



## PROMULGATION OF AGENCY REGULATIONS FINDINGS REPORT





# SC Commission for Minority Affairs

## *Promulgation of Agency Regulations Findings Report*

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# Introduction

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## *What is promulgation?*

Promulgation means to “put into action or effect”, to “announce or declare”, and to put into operation. Promulgation applies to the process within government that allows for a law, regulation or decree to be formally acknowledged and put into law.

The South Carolina Code of Laws, Title 1, Chapter 31, Section 1-31-40, Part (A)(10) states:

*“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...”<sup>1</sup>*

This section of the SC Commission for Minority Affairs statute empowers the agency with the authority to “*put into action or effect*” the law on behalf of the State to recognized Native American entities,”<sup>2</sup> and to put into action or effect other regulations to carry out the duties and mission of the agency.

## *Promulgation, Bills and Provisos*

The action of promulgation is similar to creating a bill. Unlike a bill, regulations that are promulgated are created internally and approved by the agency’s Board of Commissioners. The changes are then submitted to be published in the *South Carolina State Register*.

Bills are usually written with the assistance of Legislative staff. They must be sponsored and introduced by a Legislator in either the House of Representatives or the Senate. The bills will then go to a Legislative Committees. The Committees will decide if the bill needs additional work in a Sub-Committee or if it will be sent back to the respective Chamber for a vote. Once a bill has passed the Committee and rounds of voting by House and Senate, it is sent to the Governor to sign.

Promulgation is a simpler process reserved for Agencies<sup>3</sup> with regulatory authority. It allows those agencies to make changes quickly and efficiently without going through the full legislative process. Regulations<sup>4</sup> are tracked by the state’s “*Regulatory Tracking Matrix*”<sup>5</sup> which allows the public to see what changes are being proposed by each agency. The Matrix explains how these changes will affect individuals and their communities. Not all state agencies are regulatory in nature. However, there are many agencies like the Commission with some regulatory authority

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<sup>1</sup> See Appendix A: SC Commission for Minority Affairs Statue.

<sup>2</sup> Information provided from Slide 6 of SC Commission for Minority Affairs-“State Recognition Application Workshop Training Power Point” created by Marcy L. Hayden. Appendix D.

<sup>3</sup> List of State Agencies with Regulatory Authority from [www.sc.statehouse.gov](http://www.sc.statehouse.gov), Appendix C.

<sup>4</sup> The State of South Carolina Code of Regulations is listed online and can be found at <http://www.scstatehouse.gov/coderegs/statmast.php> . Appendix B.

<sup>5</sup> Example taken from the SC Legislature Regulations Tracking Matrix-Session 121 (2015-2016) located at [www.scstatehouse.gov](http://www.scstatehouse.gov). Appendix E.

but are not considered a full regulatory agency. According to our research, the regulatory agencies with the most frequent promulgation activity are the following: Labor, Licensing and Regulation, Department of Health and Environmental Control, Department of Natural Resources, Department of Education, and the Office of the Attorney General.

An example of a promulgation of regulations (regulatory change) is as follows:

*Department of Natural Resources (DNR) submits a change to their regulations on the number of days you are allowed to hunt wild turkey. The number changes by an additional 2 days.*

This is a minor regulation change that does not require full Legislative approval because it does not change the overall duties and functions of DNR.<sup>6</sup> Once this change is approved and listed in the *SC State Register*, it becomes law.

Some of these agencies have developed and implemented clear procedures and policies in addressing what to do to promulgate regulations. Examples of these are included in Appendix H of this report.

In addition to promulgation and legislation, agencies are also allowed to request provisos. Provisos are by definition the creation of “an article or clause, as in a contract, that introduces a condition.” These “conditional articles” allow an agency the ability to request funding for a very specific cause. Provisos are not commonly used, but the Commission has utilized them in the past for major research projects, the creation of funding for programs and to raise money through grants and other fund raising requests. They are normally requested through the budget and hearings process.



As the Commission continues to grow and move forward, there is a real need to utilize these three tools: Legislation (Bills), Promulgation and Provisos. These tools will assist the Commission in carrying out provisions outlined in the Commission’s Statute and Regulations to streamline programs, duties and functions that address the needs of the populations served. As the Commission is faced with taking on new initiatives and duties, understanding promulgation and the ability to make changes will give the agency a way to impact policy and law.

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<sup>6</sup> Example taken from the SC Legislature Regulations Tracking Matrix-Session 121 (2015-2016) located at [www.scstatehouse.gov](http://www.scstatehouse.gov), Appendix E.

# Purpose

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## *How is this report to be used?*

The “Promulgation of Agency Regulations Findings Report” is a document that has been created to outline the difference between promulgation, bills, and provisos in addition to providing valuable information regarding the promulgation process. This report which was researched by the Commission staff will assist the Board in understanding the “Administrative Procedures Act,” the Commission’s Statute and Regulations and provide examples of promulgation policy and procedure.

The Board will have the tools needed to carry out the agency’s duty and function under the South Carolina Code of Laws, Title 1, Chapter 31, Section 1-31-40, Part (A)(10). It states:

*“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...”<sup>7</sup>*

This report is intended for internal use by the agency. The research conducted in this report will lay the ground work and provide the tools necessary for the agency to constructively review our statute, regulations, program areas, duties and functions for ways to streamline our work. This report is one of three objectives under the strategy to “Promulgate regulations to carry out provision outlined in CMA’s statute to streamline programs, duties and functions to address the needs of the pollutions served,” located in the *CMA Accountability Report 2015-2016*<sup>8</sup>.

Following this report, the staff will provide an internal document titled, “Review of CMA Statute, Regulations and Program Areas,” to assist the agency in determining what legislative action, revisions or promulgation will be necessary in the future. Additionally, staff will also prepare suggestions for the revision of the statute and regulations in order to better carry out the functions and duties to address the needs of the populations served.

## *5-Year Reporting Requirements*

Under the South Carolina Code of Laws, Title 1, Chapter 23, Section 1-23-120, Part (J)(1-3)<sup>9</sup> an agency with regulations must conduct a formal review of all regulations that have been promulgated and any transferred responsibility. This review must be submitted to the Code Commission. It must contain information regarding how an agency will begin the process of repeal, how the agency plans to amend, or if the agency does not plan to amend or repeal the regulations.

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<sup>7</sup> See Appendix A: SC Commission for Minority Affairs Statue.

<sup>8</sup> Objectives 2.2.1-2.2.3 under Strategy 2.2 under Goal number 2 in the *SC CMA Accountability Report 2015-2016*, <http://www.admin.sc.gov/budget/agency-accountability-reports>.

<sup>9</sup> See Appendix F: SC State Administrative Procedure Act South Carolina Code of Laws, Title 1, Chapter 23, Articles 1-5

# History

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## *SC CMA Statutory and Regulatory History*

The South Carolina Commission for Minority Affairs was created in 1993 by the General Assembly to provide the citizens of the State with a single point of contact for information regarding the State's minority population. The Commission's statute has been amended a few times over the last twenty-three years. The first legislation created the agency in 1993 and tasked the Commission to serve African American males researching issues related poverty as well as challenges faced by this population.

In 2001, community members within the Hispanic and Native American Indian Communities began to work with the Commission to make changes to the statute. In 2002, a statute change was introduced to add the Hispanic, Native American Indian and Asian American programs to the Commission.

Regulations were established to outline the process of State Recognition for Native American Indian entities and to govern our community Advisory Committees. The first promulgation of regulations that the Commission completed was the *Joint Resolution S. 1185* in 2004. This regulation changed the requirements for state recognition and the advisory committee under *Article 1 and 2* of the Commission's regulations. The next set of regulatory changes occurred in 2006. During this promulgation, requirements for State Recognition were amended.

The Commission has face additional proposed and ratified changes to our statute following the 2002 Statute amendments. In 2008, a hotline was added to the Commission under the "*SC Illegal Immigration Reform Act*<sup>10</sup>." This hotline was never funded at the Commission, but remained in our Statute until 2015. The State formed a "Human Trafficking Task Force" and with this legislation, Commission's statute was amended to add the State's Human Trafficking Hotline. No funding has been provided for this duty to date.

## *Timeline*

Staff has created a detailed timeline outlining the changes and amendments to the statute, promulgation of regulations and provisos that have occurred with the Commission over the years. This timeline does not include proposed legislation or changes that were not ratified. The entire history of all legislation, promulgation and provisos is available on the State Legislature's website [www.scstatehouse.gov](http://www.scstatehouse.gov).

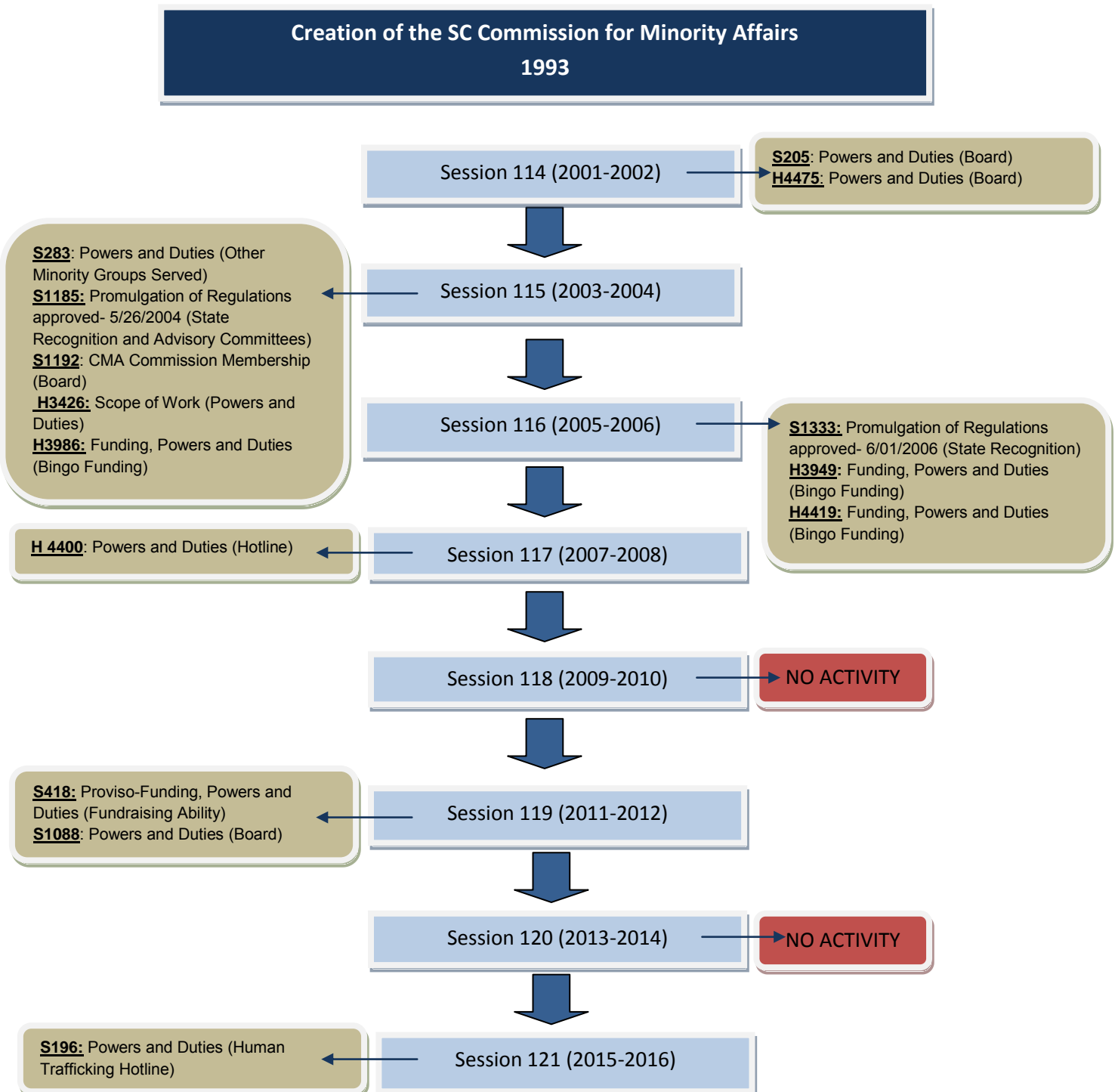
The time line is organized by year and legislative session. Each year and session will state the type of change, bill/resolution number, and what area was affected. Notes are provided for

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<sup>10</sup> While the legislation uses the term "illegal", the preferred terminology is "undocumented" or "unauthorized."

additional information regarding the particular change or amendment. Only legislation that has been approved and ratified has been included.

## *SC Commission for Minority Affairs Legislative Timeline*





# The Promulgation Process

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Promulgation is a tool used by regulatory agencies to carry out their duties and functions without going through legislation to change their regulations. This process allows for a law, regulation or decree to be formally acknowledged and put into law. The SC Commission for Minority Affairs is given this authority in the *SC Code of Laws. The South Carolina Code of Laws, Title 1, Chapter 31, Section 1-31-40, Part (A)(10)* states:

*“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...”<sup>11</sup>*

With this statutory authority, the Commission is allowed to make changes to its regulations. These changes must not change the actual functions and duties of the Commission, but amend and make minor changes to those functions and duties. The process of promulgation does not change the SC Commission for Minority Affairs statute and cannot remove a function or duty of the agency as outlined in the statute.

In order to most effectively utilize this tool, the agencies follow outlines set forth in the *SC Administrative Procedures Act*. Agencies will also create internal policies and procedures to document the process of promulgation. Once an agency has created the language desired, the change is then submitted to a committee for review prior to being published in the *SC State Register*. This process generally takes no more than 180 days from publication of the *Notice of Draft* to official publication in the *State Register*, but could take up to a year or longer.

## ***SC Administrative Law Act***

In South Carolina, the process of promulgation is governed by *Sections 1-23-110 through 111, 115, 120, 125, 126, 130, 150 and 160* of the *South Carolina Code of Laws, Title 1, Chapter 23, Article 1 (SC Administrative Procedure Act)*<sup>12</sup>. This act gives agencies the instruction they need to carry out the process of promulgation. Additionally, this Act gives the state a way to codify the regulation changes in the *SC State Register*.

*“This Act provides that all regulations promulgated or proposed to be promulgated by state having general public applicability and legal effect, including all those penalty provisions must be filed with the Legislative Council and published in the State Register.”<sup>13</sup>*

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<sup>11</sup> See Appendix A: SC Commission for Minority Affairs Statute.

<sup>12</sup> See Appendix F: SC State Administrative Procedure Act South Carolina Code of Laws, Title 1, Chapter 23, Articles 1-5

<sup>13</sup> Quoted text from [www.administrativelaw.uslegal.com/administrative-procedure-acts/south-carolina/](http://www.administrativelaw.uslegal.com/administrative-procedure-acts/south-carolina/), 9December2015.



*Article 1* contains all parts of the process for promulgation for State Agencies in the Administrative Procedure Act. These sections contain detailed information on the drafting period, submission, repeal and appeal process. *Article 2* contains processes for regulation of Small Business. *Articles 3-5* address the process and procedures for the SC Administrative Law Court system.

## ***Article I: Process and Procedures***

The *South Carolina Code of Laws, Title 1, Chapter 23, Article 1, Section 110, 111, 115 and 120* outlines the procedures for promulgation of amendments or repeals of regulations. Prior to promulgation, an agency must draft the language for the proposed regulatory changes. An agency must then give notice of the drafting period by publishing notice in the State Register. The notice must include the following items in accordance to *S.C. Code 1-23-110, Part (A) (1)(a)(b)(c)*:

- “(a) the address to which interested person may submit written comments during the initial drafting period before the regulations are submitted as proposed;
- (b) a synopsis of what the agency plans to draft; and
- (c) the agency’s statutory authority for promulgating the regulation.”<sup>14</sup>

*Part (A)(2)* and *(3)(a)(b)(c)* instructs the agency to hold a public comment period and/or hearing in which members of the public can share views, data, and arguments either orally or written within no less than 30 days from the *Notice of Drafting* in the *State Register*. If a *Notice of Drafting* is published, and less than 25 individuals request a public hearing, the agency does not need to have a public hearing. Public comments can still be accepted.

In the *S.C. Code 1-23-111, Part (A)*, the public hearing process is outlined. Again, a public hearing is not required if less than 25 individuals request a public hearing in writing. The Commission, because it is governed by a Board of Commissioners, is required to have the Board Chair preside over the hearing. The hearing is conducted by the Board of Commissioners.

The Chairman will ensure that all are treated fairly and impartially during the hearing. A record of the meeting must be maintained. Information presented orally and in written form must be considered for submission. Agency representatives and witnesses may be questioned in order to explain the purpose or intent of proposed regulations. The Board Chair may limit repetitive or immaterial statements or questions. At the request of the Board Chair and/or the Agency, a written transcript of the hearing must be prepared.

The agency is required to produce a *Preliminary Assessment Report* including the fiscal impact statement, statement of rationale and analysis of public input, scientific data or technical basis, to include any identified studies, reports, policies or statements of professional judgment or

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<sup>14</sup> See Appendix F: SC State Administrative Procedure Act South Carolina Code of Laws, Title 1, Chapter 23, Articles 1-5

administrative need relied upon in developing the new regulation. This report as outlined in *S.C. Code 1-23-111, Part (B)*, must be completed within five working days of the hearing or within no more than 20 days if an extension is granted.

After the public hearing has been conducted and the report reviewed, the Chairman and Board of Commissioners can decide if the change in regulations can move forward. If the Board determines there is no reason for the proposed regulation, *Part (C)* states that the “agency shall elect to:

- *(a) modify the proposed regulation by including the suggested modifications of the presiding official;*
- *(b) not modify the proposed regulation in accordance with the presiding official’s suggested modification in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official’s written report; or*
- *(c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.”<sup>15</sup>*

## ***Article II: Small Business Regulatory Flexibility***

The article intends to protect businesses from any state regulations that would have an “adverse” impact on a small business. If there is legislation or promulgation put before the General Assembly that may impact small businesses, the Small Business Regulatory Review Committee, shall prepare:

- (1) an economic impact statement that includes the following:*
  - (a) an identification and estimate of the number of small businesses subject to the proposed regulation;*
  - (b) the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;*
  - (c) a statement of the economic impact on small businesses; and*
  - (d) a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation; and*
- (2) a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.*

In other words, the flexibility analysis should include statutes that minimize significant impact while accomplishing its goals and objectives. A small business that is adversely impacted or

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<sup>15</sup> See Appendix F: SC State Administrative Procedure Act South Carolina Code of Laws, Title 1, Chapter 23, Articles 1-5

aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this article.

In summary, any regulations promulgated by any agency shall contain flexibility as to not have an adverse impact on small businesses. If those regulations do impact the small business, that business has a right to judicial process to have their concerns heard by an appointed committee to hear such actions and through the Administrative Law Courts.

The Commission does not have regulations that effect Small businesses at this time. Proposed legislation during Session 121 (2015-2016)<sup>16</sup>, would amend the Commission's statute to add the duties and functions of the Small and Minority Business Assistance Office.

Basically, this proposed legislation would transfer all powers, duties, responsibilities, and authority of the Small and Minority Business Assistance Office to the SC Commission for Minority Affairs (CMA) effective June 2016. The CMA would absorb that office as part of the Small and Minority Business Initiative, and continue to carry out the mission of that agency. Based on current proposed legislation, the program(s) provided by the agency would continue as usual. The only difference is that the Commission would be responsible, ultimately, to ensuring the continuation of services provided.

These services include, for the most part, certifying individuals/businesses as woman or minority owned. By the processes that are currently in place to address certification, the Commission would need to utilized currently establish regulations of this Office or create a new set of regulations to carried out these provisions.

### ***Legislative Council***

All regulations must be filed with the Legislative Council within one year of the publication of the *Notice of Drafting* in the *SC State Register*. *Section 1-23-120, Parts (A)-(J)* outlines this process in detail. The Commission must submit the following to the Legislative Council:

- *(1) a copy of the regulations promulgated;*
- *(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;*
- *(3) a request for review;*
- *(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;*

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<sup>16</sup> See Appendix I, Session 121 (2015-2016), Bill S. 279.

- (5) *a copy of the final assessment report and the summary of the final report prepared by the office pursuant to Section 1-23-115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;*
- (6) *a copy of the fiscal impact statement prepared by the agency as required by Section 1-23-110;*
- (7) *a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;*
- (8) *a copy of the economic impact statement, as provided in Section 1-23-270(C)(1)(a); and*
- (9) *a copy of the regulatory flexibility analysis, as provided in Section 1-23-270(C)(1)(b).*<sup>17</sup>

This report will be presented to the President of the Senate and the Speaker of the House. They will refer this regulation to the standing committee that is concerned with the function of promulgation for the agency. Each committee member will receive a copy of the report and notify the General Assembly of its receipt through electronic means and the *Regulations Tracking Matrix*.<sup>18</sup> The Committee has 120 days to take action on the regulations. The regulation must receive a joint resolution to approve the regulation from both the House and the Senate within the 120 day period. The regulation is effective upon publication in the *State Register*.

In addition to this process which is initiated by the agency, individuals can request promulgation. Section 1-23-126 states:

*“an interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after the submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.”*<sup>19</sup>

This initiation by an individual of promulgation, if approved by the Board of Commissioners, would then start the process outline above in the “Processes and Procedures” section.

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<sup>17</sup> See Appendix F: SC State Administrative Procedure Act South Carolina Code of Laws, Title 1, Chapter 23, Articles 1-5

<sup>18</sup> Example taken from the SC Legislature Regulations Tracking Matrix-Session 121 (2015-2016) located at [www.scstatehouse.gov](http://www.scstatehouse.gov). Appendix E.

<sup>19</sup> See Appendix F: SC State Administrative Procedure Act South Carolina Code of Laws, Title 1, Chapter 23, Articles 1-5

## SC State Register

The *South Carolina State Register* is the official state publication that updates the *South Carolina Code of Regulations* on a temporary basis. All changes to agency regulations are required to be published in the *State Register*<sup>20</sup> in accordance with the *Administrative Procedures Act*. The *State Register* also publishes the Governor's Executive Orders, notices on public hearings and meetings, and other documents published by state agencies considered to be in the public interest.

The *State Register* accepts filings from 8:30 a.m. until 5:00 p.m. on normal business days. Documents must be submitted to them in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*<sup>21</sup>. All documents are drafted by State agencies and published as they are received by the *State Register*. The *State Register* is available online or a hard-copy subscription can be requested for a fee.

## Other Agencies Process and Procedures Examples

Most all other regulatory agencies have internal policies and procedures that mirror the *SC Administrative Procedures Act* requirements. Our research shows that out of all the regulatory agencies, those with most frequent promulgation activity are the following: Labor, Licensing and Regulation, Department of Health and Environmental Control, Department of Natural Resources, Department of Education, and the Office of the Attorney General.

While doing research for this report, staff identified one example of a state agency policy on “*Approval Process for Statutes and Regulations*” produced by SC Department of Health and Environmental Control. Additionally, staff also identified three separate examples of agencies promulgating regulations. These agencies are Labor, Licensing and Regulation, Department of Natural Resources and Department of Education. Examples of the policy and promulgation are located in Appendix H.



<sup>20</sup> See Appendix G: *SC State Register* and *Standards Manual for Drafting and Filing Regulations*

<sup>21</sup> See Appendix G: *SC State Register* and *Standards Manual for Drafting and Filing Regulations*

# Findings and Recommendations

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Below are findings and recommendations to the SC commission for Minority Affairs Board of Commissioners. During the process of preparing this report, staff identified several important items that may need to be addressed by the Board and/or Staff. Additionally, staff has made recommendations to the Board and Executive Director regarding these findings. They are listed below by number, followed by their respective recommendation.

## *Findings and Recommendations Table*

### ***Findings #1:***

The SC Commission for Minority Affairs does have regulatory authority per SC Code of laws, Title 1, Chapter 31, Section 1-31-40, Part (A)(10). As stated, the Commission is to 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.

### ***Recommendation:***

It is recommended that the Board and CMA staff review this report and become familiar with the terms and processes outlined. Through the process of an “in-house” review of our statute, regulations and program areas, the staff will create an internal report for the Board, titled “Review of CMA Statute, Regulations and Program Areas,” which will give detailed suggestions for changes, revisions, and amendments of these various areas. This document is to be used by the Board at their pleasure to assist with the process of planning and development. Additionally, this review will assist the Board in making “educated” and “well-researched” decisions regarding changes to our statute, regulations and program areas. It is recommended that a review of currently proposed legislation take priority during FY2015-2016.

### ***Findings #2:***

Although the Commission has had regulatory authority since 2002, it has not created a policy and/or procedure for the process of promulgation.

### ***Recommendation:***

Sample policies and procedures have been included in this report for the Board and staff to review. It is recommended that the Board direct the Executive Director to create a draft policy and procedure on promulgation of regulations and other legislative changes. This policy should then be reviewed by the CMA Board; edited/approved and put into action thus giving the CMA the framework needed to utilize these tools.



***Findings #3:***

The SC Commission for Minority Affairs has not been in the practice of utilizing bills, promulgation, or provisos to the degree of other agencies over the years. As a staff, we could not determine why, other than that there is not a current policy or procedure to address this area.

***Recommendation:***

It is recommended that a policy and procedures be created. In order for the CMA to utilize these tools, the CMA will need to have policy and procedures in place first. Then it is recommended that the Staff review annually all of the legislation that has been proposed during that year's session. After reviewing, staff should prepare a report outlining the details of the legislation; how this will fit within our agency plan; how to address this legislation through other means if needed, i.e. promulgation or policy change; and suggestions for legislation/promulgation for the following session. Additionally, it is recommended that each initiative utilize their advisory committee to seek advice to help address issues or challenges faced by our communities through legislation/promulgation. It is recommended that a formalized process be drafted in which these committees can make these recommendations to the staff to include in the report. This process would assist the agency with drafting language and gaining support for such changes. It would be beneficial to the Board to have such information in a structured way.

***Findings #4:***

Under the South Carolina Code of Laws, Title 1, Chapter 23, Section 1-23-120, Part (J)(1-3) an agency with regulations must conduct a formal review of all regulations that have been promulgated and any transferred responsibility. This review must be submitted to the Code Commission. It must contain information regarding how an agency will begin the process of repeal, how the agency plans to amend or if the agency does not plan to amend or repeal the regulations. The Commission for Minority Affairs has not completed this report in prior years. The first report should have been completed in 2008 and the second in 2013. The next report will be due 2018.

***Recommendation:***

It is recommended that the Commission complete the upcoming 2018 5-year Regulation Review and submit this report to the Code Commission. Utilizing the information presented in this report and the upcoming statutory and regulatory internal review reports, the Commission Board should direct the Executive Director to review requirements and submission process for the upcoming 2018 submission. More detailed information regarding this reporting requirement needs to be researched prior to submission as this may not be required for agencies not listed as "Regulatory."



***Findings #5:***

The SC Commission for Minority Affairs has regulations and regulatory power, but is not considered fully as a “Regulatory Agency.” There is not a list available of regulatory agencies or a way to check this information through the State, other than “assuming” all agencies with regulations listed in the *Code of Regulations* are considered regulatory Agencies. Additionally, proposed legislation this session could increase our regulatory functions.

***Recommendation:***

It is recommended that the Commission further investigate this issue and determine if the CMA is a “Regulatory Agency.” In addition, the Commission should review proposed legislation, i.e. Governor’s Office of Small and Minority Business Assistance moving into the SC Commission for Minority Affairs, S.279<sup>22</sup>. This bill and other proposed legislation could increase regulatory duties. This information should be included in the upcoming reports to the Board.

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The team working on this report has made several suggestions to the CMA Board and Executive Director in regards to the five findings. Namely, that additional research be conducted regarding our status as a “Regulatory Agency” and if we are required to produce a “5-Year Regulatory Review” for the Code Commission.

Additionally, the staff recommends that the Board review this report to become familiar with the language and terminology used when discussing various areas of work of the Commission. Based on the findings, the most pressing recommendation from the staff is that an additional internal report be created for the Board outlining suggestions for statutory, regulatory and other programmatic changes over the next few years. These suggestions could be utilized by the Board during their strategic planning for the agency.

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<sup>22</sup> This Bill and other pending legislation are in Appendix I of this report.

# Appendix

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# Appendix A

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## **SC Commission for Minority Affairs Statute**

## DISCLAIMER

The South Carolina Legislative Council is offering access to the South Carolina Code of Laws on the Internet as a service to the public. The South Carolina Code on the General Assembly's website is now current through the 2015 session. The South Carolina Code, consisting only of Code text, numbering, history, and Effect of Amendment, Editor's, and Code Commissioner's notes may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the South Carolina Code available on the South Carolina General Assembly's website, this version of the South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify the Legislative Services Agency at [LSA@scstatehouse.gov](mailto:LSA@scstatehouse.gov) regarding any apparent errors or omissions in content of Code sections on this website, in which case LSA will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

## CHAPTER 31

### State Commission for Minority Affairs

**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.

Editor's Note

2012 Act No. 279, Section 33, provides as follows:

“Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy.”

Effect of Amendment

The 2012 amendment deleted “six” before “congressional districts” and substituted “two persons from the State” for “three persons from the State”.

**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.

**Effect of Amendment**

The 2008 amendment added subparagraph (A)(11) relating to a toll free telephone number and electronic website, and redesignated subparagraph (A)(11) as (A)(12).

**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.

# Appendix B

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## **SC Commission for Minority Affairs Regulations**



## DISCLAIMER

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## CHAPTER 139

### Commission for Minority Affairs

#### ARTICLE I

#### STATE RECOGNITION OF NATIVE AMERICAN INDIAN ENTITIES

(Statutory Authority: S.C. Code § 1-31-40(A)(10))

#### **139-100. Purpose.**

Section 1-31-40(A)(10), South Carolina Code of Laws provides that “The Commission shall promulgate regulations as may be necessary regarding State Recognition of Native American Indian entities in the State of South Carolina.”

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

#### **139-101. Scope.**

These rules and regulations shall be applicable to all entities seeking Native American Indian State Recognition as a:

- A. Native American Indian Tribe.
- B. Native American Indian Group.
- C. Native American Special Interest Organization.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

#### **139-102. Definitions.**

As used in this article, unless the context clearly requires otherwise:

- A. “State” means the State of South Carolina.
- B. “Commission” means the South Carolina Commission for Minority Affairs.
- C. “Board” means a quorum or more of the oversight body of the Commission.
- D. “Tribe” means an assembly of Indian people comprising numerous families, clans, or generations together with their descendents, who have a common character, interest, and behavior denoting a separate ethnic and cultural heritage, and who have existed as a separate community, on a substantially continuous basis throughout the past 100 years. In general, core members of the tribe are related to each other by blood. A tribal council and governmental authority unique to Native American Indians govern them.

E. “Group” means a number of individuals assembled together, which have different characteristics, interests and behaviors that do not denote a separate ethnic and cultural heritage today, as they once did. The group is composed of both Native American Indians and other ethnic races. They are not all related to one another by blood. A tribal council and governmental authority unique to Native American Indians govern them.

F. “Special Interest Organization” means an assembly of people who have united for the common purpose of promoting Native American culture and addressing socio-economic deprivation among people of Indian origin. The organization is made up of Native American Indians and other ethnic races. A tribal council or other form of governing body provides oversight and management. Membership is not required. They may be organized as a private nonprofit corporation under the laws of South Carolina.

G. "Official Record" means a record created, received, sanctioned by, or proceeding from an officer acting in an official capacity.

H. "Lineage" means direct descent from a particular ancestor or the descendents of a common ancestor considered the founder of the line.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–103. Notification of Recognition Status, Appeals and Withdrawals.**

A. Formal acknowledgement of the decision of the Board of the Commission regarding the status of an application for State Recognition shall be in writing, and may be further acknowledged in other forms (certificate, plaque, and/or culturally appropriate ceremony) as determined appropriate by the Commission.

B. Whenever an entity receives an unfavorable recommendation from the State Recognition Committee, the entity will be notified by mail within five business days from the date of notification to the Board of the Commission. This notification will include the reason the unfavorable recommendation was given. The entity shall have ten business days from receipt of the notification letter to submit an appeal asking for reversal of that decision. The appeal must state clearly the reasons that the entity believes that the decision should be reversed. The Commission for Minority Affairs must receive the appeal in writing. Entities are barred from submitting new information, updated information, additional exhibits, charts, and/or any additional documentation that was not part of the original petition and considered by members of the State Recognition Committee.

C. An entity may withdraw its request for State Recognition at any point during the initial review process by the State Recognition Committee. After the State Recognition Committee makes its initial recommendations to the Board of the Commission, an entity may not withdraw its request.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–104. Limitations.**

A. The Native American Indian entities recognized by this act, their members, lands, natural resources, or other property owned by such entities or their members, are subject to the civil, criminal, and regulatory jurisdiction and laws of the State of South Carolina, its agencies, and political subdivisions, and the civil and criminal jurisdiction of the courts of the State of South Carolina, to the same extent as any other person, citizen or land in South Carolina.

B. Notwithstanding their state certification, Native American Indian entities have no power or authority to take any action that would establish, advance or promote any form of gambling in the State of South Carolina; nor does this provision of law confer power or authority to take any action which could establish, advance or promote any form of gambling in the State.

C. Nothing in this act 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 Indian entity recognized by the State.

D. Federally recognized tribes retain all federally recognized sovereignty of rights under this provision of law.

E. State recognized tribes that subsequently obtain federal recognition are not bound by the limitations of this provision and therefore, gain and retain all federally recognized sovereignty of rights under this provision of law.

F. Splinter groups, political factions, communities or groups that separate from the main body of a currently State acknowledged tribe or who claim the same ancestors, history, genealogy, institutions, establishments, or other primary characteristics of a currently recognized tribe, may not be acknowledged under these regulations. However, entities that can establish clearly and on a substantially continuous basis that they have functioned throughout the past one hundred years until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or as having been associated in some manner with an acknowledged South

Carolina Indian Tribe. No entities formed after January 1, 2006 shall be granted State recognition as a "Tribe".

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139–105. Criteria for State Recognition.**

A. Native American Indian Tribe - requirements 1 through 9 must be satisfactorily met to achieve State Recognition. Requirements 10 and 11 are optional.

(1) The tribe is headquartered in the State of South Carolina and indigenous to this State. The tribe must produce evidence of tribal organization and/or government and tribal rolls for a minimum of five years.

(2) Historical presence in the State for past 100 years and entity meets all of the characteristics of a "tribe" as defined in R. 139–102 (D)

(3) Organized for the purpose of preserving, documenting and promoting the Native American Indian culture and history, and have such reflected in its by-laws.

(4) Exist to meet one or more of the following needs of Native American Indian people - spiritual, social, economic, or cultural needs through a continuous series of educational programs and activities that preserve, document, and promote the Native American Indian culture and history.

(5) Claims must be supported by official records such as birth certificates, church records, school records, U.S. Bureau of the Census records, and other pertinent documents.

(6) Documented kinship relationships with other Indian tribes in and outside the State.

(7) Anthropological or historical accounts tied to the group's Indian ancestry.

(8) A minimum of one hundred living descendants who are eighteen years of age or older, whose Indian lineage can be documented by a lineal genealogy chart, and whose names, and current addresses appear on the Tribal Roll.

(9) Documented traditions, customs, legends, etc., that signify the specific group's Indian heritage.

(10) Letters, statements, and documents from state or federal authorities, that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation, and affairs.

(11) Letters, statements, and documents from tribes in and outside of South Carolina which attest to the Indian heritage of the group.

B. Native American Indian Group - requirements 1 through 5 must be satisfactorily met to achieve State Recognition. Requirement 6 is optional.

(1) The group headquartered in South Carolina and indigenous to this State.

(2) Assembled as a "Group" for a minimum of three years, and entity meets all the characteristics of a "Group" as defined in R. 139–102 (E).

(3) Organized for the purpose of preserving, documenting and promoting the Native American Indian culture and history, and have such reflected in its by-laws.

(4) Exist to meet one or more of the following needs of Native American Indian people - spiritual, social, economic, or cultural needs through a continuous series of educational programs and activities that preserve, document, and promote the Native American Indian culture and history.

(5) Claims must be supported by official records such as birth certificates, church records, school records, U.S. Bureau of the Census records, or other pertinent documents.

(6) Letters, statements, and documents from state or federal authorities, that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation and affairs.

C. Native American Special Interest Organization - requirements 1 through 4 must be satisfactorily met to achieve State recognition. Requirement 5 is optional.

(1) The organization must represent the interest of Native American Indian people residing in South Carolina.

(2) The organization is recognized as a private nonprofit corporation under the laws of the State.

(3) Letters, statements, and documents from tribes attesting to the work of the organization as it promotes Native American culture and addresses socio-economic deprivation among people of Indian origin.

(4) Formed and operating for a minimum of two years.

(5) Letters, statements, and documents from state and federal authorities that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation, and affairs.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139–106. Purpose of the Native American Indian Advisory Committee.**

It shall be the purpose of the Native American Indian Advisory Committee to preserve the true aboriginal culture of the Americas in the State of South Carolina and to advance the Native American Indian culture by:

(A) Advising the Commission regarding Native American Indian Affairs.

(B) Identifying the needs and concerns of the Native American Indian people of South Carolina by bringing such needs and concerns to the attention of the Commission.

(C) Making recommendations to the Commission to address the needs and concerns of Native American Indian people.

(D) Inviting individuals recognized as specialists in Native American Indian Affairs and representatives of the state and federal agencies to present information to members of the Advisory Committee.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139–107. Membership Requirements for the Native American Advisory Committee.**

Entities who want to participate on the Native American Indian Advisory Committee must meet and comply with the following minimum requirements:

(A) The entity must have obtained State Recognition designation as either:

(1) A Tribe.

(2) A Group.

(B) Upon receiving State Recognition, the tribal council, and/or governmental authority of the “Tribe” or “Group” must provide in writing to the Commission, the name, address, and telephone number of the voting representative to serve on the Advisory Committee. Designees shall continue to serve until such time as the Executive Director of the Commission is notified in writing of a change by the appointing tribal council and/or governmental authority.

(C) Additionally, representatives from the following organizations shall serve as non-voting advisors to members of the Native American Indian Advisory Committee:

(1) Office of the Governor.

(2) Office of the State Archeologist.

(3) Federally Recognized Tribes.

(4) Commission for Minority Affairs.

(5) Representatives from South Carolina state agencies having a vested interest in Native American affairs.

(D) The Chair of the Native American Indian Advisory Committee shall be the Executive Director of the Commission for Minority Affairs or a designee appointed by the Executive Director.

(E) The Native American Indian Advisory Committee serves at the pleasure of the Board of the Commission for Minority Affairs.

(F) The Native American Indian Advisory Committee shall meet at least twice a year or at the call of the chair.

(G) The Native American Indian Advisory Committee may establish subcommittees to carry out its purpose.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–108. Membership, Terms, and Voting Power of the State Recognition Committee.**

(A) The State Recognition Committee shall consist of five (5) members:

- (1) The State Archeologist.
- (2) The Executive Director of the Commission for Minority Affairs.
- (3) Two members of the Native American Indian Advisory Committee.
- (4) One notable Native American leader or scholar from across the United States, excluding South Carolina.

(B) The State Archaeologist and the Executive Director of the Commission for Minority Affairs shall serve indefinitely. The Executive Director of the Commission for Minority Affairs shall serve as chair of the State Recognition Committee. The three remaining positions shall serve for two-year terms beginning July 1 and ending June 30 of each two-year term.

(C) Initially, three persons shall compose the Interim State Recognition Committee. This interim group shall consist of:

- (1) The State Archeologist.
- (2) The Executive Director of the Commission for Minority Affairs.
- (3) One representative from a South Carolina Native American Indian entity or notable Native American leader or scholar from across the United States, to be decided by the State Archaeologist and the Executive Director of the Commission for Minority Affairs.

(D) The two entities first obtaining State Recognition shall take their seats on the following July 1 and will represent the Native American Indian Advisory Committee on the State Recognition Committee. Thereafter, the two members representing the Native American Indian Advisory Committee shall be selected by the Committee members, by majority vote from among those “Tribes” and “Groups” having obtained State Recognition.

(E) Upon seating the first two entities to obtain State Recognition on the State Recognition Committee, the four members of the State Recognition Committee shall select one person to fill the seat designated for “One representative from a South Carolina Native American Indian entity or a notable Native American leader or scholar from across the United States.” The four State Recognition Committee members may select an individual from among the following categories:

- (1) State recognized “Tribe” or “Group”.
- (2) Federally recognized “Tribe”.
- (3) Native American Entity.
- (4) Native American Leader or Scholar.

(F) Thereafter, the four members of the State Recognition Committee shall select one person from among the following categories:

- (1) Federally recognized “Tribe”.
- (2) Notable Native American leader or scholar from across the United States, excluding South Carolina.

(G) The establishment of the first three-member Interim State Recognition Committee shall be at the discretion of the Executive Director of the Commission for Minority Affairs. Thereafter, elections shall be held in April every other year, prior to the end of the two-year term for seating of State Recognition Committee members.

(H) An entity applying for State Recognition must receive a majority vote or three affirmative votes out of five to be recommended for State Recognition. The absence of a member or failure of a committee member to vote will be counted as an “Abstention” vote. No member may cast a vote for another member.

(I) In the event that a member is no longer able to serve due to death, illness, or other personal reasons, a written letter of resignation from the governing body of the entity represented should be sent to the Executive Director of the Commission for Minority Affairs. Upon receiving the letter of resignation, the Executive Director shall move forward to fill the vacancy and the remaining unexpired term in accordance with the guidelines set forth herein. If a member fails to participate after having been appointed to the State Recognition Committee, the Executive Director shall make the Chairperson of the Board of the Commission for Minority Affairs aware of the impact upon the State Recognition process, and the Board may vote to declare the seat vacant. If such occurs, a new appointment may be made in accordance with the manner in which the seat was filled, and in accordance with the guidelines set forth herein.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–109. Duties of the State Recognition Committee.**

(A) The State Recognition Committee shall review all information submitted to the Commission for Minority Affairs from entities seeking State Recognition as:

- (1) A Tribe.
- (2) A Group.
- (3) A Special Interest Organization.

(B) The State Recognition Committee shall review all information submitted in accordance with R. 139–102 (D)(E)(F) and R. 139–105 (A)(B)(C), and request such information as it deems appropriate and necessary to make a recommendation to the Board of the Commission. State Recognition Committee may seek clarification through written correspondence or by meeting with an entity as it deems appropriate. The State Recognition Committee will not accept unsolicited additional documentation.

(C) The State Recognition Committee shall receive applications twice a year from entities seeking State Recognition, that being on or before April 1 and September 1 of each year.

(D) The State Recognition Committee shall make its recommendations within 120 days. The Chair of the State Recognition Committee must notify the Chair of the Board of the Commission for Minority Affairs of its recommendation regarding each entity.

(E) The Board of the Commission shall either reject or accept the recommendations of the State Recognition Committee in part, or in whole. In either event, all entities will be advised of the status of their requests and the reason for approval or rejection.

(F) Entities who fail to achieve State Recognition shall not be eligible to reapply for the same status for one year from their original date of submission, that being April 1 or September 1 and in accordance with R. 139–109(C).

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.

### **139–110. Verification of Authenticity of Documents.**

(A) All copies of official records and other documents submitted in support of State Recognition of Native American Indian entities must include a means for the State Recognition Committee to ascertain authenticity. In the case of official records, this may include a stamped, dated, embossed, and signed certification on the document by the office from which the record was obtained. For other documents, a signed and notarized affidavit of origin and other relevant information to support authentication is required.

(B) In those instances where records are maintained under lock and key, such as tribal rolls, adoption papers, birth certificates and other legal papers, members of the State Recognition Committee may conduct an on-site review of such documents on the premises of the entity making application. Members of the Committee may request supporting documentation on-site that provides evidence of the existence of a viable Native American Indian “Tribe”, “Group”, and “Organization”.

**HISTORY:** Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.



## **ARTICLE II ADVISORY COMMITTEES**

(Statutory Authority: S.C. Code § 1-31-40(A)(7) and (10))

### **139-200. Purpose.**

Section 1-31-40(A)(7),(10), South Carolina Code of Laws, provides that “The Commission shall establish advisory committees representative of minority groups, as the Commission considers appropriate to advise the Commission,” and “The Commission shall 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;.”

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139-201. Scope.**

These rules and regulations shall be applicable to all advisory committees, except as specifically addressed separately for Native American Indians.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139-202. Duties of Advisory Committees.**

A. Advise the Commission for Minority Affairs regarding socio-economic issues relevant to African Americans, Hispanics/Latinos, Asians and other ethnic minority groups in South Carolina.

B. Identify the needs and concerns of the various ethnic minorities and bring such needs and concerns to the attention of the Commission for Minority Affairs.

C. Make recommendations to the Commission for Minority Affairs to address the needs and concerns of ethnic minority groups.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

### **139-203. Membership, Terms, Size, and Administration of the Advisory Committees.**

A. The recommendation and selection of persons to serve on the Advisory Committees shall be made by the Executive Director of the Commission, with the review and approval of the Board of the Commission for Minority Affairs.

B. The committee members shall serve for two year terms and may be recommended for reappointment by the Executive Director of the Commission, with the review and approval of the Board of the Commission for Minority Affairs.

C. Advisory Committees shall not exceed twenty persons.

D. The chair of all Advisory Committees shall be the Executive Director of the Commission for Minority Affairs or a designee appointed by the Executive Director.

E. Advisory Committees serve at the pleasure of the Board of the Commission for Minority Affairs.

F. Advisory Committee members, including Native Americans, serve without compensation or per diem.

G. All meetings, documents and work produced or performed by an Advisory Committee, except as exempted by these regulations, shall be covered by the Freedom of Information Act.

**HISTORY: Added by State Register Volume 28, Issue No. 6, eff June 25, 2004. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.**

# Appendix C

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## **SC State Agencies with Regulatory Authority**

## *Code of Regulations List by Chapter*

*(Chapters 1-139)*

*Compiled from the website: [www.scstatehouse.gov](http://www.scstatehouse.gov).*

*CHAPTER 1 - DEPARTMENT OF LABOR, LICENSING AND REGULATION - BOARD OF ACCOUNTANCY*

*CHAPTER 3 - DEPARTMENT OF COMMERCE - AERONAUTICS DIVISION*

*CHAPTER 5 - DEPARTMENT OF AGRICULTURE*

*CHAPTER 7 - ALCOHOLIC BEVERAGES, BEER AND WINE*

*CHAPTER 8 - BUILDING CODES COUNCIL*

*CHAPTER 9 - INSTITUTE OF ARCHEOLOGY AND ANTHROPOLOGY*

*CHAPTER 10 - DEPARTMENT OF LABOR, LICENSING AND REGULATION*

*CHAPTER 11 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF ARCHITECTURAL EXAMINERS*

*CHAPTER 12 - SOUTH CAROLINA DEPARTMENT OF ARCHIVES AND HISTORY*

*CHAPTER 13 - ATTORNEY GENERAL*

*CHAPTER 14 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA AUCTIONEERS' COMMISSION*

*CHAPTER 15 - STATE BOARD OF FINANCIAL INSTITUTIONS*

*CHAPTER 17 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF BARBER EXAMINERS*

*CHAPTER 18 - SOUTH CAROLINA COMMISSION FOR THE BLIND*

*CHAPTER 19 - STATE BUDGET AND CONTROL BOARD*

*CHAPTER 20 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE ATHLETIC COMMISSION*

*CHAPTER 21 - SOUTH CAROLINA CEMETERY BOARD*

*CHAPTER 22 - COASTAL CAROLINA UNIVERSITY*

*CHAPTER 23 - THE COLLEGE OF CHARLESTON*

*CHAPTER 24 - OFFICE OF THE GOVERNOR-- DIVISION FOR REVIEW OF THE FOSTER CARE OF CHILDREN*

*CHAPTER 25 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS*

*CHAPTER 26 - THE CITADEL*

*CHAPTER 27 - CLEMSON UNIVERSITY*

*CHAPTER 28 - DEPARTMENT OF CONSUMER AFFAIRS*

*CHAPTER 29 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE*

*LICENSING BOARD FOR CONTRACTORS*

*CHAPTER 30 - DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL--  
COASTAL DIVISION*

*CHAPTER 31 - OFFICE OF THE GOVERNOR-- CONTINUUM OF CARE FOR  
EMOTIONALLY DISTURBED CHILDREN DIVISION*

*CHAPTER 33 - DEPARTMENT OF CORRECTIONS*

*CHAPTER 35 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE  
BOARD OF COSMETOLOGY*

*CHAPTER 36 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- BOARD  
OF EXAMINERS FOR THE LICENSURE OF PROFESSIONAL COUNSELORS,  
MARRIAGE AND FAMILY THERAPISTS, AND PSYCHO-EDUCATIONAL SPECIALISTS*

*CHAPTER 37 - SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY*

*CHAPTER 38 - DEPARTMENT OF PUBLIC SAFETY*

*CHAPTER 39 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE  
BOARD OF DENTISTRY*

*CHAPTER 40 - DEPARTMENT OF LABOR, LICENSING AND REGULATION PANEL  
FOR DIETETICS*

*CHAPTER 42 - STATE EDUCATION ASSISTANCE AUTHORITY*

*CHAPTER 43 - STATE BOARD OF EDUCATION*

*CHAPTER 44 - SOUTH CAROLINA LOTTERY COMMISSION*

*CHAPTER 45 - STATE ELECTION COMMISSION*

*CHAPTER 47 - DEPARTMENT OF EMPLOYMENT AND WORKFORCE*

*CHAPTER 49 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH  
CAROLINA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND  
LAND SURVEYORS*

*CHAPTER 50 - SOUTH CAROLINA STATE BOARD OF EXAMINERS FOR REGISTERED  
ENVIRONMENTAL SANITARIANS*

*CHAPTER 51 - SOUTH CAROLINA ENVIRONMENTAL CERTIFICATION BOARD*

*CHAPTER 52 - STATE ETHICS COMMISSION*

*CHAPTER 53 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE  
BOARD OF REGISTRATION FOR FORESTERS*

*CHAPTER 55 - STATE COMMISSION OF FORESTRY*

*CHAPTER 57 - DEPARTMENT OF LABOR, LICENSING AND REGULATION--SOUTH  
CAROLINA STATE BOARD OF FUNERAL SERVICE*

*CHAPTER 58 - OFFICE OF THE GOVERNOR*

*CHAPTER 61 - DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL*

*CHAPTER 62 - STATE COMMISSION ON HIGHER EDUCATION*

*CHAPTER 63 - DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION*

*CHAPTER 64 - SOUTH CAROLINA STATE HOUSING FINANCE AND DEVELOPMENT AUTHORITY*

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*CHAPTER 71 - DEPARTMENT OF LABOR, LICENSING AND REGULATION--DIVISION OF LABOR*

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*CHAPTER 73 - SOUTH CAROLINA LAW ENFORCEMENT DIVISION*

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*CHAPTER 76 - BOARD OF LANDSCAPE ARCHITECTURAL EXAMINERS*

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*CHAPTER 93 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA BOARD OF LONG TERM HEALTH CARE ADMINISTRATORS*

*CHAPTER 94 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA BOARD OF OCCUPATIONAL THERAPY*

*CHAPTER 95 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- BOARD OF EXAMINERS IN OPTOMETRY*

*CHAPTER 96 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA BOARD OF EXAMINERS IN OPTICIANRY*

*CHAPTER 99 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF PHARMACY*

*CHAPTER 100 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF EXAMINERS IN PSYCHOLOGY*

*CHAPTER 101 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF PHYSICAL THERAPY EXAMINERS*

*CHAPTER 102 - ATTORNEY GENERAL--DIVISION OF PUBLIC CHARITIES*

*CHAPTER 103 - PUBLIC SERVICE COMMISSION*

*CHAPTER 104 - SOUTH CAROLINA STATE PORTS AUTHORITY*

*CHAPTER 105 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA REAL ESTATE COMMISSION*

*CHAPTER 106 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION*

*CHAPTER 108 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOIL CLASSIFIERS ADVISORY COUNCIL*

*CHAPTER 110 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF SOCIAL WORK EXAMINERS*

*CHAPTER 112 - STATE REORGANIZATION COMMISSION*

*CHAPTER 113 - SECRETARY OF STATE*

*CHAPTER 114 - DEPARTMENT OF SOCIAL SERVICES*

*CHAPTER 115 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- BOARD OF EXAMINERS IN SPEECH/LANGUAGE PATHOLOGY AND AUDIOLOGY*

*CHAPTER 117 - DEPARTMENT OF REVENUE*

*CHAPTER 119 - UNIVERSITY OF SOUTH CAROLINA*

*CHAPTER 120 - DEPARTMENT OF LABOR, LICENSING AND REGULATION--BOARD OF VETERINARY MEDICAL EXAMINERS*

*CHAPTER 121 - DEPARTMENT OF NATURAL RESOURCES*

*CHAPTER 123 - DEPARTMENT OF NATURAL RESOURCES*

*CHAPTER 125 - WINTHROP UNIVERSITY*

*CHAPTER 126 - DEPARTMENT OF HEALTH AND HUMAN SERVICES*

*CHAPTER 127 - SOUTH CAROLINA OCCUPATIONAL HEALTH AND SAFETY REVIEW BOARD*

*CHAPTER 130 - DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES*

*CHAPTER 131 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF REGISTRATION FOR GEOLOGISTS*

*CHAPTER 132 - SOUTH CAROLINA CRIME VICTIM'S ADVISORY BOARD*

*CHAPTER 133 - DEPARTMENT OF PARKS, RECREATION AND TOURISM*

*CHAPTER 134 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- BOARD OF PODIATRY EXAMINERS*

*CHAPTER 136 - DEPARTMENT OF LABOR, LICENSING AND REGULATION--*

*COMMISSIONERS OF PILOTAGE*

*CHAPTER 137 - DEPARTMENT OF LABOR, LICENSING AND REGULATION-- SOUTH  
CAROLINA REAL ESTATE APPRAISERS BOARD*

*CHAPTER 139 - COMMISSION FOR MINORITY AFFAIRS*

# Appendix D

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**Slide 6 of SC Commission for Minority Affairs-“State Recognition Application Workshop Training Power Point” created by Marcy L. Hayden**



# 139-100. Purpose.

- **Section 1-31-40(A)(10)**, South Carolina Code of Laws provides that:  
*“The Commission shall promulgate regulations as may be necessary regarding State Recognition of Native American Indian entities in the State of South Carolina.”*
- **Meaning:** *The CMA “puts into action or effect” the law on behalf of the State to recognized Native American entities.*

# Appendix E

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## **Regulatory Tracking Matrix Example**

# South Carolina Legislature

Committee Postings and Reports &gt; House Regulations and Administrative Procedures Committee

## House Regulations and Administrative Procedures Committee

Eric M. Bedingfield, *Chairman*  
 William M. "Bill" Chumley  
 J. Wayne George  
 Lonnie Hosey  
 Ralph Shealy Kennedy, Jr.  
 Leola C. Robinson-Simpson  
 Don L. Wells

Carl L. Anderson, *1st V.C.*  
 P. Michael "Mike" Forrester  
 Wendell G. Gilliard  
 Chip Huggins  
 Christopher J. "Chris" Murphy  
 Edward L. Southard

[Video Archives](#)

### GENERAL COMMITTEE INFORMATION

- Rules
- 2015-2016 Subcommittee Assignments
- Committee Meeting Information

## Regulations Tracking Matrix

Session 121 (2015-2016)

Session: 121 - (2015-2016) ▼

Agency: All ▼

[Submit](#)

Searching: All Regulations - found 12

Doc#	Subject Matter	Agency	SubCommittee	Meeting Date/Time/Place	Senate Committee	First Reading	120 Day Auto Promulgate Date	Status
4541	Hazardous Waste Management	DHEC	Business, Commerce and Administrative		Medical Affairs	01/21/15	05/21/15	Pending
4546	Wildlife Management Areas; Turkey Hunting Rules and Seasons.; Either-sex Days and Antlerless Deer Limits for Private Lands in Games Zones 1-6	DNR	Environment and Natural Resources		Fish, Game and Forestry	02/03/15	06/04/15	Resubmitted
4560	Alligator Hunting and Alligator Propagation	DNR	Environment and Natural Resources		Fish, Game and Forestry	03/17/15	02/15/16	Resubmitted
4547	Public Use of State Lakes and Ponds	DNR	Environment and Natural Resources		Fish, Game and Forestry	03/24/15	02/28/16	Resubmitted
4543	Standards for Licensing Nursing Homes	DHEC	Health		Medical Affairs	03/25/15	02/28/16	Pending
4540	Emergency Medical Services	DHEC	Health		Medical Affairs	03/25/15	02/28/16	Withdrawn Permanently
4552	Horse & Kangaroo Meat; Fairs, Camp Meetings, & other Gatherings; Camps; Mobile/Manu-factored Home Park; Sanitation of Schools; Nuisances	DHEC	Environment and Natural Resources		Medical Affairs	04/14/15	03/14/16	Pending
4553	Standards for Licensing Hospices	DHEC		TBD	Medical Affairs	04/21/15	03/27/16	Pending
4562	Board of Long Term Health Administrators	LLR	Business, Commerce and Administrative		Medical Affairs	04/22/15	03/28/16	Pending
4563	Local Emergency Preparedness Standards	SC EMD	Business, Commerce and Administrative		General	05/05/15	04/05/16	Pending
4564	Standards for Licensing Habilitation Centers for Persons with Intellectual Disability or Persons with Related Conditions	DHEC			Medical Affairs	05/20/15	04/25/16	Pending
4565	Underground Storage Tank Control Regulations	DHEC			General	05/20/15	04/25/16	Pending

#### KEY:

Approved or Approved Partial  
 Disapproved  
 Withdrawn  
 Withdrawn and Resubmitted

# Appendix F

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## SC Administrative Law

## DISCLAIMER

The South Carolina Legislative Council is offering access to the South Carolina Code of Laws on the Internet as a service to the public. The South Carolina Code on the General Assembly's website is now current through the 2015 session. The South Carolina Code, consisting only of Code text, numbering, history, and Effect of Amendment, Editor's, and Code Commissioner's notes may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the South Carolina Code available on the South Carolina General Assembly's website, this version of the South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify the Legislative Services Agency at [LSA@scstatehouse.gov](mailto:LSA@scstatehouse.gov) regarding any apparent errors or omissions in content of Code sections on this website, in which case LSA will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 23  
State Agency Rule Making and Adjudication of Contested Cases

ARTICLE 1  
State Register and Code of Regulations

**SECTION 1-23-10. Definitions.**

As used in this article:

(1) “Agency” or “State agency” means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases;

(2) “Document” means a regulation, notice or similar instrument issued or promulgated pursuant to law by a state agency;

(3) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

(4) “Regulation” means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term “regulation” includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include descriptions of agency procedures applicable only to agency personnel; opinions of the Attorney General; decisions or orders in rate making, price fixing, or licensing matters; awards of money to individuals; policy statements or rules of local school boards; regulations of the National Guard; decisions, orders, or rules of the Board of Probation, Parole, and Pardon Services; orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients; decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment tenure and promotion of faculty and disciplinary proceedings; decisions of the Human Affairs Commission relating to firms or individuals; advisory opinions of agencies; and other agency actions relating only to specified individuals.

(5) “Promulgation” means final agency action to enact a regulation after compliance with procedures prescribed in this article.

(6) “Office” means the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

(7) “Substantial economic impact” means a financial impact upon:

- (a) commercial enterprises;
- (b) retail businesses;
- (c) service businesses;
- (d) industry;
- (e) consumers of a product or service;
- (f) taxpayers; or
- (g) small businesses as defined in Section 1-23-270.

**HISTORY:** 1977 Act No. 176, Art. I, Section 1; 1992 Act No. 507, Section 2; 1996 Act No. 411, Section 1; 1999 Act No. 77, Section 2; 2000 Act No. 387, Part II, Section 69A.3; 2004 Act No. 231, Section 3, eff January 1, 2005.

**Code Commissioner’s Note**

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

#### Effect of Amendment

The 2004 amendment added subparagraph (7)(g).

**SECTION 1-23-20.** Custody, printing and distribution of documents charged to Legislative Council; establishment of State Register.

The Legislative Council is charged with the custody, printing and distribution of the documents required or authorized to be published in this article and with the responsibility for incorporating them into a State Register. Such Register shall include proposed as well as finally adopted documents required to be filed with the Council; provided, however, that publication of a synopsis of the contents of proposed regulations meets the requirements of this section. Additions to the State Register shall be published by the Legislative Council at least once every thirty days.

HISTORY: 1977 Act No. 176, Art. I, Section 2.

**SECTION 1-23-30.** Filing of documents with Legislative Council; public inspection; distribution.

The original and either two additional originals or two certified copies of each document authorized or required to be published in the State Register by this article shall be filed with the Legislative Council by the agency by which it is promulgated. Filing may be accomplished at all times when the Council office is open for official business.

The Council shall note upon each document filed the date and hour of filing and shall as soon as practicable publish such document in the State Register. Copies of all documents filed shall be available at the Council office for public inspection during office hours.

The Council shall transmit to the Clerk of Court of each county a copy of the State Register and all additions thereto when published. Clerks of Court shall maintain their copies of the Register in current form and provide for public inspection thereof. The Council shall transmit one original or certified copy of each document filed with the Council to the Department of Archives and History which shall be made available for public inspection in the office of the department.

HISTORY: 1977 Act No. 176, Art. I, Section 3.

**SECTION 1-23-40.** Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

HISTORY: 1977 Act No. 176, Art. I, Section 4.

**SECTION 1-23-50.** Legislative Council to establish procedures.

The Legislative Council shall establish procedures for carrying out the provisions of this article relating to the State Register and the form and filing of regulations. These procedures may provide among other things:

- (1) The manner of certification of copies required to be filed under Section 1-23-40;
- (2) The manner and form in which the documents or regulations shall be printed, reprinted, compiled, indexed, bound and distributed, including the compilation of the State Register ;
- (3) The number of copies of the documents, regulations or compilations thereof, which shall be printed and compiled, the number which shall be distributed without charge to members of the General

Assembly, officers and employees of the State or state agencies for official use and the number which shall be available for distribution to the public;

(4) The prices to be charged for individual copies of documents or regulations and subscriptions to the compilations and reprints and bound volumes of them.

HISTORY: 1977 Act No. 176, Art. I, Section 5; 1979 Act No. 188, Section 2.

**SECTION 1-23-60.** Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated subject to further action required under this article;

(2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;

(3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

HISTORY: 1977 Act No. 176, Art. I, Section 6.

**SECTION 1-23-70.** Duty of Attorney General.

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

HISTORY: 1977 Act No. 176, Art. I, Section 7.

**SECTION 1-23-80.** Costs incurred and revenues collected by Legislative Council.

The cost of printing, reprinting, wrapping, binding and distributing the documents, regulations or compilations thereof, including the State Register, and other expenses incurred by the Legislative Council in carrying out the duties placed upon it by this article shall be funded by the appropriations to the council in the annual state general appropriations act. All revenue derived from the sale of the documents and regulations shall be deposited in the general fund of the State.

HISTORY: 1977 Act No. 176, Art. I, Section 8.

**SECTION 1-23-90.** Complete codifications of documents; Code of State Regulations designated.

(a) The Legislative Council may provide for, from time to time as it considers necessary, the preparation and publication of complete codifications of the documents of each agency having general applicability and legal effect, issued or promulgated by the agency which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.

(b) A codification published under item (a) of this section shall be designated as the "Code of State Regulations". The Legislative Council may regulate the binding of the printed codifications into separate



books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Legislative Council may require. A general index to the entire Code of State Regulations may be separately printed and bound.

(c) The Legislative Council shall regulate the supplementation and republication of the printed codifications with a view to keeping the Code of State Regulations as current as practicable.

(d) The authority granted in this section is supplemental to and not in conflict with the establishment of the State Register as provided for in other provisions of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 9.

**SECTION 1-23-100.** Exemptions for Executive Orders, proclamations or documents issued by Governor's Office; treatment of some Executive Orders for information purposes.

This article shall not apply to Executive Orders, proclamations or documents issued by the Governor's Office. However, Governor's Executive Orders, having general applicability and legal effect shall be transmitted by the Secretary of State to the Legislative Council to be published in a separate section of the State Register for information purposes only. Such orders shall not be subject to General Assembly approval.

HISTORY: 1977 Act No. 176, Art. I, Section 10.

**SECTION 1-23-110.** Procedures for publication of notice of proposed promulgation of regulations; public participation; contest of regulation for procedural defects.

(A) Before the promulgation, amendment, or repeal of a regulation, an agency shall:

(1) give notice of a drafting period by publication of a notice in the State Register. The notice must include:

(a) the address to which interested persons may submit written comments during the initial drafting period before the regulations are submitted as proposed;

(b) a synopsis of what the agency plans to draft;

(c) the agency's statutory authority for promulgating the regulation;

(2) submit to the office, no later than the date the notice required in item (3) is published in the State Register, a preliminary assessment report prepared in accordance with Section 1-23-115 on regulations having a substantial economic impact;

(3) give notice of a public hearing at which the agency will receive data, views, or arguments, orally and in writing, from interested persons on proposed regulations by publication of a notice in the State Register if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The notice must include:

(a) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments;

(b) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date the notice is published in the State Register;

(c) a narrative preamble and the text of the proposed regulation. The preamble shall include a section-by-section discussion of the proposed regulation and a justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs;

(d) the statutory authority for its promulgation;

(e) a preliminary fiscal impact statement prepared by the agency reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A preliminary fiscal impact statement is not required for those regulations which are not subject to General Assembly review under Section 1-23-120;

(f) a summary of the preliminary assessment report submitted by the agency to the office and notice that copies of the preliminary report are available from the agency. The agency may charge a reasonable fee to cover the costs associated with this distribution requirement. A regulation that does not

require an assessment report because it does not have a substantial economic impact, must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(g) statement of the need and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11). At no time is an agency required to include items (4) through (8) in the reasonableness and need determination. However, comments related to items (4) through (8) received by the agency during the public comment periods must be made part of the official record of the proposed regulations.

(h) the location where a person may obtain from the agency a copy of the detailed statement of rationale as required by this item. For new regulations and significant amendments to existing regulations, an agency shall prepare and make available to the public upon request a detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation. This subitem does not apply to regulations which are not subject to General Assembly review under Section 1-23-120.

(B) Notices required by this section must be mailed by the promulgating agency to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.

(C)(1) The agency shall consider fully all written and oral submissions respecting the proposed regulation.

(2) Following the public hearing and consideration of all submissions, an agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of regulation as proposed pursuant to subsection (A)(3) and the substantive change was not raised, considered, or discussed by public comment received pursuant to this section. The agency shall refile such a regulation for publication in the State Register as a proposed regulation pursuant to subsection (A)(3).

(D) A proceeding to contest a regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

**HISTORY:** 1977 Act No. 176, Art. I, Section 11; 1980 Act No. 442, Section 1; 1985 Act No. 190, Section 2; 1988 Act No. 605, Section 1; 1989 Act No. 91, Section 1; 1992 Act No. 507, Section 3; 1993 Act No. 181, Section 11; 1996 Act No. 411, Sections 2, 3; 2002 Act No. 231, Section 1; 2007 Act No. 104, Section 1, eff July 1, 2008.

**Code Commissioner's Note**

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**Editor's Note**

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1-23-110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act's effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

**Effect of Amendment**

The 2007 amendment designated paragraph (C)(1) and added paragraph (C)(2) relating to regulations containing substantive changes.

**SECTION 1-23-111.** Regulation process; public hearings; report of presiding official; options upon unfavorable determination.

(A) When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a single director, it must be conducted by an

administrative law judge assigned by the chief judge. When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a board or commission, it must be conducted by the board or commission, with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing on the regulation are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and any written exhibits in support of the proposed regulation. The agency may also submit oral evidences. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

(B) After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official shall issue a written report which shall include findings as to the need and reasonableness of the proposed regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and other factors as the presiding official identifies and may include suggested modifications to the proposed regulations in the case of a finding of lack of need or reasonableness.

(C) If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

- (a) modify the proposed regulation by including the suggested modifications of the presiding official;
- (b) not modify the proposed regulation in accordance with the presiding official's suggested modifications in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official's written report; or
- (c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.

HISTORY: 1993 Act No. 181, Section 11A; 1996 Act No. 411, Section 4.

**SECTION 1-23-115.** Regulations requiring assessment reports; report contents; exceptions; preliminary assessment reports.

(A) Upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and provided to the committee. The written notification tolls the running of the one hundred-twenty-day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred-twenty-day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

(B) A state agency must submit to the Office of Research and Statistics of Revenue and Fiscal Affairs Office, a preliminary assessment report on regulations which have a substantial economic impact. Upon receiving this report the office may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the office on

requests made pursuant to this section. The office shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1-23-110. The office shall forward the final assessment report and a summary of the final report to the promulgating agency.

(C) The preliminary and final assessment reports required by this section must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

- (1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;
- (2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in this subsection and the expected benefit of the regulation;
- (3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost-effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;
- (4) the effect of the regulation on competition;
- (5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;
- (6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;
- (7) the source of revenue to be used for implementing and enforcing the regulation;
- (8) a conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;
- (9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;
- (10) the effect of the regulation on the environment and public health;
- (11) the detrimental effect on the environment and public health if the regulation is not implemented.

An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require numerically precise cost-benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the office.

(D) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the office which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

(E) An assessment report is not required on:

- (1) regulations specifically exempt from General Assembly review by Section 1-23-120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;
- (2) emergency regulations filed in accordance with Section 1-23-130; however, before an emergency regulation may be refiled pursuant to Section 1-23-130, an assessment report must be prepared in accordance with this section;
- (3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

HISTORY: 1992 Act No. 507, Section 1; 1993 Act No. 181, Section 12; 1996 Act No. 411, Sections 5, 6.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 1-23-120.** Approval of regulations; submission to Legislative Council for submission to General Assembly; contents, requirements and procedures; compliance with federal law.

(A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1-23-110, except those regulations requiring a final assessment report as provided in Sections 1-23-270 and 1-23-280.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

- (1) a copy of the regulations promulgated;
- (2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;
- (3) a request for review;
- (4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;
- (5) a copy of the final assessment report and the summary of the final report prepared by the office pursuant to Section 1-23-115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;
- (6) a copy of the fiscal impact statement prepared by the agency as required by Section 1-23-110;
- (7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;
- (8) a copy of the economic impact statement, as provided in Section 1-23-270(C)(1)(a); and
- (9) a copy of the regulatory flexibility analysis, as provided in Section 1-23-270(C)(1)(b).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is

effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1-23-130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the office pursuant to Section 1-23-115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one-hundred-twenty-day period of review begins on the date the regulation is filed with the President and Speaker. *Sine die* adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1-23-125, but the introduction does not toll the one-hundred-twenty-day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two-year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the state Board of Financial Institutions in order to authorize state-chartered banks, state-chartered savings and loan associations, and state-chartered credit unions to engage in activities that are authorized pursuant to Section 34-1-110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;

(4) as emergency regulations under Section 1-23-130.

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

(J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(1) for which the agency intends to begin the process of repeal in accordance with this article;

(2) for which the agency intends to begin the process of amendment in accordance with this article; and

(3) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

**HISTORY:** 1977 Act No. 176, Art. I, Section 12; 1979 Act No. 188, Section 3; 1980 Act No. 442, Section 2; 1981 Act No. 21, Section 1; 1982 Act No. 414, Section 1; 1986 Act No. 414, Section 14; 1988 Act No. 605, Section 2; 1989 Act No. 91, Section 2; 1992 Act No. 507, Section 4; 1993 Act No. 181, Section 13; 1996 Act No. 411, Section 7; 1996 Act No. 411, Section 8; 1997 Act No. 114, Section 1; 2002 Act No. 231, Section 2; 2004 Act No. 231, Sections 4, 5, eff January 1, 2005; 2007 Act No. 104, Section 2, eff July 1, 2008; 2011 Act No. 33, Section 1, eff June 7, 2011; 2013 Act No. 31, Section 3, eff May 21, 2013.

#### Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

#### Editor's Note

2007 Act No. 104, Section 5, provides as follows:

"This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1-23-110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act's effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008."

#### Effect of Amendment

The 2004 amendment, in subsection (A), added the exception at the end of the first sentence relating to Sections 1-23-270 and 1-23-280 and, in subsection (B), added paragraphs (B)(7) and (B)(8).

The 2007 amendment rewrote this section to provide for submission of regulations to the Legislative Council for submission to the General Assembly; added paragraph (B)(2) requiring amendments to be clearly indicated; and added subsection (G) relating to when regulations are deemed withdrawn.

The 2011 amendment, in subsection (H)(1), added the last five sentences.

The 2013 amendment, in subsection (C), substituted "the Legislative Services Agency" for "Legislative Printing Information and Technology Services".

**SECTION 1-23-125.** Approval, disapproval and modification of regulations.

(A) The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, this provision does not prevent the introduction of a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

(B) If a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing along with its recommendations as to changes that would be necessary to obtain committee approval. The agency may:

(1) withdraw the regulation from the General Assembly and resubmit it with the recommended changes to the Speaker and the Lieutenant Governor, but any regulation not resubmitted within thirty days is considered permanently withdrawn;

(2) withdraw the regulation permanently;

(3) take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

(C) The notification tolls the one-hundred-twenty-day period for automatic approval, and when an agency withdraws regulations from the General Assembly prior to the time a committee resolution to approve or disapprove the regulation has been introduced, the remainder of the period begins to run only on the date the regulations are resubmitted to the General Assembly. Upon resubmission of the regulations, additional days must be added to the days remaining in the review period for automatic approval, if less than twenty days, to equal twenty days, and a copy of the amended regulation must be given to each member of the committee. If an agency decides to take no action pursuant to subsection (B)(3), it shall notify the committee in writing and the remainder of the period begins to run only upon this notification.

(D) This section, as it applies to approval, disapproval, or modification of regulations, does not apply to joint resolutions introduced by other than the committees to which regulations are initially referred by the Lieutenant Governor or the Speaker of the House of Representatives.

(E) A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes from the previously submitted version.

**HISTORY:** 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1988 Act No. 605, Section 3; 1996 Act No. 411, Section 9; 2007 Act No. 104, Section 3, eff July 1, 2008.

**Editor's Note**

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1-23-110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act's effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

**Effect of Amendment**

The 2007 amendment, in subsection (A), deleted the last sentence relating to withdrawal or modification of a regulation under legislative review and rewrote subsection (E) which required public comment on regulations containing a substantive change.

**SECTION 1-23-126.** Petition requesting promulgation, amendment or repeal of regulation.

An interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.



HISTORY: 1980 Act No. 442, Section 6.

**SECTION 1-23-130.** Emergency regulations.

(A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

(B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the office pursuant to Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111.

(C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

(D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refileing emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

(E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 13; 1980 Act No. 442, Section 4; 1986 Act No. 478, Section 1; 1992 Act No. 507, Section 5; 1993 Act No. 181, Section 14.

**Code Commissioner's Note**

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 1-23-140.** Duties of state agencies; necessity for public inspection.

(a) In addition to other requirements imposed by law, each agency shall:

(1) Adopt and make available for public inspection a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all final orders, decisions and opinions except as otherwise provided by law.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection as required by this article and Article 2. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

HISTORY: 1977 Act No. 176, Art. I, Section 14.

**SECTION 1-23-150.** Appeals contesting authority of agency to promulgate regulation.

(a) Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation of the agency or the authority of the agency to promulgate a particular regulation. The agency shall, within thirty days after receipt of such petition, issue a declaratory ruling thereon.

(b) After compliance with the provisions of paragraph (a) of this section, any person affected by the provisions of any regulation of an agency may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or that the regulation exceeds the regulatory authority of the agency. The agency shall be made a party to the action.

HISTORY: 1977 Act No. 176, Art. I, Section 15; 1980 Act No. 442, Section 5.

**SECTION 1-23-160.** Prior filed regulations unaffected.

All regulations of state agencies promulgated according to law and filed with the Secretary of State as of January 1, 1977, shall have the full force and effect of law. All regulations of state agencies promulgated under this article and effective as of June 30, 1994 shall have the full force and effect of law.

HISTORY: 1977 Act No. 176, Art. I, Section 16; 1993 Act No. 181, Section 15.

## ARTICLE 2

### Small Business Regulatory Flexibility

**SECTION 1-23-270.** Small business defined; economic impact statements; impact reduction options; judicial review of agency compliance; periodic review of regulations.

(A) This article may be cited as the “South Carolina Small Business Regulatory Flexibility Act of 2004”.

(B) As used in this article “small business” means a commercial retail service, industry entity, or nonprofit corporation, including its affiliates, that:

(1) is, if a commercial retail service or industry service, independently owned and operated; and

(2) employs fewer than one hundred full-time employees or has gross annual sales or program service revenues of less than five million dollars.

(C) Before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare:

(1) an economic impact statement that includes the following:

(a) an identification and estimate of the number of small businesses subject to the proposed regulation;

(b) the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) a statement of the economic impact on small businesses; and

(d) a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation;

(2) a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.

(D) The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) establishment of less stringent compliance or reporting requirements for small businesses;

(2) establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) consolidation or simplification of compliance or reporting requirements for small businesses;

(4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) exemption of small businesses from all or a part of the requirements contained in the proposed regulation.

(E) A small business that is adversely impacted or aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this article. A small business may seek that review during the period beginning on the date of final agency action.

(F)(1) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in Section 1-23-120(H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(a) for which the agency intends to begin the process of repeal in accordance with this article;

(b) for which the agency intends to begin the process of amendment in accordance with this article; and

(c) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with Article 1 before or after it is identified in the report to the Code Commissioner.

(2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:

(a) continued need for the regulation;

(b) nature of complaints or comments received concerning the regulation from the public;

(c) complexity of the regulation;

(d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and

(e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

**HISTORY:** 2004 Act No. 231, Section 2, eff January 1, 2005; 2007 Act No. 104, Section 4, eff July 1, 2008.

**Code Commissioner's Note**

Paragraphs (D)(a) to (D)(e) were redesignated as paragraphs (D)(1) to (D)(5) at the direction of the Code Commissioner.

**Editor's Note**

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1-23-110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act's effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

**Effect of Amendment**

The 2007 amendment rewrote paragraph (F)(1).

**SECTION 1-23-280.** Small Business Regulatory Review Committee; membership; terms.

(A)(1) There is established a Small Business Regulatory Review Committee within the South Carolina Department of Commerce. For purposes of this article, "committee" is the Small Business Regulatory Review Committee and "department" is the South Carolina Department of Commerce.

(2) The duties of the committee, in determining if a proposed permanent regulation has a significant adverse impact on small businesses, are to:

(a) direct the promulgating agency to prepare the regulatory flexibility analysis described in Section 1-23-270(C)(2) no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1-23-110(A)(3); and

(b) request, at the committee's discretion, the Revenue and Fiscal Affairs Office to prepare a final assessment report, as provided in Section 1-23-115(B), of the proposed permanent regulation no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1-23-110(A)(3). The committee may request a final assessment report from the Revenue and Fiscal Affairs Office only in cases where the committee determines that information in addition to the agency's economic impact as provided in Section 1-23-270(C)(1) is critical in the committee's determination that a proposed permanent regulation has a significant adverse impact on small business. The Revenue and Fiscal Affairs Office:

(i) within the review and comment period, shall perform a final assessment report of the regulation on small businesses within sixty days of a request for assessment by the committee, and the promulgating agency has sixty days to complete a regulatory flexibility analysis; and

(ii) may request additional information from the agency. The sixty-day final assessment report deadline must be tolled until the time that the Office of Research and Statistics receives the requested additional information. The one-year deadline for submission of regulations to the General Assembly as provided in Section 1-23-120(A) also must be tolled until the time that both analyses are prepared and presented to the committee; and

(c) submit to the promulgating agency, no later than thirty days after receipt of the regulatory flexibility analysis prepared by the promulgating agency and, if requested by the committee, after receipt of the final assessment report prepared by the Office of Research and Statistics, a written statement advising the agency that a proposed permanent regulation has a significant adverse impact on small business.

(3) This subsection does not limit the committee's ability to petition a state agency to amend, revise, or revoke an existing regulation.

(4) Staff support for the committee must be provided by the department. The department shall act only as a coordinator for the committee, and may not provide legal counsel for the committee.

(B) The committee shall consist of eleven members, appointed as follows:

(1) five members to be appointed by the Governor;

(2) three members to be appointed by the President Pro Tempore of the Senate; and

(3) three members to be appointed by the Speaker of the House of Representatives.

(C) In addition, the Chairman of the Labor, Commerce and Industry Committee of the South Carolina Senate and the Chairman of the Labor, Commerce and Industry Committee of the South Carolina House of Representatives, or their designees, shall serve as nonvoting, ex officio members of the committee. During the committee review process, the director or his designee, of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(D) Appointments to the committee must be representative of a variety of small businesses in this State. All appointed members shall be either current or former owners or officers of a small business.

(E) The initial appointments to the committee must be made within sixty days from the effective date of this act. The department shall provide the name and address of each appointee to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairmen of the House and Senate Labor, Commerce and Industry Committees.

(F)(1) Members initially appointed to the committee shall serve for terms ending December 31, 2005. Thereafter, appointed members shall serve two-year terms that expire on December thirty-first of the second year.

(2) The Governor shall appoint the initial chairman of the committee from the appointed members for a term ending December 31, 2006, and shall appoint subsequent chairs of the committee from the appointed members for two-year terms that expire on December thirty-first of the second year.

(3) The committee shall meet as determined by its chairman.

(4) A majority of the voting members of the committee constitutes a quorum to do business. The concurrence of a majority of the members of the committee present and voting is necessary for an action of the committee to be valid.

(5) An appointed committee member may not serve more than three consecutive terms.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

Code Commissioner's Note

At the direction of the Code Commissioner, the reference in subparagraph (A)(2)(a) was changed from "1-23-270(C)(1)" to "1-23-270(C)(2)".

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 1-23-290.** Petition opposing regulation having significant adverse impact; determination of whether impact statement or public hearing addressed economic impact; waiver or reduction of administrative penalties.

(A) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has a significant adverse impact on small business.

(B) Within sixty days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business or if conditions justifying the regulation have changed. The agency shall submit a written response of its determination to the committee within sixty days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Administrative Procedures Act.

(C) If the agency determines that the petition does not merit the amendment or repeal of a regulation, the committee promptly shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal the regulation in accordance with the Administrative Procedures Act. The review must be based upon the actual record presented to the agency. The committee shall base its recommendation on any of the following reasons:

(1) the actual impact on small business was not reflected in, or significantly exceeded, the economic impact statement formulated by the Revenue and Fiscal Affairs Office, pursuant to Section 1-23-280(A)(2);

(2) the actual impact was not previously considered by the agency in its economic impact statement formulated pursuant to Section 1-23-270(C) or its regulatory flexibility analysis formulated pursuant to Section 1-23-280(A)(2); or

(3) the technology, economic conditions, or other relevant factors justifying the purpose for the regulations have changed or no longer exist.

(D) If the committee recommends that an agency initiate regulation proceedings for a reason provided in subsection (C), the committee shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an evaluation report and the agency's response as provided in Section 1-23-290(B). The General Assembly may take later action in response to the evaluation report and the agency's response as the General Assembly finds appropriate.

(E)(1) Notwithstanding another provision of law, an agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce an administrative penalty or administrative fine for a violation of a regulation by a small business if the:

(a) small business corrects the violation within thirty days or less after receipt of a notice of violation or citation; or

(b) violation was the result of an excusable misunderstanding of the agency's interpretation of a regulation.

(2) Item (1) does not apply if:

(a) a small business has been notified previously of the violation of a regulation by the agency pursuant to Section 1-23-290(E)(1) and has been given an opportunity to correct the violation on a previous occasion;

(b) a small business fails to exercise good faith in complying with the regulation;

(c) a violation involves wilful or criminal conduct;

(d) a violation results in imminent or adverse health, safety, or environmental impact; or

(e) the penalty or fine is assessed pursuant to a federal law or regulation, for which a waiver or reduction is not authorized by the federal law or regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

#### **SECTION 1-23-300.** Applicability.

This article does not apply to emergency regulations promulgated pursuant to Section 1-23-130 or regulations promulgated pursuant to Chapter 9 of Title 46 or Chapter 4 of Title 47 or to proposed regulations by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions that do not allow discretion to consider less restrictive alternatives or to a federal regulation that has gone through the federal regulatory flexibility act, if the federal review process is the same as or is stricter than the requirements of these sections.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

### **ARTICLE 3**

#### **Administrative Procedures**

#### **SECTION 1-23-310.** Definitions.

As used in this article:

(1) "Administrative law judge" means a judge of the South Carolina Administrative Law Court created pursuant to Section 1-23-500;

(2) "Agency" means each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases;

(3) "Contested case" means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

(4) "License" includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

**HISTORY:** 1977 Act No. 176, Art. II, Section 1; 1980 Act No. 442, Section 7; 1993 Act No. 181, Section 16; 1998 Act No. 359, Section 1; 2008 Act No. 334, Section 3, eff June 16, 2008.

**Effect of Amendment**

The 2008 amendment, in item (1), substituted “Administrative Law Court” for “administrative law judge division”; and, in item (2), substituted “, the courts, or the Administrative Law Court,” for “or the courts, but to include the administrative law judge division”.

**SECTION 1-23-320.** Notice and hearing in contested case; depositions; subpoenas; informal disposition; content of record.

(A) In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days, except in proceedings before the Department of Employment and Workforce, which are governed by the provisions of Section 41-35-680.

(B) The notice must include a:

- (1) statement of the time, place, and nature of the hearing;
- (2) statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) reference to the particular sections of the statutes and rules involved;
- (4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(C) A party to these proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Depositions must 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 court of common pleas; 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 of it, and matters of practice relating to it apply.

(D) The agency hearing a contested case may issue subpoenas in the name of the agency for the attendance and testimony of witnesses and the production and examination of books, papers, and records on its own behalf or, upon request, on behalf of another party to the case.

A party to the proceeding may seek enforcement of or relief from an agency subpoena before the Administrative Law Court pursuant to Section 1-23-600(F).

(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(F) Unless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.

(G) The record in a contested case must include:

- (1) all pleadings, motions, intermediate rulings, and depositions;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on the contested case;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing.

(H) Oral proceedings or any part of the oral proceedings must be transcribed on request of a party.

(I) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

**HISTORY:** 1977 Act No. 176, Art. II, Section 2; 1983 Act No. 56, Section 1; 1993 Act No. 181, Section 17; 1998 Act No. 359, Section 2; 2008 Act No. 334, Section 4, eff June 16, 2008.

**Code Commissioner’s Note**

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 122, “Department of Employment and Workforce” was substituted for all references to “Employment Security Commission”, and “Executive Director of the Department of Employment and Workforce” or “executive director” was

substituted for all references to the “Chairman of the Employment Security Commission” or “chairman” that refer to the Chairman of the Employment Security Commission, as appropriate.

**Effect of Amendment**

The 2008 amendment substituted (A) to (I) for (a) to (i) as the subsection designations; in subsection (D), rewrote the second undesignated paragraph relating to enforcement of or relief from an agency subpoena; and made nonsubstantive language changes throughout.

**SECTION 1-23-330.** Evidentiary matters in contested cases.

In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

(3) Any party may conduct cross-examination;

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency’s specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency’s experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

HISTORY: 1977 Act No. 176, Art. II, Section 3; 1979 Act No. 188, Section 6.

**SECTION 1-23-340.** Procedure in contested cases where majority of those who are to render final decision are unfamiliar with case.

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or reviewed the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

HISTORY: 1977 Act No. 176, Art. II, Section 4.

**SECTION 1-23-350.** Final decision or order in contested case.

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

HISTORY: 1977 Act No. 176, Art. II, Section 5.



**SECTION 1-23-360.** Communication by members or employees of agency assigned to decide contested case.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.

HISTORY: 1977 Act No. 176, Art. II, Section 6.

**SECTION 1-23-370.** Procedures regarding issuance, denial or renewal of licenses.

(a) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this article and Article 1 concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

HISTORY: 1977 Act No. 176, Art. II, Section 7.

**SECTION 1-23-380.** Judicial review upon exhaustion of administrative remedies.

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer,

wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

Effect of Amendment

The 2006 amendment rewrote this section to provide for review by an administrative law judge and appeal to the South Carolina Court of Appeals.

The 2008 amendment deleted subsection (B) relating to review by an administrative law judge of a final decision in a contested case; deleted the designation of the first paragraph as subsection (A) and at the end of the first sentence substituted "pursuant to this article and Article 1" for "under this article, Article 1, and Article 5"; in paragraph (1) deleted ", the Administrative Law Court," following "agency"; in the

fourth sentence of paragraph (2) deleted “or administrative law judge” following “agency”; and in the second sentence of paragraph (4) deleted “or the Administrative Law Court” following “agency” in two places.

**SECTION 1-23-390.** Supreme Court review.

An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

**HISTORY:** 1977 Act No. 176, Art. II, Section 9; 1999 Act No. 55, Section 4; 2006 Act No. 387, Section 3, eff July 1, 2006.

**Editor’s Note**

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

**Effect of Amendment**

The 2006 amendment added “or the court of appeals” and made nonsubstantive changes.

**SECTION 1-23-400.** Application of article.

The provisions of this article shall not apply to any matters pending on June 13, 1977. The provisions of Sections 1-23-360 and 1-23-370 shall not apply to any agency which under existing statutes have established and follow notice and hearing procedures which are in compliance with such sections.

**HISTORY:** 1977 Act No. 176, Art. II, Section 10.

**ARTICLE 5**

**South Carolina Administrative Law Court**

**Editor’s Note**

2004 Act No. 202, Section 3, provides as follows:

“Wherever the term ‘Administrative Law Judge Division’ appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act.”

**SECTION 1-23-500.** South Carolina Administrative Law Court created; number of judges.

There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 9; 2004 Act No. 202, Section 1, eff April 26, 2004.

Effect of Amendment

The 2004 amendment deleted the designation preceding former subsection (A) and rewrote the paragraph, substituting “Administrative Law Court” for “Administrative Law Judge Division”, and deleted subsection (B) relating to a feasibility study by the Judicial Council.

**SECTION 1-23-505. Definitions.**

As used in this article:

(1) “Administrative law judge” means a judge of the South Carolina Administrative Law Court created pursuant to Section 1-23-500.

(2) “Agency” means a state agency, department, board, or commission whose action is the subject of a contested case hearing or an appellate proceeding heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.

(3) “Contested case” means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.

(4) “License” includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 2008 Act No. 334, Section 1, eff June 16, 2008.

**SECTION 1-23-510. Election of judges; terms.**

(A) The judges of the division must be elected by the General Assembly in joint session, for a term of five years and until their successors are elected and qualify; provided, that of those judges initially elected, the chief judge, elected to Seat 1 must be elected for a term of five years, the judge elected to Seat 2 must be elected for a term of three years, the judge elected to Seat 3 must be elected for a term of one year. The remaining judges of the division must be elected for terms of office to begin February 1, 1995, for terms of five years and until their successors are elected and qualify; provided, that those judges elected to seats whose terms of office are to begin on February 1, 1995, to Seat 4 must be initially elected for a term of five years, the judge elected to Seat 5 must be initially elected for a term of three years, and the judge elected to Seat 6 must be initially elected for a term of one year. The terms of office of the judges of the division for Seats 1, 2, and 3 shall begin on March 1, 1994. The terms of office of the judges of the division for Seats 4, 5, and 6 shall begin on February 1, 1995. The terms of office of each of the seats shall terminate on the thirtieth day of June in the final year of the term for the respective seats.

(B) In electing administrative law judges, race, gender, and other demographic factors including age, residence, type of practice, and law firm size should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State.

(C) Before election as an administrative law judge, a candidate must undergo screening pursuant to the provisions of Section 2-19-10, et seq.

(D) Each seat on the division must be numbered. Elections are required to be for a specific seat. The office of chief administrative law judge is a separate and distinct office for the purpose of an election.

(E) In the event that there is a vacancy in the position of the chief administrative law judge or for any reason the chief administrative law judge is unable to act, his powers and functions must be exercised by the most senior administrative law judge as determined by the date of their election to the division.

HISTORY: 1993 Act No. 181, Section 19; 1999 Act No. 39, Section 1.

**SECTION 1-23-520.** Eligibility for office.

No person is eligible for the office of law judge of the division who does not at the time of his election meet the qualification for justices and judges as set forth in Article V of the Constitution of this State.

HISTORY: 1993 Act No. 181, Section 19.

**SECTION 1-23-525.** Members of General Assembly disqualified for office of law judge.

No member of any General Assembly who is not otherwise prohibited from being elected to an administrative law judge position may be elected to such position while he is a member of the General Assembly and for a period of four years after he ceases to be a member of the General Assembly.

HISTORY: 1993 Act No. 181, Section 19.

**SECTION 1-23-530.** Oath of office.

The judges of the division shall qualify after the date of their election by taking the constitutional oath of office.

HISTORY: 1993 Act No. 181, Section 19.

**SECTION 1-23-535.** Official seal.

The Administrative Law Court shall have a seal with a suitable inscription, an impression of which must be filed with the Secretary of State.

HISTORY: 2008 Act No. 334, Section 2, eff June 16, 2008.

**SECTION 1-23-540.** Compensation; full-time position.

The chief judge (Seat 1) shall receive as annual salary equal to ninety percent of that paid to the circuit court judges of this State. The remaining judges shall receive as annual salary equal to eighty percent of that paid to the circuit court judges of this State. They are not allowed any fees or perquisites of office, nor may they hold any other office of honor, trust, or profit. Administrative law judges in the performance of their duties are also entitled to that per diem, mileage, expenses, and subsistence as is authorized by law for circuit court judges.

Each administrative law judge shall devote full time to his duties as an administrative law judge, and may not practice law during his term of office, nor may he during this term be a partner or associate with anyone engaged in the practice of law in this State.

HISTORY: 1993 Act No. 181, Section 19.

**SECTION 1-23-550.** Vacancies.

All vacancies in the office of administrative law judge must be filled in the manner of original appointment. When a vacancy is filled, the judge elected shall hold office only for the unexpired term of his predecessor.

HISTORY: 1993 Act No. 181, Section 19.

**SECTION 1-23-560.** Application of Code of Judicial Conduct; complaints against administrative law judges; attending judicial-related functions.

Administrative law judges are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for administrative law judges are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against administrative law judges for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge and the judge's spouse or guest may accept an invitation to attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, legal system, or the administration of justice.

**HISTORY:** 1993 Act No. 181, Section 19; 2008 Act No. 334, Section 6, eff June 16, 2008; 2014 Act No. 146 (S.405), Section 1, eff April 7, 2014.

**Effect of Amendment**

The 2008 amendment added the second sentence referring to Code of Judicial Conduct, Rule 502, Rule 7, and the fourth sentence relating to invitations to judicial-related functions; and, in the third sentence, added “, which” following “Commission” and substituted “shall use the procedure contained in” for “pursuant to”.

2014 Act No. 146, Section 1, rewrote the third sentence, removing reference to the State Ethics Commission.

**SECTION 1-23-570.** Chief Judge responsible for administration of division.

The Chief Judge of the Administrative Law Judge Division is responsible for the administration of the division, including budgetary matters, assignment of cases, and the administrative duties and responsibilities of the support staff. The chief judge shall assign judges of the division to hear all cases of the various state departments and commissions for which it is responsible on a general rotation and interchange basis by scheduling and assigning administrative law judges based upon subject matter no less frequently than every six months.

**HISTORY:** 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 3.

**SECTION 1-23-580.** Clerk of division; assistants to administrative law judges; other staff.

(A) A clerk of the division, to be appointed by the chief judge, must be appointed and is responsible for the custody and keeping of the records of the division. The clerk of the division shall perform those other duties as the chief judge may prescribe.

(B) Each administrative law judge may appoint, hire, contract, and supervise an administrative assistant as individually allotted and authorized in the annual general appropriations act.

(C) The other support staff of the division is as authorized by the General Assembly in the annual general appropriations act and shall be hired, contracted, and supervised by the chief judge. The division may engage stenographers for the transcribing of the proceedings in which an administrative law judge presides. It may contract for these stenographic functions, or it may use stenographers provided by the agency or commission.

**HISTORY:** 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 4.

**SECTION 1-23-590.** Appropriation of funds.

The General Assembly in the annual general appropriations act shall appropriate those funds necessary for the operation of the Administrative Law Judge Division.

**HISTORY:** 1993 Act No. 181, Section 19.

**SECTION 1-23-600.** Hearings and proceedings.

(A) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except those arising under the:

- (1) Consolidated Procurement Code;
- (2) Public Service Commission;
- (3) Department of Employment and Workforce;
- (4) Workers' Compensation Commission, except as provided in Section 42-15-90; or

(5) other cases or hearings which are prescribed for or mandated by federal law or regulation, unless otherwise by statute or regulation specifically assigned to the jurisdiction of the Administrative Law Court. Unless otherwise provided by statute, the standard of proof in a contested case is by a preponderance of the evidence. The South Carolina Rules of Evidence apply in all contested case proceedings before the Administrative Law Court.

(B) All requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure. A party that files a request for a hearing with the Administrative Law Court must simultaneously serve a copy of the request on the affected agency. Upon the filing of the request, the chief judge shall assign an administrative law judge to the case. Notice of the contested case hearing must be issued in accordance with the rules of procedure of the Administrative Law Court.

(C) A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by a party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge shall render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11-35-4410, and an appeal from the Workers' Compensation Commission is to the court of appeals as provided in Section 42-17-60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.

(E) Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals, provided that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of the decision by the court of appeals pursuant to the provisions of Section 1-23-610.

(F) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

(G) Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by an agency or by a department of the executive branch of government, as defined in Section 1-30-10, such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department or agency of the executive

branch of government authorized by law to seek an administrative process may apply to the Administrative Law Court to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department or agency of the executive branch of government may apply to the Administrative Law Court for relief from the process as provided in the Rules of the Administrative Law Court.

(H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; however, matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court. Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

(3) The general rule of subsection (H)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection. Upon motion by any party, the court shall lift the stay for good cause shown or if no irreparable harm will occur, then the stay shall be lifted. A hearing must be held within thirty days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay. The judge must issue an order no later than fifteen business days after the hearing is concluded.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.

(I) If a final order of the Administrative Law Court is not appealed in accordance with the provisions of Section 1-23-610, upon request of a party to the proceedings, the clerk of the Administrative Law Court shall file a certified copy of the final order with a clerk of the circuit court, as requested, or court of competent jurisdiction, as requested. After filing, the certified order has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.

(J) If an attorney of record is called to appear in actions pending in other tribunals in this State, the action in the Administrative Law Court has priority as is appropriate. Courts and counsel have the obligation to adjust schedules to accord with the spirit of comity between the Administrative Law Court and other state courts.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Sections 1, 5; 1995 Act No. 92, Section 1; 2004 Act No. 202, Section 2, eff April 26, 2004; 2006 Act No. 381, Section 1, eff June 13, 2006; 2006 Act No. 387, Section 4, eff July 1, 2006; 2007 Act No. 111, Pt I, Section 1, eff July 1, 2007, applicable to injuries that occur on or after that date; 2008 Act No. 188, Section 1, eff January 1, 2009; 2008 Act No. 201, Section 13, eff February 10, 2009; 2008 Act No. 334, Section 7, eff June 16, 2008; 2010 Act No. 278, Section 23, eff July 1, 2010; 2012 Act No. 183, Section 2, eff June 7, 2012; 2012 Act No. 212, Section 1, eff June 7, 2012.



#### Code Commissioner's Note

At the direction of the Code Commissioner, the 2006 amendments were read together. The text of the section as amended by Act 387 is set forth above, except that in subsection (B), "those matters which are otherwise provided for in title 56" was deleted following "Occupational Health and Safety Act", in subparagraph (G)(3), "(G)" was substituted for "(F)", and subsection (E) from Act 381 was added as subsection (H).

At the direction of the Code Commissioner, the amendment of this section by 2008 Act No. 334, Section 1, effective June 16, 2008, was deemed to prevail over the amendment by 2008 Act No. 201, Section 13, effective February 10, 2009, because it was enacted later. The section was also amended by 2008 Act No. 188, Section 1, effective January 1, 2009, to delete the reference to cases arising under the Occupational Safety and Health Act in subsection (B). Among other changes, the amendment by Act 334 redesignated subsection (B) as subsection (A) and included cases arising under the Occupational Safety and Health Act as item (1). At the direction of the Code Commissioner, the deletion of the reference to the Occupational Safety and Health Act by Act 188 effective January 1, 2009 was applied to subsection (A) as amended by Act 334 on the basis that the reference to OSHA was inadvertently included in the later act and its inclusion was not consistent with the intent of the General Assembly in passing Act 188. Accordingly, in subsection (A) as amended by Act 334, item (1) was deleted effective January 1, 2009, and items (2) to (6) redesignated as items (1) to (5).

At the direction of the Code Commissioner, the reference in subsection (E) to Section 1-23-380(A) was changed to Section 1-23-380 to conform to the amendment of that section by 2008 Act No. 334, Section 5.

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 122, "Department of Employment and Workforce" was substituted for all references to "Employment Security Commission", and "Executive Director of the Department of Employment and Workforce" or "executive director" was substituted for all references to the "Chairman of the Employment Security Commission" or "chairman" that refer to the Chairman of the Employment Security Commission, as appropriate.

#### Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

2010 Act 278, Section 26, provides as follows:

"This act takes effect July 1, 2010; provided, the provisions of this act do not apply to any matter pending before a court of this State prior to June 1, 2010."

#### Effect of Amendment

The 2004 amendment in subsection (A) substituted "must" for "shall" and "is responsible" for "shall be responsible"; in subsections (B) and (D) deleted "of the division" following "administrative law judge"; in subsection (B) substituted "Court" for "Judge Division"; in subsection (D), inserted ", or as otherwise provided by law," following "Licensing and Regulation"; rewrote subsection (C); deleted subsection (E) relating to cases initiated before and after May 1, 1994; and made nonsubstantive changes.

The first 2006 amendment, in subsection (B), deleted “those matters which are otherwise provided for in Title 56,” following “Occupational Health and Safety Act”; and added subsection (E) [redesignated as (H)] relating to the filing of final orders.

The second 2006 amendment rewrote subsections (B) and (D) and added subsection (E), (F) and (G) relating to appeal of orders of the State Human Affairs Commission to the Administrative Law Court.

The 2007 amendment, in subsection (D), substituted “Court of Appeals” for “circuit court” relating to appeals from the Workers’ Compensation Commission.

The first 2008 amendment, in subsection (B), deleted “arising under the Occupational Safety and Health Act,”.

The second 2008 amendment, in subsection (B), added the second sentence relating to the standard of proof in a contested case’ and, in subsection (H), in the first sentence deleted “petition for judicial review of a” preceding “final order” and substituted “appealed” for “filed”.

The third 2008 amendment, deleted subsection (A) relating to the keeping and availability of records and reenacted it as subsection (C); redesignated subsections (B) and (C) as subsections (A) and (B); in subsection (A) substituted “1-23-505” for “1-23-310”, designated paragraphs (1) to (6) [redesignated as (1) to (5) effective January 1, 2009 at the direction of the Code Commissioner] from existing text, and added the second and third sentences of (6) [redesignated as (5)] relating to standard of proof and applicability of the South Carolina Rules of Evidence; in subsection (B), added the fourth sentence relating to notice of the contested case hearing; in subsection (D), added the second sentence relating to certain appeals from inmates; added subsection (E); redesignated subsections (E) to (H) as (F) to (I); in subsection (G), substituted “Administrative Law Court” for “chief administrative law judge” and added references to agencies of the executive branch in two places; in paragraph (H)(2), in the fourth sentence added “however,” and the fifth and sixth sentences; in paragraph (H)(3), substituted “(H)(2)” for “(G)(2)”; in paragraph (H)(4), added the second through fourth sentences; in paragraph (H)(5), deleted from the end “, or cases when Section 1-23-610(A) applies, the appropriate board or commission”; and, in subsection (I), in the first sentence deleted “petition for judicial review of a” preceding “final order” and substituted “filed” for “appealed”, “1-23-610” for “1-23-600” and ‘shall” for “must”.

The 2010 amendment added subsection (J) relating to priority of actions in different courts.

The first 2012 amendment in subsection (A)(4), inserted “, except as provided in Section 42-15-90”.

The second 2012 amendment in subsection (D), deleted “, and an appeal from the Department of Employment and Workforce is to the circuit court as provided in Section 41-35-750”, and made other changes.

**SECTION 1-23-610.** Judicial review of final decision of administrative law judge; stay of enforcement of decision.

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge’s decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

(B) The review of the administrative law judge’s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further

proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

**HISTORY:** 1993 Act No. 181, Section 19; 2006 Act No. 387, Section 5, eff July 1, 2006; 2008 Act No. 334, Section 8, eff June 16, 2008.

**Editor's Note**

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

**Effect of Amendment**

The 2006 amendment rewrote this section.

The 2008 amendment rewrote this section.

**SECTION 1-23-630. Powers of law judges.**

(A) Each administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

(B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division's rules of procedure.

**HISTORY:** 1993 Act No. 181, Section 19; 2003 Act No. 39, Section 1.

**SECTION 1-23-640. Principal offices of court; where cases heard.**

The court shall maintain its principal offices in the City of Columbia. However, judges of the court shall hear contested cases at the court's offices or at a suitable location outside the City of Columbia when determined by the chief judge.

**HISTORY:** 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 6; 2008 Act No. 334, Section 9, eff June 16, 2008.

**Effect of Amendment**

The 2008 amendment substituted “court” for “division” throughout and in the second sentence deleted “offices or location of the involved department or commission as prescribed by the agency or commission, at the division’s” following “hear contested cases at the” and made minor language changes.

**SECTION 1-23-650.** Promulgation of rules.

(A) Rules governing the internal administration and operations of the Administrative Law Court must be:

- (1) proposed by the chief judge of the court and adopted by a majority of the judges of the court; or
- (2) proposed by any judge of the court and adopted by seventy-five percent of the judges of the court.

(B) Rules governing practice and procedure before the court which are:

- (1) consistent with the rules of procedure governing civil actions in courts of common pleas; and
- (2) not otherwise expressed in Chapter 23, Title 1; upon approval by a majority of the judges of the court must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution.

(C) All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

**HISTORY:** 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 2; 1998 Act No. 359, Section 5; 2006 Act No. 387, Section 6, eff July 1, 2006.

**Editor’s Note**

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

**Effect of Amendment**

The 2006 amendment designated subsections (A) and (B); in subsection (A), in the introductory statement substituted “Administrative Law Court must” for “administrative law judge division shall”; added subsection (C); and substituted “court” for “division” and made nonsubstantive changes throughout.

**SECTION 1-23-660.** Office of Motor Vehicle Hearings; conduct of hearings; applicability of Code of Judicial Conduct; appeals.

(A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The chief judge of the Administrative Law Court shall serve as the director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Office of Motor Vehicle Hearings of the Administrative Law Court on January 1,

2006. The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes. All employees of the office shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23 of Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Motor Vehicle Hearings, at suitable locations as determined by the chief judge. For purposes of this section, any law enforcement agency that employs an officer who requested a breath test and any law enforcement agency that employs a person who acted as a breath test operator resulting in a suspension pursuant to Section 56-1-286 or 56-5-2951 is a party to the hearing and shall be served with appropriate notice, afforded the opportunity to request continuances and participate in the hearing, and provided a copy of all orders issued in the action. Representatives of the Department of Motor Vehicles are not required to appear at implied consent, habitual offender, financial responsibility, or point suspension hearings. However, if the Department of Motor Vehicles elects not to appear through a representative at any implied consent hearing, or through the submission of documentary evidence at any habitual offender, financial responsibility, or point suspension hearing, and it wishes to appeal the decision, it must first file a motion for reconsideration with the Office of Motor Vehicle Hearings within ten days after receipt of the hearing officer's decision. The hearing officer must issue a written order upon the motion for reconsideration within thirty days. The Department of Motor Vehicles may file a notice of appeal with the Administrative Law Court within thirty days after receipt of the hearing officer's order on the motion for reconsideration. The Administrative Law Court must dismiss any appeal which does not meet the requirements of this subsection.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The State Ethics Commission is responsible for the enforcement and administration of those rules and for the issuance of advisory opinions on the requirements of those rules for administrative law judges and hearing officers pursuant to the procedures contained in Section 8-13-320. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge's or hearing officer's spouse or guest, may accept an invitation to and attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(D) Appeals from decisions of the hearing officers must be taken to the Administrative Law Court pursuant to the court's appellate rules of procedure. Recordings of all hearings will be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge shall not hear any appeals from these decisions.

HISTORY: 1993 Act No. 181, Section 19; 2005 Act No. 128, Section 22, eff July 1, 2005; 2006 Act No. 381, Section 2, eff June 13, 2006; 2006 Act No. 387, Section 7, eff July 1, 2006; 2008 Act No. 201, Section 14, eff February 10, 2009; 2008 Act No. 279, Section 1, eff October 1, 2008.

Code Commissioner's Note

At the direction of the Code Commissioner, both 2006 amendments were read together. The text of the section from the second amendment by Act 387 is set forth above, except that the eighth and ninth sentences in the first undesignated paragraph and the second and sixth sentences of the third undesignated paragraph were added from first amendment by Act 381.

This section was amended by 2008 Act Nos. 201 and 279. At the direction of the Code Commissioner, the text of Act 279 appears above because it was enacted later.

#### Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

#### Effect of Amendment

The 2005 amendment rewrote this section.

The first 2006 amendment, in the first undesignated paragraph, added the eighth and ninth sentences relating to promulgation of rules; and in the third undesignated paragraph, added the second sentence relating to breath tests, the third sentence relating to appearance by representatives of the Department of Motor Vehicles, and the seventh sentence relating to tape recordings of hearings.

The second 2006 amendment rewrote this section.

The first 2008 amendment deleted the last four sentences of the first undesignated paragraph relating to hiring a law clerk to assist the judges who hear Department of Motor Vehicle Hearing appeals; deleted the second undesignated paragraph relating to the role of the Budget and Control Board in the transition; and rewrote the third undesignated paragraph.

The second 2008 amendment rewrote this section, designating the subsections and substituting "Office of Motor Vehicle Hearings" for "Division of Motor Vehicle Hearings" throughout.

#### **SECTION 1-23-670.** Filing fees.

Each request for a contested case hearing, notice of appeal, or request for injunctive relief before the Administrative Law Court must be accompanied by a filing fee equal to that charged in circuit court for filing a summons and complaint, unless another filing fee schedule is established by rules promulgated by the Administrative Law Court, subject to review as in the manner of rules of procedure promulgated by the Supreme Court pursuant to Article V of the Constitution of this State. This fee must be retained by the Administrative Law Court in order to help defray the costs of the proceedings. No filing fee is required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Parole and Pardon Services. However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee. If the presiding administrative law judge determines at the conclusion of the proceeding that the case was frivolous or taken solely for the purpose of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

HISTORY: 2008 Act No. 353, Section 2, Pt 18A, eff July 1, 2009.

#### **SECTION 1-23-680.** Cost of South Carolina Code, supplements, and replacement volumes.

The South Carolina Administrative Law Court is not required to reimburse the South Carolina Legislative Council for the cost of the Code of Laws, code supplements, or code replacement volumes distributed to the court.

HISTORY: 2008 Act No. 353, Section 2, Pt 18B, eff July 1, 2009.

# Appendix G

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*South Carolina State Register*  
**and**  
*Standards Manual for Drafting and Filing Regulations*



# SOUTH CAROLINA STATE REGISTER

PUBLISHED BY  
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## **SOUTH CAROLINA STATE REGISTER DISCLAIMER**

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# ***SOUTH CAROLINA STATE REGISTER***

An official state publication, the *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

## **STYLE AND FORMAT**

Documents are arranged within each issue of the *State Register* according to the type of document filed:

**Notices** are documents considered by the agency to have general public interest.

**Notices of Drafting Regulations** give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

**Proposed Regulations** are those regulations pending permanent adoption by an agency.

**Pending Regulations Submitted to the General Assembly** are regulations adopted by the agency pending approval by the General Assembly.

**Final Regulations** have been permanently adopted by the agency and approved by the General Assembly.

**Emergency Regulations** have been adopted on an emergency basis by the agency.

**Executive Orders** are actions issued and taken by the Governor.

## **2015 PUBLICATION SCHEDULE**

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made by 5:00 P.M. on the closing date for that issue.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Submission Deadline	1/9	2/13	3/13	4/10	5/8	6/12	7/10	8/14	9/11	10/9	11/13	12/11
Publishing Date	1/23	2/27	3/27	4/24	5/22	6/26	7/24	8/28	9/25	10/23	11/27	12/25

## **REPRODUCING OFFICIAL DOCUMENTS**

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

## **PUBLIC INSPECTION OF DOCUMENTS**

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 212-4500.

## **ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS**

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

## **EMERGENCY REGULATIONS**

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

## **REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW**

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

## **EFFECTIVE DATE OF REGULATIONS**

**Final Regulations** take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

**Emergency Regulations** take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refiled for one additional ninety-day period.

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# **STANDARDS MANUAL**

## **FOR DRAFTING AND FILING REGULATIONS**

Amended 2014  
DEIRDRE BREVARD-SMITH, EDITOR  
*SOUTH CAROLINA STATE REGISTER*

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## I. INTRODUCTION

This *Standards Manual for Drafting and Filing Regulations* is a revision of the 2006 version. It contains guidelines and standards for drafting and filing regulations for General Assembly review and for submitting documents for publication in the *State Register*.

## II. SOUTH CAROLINA STATE REGISTER

The *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *Code of State Regulations*. The *State Register* is a monthly publication containing Governors' executive orders, agency notices of general public interest, agency notices of drafting regulations, and proposed, final, and emergency regulations filed pursuant to the South Carolina Administrative Procedures Act (APA), Section 1-23-10 et seq., S.C. Code of Laws, 1976.

### A. DOCUMENTS PUBLISHED IN THE STATE REGISTER

1. **Governor's Executive Orders** are orders issued by the Governor considered to be of interest to the public.
2. **Notices of General Public Interest** are considered by a state agency to be of interest to the general public. Errata notices are included in this category.
3. **Notices of Drafting Regulations** notify the public that a state agency will be drafting regulations on a particular topic thereby providing the public the opportunity to comment on the agency's proposal for regulations during the agency's initial drafting period before publication of the proposed regulation.
4. **Proposed Regulations** contain the text of regulations that a state agency has proposed and include information providing the opportunity for public comment and hearing.
5. **Final Regulations** are regulations adopted by state agencies and approved by the General Assembly by enactment of a joint resolution or by the one-hundred-twenty day automatic approval process or adopted by the agency to comply with federal law and submitted as final to the Legislative Council. Final regulations are effective upon publication in the *State Register*.
6. **Emergency Regulations** are regulations filed by a state agency with the Legislative Council when the agency finds that an imminent peril to public health, safety, or welfare or an abnormal or an unusual condition, immediate need, or the State's best interest requires immediate promulgation of an emergency regulation. If a natural resources-related agency finds that an abnormal or an unusual condition, immediate need, or the State's best interest requires immediate promulgation of an emergency regulation to protect or manage natural resources, the agency may file the regulation with a statement of the situation that requires immediate promulgation. An emergency regulation is effective upon filing for ninety days and is renewable for an additional ninety days if the original filing begins and ends during the legislative interim.

### B. PUBLICATION SCHEDULE AND FILING DEADLINES

The *State Register* is published on the **fourth** Friday of each month. Additional issues of the *State Register* may be published as considered necessary by the Legislative Council. Documents to be published in the *State Register* must be received in the office of the *State Register* by 5:00 PM on the **second** Friday of each month in order to be included in that month's issue. Agencies are encouraged to submit documents for publication as early as possible prior to the deadline date so that there will be sufficient time to process, review, and verify documents before the deadline. **Documents that are not in complete compliance with this manual will be returned to the agency. Returned documents must be refiled by the deadline in order to be included in that month's publication.**

### C. SUBSCRIPTIONS

Electronic subscriptions to the *State Register* are free. Subscription forms are available on the South Carolina General Assembly Home Page, [www.scstatehouse.gov](http://www.scstatehouse.gov), under Publications, South Carolina State Register Subscription Form.

### III. AGENCY PROMULGATION OF REGULATIONS

To adopt, amend, or repeal a regulation, a state agency must prepare and submit all documents required by the Administrative Procedures Act (APA) to be published in the *State Register* according to the standards prescribed in this manual and the requirements of the APA. Although these standards are designed to incorporate the requirements for promulgation of regulations pursuant to the APA, an agency must not rely exclusively on this manual for regulatory process requirements and must also consult the APA for further specificity of these requirements. Compliance with these standards and requirements are the exclusive means by which administrative regulations become effective in South Carolina.

Questions of a general nature regarding the promulgation and review process for regulations may be directed to the Office of the Legislative Council; however, pursuant to the Administrative Procedures Act the Attorney General is responsible for interpretation of the Act and determining agency compliance. (Section 1-23-70)

#### A. DEFINITIONS

1. **Regulation.** A regulation as defined in the Administrative Procedures Act is “...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term “regulation” includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include:

- a. Descriptions of agency procedures applicable only to agency personnel;
- b. Opinions of the Attorney General;
- c. Decisions or orders in rate making, price fixing, or licensing matters;
- d. Awards of money to individuals;
- e. Policy statements or rules of local school boards;
- f. Regulations of the National Guard;
- g. Decisions, orders, or rules of the Board of Probation, Parole and Pardon Services;
- h. Orders of the supervisory or administrative agency of a penal, mental, or medical institution in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients;
- i. Decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment, tenure, and promotion of faculty, and disciplinary proceedings;
- j. Decisions of the Human Affairs Commission relating to firms or individuals;
- k. Advisory opinions of agencies;
- l. Other agency actions relating only to specified individuals.”

Determining if an agency procedure or policy must be promulgated as a “regulation” is often crucial to an agency because whether or not this procedure or policy has the force and effect of law hinges on whether it was required to be promulgated as a regulation and if so, if it was promulgated in compliance with the requirements of the Administrative Procedures Act.

2. **Administrative Procedures Act or APA.** This act provides the statutory requirements for the promulgation, processing, and review of regulations. The act is codified at Article 1, Chapter 23, Title 1; Section 1-23-10 et seq., S.C. Code of Laws, 1976.

3. **Assessment Report.** A report prepared by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office if the regulation has a substantial economic impact and if the promulgating agency received a request for a report from two members of the General Assembly during the drafting comment period or by majority vote of a legislative committee reviewing the regulation during the legislative review process. (Section 1-23-115)

(SEE APPENDIX 4).

4. **Fiscal Impact Statement.** A preliminary or final statement prepared by a state agency that reflects estimates of costs to be incurred by the State and its political subdivisions in complying with the regulation. (Section 1-23-110(A)(3)(e)) (SEE APPENDIX 2).

5. **Instructions.** Instructions are precise directions to the publishers of the *Code of State Regulations* for placement of the regulations in the *Code*. For example:

Instructions: New regulation added.

Instructions: Delete items (a), (b), (c), and (d). Items (e) and (f) remain.

Instructions: Amend item (c). Items (a) and (b) remain the same.

6. **Preamble.** An introductory narrative describing the purpose, scope, and content of the proposed regulation; it must include all of the major subjects (topics) addressed in the regulation and a section-by-section discussion and justification for any provision not required to maintain compliance with federal law. The preamble also must include a reference to the date the Notice of Drafting was published in the *State Register*.

7. **Presiding Official's Report.** A written report prepared by the presiding official of a public hearing that may be required to be conducted pursuant to Section 1-23-111. The report must include findings as to the need and reasonableness of the regulation and may include suggested modifications in the case of a finding by the presiding official of a lack of need or reasonableness.

8. **Regulation Number and Analysis Line.** The regulation number is assigned by the agency in accordance with its placement in the agency's chapter in the *Code of State Regulations*. The analysis line is provided by the agency and describes the subject of the regulation.

9. **Statement of Need and Reasonableness.** A statement prepared by a state agency as to the need and reasonableness of a regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (3) and (9) through (11). A Statement of Need and Reasonableness is required for all proposed regulations (SEE APPENDIX 3).

10. **Statement of Rationale.** A detailed statement prepared by a state agency stating the basis for the regulation, including the scientific or technical basis, if any, and identifying any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation.

11. **Statutory Authority.** The statutory authority cites the code section in the Code of Laws of South Carolina, 1976, that gives the state agency the authority for promulgating regulations, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation.

12. **Substantial Economic Impact.** A substantial economic impact states the financial impact, if any, on commercial enterprises, retail businesses, service businesses, industry, consumers of a product or service, taxpayers, or small businesses. (Section 1-23-10(7))

13. **Synopsis.** A summary prepared by the agency of the content of the regulation and changes to existing regulations. The synopsis should include all of the major issues addressed in the regulation, including any citations of federal law that mandate changes in the regulation. The synopsis is included in a joint resolution introduced to approve or disapprove the regulation.

14. **Text.** The full text of the new or amended regulation as it would appear in the *Code of State Regulations* and the text of a regulation that is being repealed.

## **B. STEPS IN PROMULGATING PERMANENT REGULATIONS**

### **STEP 1**

#### **PUBLICATION OF A NOTICE OF DRAFTING**

The publication of a Notice of Drafting in the *State Register* is the first step in the regulatory process for promulgation of a permanent regulation. The Notice of Drafting must include a synopsis of what the agency plans to draft or repeal, the agency's statutory authority for promulgating the regulation, and the address where interested persons may submit written comments during the drafting period. (Section 1-23-110(A)(1))

### **STEP 2**

#### **PUBLICATION OF THE PROPOSED REGULATION WITH A NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT**

Following the drafting period the agency submits its proposed regulation, and Legislative Council assigns a document number to the proposed regulation upon filing. The regulation is referenced by this number throughout the legislative review process. A proposed regulation must include the:

1. Statutory Authority. (Section 1-23-110(A)(3)(d));
2. Narrative Preamble, including a section-by-section discussion of the proposed regulation. (Section 1-23-110(A)(3)(c));
3. Preliminary Fiscal Impact Statement prepared by the agency, containing estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. (Section 1-23-110(3)(e)) (SEE APPENDIX 2);
4. Notice of Opportunity for Public Comment, including a notice of public hearing. (Section 1-23-110(A)(3)) (SEE STEP 3, "PUBLIC HEARING ON A PROPOSED REGULATION");
5. Statement of Need and Reasonableness. (Section 1-23-110 (A)(3)(g)) (SEE APPENDIX 3);
6. Statement of Rationale. (Section 1-23-110(A)(3)(h));
7. Full text of the proposed regulation. (Deleted text must be stricken through and new text must be underlined) (Section 1-23-120(B)(2));
8. Completed Document Transmittal Form (SEE APPENDIX 1); and
9. If an assessment report was requested by two members of the General Assembly during the drafting comment period, a summary of the preliminary assessment report and notice that copies of the preliminary report are available from the agency. (Section 1-23-110 (A)(3)(f)) (SEE APPENDIX 4).

**NOTE:** If requests for an assessment report have been made for a regulation that does not have a substantial economic impact, a statement must be filed with the regulation to that effect. If requests for an assessment report have been made on a regulation that is exempt from filing an assessment report, an explanation of the exemption must be filed with the regulation.

### **STEP 3**

#### **PUBLIC HEARING ON A PROPOSED REGULATION**

Because public access is one of the goals of the Administrative Procedures Act, a notice of opportunity for a public hearing must be included as part of the proposed regulation. The public hearing must be held at least thirty days after publication of the notice of the hearing in the *State Register* if requested by twenty-five or more persons, by an individual representing a group of twenty-five or more persons, by a governmental subdivision or agency, or by an association having at least twenty-five members. The notice of public hearing must include the address to which written comments must be sent, the time period of not less than thirty days for submitting these comments, and the date, time, and place of the public hearing.

When a public hearing is held that involves the promulgation of a regulation by a department for which the governing authority is a single director, the hearing must be conducted by an administrative law judge assigned by the chief judge. When a hearing is held that involves the promulgation of a regulation by a department for which the governing authority is a board or commission, the hearing must be conducted by the board or commission with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the Statement of Need and Reasonableness, and any written exhibits in support of the proposed regulation. The agency may also submit oral evidence. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official must issue a written report which must include findings as to the need and reasonableness of the proposed regulation and may include suggested modifications to the proposed regulation in the case of a finding of lack of need or reasonableness.

If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

1. Incorporate the suggested modifications of the presiding official into the proposed regulation and submit the revised proposed regulation for legislative review;
2. Not modify the proposed regulation and submit the proposed regulation as originally drafted for legislative review with a copy of the presiding official's report attached; or
3. Terminate the promulgation process by publication of a notice in the *State Register*.

### **STEP 4**

#### **REGULATIONS REQUIRING GENERAL ASSEMBLY REVIEW**

After a state agency, pursuant to Section 1-23-110, has adopted a regulation, which may include a new regulation or an amendment to or repeal of an existing regulation, the agency shall submit the regulation to the General Assembly for review, and it must be submitted for review within one year of the date of publication of the Notice of Drafting. (Section 1-23-120(A). An agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of the regulation as proposed pursuant to Section 1-23-110(A)(3) and the substantive change was not raised, considered, or discussed by public comment received by the agency. The agency shall refile such a regulation for publication in the *State Register* as a proposed regulation pursuant to Section 1-23-110(A)(3).

Regulations and all correspondence pertaining to regulations must be submitted to the General Assembly through the Editor of the *State Register* in the Legislative Council. The Editor shall process and forward the regulations to the President of the Senate and the Speaker of the House of Representatives.

To initiate the process of legislative review, the agency shall file with the Editor of the State Register:

1. Two letters of request for review: one addressed to the President of the Senate and one addressed to the Speaker of the House of Representatives;
2. The full text of the regulation. Deleted text must be stricken through and new text underlined. The regulation must be accompanied by:
  - a. A synopsis of the regulation that explains the content of the regulation and any changes to existing regulations;
  - b. Instructions to publishers on the regulation's placement in the *Code of State Regulations* or amendments to existing regulations;
  - c. A fiscal impact statement;
  - d. Statement of Rationale;
  - e. If an assessment report was requested by two members of the General Assembly, summary of the final assessment report and the final assessment report prepared by the Office of Research and Statistics or a statement or explanation that an assessment report is not required or is exempt;
  - f. If directed by the Small Business Regulatory Review Committee:
    - (i) economic impact statement;
    - (ii) regulatory flexibility analysis.
3. A report of the presiding official of the public hearing, if required pursuant to Section 1-23-111(C)(b).

## **STEP 5**

### **REGULATIONS EXEMPT FROM GENERAL ASSEMBLY REVIEW**

General Assembly review is not required for regulations that are:

1. Promulgated to comply with federal law;
2. Promulgated by the State Board of Financial Institutions to authorize state-chartered banks, savings and loan associations, and credit unions to engage in activities that are authorized pursuant to Section 34-1-110, S.C. Code of Laws, 1976;
3. Promulgated by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;
4. Emergency Regulations filed pursuant to Section 1-23-130.

However, Steps 1 through 3 must be completed for a regulation exempt from General Assembly review and the documents enumerated in Step 4, number 2 and 3 above, must also be filed with the Editor of the State Register, except that strike through and underlined text, a fiscal impact statement, and a statement of rationale are not required. The regulation must be submitted by the agency as final for publication in the *State Register*, and unless specified otherwise, the regulation is effective upon the date of publication.

If underlying federal law is the basis for exemption and the federal law is repealed or otherwise does not have the force and effect of law, the state regulation is deemed repealed. The state agency must publish this repeal in the *State Register* within sixty days of the date the federal law lost its force and effect, and the prior state regulation, if any, is reinstated. (Section 1-23-120(H)(1)).

### **C. EMERGENCY REGULATIONS**

An emergency regulation may be filed by an agency which finds that imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in the Administrative Procedures Act. Also, if a natural resources-related agency finds that an abnormal or an unusual condition, immediate need, or the State's best interest requires immediate promulgation of an emergency regulation to protect or manage natural resources, the agency may file the regulation with a statement of the situation that requires immediate promulgation. An emergency regulation must be prepared according to the standards prescribed in this manual and filed with the Editor of the *State Register* in the office of the Legislative Council for publication in the *State Register*.

An emergency regulation is effective upon filing for ninety days and is renewable for an additional ninety days if the original filing begins and ends during the legislative interim. An emergency regulation that has a substantial economic impact may not be refiled without a summary of the final assessment report prepared by the Office of Research and Statistics, if an assessment report was requested by two members of the General Assembly during the first ninety day period the regulation was in effect, and a statement of need and reasonableness prepared by the agency also must be submitted.



## **IV. LEGISLATIVE REVIEW OF REGULATIONS**

### **A. ONE-HUNDRED-TWENTY-DAY REVIEW PERIOD**

Upon receiving a regulation, the President of the Senate and the Speaker of the House, respectively, refer the regulation to the standing committee of the Senate and House which is most concerned with the function of the promulgating agency. The General Assembly has one hundred twenty calendar days to review a regulation from the date the regulation is received by the President of the Senate and Speaker of the House of Representatives. If no action occurs in the committee on a regulation within sixty calendar days of the committee receiving the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting. *Sine die* adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly, excluding special sessions called by the Governor.

### **B. METHODS OF APPROVAL AND DISAPPROVAL OF REGULATIONS**

A regulation may be approved or disapproved by the enactment of a joint resolution, generally introduced by the committee to which the regulation was referred but it may be introduced by any member. A regulation also may be automatically approved by expiration of the one-hundred-twenty-day review period.

Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled until a negative vote is taken on the joint resolution. An emergency regulation may not be filed on regulations for which the standing committee has introduced a joint resolution disapproving the regulation. If no joint resolution is enacted to approve the regulation or introduced to disapprove the regulation before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

### **C. MODIFICATION, WITHDRAWAL, AND RESUBMISSION OF REGULATIONS**

A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, if the resubmitted regulation contains no substantive changes from the previously submitted version.

The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, the committee may introduce a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

Additionally, if a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing, along with its recommendations of what would be necessary to obtain committee approval. The agency may:

1. Withdraw the regulation from the General Assembly and resubmit it with the recommended changes. If a regulation is not resubmitted within thirty days, the regulation is considered permanently withdrawn;
2. Withdraw the regulation permanently;
3. Take no action and abide by whatever action is taken, or not taken, by the General Assembly on the regulation concerned.

The date of the standing committee's letter (the "notification") tolls the one-hundred-twenty-day period for automatic approval.

When an agency withdraws a regulation from the General Assembly upon the request of a committee or on its own, the remainder of the period begins to run only on the date the regulation is resubmitted to the General Assembly.

Upon resubmission of the regulation, if fewer than twenty days remain in the legislative review period, additional days must be added to equal twenty days.

If an agency decides to take no action when requested by a committee to withdraw a regulation and make changes, the agency shall notify the committee in writing with a copy to the Editor of the *State Register*, and the remainder of the legislative review period will resume as of the date of the notification. (Section 1-23-125)

TO PERMANENTLY WITHDRAW A REGULATION at the request of a committee or on its own, the agency shall file with the Editor of the *State Register* two letters of request for withdrawal: one addressed to the President of the Senate and one addressed to the Speaker of the House of Representatives.

TO RESUBMIT A REGULATION, the agency shall file with the Editor of the *State Register*:

1. Two letters of request to resubmit: one addressed to the President of the Senate and one addressed to the Speaker of the House of Representatives that state the reason for withdrawal and resubmission and state the changes contained in the version of the regulation to be resubmitted;
2. The revised regulation, including a revised synopsis, instructions, and fiscal impact statement.

A regulation is deemed withdrawn if it has not become effective by the date of publication of the next *State Register* published after the end of the two-year legislative session in which the regulation was submitted to the President and Speaker for review. Other provisions of the Administrative Procedures Act notwithstanding, a regulation deemed withdrawn pursuant to the end of the two-year legislative session may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, if the resubmitted regulation contains no substantive changes from the previously submitted version.

#### **D. EFFECTIVE DATES OF REGULATIONS**

A final regulation takes effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation. The final regulation is published in the next issue following approval based on deadline dates for publication. A regulation approved before the second Friday of the month is published in that month's *State Register*. A regulation approved after the second Friday of the month is published in the following month's *State Register*.

An emergency regulation takes effect upon filing with the Editor of the *State Register* and remains in effect for ninety days. It is renewable for ninety additional days if the original ninety-day period begins and ends during the legislative interim.

#### **E. CORRECTING ERRORS IN REGULATIONS**

An error in the text of a proposed or adopted regulation printed in the *State Register* may be corrected by an agency requesting the Editor of the *State Register* to publish an errata notice in the *State Register* if the correction does not change the legal meaning of the regulation.

## **F. STATUTORY FIVE-YEAR REVIEW OF REGULATIONS**

Pursuant to Section 1-23-120 (J) and Section 1-23-270(F), by July 1, 1997 and every five years thereafter, each state agency that promulgates regulations or to which the responsibility for administering regulations has been transferred shall conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except regulations exempt from General Assembly review and emergency regulations promulgated pursuant to Section 1-23-130. Upon completion of the review, the agency shall submit to the Code Commissioner, at Legislative Council, a report that identifies those regulations:

1. which the agency intends to begin the process of repeal;
2. which the agency intends to begin the process of amendment; and
3. which do not require repeal or amendment.

## V. SPECIAL REPORTS

### A. ASSESSMENT REPORTS

During the drafting comment period for a regulation a request may be made by two members of the General Assembly for an assessment report to be prepared on a regulation having a substantial economic impact. The agency must submit a preliminary assessment report to the Office of Research and Statistics of the Revenue and Fiscal Affairs Office before the date the notice of the public hearing is published in the *State Register* with the proposed regulations. The preliminary assessment report must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of economic activities arising from the proposed regulation.

(Section 1-23-115) (SEE APPENDIX 4).

The Office of Research and Statistics shall prepare and publish a final assessment report within sixty days after the date of the public hearing held pursuant to Section 1-23-110(A)(3). The Office shall forward the final assessment report and a summary of the final report to the promulgating agency. Both the preliminary and final reports may include:

1. A description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;
2. A determination of the need for the regulation and the expected benefit of the regulation;
3. A determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;
4. The effect of the regulation on competition;
5. The effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;
6. The effect of the regulation on employment in the geographical area in which the regulation would be implemented;
7. The source of revenue to be used for implementing and enforcing the regulation;
8. A conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;
9. The uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation must consider qualitative and quantitative benefits and burdens;
10. The effect of the regulation on the environment and public health;
11. The detrimental effect on the environment and public health if the regulation is not implemented.

The legislative committee to which a regulation has been referred also may, by majority vote, notify the promulgating agency in writing informing the agency that the committee cannot approve the regulation unless an assessment report is prepared and provided to the committee. The notification must be copied to the Editor of the *State Register* and the one-hundred-twenty-day legislative review period is tolled on the date of the notification.

Following receipt of the committee's request, the agency shall send a preliminary assessment report to the Office of Research and Statistics of the Revenue and Fiscal Affairs Office with a request for a final assessment report and a copy of the committee's written request. The Office of Research and Statistics will prepare and submit a final assessment report to the agency. The agency shall submit the final assessment report and a summary of the report to the Editor of the *State Register*. The review period resumes when the assessment report is submitted to the committees by the Editor. If fewer than twenty days remain in the legislative review period, additional days will be added to equal twenty days.

An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. In preparing an assessment report, numerically precise cost-benefit analysis is not required. At no time is an agency required to include items (4) through (8) in a preliminary assessment report; however, these items may be included in the final assessment report prepared by the Office of Research and Statistics.

Assessment reports may not be requested on:

1. Regulations specifically exempt from General Assembly review pursuant to Section 1-23-120(H). However, if any portion of a regulation promulgated to maintain compliance with federal law, and thereby exempt from review, is more stringent than federal law, then that portion is not exempt from an assessment report;
2. Emergency regulations, except that an emergency regulation that has a substantial economic impact may not be refilled without a summary of the final assessment report prepared by the Office of Research and Statistics if an assessment report was requested by two members of the General Assembly during the first ninety day period the regulation was in effect.
3. Regulations which control the hunting or taking of wildlife, including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

## **B. SMALL BUSINESS REGULATORY FLEXIBILITY REPORTS**

Before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare in accordance with Section 1-23-270 et seq.:

1. an economic impact statement that includes the following:
  - a. an identification and estimate of the number of small businesses subject to the proposed regulation;
  - b. the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;
  - c. a statement of the economic impact on small businesses; and
  - d. a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation;
2. a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.

If directed by the Small Business Regulatory Review Committee to prepare these reports, the agency shall submit these reports along with its regulations to the General Assembly for review.

## VI. PREPARING DOCUMENTS FOR FILING AND PUBLICATION

### A. DEVELOPMENT OF STANDARDS

The Legislative Council has developed the standards contained in this manual for drafting and filing documents and submitting regulations. All regulations must be filed electronically in accordance with this manual so that all regulations can be preserved in a searchable database from which they can be efficiently and effectively retrieved by the user and printed in the *State Register* and in the *Code of State Regulations*. These standards are designed to incorporate the requirements for promulgation of regulations pursuant to the Administrative Procedures Act; however, an agency must not rely exclusively on this manual for regulatory process requirements and must also consult the Administrative Procedures Act for these requirements.

### B. SUBMISSION OF DOCUMENTS

1. All documents printed in the *State Register* or sent to the General Assembly for review must be submitted in two forms, electronic and paper. Documents must be submitted electronically via email to [reg@scstatehouse.gov](mailto:reg@scstatehouse.gov). **The official filing date and time for emailed documents will be the date and time the paper copy is received in the Legislative Council.**

2. **Documents that must be submitted in electronic and paper forms:**

- a. Notices of General Public Interest and Notices of Drafting for publication in the *State Register* – electronic and two paper copies.
- b. Proposed regulations - electronic and two paper copies.
- c. Final regulations submitted for publication in the *State Register* that are exempt from General Assembly review - electronic and two paper copies.
- d. Regulations being submitted for General Assembly review - electronic and two paper copies.
- e. Emergency regulations - electronic and two paper copies.

3. **Documents that must be submitted in paper copy only:**

- a. Letters to the Speaker of the House of Representatives and Lieutenant Governor that request General Assembly review - an original and one copy of each letter.
- b. Document Transmittal Forms - an original and one copy.
- c. Supporting material such as graphs, maps, illustrations, and charts (such material should be originals or good quality) - two copies.

4. **Documents that must be submitted upon request or pursuant to the APA:**

- a. A report from the presiding official of the public hearing - two copies.
- b. Letters from members of the General Assembly requesting an assessment report - two copies.
- c. Final assessment report prepared by the Office of Research and Statistics - two copies.
- d. Economic Impact Statement and Regulatory Flexibility Analysis - two copies.

### C. CODIFICATION

The purpose of codification is to make it possible to cite the subject matter of every section, subsection, and item of a regulation with precision. For example:

DO NOT
7-70. Licenses. There are three kinds of licenses: A. Restricted; B. Unrestricted; C. Temporary. These licenses are issued only in the months of July and January.

DO
7-70. Licenses. A. There are three kinds of licenses: (1) Restricted; (2) Unrestricted; (3) Temporary. B. These licenses are issued only in the months of July and January.

In the “Do Not” example, the last paragraph stands alone, it is not codified; it cannot be cited. In the “Do” example, every subject is codified and every subject can be cited. The citation of the last paragraph is R. 7-70 (B).

An example of correctly codified text follows:

61-96. Athletic Trainers	
A. In order that athletic trainers practicing in the State may be certified, they must meet the following requirements of examination and registration fees unless otherwise exempted by law.	
B. The Examination: The examination shall be the current examination of the National Athletic Trainers' Association.	
(1) Application Fee: The application fee shall be \$50.00 due on the day of the examination.	
(2) Other fees:	
(a) Duplicate certificate: \$5.00.	
(b) Duplicate ID Card: \$2.00.	

A typical citation under the codification system in the above example is R.61.96B(2)(a). This citation refers to “Duplicate certificate: \$5.00”.

The numbering system for codified text follows this format:

<u>61</u> -	Agency chapter number in the <i>Code of State Regulations</i>
61- <u>96</u>	The number of the regulation assigned by the agency
61-96 <u>A</u>	Section
61-96A( <u>1</u> )	Subsection
61-96A(1)( <u>a</u> )	Item

A typical citation illustrating codification is 61-96 B(2)(a) as shown below:

61-	The number assigned to the agency issuing the regulation. It corresponds to a chapter number in the <i>Code of State Regulations</i> (in this case the chapter number for the Department of Health and Environmental Control).
96	The number of the regulation assigned by the agency.
A	The section designation of the regulation: (A) - (Z) and (AA) - (ZZ). There can never be only one section; there must be at least two. If there is only one section in a regulation, do not designate the section. It would be referred to as the number assigned by the agency.
(1)	The subsection designation of the regulation. Each section may be subdivided into several subsections indicated in the citation by an Arabic numeral in parenthesis. There can never be only one subsection; there must be at least two. If there is only one subsection in a regulation, do not designate the subsection.
(a)	Dividing a subsection further creates an item, designated by a lower case letter in parenthesis. Items cannot be written singly; there must always be at least two. Dividing a regulation into several subsections and items is not advisable unless absolutely necessary for clarity. If it is necessary, the divisions would be “number, letter, number, letter,” with each division having at least two entries.

## D. WORD PROCESSING STANDARDS

Documents that do not comply with the word processing standards enumerated below will be returned to the agency. A returned document must be refiled before the publication deadline in order to be included in that month's publication.

1. Type text single spaced.
2. Set justification to full.
3. Set all margins (top, bottom, left and right) to one inch.
4. Use only one font throughout the document. Times New Roman, Scalable 11 point, is preferred. If the font must be decreased for drafting very complex tables within the text of the regulation, return to an 11 point font at the end of the table or chart.
5. If possible use the following tab settings: 0.15, 0.3, 0.45, 0.6, 0.75, 0.9, 1.05, 1.2, 1.35, 1.5, 1.65, 1.8, 1.95, 2.1, 2.25, 2.4, 2.55, 2.7, 2.85, 3.0, 3.15, 3.3, 3.45, 3.6, 3.75, 3.9. The text of regulations is written as a series of tabbed paragraphs. The first line of the paragraph is indented one tab; all other lines return to the left margin. A section is indented two tabs; a subsection, three tabs and so on. The indentation pattern is:

### A. Eligibility Requirements.

1. All applications shall include the following information for the area to be serviced under the terms of the grant:

a. A description of the solid waste management project or public education recycling project for which grant funds are requested, including any business and accounting plans for such projects;

## NOT:

### A. Eligibility Requirements.

1. All applications shall include the following information for the area to be serviced under the terms of the grant:
  - a. A description of the solid waste management project or public education recycling project for which grant funds are requested, including any business and accounting plans for such projects;
6. USE hard returns only at the end of a paragraph or to create space between paragraphs. DO NOT USE a hard return at the end of each line; allow the sentence to "wrap around" automatically. Paragraph spacing should be set to 0 pt for both before and after settings.
7. If you have text that needs to be in table or column format, make sure to return the tab settings to those referenced in Item 5 above at the end of your table or column. Do not use spaces to separate columns or align text.
8. DO NOT USE headers or footers.
9. DO NOT USE bold print in the text of a document except where bold print is necessary for specified headings and subheadings in *State Register* documents.
10. USE italics and underscoring sparingly.
11. When referring to code sections in the Code of Laws of South Carolina, 1976, write out the word "Section".



12. Use decimal tabs when tabbing numbers with decimals such as dollar amounts. DO NOT USE tabs and spaces to line up decimals.
13. DO NOT use Word's automatic paragraph and outline numbering. USE tabs to space over when outlining. This method helps to maintain a neat outline throughout the text of the *State Register* publication.  
Example: (Tab) A. (Tab) Waste material must not be ....
14. DO NOT use "styles". The style setting should be "normal" throughout the document.
15. When revising regulations by deleting existing text and replacing it with new text, strike the existing text first, then place the new text (underlined) after the stricken text.
16. Paginate the document. (bottom, center)
17. If you need help with GRAPHICS, TEXTBOXES, TABLES OR COLUMNS, please call the Legislative Services Agency at 212-4420 for specific instructions.

#### **E. PROCESSING OF SUBMITTED DOCUMENTS**

The Legislative Council has 10 working days to convert and process a regulation that is submitted for publication or for General Assembly review. The document will be returned to the agency for a signature of verification and will not be published if it does not meet the publication schedule or will not be forwarded for legislative review until the verified regulation is returned to the Editor of the *State Register*. The promulgating agency is responsible for proofing and verifying the document to make sure that it is accurate and contains the text the agency intended to submit.

## **VII. GUIDELINES FOR DRAFTING TEXT**

### **A. LANGUAGE STYLE**

Write in plain, easy to understand English. Avoid the use of jargon, “bureaucratese”, and “legalese”. If a technical word must be included, define it the first time it is used if it is not defined in a definitional section. Avoid synonyms; use a specific word for an item and use it throughout the regulation. Use the third-person singular in regulations. Use active voice verbs. Use “shall or must” and “will and may” correctly, making sure that the meaning of each use is clear. Refer to South Carolina as “the State”, but refer to other states by their names (i.e. West Virginia, not “the State of West Virginia”). Write out all numbers, such as “one hundred twenty days”. Delete unnecessary words, but do not substitute brevity for clarity or accuracy.

### **B. CITATIONS**

Citing another regulation within the text of a regulation should follow the form: R.61-96 (for example); citing a section, R.61-96A; citing a subsection, R.61-96A(1); citing an item, R. 61-96A(1)(a). To refer to a section, subsection, or item of a regulation within the text of the same regulation, use “the section as in A above”, “the subsection as in A(1) above”, and “the item as in A(1)(a) above”.

References to notices or other matters published in the *State Register* are cited as SR22-1”. “SR” refers to the *State Register*; “22” is the volume number for a particular year; “1” is the issue number of the volume designating the month in which it is published.

### **C. INCORPORATION BY REFERENCE**

Because some regulations are lengthy and are available in printed form elsewhere, a provision has been made to incorporate them into regulations by reference. Examples of such material are federal rules that a state agency adopts, a uniform code such as the National Fire Code, and forms, handbooks, or manuals used routinely in agencies. A regulation may be incorporated by reference only if the incorporated material is retained at the agency and made available upon request to a member of the public.

## **A. EXAMPLE OF NOTICES OF GENERAL PUBLIC INTEREST**

### **DEPARTMENT OF LABOR, LICENSING AND REGULATION OFFICE OF STATE FIRE MARSHAL**

#### **NOTICE OF GENERAL PUBLIC INTEREST**

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 14, Standard for the Installation of Standpipe and Hose Systems, 2010 Edition
2. The original promulgating authority for this code is:  
National Fire Protection Association  
1 Batterymarch Park  
Quincy, Massachusetts 02269
3. This code is referenced by:  
South Carolina Code of Laws, Section 40-10-240(A)  
South Carolina Regulations 71-8300.2(G)(4)

The Office of State Fire Marshal specifically requested comments concerning sections of these editions which may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal will promulgate this latest edition without amendment.

### **DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

#### **ERRATA**

#### **61-79. Hazardous Waste Management Regulations**

The amendment of R.61-79.270 published in the *State Register*, Volume 14, Issue No. 12 (November 23, 1990), is corrected so that amended sections R.61-79.270.40 through 270.49 on pages 254 through 258 are deleted. These sections have not been amended; the previous text of R.61-79.40 through 270.49 remains in effect.

## **B. EXAMPLE OF NOTICE OF DRAFTING REGULATION**

### **DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61**

Statutory Authority: 1976 Code Sections 44-56-410 et seq.

#### **Notice of Drafting:**

The Department of Health and Environmental Control proposes to draft a new regulation that addresses the Drycleaning Restoration Fund. Interested persons may submit comments to Mr. John Brown, Bureau of Solid and Hazardous Waste, Division of Site Assessment and Engineering, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received no later than 5:00 p.m. on June 25, 1996, the close of the drafting comment period.

#### **Synopsis:**

The General Assembly passed the “Drycleaning Restoration Fund Act” (Section 44-56-410) that established a State administered program for the rehabilitation and remediation of sites contaminated by drycleaning solvents. The fund is to be capitalized through the imposition of fees and charges levied on all drycleaners in the State using perchloroethylene and stoddard solvents and wholesale suppliers of perchloroethylene and stoddard solvents except that drycleaners who solely use stoddard solvents or a combination of perchloroethylene and stoddard solvents may opt out of the program. The Act requires the Department of Revenue and the Department of Health and Environmental Control to jointly administer the program. Both agencies must promulgate regulations to provide for the optimum use of these funds.

The proposed regulation will address remediation of sites contaminated by drycleaning solvents. Criteria, procedures, and standards will be provided for eligibility assessment, moratorium, financial responsibility, facility prioritization, restoration investigation and goals, and contractor certification.

Legislative review of this proposal will be required.

## C. FORMAT OF A PROPOSED REGULATION

Document No. \_\_\_\_\_

*[Upon filing, a document number is assigned to the proposed regulation. The regulation is referenced by this number throughout the legislative process until the regulation is published as final in the State Register.]*

### NAME OF AGENCY

*[Name of Agency: centered, all caps; bold print]*

### CHAPTER 00

*[Agency chapter number: centered, all caps]*

Statutory Authority: 1976 Code Section 00-000-0000

*[Statutory Authority is the code section in the Code of Laws of South Carolina, 1976, that gives an agency the authority to promulgate regulations, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation. It is centered immediately after the chapter number. Do not use the legal section symbol (§); write out the word "Section."]*

00-000. *[Insert the number and title of the regulation. If the title of an existing regulation is to be amended, show the change in title in the revised text below.]*

*[Skip 1 line]*

### **Preamble:** *[Bold print subheading]*

*[The preamble is an introductory narrative describing the purpose, scope, and content of the proposed regulation; it contains precise language and covers all of the major subjects (topics) addressed and includes a section-by-section discussion and justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs. The preamble must also include a reference to the date the Notice of Drafting was published in the State Register.]*

*[Skip 1 line]*

### **Notice of Public Hearing and Opportunity for Public Comment:** *[Bold print subheading]*

*[This notice must include: (1) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments, and (2) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date this notice is published in the State Register.]*

*[Skip 1 line]*

### **Preliminary Fiscal Impact Statement:** *[Bold print subheading]*

*[Skip 1 line]*

### **Statement of Need and Reasonableness:** *[Bold print subheading]*

#### DESCRIPTION OF REGULATION: *[Title of regulation]*

Purpose:

Legal Authority:

Plan for Implementation:

#### DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

*[Narrative]*

DETERMINATION OF COSTS AND BENEFITS:

*[Narrative]*

UNCERTAINTIES OF ESTIMATES:

*[Narrative]*

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

*[Narrative]*

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

*[Narrative]*

*[Skip 1 line]*

**Statement of Rationale:** *[Use bold print for subheading. A detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation.]*

*[Skip 1 line]*

**Summary of Preliminary Assessment Report:** *[Add this section to the Proposed Regulation only if an Assessment Report was requested by two members of the General Assembly during the drafting comment period. If this section is added, bold print the subheading]*

*[Skip 1 line]*

**Text:** *[Bold print subheading]*

*[Complete text of proposed new regulation or amendment to existing regulation as it should appear in the Code of State Regulations or the text of a regulation being repealed]*

## D. FORMAT OF A REGULATION SUBMITTED FOR GENERAL ASSEMBLY REVIEW

Document No. 0000

*[Insert the document number assigned to the regulation at the time it was proposed in the State Register.]*

### **NAME OF AGENCY**

*[Name of agency: centered, all caps, bold print]*

### **CHAPTER 00**

*[Agency chapter number: centered, all caps]*

Statutory Authority: 1976 Code Section 00-000-0000

*[Statutory authority is the code section in the Code of Laws of South Carolina, 1976, that gives an agency the authority to promulgate the regulation, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation. It is centered immediately after the chapter number. Do not use the legal section symbol (§); write out the word "Section."]*

00-000. *[Insert the number and title of the regulation]*

*[Skip 1 line]*

**Synopsis:** *[Bold print subheading. The synopsis should explain the content and any changes in existing regulations resulting from the regulations.]*

*[Skip 1 line]*

**Instructions:** *[Bold print subheading. Give **exact** directions to the publishers for placement of the regulation in the Code of State Regulations.]*

*[Skip 1 line]*

**Text:** *[Bold print subheading. Complete text of the new regulation or amendment to or repeal of an existing regulation as it should appear in the Code of State Regulations.]*

*[Skip 1 line]*

**Fiscal Impact Statement:** *[Use bold print for subheading. This is a final agency statement reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the new regulation.]*

*[Skip 1 line]*

**Statement of Rationale:** *[Use bold print for subheading. A detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation.]*

*[Skip 1 line]*

**Final Assessment Report Summary Prepared by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.** *[Add this subsection to the Final Regulation only if an Assessment Report was requested by two members of the General Assembly during the drafting comment period. Bold print subheading.]*

## **E. FORMAT FOR AN EMERGENCY REGULATION**

### **NAME OF AGENCY**

*[Name of agency: centered, all caps, bold print]*

### **CHAPTER 00**

*[Agency chapter number: centered, all caps]*

Statutory Authority: 1976 Code Section 00-000-0000

*[Statutory authority is the code section in the Code of Laws of South Carolina, 1976, that gives an agency the authority to promulgate the regulation, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation. It is centered immediately after the chapter number; do not use the legal section symbol (§), write out the word "Section."]*

00-000. *[Insert the number and title of the regulation]*

### **Emergency Situation:**

*[Statement of the situation requiring immediate promulgation]*

### **Text:**

*[Full text of emergency regulation]*

**Statement of Need and Reasonableness:** *[Include this section only when refiling for an additional ninety-day period if the regulation has a substantial economic impact.]*

The statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

### **DESCRIPTION OF REGULATION:**

Purpose:

Legal Authority:

Plan for Implementation:

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

**DETERMINATION OF COSTS AND BENEFITS:**

**UNCERTAINTIES OF ESTIMATES:**

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:**

**Final Assessment Report Summary Prepared by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.** *[Include this section when refiling, only if an assessment report was requested by at least two members of the General Assembly during the first ninety days the regulation was in effect pursuant to Section 1-23-130(B)]*



**APPENDIX 1****DOCUMENT TRANSMITTAL FORM**

This form must be completed and submitted with each document filed with the Editor of the *State Register* in the Legislative Council

1. Agency Name	2. Chapter Number	3. Date of Filing
4. Regulation Number	5. Subject of Regulation	
6. Statutory Authority		

## 7. Type of Filing

- \_\_\_\_\_ NOTICE OF GENERAL PUBLIC INTEREST
- \_\_\_\_\_ NOTICE OF DRAFTING
- \_\_\_\_\_ PROPOSED REGULATION
- \_\_\_\_\_ EMERGENCY REGULATION
- \_\_\_\_\_ FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW
- \_\_\_\_\_ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW
- \_\_\_\_\_ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW WITH NO SUBSTANTIVE CHANGES
- \_\_\_\_\_ FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

8. For Additional Information, Contact		9. Telephone Number
10. Typed Name of Official	11. Signature of Official	12. Date

SOUTH CAROLINA STATE REGISTER USE ONLY	
13. For publication in SR Volume ____ Issue ____  Document Number ____  Verification: ____	OFFICIAL FILING STAMP

## **APPENDIX 2**

### **PRELIMINARY OR FINAL FISCAL IMPACT STATEMENT**

The Preliminary or Final Fiscal Impact Statement shall reflect costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A political subdivision includes counties, municipalities, school districts, and special purpose districts.

A preliminary fiscal impact statement is required for regulations subject to legislative review but is not required for regulations exempt from General Assembly review pursuant to Section 1-23-120(H).

A preliminary fiscal impact statement is required for the proposed regulation (Section 1-23-110(A)(3)(e)), and a final fiscal impact statement is required to be submitted with the regulation for General Assembly review pursuant to (Section 1-23-120(B)(6)).

A suggested format for the preliminary fiscal impact statement is shown below.

#### **Preliminary or Final Fiscal Impact Statement:**

The (Name of Agency) estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be approximately \$\_\_\_\_\_.

## APPENDIX 3

### STATEMENT OF NEED AND REASONABLENESS

Code Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, require an agency promulgating a regulation to provide a Statement of Need and Reasonableness to evaluate the effect and impact of the proposed regulation, the consequences of no action, and possible alternatives to the proposed action. The Statement of Need and Reasonableness is required for all proposed regulations and the amendment to or repeal of existing regulations.

The Statement of Need and Reasonableness is determined by the agency based on an analysis enumerated in Section 1-23-115(C) (1) - (3) and (9) - (11) listed below:

1. A description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;
2. A determination of the need and reasonableness of the regulation and the expected benefit of the regulation;
3. A determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;
9. The uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation must consider qualitative and quantitative benefits and burdens;
10. The effect of the regulation on the environment and public health; and
11. The detrimental effect on the environment and public health if the regulation is not implemented.

Although an agency is not required to include an analysis of the factors in Section 1-23-115(C)(4) - (8) in its Statement of Need and Reasonableness, comments received by the agency during the public comment periods related to these items must be made part of the official record of the proposed regulation.

An assessment report, if required, must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. Numerically, precise cost-benefit analysis is not required in preparing an assessment report.

(FORMAT NEXT PAGE)

**Suggested Format: Statement of Need and Reasonableness**

1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11)

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: *[Title of Regulation]*

Purpose of Regulation:

Legal Authority:

Plan for Implementation:

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

*[Narrative]*

DETERMINATION OF COSTS AND BENEFITS:

*[Narrative on costs and benefits, including estimates of economic impacts, costs for implementation, cost effectiveness, efficiency, and feasibility]*

UNCERTAINTIES OF ESTIMATES OF BENEFITS AND BURDENS:

*[Narrative]*

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

*[Narrative]*

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

*[Narrative]*

## APPENDIX 4

### PRELIMINARY ASSESSMENT REPORT

Pursuant to Section 1-23-115(A), an assessment report may be requested on a regulation by at least two members of the General Assembly during the drafting comment period or by majority vote of a legislative committee to which the regulation was referred for review. A request for an assessment report may be made on a regulation having a substantial economic impact except:

1. Regulations specifically exempt from General Assembly review pursuant to Section 1-23-120(H). However, if any portion of a regulation promulgated to maintain compliance with federal law, and thereby exempt from review, is more stringent than federal law, then that portion is not exempt.
2. Emergency regulations filed in accordance with Section 1-23-130; however, an assessment report may be requested on emergency regulations refiled for an additional ninety day period.
3. Regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

#### Content Requirements for the Assessment Report

An assessment report must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and the State and the effects of the economic activities arising out of the proposed regulation and may address the factors set forth in Section 1-23-115(C)(1) through (11).

Although the agency is not required to include in its preliminary assessment report Section 1-23-115(C)(4) through (8), which include the effects of the regulation on competition, on the cost of living and doing business in the affected areas, and on employment in the affected areas and which include the source of funds for implementation and enforcement of the regulation and a conclusion of the short-term and long-term economic impact upon all persons substantially affected, these factors may be addressed in the final report.

#### Responsibility of the Promulgating Agency to Update the Preliminary Assessment Report

If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency shall submit corrected information to the Office of Research and Statistics of the Revenue and Fiscal Affairs Office with a copy to the Editor of the *State Register*. The Office of Research and Statistics shall forward a revised Final Assessment Report to the agency. The agency shall submit the revised report to the Editor of the *State Register* who shall submit the revised report to the committees to which the regulation was referred.

(SUGGESTED FORMAT NEXT PAGE)

**Suggested Format: Preliminary Assessment Report**

PRELIMINARY ASSESSMENT REPORT  
PREPARED IN ACCORDANCE  
WITH S.C. CODE SECTION 1-23-115

FOR PROPOSED REGULATION\_\_\_\_\_

(Date)

DESCRIPTION OF REGULATION: *[Title of regulation]*

Purpose of Regulation:

Legal Authority:

Plan for Implementation:

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED  
ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

*[Narrative]*

DETERMINATION OF COSTS AND BENEFITS:

*[Narrative]*

UNCERTAINTIES OF ESTIMATES OF BENEFITS AND BURDENS:

*[Narrative]*

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

*[Narrative]*

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS  
NOT IMPLEMENTED:

*[Narrative]*

## **TITLE 1**

### **Administration of the Government**

#### **CHAPTER 23**

#### **State Agency Rule Making and Adjudication of Contested Cases**

##### **Article 1**

##### **State Register and Code of Regulations**

###### **SECTION 1-23-10. Definitions.**

As used in this article:

(1) “Agency” or “State agency” means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases;

(2) “Document” means a regulation, notice or similar instrument issued or promulgated pursuant to law by a state agency;

(3) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

(4) “Regulation” means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term “regulation” includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include descriptions of agency procedures applicable only to agency personnel; opinions of the Attorney General;

decisions or orders in rate making, price fixing, or licensing matters; awards of money to individuals; policy statements or rules of local school boards; regulations of the National Guard; decisions, orders, or rules of the Board of Probation, Parole, and Pardon Services; orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients; decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment tenure and promotion of faculty and disciplinary proceedings; decisions of the Human Affairs Commission relating to firms or individuals; advisory opinions of agencies; and other agency actions relating only to specified individuals.

(5) “Promulgation” means final agency action to enact a regulation after compliance with procedures prescribed in this article.

(6) “Office” means the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

(7) “Substantial economic impact” means a financial impact upon:

(a) commercial enterprises;

- (b) retail businesses;
- (c) service businesses;
- (d) industry;
- (e) consumers of a product or service;
- (f) taxpayers; or
- (g) small businesses as defined in Section 1-23-270.

**SECTION 1-23-20. Custody, printing and distribution of documents charged to Legislative Council; establishment of State Register.**

The Legislative Council is charged with the custody, printing and distribution of the documents required or authorized to be published in this article and with the responsibility for incorporating them into a State Register. Such Register shall include proposed as well as finally adopted documents required to be filed with the Council; provided, however, that publication of a synopsis of the contents of proposed regulations meets the requirements of this section. Additions to the State Register shall be published by the Legislative Council at least once every thirty days.

**SECTION 1-23-30. Filing of documents with Legislative Council; public inspection; distribution.**

The original and either two additional originals or two certified copies of each document authorized or required to be published in the State Register by this article shall be filed with the Legislative Council by the agency by which it is promulgated. Filing may be accomplished at all times when the Council office is open for official business.

The Council shall note upon each document filed the date and hour of filing and shall as soon as practicable publish such document in the State Register. Copies of all documents filed shall be available at the Council office for public inspection during

office hours.

The Council shall transmit to the Clerk of Court of each county a copy of the State Register and all additions thereto when published. Clerks of Court shall maintain their copies of the Register in current form and provide for public inspection thereof. The Council shall transmit one original or certified copy of each document filed with the Council to the Department of Archives and History which shall be made available for public inspection in the office of the department.

**SECTION 1-23-40. Documents required to be filed and published in State Register.**

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

**SECTION 1-23-50. Legislative Council to establish procedures.**

The Legislative Council shall establish procedures for carrying out the provisions of this article relating to the State Register and the form and filing of regulations. These procedures may provide among other things:

- (1) The manner of certification of copies required to be filed under Section 1-23-40;
- (2) The manner and form in which the



documents or regulations shall be printed, reprinted, compiled, indexed, bound and distributed, including the compilation of the State Register ;

(3) The number of copies of the documents, regulations or compilations thereof, which shall be printed and compiled, the number which shall be distributed without charge to members of the General Assembly, officers and employees of the State or state agencies for official use and the number which shall be available for distribution to the public;

(4) The prices to be charged for individual copies of documents or regulations and subscriptions to the compilations and reprints and bound volumes of them.

**SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.**

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated subject to further action required under this article;

(2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required

under Section 1-23-30;

(3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

**SECTION 1-23-70. Duty of Attorney General.**

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

**SECTION 1-23-80. Costs incurred and revenues collected by Legislative Council.**

The cost of printing, reprinting, wrapping, binding and distributing the documents, regulations or compilations thereof, including the State Register, and other expenses incurred by the Legislative Council in carrying out the duties placed upon it by this article shall be funded by the appropriations to the council in the annual state general appropriations act. All revenue derived from the sale of the documents and regulations shall be deposited in the general fund of the State.

**SECTION 1-23-90. Complete codifications of documents; Code of State Regulations designated.**

(a) The Legislative Council may provide for, from time to time as it considers necessary, the preparation and publication of

complete codifications of the documents of each agency having general applicability and legal effect, issued or promulgated by the agency which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.

(b) A codification published under item (a) of this section shall be designated as the "Code of State Regulations". The Legislative Council may regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Legislative Council may require. A general index to the entire Code of State Regulations may be separately printed and bound.

(c) The Legislative Council shall regulate the supplementation and republication of the printed codifications with a view to keeping the Code of State Regulations as current as practicable.

(d) The authority granted in this section is supplemental to and not in conflict with the establishment of the State Register as provided for in other provisions of this article.

**SECTION 1-23-100. Exemptions for Executive Orders, proclamations or documents issued by Governor's Office; treatment of some Executive Orders for information purposes.**

This article shall not apply to Executive Orders, proclamations or documents issued by the Governor's Office. However, Governor's Executive Orders, having general applicability and legal effect shall be transmitted by the Secretary of State to the Legislative Council to be published in a separate section of the State Register for information purposes only. Such orders shall not be subject to General Assembly approval.

**SECTION 1-23-110. Procedures for publication of notice of proposed promulgation of regulations; public participation; contest of regulation for procedural defects.**

(A) Before the promulgation, amendment, or repeal of a regulation, an agency shall:

(1) give notice of a drafting period by publication of a notice in the State Register. The notice must include:

(a) the address to which interested persons may submit written comments during the initial drafting period before the regulations are submitted as proposed;

(b) a synopsis of what the agency plans to draft;

(c) the agency's statutory authority for promulgating the regulation;

(2) submit to the office, no later than the date the notice required in item (3) is published in the State Register, a preliminary assessment report prepared in accordance with Section 1-23-115 on regulations having a substantial economic impact;

(3) give notice of a public hearing at which the agency will receive data, views, or arguments, orally and in writing, from interested persons on proposed regulations by publication of a notice in the State Register if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The notice must include:

(a) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments;

(b) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date the notice is published in the State Register;

(c) a narrative preamble and the text of the proposed regulation. The preamble shall include a section-by-section discussion of the proposed regulation and a justification for

any provision not required to maintain compliance with federal law including, but not limited to, grant programs;

(d) the statutory authority for its promulgation;

(e) a preliminary fiscal impact statement prepared by the agency reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A preliminary fiscal impact statement is not required for those regulations which are not subject to General Assembly review under Section 1-23-120;

(f) a summary of the preliminary assessment report submitted by the agency to the office and notice that copies of the preliminary report are available from the agency. The agency may charge a reasonable fee to cover the costs associated with this distribution requirement. A regulation that does not require an assessment report because it does not have a substantial economic impact, must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(g) statement of the need and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11). At no time is an agency required to include items (4) through (8) in the reasonableness and need determination. However, comments related to items (4) through (8) received by the agency during the public comment periods must be made part of the official record of the proposed regulations.

(h) the location where a person may obtain from the agency a copy of the detailed statement of rationale as required by this item. For new regulations and significant amendments to existing regulations, an agency shall prepare and make available to

the public upon request a detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation. This subitem does not apply to regulations which are not subject to General Assembly review under Section 1-23-120.

(B) Notices required by this section must be mailed by the promulgating agency to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.

(C)(1) The agency shall consider fully all written and oral submissions respecting the proposed regulation.

(2) Following the public hearing and consideration of all submissions, an agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of regulation as proposed pursuant to subsection (A)(3) and the substantive change was not raised, considered, or discussed by public comment received pursuant to this section. The agency shall refile such a regulation for publication in the State Register as a proposed regulation pursuant to subsection (A)(3).

(D) A proceeding to contest a regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

**SECTION 1-23-111. Regulation process; public hearings; report of presiding official; options upon unfavorable determination.**

(A) When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a single director, it

must be conducted by an administrative law judge assigned by the chief judge. When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a board or commission, it must be conducted by the board or commission, with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing on the regulation are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and any written exhibits in support of the proposed regulation. The agency may also submit oral evidences. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

(B) After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official shall issue a written report which shall include findings as to the need and reasonableness of the proposed regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and other factors as the

presiding official identifies and may include suggested modifications to the proposed regulations in the case of a finding of lack of need or reasonableness.

(C) If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

(a) modify the proposed regulation by including the suggested modifications of the presiding official;

(b) not modify the proposed regulation in accordance with the presiding official's suggested modifications in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official's written report; or

(c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.

**SECTION 1-23-115. Regulations requiring assessment reports; report contents; exceptions; preliminary assessment reports.**

(A) Upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and

provided to the committee. The written notification tolls the running of the one hundred-twenty-day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred-twenty-day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

(B) A state agency must submit to the Office of Research and Statistics of Revenue and Fiscal Affairs Office, a preliminary assessment report on regulations which have a substantial economic impact. Upon receiving this report the office may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the office on requests made pursuant to this section. The office shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1-23-110. The office shall forward the final assessment report and a summary of the final report to the promulgating agency.

(C) The preliminary and final assessment reports required by this section must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

(1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;

(2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an

analysis of the factors listed in this subsection and the expected benefit of the regulation;

(3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost-effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;

(4) the effect of the regulation on competition;

(5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;

(6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;

(7) the source of revenue to be used for implementing and enforcing the regulation;

(8) a conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;

(9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;

(10) the effect of the regulation on the environment and public health;

(11) the detrimental effect on the environment and public health if the regulation is not implemented. An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require

numerically precise cost-benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the office.

(D) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the office which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

(E) An assessment report is not required on:

(1) regulations specifically exempt from General Assembly review by Section 1-23-120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;

(2) emergency regulations filed in accordance with Section 1-23-130; however, before an emergency regulation may be refiled pursuant to Section 1-23-130, an assessment report must be prepared in accordance with this section;

(3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

**SECTION 1-23-120. Approval of regulations; submission to Legislative Council for submission to General Assembly; contents, requirements and procedures; compliance with federal law.**

(A) All regulations except those

specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1-23-110, except those regulations requiring a final assessment report as provided in Sections 1-23-270 and 1-23-280.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

(1) a copy of the regulations promulgated;

(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

(3) a request for review;

(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

(5) a copy of the final assessment report and the summary of the final report prepared by the office pursuant to Section 1-23-115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(6) a copy of the fiscal impact statement prepared by the agency as required by Section 1-23-110;

(7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

(8) a copy of the economic impact statement, as provided in Section 1-23-270(C)(1)(a); and

(9) a copy of the regulatory flexibility analysis, as provided in Section 1-23-270(C)(1)(b).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review,

the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1-23-130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the office pursuant to Section 1-23-115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one-hundred-twenty-day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the

Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1-23-125, but the introduction does not toll the one-hundred-twenty-day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two-year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without

legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the state Board of Financial Institutions in order to authorize state-chartered banks, state-chartered savings and loan associations, and state-chartered credit unions to engage in activities that are authorized pursuant to Section 34-1-110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;

(4) as emergency regulations under Section 1-23-130.

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

(J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or



for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(1) for which the agency intends to begin the process of repeal in accordance with this article;

(2) for which the agency intends to begin the process of amendment in accordance with this article; and

(3) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

**SECTION 1-23-125. Approval, disapproval and modification of regulations.**

(A) The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, this provision does not prevent the introduction of a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

(B) If a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing along with its recommendations as to changes that would be necessary to obtain committee approval. The agency may:

(1) withdraw the regulation from the General Assembly and resubmit it with the recommended changes to the Speaker and the Lieutenant Governor, but any regulation not resubmitted within thirty days is considered permanently withdrawn;

(2) withdraw the regulation permanently;

(3) take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

(C) The notification tolls the one-hundred-twenty-day period for automatic approval, and when an agency withdraws regulations from the General Assembly prior to the time a committee resolution to approve or disapprove the regulation has been introduced, the remainder of the period begins to run only on the date the regulations are resubmitted to the General Assembly. Upon resubmission of the regulations, additional days must be added to the days remaining in the review period for automatic approval, if less than twenty days, to equal twenty days, and a copy of the amended regulation must be given to each member of the committee. If an agency decides to take no action pursuant to subsection (B)(3), it shall notify the committee in writing and the remainder of the period begins to run only upon this notification.

(D) This section, as it applies to approval, disapproval, or modification of regulations, does not apply to joint resolutions introduced by other than the committees to which regulations are initially referred by the Lieutenant Governor or the Speaker of the House of Representatives.

(E) A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if

the resubmitted regulation contains no substantive changes from the previously submitted version.

**SECTION 1-23-126. Petition requesting promulgation, amendment or repeal of regulation.**

An interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.

**SECTION 1-23-130. Emergency regulations.**

(A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

(B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the office pursuant to Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111.

(C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain

in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

(D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refiling emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

(E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

**SECTION 1-23-140. Duties of state agencies; necessity for public inspection.**

(a) In addition to other requirements imposed by law, each agency shall:

(1) Adopt and make available for public inspection a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all final orders, decisions and opinions except as otherwise provided by law.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection as required by this article and Article 2. This provision is not applicable

in favor of any person or party who has actual knowledge thereof.

**SECTION 1-23-150. Appeals contesting authority of agency to promulgate regulation.**

(a) Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation of the agency or the authority of the agency to promulgate a particular regulation. The agency shall, within thirty days after receipt of such petition, issue a declaratory ruling thereon.

(b) After compliance with the provisions of paragraph (a) of this section, any person affected by the provisions of any regulation of an agency may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or that the regulation exceeds the regulatory authority of the agency. The agency shall be made a party to the action.

**SECTION 1-23-160. Prior filed regulations unaffected.**

All regulations of state agencies promulgated according to law and filed with the Secretary of State as of January 1, 1977, shall have the full force and effect of law. All regulations of state agencies promulgated under this article and effective as of June 30, 1994 shall have the full force and effect of law.



# Appendix H

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## Promulgation Policy Examples



South Carolina Department of Health and  
Environmental Control

Vital Records   Public Health   Environment   Food Safety   Permits &  
Compliance

DHEC > Agency... > S.C. Board... > [Approval Process for Statutes and Regulations](#)

## Approval Process for Statutes and Regulations

During Board meetings, Board members have the opportunity to review and hear commentary from DHEC staff and the public on proposed new or amended rules and regulations. In most cases, once the Board approves of such rules or regulations, those provisions are sent to the General Assembly for their review and concurrence. Occasionally, proposed regulatory changes are not required to be sent forth to the General Assembly for review; this usually happens when the agency is adopting a federal mandate. In all cases of regulation development, the agency adheres to the state *Administrative Procedures Act*.

When a proposed regulatory change is presented to the Board during a monthly Board meeting, a staff person representing the area of the agency that is responsible for developing the regulatory change will present the reasoning behind the proposal. This presentation is made after the agency has published notice of the proposed change in the *State Register* and allowed required time for public comment.

### Regulations NOT REQUIRING Legislative Approval

- After the 30-day comment period for a proposed regulatory change ends, DHEC requests that the Board grant approval to publish a **Notice of Proposed Regulation** (NPR) in the *State Register* and may hold a **Staff-Led Informational Forum (SIF)** on the proposed change. The SIF is open to the public.
- If the Board approves the request to publish the NPR, it is sent forward for publication in the *State Register*. The NPR announces the dates of both the SIF

and of a subsequent **Public Hearing**, and starts a second 30-day comment period on the proposed regulatory change.

- At a second Board Meeting, the Board holds a **Public Hearing** on the proposed regulation. The Public Hearing allows the opportunity for anyone from the public to attend and/or provide comments. A court reporter records a transcript of the hearing, which is included in the public record.
- If the Board approves the proposed regulatory change wherein legislative approval is not required, DHEC publishes a **Notice of Final Regulation (NFR)** in the *State Register*. Again, legislative approval is not required when state regulatory changes are made to comply with a federal requirement.
- The new regulation change becomes effective on publication of the **NFR** in the *State Register*.

## Regulations REQUIRING Legislative Approval

- After the 30-day comment period for a proposed regulatory change ends, DHEC requests that the Board grant approval to publish a **Notice of Proposed Regulation (NPR)** in the *State Register* and may request holding a **Staff-Led Informational Forum (SIF)** on the proposed change. The SIF is open to the public.
- If the Board approves the request to publish the NPR, it is sent forward for publication in the *State Register*. The NPR announces the dates of both the SIF and of a subsequent **Public Hearing**, and starts a second 30-day comment period on the proposed regulatory change.
- At a second Board Meeting, the Board holds a **Public Hearing** on the proposed regulation. The Public Hearing allows the opportunity for anyone from the public to attend and/or provide comments. A court reporter records a transcript of the hearing, which is included in the public record.
- If the Board approves the proposed regulatory change wherein **legislative approval is required**, DHEC will submit the regulatory change to the South Carolina General Assembly for approval. The Legislature has 120 days to address the regulatory change. The 120-day period does not begin until the General Assembly is in session. Following legislative approval, the NFR is published in the *State Register*.
- The new regulation change becomes effective on publication of the **NFR** in the *State Register*.

## Emergency Regulations

In rare cases where an abnormal or unusual condition arises, the agency has the authority to promulgate emergency regulations if it is in the state's best interest. These regulations are effective upon filing for ninety days and can be renewed for an additional ninety days if the original filing begins and ends during the legislative interim. Rather than go through the typical (and rather lengthy) process of regulation development, an agency may file emergency regulations directly with the Legislative Council. The regulation becomes effective as of the time of filing. The procedures for promulgating an emergency regulation are as follows:

- After consulting legal counsel, DHEC staff will draft a proposed emergency 131

Received from CMAA

regulation. Emergency regulation submissions must contain a written statement that justifies the request for immediate promulgation.

- DHEC staff and legal counsel will then consult with the agency director (Commissioner). The Commissioner is required to advise the Governor of the agency's intent to proceed with an emergency regulation.
- After the Commissioner approves of moving forward with the proposed regulation, the regulation and justification are presented to the Board at the earliest opportunity. A special meeting of the Board members may be called in this situation.
- Upon approval of the Board, the emergency regulation will be presented to the Legislative Council. The regulation becomes effective at the time of filing and stands for ninety days unless it is refilled or otherwise promulgated under the traditional regulation rules.
- The Legislative Council will publish the regulation in the next *State Register*.

We've established a [Regulatory Development](#) page that contains a step-by-step process for how DHEC develops regulations and how the public can participate in the process.

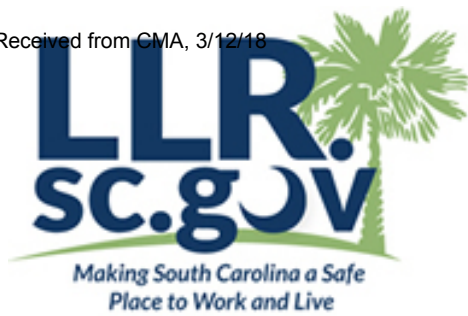
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Columbia, SC 29201 (803)898-DHEC(3432)





# 2014-2015 Annual Report



## South Carolina Department of Labor, Licensing and Regulation

110 Centerview Drive  
Columbia, SC 29210

Richele K. Taylor, Director

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## Introduction

On February 1, 1994, the South Carolina Legislature created the South Carolina Department of Labor, Licensing and Regulation (LLR) with Act 181 by combining 41 separate state agencies, including the Department of Labor, the State Fire Academy, the State Fire Marshal's Office, and 38 professional and occupational licensing boards. Legislators envisioned an organization that would promote efficiency and build accountability while delivering the highest level of customer service. The 1994 legislation empowered the Governor to appoint a director of LLR with the advice and consent of the Senate.

In 2010, the South Carolina Legislature transferred the Soil Classifiers Advisory Council and the Board of Landscape Architectural Examiners to LLR from the Department of Natural Resources, bringing the total number of boards to 40.

Currently, LLR administers more than 70 programs, from Occupational Safety and Health to professional and occupational licensing to educating the fire service.

## LLR Locations

LLR's Office of the Director, Office of Communications and Governmental Affairs, Division of Administration, Division of Labor, Office of General Counsel, which includes the Office of Advice Counsel, and the Division of Professional and Occupational Licensing (POL), are located within the Kingstree Building at 110 Centerview Drive in Columbia. The Division of Fire and Life Safety is located at the S.C. Fire Academy campus, 141 Monticello Trail, Columbia.

## Agency Overview

The mission of the Department of Labor, Licensing and Regulation is to promote and protect the health, safety and economic wellbeing of the public through regulation, licensing, enforcement, training and education.

Our mission goes hand-in-hand with the Governor's effort to raise personal incomes of South Carolinians by creating a better environment for economic growth, delivering government services more openly and efficiently, improving quality of life, and improving the state's education. LLR accomplishes its mission by:

- Promoting an environment of growth and innovation which allows regulated businesses and professionals to operate successfully and free of overly restrictive and unwarranted regulation.
- Providing cost efficient administration and periodic review of licensing and certification programs to assure the appropriate protection of the public.
- Conducting required inspections, complaint investigations, and enforcement activities in a manner that is fair, accountable and cost effective.
- Providing businesses and industry, the fire service, its licensees and the public relevant training and education programs.

## Office of the Director

### Director

**Richele K. Taylor**

The Office of the Director is comprised of the Director, the Office of Communications and Governmental Affairs, and the Office of Information Technology.

The Director of the Agency is appointed by the Governor, with the advice and consent of the Senate. Governor Nikki R. Haley appointed Richele K. Taylor as Director on December 8, 2014, and she was confirmed by the Senate on February 12, 2015.

## Office of Communications and Governmental Affairs

**Counsel to Office of Communications and Governmental Affairs**

**Holly Beeson**



The Office of Communications promotes and explains to the public the Agency's goals, activities, and services using a variety of media. The director serves as the Agency spokesperson to the media for all programs and manages requests from the public for information requested under the South Carolina Freedom of Information Act to assure compliance with the law. The director also serves as the Agency's Ombudsman.

**Director of Governmental Affairs**

**Grant Gillespie**

The Office of Governmental Affairs serves as a liaison between the Agency and the Governor's Office, legislators, legislative staff, and other state and federal agencies. The Office is also responsible for coordinating, monitoring, and reviewing proposed legislation, amendments, regulations, and approved bills that are initiated and/or affect boards, commissions, and divisions administered by LLR. This includes all relative legislation drafted and introduced by parties external to the department. Additionally, the office assists with training and educating LLR staff, boards, and commissions regarding the legislative process.

## Governmental Affairs-Summary of Legislation Passed

The 2015 meeting of the S.C. General Assembly began the first half of a two-year legislative session.

Agency-related legislation enacted during the 2015 session is listed below by effective date:

Bills Reflecting Statutory Changes				
Act #	References	Board/Commission	Subject	Effective Date
<u>7</u>	<u>14-7-1610, 14-7-1630, 16-3-2010, 16-3-2100, 16-3-2050, 8-30-10, 16-1-60, 17-25-45, 23-3-430, 23-3-490, 23-3-540,</u>	Medically Related Boards, Massage / Bodywork	Section 16-3-2100 requires emergency rooms, urgent care center, and businesses that offer massage or bodywork to post information regarding the National Human Trafficking Resource Center Hotline. The information must be posted in each public restroom for the business or establishment and a prominent location conspicuous to the public at the establishment entrance where posters and notices are customarily posted on a poster no smaller than 8 ½ " x 11" and must state in both English and Spanish on the same poster information about the hotline. Requires LLR to participate in a task force.	04/02/15
<u>17</u>	<u>§6-9-55</u>	Building Codes, Contractors, Residential Builders	Prohibits enforcement of Section 501.3 of the 2012 International Residential Code removing provisions allowing enforcement of the Code after a certain date.	05/07/15
<u>43</u>	<u>§40-37-290</u>	Optometry, Pharmacy	Clarifies that Schedule II controlled substances that have been reclassified from Schedule III to Schedule II on or after October 6, 2014, may continue to be purchased, possessed, administered, supplied, and prescribed by an optometrist.	05/07/15
<u>44</u>	<u>§40-7-350</u>	Barbers	Deletes and replaces current language with licensing requirements for barber schools and barber school instructors.	05/12/15
<u>32</u>	<u>§§44-22-10, 44-22-60, 44-22-140</u>	Medical, Nursing	Mental Health Patient Rights -Defines the term "Authorized Health Care Provider"; amends patients' rights to allow authorized health care provider to perform required initial examination; and allows authorized health care provider to authorize medications and treatment given or administered to patient.	06/01/15
<u>29</u>	<u>§§40-43-190, 40-43-200</u>	Pharmacy, Medical, Nursing	Allows pharmacists to administer influenza vaccines and certain medications. Creates protocol for pharmacists to administer certain additional vaccines without a written order or prescription from a	06/01/15





			practitioner. Provides circumstances in which a pharmacy intern may administer vaccines. Revises recordkeeping requirements to extend the period for maintaining records, specifies manner of determining measurement dates, and electronic storage of certain documents, records, and copies. The Joint Pharmacist Administered Influenza Vaccines Committee assist and advise the Board of Medical Examiners in determining whether a specific vaccine is appropriate for administration by a pharmacist without a written order or prescription.	
<u>51</u>	<u>§§40-2-10, 40-2-30, 40-2-35, 40-2-40, 40-2-80, 40-2-250, 40-2-255, 40-2-560</u>	Accountancy	Revises Board of Accountancy composition. Revises definitions concerning the practice of accountancy. Replaces the term "financial statements" with the word "information". Requires applicants to undergo state and federal criminal records checks. Applicants who delay submitting an application for a substantial period of time after passing the examination or obtaining accounting experience are required to obtain continuing education or additional experience. A simple majority of firm ownership must be CPAs to qualify for registration of certified public accounting firms. Defines the qualifications and continuing professional education requirements for noncertified public accountant firm owners. Deletes prohibitions against ownership by investors and commercial enterprises. The Department of Labor, Licensing and Regulation may require state and federal criminal records checks in conducting investigations and proceedings. Provides for the recovery of related investigations costs. Requires license and registration renewal applications be filed on or before February 1 <sup>st</sup> . Clarifies that late filings may result in lapse, reinstatement fees, and sanctions	06/03/15
<u>54</u>	<u>§§44-130-10 - 44-130-60.</u>	Medical, Nursing, Pharmacy	South Carolina Overdose Prevention Act - Allows certain medical professionals to prescribe opioid antidotes for individuals who the medical professional believes in good faith are at risk of experiencing an opioid overdose. Requires medical professionals to provide instructional information to a person to whom the medical professional prescribes an opioid antidote. Allows pharmacists to dispense opioid antidotes pursuant to a prescription, to allow caregivers and first responders to administer opioid antidotes to individuals who the caregiver or first responder believes are at risk of experiencing an opioid overdose. Prescribers may prescribe standing orders for opioid antidotes to first responders and for first responders to possess these opioid antidotes. Provides protection from civil and criminal liability for prescribing, dispensing, or administering opioid antidotes, and for other purposes.	06/03/15
<u>75</u>	<u>§§63-7-380, 63-7-1990, 63-7-2000</u>	Medically Related Boards	Certain medical professionals without parental consent to perform medical examinations on and release medical records about a child who is the subject of an abuse or neglect report. Identifies to whom primary care physicians, consulting physicians,	06/08/15



			and hospital facilities may or must release those medical records. Allows S.C. Children's Advocacy Medical Response System Child Abuse Health Care Providers to access to certain information about indicated cases and to require the Department of Social Services (DSS) to share information relating to an indicated case with a child's primary or specialty health care provider. Authorizes DSS to release a summary of the allegations and investigation outcome to S.C. Children's Advocacy Medical Response System Child Abuse Health Care Providers.	
<u>66</u>	<u>§59-67-160</u>	Medical, Nursing	Amends mandatory physical examinations requirement for public school bus drivers to provide that the examinations must be certified by medical examiners, and deletes the existing provisions allowing this certification to be made by physicians, nurse practitioners, or physician's assistants.	06/08/15
<u>70</u>	<u>§30-4-80</u>	Agency	FOIA Notice of Meeting for Public Bodies – Requires public bodies to post an agenda at meeting site and on public website not later than 24 hours prior to the meeting. After posting of the agenda, no item may be added without post for an additional 24 hours. If the body finds that an emergency or an exigent circumstance exists if the item is not added to the agenda, the item may be added to the agenda by a two-thirds vote of the members present.	06/08/15
<u>72</u>	<u>§§44-63-74, 32-8-325, 32-8-340</u>	Funeral, Medical	Electronic Filing and Transmission of Death Certificates – Establishes that death certificates must be filed electronically within five days. Medical certifications of cause of death must be provided to the funeral home director within 48 hours after receipt of notice of death. Provides for penalties for noncompliance.	01/01/16
<u>124</u>	<u>§40-67-220</u>	Speech-Language Pathology	Temporarily exempts applicants for licensure as a speech-language pathologist assistant from the requirement of a bachelor's degree from a regionally accredited institution of higher education found in <u>§40-67-220</u> if the applicant holds a bachelor's degree in speech-language pathology from a nationally accredited institution of higher education. These provisions must be construed to effectuate its purposes and must be applied retroactively. Joint Resolution expires on July 1, 2019.	06/03/15 (Expires 07/01/19)

**Regulations Passed**

Document #	Board/Commission	Subject	Effective Date
4486	OSHA	<p>Promulgates the following changes to South Carolina Regulations:</p> <p>In Subarticle 6 (General Industry and Public Sector Marine Terminals):  Revisions to Sections: 1910.136, 1910.137, 1910.217, 1910.269, 1910.331, 1910.399, Appendix A to Part 1910.269 Flow Charts, Appendix B to Subpart I, Nonmandatory Compliance, Guidelines for Hazard Assessment and Personal Protective Equipment Selection.</p> <p>In Subarticle 7 (Construction):</p>	09/26/14



		Revisions to Sections: 1926.6, 1926.97, 1926.500, 1926.950, 1926.951, 1926.952, 1926.953, 1926.954, 1926.955, 1926.956, 1926.957, 1926.958, 1926.959, 1926.960, 1926.961, 1926.962, 1926.963, 1926.964, 1926.965, 1926.966, 1926.967, 1926.968, Appendix A to Subpart V of Part 1926-Reserved, Appendix B to Subpart V of Part 1926, Working on Exposed Energized Parts, Appendix C to Subpart V of part 1926-Protection from Hazardous Differences in Electric Potential, Appendix D to Subpart V of 1926-Methods of Inspecting and Testing Wood Poles, Appendix E to Subpart V of Part 1926-Protection from Flames and Electric Arcs, Appendix F to Subpart V of Part 1926-Work-positioning Equipment Inspection Guidelines, Appendix G to Subpart V of Part 1926-Reference Documents, 1926.1053, 1926.1400 and 1926.1410.	
4502	Dentistry	Removes the existing schedule of fees in Regulations 39-1, 39-2, 39-3, and 39-18, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	04/24/15
4507 <u>Act #110</u>	Long Term Health Care Administrators	Removes the existing schedule of fees in Regulation 93-100, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	04/01/15
4509 <u>Act #111</u>	Medical Examiners	Removes the existing schedule of fees in Regulation 81-300, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	04/01/15
4511 <u>Act #112</u>	Opticianry	Removes the existing schedule of fees in Regulation 96-109, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	04/01/15
4513 <u>Act #113</u>	Podiatry	Removes the existing schedule of fees in Regulations 134-20 and 134-40, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	04/01/15
4515 <u>Act #114</u>	Psychology	Removes the existing schedule of fees in Regulation 100-7, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	04/01/15
4499	Architects	Removes the existing schedule of fees in Regulation 11-5, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4500	Athletic	Removes the existing schedule of fees in Regulations 20-4.10, 20-23.11, 20-24.10, and 20-27.33, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4501	Building Codes	Amends Regulations 8-115, 8-601, 8-602, 8-604, 8-607, and 8-613 generally and updates the regulations to comport with Act 179 from the 2013-2014 legislative session.	06/26/15
4503	Engineers / Surveyors	Removes the existing schedule of fees in Regulation 49-103, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4504	Environmental Certification	Removes the existing schedule of fees in Regulation 51-6, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4505	Funeral	Removes the existing schedule of fees in Regulation 57-12, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4506	Geologists	Removes the existing schedule of fees in Regulation 131-13, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4508	Manufactured	Removes the existing schedule of fees in Regulation 79-26, cross-references	06/26/15



	Housing	the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	
4510	Nursing	Amends Regulation 91-31 to comport with establishment of fees in Chapter 10-25 of the Regulations.	06/26/15
4512	Physical Therapy	Removes the existing schedule of fees in Regulation 101-08, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4514	Counselors	Removes the existing schedule of fees in Regulation 36-15, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4516	Real Estate Appraisers	Removes the existing schedule of fees in Regulation 137-800.03, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4517	Real Estate	Removes the existing schedule of fees in Regulation 105-13, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4518	Residential Builders	Removes the existing schedule of fees in Regulation 106-3, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4519	Soil Classifiers	Removes the existing schedule of fees in Regulation 108-7, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4520	Veterinarians	Removes the existing schedule of fees in Regulation 120-14, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4521	Pharmacy	Establishes administrative citation authority and a penalty schedule for pharmacists, pharmacy technicians and permit holders, adds Regulations 99-45 and 99-46 in conformance with the Pharmacy Practice Act and current practice. Establishes a fine amount as required by S.C. Code Ann. §§ 40-43-150(C) and -160, the Board is establishing fines in regulation	06/26/15
4535	Real Estate	Moves fees from Regulation 105-12 to Regulation 10-37 to correct a scrivener's error.	06/26/15
4536	Athletic	Satisfies professional boxing, wrestling, kick boxing, and off the street boxing licensure requirements, Regulations 20-1.1 through 20-4.9, Regulations 20-4.12 through 20-22.8, Regulation 20-22.10, Regulations 20-22.13 through 20-23.8, Regulations 20-23.12 through 20-25.1, and Regulations 20-27.01 through 20-27.22 are amended, and Regulations 20-27.24 through 20-27.82 are added in conformance with the State Athletic Commission Practice Act.	06/26/15
4537	Building Codes	Removes the existing schedule of fees in Regulations 8-145 and 8-618, cross-references the fees in their new location in Chapter 10, which includes a link to the Board's website where the fees will also appear.	06/26/15
4554	Nursing	Moves the remaining fees from Regulation 91-31 to Regulation 10-25.	06/26/15
4555	Fire Marshal	Eliminates redundant and unnecessary regulations; updates the remaining existing regulations; uses a standardized format for all regulations; and makes the current regulations compatible with current federal and state statutes	06/26/15
4556	Geologists	Corrects a scrivener's error in Regulation 10-18(A)(2) by changing the application fee for a Professional Geologist from \$400 to \$200.	06/26/15
4557	Geologists	Amends Regulation 131-11 to permit the use of electronic signatures and seals.	06/26/15
4558	OSHA	Amends Regulation 71, Article I, Subarticle 3 Sections 71-302 and 71-339, and Non-Mandatory Appendix A to Subpart B to reflect changes since its promulgation.	06/26/15





These lists of Acts and regulations are strictly for reference only. Neither the Department of Labor, Licensing and Regulation nor any of its employees makes any warranty, express or implies or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of this information or represents that its use would not infringe privately owned rights.

## Office of Information Technology

### Chief Information Officer

**Matt Faile**

The Office of Information Technology provides expertise in development, implementation, security, and maintenance of computer-based information systems and coordinates all information technology activities for the Agency. This Office also manages the Agency's E-commerce presence.

## Division of Administration

110 Centerview Drive  
Kingstree Building  
Columbia, S.C. 29210  
(803) 896-4300

### Deputy Director

**Farrar Stewart**

The Division is responsible for providing administrative support services for the Agency in accordance with state and Agency policies and procedures and governing federal, state, and local regulations. The Division consists of four offices: Budget, Finance, Human Resources, and Procurement.

### Assistant Deputy Director

**Laura Pace**

- The Budget Office is responsible for coordinating the Agency's budget and federal grants.
- The Finance Office is responsible for directing fiscal functions of the Agency.

### Human Resources Director

**Farrar Stewart**

- The Human Resources Office is responsible for providing services in the areas of consulting, policy development, employee relations, compensation, recruitment, employee training and development, and employee benefits.
- The Procurement Office is responsible for directing and providing expertise in Agency purchasing, property and vehicle management, employee driver training records, and mailroom services.

## Office of General Counsel

110 Centerview Drive  
P.O. Box 11329  
Columbia, S.C. 29211-1329  
(803) 896-4485

### General Counsel

**Melina Mann**

The General Counsel is charged with providing litigation and advice services to LLR programs and oversees the Agency's Office of Disciplinary Counsel and Office of Advice Counsel.

### Disciplinary Counsel

**Pat Hanks**

The Office of Disciplinary Counsel handled the following cases during FY 2015:

Division of POL cases opened	935
Division of POL cases closed	1,282
Division of OSHA cases opened	60
Division of OSHA cases closed	41
Division of Labor cases opened	0



# SC Code of Laws and Regulations

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## Changes in Laws and Regulations

Some of the property-specific regulations could change due to the need for emergency regulations. Changes will be publicized in local newspapers and on the DNR web site at [www.dnr.sc.gov/regs/changes.html](http://www.dnr.sc.gov/regs/changes.html) as any new legislation is passed. Discrepancies between the book and any statute or regulation shall be governed by the statute or regulation. Errors occasionally appear and news releases are published to clarify these situations. To research laws, visit <http://www.scstatehouse.gov/coderegs/statmast.php>.

Other information is published only in DNR news releases. This includes announcements relative to shrimp baiting, public hearings, fishing rodeos, DNR Board decisions and position statements, new legislation, youth activities, mobility impaired hunts, US Dept. of Agriculture cost-share programs, special drawing hunts, schedules for newly acquired areas and many other items of interest. DNR news releases are published weekly and distributed free to editors of all regional and local newspapers and are available to the public.

## Please Note:

For further background information pertaining to Code of Laws and Regulations, the hyperlinks below take you to the unannotated South Carolina Code on the General Assembly's website. The unannotated South Carolina Code is not official, and the state agencies preparing this information and the General Assembly are not responsible for any errors or omissions which may occur with in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

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## SC Code of Laws

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- [Title 49 - Waters, Water Resources and Drainage](#)
- [Title 50 - Fish, Game and Watercraft](#)

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## SC Code of Regulations

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- [Chapter 121 - Department of Natural Resources](#)
- [Chapter 123 - Department of Natural Resources](#)

# SC Department of Education

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<http://ed.sc.gov/sbe/state-board-of-education/additional-resources/regulations-table-of-contents/>

## Regulations Table of Contents

### Table of Contents

This page provides links to the sites and related documents that cover South Carolina public education regulations currently in place. Proposed and approved regulations for each legislative year are located at the links on the right.

Note: Dates that appear in parenthesis "( )" indicate the most recent version of a regulation

### ARTICLE 1 Governance of the State Board of Education

(Deleted)

### ARTICLE 2 State Superintendent of Education

(Reserved)

### ARTICLE 3 Certification Regulations

- 43-[50](#). Persons Required to Hold a Teaching Certificate (6/25/99)
- 43-[51](#). Certification Requirements (6/27/03)
- 43-[52](#). Application for Teaching Credential (6/27/03)
- 43-[53](#). Credential Classification (5/25/12)
- 43-[55](#). Renewal of Credentials (6/27/03)
- 43-[56](#). Foreign Applicants (6/25/99)
- 43-[57](#). Prior Work Experience (5/88)
- 43-[57.1](#). Computing the Experience of Teachers (6/22/01)

- 43-[57.2](#). Teaching Experience Acceptable for Credit (6/22/01)
- 43-[57.5](#). Military Service (1991)
- 43-[58](#). Disciplinary Action on Educator Certificates (5/26/06)
- 43-[58.1](#). Reporting of Terminations of Certain School District Employees (7/23/93)
- 43-[62](#). Requirements for Additional Areas of Certification (6/26/15)
- [Guidelines to Regulation](#) 43-62 (6/26/15)
- 43-[63](#). Requirements for Career and Technology Education Work-Based Certification (7/26/02)
- 43-[64](#). Requirements for Initial Certification at the Advanced Level (6/27/14)

## ARTICLE 4 Textbook Regulations

- 43-[70](#). Textbook Adoption Regulation (3/24/00)
- 43-[71](#). Free Textbooks (5/23/08)
- 43-[73](#). Disposition of Instructional Materials Samples after State Adoption Process (5/23/03)

## ARTICLE 5 Transportation Regulations

- 43-[80](#). Operation of Public Pupil Transportation Services (4/27/09)

## ARTICLE 6 Teacher Training Institutions

- 43-[90](#). Program Approval Standards For South Carolina Teacher Education Standards (6/28/02)

## ARTICLE 7 Test Security

- 43-[100](#). Test Security (6/26/15)

## ARTICLE 8 Correspondence Courses

(Reserved)

## ARTICLE 9 Proprietary Schools

(Proprietary Schools were transferred to the Commission on Higher Education, 1991 Act #246.)

## ARTICLE 10 Defined Minimum Program

- 43-[130](#). Accreditation Standards Filed (REPEALED 6/27/14)

## ARTICLE 11 School District Organization

(Repealed)

## ARTICLE 12 School Board Operation

(Repealed)

## ARTICLE 13 General School Administration

- 43-161. Appointment (Term) of School Superintendent (1976)
- 43-162. School Superintendent Compensation and Benefits/Expenses (REPEALED 6/27/14)
- 43-165.1. Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP) (6/26/15)
- 43-166. Student and School Safety (3/28/97)
- 43-167. Principal Induction Program (3/24/00)
- 43-168. Nutrition Standards for Elementary (K–5) School Food Service Meals and Competitive Foods (2/27/09)
- 43-169. Food Service Management Company Contracts (6/24/11)

## ARTICLE 14 Fiscal Management

- 43-171.1. Disbursement of Funds for Pressing Repairs, Renovations and Construction (6/85)
- 43-172. Accounting and Reporting (4/25/97)
- 43-176. Section 4(1)(c) Pupils to be Counted in Only One Pupil Classification (1/84)

## ARTICLE 15 Business Management

- 43-188. Displaying the Flag (6/27/14)

## ARTICLE 16 Facility Expansion Program

(Repealed)

## ARTICLE 17 Personnel

- 43-201.1. Teacher Grants (REPEALED 6/27/14)
- 43-205. Administrative and Professional Personnel Qualifications, Duties and Workloads (5/25/07)

- 43-[205.1](#). Assisting, Developing, and Evaluating Professional Teaching (ADEPT) (6/28/13)
- 43-[206](#). Professional Personnel Resignation (1976)
- 43-[207](#). Health Examination (2/84)
- 43-[209](#). Support Personnel/Paraprofessional Personnel Positions, Qualifications and Duties (11/28/03)

## ARTICLE 18 Negotiations

(Reserved)

## ARTICLE 19 Instructional Program

- 43-[220](#). Gifted and Talented (6/28/13)
- 43-[229](#). Defined Program for the Palmetto Unified School District (PUSD) (6/27/14)
- 43-[231](#). Defined Program K–5 (6/27/97)
- 43-[232](#). Defined Program 6–8 (6/26/15)
- 43-[234](#). Defined Program, Grades 9–12 and Graduation Requirements (6/26/15)
- 43-[236](#). Career or Technology Centers/Comprehensive High Schools (2/28/03)
- 43-[237.1](#). Adult Education Program (6/27/14)
- 43-[238](#). Health Education (7/24/92)
- 43-[240](#). Summer School Programs (6/28/02)
- 43-[241](#). Medical Homebound Instruction (6/27/03)
- 43-[242](#). Driver Training (6/26/98)
- 43-[243](#). Special Education, Education of Students with Disabilities (07/26/13)
- 43-[243.1](#) Criteria for Entry into Programs of Special Education for Students with Disabilities (09/23/11)
- 43-[243.4](#). Utilization of Generic Teacher Certification (REPEALED 6/27/14)
- 43-[244](#). Interscholastic Activities (7/80)
- 43-[244.1](#). Interscholastic Activities: Academic Requirements for Participation (5/88)
- 43-[246](#). Instruction at a Place Other Than School (5/89)

- 43-~~248~~. South Carolina Virtual School Program (6/27/14)
- 43-~~258.1~~ Advanced Placement (7/25/08)
- 43-~~259~~. Adult Education (6/26/15)
- 43-~~260~~. Use and Dissemination of Test Results (REPEALED 6/26/15)
- 43-~~261~~. District and School Planning (6/25/04)
- 43-~~262~~. Assessment Program (6/26/15)
- 43-~~262.4~~ End-Of-Course Tests (REPEALED AND MERGED INTO 43-262 6/26/15)
- 43-~~264.1~~. Half-Day Child Development Programs (6/27/03)
- 43-~~265~~. Parenting/Family Literacy (6/23/00)
- 43-~~267~~. Early Childhood Assistance Programs - Grade K–3 (6/24/94)
- 43-~~268~~. Academic Assistance Programs - Grade 4–12 (6/24/94)

## ARTICLE 20 Students

- 43-~~272~~. School Admission (6/27/14)
- 43-~~272.2~~ Review Process for Homeless Children and Unaccompanied Youth (1/26/07)
- 43-~~273~~. Transfers and Withdrawals (6/28/13)
- 43-~~274~~. Student Attendance (Absences and Excuses) (6/27/14)
- Guidelines to Regulation 43-274 (5/11/05)
- 43-~~274.1~~ At-Risk Students (4/27/12)
- 43-~~279~~. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be (Implemented by Local School Districts (6/27/14)

## ARTICLE 21 General Public Relations

(Repealed)

## ARTICLE 22 Organizational Relations

(Reserved)

## ARTICLE 23 Educational Agency Relations

- 43-300. Accreditation Criteria (6/27/14)
- 43-302. Palmetto Gold and Silver Awards Program (3/28/03)
- 43-303. Flexibility Through Deregulation Program (6/25/04)
- 43-307. Alignment of Assessment and Accountability with the No Child Left Behind Act (6/27/03)

## ARTICLE 24 Audiovisual Library Services

(Repealed)

## ARTICLE 25 Teacher Training Programs in Mathematics, Science, Reading and Computer Education

- 43-500. Operation and Funding of Teacher Training Courses in Mathematics, Science, Reading and Computer Education (REPEALED 6/27/14)

## ARTICLE 26 Charter Schools

- 43-601 Procedures and Standards for Review of Charter School Application (6/26/15)



# Appendix I

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**Session 121 (2015-2016)**

**Bill S. 279 and Other Pending Legislation**

# South Carolina Legislature

Minority Affairs found 23 times. 

## S 279

Session 121 (2015-2016)

### S 0279 General Bill, By Cromer

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ELIMINATING THE SOUTH CAROLINA SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE AND TO TRANSFER THE POWERS AND DUTIES TO THE SOUTH CAROLINA COMMISSION FOR **MINORITY AFFAIRS** ON JULY 1, 2016; TO AMEND CHAPTER 31, TITLE 1 OF THE 1976 CODE TO PROVIDE VARIOUS POWERS AND DUTIES TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5220(6) TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5230 TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5240 TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5260 TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO REPEAL SECTION 11-35-5270 OF THE 1976 CODE, RELATING TO THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE; AND TO PROVIDE FOR OTHER TRANSITIONAL PROVISIONS, FOR THE EFFECTIVE DATE OF THE ACT, AND FOR THE MANNER IN WHICH IT SHALL BE IMPLEMENTED.

- 01/13/15 Senate Introduced and read first time  
(Senate Journal-page 165)
- 01/13/15 Senate Referred to Committee on Labor, Commerce and  
Industry (Senate Journal-page 165)
- 02/10/15 Scrivener's error corrected

### VERSIONS OF THIS BILL

1/13/2015  
2/10/2015

### S. 279

### A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ELIMINATING THE SOUTH CAROLINA SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE AND TO TRANSFER THE POWERS AND DUTIES TO THE SOUTH CAROLINA COMMISSION FOR **MINORITY AFFAIRS** ON JULY 1, 2016; TO AMEND CHAPTER 31, TITLE 1 OF THE 1976 CODE TO PROVIDE VARIOUS POWERS AND DUTIES TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5220(6) TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5230 TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5240 TO CHANGE REFERENCES FROM THE SMALL AND

Received from CMX, 8/12/18

MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO AMEND SECTION 11-35-5260 TO CHANGE REFERENCES FROM THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE TO THE COMMISSION FOR **MINORITY AFFAIRS**; TO REPEAL SECTION 11-35-5270 OF THE 1976 CODE, RELATING TO THE SMALL AND MINORITY BUSINESS ASSISTANCE OFFICE; AND TO PROVIDE FOR OTHER TRANSITIONAL PROVISIONS, FOR THE EFFECTIVE DATE OF THE ACT, AND FOR THE MANNER IN WHICH IT SHALL BE IMPLEMENTED.

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

SECTION 1. Effective July 1, 2016, the South Carolina Small and Minority Business Assistance Office is eliminated and its functions, powers, duties, responsibilities, and authority are devolved upon the State Commission for **Minority Affairs**.

SECTION 2. Chapter 31, Title 1 of the 1976 Code is amended by adding:

"Section 1-31-60. In addition to the powers and duties contained in Section 1-31-40, the Commission shall also:

- (1) assist the State's chief procurement officers and governmental bodies in developing policies and procedures which will facilitate awarding contracts to small and minority firms;
- (2) assist the chief procurement officers in aiding small and minority-owned firms and community-based business in developing organizations to provide technical assistance to minority firms;
- (3) assist with the procurement and management training for small and minority firm owners;
- (4) assist in the identification of responsive small and minority firms;
- (5) receive and process applications from businesses for certification and registration as a minority firm on such forms as it may prescribe;
- (6) revoke the certification of any firm that has been found to have engaged in any of the following:
  - (a) fraud or deceit in obtaining the certification;
  - (b) furnishing of substantially inaccurate or incomplete information concerning ownership or financial status;
  - (c) failure to report changes which affect the requirements for certification;
  - (d) gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of his business; or
  - (e) wilful violation of any provision of this article.
- (7) After a period of one year, the Commission may reissue a certificate of eligibility provided acceptable evidence has been presented to the commission that the conditions which caused the revocation have been corrected."

SECTION 3. Section 11-35-5220(6) of the 1976 Code is amended to read:

"(6) Fee Waivers. Upon request by an MBE, certified by the ~~Small and Minority Business Assistance Office~~ South Carolina Commission for **Minority Affairs**, user or subscription fees for services provided by the chief procurement officers may be waived for an MBE."

SECTION 4. Section 11-35-5230(B)(3) of the 1976 Code is amended to read:

Receiv (B)(3) in CMA. Any firm desiring to be certified as a minority firm shall make application to the ~~Small and Minority Business Assistance Office (SMBAO) as defined by Section 11-35-5270~~ South Carolina Commission for **Minority Affairs**, on such forms as may be prescribed by that office."

SECTION 5. Section 11-35-5240(1)(d),(1)(e),(2) of the 1976 Code are amended to read:

"(d) goals that include expending with Minority Business Enterprises certified by the ~~Office of Small and Minority Business Assistance~~ South Carolina Commission for **Minority Affairs** an amount equal to ten percent of each governmental body's total dollar amount of funds expended;"

(e) solicitation of certified minority vendors, a current list of which must be supplied by the ~~Office of Small and Minority Business Assistance~~ South Carolina Commission for **Minority Affairs**, in each commodity category for which the minority vendor is qualified. The current listing of qualified minority vendors must be made available by the ~~Office of Small and Minority Business Assistance~~ South Carolina Commission for **Minority Affairs** on a timely basis;"

(2) MBE utilization plans must be submitted to the ~~SMBAO~~ South Carolina Commission for **Minority Affairs** for approval no later than July thirtieth, annually. Upon petition by the governmental body, ~~SMBAO~~ the South Carolina Commission for **Minority Affairs** may authorize an MBE utilization plan that establishes a goal of less than ten percent of the governmental body's total dollar amount of funds expended. Progress reports must be submitted to the ~~SMBAO~~ South Carolina Commission for **Minority Affairs** no later than thirty days after the end of each fiscal quarter and contain the following information:

(a) number of minority firms solicited;

(b) number of minority bids received;

(c) total dollar amount of funds expended on contracts awarded to minority firms certified pursuant to Section 11-35-5230; and

(d) total dollar amount of funds expended."

SECTION 6. Section 11-35-5260 of the 1976 Code is amended to read:

"Section 11-35-5260. The ~~Small and Minority Business Assistance Office~~ South Carolina Commission for **Minority Affairs** shall report annually in writing to the Governor concerning the number and dollar value of contracts awarded for each governmental body to a firm certified as a minority firm pursuant to Section 11-35-5230 during the preceding fiscal year. These records must be maintained to evaluate the progress of this program."

SECTION 7. (A) The Code Commissioner is directed to change or correct all references to the former Small and Minority Business Assistance Office in the 1976 Code to the South Carolina Commission for **Minority Affairs**, as applicable. References to the names of these offices in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references.

(B) On or before July 1, 2016, the Code Commissioner also shall prepare and deliver a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives concerning appropriate and conforming changes to the 1976 Code of Laws reflecting the provisions of this act.

SECTION 8. Section 11-35-5270 of the 1976 Code, relating to the Small and Minority Business Assistance Office, is repealed.

SECTION 9. This act takes effect on July 1, 2016.





## SC Commission for Minority Affairs

## Status of Pending Legislation: Session 121

Bill Number	Summary	Status	Notes
<b>S. 279</b>	To move the SC Small and Minority Business Assistance Office and duties from the Governor's Office to the SC Commission for Minority Affairs.	Pending	1/13/15-Senate Introduced and read first time 1/13/15-Moved to Senate Labor, Commerce and Industry Committee <b>Introduced by: Senator Cromer</b>
<b>S. 356</b>	To cease State Recognition for any new Native American Indian Entities applying for "Group" status, while keeping those currently recognized as such.	Pending	1/22/15-Senate Introduced and read first time 1/22/15 -Senate Referred to Judiciary Committee 2/05/16-Referred to Judiciary Sub-Committee 2/24/16-Sub-Committee hearing with Staff testimony <b>Introduced by: Senator Rankin</b>
<b>H. 4820</b>	To cease State Recognition for any new Native American Indian Entities applying for "Group" status, while keeping those currently recognized as such.	Pending	2/03/16 -House Introduced and read first time 2/03/16-House Referred to Judiciary Committee <b>Introduced by: Rep. Ryhal</b>
<b>S. *1048</b>	To acknowledge and congratulate the PAIA/Lower Eastern Cherokee Nation of SC on gaining State "Tribal" Recognition status.	Passed	2/02/16 -Senate Introduced, adopted, sent to House 2/03/16 House Introduced, adopted, returned with concurrence <b>*Concurrent Resolution Introduced by: Senator Verdin</b>
<b>H. *4756</b>	To acknowledge and congratulate the PAIA/Lower Eastern Cherokee Nation of SC on gaining State "Tribal" Recognition status.	Passed	1/27/16 House Introduced, adopted, sent to Senate 1/28/16 Senate Introduced, adopted, returned with concurrence <b>*Concurrent Resolution Introduced by: Rep. Smith</b>
<b>H. 4826</b>	To permit Indian Artists (under Federal Indian Arts and Crafts Law) to sell Game Animal Parts used in their art.	Pending	2/03/16 -House Introduced and read first time 2/03/16 House Referred to Committee on Agriculture, Natural Resources and Environmental Affairs <b>Introduced by: Rep. Ryhal</b>
<b>S. 674</b>	To amend the "Workers' Compensation Act" under various titles and to assign the Commission to review and file issues by our "civil rights division," and require the Commission to deliver a biennial report to the legislature based on the information received under subsection.^	Pending	4/16/15 Senate Introduced and read first time 4/16/15 Senate Referred to Committee on Judiciary 2/05/16 Senate Referred to Judiciary Subcommittee <b>Introduced by: Senator Martin</b> <i>^The intent was the Human Affairs Commission. They have been notified.</i>

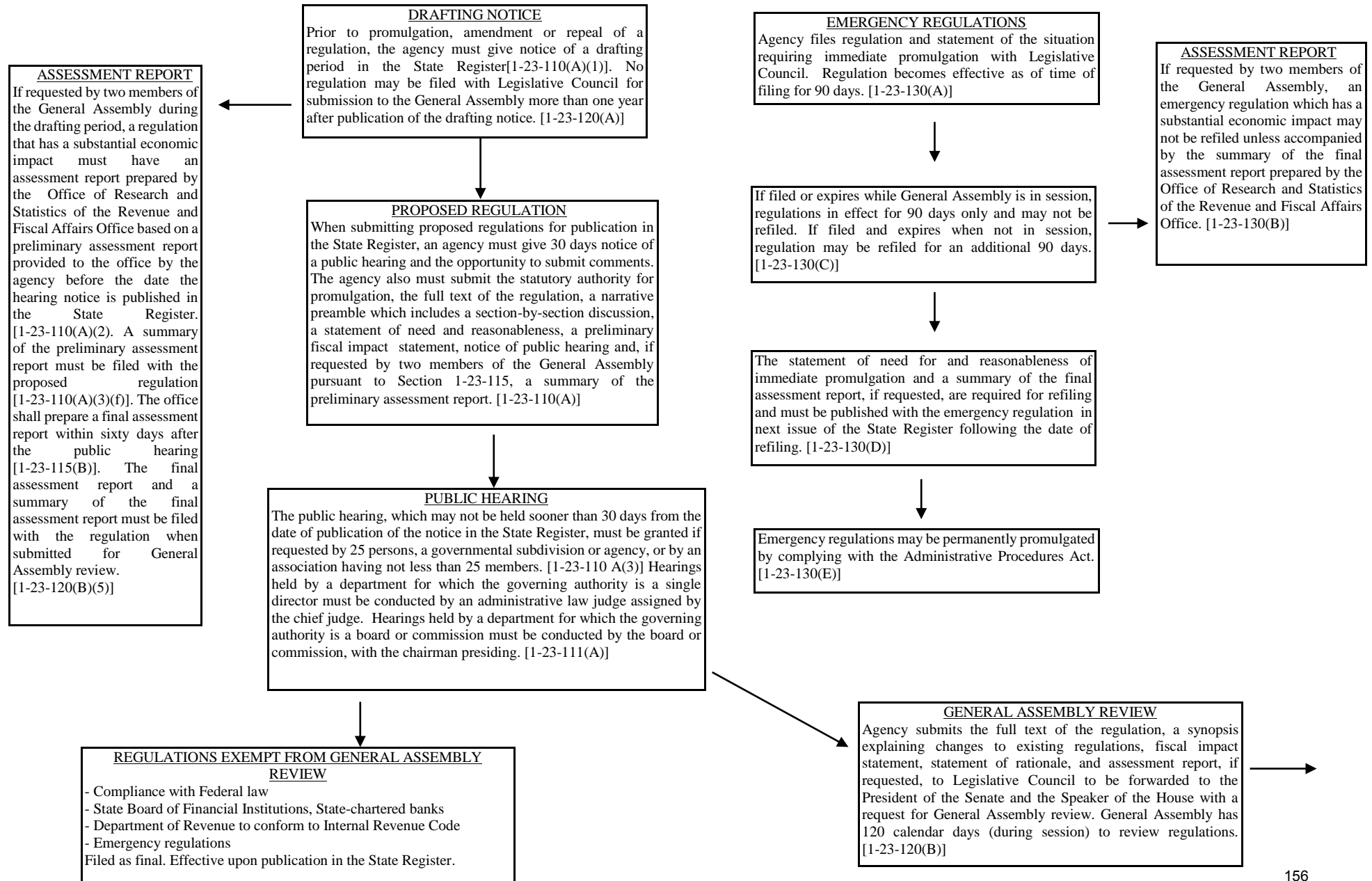
# Appendix J

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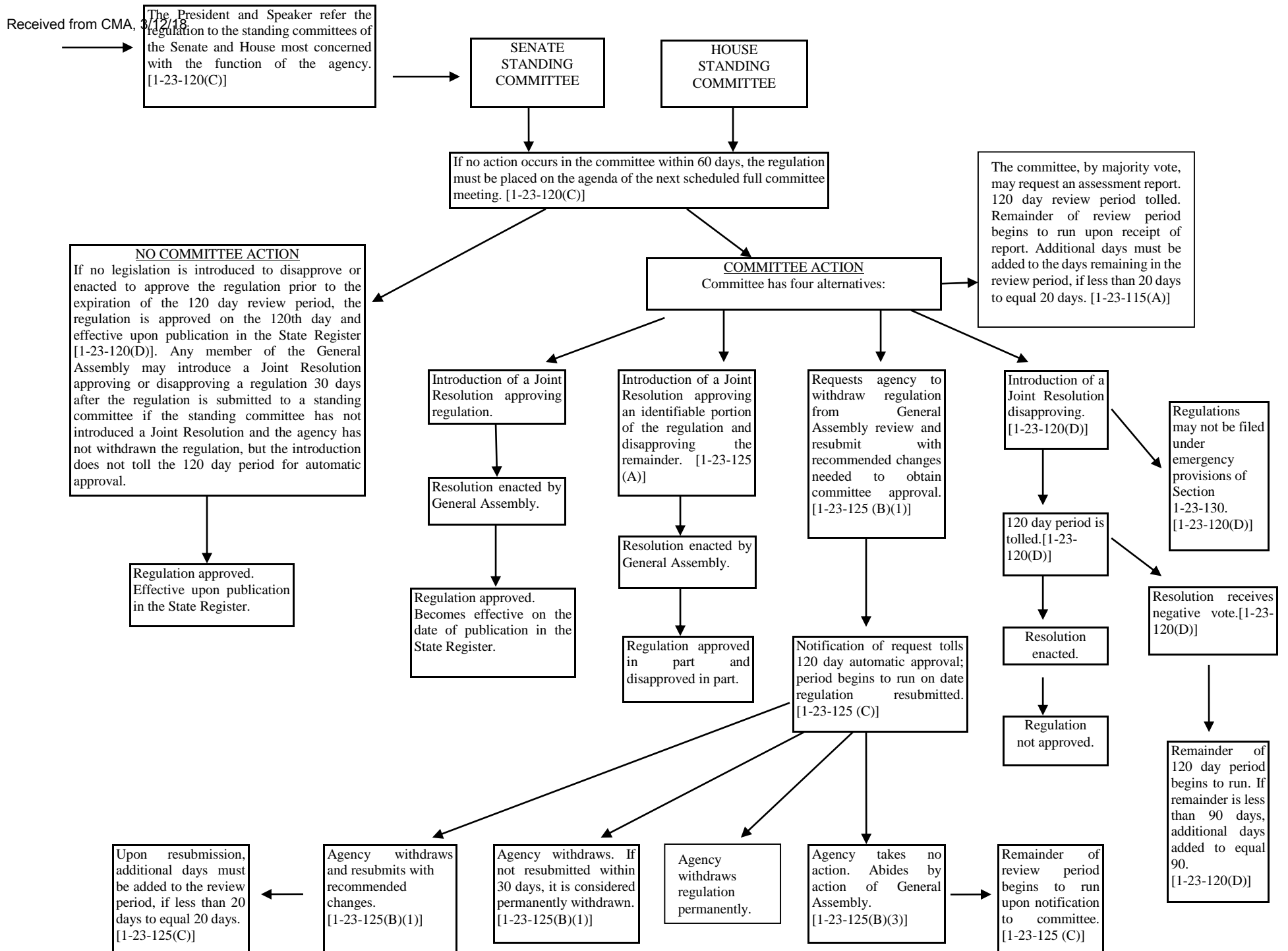
## **Promulgation Regulatory Process Flow Chart**

# THE REGULATORY PROCESS IN SOUTH CAROLINA

As Amended by Act 121 of 2014  
Prepared by Deirdre Brevard-Smith, Editor  
*South Carolina State Register*







Agency withdraws regulation on its own for any reason.



Agency withdraws and resubmits with no substantive changes. The regulation may be resubmitted by the agency during the legislative session without repeating the requirements of Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, if the resubmitted regulation contains no substantive changes from the previously submitted version. [1-23-125(E)]  
The agency must notify the committees and the Editor of the State Register of the withdrawal.

END OF TWO-YEAR SESSION

A regulation is deemed withdrawn if it has not become effective by the date of publication of the next State Register published after the end of the two-year session in which the regulation was submitted to the President and Speaker for review. A regulation deemed withdrawn may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, if the resubmitted regulation contains no substantive changes from the previously submitted version.  
[1-23-120 (G)]

# Appendix K

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## **Promulgation to CMA Regulations**

# South Carolina Legislature

Minority Affairs found 3 times. 

## S\*1185

Session 115 (2003-2004)

### S\*1185(Rat #0323, Act #0337 of 2004) Joint Resolution, By Senate Judiciary

A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE COMMISSION FOR **MINORITY AFFAIRS**, RELATING TO STATE RECOGNITION OF NATIVE AMERICAN INDIAN ENTITIES, ADVISORY COMMITTEES, DESIGNATED AS REGULATION DOCUMENT NUMBER 2874, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE. - ratified title

04/21/04 Senate Introduced, read first time, placed on calendar  
without reference SJ-36  
04/28/04 Senate Read second time SJ-67  
04/29/04 Senate Read third time and sent to House SJ-25  
05/04/04 House Introduced and read first time HJ-10  
05/04/04 House Referred to Committee on Judiciary HJ-10  
05/06/04 House Recalled from Committee on Judiciary HJ-94  
05/11/04 House Read second time HJ-12  
05/12/04 House Read third time and enrolled HJ-15  
05/19/04 Ratified R 323  
05/26/04 Became law without Governor's signature  
05/28/04 Copies available  
05/28/04 Effective date 05/26/04  
10/20/04 Act No. 337

#### VERSIONS OF THIS BILL

4/21/2004  
4/21/2004-A  
5/6/2004

#### S. 1185

(A337, R323, S1185)

A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE COMMISSION FOR **MINORITY AFFAIRS**, RELATING TO STATE RECOGNITION OF NATIVE AMERICAN INDIAN ENTITIES, ADVISORY COMMITTEES, DESIGNATED AS REGULATION DOCUMENT NUMBER 2874, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

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

#### Regulations approved

SECTION 1. The regulations of the Commission for **Minority Affairs**, relating to State Recognition of Native American Indian Entities, Advisory Committees, designated as Regulation Document Number 2874, and submitted to the General Assembly pursuant to the provisions of

Received from CMA 3/12/18

Article 1, Chapter 23, Title 1 of the 1976 Code, are approved.

**Time effective**

SECTION 2. This joint resolution takes effect upon approval by the Governor.

Ratified the 19th day of May, 2004.

Became law without the signature of the Governor -- 5/26/04.

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Legislative Services Agency  
<http://www.scstatehouse.gov>

# South Carolina Legislature

Minority Affairs found 3 times. 

## S\*1333

Session 116 (2005-2006)

### S\*1333(Rat #0363, Act #0449 of 2006) Joint Resolution, By McConnell

A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE STATE COMMISSION FOR **MINORITY AFFAIRS** RELATING TO STATE RECOGNITION OF NATIVE AMERICAN INDIANS, DESIGNATED AS REGULATION DOCUMENT NUMBER 3043, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976. - ratified title

04/11/06	Senate	Introduced and read first time	SJ-6
04/11/06	Senate	Referred to Committee on Judiciary	SJ-6
04/18/06	Senate	Recalled from Committee on Judiciary	SJ-4
04/19/06		Scrivener's error corrected	
04/19/06	Senate	Read second time	SJ-7
04/20/06	Senate	Read third time and sent to House	SJ-9
04/25/06	House	Introduced and read first time	HJ-41
04/25/06	House	Referred to Committee on Judiciary	HJ-41
05/24/06	House	Recalled from Committee on Judiciary	HJ-74
05/25/06	House	Debate adjourned until Tuesday, May 30, 2006	HJ-103
05/30/06	House	Read second time	HJ-17
05/31/06	House	Read third time and enrolled	HJ-30
05/31/06		Ratified R 363	
06/01/06		Signed By Governor	
06/06/06		Copies available	
06/06/06		Effective date	06/01/06
10/17/06		Act No.	449

#### VERSIONS OF THIS BILL

[4/11/2006](#)  
[4/18/2006](#)  
[4/19/2006](#)  
[5/24/2006](#)

#### S. 1333

(A449, R363, S1333)

**A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE STATE COMMISSION FOR **MINORITY AFFAIRS** RELATING TO STATE RECOGNITION OF NATIVE AMERICAN INDIANS, DESIGNATED AS REGULATION DOCUMENT NUMBER 3043, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976.**

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

Retrieved from CMA 3/12/18

**Regulations approved**

SECTION 1. The regulations of the Commission for **Minority Affairs** relating to State Recognition of Native American Indians, designated as Regulation Document Number 3043, and submitted to the General Assembly pursuant to the provisions of Article 1, Chapter 23, Title 1 of the 1976 Code, are approved.

**Time effective**

SECTION 2. This joint resolution takes effect upon approval by the Governor.

Ratified the 31st day of May, 2006.

Approved the 1st day of June, 2006.

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Legislative Services Agency  
<http://www.scstatehouse.gov>