**South Carolina General Assembly**

125th Session, 2023-2024

**A60, R70, S399**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Peeler, Alexander, Malloy, Kimbrell and Grooms

Companion/Similar bill(s): 3239, 4124

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Introduced in the Senate on January 17, 2023

Introduced in the House on May 4, 2023

Last Amended on May 11, 2023

Currently residing in the Senate

Summary: DHEC restructuring

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/17/2023 Senate Introduced and read first time (Senate Journal‑page 7)

 1/17/2023 Senate Referred to Committee on **Medical Affairs** (Senate Journal‑page 7)

 2/10/2023 Scrivener's error corrected

 5/2/2023 Senate Committee report: Favorable with amendment **Medical Affairs** (Senate Journal‑page 13)

 5/2/2023 Senate Read second time (Senate Journal‑page 16)

 5/3/2023 Senate Committee Amendment Adopted

 5/3/2023 Senate Amended (Senate Journal‑page 25)

 5/3/2023 Senate Read third time and sent to House (Senate Journal‑page 25)

 5/3/2023 Senate Roll call Ayes-43 Nays-0 (Senate Journal‑page 25)

 5/4/2023 House Introduced and read first time (House Journal‑page 14)

 5/4/2023 House Referred to Committee on **Ways and Means** (House Journal‑page 14)

 5/9/2023 House Committee report: Favorable with amendment **Ways and Means** (House Journal‑page 4)

 5/10/2023 Scrivener's error corrected

 5/10/2023 House Amended (House Journal‑page 101)

 5/10/2023 House Read second time (House Journal‑page 101)

 5/10/2023 House Roll call Yeas-105 Nays-0 (House Journal‑page 119)

 5/11/2023 House Read third time and returned to Senate with amendments (House Journal‑page 18)

 5/11/2023 Senate House amendment amended (Senate Journal‑page 68)

 5/11/2023 Senate Roll call Ayes-42 Nays-0 (Senate Journal‑page 68)

 5/11/2023 House Non-concurrence in Senate amendment (House Journal‑page 75)

 5/11/2023 House Roll call Yeas-1 Nays-97 (House Journal‑page 77)

 5/11/2023 Senate Senate insists upon amendment and conference committee appointed Hutto, Verdin, Davis (Senate Journal‑page 100)

 5/11/2023 House Conference committee appointed Herbkersman, Cobb-Hunter, Hewitt (House Journal‑page 80)

 5/11/2023 Senate Conference report received and adopted (Senate Journal‑page 109)

 5/11/2023 Senate Roll call Ayes-42 Nays-0 (Senate Journal‑page 109)

 5/11/2023 House Conference report adopted (House Journal‑page 90)

 5/11/2023 House Roll call Yeas-104 Nays-0 (House Journal‑page 77)

 5/11/2023 House Ordered enrolled for ratification (House Journal‑page 122)

 5/17/2023 Ratified R 70

 5/19/2023 Signed By Governor

 5/26/2023 Effective date See Act for Effective Date

 5/26/2023 Act No. 60

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 5/11/2023 House Conference committee appointed Herbkersman, Cobb-Hunter, Hewitt ([House Journal‑page 80](file:///h%3A%5Chj%5C20230511.docx))

 5/11/2023 Senate Conference report received and adopted ([Senate Journal‑page 109](file:///h%3A%5Csj%5C20230511.docx))

 5/11/2023 Senate Roll call Ayes-42 Nays-0 ([Senate Journal‑page 109](file:///h%3A%5Csj%5C20230511.docx))

 5/11/2023 House Conference report adopted ([House Journal‑page 90](file:///h%3A%5Chj%5C20230511.docx))

 5/11/2023 House Roll call Yeas-104 Nays-0 ([House Journal‑page 77](file:///h%3A%5Chj%5C20230511.docx))

 5/11/2023 House Ordered enrolled for ratification ([House Journal‑page 122](file:///h%3A%5Chj%5C20230511.docx))

 5/17/2023 Ratified R 70 ([Senate Journal‑page 22](file:///h%3A%5Csj%5C20230517.docx))

 5/19/2023 Signed By Governor

 5/26/2023 Effective date See Act for Effective Date

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(A60, R70, S399)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 44‑1‑20, RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO PROVIDE FOR THE CREATION OF A DEPARTMENT OF PUBLIC HEALTH TO ASSUME THE HEALTH-RELATED FUNCTIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND FOR OTHER PURPOSES; BY AMENDING SECTIONS 44-1-60, 44‑1‑140, AND 44-1-150, ALL RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, ALL SO AS TO MAKE CONFORMING CHANGES; BY REPEALING SECTIONS 1-30-45 AND 44-1-65 RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND THE PERMITTING OF CERTAIN ANIMAL FACILITIES; BY RENAMING CHAPTER 1 OF TITLE 44, “DEPARTMENT OF PUBLIC HEALTH”; BY ADDING CHAPTER 6 TO TITLE 48 SO AS TO CREATE THE DEPARTMENT OF ENVIRONMENTAL SERVICES TO ASSUME THE ENVIRONMENTAL-RELATED FUNCTIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, TO PROVIDE FOR THE APPOINTMENT OF A DIRECTOR BY THE GOVERNOR, AND FOR OTHER PURPOSES; By amending Chapter 3 of Title 49, relating to water resources, so as to transfer the Water Resources Division of the Department of Natural Resources to the Department of Environmental Services and for other purposes; BY AMENDING SECTION 1-30-10, RELATING TO DEPARTMENTS OF STATE GOVERNMENT, SO AS TO ADD THE DEPARTMENT OF PUBLIC HEALTH AND THE DEPARTMENT OF ENVIRONMENTAL SERVICES; BY ADDING SECTIONS 1‑30‑135 AND 1‑30‑140 SO AS TO MAKE CONFORMING CHANGES; By adding Article 7 to Chapter 11, Title 25 so as to transfer to the Department of Veterans’ Affairs the authority to establish and operate veterans homes; By adding chapter 57 to title 46 so as to create the Division of Food Safety within the Department of Agriculture and to transfer certain food safety responsibilities from the Department of Health and Environmental Control to the Department of Agriculture; By amending Section 24-9-20, relating to certain food inspections in prison facilities, so as to transfer inspection responsibility to the Department of Agriculture; By amending Section 39‑37‑120, relating to frozen milk product consumer safety, so as to transfer responsibility to the Department of Agriculture; By amending Section 1-23-600, relating to contested case hearings decided by certain boards or commissions, so as to make conforming changes; By requiring the Department of Administration to perform certain functions to effect the restructuring of the Department of Health and Environmental Control and the creation of the Department of Public Health and Department of Environmental Services, including the analysis of the programs, services, and populations served by the predecessor agencies and the preparation of reports summarizing the analysis and making recommendations as to the appropriate structure and operation of the restructured state agencies; And for other purposes.

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

Governmental agency restructuring

SECTION 1. On July 1, 2024:

 (1) There is created the Department of Public Health to be headed by a director who is appointed by the Governor pursuant to Section 1‑30‑10, with the advice and consent of the Senate; provided, however, until the Governor appoints the initial director after creation of the Department of Public Health, the Director of the Department of Health and Environmental Control shall serve as the Director of the Department of Public Health.

 (2) There is created the Department of Environmental Services to be headed by a director who is appointed by the Governor pursuant to Section 1‑30‑10, with the advice and consent of the Senate; provided, however, until the Governor appoints the initial director after creation of the Department of Environmental Services, the Director of Environmental Affairs of the Department of Health and Environmental Control shall serve as the Director of the Department of Environmental Services.

 (3) The South Carolina Department of Health and Environmental Control and the South Carolina Board of Health and Environmental Control are abolished.

 (4) The food safety program in the Division of Food and Lead Risk Assessment and the Milk and Dairy Lab of the Department of Health and Environmental Control shall become a division of the Department of Agriculture with the director of that department being deemed the head of the division unless otherwise specified, and all relevant powers and duties assigned to the Department of Health and Environmental Control being transferred to and devolved upon the Department of Agriculture.

 (5) The authority to establish, manage, and operate veterans homes shall be transferred to the Department of Veterans’ Affairs, and all powers and duties assigned to the Department of Mental Health regarding veterans homes being transferred to and devolved upon the Department of Veterans' Affairs. To the extent, the Department of Mental Health owns the grounds upon which these veterans homes are located, title shall be transferred to the Department of Veterans' Affairs.

 (6) The hydrology and aquatic nuisance species programs of the Land, Water and Conservation Division of the Department of Natural Resources shall become a division of the Department of Environmental Services, and all relevant powers and duties assigned to the Department of Natural Resources being transferred to and devolved upon the Department of Environmental Services.

Department of Administration, restructuring analysis and reporting responsibilities

SECTION 2.  (A) It is the intent of the General Assembly to restructure and transfer the programs, services, duties, and authority of the Department of Health and Environmental Control into the Department of Public Health or the Department of Environmental Services. Accordingly, the Department of Administration immediately shall commence the process of analyzing the circumstances and determining the best manner to efficiently and effectively restructure and transfer all programs, services, duties, and authority of the Department of Health and Environmental Control to the Department of Public Health or the Department of Environmental Services, consistent with the provisions of this act. The Department of Health and Environmental Control shall cooperate with the Department of Administration and assign such personnel as requested by the Executive Director of the Department of Administration to assist the department and enable it to complete its duties under this SECTION. To complete its duties under this SECTION the Department of Administration shall consult with the existing Director of the Department of Health and Environmental Control and the existing Director of Environmental Affairs of the Department of Health and Environmental Control.

 (B) The Department of Administration’s analysis required by this SECTION must include the submission of a report to the General Assembly no later than December 31, 2023, with specific recommendations of statutory changes needed throughout the South Carolina Code of Laws to reflect the restructuring and transfer of the health‑related programs, services, duties, and authority of the Department of Health and Environmental Control to the Department of Public Health and to reflect the restructuring and transfer of the environmental related programs, services, duties, and authority of the Department of Health and Environmental Control to the Department of Environmental Services. The Department of Health and Environmental Control shall assign such legal, programmatic and administrative personnel as requested by the Executive Director of Department of Administration to assist the department in identifying statutory provisions requiring change and in suggesting appropriate language to effectuate required changes. The Code Commissioner shall be available to consult with and assist the Department of Administration in making the recommendations required by this SECTION.

 (C) The Department of Administration may procure such supplies, services, information technology, and experts, including attorneys, as are necessary to perform the requirements of this SECTION. Such procurements are exempt from the purchasing procedures of the South Carolina Consolidated Procurement Code but must be made with as much competition as is practicable. Additionally, if determined necessary, the State Fiscal Accountability Authority shall assign such personnel as requested by the Executive Director of Department of Administration to assist the department in any required procurements. The Department of Health and Environmental Control shall pay the costs of any supplies, services, information technology, and experts, including attorneys, procured pursuant to this subsection.

**Department of Public Health**

SECTION 3.A. Section 44-1-20 of the S.C. Code is amended to read:

 Section 44-1-20. There is created the South Carolina Department of Public Health.

B.  Section 44-1-60(A) of the S.C. Code is amended to read:

 (A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case must be made using the procedures set forth in this section.

C.  Section 44‑1‑140 of the S.C. Code is amended to read:

 Section 44‑1‑140. (A) The Department of Public Health may make, adopt, promulgate, and enforce reasonable rules and regulations from time to time requiring and providing for:

 (1) the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats, and other vehicles of transportation in this State and all convict camps, penitentiaries, jails, hotels, schools, and other places used by or open to the public;

 (2) the sanitation of hotels, restaurants, cafes, drugstores, hot dog and hamburger stands, and all other places or establishments providing eating or drinking facilities and all other places known as private nursing homes or places of similar nature, operated for gain or profit;

 (3) the safety and sanitation in the harvesting, storing, processing, handling and transportation of mollusks, fin fish, and crustaceans;

 (4) the safety, safe operation and sanitation of public swimming pools and other public bathing places, construction, tourist and trailer camps, and fairs;

 (5) the care, segregation, and isolation of persons having or suspected of having any communicable, contagious, or infectious disease; and

 (6) the thorough investigation and study of the causes of all diseases, epidemic and otherwise, in this State, the means for the prevention of contagious disease and the publication and distribution of such information as may contribute to the preservation of the public health and the prevention of disease.

 (B) The department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious, and infectious diseases and other danger to the public life and health.

D.  Section 44‑1‑150(A) and (E) of the S.C. Code is amended to read:

 (A) Except as provided in Section 44‑1‑151, a person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Public Health, made by the department pursuant to Section 44‑1‑140, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

 (E) Reserved.

E. Sections 1-30-45 and 44‑1‑65 of the S.C. Code are repealed.

F. Chapter 1, Title 44 of the S.C. Code is renamed “Department of Public Health”.

Department of Environmental Services

SECTION 4. Title 48 of the S.C. Code is amended by adding:

 CHAPTER 6

 Department of Environmental Services

 Section 48‑6‑10. (A) There is created the Department of Environmental Services which shall be headed by a director appointed by the Governor, upon the advice and consent of the Senate. The director is subject to removal by the Governor as provided for in Section 1‑3‑240.

 (B) As the governing authority of the department, the director is vested with all authorities and duties as provided for in Section 1‑30‑10.

 (C) The Department of Environmental Services is comprised of:

 (1) the Division of Air Quality;

 (2) the Division of Land and Waste Management;

 (3) the Division of Water;

 (4) the Division of Regional and Laboratory Services, which includes the Office of Emergency Response and the Office of Onsite Wastewater and Enforcement; and

 (5) the Division of Coastal Management.

 (D) The Director of the Department of Environmental Services may realign the bureaus, divisions, offices, and programs to gain additional efficiencies or to better align resources with changes in environmental statutes or regulation.

 Section 48‑6‑20. (A) The Department of Environmental Services is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of the Department of Health and Environmental Control on the effective date of this act.

 (B) The department may promulgate regulations necessary to implement the provisions of this chapter.

 (C) The department may apply for and accept funds, grants, gifts, and services from the State, the United States government or any of its agencies, or any other public or private source and may use funds derived from these sources to defray clerical and administrative costs, as may be necessary for carrying out the department’s duties.

 Section 48‑6‑30. (A) All decisions of the Department of Environmental Services involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case, except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another animal facility, except a swine facility, also must comply with the provisions of Section 48‑6‑40.

 (B) The department shall comply with all requirements for public notice, receipt of public comments, and public hearings before making a decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.

 (C) In making a decision about a permit, license, certification, or other approval, the department shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition a permit, license, certification, or other approval. At the time that a decision is made, the department shall issue a written decision and shall base its decision on the administrative record, which must consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification, or other approval. The administrative record also may include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as those materials are referred to specifically in the department decision. The department is not required to issue a written decision for issuance of routine permits for which the department has not received adverse public comments.

 (D)(1) The department shall send notice of a decision by certified mail, return receipt requested to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of decisions for which a department decision is not required pursuant to subsection (C) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.

 (2) Within thirty calendar days after the mailing of a decision pursuant to item (1), an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1-23-600(H)(1), the entirety of Section 1‑23‑600(H) shall apply to timely requests for a contested hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department’s specialized knowledge.

 (E) If a deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

 Section 48‑6‑40. (A) In making a decision on a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, pursuant to Section 48‑6‑30(C), the department shall base its decision solely on whether the permit complies with the applicable department regulations governing the permitting of poultry and other animal facilities, other than swine facilities.

 (B) For purposes of permitting, licensing, certification, or other approval of a poultry facility or another animal facility, other than a swine facility:

 (1) only an applicant, permittee, licensee, or affected person may request a contested case hearing pursuant to Section 48‑6‑30(D)(2);

 (2) only an applicant, permittee, licensee, or affected person may become a party to a contested case hearing; and

 (3) only an applicant, permittee, licensee, or affected person is entitled as of right to be admitted as a party pursuant to Section 1‑23‑310(5) of the Administrative Procedures Act.

 (C)(1) In determining whether to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, the department only may take into consideration the existing development on and use of property owned or occupied by an affected person on the date the department receives the applicant’s complete application package as prescribed by regulation. The department must not take into consideration any changes to the development or use of property after receipt of the application including, but not limited to, the construction of a residence.

 (2) If a property owner signs a setback waiver of the right to contest the issuance of a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, including waiver of the right to notice and a public hearing on a permit, license, certification, or other approval and to file a contested case or other action, then the affected person has seventy‑two hours to provide in writing a withdrawal or rescission of the waiver.

 (D)(1) An applicant, permittee, licensee, or affected person who is aggrieved by a decision to issue or deny a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act.

 (2) Notwithstanding any other provision of law, a decision to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may not be contested if the proposed building footprint is located eight hundred feet or more from the facility owner’s property line or located one thousand feet or more from an adjacent property owner’s residence.

 (E) For purposes of this section, “affected person” means a property owner with standing within a one mile radius of the proposed building footprint or permitted poultry facility or other animal facility, except a swine facility, who is challenging on his own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other animal facilities, other than swine facilities.

 Section 48‑6‑50. All rules and regulations promulgated by the department shall be null and void unless approved by a concurrent resolution of the General Assembly at the session of the General Assembly following their promulgation.

 Section 48‑6‑60. (A) The Department of Environmental Services may make, adopt, promulgate, and enforce reasonable rules and regulations from time to time requiring and providing for:

 (1) the classification of waters;

 (2) the control of disease‑bearing insects, including the impounding of waters;

 (3) the control of industrial plants, including the protection of workers from fumes, gases, and dust, whether obnoxious or toxic;

 (4) the use of water in air humidifiers;

 (5) the regulation of the methods of disposition of garbage or sewage and any like refuse matter in or near any village, town, or city of the State, incorporated or unincorporated, and to abate obnoxious and offensive odors caused or produced by septic tank toilets by prosecution, injunction, or otherwise; and

 (6) the alteration of safety glazing material standards and the defining of additional structural locations as hazardous areas, and for notice and hearing procedures by which to effect these changes.

 (B) The department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the environment.

 Section 48‑6‑70. (A) A person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Environmental Services, made by the department pursuant to Section 48‑6‑60, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

 (B) A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 48‑6‑60 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.

 (C) Fines collected pursuant to subsection (B) must be remitted by the department to the State Treasurer for deposit in the state general fund.

 (D) The term “notice” as used in this section means either actual notice or constructive notice.

 (E) This section does not apply to fines levied pursuant to Section 48‑6‑60(3) or any other areas regulated by the South Carolina Occupational Health and Safety Act, Section 41‑12‑10, et seq.

 Section 48‑6‑80. Nothing contained in Section 48‑6‑60 in any way abridges or limits the right of a person to maintain or prosecute a civil or criminal proceeding against a person maintaining a nuisance.

Transfer of Water Resources Division to Department of Environmental Services

SECTION 5. Chapter 3, Title 49 of the S.C. Code is amended to read:

CHAPTER 3

Water Resources Planning and Coordination Act

 Section 49-3-10. The former Water Resources Division of the Department of Natural Resources is transferred to the Division of Water in the Department of Environmental Services. The regulatory functions of the former Water Resources Commission that were transferred to the Department of Health and Environmental Control are further transferred to the Department of Environmental Services.

 Section 49-3-20. As used in this chapter:

 “Department” means the Department of Environmental Services.

 Section 49-3-40. (A) The department shall advise and assist the Governor and the General Assembly in:

 (1) formulating and establishing a comprehensive water resources policy for the State, such as a State Water Plan, including coordination of policies and activities among the state departments and agencies;

 (2) developing and establishing policies and proposals designed to meet and resolve special problems of water resource use and control within or affecting the State, including consideration of the requirements and problems of urban and rural areas;

 (3) reviewing the actions and policies of state agencies with water resource responsibilities to determine the consistency of such actions and policies with the comprehensive water policy of the State and to recommend appropriate action where deemed necessary;

 (4) reviewing any project, plan, or program of federal aid affecting the use or control of any waters within the State and to recommend appropriate action where deemed necessary;

 (5) developing policies and recommendations to assure that the long-range interests of all groups, urban, suburban, and rural, are provided for in the state's representation on interstate water issues;

 (6) recommending to the General Assembly any changes of law or regulation required to implement the policy declared in this chapter; and

 (7) such other water resources planning, policy formulation, and coordinating functions as the Governor and the General Assembly may designate.

 (B) The department is authorized to conduct or arrange for such studies, inquiries, surveys, or analyses as may be relevant to its duties in assisting the Governor and the General Assembly in the implementation of the policy declared in this chapter, and in developing recommendations for the General Assembly.  For these purposes, the department shall have full access to the relevant records of other state departments and agencies and political subdivisions of the State, and may hold public hearings, and may cooperate with or contract with any public or private agency, including educational, civic, and research organizations.  The studies, inquiries, surveys, or analyses shall incorporate and integrate, to the maximum extent feasible, plans, programs, reports, research, and studies of federal, state, interstate, regional, metropolitan, and local units, agencies and departments of government.

 (C) In developing recommendations for the Governor and the General Assembly relating to the use and control of the water resources of the State, the department shall:

 (1) coordinate its activities by distribution of copies of its notices of meetings with agenda, minutes and reports of all state agencies concerned with water resources;

 (2) consult with representatives of any federal, state, interstate, or local units of government which would be affected by such recommendations;  and

 (3) be authorized to appoint such interdepartmental and public advisory boards as necessary to advise them in developing policies for recommendations to the Governor and the General Assembly.

 (D) The department shall encourage, assist, and advise regional, metropolitan, and local governmental agencies, officials, or bodies responsible for planning in relation to water aspects of their programs, and shall assist in coordinating local and regional water resources activities, programs, and plans.

 (E) The department may publish reports, including the results of such studies, inquiries, surveys, and analyses as may be of general interest, and shall make an annual report of its activities to the Governor and the General Assembly within ten days after the convening of each session of the General Assembly.

 (F) The department may receive and expend grants, gifts, and monies donated or given by any state, federal, or private agency, person, corporation, water or sewer authority, or political subdivision in connection with water resource investigations in which the results of such investigations will be made publicly available.

 (G) The department is authorized and required to review and approve the expenditure of funds derived from the United States Army Corps of Engineers when any funds are authorized and appropriated for any water resources related projects or purposes including, but not limited to, the following:

 (1) navigation,

 (2) irrigation,

 (3) water storage,

 (4) aquatic weed management,

 (5) flood control,

 (6) salinity control,

 (7) interstate water concerns, and

 (8) any studies, surveys, or analyses performed by the Corps of Engineers.

 The review and approval required by this subsection is not applicable to any Corps of Engineers funds which must be expended in a different manner pursuant to express statutory direction.

 Section 49-3-50. In exercising its responsibilities under this chapter, the department shall take into consideration the need for:

 (1) adequate supplies of surface and groundwaters of suitable quality for all uses, including domestic, municipal, agricultural, and industrial;

 (2) water of suitable quality for all purposes;

 (3) water availability for recreational and commercial needs;

 (4) hydroelectric power;

 (5) flood damage control or prevention measures including zoning to protect people, property, and productive lands from flood losses;

 (6) land stabilization measures;

 (7) drainage measures, including salinity control;

 (8) watershed protection and management measures;

 (9) outdoor recreational and fish and wildlife opportunities;

 (10) studies on saltwater intrusion into groundwater and surface water;

 (11) measures to protect the state's fisheries and other aquatic resources;

 (12) any other means by which development of water and related land resources can contribute to economic growth and development, the long-term preservation of water resources, and the general well-being of all the people of the State.

 Section 49-3-60. (A) All decisions of the Department of Environmental Services involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case, except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another animal facility, except a swine facility, also must comply with the provisions of Section 49-3-65.

 (B) The department shall comply with all requirements for public notice, receipt of public comments, and public hearings before making a decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.

 (C) In making a decision about a permit, license, certification, or other approval giving rise to a contested case, the department shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition a permit, license, certification, or other approval. At the time that a final departmental decision is made, the department shall issue a final written decision and shall base its decision on the administrative record, which must consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification, or other approval. The administrative record also may include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as such materials are specifically referred to in the department decision. The department is not required to issue a final written departmental decision for issuance of routine permits for which the department has not received adverse public comments. The department is required to make a final decision granting the permit where the applicant has met all conditions in statutes and regulations governing that permit.

 (D)(1) The department shall send a notice of a final departmental decision by certified mail, returned receipt requested to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail.  Notice of decisions for which a written decision is not required pursuant to subsection (C) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.

 (2) Decisions by the department become final thirty days after the mailing of a notice pursuant to item (1) unless the applicant, permittee, licensee, certificate holder, or affected person files a request for a contested case hearing with the Administrative Law Court.

 (3) Within thirty calendar days after the mailing of the decision pursuant to item (1), an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1‑23‑600(H)(1), the entirety of Section 1‑23‑600(H) shall apply to timely requests for a contested case hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department's specialized knowledge.

 (E) If a deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

Departments of state government

SECTION 6.A. Section 1‑30‑10(A)8. of the S.C. Code is amended to read:

 8. Department of Public Health

B.  Section 1‑30‑10(A) of the S.C. Code is amended by adding:

 25. Department of Environmental Services

Creation of Department of Public Health and Department of Environmental Services

SECTION 7.A. Chapter 30, Title 1 of the S.C. Code is amended by adding:

 Section 1‑30‑135. There is hereby created, within the executive branch of the state government, the Department of Public Health, headed by a director appointed by the Governor, with the advice and consent of the Senate. The divisions, offices, and programs of the Department of Health and Environmental Control performing functions related to regulation and protection of the public health prior to the effective date of this act, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with these divisions, offices, programs, and other related entities, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Public Health.

B.  Chapter 30, Title 1 of the S.C. Code is amended by adding:

 Section 1‑30‑140. There is hereby created, within the executive branch of the state government, the Department of Environmental Services, headed by a director appointed by the Governor pursuant to Section 48‑6‑10. The divisions, offices, and programs of the Department of Health and Environmental Control performing functions related to regulation and protection of the environment prior to the effective date of this act, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with these divisions, offices, programs, and other related entities, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Environmental Services.

**South Carolina Veterans Homes**

SECTION 8. Chapter 11, Title 25 of the S.C. Code is amended by adding:

Article 7

South Carolina Veterans Homes

 Section 25-11-710. The Department of Veterans' Affairs, in mutual agreement with the authorities of the United States Veterans Administration, may establish and operate South Carolina veterans homes to provide treatment for South Carolina veterans who require long-term nursing care. The Department of Veterans' Affairs is designated as the agency of the State to apply for and to accept gifts, grants, and other contributions from the federal government or from any other governmental unit for the operation and construction of South Carolina veterans homes. The Department of Veterans' Affairs may consult with the Department of Public Health and the Office of the Governor concerning the policies, management, and operation of the South Carolina veterans homes.

 Section 25-11-720. For the purpose of Section 25‑11‑710, “South Carolina veterans” means any ex service South Carolina citizen who was discharged under other than dishonorable conditions and who served in any branch of the military or naval service of the United States.

Food Safety, Department of Agriculture

SECTION 9. Title 46 of the S.C. Code is amended by adding:

CHAPTER 57

Food Safety

 Section 46-57-10. The Department of Agriculture shall administer and enforce the provisions contained in this chapter.

 Section 46-57-20. (A) For the purposes of this section:

 (1) “Home‑based food production operation” means an individual, operating out of the individual's dwelling, who prepares, processes, packages, stores, and distributes nonpotentially hazardous foods for sale directly to a person.

 (2) “Nonpotentially hazardous foods” means candy and baked goods that are not potentially hazardous foods.

 (3) “Person” means an individual consumer.

 (4) “Potentially hazardous foods” means:

 (a) an animal food that is raw or heat treated, a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or mixtures of cut tomatoes not modified to prevent microorganism growth or toxin formation, or garlic in oil mixtures not modified to prevent microorganism growth or toxin formation;

 (b) certain foods that are designated as Product Assessment Required (PA) because of the interaction of the pH and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat treated to destroy vegetative cells and subsequently packaged:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|   | Aw values |   |   | pH values |   |
|   |   | 4.6 or less |   | > 4.6 - 5.6 | > 5.6 |
| (1) | < 0.92 | non-PHF |   | non-PHF | non-PHF |
| (2) | > 0.92 - 0.95 | non-PHF |   | non-PHF | PHF |
| (3) | > 0.95 | non-PHF |   | PHF | PHF |

Foods in item (2) with a pH value greater than 5.6 and foods in item (3) with a pH value greater than 4.6 are considered potentially hazardous unless a product assessment is conducted pursuant to the 2009 Federal Drug Administration Food Code.

 (B) The operator of the home‑based food production operation must take all reasonable steps to protect food items intended for sale from contamination while preparing, processing, packaging, storing, and distributing the items including, but not limited to:

 (1) maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;

 (2) prohibiting all animals, including pets, from entering the area in the dwelling in which the home‑based food production operation is located while food items are being prepared, processed, or packaged and prohibiting these animals from having access to or coming in contact with stored food items and food items being assembled for distribution;

 (3) prohibiting all domestic activities in the kitchen while the home-based food production operation is processing, preparing, packaging, or handling food intended for sale;

 (4) prohibiting any person who is infected with a communicable disease that can be transmitted by food, who is a carrier of organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation; and

 (5) ensuring that all people engaged in processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation are knowledgeable of and follow safe food handling practices.

 (C) Each home‑based food production operation shall maintain a clean and sanitary facility to produce nonpotentially hazardous foods including, but not limited to:

 (1) department-approved water supply;

 (2) a separate storage place for ingredients used in foods intended for sale;

 (3) a properly functioning refrigeration unit;

 (4) adequate facilities, including a sink with an adequate hot water supply to meet the demand for the cleaning and sanitization of all utensils and equipment;

 (5) adequate facilities for the storage of utensils and equipment;

 (6) adequate hand washing facilities separate from the utensil and equipment cleaning facilities;

 (7) a properly functioning toilet facility;

 (8) no evidence of insect or rodent activity; and

 (9) department‑approved sewage disposal, either on-site treatment or publicly provided.

 (D) All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:

 (1) the name and address of the home‑based food production operation;

 (2) the name of the product being sold;

 (3) the ingredients used to make the product in descending order of predominance by weight; and

 (4) a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: “NOT FOR RESALE PROCESSED AND PREPARED BY A HOME‑BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA'S FOOD SAFETY REGULATIONS.”

 (E) Home‑based food operations only may sell, or offer to sell, food items directly to a person for his own use and not for resale. A home‑based food operation may not sell, or offer to sell, food items at wholesale. Food produced from a home‑based food production operation must not be considered to be from an approved source, as required of a retail food establishment pursuant to Regulation 61‑25.

 (F) A home‑based food production operation is not a retail food establishment and is not subject to regulation by the department pursuant to Regulation 61‑25.

 (G) The provisions of this section do not apply to an operation with net earnings of less than five hundred dollars annually but that would otherwise meet the definition of a home‑based food operation provided in subsection (A)(1).

 Section 46-57-30. (A) Notwithstanding any other provision of law, ground beef or any food containing ground beef prepared by a food service provider for public consumption must be cooked to heat all parts of the food to at least one hundred fifty‑five degrees Fahrenheit, or sixty‑eight degrees Celsius, unless otherwise ordered by the immediate consumer.

 (B) The food service provider, its business, or its employees or agents, are not liable for any adverse effects to the purchaser or anyone else for providing a ground beef product cooked at an internal temperature less than one hundred fifty‑five degrees Fahrenheit, or sixty‑eight degrees Celsius, if providing the product is at the request of the purchaser and if the food service provider has notified the purchaser in advance that a possible health risk may exist by eating the product. The notice must state that a possible health risk may exist in eating undercooked ground beef at an internal temperature less than one hundred fifty‑five degrees Fahrenheit, or sixty‑eight degrees Celsius, and be given to the purchaser:

 (1) in writing;

 (2) as stated on the menu; or

 (3) by visible sign warning.

 (C) In order for an immediate consumer or purchaser, as used in this section, to request or order ground beef to be cooked to a temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), the individual must be eighteen years of age or older.

 Section 46-57-40. Fresh meat or fresh meat products sold to a consumer may not be offered to the public for resale for human consumption if the fresh meat or fresh meat products have been returned by the consumer.

 Section 46-57-50. The Department of Agriculture may make, adopt, promulgate, and enforce reasonable rules and regulations from time to time requiring and providing for:

 (1) the sanitation of hotels, restaurants, cafes, drugstores, hot dog and hamburger stands, all other places or establishments providing eating or drinking facilities, and all other places known as private nursing homes or places of similar nature, operated for gain or profit; and

 (2) the production, storing, labeling, transportation, and selling of milk and milk products, filled milk and filled milk products, imitation milk and imitation milk products, synthetic milk and synthetic milk products, milk derivatives, and any other products made in semblance for milk or milk products; and

 (3) the sanitation and control of abattoirs, meat markets, whether the same be definitely provided for that purpose or used in connection with other businesses, and bottling plants; and

 (4) the sanitation and control of abattoirs, meat markets, whether the same be definitely provided for that purpose or used in connection with other business, and bottling plants.

 Section 46-57-60. The department may not use any funds appropriated or authorized to the department to enforce Regulation 61‑25 to the extent that its enforcement would prohibit a church or charitable organization from preparing and serving food to the public on their own premises at not more than one function a month or not more than twelve functions a year.

 Section 46-57-70. (A) Except as provided in Section 46-57-50, a person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Agriculture promulgated pursuant to this chapter, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

 (B) A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to this chapter is subject to a civil penalty not to exceed one thousand dollars a day for each violation.

 (C) Fines collected pursuant to subsection (B) must be remitted by the department to the State Treasurer for deposit in the state general fund.

 (D) The term “notice” as used in this section means either actual notice or constructive notice.

**Food service inspections, prisons**

SECTION 10. Section 24-9-20 of the S.C. Code is amended to read:

 Section 24-9-20. The division shall be responsible for inspecting, in conjunction with a representative of the State Fire Marshal, at least annually every facility in this State housing prisoners or pretrial detainees operated by or for a state agency, county, municipality, or any other political subdivision, and such inspections shall include all phases of operation, fire safety, and health and sanitation conditions at the respective facilities. Food service operations of the facilities must be inspected at least annually by an employee of the Department of Agriculture. The inspections of local confinement facilities shall be based on standards established by the South Carolina Association of Counties and adopted by the Department of Corrections, and appropriate fire and health codes and regulations. The division, the inspecting fire marshal, and the food service inspector of the Department of Agriculture shall each prepare a written report on the conditions of the inspected facility. Copies of the reports shall be filed with the chairman of the governing body of the political subdivision having jurisdiction of the facility inspected, the chairman of the governing body of each political subdivision involved in a multi-jurisdictional facility, the administrator, manager, or supervisor for the political subdivision, the responsible sheriff or police chief if he has operational custody of the inspected facility, and the administrator or director of the inspected facility. All reports shall be filed through the Director of the Department of Corrections.

**Frozen milk product consumer safety, Department of Agriculture**

SECTION 11. Section 39-37-120 of the S.C. Code is amended to read:

 Section 39-37-120. The Department of Agriculture shall enforce the provisions of this chapter and shall from time to time, after inquiry and public hearing, adopt and promulgate rules and regulations to supplement and give full effect to the provisions of this chapter. The Department of Agriculture shall establish and enforce sanitary regulations pertaining to the manufacture and distribution of frozen desserts, including the sanitary condition of (a) buildings, ground, and equipment where frozen desserts are manufactured, (b) persons in direct physical contact with frozen desserts during manufacture, (c) containers in which frozen desserts are held or shipped and (d) premises, buildings, surroundings, and equipment where frozen desserts are sold. Such rules and regulations shall be filed and open for public inspection at the principal office of the department and shall have the force of law.

Contested case hearings

SECTION 12. Section 1-23-600(H)(1) of the S.C. Code is amended to read:

 (1) This subsection applies to timely filed requests for a contested case hearing of decisions by the Department of Environmental Services. Emergency actions taken by the Department of Environmental Services pursuant to an applicable statute or regulation are not subject to the provisions of this subsection.

Department of Administration analysis

SECTION 13. (A) This SECTION is effective upon approval by the Governor.

 (B) The Department of Administration shall identify, select, retain, and procure the services of independent, third-party experts, consultants, or advisors to analyze the missions and delivery models of all state agencies concerned with the overall public health of the State, as well as certain specific populations including, but not limited to, children and adolescents, newborns, pregnant women, the elderly, disabled, mentally ill, special needs individuals, those with chemical dependencies, the chronically ill, economically disadvantaged, and veterans. This analysis will include, but not be limited to, the Department of Health and Environmental Control and its successor entities, the Department of Mental Health, the Department of Alcohol and Other Drug Abuse Services, the Department of Disabilities and Special Needs, and the Department on Aging. Any agencies identified by the Department of Administration as being subject to this analysis shall provide the department with any and all information requested and shall fully participate as requested and required.

 (C) The analysis procured by the Department of Administration shall consider whether structural changes are necessary to improve health services delivery in the State, recognize operational efficiencies, and maximize resource utilization. Structural changes to be analyzed include reorganizations or mergers of existing health agencies, or divisions or components thereof, as well as the establishment of any new health agencies or the privatization of services currently provided by existing health agencies.

 (D) The third-party experts, consultants, or advisors must make appropriate recommendations based on the analysis required pursuant to this section and the benefits of each recommendation.

 (E) The Department of Administration shall prepare a final report summarizing the aforementioned analysis and recommendations and shall submit the final report to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Medical Affairs Committee, the Chairman of the Medical, Military and Municipal Affairs Committee, the Chairman of the Finance Committee, the Chairman of the Ways and Means Committee, and the Governor by April 1, 2024, and shall submit interim reports on October 1, 2023, and January 1, 2024. Procurements by the Department of Administration of all experts, consultants, and advisors pursuant to and required by this SECTION are exempt from the purchasing procedures of the South Carolina Consolidated Procurement Code in Chapter 35, Title 11 of the S.C. Code. If requested by the Executive Director of the Department of Administration, staff from the State Fiscal Accountability Authority's Procurement Services Division shall assist in procuring the necessary services.

 (F) The Department of Health and Human Services shall give support to the Department of Administration in fulfilling the purposes of this SECTION.

State agency restructuring, effect of transfer of agencies and parts of agencies

SECTION 14. (A) When the provisions of this act transfer particular state agencies, departments, boards, commissions, committees, or entities, or sections, divisions, or portions thereof (transferring departments), to another state agency, department, division, or entity or make them a part of another department or division (receiving departments), the employees, authorized appropriations, bonded indebtedness, if applicable, real and personal property, assets, and liabilities of the transferring department also are transferred to and become part of the receiving department or division unless otherwise specifically provided. All classified or unclassified personnel of the affected agency, department, board, commission, committee, entity, section, division, or position employed by these transferring departments on the effective date of this act, either by contract or by employment at will, shall become employees of the receiving department or division, with the same compensation, classification, and grade level, as applicable. The Department of Administration shall cause all necessary actions to be taken to accomplish this transfer and shall in consultation with the agency head of the transferring and receiving agencies prescribe the manner in which the transfer provided for in this section shall be accomplished. The Department of Administration’s action in facilitating the provisions of this section are ministerial in nature and shall not be construed as an approval process over any of the transfers.

 (B) When an agency, department, entity, or official is transferred to or consolidated with another agency, department, division, entity, or official, regulations promulgated by that transferred agency, department, entity, or official under the authority of former provisions of law pertaining to it are continued and are considered to be promulgated under the authority of present provisions of law pertaining to it. When powers and duties of an agency, department, entity, or official are transferred to and devolved upon another department, agency, or subdivision thereof, the power and duty to promulgate regulations is also transferred to and devolved upon that department, agency, or subdivision thereof.

 (C) References to the names of agencies, departments, entities, or public officials changed by this act, to their duties or functions herein devolved upon other agencies, departments, entities, or officials, or to provisions of law consolidated with or transferred to other parts of the S.C. Code are considered to be and must be construed to mean appropriate references.

 (D) Unless otherwise provided herein or by law, all fines, fees, forfeitures, or revenues imposed or levied by agencies, personnel, or portions thereof, so transferred to other agencies or departments must continue to be used and expended for those purposes provided prior to the effective date of this act. If a portion of these fines, fees, forfeitures, or revenues were required to be used for the support, benefit, or expense of personnel transferred, these funds must continue to be used for these purposes.

Savings

SECTION 15. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Time effective**

SECTION 16. The provisions contained in SECTION 8 of this act relating to South Carolina Veterans Homes go into effect on July 1, 2024, for the veterans homes for which the Department of Mental Health has a service contract with a third-party provider as of May 1, 2023. The provisions contained in SECTION 8 of this act relating to South Carolina Veterans Homes go into effect on July 1, 2025, for the veterans homes for which the Department of Mental Health does not have a service contract with a third-party provider as of May 1, 2023.

Time effective

SECTION 17. This act takes effect on July 1, 2024, except that the provisions of SECTION 2 and SECTION 13, relating to the Department of Administration’s duties, take effect upon approval by the Governor.

Ratified the 17th day of May, 2023.

Approved the 19th day of May, 2023.

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