**South Carolina General Assembly**

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**S. 28**

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Summary: Restructuring Act of 2013

**HISTORY OF LEGISLATIVE ACTIONS**

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1/8/2013 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 39](file:///h:\SJ%20Archive\2013\01-08-13.docx))

**VERSIONS OF THIS BILL**

[12/13/2012](file:///p:\pprever\2013-14\28_20121213.docx)

**A** **BILL**

TO ENACT THE “SOUTH CAROLINA RESTRUCTURING ACT OF 2013” INCLUDING PROVISIONS TO AMEND SECTION 1‑30‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE AGENCIES OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT BY ADDING THE DEPARTMENT OF ADMINISTRATION; BY ADDING SECTION 1‑30‑125 SO AS TO ESTABLISH THE DEPARTMENT OF ADMINISTRATION AS AN AGENCY OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT TO BE HEADED BY A DIRECTOR APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE, AND TO TRANSFER TO THIS NEWLY CREATED DEPARTMENT CERTAIN OFFICES AND DIVISIONS OF THE STATE BUDGET AND CONTROL BOARD, OFFICE OF THE GOVERNOR, AND OTHER AGENCIES, AND TO PROVIDE FOR TRANSITIONAL AND OTHER PROVISIONS NECESSARY TO ACCOMPLISH THE ABOVE; BY ADDING CHAPTER 8 TO TITLE 1 SO AS TO CREATE THE OFFICE OF STATE INSPECTOR GENERAL AS A SEPARATE DIVISION WITHIN THE DEPARTMENT OF ADMINISTRATION, TO PROVIDE THAT THE STATE INSPECTOR GENERAL MUST BE APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE, TO PROVIDE FOR THE PURPOSE, DUTIES, RESPONSIBILITIES, AND AUTHORITY OF THE STATE INSPECTOR GENERAL, TO PROVIDE A DEFINITION OF “EXECUTIVE AGENCIES” FOR PURPOSES OF THIS CHAPTER, AND TO PROVIDE FOR THE RECEIPT AND INVESTIGATION OF COMPLAINTS RELATING TO IMPROPER OR UNLAWFUL ACTIVITY WITHIN EXECUTIVE AGENCIES OF THE STATE GOVERNMENT; BY ADDING ARTICLE 6 TO CHAPTER 3, TITLE 1 SO AS TO ESTABLISH THE DEPARTMENT OF THE STATE CHIEF INFORMATION OFFICER TO BE HEADED BY THE STATE CHIEF INFORMATION OFFICER WHO IS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, TO PROVIDE FOR THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT; TO AMEND SECTION 11‑35‑310, RELATING TO DEFINITIONS IN REGARD TO THE CONSOLIDATED PROCUREMENT CODE, SO AS TO DELETE CERTAIN DEFINITIONS PERTAINING TO INFORMATION TECHNOLOGY AND TO REPEAL SECTIONS 11‑35‑820 AND 11‑35‑1580 ALL RELATING TO THE OFFICE OF INFORMATION TECHNOLOGY OF THE STATE BUDGET AND CONTROL BOARD AND INFORMATION TECHNOLOGY SERVICES PROVIDED BY THE STATE BUDGET AND CONTROL BOARD; TO AMEND SECTIONS 1‑10‑10, 1‑11‑20, AS AMENDED, 1‑11‑22, 1‑11‑55, 1‑11‑56, 1‑11‑58, 1‑11‑65, 1‑11‑67, 1‑11‑70, 1‑11‑80, 1‑11‑90, 1‑11‑100, 1‑11‑110, 1‑11‑180, 1‑11‑220, AS AMENDED, 1‑11‑225, 1‑11‑250, 1‑11‑260, 1‑11‑270, 1‑11‑280, 1‑11‑290, 1‑11‑300, 1‑11‑310, AS AMENDED, 1‑11‑315, 1‑11‑320, 1‑11‑335, 1‑11‑340, 1‑11‑435, 2‑13‑240, CHAPTER 9 OF TITLE 3; 10‑1‑10, 10‑1‑30, AS AMENDED, 10‑1‑40, 10‑1‑130, 10‑1‑190, CHAPTER 9 OF TITLE 10, 10‑11‑50, AS AMENDED, 10‑11‑90, 10‑11‑110, 11‑9‑610, 11‑9‑620, 11‑9‑630, 11‑35‑3810, 11‑35‑3820, 11‑35‑3830, 11‑35‑3840, 13‑7‑30, 13‑7‑830, ALL AS AMENDED, 48‑46‑30, 48‑46‑40, AS AMENDED, 48‑46‑50, 48‑46‑60, 48‑46‑90, 48‑52‑410, 48‑52‑440, AS AMENDED, 48‑52‑460, 48‑52‑680, 44‑53‑530, AS AMENDED, AND 44‑96‑140; AND BY ADDING SECTION 1‑11‑185, ALL RELATING TO VARIOUS AGENCY OR DEPARTMENT PROVISIONS SO AS TO CONFORM THEM TO THE ABOVE PROVISIONS PERTAINING TO THE NEW DEPARTMENT OF ADMINISTRATION OR TO SUPPLEMENT SUCH PROVISIONS.

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

Part I

Citation

SECTION 1. This act is known and may be cited as the “South Carolina Restructuring Act of 2013”.

Part II

Department of Administration

SECTION 2. Section 1‑30‑10(A) of the 1976 Code is amended by adding at the end:

“20. Department of Administration”

SECTION 3. Chapter 30, Title 1 of the 1976 Code is amended by adding:

“Section 1‑30‑125. Effective July 1, 2013, the following offices, divisions, or components of the State Budget and Control Board, Office of the Governor, or other agencies are transferred to, and incorporated into, the Department of Administration, a department of the executive branch of state government headed by a director appointed by the Governor as provided in Section 1‑30‑10(B)(1)(i) except that this appointment must be upon the advice and consent of the Senate:

(1) Division of General Services including Facilities Management, Business Services together with Fleet Management, and Property Services;

(2) Office of Human Resources and Office of Research and Statistics of the Budget and Analysis Division;

(3) Office of Executive Policy and Programs, except for the State Ombudsman and Children’s Services programs which are contained within this office;

(4) the State Energy Office as established by Section 48‑52‑410;

(5) Office of Economic Opportunity;

(6) Developmental Disabilities Council;

(7) Continuum of Care as established by Section 20‑7‑5610;

(8) Children’s Foster Care as established by Section 20‑7‑2379;

(9) Veterans Affairs as established by Section 25‑11‑10;

(10) Commission on Women as established by Section 1‑15‑10;

(11) Victims Assistance as established by Article 13, Chapter 3, Title 16; and

(12) Small and Minority Business as established by Section 11‑35‑5270.”

SECTION 4. (A) Where the provisions of this act transfer offices, or portions of offices, of the Budget and Control Board, Office of the Governor, or other agencies to the new Department of Administration, the employees, authorized appropriations, and assets and liabilities of the transferred offices are also transferred to and become part of the Department of Administration. All classified or unclassified personnel employed by these offices on the effective date of this act, either by contract or by employment at will, shall become employees of the Department of Administration, with the same compensation, classification, and grade level, as applicable. The Budget and Control Board shall cause all necessary actions to be taken to accomplish this transfer in accordance with state laws and regulations.

(B) Regulations promulgated by these transferred offices as they formerly existed under the Budget and Control Board, Office of the Governor, or other agencies are continued and are considered to be promulgated by these offices under the newly created Department of Administration.

(C) The Code Commissioner is directed to change or correct all references to these offices of the Budget and Control Board in the 1976 Code, Office of the Governor, or other agencies to reflect the transfer of them to the Department of Administration. References to the names of these offices in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate references. This authority shall not be construed to remove any authority from the Budget and Control Board for approval of statewide policies, procedures, regulations, rates and fees, or specific actions requiring board approval.

Part III

State Inspector General

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

“CHAPTER 8

State Inspector General

Section 1‑8‑10. Effective January 1, 2013, the Office of the State Inspector General is created as a separate division within the South Carolina Department of Administration. The Office of State Inspector General must be headed by a State Inspector General who must be appointed by the Governor, with the advice and consent of the Senate, for a term of six years. A person may serve two consecutive six‑year terms as Inspector General but may be later appointed again. The Inspector General shall serve until his successor is appointed and qualifies. Vacancies must be filled in the manner of original selection. The State Inspector General only may be removed from office pursuant to the provisions of Section 1‑3‑240. The State Inspector General shall supervise the Office of State Inspector General under the direction and control of the Department of Administration and shall exercise other powers and perform other duties as the department requires.

The person appointed State Inspector General must hold the Certified Inspector General designation (CIG) granted by the National Association of Inspectors General.

Section 1‑8‑20. (A) For purposes of this chapter, ‘executive agency’ or ‘executive agencies’ means any office, agency, or another instrumentality of the executive branch of the state government other than the South Carolina National Guard, and includes state technical schools and state colleges and universities.

(B) The purpose of the Office of State Inspector General is to:

(1) deter, detect, prevent, and eradicate fraud, waste, misconduct, and abuse in the programs, operations, and contracting of all government agencies within the executive branch of the state government;

(2) keep the heads of executive agencies and the Governor fully informed about problems, errors, omissions, misconduct, and deficiencies relating to or arising out of the administration of programs, operations, and contracting in executive agencies;

(3) provide leadership, coordination, and control over satellite inspector general offices in designated executive agencies to ensure a coordinated and efficient administration of duties and use of staff;

(4) identify and report prevention opportunities identified in their work, and for Office of Inspector General managers to refer these to appropriate officials;

(5) orient public or private program personnel to systemic weaknesses in their programs and operations;

(6) review and comment on initial designs of new programs and operations;

(7) analyze audit, investigate, and identify trends and patterns;

(8) develop education and training programs to build the capacity of public officials and others to operate efficiently, effectively, and ethically; and

(9) develop an effective means for tracking recommendations.

(C) Agency or satellite inspector general offices established in executive agencies must report to and follow the direction of the State Inspector General.

(D) The state Office of Inspector General and the State Inspector General have no jurisdiction, power, or authority over the South Carolina National Guard, the Inspector General of the South Carolina National Guard, or matters falling under the jurisdiction or cognizance of the Adjutant General or the Inspector General of the South Carolina National Guard or over the legislative and judicial branches of government.

Section 1‑8‑30. (A) It is the duty and responsibility of the State Inspector General to:

(1) promote integrity and efficiency in executive agencies;

(2) initiate, supervise, and coordinate investigative activities relating to fraud, waste, misconduct, or abuse in executive agencies;

(3) recommend policies for and conduct, supervise, and coordinate activities designed to deter, detect, prevent, and eradicate fraud, waste, misconduct, and abuse in executive agencies;

(4) report expeditiously to and cooperate fully with the Attorney General. Whenever the State Inspector General has reasonable grounds to believe there has been a violation of criminal law or that a civil action should be initiated by the State, the State Inspector General shall immediately refer the matter to the Attorney General and the Budget and Control Board. The Attorney General is responsible for criminal prosecution or civil litigation and may refer matters to the State Grand Jury, a circuit solicitor, or the appropriate agency for criminal prosecution or civil litigation;

(5) refer matters to the heads of executive agencies whenever the State Inspector General determines that disciplinary or other administrative action is appropriate;

(6) audit, inspect, evaluate, and investigate the activities, records, and individuals affiliated with contracts and procurements undertaken by an executive branch entity and any other official act or function of that governmental entity;

(7) engage in prevention activities including, but not limited to, review of legislation, review of regulations, policies, procedures, transactions, training, and education;

(8) conduct joint investigations and projects with other oversight or law enforcement agencies;

(9) issue public reports;

(10) establish policies and procedures to guide functions and processes conducted by the Office of Inspector General;

(11) attend pertinent meetings held by executive branch agencies;

(12) recoup the cost of investigations from nongovernmental entities involved in wilful misconduct.

(B) The Office of Inspector General and the State Inspector General are authorized and directed to take any lawful action that is necessary and proper for the discharge of their duties and responsibilities under this chapter.

Section 1‑8‑40. (A) In addition to the authority otherwise provided in this chapter, the State Inspector General, in carrying out the duties and responsibilities of his office, is authorized to:

(1) make investigations and reports relating to the administration of the programs and operations of an executive agency as are, in the judgment of the State Inspector General, necessary or desirable. If the State Inspector General determines that a report should be issued, he shall consult with the Attorney General before issuing the report to ensure against an adverse impact on a grand jury proceeding or prosecution being conducted by the Attorney General, a circuit solicitor, or a law enforcement agency;

(2) request information or assistance necessary for carrying out the duties and responsibilities provided by this chapter from a federal, state, or local government agency or unit thereof;

(3) require and obtain immediately by written notice from officers and employees of executive agencies and the executive department, to the fullest extent permitted by law, information, documents, reports, answers, records, accounts, papers, and other necessary data and documentary evidence. If deemed necessary and upon approval of the Department of Administration, on a case by case basis, the State Inspector General has subpoena powers;

(4) have direct and prompt access to the heads of executive agencies when necessary for a purpose pertaining to the performance of functions and responsibilities under this chapter;

(5) select, appoint, and employ officers and employees necessary for carrying out the functions, powers, and duties of the office. The officers and employees must be employed in accordance with current personnel practices and procedures of the Department of Administration and may be assigned by the State Inspector General to designated executive agencies;

(6) access all records maintained by or available to any executive branch governmental entity relating to the Office of Inspector General’s duties and responsibilities;

(7) access testimony or documents from any executive branch individual, firm, or nongovernmental entity relating to the duties and responsibilities of the Office of Inspector General;

(8) require public employees to report to the Office of Inspector General information regarding fraud, waste, corruption, illegal acts, and abuse.

(B) Upon request of the State Inspector General for information or assistance, executive agencies immediately shall furnish the information and assistance to the State Inspector General or an authorized designee.

(C) If information or assistance requested is, in the judgment of the State Inspector General, unreasonably refused or not provided, the State Inspector General may report the circumstances to the head of the agency, the Attorney General, and the Department of Administration for appropriate action.

(D) When public employees report matters of fraud, waste, corruption, illegal acts, or abuse pursuant to subsection (A)(8) above, these employees have the employment protection afforded by Chapter 27 of Title 8.

Section 1‑8‑50. (A) The State Inspector General may receive and investigate complaints or information concerning the possible existence of an activity in an executive branch agency constituting a violation of law, rules or regulations, or mismanagement, fraud, waste of funds, abuse of authority, malfeasance, misfeasance, nonfeasance, or a substantial and specific danger to the public health and safety.

(B) The Office of the State Inspector General is authorized and directed to promulgate regulations to implement the polices and purposes of this chapter including, but not limited to, regulations establishing a hotline for reporting fraud, waste, and abuse and a system of monetary rewards for persons whose reports of fraud, waste, or abuse result in savings to the State, the prevention of loss, or the recovery of money or property owed to or belonging to the State or an executive agency.

(C) A person may not take or threaten to take action against an employee as a reprisal for making a complaint or disclosing information to the State Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(D) The protections in this chapter for employees who report fraud, waste, misconduct, malfeasance, misfeasance, nonfeasance, or abuse in good faith are in addition and cumulative to protections provided by another law.”

Part IV

Chief Information Officer

SECTION 6. Chapter 3, Title 1 of the 1976 Code is amended by adding:

“Article 6

State Chief Information Officer

Section 1‑3‑300. It is the intent of the General Assembly to create an instrumentality that provides leadership and direction for the use of information technology within government in South Carolina. The General Assembly recognizes the critical role information technology plays in providing cost‑effective and efficient services to the citizens of this State. The General Assembly envisions an enterprise information system that provides an easily accessible, reliable, and accurate information infrastructure to enhance both the quality and delivery of services.

Section 1‑3‑305. There is created the Department of the State Chief Information Officer. The department is headed by the State Chief Information Officer appointed by the Governor with the advice and consent of the Senate. The State Chief Information Officer serves at the pleasure of the Governor.

Section 1‑3‑310. The department may be organized in a manner the State Chief Information Officer considers most appropriate to carry out various duties, responsibilities, and authorities assigned to the department.

Section 1‑3‑315. As used in this article:

(1) ‘Council’ means the South Carolina Information Technology Council as established in this article.

(2) ‘Department’ means the Department of the State Chief Information Officer.

(3) ‘Governmental body’ means a state government department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch. Governmental body does not include a public institution of higher learning as defined in Section 59‑103‑5, the legislative branch or the judicial branch.

(4) ‘Information technology’ means electronic data processing goods and services, telecommunications goods and services, information security goods and services, information management, microprocessors, software, information processing, office systems, any services related to these, and consulting or other services for design or redesign of information technology supporting business processes.

(5) ‘Political subdivision’ means the counties, municipalities, school districts, special purpose districts, special service districts, commissioners of public works, and any other local authority, board, commission, agency, department, or political body.

(6) ‘Telecommunications’ means the provision, transmission, conveyance, or routing of voice, data, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, or other medium or method now in existence or devised after this article takes effect. Telecommunications includes, but is not limited to, local telephone services, toll telephone services, telegraph services, teletypewriter services, teleconferencing services, private line services, channel services, Internet protocol telephony, cable services, and mobile telecommunications services, and includes all facilities and equipment performing these functions.

Section 1‑3‑320. (A) There is created the South Carolina Information Technology Council.

(B) The council consists of the following twelve members:

(1) the Chief Justice of the South Carolina Supreme Court;

(2) one member of the South Carolina Senate appointed by the President Pro Tempore of the Senate;

(3) one member of the South Carolina House of Representatives appointed by the Speaker of the House of Representatives;

(4) two cabinet agency directors appointed by the Governor;

(5) one noncabinet agency director appointed by the Governor upon recommendation of the President of the State Agency Directors Organization;

(6) one representative of county government appointed by the Governor upon recommendation of the South Carolina Association of Counties;

(7) one representative of municipal government appointed by the Governor upon recommendation of the Municipal Association of South Carolina;

(8) one citizen member from the private sector appointed by the Governor;

(9) one citizen member from the private sector appointed by the President Pro Tempore of the Senate;

(10) one citizen member from the private sector appointed by the Speaker of the House of Representatives; and

(11) the State Chief Information Officer.

(C) The State Chief Information Officer serves as chairman of the council.

(D) Appointed members serve at the pleasure of the appointing authority. Members who serve by virtue of an office serve on the council while they hold that office.

(E) Members serve without compensation, but citizen members of the council are allowed the usual per diem and mileage as provided by law for members of boards, commissions, and committees while on official business of the council.

(F) The powers and duties of the council include the following:

(1) review and approve the coordinated statewide strategic plan for information technology prepared by the department;

(2) review and approve statewide strategic information technology directions, standards, and enterprise architecture prepared by the department;

(3) approve the criteria developed by the department for the review and approval of information technology plans and information technology projects of governmental bodies;

(4) review and approve the procedures developed by the department for the allocation and distribution of funds from the Information Technology Innovation Fund;

(5) upon recommendation of the department, the council may grant the department and governmental bodies exemptions from the requirements in this article;

(6) upon recommendation of the department, the council may terminate any information technology project of a governmental body or governmental bodies; and

(7) upon request of a governmental body, the council may review decisions of the department concerning whether the information technology plans and projects of the governmental body conform to statewide information technology plans, strategies, and standards.

Section 1‑3‑325. (A) The State Information Technology Director’s Committee is created to advise the State Chief Information Officer on matters relating to the development and implementation of information technology standards, policies, and procedures and facilitate the exchange of information among the information technology directors of governmental bodies and political subdivisions. The committee includes representatives from governmental bodies and political subdivisions and must be chosen in a manner and number determined by the State Chief Information Officer.

(B) The State Chief Information Officer may establish other standing or ad hoc advisory committees to provide assistance relating to any other matters within the department’s authority.

(C) Members of the advisory committees appointed pursuant to subsections (A) and (B) are allowed the usual per diem and mileage as provided by law for members of boards, commissions, and committees while on official business of the committees. Members who are full‑time state employees may not receive per diem.

Section 1‑3‑330. The powers and duties of the department include the following:

(1) develop for approval of the council a coordinated statewide strategic plan for information technology;

(2) develop for approval of the council statewide strategic information technology directions, standards, and enterprise architecture. These directions, standards, and architecture must include, but are not limited to, information related to the privacy and confidentiality of data collected and stored by governmental bodies, website accessibility, and assistive technologies. The department shall implement necessary management processes to assure that governmental bodies fully comply with these directions, standards, and architecture;

(3) develop policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement;

(4) evaluate the information technology of governmental bodies and combine information technology and related resources when the department determines that it is advisable from the standpoint of efficiency and cost effectiveness;

(5) plan and forecast future needs for information technology and conduct studies and surveys of organizational structures and best management practices of information technology systems and procedures;

(6) evaluate the information technology plans and projects of governmental bodies to ensure that the plans and projects are consistent with statewide plans, strategies, and standards, including alignment with the state’s business goals, investments, and other risk management policies;

(7) assist the Secretary of Commerce in the development of information technology related industries in the State and the promotion of economic development initiatives based on information technology;

(8) assist governmental bodies in the development of guidelines concerning the qualifications and training requirements of information technology related personnel;

(9) collaborate with political subdivisions in the development of information technology plans that are consistent with statewide plans, strategies, and standards, and encourage political subdivisions to pursue information technology investments that are compatible with the state’s information technology infrastructure;

(10) secure all telecommunications equipment and services for governmental bodies under terms the department considers suitable and coordinate the supply of the equipment and services for use by governmental bodies;

(11) operate and manage a state consolidated data center, and other appropriate data centers, to be used by governmental bodies and political subdivisions under terms and conditions established by the department;

(12) develop information technology applications and services for entities requesting them;

(13) administer information technology related procurements and contracting activities for governmental bodies in accordance with the South Carolina Consolidated Procurement Code;

(14) enter into agreements and contracts with governmental bodies, political subdivisions, and other entities for goods and services. The department may establish fee schedules to be collectible from governmental bodies, political subdivisions, and other entities for services rendered and goods provided;

(15) hire necessary personnel and assign them duties and powers as the department prescribes; and

(16) exercise and perform other powers and duties as granted to it, imposed upon it by law or necessary to carry out the purposes in this article.

Section 1‑3‑335. The department has the following additional powers and duties relating to planning and the management of information technology projects:

(1) oversee the development of any statewide and multiagency information technology enterprise projects;

(2) develop for the approval of the council an approval process for the information technology plans of governmental bodies. Each governmental body is required to develop an information technology plan and submit the plan to the department for approval. The department may reject or require modification to those plans that do not conform to statewide information technology plans, strategies, and standards;

(3) establish a methodology and process for conceiving, planning, scheduling, procuring, and providing appropriate oversight for information technology projects;

(4) develop for the approval of the council an approval process for information technology projects proposed by governmental bodies to ensure that all of these projects conform to statewide information technology plans, strategies, and standards, the information technology plan of the governmental body, and the project management methodology. All information technology projects proposed by governmental bodies that exceed an amount established by the council, initially set at four hundred thousand dollars but subject to adjustment by the council, are subject to department approval. Governmental bodies may not artificially divide these projects so as to avoid departmental approval;

(5) monitor information technology projects approved by the department. The department may modify and suspend any information technology project that is not in compliance with statewide information technology plans, strategies, and standards or that has not met the performance measures agreed to by the department and the sponsoring governmental body. The council may terminate projects upon recommendation of the department;

(6) establish minimum qualifications and training standards for project managers; and

(7) establish an information clearinghouse that identifies best practices and new developments and contains detailed information regarding the state’s previous experiences with the development of information technology projects.

Section 1‑3‑400. (A) The department has the following additional powers and duties relating to telecommunications:

(1) coordinate the various telecommunications facilities and services used by governmental bodies;

(2) acquire, lease, construct, or organize facilities and equipment as necessary to deliver comprehensive telecommunications services in an efficient and cost‑effective manner, and maintain these facilities and equipment;

(3) provide technical assistance to governmental bodies in areas such as:

(a) performing systems development services, including design, application programming, and maintenance;

(b) conducting research and sponsoring demonstration projects pertaining to all facets of telecommunications; and

(c) planning and forecasting for future needs in communications services.

(B) If requested by a political subdivision, the department, at its sole option, may supply telecommunications goods and services to the political subdivision under terms and conditions established by the department.

(C) A governmental body may not enter into an agreement or renew an existing agreement for telecommunications services or equipment unless approved by the department.

Section 1‑3‑405. The department has the following additional powers and duties relating to information technology procurements:

(1) ensure that information technology procurements are conducted in a manner consistent with the South Carolina Consolidated Procurement Code and related regulations;

(2) ensure that information technology procurements conform to statewide information technology plans, strategies, and standards. The department may reject any information technology procurement that does not conform to statewide information technology plans, strategies, and standards;

(3) recommend to the council categories of information technology procurement which must be exempted from the requirements of the South Carolina Consolidated Procurement Code and related regulations;

(4) enter into cooperative purchasing agreements with political subdivisions for the procurement of information technology and allow political subdivisions to participate in the department’s procurement of information technology under terms and conditions established by the department; and

(5) participate in, sponsor, conduct, or administer cooperative purchasing agreements for the procurement of information technology.

Section 1‑3‑410. The department has the following additional powers and duties relating to the security of government information and infrastructure:

(1) to protect the state’s critical information technology infrastructure and associated data systems if there is a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue if there is such an event, the department shall develop a Critical Information Technology Infrastructure Protection Plan which devises policies and procedures to provide for the confidentiality, integrity, and availability of, and to allow for alternative and immediate online access to data and information systems necessary to provide critical information to citizens and ensure the protection of state employees as they carry out their disaster‑related duties. All governmental bodies and political subdivisions of this State are directed to assist the department in the collection of data required for this plan;

(2) to oversee, plan, and coordinate periodic security audits of governmental bodies regarding the protection of government information and information technology infrastructure. These security audits may include, but are not limited to, on‑site audits as well as reviews of all written security procedures. The department may conduct the security audits or contract with a private firm or firms to conduct these security audits. Governmental bodies subject to a security audit shall cooperate fully with the entity designated to perform such audits.

Section 1‑3‑415. (A) The General Assembly shall appropriate funds sufficient for the development, implementation, and ongoing operation of the department’s information technology planning, project management, and security responsibilities. The General Assembly also shall appropriate funds necessary to carry out all other duties and responsibilities assigned to the department that are not reimbursable through a fee‑for‑service methodology. The department is authorized to provide to and receive from other governmental bodies, political subdivisions, and other entities goods and services. The department may charge and pay governmental bodies, political subdivisions, and other entities for the goods and services, the revenue from which must be deposited in the Office of the State Treasurer in a special account and expended only for the costs of providing the goods and services, and these funds may be retained and expended for the same purposes.

(B) There is created an Information Technology Innovation Fund. This fund must provide incentives to governmental bodies to implement enterprise initiatives and electronic government projects. Use of the fund must encourage governmental bodies to pursue innovative and creative approaches using technology that provides needed citizens services more cost effectively and efficiently. The fund may not be used to replace or offset appropriations for on‑going technology expenditures and operations. The fund consists of those funds appropriated through the state budget process, grants, gifts, and other donations received by the State or otherwise available. The department, with the approval of the council, is responsible for developing appropriate procedures for the allocation and distribution of these funds.”

SECTION 7. A. Section 11‑35‑310 of the 1976 Code is amended to read:

“Section 11‑35‑310. Unless the context clearly indicates otherwise:

(1) ~~‘Information Technology (IT)’ means data processing, telecommunications, and office systems technologies and services:~~

~~(a)~~ ~~‘data processing’ means the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off‑line memory storage, printing systems, and data transmission equipment; and related software such as operating systems, library and maintenance routines, and applications programs.~~

~~(b)~~ ~~‘telecommunications’ means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.~~

~~(c)~~ ~~‘office systems technology’ means office equipment such as typewriters, duplicating and photocopy machines, paper forms, and records; microfilm and microfiche equipment and printing equipment and services.~~

~~(d)~~ ~~‘services’ means the providing of consultant assistance for any aspect of information technology, systems, and networks.~~

~~(2)~~ ‘Board’ means State Budget and Control Board.

~~(3)~~(2) ‘Business’ means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

~~(4)~~(3) ‘Change order’ means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

~~(5)~~(4) ‘Chief procurement officer’ means (a) ~~the management officer for information technology, (b)~~ the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and ~~(c)~~ (b) the materials management officer for all other procurements.

~~(6)~~ ~~‘Information Technology Management Officer’ means the person holding the position as the head of the Information Technology Office of the State.~~

~~(7)~~(5) ‘Construction’ means the process of building, altering, repairing, remodeling, improving, or demolishing a public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

~~(8)~~(6) ‘Contract’ means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, ~~information technology,~~ or construction.

~~(9)~~(7) ‘Contract modification’ means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

~~(10)~~(8) ‘Contractor’ means any person having a contract with a governmental body.

~~(11)~~(9) ‘Cost effectiveness’ means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

~~(12)~~(10) ‘Data’ means recorded information, regardless of form or characteristics.

~~(13)~~(11) ‘Days’ means calendar days. In computing any period of time prescribed by this Code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

~~(14)~~(12) ‘Debarment’ means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

~~(15)~~(13) ‘Designee’ means a duly authorized representative of a person with formal responsibilities under the Code.

~~(16)~~(14) ‘Employee’ means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

~~(17)~~ ~~(Reserved)~~

~~(18)~~(15) ‘Governmental Body’ means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Office of Legislative Printing, Information and Technology Systems, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.

~~(19)~~(16) ‘Grant’ means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, ~~information technology,~~ or construction. A contract resulting from such an award must not be considered a grant but a procurement contract.

~~(20)~~(17) ‘Invitation for bids’ means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

~~(21)~~(18) ‘Materials Management Officer’ means the person holding the position as the head of the materials management office of the State.

~~(22)~~ ~~Reserved.~~

~~(23)~~(19) ‘Political subdivision’ means all counties, municipalities, school districts, public service or special purpose districts.

~~(24)~~(20) ‘Procurement’ means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, ~~information technology,~~ or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

~~(25)~~(21) ‘Procurement officer’ means any person duly authorized by the governmental body, in accordance with procedures prescribed by regulation, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority.

~~(26)~~(22) ‘Purchasing agency’ means any governmental body other than the chief procurement officers authorized by this Code or by way of delegation from the chief procurement officers to enter into contracts.

~~(27)~~(23) ‘Real property’ means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

~~(28)~~(24) ‘Request for proposals (RFP)’ means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, ~~information technology,~~ or construction which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the State. The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP.

~~(29)~~(25) ‘Services’ means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section 11‑35‑310(1)(d).

~~(30)~~(26) ‘Subcontractor’ means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor’s agreement with a governmental body.

~~(31)~~(27) ‘Supplies’ means all personal property including, but not limited to, equipment, materials, printing, and insurance.

~~(32)~~(28) ‘State’ means state government.

~~(33)~~(29) ‘State Engineer’ means the person holding the position as head of the state engineer’s office.

~~(34)~~(30) ‘Suspension’ means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

~~(35)~~(31) ‘Term contract’ means contracts established by the chief procurement officer for specific supplies, or services~~, or information technology~~ for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, or services~~, or information technology~~ at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi‑term contract as provided in Section 11‑35‑2030.

~~(36)~~(32) ‘Using agency’ means any governmental body of the State which utilizes any supplies, services, ~~information technology,~~ or construction purchased pursuant to this code.

~~(37)~~(33) ‘Designated board office’ and ‘designated board officer’ means the office or officer designated in accordance with Section 11‑35‑540(5).”

B. Section 11‑35‑820 of the 1976 Code is repealed.

C. Section 11‑35‑1580 of the 1976 Code is repealed.

Part V

Conforming and Miscellaneous Amendments

SECTION 8. A. Section 1‑10‑10 of the 1976 Code is amended to read:

“Section 1‑10‑10. (A) As of 12:00 noon on the effective date of this act, and permanently thereafter, the only flags authorized to be flown atop the dome of the State House, in the chambers of the Senate and House of Representatives, and on the grounds of the Capitol Complex shall be as authorized in this section.

The flags authorized to be flown atop the dome of the State House and in the chambers of the Senate and House of Representatives are the United States Flag and the South Carolina State Flag. As of 12:00 noon on the effective date of this act, the flag authorized to be flown at a designated location on the grounds of the Capitol Complex is the South Carolina Infantry Battle Flag of the Confederate States of America [the Battle Flag of the Army of Northern Virginia (General Robert E. Lee’s Army) the South Carolina, Georgia, Florida Department version]. This flag must be flown on a flagpole located at a point on the south side of the Confederate Soldier Monument, centered on the monument, ten feet from the base of the monument at a height of thirty feet. The flagpole on which the flag is flown and the area adjacent to the monument and flagpole must be illuminated at night and an appropriate decorative iron fence must be erected around the flagpole.

The South Carolina Infantry Battle Flag of the Confederate States of America is square measuring fifty‑two inches on each side, inclusive of the white border, with a St. Andrews Cross of blue, edged with white, with thirteen equal five‑pointed stars, upon a red field, with the whole banner bordered in white. The blue arms of the cross are 7.5 inches wide and the white border around the flag proper is 1.5 inches wide. The stars are five‑pointed, inscribed within a circle six inches in diameter, and are uniform in size.

From any funds appropriated to it, the Budget and Control Board, ~~the division of general services of the budget and control board~~ or its ~~successor in interest~~ successor‑in‑interest, shall ensure that the flags authorized above ~~shall~~ be placed at all times as directed in this section and shall replace the flags at appropriate intervals as may be necessary due to wear.

(B) The provisions of this section may ~~only~~ be amended or repealed only upon passage of an act which has received a two‑thirds vote on the third reading of the bill in each branch of the General Assembly.

(C) The term ‘chambers’ of the House or Senate for the purposes of this section does not include individual members’ offices. The provisions of this section do not prohibit a private individual on the capitol complex grounds from wearing as a part of his clothing or carrying or displaying any type of flag including a Confederate Flag.”

B. Section 1‑11‑20 of the 1976 Code, as last amended by Act 164 of 2005, is further amended to read:

“Section 1‑11‑20. (A) The functions of the State Budget and Control Board shall be performed, exercised and discharged under the supervision and direction of the board through three divisions, the Finance Division (embracing the work of the State Auditor, the former State Budget Commission, the former State Finance Committee and the former Board of Claims for the State of South Carolina), the Purchasing and Property Division (embracing the work of the former Commissioners of the Sinking Fund, the former Board of Phosphate Commissioners, the State Electrician and Engineer, the former Commission on State House and State House Grounds, the central purchasing functions, the former Surplus Procurement Division of the State Research, Planning and Development Board and the Property Custodian) and the Division of Personnel Administration (embracing the work of the former retirement board known as the South Carolina Retirement System and the administration of all laws relating to personnel), each division to consist of a director and such clerical, stenographic and technical employees as may be necessary, to be employed by the respective directors with the approval of the board. The State Auditor shall be the director of the Finance Division, ex officio, and the directors of the other divisions shall be employed by the State Budget and Control Board for such time and compensation, not greater than the term and compensation for the State Auditor, as shall be fixed by the board in its judgment.

(B)(1) Notwithstanding subsection (A), as of July 1, 2013, Division of General Services of the Budget and Control Board including Facilities Management, Business Services together with Fleet Management, and Property Services as well as the Office of Human Resources and Office of Research and Statistics of the Budget and Analysis Division and the other offices or divisions of the Budget and Control Board specified in Section 1‑30‑125 are transferred to, and incorporated into, the South Carolina Department of Administration.

(2) Notwithstanding another provision of law, if the Budget and Control Board maintains any responsibility related to a program administered by the Department of Administration, whether the responsibility be regulatory, oversight, approval, or other, the board may receive and expend revenues generated by the programs to support the board’s responsibilities related to the programs. The funds may be retained and expended in subsequent fiscal years.

(C) Notwithstanding subsection (A), as of July 1, 2013, Budget and Control Board also contains an additional division, known as the State House, Legislative, and Judicial Facilities Operations Division, responsible for the operations and management of the State House, Blatt Office Building, Gressette Office Building, Supreme Court Building, Calhoun Office Building, and Capitol Complex grounds.”

C. Section 1‑11‑22 of the 1976 Code is amended to read:

“Section 1‑11‑22. (A) Notwithstanding any other provision of law, the Budget and Control Board may organize its staff as it ~~deems~~ considers most appropriate to carry out the various duties, responsibilities and authorities assigned to it and to its various divisions and management and organizational entities.

(B) To the extent that any provision of law divides any responsibilities of any division, office, or program of the Budget and Control Board between the board and one or more state agencies, the transfer must not proceed until a realignment plan for the allocation of staff, assets, and resources is prepared and presented by the board’s executive director, and approved by the board. Upon the board’s approval, the Office of the Executive Director must provide for the allocation as specified in the realignment plan as soon as practicable.

(C) Notwithstanding any other provision of law, wherever the Budget and Control Board maintains any responsibility related to a program administered by the Department of Administration, whether the responsibility be regulatory, oversight, approval, or other, the board is authorized to expend revenues generated by the programs to support the board’s responsibilities related to the programs. The funds may be retained and expended in subsequent fiscal years.”

D. Sections 1‑11‑55, 1‑11‑56, and 1‑11‑58, of the 1976 Code are amended to read:

“Section 1‑11‑55. (1) ‘Governmental body’ means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, ~~legislative body,~~ government corporation, or other establishment or official of the executive~~, judicial, or legislative branches~~ branch of this State. Governmental body excludes the General Assembly, Legislative Council, the Office of Legislative Printing, Information and Technology Systems, the Judicial Department, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts.

(2) The ~~Budget and Control Board~~ South Carolina Department of Administration, Division of General Services, is hereby designated as the single central broker for the leasing of real property for governmental bodies. No governmental body shall enter into any lease agreement or renew any existing lease except in accordance with the provisions of this section.

(3) When any governmental body needs to acquire real property for its operations or any part thereof and state‑owned property is not available, it shall notify the ~~Office~~ Division of General Services of its requirement on rental request forms prepared by the office. Such forms shall indicate the amount and location of space desired, the purpose for which it shall be used, the proposed date of occupancy and such other information as General Services may require. Upon receipt of any such request, General Services shall conduct an investigation of available rental space which would adequately meet the governmental body’s requirements, including specific locations which may be suggested and preferred by the governmental body concerned. When suitable space has been located which the governmental body and the ~~office~~ division agree meets necessary requirements and standards for state leasing as prescribed in procedures of the ~~board~~ department as provided for in subsection (5) of this section, General Services shall give its written approval to the governmental body to enter into a lease agreement. All proposed lease renewals shall be submitted to General Services by the time specified by General Services.

(4) The ~~board~~ department shall adopt procedures to be used for governmental bodies to apply for rental space, for acquiring leased space, and for leasing state‑owned space to nonstate lessees. Before implementation, these procedures must be submitted to the Budget and Control Board for approval.

(5) Any participant in a property transaction proposed to be entered who maintains that a procedure provided for in this section has not been properly followed, may request review of the transaction by the ~~Director~~ director of the ~~Office~~ Division of General Services of the Department of Administration or his designee.

Section 1‑11‑56. The ~~State Budget and Control Board~~ Department of Administration, Division of General Services, in an effort to ensure that funds authorized and appropriated for rent are used in the most efficient manner, is directed to develop a program to manage the leasing of all public and private space of state agencies. The department must submit regulations for the implementation of this section to the General Assembly as provided in the Administrative Procedures Act, Chapter 23 of Title 1. The ~~board~~ department regulations, upon General Assembly approval, shall include procedures for:

(1) assessing and evaluating agency needs, including the authority to require agency justification for any request to lease public or private space;

(2) establishing standards for the quality and quantity of space to be leased by a requesting agency;

(3) devising and requiring the use of a standard lease form (approved by the Attorney General) with provisions which assert and protect the state’s prerogatives including, but not limited to, a right of cancellation in the event of:

(a) a nonappropriation for the renting agency~~,~~;

(b) a dissolution of the agency~~,~~; and

(c) the availability of public space in substitution for private space being leased by the agency;

(4) rejecting an agency’s request for additional space or space at a specific location, or both;

(5) directing agencies to be located in public space, when available, before private space can be leased;

(6) requiring the agency to submit a multi‑year financial plan for review by the ~~board’s budget office~~ Budget and Control Board’s Office of State Budget with copies sent to Ways and Means Committee and Senate Finance Committee, before any new lease for space is entered into; and requiring prior review by the Joint Bond Review Committee and the requirement of Budget and Control Board approval before the adoption of any new lease that commits more than one million dollars in a five‑year period; and

(7) requiring prior review by the Joint Bond Review Committee and ~~the requirement of Budget and Control Board~~ departmental approval before the adoption of any new lease that commits more than one million dollars in a five‑year period.

Section 1‑11‑58. (1) Every state agency, as defined by Section 1‑19‑40, shall annually perform an inventory and prepare a report of all residential and surplus real property owned by it. The report shall be submitted to the ~~State Budget and Control Board~~ Department of Administration, ~~Office~~ Division of General Services, on or before June thirtieth and shall indicate current use, current value, and projected use of the property. Property not currently being utilized for necessary agency operations shall be made available for sale and funds received from the sale of the property shall revert to the general fund.

(2) The ~~Office~~ Division of General Services ~~will~~ shall review the annual reports addressing real property submitted to it and determine the real property which is surplus to the State. A central listing of such property will be maintained for reference in reviewing subsequent property acquisition needs of agencies.

(3) Upon receipt of a request by an agency to acquire additional property, the ~~Office~~ Division of General Services shall review the surplus property list to determine if the agency’s needs ~~can~~ may be met from existing state‑owned property. If such property is identified, the ~~Office~~ division ~~of General Services~~ shall act as broker in transferring the property to the requesting agency under terms and conditions that are mutually agreeable to the agencies involved.

(4) The ~~Budget and Control Board~~ department may authorize the ~~Office~~ Division of General Services to sell any unassigned surplus real property. The ~~Office of General Services~~ division shall have the discretion to determine the method of disposal to be used, which possible methods include: auction, sealed bids, listing the property with a private broker or any other method determined by the ~~Office of General Services~~ division to be commercially reasonable considering the type and location of property involved.”

E. Sections 1‑11‑65, 1‑11‑67, 1‑11‑70, 1‑11‑80, 1‑11‑90, 1‑11‑100, and 1‑11‑110 of the 1976 Code are amended to read:

“Section 1‑11‑65. (A) All transactions involving real property, made for or by any governmental bodies, excluding political subdivisions of the State, must be recommended by the Department of Administration and approved by and recorded with the State Budget and Control Board. Upon approval of the transaction by the Budget and Control Board, there must be recorded simultaneously with the deed, a certificate of acceptance, which acknowledges the board’s approval of the transaction. The county recording authority cannot accept for recording any deed not accompanied by a certificate of acceptance. The board may exempt a governmental body from the provisions of this subsection.

(B) All state agencies, departments, and institutions authorized by law to accept gifts of tangible personal property shall have executed by its governing body an acknowledgment of acceptance prior to transfer of the tangible personal property to the agency, department, or institution.

Section 1‑11‑67. The State Budget and Control Board and the Department of Administration shall assess and collect a rental charge from all state departments and agencies that occupy ~~State Budget and Control Board~~ space in state‑controlled office buildings under their jurisdiction. The amount charged each department or agency must be calculated on a square foot, or other equitable basis of measurement, and at rates that will yield sufficient total annual revenue to cover the annual principal and interest due or anticipated on the Capital Improvement Obligations for projects administered or planned by the ~~Office of General Services~~ board or by the department, and maintenance and operation costs of State Budget and Control Board‑controlled or department‑controlled office buildings ~~under the supervision of the Office of General Services~~. The amount collected must be deposited in a special account and must be expended only for payment on Capital Improvement Obligations and maintenance and operations costs of the buildings under the supervision of the ~~Office of General Services~~ board or department.

All departments and agencies against which rental charges are assessed and whose operations are financed in whole or in part by federal or other nonappropriated funds are both directed to apportion the payment of these charges equitably among all funds to ensure that each bears its proportionate share.

Section 1‑11‑70. All vacant lands and lands purchased by the former land commissioners of the State ~~shall be~~ are subject to the directions of the ~~State Budget and Control Board~~ Department of Administration.

Section 1‑11‑80. The State Budget and Control Board, upon recommendation of the South Carolina Department of Administration, is authorized to grant easements and rights of way to any person for construction and maintenance of power lines, pipe lines, water and sewer lines and railroad facilities over, on or under such vacant lands or marshland as are owned by the State, upon payment of the reasonable value thereof.

Section 1‑11‑90. The State Budget and Control Board, upon recommendation of the South Carolina Department of Administration, may grant to agencies or political subdivisions of the State, without compensation, rights of way through and over such marshlands as are owned by the State for the construction and maintenance of roads, streets and highways or power or pipe lines, if, in the judgment of the Budget and Control Board, the interests of the State will not be adversely affected thereby.

Section 1‑11‑100. Deeds or other instruments conveying such rights of way or easements over such marshlands or vacant lands as are owned by the State shall be executed by the Governor in the name of the State, when recommended by the South Carolina Department of Administration and authorized by resolution of the Budget and Control Board, duly recorded in the minutes andrecords of such board and when duly approved by the office of the Attorney General; deeds or other instruments conveying such easements over property in the name of or under the control of State agencies, institutions, commissions or other bodies shall be executed by the majority of the governing body thereof, shall name both the State of South Carolina and the institution, agency, commission or governing body as grantors, and shall show the written approval of the majority of the members of the State Budget and Control Board.

Section 1‑11‑110. (1) The State Budget and Control Board, upon recommendation of the South Carolina Department of Administration, is authorized to acquire real property, including any estate or interest therein, for, and in the name of, the State of South Carolina by gift, purchase, condemnation or otherwise.

(2) The State Budget and Control Board, upon recommendation of the South Carolina Department of Administration, shall make use of the provisions of the Eminent Domain Procedure Act (Chapter 2 of Title 28) if it is necessary to acquire real property by condemnation. The actions must be maintained by and in the name of the board. The right of condemnation is limited to the right to acquire land necessary for the development of the Capitol Complex ~~mall~~ grounds in the City of Columbia.”

F. Section 1‑11‑180 of the 1976 Code is amended to read:

“Section 1‑11‑180. (A) In addition to the powers granted the ~~Budget and Control Board~~ South Carolina Department of Administration under this chapter or any other provision of law, the ~~board~~ department may:

(1) survey, appraise, examine, and inspect the condition of state property to determine what is necessary to protect state property against fire or deterioration and to conserve the use of the property for state purposes;

(2) ~~approve the destruction or disposal of state agency records;~~

~~(3)~~ ~~require submission and approval of plans and specifications for permanent improvements by a state department, agency, or institution before a contract is awarded for the permanent improvement;~~

~~(4)~~ approve blanket bonds for a state department, agency, or institution including bonds for state officials or personnel. However, the form and execution of blanket bonds must be approved by the Attorney General;

~~(5)~~(3) contract to develop an energy utilization management system for state facilities under its control and to assist other agencies and departments in establishing similar programs. However, this does not authorize capital expenditures.

(B) The ~~Budget and Control Board~~ South Carolina Department of Administration ~~may~~ shall promulgate regulations necessary to carry out this section.”

G. Chapter 11 of Title 1 of the 1976 Code is amended by adding:

“Section 1‑11‑185. (A) In addition to the powers granted the Budget and Control Board pursuant to this chapter or another provision of law, the board may require submission and approval of plans and specifications for permanent improvements by a state department, agency, or institution before a contract is awarded for the permanent improvement.

(B) The Budget and Control Board may promulgate regulations necessary to carry out its duties.

(C) The respective divisions of the Budget and Control Board are authorized to provide to and receive from other governmental entities, including other divisions and state and local agencies and departments, goods and services as will in its opinion promote efficient and economical operations. The divisions may charge and pay the entities for the goods and services, the revenue from which must be deposited in the state treasury in a special account and expended only for the costs of providing the goods and services, and those funds may be retained and expended for the same purposes.”

H. (1) Section 1‑11‑220 of the 1976 Code, as last amended by Act 203 of 2008, is further amended to read:

“Section 1‑11‑220. Section 1‑11‑220. There is hereby established within the ~~Budget and Control Board~~ South Carolina Department of Administration, ~~the~~ Division of ~~Motor Vehicle Management~~ General Services, Program of Fleet Management headed by ~~a Director, hereafter referred to as~~ the ‘State Fleet Manager’ appointed by and reporting directly to the ~~Budget and Control Board~~ department~~, hereafter referred to as the Board~~. The ~~Board~~ department shall develop a comprehensive state Fleet Management Program. The program shall address acquisition, assignment, identification, replacement, disposal, maintenance, and operation of motor vehicles.

The ~~Budget and Control Board~~ department shall, through ~~their~~ its policies and regulations, seek to ~~achieve the following objectives~~:

(a) ~~to~~ achieve maximum cost‑effectiveness management of state‑owned motor vehicles in support of the established missions and objectives of the agencies, boards, and commissions~~.~~;

(b) ~~to~~ eliminate unofficial and unauthorized use of state vehicles~~.~~;

(c) ~~to~~ minimize individual assignment of state vehicles~~.~~;

(d) ~~to~~ eliminate the reimbursable use of personal vehicles for accomplishment of official travel when this use is more costly than use of state vehicles~~.~~;

(e) ~~to~~ acquire motor vehicles offering optimum energy efficiency for the tasks to be performed~~.~~;

(f) ~~to~~ insure motor vehicles are operated in a safe manner in accordance with a statewide Fleet Safety Program;

(g) ~~to~~ improve environmental quality in this State by decreasing the discharge of pollutants.”

(2) Section 1‑11‑225 of the 1976 Code is amended to read:

“Section 1‑11‑225. The ~~Division of Operations~~ South Carolina Department of Administration shall establish a cost allocation plan to recover the cost of operating the comprehensive statewide Fleet Management Program. The division shall collect, retain, and carry forward funds to ensure continuous administration of the program.”

(3) Sections 1‑11‑250, 1‑11‑260, 1‑11‑270(A), 1‑11‑280, 1‑11‑290; 1‑11‑300, 1‑11‑310, as last amended by Act 203 of 2008, 1‑11‑315, 1‑11‑320; 1‑11‑335, and 1‑11‑340 of the 1976 Code are amended to read:

“Section 1‑11‑250. For purposes of Sections 1‑11‑220 to 1‑11‑330:

(a) ‘State agency’ means all officers, departments, boards, commissions, institutions, universities, colleges, and all persons and administrative units of state government that operate motor vehicles purchased, leased, or otherwise held with the use of state funds, pursuant to an appropriation, grant or encumbrance of state funds, or operated pursuant to authority granted by the State.

(b) ‘~~Board~~ Department’ means ~~State Budget and Control Board~~ the South Carolina Department of Administration.

Section 1‑11‑260. (A) The Fleet Manager shall report annually to the ~~Budget and Control Board~~ department and the General Assembly concerning the performance of each state agency in achieving the objectives enumerated in Sections 1‑11‑220 through 1‑11‑330 and include in the report a summary of the ~~division’s~~ program’s efforts in aiding and assisting the various state agencies in developing and maintaining their management practices in accordance with the comprehensive statewide ~~Motor Vehicle~~ Fleet Management Program. This report also shall contain recommended changes in the law and regulations necessary to achieve these objectives.

(B) The ~~board~~ department, after consultation with state agency heads, shall promulgate and enforce state policies, procedures, and regulations to achieve the goals of Sections 1‑11‑220 through 1‑11‑330 and shall recommend administrative penalties to be used by the agencies for violation of prescribed procedures and regulations relating to the Fleet Management Program.

Section 1‑11‑270. (A) The ~~board~~ department shall establish criteria for individual assignment of motor vehicles based on the functional requirements of the job, which shall reduce the assignment to situations clearly beneficial to the State. Only the Governor, statewide elected officials, and agency heads are provided a state‑owned vehicle based on their position.

Section 1‑11‑280. The ~~Board~~ department shall develop a system of agency‑managed and interagency motor pools which are, to the maximum extent possible, cost beneficial to the State. All motor pools shall operate according to regulations promulgated by the ~~Budget and Control Board~~ department. Vehicles shall be placed in motor pools rather than being individually assigned except as specifically authorized by the ~~Board~~ department in accordance with criteria established by the ~~Board~~ department. ~~The motor pool operated by the Division of General Services shall be transferred to the Division of Motor Vehicle Management.~~ Agencies utilizing motor pool vehicles shall utilize trip log forms approved by the ~~Board~~ department for each trip, specifying beginning and ending mileage and the job function performed.

The provisions of this section shall not apply to school buses and service vehicles.

Section 1‑11‑290. The ~~Board~~ department in consultation with the agencies operating maintenance facilities shall study the cost‑effectiveness of such facilities versus commercial alternatives and shall develop a plan for maximally cost‑effective vehicle maintenance. The ~~Budget and Control Board~~ department shall promulgate rules and regulations governing vehicle maintenance to effectuate the plan.

The State Vehicle Maintenance program shall include:

(a) central purchasing of supplies and parts;

(b) an effective inventory control system;

(c) a uniform work order and record‑keeping system assigning actual maintenance cost to each vehicle; and

(d) preventive maintenance programs for all types of vehicles.

All motor fuels shall be purchased from state facilities except in cases where such purchase is impossible or not cost beneficial to the State.

All fuels, lubricants, parts, and maintenance costs including those purchased from commercial vendors shall be charged to a state credit card bearing the license plate number of the vehicle serviced and the bill shall include the mileage on the odometer of the vehicle at the time of service.

Section 1‑11‑300. In accordance with criteria established by the ~~board~~ department, each agency shall develop and implement a uniform cost accounting and reporting system to ascertain the cost per mile of each motor vehicle used by the State under their control. Agencies presently operating under existing systems may continue to do so provided that ~~board~~ departmental approval ~~shall be~~ is required and that the existing systems ~~shall be~~ are uniform with the criteria established by the ~~board~~ department. All expenditures on a vehicle for gasoline and oil shall be purchased in one of the following ways:

(1) from state‑owned facilities and paid for by the use of Universal State Credit Cards except where agencies purchase these products in bulk;

(2) from any fuel outlet where gasoline and oil are sold regardless of whether the outlet accepts a credit or charge card when the purchase is necessary or in the best interest of the State; and

(3) from a fuel outlet where gasoline and oil are sold when that outlet agrees to accept the Universal State Credit Card.

These provisions regarding purchase of gasoline and oil and usability of the state credit card also apply to alternative transportation fuels where available. The ~~Budget and Control Board Division of Operations~~ department shall adjust the budgetary appropriation ~~in Part IA, Section 63B,~~ for ‘Operating Expenses‑‑Lease Fleet’ to reflect the dollar savings realized by these provisions and transfer such amount to other areas of the State Fleet Management Program. The ~~Board~~ department shall promulgate regulations regarding the purchase of motor vehicle equipment and supplies to ensure that agencies within a reasonable distance are not duplicating maintenance services or purchasing equipment that is not in the best interest of the State. The ~~Board~~ department shall develop a uniform method to be used by the agencies to determine the cost per mile for each vehicle operated by the State.

Section 1‑11‑310. (A) The ~~State Budget and Control Board~~ South Carolina Department of Administration shall purchase, acquire, transfer, replace, and dispose of all motor vehicles on the basis of maximum cost‑effectiveness and lowest anticipated total life cycle costs.

(B) The standard state fleet sedan or station wagon must be no larger than a compact model and the special state fleet sedan or station wagon must be no larger than an intermediate model. The ~~director of the Division of Motor Vehicle Management~~ State Fleet Manager shall determine the types of vehicles which fit into these classes. Only these classes of sedans and station wagons may be purchased by the State for nonlaw enforcement use.

(C) The State shall purchase police sedans only for the use of law enforcement officers, as defined by the Internal Revenue Code. Purchase of a vehicle under this subsection must be concurred in by the ~~director of the Division of Motor Vehicle Management~~ State Fleet Manager and must be in accordance with regulations promulgated or procedures adopted under Sections 1‑11‑220 through 1‑11‑340 which must take into consideration the agency’s mission, the intended use of the vehicle, and the officer’s duties. Law enforcement agency vehicles used by employees whose job functions do not meet the Internal Revenue Service definition of ‘Law Enforcement Officer’ must be standard or special state fleet sedans.

(D) All state motor vehicles must be titled to the State and must be received by and remain in the possession of the ~~Division~~ Program of ~~Motor Vehicle~~ Fleet Management pending sale or disposal of the vehicle.

(E) Titles to school buses and service vehicles operated by the State Department of Education and vehicles operated by the South Carolina Department of Transportation must be retained by those agencies.

(F) Exceptions to requirements in subsections (B) and (C) must be approved by the ~~director of the Division of Motor Vehicle Management~~ State Fleet Manager. Requirements in subsection (B) do not apply to the State Development Board.

(G) Preference in purchasing state motor vehicles must be given to vehicles assembled in the United States with at least seventy‑five percent domestic content as determined by the appropriate federal agency.

(H) Preference in purchasing state motor vehicles must be given to hybrid, plug‑in hybrid, bio‑diesel, hydrogen, fuel cell, or flex‑fuel vehicles when the performance, quality, and anticipated life cycle costs are comparable to other available motor vehicles.

Section 1‑11‑315. The ~~State Budget and Control Board~~ South Carolina Department of Administration, Division of General Services, Program of ~~Motor Vehicle~~ Fleet Management, shall determine the extent to which the state vehicle fleet can be configured to operate on alternative transportation fuels. This determination must be based on a thorough evaluation of each alternative fuel and the feasibility of using such fuels to power state vehicles. The state fleet must be configured in a manner that will serve as a model for other corporate and government fleets in the use of alternative transportation fuel. By March 1, 1993, the ~~Division~~ Program of ~~Motor Vehicle~~ Fleet Management must submit a plan to the General Assembly for the use of alternative transportation fuels for the state vehicle fleet that will enable the state vehicle fleet to serve as a model for corporate and other government fleets in the use of alternative transportation fuel. This plan must contain a cost/benefit analysis of the proposed changes.

Section 1‑11‑320. The ~~Board~~ department shall ensure that all state‑owned motor vehicles are identified as such through the use of permanent ~~state‑government~~ state government license plates and either state or agency seal decals. No vehicles shall be exempt from the requirements for identification except those exempted by the ~~Board~~ department.

This section shall not apply to vehicles supplied to law enforcement officers when, in the opinion of the ~~Board~~ department after consulting with the Chief of the State Law Enforcement Division, those officers are actually involved in undercover law enforcement work to the extent that the actual investigation of criminal cases or the investigators’ physical well‑being would be jeopardized if they were identified. The ~~Board~~ department is authorized to exempt vehicles carrying human service agency clients in those instances in which the privacy of the client would clearly and necessarily be impaired.

Section 1‑11‑335. The respective divisions of the Budget and Control Board and the South Carolina Department of Administration are authorized to provide to and receive from other governmental entities, including other divisions and state and local agencies and departments, goods and services, as will in its opinion promote efficient and economical operations. The divisions may charge and pay the entities for the goods and services, the revenue from which shall be deposited in the state treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes.

Section 1‑11‑340. The ~~Board~~ department shall develop and implement a statewide Fleet Safety Program for operators of state‑owned vehicles which shall serve to minimize the amount paid for rising insurance premiums and reduce the number of accidents involving state‑owned vehicles. The ~~Board~~ department shall promulgate ~~rules and~~ regulations requiring the establishment of an accident review board by each agency and mandatory driver training in those instances where remedial training for employees would serve the best interest of the State.”

I. Section 1‑11‑435 of the 1976 Code is amended to read:

“Section 1‑11‑435. To protect the state’s critical information technology infrastructure and associated data systems in the event of a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue in such an event, the ~~Office~~ Division of the Office of the State Chief Information Officer (CIO) should develop a Critical Information Technology Infrastructure Protection Plan devising policies and procedures to provide for the confidentiality, integrity, and availability of, and to allow for alternative and immediate online access to critical data and information systems including, but not limited to, health and human services, law enforcement, and related agency data necessary to provide critical information to citizens and ensure the protection of state employees as they carry out their disaster‑related duties. All state agencies and political subdivisions of this State are directed to assist the Office of the State CIO in the collection of data required for this plan.”

J. Section 2‑13‑240(a) of the 1976 Code is amended by adding at the end:

“(89) Department of Administration, six.”

K. Section 2‑13‑240(a)(58) of the 1976 Code is amended to read:

“(58) Budget and Control Board:

(a) Auditor, six;

(b) General Services Division, six;

(c) Personnel Division, one;

(d) Research and Statistical Services Division, one;

(e) Retirement System, one~~.~~;

(f) Statehouse, Legislative, and Judicial Facilities Operations Division, one.”

L. Chapter 9, Title 3 of the 1976 Code is amended to read:

“CHAPTER 9

Acquisition And Distribution Of Federal Surplus Property

Section 3‑9‑10. (a) The Division of General Services of the ~~State Budget and Control Board~~ South Carolina Department of Administration is authorized:

(1) to acquire from the United States of America under and in conformance with the provisions of Section 203 (j) of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the ‘act,’ such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law;

(2) to warehouse such property; and

(3) to distribute such property within the State to tax‑supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges and universities within the State, to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges and universities which are exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code of 1954, to civil defense organizations of the State, or political subdivisions and instrumentalities thereof, which are established pursuant to State law, and to such other types of institutions or activities as may now be or hereafter become eligible under Federal law to acquire such property.

(b) The Division of General Services of the Department of Administration is authorized to receive applications from eligible health and educational institutions for the acquisition of Federal surplus real property, investigate the applications, obtain expression of views respecting the applications from the appropriate health or educational authorities of the State, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for the purposes, and otherwise assist in the processing of the applications for acquisition of real and related personal property of the United States under Section 203 (k) of the act.

(c) For the purpose of executing its authority under this chapter, the Division of General Services is authorized to adopt, amend or rescind rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this chapter, to assure maximum utilization by and benefit to health, educational and civil defense institutions and organizations within the State from property distributed under this chapter.

(d) The ~~Budget and Control Board~~ South Carolina Department of Administration is authorized to appoint advisory boards or committees, and to employ such personnel and prescribe their duties as are deemed necessary and suitable for the administration of this chapter.

(e) The Director of the Division of General Services is authorized to make such certifications, take such action and enter into such contracts, agreements and undertakings for and in the name of the State (including cooperative agreements with any Federal agencies providing for utilization of property and facilities by and exchange between them of personnel and services without reimbursement), require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing and distribution of personal property received by him from the United States of America.

(f) The Division of General Services is authorized to act as clearinghouse of information for the public and private nonprofit institutions, organizations and agencies referred to in subparagraph (a) of this section and other institutions eligible to acquire federal surplus personal property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above‑mentioned institutions, organizations and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder.

(g) The Division of General Services, in the administration of this chapter, shall cooperate to the fullest extent consistent with the provisions of the act~~,~~ and with the departments or agencies of the United States of America, ~~and shall~~ file a State plan of operation, and operate in accordance therewith, ~~and~~ take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, ~~and~~ make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and ~~it shall~~ comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the State.

Section 3‑9‑20. The Director of the Division of General Services may delegate such power and authority as he deems reasonable and proper for the effective administration of this chapter. The ~~State Budget and Control Board~~ South Carolina Department of Administration may require bond of any person in the employ of the Division of General Services receiving or distributing property from the United States under authority of this chapter.

Section 3‑9‑30. Any charges made or fees assessed by the Division of General Services for the acquisition, warehousing, distribution or transfer of any property of the United States of America for educational, public health or civil defense purposes, including research for any such purpose, or for any purpose which may now be or hereafter become eligible under the act, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipt, warehousing, distribution or transfer.

Section 3‑9‑40. The provisions of this chapter shall not apply to the acquisition of property acquired by agencies of the State under the priorities established by Section 308 (b), Title 23, United States Code, Annotated.”

M. Section 10‑1‑10, Section 10‑1‑30, as last amended by Act 628 of 1988, and Section 10‑1‑40 of the 1976 Code are amended to read:

“Section 10‑1‑10. (A) The State Budget and Control Board shall keep, landscape, cultivate, and beautify the State House and State House grounds with authority to expend such amounts as may be annually appropriated therefor. The board shall employ all help and labor in policing, protecting, and caring for the State House and State House grounds and shall have full authority over them.

(B) The State Budget and Control Board shall keep and maintain the State House, Blatt Office Building, Gressette Office Building, Supreme Court Building, Calhoun Office Building, and the grounds of the Capitol Complex with authority to expend amounts as may be appropriated annually therefor and shall have full authority over the buildings. The board shall employ all help and labor in policing, protecting, and caring for the State House, and its grounds and shall have full authority over it.

Section 10‑1‑30. (A) The ~~Director of the Division of General Services of the~~ State Budget and Control Board may authorize the use of ~~the State House lobbies,~~ the State House steps and grounds~~,~~ and other public buildings and grounds in accordance with ~~regulations promulgated~~ restrictions set by the board.

(B) The Budget and Control Board may authorize the use of the State House lobbies and the Gressette and Blatt Office Buildings in accordance with restrictions set by the board. The ~~director~~ board shall obtain the approval of the Clerk of the Senate before authorizing any use of the Gressette Building and shall obtain the approval of the Clerk of the House of Representatives before authorizing any use of the Blatt Building.

(C) The ~~regulations~~ restrictions upon the use of the buildings and grounds must contain provisions to ~~insure~~ ensure that the public health, safety, and welfare ~~will be~~ are protected in the use of the areas including reasonable time, place, and manner restrictions and application periods before use. If sufficient measures ~~cannot be~~ are not taken to protect the public health, safety, and welfare, the ~~director~~ Budget and Control Board shall deny the requested use. Other restrictions may be imposed on the use of the areas as are necessary for the conduct of business in those areas and the maintenance of the dignity, decorum, and aesthetics of the areas.

Section 10‑1‑40. There is hereby established a committee to be known as the ‘State House Committee’, consisting of five members of the Senate, appointed by the Lieutenant Governor and five members of the House of Representatives, appointed by the Speaker, whose duties shall be to review all proposals for alterations and/or renovations to the State House. No alterations or renovations shall be undertaken without the approval of this committee.”

N. Section 10‑1‑130 of the 1976 Code is amended to read:

“Section 10‑1‑130. The trustees or governing bodies of State institutions and agencies may grant easements and rights of way over any property under their control, upon the recommendation of the Department of Administration and the concurrence and acquiescence of the State Budget and Control Board, whenever it appears that such easements ~~will~~ do not materially impair the utility of the property or damage it and, when a consideration is paid therefor, any ~~such~~ amounts ~~shall~~ must be placed in the State Treasury to the credit of the institution or agency having control of the property involved.”

O. Section 10‑1‑190 of the 1976 Code, as added by Act 145 of 1995, is amended to read:

“Section 10‑1‑190. As part of the approval process relating to trades of state property for nonstate property, the ~~Budget and Control Board~~ South Carolina Department of Administration is authorized to approve the application of any net proceeds resulting from such a transaction to the improvement of the property held by the ~~board~~ department, subject to the approval of the Budget and Control Board.”

P. Chapter 9, Title 10 of the 1976 Code is amended to read:

“CHAPTER 9

Minerals and Mineral Interests

in Public Lands

Article 1

General Provisions

Section 10‑9‑10. The Public Service Authority may, through its board of directors, make and execute leases of gas, oil and other minerals and mineral rights, excluding phosphate and lime and phosphatic deposits, over and upon the lands and properties owned by said Authority; and the ~~State Budget and Control Board~~ South Carolina Department of Administration and the forfeited land commissions of the ~~several~~ counties of this State may, with the approval of the Attorney General, make and execute such leases over and upon the lands and waters of the State and of the ~~several~~ counties under the ownership, management, or control of ~~such Board~~ the department and commissions respectively.

Section 10‑9‑20. No such lease shall provide for a royalty of less than twelve and one‑half per cent of production of oil and gas from the lease.

Section 10‑9‑30. Nothing contained in this article shall estop the State from enacting proper laws for the conservation of the oil, gas and other mineral resources of the State and all leases and contracts made under authority of this article shall be subject to such laws; provided, that the ~~State Budget and Control Board~~ South Carolina Department of Administration may negotiate for leases of oil, gas and other mineral rights upon all of the lands and waters of the State, including offshore marginal and submerged lands.

Section 10‑9‑35. In the event that the State of South Carolina is the recipient of revenues derived from offshore oil leases within the jurisdictional limits of the State such revenues shall be deposited with the State Treasurer in a special fund and shall be expended only by authorization of the General Assembly.

Funds so accumulated shall be expended only for the following purposes:

(1) to retire the bonded indebtedness incurred by South Carolina;

(2) for capital improvement expenditures.

Section 10‑9‑40. The authority conferred upon the Public Service Authority, the ~~State Budget and Control Board~~ South Carolina Department of Administration, and the forfeited land commissions by this article shall be cumulative and in addition to the rights and powers heretofore vested by law in such Authority, ~~such State Budget and Control Board~~ the South Carolina Department of Administration, and such commissions, respectively.

Article 3

Phosphate

Section 10‑9‑110. The ~~State Budget and Control Board~~ South Carolina Department of Administration shall be charged with the exclusive control and protection of the rights and interest of the State in the phosphate rocks and phosphatic deposits in the navigable streams and in the marshes thereof.

Section 10‑9‑120. The ~~Board~~ department may inquire into and protect the interests of the State in and to any phosphatic deposits or mines, whether in the navigable waters of the State or in land marshes or other territory owned or claimed by other parties, and in the proceeds of any such mines and may take such action for, or in behalf of, the State in regard thereto as it may find necessary or deem proper.

Section 10‑9‑130. The ~~Board~~ department may issue to any person who applies for a lease or license granting a general right to dig, mine and remove phosphate rock and phosphatic deposits from all the navigable streams, waters and marshes belonging to the State and also from such of the creeks, not navigable, lying therein as may contain phosphate rock and deposits belonging to the State and not previously granted. Such leases or licenses may be for such terms as may be determined by the ~~Board~~ department. The annual report of the ~~Board~~ department to the General Assembly shall include a list of all effective leases and licenses. The ~~Board~~ department may make a firm contract for the royalty to be paid the State which shall not be increased during the life of the license. Provided, that prior to the grant or issuance of any lease or license, the ~~Board~~ department shall cause to be published a notice of such application in a newspaper having general circulation in the county once a week for three successive weeks prior to the grant or issuance. ~~Provided, further~~ However, the lessee or licensee ~~may~~ shall not take possession if there ~~be~~ is an adverse claim and the burden of proving ownership in the State shall be placed upon the lessee or licensee.

Section 10‑9‑140. In every case in which ~~such~~ an application ~~shall be~~ is made to the ~~Board~~ department for a license, the ~~Board~~ department may grant or refuse the license as it ~~may deem~~ considers best for the interest of the State and the proper management of the interests of the State in ~~such~~ those deposits.

Section 10‑9‑150. As a condition precedent to the right to dig, mine, and remove the rocks and deposits granted by ~~any such~~ a license, each licensee shall enter into bond, with security, in the penal sum of five thousand dollars, conditioned for the making at the end of every month of true and faithful returns to the Comptroller General of the number of tons of phosphate rock and phosphatic deposits so dug or mined and the punctual payment to the State Treasurer of the royalty provided at the end of every quarter or three months. ~~Such~~ The bond and sureties ~~thereon shall be~~ are subject to the approval required by law for the bonds of State officers.

Section 10‑9‑160. Whenever the ~~Board~~ department shall have reason to doubt the solvency of any surety whose name appears upon any bond executed for the purpose of securing the payment of the phosphate royalty by any person digging, mining and removing phosphate rock or phosphatic deposits in any of the territory, the property of the State, under any grant or license, the ~~Board~~ department shall forthwith notify the person giving such bond and the sureties thereon and require that one or more sureties, as the case may be, shall be added to the bond, such surety or sureties to be approved by the ~~Board~~ department.

Section 10‑9‑170. The ~~Board~~ department, upon petition filed by any person who is surety on any such bond as aforesaid and who considers himself in danger of being injured by such suretyship, shall notify the person giving such bond to give a new bond with other sureties and upon failure of such person to do so within thirty days shall cause such person to suspend further operations until a new bond be given. ~~But in~~ In no case shall the sureties on the old bond be discharged from liability thereon until the new bond has been executed and approved, and such sureties shall not be discharged from any antecedent liability by reason of such suretyship.

Section 10‑9‑180. The ~~Board~~ department is hereby vested with full and complete power and control over all mining in the phosphate territory belonging to this State and over all persons digging or mining phosphate rock or phosphatic deposit in the navigable streams and waters or in the marshes thereof, with full power and authority, subject to the provisions of Sections 10‑9‑130 and 10‑9‑190 to fix, regulate, raise or reduce such royalty per ton as shall from time to time be paid to the State by such persons for all or any such phosphate rock dug, mined, removed and shipped or otherwise sent to the market therefrom. ~~But six~~ Six months’ notice shall be given all persons at such time digging or mining phosphate rock in such navigable streams, waters or marshes before any increase shall be made in the rate of royalty theretofore existing.

Section 10‑9‑190. Each person to whom a license shall be issued must, at the end of every month, make to the Comptroller General a true and lawful return of the phosphate rock and phosphatic deposits he may have dug or mined during such month and shall punctually pay to the State Treasurer, at the end of every quarter or three months, a royalty of five cents per ton upon each and every ton of the crude rock (not of the rock after it has been steamed or dried), the first quarter to commence to run on the first day of January in each year.

Section 10‑9‑200. The ~~State Budget and Control Board~~ South Carolina Department of Administration shall, within twenty days after the grant of any license as aforesaid, notify the Comptroller General of the issuing of such license, with the name of the person to whom issued, the time of the license and the location for which it was issued.

Section 10‑9‑210. Every person who shall dig, mine or remove any phosphate rock or phosphatic deposit from the beds of the navigable streams, waters and marshes of the State without license therefor previously granted by the State to such person shall be liable to a penalty of ten dollars for each and every ton of phosphate rock or phosphatic deposits so dug, mined or removed, to be recovered by action at the suit of the State in any court of competent jurisdiction. One half of such penalty shall be for the use of the State and the other half for the use of the informer.

Section 10‑9‑220. It shall be unlawful for any person to purchase or receive any phosphate rock or phosphatic deposit dug, mined or removed from the navigable streams, waters or marshes of the State from any person not duly authorized by act of the General Assembly of this State or license of the ~~Board~~ department to dig, mine or remove such phosphate rock or phosphatic deposit.

Section 10‑9‑230. Any person violating Section 10‑9‑220 shall forfeit to the State the sum of ten dollars for each and every ton of phosphate rock or phosphatic deposit so purchased or received, to be recovered by action in any court of competent jurisdiction. One half of such forfeiture shall be for the use of the State and the other half for the use of the informer.

Section 10‑9‑240. Should any person whosoever interfere with, obstruct or molest or attempt to interfere with, obstruct or molest the ~~Board~~ department or anyone by it authorized or licensed hereunder in the peaceable possession and occupation for mining purposes of any of the marshes, navigable streams or waters of the State, then the ~~Board~~ department may, in the name and on behalf of the State, take such measures or proceedings as it may be advised are proper to enjoin and terminate any such molestation, interference or obstruction and place the State, through its agents, the ~~Board~~ department or anyone under it authorized, in absolute and practical possession and occupation of such marshes, navigable streams or waters.

Section 10‑9‑250. Should any person attempt to mine or remove phosphate rock and phosphatic deposits from any of the marshes, navigable waters or streams, including the Coosaw River phosphate territory, by and with any boat, vessel, marine dredge or other appliances for such mining or removal, without the leave or license of the ~~Board~~ department thereto first had and obtained, all such boats, vessels, marine dredges and other appliances are hereby declared forfeited to and property of the State, and the Attorney General, for and in behalf of the State, shall institute proceedings in any court of competent jurisdiction for the claim and delivery thereof, in the ordinary form of action for claim and delivery, in which action the title of the State shall be established by the proof of the commission of any such act of forfeiture by the person owning them, or his agents, in possession of such boats, vessels, marine dredges or other appliances. In any such action the State shall not be called upon or required to give any bond or obligation such as is required by parties plaintiff in action for claim and delivery.

Section 10‑9‑260. Any person wilfully interfering with, molesting or obstructing or attempting to interfere with, molest or obstruct the State or the ~~State Budget and Control Board~~ South Carolina Department of Administration or anyone by it authorized or licensed in the peaceable possession and occupation of any of the marshes, navigable streams or waters of the State, including the Coosaw River phosphate territory, or who shall dig or mine or attempt to dig or mine any of the phosphate rock or phosphatic deposits of this State without a license so to do issued by the ~~Board~~ department shall be punished for each offense by a fine of not less than one hundred dollars nor more than five hundred dollars or imprisonment for not less than one nor more than twelve months, or both, at the discretion of the court.

Section 10‑9‑270. The ~~Board~~ department shall report annually to the General Assembly its actions and doings under this article during the year to the time of the meeting of the Assembly, with an itemized account of its expenses for the year incurred in connection with its duties and powers under this article.

Article 5

Geothermal Resources

Section 10‑9‑310. For purposes of this article geothermal resources mean the natural heat of the earth at temperatures greater than forty degrees Celsius and includes:

(1) The energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat.

(2) The material medium, including the brines, water, and steam naturally present, as well as any substance artificially introduced to serve as a heat transfer medium.

(3) All dissolved or entrained minerals and gases that may be obtained from the material medium but excluding hydrocarbon substances and helium.

Section 10‑9‑320. The ~~State Budget and Control Board (board)~~ South Carolina Department of Administration may lease development rights to geothermal resources underlying surface lands owned by the State. The ~~board~~ department must promulgate regulations regarding the method of lease acquisition, lease terms, and conditions due the State under lease operations. The South Carolina Department of Natural Resources is designated as the exclusive agent for the board in selecting lands to be leased, administering the competitive bidding for leases, administering the leases, receiving and compiling comments from other state agencies concerning the desirability of leasing the state lands proposed for leasing and such other activities that pertain to geothermal resource leases as may be included herein as responsibilities of the ~~board~~ department.

Section 10‑9‑330. Any lease of rights to drill for and use oil, natural gas, or minerals on public or private lands must not allow drilling for or use of geothermal energy by the lessee unless the instrument creating the lease specifically provides for such use.”

Q. Section 10‑11‑50 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

“Section 10‑11‑50. (A) It shall be unlawful for anyone to park any vehicle on any of the property described in Section 10‑11‑40 and subsection (2) of Section 10‑11‑80 except in the spaces and manner now marked and designated or that may hereafter be marked and designated by the ~~State Budget and Control Board~~ South Carolina Department of Administration, in cooperation with the Department of Transportation, or to block or impede traffic through the alleys and driveways.

(B) The State Budget and Control Board must ensure that parking spaces are available in the garage below the Capitol Complex, in proximity to the buildings utilized by the legislative, judicial, and executive branches, in the locations in use on the effective date of this subsection, and assigned as follows:

(1) three hundred for the House of Representatives;

(2) two hundred twelve for the Senate;

(3) twenty‑nine for the Judicial Department; and

(4) fifty‑seven for the Office of the Governor.”

R. Section 10‑11‑90 of the 1976 Code is amended to read:

“Section 10‑11‑90. The watchmen and policemen employed ~~by the Budget and Control Board~~ for the protection of the property described in Sections 10‑11‑30 and 10‑11‑40 and subsection (2) of Section 10‑11‑80 are hereby vested with all of the powers, privileges and immunities of constables while on this area or in fresh pursuit of those violating the law in this area, provided that such watchmen and policemen take and file the oath required of peace officers, execute and file bond in the form required of State constables, ~~in the amount of one thousand dollars, with the Budget and Control Board,~~ and be duly commissioned by the Governor.”

S. Section 10‑11‑110 of the 1976 Code is amended to read:

“Section 10‑11‑110. In connection with traffic and parking violations only, the watchmen and policemen referred to in Section 10‑11‑90, State highway patrolmen and policemen of the City of Columbia shall have the right to issue and use parking tickets of the type used by the City of Columbia, with such changes as are necessitated hereby, to be prepared and furnished by the ~~Budget and Control Board~~ South Carolina Department of Administration, upon the issuance of which the procedures shall be followed as prevail in connection with the use of parking tickets by the City of Columbia. Nothing herein shall restrict the application and use of regular arrest warrants.”

T. Sections 11‑9‑610, 11‑9‑620, and 11‑9‑630 of the 1976 Code are amended to read:

“Section 11‑9‑610. The ~~State Budget and Control Board~~ South Carolina Department of Administration shall receive and manage the incomes and revenues set apart and applied to the Sinking Fund of the State. The department must report annually on the financial status of the Sinking Fund to the Budget and Control Board.

Section 11‑9‑620. All ~~moneys~~ monies arising from the redemption of lands, leases, and sales of property or otherwise coming to the ~~State Budget and Control Board~~ South Carolina Department of Administration for the Sinking Fund, ~~shall~~ must be paid into the State Treasury and ~~shall be~~ kept on a separate account by the treasurer as a fund to be drawn upon the warrants of the ~~Board~~ department for the exclusive uses and purposes which have been or shall be declared in relation to the Sinking Fund.

Section 11‑9‑630. ~~The~~ Subject to the approval of the State Budget and Control Board, the South Carolina Department of Administration shall sell and convey, for and on behalf of the State, all such real property, assets and effects belonging to the State as are not in actual public use, such sales to be made from time to time in such manner and upon such terms as it may deem most advantageous to the State. This shall not be construed to authorize the sale by the ~~Board~~ department of any property held in trust for a specific purpose by the State or the property of the State in the phosphate rocks or phosphatic deposits in the beds of the navigable streams and waters and marshes of the State.”

U. Sections 11‑35‑3810 and 11‑35‑3830, both as amended by Act 153 of 1997, and Sections 11‑35‑3820 and 11‑35‑3840, both as amended by Act 376 of 2006, of the 1976 Code are further amended to read:

“Section 11‑35‑3810. Subject to existing provisions of law, the ~~board~~ Department of Administration shall promulgate regulations governing:

(1) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods designated by such regulations;

(2) the transfer of excess supplies between agencies and departments.

Section 11‑35‑3820. Except as provided in Section 11‑35‑1580 and Section 11‑35‑3830 and the regulations pursuant to them, the sale of all state‑owned supplies, or personal property not in actual public use must be conducted and directed by the ~~designated board office~~ Division of General Services of the South Carolina Department of Administration. The sales must be held at such places and in a manner as in the judgment of the ~~designated board office~~ Division of General Services is most advantageous to the State. Unless otherwise determined, sales must be by either public auction or competitive sealed bid to the highest bidder. Each governmental body shall inventory and report to the ~~designated board office~~ division all surplus personal property not in actual public use held by that governmental body for sale. The ~~designated board office~~ division shall deposit the proceeds from the sales, less expense of the sales, in the state general fund or as otherwise directed by regulation. This policy and procedure applies to all governmental bodies unless exempt by law.

Section 11‑35‑3830 (1) Trade‑in Value. Unless otherwise provided by law, governmental bodies may trade‑in personal property, the trade‑in value of which may be applied to the procurement or lease of like items. The ~~trade‑in~~ trade in value of such personal property shall not exceed an amount as specified in regulations promulgated by the ~~board~~ Department of Administration.

(2) Approval of Trade‑in Sales. When the trade‑in value of personal property of a governmental body exceeds the specified amount, the ~~board~~ Department of Administration shall have the authority to determine whether:

(a) the subject personal property shall be traded in and the value applied to the purchase of new like items; or

(b) the property shall be classified as surplus and sold in accordance with the provisions of Section 11‑35‑3820. The ~~board~~ departmental determination shall be in writing and be subject to the provisions of this chapter.

(3) Record of Trade‑in Sales. Governmental bodies shall submit quarterly to the materials management officer a record listing all trade‑in sales made under subsections (1) and (2) of this section.

Section 11‑35‑3840. The State Budget and Control Board may license for public sale publications, including South Carolina Business Opportunities, materials pertaining to training programs, and information technology products that are developed during the normal course of the board’s activities. The items must be licensed at reasonable costs established in accordance with the cost of the items. All proceeds from the sale of the publications and materials must be placed in a revenue account and expended for the cost of providing the services.”

V. Section 13‑7‑30 of the 1976 Code, as last amended by Act 357 of 2000, is further amended to read:

“Section 13‑7‑30. For purposes of this article, the State Budget and Control Board, upon recommendation of the South Carolina Department of Administration, hereinafter in this section referred to as the board, is designated as the agency of the State which shall have the following powers and duties that are in accord with its already established responsibilities for custody of state properties, and for the management of all state sinking funds, insurance, and analogous fiscal matters that are relevant to state properties:

(1) expend state funds in order to acquire, develop, and operate land and facilities. This acquisition may be by lease, dedication, purchase, or other arrangements. However, the state’s functions under the authority of this section are limited to the specific purposes of this article;

(2) lease, sublease, or sell real and personal properties to public or private bodies;

(3) assure the maintenance of insurance coverage by state licensees, lessees, or sublessees as will in the opinion of the board protect the citizens of the State against nuclear incident that may occur on state‑controlled atomic energy facilities;

(4) assume responsibility for extended custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the State, in the event the parties operating these facilities abandon their responsibility, or when the license for the facility is ultimately transferred to an agency of the State, and whenever the federal government or any agency of the federal government has not assumed the responsibility.

In order to finance such extended custody and maintenance as the board may undertake, the board may collect fees from private or public parties holding radioactive materials for custodial purposes. These fees must be sufficient in each individual case to defray the estimated cost of the board custodial management activities for that individual case. The fees collected for such custodial management activities shall also be sufficient to provide additional funds for the purchase of insurance which shall be purchased for the protection of the State and the general public for the period such radioactive material considering its isotope and curie content together with other factors may present a possible danger to the general public in the event of migration or dispersal of such radioactivity. All such fees, when received by the board, must be transmitted to the State Treasurer. The Treasurer must place the money in a special account, in the nature of a revolving trust fund, which may be designated ‘extended care maintenance fund’, to be disbursed on authorization of the board. Monies in the extended care maintenance funds must be invested by the board in the manner as other state monies. However, any interest accruing as a result of investment must accrue to this extended care maintenance fund. Except as authorized in Section 48‑46‑40(B)(7)(b) and (D)(2), the extended care maintenance fund must be used exclusively for custodial, surveillance, and maintenance costs during the period of institutional control and during any post‑closure and observation period specified by the Department of Health and Environmental Control, and for activities associated with closure of the site. Funds from the extended care maintenance fund shall not be used for site closure activities or for custodial, surveillance, and maintenance performed during the post‑closure observation period until all funds in the decommissioning trust account are exhausted.

(5) Enter into an agreement with the federal government or any of its authorized agencies to assume extended maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used for development of atomic energy resources or as custodial site for radioactive material.”

W. Section 13‑7‑830 of the 1976 Code, as last amended by Act 357 of 2000, is further amended to read:

“Section 13‑7‑830. The recommendations described in Section 13‑7‑620 shall be made available to the General Assembly, the Governor, ~~and~~ the Budget and Control Board, South Carolina Department of Administration.”

X. Section 48‑46‑30(4) of the 1976 Code, as added by Act 357 of 2000, is amended to read:

“(4) ‘Board’ means the South Carolina Budget and Control Board or its designated official, and ‘Department’ means the South Carolina Department of Administration or its designee.”

Y. Section 48‑46‑40 of the 1976 Code, as last amended by Act 318 of 2006, is further amended to read:

“Section 48‑46‑40. (A)(1) The board, upon recommendation of the Department of Administration, shall approve disposal rates for low‑level radioactive waste disposed at any regional disposal facility located within the State. The approval of disposal rates pursuant to this chapter is neither a regulation nor the promulgation of a regulation as those terms are specially used in ~~Title 1, Chapter 23~~ Chapter 23 of Title 1.

(2) The board shall adopt a maximum uniform rate schedule for regional generators containing disposal rates that include the administrative surcharges specified in Section 48‑46‑60(B) and surcharges for the extended custody and maintenance of the facility pursuant to Section 13‑7‑30(4) and that do not exceed the approximate disposal rates, excluding any access fees and including a specification of the methodology for calculating fees for large components, generally applicable to regional generators on September 7, 1999. Any disposal rates contained in a valid written agreement that were applicable to a regional generator on September 7, 1999, that differ from rates in the maximum uniform rate schedule will continue to be honored through the term of such agreement. The maximum uniform rate schedule approved under this section becomes effective immediately upon South Carolina’s membership in the Atlantic Compact. The maximum uniform rate schedule shall be the rate schedule applicable to regional waste whenever it is not superseded by an adjusted rate approved by the board pursuant to paragraph (3) of this subsection or by special disposal rates approved pursuant to paragraphs (5) or (6)(e) of this subsection.

(3) The board may at any time of its own initiative, at the request of a site operator, or at the request of the compact commission, adjust the disposal rate or the relative proportions of the individual components that constitute the overall rate schedule. Except as adjusted for inflation in subsection (4), rates adjusted in accordance with this section, that include the administrative surcharges specified in Section 48‑46‑60(B) and surcharges for the extended custody and maintenance of the facility pursuant to Section 13‑7‑30(4), ~~may~~ shall not exceed initial disposal rates set by the board, upon recommendation of the department pursuant to subsection (2).

(4) In March of each year the board shall adjust the rate schedule based on the most recent changes in the most nearly applicable Producer Price Index published by the Bureau of Labor Statistics as chosen by the board or a successor index.

(5) In consultation with the site operator and upon recommendation of the department, the board or its designee, on a case‑by‑case basis, may approve special disposal rates for regional waste that differ from the disposal rate schedule for regional generators set by the board pursuant to subsections (2) and (3). Requests by the site operator for such approval shall be in writing to the board. In approving such special rates, the board or its designee, shall consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, or other relevant factors; provided, however, that the board shall not approve any special rate for an entity owned by or affiliated with the site operator. Special disposal rates approved by the board under this subsection shall be in writing and shall be kept confidential as proprietary business information for one year from the date when the bid or the request for proposal containing the special rate is accepted by the regional generator; provided, however, that such special rates when accepted by a regional generator shall be disclosed to the compact commission and to all other regional generators, which shall, to the extent permitted by applicable law, keep them confidential as proprietary business information for one year from the date when the bid or request for proposal containing this special rate is accepted by the regional generator. Within one business day of a special disposal rate’s acceptance, the site operator shall notify the board, the department, the compact commission, and the regional generators of each special rate that has been accepted by a regional generator, and the board, department, the compact commission, and regional generators may communicate with each other about such special rates. If any special rate approved by the board for a regional generator is lower than a disposal rate approved by the board for regional generators pursuant to subsections (2) and (3) for waste that is generally similar in characteristics and volume, the disposal rate for all regional generators shall be revised to equal the special rate for the regional generator. Regional generators may enter into contracts for waste disposal at such special rates and on comparable terms for a period of not less than six months. An officer of the site operator shall certify in writing to the board and the compact commission each month that no regional generator’s disposal rate exceeds any other regional generator’s special rate for waste that is generally similar in characteristics and volume, and such certification shall be subject to periodic audit by the board and the compact commission.

(6)(a) To the extent authorized by the compact commission, the board, upon recommendation of the Department of Administration and on behalf of the State of South Carolina, may enter into agreements with any person in the United States or its territories or any interstate compact, state, U.S. territory, or U.S. Department of Defense military installation abroad for the importation of waste into the region for purposes of disposal at a regional disposal facility within South Carolina. No waste from outside the Atlantic Compact region may be disposed at a regional disposal facility within South Carolina, except to the extent that the board is authorized by the compact commission to enter into agreements for importation of waste.

The board shall authorize the importation of nonregional waste into the region for purposes of disposal at the regional disposal facility in South Carolina so long as nonregional waste would not result in the facility accepting more than the following total volumes of all waste:

( i) 160,000 cubic feet in fiscal year 2001;

( ii) 80,000 cubic feet in fiscal year 2002;

(iii) 70,000 cubic feet in fiscal year 2003;

( iv) 60,000 cubic feet in fiscal year 2004;

( v) 50,000 cubic feet in fiscal year 2005;

( vi) 45,000 cubic feet in fiscal year 2006;

(vii) 40,000 cubic feet in fiscal year 2011;

(viii) 35,000 cubic feet in fiscal year 2008.

After fiscal year 2012, the board shall not authorize the importation of nonregional waste for purposes of disposal.

(b) The board, upon recommendation of the department may approve disposal rates applicable to nonregional generators. In approving disposal rates applicable to nonregional generators, the board, upon recommendation of the department may consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors.

(c) Absent action by the board under subsection (b) above to establish disposal rates for nonregional generators, rates applicable to these generators must be equal to those contained in the maximum uniform rate schedule approved by the board pursuant to paragraph (2) or (3) of this subsection for regional generators unless these rates are superseded by special disposal rates approved by the board pursuant to paragraph (6)(e) of this subsection.

(d) Regional generators shall not pay disposal rates that are higher than disposal rates for nonregional generators in any fiscal quarter.

(e) In consultation with the site operator and upon recommendation of the Department of Administration, the board or its designee, on a case‑by‑case basis, may approve special disposal rates for nonregional waste that differ from the disposal rate schedule for nonregional generators set by the board. Requests by the site operator for such approval shall be in writing to the board. In approving such special rates, the board or its designee shall consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors; provided, however, that the board shall not approve any special rate for an entity owned by or affiliated with the site operator. Special disposal rates approved by the board under this subsection shall be in writing and shall be kept confidential as proprietary business information for one year from the date when the bid or request for proposal containing the special rate is accepted by the nonregional generator; provided, however, that such special rates when accepted by a nonregional generator shall be disclosed to the compact commission and to all regional generators, which shall, to the extent permitted by applicable law, keep them confidential as proprietary business information for one year from the date when the bid or request for proposal containing the special rate is accepted by the nonregional generator. Within one business day of a special disposal rate’s acceptance, the site operator shall notify the ~~board~~ department, the compact commission, and the regional generators in writing of each special rate that has been accepted by a nonregional generator, and the board, department, the compact commission, and regional generators may communicate with each other about such special rates. If any special rate approved by the board for a nonregional generator is lower than a disposal rate approved by the board for regional generators for waste that is generally similar in characteristics and volume, the disposal rate for all regional generators shall be revised to equal the special rate for the nonregional generator. Regional generators may enter into contracts for waste disposal at such special rate and on comparable terms for a period of not less than six months. An officer of the site operator shall certify in writing to the board, department and the compact commission each month that no regional generator disposal rate exceeds any nonregional generator’s special rate for waste that is generally similar in characteristics and volume, and such certification shall be subject to periodic audit by the board, department and the compact commission.

(B)(1) Effective upon the implementation of initial disposal rates by the board under Section 48‑46‑40(A), the PSC is authorized and directed to identify allowable costs for operating a regional low‑level radioactive waste disposal facility in South Carolina.

(2) In identifying the allowable costs for operating a regional disposal facility, the PSC shall:

(a) prescribe a system of accounts, using generally accepted accounting principles, for disposal site operators, using as a starting point the existing system used by site operators;

(b) assess penalties against disposal site operators if the PSC determines that they have failed to comply with regulations pursuant to this section; and

(c) require periodic reports from site operators that provide information and data to the PSC and parties to these proceedings. The Office of Regulatory Staff shall obtain and audit the books and records of the site operators associated with disposal operations as determined applicable by the PSC.

(3) Allowable costs include the costs of those activities necessary for:

(a) the receipt of waste;

(b) the construction of disposal trenches, vaults, and overpacks;

(c) construction and maintenance of necessary physical facilities;

(d) the purchase or amortization of necessary equipment;

(e) purchase of supplies that are consumed in support of waste disposal activities;

(f) accounting and billing for waste disposal;

(g) creating and maintaining records related to disposed waste;

(h) the administrative costs directly associated with disposal operations including, but not limited to, salaries, wages, and employee benefits;

(i) site surveillance and maintenance required by the State of South Carolina, other than site surveillance and maintenance costs covered by the balance of funds in the decommissioning trust fund or the extended care maintenance fund;

(j) compliance with the license, lease, and regulatory requirements of all jurisdictional agencies;

(k) administrative costs associated with collecting the surcharges provided for in subsections (B) and (C) of Section 48‑46‑60;

(l) taxes other than income taxes;

(m) licensing and permitting fees; and

(n) any other costs directly associated with disposal operations determined by the PSC to be allowable.

Allowable costs do not include the costs of activities associated with lobbying and public relations, clean‑up and remediation activities caused by errors or accidents in violation of laws, regulations, or violations of the facility operating license or permits, activities of the site operator not directly in support of waste disposal, and other costs determined by the PSC to be unallowable.

(4) Within ninety days following the end of a fiscal year, a site operator may file an application with the PSC to adjust the level of an allowable cost under subsection (3), or to allow a cost not previously designated an allowable cost. A copy of the application must be provided to the Office of Regulatory Staff. The PSC shall process such application in accordance with its procedures. If such application is approved by the PSC, the PSC shall authorize the site operator to adjust allowable costs for the current fiscal year so as to compensate the site operator for revenues lost during the previous fiscal year.

(5) A private operator of a regional disposal facility in South Carolina is authorized to charge an operating margin of twenty‑nine percent. The operating margin for a given period must be determined by multiplying twenty‑nine percent by the total amount of allowable costs as determined in this subsection, excluding allowable costs for taxes and licensing and permitting fees paid to governmental entities.

(6) The site operator shall prepare and file with the PSC a Least Cost Operating Plan. The plan must be filed within forty‑five days of enactment of this chapter and must be revised annually. The plan shall include information concerning anticipated operations over the next ten years and shall evaluate all options for future staffing and operation of the site to ensure least cost operation, including information related to the possible interim suspension of operations in accordance with subsection (B)(7). A copy of the plan must be provided to the Office of Regulatory Staff.

(7)(a) If the board, upon recommendation of the Department of Administration and upon the advice of the compact commission or the site operator, concludes based on information provided to the ~~board~~ department, that the volume of waste to be disposed during a forthcoming period of time does not appear sufficient to generate receipts that will be adequate to reimburse the site operator for its costs of operating the facility and its operating margin, then the ~~board~~ department shall direct the site operator to propose to the compact commission plans including, but not necessarily limited to, a proposal for discontinuing acceptance of waste until such time as there is sufficient waste to cover the site operator’s operating costs and operating margin. Any proposal to suspend operations must detail plans of the site operator to minimize its costs during the suspension of operations. Any such proposal to suspend operations must be approved by the Department of Health and Environmental Control with respect to safety and environmental protection.

(b) Allowable costs applicable to any period of suspended operations must be approved by the PSC according to procedures similar to those provided herein for allowable operating costs. During any such suspension of operations, the site operator must be reimbursed by the ~~board~~ department from the extended care maintenance fund for its allowable costs and its operating margin. During the suspension funding to reimburse the ~~board~~ department, the PSC, and the State Treasurer under Section 48‑46‑60(B) and funding of the compact commission under Section 48‑46‑60(C) must also be allocated from the extended care maintenance fund as approved by the ~~board~~ department based on revised budgets submitted by the PSC, State Treasurer, and the compact commission.

(c) Notwithstanding any disbursements from the extended care maintenance fund in accordance with any provision of this act, the ~~board~~ department shall continue to ensure, in accordance with Section 13‑7‑30, that the fund remains adequate to defray the costs for future maintenance costs or custodial and maintenance obligations of the site and other obligations imposed on the fund by this chapter.

(d) The PSC may promulgate regulations and policies necessary to execute the provisions of this section.

(8) The PSC may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of identifying allowable costs associated with waste disposal. The PSC may consider standards, precedents, findings, and decisions in other jurisdictions that regulate allowable costs for radioactive waste disposal.

(9) In all proceedings held pursuant to this section, the board shall participate as a party representing the interests of the State of South Carolina, and the compact commission may participate as a party representing the interests of the compact states. The Executive Director of the Office of Regulatory Staff and the Attorney General of the State of South Carolina shall be parties to any such proceeding. Representatives from the Department of Health and Environmental Control shall participate in proceedings where necessary to determine or define the activities that a site operator must conduct in order to comply with the regulations and license conditions imposed by the department. Other parties may participate in the PSC’s proceedings upon satisfaction of standing requirements and compliance with the PSC’s procedures. Any site operator submitting records and information to the PSC may request that the PSC treat such records and information as confidential and not subject to disclosure in accordance with the PSC’s procedures.

(10) In all respects in which the PSC has power and authority under this chapter, it shall conduct its proceedings under the South Carolina Administrative Procedures Act and the PSC’s rules and regulations. The PSC is authorized to compel attendance and testimony of a site operator’s directors, officers, agents, or employees.

(11) At any time the compact commission, the board, or any generator subject to payment of rates set pursuant to this chapter may file a petition against a site operator alleging that allowable costs identified pursuant to this chapter are not in conformity with the directives of this chapter or the directives of the PSC or that the site operator is otherwise not acting in conformity with the requirements of this chapter or directives of the PSC. Upon filing of the petition, the PSC shall cause a copy of the petition to be served upon the site operator. The petitioning party has the burden of proving that allowable costs or the actions of the site operator do not conform. The hearing shall conform to the rules of practice and procedure of the PSC for other cases.

(12) The PSC shall encourage alternate forms of dispute resolution including, but not limited to, mediation or arbitration to resolve disputes between a site operator and any other person regarding matters covered by this chapter.

(C) The operator of a regional disposal facility shall submit to the South Carolina Department of Revenue, the PSC, the Office of Regulatory Staff, and the board within thirty days following the end of each quarter a report detailing actual revenues received in the previous fiscal quarter and allowable costs incurred for operation of the disposal facility.

(D)(1) Within ~~30~~ thirty days following the end of the fiscal year the operator of a regional disposal facility shall submit a payment made payable to the South Carolina Department of Revenue in an amount that is equal to the total revenues received for waste disposed in that fiscal year (with interest accrued on cash flows in accordance with instructions from the State Treasurer) minus allowable costs, operating margin, and any payments already made from such revenues pursuant to Section 48‑46‑60(B) and (C) for reimbursement of administrative costs to state agencies and the compact commission. The Department of Revenue shall deposit the payment with the State Treasurer.

(2) If in any fiscal year total revenues do not cover allowable costs plus the operating margin, the ~~board~~ department must reimburse the site operator its allowable costs and operating margin from the extended care maintenance fund within thirty days after the end of the fiscal year. The board, upon recommendation of the department, shall as soon as practicable authorize a surcharge on waste disposed in an amount that will fully compensate the fund for the reimbursement to the site operator. In the event that total revenues for a fiscal year do not cover allowable costs plus the operating margin, or quarterly reports submitted pursuant to subsection (C) indicate that such annual revenue may be insufficient, the ~~board~~ department shall consult with the compact commission and the site operator as early as practicable on whether the provisions of Section 48‑46‑40(B)(7) pertaining to suspension of operations during periods of insufficient revenues should be invoked.

(E) Revenues received pursuant to item (1) of subsection (D) must be allocated as follows:

(1) The South Carolina State Treasurer shall distribute the first two million dollars received for waste disposed during a fiscal year to the County Treasurer of Barnwell County for distribution to each of the parties to and beneficiaries of the order of the United States District Court in C.A. No. 1:90‑2912‑6 on the same schedule of allocation as is established within that order for the distribution of ‘payments in lieu of taxes’ paid by the United States Department of Energy.

(2) All revenues in excess of two million dollars received from waste disposed during the previous fiscal year must be deposited in a fund called the ‘Nuclear Waste Disposal Receipts Distribution Fund’. Any South Carolina waste generator whose disposal fees contributed to the fund during the previous fiscal year may submit a request for a rebate of 33.33 percent of the funds paid by the generator during the previous fiscal year for disposal of waste at a regional disposal facility. These requests along with invoices or other supporting material must be submitted in writing to the State Treasurer within fifteen days of the end of the fiscal year. For this purpose disposal fees paid by the generator must exclude any fees paid pursuant to Section 48‑46‑60(C) for compact administration and fees paid pursuant to Section 48‑46‑60(B) for reimbursement of the PSC, the Office of Regulatory Staff, the State Treasurer, and the board for administrative expenses under this chapter. Upon validation of the request and supporting documentation by the State Treasurer, the State Treasurer shall issue a rebate of the applicable funds to qualified waste generators within sixty days of the receipt of the request. If funds in the Nuclear Waste Disposal Receipts Distribution Fund are insufficient to provide a rebate of 33.33 percent to each generator, then each generator’s rebate must be reduced in proportion to the amount of funds in the account for the applicable fiscal year.”

(3) All funds deposited in the Nuclear Waste Disposal Receipts Distribution Fund for waste disposed for each fiscal year, less the amount needed to provide generators rebates pursuant to item (2), shall be deposited by the State Treasurer in the ‘Children’s Education Endowment Fund’. Thirty percent of these monies must be allocated to Higher Education Scholarship Grants and used as provided in Section 59‑143‑30, and seventy percent of these monies must be allocated to Public School Facility Assistance and used as provided in Chapter 144 of Title 59.

(F) Effective beginning fiscal year 2001‑2002, there is appropriated annually from the general fund of the State to the Higher Education Scholarship Grants share of the Children’s Education Endowment whatever amount is necessary to credit to the Higher Education Scholarship Grants share an amount not less than the amount credited to that portion of the endowment in fiscal year 1999‑2000. Revenues credited to the endowment pursuant to this subsection, for purposes of Section 59‑143‑10, are deemed to be received by the endowment pursuant to the former provisions of Section 48‑48‑140(C).”

Z. Section 48‑46‑50(A) of the 1976 Code, as added by Act 357 of 2000, is amended to read:

“(A) The Governor shall appoint two commissioners to the Atlantic Compact Commission and may appoint up to two alternate commissioners. These alternate commissioners may participate in meetings of the compact commission in lieu of and upon the request of a South Carolina commissioner. Technical representatives from the Department of Health and Environmental Control, the board, the Department of Administration, the PSC, and other state agencies may participate in relevant portions of meetings of the compact commission upon the request of a commissioner, alternate commissioner, or staff of the compact commission, or as called for in the compact commission bylaws.”

AA. Section 48‑46‑60 of the 1976 Code, as added by Act 357 of 2000, is amended to read:

“Section 48‑46‑60. (A) The Governor and the board are authorized to take such actions as are necessary to join the Atlantic Compact including, but not limited to, petitioning the Compact Commission for membership and participating in any and all rulemaking processes. South Carolina’s membership in the Atlantic Compact pursuant to this chapter is effective July 1, 2000, if by that date the Governor certifies to the General Assembly that the Compact Commission has taken each of the actions specified below. If the Compact Commission by July 1, 2000, has not taken each of the actions specified below, then South Carolina’s membership shall become effective as soon thereafter as the Governor certifies that the Atlantic Compact Commission has taken these actions:

(1) adopted a binding regulation or policy in accordance with Article VII(e) of the compact establishing conditions for admission of a party state that are consistent with this act and ordered that South Carolina be declared eligible to be a party state consistent with those conditions;

(2) adopted a binding regulation or policy in accordance with Article IV(i)(11) of the Atlantic Compact authorizing a host state to enter into agreements on behalf of the compact and consistent with criteria established by the compact commission and consistent with the provisions of Section 48‑46‑40(A)(6)(a) and Section 48‑46‑50(D) with any person for the importation of waste into the region for purposes of disposal, to the extent that these agreements do not preclude the disposal facility from accepting all regional waste that can reasonably be projected to require disposal at the regional disposal facility consistent with subitem (5)(b) of this section;

(3) adopted a binding regulation or policy in accordance with Article IV(i)(12) of the Atlantic Compact authorizing each regional generator, at the generator’s discretion, to ship waste to disposal facilities located outside the Atlantic Compact region;

(4) authorized South Carolina to proceed with plans to establish disposal rates for low‑level radioactive waste disposal in a manner consistent with the procedures described in this chapter;

(5) adopted a binding regulation, policy, or order officially designating South Carolina as a volunteer host state for the region’s disposal facility, contingent upon South Carolina’s membership in the compact, in accordance with Article V.b.1. of the Atlantic Compact, thereby authorizing the following compensation and incentives to South Carolina:

(a) agreement, as evidenced in a policy, regulation, or order that the compact commission will issue a payment of twelve million dollars to the State of South Carolina. Before issuing the twelve million‑dollar payment, the compact commission will deduct and retain from this amount seventy thousand dollars, which will be credited as full payment of South Carolina’s membership dues in the Atlantic Compact. The remainder of the twelve million‑dollar payment must be credited to an account in the State Treasurer’s office, separate and distinct from the fund, styled ‘Barnwell Economic Development Fund’. This fund, and earnings on this fund which must be credited to the fund, may only be expended for purposes of economic development in the Barnwell County area including, but not limited to, projects of the Barnwell County Economic Development Corporation and projects of the Tri‑County alliance which includes Barnwell, Bamberg, and Allendale Counties and projects in the Williston area of Aiken County. Economic development includes, but is not limited to, industrial recruitment, infrastructure construction, improvement, and expansion, and public facilities construction, improvement, and expansion. These funds must be spent according to guidelines established by the Barnwell County governing body ~~and~~ upon approval of the board, and upon recommendation of the department. Expenditures must be authorized by the Barnwell County governing body and with the approval of the board, and upon recommendation of the department. Upon approval of the Barnwell County governing body and the ~~board~~ department, the State Treasurer shall submit the approved funds to the Barnwell County Treasurer for disbursement pursuant to the authorization;

(b) adopted a binding regulation, policy, or order consistent with the regional management plan developed pursuant to Article V(a) of the Atlantic Compact, limiting Connecticut and New Jersey to the use of not more than 800,000 cubic feet of disposal capacity at the regional disposal facility located in Barnwell County, South Carolina, and also ensuring that up to 800,000 cubic feet of disposal capacity remains available for use by Connecticut and New Jersey unless this estimate of need is later revised downward by unanimous consent of the compact commission;

(c) agreement, as evidenced in a policy or regulation, that the compact commission headquarters and office will be relocated to South Carolina within six months of South Carolina’s membership; and

(d) agreement, as evidenced in a policy or regulation, that the compact commission will, to the extent practicable, hold a majority of its meetings in the host state for the regional disposal facility.

(B) The board, the Department of Administration, the State Treasurer, and the PSC shall provide the required staff and may add additional permanent or temporary staff or contract for services, as well as provide for operating expenses, if necessary, to administer new responsibilities assigned under this chapter. In accordance with Article V.f.2. of the Atlantic Compact the compensation, costs, and expenses incurred incident to administering these responsibilities may be paid through a surcharge on waste disposed at regional disposal facilities within the State. To cover these costs the board shall impose a surcharge per unit of waste received at any regional disposal facility located within the State. A site operator shall collect and remit these fees to the board in accordance with the board’s directions. All such surcharges shall be included within the disposal rates set by the board pursuant to Section 48‑46‑40.

(C) In accordance with Article V.f.3. of the Atlantic Compact, the compact commission shall advise the ~~board~~ department at least annually, but more frequently if the compact commission deems appropriate, of the compact commission’s costs and expenses. To cover these costs the ~~board~~ department shall impose a surcharge per unit of waste received at any regional disposal facility located within the State as determined in Section 48‑46‑40. A site operator shall collect and remit these fees to the ~~board~~ department in accordance with the ~~board~~ department’s directions, and the ~~board~~ department shall remit those fees to the compact commission.”

BB. Section 48‑46‑90(A) of the 1976 Code, as added by Act 357 of 2000, is amended to read:

“(A) In accordance with Section 13‑7‑30, the ~~board~~ department, or its designee, is responsible for extended custody and maintenance of the Barnwell site following closure and license transfer from the facility operator. The Department of Health and Environmental Control is responsible for continued site monitoring.”

CC. Section 48‑52‑410 of the 1976 Code, as added by Act 449 of 1992, is amended to read:

“Section 48‑52‑410. There is established the State Energy Office within the ~~State Budget and Control Board~~ Department of Administration which shall serve as the principal energy planning entity for the State. Its primary purpose is to develop and implement a well‑balanced energy strategy and to increase the efficiency of use of all energy sources throughout South Carolina through the implementation of the Plan for State Energy Policy. The State Energy Office must not function as a regulatory body.”

DD. Section 48‑52‑440 of the 1976 Code, as last amended by Act 318 of 2006, is further amended to read:

“Section 48‑52‑440. There is established the Energy Advisory Committee, whose members are appointed by the ~~State Budget and Control Board~~ Director of the Department of Administration, except as provided in item (14) of this section. Members shall serve at the pleasure of the ~~State Budget and Control Board~~ Director of the Department of Administration except that those appointed pursuant to item (14) shall serve for a term coterminous with that of their appointing authority. The committee is composed as follows:

(1) two representatives of investor‑owned electricity companies;

(2) two representatives of electric cooperatives;

(3) one representative of the South Carolina Public Service Authority, who shall serve ex officio;

(4) one representative of municipally‑owned electric utilities;

(5) one representative of publicly‑owned natural gas companies;

(6) one representative of investor‑owned gas companies;

(7) one representative of oil suppliers or dealers;

(8) one representative of propane suppliers or dealers;

(9) one representative of nonprofit public transportation providers;

(10) two representatives of industrial consumers;

(11) two representatives of commercial consumers;

(12) two representatives of individual consumers; one must be the Executive Director of the Office of Regulatory Staff or his designee, who shall serve ex officio;

(13) two representatives of environmental groups; and

(14) one at‑large member appointed by the Governor.

The ~~Budget and Control Board~~ Director of the Department of Administration shall ~~elect~~ appoint one of the committee members to serve as chairman. The members of the Energy Advisory Committee are not eligible for per diem payments or for reimbursement for lodging or meals. The functions of the Energy Advisory Committee are advisory to the State Energy Office. The committee shall meet at least annually and at the call of the chair or at the request of at least six members to receive information on the activities of the State Energy Office and the formulation and implementation of the state energy action plan. It may comment and advise on the activities and the plan as considered appropriate by members of the committee. The State Energy Office may seek advice and guidance from the committee as considered appropriate by the director of the office. Members shall adopt rules governing meeting attendance and abide by these rules.”

EE. Section 48‑52‑460 of the 1976 Code, as added by Act 449 of 1992, is amended to read:

“Section 48‑52‑460. The establishment of the State Energy Office within the ~~State Budget and Control Board, as provided for in this part,~~ Department of Administration must be evaluated if further restructuring or reorganizing of state government takes place so as to identify and provide for the proper placement of the office upon further restructuring or reorganizing.”

FF. Section 48‑52‑680(C) of the 1976 Code, as added by Act 449 of 1992, is amended to read:

“(C) The State Energy Office shall provide the Office of Property Management of the ~~Budget and Control Board,~~ Division of General Services, information to be used in evaluating energy costs for buildings or portions of buildings proposed to be leased by governmental bodies that are defined in and subject to the Consolidated Procurement Code. The information provided must be considered with the other criteria provided by law by a governmental body before entering into a real property lease.”

GG. Section 44‑53‑530(a) and (b) of the 1976 Code, as last amended by Act 345 of 2006, is further amended to read:

“(a) Forfeiture of property defined in Section 44‑53‑520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall set forth the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances shall also include: the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. The petition shall set forth the type and quantity of the controlled substance involved. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder’s interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to Section 44‑53‑582.

If there is a dispute as to the ~~division~~ allocation of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to subsection (e) of this section.

All property, conveyances, and equipment ~~which will~~ not ~~be~~ reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred must not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency shall be at the discretion and approval of the ~~Budget and Control Board~~ South Carolina Department of Administration.

If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a South Carolina Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(b) If the property is seized by a state law enforcement agency and is not transferred by the court to the seizing agency, the judge shall order it transferred to the Division of General Services of the Department of Administration for sale. Proceeds may be used by the division for payment of all proper expenses of the proceedings for the forfeiture and sale of the property, including the expenses of seizure, maintenance, and custody, and other costs incurred by the implementation of this section. The net proceeds from any sale must be remitted to the State Treasurer as provided in subsection (g) of this section. The Division of General Services of the South Carolina Department of Administration may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.”

HH. Section 44‑96‑140 of the 1976 Code is amended to read:

“Section 44‑96‑140. (A) Not later than twelve months after the date on which the department submits the state solid waste management plan to the Governor and to the General Assembly, the General Assembly, the ~~Governor’s~~ Office of the Governor, the Judiciary, each state agency, and each state‑supported institution of higher education shall:

(1) establish a source separation and recycling program in cooperation with the department and the Division of General Services of the ~~State Budget and Control Board~~ South Carolina Department of Administration for the collection of selected recyclable materials generated in state offices throughout the State including, but not limited to, high‑grade office paper, corrugated paper, aluminum, glass, tires, composting materials, plastics, batteries, and used oil;

(2) provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with collectors or buyers of the recyclable materials, or both;

(3) evaluate the amount of waste paper material recycled and make all necessary modifications to the recycling program to ensure that all waste paper materials are recycled to the maximum extent feasible; and

(4) establish and implement, in cooperation with the department and the Division of General Services of the Department of Administration, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve the maximum feasible reduction of solid waste generated as a result of agency operations.

(B) Not later than September fifteen of each year, each state agency and each state‑supported institution of higher learning shall submit to the department a report detailing its source separation and recycling program and a review of all goods and products purchased during the previous fiscal year by those agencies and institutions containing recycled materials using the content specifications established by the ~~Office of Materials Management~~ Division of General Services, Department of Administration.

(C) By November first of each year the department shall submit a report to the Governor and to the General Assembly reviewing all goods and products purchased by the State and determining what percentage of state purchases contain recycled materials using content specifications established by the ~~Office of Materials Management,~~ Division of General Services, Department of Administration. The report also must review existing procurement regulations for the purchase of products and materials and must identify any portions of such regulations that discriminate against products and materials with recycled content and products and materials which are recyclable.

(D) Not later than one year after this chapter is effective, the Division of General Services, Department of Administration shall amend the procurement regulations to eliminate the portions of the regulations identified in its report as discriminating against products and materials with recycled content and products and materials which are recyclable.

(E) Not later than one year after the effective date of the amendments to the procurement regulations, the General Assembly, the ~~Governor’s~~ Office of the Governor, the Judiciary, all state agencies, all political subdivisions using state funds to procure items, and all persons contracting with such agency or political subdivision where such persons procure items with state funds shall procure products and materials with recycled content and products and materials which are recyclable where practicable, as determined by the ~~Office of Materials Management,~~ Division of General Services, Department of Administration. The list of recycled content specifications must be updated annually. It is the goal of the General Assembly for state and local governmental agencies to reflect a twenty‑five percent goal in their procurement policies. The decision not to procure such items shall be based on a determination that such procurement items:

(1) are not available within a reasonable period of time;

(2) fail to meet the performance standards set forth in the applicable specifications; or

(3) are only available at a price that exceeds by more than seven and one‑ half percent the price of alternative items.

(F) Not later than six months after this chapter is effective, and annually thereafter, the Department of Transportation shall submit a report to the Governor and to the General Assembly on the use of:

(1) compost as a substitute for regular soil amendment products in all highway projects;

(2) solid waste including, but not limited to, ground rubber from tires and fly ash or mixtures of them from coal‑fired electrical facilities in road surfacing of subbase materials;

(3) solid waste including, but not limited to, glass aggregate, plastic, and fly ash in asphalt or concrete; and

(4) recycled mixed‑plastic materials for guardrail posts, right‑of‑way fence posts, and sign supports.”

Part VI

Performance Audit and Effective Date

SECTION 9. During the year 2018, the Legislative Audit Council shall conduct a performance review of the provisions of this act to determine its effectiveness and achievements with regard to the more efficient performance of the functions and duties of the various agencies provided for herein and the cost savings and benefits to the State.

SECTION 10. Unless otherwise provided, this act takes effect July 1, 2013.

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