**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1162**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Grooms, Gregory, Campbell and Rose

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Introduced in the Senate on January 31, 2012

Currently residing in the Senate

Summary: Definitions relating to the Department of Transportation

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/31/2012 Senate Introduced and read first time ([Senate Journal‑page 9](file:///h:\sj%20archive\2012\01-31-12.docx))

1/31/2012 Senate Referred to Committee on **Transportation** ([Senate Journal‑page 9](file:///h:\sj%20archive\2012\01-31-12.docx))

3/29/2012 Senate Committee report: Majority favorable with amend., minority unfavorable **Transportation** ([Senate Journal‑page 8](file:///h:\sj%20archive\2012\03-29-12.docx))

3/30/2012 Scrivener's error corrected

**VERSIONS OF THIS BILL**

[1/31/2012](file:///p:\pprever\2011-12\1162_20120131.docx)

[3/29/2012](file:///p:\pprever\2011-12\1162_20120329.docx)

[3/30/2012](file:///p:\pprever\2011-12\1162_20120330.docx)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 29, 2012

**S. 1162**

Introduced by Senators Grooms, Gregory, Campbell and Rose

S. Printed 3/29/12--S. [SEC 3/30/12 3:22 PM]

Read the first time January 31, 2012.

**THE COMMITTEE ON TRANSPORTATION**

To whom was referred a Bill (S. 1162) to amend Section 57‑1‑10 of the 1976 Code, relating to definitions concerning the Department of Transportation, to remove the definition for “commission”; to amend Section, 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:

/ SECTION 1. Section 57‑1‑430(A) of the 1976 Code is amended to read:

“Section 57‑1‑430. (A)(1) The secretary is charged with the affirmative duty to carry out the policies of the commission~~,~~ to administer the day‑to‑day affairs of the department, to direct the implementation of the Statewide Transportation Improvement Program and the Statewide Mass Transit Plan, and to ensure the timely completion of all projects undertaken by the department, and routine operation and maintenance requests, and emergency repairs. He must represent the department in its dealings with other state agencies, local governments, special districts, and the federal government.

(2)(a) The secretary must prepare an annual budget for the department that must be approved by the commission before becoming effective. The department’s annual budget may not exceed the projected availability of state and federal funds for that fiscal year and must be based upon cash flow projections showing total anticipated outlays over a two year period. The cash flow projections shall be updated monthly and provided to the Governor, the Department of Transportation Commission, the Chairman of the Senate Transportation Committee, the Chairman of the Senate Finance Committee, the Chairman of the House Education and Public Works Committee, and the Chairman of the House Ways and Means Committee on or before the fifthteenth day of each month.

(b) Projected state motor fuel user fee collections incorporated into the preparation of the annual budget must be produced by the Board of Economic Advisors.”

SECTION 2. Chapter 1, Title 57 of the 1976 Code is amended by adding:

“Section 57‑1‑90.(A) Contracts for consulting services are not subject to the department’s exemption from the procurement code contained in Section 11‑35‑710(1). Consulting services must be procured by the department pursuant to Chapter 35, Title 11 and applicable federal law and regulations.

(B) The sale, lease, or disposal of surplus property must be conducted pursuant to Article 15, Chapter 35, Title 11 and applicable federal law and regulations.”

SECTION 3. Section 57‑1‑490 of the 1976 Code is amended to read:

“Section 57‑1‑490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the ~~State Auditor~~ State Inspector General. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements shall be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

(B) The Materials Management Office of the State Budget and Control Board, or its successor entity, annually must audit the department’s internal procurement operation to ensure that the department has acted properly with regard to the department’s exemptions contained in Section 11‑35‑710. The audit must be performed in accordance with applicable state law, including, but not limited to, administrative penalties for violations found as a result of the audit. The results of the audit must be made available by October fifteenth to the Department of Transportation Commission, the Department of the Transportation’s chief internal auditor, the Governor, the chairmen of the Senate Finance and Transportation Committees, and the chairmen of the House of Representatives Ways and Means and Education and Public Works Committees. The costs and expenses of the audit must be paid by the department out of its funds.

~~(C)~~ ~~The Legislative Audit Council shall contract for an independent performance and compliance audit of the department’s finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, 2010. The Legislative Audit Council may contract for follow‑up audits or conduct follow‑up audits as needed based upon the audit’s initial findings. The costs of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.~~

~~(D)~~(C) Copies of every audit conducted pursuant to this section must be made available to the Department of Transportation Commission, the Department of Transportation chief internal auditor, the Governor, the chairmen of the Senate Finance and Transportation Committees, and the chairmen of the House of Representatives Ways and Means and Education and Public Works Committees.”

SECTION 4. A. Section 1-6-20(B), as added by Act 105 of 2012, is amended to read:

“(B) The State Inspector General is responsible for:

(1) investigating and addressing allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, and wrongdoing in agencies; and

(2) performing the internal audit functions of the Department of Transportation and for conducting, or contracting with a private firm to conduct a performance and compliance audit of the department’s finance and administration division, mass transit division, and construction division.”

B. Chapter 6, Title 1 of the 1976 Code, as added by Act 105 of 2012, is amended by adding:

“Section 1-6-110. The Inspector General must establish, implement, and maintain the exclusive internal audit function of all Department of Transportation activities. The audits of the department conducted by the Inspector General must comply with recognized governmental auditing standards. The department, and any entity contracting with the department, must fully cooperate with the Inspector General 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 Department of Transportation Commission, the Secretary of Transportation, the Chairman of the Senate Transportation Committee, the Chairman of the Senate Finance Committee, the chairman of the House of Representatives Education and Public Works Committee, and the Chairman of the House of Representatives Ways and Means Committee before being made public.

C. Section 57-1-360 of the 1976 Code is repealed.

D. The employees, authorized appropriations, and assets and liabilities of the Office of Chief Internal Auditor, as established in former Section 57‑1‑360 as repealed by this act, are transferred to and become part of the Office of Inspector General. All classified or unclassified personnel employed by the Office of Chief Internal Auditor on the effective date of this act, either by contract or by employment at will, shall be transferred to the Office of Inspector General with the same compensation, classification, grade level, and contract or at will status as applicable on the effective date of this section. The Department of Transportation Commission, with the cooperation of the Secretary of Transportation, and the Inspector General shall cause all necessary actions to be taken to accomplish this transfer in accordance with state laws and regulations.”

E. This SECTION is effective January 1, 2013.

SECTION 5. Chapter 1, Title 57 of the 1976 Code is amended by adding:

“Section 57‑1‑45.(A) For the purposes of this section, ‘senior level engineers’ means an engineer employed by the department whose primary duties and responsibilities are not carried out on the engineering district level.

(B) For a period of one year after leaving the employment of the department, the Secretary of Transportation, departmental deputy secretaries, division deputy directors, the Chief Highway Engineer, and all senior level engineers may not respond to or participate in responding to a request for proposal or request for qualification solicited by the department, bid on, negotiate, or participate in the performance of a contract with the department, or otherwise attempt to influence the award of a contract by the department if the contract would have fallen under their responsibilities while employed by the department.

(C)(1) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for one year, or both.

(2) A contract awarded to a person in violation of this section, or to the employer of a person in violation of this section, is void and must be relet. The department may recover all direct and indirect expenses associated with reletting the contract from the person, or employer of the person, in violation of this section.”

SECTION 6. Section 57-1-370 of the 1976 Code is amended by adding an appropriately lettered new subsection to read:

“( ) (1) Funding for the overall highway program must be based upon a funding formula developed by the department and approved by the commission that requires that at least eighty-five percent of the funding for the combined road programs listed in this item must be used for maintenance, refurbishment, rehabilitation, or capacity expansion of existing roads and bridges until eighty percent of the pavement on the state highway system is in good structural and functional condition and eighty percent of the department maintained bridges are in good structural and functional condition.

(a) All federal highway funds received according to federal funding authorization formulas, but not including federal transporation enhancement funds and those federal funds that are directly controlled by Transporation Management Areas pursuant to federal law.

(b) All state highway funds allocated pursuant to Section 57-1-370(C)(1).

(c) All bond proceeds for projects initiated pursuant to Section 57-11-220.

(2) The commission may suspend the funding requirements in item (1) when eighty percent of the pavement on the state highway system and the department maintained bridges are in good structural and functional condition. If either the percentage of pavement on the state highway system, or the department maintained bridges, that are in good structural and functional condition falls below eighty percent, then the funding requirements in item (1) are reinstated until the department again meets or exceeds the eighty percent threshold.

(3) The funding requirements contained in item (1) do not apply to federal discretionary highway funds, transit funds, state or federal earmarks, state or federal grants, or programs for which expenditures are under the control of the federal government, local governments, the State Transportation Infrastructure Bank, or county transportation committees. The funding requirements contained in item (1) do not apply to projects initiated under Section 57-3-200 or projects initiated under Article 9, Chapter 5 of Title 57.

(4) The provisions of this subsection do not apply to projects in the State Transportation Improvement Program already being undertaken as of the effective date of Act \_\_\_ of 2012, R. \_\_\_, S. 1162.”

SECTION 7. Section 57-1-370(E), (I), and (N), and Sections 57-1-460 and 57-1-470 of the 1976 Code are repealed.

SECTION 8. This act takes effect upon approval of the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LAWRENCE K. GROOMS HUGH K. LEATHERMAN, SR.

For Majority. For Minority.

**A** **BILL**

TO AMEND SECTION 57‑1‑10 OF THE 1976 CODE, RELATING TO DEFINITIONS CONCERNING THE DEPARTMENT OF TRANSPORTATION, TO REMOVE THE DEFINITION FOR “COMMISSION”; TO AMEND SECTION 57‑1‑20, RELATING TO THE ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION, TO PROVIDE THAT THE SECRETARY MAY ESTABLISH OTHER DEPARTMENTAL DIVISIONS RATHER THAN THE COMMISSION; TO AMEND SECTION 57‑1‑40, RELATING TO PROHIBITED ACTS, TO REMOVE REFERENCES TO DEPARTMENT OF TRANSPORTATION COMMISSIONERS; TO AMEND SECTION 57‑1‑410, TO ADD QUALIFICATIONS TO SERVE AS SECRETARY OF TRANSPORTATION, AND TO PROVIDE THAT A SECRETARY OF TRANSPORTATION APPOINTEE MAY NOT SERVE IN OFFICE UNTIL SCREENED BY THE JOINT TRANSPORTATION SCREENING AND OVERSIGHT COMMISSION; TO REPEAL ARTICLE 3, CHAPTER 1 OF TITLE 7 RELATING TO THE DEPARTMENT OF TRANSPORTATION COMMISSION; TO AMEND SECTION 57‑1‑430, RELATING TO THE DUTIES AND POWERS OF THE SECRETARY OF TRANSPORTATION, TO REMOVE REFERENCES TO THE DEPARTMENT OF TRANSPORTATION COMMISSION, AND TO VEST THE POWERS AND DUTIES OF THE COMMISSION IN THE SECRETARY; TO AMEND SECTION 57‑1‑460, RELATING TO THE EVALUATION AND APPROVAL OF ROUTINE OPERATIONS AND MAINTENANCE, TO DELETE THE CURRENT PROVISIONS AND TO PROVIDE THAT CONSULTING CONTRACTS AND SALES OF SURPLUS PROPERTY MUST BE CONDUCTED PURSUANT TO THE CONSOLIDATED PROCUREMENT CODE; TO AMEND SECTION 57‑1‑470, RELATING TO COMMISSION REVIEW OF ROUTINE MAINTENANCE AND EMERGENCY REPAIR REQUESTS, TO DELETE THE CURRENT PROVISIONS AND TO VEST IN THE SECRETARY THE DUTY TO DEVELOP AND IMPLEMENT THE STATEWIDE TRANSPORTATION PLAN AND THE STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM; TO AMEND SECTION 57‑1‑490, RELATING TO ANNUAL AUDITS, TO REMOVE REFERENCES TO THE DEPARTMENT OF TRANSPORTATION COMMISSION, AND TO PROVIDE FOR INTERNAL AUDITS PERFORMED BY THE DEPARTMENT OF TRANSPORTATION OFFICE OF INTERNAL AUDIT ESTABLISHED WITHIN THE LEGISLATIVE AUDIT COUNCIL; TO AMEND ARTICLE 7, CHAPTER 1 OF TITLE 57, RELATING TO THE JOINT TRANSPORTATION REVIEW COMMITTEE, TO PROVIDE THAT THE COMMITTEE MAY CONDUCT OVERSIGHT INVESTIGATIONS, TO PROVIDE THAT THE COMMITTEE MUST SCREEN SECRETARY OF TRANSPORTATION APPOINTEES, AND TO DELETE PROVISIONS RELATED TO SCREENING DEPARTMENT OF TRANSPORTATION COMMISSION CANDIDATES; TO AMEND CHAPTER 1, TITLE 57, RELATING TO THE DEPARTMENT OF TRANSPORTATION, BY ADDING ARTICLE 9 TO ESTABLISH THE JOINT TRANSPORTATION PLANNING REVIEW COMMITTEE AND TO PROVIDE FOR ITS MEMBERSHIP, POWERS, DUTIES, AND OBLIGATIONS; TO AMEND CHAPTER 15 OF TITLE 2, RELATING TO THE LEGISLATIVE AUDIT COUNCIL, BY ADDING SECTION 2‑15‑130, TO ESTABLISH THE DEPARTMENT OF TRANSPORTATION INTERNAL AUDIT OFFICE WITH THE LEGISLATIVE AUDIT COUNCIL, AND TO PRESCRIBE THE INTERNAL AUDIT OFFICE’S POWERS, DUTIES, AND RESPONSIBILITIES; AND TO AMEND CHAPTER 1, TITLE 57, RELATING TO THE DEPARTMENT OF TRANSPORTATION, BY ADDING SECTION 57‑1‑45 TO PROHIBIT CERTAIN ENGINEERS FROM PARTICIPATING IN DEPARTMENTAL CONTRACTING FOR THREE YEARS AFTER THEY LEAVE THE EMPLOYMENT OF THE DEPARTMENT.

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

SECTION 1. Section 57‑1‑10 and Section 57‑1‑20 of the 1976 Code are amended to read:

“Section 57‑1‑10. For the purposes of this title, the following words, phrases, and terms are defined as follows:

(1) ~~‘Commission’ means the administrative and governing authority of the Department of Transportation.~~

~~(2)~~ ‘Department’ means the Department of Transportation (DOT).

~~(3)~~(2) ‘Secretary of Transportation’ means the ~~Chief Administrative Officer~~ chief administrative officer of the Department of Transportation.

Section 57‑1‑20. The Department of Transportation is established as an administrative agency of state government which is comprised of ~~a~~ the Division of Intermodal and Freight Programs, ~~a~~ the Division of Construction Engineering and Planning, ~~and a~~ the Division of Finance and Administration, and other divisions established by the secretary pursuant to Section 57‑3‑10(B). Each division of the Department of Transportation shall have such functions and powers as provided for by law.”

SECTION 2. Section 57‑1‑40 of the 1976 Code is amended to read:

“Section 57‑1‑40. (A) It is unlawful for ~~a member of the commission or~~ an engineer, agent, or other employee, acting for or on behalf of the department ~~or commission~~, to accept or agree to accept, receive or agree to receive, or ask or solicit, either directly or indirectly, with the intent to have his decision or action on any question, matter, cause, or proceeding which at the time may be pending or which by law may be brought before him in his official capacity or in his place of trust or profit influenced, any:

(1) money;

(2) contract, promise, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value;

(3) political appointment or influence, present, or reward;

(4) employment; or

(5) other thing of value.

A person violating the provisions of subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not more than five years and is disqualified forever from holding any office of trust or profit under the Constitution or laws of this State.

(B) It is unlawful for a person to give or offer to give, promise, or cause or procure to be promised, offered, or given, either directly or indirectly, to ~~a member of the commission or~~ an engineer, agent, or other employee acting for or on behalf of the ~~commission or~~ department with the intent to have his decision or action on any question, matter, cause, or proceeding which at the time may be pending or which by law may be brought before him in his official capacity or in his place of trust or profit influenced, any:

(1) money;

(2) contract, promise, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value;

(3) political appointment or influence, present, or reward;

(4) employment; or

(5) other thing of value.

A person violating the provisions of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned not more than five years and is disqualified forever from holding any office of trust or profit under the Constitution or laws of this State.

(C) The ~~members and~~ department’s employees ~~of the commission and employees of the department~~ are subject to the provisions of Chapter 13, Title 8, the State Ethics Act, and the provisions of Chapter 78, Title 15, the South Carolina Tort Claims Act.”

SECTION 3. Article 3, Chapter 1, Title 57, relating to the Commission of the Department of Transportation, is repealed.

SECTION 4. Section 57‑1‑410 of the 1976 Code is amended to read:

“Section 57‑1‑410. (A) The Governor shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at the pleasure of the Governor. ~~A person appointed to this position shall possess practical and successful business and executive ability and be knowledgeable in the field of transportation.~~ The Secretary of Transportation 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.

(B) A person appointed to this position shall:

(1) possess practical and successful business and executive ability;

(2) have background of at least fifteen years in any combination of the following fields of expertise:

(a) transportation;

(b) construction;

(c) finance;

(d) law;

(e) environmental issues;

(f) management of large business or governmental organizations or entities; or

(g) engineering; and

(3) be knowledgeable in the field of transportation.

(C) An appointee may not be confirmed by the Senate or serve as secretary, even in an interim capacity, until he is found qualified by possessing the abilities, experience, and minimum qualifications contained in this section pursuant to Section 57‑1‑730.”

SECTION 5. Section 57‑1‑430(A) of the 1976 Code is amended to read:

“Section 57‑1‑430. (A) The secretary is ~~charged with the affirmative duty to carry out the policies of the commission, to~~ must administer the day‑to‑day affairs of the department, ~~to~~ direct the development and implementation of the Statewide Transportation Improvement Program and the Statewide Mass Transit Plan, ~~and to~~ ensure the timely completion of all projects undertaken by the department, and routine operation and maintenance requests, and emergency repairs, and ensure that the department’s functions and purposes as provided by law are carried out in a timely, efficient manner. He must represent the department in its dealings with other state agencies, local governments, special districts, and the federal government. The secretary must prepare an annual budget for the department that must be approved by the ~~commission~~ General Assembly before becoming effective. In preparing the annual budget, the secretary must solely utilize revenue projections produced by the Board of Economic Advisors.”

SECTION 6. Section 57‑1‑460 of the 1976 Code is amended to read:

“Section 57‑1‑460. (A)~~(1)~~ ~~For purposes of this section ‘routine operation and maintenance’ includes, but is not limited to, signage of routes, pavement marking, replacement and installation of guard rails, repair and installation of signals, ‘chip seal’ of existing roads, enhancement projects such as streetscaping, adopt an interchange, bike lanes, curb cuts, installation of overhead message boards and cameras, research projects funded with federal aid, and pavement management system mapping.~~ Contracts for consulting services are not subject to the department’s exemption from the procurement code contained in Section 11‑35‑710(1). Consulting services must be procured by the department pursuant to Chapter 35, Title 11.

~~(2)~~ ~~For purposes of this section ‘emergency repairs’ means, but is not limited to, unforeseen deterioration of roads, bridges, or equipment due to accidents, natural disasters, or other causes that could not have been expected or that pose an immediate danger to the public.~~

(B) ~~The secretary is charged with evaluating and approving the routine operation and maintenance requests or emergency repairs that are needed for existing roads and bridges that are not included in the Statewide Transportation Improvement Program. However, requests made for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction projects under ten million dollars must be approved by the commission pursuant to Section 57‑1‑370(N).~~ The sale, lease, or disposal of surplus property must be conducted pursuant to Article 15, Chapter 35, Title 11.”

SECTION 7. Section 57‑1‑470 of the 1976 Code is amended to read:

“Section 57‑1‑470. (A)(1) ~~At each commission meeting the secretary must provide a detailed written report of all:~~ The department, at the direction of the secretary, must develop the long‑range Statewide Transportation Plan, with a minimum twenty‑year forecast period at the time of adoption, that provides for the development, implementation, maintenance, preservation, and rehabilitation of the multimodal transportation system for the State with a particular emphasis placed on preserving, maintaining, and rehabilitation the state’s existing transportation infrastructure.

~~(1)~~(2) ~~requests that he has received since the last commission meeting for routine operation and maintenance or emergency repairs, his decision concerning those requests, and a status report on all approved requests; and~~ The plan must be developed in a manner consistent with all federal laws or regulations and in consultation with all interested parties, particularly the metropolitan planning organizations and the nonmetropolitan planning organization area local officials.

~~(2)~~(3) ~~pending projects approved by the commission pursuant to Section 57‑1‑370(N) and the status of those projects, if there has been any material change in the status since the last commission meeting.~~ The plan must be developed so that at the end of the planning period the state’s highway system is in good structural and functional condition, department maintained bridges are in good structural and functional condition, and the department is implementing an acceptable maintenance standard throughout the state highway system.

(4) The plan may be revised from time to time as permitted by and in the manner required by federal laws or regulations.

(B) ~~The commission must review the report and make findings as to whether the requests approved by the secretary meet the needs of the public based upon objective and quantifiable factors.~~ Concerning the development, content, and implementation of the Statewide Transportation Improvement Program, the department must:

(1) allocate funds for preservation, maintenance, and rehabilitation projects sufficient to produce an increase in the number of roads and bridges in good structural and functional condition necessary to achieve the standards required in the Statewide Transportation Plan;

(2) develop a process for consulting with nonmetropolitan local officials, with responsibility for transportation, that provides an opportunity for their participation in the development of the long‑range Statewide Transportation Plan and the Statewide Transportation Improvement Program;

(3) ensure that it is developed pursuant to federal laws and regulations and develop an updated Statewide Transportation Improvement Program from time to time as permitted by and in the manner required by federal laws or regulations;

(4) develop and revise the Statewide Transportation Plan to be included in the Statewide Transportation Improvement Program for each nonmetropolitan planning area in consultation with local officials with responsibility for transportation;

(5) work in consultation with each metropolitan planning organization to develop and revise a transportation improvement program for each metropolitan planning area;

(6) select from the approved Statewide Transportation Improvement Program the transportation projects undertaken in nonmetropolitan areas in consultation with the affected nonmetropolitan local officials with responsibility for transportation;

(7) select projects to be undertaken, in consultation with each metropolitan planning organization, from the metropolitan planning organization’s approved transportation improvement plan in metropolitan areas not designated as a transportation management area;

(8) consult with each metropolitan planning organization, in metropolitan areas designated as transportation management areas, concerning the projects selected to be undertaken from the approved transportation improvement program and in accordance with the priorities approved by the transportation improvement program; and

(9) when selecting projects to be undertaken from nontransportation management area metropolitan planning organizations’ transportation improvement programs, or selecting the nonmetropolitan area projects to be undertaken that are included in the Statewide Transportation Improvement Program, and when consulting with metropolitan planning organizations designated as transportation management areas, the commission shall establish a priority list of projects to the extent permitted by federal laws or regulations, taking into consideration at least each of the following criteria:

(a) financial viability including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project;

(b) public safety;

(c) potential for economic development;

(d) traffic volume and congestion;

(e) truck traffic;

(f) the pavement quality index;

(g) environmental impact;

(h) alternative transportation solutions; and

(i) consistency with local land use plans.

A weighted ranking system that effectively precludes the consideration of any of the criteria listed in this item may not be utilized during the ranking process.

(C) Each Statewide Transportation Improvement Plan must cumulatively produce at least one‑fourth of the improvements in roads and bridges necessary to achieve the good structural and functional conditions required by the Statewide Transportation Plan.

~~(C)~~(D) ~~The commission may question the secretary concerning the approval or denial of any request and the process the secretary employed to reach his decision. The commission also may request additional information concerning any request and further investigate any request, approval, or denial of a project by the secretary. The secretary must fully cooperate with any request made of him or his office by the commission regarding any further investigation undertaken by the commission.~~ The secretary may not finalize the development of or implement the Statewide Transportation Plan or the Statewide Transportation Improvement Plan until he receives and considers comments and recommendations from the Joint Transportation Planning Review Committee pursuant to Article 9 of this chapter.

~~(D)~~(E)(1) ~~The text of the secretary’s written report and the findings made by the commission must be included in the commission meeting minutes. A list of all projects approved by the commission at its last meeting, together with its explanation of the objective and quantifiable factors used to justify its approval, also must be included in the commission meeting minutes.~~ To the extent that state funds are available to address the needs of the state highway system, the department must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Nonfederal Aid Highway Fund or another state revenue source. When developing the plan required by this subsection, the department must consider, but is not limited to, considering the criteria in subsection (B)(9).

(2) When state funding is programmed for a project selected from the plan to be undertaken, the department may use federal law, regulations, or guidelines relevant to the type of project being undertaken to be eligible for federal matching funds.

(F) To the extent permitted by federal laws or regulations, the department has the authority to award all federal enhancement grants. Annually, the department must submit a report to the chairman of the Senate Transportation Committee, the chairman of the Senate Finance Committee, the chairman of the House of Representatives Ways and Means Committee, and the chairman of the House of Representatives Education and Public Works Committee describing the number of federal enhancement grants that were awarded and the recipients of the federal enhancement grants.

(G) Roads may be added to or removed from the state highway system pursuant to Section 57‑5‑80.

(H) The department shall conduct a public hearing in each county in which a public hearing is required by federal regulations to allow the department to share information regarding the project with the local community and to allow the local community to address its concerns with department officials. The hearing must include the opportunity for members of the public to address a hearing officer in a format in which comments can be heard by the general public.

(I) The department shall promulgate, by regulation, procedures not inconsistent with federal laws for applying the criteria contained in subsection (B)(9) for prioritizing projects.”

SECTION 8. Section 57‑1‑490 of the 1976 Code is amended to read:

“Section 57‑1‑490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements shall be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

(B) The Materials Management Office of the State Budget and Control Board annually must audit the department’s internal procurement operation to ensure that the department has acted properly with regard to the department’s exemptions contained in Section 11‑35‑710. The audit must be performed in accordance with applicable state law, including, but not limited to, administrative penalties for violations found as a result of the audit. The results of the audit must be made available by October fifteenth to ~~the Department of Transportation Commission,~~ the Department of the Transportation’s chief internal auditor, the Governor, the chairmen of the Senate Finance and Transportation Committees, and the chairmen of the House of Representatives Ways and Means and Education and Public Works Committees. The costs and expenses of the audit must be paid by the department out of its funds.

(C) The Legislative Audit Council shall either direct the Department of Transportation Office of Internal Audit to conduct or contract ~~for an independent~~ with a private firm to conduct a performance and compliance audit of the department’s finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, ~~2010~~ 2012. The Legislative Audit Council may direct the Office of Internal Audit or contract for follow‑up audits ~~or conduct follow‑up~~ audits as needed based upon the ~~audit’s initial~~ findings contained in the initial audit conducted pursuant to this section. The costs of these audits, including related administrative and management expenses of the ~~Legislative Audit Council~~ Office of Internal Audit, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

(D) Copies of every audit conducted pursuant to this section must be made available to the ~~Department of Transportation Commission, the~~ Department of Transportation chief internal auditor, the Governor, the chairmen of the Senate Finance and Transportation Committees, and the chairmen of the House of Representatives Ways and Means and Education and Public Works Committees.”

SECTION 9. Article 7, Chapter 1, Title 57 of the 1976 Code is amended to read:

“ARTICLE 7.

~~JOINT TRANSPORTATION~~ THE REVIEW AND OVERSIGHT COMMITTEE OF THE DEPARTMENT OF TRANSPORTATION

Section 57‑1‑710. There is hereby established a committee to be known as the ~~Joint Transportation~~ Review~~, hereinafter referred to as the review committee,~~ and Oversight Committee of the Department of Administration which must exercise the powers and fulfill the duties described in this article.

Section 57‑1‑720. (A) The ~~review committee~~ Review and Oversight is composed of the following ten members.

(1) From the Senate:

(a) the chairman of the Finance Committee or his designee;

(b) the chairman of the Judiciary Committee or his designee;

(c) the chairman of the Transportation Committee or his designee; and

(d) two members appointed by the President Pro Tempore, one member upon the recommendation of the Senate Majority Leader and one member upon the recommendation of the Senate Minority Leader.

(2) From the House of Representatives:

(a) the chairman of the Ways and Means Committee or his designee;

(b) the chairman of the Education and Public Works Committee or his designee; and

(c) ~~one member~~ three members of the House of Representatives appointed by the Speaker of the House of Representatives.~~; and~~

~~(d)~~ ~~two members appointed by the Speaker of the House of Representatives from the state at large.~~

(B) In making appointments to the ~~review committee~~ Review and Oversight Committee, race, gender, and other demographic factors, such as residence in rural or urban areas, must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State.

(C) The ~~review committee~~ Review and Oversight Committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the review committee may consider necessary. Thereafter, the ~~review committee~~ Review and Oversight Committee must meet as necessary to screen ~~candidates for election to the commission~~ Secretary of Transportation appointees, conduct periodic oversight hearings, and at the call of the chairman or by a majority of the members. A quorum consists of six members.

Section 57‑1‑730. The review and oversight committee has the following powers and duties:

(A)(1) to screen each ~~candidate applying for election to the commission~~ Secretary of Transportation appointee to determine if the appointee is qualified and meets the requirements by law to serve in office giving due consideration to ability, area of expertise, dedication, compassion, common sense, and integrity of the appointee; and

~~(2)~~ ~~in screening candidates and making its findings, the review committee must give due consideration to:~~

~~(a)~~ ~~ability, area of expertise, dedication, compassion, common sense, and integrity of each candidate; and~~

~~(b)~~ ~~the impact that each candidate would have on the racial and gender composition of the commission, and each candidate’s impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State;~~

~~(3)~~(2) to ~~determine if each candidate is qualified and meets the requirements provided by law to serve as a member of the Department of Transportation Commission,~~ make findings concerning whether ~~each candidate~~ an appointee is qualified~~,~~ and deliver its findings to the Clerk of the Senate and the Clerk of the House of Representatives; ~~and~~

~~(4)~~ ~~to submit the names of all qualified candidates to the congressional district delegation for election.~~

(B) conduct periodic oversight hearings.

~~Section 57‑1‑740.~~ ~~(A)~~ ~~For purposes of this section, a vacancy is created on the commission when a term expires, a new congressional district is created, or a commission member resigns, dies, or is removed from office as provided in Section 57‑1‑330(C). If known in advance, the review committee may provide notice of a vacancy and begin screening prior to the actual date of the vacancy.~~

~~(B)~~ ~~Whenever a commission member must be elected to fill a vacancy:~~

~~(1)~~ ~~The review committee must forward a notice of the transportation commission district member vacancy to:~~

~~(a)~~ ~~a newspaper of general circulation within the congressional district from which a commission member must be elected with a request that it be published at least once a week for four consecutive weeks;~~

~~(b)~~ ~~any person who has informed the committee that he desires to be notified of the vacancy; and~~

~~(c)~~ ~~to each member of the congressional district delegation.~~

~~The committee may provide such additional notice that it deems appropriate.~~

~~(2)~~ ~~The review committee may not accept a notice of intention to seek the office from any candidate until the review committee certifies to the clerk of the Senate and the clerk of the House of Representatives that the proper notices, required by this section, have been requested to be published or provided as required in this subsection.~~

~~(3)~~ ~~The cost of the notification process required by this section must be absorbed and paid from the approved accounts of the Senate and the House of Representatives as contained in the annual appropriations act.~~

~~(C)~~ ~~Any person desiring to be a candidate for election to fill a vacancy on the commission must file a notice of intention with the review committee no later than five business days after the last date the published notice appeared in a newspaper of general circulation. Upon the expiration of the notice of intention filing period, the review committee must provide every member of the affected congressional district delegation with a complete list of the people who filed a notice.~~

~~(D)(1)~~ ~~When the notice of intention filing period closes, the review committee shall begin to conduct an investigation of candidates, as it considers appropriate, and may utilize the services of any agency of state government to assist in the investigation. Upon request of the review committee for assistance, an agency shall cooperate fully.~~

~~(2)(a)(i)~~ ~~Upon completion of the candidate investigations, the chairman of the review committee shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including the candidates, must furnish a written statement of his proposed testimony to the chairman of the review committee. This statement shall be furnished no later than forty‑eight hours prior to the date and time set for the hearing. The review committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the review committee, shall be submitted under oath and persons knowingly furnishing false information either orally or in writing shall be subject to the penalties provided by law for perjury and false swearing.~~

~~(ii)~~ ~~During the course of the investigation, the review committee may schedule an executive session at which the candidates, and other persons who the review committee wishes to interview, may be interviewed on matters pertinent to the candidate’s qualification for the office to be filled.~~

~~(iii)~~ ~~The review committee shall render its tentative findings as to whether the candidates are qualified to serve on the commission as a district member and its reasons for making the findings within a reasonable time after the hearing. If only one person applies to fill a vacancy or if the review committee concludes there are fewer candidates qualified for a vacancy than those who initially filed, it shall submit to the congressional district delegation for election only the names and qualifications of those who are considered to be qualified. The nominations of the review committee for any candidate for the election to the commission are binding on the congressional district delegation, and it shall not elect a person not nominated by the review committee. Nothing shall prevent the congressional district delegation from rejecting all persons nominated. In this event, the review committee shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled.~~

~~(b)~~ ~~As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact shall be transcribed and published in the journals of both houses or otherwise made available in a reasonable number of copies to the members of both houses and a copy must be furnished to each candidate.~~

~~(c)(i)~~ ~~The review committee must transmit to the congressional district delegation the names of all qualified candidates.~~

~~(ii)~~ ~~No member of the congressional district delegation may pledge his vote to elect a candidate until the review committee has released its written report concerning the qualifications of the candidate to the members of the appropriate congressional district delegation. The release of the written report of qualifications shall occur no earlier than forty‑eight hours after the names of the qualified candidates have been initially released to members of the appropriate congressional district delegation.~~

~~(iii)~~ ~~No candidate may directly or indirectly seek the pledge of a vote from a member of the candidate’s congressional delegation or, directly or indirectly, contact a statewide constitutional officer, a member of the General Assembly, or the Joint Transportation Review Committee regarding screening for the commission until the review committee has released its written report as to the qualifications of all candidates in a particular congressional district. For purposes of this section, ‘indirectly seek the pledge’ means the candidate, or someone acting on behalf of and at the request of the candidate, requests another person to contact a member of the General Assembly, a statewide constitutional officer, or a member of the review committee on behalf of the candidate before the review committee’s release of the written report of qualifications.~~

~~(iv)~~ ~~The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate’s qualifications.~~

~~(d)~~ ~~A candidate may withdraw at any stage of the proceedings, and in this event no further inquiry, report on, or consideration of his candidacy shall be made.~~

~~(3)~~ ~~All records, information, and other material that the review committee has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, shall be kept strictly confidential. After the review committee has reported its findings of fact, or after a candidate withdraws his name from consideration, all records, information, and material required to be kept confidential must be destroyed.~~

~~(4)(a)~~ ~~The review committee may, in the discharge of its duties, administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the review committee.~~

~~(b)~~ ~~No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the review committee on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self‑incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed during testimony.~~

~~(c)~~ ~~In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the review committee, may issue to the person an order requiring him to appear before the review committee to produce evidence, if so ordered, or to give testimony concerning the matter under investigation. Any failure to obey an order of the court may be punished as contempt. Subpoenas shall be issued in the name of the review committee and shall be signed by the review committee chairman. Subpoenas shall be issued to those persons as the review committee may designate.~~

~~(5)~~ ~~The privilege of the floor in either house of the General Assembly may not be granted to a candidate, or any immediate family member of a candidate unless the family member is serving in the General Assembly, during the time the candidate’s application is pending before the review committee and during the time the candidate’s election is pending.~~

Section 57‑1‑750. (A) Committee members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses shall be paid from the general fund of the State on warrants duly signed by the chairman of the review committee and payable by the authorities from which they are appointed.

(B) The expenses associated with the review committee’s duties to qualify and nominate candidates for the Department of Transportation Commission must be paid from the legislative appropriation of the general fund of the State.

Section 57‑1‑760. (A) The review committee must use clerical and professional employees of the General Assembly for its staff, who must be made available to the review committee.

(B) The review committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the review committee and as may be funded in the legislative appropriation of the annual general appropriations act.

(C) The costs and expenses of the review committee must be funded in the legislative appropriation of the annual general appropriations act.”

SECTION 10. Chapter 1, Title 57 of the 1976 Code is amended by adding:

“Article 9

Joint Transportation Planning Review Committee

Section 57‑1‑800. (A) There is hereby created a joint committee of the General Assembly to be known as the Joint Transportation Planning Review Committee to study and monitor policies and procedures relating to the development, implementation, maintenance, preservation, and rehabilitation of the multimodal statewide transportation system and to provide advisory assistance concerning the Statewide Transportation Plan and the Statewide Transportation Improvement Program.

(B) The committee is comprised of the following ten members of the General Assembly:

(1) three members of the Senate Transportation Committee, appointed by the chairman;

(2) three members of the House of Representatives Education and Public Works Committee, appointed by the chairman;

(3) the Chairman of the Senate Finance Committee, or his designee;

(4) the Chairman of the House Ways and Means Committee, or his designee;

(5) the President Pro Tempore of the Senate, or his designee; and

(6) the Speaker of the House of Representatives, or his designee.

(C) Terms of members of the committee shall correspond to the terms for which they are elected to the General Assembly. The committee shall elect officers of the committee, but any person so elected may succeed himself if elected to do so.

(D) The expenses of the committee shall be paid from approved accounts of both houses. The Legislative Council and all other legislative staff organizations shall provide such assistance as the joint committee may request.

Section 57‑1‑810. The committee is specifically charged with, but not limited to, the following responsibilities:

(1) to review, prior to development by the Secretary of Transportation, the long‑range Statewide Transportation Plan, and any amendments to the plan, required pursuant to Section 57‑1‑470(A);

(2) to review, prior to development by the Secretary of Transportation, the Statewide Transportation Improvement Program, and any amendments to the program, required pursuant to Section 57‑1‑470(B);

(3) to provide comments and recommendations to the Secretary of Transportation concerning the Statewide Transportation Plan and the Statewide Transportation Improvement Program. The committee’s comments and recommendations must be considered by the secretary prior to completing the development of the plan and the program;

(3) to consult with independent transportation experts concerning the State’s transportation planning processes and assist in the formulation of short and long‑term recommendations for the General Assembly;

(4) to carry out all of the above assigned responsibilities in consultation and cooperation with the Department of Transportation;

(5) to report its findings and recommendations to the General Assembly annually or more frequently if deemed advisable by the committee.

Section 57‑1‑820. To assist the committee in carrying out its responsibilities, the Department of Transportation shall provide to the commission:

(1) a complete description of each project proposed for inclusion in the Statewide Transportation Plan or Statewide Transportation Improvement Program;

(2) a statement of justification for the proposed project including an explanation of the project’s rank;

(3) the estimated total cost of the proposed project;

(4) the method of financing for the proposed project; and

(5) an estimate of future maintenance costs associated with the proposed project.”

SECTION 11. Chapter 15, Title 2 of the 1976 Code is amended by adding:

“Section 2‑15‑130. (A) There is established within the Legislative Audit Council the Department of Transportation Internal Audit Office. The functions and duties of the office shall be carried out by the Department of Transportation Chief Internal Auditor who shall be hired by the director of the Legislative Audit Council. The chief internal auditor may employ other professional, administrative, technical, and clerical personnel as he determines to be necessary in the proper discharge of the duties and responsibilities of the office.

(B)(1) The office shall establish, implement, and maintain the exclusive internal audit function of all of the Department of Transportation’s functions, duties, responsibilities, and activities. Audits shall be performed at the direction of the director of the Legislative Audit Council or as required by law.

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

(C) The Department of Transportation must reimburse the Legislative Audit Council for reasonable expenses associated with providing office space, telephone services, computer and technology services, and related supplies for the chief internal auditor and his support staff.”

SECTION 12. Chapter 1, Title 57 of the 1976 Code is amended by adding:

“Section 57‑1‑45. (A) For the purposes of this section, ‘senior level engineers’ means an engineer employed by the department whose primary duties and responsibilities are not carried out on the engineering district level.

(B) For a period of three years after leaving the employment of the department, the Secretary of Transportation, departmental deputy secretaries, division deputy directors, the Chief Highway Engineer, and all senior level engineers may not respond to or participate in responding to a request for proposal or request for qualification solicited by the department, bid on, negotiate, or participate in the performance of a contract with the department, or otherwise attempt to influence the award of a contract by the department if the contract would have fallen under their responsibilities while employed by the department.

(C)(1) A person violating the provisions of section is guilty of a felony and, upon conviction, must be imprisoned not more than five years and is disqualified forever from holding any office of trust or profit under the Constitution or laws of this State.

(2) A contract awarded to a person in violation of this section, or to the employer of a person in violation of this section, is void and must be relet. The department may recover all direct and indirect expenses associated with reletting the contract from the person, or employer of the person, in violation of this section.”

SECTION 13. On the effective date of this act the Department of Transportation Commission is dissolved. All powers, duties, responsibilities, and authority vested in the commission on the effective date of this act not otherwise accounted for in this act are devolved upon the Secretary of Transportation.

SECTION 14. References in the 1976 Code to the “Department of Transportation Commission”, or the “commission”, that refer to the administrative and governing authority of the Department of Transportation or the functions, powers, duties, responsibilities, and authority of the Department of Transportation Commission prior to the effective date of this act, mean the “Secretary of Transportation”, “Secretary”, “Department of Transportation”, or “department”, as appropriate. The Code Commissioner shall change references in the 1976 Code to conform to this act, and such changes must be included in the next printing of replacement volumes or cumulative supplements.

SECTION 15. This act takes effect upon approval by the Governor.

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