**South Carolina General Assembly**

121st Session, 2015-2016

**H. 3566**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Atwater, Sottile, Quinn, Hiott, Chumley, Bradley, Merrill, Simrill, McCoy, Ballentine, Loftis, Bedingfield, Hamilton, Long, Willis, Felder, Rivers, Norman, Yow, Huggins, Pope, Brannon, Burns, G.M. Smith, Kennedy, Putnam, Erickson, Spires, Allison, Bannister, Bingham, Clary, Collins, Corley, Delleney, Forrester, Gagnon, Gambrell, Henderson, Herbkersman, Hicks, Hixon, Horne, Limehouse, D.C. Moss, Nanney, Newton, G.R. Smith, Stringer, Tallon, Thayer and Toole

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Introduced in the House on February 11, 2015

Currently residing in the House Committee on **Judiciary**

Summary: Departments of State Government

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/11/2015 House Introduced and read first time ([House Journal‑page 9](file:///h:\HJ%20Archive\2015\02-11-15.docx))

2/11/2015 House Referred to Committee on **Judiciary** ([House Journal‑page 9](file:///h:\HJ%20Archive\2015\02-11-15.docx))

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**VERSIONS OF THIS BILL**

[2/11/2015](file:///p:\pprever\2015-16\3566_20150211.docx)

**A** **BILL**

TO AMEND SECTION 1‑30‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENTS OF STATE GOVERNMENT AND THEIR GOVERNING BODIES, SO AS TO DELETE THE PROVISION THAT PROVIDES THAT PART OF THE GOVERNING BODY OF THE DEPARTMENT OF TRANSPORTATION IS A SEVEN‑MEMBER COMMISSION; TO AMEND SECTION 1‑30‑105, AS AMENDED, RELATING TO THE ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION, SO AS TO PROVIDE THAT THE GOVERNING AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION IS THE SECRETARY OF TRANSPORTATION; TO AMEND SECTION 1‑3‑240, AS AMENDED, RELATING TO THE REMOVAL OF CERTAIN OFFICERS BY THE GOVERNOR, SO AS TO DELETE THE PROVISION THAT PROVIDES THE DEPARTMENT OF TRANSPORTATION COMMISSIONERS MAY BE REMOVED FROM OFFICE BY THE GOVERNOR UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 11‑43‑140, RELATING TO THE BOARD OF DIRECTORS OF THE TRANSPORTATION INFRASTRUCTURE BANK, SO AS TO REMOVE THE CHAIRMAN OF THE DEPARTMENT OF TRANSPORTATION COMMISSION AS A DIRECTOR, AND TO PROVIDE THAT THE SECRETARY OF TRANSPORTATION IS A MEMBER OF THE BOARD; TO AMEND SECTIONS 57‑1‑10, 57‑1‑40, 57‑1‑410, 57‑1‑430, 57‑1‑490, AND 57‑3‑20, ALL AS AMENDED, RELATING TO THE ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION, AND ITS DUTIES AND RESPONSIBILITIES, SO AS TO ELIMINATE THE DEPARTMENT OF TRANSPORTATION COMMISSION AND ITS RESPONSIBILITIES, TO ALLOW THE GOVERNOR TO APPOINT THE SECRETARY OF TRANSPORTATION AND REQUIRE THE DEPARTMENT OF TRANSPORTATION SUBMIT TO THE GENERAL ASSEMBLY AN ITEMIZED PROJECT LIST TO BE FUNDED FOR THE FISCAL YEAR IN WHICH THE GENERAL ASSEMBLY WOULD ENACT ITS ANNUAL GENERAL APPROPRIATIONS ACT; TO AMEND SECTION 57‑3‑50, RELATING TO THE ESTABLISHMENT OF HIGHWAY DISTRICTS, SO AS TO SUBSTITUTE THE TERM “DEPARTMENT” FOR THE TERM “COMMISSION”; TO AMEND SECTION 57‑1‑500, RELATING TO A DEPARTMENT OF TRANSPORTATION ETHICS WORKSHOP, SO AS TO DELETE THE DEPARTMENT OF TRANSPORTATION COMMISSIONERS AS PARTICIPANTS IN THIS WORKSHOP; TO REPEAL ARTICLE 3, CHAPTER 1, TITLE 57, SECTION 57‑1‑460, SECTION 57‑1‑470, ARTICLE 7, CHAPTER 1, TITLE 56, AND SECTIONS 6, 7, AND 8 OF ACT 114 OF 2007 ALL RELATING TO THE CREATION AND FUNCTIONS OF THE DEPARTMENT OF TRANSPORTATION AND ITS COMMISSION.

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

SECTION 1. Section 1‑30‑10(B) of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

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

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

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

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

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

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

SECTION 2. Section 1‑30‑105 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 1‑30‑105. (A) Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Transportation to be initially divided into divisions for Mass Transit, Construction and Maintenance, Engineering and Planning, and Finance and Administration; however, the State Highway Commission as constituted on June 30, 1993, under the provisions of Title 56, shall be the governing authority for the department until February 15, 1994, or as soon as its successors are elected or appointed and qualified, whichever is later.

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

(B) Notwithstanding another provision of law, effective July 1, 2015, the governing authority of the Department of Transportation is the Secretary of Transportation as provided in Section 57‑1‑410.”

SECTION 3. Section 1‑3‑240(C)(1) of the 1976 Code, as last amended by Act 224 of 2014, is further amended to read:

“(1) Persons appointed to the following offices of the State may be removed by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity:

(a) Workers’ Compensation Commission;

(b) ~~Department of Transportation Commission;~~ Reserved;

(c) Ethics Commission;

(d) Election Commission;

(e) Professional and Occupational Licensing Boards;

(f) Juvenile Parole Board;

(g) Probation, Parole and Pardon Board;

(h) Director of the Department of Public Safety;

( i) Board of the Department of Health and Environmental Control, excepting the chairman;

(j) Chief of State Law Enforcement Division;

(k) South Carolina Lottery Commission;

(l) Executive Director of the Office of Regulatory Staff;

(m) Directors of the South Carolina Public Service Authority appointed pursuant to Section 58‑31‑20. A director of the South Carolina Public Service Authority also may be removed for his breach of any duty arising under Section 58‑31‑55 or 58‑31‑56. The Governor must not request a director of the South Carolina Public Service Authority to resign unless cause for removal, as established by this subsection, exists. Removal of a director of the South Carolina Public Service Authority, except as is provided by this section or by Section 58‑31‑20(A), must be considered to be an irreparable injury for which no adequate remedy at law exists;

(n) State Ports Authority; and

(o) State Inspector General.

Subsection effective upon contingency.

(p) State Adjutant General.”

SECTION 4. Section 11‑43‑140 of the 1976 Code is amended to read:

“Section 11‑43‑140. The board of directors is the governing board of the bank. The board consists of seven voting directors as follows: the ~~Chairman~~ Secretary of the Department of Transportation ~~Commission~~, ex officio; one director appointed by the Governor who shall serve as chairman; one director appointed by the Governor; one director appointed by the Speaker of the House of Representatives; one member of the House of Representatives appointed by the Speaker, ex officio; one director appointed by the President Pro Tempore of the Senate; and one member of the Senate appointed by the President Pro Tempore of the Senate, ex officio. Directors appointed by the Governor, the Speaker, and the President Pro Tempore shall serve terms coterminous with those of their appointing authority. The terms for the legislative members are coterminous with their terms of office. The vice chairman must be elected by the board. Any person appointed to fill a vacancy must be appointed in the same manner as the original appointee for the remainder of the unexpired term.”

SECTION 5. Section 57‑1‑10 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

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

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

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

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

SECTION 6. Section 57‑1‑40 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

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

(1) money;

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

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

(4) employment; or

(5) other thing of value.

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

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

(1) money;

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

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

(4) employment; or

(5) other thing of value.

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

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

SECTION 7. Section 57‑1‑410 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑410. The Governor shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at ~~the~~ his pleasure ~~of the Governor~~. A person appointed to this position shall possess practical and successful business and executive ability and be knowledgeable in the field of transportation. The Secretary of Transportation shall receive such compensation as may be established under the provisions of Section 8‑11‑160 and for which funds have been authorized in the general appropriations act.”

SECTION 8. Section 57‑1‑430 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

“Section 57‑1‑430. (A) The secretary is charged with the affirmative duty to carry out the policies of the ~~commission~~ department, and to administer the day‑to‑day affairs of the department, to direct the implementation of the Statewide Transportation Improvement Program and the Statewide Mass Transit Plan, and to ensure the timely completion of all projects undertaken by the department, and routine operation and maintenance requests, and emergency repairs. He must represent the department in its dealings with other state agencies, local governments, special districts, and the federal government. The secretary must prepare an annual budget for the department ~~that must be approved by the commission before becoming effective~~ and submit annually to the General Assembly an itemized project list to be funded for the fiscal year in which the General Assembly would enact in its annual general appropriations act.

(B) For each division, the secretary may employ such personnel and prescribe their duties, powers, and functions as he considers necessary and as may be authorized by statute and for which funds have been authorized in the annual general appropriations act.”

SECTION 9. Section 57‑1‑490 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

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

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

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

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

SECTION 10. Section 57‑3‑20(1) of the 1976 Code as last amended by Act 206 of 2010, is further amended to read:

“(1) division deputy director for finance and administration:

(a) financial planning and management;

(b) accounting systems necessary to comply with all federal and/or state laws and/or regulations as well as all policies established by the Comptroller General; and

(c) administrative functions, including ~~recording proceedings of the commission and~~ developing policy and procedures to ensure compliance with these policies and procedures;”

SECTION 11. Section 57‑3‑50 of the 1976 Code is amended to read:

“Section 57‑3‑50. The ~~commission~~ department may establish such highway districts as in its opinion ~~shall be~~ are necessary for the proper and efficient performance of its duties. The ~~commission~~ department, every ten years, must review the number of highway districts and the territory embraced within the districts and make ~~such~~ changes ~~as~~ that may be necessary for the proper and efficient operation of the districts.”

SECTION 12. Section 57‑1‑500 of the 1976 Code, as added by Act 114 of 2007, is amended to read:

“Section 57‑1‑500. The secretary must provide for a workshop of at least two biennial contact hours concerning ethics and the Administrative Procedures Act for ~~the commissioners,~~ the secretary, the chief internal auditor, and senior management employees of the Department of Transportation; and a biennial ethics workshop of at least two contact hours for all other department employees.”

SECTION 13. Article 3, Chapter 1, Title 57, Section 57‑1‑460, Section 57‑1‑470, Article 7, Chapter 1, Title 57 and Sections 6, 7, and 8 of Act 114 of 2007 are repealed.

SECTION 14. This act takes effect upon approval by the Governor.

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