**A** **BILL**

TO AMEND SECTION 1‑30‑10(B)(1) OF THE 1976 CODE, RELATING TO THE DEPARTMENTS OF STATE GOVERNMENT AND THEIR GOVERNING BODIES, TO DELETE THE DEPARTMENT OF TRANSPORTATION COMMISSION; TO AMEND SECTIONS 57‑1‑10, 57‑1‑20, 57‑1‑40, 57‑1‑90(A), 57‑1‑410, 57‑1‑430, 57‑1‑460, 57‑1‑470, 57‑1‑490, 57‑3‑20, 57‑3‑50, 57-3-210(A), AND 57‑3‑700, RELATING TO THE ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION AND ITS DUTIES AND RESPONSIBILITIES, TO ELIMINATE THE DEPARTMENT OF TRANSPORTATION COMMISSION AND ITS RESPONSIBILITIES; TO REPEAL ARTICLE 3, CHAPTER 1 OF TITLE 57, RELATING TO THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION; AND TO REPEAL ARTICLE 7, CHAPTER 1 OF TITLE 57, RELATING TO THE JOINT TRANSPORTATION REVIEW COMMITTEE.

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

SECTION 1. Section 1‑30‑10(B)(1) of the 1976 Code is amended to read:

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

(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.”

SECTION 2. Section 57‑1‑10 of the 1976 Code is 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)~~(1) ‘Department’ means the Department of Transportation (DOT).

~~(3)~~(2) ‘Secretary of Transportation’ means the Chief Administrative Officer of the Department of Transportation appointed by the Governor as provided in Section 1‑30‑10(B)(1)(i).”

SECTION 3. Section 57‑1‑20 of the 1976 Code is amended to read:

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

SECTION 4. Section 57‑1‑40 of the 1976 Code is amended to read:

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

(1) money;

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

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

(4) employment; or

(5) other thing of value.

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

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

(1) money;

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

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

(4) employment; or

(5) other thing of value.

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

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

SECTION 5. Section 57‑1‑90(A) of the 1976 Code is amended to read:

“Section 57-1-90. (A) In formulating transportation policy, promulgating regulations, allocating funds, and planning, designing, constructing, equipping, operating and maintaining transportation facilities, no action ~~of the South Carolina Transportation Commission, or the South Carolina Department of Transportation~~ taken by the department shall have the effect of discriminating against motorcycles, motorcycle operators, or motorcycle passengers. No regulation or action of the ~~commission, or~~ department shall have the effect of enacting a prohibition or imposing a requirement that applies only to motorcycles or motorcyclists, and the principal purpose of which is to restrict or inhibit access or motorcycles and motorcyclists to any highway, bridge, tunnel, or other transportation facility.”

SECTION 6. Article 3, Chapter 1 of Title 57, relating to the Commission of the Department of Transportation, is repealed.

SECTION 7. Section 57‑1‑410 of the 1976 Code is amended to read:

“Section 57‑1‑410. The ~~commission~~ Governor shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at the pleasure of the ~~commission~~ 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 is amended to read:

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

(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 57‑1‑460 of the 1976 Code is amended to read:

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

~~(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).~~

(A) The State Auditor shall employ an individual to serve as the chief internal auditor of the department and other professional, administrative, technical, and clerical personnel as the State Auditor determines to be necessary. The State Auditor also must provide professional, administrative, technical, and clerical personnel, as the State Auditor determines to be necessary, in order for the chief internal auditor to properly discharge his duties and responsibilities authorized by the State Auditor or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the State Auditor.

(B)(1) The chief internal auditor must be a Certified Public Accountant and possess any other experience the State Auditor may require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The State Auditor 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 Governor, 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 State Auditor 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 10. Section 57‑1‑470 of the 1976 Code is amended to read:

“Section 57-1-470. ~~(A)~~ ~~At each commission meeting the secretary must provide a detailed written report of all:~~

~~(1)~~ ~~requests that he has received since the last commission meeting for routine operation and maintenance or emergency repairs, his decision concerning those requests, and a status report on all approved requests; and~~

~~(2)~~ ~~pending projects approved by the commission pursuant to Section 57‑1‑370(N) and the status of those projects, if there has been any material change in the status since the last commission meeting.~~

~~(B)~~ ~~The commission must review the report and make findings as to whether the requests approved by the secretary meet the needs of the public based upon objective and quantifiable factors.~~

~~(C)~~ ~~The commission may question the secretary concerning the approval or denial of any request and the process the secretary employed to reach his decision. The commission also may request additional information concerning any request and further investigate any request, approval, or denial of a project by the secretary. The secretary must fully cooperate with any request made of him or his office by the commission regarding any further investigation undertaken by the commission.~~

~~(D)~~ ~~The text of the secretary’s written report and the findings made by the commission must be included in the commission meeting minutes. A list of all projects approved by the commission at its last meeting, together with its explanation of the objective and quantifiable factors used to justify its approval, also must be included in the commission meeting minutes.~~

(A) The department must develop the long‑range Statewide Transportation Plan, with a minimum twenty‑year forecast period at the time of adoption, which 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 department 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 department 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 department must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Non‑Federal Aid Highway Fund or other state revenue source. When developing the plan required by this subsection, the department must consider, but is not limited to, considering the criteria in subsection (B)(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 in order to be eligible for federal matching funds.”

SECTION 11. Section 57‑1‑490 of the 1976 Code is amended to read:

“Section 57-1-490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements must 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 Fiscal Accountability Authority 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 Secretary ~~Commission~~, the State 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) Copies of every audit conducted pursuant to this section must be made available to the ~~Department of Transportation Commission~~ Secretary, the State 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 12. Article 7, Chapter 1 of Title 57, relating to the Commission of the Department of Transportation, is repealed.

SECTION 13. Section 57‑3‑20 of the 1976 Code is amended to read:

“Section 57-3-20. The responsibilities and duties of the following division deputy directors must include, but not be limited to, the following:

(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;

(2) division deputy director for construction, engineering, and planning:

(a) develop statewide strategic highway plans; and

(b) direct highway engineering activities, including construction, design, construction oversight, and maintenance of state highways;

(3) division deputy director for intermodal and freight programs:

(a) develop a statewide public transit system;

(b) coordinate the preservation and revitalization of existing rail corridors;

(c) develop and coordinate a statewide passenger and freight rail system, including the development of a comprehensive state rail plan for passenger and freight railroads and rail infrastructure services;

(d) plan, develop, and coordinate a comprehensive intermodal transportation program for the movement of passengers and freight through integrated highway, railroad, port, airport, and other transit systems;

(e) financial management of funding from federal, state, and local transit, rail, and other intermodal sources; and

(f) manage the Office of Railroads and the Office of Public Transit.”

SECTION 14. 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 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 may be necessary for the proper and efficient operation of the districts.”

SECTION 15. Section 57‑3‑210(A) of the 1976 Code is amended to read:

“(A) The department is authorized to utilize public transit funds to contract directly with private operators of public transit systems to provide service to the general public, provided that the private operators have established a plan of service that has been approved by the local governmental entity that has jurisdiction over the area to be served, the department, ~~the commission,~~ and the federal government.”

SECTION 16. Section 57‑3‑700 of the 1976 Code is amended to read:

“Section 57-3-700. With the approval of the ~~commission~~ department, the county officials may designate the department, acting through its agents and employees, as agents of the county in securing necessary rights‑of‑way and other lands.”

SECTION 17. The Code Commissioner is directed to change or correct all references to the “Commission,” “Department of Transportation Commission,” or the like in the 1976 Code to “Department of Transportation,” “Secretary,” or “Secretary of Transportation,” as appropriate, to reflect that the Commission’s authority is devolved upon the Secretary of Transportation unless otherwise provided. References to the Commission in the 1976 Code or other provisions of law are considered to be and must be construed to mean the Secretary unless otherwise provided.

SECTION 18. This act takes effect upon approval by the Governor.

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