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COMMITTEE REPORT

January 27, 2010

**H. 3314**

Introduced by Rep. Harrison

S. Printed 1/27/10--S.

Read the first time March 31, 2009.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (H. 3314) to amend Sections 1‑30‑35, 44‑20‑30, 44‑20‑210, 44‑20‑220, 44‑20‑225, 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:

/ TO AMEND SECTION 44‑20‑210, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION OF THE COMMISSION ON DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 44‑20‑220, RELATING TO THE PROMULGATION OF REGULATIONS BY THE COMMISSION ON DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE THE PROVISION REQUIRING THE COMMISSION TO CONSULT WITH THE ADVISORY COMMITTEE OF THE DIVISION TO WHICH THE REGULATIONS APPLY; TO AMEND SECTION 44‑20‑230, RELATING TO THE RESPONSIBILITIES OF THE DIRECTOR OF THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE THE PROVISION AUTHORIZING THE DIRECTOR TO APPOINT AND REMOVE EMPLOYEES OF THE DEPARTMENT; TO AMEND SECTION 44‑20‑240, RELATING TO THE CREATION AND RESPONSIBILITIES OF THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE THE PROVISION TRANSFERRING THE RESPONSIBILITY FOR AUTISTIC SERVICES FROM THE DEPARTMENT OF MENTAL HEALTH TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS; TO AMEND SECTION 44‑20‑350, RELATING TO AUTHORIZING THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS TO ESTABLISH CHARGES FOR SERVICES IN REGULATION, SO AS TO REQUIRE THESE CHARGES TO BE ESTABLISHED IN REGULATION; TO AMEND SECTION 44‑20‑430, RELATING TO THE DIRECTOR CARRYING OUT CERTAIN RESPONSIBILITIES SUBJECT TO POLICIES ADOPTED BY THE COMMISSION, SO AS TO PROVIDE THAT CARRYING OUT THESE RESPONSIBILITIES IS SUBJECT TO REGULATIONS PROMULGATED BY THE DEPARTMENT; TO AMEND SECTION 44‑7‑260, AS AMENDED, RELATING TO FACILITIES REQUIRED TO BE LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND FACILITIES THAT ARE EXEMPT FROM SUCH LICENSURE, SO AS TO REQUIRE LICENSURE FOR COMMUNITY‑BASED HOUSING AND DAY PROGRAMS OPERATED BY THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS AND TO REMOVE COMMUNITY‑BASED HOUSING SPONSORED, LICENSED, OR CERTIFIED BY THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS FROM THOSE FACILITIES THAT ARE EXEMPT FROM LICENSURE; TO AMEND ARTICLE 23, CHAPTER 7, TITLE 44, RELATING TO CRIMINAL RECORDS CHECKS OF DIRECT CARE STAFF, SO AS TO FURTHER SPECIFY THE CRIMINAL RECORDS CHECKS THAT MUST BE CONDUCTED ON DIRECT CARE STAFF, TO PROVIDE THAT A DIRECT CARE ENTITY INCLUDES A DAY PROGRAM OPERATED BY THE DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, TO DELETE PROVISIONS REQUIRING DIRECT CAREGIVERS TO VERIFY RESIDENCY FOR THE TWELVE MONTHS PRECEDING APPLYING FOR EMPLOYMENT, TO DELETE PROVISIONS AUTHORIZING PRIVATE BUSINESSES, ORGANIZATIONS, OR ASSOCIATIONS TO CONDUCT CRIMINAL HISTORY BACKGROUND CHECKS REQUIRED BY THIS ARTICLE, AND TO DELETE PROVISIONS RELATING TO CERTAIN FINGERPRINT FORMS AND PROCEDURES; AND TO REPEAL SECTION 44‑20‑225 RELATING TO CONSUMER ADVISORY BOARDS FOR THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS’ MENTAL RETARDATION, AUTISM, AND HEAD AND SPINAL CORD INJURY DIVISIONS AND ARTICLE 5, CHAPTER 20, TITLE 44 RELATING TO THE LICENSURE AND REGULATION OF FACILITIES AND PROGRAMS BY THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS. AND BY ADDING CHAPTER 2 TO TITLE 2 SO AS TO PROVIDE THAT THE STANDING COMMITTEES OF THE GENERAL ASSEMBLY HAVE A DUTY TO REVIEW AND STUDY THE OPERATIONS OF THE STATE AGENCIES WITHIN THE COMMITTEE’S JURISDICTION, TO ESTABLISH COMMITTEE OVERSIGHT JURISDICTION, TO PROVIDE FOR THE PROCESS BY WHICH A COMMITTEE MAY INITIATE AN OVERSIGHT STUDY OR INVESTIGATION, TO PROVIDE FOR THE MANNER IN WHICH AN INVESTIGATING COMMITTEE MAY ACQUIRE EVIDENCE OR INFORMATION RELATED TO THE STUDY OR INVESTIGATION, TO PROVIDE FOR PROGRAM EVALUATION REPORTS, THE MANNER IN WHICH THEY ARE REQUESTED, AND THE CONTENTS OF THE REPORTS, TO PROVIDE THAT ALL TESTIMONY GIVEN TO AN INVESTIGATING COMMITTEE MUST BE GIVEN UNDER OATH, TO PROVIDE THAT WITNESSES TESTIFYING IN FRONT OF AN INVESTIGATING COMMITTEE MAY BE REPRESENTED BY COUNSEL, AND TO PROVIDE THAT WITNESSES ARE GIVEN THE BENEFIT OF ANY PRIVILEGE WHICH THE WITNESS COULD HAVE CLAIMED IN COURT AS A PARTY TO A CIVIL ACTION.

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

SECTION 1. Section 44‑20‑30 of the 1976 Code is amended to read:

“Section 44‑20‑30. As used in this chapter:

(1) ‘Applicant’ means a person who is believed to have mental retardation, one or more related disabilities, one or more head injuries, one or more spinal cord injuries, or an infant at high risk of a developmental disability who has applied for services of the South Carolina Department of Disabilities and Special Needs.

(2)’Client’ is a person who is determined by the Department of Disabilities and Special Needs to have mental retardation, a related disability, head injury, or spinal cord injury and is receiving services or is an infant at risk of having a developmental disability and is receiving services.

(3) ‘Commission’ means the South Carolina Commission on Disabilities and Special Needs, the policy‑making and governing body of the Department of Disabilities and Special Needs.

(4) ‘County disabilities and special needs boards’ means the local public body administering, planning, coordinating, or providing services within a county or combination of counties for persons with mental retardation, related disabilities, head injuries, or spinal cord injuries and recognized by the department.

(5) ‘Day programs’ are programs provided to persons with mental retardation, related disabilities, head injuries, or spinal cord injuries outside of their residences affording development, training, employment, or recreational opportunities as prescribed by the Department of Disabilities and Special Needs.

(6) ‘Department’ means the South Carolina Department of Disabilities and Special Needs.

(7) ‘Director’ means the South Carolina Director of the Department of Disabilities and Special Needs, the chief executive director appointed by the commission.

(8) ‘High risk infant’ means a child less than thirty‑six months of age whose genetic, medical, or environmental history is predictive of a substantially greater risk for a developmental disability than that ~~for~~ of the general population.

(9) ‘Least restrictive environment’ means the surrounding circumstances that provide as little intrusion and disruption from the normal pattern of living as possible.

(10) ‘Improvements’ means the construction~~,~~ and reconstruction of buildings~~,~~ and other permanent improvements for regional centers and other programs provided by the department directly or through contract with county boards of disabilities and special needs, including equipment and the cost of acquiring and improving lands for equipment.

(11) ‘Mental retardation’ means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(12) ‘Disabilities and special needs services’ ~~are~~ means activities designed to achieve the results specified in an individual ~~client”s~~ client’s plan.

(13) ‘Obligations’ means the obligations in the form of notes or bonds or contractual agreements issued or entered into by the commission pursuant to the authorization of this chapter and of Act 1377 of 1968 to provide funds with which to repay the proceeds of capital improvement bonds allocated by the State Budget and Control Board.

(14) ‘Regional residential center’ ~~is~~ means a twenty‑four hour residential facility serving a multi‑county area and designated by the department.

(15) ‘Related disability’ ~~is~~ means a severe, chronic condition found to be closely related to mental retardation or ~~to require~~ a condition that requires treatment similar to that required for persons with mental retardation and must meet the following conditions:

(a) ~~It~~ it is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness found to be closely related to mental retardation because ~~this~~ the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons~~.~~;

(b) ~~It~~ it is manifested before twenty‑two years of age~~.~~;

(c) ~~It~~ it is likely to continue indefinitely~~.~~; and

(d) ~~It~~ it results in substantial functional limitations in three or more of the following areas of major life activity: self‑care, understanding and use of language, learning, mobility, self‑direction, and capacity for independent living.

(16) ‘Residential programs’ ~~are~~ means services providing dwelling places to clients for an extended period of time with assistance for activities of daily living ranging from constant to intermittent supervision as required by the individual client’s needs.

(17) ‘Revenues’ or ‘its revenues’ means revenue derived from paying clients at regional residential centers and community residences but does not include Medicaid, Medicare, or other federal funds received with the stipulation that they be used to provide services to clients.

(18) ‘State capital improvement bonds’ means bonds issued pursuant to Act 1377 of 1968.

(19) ‘State board’ s~~hall mean~~ means the State Budget and Control Board as constituted pursuant to Chapter 11, Title 1.”

SECTION 2. Section 44‑20‑210 of the 1976 Code is amended to read:

“Section 44‑20‑210. ~~(A)~~ There is created the South Carolina Commission on Disabilities and Special Needs. The commission consists of seven members. One member must be a resident of each congressional district and one must be from the state at large to be appointed by the Governor upon the advice and consent of the Senate. ~~They~~ Members shall serve for four years and until their successors are appointed and ~~qualify~~ qualified. Members of the commission are subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240. A vacancy may be filled by the Governor for the unexpired portion of the term.

~~(B) On July 1, 1993, the Commission on Mental Retardation becomes the Commission on Disabilities and Special Needs. The commissioners continue to serve until their terms expire and their successors are appointed and qualify.~~”

SECTION 3. Section 44‑20‑220 of the 1976 Code is amended to read:

“Section 44‑20‑220. The commission shall determine the policy and promulgate regulations governing the operation of the department and the employment of professional staff and personnel. The members of the commission shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions. The commission shall appoint and in its discretion remove a South Carolina Director of Disabilities and Special Needs who is the chief executive officer of the department. The commission may appoint advisory committees it considers necessary to assist in the effective conduct of its responsibilities. The commission may educate the public and state and local officials as to the need for the funding, development, and coordination of services for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The commission is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to mental retardation, related disabilities, head injuries, or spinal cord injuries. ~~In promulgating these regulations, the commission must consult with the advisory committee of the division for which the regulations shall apply.~~”

SECTION 4. Section 44‑20‑230 of the 1976 Code is amended to read:

“Section 44‑20‑230. Subject to the supervision, direction, and control of the commission, the director shall administer the policies and regulations established by the commission. ~~The director may appoint and in his discretion remove all other officers and employees of the department subject to the approval of the commission.~~

SECTION 5. Section 44‑20‑240 of the 1976 Code is amended to read:

“Section 44‑20‑240. There is created the South Carolina Department of Disabilities and Special Needs which has authority over all of the state’s services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. This authority does not include services delivered by other agencies of the State as prescribed by statute. The department must be comprised of a Mental Retardation Division, an Autism Division, and a Head and Spinal Cord Injuries Division. The department may be divided into additional divisions as may be determined by the director and approved and named by the commission. ~~Responsibility for all autistic services is transferred from the Department of Mental Health to the Department of Disabilities and Special Needs.~~”

SECTION 6. Section 44‑20‑350(E) of the 1976 Code is amended to read:

“(E) The department ~~may~~ shall establish by regulation charges for other services it renders.”

SECTION 7. Section 44‑20‑430 of the 1976 Code is amended to read:

“Section 44‑20‑430. The director or his designee has the final authority over applicant eligibility, determination, or services and admission order, subject to ~~policies adopted by the commission~~ regulations promulgated by the department.”

SECTION 8. Section 44‑7‑260(A) of the 1976 Code is amended to read:

“(A) If they provide care for two or more unrelated persons, the following facilities or services may not be established, operated, or maintained in this State without first obtaining a license in the manner provided by this article and regulations promulgated by the department:

(1) hospitals, including general and specialized hospitals;

(2) nursing homes;

(3) residential treatment facilities for children and adolescents;

(4) ambulatory surgical facilities;

(5) chiropractic inpatient facilities;

(6) community residential care facilities;

(7) facilities for chemically dependent or addicted persons;

(8) end‑stage renal dialysis units;

(9) day‑care facilities for adults;

(10) any other facility operating for the diagnosis, treatment, or care of persons suffering from illness, injury or other infirmity and for which the department has adopted standards of operation by regulation~~.~~;

(11) habilitation centers for the mentally retarded or persons with related conditions~~.~~;

(12) freestanding or mobile technology~~.~~;

(13) facilities wherein abortions are performed;

(14) community‑based housing operated or contracted for operation by the South Carolina Department of Disabilities and Special Needs. Community‑based housing operated or contracted for operation by the South Carolina Department of Disabilities and Special Needs that serves children shall be licensed under this article rather than Article 1, Chapter 11 of Title 63;

(15) day programs, as defined in Section 44‑20‑30(5), operated by or contracted for operation by the South Carolina Department of Disabilities and Special Needs.”

SECTION 9. Section 44‑7‑260(B) of the 1976 Code, as last amended by Act 233 of 2008, is further amended to read:

“(B) The licensing provisions of this article do not apply to:

(1) infirmaries for the exclusive use of the student bodies of privately‑owned educational institutions which maintain infirmaries;

(2) ~~community‑based housing sponsored, licensed, or certified by the South Carolina Department of Disabilities and Special Needs. The Department of Disabilities and Special Needs shall provide to the Department of Health and Environmental Control the names and locations of these facilities on a continuing basis; or~~

~~(3)~~ homeshare programs designated by the Department of Mental Health, provided that these programs do not serve more than two persons at each program location, the length of stay does not exceed fourteen consecutive days for one of the two persons, and the temporarily displaced person must be directly transferred from a homeshare program location. The Department of Mental Health shall provide to the Department of Health and Environmental Control the names and locations of these programs on a continuing basis.”

SECTION 10. Article 23, Chapter 7, Title 44 of the 1976 Code is amended to read:

“Article 23

Criminal ~~Record~~ Records Checks of Direct Care Staff

Section 44‑7‑2910. (A)(1) ~~A direct care entity employing or contracting with a direct caregiver shall conduct a criminal record check as provided in this section prior to employing or contracting with the direct caregiver.~~ To be employed by a direct care entity, a person shall first undergo a state criminal records check, supported by fingerprints by the State Law Enforcement Division and a national criminal records check, supported by fingerprints by the Federal Bureau of Investigation. The results of these criminal history background checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. A direct care entity may consider all information revealed by ~~a~~ criminal ~~record check~~ history background checks as a factor in evaluating a direct caregiver’s application to be employed by or contract with the entity.

(2) An employment agency may not furnish employees to a direct care entity without conducting ~~a~~ criminal ~~record check~~ history background checks on each employee. An employee who works in multiple direct care settings must have ~~a~~ criminal ~~record check~~ history background checks on file at the location of the employment agency, the home office of his employer, or at the individual’s primary place of employment.

(B) For purposes of this article:

(1) ‘Direct care entity’ means:

(a) a nursing home, as defined in Section 44‑7‑130;

(b) a daycare facility for adults, as defined in Section 44‑7‑130;

(c) a home health agency, as defined in Section 44‑69‑20;

(d) a community residential care facility, as defined in Section 44‑7‑130;

(e) a residential program or a day program operated by or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

(2) ‘Direct caregiver’ or ‘caregiver’ means:

(a) a registered nurse, licensed practical nurse, or certified nurse assistant;

(b) any other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist;

(c) a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;

(d) a person employed by or under contract with a direct care entity who works within any building housing patients or clients;

(e) a person employed by or under contract with by a direct care entity whose duties include the possibility of patient or client contact.

For purposes of this article, a direct caregiver does not include a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.

~~(C)(1)~~ ~~A direct caregiver applicant shall provide verification of residency for the twelve months preceding the date of the employment application. The direct care entity shall conduct a state criminal record check if the applicant has resided in South Carolina during that twelve‑month period and can verify residency through:~~

~~(a)~~ ~~a driver’s license or identification card issued by the State of South Carolina;~~

~~(b)~~ ~~rent, mortgage, or utility receipts in the applicant’s name for a home within South Carolina;~~

~~(c)~~ ~~pay stubs in the applicant’s name from a business located in South Carolina; or~~

~~(d)~~ ~~bank records in the applicant’s name showing a deposit or checking account held in a South Carolina branch office of a bank.~~

~~(2)~~ ~~A direct care entity unable to verify South Carolina residency for a direct care applicant for the preceding twelve months shall conduct a state criminal record check on the applicant prior to employment and shall commence a federal criminal record check after employment. However, if the direct care entity can verify residency in another state for the preceding twelve months, the direct care entity may conduct only a state criminal record check in the applicant’s resident state or jurisdiction where the applicant previously resided.~~

Section 44‑7‑2920. Criminal ~~record~~ records checks required pursuant to this article must be conducted by the State Law Enforcement Division ~~or by a private business, organization, or association which conducts background checks if that entity utilizes current criminal records obtained from the State Law Enforcement Division or the Federal Bureau of Investigation to determine any criminal record. An applicant shall submit with the application one complete set of the applicant’s fingerprints on forms specified or furnished by the State Law Enforcement Division. Fingerprint cards submitted to the State Law Enforcement Division pursuant to this section must be used to facilitate a national criminal records check, as required by this section~~. The criminal ~~record check is~~ history background checks are not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity; however, if a person is not employed by or is not under contract for one year or longer with a direct care entity, the criminal ~~record check~~ history background checks must be repeated before resuming employment or contracting with a direct care entity. ~~The fee charged by the Federal Bureau of Investigation, if any, for the fingerprint review~~ Costs of conducting criminal history background checks must be paid by the individual direct caregiver or the direct care entity.

Section 44‑7‑2930. A direct care entity may furnish copies of personnel records of current or former direct caregivers to another direct care entity requesting this information. Information contained in the records may include, but is not limited to, disciplinary matters and any reasons for termination. A direct care entity releasing these records pursuant to this section is presumed to be acting in good faith and is immune from civil and criminal liability which otherwise may result by reason of releasing this information. A direct care entity receiving records pursuant to this section shall conduct its own criminal ~~record check~~ history background checks pursuant to this article.

Section 44‑7‑2940. The Department of Health and Environmental Control shall verify that a direct care entity is conducting criminal ~~record~~ history background checks as required in this article before the department issues a renewal license for the direct care entity. ~~The department shall act as the channeling agency for any federal criminal record checks required by this article.~~

Section 44‑7‑2950. An individual who violates this article, or a regulation promulgated pursuant to this article, is subject to a civil fine of one hundred dollars for the first violation and five hundred dollars for each subsequent violation. A fine imposed pursuant to this section must be paid before a direct care entity’s license is renewed. Fines collected pursuant to this section must be retained by the department to help offset the costs associated with carrying out the department’s responsibilities under this article.”

SECTION 11. Section 44‑20‑225 and Article 5, Chapter 20, Title 44 of the 1976 Code are repealed.

SECTION 12. A. Title 2 of the 1976 Code is amended by adding:

“CHAPTER 2

Legislative Oversight of Executive Departments

Section 2‑2‑5. The General Assembly finds and declares the following to be the public policy of the State of South Carolina:

(1) Section 1 of Article XII of the constitution of this State requires the General Assembly to provide for appropriate agencies to function in the areas of health, welfare, and safety and to determine the activities, powers, and duties of these agencies and departments.

(2) This constitutional duty is a continuing and ongoing obligation of the General Assembly that is best addressed by periodic review of the programs of the agencies and departments and their responsiveness to the needs of the state’s citizens by the standing committees of the State Senate or House of Representatives.

Section 2‑2‑10. As used in this chapter:

(1) ‘Agency’ means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive or judicial departments of state government, including administrative bodies. ‘Agency’ includes a body corporate and politic established as an instrumentality of the State. ‘Agency’ does not include:

(a) the legislative department of state government; or

(b) a political subdivision.

(2) ‘Investigating committee’ means any standing committee or subcommittee of a standing committee exercising its authority to conduct an oversight study and investigation of an agency within the standing committee’s subject matter jurisdiction.

(3) ‘Program evaluation report’ means a report compiled by an agency at the request of an investigating committee that may include, but is not limited to, a review of agency management and organization, program delivery, agency goals and objectives, compliance with its statutory mandate, and fiscal accountability.

(4) ‘Request for information’ means a list of questions that an investigating committee serves on a department or agency under investigation. The questions may relate to any matters concerning the department or agency’s actions that are the subject of the investigation.

(5) ‘Standing committee’ means a permanent committee with a regular meeting schedule and designated subject matter jurisdiction that is authorized by the Rules of the Senate or the Rules of the House of Representatives.

Section 2‑2‑20. (A) Beginning January 1, 2011, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee’s subject matter jurisdiction at least once every five years in accordance with a schedule adopted as provided in this chapter.

(B) The purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee:

(1) are being implemented and carried out in accordance with the intent of the General Assembly; and

(2) should be continued, curtailed, or eliminated.

(C) The oversight studies and investigations must consider:

(1) the application, administration, execution, and effectiveness of laws and programs addressing subjects within the standing committee’s subject matter jurisdiction;

(2) the organization and operation of state agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within the standing committee’s subject matter jurisdiction; and

(3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within the standing committee’s subject matter jurisdiction.

Section 2‑2‑30. (A) The procedure for conducting the oversight studies and investigations is provided in this section.

(B)(1) The Rules of the Senate shall determine the agencies for which each standing committee shall conduct oversight studies and investigations. A proposed five‑year review schedule must be published in the Senate Journal on the first day of session each year.

(2) In order to accomplish the requirements of this chapter, the chairman of each standing committee shall schedule oversight studies and investigations for the agencies for which his standing committee is the investigating committee and may:

(a) coordinate schedules for conducting oversight studies and investigations with the chairmen of other standing committees; and

(b) appoint joint investigating committees to conduct the oversight studies and investigations including, but not limited to, joint committees of the Senate and House of Representatives or joint standing committees of concurrent subject matter jurisdiction within the Senate or within the House of Representatives.

(3) Chairmen of standing committees having concurrent subject matter jurisdiction over an agency or the programs and law governing an agency by virtue of the Rules of the Senate or Rules of the House of Representatives, may request that a joint investigating committee be appointed to conduct the oversight study and investigation for an agency.

(C)(1) The Speaker of the House of Representatives, upon consulting with the chairmen of the standing committees in the House of Representatives and the Clerk of the House of Representatives, shall determine the agencies for which each standing committee shall conduct oversight studies and investigations. A proposed five‑year review schedule must be published in the House Journal on the first day of session each year.

(2) In order to accomplish the requirements of this chapter, the chairman of each standing committee shall schedule oversight studies and investigations for the agencies for which his standing committee is the investigating committee and may:

(a) coordinate schedules for conducting oversight studies and investigations with the chairmen of other standing committees; and

(b) appoint joint investigating committees to conduct the oversight studies and investigations including, but not limited to, joint committees of the Senate and House of Representatives or joint standing committees of concurrent subject matter jurisdiction within the Senate or within the House of Representatives.

(3) Chairmen of standing committees having concurrent subject matter jurisdiction over an agency or the programs and law governing an agency by virtue of the Rules of the Senate or Rules of the House of Representatives, may request that a joint investigating committee be appointed to conduct the oversight study and investigation for the agency.

(D) The chairman of an investigating committee may vest the standing committee’s full investigative power and authority in a subcommittee. A subcommittee conducting an oversight study and investigation of an agency:

(1) shall make a full report of its findings and recommendations to the standing committee at the conclusion of its oversight study and investigation, and

(2) shall not consist of fewer than three members.

Section 2‑2‑40. (A) In addition to the scheduled five‑year oversight studies and investigations, a standing committee of the Senate or the House of Representatives may by one‑third vote of the standing committee’s membership initiate an oversight study and investigation of an agency within its subject matter jurisdiction. The motion calling for the oversight study and investigation must state the subject matter and scope of the oversight study and investigation. The oversight study and investigation must not exceed the scope stated in the motion or the scope of the information uncovered by the investigation.

(B) Nothing in the provisions of this chapter prohibits or restricts the President Pro Tempore of the Senate, the Speaker of the House of Representatives, or chairmen of standing committees from fulfilling their constitutional obligations by authorizing and conducting legislative investigations into agencies’ functions, duties, and activities.

Section 2‑2‑50. When an investigating committee conducts an oversight study and investigation or a legislative investigation is conducted pursuant to Section 2‑2‑40(B), evidence or information related to the investigation may be acquired by any lawful means, including, but not limited to:

(A) serving a request for information on the agency being studied or investigated. The request for information must be answered separately and fully in writing under oath and returned to the investigating committee within forty‑five days after being served upon the department or agency. The time for answering a request for information may be extended for a period to be agreed upon by the investigating committee and the agency for good cause shown. The head of the department or agency shall sign the answers verifying them as true and correct. If any question contains a request for records, policies, audio or video recordings, or other documents, the question is not considered to have been answered unless a complete set of records, policies, audio or video recordings or other documents is included with the answer;

(B) deposing witnesses upon oral examination. A deposition upon oral examination may be taken from any person that the investigating committee has reason to believe has knowledge of the activities under investigation. The investigating committee shall provide the person being deposed and the agency under investigation with no less than ten days notice of the deposition. The notice to the agency shall state the time and place for taking the deposition and name and address of each person to be examined. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice. The deposition must be taken under oath administered by the chairman of the investigating committee or his designee. The testimony must be taken stenographically or recorded by some other means and may be videotaped. A person may be compelled to attend a deposition in the county in which he resides or in Richland County;

(C) issuing subpoenas and subpoenas duces tecum pursuant to Chapter 69 of this title; and

(D) requiring the agency to prepare and submit to the investigating committee a program evaluation report by a date specified by the investigating committee. The investigating committee shall specify the agency program or programs or agency operations that it is studying or investigating and the information to be contained in the program evaluation report.

Section 2‑2‑60. (A) An investigating committee’s request for a program evaluation report must contain:

(1) the agency program or operations that it intends to investigate;

(2) the information that must be included in the report; and

(3) the date that the report must be submitted to the committee.

(B) An investigating committee may request that the program evaluation report contain any of the following information:

(1) enabling or authorizing law or other relevant mandate, including any federal mandates;

(2) a description of each program administered by the agency identified by the investigating committee in the request for a program evaluation report, including the following information:

(a) established priorities, including goals and objectives in meeting each priority;

(b) performance criteria, timetables, or other benchmarks used by the agency to measure its progress in achieving its goals and objectives;

(c) an assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet them in the future;

(3) organizational structure, including a position count, job classification, and organization flow chart indicating lines of responsibility;

(4) financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the last ten years;

(5) identification of areas where the agency has coordinated efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;

(6) identification of the constituencies served by the agency or program, noting any changes or projected changes in the constituencies;

(7) a summary of efforts by the agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;

(8) identification of emerging issues for the agency;

(9) a comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;

(10) agency policies for collecting, managing, and using personal information over the Internet and nonelectronically, information on the agency’s implementation of information technologies;

(11) a list of reports, applications, and other similar paperwork required to be filed with the agency by the public. The list must include:

(a) the statutory authority for each filing requirement;

(b) the date each filing requirement was adopted or last amended by the agency;

(c) the frequency that filing is required;

(d) the number of filings received annually for the last five years and the number of anticipated filings for the next five years;

(e) a description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication;

(12) any other relevant information specifically requested by the investigating committee.

(C) All information contained in a program evaluation report must be presented in a concise and complete manner.

(D) The chairman of the investigating committee may direct the Legislative Audit Council to perform a study of the program evaluation report and report its findings to the investigating committee. The chairman also may direct the Legislative Audit Council to perform its own audit of the program or operations being studied or investigated by the investigating committee.

(E) A state agency that is vested with revenue bonding authority may submit annual reports and annual external audit reports conducted by a third party in lieu of a program evaluation report.

Section 2‑2‑70. All testimony given to the investigating committee must be under oath.

Section 2‑2‑80. Any witness testifying before or deposed by the investigating committee may have counsel present to advise him. The witness or his counsel may, during the time of testimony or deposition, object to any question detrimental to the witness’ interests and is entitled to have a ruling by the chairman on any objection. In making his ruling, the chairman of the investigating committee shall follow as closely as possible the procedures and rules of evidence observed by the circuit courts of this State.

Section 2‑2‑90. A witness shall be given the benefit of any privilege which he may have claimed in court as a party to a civil action.

Section 2‑2‑100. A person who appears before a committee or subcommittee of either house, pursuant to this chapter, and wilfully gives false, misleading, or incomplete testimony under oath is guilty of a felony punishable by a fine within the discretion of the court or for a term of imprisonment of not more than five years, or both.

Section 2‑2‑110. If a person violates Section 2‑2‑100, it is the duty of the chair of the committee or subcommittee before which the false, misleading, or incomplete testimony was given, to notify the Attorney General of South Carolina who shall cause charges to be filed in the appropriate county.”

B. This SECTION takes effect January 1, 2011.

SECTION 13. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND SECTIONS 1‑30‑35, 44‑20‑30, 44‑20‑210, 44‑20‑220, 44‑20‑225, 44‑20‑240, 44‑20‑320, 44‑20‑350, 44‑20‑360, 44‑20‑430, 44‑20‑1120, 44‑20‑1130, 44‑20‑1140, 44‑20‑1150, 44‑20‑1160, 44‑20‑1170, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO PROVIDE THAT THE DEPARTMENT IS HEADED AND GOVERNED BY A DIRECTOR APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, AND THAT THE SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS SERVES AS AN ADVISORY BOARD TO THE DIRECTOR; AND TO REPEAL SECTION 44‑20‑230 RELATING TO POWERS AND DUTIES OF THE DIRECTOR.

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

SECTION 1. Section 1‑30‑35 of the 1976 Code is amended to read:

“Section 1‑30‑35. 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~~ must be administered as part of the Department of Disabilities and Special Needs to be initially divided into divisions for Mental Retardation, Head and Spinal Cord Injury, and Autism~~; provided, however, that the board of the former Department of Mental Retardation as constituted on June 30, 1993, and thereafter, under the provisions of Section 44‑19‑10, et seq., shall be the governing authority for the department~~. Beginning July 1, 2009, the department must be headed and governed by a director appointed by the Governor in the manner provided by Section 1‑30‑10(b), and the South Carolina Commission on Disabilities and Special Needs shall become an advisory board to the department on this date in the manner provided by law.

(A) Department of Mental Health Autism programs, formerly provided for at Section 44‑9‑10, et seq.;

(B) Head and Spinal Cord Injury Information System, formerly provided for at Section 44‑38‑10, et seq.;

(C) Department of Mental Retardation, formerly provided for at Section 44‑19‑10, et seq.”

SECTION 2. Section 44‑20‑30 of the 1976 Code is amended to read:

“Section 44‑20‑30. As used in this chapter:

(1) ‘Applicant’ means a person who is believed to have mental retardation, one or more related disabilities, one or more head injuries, one or more spinal cord injuries, or an infant at high risk of a developmental disability who has applied for services of the South Carolina Department of Disabilities and Special Needs.

(2)’Client’ is a person who is determined by the Department of Disabilities and Special Needs to have mental retardation, a related disability, head injury, or spinal cord injury and is receiving services or is an infant at risk of having a developmental disability and is receiving services.

(3) ‘Commission’ means the South Carolina Commission on Disabilities and Special Needs, ~~the policy‑making and governing body~~ an advisory board of the Department of Disabilities and Special Needs.

(4) ‘County disabilities and special needs boards’ means the local public body administering, planning, coordinating, or providing services within a county or combination of counties for persons with mental retardation, related disabilities, head injuries, or spinal cord injuries and recognized by the department.

(5) ‘Day programs’ are programs provided to persons with mental retardation, related disabilities, head injuries, or spinal cord injuries outside of their residences affording development, training, employment, or recreational opportunities as prescribed by the Department of Disabilities and Special Needs.

(6) ‘Department’ means the South Carolina Department of Disabilities and Special Needs.

(7) ‘Director’ means the ~~South Carolina Director of the Department of Disabilities and Special Needs, the chief executive director appointed by the commission~~ administrative head of the department, appointed by the Governor with the advice and consent of the Senate. The director serves at the pleasure of the Governor and may be removed by the Governor pursuant to Section 1‑3‑240(b).

(8) ‘High risk infant’ means a child less than thirty‑six months of age whose genetic, medical, or environmental history is predictive of a substantially greater risk for a developmental disability than that ~~for~~ of the general population.

(9) ‘Least restrictive environment’ means the surrounding circumstances that provide as little intrusion and disruption from the normal pattern of living as possible.

(10) ‘Improvements’ means the construction~~,~~ and reconstruction of buildings~~,~~ and other permanent improvements for regional centers and other programs provided by the department directly or through contract with county boards of disabilities and special needs, including equipment and the cost of acquiring and improving lands for equipment.

(11) ‘Mental retardation’ means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(12) ‘Disabilities and special needs services’ ~~are~~ means activities designed to achieve the results specified in an individual ~~client”s~~ client’s plan.

(13) ‘Obligations’ means the obligations in the form of notes or bonds or contractual agreements issued or entered into by the ~~commission~~ director pursuant to the authorization of this chapter and of Act 1377 of 1968 to provide funds with which to repay the proceeds of capital improvement bonds allocated by the State Budget and Control Board.

(14) ‘Regional residential center’ ~~is~~ means a twenty‑four hour residential facility serving a multi‑county area and designated by the department.

(15) ‘Related disability’ ~~is~~ means a severe, chronic condition found to be closely related to mental retardation or ~~to require~~ a condition that requires treatment similar to that required for persons with mental retardation and must meet the following conditions:

(a) ~~It~~ it is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness found to be closely related to mental retardation because ~~this~~ the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons~~.~~;

(b) ~~It~~ it is manifested before twenty‑two years of age~~.~~;

(c) ~~It~~ it is likely to continue indefinitely~~.~~; and

(d) ~~It~~ it results in substantial functional limitations in three or more of the following areas of major life activity: self‑care, understanding and use of language, learning, mobility, self‑direction, and capacity for independent living.

(16) ‘Residential programs’ ~~are~~ means services providing dwelling places to clients for an extended period of time with assistance for activities of daily living ranging from constant to intermittent supervision as required by the individual client’s needs.

(17) ‘Revenues’ or ‘its revenues’ means revenue derived from paying clients at regional residential centers and community residences but does not include Medicaid, Medicare, or other federal funds received with the stipulation that they be used to provide services to clients.

(18) ‘State capital improvement bonds’ means bonds issued pursuant to Act 1377 of 1968.

(19) ‘State board’ s~~hall mean~~ means the State Budget and Control Board as constituted pursuant to Chapter 11, Title 1.”

SECTION 3. Section 44‑20‑210 of the 1976 Code is amended to read:

“Section 44‑20‑210. (A) There is created the South Carolina Commission on Disabilities and Special Needs. The commission serves as an advisory board to the department and consists of seven members. One member must be a resident of each congressional district and one must be from the state at large to be appointed by the Governor upon the advice and consent of the Senate. ~~They~~ Members shall serve for four years and until their successors are appointed and ~~qualify~~ qualified. Members of the commission are subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240. A vacancy may be filled by the Governor for the unexpired portion of the term.

(B) On July 1, 1993, the Commission on Mental Retardation becomes the Commission on Disabilities and Special Needs. The commissioners continue to serve until their terms expire and their successors are appointed and ~~qualify~~ qualified.”

SECTION 4. Section 44‑20‑220 of the 1976 Code is amended to read:

“Section 44‑20‑220. The ~~commission~~ director shall determine the policy and promulgate regulations governing the operation of the department and the employment of professional staff and personnel. The members of the commission shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions. ~~The commission shall appoint and in its discretion remove a South Carolina Director of Disabilities and Special Needs who is the chief executive officer of the department.~~ The ~~commission~~ director may appoint additional advisory committees it considers necessary to assist in the effective conduct of its responsibilities. The director may appoint and remove other officers and employees of the department in his discretion. The ~~commission~~ director may educate the public and state and local officials as to the need for the funding, development, and coordination of services for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The ~~commission~~ director is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to mental retardation, related disabilities, head injuries, or spinal cord injuries. In promulgating these regulations, the ~~commission~~ director must consult with the advisory committee of the division for which the regulations ~~shall~~ apply.”

SECTION 5. Section 44‑20‑225 of the 1976 Code is amended to read:

“Section 44‑20‑225. The Governor shall appoint a seven‑member consumer advisory board with the advice and consent of the Senate for each of the following divisions: the Mental Retardation Division, the Autism Division, and the Head and Spinal Cord Injury Division. One member must be a resident of each congressional district, and one must be from the State at large.

The membership of each advisory board must consist of persons with knowledge and expertise in the subject area of that division. In making such 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.

The members of the ~~commission~~ advisory board shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions.

Terms of the members ~~shall~~ must be for four years and until their successors are appointed and ~~qualify~~ qualified, except that of the original appointees, two ~~shall~~ must be appointed for a period of two years, two ~~shall~~ must be appointed for a period of three years, and three ~~shall~~ must be appointed for a period of four years.”

SECTION 6. Section 44‑20‑240 of the 1976 Code is amended to read:

“Section 44‑20‑240. There is created the South Carolina Department of Disabilities and Special Needs which has authority over all of the state’s services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. This authority does not include services delivered by other agencies of the State as prescribed by statute. The department must be comprised of a Mental Retardation Division, an Autism Division, and a Head and Spinal Cord Injuries Division. The department may be divided into additional divisions and named as may be determined by the director ~~and approved and named by the commission~~. Responsibility for all autistic services is transferred from the Department of Mental Health to the Department of Disabilities and Special Needs.”

SECTION 7. Section 44‑20‑320 of the 1976 Code is amended to read:

“Section 44‑20‑320. The department or any of its programs may accept gifts, bequests, devises, grants, and donations of money, real property, and personal property for use in expanding and improving services to persons with mental retardation, related disabilities, head injuries, and spinal cord injuries available to the people of this State. However, nothing may be accepted by the department with the understanding that it diminishes an obligation for paying care and maintenance charges or other ~~monies~~ funds due the department for services rendered. The ~~commission~~ director may formulate policies and promulgate regulations governing the disposition of gifts, bequests, devises, grants, and donations. If they are given to a specific service program of the department they must remain and be used for that program only or to its successor program.”

SECTION 8. Section 44‑20‑350 of the 1976 Code is amended to read:

“Section 44‑20‑350. (A) Reasonable reimbursement to the State for its fiscal outlay on behalf of services rendered by the department or any other agency authorized by the department to offer services to clients is a just obligation of the person with mental retardation, a related disability, head injury, or spinal cord injury, his estate, or his parent or guardian under the conditions and terms provided in this section.

(B) The department or an agency authorized by the department to offer services to clients may charge for its services. However, no service may be denied a client or his parent or guardian because of inability to pay part or all of the department’s or other agency’s expenses in providing that service. Where federal reimbursement is authorized for services provided, the department initially shall seek federal reimbursement. No charge or combination of charges may exceed the actual cost of services rendered. The ~~commission~~ director shall approve the procedures established to determine ability to pay and may authorize its designees to reduce or waive charges based upon its findings.

(C) Parents, guardians, or other responsible relatives must not be charged for regional center or community residential services provided by the department for their child or ward. However, a person receiving nonresidential services or his parent or guardian may be assessed a charge for services received, not to exceed cost. The department ~~with the approval of the commission~~ may determine for which services it charges.

(D) The department shall establish a hearing and review procedure so that a client or his parent or guardian may appeal charges made for services or may present to officials of the department information or evidence to be considered in establishing charges. The department may utilize legal procedures to collect lawful claims.

(E) The department may establish by regulation charges for other services it renders.”

SECTION 9. Section 44‑20‑360 of the 1976 Code is amended to read:

“Section 44‑20‑360. (A) The physical boundaries of Midlands Center, Coastal Center, Pee Dee Center, and Whitten Center are designated as independent school districts. These facilities may elect to participate in the usual activities of the districts, to receive state and federal aid, and to utilize other benefits enjoyed by independent school districts in general.

(B) The ~~commission~~ director operates as ~~the board of trustees~~ trustee for these districts for administrative purposes, including the receipt and expenditure of funds granted to these districts for any purpose.”

SECTION 10. Section 44‑20‑430 of the 1976 Code is amended to read:

“Section 44‑20‑430. The director or his designee has the final authority over applicant eligibility, determination, or services and admission order~~, subject to policies adopted by the commission~~.”

SECTION 11. Section 44‑20‑1120 of the 1976 Code is amended to read:

“Section 44‑20‑1120. The ~~commission~~ director may raise ~~monies~~ funds for the construction of improvements under the terms and conditions of this article.”

SECTION 12. Section 44‑20‑1130 of the 1976 Code is amended to read:

“Section 44‑20‑1130. The aggregate of the outstanding principal amounts of state capital improvement bonds issued for the ~~commission~~ director may not exceed twenty million dollars.”

SECTION 13. Section 44‑20‑1140 of the 1976 Code is amended to read:

“Section 44‑20‑1140. If the ~~commission~~ director determines that improvements are required for a residential regional center or community facility, ~~it~~ he may make application for them to the State Budget and Control Board. The application must contain:

(1) a description of the improvements sought and their estimated cost;

(2) the number of paying clients receiving services from the department, the amount of fees received from the clients during the preceding fiscal year, and the estimated amount to be received from them during the next succeeding fiscal year;

(3) the revenues derived from the paying clients during the preceding three fiscal years;

(4) a suggested maturity schedule, which may not exceed twenty years, for the repayment of ~~monies~~ funds to be made available to the ~~commission~~ director for state capital improvement bonds; and

(5) a statement showing the debt service requirements of other outstanding obligations.”

SECTION 14. Section 44‑20‑1150 of the 1976 Code is amended to read:

“Section 44‑20‑1150. The State Budget and Control Board may approve, in whole or in part, or may modify an application received from the ~~commission~~ director. If it finds that a need for the improvements sought by the ~~commission~~ director exists, it may contract to make available to the ~~commission~~ director funds to be realized from the sale of state capital improvements bonds if it finds that the revenues for the preceding fiscal year, if multiplied by the number of years, which may not exceed twenty, contemplated by the suggested or revised maturity schedule for the repayment of the ~~monies~~ funds to be made available to the ~~commission~~ director, result in the production of a sum equal to not less than one hundred twenty‑five percent of the aggregate principal and interest requirement of all outstanding obligations and all obligations to be incurred by the ~~commission~~ director.”

SECTION 15. Section 44‑20‑1160 of the 1976 Code is amended to read:

“Section 44‑20‑1160. Upon receiving the approval of the State Budget and Control Board the ~~commission~~ director shall obligate ~~itself~~ himself to apply all ~~monies~~ funds derived from ~~its~~ the revenues to the payment of the principal and interest of ~~its~~ the outstanding obligations and those to be issued and to deliver to the ~~board~~ State Budget and Control Board ~~its~~ the obligations.”

SECTION 16. Section 44‑20‑1170 of the 1976 Code is amended to read:

“Section 44‑20‑1170. (A) Following the execution and delivery of its obligations, the ~~commission~~ director shall remit to the State Treasurer all ~~its~~ revenues, including accumulated revenues not applicable to prior obligations, for credit to a special fund. The special fund must be applied to meet the sums due by the ~~commission~~ director ~~under its obligations~~. These ~~monies~~ funds from the special fund must be applied by the State Treasurer to the payment of the principal of and interest on outstanding state capital improvement bonds.

(B) If the accumulation of revenues of the ~~commission~~ director in the special fund exceeds the payment due or to become due during the then current fiscal year and an additional sum equal to the maximum annual debt service requirement of the obligations for a succeeding fiscal year, the State Budget and Control Board may permit the ~~commission~~ director to withdraw the excess and apply it to improvements that have received the approval of the ~~board~~ State Budget and Control Board or to transfer the excess out of the special fund for contract awards to local disabilities and special needs boards for needed improvements at the local level and for nonrecurring prevention, assistive technology, and quality initiatives at the regional centers and local boards.”

SECTION 17. Section 44‑20‑230 of the 1976 Code is repealed.

SECTION 18. A. Title 2 of the 1976 Code is amended by adding:

“CHAPTER 2

Legislative Oversight of Executive Departments

Section 2‑2‑5. The General Assembly finds and declares the following to be the public policy of the State of South Carolina:

(1) Section 1 of Article XII of the constitution of this State requires the General Assembly to provide for appropriate agencies to function in the areas of health, welfare, and safety and to determine the activities, powers, and duties of these agencies and departments.

(2) This constitutional duty is a continuing and ongoing obligation of the General Assembly that is best addressed by periodic review of the programs of the agencies and departments and their responsiveness to the needs of the state’s citizens by the standing committees of the State Senate or House of Representatives.

Section 2‑2‑10. As used in this chapter:

(1) ‘Agency’ means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive or judicial departments of state government, including administrative bodies. ‘Agency’ includes a body corporate and politic established as an instrumentality of the State. ‘Agency’ does not include:

(a) the legislative department of state government; or

(b) a political subdivision.

(2) ‘Investigating committee’ means any standing committee or subcommittee of a standing committee exercising its authority to conduct an oversight study and investigation of an agency within the standing committee’s subject matter jurisdiction.

(3) ‘Program evaluation report’ means a report compiled by an agency at the request of an investigating committee that may include, but is not limited to, a review of agency management and organization, program delivery, agency goals and objectives, compliance with its statutory mandate, and fiscal accountability.

(4) ‘Request for information’ means a list of questions that an investigating committee serves on a department or agency under investigation. The questions may relate to any matters concerning the department or agency’s actions that are the subject of the investigation.

(5) ‘Standing committee’ means a permanent committee with a regular meeting schedule and designated subject matter jurisdiction that is authorized by the Rules of the Senate or the Rules of the House of Representatives.

Section 2‑2‑20. (A) Beginning January 1, 2011, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee’s subject matter jurisdiction at least once every five years in accordance with a schedule adopted as provided in this chapter.

(B) The purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee:

(1) are being implemented and carried out in accordance with the intent of the General Assembly; and

(2) should be continued, curtailed, or eliminated.

(C) The oversight studies and investigations must consider:

(1) the application, administration, execution, and effectiveness of laws and programs addressing subjects within the standing committee’s subject matter jurisdiction;

(2) the organization and operation of state agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within the standing committee’s subject matter jurisdiction; and

(3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within the standing committee’s subject matter jurisdiction.

Section 2‑2‑30. (A) The procedure for conducting the oversight studies and investigations is provided in this section.

(B)(1) The President Pro Tempore of the Senate, upon consulting with the chairmen of the standing committees in the Senate and the Clerk of the Senate, shall determine the agencies for which each standing committee shall conduct oversight studies and investigations. A proposed five‑year review schedule must be published in the Senate Journal on the first day of session each year.

(2) In order to accomplish the requirements of this chapter, the chairman of each standing committee shall schedule oversight studies and investigations for the agencies for which his standing committee is the investigating committee and may:

(a) coordinate schedules for conducting oversight studies and investigations with the chairmen of other standing committees; and

(b) appoint joint investigating committees to conduct the oversight studies and investigations including, but not limited to, joint committees of the Senate and House of Representatives or joint standing committees of concurrent subject matter jurisdiction within the Senate or within the House of Representatives.

(3) Chairmen of standing committees having concurrent subject matter jurisdiction over an agency or the programs and law governing an agency by virtue of the Rules of the Senate or Rules of the House of Representatives, may request that a joint investigating committee be appointed to conduct the oversight study and investigation for an agency.

(C)(1) The Speaker of the House of Representatives, upon consulting with the chairmen of the standing committees in the House of Representatives and the Clerk of the House of Representatives, shall determine the agencies for which each standing committee shall conduct oversight studies and investigations. A proposed five‑year review schedule must be published in the House Journal on the first day of session each year.

(2) In order to accomplish the requirements of this chapter, the chairman of each standing committee shall schedule oversight studies and investigations for the agencies for which his standing committee is the investigating committee and may:

(a) coordinate schedules for conducting oversight studies and investigations with the chairmen of other standing committees; and

(b) appoint joint investigating committees to conduct the oversight studies and investigations including, but not limited to, joint committees of the Senate and House of Representatives or joint standing committees of concurrent subject matter jurisdiction within the Senate or within the House of Representatives.

(3) Chairmen of standing committees having concurrent subject matter jurisdiction over an agency or the programs and law governing an agency by virtue of the Rules of the Senate or Rules of the House of Representatives, may request that a joint investigating committee be appointed to conduct the oversight study and investigation for the agency.

(D) The chairman of an investigating committee may vest the standing committee’s full investigative power and authority in a subcommittee. A subcommittee conducting an oversight study and investigation of an agency:

(1) shall make a full report of its findings and recommendations to the standing committee at the conclusion of its oversight study and investigation, and

(2) shall not consist of fewer than three members.

Section 2‑2‑40. (A) In addition to the scheduled five‑year oversight studies and investigations, a standing committee of the Senate or the House of Representatives may by one‑third vote of the standing committee’s membership initiate an oversight study and investigation of an agency within its subject matter jurisdiction. The motion calling for the oversight study and investigation must state the subject matter and scope of the oversight study and investigation. The oversight study and investigation must not exceed the scope stated in the motion or the scope of the information uncovered by the investigation.

(B) Nothing in the provisions of this chapter prohibits or restricts the President Pro Tempore of the Senate, the Speaker of the House of Representatives, or chairmen of standing committees from fulfilling their constitutional obligations by authorizing and conducting legislative investigations into agencies’ functions, duties, and activities.

Section 2‑2‑50. When an investigating committee conducts an oversight study and investigation or a legislative investigation is conducted pursuant to Section 2‑2‑40(B), evidence or information related to the investigation may be acquired by any lawful means, including, but not limited to:

(A) serving a request for information on the agency being studied or investigated. The request for information must be answered separately and fully in writing under oath and returned to the investigating committee within forty‑five days after being served upon the department or agency. The time for answering a request for information may be extended for a period to be agreed upon by the investigating committee and the agency for good cause shown. The head of the department or agency shall sign the answers verifying them as true and correct. If any question contains a request for records, policies, audio or video recordings, or other documents, the question is not considered to have been answered unless a complete set of records, policies, audio or video recordings or other documents is included with the answer;

(B) deposing witnesses upon oral examination. A deposition upon oral examination may be taken from any person that the investigating committee has reason to believe has knowledge of the activities under investigation. The investigating committee shall provide the person being deposed and the agency under investigation with no less than ten days notice of the deposition. The notice to the agency shall state the time and place for taking the deposition and name and address of each person to be examined. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice. The deposition must be taken under oath administered by the chairman of the investigating committee or his designee. The testimony must be taken stenographically or recorded by some other means and may be videotaped. A person may be compelled to attend a deposition in the county in which he resides or in Richland County;

(C) issuing subpoenas and subpoenas duces tecum pursuant to Chapter 69 of this title; and

(D) requiring the agency to prepare and submit to the investigating committee a program evaluation report by a date specified by the investigating committee. The investigating committee shall specify the agency program or programs or agency operations that it is studying or investigating and the information to be contained in the program evaluation report.

Section 2‑2‑60. (A) An investigating committee’s request for a program evaluation report must contain:

(1) the agency program or operations that it intends to investigate;

(2) the information that must be included in the report; and

(3) the date that the report must be submitted to the committee.

(B) An investigating committee may request that the program evaluation report contain any of the following information:

(1) enabling or authorizing law or other relevant mandate, including any federal mandates;

(2) a description of each program administered by the agency identified by the investigating committee in the request for a program evaluation report, including the following information:

(a) established priorities, including goals and objectives in meeting each priority;

(b) performance criteria, timetables, or other benchmarks used by the agency to measure its progress in achieving its goals and objectives;

(c) an assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet them in the future;

(3) organizational structure, including a position count, job classification, and organization flow chart indicating lines of responsibility;

(4) financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the last ten years;

(5) identification of areas where the agency has coordinated efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;

(6) identification of the constituencies served by the agency or program, noting any changes or projected changes in the constituencies;

(7) a summary of efforts by the agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;

(8) identification of emerging issues for the agency;

(9) a comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;

(10) agency policies for collecting, managing, and using personal information over the Internet and nonelectronically, information on the agency’s implementation of information technologies;

(11) a list of reports, applications, and other similar paperwork required to be filed with the agency by the public. The list must include:

(a) the statutory authority for each filing requirement;

(b) the date each filing requirement was adopted or last amended by the agency;

(c) the frequency that filing is required;

(d) the number of filings received annually for the last five years and the number of anticipated filings for the next five years;

(e) a description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication;

(12) any other relevant information specifically requested by the investigating committee.

(C) All information contained in a program evaluation report must be presented in a concise and complete manner.

(D) The chairman of the investigating committee may direct the Legislative Audit Council to perform a study of the program evaluation report and report its findings to the investigating committee. The chairman also may direct the Legislative Audit Council to perform its own audit of the program or operations being studied or investigated by the investigating committee.

(E) A state agency that is vested with revenue bonding authority may submit annual reports and annual external audit reports conducted by a third party in lieu of a program evaluation report.

Section 2‑2‑70. All testimony given to the investigating committee must be under oath.

Section 2‑2‑80. Any witness testifying before or deposed by the investigating committee may have counsel present to advise him. The witness or his counsel may, during the time of testimony or deposition, object to any question detrimental to the witness’ interests and is entitled to have a ruling by the chairman on any objection. In making his ruling, the chairman of the investigating committee shall follow as closely as possible the procedures and rules of evidence observed by the circuit courts of this State.

Section 2‑2‑90. A witness shall be given the benefit of any privilege which he may have claimed in court as a party to a civil action.

Section 2‑2‑100. A person who appears before a committee or subcommittee of either house, pursuant to this chapter, and wilfully gives false, misleading, or incomplete testimony under oath is guilty of a felony punishable by a fine within the discretion of the court or for a term of imprisonment of not more than five years, or both.

Section 2‑2‑110. If a person violates Section 2‑2‑100, it is the duty of the chair of the committee or subcommittee before which the false, misleading, or incomplete testimony was given, to notify the Attorney General of South Carolina who shall cause charges to be filed in the appropriate county.”

B. This SECTION takes effect July 1, 2009.

SECTION 19. This act takes effect upon approval by the Governor.

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