**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 48 SO AS TO ESTABLISH A DEPARTMENT OF THE ENVIRONMENT, TO PROVIDE FOR ITS GOVERNING BOARD, MANAGEMENT, AND OPERATIONS, INCLUDING DEVOLVING UPON THE DEPARTMENT CERTAIN DUTIES, FUNCTIONS, AND POWERS PREVIOUSLY EXERCISED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, ESTABLISHING A MERIT REVIEW PROCESS FOR THE REVIEW OF THE QUALIFICATIONS OF MEMBERS OF THE BOARD OF THE DEPARTMENT, AND TO PROMOTE “ONE STOP” ENVIRONMENTAL PERMIT SHOPPING; TO AMEND SECTION 48‑1‑20, RELATING TO THE STATE’S ENVIRONMENTAL PUBLIC POLICY, SO AS TO UPDATE THE STATE’S PUBLIC POLICY AND TO TRANSFER THE AUTHORITY GRANTED TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO THE DEPARTMENT OF THE ENVIRONMENT; TO AMEND SECTION 48‑39‑10, AS AMENDED, RELATING TO COASTAL TIDELANDS AND WETLANDS, SO AS TO UPDATE DEFINITIONS TO INCLUDE THE DEPARTMENT OF THE ENVIRONMENT; TO AMEND SECTION 48‑39‑35, RELATING TO COASTAL TIDELANDS AND WETLANDS, SO AS TO ESTABLISH THE COASTAL DIVISION OF THE DEPARTMENT OF THE ENVIRONMENT AND TO DEFINE THE DUTIES AND FUNCTIONS OF THIS DIVISION; TO AMEND SECTION 48‑39‑50, RELATING TO COASTAL TIDELANDS AND WETLANDS, SO AS TO DEFINE THE POWERS AND DUTIES OF THE DEPARTMENT OF THE ENVIRONMENT; TO AMEND SECTION 1‑30‑10, RELATING TO DEPARTMENTS OF THE STATE GOVERNMENT, SO AS TO RENAME THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO THE DEPARTMENT OF HEALTH AND TO ADD THE DEPARTMENT OF THE ENVIRONMENT TO THE LIST OF EXECUTIVE DEPARTMENTS; TO AMEND SECTION 1‑30‑45, RELATING TO DEPARTMENTS OF THE STATE GOVERNMENT, SO AS TO TRANSFER THE POWERS AND RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO THE DEPARTMENT OF HEALTH, NOTWITHSTANDING TRANSFERS TO OTHER DEPARTMENTS UNDER SECTION 48‑8‑530; TO AMEND SECTION 44‑1‑20, AS AMENDED, RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO REPLACE REFERENCES TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL WITH THE DEPARTMENT OF HEALTH AND TO ADD NEW QUALIFICATIONS FOR THE APPOINTED MEMBERS; TO PROVIDE FOR THE TRANSFER OF RIGHTS AND LIABILITIES RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO THE DEPARTMENT OF THE ENVIRONMENT AND THE DEPARTMENT OF HEALTH; TO PROVIDE TRANSITIONAL PROVISIONS PERTAINING TO REGULATIONS; TO PROVIDE TRANSITIONAL PROVISIONS PERTAINING TO EMPLOYEES, ASSETS AND LIABILITIES; AND TO REPEAL SECTION 48‑39‑40 RELATING TO THE COASTAL ZONE MANAGEMENT APPELLATE PANEL.

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

SECTION 1. Title 48 of the 1976 Code is amended by adding:

“CHAPTER 8

Department of the Environment

Article 1

Organization

Section 48‑8‑100. There is created the South Carolina Department of the Environment, which must be administered under the supervision of the South Carolina Board of the Environment. The board consists of eight members, one from each congressional district and one from the State at large to be appointed by the Governor, upon the advice and consent of the Senate. The member who is appointed at large shall serve as the chairman of the board. The Governor may remove the chairman of the board pursuant to Section 1‑3‑240(B); however, the Governor only may remove the other board members pursuant to Section 1‑3‑240(C). The terms of the members are for four years and until their successors are appointed and qualify, except that of the original appointees, three must be appointed for terms of two years and four must be appointed for terms of four years. All vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. In making these appointments, a potential appointee must be able to show a demonstrated commitment to the mission of the department and training and experience in one or more of the following disciplines: the natural sciences, the health effects of environmental pollution, toxicology, epidemiology, environmental law, water and air pollution control, ecology, environmental engineering, geology, hydrogeology, marine biology, and environmental conservation in order to be deemed a qualified applicant. Race, gender, and other demographic factors also must be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State. However, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

Section 48‑8‑110. The board shall meet at least quarterly and members shall receive such compensation for their services as is provided by law for members of state boards, commissions, and committees.

Section 48‑8‑120. At its first meeting, the board shall organize and select a commissioner for the department who shall serve a four‑year term and who shall have such authority and perform such duties as may be directed by the board.

Section 48‑8‑130. The board and the department shall have such appropriations and funding as is provided by the General Assembly in the annual general appropriations act to carry out the duties and responsibilities of the department under this chapter and other provisions of law. However, the board may appoint advisory committees as it considers necessary to carry out various functions of this chapter and other duties and responsibilities of the department.

Section 48‑8‑140. The department shall promote ‘one stop’ environmental permit shopping and nothing in this title may be construed to prevent this.

Article 3

Powers, Duties, and Functions

Section 48‑8‑310. (A) In order to promote the protection of the environment, the Department of the Environment shall develop and implement a long range strategy for preserving and protecting the state’s natural resources for future use, recognizing the need to plan for sustainable development. The long range strategy shall include, but is not limited to, an assessment of the quality of the environment, environmental protection goals and objectives, and a plan of action to achieve these goals and objectives. The plan must be developed through public participation and in consultation with appropriate interested parties and must be updated annually.

(B) For every major action significantly affecting the quality of the human environment, the Department of the Environment shall make a detailed statement on the costs and benefits of the proposed action including the impacts of the action on the natural and human environment and means for mitigating or avoiding adverse impacts when making permit decisions required by law. In evaluating the impact, the department shall follow the federal National Environmental Policy Act. The department shall encourage public participation in its decision making process in a manner no less inclusive than that required by the federal Environmental Protection Agency under its public policy regulations contained in 40 C.F.R. Part 25 and in accordance with the South Carolina Administrative Procedures Act.

(C) The department may review and consider the environmental compliance history of an applicant or person in making a determination to issue, reissue, deny, revoke, modify, or suspend a permit or interim status, prohibit the transfer of a permit or the transfer or achievement of interim status, or prohibit a change in ownership or controlling interest in an existing facility.

Section 48‑8‑320. Effective July 1, 2015, the following programs of the Department of Health and Environmental Control, including all of the allied, advisory, affiliated, or related entities or divisions within the department relating to these programs as well as the employees, funds, property, and all contractual rights and obligations associated with any such program are transferred to and incorporated in and must be administered as part of the Department of the Environment:

(1) Water Supply;

(2) Water Pollution Control;

(3) Air Quality Improvement;

(4) Solid and Hazardous Waste Management;

(5) Wastewater;

(6) Health Hazard Evaluation;

(7) Radiological Monitoring;

(8) Underground Storage Tanks; and

(9) Waste Minimization.

Section 48‑8‑330. To implement Section 48‑8‑520, the following provisions of law are declared to be under the jurisdiction of the Department of the Environment, and the duties, functions, and responsibilities provided in these provisions under the jurisdiction of other departments, agencies, divisions, or entities of state government are devolved upon the Department of the Environment and all references in these provisions to other departments, agencies, divisions, or entities must be construed to mean the Department of Environment: Sections 11‑37‑200, 12‑28‑2355, and 13‑1‑380, Chapter 7, Title 13, Sections 40‑23‑10, 40‑23‑60, and 40‑23‑305, Sections 44‑1‑151, 44‑1‑152, and 44‑1‑155, Chapters 2, 55, 56, 67, 87, 93 and 96, Title 44, Sections 46‑1‑140 and 46‑13‑150, Chapters 1, 2, 3, 5, 14, 18, 20, and 43, Title 48, Chapters 1, 4, 5, 11, and 23, Title 49, and the regulatory provisions of the Water Resources Commission provided for in Chapter 3, Title 49.”

SECTION 2. Section 48‑1‑20 of the 1976 Code is amended to read:

“Section 48‑1‑20. ~~It is declared to be the public policy of the State to maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the~~ It is declared to be the public policy of the State to protect public health, safety, and welfare, the quality of the natural environment, and the purity of the air and water resources of the State, to ensure the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources, and to advocate responsible stewardship of South Carolina’s environment. It is further declared that to secure these purposes and the enforcement of the provisions of this chapter, the Department of ~~Health and Environmental Control~~ the Environment shall have authority to abate, control, and prevent pollution.”

SECTION 3. Section 48‑39‑10 of the 1976 Code, as last amended by Act 41 of 2011, is further amended to read:

“Section 48‑39‑10. As used in this chapter:

(A) ‘Applicant’ means any person who files an application for a permit under the provisions of this chapter.

(B) ‘Coastal zone’ means all coastal waters and submerged lands seaward to the State’s jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper and Georgetown.

(C) ‘Division’ means the Coastal Division of ~~the South Carolina Department of Health and Environmental Control.~~ the Department of the Environment.

(D) ‘CDPS’ means Coastal Division Permitting Staff.

(E) ‘Saline waters’ means those waters which contain a measurable quantity of sea water, at least one part chloride ion per thousand.

(F) ‘Coastal waters’ means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high‑water mark. Provided, however, that the department may designate boundaries which approximate the mean extent of saline waters until such time as the mean extent of saline waters can be determined scientifically.

(G) ‘Tidelands’ means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the department shall have the authority to designate its approximate geographic extent.

(H) ‘Beaches’ means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

(I) ‘Primary ocean front sand dunes’ means those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean.

(J) ‘Critical area’ means any of the following:

(1) coastal waters;

(2) tidelands;

(3) beaches;

(4) beach/dune system which is the area from the mean high‑water mark to the setback line as determined in Section 48‑39‑280.

(K) ‘Person’ means any individual, organization, association, partnership, business trust, estate trust, corporation, public or municipal corporation, county, local government unit, public or private authority and shall include the State of South Carolina, its political subdivisions and all its departments, boards, bureaus or other agencies, unless specifically exempted by this chapter.

(L) ‘Estuarine sanctuary’ means a research area designated as an estuarine sanctuary by the Secretary of Commerce.

(M) ‘Marine sanctuary’ means any water and wetland areas designated as a marine sanctuary by the Secretary of Commerce.

(N) ‘Minor development activities’ means the construction, maintenance, repair or alteration of any private piers or erosion control structure, the construction of which does not involve dredge activities.

(O) ‘Dredging’ means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from any critical area.

(P) ‘Filling’ means either the displacement of saline waters by the depositing into critical areas of soil, sand, gravel, shells or other material or the artificial alteration of water levels or water currents by physical structure, drainage ditches or otherwise.

(Q) ‘Submerged lands’ means those river, creek and ocean bottoms lying below mean low‑water mark.

(R) ‘Oil’ means crude petroleum oil and all other hydrocarbons, regardless of specific gravity, that are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(S) ‘Gas’ means all natural gas and all other fluid hydrocarbons not hereinabove defined as oil, including condensate because it originally was in the gaseous phase in the reservoir.

(T) ‘Fuel’ means gas and oil.

(U) ‘Emergency’ means any unusual incident resulting from natural or unnatural causes which endanger the health, safety or resources of the residents of the State, including damages or erosion to any beach or shore resulting from a hurricane, storm or other such violent disturbance.

(V) ‘Department’ means the ~~South Carolina~~ Coastal Division of the Department of ~~Health and Environmental Control.~~ the Environment.

(W) ‘Board’ means the board of the department.

(X) ‘Maintenance dredging’ means excavation to restore the depth of underwater lands or restore channels, basins, canals, or similar waterway accesses to depths and dimensions that support and maintain prior or existing levels of use that previously have been dredged pursuant to a license issued by the department or an exemption as provided in Section 48‑39‑130(D)(10) ~~as added by Act 41 of 2011~~.”

SECTION 4. Section 48‑39‑35 of the 1976 Code is amended to read:

“Section 48‑39‑35. (A) The Coastal Division of the Department ~~of Health and Environmental Control~~ of the Environment is created ~~July 1, 1994.~~ to be administered within the department by a deputy commissioner. The deputy must be appointed subject to the provisions of Section 1‑30‑10(E).

(B) The following provisions of law are declared to be under the jurisdiction of the Coastal Division of the Department of the Environment, and the duties, functions, and responsibilities of other departments, agencies, divisions, or entities of state government set forth in these provisions are hereby devolved upon the Coastal Division of the Department of the Environment and all references to other departments, agencies, divisions, or entities must be construed to mean the Coastal Division of the Department of the Environment: Sections 3‑5‑130, 48‑55‑10(A)(7), and 49‑6‑30 1.(e). To further implement the provisions of this section, in any provision of law where the terms ‘Coastal Division’ or the ‘Coastal Division of the Department of Health and Environmental Control’ appear, it must be construed to mean the ‘Coastal Division of the Department of the Environment’.”

SECTION 5. Section 48‑39‑50 of the 1976 Code is amended to read:

“Section 48‑39‑50. The ~~South Carolina Department of Health and Environmental Control shall have the following~~ Department of the Environment shall have the following powers and duties:

(A) To employ the CDPS consisting of, but not limited to, the following professional members: An administrator and other staff members to include those having expertise in biology, civil and hydrological engineering, planning, environmental engineering and environmental law.

(B) To apply for, accept and expend financial assistance from public and private sources in support of activities undertaken pursuant to this chapter and the Federal Coastal zone Management Act of 1972.

(C) To undertake the related programs necessary to develop and recommend to the Governor and the General Assembly a comprehensive program designed to promote the policies set forth in this chapter.

(D) To hold public hearings and related community forums and afford participation in the development of management programs to all interested citizens, local governments and relevant state and federal agencies, port authorities and other interested parties.

(E) To promulgate necessary rules and regulations to carry out the provisions of this chapter.

(F) To administer the provisions of this chapter and all rules, regulations and orders promulgated under it.

(G) To examine, modify, approve or deny applications for permits for activities covered by the provisions of this chapter.

(H) To revoke and suspend permits of persons who fail or refuse to carry out or comply with the terms and conditions of the permit.

(I) To enforce the provisions of this chapter and all rules and regulations promulgated by the department and institute or cause to be instituted in courts of competent jurisdiction of legal proceedings to compel compliance with the provisions of this chapter.

(J) To manage estuarine and marine sanctuaries and regulate all activities therein, including the regulation of the use of the coastal waters located within the boundary of such sanctuary.

(K) To establish, control and administer pipeline corridors and locations of pipelines used for the transportation of any fuel on or in the critical areas.

(L) To direct and coordinate the beach and coastal shore erosion control activities among the various state and local governments.

(M) To implement the state policies declared by this chapter.

(N) To encourage and promote the cooperation and assistance of state agencies, coastal regional councils of government, local governments, federal agencies and other interested parties.

(O) To exercise all incidental powers necessary to carry out the provisions of this chapter.

(P) To coordinate the efforts of all public and private agencies and organizations engaged in the making of tidal surveys of the coastal zone of this State with the object of avoiding unnecessary duplication and overlapping.

(Q) To serve as a coordinating state agency for any program of tidal surveying conducted by the federal government.

(R) To develop and enforce uniform specifications and regulations for tidal surveying.

(S) To monitor, in coordination with the South Carolina Department of Natural Resources, the waters of the State for oil spills. If ~~such Department~~ the South Carolina Department of Natural Resources observes an oil spill in ~~such waters~~ these waters, it shall immediately report ~~such~~ the spill to the ~~South Carolina Department of Health and Environmental Control~~ department, the United States Coast Guard and Environmental Protection Agency. This in no way negates the responsibility of the spiller to report a spill.

(T) To direct, as the designated state agency to provide liaison to the regional response team, pursuant to Section 1510.23 of the National Contingency Plan, state supervised removal operations of oil discharged into the waters within the territorial jurisdiction of this State and entering ~~such~~ the waters after being discharged elsewhere within the State, and to seek reimbursement from the National Contingency Fund for removal operations cost expended by it and all other agencies and political subdivisions including county, municipal and regional governmental entities in removing ~~such~~ oil as provided for in Section 311(C)(2) of the Federal Water Pollution Control Act.

(U) ~~To act as advocate, where the department deems such action appropriate, on behalf of any person who is granted a permit for a specific development by the department but is denied a permit by a federal agency for the same specific development.~~

~~(V)~~ To delegate any of its powers and duties to the CDPS.”

SECTION 6. Section 1‑30‑10(A) of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

“(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Administration

2. Department of Agriculture

3. Department of Alcohol and Other Drug Abuse Services

4. Department of Commerce

5. Department of Corrections

6. Department of Disabilities and Special Needs

7. Department of Education

8. Department of Health ~~and Environmental Control~~

9. Department of Health and Human Services

10. Department of Insurance

11. Department of Juvenile Justice

12. Department of Labor, Licensing and Regulation

13. Department of Mental Health

14. Department of Motor Vehicles

15. Department of Natural Resources

16. Department of Parks, Recreation and Tourism

17. Department of Probation, Parole and Pardon Services

18. Department of Public Safety

19. Department of Revenue

20. Department of Social Services

21. Department of Transportation

22. Department of Employment and Workforce~~.~~

23. Department of the Environment.”

SECTION 7. Section 1‑30‑45 of the 1976 Code is amended to read:

“Section 1‑30‑45. ~~Effective on July 1, 1994, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Health and Environmental Control and to include a coastal division:~~

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

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

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

~~(D)~~ ~~Water Resources Commission regulatory division, formerly provided for at Section 49‑3‑10, et seq.~~

(A) Effective on July 1, 2015, the Department of Health and Environmental Control is renamed as the Department of Health and shall consist of the divisions and offices not otherwise transferred to the Department of the Environment provided by law.

(B) The Department of the Environment is created to consist of the duties prescribed in Sections 48‑8‑310, 48‑8‑320, and 48‑8‑330.”

SECTION 8. Section 44‑1‑20 of the 1976 Code, as last amended by Act 222 of 2012, is further amended to read:

“Section 44‑1‑20. There is created the South Carolina Department of Health ~~and Environmental Control~~ which ~~shall~~ must be administered under the supervision of the South Carolina Board of Health ~~and Environmental Control~~. The board shall consist of eight members, one from each congressional district, and one from the State at large to be appointed by the Governor, upon the advice and consent of the Senate. The member who is appointed at large shall serve as the chairman of the board. The Governor may remove the chairman of the board pursuant to Section 1‑3‑240(B); however, the Governor only may remove the other board members pursuant to Section 1‑3‑240(C). The terms of the members ~~shall be~~ are for four years and until their successors are appointed and qualify. All vacancies ~~shall~~ must be filled in the manner of the original appointment for the unexpired portion of the term only. In making these appointments, ~~race~~ a potential appointee must be able to show demonstrated experience as a health care provider, demonstrated commitment to the mission of the department and training, and experience as a health care provider or in health care financing or health care insurance or as a health care consumer. Race, gender, and other demographic factors ~~should~~ also must be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State~~; however~~. However, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.”

SECTION 9. All proceedings pending and all rights and liabilities including contractual rights and obligations, existing, acquired, or incurred at the time this act takes effect involving the Department of Health and Environmental Control, are saved and transferred to the South Carolina Department of the Environment or the South Carolina Department of Health, as applicable.

SECTION 10. Regulations promulgated by the former South Carolina Coastal Council or the Coastal Division of the Department of Health and Environmental Control or by the Department of Health and Environmental Control are continued and considered to be promulgated under the authority of present provisions of law and are the regulations of the Department of the Environment, Department of Health, or the Coastal Division of the Department of the Environment, as applicable.

SECTION 11. Where the provisions of this act transfer offices, or portions of offices, of the Department of Health and Environmental Control to the Department of the Environment or the Department of Health, the employees, authorized appropriations, and assets and liabilities of the transferred offices are also transferred to and become part of the Department of the Environment or the Department of Health including those newly created by the provisions of this act. 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 the Environment or the Department of Health, including those newly created by the provisions of this act, with the same employment status, compensation, classification, and grade level, as applicable.

SECTION 12. Section 48‑39‑40 of the 1976 Code is repealed.

SECTION 13. This act takes effect July 1, 2015.

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