**South Carolina General Assembly**

118th Session, 2009-2010

**S. 384**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Leventis, Courson, Sheheen, Reese, Matthews, Thomas and Davis

Document Path: l:\council\bills\ms\7161zw09.docx

Introduced in the Senate on February 3, 2009

Currently residing in the Senate

Summary: Administrative Law Court

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/3/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑12

2/3/2009 Senate Referred to Committee on **Medical Affairs** [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑12

2/9/2010 Senate Committee report: Favorable with amendment **Medical Affairs** [SJ](file:///h:\SJ%20Archive\2010\02-09-10.docx)‑12

2/10/2010 Scrivener's error corrected

**VERSIONS OF THIS BILL**

[2/3/2009](file:///p:\pprever\2009-10\384_20090203.docx)

[2/9/2010](file:///p:\pprever\2009-10\384_20100209.docx)

[2/10/2010](file:///p:\pprever\2009-10\384_20100210.docx)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 9, 2010

**S. 384**

Introduced by Senators Leventis, Courson, Sheheen, Reese, Matthews, Thomas and Davis

S. Printed 2/9/10--S. [SEC 2/10/10 2:19 PM]

Read the first time February 3, 2009.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (S. 384) to amend Section 1‑23‑600, as amended, Code of Laws of South Carolina, 1976, relating to hearings and proceedings of the Administrative Law Court, so as to reorganize, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting:

/A BILL

TO AMEND SECTION 44-1-20, RELATING TO THE APPOINTMENT OF MEMBERS OF THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO ESTABLISH EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS; TO AMEND SECTION 44‑1‑30, RELATING TO BOARD MEETINGS AND COMPENSATION OF MEMBERS, SO AS TO PROVIDE THAT QUARTERLY MEETINGS BE HELD AT THE ADMINISTRATIVE HEADQUARTERS; TO AMEND SECTION 44‑1‑40, RELATING TO THE SELECTION, TERM, AND SALARY OF THE DEPARTMENT DIRECTOR, SO AS TO AUTHORIZE THE DIRECTOR’S SALARY BE ESTABLISHED PURSUANT TO SECTION 8-11-160; TO AMEND SECTION 44‑1‑50, AS AMENDED, RELATING TO BOARD ADMINISTRATIVE REVIEWS, SO AS TO AUTHORIZE THE BOARD OF HEALTH AND THE BOARD OF ENVIRONMENTAL CONTROL TO CONDUCT ADMINISTRATIVE REVIEWS AND TO AUTHORIZE THE BOARD TO ORGANIZE THE DEPARTMENT AS NECESSARY; TO AMEND SECTION 44‑1‑60, RELATING TO APPEALS FROM DEPARTMENT DECISIONS, SO AS TO PROVIDE THAT A DEPARTMENT DECISION BECOMES FINAL THIRTY DAYS AFTER THE APPROPRIATE NOTICE IS RECEIVED BY A PERSON ENTITLED TO NOTICE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is intended to further the department’s mission of protecting and promoting the health of the public and the environment by increasing the department’s accountability. To the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.

SECTION 2. Section 44‑1‑20 of the 1976 Code is amended to read:

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

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

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

(1) a baccalaureate or more advanced degree from:

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

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

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

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

(a) public health;

(b) environmental issues;

(c) law;

(d) finance;

(e) engineering;

(f) management

(D) In making these appointments, race, gender, and other demographic factors should be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the 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.”

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

“Section 44‑1‑30. The board shall meet at least quarterly at the department’s administrative headquarters in Columbia and the members shall receive such compensation for their services as is provided by law for members of boards and commissions.”

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

“Section 44‑1‑40. (A) The board shall select a director for the department who shall serve a four‑year term and who shall have such authority and perform such duties as may be directed by the board. The director shall receive such compensation as may be established under the provisions of Section 8-11-160 and for which funds have been authorized in the general appropriations act. ~~The salary of the director shall be fixed by the board, upon approval of the State Budget and Control Board.~~

(B) ~~For any vacancy occurring in the office of director on or after February 1, 1995, the~~ The board, after consultation with and approval by the Governor, must submit the name of its appointee to the Senate for ~~the Senate’s~~ advice and consent. ~~On or after February 1, 1995, the~~ The board may remove a director only after consultation with and approval by the Governor.

(C) The director shall be reappointed in the same manner as the original appointment. A vacancy shall be filled in the manner of the original appointment for the unexpired portion of the term only.

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

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

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

(B) The board shall provide for the administrative organization of the department ~~and shall consolidate and merge existing duties, functions, and officers of the former agencies as may be necessary for economic and efficient administration~~. Provided, however, that the board may appoint ~~such~~ advisory boards as it considers necessary ~~to carry out the functions of Sections 44‑1‑10 to 44‑1‑70~~. Except as otherwise provided by law, members of the department’s advisory boards may receive mileage, per diem, and subsistence, unless provided otherwise by law ~~and there shall be provided a compensation for their services as provided by the law for members of boards and commissions~~.

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

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

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

(F) The board shall have any other rights, duties, obligations, or responsibilities as provided by law.”

SECTION 6. Chapter 1, Title 44 of the 1976 Code is amended by adding:

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

(B)(1) The chief internal auditor shall serve for a term of four years and may be removed by the board only for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity. The chief internal auditor shall have a baccalaureate or more advanced degree in accounting or finance and possess any other experience the board may require. The chief internal auditor shall establish, implement, and maintain the exclusive internal audit function of all departmental activities. The board 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 board.

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

(C) The department, at its own expense, shall 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.”

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

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

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

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

(F) No later than ~~sixty~~ sixty-five calendar days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. If the board declines in writing to schedule a final review conference or if a final review conference is not conducted within ~~sixty~~ sixty-five calendar days, the department decision becomes the final agency decision~~, and~~ unless an applicant, permittee, licensee, or affected person ~~may request~~ requests a contested case hearing before the Administrative Law Court~~, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference~~. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten calendar days’ written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(B)(1) ~~Whenever~~ When the board learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to cause a public health emergency, as defined in Section 44‑4‑130, it is authorized to notify the appropriate public safety authority, tribal authorities, and federal health and public safety authorities.

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

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

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

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

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

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

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

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

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

~~(d)~~(4) investigate and advise as to all matters respecting water supply, sewage, drainage, ventilation, heating, lighting, or other measures connected with public sanitation or safety.”

SECTION 10. Sections 44-1-70 and 44-1-280 of the 1976 Code are repealed.

SECTION 11. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 12. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 13. This act takes effect January 1, 2011. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 1‑23‑600, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HEARINGS AND PROCEEDINGS OF THE ADMINISTRATIVE LAW COURT, SO AS TO REORGANIZE THE SECTION AND PROVIDE THAT IT IS APPLICABLE TO THE STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; TO AMEND SECTION 1‑23‑610, AS AMENDED, RELATING TO REVIEW OF DECISIONS OF THE ADMINISTRATIVE LAW COURT, SO AS TO DEFINE THE PROCEDURES FOR OBTAINING JUDICIAL REVIEW OF A FINAL DECISION OF AN ADMINISTRATIVE LAW JUDGE IN A CASE INVOLVING THE STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; TO AMEND SECTION 1‑30‑45, RELATING TO THE COMPOSITION OF THE FORMER SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO DEVOLVE AND TRANSFER ALL OF THESE COMPONENTS TO THE STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AS PROVIDED FOR IN THIS ACT; TO AMEND SECTION 44‑1‑20, RELATING TO THE CREATION AND SUPERVISION OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO RESTRUCTURE THE DEPARTMENT UNDER THE SUPERVISION OF A SECRETARY APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE; TO AMEND SECTION 44‑1‑30, RELATING TO BOARD MEETINGS AND COMPENSATION OF MEMBERS, SO AS TO PROVIDE FOR THE COMPENSATION AND DUTIES OF THE SECRETARY OF THE STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; TO AMEND SECTION 44‑1‑40, RELATING TO THE SELECTION, TERM, AND SALARY OF THE DEPARTMENT DIRECTOR, SO AS TO CREATE A BOARD OF HEALTH AND A BOARD OF ENVIRONMENTAL CONTROL AND TO PROVIDE FOR THEIR MEMBERSHIP; TO AMEND SECTION 44‑1‑50, AS AMENDED, RELATING TO BOARD ADMINISTRATIVE REVIEWS, SO AS TO AUTHORIZE THE BOARD OF HEALTH AND THE BOARD OF ENVIRONMENTAL CONTROL TO CONDUCT ADMINISTRATIVE REVIEWS AND TO AUTHORIZE THE SECRETARY TO ORGANIZE THE DEPARTMENT AS NECESSARY; TO AMEND SECTION 44‑1‑60, RELATING TO APPEALS FROM DEPARTMENT DECISIONS, SO AS TO PROVIDE THAT A DEPARTMENT DECISION BECOMES FINAL THIRTY DAYS AFTER THE APPROPRIATE NOTICE IS RECEIVED BY A PERSON ENTITLED TO NOTICE; TO AMEND SECTION 44‑1‑70, RELATING TO BOARD RULES AND REGULATIONS, SO AS TO PROVIDE THAT THE DEPARTMENT SECRETARY MAY PROMULGATE RULES AND REGULATIONS; TO AMEND SECTION 44‑1‑80, AS AMENDED, RELATING TO THE BOARD’S DUTIES AND POWERS AS TO COMMUNICABLE OR EPIDEMIC DISEASES, SO AS TO TRANSFER THESE DUTIES AND POWERS TO THE DEPARTMENT SECRETARY; TO AMEND SECTION 44‑1‑90, RELATING TO CIRCUMSTANCES WHEN THE BOARD MUST ADVISE LOCAL AUTHORITIES, SO AS TO TRANSFER THESE RESPONSIBILITIES TO THE DEPARTMENT SECRETARY; TO AMEND SECTION 44‑1‑100, AS AMENDED, RELATING TO ASSISTANCE FROM LOCAL HEALTH OFFICERS, SO AS TO REQUIRE LOCAL HEALTH OFFICERS TO ASSIST THE DEPARTMENT SECRETARY; AND TO AMEND SECTION 44‑1‑280, RELATING TO COORDINATION WITH FIRST STEPS, SO AS TO REQUIRE THE DEPARTMENT SECRETARY TO COORDINATE WITH FIRST STEPS TO SCHOOL READINESS UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is intended to further the department’s mission of protecting and promoting the health of the public and the environment by increasing the department’s accountability to the Governor and the public. To the extent that a provision of this act conflicts with an existing statutes or regulation, the provisions of this act are controlling.

SECTION 2. Section 1‑23‑600 of the 1976 Code, as last amended by Act 334 of 2008, is further amended to read:

“Section 1‑23‑600. (A) 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.

(B) An administrative law judge shall preside over all hearings of contested cases as defined in Section ~~1‑23‑505~~1‑23‑310 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) Employment Security Commission;

(4) Workers’ Compensation Commission; ~~or~~

(5) Occupational Safety and Health Act; or

(6) 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)~~(C) 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, an appeal from the Workers’ Compensation Commission is to the court of appeals as provided in Section 42‑17‑60, and an appeal from the Employment Security Commission is to the circuit court as provided in Section 41‑35‑750. ~~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)~~(F) 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~~chief administrative law judge or his designee 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~~chief administrative law judge for relief from the process as provided in the Rules of the Administrative Law Court.

~~(H)~~(G)(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 and to the Department of Health and Environmental Control.

(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)~~(G)(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, or in cases when Section 1‑23‑610(A) applies, the appropriate board or commission.

(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)~~(H) If a petition for judicial review of a final order of the Administrative Law Court is not ~~appealed~~filed in accordance with the provisions of Section ~~1‑23‑610~~1‑23‑600, 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.”

SECTION 3. Section 1‑23‑610 of the 1976 Code, as last amended by Act 334 of 2008, is further amended to read:

“Section 1‑23‑610. (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.~~For quasi‑judicial review of a final decision of an administrative law judge of cases involving departments governed by a board or commission authorized to exercise the sovereignty of the State, except the Department of Natural Resources, a petition by an aggrieved party must be filed with the appropriate board or commission and served on the opposing party 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. A party aggrieved by a final decision of a board in a case is entitled to judicial review of that decision by the court of appeals pursuant to this subsection.

(B) For judicial review of a final decision of an administrative law judge of cases in which review is not governed by subsection (A), including cases involving the Department of Natural Resources and the Department of Health and Environmental Control, 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 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.

(C) 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~~reviewing tribunal 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)~~(1) in violation of constitutional or statutory provisions;

~~(b)~~(2) in excess of the statutory authority of the agency;

~~(c)~~(3) made upon unlawful procedure;

~~(d)~~(4) affected by other error of law;

~~(e)~~(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

~~(f)~~(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(D) Where appropriations in the annual general appropriations act, or where fees, fines, forfeitures, or revenues imposed or collected by agencies or commissions were required to be used for the hearing of contested cases, these appropriations or monies must continue to be used for these purposes after the effective date of this article.”

SECTION 4. Section 1‑30‑45 of the 1976 Code is amended to read:

“Section 1‑30‑45. ~~Effective on July 1, 1994, 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 Health and Environmental Control and to include a coastal division:~~

~~(A) Department of Health and Environmental Control, formerly provided for at Section 44‑1‑10, et seq.;~~

~~(B) South Carolina Coastal Council, formerly provided for at Section 48‑39‑10, et seq.;~~

~~(C) State Land Resources Conservation Commission regulatory division, formerly provided for at Section 48‑9‑10, et seq.;~~

~~(D) Water Resources Commission regulatory division, formerly provided for at Section 49‑3‑10, et seq~~Notwithstanding another provision of law, all 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 an agency, except for those subdivisions specifically included under another department, which were previously devolved and transferred to the former South Carolina Department of Health and Environmental Control pursuant to Title 44 of the 1976 Code, are devolved and transferred to the State Department of Health and Environmental Control.”

SECTION 5. Section 44‑1‑20 of the 1976 Code is amended to read:

“Section 44‑1‑20. There is hereby created the ~~South Carolina~~State Department of Health and Environmental Control~~which shall be administered under the supervision of the South Carolina Board of Health and Environmental Control. The board shall consist of seven members, one from each congressional district, and one from the State at large to be appointed by the Governor, upon the advice and consent of the Senate. The member who is appointed at large shall serve as the chairman of the board. The Governor may remove the chairman of the board pursuant to Section 1‑3‑240(B); however, the Governor may only remove the other board members pursuant to Section 1‑3‑240(C). The terms of the members shall be for four years and until their successors are appointed and qualify, except that of the original appointees, three shall be appointed for two years and four shall be appointed for four years. All vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term only. In making these appointments, race, gender, and other demographic factors should be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the 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~~, referred to in this title as the department, with subordinate divisions as may be created or authorized by law. The state department will be headed by a Secretary of Health and Environmental Control who will be appointed by the Governor upon the advice and consent of the Senate. The secretary must possess sound moral character, superior knowledge and experience concerning the promotion and protection of the health of the public and the environment, and proven administrative ability. The secretary is subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240.”

SECTION 6. Section 44‑1‑30 of the 1976 Code is amended to read:

“Section 44‑1‑30. The ~~Board~~secretary shall ~~meet at least quarterly and the members shall receive such compensation for their services as is provided by law for members of boards and commissions~~receive annual compensation as may be provided by the General Assembly and official expenses as provided by law for executing the duties and functions of the department. The secretary will be vested with the duty and authority to oversee, manage, and control the operation, administration, and organization of the department. The secretary will serve as the primary point of accountability, reporting directly to the Governor, for the management of environmental protection and public health programs.”

SECTION 7. Section 44‑1‑40 of the 1976 Code is amended to read:

“Section 44‑1‑40. ~~The board shall select a director for the department who shall serve a four‑year term and who shall have such authority and perform such duties as may be directed by the board. The salary of the director shall be fixed by the board, upon approval of the State Budget and Control Board. For any vacancy occurring in the office of director on or after February 1, 1995, the board, after consultation with and approval by the Governor, must submit the name of its appointee to the Senate for the Senate’s advice and consent. On or after February 1, 1995, the board may remove a director only after consultation with and approval by the Governor~~There are hereby created a Board of Health and a Board of Environmental Control. Each board shall consist of three members, appointed by the Governor with advice and consent of the Senate and removable only for the reasons provided in Section 1‑3‑240(C). The terms of the members will be for three years and until their successors are appointed and qualified, except that of the original appointees, one member of each board will be appointed for two years and two members of each board will be appointed for three years. All vacancies will be filled in the manner of the original appointment for the unexpired portion of the term only. Members of the Board of Health must possess superior knowledge concerning and a demonstrated commitment to the protection and promotion of public health, and members of the Board of Environmental Control must possess superior knowledge concerning and a demonstrated commitment to promoting and protecting the health of the environment. In making these appointments, race, gender, geography, and other demographic factors should be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the 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.”

SECTION 8. Section 44‑1‑50 of the 1976 Code, as last amended by Act 387 of 2006, is further amended to read:

“Section 44‑1‑50. (A) ~~The board may conduct such administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1~~The Board of Health may conduct administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department’s division of Health Services or division of Health Regulation which may give rise to a contested case pursuant to Chapter 23, Title 1. The Board of Environmental Control may conduct administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department’s division of Ocean and Coastal Resource Management or division of Environmental Quality Control which may give rise to a contested case pursuant to Chapter 23, Title 1.

(B) The ~~board~~secretary shall provide for the administrative organization of the department and shall consolidate and merge existing duties, functions, and officers of the former agencies as may be necessary for economic and efficient administration. Provided, however, that the ~~board~~secretary may appoint ~~such~~advisory boards as ~~it~~he considers necessary to carry out the functions of Sections 44‑1‑10 to 44‑1‑70, and there ~~shall~~must be provided a compensation for their services as provided by the law for members of boards and commissions.”

SECTION 9. Section 44‑1‑60(E) and (F) of the 1976 Code, as added by Act 387 of 2006, is amended to read:

“(E) Notice of the department decision must be sent by certified mail, return receipt requested to the applicant, permittee, licensee, and affected persons who have submitted comments or otherwise asked to be notified~~by certified mail, return receipt requested~~. The department decision becomes the final agency decision ~~fifteen~~thirty days after notice of the department decision has been ~~mailed to~~received by the applicant, permitee, licensee, and affected person entitled to notice, unless a written request for final review is filed with the department by the applicant, permittee, licensee, or affected person.

(F) No later than sixty days after the date of receipt of a request for final review, a final review conference must be conducted by the appropriate board~~, its designee, or a committee of three members of the board appointed by the chair~~. If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten days’ written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:

(1) Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the department must explain the department decision and the materials relied upon in the administrative record to support the department decision. The applicant or affected party shall state the reasons for protesting the department decision and may provide evidence to support amending, modifying, or rescinding the department decision. The department may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the department. Any final review conference officer may request additional information and may question the applicant or affected party, the department, and anyone else providing information at the conference.

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

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

SECTION 10. Section 44‑1‑70 of the 1976 Code is amended to read:

“Section 44‑1‑70. All rules and regulations promulgated by the ~~Board~~secretary ~~shall be~~are null and void unless approved by a concurrent resolution of the General Assembly at the session of the General Assembly following their promulgation.”

SECTION 11. Section 44‑1‑80 of the 1976 Code, as last amended by Act 339 of 2002, is further amended to read:

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

(B)(1) ~~Whenever~~When the ~~board~~secretary learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to cause a public health emergency, as defined in Section 44‑4‑130, ~~it~~he is authorized to notify the appropriate public safety authority, tribal authorities, and federal health and public safety authorities.

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

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

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

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

SECTION 12. Section 44‑1‑90 of the 1976 Code is amended to read:

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

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

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

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

~~(d)~~(4) investigate and advise as to all matters respecting water supply, sewage, drainage, ventilation, heating, lighting, or other measures connected with public sanitation or safety.”

SECTION 13. Section 44‑1‑100 of the 1976 Code, as last amended by Act 339 of 2002, is further amended to read:

“Section 44‑1‑100. All sheriffs and constables in the several counties of this State and police officers and health officers of cities and towns must aid and assist the ~~Director of the Department~~Secretary of Health and Environmental Control and must carry out and obey his orders, or those of the Department of Health and Environmental Control, to enforce and carry out any and all restrictive measures and quarantine regulations that may be prescribed. During a state of public health emergency, as defined in Section 44‑4‑130, the ~~director~~secretary may request assistance in enforcing orders issued pursuant to this chapter and pursuant to Chapter 4, Title 44, from the public safety authority, as defined in Section 44‑4‑130, other state law enforcement authorities, and local law enforcement. The public safety authority may request assistance from the South Carolina National Guard in enforcing orders made pursuant to this chapter or pursuant to Chapter 4, Title 44.”

SECTION 14. Section 44‑1‑280 of the 1976 Code is amended to read:

“Section 44‑1‑280. The ~~Board~~Secretary and Department of Health and Environmental Control in establishing priorities and funding for programs and services which impact on children and families during the first years of a child’s life, within the powers and duties granted to it, must support, as appropriate, the South Carolina First Steps to School Readiness initiative, as established in Title 59, Chapter 152, at the state and local levels.”

SECTION 15. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 16. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 17. This act takes effect upon approval by the Governor 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. For all actions pending on the effective date of this act, the action proceeds as provided in this act for review.

‑‑‑‑XX‑‑‑‑