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Companion/Similar bill(s): 3579, 3661, 4484, 4948

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Summary: Commission of the Department of Transportation

**HISTORY OF LEGISLATIVE ACTIONS**

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1/12/2016 House Referred to Committee on **Judiciary** ([House Journal‑page 119](file:///h:\HJ%20Archive\2016\01-12-16.docx))

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**VERSIONS OF THIS BILL**

[1/12/2016](file:///p:\pprever\2015-16\4635_20160112.docx)

**A** **BILL**

TO AMEND SECTIONS 57‑1‑310, 57‑1‑320, 57‑1‑325, AND 57‑1‑330, ALL AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, SO AS TO PROVIDE THAT ALL THE COMMISSIONERS MUST BE APPOINTED BY THE GOVERNOR AND SERVE AT THE PLEASURE OF THE GOVERNOR, TO PROVIDE THAT APPOINTEES MUST BE SCREENED BY THE JOINT TRANSPORTATION REVIEW COMMITTEE, AND TO PROVIDE THAT NO PERSON MAY SERVE AS A COMMISSIONER FOR MORE THAN TWELVE YEARS AND NO COUNTY MAY HAVE A RESIDENT COMMISSIONER FOR MORE THAN TWELVE CONSECUTIVE YEARS; TO AMEND SECTION 57‑1‑410, AS AMENDED, RELATING TO THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION, SO AS TO PROVIDE THAT THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, INSTEAD OF THE GOVERNOR, SHALL APPOINT THE SECRETARY; TO AMEND SECTIONS 57‑1‑730 AND 57‑1‑740, AS AMENDED, RELATING RESPECTIVELY TO THE DUTIES OF THE JOINT TRANSPORTATION REVIEW COMMITTEE, BOTH SO AS TO REQUIRE THE COMMITTEE TO SCREEN APPOINTEES TO THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION IN A SIMILAR MANNER AS CURRENTLY ELECTED COMMISSIONERS ARE SCREENED; BY ADDING SECTION 57‑1‑95 SO AS TO PROHIBIT THE COMMENCEMENT OF ANY NEW ROAD CONSTRUCTION PROJECTS IN THIS STATE UNTIL JULY 1, 2021, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 11‑43‑140, RELATING TO THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK, SO AS TO INCREASE THE BOARD TO THIRTEEN MEMBERS AND TO SET FORTH THE MEMBERSHIP, AND TO PROVIDE THAT NO MEMBER MAY SERVE MORE THAN TWELVE YEARS; TO AMEND SECTION 11‑43‑180, RELATING TO FINANCIAL ASSISTANCE GIVEN BY THE INFRASTRUCTURE BANK, SO AS TO PROHIBIT THE BANK FROM PROVIDING ANY LOANS OR OTHER FINANCIAL ASSISTANCE TO ANY PROJECT UNLESS THE ELIGIBLE COSTS OF THE PROJECT ARE AT LEAST TWENTY‑FIVE MILLION DOLLARS; AND BY ADDING SECTION 11‑43‑265 SO AS TO REQUIRE THE INFRASTRUCTURE BANK TO PRIORITIZE ALL PROJECTS IN ACCORDANCE WITH THE PRIORITIZATION CRITERIA ESTABLISHED IN ACT 114 OF 2007, AND TO PROVIDE AN EXCEPTION.

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

SECTION 1. Sections 57‑1‑310 through 57‑1‑330 of the 1976 Code, all as last amended by Act 114 of 2007, are further amended to read:

“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, all appointed by the Governor. ~~Such elections or appointment, as the case may be,~~ Appointments 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~~ All appointments 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)~~ screen each appointee, as provided in Article 7, 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. An appointee may not take the oath of office until the Joint Transportation Review Committee notifies the Clerk of the Senate and the Clerk of the House of Representatives that the appointee is qualified pursuant to Section 57‑1‑740(B)(2)(b).

(C) The qualifications that each commission member 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

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

(a) transportation;

(b) construction;

(c) finance;

(d) 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 for more than ~~one consecutive term~~ twelve consecutive years and 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 are elected to a term of office of four years which expires on February fifteenth of the appropriate year.~~ All commission members serve at the pleasure of the Governor, but a commission member may not serve more than twelve years, regardless of when the term was served. Commissioners shall continue to serve until their successors are ~~elected~~ appointed and qualify, provided that a commissioner ~~may~~ only may 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. Except for the at‑large member, ~~no~~ a person is not 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~~ such commission member to maintain residency in the district for which he is ~~elected~~ appointed 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).~~”

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 57‑1‑730 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~~ each person appointed 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 the Governor~~; and~~

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

SECTION 4. 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~~ is appointed:

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

(a) a newspaper of general circulation within the congressional district from which a commission member ~~must be elected~~ is appointed 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~~ appointment; 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~~ conduct an investigation of an appointee until the review committee certifies to the Clerk of the Senate, ~~and~~ the Clerk of the House of Representatives, and the Governor 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)~~(B)(1) When the ~~notice of intention filing period closes~~ certifications are made pursuant to subsection (A)(2), 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) Upon completion of ~~the candidate~~ an appointee’s ~~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~~ appointee, 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) 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) 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) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact, including whether the appointee is qualified, shall be delivered to the Clerk of the Senate and the Clerk of the House of Representatives to be 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~~ the Governor and the appointee.

(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~~ An appointee may withdraw at any stage of the proceedings, and in this event no further inquiry, report on, or consideration of his ~~candidacy~~ appointment 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~~ an appointee 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~~ A person ~~shall~~ may not 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~~ an individual ~~shall~~ may not 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~~ an appointee, or any immediate family member of ~~a candidate~~ an appointee unless the family member is serving in the General Assembly, during the time the ~~candidate’s~~ appointee’s application is pending before the review committee and during the time the ~~candidate’s~~ appointee’s election is pending.”

SECTION 5. Sections 1, 2, 3, and 4 of this act take effect July 1, 2016, except that the members of the Commission of the Department of Transportation serving on June 30, 2016, shall continue to serve until their current term expires, and until their successor is appointed and found qualified. If a vacancy occurs in the seat of a member serving on June 30, 2016, before the member’s term otherwise expires, the vacancy must be filled in the same manner as the current member was elected or appointed, and the member filling the vacancy shall serve until the term expires. The members serving on June 30, 2016, may be reappointed pursuant to Section 57‑1‑310, as amended by this act.

SECTION 6. Article 1, Chapter 1, Title 57 of the 1976 Code is amended by adding:

“Section 57‑1‑95. (A) Notwithstanding any other provision of law, no new road construction projects may commence in this State until July 1, 2021. This section must not be construed to prohibit the expansion of roads that existed on June 30, 2016. This section applies to the department and any other entity authorized to construct roads in this State.

(B) This section does not apply to:

(1) any project for which preliminary engineering and design work has been initiated before January 1, 2017;

(2) large interstate projects for which matching funds are available;

(3) any project contained in a metropolitan planning organization’s transportation improvement plan before January 1, 2017; and

(4) a new facility designed to be a toll road.”

SECTION 7. A. Section 11‑43‑140 of the 1976 Code is amended to read:

“Section 11‑43‑140. The board of directors is the governing board of the bank. The board consists of ~~seven~~ thirteen voting directors as follows: ~~the Chairman 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~~ the seven members of the Commission of the Department of Transportation who represent a transportation district, ex officio; ~~one director~~ two directors appointed by the Speaker of the House of Representatives, at least one of whom resides in or represents all or some portion of the counties designated as distressed or least developed pursuant to Section 12‑6‑3360 for 2009 or a county designated as such at the time of appointment; one member of the House of Representatives appointed by the Speaker, ex officio; ~~one director~~ two directors appointed by the President Pro Tempore of the Senate, at least one of whom resides in or represents all or some portion of the counties designated as distressed or least developed pursuant to Section 12‑6‑3360 for 2009 or a county designated as such at the time of appointment; and one member of the Senate appointed by the President Pro Tempore of the Senate, ex officio. All directors serve at the pleasure of the appointing authority. 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 Governor shall designate which member of the Commission of the Department of Transportation shall serve as chairman. The vice chairman must be elected by the board. A director may not serve more than twelve years, regardless of when the term was served. Any person appointed to fill a vacancy must be appointed in the same manner as the original appointee for the remainder of the unexpired term.”

B. This SECTION takes effect January 1, 2017, at which time the Board of Directors of the South Carolina Transportation Infrastructure Bank must be made up of members appointed pursuant to Section 11‑43‑140, as amended by this act. The members of the Board of Directors of the South Carolina Transportation Infrastructure Bank as of December 31, 2016, only may continue to serve on the board if they were legislatively appointed, and the legislative appointing authority, in writing, expresses the desire for the member to continue serving, and otherwise qualify. To ensure an efficient transition to the reconstituted Board of Trustees of the South Carolina Transportation Infrastructure Bank on January 1, 2017, upon the effective date of this act, the appointing authorities may begin making appointments to the Board of Trustees of the South Carolina Transportation Infrastructure Bank for membership that takes effect January 1, 2017.

SECTION 8. A. Section 11‑43‑180 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

“( ) The bank may not provide any loans or other financial assistance, including bond proceeds, to any project unless the eligible costs of the project are at least twenty‑five million dollars.”

B. This SECTION takes effect upon approval by the Governor and only applies to projects selected by the bank after that date.

SECTION 9. A. Article 1, Chapter 43, Title 11 of the 1976 Code is amended by adding:

“Section 11‑43‑265. (A) Notwithstanding any other provision of law and subject to the provisions of subsection (B), the bank must prioritize all projects in accordance with the prioritization criteria provided in Section 57‑1‑370(B)(8).

(B) The General Assembly may enact a joint resolution allowing the bank to fund a project without using the prioritization criteria provided in subsection (A). The joint resolution must be specific as to the project and the amount authorized to be funded.”

B. This SECTION takes effect upon approval by the Governor and only applies to projects selected by the bank after that date.

SECTION 10. Except where otherwise provided, this act takes effect July 1, 2016.

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