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Indicates New Matter

COMMITTEE REPORT

February 3, 2016

**S. 561**

Introduced by Senators Grooms, Davis, Gregory, Peeler, Malloy, Campbell, Cleary and Bennett

S. Printed 2/3/16--S. [SEC 2/4/16 2:44 PM]

Read the first time March 17, 2015.

**THE COMMITTEE ON TRANSPORTATION**

To whom was referred a Bill (S. 561) to amend Article 3, Chapter 1, Title 57 of the 1976 Code, relating to the Commission of the Department of Transportation, to increase the membership of the commission, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting:

/ SECTION 1. Article 3, Chapter 1, Title 57 of the 1976 Code is amended to read:

“ARTICLE 3

Commission of the Department of Transportation

Section 57‑1‑310. ~~(A)~~ ~~The congressional districts of this State are constituted and created Department of Transportation Districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The Commission of the Department of Transportation shall be composed of one member from each transportation district elected by the delegations of the congressional district and one member appointed by the Governor from the State at large. Such elections or appointment, as the case may be, shall take into account race and gender so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment or in an election in no way creates a cause of action or basis for an employee grievance for a person appointed or elected or for a person who fails to be appointed or elected.~~

~~(B)(1)~~ ~~Candidates for election to the commission must be screened by the Joint Transportation Review Committee, as provided in Article 7 of this chapter, and determined to meet the qualifications contained in subsection (C) in order to be eligible for election.~~

~~(2)~~ ~~The at‑large appointment made by the Governor must be transmitted to the Joint Transportation Review Committee. The Joint Transportation Review Committee must determine whether the at‑large appointee meets the qualifications in subsection (C) and report its findings to the General Assembly and the Governor. Until the Joint Transportation Review Committee finds a gubernatorial appointee qualified, the appointee must not take the oath of office and the full rights and privileges and powers of the office shall not vest.~~

(A) For purposes of this chapter, the Regional Councils of Government districts of this State, as established pursuant to Section 6‑7‑110, are constituted and created Department of Transportation Districts of the State. The Commission of the Department of Transportation shall be composed of one commissioner from each transportation district upon the recommendation of the appropriate regional council of government, appointed by the Governor, with advice and consent of the Senate. In making appointments, the Governor shall take into account race, gender, and other demographic factors, such as residence in rural or urban areas, so as to represent, to the greatest extent possible, all segments of the population of the State and the impact that each appointee would have on the composition of the commission. Also, the Governor shall ensure that the commission is comprised of least two commissioners who reside in a county with a population of one hundred thousand or less and at least two commissioners who reside in a county with a population greater than one hundred thousand. 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.

(B)(1) The governing body of each regional council of government shall recommend three candidates to the Governor to represent the transportation district. The Governor shall appoint only a candidate who is recommended by the applicable regional council of government.

(2) The Joint Transportation Review Committee must screen each appointee and report its findings to the General Assembly and the Governor. Until the Joint Transportation Review Committee finds an appointee qualified and the Senate confirms the appointee, the appointee must not take the oath of office and the full rights and privileges and powers of the office does not vest.

(C) The qualifications that each ~~commission member~~ commissioner must possess, include, but are not limited to:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors ~~prior to~~ before completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; or

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

(a) transportation;

(b) construction;

(c) finance;

(d) practice of law;

(e) environmental issues;

(f) management; or

(g) engineering.

(D) ~~No~~ A member of the General Assembly or member of his immediate family ~~shall~~ may not be ~~elected or~~ appointed to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be ~~elected or~~ appointed to the commission for a period of four years after the member either:

(1) ceases to be a member of the General Assembly; or

(2) fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

Section 57‑1‑320. ~~(A)~~ ~~A county that is divided among two or more Department of Transportation districts, for purposes of electing a commission member, is deemed to be considered in the district which contains the largest number of residents from that county.~~

~~(B)~~ ~~No~~ A county within a Department of Transportation district ~~shall~~ may not have a resident ~~commission member~~ commissioner for more than one consecutive term and ~~in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter~~ two terms, from commissioners representing other counties, must occur before a county may again have a resident commissioner appointed.

~~Section 57‑1‑325.~~ ~~Legislators residing in the congressional district shall meet upon written call of a majority of the members of the delegation of each district at a time and place to be designated in the call for the purpose of electing a commissioner to represent the district. A majority present, either in person or by written proxy, of the delegation from a given congressional district constitutes a quorum for the purpose of electing a district commissioner. No person may be elected commissioner who fails to receive a majority vote of the members of the delegation.~~

~~The delegation must be organized by the election of a chairman and a secretary, and the delegations of each congressional district shall adopt such rules as they consider proper to govern the election. Any absentee may vote by written proxy. When the election is completed, the chairman and the secretary of the delegation shall immediately transmit the name of the person elected to the Secretary of State who shall issue to the person, after he has taken the usual oath of office, a certificate of election as commissioner. The Governor shall then issue a commission to the person, and pending the issuance of the commission, the certificate of election is sufficient warrant to the person to perform all of the duties and functions of his office as commissioner. Each commissioner shall serve until his successor is elected and qualified.~~

Section 57‑1‑330. ~~(A)~~ ~~For the purposes of electing a commission member, a legislator shall vote only in the congressional district in which he resides. All commission members are elected to a term of office of four years which expires on February fifteenth of the appropriate year. Commissioners shall continue to serve until their successors are elected and qualify, provided that a commissioner may only serve in a hold‑over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by election or appointment in the manner provided in this article for the unexpired term only. No person is eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by an elected commission member to maintain residency in the district for which he is elected shall result in the forfeiture of his office.~~

~~(B)~~ ~~The at‑large commission member shall serve at the pleasure of the Governor. The at‑large commission member may be appointed from any county in the State unless another commission member is serving from that county. Failure by the at‑large commission member to maintain residence in the State shall result in a forfeiture of his office.~~

~~(C)~~ ~~All elected commission members may be removed from office as provided in Section 1‑3‑240(C)(1).~~

(A) All commissioners are appointed to a term of office of six years which expires on December thirty‑first of the appropriate year. A commissioner may not serve more than one term, regardless of when the term was served. A commissioner shall continue to serve until his successor is appointed, found qualified, and is confirmed, provided that a commissioner may serve in a hold‑over capacity for a period not to exceed four months. A vacancy must be filled by appointment in the manner provided in this article for the unexpired term only.

(B) A person is not eligible to serve as a commissioner who is not a resident of that district at the time of his appointment. Failure by a commissioner to maintain residency in the district for which he is appointed shall result in the forfeiture of his office.

(C) A commissioner may be removed from office only as provided in Section 1‑3‑240(C)(1)(b).

Section 57‑1‑340. Each ~~commission member~~ commissioner, within thirty days after his ~~election or appointment~~ confirmation, and before entering upon the discharge of the duties of his office, shall take, subscribe, and file with the Secretary of State the oath of office prescribed by the Constitution of the State.

Section 57‑1‑350. (A) The commission may adopt an official seal for use on official documents of the department.

(B) The commission shall elect a chairman and adopt its own rules and procedures and may select such additional officers to serve such terms as the commission may designate.

(C) Commissioners must be reimbursed for official expenses as provided by law for members of state boards and commissions as established in the annual general appropriations act.

(D) All ~~commission members~~ commissioners are eligible to vote on all matters that come before the commission.

(E) The chairman of the commission shall serve on the South Carolina Transportation Infrastructure Bank board, pursuant to Section 11‑43‑140.

Section 57‑1‑360. ~~(A)~~ ~~The commission must appoint a chief internal auditor and other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission’s duties and responsibilities provided by law. The commission also must provide professional, administrative, technical, and clerical personnel, as the commission determines to be necessary, for the chief internal auditor to properly discharge his duties and responsibilities authorized by the commission or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the commission.~~

~~(B)(1)~~ ~~The chief internal auditor shall serve for a term of four years and may be removed by the commission only for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity. The chief internal auditor must be a Certified Public Accountant and possess any other experience the commission may require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The commission shall set the salary for the chief internal auditor as allowed by statute or applicable law.~~

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

~~(3)~~ ~~The commission is vested with the exclusive management and control of the chief internal auditor.~~

~~(C)~~ ~~The department, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies, for the chief internal auditor and his support staff.~~

Section 57‑1‑370. (A) The commission must develop the long‑range Statewide Transportation Plan, with a minimum twenty‑year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The plan must be developed in a manner consistent with all federal laws or regulations and in consultation with all interested parties, particularly the metropolitan planning organizations and the nonmetropolitan planning organization area local officials. The plan may be revised from time to time as permitted by and in the manner required by federal laws or regulations.

(B) Concerning the development, content, and implementation of the Statewide Transportation Improvement Program, the commission must:

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

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

(3) develop and revise the transportation plan for inclusion in the Statewide Transportation Improvement Program, for each nonmetropolitan planning area in consultation with local officials with responsibility for transportation;

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

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

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

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

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

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

(b) public safety;

(c) potential for economic development;

(d) traffic volume and congestion;

(e) truck traffic;

(f) the pavement quality index;

(g) environmental impact;

(h) alternative transportation solutions; and

(i) consistency with local land use plans.

(C)(1) To the extent that state funds are available to address the needs of the state highway system, the commission must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Nonfederal Aid Highway Fund or other state revenue source. When developing the plan required by this subsection, the commission must consider, but is not limited to, considering~~,~~ the criteria in subsection (B)(8).

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

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

~~(E)~~ ~~The commission must give its prior authorization to any consulting contracts advertised for or awarded by the department and authorize the selection of consultants by department personnel.~~

~~(F)~~ ~~Roads may not be added to or removed from the state highway system without prior authorization from the commission.~~

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

~~(H)~~ ~~The department shall promulgate, by regulation, procedures not inconsistent with federal laws for applying the criteria contained in subsection (B)(8) for prioritizing projects.~~

~~(I)~~ ~~The department may not sell surplus property without prior authorization from the commission.~~

~~(J)~~ The commission must approve the department’s annual budget.

~~(K)~~ ~~The department may not dedicate or name highway facilities without prior authorization from the commission.~~

~~(L)~~ ~~The department may not enter into any contract with a value in excess of five hundred thousand dollars without the prior authorization of the commission.~~

~~(M)~~ ~~The commission shall give prior approval to any additional contracts the department wishes to be entered into during a fiscal year with an entity that has already received individual contracts during that fiscal year that in the aggregate value are at least five hundred thousand dollars.~~

~~(N)~~ ~~Any request made for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction projects under ten million dollars must be reviewed and approved by the commission who certify that the request is needed based upon objective and quantifiable factors before work may proceed.~~

~~(O)~~ ~~The commission shall have any other rights, duties, obligations, or responsibilities as provided by law.~~”

SECTION 2. 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~~ commission shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at the pleasure of the ~~Governor~~ commission. 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 3. Section 57‑1‑460 of the 1976 Code, as added by Act 114 of 2007, is amended to read:

“Section 57‑1‑460. ~~(A)(1)~~ ~~For purposes of this section ‘routine operation and maintenance’ includes, but is not limited to, signage of routes, pavement marking, replacement and installation of guard rails, repair and installation of signals, “chip seal” of existing roads, enhancement projects such as streetscaping, adopt an interchange, bike lanes, curb cuts, installation of overhead message boards and cameras, research projects funded with federal aid, and pavement management system mapping.~~

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

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

SECTION 4. A. Section 57‑1‑720(C) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

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

B. Section 57‑1‑730 of the 1976 Code, as added by Act 114 of 2007, is amended to read:

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

(1) to screen each ~~candidate applying for election~~ appointee to the commission;

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

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

(b) the impact that each ~~candidate~~ appointee would have on the ~~racial and gender~~ composition of the commission~~, and each candidate’s impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State~~ considering the factors required by Section 57‑1‑310(A), and whether the Governor has met the requirements thereof; and

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

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

C. Section 57‑1‑740 of the 1976 Code, as last amended by Act 253 of 2010, is further amended to read:

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

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

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

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

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

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

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

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

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

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

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

~~(2)(a)(i)~~ (B)(1) Upon completion of the ~~candidate investigations~~ investigation, the chairman of the review committee shall schedule a public hearing concerning the qualifications of the ~~candidates~~ appointee. ~~Any person who desires to testify at the hearing, including the candidates, must furnish a written statement of his proposed testimony to the chairman of the review committee. This statement shall be furnished no later than forty‑eight hours prior to the date and time set for the hearing. The review committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the review committee, shall be submitted under oath and persons knowingly furnishing false information either orally or in writing shall be subject to the penalties provided by law for perjury and false swearing.~~

~~(ii)~~ (2) During the course of the investigation, the review committee may schedule an executive session at which the ~~candidates~~ appointee, and other persons who the review committee wishes to interview, may be interviewed on matters pertinent to the ~~candidate’s~~ appointee’s qualification ~~for the office to be filled~~.

~~(iii)~~ (3) The review committee shall render its ~~tentative~~ findings as to whether the ~~candidates are~~ appointee is qualified to serve on the commission ~~as a district member and its reasons for making the findings~~ within a reasonable time after the hearing. ~~If only one person applies to fill a vacancy or if the review committee concludes there are fewer candidates qualified for a vacancy than those who initially filed, it shall submit to the congressional district delegation for election only the names and qualifications of those who are considered to be qualified. The nominations of the review committee for any candidate for the election to the commission are binding on the congressional district delegation, and it shall not elect a person not nominated by the review committee. Nothing shall prevent the congressional district delegation from rejecting all persons nominated. In this event, the review committee shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled.~~

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. Section 11‑43‑140 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 of the Commission 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~~ A 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 6. (A) Commissioners serving as of the effective date of this act may continue to serve until the end of the term to which they were elected and until their successors are appointed, found qualified, and confirmed as provided in this act. The at‑large commissioner shall cease to be a member as of the effective date of this act.

(B) A commissioner serving pursuant to subsection (A) is deemed to represent the transportation district, as provided in SECTION 1 of this act, in which he resides. If a transportation district, as provided in SECTION 1 of this act, is not represented by a commissioner on the effective date of this act, the Governor shall appoint a commissioner to represent the district for a full term as provided in SECTION 1 of this act.

(C) If a commissioner serving pursuant to subsection (A) is unable to complete the term to which he was elected, the Governor shall fill the vacancy for a full term as provided in SECTION 1 of this act with an appointee residing in a different county than the commissioner he is succeeding.

SECTION 7. Except where provided otherwise this act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LAWRENCE K. GROOMS for Committee.

**A** **BILL**

TO AMEND ARTICLE 3, CHAPTER 1, TITLE 57 OF THE 1976 CODE, RELATING TO THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, TO INCREASE THE MEMBERSHIP OF THE COMMISSION TO NINE MEMBERS, TO PROVIDE THAT COMMISSIONERS SHALL BE APPOINTED BY THE GOVERNOR FROM THE STATE AT LARGE SUBJECT TO SCREENING BY THE JOINT TRANSPORTATION REVIEW COMMITTEE AND THE ADVICE AND CONSENT OF THE SENATE, TO PROVIDE THAT COMMISSIONERS SHALL BE APPOINTED TO SIX‑YEAR TERMS, AND TO CLARIFY THE COMMISSION’S DUTIES AND RESPONSIBILITIES; TO AMEND SECTION 57‑1‑410, RELATING TO THE APPOINTMENT OF THE SECRETARY OF TRANSPORTATION, TO PROVIDE THAT THE COMMISSION, WITH THE APPROVAL OF THE GOVERNOR, SHALL APPOINT A SECRETARY OF TRANSPORTATION SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE; TO AMEND SECTIONS 57‑1‑720(C) AND 57‑1‑730 TO MAKE TECHNICAL AND CONFORMING AMENDMENTS REFLECTING THE APPOINTMENT OF COMMISSIONERS RATHER THAN ELECTION OF COMMISSIONERS; TO AMEND CHAPTER 6, TITLE 1 OF THE 1976 CODE, RELATING TO THE OFFICE OF INSPECTOR GENERAL, TO ESTABLISH A DIVISION WITHIN THE OFFICE OF INSPECTOR GENERAL THAT IS RESPONSIBLE FOR THE INTERNAL AUDIT FUNCTION OF THE DEPARTMENT OF TRANSPORTATION; AND TO REPEAL SECTIONS 57‑1‑460 AND 57‑1‑740.

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

SECTION 1. Article 3, Chapter 1, Title 57 of the 1976 Code is amended to read:

“ARTICLE 3

Commission of the Department of Transportation

Section 57‑1‑310. (A) ~~The congressional districts of this State are constituted and created Department of Transportation Districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The~~ There is established the Commission of the Department of Transportation which shall be composed of ~~one member from each transportation district elected by the delegations of the congressional district and~~ ~~one member~~ nine members from the State at large appointed by the Governor, upon the advice and consent of the Senate, following the Joint Transportation Review Committee’s determination of qualifications. ~~from the State at large~~. ~~Such elections or appointment, as the case may be,~~ In making appointments to the commission, the Governor shall take into account race, ~~and~~ gender, and other demographic factors, such as residence in rural or urban areas, so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment ~~or in an election~~ in no way creates a cause of action or basis for an employee grievance for a person appointed ~~or elected~~ or for a person who fails to be appointed.

(B)~~(1)~~ ~~Candidates for election to the commission must be screened by the Joint Transportation Review Committee, as provided in Article 7 of this chapter, and determined to meet the qualifications contained in subsection (C) in order to be eligible for election.~~

~~(2)~~ ~~The at‑large appointment made by the Governor~~ Appointees must be transmitted to the Joint Transportation Review Committee. The Joint Transportation Review Committee must determine whether the ~~at‑large~~ each appointee meets the qualifications in subsection (C) and report its findings to the General Assembly and the Governor. Until the Joint Transportation Review Committee finds a gubernatorial appointee qualified, and the appointee is subsequently confirmed by the Senate, the appointee must not take the oath of office and the full rights and privileges and powers of the office shall not vest.

(C) The qualifications that each ~~commission member~~ commissioner must possess, include, but are not limited to:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; ~~or~~ and

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

(a) transportation;

(b) construction;

(c) finance;

(d) practice of law;

(e) environmental issues;

(f) management; or

(g) engineering.

(D) No member of the General Assembly or member of his immediate family shall be ~~elected or~~ appointed to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be ~~elected or~~ appointed to the commission for a period of four years after the member either:

(1) ceases to be a member of the General Assembly; or

(2) fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

~~Section 57‑1‑320.~~ ~~(A)~~ ~~A county that is divided among two or more Department of Transportation districts, for purposes of electing a commission member, is deemed to be considered in the district which contains the largest number of residents from that county.~~

~~(B)~~ ~~No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in~~ In no event shall any two persons from the same county serve as a commission member simultaneously ~~except as provided hereinafter~~.

~~Section 57‑1‑325.~~ ~~Legislators residing in the congressional district shall meet upon written call of a majority of the members of the delegation of each district at a time and place to be designated in the call for the purpose of electing a commissioner to represent the district. A majority present, either in person or by written proxy, of the delegation from a given congressional district constitutes a quorum for the purpose of electing a district commissioner. No person may be elected commissioner who fails to receive a majority vote of the members of the delegation.~~

~~The delegation must be organized by the election of a chairman and a secretary, and the delegations of each congressional district shall adopt such rules as they consider proper to govern the election. Any absentee may vote by written proxy. When the election is completed, the chairman and the secretary of the delegation shall immediately transmit the name of the person elected to the Secretary of State who shall issue to the person, after he has taken the usual oath of office, a certificate of election as commissioner. The Governor shall then issue a commission to the person, and pending the issuance of the commission, the certificate of election is sufficient warrant to the person to perform all of the duties and functions of his office as commissioner. Each commissioner shall serve until his successor is elected and qualified.~~

Section 57‑1‑330. ~~(A)~~ ~~For the purposes of electing a commission member, a legislator shall vote only in the congressional district in which he resides. All commission members~~ Commissioners are ~~elected~~ appointed to a term of office of ~~four~~ six years which expires on February fifteenth of the appropriate year. Commissioners shall continue to serve until their successors are ~~elected~~ appointed and qualify, provided that a commissioner may only serve in a hold‑over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by ~~election or~~ appointment in the manner provided in this article for the unexpired term only. ~~No person is eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by an elected commission member to maintain residency in the district for which he is elected shall result in the forfeiture of his office.~~ Commissioners may be removed from office as provided in Section 1‑3‑240(C)(1).

~~(B)~~ ~~The at‑large commission member shall serve at the pleasure of the Governor. The at‑large commission member may be appointed from any county in the State unless another commission member is serving from that county. Failure by the at‑large commission member to maintain residence in the State shall result in a forfeiture of his office.~~

~~(C)~~ ~~All elected commission members may be removed from office as provided in Section 1‑3‑240(C)(1).~~

Section 57‑1‑340. Each commission member, within thirty days after his ~~election or~~ appointment, and before entering upon the discharge of the duties of his office, shall take, subscribe, and file with the Secretary of State the oath of office prescribed by the Constitution of the State.

Section 57‑1‑350. (A) The commission may adopt an official seal for use on official documents of the department.

(B) The commission shall elect a chairman and adopt its own rules and procedures and may select such additional officers to serve such terms as the commission may designate.

(C) Commissioners must be reimbursed for official expenses as provided by law for members of state boards and commissions as established in the annual general appropriations act.

(D) All ~~commission members~~ commissioners are eligible to vote on all matters that come before the commission.

~~Section 57‑1‑360.~~ ~~(A)~~ ~~The commission must appoint a chief internal auditor and other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission’s duties and responsibilities provided by law. The commission also must provide professional, administrative, technical, and clerical personnel, as the commission determines to be necessary, for the chief internal auditor to properly discharge his duties and responsibilities authorized by the commission or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the commission.~~

~~(B)(1)~~ ~~The chief internal auditor shall serve for a term of four years and may be removed by the commission only for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity. The chief internal auditor must be a Certified Public Accountant and possess any other experience the commission may require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The commission shall set the salary for the chief internal auditor as allowed by statute or applicable law.~~

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

~~(3)~~ ~~The commission is vested with the exclusive management and control of the chief internal auditor.~~

~~(C)~~ ~~The department, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies, for the chief internal auditor and his support staff.~~

Section 57‑1‑370. (A) The commission must develop the long‑range Statewide Transportation Plan, with a minimum twenty‑year forecast period at the time of adoption~~,~~ that provides for the development and implementation of the multimodal transportation system for the State. The plan must be developed in a manner consistent with all federal laws or regulations and in consultation with all interested parties, particularly the metropolitan planning organizations and the nonmetropolitan planning organization area local officials. The plan may be revised from time to time as permitted by and in the manner required by federal laws or regulations.

(B) Concerning the development, content, and implementation of the Statewide Transportation Improvement Program, the commission must:

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

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

(3) develop and revise the transportation plan for inclusion in the Statewide Transportation Improvement Program, for each nonmetropolitan planning area in consultation with local officials with responsibility for transportation;

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

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

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

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

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

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

(b) public safety;

(c) potential for economic development;

(d) traffic volume and congestion;

(e) truck traffic;

(f) the pavement quality index;

(g) environmental impact;

(h) alternative transportation solutions; and

(i) consistency with local land use plans.

(C)(1) To the extent that state funds are available to address the needs of the state highway system, the commission must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Nonfederal Aid Highway Fund or other state revenue source. When developing the plan required by this subsection, the commission must consider, but is not limited to considering, the criteria in subsection (B)(8).

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

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

~~(E)~~ ~~The commission must give its prior authorization to any consulting contracts advertised for or awarded by the department and authorize the selection of consultants by department personnel.~~

~~(F)~~ ~~Roads may not be added to or removed from the state highway system without prior authorization from the commission.~~

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

~~(H)~~ ~~The department shall promulgate, by regulation, procedures not inconsistent with federal laws for applying the criteria contained in subsection (B)(8) for prioritizing projects.~~

~~(I)~~ ~~The department may not sell surplus property without prior authorization from the commission.~~

~~(J)~~(D) The commission must approve the department’s annual budget.

~~(K)~~ ~~The department may not dedicate or name highway facilities without prior authorization from the commission.~~

~~(L)~~ ~~The department may not enter into any contract with a value in excess of five hundred thousand dollars without the prior authorization of the commission.~~

~~(M)~~ ~~The commission shall give prior approval to any additional contracts the department wishes to be entered into during a fiscal year with an entity that has already received individual contracts during that fiscal year that in the aggregate value are at least five hundred thousand dollars.~~

~~(N)~~ ~~Any request made for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction projects under ten million dollars must be reviewed and approved by the commission who certify that the request is needed based upon objective and quantifiable factors before work may proceed.~~

~~(O)~~ ~~The commission shall have any other rights, duties, obligations, or responsibilities as provided by law.~~”

SECTION 2. Section 57‑1‑410 of the 1976 Code is 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 pleasure of the Governor~~. The commission shall appoint a Secretary of Transportation who shall be the administrative head of the department. The commission, after consultation with and with the approval of the Governor, must submit the name of its appointee to the Senate for the Senate’s advice and consent. 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 3. A. Section 57‑1‑720(C) of the 1976 Code is amended to read:

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

B. Section 57‑1‑730 of the 1976 Code is amended to read:

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

(1) to screen each ~~candidate applying for election~~ gubernatorial appointee to the commission;

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

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

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

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

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

SECTION 4. A. Chapter 6, Title 1 of the 1976 Code is amended by adding:

“Section 1‑6‑110. (A) There is established within the Office of Inspector General a division that provides the exclusive internal audit function for the Department of Transportation. The division shall be headed by a director who is appointed by the Inspector General. The director must be a Certified Public Accountant and possess any other experience the Inspector General may require.

(B)(1) The division must establish, implement, and maintain the exclusive internal audit function of all Department of Transportation activities.

(2) The audits performed by the division must comply with recognized governmental auditing standards. The department and any entity contracting with the department must fully cooperate with the division in the discharge of its duties and responsibilities and must timely produce all requested information, including, but not limited to books, papers, correspondence, memoranda, and other records the division considers necessary in connection with an internal audit. All final audit reports must be submitted to the Department of Transportation Commission, the Secretary of Transportation, the Joint Transportation Review Committee, the chairman of the Senate Transportation Committee, the chairman of the Senate Finance Committee, the chairman of the House of Representatives Education and Public Works Committee, and the chairman of the House of Representatives Ways and Means Committee before being made public.

(3) The Inspector General is vested with the exclusive management and control of the division.

(C) The department must reimburse the Inspector General for all reasonable expenses associated with the operation and management of the division.”

B. This section takes effect sixty days after the effective date of this act.

SECTION 5. (A) Members of the Department of Transportation Commission serving as of the effective date of this act who were elected by a congressional delegation may continue to serve until the end of the term to which they were elected. At the expiration of the term the Governor shall fill the vacancy as provided in this act. A vacancy in one of those seats prior to the expiration of the term to which the commissioner was elected shall be filled as provided in this act for a full term commencing on the date of confirmation and ending as provided by law.

(B) Upon the effective date of this act, the Governor must appoint two members to the commission as provided in this act. The Governor may appoint the current commissioner serving at her pleasure.

(C) The provisions contained in SECTION 4 related to establishing a division within the Office of Inspector General shall take effect upon the approval of the Governor. The Chief Internal Auditor shall be the initial director of the division and shall remain in that position until the expiration of the term to which he was hired. Thereafter, the Inspector General shall hire a division director as provided in this act.

SECTION 6. This act takes effect upon approval by the Governor.

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