

**State Employee Grievance Act Exemptions-SC DOT**

- Agency Director §8-17-370 (8)
- Deputy Directors §8-17-370 (12) §8-17-320 (9) §1-30-10 (E)
- Employees in the Office of the Chief Internal Auditor §57-1-360(A)

mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated committee panel and to the committee attorney for a hearing, whichever is appropriate based on the type of adverse employment action. The State Human Resources Director shall notify committee members, the committee attorney, and the parties concerned of the date, time, and place of hearings. The documents transmitted by the State Human Resources Director to the designated committee panel and committee attorney must be marked into evidence as "Committee Exhibit P" during the committee chairman's opening statement at the beginning of the hearing unless excluded by the committee attorney based on a prior objection raised by either party.

The State Human Resources Director is responsible for recording the hearings, and shall provide to the committee from the resources of the Office of Human Resources, the administrative and clerical services required.

HISTORY: 1982 Act No. 402; 1996 Act No. 284, Section 6, eff October 1, 1996.

**SECTION 8-17-360. Mediation of grievances by state personnel director.**

Once an appeal has been made to the State Human Resources Director and has been determined to meet all jurisdictional requirements, but before forwarding the appeal to the committee, the State Human Resources Director shall appoint a mediator to the appeal of the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy. The mediator must be an impartial third party who shall act to encourage and facilitate the resolution of the dispute through mediation. The mediator shall review the documents which have been submitted by each party and shall schedule a time to meet with both parties, jointly or independently, to attempt to resolve the matter. Mediation conferences are confidential and limited to the parties and their representatives. Other persons may attend only with the permission of the parties and the mediator. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement. Failure of the covered employee or the employee's representative to attend a mediation conference without reasonable justification constitutes a waiver of the employee's rights to further pursue the appeal. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties.

The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

HISTORY: 1982 Act No. 402, Section 6; 1996 Act No. 284, Section 7, eff October 1, 1996.

**SECTION 8-17-370. Exemptions.**

The provisions of this article do not apply to:

- (1) members, officers, or employees of the General Assembly;
- (2) employees within the Office of the Governor who work at the mansion or in the State House or those employees appointed by the Governor to serve at or above the organizational level of assistant directors of the individual program components;
- (3) elected public officials of this State or persons appointed to fill vacancies in these offices;
- (4) all judges, officers, and employees of the Judicial Department; jurors; all employees of the Commission on Prosecution Coordination; and the judges, officers, and employees of the Administrative Law Judge Division;
- (5) members of state boards, commissions, councils, advisory councils, or committees compensated on a per diem basis;

- (6) inmate help in a charitable, penal, or correctional institution, residents of rehabilitation facilities, or students employed in institutions of learning;
- (7) part-time professional personnel engaged in consultant or contractual services;
- (8) an agency head who has the authority and responsibility for an agency within state government including the divisions of the State Budget and Control Board;
- (9) employees of the Public Service Authority, State Ports Authority, the Jobs-Economic Development Authority, or the Division of Public Railways and the Division of Savannah Valley Development of the Department of Commerce;
- (10) teaching or research faculty, professional librarians, academic administrators, or other persons holding faculty appointments at a four-year post-secondary educational institution, including its branch campuses, if any, as defined in Section 59-107-10;
- (11) athletic coaches and unclassified employees in the athletic departments of four-year post-secondary educational institutions as defined in Section 59-107-10;
- (12) deputy directors as defined in Section 8-17-320;
- (13) regional and county directors of the Department of Social Services as defined in Section 43-3-40(B);
- (14) employees of the Medical University Hospital Authority, provided the Medical University Hospital Authority has promulgated an employee grievance plan in accordance with its enabling provision;
- (15) presidents of the South Carolina Technical College System;
- (16) a retired member of the South Carolina Police Officers Retirement System or a retired member of the South Carolina Retirement System who is hired by an agency to fill all or some fraction of a full-time equivalent (FTE) position covered by the State Employee Grievance Procedure Act; and
- (17) notwithstanding the provisions of Section 9-1-2210(E), any participant in the Teacher and Employee Retention Incentive Program.
- (18) the chief investment officer and all other employees of the Retirement System Investment Commission.
- (19) employees of the Office of the Lieutenant Governor if the employees report directly to the Lieutenant Governor or report directly to a person who reports directly to the Lieutenant Governor.
- (20) the executive director, assistant directors, and the area directors of the South Carolina Department of Employment and Workforce created pursuant to Section 1-30-10(A)(20).


HISTORY: 1982 Act No. 402, Section 7; 1993 Act No. 177, Section 1, eff June 16, 1993, and applies to personnel actions taken after that date; 1993 Act No. 181 Section 73, eff July 1, 1993; 1994 Act No. 452, Section 8, eff June 16, 1994; 1996 Act No. 284, Section 8, eff October 1 1996; 2000 Act No. 264, Section 3, eff May 1, 2000; 2002 Act No. 171, Section 1, eff February 7, 2002; 2002 Act No. 356, Section 11, eff July 1, 2002; 2005 Act No. 153, Pt II, Sections 3.A, 3.B, Pt IV, Section 4, eff July 1, 2005; 2008 Act No. 353, Section 2, Pt 25B, eff July 1, 2009; 2010 Act No. 146, Section 6, eff March 30, 2010.

**SECTION 8-17-375.** Reassignment, termination, or reduction of compensation of unclassified executive department employees appointed by governing board subject to Senate confirmation.

Notwithstanding any other provision of law, employees of an executive department of this State, except for the Department of Transportation, enumerated in Section 1-30-10(A) with a governing board who are unclassified, whose employment or compensation are decided by the governing board subject to specified approvals provided by law, and whose appointment or employment is subject to Senate confirmation may not be reassigned, terminated, or have their compensation reduced, except by majority vote of the governing board and approval by the Senate upon advice and consent prior to the action being taken or an interim appointment being made.

HISTORY: 2008 Act No. 353, Section 2, Pt 20H, eff July 1, 2009.

# South Carolina Legislature

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## Code of Laws

### TITLE 1. ADMINISTRATION OF THE GOVERNMENT

#### CHAPTER 30. Departments of State Government

#### **SECTION 1-30-10.** Departments of State Government.

Subsection (A) effective until July 1, 2015

(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Agriculture
2. Department of Alcohol and Other Drug Abuse Services
3. Department of Commerce
4. Department of Corrections
5. Department of Disabilities and Special Needs
6. Department of Education
7. Department of Health and Environmental Control
8. Department of Health and Human Services
9. Department of Insurance
10. Department of Juvenile Justice
11. Department of Labor, Licensing and Regulation
12. Department of Mental Health
13. Department of Natural Resources
14. Department of Parks, Recreation and Tourism
15. Department of Probation, Parole and Pardon Services
16. Department of Public Safety
17. Department of Revenue
18. Department of Social Services
19. Department of Transportation
20. Department of Employment and Workforce

Subsection (A) effective July 1, 2015

(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Administration
2. Department of Agriculture
3. Department of Alcohol and Other Drug Abuse Services
4. Department of Commerce
5. Department of Corrections
6. Department of Disabilities and Special Needs
7. Department of Education
8. Department of Health and Environmental Control
9. Department of Health and Human Services
10. Department of Insurance
11. Department of Juvenile Justice
12. Department of Labor, Licensing and Regulation
13. Department of Mental Health
14. Department of Motor Vehicles
15. Department of Natural Resources
16. Department of Parks, Recreation and Tourism
17. Department of Probation, Parole and Pardon Services
18. Department of Public Safety
19. Department of Revenue
20. Department of Social Services
21. Department of Transportation
22. Department of Employment and Workforce.

(B)(1) The governing authority of each department shall be:

(i) a director or a secretary, who must be appointed by the Governor with the advice and consent of the Senate, subject to removal from office by the Governor pursuant to provisions of Section 1-3-240 (B); or

(ii) a board to be appointed and constituted in a manner provided for by law; or

(iii) in the case of the Department of Agriculture and the Department of Education, the State Commissioner of Agriculture and the State Superintendent of Education, respectively, elected to office under the Constitution of this State; or

(iv) in the case of the Department of Transportation, a seven member commission constituted in a manner provided by law, and a Secretary of Transportation appointed by and serving at the pleasure of the Governor.

(2) In making an appointment for a governing authority of a department, race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed. The Governor in making the appointments provided for by this section shall endeavor to appoint individuals who have demonstrated exemplary managerial skills in either the public or private sector.

(C) Each department shall be organized into appropriate subdivisions by the governing authority of the department through further consolidation or further subdivision. The power to organize and reorganize the department into divisions lies with the General Assembly in furtherance of its mandate pursuant to Article XII of the South Carolina Constitution, 1895. The dissolution of any division must likewise be statutorily approved by the General Assembly.

(D) The governing authority of a department is vested with the duty of overseeing, managing, and controlling the operation, administration, and organization of the department. The governing authority has the power to create and appoint standing or ad hoc advisory committees in its discretion or at the direction of the Governor to assist the department in particular areas of public concern or professional expertise as is deemed appropriate. Such committees shall serve at the pleasure of the governing authority and committee members shall not receive salary or per diem, but shall be entitled to reimbursement for actual and necessary expenses incurred pursuant to the discharge of official duties not to exceed the per diem, mileage, and subsistence amounts allowed by law for members of boards, commissions, and committees.

(E) The governing authority of a department may appoint deputies to head the divisions of their department, with each deputy managing one or more of the divisions; in the case of the Department of Commerce, the Secretary of Commerce may appoint a departmental executive director and also may appoint directors to manage the various divisions of the Department of Commerce. In making appointments race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed. Deputies serve at the will and pleasure of the governing authority. The deputy of a division is vested with the duty of overseeing, managing, and controlling the operation and administration of the division under the direction and control of the department's governing authority and performing such other duties as delegated by the department's governing authority.

(F) In the event a vacancy occurs in the office of the department's governing authority at a time when the General Assembly is not in session, the Governor temporarily may fill the vacancy pursuant to Section 1-3-210.

(G)(1) Department and agency governing authorities must, no later than the first day of the 2015 Legislative Session and every twelve months thereafter, submit to the Governor and General Assembly reports giving detailed and comprehensive recommendations for the purposes of merging or eliminating duplicative or unnecessary divisions, programs, or personnel within each department to provide a more efficient administration of government services. If an agency or department has no recommendations for restructuring of divisions, programs, or personnel, its report must contain a statement to that effect. Upon their receipt by the President of the Senate and the Speaker of the House of Representatives, these reports must be referred as information to the standing committees

(C) Public Service Commission Safety Enforcement, formerly provided in Section 58-3-310;

(D) Public Safety Division, formerly of the Governor's Office.

HISTORY: 1993 Act No. 181, § 1; 1996 Act No. 459, § 3; 2003 Act No. 51, § 8; 2012 Act No. 119, § 1, eff February 1, 2012.

**SECTION 1-30-95.** Department of Revenue.

The following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Revenue to be initially divided into divisions for Alcohol Beverage Control and Tax; provided, however, that from July 1, 1993, until February 1, 1995, the governing authority of the department shall be the commissioners of the Tax Commission, as constituted June 30, 1993, and thereafter, pursuant to the provisions of Section 12-3-10, et seq.;

(A) Licensing Division of Alcoholic Beverage Control Commission, formerly provided for at Section 61-1-10, et seq.;

(B) Tax Commission, formerly provided for at Section 12-3-10, et seq.

HISTORY: 1993 Act No. 181, § 1; 1996 Act No. 459, § 4.

**SECTION 1-30-100.** Department of Social Services.

Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Social Services:

Department of Social Services, formerly provided for at Section 43-1-10, et seq.

HISTORY: 1993 Act No. 181, § 1.

**SECTION 1-30-105.** Department of Transportation.

Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Transportation to be initially divided into divisions for Mass Transit, Construction and Maintenance, Engineering and Planning, and Finance and Administration; however, the State Highway Commission as constituted on June 30, 1993, under the provisions of Title 56, shall be the governing authority for the department until February 15, 1994, or as soon as its successors are elected or appointed and qualified, whichever is later.

Department of Highways and Public Transportation, except the Motor Vehicle Division, which was established as the Department of Motor Vehicles by Section 56-1-5, and the State Highway Patrol, formerly provided for at Section 56-1-10, et seq.

HISTORY: 1993 Act No. 181, § 1; 2007 Act No. 114, § 2, eff June 27, 2007.

**SECTION 1-30-110.** Office of the Governor.

**SECTION 57-1-360.** Chief internal auditor; term; removal from office; standards for audits; staff and office space.

(A) The commission must appoint a chief internal auditor and other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission's duties and responsibilities provided by law. The commission also must provide professional, administrative, technical, and clerical personnel, as the commission determines to be necessary, for the chief internal auditor to properly discharge his duties and responsibilities authorized by the commission or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the commission.

(B)(1) The chief internal auditor shall serve for a term of four years and may be removed by the commission only for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity. The chief internal auditor must be a Certified Public Accountant and possess any other experience the commission may require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The commission shall set the salary for the chief internal auditor as allowed by statute or applicable law.

(2) The audits performed by the chief internal auditor must comply with recognized governmental auditing standards. The department and any entity contracting with the department must fully cooperate with the chief internal auditor in the discharge of his duties and responsibilities and must timely produce all books, papers, correspondence, memoranda, and other records considered necessary in connection with an internal audit. All final audit reports must be submitted to the commission and the chairman of the Senate Transportation Committee, the chairman of the Senate Finance Committee, the chairman of the House of Representatives Education and Public Works Committee, and the chairman of the House of Representatives Ways and Means Committee before being made public.

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

(C) The department, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies, for the chief internal auditor and his support staff.