Advance Sheet No. 1 | July 20, 2010 | Pages 1091-1344 Acts 123-161

2010 REGULAR SESSION

Acts and Joint Resolutions

of the

GENERAL ASSEMBLY
OF THE STATE OF SOUTH CAROLINA

(continued on inside cover)

Numbers in parenthesis to left of act numbers (numbers in bold face) refer as follows: number with R before it refers to ratification number, number with S before it refers to bill number in Senate, and number with H before it refers to bill number in House of Representatives.

STEPHEN T. DRAFFIN, Code Commissioner, P.O. Box 11489,
Columbia, S.C. 29211

ACTS

AND

JOINT RESOLUTIONS

OF THE

General Assembly

OF THE

State of South Carolina

MARK SANFORD, Governor; ANDRÉ BAUER, Lieutenant Governor and ex officio President of the Senate; GLENN F. McCONNELL, President Pro Tempore of the Senate; ROBERT W. HARRELL JR., Speaker of the House of Representatives; HARRY F. CATO, Speaker Pro Tempore of the House of Representatives; JEFFREY S. GOSSETT, Clerk of the Senate; CHARLES F. REID, Clerk of the House of Representatives.

PART I

GENERAL AND PERMANENT LAWS

No. 123

(R122, S374 of 2009)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41-35-320 SO AS TO PROVIDE FOR THE PAYMENT OF EXTENDED UNEMPLOYMENT BENEFITS WHEN THESE BENEFITS ARE FULLY FUNDED BY THE FEDERAL GOVERNMENT AND UPON THE MEETING OF OTHER SPECIFIC CONDITIONS.

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

Employment Security Benefits, extension under certain conditions

SECTION 1. Article 3, Chapter 35, Title 41 of the 1976 Code is amended by adding:

"Section 41-35-320. (1) For a week in which one hundred percent federal sharing funding is available, there is an 'on' indicator for a week:

(a) beginning after March 7, 2009; and

(b) ending four weeks before the last week of unemployment for which one hundred percent federal sharing is available under Section 2005(a) of Public Law No. 111-5, or an amendment of this provision, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of this law.

(2) There is a state 'on' indicator for this State for a week in which the United States Secretary of Labor determines that for the period consisting of the most recent three months, the rate of total unemployment, seasonally adjusted, equaled or exceeded six and a half percent, and the average rate of total unemployment for the State, seasonally adjusted, as determined by the United States Secretary of Labor for this period equals or exceeds one hundred ten percent of the average unemployment for the State for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(3)(a) Effective with respect to weeks beginning in a 'high unemployment period', Section 41-35-440 must be applied by substituting:

(i) 'eighty percent' for 'fifty percent' in item (1)(a) of that section; and

(ii) 'twenty' for 'thirteen' in item (1)(b) of that section.

(b) For the purpose of this section, a 'high unemployment period' exists during a period in which an extended benefit period would be in effect by substituting 'eight percent' for 'six and a half percent' in subsection (2).

(4) There is a state 'off' indicator for the purpose of this section when a condition of subsection (2) is not satisfied.

(5) Notwithstanding a provision of Section 41-35-380, an individual's 'eligibility period' must include an eligibility period provided in Section 2005(b) of Public Law 111-5 and an amendment of this provision.

(6) The commission shall implement procedures to allow retroactive claims, but these procedures must conform to conditions of federal funding."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 28th day of October, 2009.

Approved the 29th day of October, 2009.

No. 124

(R123, H3130 of 2009)

AN ACT TO PROVIDE FOR MAJOR ECONOMIC DEVELOPMENT IN THIS STATE BY AMENDING SECTION 12-6-2320, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ALLOCATION AND APPORTIONMENT OF A MULTISTATE TAXPAYER'S INCOME FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY ENTER INTO AN ALLOCATION AND APPORTIONMENT AGREEMENT APPLICABLE FOR NOT MORE THAN TEN YEARS WITH A TAXPAYER IF THE TAXPAYER IS PLANNING A NEW FACILITY IN THIS STATE AND INVESTS AT LEAST SEVEN HUNDRED FIFTY MILLION DOLLARS IN REAL OR PERSONAL PROPERTY OR BOTH IN A SINGLE

COUNTY IN THIS STATE AND CREATES AT LEAST THREE THOUSAND EIGHT HUNDRED FULL-TIME NEW JOBS AND TO EXTEND THE DEFINITION OF "TAXPAYER" FOR PURPOSES OF ENTERING INTO ALLOCATION AND APPORTIONMENT AGREEMENTS; BY AMENDING SECTION 12-36-2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO EXEMPT AIRCRAFT FUEL USED IN TEST FLIGHTS AND TRANSPORT OF UNCOMPLETED AIRCRAFT BETWEEN MANUFACTURING FACILITIES WHEN SOLD TO CERTAIN MANUFACTURERS, TO EXEMPT COMPUTER EQUIPMENT USED IN CONJUNCTION WITH A MANUFACTURING FACILITY WHERE THE TAXPAYER INVESTS AT LEAST SEVEN HUNDRED FIFTY MILLION DOLLARS AND CREATES AT LEAST THREE THOUSAND EIGHT HUNDRED FULL-TIME NEW JOBS IN THIS STATE OVER A SEVEN-YEAR PERIOD, AND TO EXEMPT CONSTRUCTION MATERIALS WHERE THE TAXPAYER MAKES A SIMILAR INVESTMENT AND CREATES A SIMILAR NUMBER OF FULL-TIME JOBS IN THIS STATE OVER A SIMILAR PERIOD; AND BY AMENDING SECTIONS 11-41-20, AS AMENDED, 11-41-50, AS AMENDED, 11-41-60, AND 11-41-90, ALL RELATING TO THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT, SO AS TO AUTHORIZE THE ISSUANCE OF ADDITIONAL STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BONDS AND MAKE FINDINGS WITH RESPECT TO THIS ADDITIONAL AUTHORIZATION, TO PRESCRIBE THE LIMITATIONS APPLICABLE TO THE ISSUANCE OF THESE ADDITIONAL ECONOMIC DEVELOPMENT BONDS, AND TO MAKE CONFORMING AMENDMENTS.

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

Allocation and apportionment of income

SECTION 1. A. Section 12-6-2320(B) of the 1976 Code is amended to read:

"(B)(1)For the purposes of this chapter, the department may enter into an agreement with the taxpayer establishing the allocation and

apportionment of the taxpayer's income for a period not to exceed five years, if the following conditions are met:

(a) the taxpayer is planning a new facility in this State or an expansion of an existing facility;

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(2) For the purposes of this subsection the word 'taxpayer' includes any one or more of the members of a controlled group of corporations authorized to file a consolidated return under Section 12-6-5020. Also, the word 'taxpayer' includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

(3) Notwithstanding the provisions of item (1), the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed ten years if the following conditions are met:

(a)(i) the taxpayer is planning a new facility in this State or an expansion of an existing facility and the new or expanded facility results in a total investment of at least ten million dollars and the creation of at least two hundred new full-time jobs, with an average cash compensation level for the new jobs of more than three times the per capita income of this State at the time the jobs are filled which must be within five years of the Advisory Coordinating Council for Economic Development's certification. Per capita income for the State shall be determined by using the most recent data available from the Board of Economic Advisors; or

(ii) the taxpayer is planning a new facility in this State and invests at least seven hundred fifty million dollars in real or personal property or both in a single county in this State and creates at least three thousand eight hundred full-time new jobs, as those terms are defined in Section 12-6-3360(M), within the county. The taxpayer has seven years from the date it makes the notification provided for in

subitem (b) of this item to make the required investment and create the required number of jobs;

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(4) The taxpayer may begin operating under the agreement beginning with the tax year in which the agreement is executed. If the taxpayer fails to meet the requirements of subitem (3)(a)(ii), the department may assess any tax due as a result of the taxpayer's failure to meet the requirements of subitem (3)(a)(ii). For any subsequent year that the taxpayer fails to maintain three thousand eight hundred full-time new jobs, then the department may assess any tax due for that year."

B. This section is effective on November 1, 2009, and item (3)(a)(ii) only applies to a taxpayer entering into an agreement prior to October 31, 2015.

Sales tax exemption, aircraft fuel, required use

SECTION 2. A. Section 12-36-2120(9) of the 1976 Code is amended to read:

"(9) coal, or coke or other fuel sold to manufacturers, electric power companies, and transportation companies for:

(a) use or consumption in the production of by-products;

(b) the generation of heat or power used in manufacturing tangible personal property for sale. For purposes of this item, 'manufacturer' or 'manufacturing' includes the activities of a processor;

(c) the generation of electric power or energy for use in manufacturing tangible personal property for sale;

(d) the generation of motive power for transportation. For the purposes of this exemption, 'manufacturer' or 'manufacturing' includes the activities of mining and quarrying;

(e) the generation of motive power for test flights of aircraft by the manufacturer of the aircraft where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven-year period; and

(ii) the taxpayer creates at least three thousand eight hundred full-time new jobs at the single manufacturing facility during that seven-year period; or

(f) the transportation of an aircraft prior to its completion from one facility of the manufacturer of the aircraft to another facility of the manufacturer of the aircraft, not including the transportation of major component parts for construction or assembly, or the transportation of personnel. This exemption only applies when:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven-year period; and

(ii) the taxpayer creates at least three thousand eight hundred full-time new jobs at the single manufacturing facility during that seven-year period.

To qualify for the exemptions provided for in subitems (e) and (f), the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment and create the required number of full-time new jobs over the seven-year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the seven hundred fifty million dollar investment requirement and has created the three thousand eight hundred full-time new jobs or, after the expiration of the seven-year period, that it has not met the seven hundred fifty million dollar investment requirement and created the three thousand eight hundred full-time new jobs. The department may assess any tax due on fuel purchased tax free pursuant to subitems (e) and (f) but due the State as a result of the taxpayer's failure to meet the seven hundred fifty million dollar investment requirement and create the three thousand eight hundred full-time new jobs. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the seven hundred fifty million dollar investment

requirement and created the three thousand eight hundred full-time new jobs.

As used in subitems (e) and (f), 'taxpayer' includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code."

B. The exemptions in subitems (e) and (f) are effective November 1, 2009, and only apply to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.

Sales tax exemption, computer equipment

SECTION 3. A. Section 12-36-2120(65) of the 1976 Code, as added by Act 335 of 2006, is amended to read:

"(65)(a) computer equipment, as defined in subitem (c) of this item, used in connection with a technology intensive facility as defined in Section 12-6-3360(M)(14)(b), where:

(i) the taxpayer invests at least three hundred million dollars in real or personal property or both comprising or located at the facility over a five-year period;

(ii) the taxpayer creates at least one hundred new full-time jobs at the facility during that five-year period, and the average cash compensation of at least one hundred of the new full-time jobs is one hundred fifty percent of the per capita income of the State according to the most recently published data available at the time the facility's construction starts; and

(iii) at least sixty percent of the three hundred million dollars minimum investment consists of computer equipment;

(b) computer equipment, as defined in subitem (c) of this item, used in connection with a manufacturing facility, where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven-year period; and

(ii) the taxpayer creates at least three thousand eight hundred full-time new jobs at the facility during that seven-year period.

As used in this subitem, 'taxpayer' includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

(c) For the purposes of this item, 'computer equipment' means original or replacement servers, routers, switches, power units, network

devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

(d) These exemptions apply from the start of the investment in or construction of the technology intensive facility or the manufacturing facility. The taxpayer shall notify the Department of Revenue of its use of the exemption provided in this item on or before the first sales tax return filed with the department after the first such use. Upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this item. Within six months after the fifth anniversary of the taxpayer's first use of this exemption, the taxpayer shall notify the department in writing that it has or has not met the investment and job requirements of this item by the end of that five-year period. Once the department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption described above, regardless of when the taxpayer makes the investments.

(e) The department may assess any tax due on property purchased tax free pursuant to this item but due the State if the taxpayer subsequently fails timely to meet the investment and job requirements of this item after being granted the exemption; for purposes of determining whether the taxpayer has timely satisfied the investment requirement, replacement computer equipment counts toward the investment requirement to the extent that the value of the replacement computer equipment exceeds the cost of the computer equipment so replaced, but, provided the taxpayer otherwise qualifies for the exemption, the full value of the replacement computer equipment is exempt from sales and use tax. The running of the periods of limitation within which the department may assess taxes provided pursuant to Section 12-54-85 is suspended during the time period beginning with the taxpayer's first use of this exemption and ending with the later of the fifth anniversary of first use or notice to the department that the taxpayer either has met or has not met the investment and job requirements of this item;"

B. The exemption provided for in subitem (b) is effective on November 1, 2009, and only applies to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.

Sales tax exemption, construction materials

SECTION 4. A. Section 12-36-2120(67) of the 1976 Code, as last amended by Act 110 of 2007, is further amended to read:

"(67) effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen-month period, or effective November 1, 2009, construction materials used in the construction of a new or expanded single manufacturing facility where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven-year period; and

(ii) the taxpayer creates at least three thousand eight hundred full-time new jobs at the facility during that seven-year period.

To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the applicable time period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax free pursuant to this subitem but due the State as a result of the taxpayer's failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the investment requirement.

As used in this subitem, 'taxpayer' includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code."

B. The additional exemption provided by this section is effective November 1, 2009, and only applies to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.

State General Obligation Economic Development Bonds, findings, authorization

SECTION 5. A. The General Assembly hereby finds, as a fact, that the construction of infrastructure, as defined in, and subject to the terms and conditions of, the State General Obligation Economic Development Bond Act, for use by private parties enhances the recruitment of businesses to the State, facilitates the operation and growth of businesses in the State, and thereby provides significant and substantial direct and indirect benefits to the State and its residents, including employment and other opportunities; that such benefits outweigh the costs of such infrastructure; that for such reasons it is in the best interest of the State to authorize the issuance of economic development bonds as defined in, and subject to the terms and conditions of, the State General Obligation Economic Development Bond Act; and that such economic development bonds, issued for such purpose, serve a public purpose in fostering economic development and increasing employment in the State. The General Assembly further finds, as a fact, that the primary beneficiaries of the issuance of such economic development bonds and the construction of such infrastructure are the State of South Carolina and its residents.

B. Section 11-41-20 of the 1976 Code, as last amended by Act 187 of 2004, is further amended to read:

"Section 11-41-20. As incident to this chapter, the General Assembly finds:

(1) That by Section 4, Act 10 of 1985, the General Assembly ratified an amendment to Article X, Section 13(6)(c), Constitution of this State, 1895. One amendment in Article X, Section 13(6)(c) limits the issuance of general obligation debt of the State such that maximum annual debt service on all general obligation bonds of the State, excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, must not exceed five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(2) That Article X, Section 13(6)(c), further provides that the percentage rate of general revenues of the State by which general obligation bond debt service is limited may be reduced to four or increased to seven percent by legislative enactment passed by a two-thirds vote of the total membership of the Senate and a two-thirds vote of the total membership of the House of Representatives.

(3) That pursuant to Article X, Section 13(6)(c), the General Assembly, in Act 254 of 2002 and Act 187 of 2004, increased to five and one-half percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to provide infrastructure required for significant economic development projects within the State, including those related to the life sciences industry that create high-paying jobs and meet certain investment criteria.

(4) That pursuant to Article X, Section 13(6)(c), the General Assembly, in Act 187 of 2004, increased to six percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to advance economic development and to facilitate and increase research within the State at the research universities.

(5) That Article X, Section 13(5) of the Constitution of this State, 1895, provides that if general obligation debt be authorized by two-thirds of the members of each House of the General Assembly, then there shall be no conditions or restrictions limiting the incurring of such indebtedness except those restrictions and limitations imposed in the authorization to incur such indebtedness, and the provisions of Article X, Section 13(3) of the Constitution of this State.

(6) That Article X, Section 13(5) provides additional constitutional authority for bonds authorized by this chapter.

(7) In order to continue fostering economic development within the State as set out in subsections (3) and (4) of this section, it is in the best interests of the State that the General Assembly authorize an additional amount of general obligation debt pursuant to Article X, Section 13(5) of the Constitution of this State, with such indebtedness limited to a principal amount of general obligation debt not exceeding one hundred seventy million dollars at any time, provided that no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity."

C. Section 11-41-50 of the 1976 Code, as last amended by Act 184 of 2004, and Section 11-41-60, as added by Act 254 of 2002, are respectively amended to read:

"Section 11-41-50. (A) Pursuant to Article X, Section 13(6)(c) of the Constitution of this State, 1895, the General Assembly provides that economic development bonds may be issued pursuant to this subsection at such times as the maximum annual debt service on all general obligation bonds of the State, including economic development bonds outstanding and being issued, but excluding research university infrastructure bonds pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, will not exceed five and one-half percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. The State at any time may not issue general obligation bonds, excluding economic development bonds issued pursuant to this chapter, research university infrastructure bonds issued pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, if at the time of issuance the maximum annual debt service on all such general obligation bonds, outstanding and being issued exceeds five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(B) In addition to and exclusive of the economic development bonds provided for and issued pursuant to subsection (A) of this section, the General Assembly provides that pursuant to Article X, Section 13(5) of the Constitution of this State, 1895, (i) additional economic development bonds may be issued under this chapter in an aggregate principal amount that does not exceed one hundred seventy million dollars, and (ii) in addition to the authorization contained in the preceding clause, additional economic development bonds may be issued provided that the aggregate principal amount of economic development bonds then outstanding under clauses (i) and (ii), together with the economic development bonds to be issued pursuant to this clause (ii), does not at any time exceed the principal amount specified in clause (i). From the proceeds of the economic development bonds authorized pursuant to this subsection, no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.

Section 11-41-60. The maximum annual debt service on bonds issued pursuant to subsection (A) of Section 11-41-50 must not exceed one-half of one percent of the general revenues for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. Bonds issued pursuant to subsection (B) of Section 11-41-50 shall not be subject to the limitation on maximum annual debt service prescribed by Article X, Section 13(6)(c) of the Constitution of this State, 1895."

D. Section 11-41-90 of the 1976 Code, as added by Act 254 of 2002, is amended to read:

"Section 11-41-90. To effect the issuance of bonds, the State Budget and Control Board shall adopt a resolution providing for the issuance of bonds pursuant to the provisions of this chapter. The authorizing resolution must include:

(1) a statement of whether the bonds are being authorized and issued pursuant to Section 11-41-50(A) or Section 11-41-50(B);

(2) a schedule showing the aggregate of bonds issued, the annual principal payments required to retire the bonds, and the interest on the bonds;

(3) the amount of bonds proposed to be issued;

(4) a schedule showing future annual principal requirements and estimated annual interest requirements on the bonds to be issued; and

(5) certificates evidencing that the provisions of Sections 11-41-50 and 11-41-60 have been or will be met."

One subject

SECTION 6. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of major economic development opportunities in this State as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

Severability

SECTION 7. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 8. Except where otherwise provided, this act takes effect upon approval by the Governor.

Ratified the 28th day of October, 2009.

Approved the 30th day of October, 2009.

No. 125

(R124, S186)

AN ACT TO AMEND SECTION 15-77-300, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ALLOWANCE OF ATTORNEY'S FEES IN STATE-INITIATED ACTIONS, SO AS TO LIMIT ATTORNEY'S FEES TO A REASONABLE TIME EXPENDED AT A REASONABLE RATE AND TO PROVIDE FACTORS THAT MUST BE CONSIDERED IN MAKING THIS DETERMINATION.

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

Attorney's fees, state-initiated actions

SECTION 1. Section 15-77-300 of the 1976 Code is amended to read:

"Section 15-77-300. (A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

(1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

(B) Attorney's fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

(1) the nature, extent, and difficulty of the case;
(2) the time devoted;
(3) the professional standing of counsel;
(4) the beneficial results obtained; and
(5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney's fees. However, in no event shall a prevailing party be allowed to shift attorney's fees pursuant to this section that exceed the fees the party has contracted to pay counsel personally for work on the litigation.

(C) The provisions of this section do not apply to civil actions relating to the establishment of public utility rates, disciplinary actions by state licensing boards, habeas corpus or post conviction relief actions, child support actions, except as otherwise provided for herein, and child abuse and neglect actions."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Approved the 24th day of February, 2010.

No. 126

(R125, S362)

AN ACT TO AMEND SECTION 42-11-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FIREFIGHTERS AND LAW ENFORCEMENT OFFICERS COVERED UNDER WORKERS' COMPENSATION LAW AND THE PRESUMPTION REGARDING IMPAIRMENT OR INJURY FROM HEART DISEASE OR RESPIRATORY DISEASE, OR BOTH, SO AS TO PROVIDE THAT THE IMPAIRMENT OR INJURY IS CONSIDERED TO HAVE ARISEN OUT OF AND IN THE COURSE OF EMPLOYMENT IF THEY HAVE SUCCESSFULLY PASSED A PHYSICAL EXAM BY JULY 1, 2012, AND BEFORE AN ALLEGED INJURY, AND TO PROVIDE AN ALTERNATIVE PROCEDURE AND DEADLINE FOR SUBMISSION OF PHYSICAL EXAMINATION REPORTS WHEN A LAW ENFORCEMENT AGENCY CANNOT PRODUCE THE REPORT REQUIRED BY THIS SECTION.

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

Presumption of heart or respiratory disease

SECTION 1. Section 42-11-30 of the 1976 Code, as last amended by Act 108 of 2005, is further amended to read:

"Section 42-11-30. (A) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers' Compensation Law, any impairment or injury to the health of a firefighter caused by heart disease or respiratory disease resulting in total or partial disability or death is presumed to have arisen out of and in the course of employment, unless the contrary is shown by competent evidence, if the firefighter is at the time of such impairment or injury a bona fide member of a municipal, county, state, port authority, or fire control

district fire department in this State. In order to be entitled to the presumption provided for in this section, any person becoming a member of a fire department after May 29, 1968, must be under the age of thirty-seven years and must have successfully passed a physical examination by a competent physician upon entering into such service or by July 1, 2012, a written report of which must have been made and filed before any alleged injury with the fire department, which examination failed to reveal any evidence of such condition or conditions, and the condition or conditions developed while actively engaged in fighting a fire or within twenty-four hours from the date of last service in the activity.

(B)(1) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers' Compensation Law, a cardiac-related incident resulting in impairment or injury to a law enforcement officer resulting in total or partial disability, or death, is presumed to have arisen out of and in the course of employment if this impairment or injury developed while actively engaged in, or within twenty-four hours from the date of, a law enforcement incident involving unusual or extraordinary physical exertion, unless the contrary is shown by competent evidence. At the time of the incident, the law enforcement officer must be employed as a law enforcement officer of a municipal, county, state, port authority, or other law enforcement agency in this State. In order to be entitled to the presumption provided by this section, a person becoming a law enforcement officer, must be under thirty-seven years of age and upon entering into the service, must have successfully passed a physical examination which includes a risk factor assessment for coronary artery disease conducted by a competent physician who should counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor assessment. A written report of the examination must have been made and filed with the law enforcement agency, which examination must not have revealed evidence of cardiac impairment or injury. If the law enforcement officer is identified as being a high risk for coronary artery disease during the risk factor assessment and the law enforcement officer fails to undergo, at his own expense, additional medical tests related to discovery of coronary artery disease, he is not entitled to the presumption provided by this section.

(2) If a law enforcement agency cannot produce the report described in subitem (B)(1), the law enforcement officer may submit a written report of a physical examination conducted before July 1, 2012, which includes a risk factor assessment for coronary artery disease

conducted by a competent physician who also shall counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Became law without the signature of the Governor -- 2/25/2010.

No. 127

(R126, S654)

AN ACT TO AMEND SECTION 30-5-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PERFORMANCE OF THE REGISTER OF DEEDS' DUTIES BY THE CLERK OF COURT IN CERTAIN COUNTIES, SO AS TO PROVIDE LANCASTER COUNTY HAS A SEPARATE CLERK OF COURT AND REGISTER OF DEEDS; TO AMEND SECTION 30-5-12, AS AMENDED, RELATING TO THE APPOINTMENT OF THE REGISTER OF DEEDS IN CERTAIN COUNTIES, SO AS TO PROVIDE THE GOVERNING BODY OF LANCASTER COUNTY SHALL APPOINT THE REGISTER OF DEEDS FOR LANCASTER COUNTY; AND TO REPEAL ACT 454 OF 2000 RELATING TO THE TRANSFER OF THE DUTIES OF THE REGISTER OF DEEDS IN LANCASTER COUNTY TO THE RECORDS MANAGEMENT DIRECTOR OF LANCASTER COUNTY.

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

Performance of register of deeds' duties by clerk of court in certain counties

SECTION 1. Section 30-5-10 of the 1976 Code, as last amended by Act 221 of 2008, is further amended to read:

"Section 30-5-10. (A) In every county in the State other than Aiken, Anderson, Beaufort, Berkeley, Charleston, Chesterfield, Clarendon, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter the duties prescribed by law for the register of deeds must be performed by the clerk of court who has all the powers and emoluments given the register of deeds in Aiken, Anderson, Beaufort, Berkeley, Charleston, Chesterfield, Clarendon, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter counties.

(B) The registers of deeds in Berkeley and Dorchester counties are elected for terms of four years and until a successor is elected in the general election and qualifies."

Appointment of register of deeds in certain counties

SECTION 2. Section 30-5-12 of the 1976 Code, as last amended by Act 221 of 2008, is further amended to read:

"Section 30-5-12. (A) The governing bodies of Anderson, Beaufort, Chesterfield, Clarendon, Colleton, Georgetown, Horry, Jasper, Kershaw, Lancaster, Oconee, Orangeburg, and Pickens counties shall appoint the register of deeds for its county under terms and conditions as it may agree upon.

(B) The governing body of Georgetown County may appoint a register of deeds only after advertising the information concerning the appointment for two weeks before action is taken in a newspaper of general circulation in the county."

Repeal

SECTION 3. Act 454 of 2000 is repealed.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Approved the 24th day of February, 2010.

No. 128

(R127, S705)

AN ACT TO AMEND SECTION 7-7-501, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN SUMTER COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF SUMTER COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts, Sumter County, map number changed

SECTION 1. Section 7-7-501 of the 1976 Code, as last amended by Act 62 of 2007, is further amended to read:

"Section 7-7-501. (A) In Sumter County there are the following voting precincts:
Bates
Birnie
Burns-Downs
Causeway Branch 1
Causeway Branch 2
Cherryvale
Crosswell
Dalzell 1
Dalzell 2
Delaine
Ebenezer 1
Ebenezer 2

Folsom Park
Furman
Green Swamp 1
Green Swamp 2
Hampton Park
Hillcrest
Horatio
Lemira
Loring
Magnolia-Harmony
Manchester Forest
Mayesville
Mayewood
McCray's Mill 1
McCray's Mill 2
Millwood
Morris College
Mulberry
Oakland Plantation 1
Oakland Plantation 2
Oswego
Palmetto Park
Pinewood
Pocotaligo 1
Pocotaligo 2
Privateer
Rembert
Saint John
Saint Paul
Salem
Salterstown
Savage-Glover
Second Mill
Shaw
South Liberty
South Red Bay
Spectrum
Stone Hill
Sumter High 1
Sumter High 2
Sunset
Swan Lake

Thomas Sumter
Turkey Creek
Wilder
Wilson Hall.

(B) The precinct lines defining the precincts provided for in subsection (A) are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-85-09 and as shown on copies provided to the Sumter County Registration and Elections Commission by the office.

(C) The polling places for the precincts provided in this section must be established by the Sumter County Registration and Elections Commission subject to the approval of a majority of the Sumter County Legislative Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Approved the 24th day of February, 2010.

No. 129

(R131, H4055)

AN ACT TO AMEND SECTION 7-7-320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN HORRY COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF HORRY COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts, Horry County

SECTION 1. Section 7-7-320 of the 1976 Code, as last amended by Act 64 of 2007, is further amended to read:

"Section 7-7-320. (A) In Horry County there are the following voting precincts:
Adrian
Allsbrook
Atlantic Beach
Aynor
Bayboro
Brooksville
Brownway
Burgess 1
Burgess 2
Burgess 3
Carolina Forest 1
Carolina Forest 2
Cedar Grove
Cherry Grove 1
Cherry Grove 2
Coastal Carolina
Coastal Lane 1
Coastal Lane 2
Cool Springs
Crescent
Daisy
Deerfield
Dog Bluff
Dogwood
Dunes 1
Dunes 2
Dunes 3
East Conway
East Loris
Ebenezer
Emerald Forest 1
Emerald Forest 2
Emerald Forest 3
Enterprise
Floyds

Forest Brook
Four Mile
Galivants Ferry
Garden City 1
Garden City 2
Garden City 3
Garden City 4
Glenns Bay
Green Sea
Gurley
Hickory Grove
Hickory Hill
Homewood
Horry
Inland
Jackson Bluff
Jamestown
Jernigan's Cross Roads
Jet Port 1
Jet Port 2
Jordanville
Joyner Swamp
Juniper Bay
Lake Park
Leon
Little River 1
Little River 2
Little River 3
Live Oak
Maple
Marlowe 1
Marlowe 2
Methodist Rehobeth
Mill Swamp
Mt. Olive
Mt. Vernon
Myrtle Trace
Myrtlewood 1
Myrtlewood 2
Myrtlewood 3
Nixon's Cross Roads 1
Nixon's Cross Roads 2

North Conway 1
North Conway 2
Norton
Ocean Drive 1
Ocean Drive 2
Ocean Forest 1
Ocean Forest 2
Ocean Forest 3
Palmetto Bays
Pawley's Swamp
Pleasant View
Poplar Hill
Port Harrelson
Race Path 1
Race Path 2
Red Bluff
Red Hill 1
Red Hill 2
Salem
Sea Oats 1
Sea Oats 2
Sea Winds
Shell
Socastee 1
Socastee 2
Socastee 3
Socastee 4
Spring Branch
Surfside 1
Surfside 2
Surfside 3
Surfside 4
Sweet Home
Taylorsville
Tilly Swamp
Toddville
Wampee
West Conway
West Loris
White Oak
Wild Wing
Windy Hill 1

Windy Hill 2.

(B) The precinct lines defining the precincts provided for in subsection (A) are as shown on maps filed with the county election commission and the voter registration board as provided and maintained by the Office of Research and Statistics of the State Budget and Control Board designated as document P-51-09.

(C) The polling places for the precincts listed in subsection (A) must be determined by the Horry County Election Commission with the approval of a majority of the Horry County Legislative Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Approved the 24th day of February, 2010.

No. 130

(R133, H4310)

AN ACT TO AMEND SECTION 4-10-970, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO USES ALLOWED FOR REVENUES OF THE LOCAL OPTION TOURISM DEVELOPMENT FEE, SO AS TO ALLOW AMOUNTS UP TO TWENTY PERCENT OF THE REVENUE TO BE USED FOR PROPERTY TAX RELIEF FOR OWNER-OCCUPIED RESIDENTIAL PROPERTY AND FOR TOURISM-RELATED CAPITAL PROJECTS BEGINNING IN THE SECOND RATHER THAN THE THIRD YEAR OF IMPOSITION OF THE FEE, TO REQUIRE THE AMOUNTS USED FOR THESE PURPOSES TO BE RETAINED BY THE MUNICIPALITY WITH AT LEAST TWENTY PERCENT OF THE AMOUNT RETAINED USED AS A CREDIT AGAINST THE PROPERTY TAX LIABILITY OF OWNER-OCCUPIED RESIDENTIAL PROPERTY AND PROVIDE FOR THE CALCULATION OF THE CREDIT, TO PROVIDE FOR THE USE OF CREDITS IN EXCESS OF THE

MUNICIPAL PROPERTY TAX LIABILITY, AND TO PROVIDE REPORTING REQUIREMENTS.

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

Use of Revenues

SECTION 1. Section 4-10-970(A) of the 1976 Code, as added by Act 3 of 2009, is amended to read:

"(A)(1) Except as provided in item (2) of this subsection, all revenues and interest of the fee must be used exclusively for tourism advertisement and promotion directed at non-South Carolina residents.

(2) Revenues received in the second and subsequent years of imposition must be used as provided in item (1) except that up to twenty percent may be retained by the municipality and used as follows:

(a) at least twenty percent of the amount retained must be used to provide a credit against the property tax liability imposed by the municipality on parcels of owner-occupied residential property located in the municipality classified for property taxes pursuant to Section 12-43-220(c). The credit is an amount determined by multiplying the appraised value of the residence by a fraction in which the numerator is the total estimated revenue retained by the municipality allocated to the credit and the denominator is the total of the appraised value of all such property in the municipality as of January first of the applicable property tax year. For purposes of this calculation, appraised value is as defined in Section 12-37-3130(3) reduced by the limitation provided pursuant to Section 12-37-3140(B);

(b) the balance for tourism-related capital projects. No capital project is eligible to be funded directly or indirectly with fee revenues unless the project consists of construction of new or renovation of existing tourism-related facilities intended to grow or maintain the overnight tourism market in the municipality; and

(c) the credit allowed pursuant to subitem (a) of this item applies after all other credits have been applied. To the extent that the credit amount allowed by this item exceeds the municipal property tax liability, the excess credit is added to the amount set aside for use as provided in subitem (b) of this item. If no projects are funded pursuant to subitem (b) of this item, the excess credit must be used to provide a credit against the municipal tax liability of all taxable property in the municipality ineligible for the credit allowed by subitem (a) of this

item. This credit must be calculated in the same manner as the credit provided in subitem (a), mutatis mutandis."

Reporting

SECTION 2. Section 4-10-970 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) At least quarterly, an organization designated by the municipality pursuant to this section shall provide a report to the municipality that includes identification of revenues received from the Local Option Tourism Development Fee during the previous quarter, as well as expenditures made from those funds during the previous quarter. Each report also shall be posted by the organization on its website."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Became law without the signature of the Governor -- 2/25/10.

No. 131

(R134, H4406)

AN ACT TO AMEND SECTION 7-7-340, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN KERSHAW COUNTY, SO AS TO REDESIGNATE A MAP NUMBER ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Map reference changed

SECTION 1. Section 7-7-340(B) of the 1976 Code, as last amended by Act 9 of 2009, is further amended to read:

"(B) The precinct lines defining the above precincts in Kershaw County are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-55-10 and as shown on copies of the official map provided to the Kershaw County Board of Voter Registration by the office."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of February, 2010.

Approved the 24th day of February, 2010.

No. 132

(R138, S21)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 47 TO TITLE 15 SO AS TO ENACT THE "UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT", TO PROVIDE AN EFFICIENT AND INEXPENSIVE PROCEDURE FOR LITIGANTS TO DEPOSE OUT-OF-STATE INDIVIDUALS AND FOR THE PRODUCTION OF DISCOVERABLE MATERIALS THAT MAY BE LOCATED OUT OF STATE.

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

Uniform Interstate Depositions and Discovery Act

SECTION 1. Title 15 of the 1976 Code is amended by adding:

"CHAPTER 47

Uniform Interstate Depositions and Discovery Act

Section 15-47-100. This chapter may be cited as the 'Uniform Interstate Depositions and Discovery Act'.

Section 15-47-110. As used in this chapter:

(1) 'Clerk of court' means a clerk of court who is duly elected for that county elected in each county pursuant to Section 14-17-10 and who is ex officio clerk of the court of general sessions, the family court, and all other courts of record in the county except as may be provided by the law establishing the other courts.

(2) 'Foreign jurisdiction' means a state other than South Carolina.

(3) 'Foreign subpoena' means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(4) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(5) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, federally recognized Indian tribes, or any territory or insular possession subject to the jurisdiction of the United States.

(6) 'Subpoena' means a document, however denominated, issued under authority of a court of record requiring a person to:

(a) attend and give testimony at a deposition;

(b) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(c) permit inspection of premises under the control of the person.

Section 15-47-120. (A) To request issuance of a subpoena under this chapter, a party must submit a foreign subpoena to the clerk of court of the county in which discovery is sought to be conducted in this State. A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of this State.

(B) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with the rules of court, promptly shall issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena must incorporate the terms used in the foreign subpoena and contain or be accompanied by the names,

addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

Section 15-47-130. A subpoena issued by a clerk of court under Section 15-47-120 must be served in compliance with the applicable rules of court or statutes relating to the service of a subpoena in this State.

Section 15-47-140. When a subpoena issued under Section 15-47-120 commands a person to attend and give testimony at a deposition, produce designated books, documents, records, electronically stored information, or tangible items, or permit inspection of premises, the time and place and the manner of the taking of the deposition, the production, or the inspection must comply with the South Carolina Rules of Civil Procedure relating to discovery.

Section 15-47-150. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under Section 15-47-120 must comply with the applicable rules or statutes of this State and be submitted to the court in the county in which discovery is to be conducted.

Section 15-47-160. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to requests for discovery in cases pending on that date.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.

No. 133

(R139, S188)

AN ACT TO AMEND SECTIONS 44-34-60 AND 44-34-100, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO AGE RESTRICTIONS ON TATTOOING, SO AS TO PROVIDE THAT PERSONS EIGHTEEN OR OLDER ARE ELIGIBLE TO RECEIVE A TATTOO.

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

Tattoo

SECTION 1. Section 44-34-60(C) of the 1976 Code, as added by Act 250 of 2004, is amended to read:

"(C) A tattoo artist must verify by means of a picture identification that a recipient is at least eighteen years of age. For purposes of this section, 'picture identification' means:

(1) a valid driver's license; or

(2) an official photographic identification card issued by the South Carolina Department of Revenue, a federal or state law enforcement agency, an agency of the United States Department of Defense, or the United States Department of State. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought pursuant to this section."

Tattoo

SECTION 2. Section 44-34-100(A) of the 1976 Code, as added by Act 250 of 2004, is amended to read:

"(A) It is unlawful for a person to perform or offer to perform tattooing upon a person under the age of eighteen years."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.

No. 134

(R152, S1127)

AN ACT TO AMEND SECTION 48-1-83, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DISSOLVED OXYGEN CONCENTRATION DEPRESSION, SO AS TO PROVIDE THAT THE STANDARD FOR DISSOLVED OXYGEN IS 0.1 MG/L.

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

Standard revised

SECTION 1. Section 48-1-83(A) of the 1976 Code is amended to read:

"(A) The department shall not allow a depression in dissolved oxygen concentration greater than 0.1 mg/l in a naturally low dissolved oxygen waterbody unless the requirements of this section are all satisfied by demonstrating that resident aquatic species shall not be adversely affected. The provisions of this section apply in addition to any standards for a dissolved oxygen depression in a naturally low dissolved oxygen waterbody promulgated by the department by regulation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.

No. 135

(R166, H4551)

AN ACT TO AMEND SECTION 23-47-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITION OF TERMS ASSOCIATED WITH THE PUBLIC SAFETY COMMUNICATIONS CENTER, SO AS TO REVISE THE DEFINITION OF SEVERAL EXISTING TERMS AND TO PROVIDE DEFINITIONS FOR SEVERAL NEW TERMS; TO AMEND SECTION 23-47-20, AS AMENDED, RELATING TO 911 SYSTEM SERVICE REQUIREMENTS, SO AS TO DELETE "A CAPABILITY TO HAVE CELLULAR PHONES ROUTED TO 911" AS A SYSTEM REQUIREMENT AND TO ADD "ROUTING AND CAPABILITIES TO RECEIVE AND PROCESS CMRS SERVICE AND VOIP SERVICE CAPABLE OF MAKING 911 CALLS" AS A SYSTEM REQUIREMENT; TO AMEND SECTION 23-47-50, RELATING TO SUBSCRIBER BILLING FOR 911 SERVICE, SO AS TO PROVIDE THAT FOR THE BILLING OF 911 CHARGES FOR LOCAL EXCHANGE ACCESS FACILITIES THAT ARE CAPABLE OF SIMULTANEOUSLY CARRYING MULTIPLE VOICE AND DATA TRANSMISSIONS OR TO REVISE THE 911 CHARGE THAT A PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IS SUBJECT TO, AND TO MAKE TECHNICAL CHANGES; BY ADDING SECTION 23-47-55 SO AS TO PROVIDE THAT A SUBSCRIBER IS NOT LIABLE FOR A DIFFERENT NUMBER OF 911 CHARGES THAN THE SUBSCRIBER HAS BEEN BILLED FOR ANY FACILITY, AND THAT NO SERVICE SUPPLIER IS LIABLE TO ANY PERSON FOR BILLING, COLLECTING, OR REMITTING CERTAIN 911 CHARGES FOR SERVICE WHICH ARE BILLED FOR BEFORE THE EFFECTIVE DATE OF THIS ACT; TO AMEND SECTION 23-47-65, RELATING TO THE CMRS EMERGENCY TELEPHONE ADVISORY COMMITTEE, SO AS TO REVISE THE NAME OF THE COMMITTEE AND ITS MEMBERSHIP,

TO MAKE TECHNICAL CHANGES, AND TO PROVIDE THAT THE COMMITTEE AND THE STATE BUDGET AND CONTROL BOARD ARE AUTHORIZED TO REGULATE PREPAID WIRELESS SELLERS; BY ADDING SECTION 23-47-67 SO AS TO IMPOSE A VOIP 911 CHARGE ON EACH LOCAL EXCHANGE ACCESS FACILITY, AND TO PROVIDE FOR THE COLLECTION OF THE CHARGE AND ITS DISTRIBUTION; BY ADDING SECTION 23-47-68 SO AS TO IMPOSE A PREPAID WIRELESS 911 CHARGE, AND TO PROVIDE FOR ITS COLLECTION AND DISTRIBUTION; BY ADDING SECTION 23-47-69 SO AS TO LIMIT THE CHARGES THAT MAY BE IMPOSED FOR 911 SERVICE; AND TO AMEND SECTION 23-47-70, RELATING TO LIABILITY FOR DAMAGES THAT MAY OCCUR FROM A GOVERNMENTAL AGENCY PROVIDING 911 SERVICE, SO AS TO PROVIDE FOR LIABILITY WHEN 911 SERVICE IS PROVIDED AND WHEN IT IS NOT PROVIDED PURSUANT TO TARIFFS ON FILE WITH THE PUBLIC SERVICE COMMISSION, AND TO MAKE A TECHNICAL CHANGE.

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

Definitions

SECTION 1. Section 23-47-10 of the 1976 Code is amended to read:

"Section 23-47-10. As used in this chapter:

(1) '911 charge' means a fee for the 911 service start-up equipment costs, subscriber notification costs, addressing costs, billing costs, and nonrecurring and recurring installation, maintenance service, and network charges of a service supplier providing 911 service as provided in this chapter.

(2) '911 system' or '911 service' means an emergency telephone system that provides the user of the public telephone system with the ability to reach a public safety answering point by dialing the digits 911. The term 911 system or service also includes 'enhanced 911 service', which means an emergency telephone system with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features. '911 system' and '911 service' include those systems and

services that use or rely upon Internet protocol or other similar technologies to provide services that direct voice calls to public safety answering points.

(3) '911 plan' means a plan for the 911 system, enhanced 911 system, or any amendment to the plan developed by a county or municipality.

(4) 'Basic 911 system' means a system by which the various emergency functions provided by public safety agencies within each local government's jurisdiction may be accessed utilizing the three-digit number 911, but no available options of enhanced systems are included in the system.

(5) 'Enhanced 911 network features' means selective routing, automatic number identification, and location identification.

(6) 'Enhanced 911 system' means enhanced 911 service, which is a telephone exchange communications service consisting of telephone network features and public safety answering points designated by the local government which enables users of the public telephone system to access a 911 public safety communications center by dialing the digits 911. The service directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification.

(7) 'Addressing', with respect to nonCMRS exchange access service, means the assigning of a numerical address and street name (the name may be numerical) to each location within a local government's geographical area necessary to provide public safety service as determined by the local government. This address replaces any route and box number currently in place in the 911 database and facilitates quicker response by public safety agencies.

(8) 'Automatic location identification' means an enhanced 911 service capability that enables the automatic display of information.

(9) 'Automatic number identification' means an enhanced 911 service capability that enables the automatic display of the seven-digit number used to place a 911 call.

(10) 'Board' means the South Carolina State Budget and Control Board.

(11) 'Committee' means the South Carolina 911 Advisory Committee.

(12) 'CMRS connection' means each mobile number assigned to a CMRS customer.

(13) 'Commercial Mobile Radio Service' (CMRS) means commercial mobile service under Sections 3(27) and 332(d), Federal

Telecommunications Act of 1996 (47 U.S.C. Section 151, et seq.), Federal Communications Commission Rules, and the Omnibus Budget Reconciliation Act of 1993. The term includes any wireless two-way communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional and/or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line. The term does not include services that do not provide access to 911 service, a communication channel suitable only for data transmission, a wireless roaming service or other nonlocal radio access line service, or a private telecommunications system.

(14) 'Customer' means the local government subscribing to 911 service from a service supplier.

(15) 'Department' means the Department of Revenue.

(16) 'Enhancement' means any addition to a 911 system such as automatic number identification, selective routing of calls, or other future technological advancements, as determined by the Public Service Commission for nonCMRS exchange access companies.

(17) 'Exchange access facility' means the access from a particular telephone subscriber's premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by the South Carolina Public Service Commission. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, or wide area telecommunications service (wats), foreign exchange (fx), or incoming lines.

(18) 'Local government' means any city, county, or political subdivision of the State.

(19) 'Mapping' means the development of a computerized geographical display system of roads and structures where emergency response may be required.

(20) 'Prepaid wireless 911 charge' means the charge that a prepaid wireless seller is required to collect from a prepaid wireless consumer pursuant to Section 23-47-68.

(21) 'Prepaid wireless consumer' means a person or entity that purchases prepaid wireless telecommunications service in a prepaid wireless retail transaction.

(22) 'Prepaid wireless provider' means a person or entity that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(23) 'Prepaid wireless retail transaction' means the purchase of prepaid wireless telecommunications service from a prepaid wireless seller for any purpose other than resale.

(24) 'Prepaid wireless seller' means a person or entity that sells prepaid wireless telecommunications service to another person or entity for any purpose other than resale.

(25) 'Prepaid wireless telecommunications service' means any commercial mobile radio service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in units or dollars which decline with use in a known amount.

(26) 'Public safety agent' means a functional agency which provides fire fighting, law enforcement, medical, or other emergency services.

(27) 'Public safety answering point' (PSAP) means a communications facility operated on a twenty-four hour basis which first receives 911 calls from persons in a 911 service area and which may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies. A PSAP may be designated to a primary or secondary exchange service, referring to the order in which calls are directed for answering.

(28) 'Regional systems' means the formation of two or more local governments or multi-jurisdictional systems for the purpose of jointly forming and funding 911 systems.

(29) 'Selective routing' means the method employed to direct 911 calls to the appropriate public safety answering point based on the geographical location from which the call originated.

(30) 'Service subscriber' means any person, company, corporation, business, association, or party not exempt from county or municipal taxes or utility franchise assessments who is provided telephone (local exchange access facility) service in the political subdivision or CMRS service or VoIP service.

(31) 'Service supplier' means any person, company, or corporation, public or private, providing exchange telephone service, CMRS service, or VoIP service to end users.

(32) 'Rate' means the recurring or nonrecurring rates billed by the service supplier, which represents the service supplier's recurring charges for exchange access facilities, exclusive of all taxes, fees, licenses, or similar charges.

(33) 'Telephone subscriber' or 'subscriber' means a person or entity to whom exchange telephone service, either residential or commercial, is provided and in return for which the person or entity is billed on a monthly basis. When the same person, business, or organization has

several telephone access lines, each exchange access facility constitutes a separate subscription.

(34) 'Voice over Internet Protocol (VoIP) service' means interconnected VoIP service as that term is defined in 47 C.F.R. Section 9.3 as may be amended.

(35) 'Voice over Internet Protocol (VoIP) provider' means a person or entity that provides VoIP service.

(36) 'Voice over Internet Protocol (VoIP) subscriber' means a person or entity that purchases VoIP service from a VoIP provider.

(37) 'Voice over Internet Protocol (VoIP) 911 charge' means the charge imposed pursuant to Section 23-47-67.

(38) 'Voice over Internet Protocol (VoIP) service line' means a VoIP service that offers an active telephone number or successor dialing protocol assigned by a VoIP service provider to a customer that has outbound calling capability."

CMRS Service and VoIP Service

SECTION 2. Section 23-47-20(C)(14) of the 1976 Code is amended to read:

"(14) routing and capabilities to receive and process CMRS service and VoIP service capable of making 911 calls;"

911 charges

SECTION 3. Section 23-47-50 of the 1976 Code is amended to read:

"Section 23-47-50. (A) The maximum 911 charge that a subscriber may be billed for an individual local exchange access facility must be in accordance with the following scale:
Tier I--1,000 to 40,999 access lines--$1.50 for start-up costs, $1.00 for on-going costs.
Tier II--41,000 to 99,999 access lines--$1.00 for start-up costs, $.60 for on-going costs.
Tier III--more than 100,000 access lines--$.75 for start-up costs, $.50 for on-going costs.

Start-up includes a combination of recurring and nonrecurring costs and up to a maximum of fifty local exchange lines per account. For bills rendered on or after the effective date of this act, for any individual local exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions, a

subscriber must be billed a number of 911 charges equal to: (a) the number of outward voice transmission paths activated on such a facility in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the service supplier; or (b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the service supplier. The total number of 911 charges remains subject to the maximum of fifty 911 charges per account set forth above.

(B) Every local telephone subscriber served by the 911 system is liable for the 911 charge imposed. A service supplier has no obligation to take any legal action to enforce the collection of the 911 charges for which a subscriber is billed. However, a collection action may be initiated by the local government that imposed the charges. Reasonable costs and attorneys' fees associated with that collection action may be awarded to the local government collecting the 911 charges.

(C) The local government subscribing to 911 service is ultimately responsible to the service supplier for all 911 installation, service, equipment, operation, and maintenance charges owed to the service supplier. Upon request by the local government, the service supplier shall provide a list of amounts uncollected along with the names and addresses of telephone subscribers who have identified themselves as refusing to pay the 911 charges. Taxes due on a 911 system service provided by the service supplier must be billed to the local government subscribing to the service. State and local taxes do not apply to the 911 charge billed to the telephone subscriber.

(D) Service suppliers that collect 911 charges on behalf of the local government are entitled to retain two percent of the gross 911 charges remitted to the local government as an administrative fee. The service supplier shall remit the remainder of charges collected during the month to the fiscal offices of the local government. The 911 charges collected by the service supplier must be remitted to the local government within forty-five days of the end of the month during which such charges were collected and must be deposited by and accounted for by the local government in a separate restricted fund known as the 'emergency telephone system fund' maintained by the local government. The local government may invest the money in the fund in the same manner that other monies of the local government are invested and income earned from the investment must be deposited into the fund. Monies from this fund are totally restricted to use in the 911 system.

(E) The 'emergency telephone system' fund must be included in the annual audit of the local government in accordance with generally accepted auditing standards.

(F) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier. A monthly CMRS 911 charge is levied for each CMRS connection for which there is a mobile identification number containing an area code assigned to South Carolina by the North American Numbering Plan Administrator. The amount of the levy must be approved annually by the board at a level not to exceed the average monthly telephone (local exchange access facility) 911 charges paid in South Carolina. The board and the committee may calculate the CMRS 911 charge based upon a review of one or more months during the year preceding the calculation of telephone (local exchange access facility) charges paid in South Carolina. The CMRS 911 charge must have uniform application and must be imposed throughout the State; however, trunks or service lines used to supply service to CMRS providers shall not be subject to a CMRS 911 levy. Prepaid wireless telecommunications service is subject to the 911 charge set forth in Section 23-47-68 and not to the CMRS 911 charge set forth in this subsection. On or before the twentieth day of the second month succeeding each monthly collection of the CMRS 911 charges, every CMRS provider shall file with the Department of Revenue a return under oath, in a form prescribed by the department, showing the total amount of fees collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall place the collected fees on deposit with the State Treasurer. The funds collected pursuant to this subsection are not general fund revenue of the State and must be kept by the State Treasurer in a fund separate and apart from the general fund to be expended as provided in Section 23-47-65.

(G)(1) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier.

(2) Except as provided in Section 23-47-68(B), a 911 charge imposed under this chapter shall be added to the billing by the service supplier to the service subscriber and may be stated separately.

(3) A billed subscriber shall be liable for any 911 charge imposed under this chapter until it has been paid to the service supplier."

911 charges

SECTION 4. Chapter 47, Title 23 of the 1976 Code is amended by adding:

"Section 23-47-55. (A) For services for which a bill is rendered prior to the effective date of this act, for an exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions, a subscriber is not liable to any person or entity for a different number of 911 charges than the subscriber has been billed for any such facility, and no service supplier is liable to any person or entity for billing, collecting, or remitting a different number of 911 charges for any such facility than is required by Section 23-47-50(A).

(B) For services for which a bill is rendered prior to the effective date of this act, no subscriber is liable to any person or entity for a different 911 charge on VoIP service or VoIP service lines than the subscriber has been billed, and no service supplier is liable to any person or entity for billing, collecting, or remitting a different 911 charge on VoIP service or VoIP service lines than is required by Section 23-47-67, or both."

South Carolina 911 Advisory Committee

SECTION 5. Section 23-47-65 of the 1976 Code is amended to read:

"Section 23-47-65. (A)(1) The South Carolina 911 Advisory Committee is created to assist the board in carrying out its responsibilities in implementing a wireless enhanced 911 system consistent with FCC Docket Number 94-102. The committee must be appointed by the Governor and shall consist of: a director of a division of the State Budget and Control Board, ex officio; the Director of the Office of Research and Statistics; two employees of CMRS providers licensed to do business in the State; two 911 system employees; and one employee of a telephone (local exchange access facility) service supplier licensed to do business in the State; and one consumer. Local governments and related organizations such as the National Emergency Number Association may recommend PSAP Committee members, and industry representatives may recommend wireline and CMRS Committee members to the Governor. There is no expense reimbursement or per diem payment from the fund created by the CMRS surcharge made to members of the committee.

(2) All committee members, except the ex officio members, must be appointed for a three-year term by the Governor. Committee members may be appointed to one subsequent term.

(3) In the event a vacancy arises, it must be filled for the remainder of the term in the manner of the original appointment. A partial term does not count toward the term limits; however, service for three-fourths or more of a term constitutes service for a term.

(4) Any committee member who terminates his holding of the office or employment which qualified him for appointment shall cease immediately to be a member of the committee; the person appointed to fill the vacancy shall do so for the unexpired term of the member whom he succeeds.

(5) The committee shall establish its own procedures with respect to the selection of officers, quorum, place, and conduct of meetings.

(B) The responsibilities of the committee with respect to CMRS emergency telephone services are to:

(1) advise the board on technical issues regarding the implementation of a wireless 911 system, especially matters concerning appropriate systems and equipment to be acquired by CMRS providers and PSAPs to assure the compatibility of the systems and equipment and the ability of the systems and equipment to comply with the requirements of FCC Docket Number 94-102;

(2) recommend systems and equipment for which reimbursement may be allowed to CMRS providers and PSAPs under the provisions of this chapter, which are compatible with each other as needed for the public's safety, and will not result in wasteful spending on inappropriate or redundant technology.

(C) The responsibilities of the board with respect to CMRS emergency telephone services are to:

(1) direct the State Treasurer in the management and disbursal of the funds in and from an interest-bearing account in the following manner:

(a) hold and distribute not more than thirty-nine and eight-tenths percent of the total monthly revenues in the interest-bearing account to PSAP administrators based on CMRS 911 call volume for expenses incurred for the answering, routing, and proper disposition of CMRS 911 calls;

(b) hold and distribute not more than fifty-eight and two-tenths percent of the total monthly revenues in the interest-bearing account solely for the purposes of complying with applicable requirements of FCC Docket Number 94-102. These funds may be utilized by the

PSAP and the CMRS providers licensed to do business in this State for the following purposes in connection with compliance with the FCC requirements: upgrading, acquiring, maintaining, programming, and installing necessary data, hardware, and software. Invoices detailing specific expenses for these purposes must be presented to the board in connection with any request for reimbursement, and the request must be approved by the board, upon recommendation of the committee. Any invoices presented to the board for reimbursements of costs not described by this section may be approved only by a unanimous vote of the committee, but in no event shall reimbursement be made for costs unrelated to compliance with applicable requirements of FCC Docket Number 94-102;

(c) hold and distribute not more than two percent of the total monthly revenues in the interest-bearing account to compensate the independent auditor provided for herein and for expenses which the board is authorized to incur by contract, or otherwise, for provision of any administrative, legal, support, or other services to assist the board in fulfilling its responsibilities under this act;

(2) with the State Treasurer, prepare annual reports outlining fees collected and monies disbursed to PSAP and CMRS providers, and submit annual reports outlining monies disbursed for operations of the board;

(3) retain an independent, private auditor, as provided in the Consolidated Procurement Code, for the purposes of receiving, maintaining, and verifying the accuracy of proprietary information submitted to the board by CMRS providers or PSAPs, and assisting the committee in its duties including its annual calculation of the average 911 charges pursuant to Section 23-47-50(F) and in cost studies it may conduct. Due to the confidential and proprietary nature of the information submitted by CMRS providers, the information may not be released to a party other than the independent private auditor and is expressly exempt from disclosure pursuant to Chapter 4, Title 30. The information collected by the auditor may be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider;

(4) conduct a cost study to be submitted to the House Ways and Means Committee and Senate Finance Committee one year from the effective date of this section and thereafter at the board's discretion. The board may include any information it considers appropriate to assist the General Assembly in determining whether future legislation is necessary or appropriate, but the report must include information to assist in determining whether to adjust the CMRS 911 charge to reflect

actual costs incurred by PSAPs or CMRS providers for compliance with applicable requirements of FCC Docket Number 94-10;

(5) convene the committee and consult with it concerning the performance of the responsibilities assigned to the board and to the committee in this chapter, and the development and maintenance of the state's CMRS emergency telephone services and system;

(6) report as required or suggested by this chapter, promulgate any regulations, and take further actions as are appropriate in implementing it.

(D) The board and committee must:

(1) annually calculate the average 911 charge as provided in Section 23-47-50(F);

(2) take appropriate measures to maintain the confidentiality of the proprietary information described in this section. This information may be disclosed to board and committee members only in the event a dispute arises with respect to the board's and committee's discharge of their responsibilities under Section 23-47-65(B)(2) which necessitates such disclosure. The information also shall be exempt from disclosure pursuant to Chapter 4, Title 30. Members of the board may not disclose the information to any third parties, including their employers;

(3) take appropriate measures to see that all prepaid wireless sellers comply with the requirements of Section 23-47-68(F) and that all other CMRS service suppliers comply with the requirements of Section 23-47-50(F).

(E) CMRS providers are entitled to retain two percent of the fees collected as reimbursement for collection and handling of the CMRS 911 charge."

VoIP 911 charge

SECTION 6. Chapter 47, Title 23 of the 1976 Code is amended by adding:

"Section 23-47-67. (A) There is hereby imposed a VoIP 911 charge in an amount identical to the amount of the 911 charge imposed on each local exchange access facility pursuant to Section 23-47-40(A) and 23-47-50(A).

(B) A VoIP provider must collect the VoIP 911 charge established in subsection (A) on each VoIP service line. This VoIP 911 charge must be sourced to the local government in the same manner as CMRS is sourced pursuant to the Mobile Telecommunications Sourcing Act as provided in Title 4 , U.S.C.

(C) Funding from the VoIP 911 charge established in subsection (A) must be used in the same manner as set forth in Section 23-47-40(B) and (C). The provisions of Section 23-47-50(B), (C), (D), (E), and (G) apply with equal force with regard to the VoIP 911 charge.

(D) A VoIP provider that purchases its 911 capabilities in South Carolina from another person or entity is responsible for directly remitting the VoIP 911 charge as set forth in this section unless the VoIP provider and the other person or entity have agreed in writing that the other person or entity will remit the VoIP 911 charge on behalf of the VoIP provider.

(E) If a billed subscriber purchases a service that is both a CMRS service and a VoIP service, and there is a single active mobile telephone number or successor dialing protocol associated with the service, then only the CMRS 911 charge set forth in Section 23-47-50(F) shall apply to the service. Similarly, if an exchange access facility is also a VoIP service line, then only the 911 charge set forth in Sections 23-47-40(A) and 23-47-50(A) shall apply to the service."

Prepaid wireless 911 charge

SECTION 7. Chapter 47, Title 23 of the 1976 Code is amended by adding:

"Section 23-47-68. (A) There is hereby imposed a prepaid wireless 911 charge in the amount equal to the average 911 charges calculated pursuant to Section 23-47-50(F).

(B) A prepaid wireless seller must collect the prepaid wireless 911 charge established in subsection (A) from a prepaid wireless consumer with respect to each prepaid wireless retail transaction occurring in this State. The amount of the prepaid wireless 911 charge shall be either: separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller or otherwise disclosed to the prepaid wireless consumer.

(C) For the purposes of this section, a prepaid wireless retail transaction must be sourced as provided in Section 12-36-910(B)(5)(b).

(D) The prepaid wireless 911 charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or of any prepaid wireless provider. However, the prepaid wireless seller is liable to remit to the department all prepaid wireless 911 charges that the prepaid wireless seller collects from prepaid wireless consumers as provided in this section.

(E) The amount of the prepaid wireless 911 charge collected by a prepaid wireless seller from a prepaid wireless consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the prepaid wireless consumer by the prepaid wireless seller, shall not be included in the base for measuring any tax, fee, prepaid wireless 911 charge, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency. This amount shall not be considered revenue of the prepaid wireless seller.

(F) A prepaid wireless seller is entitled to retain three percent of the gross prepaid wireless 911 charges remitted to the department as an administrative fee. A prepaid wireless seller must remit the remainder of the prepaid wireless 911 charges collected to the department on a monthly, quarterly, or annual basis.

(G) The audit and appeal procedures applicable under Chapter 36, Title 12 shall apply to the prepaid wireless 911 charge.

(H) The department shall establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under Section 12-36-950.

(I) The department shall transfer all remitted prepaid wireless 911 charges to the State Treasurer in the same manner as provided in Section 23-47-50(F). These funds are not general fund revenue of the State and must be kept by the State Treasurer in a fund separate and apart from the general fund to be expended as provided in Section 23-47-65."

911 charges

SECTION 8. Chapter 47, Title 23 of the 1976 Code is amended by adding:

"Section 23-47-69. Neither the State, any political subdivision of the State, nor an intergovernmental agency may require any service provider to impose, collect, or remit a tax, fee, surcharge, or other charge for 911 funding purposes other than the 911 charges set forth in this chapter."

Liability for providing 911 service

SECTION 9. Section 23-47-70 of the 1976 Code is amended to read:

"Section 23-47-70. (A) A local government or public safety agency, as defined in Section 23-47-10, or state government entity, their officers, agents, or employees, together with any person following their instructions in rendering services, are not liable for civil damages as a result of an act or omission under this chapter, including, but not limited to, developing, adopting, operating, or implementing a plan or system pursuant to the South Carolina Tort Claims Act, Section 15-78-60(5) or 15-78-60(19).

(B) To the extent that a 911 service is provided pursuant to tariffs on file with the South Carolina Public Service Commission, the liability of the provider of this service must be governed by the filed and approved tariffs of the South Carolina Public Service Commission, including, but not limited to, those general subscriber service tariffs concerning emergency reporting services.

(C) To the extent that a 911 service is not provided pursuant to tariffs on file with the South Carolina Public Service Commission, in no event shall the provider of these services or its officers, employees, assigns, or agents be liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, or provision of 911 service unless such event was the result of reckless, wilful, or wanton conduct of the 911 service supplier or its officers, employees, assigns, or agents.

No 911 service supplier or its officers, employees, assigns, or agents shall be liable for civil damages or criminal liability in connection with the release of subscriber information to any governmental entity as required under the provisions of this chapter."

Time effective

SECTION 10. SECTIONS 1, 2, 3, 5, 6, and 7 of this act take effect on July 1, 2011. The remaining sections of this act take effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.

No. 136

(R169, H4698)

AN ACT TO AMEND SECTION 7-7-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN AIKEN COUNTY, SO AS TO REVISE AND RENAME CERTAIN PRECINCTS AND REDESIGNATE A MAP NUMBER ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts in Aiken County

SECTION 1. Section 7-7-40 of the 1976 Code, as last amended by Act 247 of 2006, is further amended to read:

"Section 7-7-40. (A) In Aiken County there are the following voting precincts:
Aiken #1
Aiken #2
Aiken #3
Aiken #4
Aiken #5
Aiken #6
Aiken #47
Anderson Pond #69
Ascauga Lake
Bath
Beech Island
Belvedere #9
Belvedere #44
Belvedere #62
Belvedere #74
Breezy Hill
Carolina Heights
Cedar Creek #64
China Springs

Clearwater
College Acres
Couchton
Eureka
Fox Creek 58
Fox Creek 73
Gem Lakes
Gloverville
Graniteville
Hammond
New Holland
Hitchcock #66
Hollow Creek
Jackson
Langley
Levels
Levels #72
Lynwood
Midland Valley #51
Midland Valley #71
Millbrook
Misty Lakes
Monetta
Montmorenci #22
New Ellenton
North Augusta #25
North Augusta #26
North Augusta #27
North Augusta #28
North Augusta #29
North Augusta #54
North Augusta #55
North Augusta #67
North Augusta #68
Oak Grove
Perry
Redds Branch
Salley
Sandstone #70
Shaws Fork
Shiloh
Silver Bluff

Six Points #35
Six Points #46
Sleepy Hollow #65
South Aiken #75
South Aiken #76
Tabernacle
Talatha
Pine Forest
Vaucluse
Wagener
Ward
Warrenville
White Pond
Willow Springs
Windsor

(B) The precinct lines defining the precincts provided in subsection (A) of this section are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-03-10 and as shown on certified copies of the official map provided by the office to the State Election Commission and the Aiken County Board of Elections and Registration.

(C) The polling places for the precincts provided in subsection (A) of this section must be established by the Aiken County Board of Elections and Registration with the approval of a majority of the county legislative delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.

No. 137

(R143, S929)

AN ACT TO AMEND SECTION 41-1-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO POSTING CERTAIN EMPLOYMENT NOTICES IN THE WORKPLACE, SO AS TO REMOVE A PROVISION REQUIRING NOTICE BE POSTED IN A ROOM WHERE FIVE OR MORE PEOPLE ARE EMPLOYED; TO AMEND SECTION 41-3-10, AS AMENDED, RELATING TO THE DIVISION OF LABOR WITHIN THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT, SO AS TO REMOVE THE PROVISION ESTABLISHING THE DIVISION; TO AMEND SECTION 41-3-40, AS AMENDED, RELATING TO THE DIRECTOR OF THE DEPARTMENT, SO AS TO REMOVE REFERENCES TO THE DIVISION OF LABOR; TO AMEND SECTIONS 41-3-50, AS AMENDED, 41-3-60, AS AMENDED, 41-3-100, AS AMENDED, 41-3-120, AS AMENDED, ALL RELATING TO VARIOUS LABOR AND EMPLOYMENT LAWS, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 41-1-40 RELATING TO REQUIRING AN EMPLOYER WHO REQUIRES NOTICE FROM AN EMPLOYEE QUITTING WORK TO POST NOTICE OF A SHUTDOWN, SECTION 41-1-50 RELATING TO THE ACCEPTANCE OF PAYMENT FROM A RELIEF FUND NOT BARRING A DAMAGES ACTION, SECTION 41-3-80 RELATING TO ENFORCEMENT OF THE FAIR LABOR STANDARDS ACT OF 1938, SECTION 41-15-10 RELATING TO LOCKING OF EMPLOYEES IN BUILDINGS, SECTION 41-15-50 RELATING TO REQUIRING A LIGHT AT AN ELEVATOR SHAFT ENTRANCE WHEN THE ELEVATOR IS IN OPERATION, ARTICLE 5, CHAPTER 3, TITLE 41 RELATING TO THE MIGRANT LABOR SUBDIVISION OF THE DEPARTMENT, CHAPTER 21, TITLE 41 RELATING TO VOLUNTARY APPRENTICESHIPS, AND CHAPTER 23, TITLE 41 RELATING TO AGRICULTURAL LABOR CONTRACTS.

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

Employers shall post certain labor laws

SECTION 1. Section 41-1-10 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-1-10. Every employer shall keep posted in a conspicuous place a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Director of the Department of Labor, Licensing and Regulation or his designee shall furnish the printed form of such notice upon request."

Director of department appointed by Governor

SECTION 2. Section 41-3-10 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-3-10. A Director of the Department of Labor, Licensing and Regulation must be appointed by the Governor pursuant to the provisions of Section 40-73-15. The director means the chief administrative officer of the Department of Labor, Licensing and Regulation. The department is authorized to promulgate regulations for the department, and it is the duty of the department to administer and enforce the regulations and direct all inspections and investigations except as otherwise provided."

Department may promulgate regulations to effectuate title

SECTION 3. Section 41-3-40 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-3-40. The Director of the Department of Labor, Licensing and Regulation, or his designee, shall promulgate regulations with reference to this title as shall be necessary properly to carry out the duties imposed upon the department."

Workplace inspections by department

SECTION 4. Section 41-3-50 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-3-50. The director of the department or his designee shall visit and inspect at reasonable hours, as often as practicable, all places, sites, or areas where employment comes under the jurisdiction of the department to enforce the provisions of Chapters 1 through 24."

Enforcement of labor and employment laws; appointment and duties of inspectors and assistants

SECTION 5. Section 41-3-60 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-3-60. The Director of the Department of Labor, Licensing and Regulation or his designee shall enforce all laws of Chapters 1 through 24 in places, sites, or areas, which come under his jurisdiction, and appoint such assistants and inspectors as necessary to carry out his duties. The duties of such assistants and inspectors shall be prescribed by the director which come under his jurisdiction."

Department required to furnish certain required blanks and forms

SECTION 6. Section 41-3-100 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-3-100. All blanks and forms required by the Director of the Department of Labor, Licensing and Regulation or his designee under provisions of Chapters 1 through 24 must be furnished by the director or his designee."

Enforcement and prosecution of violations

SECTION 7. Section 41-3-120 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 41-3-120. The Director of the Department of Labor, Licensing and Regulation or his designee shall enforce the provisions of Chapters 1 through 24 and prosecute all violations of law relating to those chapters before any court of competent jurisdiction."

Sections repealed

SECTION 8. Sections 41-1-40, 41-1-50, 41-3-80, 41-15-10, 41-15-50, Article 5, Chapter 3, Title 41; Chapter 21, Title 41; and Chapter 23, Title 41 of the 1976 Code are repealed.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 138

(R144, S963)

AN ACT TO AMEND SECTION 7-7-380, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN LEXINGTON COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF LEXINGTON COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts, Lexington County

SECTION 1. Section 7-7-380 of the 1976 Code, as last amended by Act 37 of 2007, is further amended to read:

"Section 7-7-380. (A) In Lexington County there are the following voting precincts:
Amicks Ferry
Barr Road 1

Barr Road 2
Batesburg
Bethany
Beulah Church
Boiling Springs
Boiling Springs South
Bush River
Cayce No. 1
Cayce No. 2
Cayce No. 3
Cayce 2A
Cedar Crest
Chalk Hill
Challedon
Chapin
Coldstream
Congaree 1
Congaree 2
Cromer
Dreher Island
Dutchman Shores
Edenwood
Edmund
Emmanuel Church
Fairview
Faith Church
Gardendale
Gaston 1
Gaston 2
Gilbert
Grenadier
Hollow Creek
Hook’s Store
Irmo
Kitti Wake
Lake Murray 1
Lake Murray 2
Leaphart Road
Leesville
Lexington No. 1
Lexington No. 2
Lexington No. 3

Lexington No. 4
Lincreek
Mack-Edisto
Midway
Mims
Mt. Hebron
Mount Horeb
Murraywood
Oakwood
Old Barnwell Road
Old Lexington
Park Road 1
Park Road 2
Pelion 1
Pelion 2
Pilgrim Church
Pine Ridge 1
Pine Ridge 2
Pineview
Pond Branch
Providence Church
Quail Hollow
Quail Valley
Red Bank
Red Bank South 1
Red Bank South 2
Ridge Road
Round Hill
Saluda River
Sand Hill
Sandy Run
Seven Oaks
Sharpe's Hill
Springdale
Springdale South
St. Davids
St. Michael
Summit
Swansea 1
Swansea 2
West Columbia No. 1
West Columbia No. 2

West Columbia No. 3
West Columbia No. 4
Westover
White Knoll
Whitehall
Woodland Hills.

(B) The polling places of the various voting precincts in Lexington County must be designated by the Registration and Elections Commission for Lexington County. The precinct lines defining the precincts in subsection (A) are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-63-10 and as shown on copies provided to the Registration and Elections Commission for Lexington County by the Office of Research and Statistics. The official map may not be changed except by act of the General Assembly."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 139

(R146, S975)

AN ACT TO AMEND SECTION 50-11-65, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TRAINING OF BIRD DOGS, SO AS TO DEFINE "TRAINING BIRDS", TO PROVIDE FOR THE USE OF TRAINING BIRDS DURING THE CLOSED SEASON, AND TO PROVIDE THAT TRAINING MUST HAVE MINIMAL DISTURBANCE ON WILD BIRDS.

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

Training of bird dogs; training birds defined; use of birds in closed season; minimize the disturbance of wild birds during training

SECTION 1. Section 50-11-65 of the 1976 Code is amended to read:

"Section 50-11-65. (A) For purposes of this section, 'training birds' means pen raised quail, chukar, pheasant, Hungarian partridge, or any other upland game birds approved by the Department of Natural Resources and identified in the Bird Dog Trainer's License required pursuant to subsection (B).

(B) Persons engaged in the business of training bird dogs in return for money, goods, or services may obtain a Bird Dog Trainer's License entitling them to the privileges provided in this section.

(C) The applicant for the license shall provide proof of ownership in or a recorded leasehold instrument for a tract of land to be designated as a bird dog training area. The applicant also shall provide a county or highway map designating the location of the property together with a tax map, aerial photograph, or plat designating the property boundaries. The bird dog training area may not exceed fifty acres for each licensee.

(D) The boundaries of the area must be posted every one hundred fifty feet or less with signs designating the area as follows: 'Private Bird Dog Training'.

(E) The application and the license must list the trainer and not more than two assistants, all of whom must have hunting licenses. Upon receiving a training license, the trainer and his two assistants may train dogs by taking training birds as provided in the license required pursuant to subsection (B). No person, trainer, or assistant may be listed on more than one license.

(F) The licensee shall maintain records showing the number of training birds purchased or raised, released for bird dog training, and harvested as part of the training program, together with other records the department may require as a condition of the license. A copy of these records must be open for inspection by agents of the department at reasonable times and must be furnished to the department in an annual report before issuance of the next year's license. The fee for the license is fifty dollars, and the license expires annually June thirtieth.

(G) The trainer and his assistants shall make reasonable efforts to minimize the disturbance of wild birds during training. Training birds released pursuant to this section must be banded, and recovery or recall pens may be used if the trainer is issued a permit for the pens. Unbanded birds taken in recall pens must be released immediately.

(H) A person possessing a hunting license may train bird dogs on private land at any time during the year. However, outside the established hunting season for the birds identified in subsection (A), only weapons capable of firing blank ammunition may be used unless feral pigeons have been released and are being used in the training.

(I) A person violating subsection (D), (E), (F), (G), or (H) is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days. A trainer or assistant trainer who violates one or more of these subsections must have his privileges provided under this section suspended for two years from the date of conviction."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 140

(R147, S1043)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-5-17 TO ESTABLISH THE FLOUNDER POPULATION STUDY PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES TO CLARIFY THE LOCATION IN WHICH THE PROGRAM WILL OPERATE, TO CLARIFY THAT PROHIBITED ARTIFICIAL ILLUMINATION IS GENERATED BY MOTOR FUEL POWERED GENERATORS, AND TO PROVIDE THAT THE PROGRAM WILL END ON JUNE 30, 2014; TO REPEAL THE PROVISIONS OF THIS SECTION SIX YEARS AFTER THE EFFECTIVE DATE; AND TO REPEAL SECTION 50-5-2017 RELATING TO THE FLOUNDER POPULATION STUDY PROGRAM AND CATCH LIMITS.

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

Flounder Population Study Program

SECTION 1. Article 1, Chapter 5, Title 50 of the 1976 Code is amended by adding:

"Section 50-5-17. (A) There is established the Flounder Population Study Program to be administered by the Department of Natural Resources. The program shall study the effects of flounder catch limits and the prohibition of artificial illumination produced by motor fuel powered generators on flounder (Paralichthys species), located in the waters of Pawleys Inlet north to the northern terminus of Main Creek at Garden City Beach. For purposes of this resolution, 'gigging' means using a prong, spear, or similar device, including a bow and arrow to spear a fish.

(B) During the term of the program in the area defined in subsection (A):

(1) the lawful flounder gigging and fishing catch limit is ten per day for any individual, not to exceed twenty flounder in any one day on any boat;

(2) it is unlawful to use any type of artificial illumination produced by motor fuel powered generators while gigging or fishing for flounder from a boat or while wading in the water.

(C) The program shall run for five years, beginning January 1, 2010, and ending June 30, 2014.

(D) For purposes of this section, 'motor fuel' has the same meaning as defined in Section 12-28-110(39)."

Repealer

SECTION 2. SECTION 2 of Act 2 of 2007 is amended to read:

"SECTION 2. The provisions of this act are repealed six years from the effective date of the act."

Repealer

SECTION 3. Section 50-5-2017 of the 1976 Code, as added by Act 47 of 2009, is repealed.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 141

(R148, S1096)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58-37-50, SO AS TO AUTHORIZE ELECTRICITY PROVIDERS AND NATURAL GAS PROVIDERS TO IMPLEMENT FINANCING AGREEMENTS FOR THE INSTALLATION OF ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS; TO PROVIDE FOR THE RECOVERY OF THE FINANCING THROUGH CHARGES PAID FOR BY THE CUSTOMERS BENEFITTING FROM THE INSTALLATION OF THE ENERGY EFFICIENCY AND CONSERVATION MEASURES; TO PROTECT THE ENTITIES FROM LIABILITY FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF THE MEASURES; TO PROVIDE FOR THE INSTALLATION OF ENERGY EFFICIENCY AND CONSERVATION MEASURES IN RENTAL PROPERTIES; TO PROVIDE FOR AN ENERGY AUDIT BEFORE ENTERING INTO A FINANCING AGREEMENT; TO PROVIDE A MECHANISM FOR RECOVERY OF THE COSTS OF THE MEASURES INSTALLED IN RENTAL PROPERTIES; TO PROVIDE THAT THIS SECTION APPLIES TO CERTAIN ENERGY EFFICIENCY AND CONSERVATION MEASURES; TO PROVIDE THAT AN ELECTRICITY PROVIDER OR NATURAL GAS PROVIDER MAY NOT OBTAIN FUNDING FROM CERTAIN FEDERAL PROGRAMS; TO AMEND SECTION 8-21-310, AS AMENDED, RELATING TO THE SCHEDULE OF FEES AND COSTS TO BE COLLECTED BY CLERKS OF COURT AND REGISTERS OF DEEDS, SO AS TO ALLOW THEM TO CHARGE A FEE FOR FILING A NOTICE

OF A METER CONSERVATION CHARGE; AND TO AMEND SECTION 27-50-40, RELATING TO DISCLOSURE STATEMENTS TO A PURCHASER OF REAL ESTATE, SO AS TO REQUIRE THE DISCLOSURE OF A METER CONSERVATION CHARGE BY SELLERS OF REAL PROPERTY.

Whereas, there are various factors putting upward pressure on the price of electricity and natural gas, and those factors are likely to increase in the foreseeable future; and

Whereas, improvement of residential energy efficiency and conservation can protect South Carolina electricity and natural gas consumers from these price increases; and

Whereas, the implementation of energy efficiency and conservation measures in South Carolina residences will benefit not only the residents of the homes in which the measures are installed, but also all residents of South Carolina by reducing the need for new and expensive sources of generation; and

Whereas, the costs of energy efficiency and conservation measures and the availability of financing for these costs are now, and have been, major impediments to the widespread adoption of energy efficiency and conservation measures; and

Whereas, South Carolina electricity providers and natural gas providers are in a position to assist their customers with the installation and financing of energy efficiency and conservation measures, provided that appropriate procedures are followed for the installation of the measures and the recovery of the costs of the measures; and

Whereas, in order to make energy efficiency and conservation measures available to rental properties, it is appropriate to require the landlords who will benefit from the measures and who voluntarily agree to participate to give notice to tenants who will be living in the rental units in which the energy efficiency and conservation measures are installed. Now, therefore,

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

Agreements for energy efficiency and conservation measures

SECTION 1. Chapter 37, Title 58 of the 1976 Code is amended by adding:

"Section 58-37-50. (A) As used in this section:

(1) 'Electricity provider' means an electric cooperative, an investor-owned electric utility, the South Carolina Public Service Authority, or a municipality or municipal board or commission of public works that owns and operates an electric utility system.

(2) 'Natural gas provider' means an investor-owned natural gas utility or publicly owned natural gas provider.

(3) 'Meter conservation charge' means the charge placed on a customer's account by which electricity providers and natural gas providers recover the costs, including financing costs, of energy efficiency and conservation measures.

(4) 'Notice of meter conservation charge' means the written notice by which subsequent purchasers or tenants will be given notice that they will be required to pay a meter conservation charge.

(5) 'Customer' means a homeowner or tenant receiving electricity or natural gas as a retail customer.

(6) 'Community action agency' means a nonprofit eleemosynary corporation created pursuant to Chapter 45, Title 43 providing, among other things, weatherization services to a homeowner or tenant.

(B) Electricity providers and natural gas providers may enter into written agreements with customers and landlords of customers for the financing of the purchase price and installation costs of energy efficiency and conservation measures. These agreements may provide that the costs must be recovered by a meter conservation charge on the customer's electricity or natural gas account, provided that the electricity providers and natural gas providers comply with the provisions of this section. A failure to pay the meter conservation charge may be treated by the electricity provider or natural gas provider as a failure to pay the electricity or natural gas account, and the electricity provider or natural gas provider may disconnect electricity or natural gas service for nonpayment of the meter conservation charge, provided the electricity provider or natural gas provider complies with the provisions of Article 25, Chapter 31, Title 5; Article 17, Chapter 11, Title 6; Article 17, Chapter 49, Title 33; Article 11, Chapter 5, Title 58; Article 21, Chapter 27, Title 58; Article 5, Chapter 31, Title 58; and any applicable rules, regulations, or ordinances relating to disconnections.

(C) Any agreement permitted by subsection (B) must state plainly the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and must not exceed four percent above the stated yield for one-year treasury bills as published by the Federal Reserve at the time the agreement is entered. Any indebtedness created under the provisions of this section may be paid in full at any time before it is due without penalty.

(D) An electricity provider or natural gas provider may recover the costs, including financing costs, of these measures from its members or customers directly benefiting from the installation of the energy efficiency and conservation measures. Recovery may be through a meter conservation charge to the account of the member or customer and any such charge must be shown by a separate line item on the account.

(E) An electricity provider or natural gas provider shall assume no liability for the installation, operation, or maintenance of energy efficiency and conservation measures when the measures are performed by a third party, and shall not provide any warranty as to the merchantability of the measures or the fitness for a particular purpose of the measures, and no action may be maintained against the electricity provider or natural gas provider relating to the failure of the measures. An electricity provider or natural gas provider shall assume no liability for energy audits performed by third parties and shall provide no warranty relating to any energy audit done by any third party. Nothing in this section may be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy efficiency and conservation measures.

(F) Before entering into an agreement contemplated by this section, the electricity provider or natural gas provider shall cause to be performed an energy audit on the residence considered for the energy efficiency measures. The energy audit must be conducted by an energy auditor certified by the Building Performance Institute or similar organization. The audit must provide an estimate of the costs of the proposed energy efficiency and conservation measures and the expected savings associated with the measures, and it must recommend measures appropriately sized for the specific use contemplated. An agreement entered following completion of an energy audit shall specify the measures to be completed and the contractor responsible for completion of the measures. The choice of a contractor to perform the work must be made by the owner of the residence. Upon request, the

electricity provider or natural gas provider must provide the owner of the residence with a list of contractors qualified to do the work. Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work that is determined to have been done improperly or to be inappropriately sized for the intended use must be remedied by the responsible contractor. Until the work has been remedied, funds due to the contractor must be held in escrow by the electricity provider or natural gas provider.

(G) An electricity provider or natural gas provider that enters into an agreement as provided in this section may recover the costs, including financing costs, of energy efficiency and conservation measures from subsequent purchasers of the residence in which the measures are installed, provided the electricity provider or natural gas provider gives record notice that the residence is subject to the agreement. Notice must be given, at the expense of the filer, by filing a notice of meter conservation charge with the appropriate office for the county in which the residence is located, pursuant to Section 30-5-10. The notice of meter conservation charge does not constitute a lien on the property but is intended to give a purchaser of the residence notice that the residence is subject to a meter conservation charge. Notice is deemed to have been given if a search of the property records of the county discloses the existence of the charge and informs a prospective purchaser: (1) how to ascertain the amount of the charge and the length of time it is expected to remain in effect, and (2) of his obligation to notify a tenant if the purchaser leases the property as provided in subsection (H)(3).

(H) An electricity provider or natural gas provider may enter into agreements for the installation of energy efficiency and conservation measures and the recovery of the costs, including financing costs, of the measures with respect to rental properties by filing a notice of meter conservation charge as provided in subsection (G) and by complying with the provisions of this subsection:

(1) The energy audit required by subsection (F) above must be conducted and the results provided to both the landlord and the tenant living in the rental property at the time the agreement is entered.

(2) If both the landlord and tenant agree, the electricity provider or natural gas provider may recover the costs of the energy efficiency and conservation measures, including financing costs, through a meter conservation charge on the account associated with the rental property occupied by the tenant. The agreement must provide notice to the landlord of the provisions contained in subsection (H)(3).

(3) With respect to a subsequent tenant occupying a rental unit benefiting from the installation of energy efficiency and conservation measures, the electricity provider or natural gas provider may continue to recover the costs, including financing costs, of the measures through a meter conservation charge on the account associated with the rental property occupied by the tenant. With respect to a subsequent tenant, the landlord must give a written notice of meter conservation charge in the same manner as required by Section 27-40-420. If the landlord fails to give the subsequent tenant the required notice of meter conservation charge, the tenant may deduct from his rent, for no more than one-half of the term of the rental agreement, the amount of the meter conservation charge paid to the electricity provider or natural gas provider.

(I) Agreements entered pursuant to the provisions of this section are exempt from the provisions of the South Carolina Consumer Protection Code, Chapter 2, Title 37.

(J) An electricity provider or natural gas provider may contract with third parties to perform functions permitted under this section, including the financing of the costs of energy efficiency and conservation measures. A third party must comply with all applicable provisions of this section.

(K) The provisions of this section apply only to energy efficiency and conservation measures for a residence already occupied at the time the measures are taken. The procedures allowed by this section may not be used with respect to a new residence or a residence under construction. The provisions of this section may not be used to implement energy efficiency or conservation measures that result in the replacement of natural gas appliances or equipment with electric appliances or equipment, or that result in the replacement of electric appliances or equipment with natural gas appliances or equipment, unless the customer who seeks to install the energy efficiency or conservation measure is being provided electric and natural gas service by the same provider.

(L) Electricity providers or natural gas providers may offer their customers other types of financing agreements available by law, instead of the option established in this section, for the types of energy efficiency or conservation measures described in this section.

(M)(1) An electricity provider or natural gas provider must not obtain funding from the following federal programs to provide loans provided by this section:

(a) the Low Income Home Energy Assistance Program (LIHEAP), created by Title XXVI of the Omnibus Budget

Reconciliation Act of 1981 and codified as Chapter 94, Title 42 of the United States Code, as amended by the Human Services Reauthorization Act of 1984, the Human Services Reauthorization Act of 1986, the Augustus F. Hawkins Human Services Reauthorization Act of 1990, the National Institutes of Health Revitalization Act of 1993, the Low Income Home Energy Amendments of 1994, the Coats Human Services Reauthorization Act of 1998, and the Energy Policy Act of 2005 which is administered and funded by the United States Department of Health and Human Services on the federal level and administered locally by community action agencies;

(b) the Weatherization Assistance Program, created by Title IV of the Energy Conservation and Production Act of 1976 and codified as Part A, Subchapter III, Chapter 81, Title 42 of the United States Code, amended by the National Energy Conservation Policy Act, the Energy Security Act, the Human Services Reauthorization Act of 1984, and the State Energy Efficiency Programs Improvement Act of 1990 and administered and funded by the United States Department of Energy on the federal level and administered locally by community action agencies.

(2) Nothing in this section changes the exclusive administration of these programs by local community action agencies through the South Carolina Governor's Office of Economic Opportunity pursuant to its authority pursuant to the provisions of Chapter 45, Title 43, the Community Economic Opportunity Act of 1983.

(3) Nothing in this subsection prevents a customer or member of an electricity provider or natural gas provider from obtaining services under the Low Income Home Energy Assistance Program or the Weatherization Assistance Program."

Fee for filing notice of meter conservation charge

SECTION 2. Section 8-21-310 of the 1976 Code, as last amended by Act 329 of 2002, is further amended by adding a new item at the end to read:

"(23) for filing a notice of meter conservation charge as permitted by Section 58-37-50, ten dollars."

Meter conservation charge

SECTION 3. Section 27-50-40(A) of the 1976 Code is amended by adding an item at the end to read:

"(8) existence of a meter conservation charge, as permitted by Section 58-37-50, that applies to electricity or natural gas service to the property."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 142

(R154, S1174)

AN ACT TO AMEND SECTION 12-6-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE INCOME TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO THE YEAR 2009; TO ADOPT THE PROVISIONS OF PUBLIC LAW 111-126 RELATING TO THE TIMING OF DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS FOR HAITI RELIEF; TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO PROVISIONS OF THE INTERNAL REVENUE CODE NOT ADOPTED BY STATE LAW, SO AS TO ADD PROVISIONS TO THOSE NOT ADOPTED; TO AMEND SECTION 12-6-3910, AS AMENDED, RELATING TO ESTIMATED STATE INCOME PAYMENTS, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE PENALTIES ON CORPORATE TAXPAYERS WHO CALCULATE SOUTH CAROLINA ESTIMATED TAX PAYMENTS BASED ON FEDERAL ESTIMATED TAX PERIODS THAT DO NOT CONFORM TO STATE LAW; AND TO AMEND ACT 110 OF 2007 AND ACT 16 OF 2009, RELATING TO MISCELLANEOUS REVENUE PROVISIONS AND CONFORMITY OF STATE INCOME TAX LAW TO THE INTERNAL REVENUE CODE, SO AS TO DELETE OBSOLETE PROVISIONS.

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

References updated

SECTION 1. Section 12-6-40(A)(1)(a) of the 1976 Code, as last amended by Act 16 of 2009, is further amended to read:

"(a) Except as otherwise provided, 'Internal Revenue Code' means the Internal Revenue Code of 1986, as amended through December 31, 2009, and includes the effective date provisions contained in it."

Law adopted

SECTION 2. Public Law 111-126, relating to charitable deductions for Haiti relief enacted on January 22, 2010, is adopted for South Carolina income tax purposes, including the effective dates therein.

Provisions added

SECTION 3. A. Items (4) and (16) of Section 12-6-50 of the 1976 Code, as last amended by Act 16 of 2009, are further amended to read:

"(4) Sections 78, 85(c), 86, 87, 168(k), 168(l), 168(m), 168(n), 196, and 280C relating to dividends received from certain foreign corporations by domestic corporations, unemployment compensation, taxation of social security and certain railroad retirement benefits, the alcohol fuel credit, bonus depreciation, deductions for certain unused business credits, and certain expenses for which credits are allowable;

(16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12-6-3910 and Section 12-54-55. However, Section 6654(d)(1)(D) relating to estimated tax payments for qualified individuals as defined in that item is not adopted."

B. Section 12-6-50 of the 1976 Code, as last amended by Act 16 of 2009, is further amended by inserting two new items after item (5) to read:

"(5A) Section 108(i) relating to the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument;

(5B) Section 163(e)(5)(F) relating to original issue discount on certain high yield obligations;"

Penalties may be waived

SECTION 4. Section 12-6-3910 of the 1976 Code, as last amended by Act 363 of 2002, is further amended by adding a new subsection at the end to read:

"(E) The department may waive estimated tax payment penalties for corporations that calculate South Carolina estimated tax payments based on a federal law that increases estimated tax payments in one estimated tax payment period and decreases estimated tax payments for one estimated tax payment period, or changes the dates estimated tax payments are due for not more than one month."

Provision deleted

SECTION 5. Act 110 of 2007 is amended by deleting Section 49 which reads:

"Section 49. A taxpayer must not be penalized for following the provisions of Section 401 of the federal Tax Increase Prevention and Reconciliation Act of 2005 for South Carolina purposes."

Provision deleted

SECTION 6. Act 16 of 2009 is further amended by deleting Section 3 which reads:

"Section 3. For purposes of Section 12-6-3910, as last amended by Act 363 of 2002, a taxpayer must not be penalized for following the provisions of Section 3094 of the federal Housing Economic Recovery Act of 2008 (PL 110-289) for South Carolina purposes."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 143

(R158, H3371)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-71-243 SO AS PROVIDE FOR DEFINITIONS AND TO REGULATE A PROVIDER OF HEALTH CARE CONTRACTS AND ISSUERS OF CERTAIN INDIVIDUAL HEALTH INSURANCE WHEN A PROVIDER CONTRACT FOR HEALTH CARE SERVICES IS TERMINATED OR NONRENEWED; AND BY ADDING SECTIONS 38-71-246 AND 38-71-247 SO AS TO REQUIRE EACH PROVIDER CONTRACT TO CONTAIN CONTINUATION OF CARE PROVISIONS WITH A PLAIN LANGUAGE DESCRIPTION.

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

Definitions, applicability, requirements

SECTION 1. Article 1, Chapter 71, Title 38 of the 1976 Code is amended by adding:

"Section 38-71-243. (A) As used in this section:

(1) 'Continuation of care' means the provision of in-network level benefits for services rendered by certain out-of-network providers for a definite period of time in order to ensure continuity of care for covered persons for a serious medical condition. Continuation of care must be provided for ninety days or until the termination of the benefit period, whichever is greater.

(2) 'Health insurance coverage' means as defined in Sections 38-71-670(6) and 38-71-840(14).

(3) 'Health insurance issuer' or 'issuer' means an entity that provides health insurance coverage in this State as defined in Sections 38-71-670(7) and 38-71-840(16).

(4) 'State health plan' means the employee and retiree insurance program provided for in Article 5, Chapter 11, Title 1.

(5) 'Serious medical condition' means a health condition or illness, that requires medical attention, and where failure to provide the current course of treatment through the current provider would place the person's health in serious jeopardy, and includes cancer, acute myocardial infarction, and pregnancy. Such attestation by the treating physician must be made upon the request of the patient and in a written form approved by the Department of Insurance or prescribed through regulation, order, or bulletin.

(B) This section applies to an individual health plan, a group health plan, or a health benefit plan, including the state health plan, that is delivered, issued for delivery, or renewed in this State and which provides health insurance coverage. Continuation of care must not be provided if suspension or revocation of the provider's license occurs.

(C) If a provider contract is terminated or nonrenewed, the issuer and the provider shall comply with the following requirements:

(1) The issuer is liable for covered benefits rendered in the continuation of care by a provider to a covered person for a serious medical condition. Except as required by this section, the benefits payable for services rendered during the continuation of care are subject to the policy's or contract's regular benefit limits.

(2) The issuer shall not require a covered person to pay a deductible or copayment which is greater than the in-network rate for services rendered during the continuation of care.

(3) An issuer offering health insurance coverage shall not require a covered person, as a condition of continued coverage under the plan, to pay a premium or contribution which is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of covered benefits rendered as provided for in this section to the covered person or the dependent of a covered person.

(4) The provider shall accept as payment in full for services rendered within in the continuation of care the negotiated rate under the provider contract.

(5) Except for an applicable deductible or a copayment, a provider shall not bill or otherwise hold a covered person financially responsible for services rendered in the continuation of care and furnished by the provider, unless the provider has not received payment in accordance with item (4) of this subsection and in accordance with Article 2, Chapter 59 of this title.

(6) Upon receipt of the patient's request accompanied by the physician's attestation on the prescribed form, the issuer shall notify

the provider and the covered person of the provider's date of termination from the network and of the continuation of care provisions as provided for in this section.

(7) The issuer is responsible for determining if a covered person qualifies for continuation of care and may request additional information in reaching such determination.

Section 38-71-246. (A) Each provider contract must contain a continuation of care provision consistent with the language of Section 38-71-243.

(B) Nothing in this section prohibits a provider contract from providing continuation of care services greater than those required to be offered pursuant to subsection (A) or more favorable to the covered person than those required to be offered pursuant to subsection (A).

Section 38-71-247. Each health insurance issuer shall include a plain language description of the continuation of care provisions set forth in Section 38-71-243 in the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage it provides to covered persons."

Regulations

SECTION 2. The Department of Insurance may promulgate regulations necessary for implementation of this act.

Severability

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 4. This act takes effect upon approval by the Governor and applies to an individual health plan, a group health plan, or a health benefit plan, including the state health plan, issued, renewed, delivered, or entered into after December 31, 2010.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 144

(R142, S914)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-13-120 SO AS TO SET SIZE LIMITS, CATCH LIMITS, AND OTHER CATCH REQUIREMENTS FOR BLACK BASS (LARGEMOUTH) IN LAKE MARION, LAKE MOULTRIE, AND THE UPPER SANTEE RIVER; AND TO AMEND SECTION 50-13-385, AS AMENDED, RELATING TO SIZE LIMITS FOR BLACK BASS (LARGEMOUTH) IN CERTAIN SPECIFIED LAKES, SO AS TO DELETE LAKE MARION AND LAKE MOULTRIE.

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

Black bass size and catch limits

SECTION 1. Article 1, Chapter 13, Title 50 of the 1976 Code is amended by adding:

"Section 50-13-120. (A) As used in this section:

(1) 'Lake Marion' means all waters of the Santee River and its tributaries impounded by the Lake Marion Dam, including the flooded backwater areas in Calhoun and Sumter Counties.

(2) 'Lake Moultrie' means all waters impounded by the Pinopolis Dam and the Saint Stephen Dam, including the diversion canal and those waters of the rediversion canal upstream of the Saint Stephen Dam.

(3) 'Upper reach of the Santee River' means all waters of the Santee River from the backwaters of Lake Marion at the railroad trestle bridge near Rimini upstream to the confluence of the Congaree and Wateree Rivers.

(B) It is unlawful to possess any black bass (largemouth) in Lakes Marion or Moultrie or the upper Santee River less than fourteen inches in total length. It is unlawful to land black bass without the head and tail fin intact.

(C) The lawful catch limit for black bass (largemouth) or a combination of them in Lakes Marion or Moultrie or the upper Santee River is five per day."

Lakes deleted

SECTION 2. Section 50-13-385 of the 1976 Code, as last amended by Act 286 of 2008, is further amended to read:

"Section 50-13-385. It is unlawful to take or possess largemouth bass less than twelve inches in length in Lake Wylie. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed one hundred dollars or imprisoned for a term not to exceed thirty days."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 145

(R162, H4340)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 23, TITLE 57 SO AS TO DESIGNATE CERTAIN HIGHWAYS IN OCONEE COUNTY AS THE FALLING WATERS SCENIC BYWAY, AND TO MAKE IT SUBJECT TO THE

REGULATIONS OF THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION AND THE SOUTH CAROLINA SCENIC HIGHWAYS COMMITTEE.

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

Falling Waters Scenic Byway

SECTION 1. Chapter 23, Title 57 of the 1976 Code is amended by adding:

"Article 19

Falling Waters Scenic Byway

Section 57-23-1000. (A) That portion of South Carolina Highway 107 beginning at the United States Forest Service property line south of Dodge Mountain, approximately five miles north of its intersection with South Carolina Highway 28, continuing in a northerly direction to the North Carolina State line, that portion of S-37-413 beginning at its intersection with South Carolina Highway 107 continuing in a northeasterly direction to South Carolina Highway 130, and South Carolina Highway 130 from its intersection with S-37-413 continuing in a northeasterly direction to the North Carolina State line, all being connected routes totaling approximately thirteen miles, are designated as the Falling Waters Scenic Byway. Certain parts of this route previously designated as the Oscar Wigington United States Forest Service Scenic Byway, may maintain dual designation as a state scenic highway and a United States Forest Service Scenic Byway. The Falling Waters Scenic Byway is subject to the regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee.

(B) The Department of Transportation shall install appropriate markers or signs to implement this designation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Approved the 31st day of March, 2010.

No. 146

(R159, H3442)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41-29-300 SO AS CREATE THE WORKFORCE DEPARTMENT APPELLATE PANEL AND PROVIDE FOR ITS COMPOSITION AND A METHOD OF SCREENING AND ELECTING MEMBERS AND A CHAIRMAN, TO PROVIDE A PARTY ONLY MAY APPEAL FROM A DECISION OF THE WORKFORCE DEPARTMENT TO THE PANEL, AND TO REQUIRE A QUORUM OF THE PANEL TO CONDUCT A HEARING OR DECIDE AN APPEAL; BY ADDING SECTION 41-29-310 SO AS TO TRANSFER THE WORKFORCE INVESTMENT ACT PROGRAM FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF WORKFORCE; TO AMEND SECTION 1-30-10, AS AMENDED, RELATING TO DEPARTMENTS WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT, SO AS TO ADD THE DEPARTMENT OF WORKFORCE TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; TO AMEND SECTION 41-29-10, RELATING TO THE EMPLOYMENT SECURITY COMMISSION, SO AS TO PROVIDE CHAPTERS 27 THROUGH 41 OF TITLE 41 ARE ADMINISTERED BY THE DEPARTMENT, AND TO DELETE OTHER LANGUAGE IN THE SECTION; TO AMEND SECTION 41-29-20, RELATING TO THE CHAIRMAN, QUORUM, AND FILLING OF A VACANCY ON THE EMPLOYMENT SECURITY COMMISSION, SO AS TO DELETE THE EXISTING LANGUAGE AND TO PROVIDE THE DEPARTMENT OF WORKFORCE MUST BE MANAGED AND OPERATED BY A DIRECTOR APPOINTED BY THE GOVERNOR, TO PROVIDE THE DIRECTOR SERVES COTERMINOUS TO THE GOVERNOR AND MAYBE REMOVED BY THE GOVERNOR, AND TO PROVIDE THE DIRECTOR SHALL RECEIVE CERTAIN COMPENSATION; TO AMEND SECTION 8-17-370,

AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE EMPLOYMENT GRIEVANCE PROCEDURE, SO AS TO EXEMPT THE EXECUTIVE DIRECTOR, ASSISTANT DIRECTORS, AND AREA DIRECTORS OF THE DEPARTMENT OF WORKFORCE FROM THE STATE EMPLOYEE GRIEVANCE PROCEDURE; BY ADDING SECTION 41-27-650 SO AS TO PROVIDE THE DEPARTMENT MUST WORK IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE ON CERTAIN MATTERS AND IN CONJUNCTION WITH THE STATE BUDGET AND CONTROL BOARD ON CERTAIN MATTERS; TO AMEND SECTION 41-33-45, RELATING TO CERTAIN ANNUAL REPORTS REQUIRED OF THE DEPARTMENT, SO AS TO REQUIRE THE DEPARTMENT ANNUALLY MUST REPORT TO THE GENERAL ASSEMBLY, THE REVIEW COMMITTEE, AND THE GOVERNOR THE AMOUNT IN THE UNEMPLOYMENT TRUST FUND AND MAKE AN ASSESSMENT OF ITS FUNDING LEVEL, AND TO SPECIFY CERTAIN REQUIREMENTS OF THE REPORT; TO AMEND SECTION 41-31-10, AS AMENDED, RELATING TO GENERAL RATES OF EMPLOYMENT CONTRIBUTION TO THE UNEMPLOYMENT TRUST FUND, SO AS TO PROVIDE AN EMPLOYER MAY PREPAY HIS REQUIRED CONTRIBUTION TO THIS FUND, AND TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS REGARDING THE METHODOLOGY FOR CALCULATING THESE PREPAYMENTS AND THE MANNER FOR CREDITING THESE PREPAYMENTS TO THE EMPLOYER'S ACCOUNT; TO AMEND SECTIONS 41-27-10, 41-27-30, 41-27-150, 41-27-160, 41-27-190, 41-27-210, AS AMENDED, 41-27-230, 41-27-235, AS AMENDED, 41-27-260, AS AMENDED, 41-27-360, 41-27-370, AS AMENDED, 41-27-380, 41-27-390, 41-27-510, 41-27-550, 41-27-560, 41-27-570, 41-27-580, 41-27-600, 41-27-610, 41-27-620, 41-27-630, 41-29-40, 41-29-50, 41-29-70, 41-29-80, 41-29-110, 41-29-130, 41-29-140, 41-29-150, 41-29-170, AS AMENDED, 41-29-180, 41-29-190, 41-29-200, 41-29-210, 41-29-220, 41-29-230, 41-29-240, 41-29-270, 41-29-280, 41-29-290, 41-33-10, 41-33-20, 41-33-30, 41-33-40, 41-33-45, 41-33-80, AS AMENDED, 41-33-90, 41-33-100, 41-33-110, 41-33-120, 41-33-130, 41-33-170, 41-33-180, 41-33-190, 41-33-200, 41-33-210, 41-33-430, 41-33-460, 41-33-470, 41-33-610, 41-33-710, 41-35-30, 41-35-100, 41-35-115, AS AMENDED, 41-35-125, 41-35-126, 41-35-130, AS AMENDED,

41-35-140, 41-35-330, 41-35-340, 41-35-410, 41-35-420, AS AMENDED, 41-35-450, 41-35-610, 41-35-630, 41-35-640, AS AMENDED, 41-35-670, 41-35-680, AS AMENDED, 41-35-690, 41-35-700, 41-35-710, AS AMENDED, 41-35-730, 41-35-740, 41-35-750, AS AMENDED, 41-37-20, 41-37-30, 41-39-30, 41-39-40, 41-41-20, AS AMENDED, 41-41-40, AS AMENDED, 41-41-50, 41-42-10, 41-42-20, 41-42-30, AND 41-42-40, ALL RELATING TO VARIOUS DEPARTMENT PROVISIONS, SO AS TO CONFORM THEM TO THE REPLACEMENT OF THE EMPLOYMENT SECURITY COMMISSION WITH THE DEPARTMENT OF WORKFORCE; TO AMEND SECTION 41-29-120, AS AMENDED, RELATING TO EMPLOYMENT STABILIZATION, SO AS TO REQUIRE ADDITIONAL MEASURES; TO AMEND SECTION 41-29-250, RELATING TO PUBLICATION AND FURNISHING OF CERTAIN MATERIAL, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS; TO AMEND SECTION 41-35-110, AS AMENDED, RELATING TO CONDITIONS OF ELIGIBILITY FOR BENEFITS, SO AS TO MAKE A PERSON INELIGIBLE UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 41-35-120, AS AMENDED, RELATING TO DISQUALIFICATION FOR BENEFITS FOR USE OF ILLEGAL DRUGS, SO AS TO PROVIDE THIS DISQUALIFICATION MUST CONTINUE UNTIL CERTAIN CONDITIONS ARE SATISFIED; TO AMEND SECTION 41-35-720, RELATING TO THE CONDUCT OF APPEALED CLAIMS, SO AS TO PROVIDE THE DEPARTMENT MAY PROMULGATE REGULATIONS TO DETERMINE CERTAIN PROCEDURES; BY ADDING SECTION 41-35-760 SO AS TO PROVIDE THE DEPARTMENT MUST PROMULGATE CERTAIN REGULATIONS GOVERNING PROCEEDINGS AND OTHER CERTAIN MATTERS BEFORE THE DEPARTMENT, AND TO SPECIFY CERTAIN REQUIREMENTS FOR THESE REGULATIONS; BY ADDING SECTION 41-35-615 SO AS TO PROVIDE WHEN CERTAIN NOTICES GIVEN AN EMPLOYER MUST BE MADE BY UNITED STATES MAIL OR ELECTRONIC MAIL, AMONG OTHER THINGS; TO AMEND SECTION 41-27-590, RELATING TO THE PROSECUTION OF CERTAIN VIOLATIONS, SO AS TO PROVIDE THE DEPARTMENT MUST REFER CASES OF SIGNIFICANT CLAIMANT FRAUD OR SIGNIFICANT EMPLOYER FRAUD TO THE ATTORNEY GENERAL TO DETERMINE WHETHER PROSECUTION IS

APPROPRIATE; BY ADDING ARTICLE 7 TO CHAPTER 13, TITLE 38 SO AS TO PROVIDE THE DEPARTMENT OF INSURANCE MUST CONDUCT CERTAIN EXAMINATIONS, INVESTIGATIONS, AND MAKE CERTAIN REPORTS RELATED TO THE UNEMPLOYMENT COMPENSATION FUND ADMINISTERED BY THE DEPARTMENT; BY ADDING ARTICLE 7 TO CHAPTER 27, TITLE 41 SO AS TO CREATE THE DEPARTMENT OF WORKFORCE REVIEW COMMITTEE, TO PROVIDE THE COMMITTEE'S COMPOSITION, DUTIES, POWERS, AND ENTITLEMENT TO EXPENSE REIMBURSEMENT; BY ADDING SECTION 41-29-35 SO AS TO PROVIDE FOR THE APPOINTMENT OF THE EXECUTIVE DIRECTOR, THE MANNER OF HIS APPOINTMENT, AND QUALIFICATIONS FOR THE POSITION; BY ADDING SECTION 41-29-25 SO AS TO PROVIDE FOR THE MANNER IN WHICH THE EXECUTIVE DIRECTOR MUST DISCHARGE HIS DUTIES, AMONG OTHER THINGS; TO REPEAL SECTION 41-29-30 RELATING TO THE APPOINTMENT OF A SECRETARY AND CHIEF EXECUTIVE OFFICER OF THE COMMISSION, SECTION 41-29-60 RELATING TO THE ORGANIZATION OF THE COMMISSION AND ITS SEAL, SECTION 41-29-90 RELATING TO THE ADOPTION OF CERTAIN REGULATIONS BY THE COMMISSION RELATED TO THE APPOINTMENT, PROMOTION, AND DEMOTION OF COMMISSION EMPLOYEES, SECTION 41-29-100 RELATING TO THE DELEGATION OF POWERS GRANTED TO THE COMMISSION, SECTION 41-29-130 RELATING TO ADOPTION OF CERTAIN RULES AND REGULATIONS BY THE COMMISSION, AND SECTION 41-29-260 RELATING TO THE ABILITY OF COMMISSIONERS OF THE EMPLOYMENT SECURITY COMMISSION TO FILE OPINIONS OR OFFICIAL MINUTES; AND TO FURTHER PROVIDE FOR THE IMPLEMENTATION OF THIS ACT.

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

Part I

Creation of Workforce Department Appellate Panel,
Transfer of Workforce Management Act Program to Department of Workforce, Creation of Department of Workforce, and

Replacement of the Employment Security Commission
With the Department of Workforce

Workforce Appellate Panel created; purpose, powers, and composition

SECTION 1. Chapter 29, Title 41 of the 1976 Code is amended by adding:

"Section 41-29-300. (A) There is created the Workforce Department Appellate Panel within the Department of Workforce, which is separate and distinct from the department's divisions. The sole purpose of the panel is to hear and decide appeals from decisions of the department's divisions.

(B)(1) The panel initially must be comprised of the members of the South Carolina Employment Security Commission serving on the day before the effective date of this act. These initial panel members may serve in that temporary capacity until their successors are elected pursuant to this section.

(2) The members of the appellate panel must be elected by the General Assembly, in joint session, for terms of four years and until their successors have been elected and qualified, commencing on the first day of July in each presidential election year. Initial elections for members of the appellate panel must be held before May 22, 2010.

(3) The appellate panel must elect one of its members to be chairman. A vacancy must be filled by the Governor through a temporary appointment until the next session of the General Assembly, at which time a joint session of the General Assembly shall elect an appellate panelist to fill the unexpired term.

(4) The appellate panelists 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 but not to exceed compensation that is commensurate with their hearing duties.

(C) A party only may appeal from a decision of the department directly to the panel. A party only may appeal a decision of the panel to an administrative law court in the manner provided in Section 41-35-750.

(D) A quorum must consist of two panel members and is necessary to hear or decide an appeal under subsection (C). A decision of the panel must be rendered in writing and is subject to disclosure under the Freedom of Information Act.

(E)(1) The Department of Workforce Review Committee must screen a person and find him qualified before he may be elected to serve as a member of the appellate panel. The qualifications that each panelist must possess, include, but are not limited to:

(a) a baccalaureate or more advanced degree from:

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

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

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

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

(i) general business administration;

(ii) general business management;

(iii) management at the Department of Workforce, or its predecessor;

(iv) human resources management;

(v) finance; or

(vi) law.

(2) A member of the General Assembly may not be elected to serve as a panelist or appointed to be a panelist while serving in the General Assembly; nor shall a member of the General Assembly be elected or appointed to be a panelist for a period of two years after the member either:

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

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

(3) When screening an appellate panel candidate and making its findings regarding the candidate, the South Carolina Department of Workforce Review Committee must give due consideration to a person's ability, area of expertise, dedication, compassion, common sense, and integrity.

(F)(1) A panelist is bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. A panelist also must comply with the applicable requirements of Chapter 13, Title 8.

(2) A panelist and his administrative assistant annually must attend and successfully complete a workshop of at least three continuing education hours in ethics."

Workforce Investment Act transferred to Department of Workforce

SECTION 2. Chapter 29, Title 41 of the 1976 Code is amended by adding:

"Section 41-29-310. The Workforce Investment Act program created by the Workforce Investment Act of 1988 and transferred to the Department of Commerce by Executive Order 2005-09 is transferred to the Department of Workforce on the effective date of this section."

Department of Workforce added to Executive branch departments

SECTION 3. Section 1-30-10(A) of the 1976 Code is amended to read:

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

1. Department of Agriculture
2. Department of Alcohol and Other Drug Abuse Services
3. Department of Commerce
4. Department of Corrections
5. Department of Disabilities and Special Needs
6. Department of Education
7. Department of Health and Environmental Control
8. Department of Health and Human Services
9. Department of Insurance
10. Department of Juvenile Justice
11. Department of Labor, Licensing and Regulation
12. Department of Mental Health
13. Department of Natural Resources
14. Department of Parks, Recreation and Tourism
15. Department of Probation, Parole and Pardon Services
16. Department of Public Safety
17. Department of Revenue
18. Department of Social Services
19. Department of Transportation
20. Department of Workforce"

Unemployment Security provisions to be administered by Department of Workforce

SECTION 4. Section 41-29-10 of the 1976 Code is amended to read:

"Section 41-29-10. Chapters 27 through 41 of this title shall be administered by the South Carolina Department of Workforce."

Department of Workforce created; executive director to manage, receive compensation

SECTION 5. Section 41-29-20 of the 1976 Code is amended to read:

"Section 41-29-20. There is hereby created the South Carolina Department of Workforce which must be managed and operated by an executive director nominated by the State Department of Workforce Review Committee and appointed by the Governor. The term of the executive director is conterminous with that of the Governor and until a successor is appointed pursuant to this act. The executive director is subject to removal by the Governor as provided in Section 1-3-240(B). The executive director shall receive compensation as established under the provisions of Section 8-11-160 and for which funds have been authorized in the general appropriations act. For the purposes of this chapter, 'department' means the South Carolina Department of Workforce."

State employment grievance procedure exemptions; certain Department of Workforce directors exempted

SECTION 6. Section 8-17-370 of the 1976 Code, as last amended by Act 353 of 2008, is further amended by adding a new item at the end appropriately numbered to read:

"( ) the executive director, assistant directors, and the area directors of the South Carolina Department of Workforce created pursuant to Section 1-30-10(A)(20)."

Department must work in conjunction with Department of Commerce and State Budget and Control Board on certain matters

SECTION 7. Article 5, Chapter 27, Title 41 of the 1976 Code is amended by adding:

"Section 41-27-650. (A) The Department of Commerce and the Department of Workforce must work in conjunction to develop or procure computer hardware, software, and other equipment that are compatible with each other as needed to efficiently address the state's policy goals as set forth in Section 41-27-20. Once information technology is attained, the departments regularly must develop reports that address relevant workforce issues and make the reports available to workforce training entities, including, but not limited to, the State Board for Technical and Comprehensive Education, the Commission on Higher Education, and the State Agency of Vocational Rehabilitation. Additionally, the departments must respond promptly to inquiries for information made by education and workforce training entities.

(B) The department must work in conjunction with the State Budget and Control Board to coordinate its computer system with computer systems of other state agencies so that the department may more efficiently match unemployed persons with available jobs. The department must provide a progress report concerning implementation of this subsection to the Chairman of the Senate Labor, Commerce and Industry Committee, the Chairman of the House of Representatives Ways and Means Committee, the Department of Workforce Review Committee, and the Governor every three months until fully implemented.

(C) This section is not intended to restrict or hinder the development of an unemployment benefits system financed in whole or in part by the United States Department of Labor."

Annual reporting requirements; trend chart and certain analyses required

SECTION 8. Section 41-33-45 of the 1976 Code, as added by Act 73 of 1999, is amended to read:

"Section 41-33-45. (A) The department shall report, by October first of each year, to the General Assembly, the Review Committee, and to

the Governor the amount in the unemployment trust fund and make an assessment of its funding level.

(B)(1) The annual assessment report must contain a trend chart concerning the unemployment trust fund's annual balance each year for at least the previous five years. The chart must compare the ending balance for each year with the minimum reserves needed to withstand an average recession and a severe recession.

(2) The annual assessment report also must contain an analysis of the cost paid to beneficiaries and cost-shifting, if any, from companies without a negative balance in their account fund to companies with a negative balance in their fund account. The analysis must be conducted with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. The analysis also must include recommendations for adjusting the tax structure to address inequities that arise due to cost-shifting."

General employer rates of contribution to Unemployment Trust Fund; prepaying allowed, regulations must determine methods for calculating prepayments and crediting to employer's account

SECTION 9. Section 41-31-10(A) of the 1976 Code, as last amended by Act 37 of 1999, is further amended to read:

"(A) Each employer shall pay contributions equal to five and four-tenths percent of wages paid by him during each year except as may be otherwise provided in Chapters 27 through 41 of this title. Employers may prepay their required contributions to the fund. The department must promulgate regulations regarding the methodology by which the allowed prepayment amounts will be calculated and the manner in which they will be credited to the employer's account."

Department recommendations on restoring solvency of Unemployment Trust Fund; reporting requirements

SECTION 10. The department must file a report with the General Assembly, the Review Committee, and the Governor on or about January 1, 2011, making recommendations concerning restoration of the solvency of the unemployment trust fund.

Part II

Conforming and Miscellaneous Amendments

Conforming amendment

SECTION 11. Section 41-27-10 of the 1976 Code is amended to read:

"Section 41-27-10. Chapters 27 through 41 of this title shall be known and may be cited as the 'South Carolina Department of Workforce'."

Conforming amendment

SECTION 12. Section 41-27-30 of the 1976 Code is amended to read:

"Section 41-27-30. Nothing in Chapters 27 through 41 of this title must be construed to cause the department or the courts of this State in interpreting these chapters to be bound by interpretations as to liability or nonliability of employers by Federal administrative agencies, nor is it the intent of the General Assembly to require an identical coverage of employers under these chapters with coverage requirements pursuant to Section 3101 et seq. of the Federal Internal Revenue Code."

Conforming amendment

SECTION 13. Section 41-27-150 of the 1976 Code is amended to read:

"Section 41-27-150. 'Base period' means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41-29-140(2), the base period is that applicable provided by the law of the paying state."

Conforming amendment

SECTION 14. Section 41-27-160 of the 1976 Code is amended to read:

"Section 41-27-160. 'Benefit year' means the one-year period beginning with the day as of which an insured worker first files a request for determination of his insured status, and afterward the one-year period beginning with the day by which he next files this request after the end of his last preceding 'benefit year'; provided, that in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41-29-140(2), the benefit year is that applicable provided by the law of the paying state. The filing of a notice of unemployment is considered a request for determination of insured status if a current benefit year has not previously been established. A request for determination of insured status must be made pursuant to regulations as the department prescribes."

Conforming amendment

SECTION 15. Section 41-27-190 of the 1976 Code is amended to read:

"Section 41-27-190. 'Department' means the South Carolina Department of Workforce."

Conforming amendment

SECTION 16. Section 41-27-210(11) of the 1976 Code is amended to read:

"(11) For purposes of paragraphs (2), (6), (7), and (8), employment includes service that would constitute employment but for the fact that the service is considered to be performed entirely within another state pursuant to an election provided by an arrangement entered into in accordance with Section 41-27-550 by the department and an agency charged with the administration of another state or federal unemployment compensation law."

Conforming amendment

SECTION 17. Section 41-27-230(10) of the 1976 Code is amended to read:

"(10) A service not covered under item (7) of this section and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of another state or of the federal government, is considered employment subject to Chapters 27 through 41 of this title if the individual performing such services is a resident of this State and the department approves the election of the employing unit for whom the services are performed that the entire service of the individual is considered employment subject to Chapters 27 through 41 of this title."

Conforming amendment

SECTION 18. Section 41-27-235(C)(2) of the 1976 Code, as last amended by Act 170 of 2004, is further amended to read:

"(2) A Native American tribe or tribal unit that elects to pay a benefit attributable to service in their employ but fails to reimburse the required payment, including an interest and penalty assessment, within ninety days of the receipt of a bill, causes the Native American tribe to lose the option to make a payment in lieu of a contribution for the following tax year unless payment in full is received before the contribution rates for the next year are computed. The department shall notify the United States Internal Revenue Service and the United States Department of Labor of a tribe or tribal unit's failure to make a required payment within ninety days of a final notice of delinquency."

Conforming amendment

SECTION 19. Section 41-27-260 of the 1976 Code, as last amended by Act 306 of 2002, is further amended to read:

"Section 41-27-260. The term 'employment' as used in Chapters 27 through 41 of this title does not include:

(1) labor engaged in the seafood industry, which is defined as persons employed in the commercial netting, catching, and gathering of seafood, and the processing of such seafood for the fresh market;

(2) casual labor not in the course of the employing unit's trade or business;

(3) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of his father or mother;

(4) service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by Chapters 27 through 41 of this title, except that to the extent that the Congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of Chapters 27 through 41 of this title are applicable to those instrumentalities and to services performed for those instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers; provided, that if this State is not certified for a year by the Secretary of Labor or his successors under the Federal Internal Revenue Code, the payments required of those instrumentalities with respect to such year must be refunded by the department from the funds in the same manner and within the same period as is provided in Section 41-31-360 with respect to contributions erroneously collected;

(5) service performed after December 31, 1977, in the employ of a governmental entity referred to in Section 41-27-230(2)(b), if the service is performed by an individual in the exercise of his duties as:

(a) an elected official or as the appointed successor of an elected official;

(b) a member of a legislative body, or a member of the judiciary of a state or political subdivision;

(c) a member of the State National Guard or Air National Guard;

(d) an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(e) in a position that, pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(6) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the department must enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication of it in the manner provided in Section 41-29-130 for general rules, to provide reciprocal treatment to individuals who have after acquiring potential

rights to benefits under Chapters 27 through 41 of this title, acquired rights to unemployment compensation under such act of Congress or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under Chapters 27 through 41 of this title;

(7) service other than service performed as defined in Section 41-27-230(3) performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), a political campaign on behalf of a candidate for public office, provided, that service performed in the employ of an organization operated for the primary purpose of carrying on a trade or business for profit may not be exempt on the grounds that all of its profits are payable to one or more organizations exempt under this paragraph;

(8) service other than service performed as defined in Section 41-27-230(3) that is performed in a calendar quarter in the employ of an organization exempt from federal income tax under Section 501(a) (other than an organization described in Section 401(a)) or under Section 521 of the Federal Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars;

(9) the term 'employment' does not include:

(a) service performed in the employ of a school, college, or university, if the service is performed by:

(i) a student who is enrolled and is regularly attending classes at the school, college or university; or

(ii) the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by his school, college, or university, and the employment is not covered by a program of unemployment insurance;

(b) service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a

full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has certified this to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(c) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in Section 41-27-280;

(10) for the purposes of Section 41-27-230(2) and (3), 'employment' does not include service performed:

(a) in the direct employ of a church, convention, or association of churches or an organization operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, convention, or association of churches; or

(b) by an ordained, a commissioned, or a licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order; or

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be absorbed readily in the competitive labor market by an individual receiving rehabilitation or remunerative work; or

(d) before January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution; or

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency or political subdivision of a state, or an individual receiving work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; or

(f) by an inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351;

(11) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(12) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered and approved pursuant to state law;

(13) service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if this service is performed by the individual for his employer for remuneration solely by way of the commission;

(14) service other than service performed as defined in Section 41-27-230(3) by an individual for an employer as a real estate salesman or agent, if this service is performed by the individual for his employer for remuneration solely by way of the commission;

(15) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(16) 'agricultural labor' as defined by Section 41-27-120 and when performed by students who are enrolled and regularly attending classes for at least five months during a particular year at a secondary school or at an accredited college, university, or technical school and also when performed by part-time persons who do not qualify as students pursuant to this section but who at the conclusion of their agricultural labor would not qualify for benefits pursuant to the provisions of the department;

(17) service performed as a member of a Native American tribal council or service in a fishing rights related activity of a Native American tribe by a member of the tribe for another member of the tribe or by a qualified Native American entity."

Conforming amendment

SECTION 20. Section 41-27-360 of the 1976 Code is amended to read:

"Section 41-27-360. 'Statewide average weekly wage' means the amount computed by the department as of July first of each year that is the aggregate amount of wages, irrespective of the limitation on the amount of wages subject to contributions by reason of Section 41-27-380(2), reported by employers as paid during the first four of the last six completed calendar quarters before this date, divided by a figure representing fifty-two times the twelve-month average of the

number of employees in the pay period containing the twelfth day of each month during the same four calendar quarters as reported by those employers."

Conforming amendment

SECTION 21. Section 41-27-370 of the 1976 Code, as last amended by Act 349 of 2000, is further amended to read:

"Section 41-27-370. (1) An individual is considered 'unemployed' in a week during which he performs no services and with respect to which no wages are payable to him or in a week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. The department must prescribe regulations applicable to unemployed individuals, making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department considers necessary.

(2) An individual is considered 'unemployed' in a week during which no governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to his employment is payable to him or, if that payment is payable to him with respect to those weeks, the amount of it is less than his weekly benefit amount. An eligible individual who is unemployed in a week and is receiving a government or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to his employment must be paid with respect to this week a benefit in an amount equal to his weekly benefit amount less the pension, retirement or retired pay, annuity, or other similar periodic payment payable to him with respect to such week. This benefit, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. The amount of benefits payable to an individual for a week that begins after the effective date of the applicable provision in the Federal Unemployment Tax Act and that begins in a period with respect to which this individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual must be reduced not below zero but by an amount equal to the amount of this pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week. However, if the provisions of the Federal Unemployment Tax Act permit, the requirements of this

subsection shall apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained, or contributed to, by a base period employer or chargeable employer.

In the event the individual has participated in a pension, retirement or retired pay, annuity, or other similar plan of the base period employer or chargeable employer by having made contributions to this plan, the weekly benefit amount payable to the individual for that week must be reduced, but not below zero, by:

(a) the prorated weekly amount of the pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual; or

(b) no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or any other person or organization, who is not a base period employer or chargeable employer; or

(c) the entire prorated weekly amount of the pension if subitem (a) or (b) does not apply.

This provision is effective for all weeks commencing on or after August 29, 1982.

For purposes of this subsection, social security benefits are not considered a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to the beneficiary's employment. As a result, the offset of social security will be reduced from fifty to zero percent based on the fact that individuals are required to contribute to social security.

(3) An individual may not be considered unemployed in a week in which the department finds that his unemployment is due to a vacation week with respect to which the individual is receiving or has received his regular wages. This subsection does not apply to a claimant whose employer fails to comply, in respect to the vacation period, with the requirements of a regulation or procedure of the department regarding the filing of a notice, report, information, or claim in connection with individual, group, or mass separation arising from the vacation.

(4) An individual may not be considered unemployed in a week, not to exceed two in any benefit year, in which the department finds his unemployment is due to a vacation week that is constituted a vacation period without pay by reason of a written contract between the employer and the employees or by reason of the employer's vacation policy and practice to his employees. This provision applies only if the department finds employment will be available for the claimant with the employer at the end of a vacation period as described in this

section. This subsection is not applicable to a claimant whose employer fails to comply, in respect to this vacation period, with the requirements of a regulation or procedure of the department regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation."

Conforming amendment

SECTION 22. Section 41-27-380 of the 1976 Code is amended to read:

"Section 41-27-380. (A) 'Wages' means remuneration paid for personal services, including commissions and bonuses, sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent, or arbitration for loss of pay by reason of discharge and cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in a medium other than cash is estimated and determined pursuant to regulations prescribed by the department. 'Wages' includes all tip income, including charged tips, received while performing a service that constitutes employment and are included in a written statement furnished to the employer. 'Wages' does not include:

(1) the amount of a payment with respect to services performed on behalf of an individual in its employ provided by a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals, including an amount paid by an employing unit for insurance or annuities or into a fund to provide for any such payment, because of:

(a) retirement;

(b) sickness or accident disability;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death, provided the individual is in its employ has not the:

(i) option to receive, instead of provisions for death benefits, part of payment or, if the death benefit is insured, part of the premiums or contributions to premiums paid by his employing unit; and

(ii) right, under a provision of the plan, system, or policy of insurance providing for a death benefit, to assign the benefit or receive a cash consideration in lieu of the benefit either upon his withdrawal from the plan or system providing for the benefit or upon termination

of the plan, system, or policy of insurance or of his service with the employing unit;

(2) an amount received from this State or the Federal Government by a member of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, and the Reserve Corps of Marines as drill pay, including a longevity pay and allowance;

(3) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ, pursuant to Section 3101 of the Federal Internal Revenue Code, only if the service is agricultural labor or domestic service in a private home of the employer;

(4) a payment, other than vacation pay or sick pay, made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which payment is made;

(5) a remuneration paid in a medium other than cash for a service performed in an agricultural labor or domestic service.

(B) For the purpose of Article 1, Chapter 31, of this title, 'wages' does not include a portion of remuneration that, after remuneration equal to seven thousand dollars has been paid in a calendar year to an individual by an employer or his predecessor or with respect to employment during a calendar year, is paid to the individual by the employer during the calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, employment includes service constituting employment under any unemployment compensation law of another state."

Conforming amendment

SECTION 23. Section 41-27-390 of the 1976 Code is amended to read:

"Section 41-27-390. 'Week' means calendar week or a period of seven consecutive days that the department prescribes by regulation. The department likewise may determine that a week is considered 'in', 'within', or 'during' that benefit year which includes the greater part of that week."

Conforming amendment

SECTION 24. Section 41-27-510 of the 1976 Code is amended to read:

"Section 41-27-510. The department must promulgate regulations applicable to unemployed individuals, making distinctions in the procedures regarding total unemployment, part-total unemployment, partial unemployment of the individuals attached to their regular jobs and other forms of short-time work as the department considers necessary."

Conforming amendment

SECTION 25. Section 41-27-550 of the 1976 Code is amended to read:

"Section 41-27-550. The department may enter into agreements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 41-27-230 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this State or within one of such other states and whereby potential rights to benefits accumulative under the unemployment compensation laws of one or more states or under the law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department considers fair and reasonable as to all affected interests and will not result in a substantial loss to the fund, and the department may enter into agreements with appropriate agencies of other states or the federal government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state."

Conforming amendment

SECTION 26. Section 41-27-560 of the 1976 Code is amended to read:

"Section 41-27-560. A report, communication, or other similar matter, either oral or written from an employee or employer to the other or to the department or its agents, representatives, or employees that has been written, sent, delivered, or made in connection with the requirements and the administration of Chapters 27 through 41 of this title must not be made the subject matter or basis of a suit for slander or libel in a court of this State."

Conforming amendment

SECTION 27. Section 41-27-570 of the 1976 Code is amended to read:

"Section 41-27-570. In case of a suit to enjoin the collection of the contributions provided for in Chapters 27 through 41 of this title, to test the validity of those chapters or for another purpose connected with its duties, the department must be made a party to it and the Attorney General or counsel for the department shall defend the suit in accordance with the provisions of Section 41-27-580."

Conforming amendment

SECTION 28. Section 41-27-580 of the 1976 Code is amended to read:

"Section 41-27-580. In a civil action to enforce the provisions of Chapters 27 through 41 of this title, the department and the State may be represented by a qualified attorney employed by the department and is designated by it for this purpose or, at the department's request, by the Attorney General."

Conforming amendment

SECTION 29. Section 41-27-600 of the 1976 Code is amended to read:

"Section 41-27-600. The department may compromise a civil penalty or cause of action arising pursuant to a provision of Chapters 27 through 41 of this title instead of commencing suit on them and may compromise the case after suit on it commences. In these cases the department shall keep on file in its office the reasons for settlement by compromise; a statement on the amount of contribution imposed; the

amount of additional contribution, penalty, or interest imposed by law in consequence of neglect or delinquency; and the amount actually paid pursuant to the terms of the compromise."

Conforming amendment

SECTION 30. Section 41-27-610 of the 1976 Code is amended to read:

"Section 41-27-610. The failure to do an act required pursuant to a provision of Chapters 27 through 41 of this title is considered an act committed in part at the office of the department."

Conforming amendment

SECTION 31. Section 41-27-620 of the 1976 Code is amended to read:

"Section 41-27-620. The certificate of the department to the effect that a contribution has not been paid, that a report has not been made, that information has not been furnished, or that records have not been produced or made available for inspection, as required pursuant to Chapters 27 through 41 of this title, is prima facie evidence of the alleged action."

Conforming amendment

SECTION 32. Section 41-27-630 of the 1976 Code is amended to read:

"Section 41-27-630. A benefit is considered due and payable pursuant to Chapters 27 through 41 of this title only to the extent provided in those chapters and to the extent that money is available for them to the credit of the unemployment compensation fund and neither the State nor the department must be liable for an amount in excess of that sum."

Conforming amendment

SECTION 33. Section 41-29-40 of the 1976 Code is amended to read:

"Section 41-29-40. There are created under the department two coordinate divisions, the South Carolina State Employment Service Division created pursuant to Section 41-5-10, and a division to be known as the Unemployment Compensation Division. Each division must be administered by a full-time salaried director, who is subject to the supervision and direction of the department. The department may appoint, fix the compensation of, and prescribe the duties of the directors of these divisions. These appointments must be made on a nonpartisan merit basis in accordance with the provisions of Section 41-29-90. The director of each division shall be responsible to the department for the administration of his respective division and has the power and authority as vested in him by the department."

Conforming amendment

SECTION 34. Section 41-29-50 of the 1976 Code is amended to read:

"Section 41-29-50. The executive director may appoint local or industry advisory councils, composed in each case of equal numbers of employer representatives and employee representatives, who may fairly be regarded as representatives because of their vocation, employment or affiliations, and of members representing the general public as the executive director designates. Local councils shall aid the department in formulating a policy and discussing problems relating to the administration of Chapters 27 through 41 of this title, and in assuring impartiality and freedom from political influence in the solution of those problems. Members of local advisory councils must serve without compensation, must receive per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees."

Conforming amendment

SECTION 35. Section 41-29-70 of the 1976 Code is amended to read:

"Section 41-29-70. Subject to the provisions of Chapters 27 through 41 of this title, the department may employ or retain on a contract basis other accountants, attorneys, experts necessary to perform the department's duties."

Conforming amendment

SECTION 36. Section 41-29-80 of the 1976 Code is amended to read:

"Section 41-29-80. The department shall:

(1) classify all positions under Chapters 27 through 41 of this title except those exempted by the Federal Social Security Act or regulations of the Secretary of Labor or his successors; and

(2) establish salary schedules and minimum personnel standards. These standards must conform to the minimum standards prescribed under the provisions of Section 303(a)(1) of the Federal Social Security Act, as amended, and applicable state law and regulations."

Conforming amendment

SECTION 37. Section 41-29-110 of the 1976 Code is amended to read:

"Section 41-29-110. The department must promulgate regulations necessary to carry out the provisions of Chapters 27 through 41 of this title, employ personnel, make expenditures, require reports not otherwise provided for in these chapters, conduct investigations or take other action as it considers necessary or suitable to administer its duties and exercise its powers pursuant to the title."

Employment stabilization; additional measures required

SECTION 38. Section 41-29-120 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

"Section 41-29-120. (A)(1) The department, with the advice and aid of its advisory councils and through its appropriate divisions, shall take appropriate steps to:

(a) reduce and prevent unemployment;

(b) encourage and assist in adopting practical methods of vocational training, retraining, and vocational guidance;

(c) investigate, recommend, advise, and assist in establishing and operating, by a municipality, county, school district, and the State, of reserves for public works to be used in times of business depression and unemployment;

(d) promote the reemployment of unemployed workers throughout the State in every other way that is feasible; and

(e) promote the joint electronic filing of Employer Unemployment Insurance Benefits Payments and Reports in conjunction with South Carolina Business One Stop to provide employment units a single point of contact for reporting and paying state taxes.

(2) While pursuing these goals, the department also shall carry on and publish the results of statistical surveys, investigations, and research studies.

(B) The department may require from an employing unit for the department's cooperation with the Bureau of Labor Statistics of the United States Department of Labor or its successor agency the United States Bureau of Labor Statistics report to:

(1) assign industry codes to South Carolina employers under the ES-202 Covered Employment and Wages Program;

(2) collect employment information on multiple worksites for South Carolina employers under the ES-202 Covered Employment and Wages Program;

(3) collect monthly employment, hours, and earnings from South Carolina employers under the BLS-790 Current Employment Statistics Program;

(4) collect employment information from federal employers under the ES-202 Covered Employment and Wages Program; and

(5) collect occupational employment and wage information from South Carolina employers under the Occupational Employment Statistics Program.

(C) As used in this section, 'employing unit' means an entity employing more than twenty individuals.

(D) The department must institute the following measures to the fullest extent possible under state and federal law:

(1) increase eligibility reviews and investigations as to violations of Sections 41-35-110 and 41-35-120 and enforce appropriate disqualifications and penalties;

(2) increase investigations of violations of Chapter 41, Title 41 and enforce appropriate penalties;

(3) increase investigations of violations of Article 3, Chapter 31, Title 41 and enforce appropriate penalties;

(4) keep detailed voting and attendance records at all department and appellate panel hearings and make them available to the General Assembly;

(5) keep detailed travel and expense records for department employees and appellate panelists and make them available to the General Assembly;

(6) continue to work with the South Carolina Budget and Control Board and Office of Research and Statistics to develop and continuously improve a customer service portal, to include increased interagency integration and data sharing, and keep the General Assembly regularly informed of its progress in upgrading its computer system through a possible multistate compact in cooperation with the federal government;

(7) report to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Labor, Commerce and Industry Committee within five days of the effective date of this act as to the degree the department can accomplish or cannot accomplish each subitem in this subsection, and provide reasons why a subitem cannot be accomplished if the department cannot do so;

(8) report to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Labor, Commerce and Industry Committee on the first day of each month in Fiscal Years 2010 and 2011 on the progress of each request; and

(9) take all other actions necessary and prudent to effectively and efficiently manage the state's unemployment benefits program."

Conforming amendment

SECTION 39. Section 41-29-140 of the 1976 Code is amended to read:

"Section 41-29-140. The department may enter an arrangement with the appropriate agency of another state or of the federal government with respect to the combination of wages:

(1) An agreement with the federal government where wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of the federal government, are considered wages for employment by an employer for the purpose of Sections 41-35-10 to 41-35-100 if the agency of the federal government agrees to reimburse the fund for the portion of benefits paid under Chapters 27 through 41 of this title on the basis of these wages or services as the department finds will be fair and reasonable and the department will reimburse the agency of the federal government with a reasonable portion of benefits paid under law of the federal government on the basis of employment or wages for

employment by employers the department finds will be fair and reasonable to all affected interests.

(2) The department shall participate in an arrangement for the payment of compensation on the basis of combining an individual's wages and employment covered under Chapters 27 through 41 of this title with his wages and employment covered under the unemployment compensation law of another state approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in those situations and that includes provisions for:

(a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws; and

(b) avoiding the duplicate use of wages and employment by reason of this combining.

(3) This reimbursement is considered a benefit for the purpose of Section 41-35-50 and Article 1, Chapter 33 of this title. The department may make to another state or federal agency and receive from another state or federal agency reimbursement from or to the fund in accordance with and made pursuant to this section."

Conforming amendment

SECTION 40. Section 41-29-150 of the 1976 Code is amended to read:

"Section 41-29-150. An employing unit must keep true and accurate work records containing information the department prescribes. These records must be open to inspection and subject to being copied by the department or its authorized representative at a reasonable time and as often as necessary. The department and the chairman of an appeal tribunal may require from an employing unit a sworn or unsworn report with respect to persons employed by it that he or it considers necessary for the effective administration of Chapters 27 through 41 of this title. Information obtained in this manner or from an individual pursuant to the administration of these chapters, except to the extent necessary for the proper administration of such chapters, shall be held confidential and may not be published or be open to public inspection, other than to the public employees in the performance of their public duties, in any manner revealing the

individual's or employing unit's identity. However, a claimant or his legal representative at a hearing before an appeal tribunal must be supplied information from these records to the extent necessary for the proper presentation of his claim. An employee or member of the department who violates a provision of this section must be fined not less than twenty dollars or more than two hundred dollars, imprisoned for not longer than ninety days, or both."

Conforming amendment

SECTION 41. Section 41-29-170 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

"Section 41-29-170. (A) A claimant or his legal representative must be supplied with information from the records, to the extent necessary for the proper presentation of his claim in a proceeding pursuant to Chapters 27 through 41, subject to restrictions the department may prescribe by regulation.

(B)(1) Upon written request, the department may furnish information obtained through the administration of Chapters 27 through 42 including, but not limited to, the name, address, ordinary occupation, wages, and employment status of a covered worker or recipient of benefits and the recipient's rights to additional benefits pursuant to Chapters 27 through 41, to:

(a) an agency or agent of the United States charged with the administration of public works or assistance through public employment;

(b) a state agency similarly charged; and

(c) an agency or entity to which disclosure is permitted or required by federal statute or regulation or by state law.

(2) This disclosure is subject to restrictions the department may prescribe by regulation.

(C)(1) The State Employment Office must furnish, upon request of a public agency administering the Temporary Assistance to Needy Families (TANF) or child support programs, a state agency administering food stamp coupons, a state or federal agency administering the new hire directory, or a public housing authority, information in its possession relating to:

(a) an individual who is receiving, has received, or has applied for unemployment insurance;

(b) the amount of benefits being received;

(c) the current home address of these individuals;

(d) whether an offer of work has been refused and, if so, a description of the job and the terms, conditions, and rate of pay;

(e) in the case of requests from a public housing authority, a listing of the current employer and previous employers for the available preceding six calendar quarters;

(f) in the case of requests from the state or federal agency that issues food stamp coupons or the new hire directory, a listing of the current employer and address and previous employers and their addresses, including wage information, for the available preceding six calendar quarters.

The requesting agency is responsible for reimbursing the department for actual costs incurred in supplying the information. This information must be provided in the most useful and economical format possible."

Conforming amendment

SECTION 42. Section 41-29-180 of the 1976 Code is amended to read:

"Section 41-29-180. The department shall endeavor, both for the relief of the clerical work of employers and its own office, to confine reporting to the minimum necessary for the proper administration of the law, and, except for necessary separation, low earnings, special reports or notices, or wage and employment reports required pursuant to Section 41-29-140, it shall not require reports as to the earnings of individual employees more frequently than quarterly."

Conforming amendment

SECTION 43. Section 41-29-190 of the 1976 Code is amended to read:

"Section 41-29-190. In the discharge of the duties imposed by Chapters 27 through 41 of this title, the department or a duly authorized representative of it may administer an oath and affirmation, take a deposition, certify to an official act and issue a subpoena to compel the attendance of a witness and the production of books, papers, correspondence, memoranda and other records considered necessary as evidence in connection with a disputed claim or the administration of Chapters 27 through 41 of this title."

Conforming amendment

SECTION 44. Section 41-29-200 of the 1976 Code is amended to read:

"Section 49-29-200. A person must not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the department, an appeal tribunal, or their duly authorized representative or in obedience to the subpoena of them in a cause or proceeding before the department or an appeal tribunal 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. An individual must not be prosecuted or subjected to a penalty or forfeiture for or on account of a 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 testifying must not be exempt from prosecution and punishment for perjury committed in testifying."

Conforming amendment

SECTION 45. Section 41-29-210 of the 1976 Code is amended to read:

"Section 41-29-210. (1) In case of contumacy by a person or refusal to obey a subpoena issued to a person, a court of this State or judge of this State within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the department or a duly authorized representative may issue to him an order requiring him to appear before the department or a duly authorized representative of the department to produce evidence if ordered to do so or to give testimony touching the matter under investigation or in question. Failure to obey an order of the court may be punished as a contempt of the order.

(2) A person who, without just cause, fails or refuses to attend and testify; to answer a lawful inquiry; or to produce books, papers, correspondence, memoranda and other records, if it is in his power to do this in accordance with a subpoena of the department or a duly authorized representative, must be punished by a fine of not less than twenty nor more than two hundred dollars or by imprisonment for not

more than thirty days. Each failure to obey a subpoena constitutes a separate offense."

Conforming amendment

SECTION 46. Section 41-29-220 of the 1976 Code is amended to read:

"Section 41-29-220. The department may request the Comptroller of the Currency of the United States to cause an examination of the correctness of a return or report of a national banking association rendered pursuant to the provisions of Chapters 27 through 41 of this title, and may in connection with this request transmit this report or return it to the Comptroller of the Currency of the United States as provided in Section 3305(c) of the federal Internal Revenue Code."

Conforming amendment

SECTION 47. Section 41-29-230 of the 1976 Code is amended to read:

"Section 41-29-230. (1) In the administration of Chapters 27 through 41 of this title, the department must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters, and act, through the promulgation of appropriate rules, regulations, administrative methods and standards, as necessary to secure to this State and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

(2) In the administration of the provisions in Article 3 Chapter 35, of this title, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department must act as necessary to:

(a) ensure that the provisions are interpreted and applied to meet the requirements of the federal act as interpreted by the United States Secretary of Labor; and

(b) secure to this State the full reimbursement of the federal share of extended benefits paid pursuant to this title that are reimbursable under the federal act."

Conforming amendment

SECTION 48. Section 41-29-240 of the 1976 Code is amended to read:

"Section 41-29-240. The department may make the state's record relating to the administration of Chapters 27 through 41 of this title available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the board's expense, copies of this record as the Railroad Retirement Board considers necessary for its purposes. The department may afford reasonable cooperation with an agency of the United States charged with the administration of an unemployment insurance law."

Publication and furnishing of certain material

SECTION 49. Section 41-29-250 of the 1976 Code is amended to read:

"Section 41-29-250. The department must:

(A) print and make available for public distribution the text of Chapters 27 through 41 of this title and its:

(1) regulations;

(2) annual reports to the Governor and General Assembly; and

(3) other material the department considers relevant and suitable; and

(B) furnish this material to a person on request and make it available on its Internet website."

Conforming amendment

SECTION 50. Section 41-29-270 of the 1976 Code is amended to read:

"Section 41-29-270. Notwithstanding the provisions of Chapters 27 through 41 of this title, the department must promulgate regulations necessary for the operation of an emergency unemployment compensation system in the event of an enemy attack that disrupts or endangers the department's usual procedures or facilities."

Conforming amendment

SECTION 51. Section 41-29-280 of the 1976 Code is amended to read:

"Section 41-29-280. Not later than the fifteenth day of January annually, the department shall submit to the Governor and the General Assembly a report covering the administration and operation of Chapters 27 through 41 of this title during the preceding fiscal year and make recommendations for amendments to these chapters as the department considers proper. These reports must include a balance sheet of the money in the fund in which there must be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserves must be set up by the department in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period."

Conforming amendment

SECTION 52. Section 41-29-290 of the 1976 Code is amended to read:

"Section 41-29-290. When the department believes a change in contribution or benefit rates is necessary to protect the solvency of the fund, it promptly must inform the Governor and the General Assembly of this information and make recommendations regarding it."

Conforming amendment

SECTION 53. Section 41-33-10 of the 1976 Code is amended to read:

"Section 41-33-10. There is established a special fund, to be known as the unemployment compensation fund, which must be administered separate and apart from all public monies or funds of the State. This fund must consist of:

(1) all contributions and payments in lieu of contributions collected under Chapters 27 through 41 of this title;

(2) interest earned on any money in the fund;

(3) property or securities acquired through the use of money belonging to the fund;

(4) earnings of those properties or securities;

(5) money credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act, as amended;

(6) money received from the federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Compensation Act of 1970; and

(7) money received for the fund from another source. Money in the fund must be comingled and undivided."

Conforming amendment

SECTION 54. Section 41-33-20 of the 1976 Code is amended to read:

"Section 41-33-20. Subject to the provisions of Chapters 27 through 41 of this title, the department is invested with the full power, authority, and jurisdiction over the fund, including all money, property, and securities belonging to it, and may perform any and all acts, whether or not specifically designated in this title, which are necessary or convenient in the administration of this title consistent with the provisions of those chapters."

Conforming amendment

SECTION 55. Section 41-33-30 of the 1976 Code is amended to read:

"Section 41-33-30. The State Treasurer is ex officio treasurer and custodian of the fund and shall administer it pursuant to the directions of the department and shall issue his warrants upon it pursuant to regulations promulgated by the department."

Conforming amendment

SECTION 56. Section 41-33-40 of the 1976 Code is amended to read:

"Section 41-33-40. All money in the fund must be comingled and undivided, but the State Treasurer shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and
(c) a benefit account.

All money payable to the fund, upon receipt of the money by the department, must be forwarded to the State Treasurer who immediately shall credit it to the clearing account."

Conforming amendment

SECTION 57. Section 41-33-80 of the 1976 Code, as last amended by Act 306 of 2002, is further amended to read:

"Section 41-33-80. Except as provided in Section 41-33-180, money must be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits or refunds pursuant to Section 41-31-360 or item (6) of Section 41-27-260 and in accordance with regulations prescribed by the department; except that money credited to this account pursuant to Section 903 of the Social Security Act, as amended, must be used exclusively as provided in Sections 41-33-130 to 41-33-160."

Conforming amendment

SECTION 58. Section 41-33-90 of the 1976 Code is amended to read:

"Section 41-33-90. The department shall from time to time issue its requisition for a lump sum amount for the payment of benefits or refunds upon the Comptroller General who shall draw his warrant on the State Treasurer in the form provided by law. The Treasurer shall pay this amount to the department by a check drawn on the benefit account, notwithstanding any provisions of law in this State relating to deposit, administration, release and disbursement of money in the possession or custody of this State to the contrary. The department in requisitioning lump sum withdrawals from the State Treasurer for the payment of individual benefit claims shall not exceed in any event the balance of funds in the benefit account, and the requisition must be in an amount estimated to be necessary for benefit payments for a period that the department may prescribe by regulation."

Conforming amendment

SECTION 59. Section 41-33-100 of the 1976 Code is amended to read:

"Section 41-33-100. Such lump sum amounts when received by the department from the State Treasurer must be immediately deposited by the department in a benefit payment account maintained in the name of the department in that bank or public depository and under conditions the department determines necessary. The bank or public depository must be one in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund or benefit payment account. The department shall require the bank or depository it selects as the depository of the benefit payment account security in an amount equal to the amount on deposit. This security must consist of securities or a surety bond required by law of depositories of state funds."

Conforming amendment

SECTION 60. Section 41-33-110 of the 1976 Code is amended to read:

"Section 41-33-110. The department shall delegate to designated representatives the authority to sign checks on the benefit payment account and the signature of one of the designated representatives must be required on each check. The department shall require the representative to give a bond in an amount the department determines for his faithful performance of his duties in connection with the benefit payment account in a form prescribed by law or approved by the Attorney General. Premiums for these bonds must be paid from the unemployment compensation administration fund. A duly authorized representative of the department may draw and issue its checks on the benefit payment account for the payment of individual benefit claims."

Conforming amendment

SECTION 61. Section 41-33-120 of the 1976 Code is amended to read:

"Section 41-33-120. A refund payable pursuant to Section 41-31-360 or item (6) of Section 41-27-260 may be paid from the

clearing or benefit accounts upon requisition by the department to the Comptroller General, who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay the refund from the proper account."

Conforming amendment

SECTION 62. Section 41-33-130 of the 1976 Code is amended to read:

"Section 41-33-130. An expenditure of money in the benefit account and a refund from the clearing account must not be subject to a provision of law requiring a specific appropriation or other formal release by state officers of money in their custody. A warrant issued for the payment of a benefit and a refund must bear the signature of the department or a duly authorized agent for that purpose."

Conforming amendment

SECTION 63. Section 41-33-170 of the 1976 Code is amended to read:

"Section 41-33-170. A balance of money requisitioned from the unemployment trust fund under Section 41-33-80 which remains unclaimed or unpaid in the benefit account and the benefit payment account after the expiration of the period for which those sums were requisitioned either must be deducted from an estimate for, and may be used for the payment of, a benefit during a succeeding period or, in the discretion of the department, must be redeposited with the Secretary of the Treasury of the United States to the credit of this State's account in the unemployment trust fund, as provided in Section 41-33-50."

Conforming amendment

SECTION 64. Section 41-33-180 of the 1976 Code is amended to read:

"Section 41-33-180. Money also may be requisitioned from this State's account in the unemployment trust fund for the payment of benefits under an unemployment compensation, unemployment insurance, or unemployment benefit law administered by a bureau, department, division, agency, or instrumentality of the United States to

which the department has made available its personnel and facilities for the taking, processing, determination, and paying of claims pursuant to Section 41-29-230. No money may be drawn from the unemployment trust fund for the purpose of paying benefits for or on behalf of the United States unless a provision first is made by law, agreement, or contract for the reimbursement of the money by the bureau, department, division, agency, or instrumentality of the United States for or on behalf of which the benefits have been paid."

Conforming amendment

SECTION 65. Section 41-33-190 of the 1976 Code is amended to read:

"Section 41-33-190. The department may establish bank accounts other than the benefit payment account and deposit in them money requisitioned from the unemployment trust fund for the payment of benefits for or on behalf of the United States as provided in Section 41-33-180. All provisions of this article governing the deposit, administration, mode of check signing, and safeguarding of the benefit payment account must apply to an account established by the department under this section."

Conforming amendment

SECTION 66. Section 41-33-200 of the 1976 Code is amended to read:

"Section 41-33-200. A balance of money requisitioned from the unemployment trust fund under Section 41-33-180 which remains unclaimed or not disbursed in those accounts after the expiration of the period for which the sums were requisitioned either must be deducted from estimates for, and used in the payment of, benefits during succeeding periods or, in the discretion of the department, must be redeposited with the Secretary of the Treasury of the United States to the credit of this State's account in the unemployment trust fund, as provided in Section 41-33-50."

Conforming amendment

SECTION 67. Section 41-33-210 of the 1976 Code is amended to read:

"Section 41-33-210. The provisions of this article to the extent that they relate to the unemployment trust fund must be operative only so long as the Secretary of the Treasury of the United States continues to maintain for this State a separate book account of all funds deposited in the trust fund by this State for benefit purposes, together with this State's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals. If and when the unemployment trust fund ceases to exist or a separate book account is no longer maintained, all money, properties, or securities in the trust fund belonging to the unemployment compensation fund of this State must be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release the money, properties, or securities in a manner approved by the department in accordance with the provisions of Chapters 27 through 41 of this title. This money must be invested only in readily marketable bonds or other interest bearing obligations of the United States or of this State or a political subdivision of this State and these investments at all times must be made so that all the assets of the fund always must be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the department in accordance with the purposes and provisions of Chapters 27 through 41 of this title."

Conforming amendment

SECTION 68. Section 41-33-430 of the 1976 Code is amended to read:

"Section 41-33-430. Money deposited or paid into the fund are appropriated and made available to the department. Money in this fund must be expended solely for the purpose of defraying the cost of the administration of Chapters 27 through 41 of this title and for no other purpose. A balance in the fund may not lapse at any time but continuously must be available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by the chairman or a designated member, officer, or agent for payment of the costs of administration to the Comptroller General who shall draw his warrant in the usual form

provided by law on the State Treasurer, who shall pay it by check on the employment security administration fund."

Conforming amendment

SECTION 69. Section 41-33-460 of the 1976 Code is amended to read:

"Section 41-33-460. Money in the employment security administration fund, paid to this State under Title III of the Social Security Act and the Wagner-Peyser Act, found by the Secretary of Labor, or his successors, because of an action or contingency, to have been lost or expended for a purpose other than, or in an amount in excess of, those found necessary by the Secretary of Labor, for the proper administration of the employment security program, it is the policy of this State that the money must be replaced by money appropriated for this purpose from the general funds of this State to the employment security administration fund for expenditures as provided in Section 41-33-430. Funds that have been expended by the department or its agents pursuant to a budget approved by the Secretary of Labor, pursuant to the general standards and limitations promulgated by the Secretary of Labor, before this expenditure, when proposed expenditures have not been specifically disapproved by the Secretary of Labor, must not be considered to require replacement."

Conforming amendment

SECTION 70. Section 41-33-470 of the 1976 Code is amended to read:

"Section 41-33-470. The department shall report to the State Budget and Control Board in the same manner as is required generally for the submission of financial requirements for the ensuing year and the board shall include in its request for general appropriations presented to the General Assembly at its next regular session a statement of the amounts required for any replacement required by Section 41-33-460."

Conforming amendment

SECTION 71. Section 41-33-610 of the 1976 Code is amended to read:

"Section 41-33-610. (A) There is created in the State Treasury a special fund to be known as the employment security special administration fund, which must consist of all penalties and interest collected on contributions due pursuant to Sections 41-31-330 and 41-31-350 and interest collected on unpaid contributions pursuant to Section 41-31-370. Money in the fund must be deposited, administered, and disbursed pursuant to the provisions of Section 41-33-420 applicable to the employment security administration fund.

(B) Money deposited in the special administration fund is appropriated and made available to the department. Money in the fund must be expended solely for:

(1) replacements in the employment security administration fund as provided in Section 41-33-460;

(2) refunds pursuant to Section 41-31-360 of interest erroneously collected; and

(3) special, extraordinary, and incidental expenses incurred in the administration of Chapters 27 through 41 of this title not provided for in the employment security administration fund and for which federal funds are not granted by the federal government through the Secretary of Labor or its other agencies.

(C) A balance in the fund shall not lapse at any time, but must be continuously available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund."

Conforming amendment

SECTION 72. Section 41-33-710 of the 1976 Code is amended to read:

"Section 41-33-710. (A) There is created in the State Treasury a special fund to be known as the employment security administrative contingency fund, which consists of all assessments collected pursuant to Section 41-27-410. Money in the employment security administrative contingency fund must be deposited, administered, and disbursed in accordance with the provisions of Section 41-33-420 applicable to the employment security administration fund.

(B) Money deposited in the employment security administrative contingency fund is appropriate and made available to the department. Money in the fund must be expended to:

(1) assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery;

(2) undertake a program or activity that furthers the goal of the department as provided in Chapter 42 of this title;

(3) supplement basic employment security services with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(4) provide employment services, like recruitment, screening, and referral of qualified workers to agricultural areas where those services have in the past contributed to positive economic conditions for the agricultural industry; and

(5) provide otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment.

(C) A balance in the fund does not lapse, but is continuously available to the department for expenditure consistent with Chapter 42 of this title. The department must issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund."

Conforming amendment

SECTION 73. Section 41-35-30 of the 1976 Code is amended to read:

"Section 41-35-30. (A) When a benefit due an individual has been unpaid at the time of death and the estate of the individual has not been administered in the probate court within sixty days after the time of death, the department may pay benefit amounts the deceased may have been entitled to:

(1) the surviving wife or husband and, if there is none;

(2) the minor children and, if there are none;

(3) the adult children and, if there are none;

(4) the parents of the deceased and, if there are none;

(5) a person dependent on the deceased.

(B) If there is no person within those classifications, the payments due the deceased must lapse and revert to the unemployment trust fund.

(C) Payment to a responsible adult with whom minor children are making their home, upon a written pledge to use the payment for the benefit of these minors, is considered proper and legal payment to the minor children without the requirement of formal appointment of a guardian."

Conforming amendment

SECTION 74. Section 41-35-100 of the 1976 Code is amended to read:

"Section 41-35-100. The department must promulgate regulations necessary to preserve the benefit rights of individuals who volunteer, enlist, or are called or drafted into a branch of the military, naval service, or an organization affiliated with the defense of the United States or this State. These regulations, with respect to these individuals, must supersede an inconsistent provision of Chapters 27 through 41 of this title, but where practicable must secure results reasonably similar to those provided in the analogous provisions of these chapters."

Conditions for benefit eligibility; ineligibility for certain circumstances

SECTION 75. Section 41-35-110 of the 1976 Code, as last amended by Act 497 of 1994, is further amended to read:

"Section 41-35-110. An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he:

(1) has made a claim for benefits with respect to that week pursuant to regulations prescribed by the department;

(2) has registered for work and after work has continued to report at an employment office, except that the department, by regulation, may waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs; provided, that no regulation conflicts with Sections 41-35-10 or 41-35-30;

(3) is able to work and is available for work at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience; is available for this work either at a locality at which he earned wages for insured work during his base period or, if the individual has moved, to a locality where it may reasonably be expected that work suitable for

him under the provisions of Section 41-35-120(3)(b) is available; and, in addition to having complied with subsection (2), is himself actively seeking work; provided, however:

(a) notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit with respect to a week in which he is in training with the approval of the department by reason of the application of the provision of this section relating to availability for work and an active search for work;

(b) a claimant may not be eligible to receive a benefit or waiting period credit if engaged in self-employment of a nature to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time;

(c) no claimant shall be eligible to receive benefits or waiting period credit following the completion of a temporary work assignment unless the claimant shows that he informed the temporary employment agency that provided the assignment of the assignment's completion, has maintained on-going weekly contact with the agency after completion of the assignment, and that the agency has not provided a subsequent assignment for which the claimant's prior training or experience shows him to be fitted or qualified;

(4) has been unemployed for a waiting period of one week, but a week may not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that included the week with respect to which he claims payment of a benefit;

(b) if a benefit has been paid with respect to it; and

(c) unless the individual was eligible for a benefit with respect to it as provided in this section and Section 41-35-120, except for the requirements of this item (4) and of item (5) of Section 41-35-120;

(5) has separated, through no fault of his own, from his most recent bona fide employer; provided, however, the term 'most recent bona fide employer' means the work or employer from which the individual separated regardless of work subsequent to his separation in which he earned less than eight times his weekly benefit amount; and

(6) participates in reemployment services, such as job search assistance services, if he is determined to be likely to exhaust regular benefits and need a reemployment service pursuant to a profiling system established by the department, unless the department determines:

(a) the individual has completed such services; or

(b) there is justifiable cause for the claimant's failure to participate in those services."

Conforming amendment

SECTION 76. Section 41-35-115 of the 1976 Code, as added by Act 21 of 1993, is amended to read:

"Section 41-35-115. Notwithstanding another provision of law, an individual otherwise eligible for a benefit may not be denied a benefit with respect to a week in which he is required by law to appear in court as a witness or juror. However, an unemployment benefit received by a person pursuant to Chapters 27 through 41 of this title must be reduced by any per diem received for service as a juror. The department must promulgate regulations necessary to implement the provisions of this section."

Disqualification for benefits when illegal drugs used; regain qualification when certain conditions satisfied

SECTION 77. Section 41-35-120 of the 1976 Code, as last amended by Act 50 of 2005, is further amended to read:

"Section 41-35-120. An insured worker is ineligible for benefits for:

(1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.

(2) Discharge for cause connected with the employment. If the department finds that he has been discharged for cause connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the

next twenty-six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker's benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge. A charge of discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty. 'Cause connected with the employment' as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity.

(3)(a) Discharge for illegal drug use, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if the:

(i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and

(ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

(iii) insured worker provides a blood, hair, or urine specimen during a drug test administered on behalf of the employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

(A) the sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and

(B) the test was performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists or the State Law Enforcement Division; and

(C) an initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or a more accurate scientifically accepted method approved by the National Institute on Drug Abuse;

(iv) for purposes of this item, 'unlawfully' means without a prescription.

(b) If an insured worker makes an admission pursuant to the employer's policy, which provides that voluntary admissions made before the employer's request to the employee to submit to testing may

protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the:

(i) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer's request to submit to a test; and

(ii) employee makes the admission specifically pursuant to the employer's policy.

(c) Information, interviews, reports, and drug-test results, written or otherwise, received by an employer through a drug-testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including administrative or judicial appeal.

(4) Discharge for gross misconduct, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if he is discharged due to:

(i) wilful or reckless employee damage to employer property that results in damage of more than fifty dollars;

(ii) employee consumption of alcohol or being under the influence of alcohol on employer property in violation of a written company policy restricting or prohibiting consumption of alcohol;

(iii) employee theft of items valued at more than fifty dollars;

(iv) failure to comply with applicable state or federal drug and alcohol testing and use regulations including, but not limited to, 49 C.F.R. part 40 and part 382 of the federal motor carrier safety regulations, while on the job or on duty, and regulations applicable for employees performing transportation and other safety sensitive job functions as defined by the federal government;

(v) employee committing criminal assault or battery of another employee or a customer;

(vi) employee committing criminal abuse of patient or child in his professional care;

(vii) employee insubordination, which is defined as wilful failure to comply with a lawful, reasonable order of a supervisor directly related to the employee's employment as described in an applicable written job description; or

(viii) employee wilful neglect of duty directly related to the employee's employment as described in an applicable written job description.

(5) Failure to accept work.

(a) If the department finds he has failed, without good cause:

(i) (A) either to apply for available suitable work, when so directed by the employment office or the department;

(B) to accept available suitable work when offered to him by the employment office or an employer; or

(C) to return to his customary self-employment, if any, when so directed by the department, the ineligibility begins with the week the failure occurred and continues until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined in Chapters 27 through 41 of this title and earned wages for services equal to at least eight times the weekly benefit amount of his claim.

(b) In determining whether work is suitable for an individual, the department must consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(c) Notwithstanding another provision of Chapters 27 through 41 of this title, work is not considered suitable and benefits may not be denied under these chapters to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit for a week for failure to apply for, or refusal to accept, suitable work because he is in training with the approval of the department.

(e) Notwithstanding another provision of this chapter, an otherwise eligible individual may not be denied a benefit for a week because he is in training approved under Section 236(a)(1) of the Trade

Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter training, if the work left is not suitable employment, or because of the application to a week in training of provisions in this law or an applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subitem, 'suitable employment' means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for the work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) Labor dispute. For a week in which the department finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory, establishment, or other premises at which he was last employed. This paragraph does not apply if it is shown to the satisfaction of the department that he:

(a) is not participating in, financing, or directly interested in the labor dispute;

(b) does not belong to a grade or class of workers of which, immediately before he became unemployed by reason of the dispute, there were members employed at the premises at which the dispute exists, any of whom are participating in or directly interested in the dispute. If separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each department for the purpose of this item is considered to be a separate factory, establishment, or other premises.

(7) Receiving benefits elsewhere. For a week in which, or a part of which, he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to unemployment benefits, this disqualification does not apply.

(8) Voluntary retirement. If the department finds that he voluntarily retired from his most recent work with the ineligibility beginning with the effective date of his claim and continuing for the duration of his unemployment and until the individual submits satisfactory evidence of having had new employment and of having earned wages of not less than eight times his weekly benefit amount as defined in Section 41-35-40. For the purpose of this section, 'most recent work' means the work from which the individual retired

regardless of any work subsequent to his retirement in which he earned less than eight times his weekly benefit amount."

Conforming amendment

SECTION 78. Section 41-35-125 of the 1976 Code, as added by Act 50 of 2005, is amended to read:

"Section 41-35-125. (A) Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

(1) reasonably fears future domestic abuse at or en route to the workplace;

(2) needs to relocate to avoid future domestic abuse; or

(3) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(B) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse including, but not limited to, police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(C) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual."

Conforming amendment

SECTION 79. Section 41-35-126 of the 1976 Code, as added by Act 67 of 2007, is amended to read:

"Section 41-35-126. Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily to relocate because of the transfer of a spouse who has been reassigned from one military assignment to another, provided that the separation from employment occurs within fifteen days of the scheduled relocation date."

Conforming amendment

SECTION 80. Section 41-35-130 of the 1976 Code, as last amended by Act 67 of 2007, is further amended to read:

"Section 41-35-130. (A) A benefit paid to a claimant for unemployment immediately after the expiration of disqualification for:

(1) voluntarily leaving his most recent work without good cause;

(2) discharge from his most recent work for misconduct; or

(3) refusal of suitable work without good cause must not be charged to the account of an employer.

(B) A benefit paid to a claimant must not be charged against the account of an employer by reason of the provisions of this subsection if the department determines under Section 41-35-120 that the individual:

(1) voluntarily left his most recent employment with that employer without good cause;

(2) was discharged from his most recent employment with that employer for misconduct connected with his work; or

(3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if the employer furnishes the department with those notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as are required by the law and regulations of the department.

(C) If a benefit is paid pursuant to a decision that is finally reversed in subsequent proceedings with respect to it, an employer's account must not be charged with a benefit paid.

(D) A benefit paid to a claimant for a week in which he is in training with the approval of the department must not be charged to an employer.

(E) The provisions of subsections (A) through (D), all inclusive, with respect to the noncharging of benefits paid must be applicable only to an employer subject to the payment of contributions.

(F) A benefit paid to a claimant during an extended benefit period, as defined in Article 3, Chapter 35, must not be charged to an employer; except that a nonprofit organization electing to become liable for payments in lieu of contributions in accordance with Section 41-31-620 must reimburse fifty percent of extended benefits attributable to services performed in its employ and that after January 1, 1979, the State or a political subdivision or instrumentality of it as defined in Section 41-27-230(2)(b) electing to become liable for payment in lieu of contributions in accordance with Section 41-31-620

must reimburse all extended benefits attributable to services performed in its employ.

(G) A nonprofit organization that elects to make a payment in lieu of a contribution to the unemployment compensation fund as provided in Section 41-31-620(2) or Section 41-31-810 is not liable to make those payments with respect to the benefits paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41-35-65 to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94-566.

(H) A benefit paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41-35-65 must not be charged against the account of an employer to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94-566.

(I) A benefit paid to an individual pursuant to Section 41-35-125 must not be charged to the account of a contributing employer.

(J) A benefit paid to an individual pursuant to Section 41-35-126 must not be charged to the account of a contributing employer."

Conforming amendment

SECTION 81. Section 41-35-140 of the 1976 Code is amended to read:

"Section 41-35-140. (A) The department may require an individual filing a new claim for unemployment compensation to disclose, at the time of filing the claim, whether or not he owes child support obligations as defined under subsection (G), or, pursuant to an agreement between the department and the state or local child support enforcement agency, the state or local child support enforcement agency must notify the department whether a particular individual who has filed a new or continued claim for unemployment compensation, at the time of filing the claim, owes child support obligations, or if the state or local child support enforcement agency advises the department that the individual owes child support obligations and the individual is determined to be eligible for unemployment compensation, the department must notify the state or local child support enforcement agency enforcing the obligations that the individual has been determined to be eligible for unemployment compensation.

(B) The department must deduct and withhold from unemployment compensation payable to an individual who owes a child support obligation as defined under subsection (G):

(1) the amount specified by the individual to the department to be deducted and withheld under this section, if neither (2) nor (3) of this subsection (B) is applicable;

(2) the amount, if any, determined pursuant to an agreement submitted to the department under Section 454 (20)(B)(i) of the Social Security Act by the state or local child support enforcement agency unless item (3) is applicable; or

(3) An amount otherwise required to be deducted and withheld from unemployment compensation pursuant to legal process, as that term is defined in Section 462(e) of the Social Security Act properly served upon the department.

(C) An amount deducted and withheld under subsection (B) must be paid by the department to the appropriate state or local child support enforcement agency.

(D) An amount deducted and withheld under subsection (B) must be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligation.

(E) For the purposes of subsections (A) through (D), the term 'unemployment compensation' means compensation payable under this act, including amounts payable by the department pursuant to an agreement under federal law providing for compensation, assistance, or allowances concerning unemployment.

(F) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section which are by the state or local child support enforcement agency.

(G) The term 'child support obligation' means for purposes of these provisions, attributable to a child support obligation enforced pursuant to a plan described in Section 454 of the Social Security Act and approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(H) The term 'state or local child support enforcement agency' as used in these provisions means an agency of this State or a political subdivision of this State operating pursuant to a plan described in subsection (G).

(I) This section is effective for weeks commencing on or after October 1, 1982."

Conforming amendment

SECTION 82. Section 41-35-330 of the 1976 Code is amended to read:

"Section 41-35-330. (A) There is a 'state 'on' indicator' for this State for a week if the department determines, pursuant to the regulations of the United States Secretary of Labor, that for the period consisting of that week and the immediately preceding twelve weeks the rate of insured unemployment, not seasonally adjusted, under Chapters 27 through 41 of this title:

(1) equaled or exceeded one hundred twenty percent of the average of those rates for the corresponding thirteen week period ending in each of the preceding two calendar years; and

(2) equaled or exceeded five percent. With respect to benefits for weeks of unemployment beginning after July 1, 1977, the determination of whether there has been a 'state 'on' or 'off' indicator' for this State beginning or ending an extended benefit period must be made under this section as if:

(a) subsection (A) did not contain item (1); and

(b) the word 'five' contained in item (2) of this subsection were 'six' except that, notwithstanding a provision of this section, a week for which there would otherwise be a 'state 'on' indicator' for this State must continue to be such a week and must not be determined to be a week for which there is a 'state 'off' indicator' for this State.

(B) There is a 'state 'off' indicator' for this State for a week if, for the period consisting of that week and the immediately preceding twelve weeks, either items (1) or (2) of subsection (A) are not satisfied.

(C) This section applies to weeks beginning after September 25, 1982."

Conforming amendment

SECTION 83. Section 41-35-340 of the 1976 Code is amended to read:

"Section 41-35-340. For purposes of Section 41-35-330 'rate of insured unemployment' means the percentage derived by dividing the:

(1) average weekly number of individuals filing claims for regular state compensation in this State for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the department on the basis of its reports to the United States Secretary of Labor, by

(2) average monthly employment covered under Chapters 27 through 41 of this title for the first four of the most recent six completed calendar quarters ending before the end of this thirteen-week period."

Conforming amendment

SECTION 84. Section 41-35-410 of the 1976 Code is amended to read:

"Section 41-35-410. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the department, the provisions of Chapters 27 through 41 of this title which apply to claims for, or the payment of, regular benefits must apply to claims for, and the payment of, extended benefits."

Conforming amendment

SECTION 85. Section 41-35-420 of the 1976 Code, as last amended by Act 125 of 1993, is further amended to read:

"Section 41-35-420. (A) An individual is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to that week:

(1) He is an 'exhaustee' as defined in Section 41-35-390.

(2) He has satisfied the requirements of Chapters 27 through 41 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) Except as provided in item (4), an individual must not be eligible for extended benefits for a week if:

(a) extended benefits are payable for that week pursuant to an interstate claim filed in a state under the interstate benefit payment plan; and

(b) no extended benefit period is in effect for that week in the State.

(4) Item (3) of subsection (A) does not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual with respect to the benefit year.

(B)(1) Notwithstanding the provisions of Sections 41-35-410 and 41-35-420, effective for weeks beginning after March 31, 1981, an individual is disqualified from receipt of extended benefits if the department finds that during any week of his eligibility period he has failed either to apply for, or to accept an offer of, suitable work, as defined under item (4) of this subsection, to which he was referred by the department.

(2) Notwithstanding the provisions of Sections 41-35-410 and 41-35-420, effective for weeks beginning after March 31, 1981, an individual is disqualified from receipt of extended benefits if the department finds that during any week of his eligibility period he has failed to furnish evidence that he has actively engaged in a systematic and sustained effort to find work.

(3) This disqualification begins with the week in which the failure occurred and continues until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times his weekly extended benefit amount.

(4) For the purposes of this subsection, the term 'suitable work' means work within the individual's capabilities to perform if:

(a) the gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954, payable to the individual for that week;

(b) the wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to an exemption, or the state or local minimum wage;

(c) the position was offered to the individual in writing or was listed with the State Employment Service;

(d) the work otherwise meets the definition of 'suitable work' for regular benefits contained in subsection (5)(b) of Section 41-35-120 to the extent that the criteria of suitability are not inconsistent with the provisions of this item; and

(e) the individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary

occupation within a reasonably short period of time are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to the individual must be made pursuant to the definition of suitable work contained in Section 41-35-120 without regard to the definition specified by this item (4).

(C) Notwithstanding a provision of item (d) of this subsection to the contrary, work may not be considered suitable for an individual if it is not consistent with Section 41-35-120(5)(b).

(D) For the purposes of item (2) of subsection (B), an individual must be treated as actively engaged in seeking work during a week if the individual:

(1) has engaged in a systematic and sustained effort to obtain work during the week;

(2) furnishes tangible evidence that he has engaged in an effort during the week.

(E) The Employment Service must refer any claimant entitled to extended benefits under this chapter to any suitable work that meets the criteria prescribed in item (4) of subsection (B).

(F) An individual must not be eligible to receive an extended benefit with respect to a week of unemployment in his eligibility period if he has been disqualified for regular or extended benefits under the chapter because he voluntarily left work, was discharged for cause, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for these reasons has been terminated pursuant to specific conditions established under the South Carolina Employment Security Law requiring the individual to perform service for remuneration subsequent to the date of the disqualification.

If the disqualification imposed did not require the individual to perform service for remuneration subsequent to the date of the disqualification, the individual is ineligible for an extended benefit beginning with the effective date of the request for initiation of an extended benefit claim series and continuing until he secures employment and shows to the department's satisfaction that he has worked in each of at least four different weeks, whether or not those weeks are consecutive, and earned wages equal to at least four times the weekly benefit amount of his claim."

Conforming amendment

SECTION 86. Section 41-35-450 of the 1976 Code is amended to read:

"Section 41-35-450. When an extended benefit period is to become effective in this State as a result of a 'state 'on' indicator', or an extended benefit period is to be terminated in this State as a result of a 'state 'off' indicator', the department must make an appropriate public announcement. A computation required by the provisions of Section 41-35-340 must be made by the department pursuant to regulations prescribed by the United States Secretary of Labor."

Conforming amendment

SECTION 87. Section 41-35-610 of the 1976 Code is amended to read:

"Section 41-35-610. A request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, and a claim for benefits must be made pursuant to regulations the department promulgates. An employer must post and maintain in places readily accessible to individuals in his service printed statements concerning regulations or related matters the department prescribes by regulation. An employer must supply those individuals copies of the printed statements or materials the department prescribes by regulation. These statements or materials must be supplied by the department to an employer without cost to the employer."

Conforming amendment

SECTION 88. Section 41-35-630 of the 1976 Code is amended to read:

"Section 41-35-630. (A) In a case where the payment or denial of a benefit will be determined by the provisions of Section 41-35-120(6), the department must designate a special examiner to make an initial determination with respect to it. The determination of the examiner may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The department may, upon written request by a group of workers or their authorized representative, allow one of a group representing a grade or class of workers similarly situated to file an appeal known as a 'Group Test Appeal', and the decision of the appeal tribunal or the department regarding the disqualification of the group representative because of the application of Section 41-35-120(6) is binding on the entire group.

(B) When a determination involves multiple claimants and difficult issues of fact or law, the department may designate a special examiner to render the determination. A determination, which may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The department must allow a claimant affected by this determination to join in one appeal and the decision of the appeal tribunal or the department is binding on all claimants who are parties to the consolidated appeal."

Conforming amendment

SECTION 89. Section 41-35-640 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

"Section 41-35-640. (A) An initial determination may for good cause be reconsidered. A party entitled to notice of an initial determination may apply for a reconsideration not later than ten days after the determination was mailed to his last known address. Notice of the redetermination must be promptly given in the manner prescribed in this article with respect to notice of an initial determination.

(B) An initial determination must be reconsidered when the department finds an error in computation or of a similar character has occurred in connection with it or that wages of the claimant pertinent to the determination, but not considered in connection with it, have been newly discovered. However, this redetermination must not be made after one year from the date of the original determination. The reconsidered determination supersedes the original determination. Notice of this redetermination promptly must be given in the manner prescribed in this article with respect to notice of an original determination. Subject to the same limitations and for the same reasons, the department may reconsider a determination in a case where a final decision is rendered by an appeal tribunal, the department, or a court, and, after notice to and the expiration of the period for appeal by the persons entitled to notice of the final decision, may apply to the body or court that rendered the final decision and seek a revised decision. In the event that an appeal involving an original determination is pending on the date a redetermination is issued, the appeal, unless withdrawn, must be treated as an appeal from the redetermination."

Conforming amendment

SECTION 90. Section 41-35-670 of the 1976 Code is amended to read:

"Section 41-35-670. (A) Notwithstanding another provision contained in this article, benefits must be paid pursuant to a determination, redetermination, or the decision of an appeal tribunal, the department, or a reviewing court upon the issuance of that determination, redetermination, or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review provided with respect to it or the pendency of such an application, filing, or petition, until the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits must be paid or denied for weeks of unemployment afterward pursuant to the modifying or reversing redetermination or decision.

(B) If a determination or redetermination allowing a benefit is affirmed by the appeal tribunal or the department, or if a decision of an appeal tribunal allowing a benefit is affirmed by the department, those benefits must be paid promptly regardless of a further appeal that may be taken, and no injunction, supersedeas, stay, or other writ or process suspending the payment of the benefits must be issued by a court."

Conforming amendment

SECTION 91. Section 41-35-680 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

"Section 41-35-680. Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days, must make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify, or reverse the determination or redetermination within thirty days from the date of the hearing. Each party promptly must be furnished a copy of the decision, including the reasons for the decision. This must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated pursuant to Section 41-35-710."

Conforming amendment

SECTION 92. Section 41-35-690 of the 1976 Code is amended to read:

"Section 41-35-690. The procedure provided in this chapter for appeals from a determination or redetermination to the appeal tribunal and for appeals from the tribunal, first to the Workforce Department Appellate Panel, as established by Section 41-29-300, and afterward to the administrative law court, pursuant to Section 41-29-300(C)(1), is the sole and exclusive appeal procedure."

Conforming amendment

SECTION 93. Section 41-35-700 of the 1976 Code is amended to read:

"Section 41-35-700. (A) To hear and decide appeal claims, the executive director must appoint one or more impartial appeal tribunals consisting of either:

(1) a referee, selected pursuant to Section 41-29-70; or

(2) a body consisting of three members, one of whom:

(a) must be a referee who must serve as chairman;

(b) one of whom must be a representative of employers; and

(c) the third of whom must be a representative of employees.

(B) Each of the latter two members shall serve at the pleasure of the executive director and shall be paid a per diem as fixed in the annual state appropriation act for boards, commissions, and committees for each day of active service on a tribunal plus necessary expenses, as fixed in the annual appropriation act. A person must not participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of a member of an appeal tribunal. The chairman must act alone in the absence or disqualification of another member and his alternate. The hearings must not proceed unless the chairman of the appeal tribunal is present."

Conduct of appealed claims; department to promulgate procedures by regulation

SECTION 94. Section 41-35-710 of the 1976 Code is amended to read:

"Section 41-35-710. The Workforce Department Appellate Panel may on its own motion affirm, modify, or set aside a decision of an appeal tribunal on the basis of evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision to initiate further appeals before it. The appellate panel must permit further appeals by a party to a decision of an appeal tribunal and by the examiner whose decision has been overruled or modified by an appeal tribunal. The appellate panel may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal. Proceedings removed to the appellate panel must be heard by a quorum pursuant to the requirements of Sections 41-35-690 and 41-35-720. The appellate panel promptly must notify a party to a proceeding of its findings and decision."

Conforming amendment

SECTION 95. Section 41-35-720 of the 1976 Code is amended to read:

"Section 41-35-720. The department must promulgate regulations establishing rules of procedure for proceedings, hearings, and appeals to the appellate panel and the appeal tribunals pursuant to Section 41-35-790. The rules of procedure must address the manner for determining the rights of each party to an appeal. The rules of procedure are not required to conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record must be kept of all proceedings in connection with an appealed claim. Testimony at a hearing before an appeals tribunal on an appealed claim must be recorded but must not be transcribed unless the claim is appealed to the appellate panel."

Conforming amendment

SECTION 96. Section 41-35-730 of the 1976 Code is amended to read:

"Section 41-35-730. Witnesses subpoenaed pursuant to this article must be allowed fees and mileage at a rate fixed by the department, which must not exceed that allowed for witnesses by the administrative law court. These fees must be considered a part of the expense of administering Chapters 27 through 41 of this title."

Conforming amendment

SECTION 97. Section 41-35-740 of the 1976 Code is amended to read:

"Section 41-35-740. A decision of the department, in the absence of an appeal from it as provided in this article, becomes final ten days after the date of notification or mailing of it, and judicial review is permitted only after a party claiming to be aggrieved by it has exhausted his administrative remedies as provided by Chapters 27 through 41 of this title. The department must be considered to be a party to a judicial action involving a decision and may be represented in the judicial action by a qualified attorney employed by the department and designated by the department for that purpose or, at the department's request, by the Attorney General."

Department to promulgate regulations governing certain proceedings

SECTION 98. Section 41-35-750 of the 1976 Code, as last amended by Act 387 of 2006, is further amended to read:

"Section 41-35-750. Within thirty days from the date of mailing the department's decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the department's decision may initiate an action in the administrative law court against the department for the review of its decision, in which action every other party to the proceeding before the department must be made a defendant. In this action a petition, which need not be verified but which must state the grounds on which a review is sought, must be served on the executive director or on a person designated by the department within the time specified by this section. Service is considered complete service on all parties, but there must be left with the person served as many copies of the petition as there are defendants, and the department promptly shall mail one copy to each defendant. With its answer the department must certify and file with

the court all documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision. The department also may certify to the court questions of law involved in a decision by the department. In a judicial proceeding under this chapter, the findings of the department regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the administrative law court must be confined to questions of law. These actions, and the questions so certified, must be heard in a summary manner and must be given precedence over other cases. An appeal may be taken from the decision of the administrative law court pursuant to the South Carolina Appellate Court Rules and Section 1-23-610. It is not necessary in a judicial proceeding under this article to enter exceptions to the rulings of the department, and no bond is required for entering the appeal. Upon the final determination of the judicial proceeding, the department must enter an order in accordance with the determination. A petition for judicial review must not act as a supersedeas or stay unless the department orders a supersedeas or stay."

Conforming amendment

SECTION 99. Chapter 35, Title 41 of the 1976 Code is amended by adding:

"Section 41-35-760. (A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and publish all regulations on an electronic website.

(B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:

(1) procedures for seeking a hearing, review, or appeal;

(2) procedures for notifying parties;

(3) evidentiary rules;

(4) procedures for making findings of fact and conclusions of law;

(5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and

(6) procedures for seeking review or appeal of the department's decision.

(C) All regulations must be promulgated in accordance with the provisions of Chapter 23, Title 1 of the South Carolina Code of Laws."

Conforming amendment

SECTION 100. Section 41-37-20 of the 1976 Code is amended to read:

"Section 41-37-20. (A) An employing unit not otherwise subject to Chapters 27 through 41 of this title, which files with the department its written election to become an employer subject to these chapters for not less than two calendar years, with the written approval of the election by the department, must become an employer subject to the same extent as all other employers as of the date stated in the approval and must cease to be subject to these chapters as of January first of a calendar year subsequent to the two calendar years if by the thirtieth day of April of that year it has filed with the department a written notice to that effect.

(B) An employing unit, for which services that do not constitute employment as defined in Chapters 27 through 41 of this title are performed, may file with the department a written election that services performed by an individual in its employment in one or more distinct establishments or places of business must be considered to constitute employment by an employer for the purposes of those chapters for not less than two calendar years. On the written approval of this election by the department, these services must be considered to constitute employment subject to those chapters from and after the date stated in the approval. These services cease to be considered employment subject to these chapters as of January first of a calendar year subsequent to those two calendar years if by the thirtieth day of April of that year the employing unit files with the department a written notice to that effect."

Conforming amendment

SECTION 101. Section 41-37-30 of the 1976 Code is amended to read:

"Section 41-37-30. Except as otherwise provided in Section 41-37-20:

(A) As of January 1, 1972, an employing unit must cease to be an employer subject to Chapters 27 through 41 of this title only if it files

with the department by the thirtieth day of April of that year an application for termination of coverage and the department finds that there were no twenty different weeks within the preceding calendar year within which the employing unit had four or more individuals in employment subject to these chapters.

(B) As of January 1, 1973, an employing unit shall cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of a calendar year an application for termination of coverage and the department finds that there were no twenty different weeks within the preceding calendar year within which the employing unit had at least one individual in employment subject to these chapters and that there was no calendar quarter within the preceding calendar year in which the employing unit paid fifteen hundred dollars or more in wages for service in employment, except that no employing unit for which service is performed in employment as defined in Section 41-27-230(3) may cease to be an employer subject to Chapters 27 through 41 of this title unless it files with the department by the thirtieth day of April of any calendar year an application for termination of coverage and the department finds that there were not twenty different weeks within the preceding calendar year within each of which the employing unit had four or more persons in employment.

(C) As of January 1, 1979, an employing unit, as defined in Section 41-27-230(5), must cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of a calendar year an application for termination of coverage and the department finds that there were not twenty different weeks within the preceding calendar year within which the employing unit had at least ten individuals in employment subject to Chapters 27 through 41 of this title and that there was no calendar quarter within the preceding calendar year in which the employing unit paid twenty thousand dollars or more in wages for service in employment.

(D) As of January 1, 1979, an employing unit, as defined in Section 41-27-230(6), must cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of a calendar year an application for termination of coverage and the department finds that there was no calendar quarter within the preceding calendar year in which the employing unit paid one thousand dollars or more in wages for service in employment.

(E) An employer who has rendered no employment and paid no wages in the State for a continuous period of one calendar year may

submit an application for termination of coverage upon the resumption of employment in the State. However, when a successor employer acquired substantially all of the business of a predecessor employer and the experience rating reserve of the predecessor is transferred to the successor, the liability of the predecessor may be terminated at the end of the calendar year during which this succession occurred, provided that the predecessor did not within the calendar year subsequent to the date of succession render employment or pay wages sufficient to remain an employer as defined in Section 41-27-210.

(F) The provisions of this section must not be applicable to an employing unit for a service performed in employment as defined by Section 41-27-230(2).

For the purpose of this section, the two or more employing units mentioned in items (3) and (4) of Section 41-27-210 must be treated as a single employing unit."

Conforming amendment

SECTION 102. Section 41-39-30 of the 1976 Code is amended to read:

"Section 41-39-30. An individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representatives or by a court or an officer, except an attorney, of it. An individual claiming a benefit in a proceeding before the department or a court must be represented by an attorney or other duly authorized agent, but an attorney or agent must not charge or receive for this service more than an amount approved by the department. A person who violates a provision of this section, for each offense, must be fined not less than fifty dollars nor more than five hundred dollars, imprisoned for not more than six months, or both."

Conforming amendment

SECTION 103. Section 41-39-40 of the 1976 Code, as added by Act 306 of 1996, is amended to read:

"Section 41-39-40. (A) As of January 1, 1997, an individual filing an initial claim for unemployment compensation must be advised at the time of the filing of the claim that:

(1) unemployment compensation is subject to federal and state income taxation;

(2) requirements exist pertaining to estimated tax payments;

(3) the individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the rate specified in the Internal Revenue Code of 1986;

(4) the individual may elect to have South Carolina state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of seven percent;

(5) the individual is permitted to change a previously elected withholding of income tax at least once.

(B) Amounts deducted and withheld from unemployment compensation must remain in the Unemployment Trust Fund until transferred to the federal or state taxing authority as a payment of income tax. The date of transfer to the South Carolina Department of Revenue must be the same date as the transfer to the Internal Revenue Service.

(C) The department shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of income tax.

(D) Amounts must be deducted and withheld under this section only after amounts are deducted and withheld for overpayments of unemployment compensation, child support obligations, or other amount required to be deducted and withheld under this title."

Conforming amendment

SECTION 104. Section 41-41-20 of the 1976 Code, as last amended by Act 202 of 2002, is further amended to read:

"Section 41-41-20. (A) A claimant found by the department knowingly to have made a false statement or who knowingly failed to disclose a material fact when filing a compensable claim to establish his right to or increase the amount of his benefits is ineligible to receive benefits for any week for which the claim was filed and is ineligible to receive further benefits for not less than ten and not more than fifty-two consecutive weeks as determined by the department according to the circumstances of the case, these weeks to commence with the date of the determination.

(B) If the department finds that a fraudulent misrepresentation has been made by a claimant with the object of obtaining benefits under

this chapter to which he was not entitled, in addition to any other penalty or prosecution provided under this chapter, the department may make a determination that there must be deducted from benefits to which the claimant might become entitled during this present benefit year or the next subsequent benefit year, or both, an amount not less than two times his weekly benefit amount and not more than his maximum benefit amount payable in a benefit year, as determined under Chapter 35. This deduction takes effect on the date of the determination. An appeal from this determination must be made in the manner prescribed in Article 5, Chapter 35."

Conforming amendment

SECTION 105. Section 41-41-40 of the 1976 Code, as last amended by Act 202 of 2002, is further amended to read:

"Section 41-41-40. (A)(1) A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department for the unemployment compensation fund a sum equal to the amount received by him.

(2) If full repayment of benefits, to which an individual was determined not entitled, has not been made, the sum must be deducted from future benefits payable to him under Chapters 27 through 41, and the sum must be collectible in the manner provided in Sections 41-31-380 to 41-31-400 for the collection of past due contributions.

(3) The department may attempt collection of overpayments through the South Carolina Department of Revenue in accordance with Section 12-56-10, et seq. If the overpayment is collectible in accordance with Section 12-56-60, the department shall add to the amount of the overpayment a collection fee of not more than twenty-five dollars for each collection attempt to defray administrative costs.

(4) Notwithstanding any other provision of this section, no action to enforce recovery or recoupment of any overpayment may begin after five years from the date of the final determination.

(B)(1) A person who is overpaid any amounts as benefits under Chapters 27 through 41 is liable to repay those amounts, except as otherwise provided by this subsection.

(2) Upon written request by the person submitted to the department within the statutory appeal period from the issuance of the

determination of overpayment, the department may waive repayment if the department finds that the:

(a) overpayment was not due to fraud, misrepresentation, or wilful nondisclosure on the part of the person;

(b) overpayment was received without fault on the part of the person; and

(c) recovery of the overpayment from the person would be contrary to equity and good conscience.

(3) Decisions denying waiver requests are subject to the appeal provisions of Chapter 35.

(C) A person who has received a sum as benefits under the comparable unemployment law of any other state while conditions imposed by that law were not fulfilled or while he was disqualified from receiving benefits by that law is liable to repay the department for the corresponding unemployment compensation fund of the other state a sum equal to the amount received by him if the other state has entered into an Interstate Reciprocal Overpayment Recovery Agreement with the State and has furnished the department with verification of the overpayment as required by the agreement. Recovery of overpayments under this subsection are not subject to the provisions of subsections (A)(3) and (B)."

Conforming amendment

SECTION 106. Section 41-41-50 of the 1976 Code is amended to read:

"Section 41-41-50. An employing unit or person who wilfully violates a provision of Chapters 27 through 41 of this title or an order, rule, or regulation under this title, the violation of which is made unlawful or the observance of which is required under the terms of these chapters, is liable to a penalty of one thousand dollars, to be recovered by the department in an appropriate civil action in a court of competent jurisdiction, and also is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than twenty dollars but not more than one hundred dollars or imprisonment for not longer than thirty days, and each day the violation continues is considered a separate offense."

Conforming amendment

SECTION 107. Section 41-42-10 of the 1976 Code is amended to read:

"Section 41-42-10. The department must create a division known as the 'South Carolina State Employment Service' that must establish and maintain free public employment offices in a number and in places necessary for the proper administration of Chapters 27 through 42 of this title and for the purpose of performing duties within the purview of the act of Congress, entitled 'An Act to Provide for the Establishment of a National Employment System and for Cooperation With the States in the Promotion of Such System, and for Other Purposes', approved June 6, 1933 (48 Stat. 113, U.S.C. Title 29, Section 49(c) as amended). All duties and powers formerly conferred on another department, agency, or officer of this State relating to the establishment, maintenance, and operation of free public employment offices are vested in this division."

Conforming amendment

SECTION 108. Section 41-42-20 of the 1976 Code is amended to read:

"Section 41-42-20. The division must be administered by a full-time salaried director, who shall cooperate with an official or agency of the United States having powers or duties under provisions of such act of Congress and shall do and perform all things necessary to secure to this State the benefits of that act of Congress in the promotion and maintenance of a system of public employment offices. The executive director shall appoint the director and other officers and employees of the State Employment Service."

Conforming amendment

SECTION 109. Section 41-42-30 of the 1976 Code is amended to read:

"Section 41-42-30. The provisions of the act of Congress mentioned in Section 41-42-10 are accepted by this State, in conformity with Section 4 of that act and this State will observe and comply with the

requirements of the act. The department is designated and constituted the agency of this State for the purposes of that act."

Conforming amendment

SECTION 110. Section 41-42-40 of the 1976 Code is amended to read:

"Section 41-42-40. For the purpose of establishing and maintaining free public employment offices the division may enter into agreement with a political subdivision of this State or with a private nonprofit organization and as a part of such agreement the department may accept money, services, or quarters as a contribution to the unemployment compensation administration fund."

Factor to consider for appointments and hires

SECTION 111. In making appointments and hiring decisions for positions pursuant to this act, the governing authority or individual tasked with making such appointment or hiring decision must consider race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

Management audits of department's finance and operations required of Legislative Audit Council

SECTION 112. The Legislative Audit Council shall contract for three independent management audits of the department's finance and operations. This first audit must be completed by July 1, 2011, the second audit must be completed by July 1, 2013, and the third audit must be completed by July 1, 2018. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the audit's initial findings.

At a minimum, the audits required pursuant to this SECTION must:

(1) provide a detailed accounting of the revenues and expenditures from the Unemployment Insurance Trust Fund since 2000;

(2) determine the adequacy of the process for notifying state officials of the financial status of the Unemployment Insurance Trust Fund;

(3) assess alternatives for maintaining the solvency of the Unemployment Insurance Trust Fund;

(4) examine the unemployment eligibility benefit process for efficiency and compliance with law and agency policy; and

(5) evaluate the effectiveness of the Department of Workforce's programs for assisting claimants in returning to work.

The cost 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.

Workforce Initiative/Economic Development Research Committee; duties, composition, reporting requirement, abolition

SECTION 113. (A) There is created the Workforce Initiative/Economic Development Research Committee. This committee shall review, examine, and make recommendations regarding steps that should be taken to improve the economy of this State, the employment of South Carolinians, and to restore a substantially greater sense of financial security to the citizens of this State. The review must include an inventory of workforce training and recruitment programs and their adequacy toward meeting the needs of South Carolina's businesses. In addition, the review and recommendations must place emphasis on the goal of matching unemployed citizens with jobs.

(B) The twenty-five member committee is composed of:

(1) one member appointed by the Governor;

(2) one member appointed by the President Pro Tempore of the Senate;

(3) one member appointed by the Speaker of the House of Representatives;

(4) the Secretary of Commerce, or his designee;

(5) the Director of the Department of Parks, Recreation and Tourism, or his designee;

(6) a county economic development director from each Congressional district chosen by the economic development person or his designee from the office of the member of Congress representing each district;

(7) the Dean of the Moore School of Business at the University of South Carolina, the Dean of the Francis Marion University School of Business, the Dean of the South Carolina State University School of Business, the Dean of the College of Charleston School of Business and Economics, the Dean of the Clemson University College of Business, and the Dean of the Winthrop University College of Business Administration;

(8) the Chairman of the Board of Economic Advisors;

(9) the Secretary of Agriculture, or his designee;

(10) the Executive Director of the Department of Employment and Workforce;

(11) the Chairman of the State Ports Authority, or his designee;

(12) the Director of the Office of Small and Minority Business Assistance;

(13) the President of the South Carolina Chamber of Commerce, or his designee;

(14) the President of the South Carolina Manufacturers' Alliance, or his designee; and

(15) the Executive Director of the State Board for Technical and Comprehensive Education, or his designee.

(C) The Governor shall serve as the chairperson of the committee.

(D) A vacancy occurring on the committee must be filled in the same manner as the original appointment.

(E) The staffing for the committee must be provided by the appropriate committees of the Senate and House of Representatives that oversee legislation affecting economic development and finance in this State and the staff of the Workforce Investment Program.

(F) The committee shall submit its report to the General Assembly and Governor before January 1, 2011, at which time the Workforce Initiative/Economic Development Research Committee is abolished.

Code Commissioner shall make certain conforming changes

SECTION 114. The Code Commissioner is directed to change all references in the 1976 Code to the "Department of Workforce" to the "Department of Employment and Workforce."

Notice to employer concerning certain requests; manner of notice, response requirements

SECTION 115. Chapter 35, Title 41 of the 1976 Code is amended by adding:

"Section 41-35-615. All notices given to an employer concerning a request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, a claim for benefits, and any reconsideration of a determination must be made by United States mail or electronic mail. The employer may designate with the department its preferred method of notice. If an employer does not make a designation, then notices must be made by United States mail. The employer may not be required to respond to the notice until twelve business days after the postmark on notices sent via United States Mail or ten business days after the date a notice is sent via electronic mail."

Criminal prosecution for violations; significant fraud cases must be referred to Attorney General

SECTION 116. Section 41-27-590 of the 1976 Code is amended to read:

"Section 41-27-590. (A) All criminal actions for violation of any provision of Chapters 27 through 41 of this title or of any rules or regulations issued pursuant thereto shall be prosecuted by the Attorney General of the State or at his request and under his direction by the solicitor of any circuit or any prosecuting attorney in any court of competent jurisdiction in the county in which the employer has a place of business or the violator resides.

(B) The department must refer all cases of significant claimant and/or employer fraud to the Attorney General to determine whether to prosecute the offender."

Examinations, Investigations, and Reports of the Department of Workforce; requirements, initiation by certain parties, timely access to information required, examination powers and requirements provided

SECTION 117. Chapter 13, Title 38 of the 1976 Code is amended by adding:

"Article 7

Examinations, Investigations, and Reports of the Department of Workforce

Section 38-13-700. (A) At least every five years, or upon request pursuant to Section 38-13-710, the director must conduct an examination of the unemployment compensation fund administered by the Department of Workforce. Examinations scheduled by the director must include at least a detailed accounting of the revenue and expenditures of the fund and an analysis of the current and future solvency of the fund.

(B) In scheduling and determining the nature, scope, and frequency of examinations, the director shall consider compliance with relevant federal and South Carolina laws and regulations, the results of previous examinations, changes in management, and reports of the audits performed by the Legislative Audit Council.

(C) For purposes of completing an examination of an insurer under this article, the director may examine or investigate the Department of Workforce in a manner considered necessary or material by the director.

Section 38-13-710. (A) An examination of the unemployment compensation fund may be initiated upon the request of either:

(1) the Chairman of the Senate Labor, Commerce and Industry Committee or the Chairman of the Senate Finance Committee and the President Pro Tempore; or

(2) the Chairman of the House of Representatives Labor, Commerce and Industry Committee or the Chairman of the House of Representatives Ways and Means Committee and the Speaker of the House of Representatives.

(B) The request must describe the issues upon which the requestor would like for the examination to focus.

(C) The director must consult with the requestors to determine the appropriate scope of the examination.

Section 38-13-720. (A) The Department of Workforce must provide timely, convenient, and free access to all books, records, accounts, papers, documents, and computer or other recordings relating to the subject of the examination. If the director considers it necessary to the conduct of the examination, he may require that the Department of Workforce furnish the original books and records. The Executive Director of the Department of Workforce shall facilitate the examination and aid in the examination.

(B) The director may issue subpoenas, administer oaths, and examine under oath a person as to matters pertinent to the examination.

Upon the failure or refusal of a person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(C) When making an examination pursuant to this article, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of the retainment must be borne by the Department of Workforce. Examination fees must be retained by the department and are considered 'other funds'.

Section 38-13-730. In addition to any other recognized and appropriate examination methodologies, when conducting an examination, the department must utilize sample data testing to verify the accuracy of information provided by the Department of Workforce.

Section 38-13-740. The results of each examination must be compiled in a report. Examination reports must be comprised of only facts appearing on the books, records, or other documents maintained by the Department of Workforce and as ascertained from the testimony of the executive director and any other employees examined concerning the subject of the examination, and the conclusions and recommendations of the director that he finds warranted from the facts. The reports must be submitted to the General Assembly, the Review Committee, and the Governor, and made available on the Internet websites maintained by the Department of Insurance and the Department of Workforce.

Section 38-13-750. The director may not assign an examiner that has a conflict of interest.

Section 38-13-760. The Department of Workforce shall pay the charges incurred in the examination, including the expenses of the director and the expenses and compensation of his examiners and assistants.

Section 38-13-770. The director may require the Department of Workforce to answer any inquiry in relation to the administration of the unemployment compensation fund. The executive director of the Department of Workforce must promptly reply in writing."

South Carolina Department of Workforce Review Committee created; composition, duties, powers, entitlement to certain expense reimbursements, clerical and professional support available

SECTION 118. Chapter 27, Title 41 of the 1976 Code is amended by adding:

"Article 7

South Carolina Department of Workforce Review Committee

Section 41-27-700. There is created the Department of Workforce Review Committee which must exercise the powers and fulfill the duties described in this article.

Section 41-27-710. (A) The committee must be composed of nine members, three of whom must be members of the House of Representatives appointed by the Speaker, at least one of whom must be a member of the minority party; three of whom must be members of the Senate appointed by the President Pro Tempore, at least one of whom must be a member of the minority party; and three of whom shall be appointed by the Governor from the general public at large, of which one must represent businesses with fewer than fifty employees and one of whom must represent businesses with fewer than five hundred employees. A member of the general public appointed by the Governor may not be a member of the General Assembly.

(B) The committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and other officers as the committee considers necessary. Afterward, the committee at least annually shall meet and at the call of the chairman or a majority of the members. A quorum consists of five members.

(C) Unless the committee finds a person qualified to serve as the Executive Director of the Department of Workforce, the person may not be appointed.

(D) A member of the committee that misses three consecutive scheduled meetings at which a quorum is present must be removed from and replaced on the committee by the person that appointed that member.

(E) The committee must discharge its duties related to screening and nominating qualified individuals for appointment by the Governor in the manner provided in Chapter 20, Title 2.

Section 41-27-720. The committee shall:

(1) nominate three qualified applicants for the Governor to consider in appointing the executive director. In order to be found qualified, the person must meet the minimum requirements as provided in Section 41-29-35. The committee must consider a person's experience and expertise in matters related to unemployment, workforce development, and economic development. A person may not be appointed to serve as the permanent executive director unless he is found qualified by the committee. If the Governor rejects all of the nominees, the committee must reopen the nominating process;

(2) screen Department of Workforce Appellate Panel candidates for qualifications. In order to be found qualified, the person must meet the minimum requirements as provided in Section 41-29-300(E). The committee must consider a person's experience and expertise in matters related to unemployment, workforce development, and economic development. A person may not be elected to serve on the Department of Workforce Appellate Panel unless he is found qualified by the committee;

(3) conduct an annual performance review of the executive director, which must be submitted to the General Assembly and the Governor. A draft of the executive director's performance review must be submitted to him, and the executive director must be allowed an opportunity to be heard before the committee before the final draft of the performance review is submitted to the General Assembly and the Governor;

(4) submit to the General Assembly and the Governor, on an annual basis, the committee's evaluation of the performance of the Department of Workforce. A proposed draft of the evaluation must be submitted to the Executive Director of the Department of Workforce before submission to the General Assembly and the Governor, and the Executive Director of the Department of Workforce must be given an opportunity to be heard before the committee before the completion of the evaluation and its submission to the General Assembly and the Governor;

(5) assist in developing an annual workshop of at least six contact hours concerning ethics and the Administrative Procedures Act for the executive director and employees of the Department of Workforce as the committee considers appropriate;

(6) make reports and recommendations to the General Assembly and the Governor on matters relating to the powers and duties set forth in this section;

(7) submit a letter to the General Assembly with the annual budget proposals of the Department of Workforce, indicating the committee has reviewed the proposals; and

(8) undertake additional studies or evaluations as the committee considers necessary.

Section 41-27-725. (A) The committee in the discharge of its duties may 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 committee's investigation.

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

(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 committee may issue to the person an order requiring him to appear before the committee to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt hereof. Subpoenas shall be issued in the name of the committee and shall be signed by the committee chairman. Subpoenas shall be issued to those persons as the committee may designate.

Section 41-27-730. (A) The committee members are entitled to mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of

the duties for which they are appointed. These expenses must be paid from the general fund of the State on warrants duly signed by the chairman of the committee and payable by the authorities from which they are appointed, except as provided in subsection (B) of this section.

(B) The committee may request that it be reimbursed for expenses associated with its duties with funds from the employment security administration fund. The expenses of the committee must be advanced by a legislative body and the legislative body incurring this expense must be reimbursed by the State.

Section 41-27-740. (A) The committee must use clerical and professional employees of the Senate Labor, Commerce and Industry Committee and the House of Representatives Labor, Commerce and Industry Committee for its staff, who must be made available to the committee.

(B) The committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the committee.

Section 41-27-750. The committee may conduct a comprehensive study of other states' unemployment and workforce agency structures, responsibilities, qualifications, and compensation. The committee may prepare and deliver this report along with its recommendations to the General Assembly and the Governor."

Executive Director Workforce Department; manner of appointment, qualifications required

SECTION 119. Chapter 29, Title 41 of the 1976 Code is amended by adding:

"Section 41-29-35. (A) The Executive Director of the Department of Workforce must be appointed pursuant to the procedure set forth in Section 41-27-720.

(B) The committee must nominate three applicants found qualified to serve as executive director for the Governor's consideration. In making nominations to the Governor, the committee should consider race, gender, national origin, and other demographic factors to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State. The committee must also give due consideration to a person's ability, area of expertise, dedication, compassion, common sense, and integrity. If fewer than three

applicants are found qualified to serve as executive director, the committee must resolicit for applicants and continue the screening process until three applicants are found qualified and nominated.

(1) A person may not be appointed to serve as permanent executive director unless the committee finds the person qualified.

(2) The Governor must transmit the name of his appointee to the Senate for advice and consent.

(3) If the Governor rejects all of the nominees, the committee must reopen the nominating process.

(C) For the committee to find a person qualified, he must have:

(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; and

(2) a background of substantial duration and expertise in business, labor and employment, employment benefits, human resource management, or five years' experience as a practicing attorney.

(D) The committee may find a person qualified although he does not have a background of substantial duration and expertise in one of the five enumerated areas contained in subsection (C)(2) of this section if two-thirds of the committee vote to qualify this candidate and provide written justification of their decision in the report as to the qualifications of the candidates."

Executive Director of Workforce Department obliged to discharge duties in certain manner

SECTION 120. Chapter 29, Title 41 of the 1976 Code is amended by adding:

"Section 41-29-25. (A) The executive director shall discharge his duties:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the department. As used in this chapter, best interests means a balancing of the following:

(a) achieving the purposes of the department;

(b) preservation of the financial integrity of the department and its ongoing operations; and

(c) exercise of the powers of the department in accordance with good business practices and the requirements of applicable laws and regulations.

(B) In discharging his duties, the executive director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the State whom the executive director reasonably believes to be reliable and competent in the matters presented; or

(2) legal counsel, public accountants, or other persons as to matters the executive director reasonably believes are within the person's professional or expert competence.

(C) The executive director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

(D) Nothing in this section gives rise to a cause of action against the executive director or any decision made by the executive director concerning departmental operations or development."

Governor must appoint qualified interim executive director with advice and consent of the Senate; length of tenure defined

SECTION 121. The Governor must appoint a person meeting the requirements for executive director provided in this act to serve as interim executive director. The interim executive director serves until March 31, 2011, or until a successor is appointed pursuant to this act. The interim executive director is appointed upon the advice and consent of the Senate.

Code Commissioner shall make certain conforming changes

SECTION 122. The Code Commissioner is directed to change all references in the 1976 Code to the "Employment Security Commission" to the "Department of Employment and Workforce" and all references to the "Chairman of the Employment Security Commission" or "chairman" that refer to the Chairman of the Employment Security Commission to "Executive Director of the Department of Employment and Workforce" or "executive director", as appropriate.

Repeal

SECTION 123. Sections 41-29-30, 41-29-60, 41-29-90, 41-29-100, 41-29-130, and 41-29-260 are repealed.

Severability

SECTION 124. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 125. (A) This act takes effect upon approval by the Governor.

(B) The provisions of this act requiring the name of the Employment Security Commission to be changed do not take effect until funding becomes available through appropriations by the General Assembly or until sufficient federal funds are available.

(C) Where the provisions of this act transfers the duties and responsibilities of the South Carolina Employment Security Commission (transferring agency) to the Department of Workforce (receiving agency), the employees, authorized appropriations, and real and personal property of the transferring agency are also transferred to and become part of the receiving agency. All classified or unclassified personnel of the transferring agency shall become employees of the receiving agency, with the same compensation, classification, and grade level, as applicable. Where necessary and appropriate, the State Budget and Control Board 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 board’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.

(D) Employees or personnel of the transferring agency transferred to or made a part of the receiving agency shall continue to occupy the same office locations and facilities which they now occupy unless or until otherwise changed by appropriate action and authorization. The rent and physical plant operating costs of these offices and facilities, if any, shall continue to be paid by the transferring agency until otherwise provided by the General Assembly. The records and files of the transferring agency shall remain the property of the transferring agency, except that the transferred personnel shall have complete access to these records and files in the performance of their duties as new employees of the receiving agency.

(E) All remaining costs necessary for the implementation and operation of the Department of Workforce shall be provided for by the General Assembly in the annual appropriations act however, for fiscal year 2009-2010, the funds appropriated to the South Carolina Employment Security Commission shall be credited to the Department of Workforce for the implementation of this act and for the operation needs of the department.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.

No. 147

(R160, H3707)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 39-41-235 SO AS TO REQUIRE MOTOR FUEL TERMINALS TO OFFER FOR SALE ALL GRADES OF PETROLEUM PRODUCTS SUITABLE FOR SUBSEQUENT BLENDING WITH ETHANOL; TO REQUIRE MOTOR FUEL TERMINALS TO OFFER FOR SALE ALL GRADES OF DIESEL FUEL SUITABLE FOR BLENDING TO PRODUCE BIODIESEL OR BIODIESEL BLENDS; TO PROHIBIT THE SALE OF AN UNBLENDED PRODUCT WITHOUT NECESSARY ADDITIVES; TO PROHIBIT THE DENIAL OF A DISTRIBUTOR OR RETAILER FROM BEING

THE BLENDER OF RECORD; TO REQUIRE THE UTILIZATION OF THE RENEWABLE IDENTIFICATION NUMBER SYSTEM; TO DECLARE A VIOLATION OF THIS SECTION AN UNFAIR TRADE PRACTICE AND TO PROVIDE A PENALTY; TO REQUIRE WHOLESALER PURCHASERS TO ENSURE THEIR ACTIVITIES RESULT IN PRODUCTS THAT MEET CERTAIN STANDARDS; TO PROVIDE FOR LIABILITY FOR DAMAGES ARISING FROM THE BLENDING OF GASOLINE, GASOLINE BLENDING STOCK, OR DIESEL; AND TO REQUIRE NOTICE OF THE ENTITY THAT PERFORMED THE BLENDING IN CERTAIN LOCATIONS.

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

Legislative findings

SECTION 1. The General Assembly finds that the use of blended fuels reduces the dependence on imported oil and, therefore, the protection thereof is reasonable and necessary to accomplish this legitimate public purpose. The General Assembly further finds that promoting and protecting the use of blended fuels in order to reduce the dependence on imported oil protects a basic societal interest. The General Assembly also finds that it is in the best societal interest not to restrict or prevent the blending of ethanol or biodiesel by distributors or retailers. Therefore, any provision of any contract that is executed, modified, renewed, or amended on or after the effective date of this act that would restrict or prevent a distributor or retailer from blending is contrary to the public purpose of this act and is deemed void.

Sale of all grades of petroleum products and diesel fuel that are suitable for blending; sale of unblended product without necessary additives; blender of record status and registration; Renewable Identification Number system used; violation deemed unfair trade practice; wholesaler responsibilities; liability for damages arising from blending; notice of blending entity

SECTION 2. Article 1, Chapter 41, Title 39 of the 1976 Code is amended by adding:

"Section 39-41-235. (A) Regardless of other products offered, every terminal, as defined in Section 12-28-110(56), located within the

State must offer for sale all grades of petroleum products that are not already preblended with ethanol and that are suitable for subsequent blending of the product with ethanol.

(B) Regardless of other products offered, every terminal, as defined in Section 12-28-110(56), located within the State must offer for sale all grades of diesel fuel that are not already preblended to produce biodiesel or a biodiesel blend and that are suitable for subsequent blending to produce biodiesel or biodiesel blends.

(C) A terminal shall not offer for sale an unblended product that omits any additive found in a product preblended with ethanol. A terminal shall not offer for sale an unblended product that does not contain a comparable amount of any additive found in a product preblended with ethanol.

(D) No person or entity shall take an action to deny a distributor, as defined in Section 12-28-110(17), or retailer, as defined in Section 12-28-110(52) who is doing business in this State and who has registered with the Internal Revenue Service on Form 637 (M) from being the blender of record afforded them by the acceptance by the Internal Revenue Service of Form 637 (M).

(E) A distributor or retailer and a refiner must utilize the Renewable Identification Number (RIN) system. Nothing in this section may be construed to imply a market value for the RINs.

(F) A violation of this article is deemed an unfair trade practice, and each violation is a separate offense. A person or entity violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars for each violation.

(G) Wholesalers purchasing gasoline, gasoline blending stock, or diesel are responsible for ensuring that their activities result in gasolines and diesels that meet the standards promulgated by the Commissioner of Agriculture. Refiners, suppliers, and permissive suppliers shall not be liable for fines, penalties, injuries, or damages arising out of the subsequent blending of gasoline, gasoline blending stock, or diesel pursuant to this section. An entity that does not blend the product at issue has no duty with respect to blending and shall not be liable for fines, penalties, injuries, or damages arising out of blending that does not meet those standards.

(H) An entity that purchases an unblended product and subsequently blends that product with ethanol or biodiesel shall provide notice to the purchasing entity's consumers, at the pump or another prominent location near the pump, identifying the entity that performed the blending."

Severability clause

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Savings clause

SECTION 4. 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 5. (A) Section 39-41-235(A) and Section 39-41-235(B) as contained in SECTION 2 of this act take effect sixty days after approval of the Governor.

(B) Except as provided in subsection (A) of this SECTION, this act takes effect upon approval of the Governor.

Ratified the 25th day of March, 2010.

Vetoed by the Governor -- 3/31/2010.
Veto overridden by House -- 4/15/2010.
Veto overridden by Senate -- 4/15/2010.

No. 148

(R145, S964)

AN ACT TO AMEND SECTION 59-53-2410, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITIES, SO AS TO CREATE THE TECHNICAL COLLEGE OF THE LOWCOUNTRY ENTERPRISE CAMPUS AUTHORITY.

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

Technical College of the Lowcountry Enterprise Campus Authority created

SECTION 1. Section 59-53-2410(A) of the 1976 Code, as added by Act 71 of 2009, is amended to read:

"(A) There are created bodies politic and corporate known as the Aiken Technical College Enterprise Campus Authority, the Greenville Technical College Enterprise Campus Authority, the Orangeburg-Calhoun Technical College Enterprise Campus Authority, the Spartanburg Community College Enterprise Campus Authority, the Technical College of the Lowcountry Enterprise Campus Authority, and the York Technical College Enterprise Campus Authority. The authorities are public instrumentalities of the State and the exercise by them of a power conferred in this article is the performance of an essential public function. The authorities are governed by a board, which consists of members of the respective commissions. All members serve ex officio. Persons serving as chairman, vice chairman, treasurer, and secretary of the respective commissions shall serve in the same capacity on their respective board. Members of a board shall receive per diem as provided for members of boards, commissions, and

committees and actual expenses incurred in the performance of their duties."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Vetoed by the Governor -- 3/31/2010.
Veto overridden by Senate -- 4/14/2010.
Veto overridden by House -- 4/20/2010.

No. 149

(R173, H4048)

AN ACT TO AMEND SECTION 22-2-190, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COUNTY JURY AREA DESIGNATIONS FOR USE IN MAGISTRATES COURTS, SO AS TO REVISE THE JURY AREAS FOR LAURENS COUNTY TO PROVIDE FOR ONE JURY AREA COUNTYWIDE.

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

Laurens County jury areas, one jury area countywide

SECTION 1. Section 22-2-190(30) of the 1976 Code is amended to read:

"(30) Laurens County
One jury area countywide"

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 20th day of April, 2010.

Approved the 26th day of April, 2010.

No. 150

(R174, H4514)

AN ACT TO AMEND SECTION 12-44-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO REVISE THE DEFINITION OF "TERMINATION DATE"; AND TO AMEND SECTION 12-6-590, AS AMENDED, RELATING TO TREATMENT OF "S" CORPORATIONS FOR TAX PURPOSES, SO AS TO PROVIDE THAT A SPECIFIED AMOUNT OF INCOME TAXES PAID BY RESIDENT AND NONRESIDENT SHAREHOLDERS OF CERTAIN "S" CORPORATIONS ENGAGED IN MANUFACTURING MUST BE DEPOSITED INTO A SPECIAL FUND AND DISTRIBUTED BY THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT AS GRANTS FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS, WHICH DIRECTLY SUPPORT THE PROJECTS, AND TO PROVIDE FOR GUIDELINES TO ADMINISTER THE FUND AND APPLICATIONS FOR THE GRANTS.

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

Definition revised

SECTION 1. Section 12-44-30(20) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(20) 'Termination date' means the date that is the last day of a property tax year that is the twenty-ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county prior to the termination date for an extension of the termination date beyond the twenty-ninth year up to ten years. The county council of the county shall approve an extension by resolution upon a finding

of substantial public benefit. A copy of the resolution must be delivered to the department within thirty days of the date the resolution was adopted. If the fee agreement is terminated in accordance with Section 12-44-140, the termination date is the date the agreement is terminated."

Fund established; use of monies

SECTION 2. Section 12-6-590 of the 1976 Code, as last amended by Act 116 of 2007, is further amended by adding:

"(C) One-half of all income taxes paid by resident shareholders and nonresident shareholders under Section 12-8-590 or other provisions of law, up to five million dollars, of an 'S' Corporation engaged in manufacturing with a new five hundred million dollar capital investment at a single site and four hundred new employees, for a period of five years, must be paid by the department to the State Treasurer to be deposited into a fund and distributed pursuant to the approval of the Coordinating Council for Economic Development. The county or municipality in which the project is located may apply to the council for grants from the fund by submitting a grant application. Upon review of the grant application, the council shall determine the amount of monies to be received by each of the eligible counties or municipalities. All monies must be used for public infrastructure improvements which directly support the project. Grants may run for more than a year and may be based upon a specified dollar amount or a percentage of the monies deposited annually into the fund. After approval of a grant application, the council may approve the release of monies. The council shall adopt guidelines to administer the fund, including, but not limited to, grant application criteria for review and approval of grant applications."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 20th day of April, 2010.

Became law without the signature of the Governor -- 4/27/2010.

No. 151

(R140, S191)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE "SOUTH CAROLINA REDUCTION OF RECIDIVISM ACT OF 2010" SO AS TO PROVIDE LAW ENFORCEMENT OFFICERS WITH THE STATUTORY AUTHORITY TO REDUCE RECIDIVISM RATES, APPREHEND CRIMINALS AND PROTECT POTENTIAL VICTIMS FROM CRIMINAL ENTERPRISES BY AUTHORIZING WARRANTLESS SEARCHES AND SEIZURES OF PROBATIONERS AND PAROLEES; TO AMEND SECTION 63-19-1820, RELATING TO THE BOARD OF JUVENILE PAROLE, SO AS TO PROVIDE THAT BEFORE A JUVENILE MAY BE CONDITIONALLY RELEASED, THE JUVENILE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 63-19-1850, RELATING TO CONDITIONAL RELEASE, SO AS TO PROVIDE THAT BEFORE A JUVENILE MAY BE CONDITIONALLY RELEASED, THE JUVENILE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24-19-110, RELATING TO THE PROCEDURE FOR CONDITIONAL RELEASE OF YOUTHFUL OFFENDERS, SO AS TO PROVIDE THAT BEFORE A YOUTHFUL OFFENDER MAY BE CONDITIONALLY RELEASED, THE YOUTHFUL OFFENDER MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24-13-710, RELATING TO THE GUIDELINES, ELIGIBILITY CRITERIA, AND IMPLEMENTATION OF A SUPERVISED FURLOUGH PROGRAM, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON SUPERVISED FURLOUGH, THE INMATE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24-13-720, RELATING TO INMATES WHO MAY BE PLACED WITHIN CERTAIN PROGRAMS, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON SUPERVISED

FURLOUGH, THE INMATE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24-13-1330, RELATING TO AN ELIGIBLE INMATE'S AGREEMENT TO TERMS AND CONDITIONS, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON PAROLE, THE INMATE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24-21-410, RELATING TO THE COURT BEING AUTHORIZED TO SUSPEND IMPOSITION OF SENTENCE FOR PROBATION AFTER CONVICTION, SO AS TO PROVIDE THAT BEFORE A DEFENDANT MAY BE PLACED ON PROBATION, THE DEFENDANT MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT BASED ON REASONABLE SUSPICIONS; TO AMEND SECTION 24-21-430, RELATING TO THE CONDITIONS OF PROBATION, SO AS TO PROVIDE THAT THE CONDITIONS IMPOSED MUST INCLUDE THE REQUIREMENT THAT THE PROBATIONER MUST PERMIT SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT BASED ON REASONABLE SUSPICIONS; TO AMEND SECTION 24-21-560, RELATING TO COMMUNITY SUPERVISION PROGRAMS, SO AS TO PROVIDE THAT THE CONDITIONS OF PARTICIPATION MUST INCLUDE THE REQUIREMENT THAT THE OFFENDER MUST PERMIT SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT; TO AMEND SECTION 24-21-640, RELATING TO THE CIRCUMSTANCES WARRANTING PAROLE, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON PAROLE, THE INMATE MUST AGREE TO SEARCH AND SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; AND TO AMEND SECTION 24-21-645, RELATING TO THE ORDER AUTHORIZING PAROLE, SO AS TO PROVIDE THAT THE CONDITIONS OF PAROLE MUST INCLUDE THE REQUIREMENT THAT THE PAROLEE MUST PERMIT SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE.

Whereas, as held by the United States Supreme Court in Samson v. California, 547 U.S. 843 (2006), warrantless and suspicionless searches

of probationers and parolees are a legitimate state interest due to the fact that they are persons more likely to commit future criminal offenses; and

Whereas, as held by the United States Supreme Court in Samson v. California, 547 U.S. 843 (2006), parolees have fewer expectations of privacy than probationers because parole is more akin to imprisonment than probation; and

Whereas, as held by the United States Supreme Court in United States v. Knights, 534 U.S. 112 (2001), probationers do not enjoy the absolute liberty of other citizens; and

Whereas, as held by the United States Supreme Court in United States v. Knights, 534 U.S. 112 (2001), warrantless searches of probationers are allowed if based on reasonable suspicions; and

Whereas, the United States Supreme Court has noted, in Ewing v. California, 538 U.S. 11 (2003), that recidivism is a grave concern throughout the nation; and

Whereas, the Untied States Supreme Court has held in numerous cases that the Fourth Amendment does not render the states powerless to effectively address concerns for protecting people from criminal activity. Now, therefore,

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

Citation of the act

SECTION 1. This act may be cited as the "South Carolina Reduction of Recidivism Act of 2010".

General Assembly's intent

SECTION 2. It is the intent of the General Assembly of South Carolina to provide law enforcement officers with the statutory authority to reduce recidivism rates of probationers and parolees, apprehend criminals, and protect potential victims from criminal enterprises.

Board of Juvenile Parole, conditional release, search or seizure without a search warrant

SECTION 3. Section 63-19-1820(A)(1) of the 1976 Code is amended to read:

"(A)(1) The Board of Juvenile Parole shall meet monthly and at other times as may be necessary to review the records and progress of juveniles committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these juveniles. The board shall make periodic inspections, at least quarterly, of the records of these juveniles and may issue temporary and final discharges or release these juveniles conditionally and prescribe conditions for release into aftercare. Before a juvenile is conditionally released, the juvenile must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile's person, any vehicle the juvenile owns or is driving, and any of the juvenile's possessions by:

(a) the juvenile's aftercare counselor;

(b) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(c) any other law enforcement officer.

A juvenile may not be conditionally released by the parole board if he fails to comply with this provision. However, a juvenile who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile's person, any vehicle the juvenile owns or is driving, or any of the juvenile's possessions.

Immediately before each search or seizure conducted pursuant to this item, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this item shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this

information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this item, he is subject to discipline pursuant to the employing agency's policies and procedures."

Board of Juvenile Parole, conditional release, search or seizure without a search warrant

SECTION 4. Section 63-19-1850(A) of the 1976 Code is amended to read:

"(A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the releasing entity until the expiration of the specified term imposed in the juvenile's conditional aftercare release. The specified period of conditional release may expire before but not after the twenty-first birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release. The conditions of release must include the requirement that the juvenile parolee must permit the search or seizure, without a search warrant, with or without cause, of the juvenile parolee's person, any vehicle the juvenile parolee owns or is driving, and any of the juvenile parolee's possessions by:

(1) his aftercare counselor;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer.

However, the conditions of release of a juvenile parolee who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the juvenile parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile parolee's person, any vehicle the juvenile parolee owns or is driving, or any of the juvenile parolee's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not

authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this subsection, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency's policies and procedures."

Youthful offenders, conditional release, search or seizure without a search warrant

SECTION 5. Section 24-19-110 of the 1976 Code is amended to read:

"Section 24-19-110. The division may at any time after reasonable notice to the director release conditionally under supervision a committed youthful offender. Before a youthful offender may be conditionally released, the youthful offender must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the youthful offender's person, any vehicle the youthful offender owns or is driving, and any of the youthful offender's possessions by:

(1) his supervisory agent;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer. A youthful offender must not be conditionally released by the division if he fails to comply with this provision.

However, a youthful offender who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the youthful offender's person, any vehicle the youthful offender owns or is driving, or any of the youthful offender's possessions. When, in the judgment of the director, a committed youthful offender should be released conditionally under supervision, he shall so report and recommend to the division. The conditions of release must include the requirement that the youthful offender must permit the search or seizure, without a search warrant, with or without cause, of the youthful offender's person, any vehicle the youthful offender owns or is driving, and any of the youthful offender's possessions by:

(1) his supervisory agent;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer.

However, the conditions of release of a youthful offender who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the youthful offender agree to be subject to search or seizure, without a search warrant, with or without cause, of the youthful offender's person, any vehicle the youthful offender owns or is driving, or any of the youthful offender's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of

Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency's policies and procedures.

The division may regularly assess a reasonable fee to be paid by the youthful offender who is on conditional release to offset the cost of his supervision.

The division may discharge a committed youthful offender unconditionally at the expiration of one year from the date of conditional release."

Inmates, supervised furlough, search or seizure without a search warrant

SECTION 6. Section 24-13-710 of the 1976 Code is amended to read:

"Section 24-13-710. The Department of Corrections and the Department of Probation, Parole and Pardon Services shall jointly develop the policies, procedures, guidelines, and cooperative agreement for the implementation of a supervised furlough program which permits carefully screened and selected inmates who have served the mandatory minimum sentence as required by law or have not committed a violent crime as defined in Section 16-1-60, a 'no parole offense' as defined in Section 24-13-100, the crime of criminal sexual conduct in the third degree as defined in Section 16-3-654, or the crime of committing or attempting a lewd act upon a child under the age of fourteen as defined in Section 16-15-140 to be released on furlough prior to parole eligibility and under the supervision of state probation and parole agents with the privilege of residing in an approved residence and continuing treatment, training, or employment in the community until parole eligibility or expiration of sentence, whichever is earlier.

Before an inmate may be released on supervised furlough, the inmate must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

An inmate must not be granted supervised furlough if he fails to comply with this provision. However, an inmate who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, or any of the inmate's possessions.

The department and the Department of Probation, Parole and Pardon Services shall assess a fee sufficient to cover the cost of the participant's supervision and any other financial obligations incurred because of his participation in the supervised furlough program as provided by this article. The two departments shall jointly develop and approve written guidelines for the program to include, but not be limited to, the selection criteria and process, requirements for supervision, conditions for participation, and removal.

The conditions for participation must include the requirement that the offender must permit the search or seizure, without a search warrant, with or without cause, of the offender's person, any vehicle the offender owns or is driving, and any of the offender's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

However, the conditions for participation for an offender who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the offender agree to be subject to search or seizure, without a search warrant, with or without cause, of the offender's person, any vehicle the offender owns or is driving, or any of the offender's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on supervised furlough. A law enforcement

officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

The cooperative agreement between the two departments shall specify the responsibilities and authority for implementing and operating the program. Inmates approved and placed on the program must be under the supervision of agents of the Department of Probation, Parole and Pardon Services who are responsible for ensuring the inmate's compliance with the rules, regulations, and conditions of the program as well as monitoring the inmate's employment and participation in any of the prescribed and authorized community-based correctional programs such as vocational rehabilitation, technical education, and alcohol/drug treatment. Eligibility criteria for the program include, but are not limited to, all of the following requirements:

(1) maintain a clear disciplinary record for at least six months prior to consideration for placement on the program;

(2) demonstrate to Department of Corrections' officials a general desire to become a law-abiding member of society;

(3) satisfy any other reasonable requirements imposed upon him by the Department of Corrections;

(4) have an identifiable need for and willingness to participate in authorized community-based programs and rehabilitative services;

(5) have been committed to the State Department of Corrections with a total sentence of five years or less as the first or second adult commitment for a criminal offense for which the inmate received a sentence of one year or more. The Department of Corrections shall notify victims pursuant to Article 15, Chapter 3, Title 16 as well as the sheriff's office of the place to be released before releasing inmates through any supervised furlough program. These requirements do not apply to the crimes referred to in this section."

Inmates, supervised furlough, search or seizure without a search warrant

SECTION 7. Section 24-13-720 of the 1976 Code is amended to read:

"Section 24-13-720. Unless sentenced to life imprisonment, an inmate under the jurisdiction or control of the Department of Corrections who has not been convicted of a violent crime under the provisions of Section 16-1-60 or a 'no parole offense' as defined in Section 24-13-100 may, within six months of the expiration of his sentence, be placed with the program provided for in Section 24-13-710 and is subject to every rule, regulation, and condition of the program. Before an inmate may be released on supervised furlough, the inmate must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

An inmate may not be released on supervised furlough by the department if he fails to comply with this provision. However, an inmate who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, or any of the inmate's possessions.

The conditions for participation must include the requirement that the inmate must permit the search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

However, the conditions for participation for an inmate who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the inmate agree to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person,

any vehicle the inmate owns or is driving, or any of the inmate's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on supervised furlough. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

No inmate otherwise eligible under the provisions of this section for placement with the program may be so placed unless he has qualified under the selection criteria and process authorized by the provisions of Section 24-13-710. He also must have maintained a clear disciplinary record for at least six months prior to eligibility for placement with the program."

Parole, search or seizure without a search warrant

SECTION 8. Section 24-13-1330(D) and (E) of the 1976 Code is amended to read:

"(D) An applicant may not participate in a program unless he agrees to be bound by all of its terms and conditions and indicates this agreement by signing the following:

'I accept the foregoing program and agree to be bound by its terms and conditions. I understand that my participation in the program is a privilege that may be revoked at the sole discretion of the director. I

understand that I shall complete the entire program successfully to obtain a certificate of earned eligibility upon the completion of the program, and if I do not complete the program successfully, for any reason, I will be transferred to a nonshock incarceration correctional facility to continue service of my sentence.'

Before an inmate may be released on parole, the inmate must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

A shock incarceration inmate may not be granted parole release by the department if he fails to comply with this provision. However, a shock incarceration inmate who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the offender agree to be subject to search or seizure, without a search warrant, with or without cause, of the shock incarceration inmate's person, any vehicle the shock incarceration inmate owns or is driving, or any of the shock incarceration inmate's possessions.

Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

(E) An inmate who has completed a shock incarceration program successfully is eligible to receive a certificate of earned eligibility and must be granted parole release if the inmate has executed the agreements described in subsection (D) of this section. The conditions of parole must include the requirement that the parolee must permit the search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, and any of the parolee's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

However, the conditions of parole of a parolee who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, or any of the parolee's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures."

Probation, search or seizure without a search warrant

SECTION 9. Section 24-21-410 of the 1976 Code is amended to read:

"Section 24-21-410. After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. Probation is a form of clemency. Before a defendant may be placed on probation, he must agree in writing to be subject to a search or seizure, without a search warrant, based on reasonable suspicions, of the defendant's person, any vehicle the defendant owns or is driving, and any of the defendant's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

A defendant may not be placed on probation by the court if he fails to comply with this provision and instead must be required to serve the suspended portion of the defendant's sentence. However, a defendant who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the defendant agree to be subject to search or seizure, without a search warrant, with or without cause, of the defendant's person, any vehicle the defendant owns or is driving, or any of the defendant's possessions.

Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the

Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures."

Probation, search or seizure without a search warrant

SECTION 10. The first unnumbered paragraph of Section 24-21-430 of the 1976 Code is amended to read:

"Section 24-21-430. The court may impose by order duly entered and may at any time modify the conditions of probation and may include among them any of the following or any other condition not prohibited in this section; however, the conditions imposed must include the requirement that the probationer must permit the search or seizure, without a search warrant, based on reasonable suspicions, of the probationer's person, any vehicle the probationer owns or is driving, and any of the probationer's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer, but the conditions imposed upon a probationer who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the probationer agree to be subject to search or seizure, without a search warrant, with or without cause, of the probationer's person, any vehicle the probationer owns or is driving, or any of the probationer's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on probation. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the

search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

To effectively supervise probationers, the director shall develop policies and procedures for imposing conditions of supervision on probationers. These conditions may enhance but must not diminish court imposed conditions."

Community supervision program, search or seizure without a search warrant

SECTION 11. Section 24-21-560(B) of the 1976 Code is amended to read:

"(B) A community supervision program operated by the Department of Probation, Parole and Pardon Services must last no more than two continuous years. The period of time a prisoner is required to participate in a community supervision program and the individual terms and conditions of a prisoner's participation shall be at the discretion of the department based upon guidelines developed by the director; however, the conditions of participation must include the requirement that the offender must permit the search or seizure, without a search warrant, with or without cause, of the offender's person, any vehicle the offender owns or is driving, and any of the offender's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer, but the conditions for participation for an offender who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the offender agree to be subject to search or seizure, without a search warrant, with or without cause, of the offender's person, any vehicle the offender owns or is driving, or any of the offender's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure pursuant to this subsection, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently in a community supervision program. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency's policies and procedures.

A prisoner participating in a community supervision program must be supervised by a probation agent of the department. The department must determine when a prisoner completes a community supervision program, violates a term of community supervision, fails to participate in a program satisfactorily, or whether a prisoner should appear before the court for revocation of the community supervision program."

Parole, search or seizure without a search warrant

SECTION 12. Section 24-21-640 of the 1976 Code is amended to read:

"Section 24-21-640. The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

Before an inmate may be released on parole, he must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

An inmate may not be granted parole release by the board if he fails to comply with this provision. However, an inmate who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the inmate agree to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, or any of the inmate's possessions.

Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner must, as often as may be required, render a written report to the board giving that information as may be required by the board which must be confirmed by the person in whose employment the

prisoner may be at the time. The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. Provided that where more than one included offense shall be committed within a one-day period or pursuant to one continuous course of conduct, such multiple offenses must be treated for purposes of this section as one offense.

Any part or all of a prisoner's in-prison disciplinary records and, with the prisoner's consent, records involving all awards, honors, earned work credits and educational credits, are subject to the Freedom of Information Act as contained in Chapter 4, Title 30."

Parole, search or seizure without a search warrant

SECTION 13. Section 24-21-645 of the 1976 Code is amended to read:

"Section 24-21-645. The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.

The conditions of parole must include the requirement that the parolee must permit the search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, and any of the parolee's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

However, the conditions of parole for a parolee who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, or any of the parolee's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

Upon satisfactory completion of the provisional period, the director or one lawfully acting for him must issue an order which, if accepted by the prisoner, shall provide for his release from custody. However, upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole, except that prisoners who are eligible for parole pursuant to Section 16-25-90, and who are subsequently denied parole must have their cases reviewed every twelve months for the purpose of a determination of parole. This section applies retroactively to a prisoner who has had a parole hearing pursuant to Section 16-25-90 prior to the effective date of this act."

Savings clause

SECTION 14. The repeal or amendment by the provisions 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.

Severability clause

SECTION 15. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Law enforcement, penalty for failure to report

SECTION 16. In any instance in which a law enforcement officer has failed to make the reports necessary to the State Law Enforcement Division for warrantless searches, then in the absence of a written policy by the employing agency enforcing the reporting requirements, the otherwise applicable state-imposed, one-day suspension without pay applies.

Time effective

SECTION 17. This act takes effect upon approval by the Governor.

Ratified the 25th day of March, 2010.

Vetoed by the Governor -- 3/31/2010.
Veto overridden by Senate -- 4/14/2010.
Veto overridden by House -- 4/28/2010.

No. 152

(R171, H3395)

AN ACT TO AMEND SECTION 11-11-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE GENERAL RESERVE FUND, SO AS TO MAKE CONFORMING AMENDMENTS TO REFLECT ANY CHANGE IN THE AMOUNT REQUIRED TO BE HELD IN THE GENERAL RESERVE FUND PURSUANT TO THE CONSTITUTION OF THIS STATE AND THE RATE AND MANNER OF REPLENISHMENT OF THAT AMOUNT; TO AMEND SECTION 11-11-320, AS AMENDED, RELATING TO THE CAPITAL RESERVE FUND, SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH REVENUES IN THE FUND MUST BE USED IN EACH FISCAL YEAR INCLUDING A REQUIREMENT THAT THE CAPITAL RESERVE FUND MAY NOT BE USED TO OFFSET A MIDYEAR BUDGET REDUCTION; TO AMEND SECTION 11-9-890, RELATING TO THE DELINEATION OF FISCAL YEAR REVENUE ESTIMATES BY QUARTERS AND ACTIONS REQUIRED TO AVOID YEAR-END DEFICITS, SO AS TO REVISE PROCEDURES REQUIRED TO REDUCE GENERAL FUND APPROPRIATIONS AND EXPENDITURES AND THE CRITERIA WHICH REQUIRES SUCH REDUCTIONS; TO AMEND SECTION 1-11-495, RELATING TO MONITORING REVENUES AND EXPENDITURES TO DETERMINE YEAR-END DEFICITS, SO AS TO FURTHER PROVIDE FOR WHEN REDUCTIONS BY THE STATE BUDGET AND CONTROL BOARD MAY BE ORDERED, TO PROVIDE THAT THE REDUCTIONS ARE SUBJECT TO ANY BILL OR RESOLUTION ENACTED BY THE GENERAL ASSEMBLY, AND TO ADD A REQUIREMENT THAT TO RECOGNIZE A DEFICIT REQUIRES FOUR VOTES OF THE MEMBERS OF

THE STATE BUDGET AND CONTROL BOARD; TO REPEAL SECTION 11-11-325 RELATING TO BUDGET SHORTFALLS AND THE REQUIREMENT THAT THE STATE BUDGET AND CONTROL BOARD FIRST MUST REDUCE THE CAPITAL RESERVE FUND BEFORE MANDATING CUTS TO OPERATING APPROPRIATIONS IF A REVENUE SHORTFALL IS PROJECTED; AND TO PROVIDE FOR THE MANNER IN WHICH AND CONDITIONS UNDER WHICH THESE PROVISIONS TAKE EFFECT.

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

General Reserve Fund amounts and replenishment

SECTION 1. A. Section 11-11-310 of the 1976 Code, as last amended by Act 385 of 1988, is further amended to read:

"Section 11-11-310. (A) The State Budget and Control Board shall provide for a General Reserve Fund. Funds accumulating in excess of the annual operating expenditures must be transferred to the General Reserve Fund and the transfer must continue to be made in succeeding fiscal years until the accumulated total in this reserve reaches an amount equal to the applicable percentage amount of the general fund revenue of the latest completed fiscal year.

(B) If there is a year-end operating deficit, so much of the General Reserve Fund as is necessary must be used to cover the deficit. The amount so applied must be restored to the General Reserve Fund out of future revenues as provided in Section 36, Article III of the Constitution of this State and out of funds accumulating in excess of annual operating expenditures as provided in this section until the applicable percentage amount is reached and actually maintained.

(C) In the event of a year-end operating deficit, so much of the reserve fund as may be necessary must be used to cover the deficit, and the amount must be restored to the reserve fund within five fiscal years out of future revenues until the applicable percentage amount required to be transferred to the General Reserve Fund, is reached and maintained. Provided, that a minimum of one percent of the general fund revenue of the latest completed fiscal year, if so much is necessary, must be restored to the reserve fund each year following the deficit until the applicable percentage amount required by general law to be transferred to the General Reserve Fund is restored.

(D) For purposes of this section 'applicable percentage amount' means five percent of general fund revenue of the latest completed fiscal year. The five percent requirement shall be reached by adding a cumulative one-half of one percent of such revenue in each fiscal year succeeding the last fiscal year to which the three percent limit applied until the percentage of such revenue equals five percent which then and thereafter shall apply."

B. This section takes effect upon ratification of an amendment to Section 36, Article III of the Constitution of this State authorizing its terms submitted to the electors of this State at the general election of 2010 and first applies for the state fiscal year beginning after that date.

Capital Reserve Fund uses; section repealed

SECTION 2. A. Section 11-11-320(C) of the 1976 Code is amended to read:

"(C) Revenues in the Capital Reserve Fund only may be used in the following manner:

(1) In any fiscal year in which the General Reserve Fund does not maintain the percentage amount required by Section 11-11-310, monies from the Capital Reserve Fund first must be used, to the extent necessary, to fully replenish the requisite percentage amount in the General Reserve Fund. The Capital Reserve Fund's replenishment of the General Reserve Fund is in addition to the replenishment requirement provided in Section 36(A), Article III of the Constitution of this State. After the General Reserve Fund is fully restored to the requisite percentage, the monies in the Capital Reserve Fund may be appropriated pursuant to item (2) of this subsection. The Capital Reserve Fund may not be used to offset a midyear budget reduction.

(2) Subsequent to appropriations required by item (1), monies from the Capital Reserve Fund may be appropriated by the General Assembly in separate legislation upon an affirmative vote in each branch of the General Assembly by two-thirds of the members present and voting but not less than three-fifths of the total membership in each branch for the following purposes:

(a) to finance in cash previously authorized capital improvement bond projects;

(b) to retire interest or principal on bonds previously issued;

(c) for capital improvements or other nonrecurring purposes."

B. Section 11-11-325 of the 1976 Code is repealed.

C. This section takes effect upon ratification of an amendment to Section 36, Article III of the Constitution of this State authorizing its terms submitted to the electors of this State at the 2010 general election and first applies for the state fiscal year beginning after that date.

Procedures and criteria revised

SECTION 3. Section 11-9-890 B. of the 1976 Code is amended to read:

"B. If at the end of the first, second, or third quarter of any fiscal year quarterly revenue collections are two percent or more below the amount projected for that quarter by the Board of Economic Advisors, the State Budget and Control Board, within seven days of that determination, shall take action to avoid a year-end deficit. Notwithstanding Section 1-11-495, if the State Budget and Control Board does not take unanimous action within seven days, the Director of the Office of State Budget must reduce general fund appropriations by the requisite amount in the manner prescribed by law. Upon making the reduction, the Director of the Office of State Budget immediately must notify the State Treasurer and the Comptroller General of the reduction, and upon notification, the appropriations are considered reduced. No agencies, departments, institutions, activity, program, item, special appropriation, or allocation for which the General Assembly has provided funding in any part of this section may be discontinued, deleted, or deferred by the Director of the Office of State Budget. A reduction of rate of expenditure by the Director of the Office of State Budget, under authority of this section, must be applied as uniformly as shall be practicable, except that no reduction must be applied to funds encumbered by a written contract with the agency, department, or institution not connected with state government."

Reductions and deficit recognitions

SECTION 4. Section 1-11-495(A) and (B) of the 1976 Code, as added by Act 353 of 2008, is amended to read:

"(A) The State Budget and Control Board is directed to survey the progress of the collection of revenue and the expenditure of funds by all agencies, departments, and institutions. If the board determines that

a year-end aggregate deficit may occur by virtue of a projected shortfall in anticipated revenues, it shall utilize those funds as may be available and required to be used to avoid a year-end deficit and after that take action as necessary to restrict the rate of expenditure of all agencies, departments, and institutions consistent with the provisions of this section. No agencies, departments, institutions, activity, program, item, special appropriation, or allocation for which the General Assembly has provided funding in any part of this section may be discontinued, deleted, or deferred by the board. A reduction of rate of expenditure by the board, under authority of this section, must be applied as uniformly as may be practicable, except that no reduction must be applied to funds encumbered by a written contract with the agency, department, or institution not connected with state government. This reduction is subject to any bill or resolution enacted by the General Assembly.

(B) As far as practicable, all agencies, departments, and institutions of the State are directed to budget and allocate appropriations as a quarterly allocation, so as to provide for operation on uniform standards throughout the fiscal year and in order to avoid an operating deficit for the fiscal year. It is recognized that academic year calendars of state institutions affect the uniformity of the receipt and distribution of funds during the year. The Comptroller General or the Office of State Budget shall make reports to the board as they consider advisable on an agency, department, or institution that is expending authorized appropriations at a rate which predicts or projects a general fund deficit for the agency, department, or institution. The board is directed to require the agency, department, or institution to file a quarterly allocations plan and is further authorized to restrict the rate of expenditures of the agency, department, or institution if the board determines that a deficit may occur. It is the responsibility of the agency, department, or institution to develop a plan, in consultation with the board, which eliminates or reduces a deficit. If the board makes a finding that the cause of, or likelihood of, a deficit is unavoidable due to factors which are outside the control of the agency, department, or institution, then the board may determine that the recognition of the agency, department, or institution is appropriate and shall notify the General Assembly of this action or the presiding officer of the House and Senate if the General Assembly is not in session. The board only may recognize a deficit by a vote of at least four members of the board."

Time effective

SECTION 5. Except where otherwise stated, this act takes effect upon approval by the Governor.

Ratified the 20th day of April, 2010.

Vetoed by the Governor -- 4/26/2010.
Veto overridden by House -- 4/28/2010.
Veto overridden by Senate -- 5/6/2010.

No. 153

(R179, S168)

AN ACT TO AMEND SECTION 38-79-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEDICAL MALPRACTICE INSURANCE, SO AS TO PROVIDE THAT A LICENSED HEALTH CARE PROVIDER WHO RENDERS MEDICAL SERVICES VOLUNTARILY AND WITHOUT COMPENSATION, AND SEEKS NO REIMBURSEMENT FROM CHARITABLE AND GOVERNMENTAL SOURCES, AND PROVIDES NOTICE TO THE PATIENT OR PATIENT'S PROVIDER IN A NONEMERGENCY, IS NOT LIABLE FOR ANY CIVIL DAMAGES FOR ANY ACT OR OMISSION UNLESS THE ACT OR OMISSION WAS THE RESULT OF THE HEALTH CARE PROVIDER'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

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

Civil liability, health care provider under certain conditions immune from

SECTION 1. Section 38-79-30 of the 1976 Code is amended to read:

"Section 38-79-30. No licensed health care provider, as defined in Section 38-79-410, who renders medical services voluntarily and without compensation or the expectation or promise of compensation and seeks no reimbursement from charitable and governmental sources

is liable for any civil damages for any act or omission resulting from the rendering of the services unless the act or omission was the result of the licensed health care provider's gross negligence or wilful misconduct. The agreement to provide a voluntary, noncompensated service must be made before rendering service in the case of a nonemergency and may be evidenced by the provider's giving notice to the patient or to the person responsible for the patient's care and acting for the patient that the service being rendered is voluntary and without compensation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 11th day of May, 2010.

No. 154

(R180, S170)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63-17-385 SO AS TO REQUIRE THE FAMILY COURT TO ISSUE A RULE TO SHOW CAUSE UPON THE FILING OF A PETITION AND AN AFFIDAVIT THAT A PARENT HAS FAILED TO PAY COURT-ORDERED SUPPORT FOR A CHILD, OTHER THAN PERIODIC CHILD SUPPORT PAYMENTS; TO PROVIDE FOR THE CONTENTS OF THE AFFIDAVIT AND TO REQUIRE COURT ADMINISTRATION TO PREPARE AND MAKE THE AFFIDAVIT FORM AVAILABLE TO PETITIONERS; TO SPECIFY OTHER DOCUMENTS AND INFORMATION THAT MAY ACCOMPANY THE AFFIDAVIT; TO ESTABLISH THE BURDEN OF PROOF; TO REQUIRE THE PETITIONER TO BE PRESENT AT THE HEARING; AND TO PROVIDE CIRCUMSTANCES UNDER WHICH ATTORNEY'S FEES AND LITIGATION COSTS MAY BE AWARDED.

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

Failure to pay court-ordered child support other than periodic child support payments

SECTION 1. Article 3, Chapter 17, Title 63 of the 1976 Code is amended by adding:

"Section 63-17-385. (A) Where a court order requires a parent to provide monetary support for a child in the form of payment of health, medical, educational, or other expenses, excluding periodic child support payments, and the parent fails to do so, the other parent or the child's custodial guardian may petition the court for relief using an authorized affidavit and supporting documents setting forth the existence of the expense and the failure of the parent to pay the required support.

(1) Within sixty days of approval of this act by the Governor, Court Administration shall prepare the authorized affidavit form and make it available to petitioners seeking relief under the provisions of this section. The authorized affidavit form must contain the following information:

(a) the names and addresses of the petitioner and the parent alleged to have failed to make the support payment;

(b) the amount and nature of the support payment the parent allegedly failed to make;

(c) the date and manner in which the petitioner notified the alleged nonpaying parent and requested payment;

(d) the response, if any, of the alleged nonpaying parent upon receiving the petitioner's request for payment; and

(e) if the matter relates to an expense covered by an insurance policy, whether an insurance claim has been filed, and, if so, the insurance carrier's response.

(2) The authorized affidavit may be accompanied by the following documents:

(a) a copy of the court order requiring the parent to provide monetary support for a child excluding periodic payments of funds for support;

(b) a copy of any bill, invoice, or other written document, substantiating the expense the petitioner claims the parent is required to pay;

(c) a copy of any written request for payment of the support by the petitioner to the alleged nonpaying parent;

(d) a copy of any written reply from the alleged nonpaying parent to the parent responding to the petitioner's request for payment;

(e) if the matter relates to an expense covered by an insurance policy, a copy of all correspondence to and from the insurance carrier pertaining to payment of the claim;

(f) proof that the petitioner has satisfied that portion of the expense he is required to pay pursuant to the court order; and

(g) the current mailing address of the alleged nonpaying parent.

(3) Upon receipt of a petition accompanied by an authorized affidavit, the court shall issue a rule to show cause to the alleged nonpaying parent for nonpayment of the required support. The parent must be served in accordance with the South Carolina Rules of Civil Procedure. The court also shall provide notice of the hearing to the petitioner.

(B)(1) At the hearing on the rule to show cause, once the petitioner has established his claim, the burden is on the alleged nonpaying parent to establish a defense.

(2) The alleged nonpaying parent may assert any defense allowed by law.

(3) The petitioner must be present at the hearing and may be called upon to testify.

(C) If the family court determines that the claims or defenses of either party are frivolous, or that either party knowingly or intentionally made or filed a false authorized affidavit, or knowingly or intentionally submitted false documents in support of a claim or defense, the court may award to either party attorney's fees and other litigation costs reasonably incurred in the prosecution or defense of the petition."

Time effective

SECTION 2. This act takes effect ninety days after approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 12th day of May, 2010.

No. 155

(R181, S196)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 15-3-690 SO AS TO PROVIDE A LIQUEFIED PETROLEUM GAS DEALER IS IMMUNE FROM CIVIL LIABILITY FOR AN INJURY OR DAMAGE PROXIMATELY CAUSED BY A LIQUEFIED PETROLEUM GAS SYSTEM OR GAS BURNING APPLIANCE IN CERTAIN CIRCUMSTANCES, TO PROVIDE CERTAIN DEFINITIONS, AND TO LIMIT APPLICABILITY OF THE SECTION; AND TO AMEND SECTION 40-82-270, RELATING TO THE REQUIREMENT TO NOTIFY A PROPANE SUPPLIER BEFORE BEGINNING WORK ON A SYSTEM SUPPLIED BY A LIQUEFIED PETROLEUM GAS SUPPLIER, SO AS TO PROVIDE A CONSUMER, OWNER, END USER, OR PERSON WHO ALTERS OR MODIFIES HIS LIQUEFIED PETROLEUM GAS EQUIPMENT, GAS BURNING APPLIANCE, OR SYSTEM INSTALLED BY A LICENSED DEALER MUST NOTIFY THE LICENSED DEALER WHO NEXT FILLS OR OTHERWISE SERVICES HIS LIQUEFIED PETROLEUM GAS SYSTEM THAT THIS WORK HAS BEEN PERFORMED, TO PROVIDE THE LICENSED DEALER MUST NOTIFY THEIR CUSTOMERS IN WRITING AT LEAST ONCE ANNUALLY OF THE CUSTOMER'S STATUTORY OBLIGATION OF NOTIFICATION IN REGARD TO MODIFICATIONS TO THEIR PROPANE APPLIANCES OR SYSTEMS, AND TO PROVIDE THIS NOTICE TO CUSTOMERS SHOULD BE PROVIDED IN A SEPARATE AND DISTINCT DISCLOSURE AND NOT A PART OF OTHER SAFETY LITERATURE GIVEN TO CUSTOMERS.

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

Immunity from civil liability for liquefied petroleum gas dealers, definitions, scope

SECTION 1. Chapter 3, Title 15 of the 1976 Code is amended by adding:

"Section 15-3-690. (A) As used in this subsection, the following definitions apply:

(1) 'System' or 'systems' means assembly of equipment consisting of the container and any device that is connected to the container for the utilization of liquefied petroleum gas.

(2) 'Dealer' means a person engaging in the installation of liquefied petroleum gas systems or in the manufacture, distribution, sale, storing, or transporting by tank truck, tank trailer, or container of liquefied petroleum gases or engaging in installing, servicing, repairing, adjusting, disconnecting, or connecting appliances to liquefied petroleum gas systems and containers.

(3) 'Liquefied petroleum gas' means material composed predominately of hydrocarbons or mixtures of hydrocarbons, including propane, propylene, butanes (normal butane or isobutane), and butylenes.

(B) A liquefied petroleum gas dealer shall be immune from civil liability if the proximate cause of the injury or damage was:

(1) an alteration, modification, or repair of the liquefied petroleum gas system or gas burning appliance that could not have been discovered by the liquefied petroleum gas dealer in the exercise of reasonable care; or

(2) the use of the liquefied petroleum gas system or gas burning appliance in a manner or for a purpose other than that for which the liquid petroleum gas system or gas burning appliance was intended to be used or for which could reasonably have been foreseen, provided that the liquefied petroleum gas dealer or the manufacturer of the liquefied petroleum gas system or gas burning appliance took reasonable steps to warn the ultimate consumer of the hazards associated with foreseeable misuses of the liquefied petroleum gas system or gas burning appliance.

(C) Nothing in this subsection shall be construed as affecting, modifying, or eliminating the liability of a manufacturer of the liquefied petroleum gas system or gas burning appliance, or its employees or agents from any other legal claim, including, but not limited to, product liability claims.

(D) Nothing in this subsection shall apply to a cylinder exchange company as defined pursuant to Section 40-82-20(3) or a reseller as defined pursuant to Section 40-82-20(7)."

Notifying propane supplier concerning certain work on system, notice to customers of statutory obligations, form of notice to customers

SECTION 2. Section 40-82-270 of the 1976 Code is amended to read:

"Section 40-82-270. (1) An installer or service worker shall notify the supplier of propane before beginning any work on the system supplied by a liquefied petroleum gas supplier. If more than one liquefied petroleum gas supplier has supplied gas to the container of the system, the last supplier of liquefied petroleum gas must be notified before any work is performed on the system.

(2) Any consumer, owner, end user, or person who alters or modifies in any way his liquefied petroleum gas equipment, gas burning appliance, or system installed by a licensed dealer shall, for informational purposes, notify the licensed dealer who next fills or otherwise services his liquefied petroleum gas system that such work has been performed. The licensed dealer shall notify their customers in writing at least once per year of the customer's statutory obligation of notification in regard to modifications to their propane appliances or systems. This notice should be provided in a separate and distinct disclosure and not a part of other safety literature given to customers."

Time effective

SECTION 3. This act takes effect upon approval by the Governor, and applies to any cause of action arising on or after the effective date.

Ratified the 6th day of May, 2010.

Became law without the signature of the Governor -- 5/13/2010.

No. 156

(R183, S652)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 33-56-75 SO AS TO PROVIDE THAT A LIST OF CONTRIBUTORS TO A SOLICITATION CAMPAIGN CONDUCTED BY A

PROFESSIONAL FUNDRAISING COUNSEL OR SOLICITOR IS THE PROPERTY OF THE CHARITABLE ORGANIZATION FOR WHOM THE CAMPAIGN IS CONDUCTED; TO REQUIRE A PROFESSIONAL FUNDRAISING COUNSEL OR SOLICITOR RECEIVING CONTRIBUTIONS ON BEHALF OF THE CHARITABLE ORGANIZATION TO DELIVER THE LIST OF CONTRIBUTORS FOLLOWING THE CAMPAIGN TO THE CHARITABLE ORGANIZATION; TO PROHIBIT THE PROFESSIONAL FUNDRAISING COUNSEL OR SOLICITOR FROM WITHHOLDING THE LIST, RESTRICTING THE CHARITABLE ORGANIZATION'S USE OF THE LIST, OR PROVIDING THE LIST OR USE OF THE LIST TO ANYONE OTHER THAN THE CHARITABLE ORGANIZATION; TO PROVIDE ADMINISTRATIVE FINES AND SANCTIONS TO BE IMPOSED BY THE SECRETARY OF STATE AGAINST A PROFESSIONAL FUNDRAISING COUNSEL OR SOLICITOR IN VIOLATION OF THIS ACT; AND TO PROVIDE AN EXEMPTION FOR CERTAIN POLITICAL CAMPAIGNS; AND TO AMEND SECTION 33-56-160, RELATING TO ADMINISTRATIVE FINES AND FEES COLLECTED UNDER THE SOUTH CAROLINA SOLICITATION OF CHARITABLE FUNDS ACT, SO AS TO PROVIDE THAT FINES COLLECTED PURSUANT TO SECTION 33-56-75 MAY NOT BE RETAINED BY THE SECRETARY OF STATE BUT MUST BE DEPOSITED WITH THE STATE TREASURER IN A SEPARATE FUND TO BE USED TO ADMINISTER SECTION 33-56-75.

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

Charitable organizations campaign contributor lists

SECTION 1. Chapter 56, Title 33 of the 1976 Code is amended by adding:

"Section 33-56-75. (A) A list provided by the charitable organization of the names, postal addresses, telephone numbers, email addresses, and the dates and amounts of each donation, of each contributor to a solicitation campaign organized pursuant to this chapter conducted by a professional fundraising counsel or professional solicitor is the property of the charitable organization for which the solicitation campaign is conducted. The professional fundraising counsel or professional solicitor must maintain this list throughout the

duration of the solicitation campaign until the list is transferred to the charitable organization pursuant to subsection (B).

(B) If the contributions are received by a professional fundraising counsel or professional solicitor, his agent or subcontractor, then the professional fundraising counsel or professional solicitor shall deliver the list of contributors, including the names, postal addresses, telephone numbers, email addresses, and dates and amounts of donations, to the charitable organization within ninety days after the solicitation campaign has been completed, or within ninety days after each anniversary of a solicitation campaign that lasted for more than one year.

(C) A professional fundraising counsel or professional solicitor must not:

(1) withhold from the charitable organization the list referenced in subsection (A);

(2) restrict any use by the charitable organization of the list referenced in subsection (A);

(3) transfer possession or control of the list referenced in subsection (A) to any person other than the charitable organization that owns the list;

(4) permit the use of the list referenced in subsection (A) by any person not so authorized by the charitable organization; or

(5) use the list referenced in subsection (A) for the benefit of any person other than the owner of the list, without the explicit written consent of the charitable organization that owns this list.

(D)(1) If a professional fundraising counsel or a professional solicitor violates a provision of this section, the Secretary of State must notify the professional fundraising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to the last known address of the violator. If the violation is not remedied within fifteen days after the formal notification or receipt of the notice, the Secretary of State may assess an administrative fine of one hundred dollars for each day of noncompliance, not to exceed a maximum fine of twenty-five thousand dollars for each violation.

(2) A person who is assessed an administrative fine pursuant to this section shall, within thirty days from receipt of certified or registered notice from the Secretary of State, pay the assessed fine or request a contested case hearing before the Administrative Law Court. If no fine is remitted or no contested case is requested, then the Secretary of State may suspend the registration of the person and is authorized to request an injunction against the person in the Administrative Law Court to prohibit the person from engaging in

further charitable solicitation activities in this State. The decision of the Administrative Law Court may be appealed as provided in Section 1-23-610.

(E) The provisions of this section do not apply to a professional fundraising counsel or a professional solicitor used for a political campaign subject to disclosure requirements of Section 8-13-920."

Use and disbursal of fines and fees

SECTION 2. Section 33-56-160 of the 1976 Code is amended to read:

"Section 33-56-160. (A) The first two hundred thousand dollars in administrative fine revenue received pursuant to this chapter in a fiscal year, not including fine revenues collected pursuant to Section 33-56-75, may be retained by the Secretary of State to offset the expenses of enforcing this chapter. All administrative fines collected pursuant to this chapter in excess of two hundred thousand dollars in a fiscal year, not including fine revenues collected pursuant to Section 33-56-75, must be transmitted to the State Treasurer and deposited in the state general fund. All fees collected pursuant to this chapter must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the state general fund and used by the Secretary of State for the purpose of administering the provisions of this chapter.

(B) All administrative fines collected pursuant to Section 33-56-75 in a fiscal year must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the state general fund. The revenue collected from these fines must be directed to the Secretary of State for the purpose of administering the provisions of that section."

Time effective

SECTION 3. This act takes effect upon approval by the Governor and applies to all transactions or contracts entered into on or after that date.

Ratified the 6th day of May, 2010.

Approved the 11th day of May, 2010.

No. 157

(R184, S907)

AN ACT TO AMEND ARTICLE 1, CHAPTER 61, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EMERGENCY MEDICAL SERVICES (EMS), SO AS TO REVISE DEFINITIONS AND ADD NEW DEFINITIONS INCLUDING, BUT NOT LIMITED TO, THE "STATE MEDICAL CONTROL PHYSICIAN", WITH WHOM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CONTRACTS TO OVERSEE THE MEDICAL ASPECTS OF THE EMS PROGRAM, AND THE "INVESTIGATIVE REVIEW COMMITTEE" WHICH WILL CONDUCT INVESTIGATIONS OF LICENSEES; TO PROVIDE THAT THE STATE MEDICAL CONTROL PHYSICIAN SHALL ADVISE THE DEPARTMENT ON THE DEVELOPMENT OF STANDARDS AND PROMULGATION OF REGULATIONS FOR THE EMS PROGRAM; TO PROVIDE THAT THE EMS PROGRAM MUST INCLUDE THE ESTABLISHMENT OF AN ELECTRONIC PATIENT CARE REPORTING SYSTEM TO PROVIDE DATA TO THE NATIONAL EMS INFORMATION SYSTEM DATABASE; TO PROVIDE THAT MEMBERS OF THE EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL SERVE WITHOUT COMPENSATION, MILEAGE, PER DIEM, OR SUBSISTENCE; TO SPECIFY THAT A BUSINESS PROVIDING EMS OR AMBULANCE SERVICES OR AN AMBULANCE ATTENDANT PROVIDING PATIENT CARE WITHOUT THE APPLICABLE LICENSE OR PERMIT SUBJECTS THE BUSINESS OR PERSON TO CIVIL PENALTIES; TO REQUIRE AN EMS AND AN AMBULANCE SERVICE TO RETAIN A MEDICAL CONTROL PHYSICIAN TO MAINTAIN QUALITY CONTROL OF PATIENT CARE AND TO PROVIDE IMMUNITY FROM CIVIL LIABILITY FOR SUCH PHYSICIANS ACTING IN GOOD FAITH IN CARRYING OUT THESE RESPONSIBILITIES; TO PROVIDE THAT AN EMERGENCY MEDICAL TECHNICIAN (EMT) CERTIFICATE IS VALID FOR FOUR YEARS, RATHER THAN THREE YEARS; TO DELETE THE REQUIREMENT THAT UPON CERTIFICATE RENEWAL AN EMT MUST COMPLETE A REFRESHER COURSE AND AN EXAMINATION AND INSTEAD TO REQUIRE THE EMT TO

PROVIDE DOCUMENTATION OF CURRENT NATIONAL REGISTRATION AND RENEWAL FOR THE APPROPRIATE LEVEL OF CERTIFICATION AND TO PROVIDE AN EXEMPTION FOR EMT'S CERTIFIED BEFORE OCTOBER 2006; TO SPECIFY THAT THE IDENTITY OF AN EMT CONTAINED IN INFORMATION COLLECTED BY EMS IS CONFIDENTIAL UNLESS REQUESTED BY A PATIENT; TO PROVIDE THAT UPON REQUEST A PATIENT MAY OBTAIN INFORMATION COLLECTED BY EMS; TO DELETE PROVISIONS PERTAINING TO THE CONFIDENTIALITY OF THE IDENTITY OF PHYSICIANS AND HOSPITALS AND THE CONFIDENTIALITY OF OFFICIAL INVESTIGATIONS CONDUCTED BY THE EMS SECTION OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TO PROVIDE THAT INVESTIGATIONS MUST BE CONDUCTED BY THE INVESTIGATIVE REVIEW COMMITTEE AND THAT ACTION TAKEN BY THE COMMITTEE ON A LICENSE IS PUBLIC INFORMATION AFTER ISSUANCE OF AN ADMINISTRATIVE ORDER; TO FURTHER SPECIFY TO WHOM PATIENT INFORMATION MAY BE RELEASED; AND TO REQUIRE THE DEPARTMENT AND A PERSON OR ENTITY LICENSED OR CERTIFIED PURSUANT TO THIS ARTICLE TO DISCLOSE TO THE SOLICITOR INFORMATION THAT COULD AID IN THE INVESTIGATION OR PROSECUTION OF CRIMINAL ACTIVITY; TO REPEAL SECTION 44-61-105 AUTHORIZING THE GOVERNING BODY OF A COUNTY TO EXEMPT AMBULANCES USED PRIMARILY AS CONVALESCENT TRANSPORT UNITS FROM SIZE REQUIREMENTS AND TO ALSO DELETE OTHER REQUIREMENTS FOR CERTAIN VEHICLES USED AS CONVALESCENT TRANSPORT UNITS, AND SECTION 44-61-150 REQUIRING REGULATIONS PROMULGATED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO BE FILED WITH THE SECRETARY OF STATE; AND TO AMEND ARTICLE 3, CHAPTER 61, TITLE 44, RELATING TO EMERGENCY MEDICAL SERVICES FOR CHILDREN (EMSC), SO AS TO REVISE CERTAIN DEFINITIONS AND TO ADD, AMONG OTHERS, THE DEFINITION OF "EMERGENCY MEDICAL TECHNICIAN" (EMT); TO CHANGE THE EMSC PROGRAM NAME TO THE "EMERGENCY MEDICAL SERVICES AND TRAUMA FOR CHILDREN PROGRAM" AND TO PROVIDE

THAT THIS PROGRAM MUST INCLUDE GUIDELINES FOR VOLUNTARY DESIGNATION OF PEDIATRIC EMERGENCY DEPARTMENTS, DISASTER RESPONSE GUIDELINES, PEDIATRIC DISASTER PREPAREDNESS TRAINING, AND ASSISTANCE WITH THE DEVELOPMENT OF DISASTER PLAN STRATEGIES RELATING TO CHILDREN; TO SPECIFY THAT THE IDENTITY OF AN EMT CONTAINED IN INFORMATION COLLECTED BY EMS IS CONFIDENTIAL UNLESS REQUESTED BY A PATIENT; TO PROVIDE THAT UPON REQUEST A PATIENT MAY OBTAIN INFORMATION COLLECTED BY EMS; TO DELETE PROVISIONS PERTAINING TO THE CONFIDENTIALITY OF THE IDENTITY OF PHYSICIANS AND HOSPITALS; TO FURTHER SPECIFY TO WHOM PATIENT INFORMATION MAY BE RELEASED; TO REQUIRE THE DEPARTMENT AND A PERSON OR ENTITY LICENSED OR CERTIFIED PURSUANT TO THIS ARTICLE TO DISCLOSE TO THE SOLICITOR INFORMATION THAT COULD AID IN THE INVESTIGATION OR PROSECUTION OF CRIMINAL ACTIVITY; AND TO ESTABLISH THE EMERGENCY MEDICAL SERVICES FOR CHILDREN ADVISORY COMMITTEE, TO PROVIDE FOR ITS MEMBERS AND DUTIES, AND TO PROVIDE THAT MEMBERS ON THE COMMITTEE SERVE WITHOUT COMPENSATION, MILEAGE, PER DIEM, OR SUBSISTENCE.

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

Revisions to the Emergency Medical Services Act of South Carolina

SECTION 1. Article 1, Chapter 61, Title 44 of the 1976 Code is amended to read:

"Article 1

Emergency Medical Services

Section 44-61-10. This article may be cited as the 'Emergency Medical Services Act of South Carolina'.

Section 44-61-20. As used in this article, and unless otherwise specified, the term:

(1) 'Ambulance' means a vehicle maintained or operated by a licensed provider who has obtained the necessary permits and licenses for the transportation of persons who are sick, injured, wounded, or otherwise incapacitated.

(2) 'Attendant' means a trained and qualified individual responsible for the operation of an ambulance and the care of the patients, regardless of whether the attendant also serves as driver.

(3) 'Attendant-driver' means a person who is qualified as an attendant and a driver.

(4) 'Authorized agent' means any individual designated to represent the department.

(5) 'Board' means the governing body of the Department of Health and Environmental Control or its designated representative.

(6) 'Certificate' means official acknowledgment by the department that an individual has completed successfully one of the appropriate emergency medical technician training courses referred to in this article in addition to completing successfully the requisite examinations, which entitles that individual to perform the functions and duties as delineated by the classification for which the certificate was issued.

(7) 'Condition requiring an emergency response' means the sudden onset of a medical condition manifested by symptoms of such sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect without medical attention, to result in:

(a) serious illness or disability;

(b) impairment of a bodily function;

(c) dysfunction of the body; or

(d) prolonged pain, psychiatric disturbance, or symptoms of withdrawal.

(8) 'Department' means the administrative agency known as the Department of Health and Environmental Control.

(9) 'Driver' means an individual who drives or otherwise operates an ambulance.

(10) 'Emergency medical responder agency' means a licensed agency providing medical care at the EMT level or above, as a nontransporting emergency medical responder.

(11) 'Emergency medical service system' means the arrangement of personnel, facilities, and equipment for the delivery of health care services under emergency conditions.

(12) 'Emergency medical technician' (EMT) when used in general terms for emergency medical personnel, means an individual

possessing a valid EMT, advanced EMT (AEMT), or paramedic certificate issued by the State pursuant to the provisions of this article.

(13) 'Emergency transport' means services and transportation provided after the sudden onset of a medical condition manifesting itself by acute symptoms of such severity including severe pain that the absence of medical attention could reasonably be expected to result in the following:

(a) placing the patient's health in serious jeopardy;

(b) causing serious impairment to bodily functions;

(c) causing serious dysfunction of bodily organ or part; or

(d) a situation that resulted from an accident, injury, acute illness, unconsciousness, or shock, for example, required oxygen or other emergency treatment, required the patient to remain immobile because of a fracture, stroke, heart attack, or severe hemorrhage.

(14) 'Immediate family' means a person's spouse. In the event there is no spouse, 'immediate family' means a person's parents and children.

(15) 'In-service training' means a course of training approved by the department that is conducted by the licensed provider for his personnel at his prime location.

(16) 'Investigative Review Committee' means a professional peer review committee that is convened by the department when the findings of an official investigation against an entity or an individual regulated by the department may warrant suspension or revocation of a license or certification. This committee consists of the State Medical Control Physician, three regional EMS office representatives, at least one paramedic, and at least one emergency room physician who is also a medical control physician. Appointment is made to this committee by the Director of the Division of EMS and Trauma.

(17) 'Legal guardian' means a person who is lawfully invested with the power, and charged with the obligation of, taking care of and managing the property and rights of a person who, because of age, understanding, or self-control, is considered incapable of administering his or her own affairs.

(18) 'Legal representative' of a person is his personal representative, general guardian, or conservator of his property or estate, or the person to whom power of attorney has been granted.

(19) 'License' means an authorization to a person, firm, corporation, or governmental division or agency to provide emergency medical services in the State.

(20) 'Licensee' means any person, firm, corporation, or governmental division or agency possessing authorization, permit,

license, or certification to provide emergency medical service in this State.

(21) 'Moral turpitude' means behavior that is not in conformity with and is considered deviant by societal standards.

(22) 'National Registry of Emergency Medical Technicians Registration' is given to an individual who has completed successfully the National Registry of Emergency Medical Technicians examination and its requirements.

(23) 'Nonemergency ambulance transport' means services and transportation provided to a patient whose condition is considered stable. A stable patient is one whose condition reasonably can be expected to remain the same throughout the transport and for whom none of the criteria for emergency transport has been met. Prearranged transports scheduled at the convenience of the service or medical facility will be classified as a nonemergency transport.

(24) 'Nonemergency ambulance transport service' means an ambulance service that provides for routine transportation of patients that require medical monitoring in a nonemergency setting including, but not limited to, prearranged transports.

(25) 'Operator' means an individual, firm, partnership, association, corporation, company, group, or individuals acting together for a common purpose or organization of any kind, including any governmental agency other than the United States.

(26) 'Patient' means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(27) 'Permit' means an authorization issued for an ambulance vehicle which meets the standards adopted pursuant to this article.

(28) 'Revocation' means that the department has permanently voided a license or certificate and the holder no longer may perform the function associated with the license, or certificate. The department will not reissue the license or certificate for a period of two years for a license or permit and four years for a certificate. At the end of this period the holder may petition for reinstatement.

(29) 'Standards' means the required measurable components of an emergency medical service system having permanent and recognized value that provide adequate emergency health care delivery.

(30) 'State Medical Control Physician' means a physician who shall be contracted with the department to oversee all medical aspects of the EMS Program. The contracted physician must both reside and be licensed to practice in this State. Duties of the State Medical Control Physician shall include, but not be limited to, the following:

(a) protocol development;

(b) establishment of the scope of practice for EMTs at all levels;

(c) provide recommendations for disciplinary actions in cases involving inappropriate patient care; and

(d) serve as Chairman of the State Medical Control Committee and the State Emergency Medical Services Advisory Council.

(31) 'Suspension' means that the department has temporarily voided a license, permit, or certificate and the holder may not perform the function associated with the license, permit, or certificate until the holder has complied with the statutory requirements and other conditions imposed by the department.

Section 44-61-30. (A) The Department of Health and Environmental Control, with the advice of the Emergency Medical Services Advisory Council and the State Medical Control Physician, shall develop standards and promulgate regulations for the improvement of emergency medical services (hereinafter referred to as EMS) in the State. All administrative responsibility for this program is vested in the department.

(B) The EMS Program shall include:

(1) the regulation and licensing of public, private, volunteer, or other type ambulance services; however, in developing these programs for regulating and licensing ambulance services, the programs must be formulated in such a manner so as not to restrict or restrain competition;

(2) inspection and issuance of permits for ambulance vehicles;

(3) the licensing of emergency medical responder agencies;

(4) training and certification of EMS personnel;

(5) development, adoption, and implementation of EMS standards and state plan;

(6) the development and coordination of an EMS communications system;

(7) designation of trauma centers and the categorization of hospital emergency departments; and

(8) the establishment of an electronic patient care reporting system to provide data to the National EMS Information System database for betterment of EMS across the nation.

(C) An Emergency Medical Services Advisory Council must be established composed of representatives of the Department of Health and Environmental Control, the South Carolina Medical Association, the South Carolina Trauma Advisory Council, the South Carolina Hospital Association, the South Carolina Heart Association, Medical University of South Carolina, University of South Carolina School of

Medicine, South Carolina College of Emergency Physicians, South Carolina Emergency Nurses Association, Emergency Management Division of the Office of the Adjutant General, South Carolina Emergency Medical Services Association, State Board for Technical and Comprehensive Education, Governor's Office of Highway Safety, Department of Health and Human Services, four regional Emergency Medical Services councils, and one EMT first responder agency. Membership on the council must be by appointment by the board. Three members of the advisory council must be members of organized rescue squads operating in this State, three members shall represent the private emergency services systems, and three members shall represent the county emergency medical services systems. The advisory council shall serve without compensation, mileage, per diem, or subsistence.

Section 44-61-40. (A) A person, firm, corporation, association, county, district, municipality, or metropolitan government or agency, either as owner, agent, or otherwise, may not furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to engage in the business or service of providing emergency medical response or ambulance service, or both, without obtaining a license and ambulance permit issued by the department. Failure to furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to engage in the business or service of providing emergency medical response or ambulance service without the proper license or permit, or both, from the department results in a Class I civil penalty, as defined in Regulation 61-7(304).

(B) Applicants shall file license applications with the appropriate official of the department having authority over emergency services. At a minimum, license applications shall contain evidence of ability to conform to the standards and regulations established by the board and such other information as may be required by the department. If the application is approved, the license will be issued. If the application is disapproved, the applicant may appeal in a manner pursuant to Article 3, Chapter 23, Title 1.

(C) An applicant shall retain a medical control physician to maintain quality control of the patient care provided by the applicant's service. No medical control physician acting in good faith who participates in the review or evaluation of the services provided by the applicant to help improve the quality of patient care is liable for any civil damages as a result of any act or omission by the physician in the course of a review or evaluation.

(D) Applicants shall renew licenses and permits every two years.

Section 44-61-50. A vehicle must not be operated as an ambulance, unless its licensed owner applies for and receives an ambulance permit issued by the department for that vehicle. Prior to issuing an original permit for an ambulance, the vehicle for which the permit is issued shall meet all requirements as to vehicle design, construction, staffing, medical and communication equipment and supplies, and sanitation as set forth in this article or in the standards and regulations promulgated by the board. Absent revocation or suspension, permits issued for ambulances are valid for a period not to exceed two years.

Section 44-61-60. (A) Such equipment as deemed necessary by the department must be required of organizations applying for ambulance permits. Each licensee of an ambulance shall comply with regulations as may be promulgated by the board and shall maintain in each ambulance, when it is in use as such, all equipment as may be prescribed by the board.

(B) The transportation of patients and the provision of emergency medical services shall conform to standards promulgated by the board.

Section 44-61-65. Organizations applying for emergency medical responder licensure must comply with equipment, training, and certification standards and other requirements promulgated by the department in regulation.

Section 44-61-70.(A) The department may enforce rules, regulations, and standards promulgated pursuant to this article. An enforcement action taken by the department may be appealed pursuant to Article 3, Chapter 23, Title 1.

(B) Grounds for an enforcement action against an authorization, license, or permit exist for violation of a regulation promulgated pursuant to this article. The department may suspend a license pending an investigation of an alleged violation or complaint. The department may impose a civil monetary penalty up to five hundred dollars per offense per day to a maximum of ten thousand dollars and revoke or suspend the provider's license or permit if the department finds that a service has:

(1) allowed uncertified personnel to perform patient care;

(2) falsified required forms or paperwork as required by the department;

(3) failed to maintain required equipment as evidenced by past compliance history;

(4) failed to maintain a medical control physician;

(5) failed to maintain equipment in working order; or

(6) failed to respond to a call within the response area of the service without providing for response by an alternate service.

(C) Whoever hinders, obstructs, or interferes with a duly authorized agent of the department while in the performance of his duties or violates a provision of this article or regulation of the board promulgated pursuant to this article is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than five hundred dollars and not more than five thousand dollars or by imprisonment for not less than ten days nor more than six months for each offense. Information pertaining to the license or permit is admissible in evidence in all prosecutions under this article if it is consistent with applicable statutory provisions.

(D) If a permitted ambulance or licensed emergency medical responder service fails inspection or loses points upon initial inspection, a civil monetary penalty must not be levied. Instead, a copy of the inspection report will be given to the service indicating deficiencies found and a request for a letter of compliance and a time period by which to correct the deficiencies will be issued. Upon reinspection, any deficiencies found will be assigned a point value and fine schedule or the permit will be revoked, or both. The fine schedule is found in Regulation 61-7.

Section 44-61-80. (A) All ambulance attendants shall obtain a valid emergency medical technician certificate unless an exception is granted pursuant to regulations promulgated by the department. A person who provides patient care that is within the scope of an emergency medical technician without obtaining proper certification from the department shall be sanctioned in accordance with a Class I civil penalty as defined in Regulation 61-7(304), unless an exception was granted as provided for in this subsection.

(B) The department shall develop and approve educational standards for the necessary classification of emergency medical technicians and approve the training program for the necessary classifications of emergency medical technicians.

(C) A person seeking EMT certification must pass the National Registry of Emergency Medical Technicians examination for the level of certification desired and meet other requirements established by the department. The department will make a determination of the applicant’s qualifications and, if appropriate, issue a certificate to the applicant.

(D) A person seeking EMT certification or recertification must undergo a state criminal history background check, supported by fingerprints by the South Carolina Law Enforcement Division (SLED), and a national criminal history background check, supported by fingerprints by the Federal Bureau of Investigation (FBI). The results of these criminal history background checks must be reported to the department. SLED is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The cost of the state criminal history background check must not exceed eight dollars and must be paid by the EMT or the EMS agency upon application for the state check. The cost of the national criminal history background check is established by the FBI and must be paid by the EMT or the EMS agency upon application for the national check. The state and national criminal history background checks are not required for an EMT employed as of July 1, 2008, until the EMT applies for recertification. The department may deny certification to applicants with certain past felony convictions and to those who are under felony indictment. Applications for certification of individuals convicted of or under indictment for the following crimes will be denied in all cases:

(1) felonies involving criminal sexual conduct;

(2) felonies involving the physical or sexual abuse of children, the elderly, or the infirm including, but not limited to, criminal sexual conduct with a minor, making or distributing child pornography or using a child in a sexual display, incest involving a child, or assault on a vulnerable adult;

(3) a crime in which the victim is a patient or resident of a health care facility, including abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant.

Applications from individuals convicted of, or under indictment for, other offenses not listed above will be reviewed by the department on a case by case basis.

(E) EMT certification is valid for a period not exceeding four years from the date of issuance and must be renewed by undergoing a state and national criminal history background check as provided for in subsection (D) and providing documentation to the department of current national registration for the appropriate level of certification and any other credential as required by the department. The national registry credential must be renewed in accordance with National Registry of Emergency Medical Technicians policies and procedures. An individual who was certified in this State before October 2006, and

has continuously maintained certification, may continue to renew certification without a national registry credential if the individual has successfully completed all other requirements as established by the department in regulation.

(F) The department may take enforcement action against the holder of a certificate at any time it is determined that the holder no longer meets the prescribed qualifications set forth by the department or has failed to provide to patients emergency medical treatment of a quality deemed acceptable by the department or is guilty of misconduct. Misconduct means that, while holding a certificate, the holder:

(1) used a false, fraudulent, or forged statement or document or practiced a fraudulent, deceitful, or dishonest act in connection with the certification requirements or official documents required by the department;

(2) was convicted of or currently under indictment for a felony or another crime involving moral turpitude, drugs, or gross immorality;

(3) was addicted to alcohol or drugs to such a degree as to render him unfit to perform as an EMT;

(4) sustained a mental or physical disability that renders further practice by him dangerous to the public;

(5) obtained fees or assisted another in obtaining fees under dishonorable, false, or fraudulent circumstances;

(6) disregarded an appropriate order by a physician concerning emergency treatment or transportation;

(7) at the scene of an accident or illness, refused to administer emergency care based on the age, sex, race, religion, creed, or national origin of the patient;

(8) after initiating care of a patient at the scene of an accident or illness, discontinued care or abandoned the patient without the patient's consent or without providing for the further administration of care by an equal or higher medical authority;

(9) revealed confidences entrusted to him in the course of medical attendance, unless this revelation was required by law or is necessary in order to protect the welfare of the individual or the community;

(10) by action or omission and without mitigating circumstance, contributed to or furthered the injury or illness of a patient under his care;

(11) was careless, reckless, or irresponsible in the operation of an emergency vehicle;

(12) performed skills above the level for which he was certified or performed skills that he was not trained to do;

(13) observed the administration of substandard care by another EMT or other medical provider without documenting the event and notifying a supervisor;

(14) by his actions or inactions, created a substantial possibility that death or serious physical harm could result;

(15) did not take or complete remedial training or other courses of action as directed by the department as a result of an investigation or inquiry;

(16) was found to be guilty of the falsification of documentation as required by the department;

(17) breached a section of the Emergency Medical Services Act of South Carolina or a subsequent amendment of the act or any rules or regulations published pursuant to the act.

The department is further authorized to suspend a certificate pending the investigation of any complaint or allegation regarding the commission of an offense including, but not limited to, those listed above.

(G) All instructors of emergency medical technician training courses must be certified by the department pursuant to requirements established by the board; and all such training courses shall be supervised by certified instructors.

Section 44-61-90. Each licensee shall maintain records that include approved patient care report forms, employee or member rosters or both, and training records. These records must be available for inspection by the department at any reasonable time and copies must be furnished to the department upon request.

Section 44-61-100. The following are exempted from the provisions of this article:

(A) ambulances owned and operated by the Federal Government;

(B) a vehicle or vehicles, including associated personnel, rendering assistance to community ambulances in the case of a catastrophe when licensed ambulances in the locality are insufficient to render the required services;

(C) the use of a privately or publicly owned vehicle, not ordinarily utilized in the transportation of persons who are sick, injured, or otherwise incapacitated and operating pursuant to Section 15-1-310 (Good Samaritan Act) in the prevention of loss of life and alleviation of suffering;

(D) the use of out-of-state ambulance services and personnel to assist with treatment and transport of patients during a disaster or

catastrophe when licensed services in the locality are insufficient to render the required services.

Section 44-61-110. No financial grants or funds administered by the State for emergency medical services pertinent to this article shall be made available to counties or municipalities not in compliance with the provisions of this article.

Section 44-61-120. The department shall develop a comprehensive statewide emergency medical services plan to implement and ensure the delivery of adequate emergency medical services to every citizen. This plan shall include guidelines for emergency medical technicians at all levels for the administration of epinephrine to a person suffering or believed to be suffering from anaphylaxis.

Section 44-61-130. A certified emergency medical technician may perform any function consistent with his certification, according to guidelines and regulations that the board may prescribe. Emergency medical technicians, trained to provide advanced life support and possessing current Department of Health and Environmental Control certification while on duty with a licensed service, are authorized to possess limited quantities of drugs, including controlled substances, as may be approved by the Department of Health and Environmental Control for administration to patients during the regular course of duties of emergency medical technicians, pursuant to the written or verbal order of a physician possessing a valid license to practice medicine in this State; however, the physician must be registered pursuant to state and federal laws pertaining to controlled substances.

Section 44-61-140. This article must not be construed as limiting presently operating rescue units from utilizing their existing equipment and performing the functions they are now allowed to do so long as they do not conflict with licensed agencies contained in Section 44-61-40(A).

Section 44-61-160. (A) The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information and data collected or prepared by emergency medical services must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act nor are they subject to subpoena in any administrative, civil, or criminal proceeding, and they are not otherwise available except

pursuant to court order. An individual in attendance at a proceeding must not be required to testify as to the identity of a patient except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient upon his request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical services must be released to the patient's immediate family, the patient's legal guardian, or the patient's legal representative upon their request.

(B) The identity of a patient is confidential and must not be released except that the identity of a patient may be released upon consent of the patient, the patient's immediate family, the patient's legal guardian, or the patient's legal representative.

(C) An official investigation or inquiry shall be conducted by an Investigative Review Committee. The fact of suspension or restriction of a license, and the fact of any subsequent related action taken by the department is public information under the Freedom of Information Act after issuance of an administrative order.

(D) Except as otherwise provided in this section, patient information must not be released except to:

(1) appropriate staff of the department's Division of Emergency Medical Services and Trauma, the South Carolina Data Oversight Council, and State Budget and Control Board, Office of Research and Statistics;

(2) submitting hospitals or their designees;

(3) a person engaged in an approved research project, except that information identifying a subject of a report or a reporter must not be made available to a researcher unless consent is obtained pursuant to this section.

(E) For purposes of maintaining the database collected pursuant to this article, the department and the Office of Research and Statistics may access and provide access to appropriate confidential data reported in accordance with this section.

(F) A person subject to this article who intentionally fails to comply with reporting, confidentiality, or disclosure requirements of this article is subject to a civil penalty of not more than one hundred dollars for a

first offense and not more than five thousand dollars for each subsequent violation.

(G) The department, or a person or entity licensed or certified under this section is required to disclose to the solicitor or his designee information received that could aid in the investigation or prosecution of criminal activity. This includes, but is not limited to, information concerning child abuse, felony driving under the influence, assaults, or other crimes regardless of whether the information is obtained before, during, or after treatment. All information received by the solicitor shall be held confidential by the solicitor or his designee unless such information is necessary for criminal investigation and prosecution.

(H) This section supersedes any other provision of law, with the exception of federal law, which may be contrary to requirements set forth in this section."

Sections repealed

SECTION 2. Sections 44-61-105 and 44-61-150 of the 1976 Code are repealed.

Revisions to the Children's Emergency Medical Services Act

SECTION 3. Article 3, Chapter 61, Title 44 of the 1976 Code is amended to read:

"Article 3

Emergency Medical Services for Children

Section 44-61-300. This article may be cited as the 'Children's Emergency Medical Services Act'.

Section 44-61-310. As used in this article:

(1) 'Advanced life support' means an advanced level of prehospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized by the department pursuant to regulations.

(2) 'Basic life support' means a basic level of prehospital care which includes patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization, and other techniques and procedures authorized by the department pursuant to regulations.

(3) 'Board' means the governing body of the Department of Health and Environmental Control or its designated representative.

(4) 'Department' means the Division of Emergency Medical Services and Trauma within the Department of Health and Environmental Control.

(5) 'Director' means the Director of the Department of Health and Environmental Control.

(6) 'EMSC Program' means the Emergency Medical Services for Children Program established pursuant to this article and other relevant programmatic activities conducted by the department in support of appropriate treatment, transport, and triage of ill or injured children.

(7) 'Emergency medical services personnel' means persons trained and certified or licensed to provide emergency medical care, whether on a paid or volunteer basis, as part of a basic life support or advanced life support prehospital emergency care service or in an emergency department or pediatric critical care or specialty unit in a licensed hospital.

(8) 'Emergency medical technician' or 'EMT' means, when used in general terms for emergency medical personnel, an individual possessing a valid, emergency medical technician (EMT), advanced emergency medical technician (AEMT), or paramedic certificate issued by the State pursuant to the provisions of this article.

(9) 'Manager' means the person coordinating the EMSC Program within the Department of Health and Environmental Control.

(10) 'Prehospital care' means the provision of emergency medical care or transportation by trained and certified or licensed emergency medical services personnel at the scene of an emergency and while transporting sick or injured persons to a medical care facility or provider.

Section 44-61-320. There is established within the Department of Health and Environmental Control, Division of Emergency Medical Services, the Emergency Medical Services and Trauma for Children Program.

Section 44-61-330. (A) The EMSC Program must include, but is not limited to, the establishment of:

(1) initial and continuing education programs for emergency medical services personnel that include training in the emergency care of infants and children;

(2) guidelines for referring children to the appropriate emergency treatment facility;

(3) pediatric equipment guidelines for prehospital care and emergency department;

(4) guidelines for EMT, AEMT, and paramedic emergency medical technician certification for administering epinephrine to children suffering from a severe allergic reaction;

(5) guidelines for the voluntary designation of pediatric emergency departments;

(6) guidelines for pediatric trauma centers;

(7) an interhospital transfer system for critically ill or injured children;

(8) in conjunction with the South Carolina Data Oversight Council, the collection and analysis of statewide pediatric emergency and critical care medical services data from emergency and critical care medical services for the purpose of quality improvement by these facilities and services, subject to the confidentiality requirements of Section 44-61-350;

(9) injury prevention programs for parents;

(10) public education programs on accessing the emergency medical services system and what to do until the emergency medical services personnel arrive;

(11) guidelines for the appropriate response to children and their families before, during, and after a disaster;

(12) incorporation of pediatric disaster preparedness training into initial and continuing education programs for emergency medical services personnel;

(13) assistance with the development of disaster plan strategies that address pediatric surge capacity before, during, and after a disaster for both injured and noninjured children.

(B) In gathering statewide pediatric emergency and critical care medical services data, the department shall rely upon, to the extent possible, data from existing sources; however, the department may contact families and physicians for the purpose of gathering additional data and providing information on available public and private resources. Information requested from a physician's office must be obtained pursuant to Section 44-115-10. Patient contact following data received from the State Budget and Control Board, Office of Research and Statistics must be conducted in accordance with regulations

approved by the South Carolina Data Oversight Council and promulgated by the Office of Research and Statistics.

Section 44-61-340. (A) The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information or data collected or prepared by the EMSC Program must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act nor are they subject to subpoena in any administrative, civil, or criminal proceeding, and they are not otherwise available except pursuant to court order. An individual in attendance at a proceeding shall not be required to testify as to the identity of a patient except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article shall not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient or the patient's legal guardian upon request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical services must be released to the patient's immediate family, the patient's legal guardian, or the patient's legal representative upon their request.

(B) The identity of a patient is confidential and shall not be released except that the identity of a patient may be released upon written consent of the patient, the patient's immediate family, the patient's legal guardian, or the patient's legal representative.

(C) Except as otherwise authorized in this section, patient information must not be released except to:

(1) appropriate staff of the Division of Emergency Medical Services and Trauma within the Department of Health and Environmental Control, South Carolina Data Oversight Council, and State Budget and Control Board, Office of Research and Statistics;

(2) submitting hospitals or their designees;

(3) a person engaged in an approved research project, except that no information identifying a subject of a report or a reporter may be made available to a researcher unless consent is obtained pursuant to this section.

(D) For purposes of maintaining the database collected pursuant to this article, the department and the Office of Research and Statistics

may both access and provide access to appropriate confidential data reported in accordance with Section 44-61-160.

(E) A person subject to this article who intentionally fails to comply with reporting, confidentiality, or disclosure requirements of this article is subject to a civil penalty of not more than one hundred dollars for a first offense and not more than five thousand dollars for each subsequent violation.

(F) The department, or a person or entity licensed or certified under this section is required to disclose to the solicitor or his designee information received that could aid in the investigation or prosecution of criminal activity. This includes, but is not limited to, information concerning child abuse, felony driving under the influence, assaults, or other crimes regardless of whether the information is obtained before, during, or after treatment. All information received by the solicitor shall be held confidential by the solicitor or his designee unless such information is necessary for criminal investigation and prosecution.

Section 44-61-350. (A) There is established the Emergency Medical Services for Children Advisory Committee to advise the department on matters concerning preventative, prehospital, hospital, rehabilitative, and other post-hospital medical care for children.

(B) Committee members must be appointed by the board.

(C) The advisory committee is composed of a nurse with emergency pediatric experience, a physician with pediatric training, an emergency physician, an EMT/paramedic who is currently practicing, a ground level prehospital provider representative, an emergency medical services state agency representative, the EMSC Program principal investigator, the EMSC Program manager, and a family representative. All members must reside and, if applicable, be licensed or certified to practice in this State.

(D) Members of the advisory committee shall serve without compensation, mileage, per diem, or subsistence."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 11th day of May, 2010.

No. 158

(R185, S931)

AN ACT TO AMEND SECTION 44-48-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EFFECTIVE DATE OF PAROLE OR CONDITIONAL RELEASE OF SEXUALLY VIOLENT PREDATORS, SO AS TO PROVIDE THAT WRITTEN NOTICE OF THE RELEASE OF A SEXUALLY VIOLENT PREDATOR FROM PRISON MUST BE GIVEN TO THE MULTIDISCIPLINARY TEAM AT LEAST TWO HUNDRED SEVENTY DAYS RATHER THAN ONE HUNDRED DAYS BEFORE HIS RELEASE FROM TOTAL CONFINEMENT WITH CERTAIN EXCEPTIONS, OR CERTAIN ANTICIPATED HEARINGS, AND TO PROVIDE THAT THE PAROLE OR CONDITIONAL RELEASE ORDER DOES NOT TAKE EFFECT FOR ONE HUNDRED EIGHTY DAYS, RATHER THAN NINETY DAYS, AFTER ISSUANCE OF THE ORDER; TO AMEND SECTION 44-48-80, AS AMENDED, RELATING TO THE FACILITY IN WHICH A PERSON MUST BE HELD AFTER PROBABLE CAUSE IS FOUND TO EXIST THAT THE PERSON IS A SEXUALLY VIOLENT PREDATOR, SO AS TO REQUIRE THAT THE PERSON ONLY BE HELD IN A LOCAL OR REGIONAL DETENTION FACILITY PENDING CONCLUSION OF THE PROCEEDINGS IN THIS CHAPTER AND THAT THE COURT MUST DIRECT THE PERSON TO BE TRANSPORTED TO AN APPROPRIATE FACILITY OF THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, AND TO PROVIDE THAT THE EXPERT THAT CONDUCTS THE EVALUATION OF A PERSON TO DETERMINE WHETHER HE IS A SEXUALLY VIOLENT PREDATOR MUST COMPLETE THE EVALUATION WITHIN SIXTY DAYS AFTER THE PROBABLE CAUSE HEARING UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST; TO AMEND SECTION 44-48-90, AS AMENDED, RELATING TO THE TIME WITHIN WHICH A JURY TRIAL MUST BE REQUESTED AND HELD TO DETERMINE IF A PERSON IS A SEXUALLY VIOLENT PREDATOR, SO AS TO DELETE THE PROVISION THAT REQUIRES THAT THE TRIAL MUST BE CONDUCTED WITHIN SIXTY DAYS OF THE HEARING HELD PURSUANT TO SECTION 44-48-80, TO PROVIDE THAT THE TRIAL MUST BE HELD WITHIN NINETY DAYS OF ISSUANCE OF

THE COURT APPOINTED EVALUATOR'S OPINION, AND TO PROVIDE THAT UPON RECEIPT OF THE ISSUANCE OF THE OPINION, EITHER PARTY MAY RETAIN AN EXPERT TO CONDUCT A SUBSEQUENT EVALUATION; TO AMEND SECTION 44-48-100, AS AMENDED, RELATING TO THE FACILITY IN WHICH A PERSON MUST BE HELD UPON A MISTRIAL IN DETERMINING WHETHER THE PERSON IS A SEXUALLY VIOLENT PREDATOR, SO AS TO REQUIRE THAT THE PERSON ONLY BE HELD IN A LOCAL OR REGIONAL DETENTION FACILITY; AND TO AMEND SECTION 44-48-120, AS AMENDED, RELATING TO PROCEDURES REQUIRED WHEN THE DIRECTOR OF THE DEPARTMENT OF MENTAL HEALTH DETERMINES A PERSON COMMITTED TO THE DEPARTMENT AS A SEXUALLY VIOLENT PREDATOR IS NO LONGER LIKELY TO COMMIT ACTS OF SEXUAL VIOLENCE, SO AS TO REQUIRE THE DIRECTOR TO CERTIFY THIS DETERMINATION IN WRITING AND TO NOTIFY THE ATTORNEY GENERAL OF THIS CERTIFICATION AND OF THE PATIENT'S AUTHORIZATION TO PETITION THE COURT FOR RELEASE, TO PROVIDE THAT THE ATTORNEY GENERAL MAY REQUEST AN EXAMINATION BEFORE A HEARING ON THE RELEASE IS HELD, AND TO PROVIDE THAT EITHER PARTY MAY REQUEST THAT THE HEARING BE HELD BEFORE A JURY, AND TO PROVIDE THAT IF THE ATTORNEY GENERAL'S QUALIFIED EXPERT CONCLUDES THAT THE PETITIONER, IF RELEASED MAY COMMIT ACTS OF SEXUAL VIOLENCE, THE PETITIONER MAY RETAIN A QUALIFIED EXPERT TO PERFORM A SUBSEQUENT EVALUATION.

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

Sexually violent predators

SECTION 1. Section 44-48-40(A) and (B) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"(A) If a person has been convicted of a sexually violent offense, the agency with jurisdiction must give written notice to the multidisciplinary team established in Section 44-48-50, the victim, and the Attorney General at least two hundred seventy days before:

(1) the person's anticipated release from total confinement, except that in the case of a person who is returned to prison for no more than two hundred seventy days as a result of a revocation of any type of community supervision program, written notice must be given as soon as practicable following the person's readmission to prison;

(2) the anticipated hearing on fitness to stand trial following notice under Section 44-23-460 of a person who has been charged with a sexually violent offense but who was found unfit to stand trial for the reasons set forth in Section 44-23-410 following a hearing held pursuant to Section 44-23-430;

(3) the anticipated hearing pursuant to Section 17-24-40(C) of a person who has been found not guilty by reason of insanity of a sexually violent offense; or

(4) release of a person who has been found guilty of a sexually violent offense but mentally ill pursuant to Section 17-24-20.

(B) If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release, the parole or the conditional release must be granted to be effective one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole or conditional release of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release."

Sexually violent predators

SECTION 2. Section 44-48-80(D) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"(D) If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator. The evaluation must

be conducted by a qualified expert appointed by the court at the probable cause hearing. The expert must complete the evaluation within sixty days after the completion of the probable cause hearing. The court may grant one extension upon request of the expert and a showing of good cause. Any further extensions only may be granted for extraordinary circumstances."

Sexually violent predators

SECTION 3. Section 44-48-90 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"Section 44-48-90. (A) The court must conduct a trial to determine whether the person is a sexually violent predator.

(B) Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist the person.

(C) Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports.

In the case of an indigent person who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the person in obtaining the expert to perform an examination or participate in the trial on the person's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source."

Sexually violent predators

SECTION 4. Section 44-48-100(A) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"(A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release. Upon a mistrial, the court must direct that the person be held at a local or regional detention facility

until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury's determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal."

Sexually violent predators

SECTION 5. Section 44-48-120 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"Section 44-48-120. (A) If the Director of the Department of Mental Health determines that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the director must certify such determination in writing with the specific basis thereof, authorize the person to petition the court for release, and notify the Attorney General of the certification and authorization. The petition must be served upon the court and the Attorney General. The Attorney General must notify the victim of the proceeding.

(B) The court, upon receipt of the petition for release, must order a hearing within thirty days unless the Attorney General requests an examination by a qualified expert as to whether the petitioner's mental abnormality or personality disorder has so changed that the petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the petitioner or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the petitioner examined by qualified experts chosen by the State. If the Attorney General retains a qualified expert who concludes that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, if released, is likely to commit acts of sexual violence, the petitioner may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent petitioner who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the petitioner in obtaining the expert to perform an examination or participate in the hearing or trial on the petitioner's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a

written statement specifying the time expended, services rendered, expenses incurred on behalf of the petitioner, and compensation received in the case or for the same services from any other source. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, that if released, is likely to commit acts of sexual violence."

Time effective

SECTION 6. SECTION 1 of this act takes effect one hundred eighty days after approval by the Governor. The remaining sections of this act take effect upon approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 12th day of May, 2010.

No. 159

(R186, S1097)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41-21-110 SO AS TO ENACT THE "FUTURE VOLUNTEER FIREFIGHTERS ACT OF SOUTH CAROLINA" AND TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION IN COOPERATION WITH THE STATE FIREFIGHTERS ASSOCIATION MAY ESTABLISH A JUNIOR FIREFIGHTERS PROGRAM.

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

Future Volunteer Firefighters Act of South Carolina

SECTION 1. This act shall be known and cited as the "Future Volunteer Firefighters Act of South Carolina".

Junior firefighters program

SECTION 2. Chapter 21, Title 41 of the 1976 Code is amended by adding:

"Section 41-21-110. (A) The Director of the Department of Labor, Licensing and Regulation, in cooperation with the State Firefighters Association, may establish a junior firefighters program, consistent with all applicable state and federal child labor laws, for the purpose of encouraging, educating, and training qualified youth to enter the fire service as a career. Notwithstanding any other provision of law, qualified youth under eighteen years of age shall be allowed to participate in training activities offered by local fire departments, the Office of the State Fire Marshall, and the Department of Labor, Licensing and Regulation. As used in this subsection, the term 'qualified youth' means an uncompensated fire department or rescue squad member who is between fourteen and eighteen years of age.

(B) Participants in the junior firefighters program are not considered employees of the State and are not considered eligible for unemployment compensation upon termination from the program; however, participants are entitled to all other work benefits, including workers' compensation or its equivalent."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 12th day of May, 2010.

No. 160

(R187, S1172)

AN ACT TO AMEND SECTION 63-7-1640, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENT OF SOCIAL SERVICES PROVIDING REASONABLE EFFORTS TO ACHIEVE FAMILY PRESERVATION AND REUNIFICATION, SO AS TO

PROVIDE THAT THE NAMED PARTY MAY MOVE TO HAVE THE COURT DETERMINE IF THE DEPARTMENT SHALL CONTINUE WITH THESE EFFORTS, TO ADD ALCOHOL AND DRUG ADDITION, MENTAL ILLNESS, AND EXTREME PHYSICAL INCAPACITY TO THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT IS NOT REQUIRED TO CONTINUE TO MAKE REASONABLE EFFORTS TO PRESERVE OR REUNIFY A FAMILY, TO REQUIRE THE COURT TO MAKE SPECIFIC FINDINGS WHEN RELEASING THE DEPARTMENT FROM MAKING THESE REASONABLE EFFORTS OR WHEN REQUIRING THE DEPARTMENT TO CONTINUE MAKING THESE REASONABLE EFFORTS, AND TO REQUIRE THE DEPARTMENT TO PETITION FOR TERMINATION OF PARENTAL RIGHTS WITHIN SIXTY DAYS WHEN MAKING REASONABLE EFFORTS TO PRESERVE OR REUNIFY A FAMILY IS NO LONGER REQUIRED; TO AMEND SECTION 63-7-1660, RELATING TO PROCEDURES FOR REMOVING A CHILD FROM THE CUSTODY OF HIS PARENTS BY FILING A PETITION IN FAMILY COURT AND GROUNDS FOR REMOVAL, SO AS TO REQUIRE THE DEPARTMENT TO ALSO SEEK TERMINATION OF PARENTAL RIGHTS IF CIRCUMSTANCES EXIST; TO AMEND SECTION 63-7-1680, RELATING TO THE CONTENTS OF A PLACEMENT PLAN WHEN A CHILD IS REMOVED FROM THE CUSTODY OF HIS PARENTS, SO AS TO REVISE AND FURTHER SPECIFY THE CONTENTS OF THE PLACEMENT PLAN; TO AMEND SECTION 63-7-1700, RELATING TO FAMILY COURT REVIEWING A CHILD'S PERMANENT PLACEMENT PLAN, SO AS TO FURTHER PROVIDE THE CONTENTS OF A SUPPLEMENTAL REPORT TO BE PROVIDED TO THE COURT WHEN CONDUCTING SUCH A REVIEW, TO FURTHER SPECIFY CONDITIONS FOR REVIEW, TO FURTHER SPECIFY CONDITIONS FOR RETURNING THE CHILD TO THE CUSTODY OF HIS PARENTS, TO FURTHER SPECIFY CONDITIONS UNDER WHICH THE PLACEMENT PLAN MAY BE EXTENDED, AND TO DELETE DUPLICATIVE TEXT; TO AMEND SECTION 63-7-2570, RELATING TO GROUNDS FOR TERMINATING PARENTAL RIGHTS, SO AS TO CLARIFY THAT IN SOME INSTANCES A PARENT'S CONDUCT INVOLVING ANOTHER CHILD OF THE PARENT LIVING IN THE PARENT'S HOME MAY CONSTITUTE

GROUNDS FOR TERMINATION OF PARENTAL RIGHTS, TO FURTHER SPECIFY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS DUE TO A PARENT HAVING A DIAGNOSABLE CONDITION, AND TO MAKE A TECHNICAL CORRECTION; TO AMEND SECTION 63-9-60, RELATING TO PERSONS WHO MAY ADOPT A CHILD IN THIS STATE, SO AS TO PROVIDE THAT AN ADOPTION BY PERSONS WHO ARE NONRESIDENTS MUST BE FINALIZED IN THIS STATE; BY ADDING SECTION 63-9-70 SO AS TO PROHIBIT CERTAIN PERSONS OR ENTITIES FROM ADVERTISING THAT THE PERSON OR ENTITY WILL PLACE OR ACCEPT A CHILD FOR ADOPTION, TO PROVIDE AN EXCEPTION, TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS, AND TO PROVIDE THAT THE FAMILY COURT SHALL ENJOIN VIOLATIONS OF THIS SECTION; AND TO AMEND SECTION 63-9-1110, RELATING TO STEPPARENT AND FAMILY ADOPTIONS, SO AS TO AUTHORIZE THE COURT TO WAIVE THE REQUIREMENT THAT THE ADOPTION MUST BE FINALIZED IN THIS STATE.

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

Procedures and requirements for family preservation and reunification

SECTION 1. Section 63-7-1640 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-1640. (A) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child's health and safety must be the paramount concern.

(B) The family court may rule on whether reasonable efforts to preserve or reunify a family should be required in hearings regarding removal of custody, review of amendments to a placement plan, review of the status of a child in foster care, or permanency planning or in a separate proceeding for this purpose. The court may consider this issue on the motion of a named party, the child's guardian ad litem, or the foster care review board, provided that the foster care review board has reviewed the case pursuant to Section 63-11-720 or the child has previous entry into foster care.

(C) The family court may authorize the department to terminate or forego reasonable efforts to preserve or reunify a family when the records of a court of competent jurisdiction show or when the family court determines that one or more of the following conditions exist:

(1) the parent has subjected the child or another child while residing in the parent's domicile to one or more of the following aggravated circumstances:

(a) severe or repeated abuse;

(b) severe or repeated neglect;

(c) sexual abuse;

(d) acts the judge finds constitute torture; or

(e) abandonment;

(2) the parent has been convicted of or pled guilty or nolo contendere to murder of another child, or an equivalent offense, in this jurisdiction or another;

(3) the parent has been convicted of or pled guilty or nolo contendere to voluntary manslaughter of another child, or an equivalent offense, in this jurisdiction or another;

(4) the parent has been convicted of or pled guilty or nolo contendere to aiding, abetting, attempting, soliciting, or conspiring to commit murder or voluntary manslaughter of the child or another child while residing in the parent's domicile, or an equivalent offense, in this jurisdiction or another;

(5) physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting:

(a) an offense against the person, as provided for in Title 16, Chapter 3;

(b) criminal domestic violence, as defined in Section 16-25-20;

(c) criminal domestic violence of a high and aggravated nature, as defined in Section 16-25-65; or

(d) the common law offense of assault and battery of a high and aggravated nature, or an equivalent offense in another jurisdiction;

(6) the parental rights of the parent to another child of the parent have been terminated involuntarily;

(7) the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical

incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child;

(8) other circumstances exist that the court finds make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the permanent plan for the child.

(D) The department may proceed with efforts to place a child for adoption or with a legal guardian concurrently with making efforts to prevent removal or to make it possible for the child to return safely to the home.

(E) If the family court's decision that reasonable efforts to preserve or reunify a family are not required results from a hearing other than a permanency planning hearing, the court's order shall require that a permanency planning hearing be held within thirty days of the date of the order.

(F) In determining whether to authorize the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must consider whether initiation or continuation of reasonable efforts to preserve or reunify the family is in the best interests of the child. If the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must make specific written findings in support of its conclusion that one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, and why continuation of reasonable efforts is not in the best interest of the child. If the court does not authorize the department to terminate or forego reasonable efforts where one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, the court must make specific written findings in support of its conclusion that continuation of reasonable efforts is in the best interest of the child. The court must not consider the availability or lack of an adoptive resource as a reason to deny the request to terminate or forego reasonable efforts.

(G) In any case in which the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the department shall file a petition for termination of parental rights within sixty days, unless there are compelling reasons why termination of parental rights would be contrary to the best interests of the child."

Procedures for removing a child from his home

SECTION 2. Section 63-7-1660(B)(2) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(2) The petition for removal may include a petition for termination of parental rights. The petition for removal must include a petition for termination of parental rights if court records or other evidence indicate the existence of one or more of the conditions set forth in Section 63-7-1640(C)(1) through (8), unless there are compelling reasons for believing that termination of parental rights would be contrary to the best interests of the child."

Contents of Placement Plans

SECTION 3. Section 63-7-1680 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-1680. (A) If the court orders that a child be removed from the custody of the parent or guardian, the court must approve a placement plan. A plan must be presented to the court for its approval at the removal hearing or within ten days after the removal hearing. If the plan is presented subsequent to the removal hearing, the court shall hold a hearing on the plan if requested by a party. The plan must be a written document prepared by the department. To the extent possible, the plan must be prepared with the participation of the parents or guardian of the child, the child, and any other agency or individual that will be required to provide services in order to implement the plan.

(B) The first section of the plan shall set forth the changes that must occur in the home and family situation before the child can be returned. These changes must be reasonably related to the reasons justifying removal of the child from the custody of the parents or guardian. This section of the plan must contain a notice to the parents or guardian that failure to make the indicated changes within six months may result in termination of parental rights.

(C) The second section of the plan shall set forth:

(1) specific actions to be taken by the parents or guardian of the child; and

(2) social or other services to be provided or made available to the parent or guardian of the child.

This section of the plan must include time frames for commencement or completion of specific actions or services. This section must contain a notice to the parents or guardian that completion of the indicated actions will not result in return of the child unless the changes set forth in section one of the plan have occurred.

(D) The third section of the plan shall set forth rights and obligations of the parents or guardian while the child is in custody including, but not limited to:

(1) the responsibility of the parents or guardian for financial support of the child during the placement; and

(2) the visitation rights and obligations of the parents or guardian during the placement.

This section of the plan must include a notice to the parents or guardian that failure to support or visit the child as provided in the plan may result in termination of parental rights.

(E) The fourth section of the plan must address matters relating to the placement of the child including, but not limited to, the following:

(1) the nature and location of the placement of the child, unless there are compelling reasons for concluding that disclosure of the location of the placement to the parents, guardian, or other person would be contrary to the best interests of the child. The placement must be as close to the child's home as is reasonably possible, unless there are compelling reasons for concluding that placement at a greater distance is necessary to promote the child's well-being. In the absence of good cause to the contrary, preference must be given to placement with a relative or other person who is known to the child and who has a constructive and caring relationship with the child;

(2) visitation or other contact with siblings, other relatives, and other persons important to the child. The plan shall provide for as much contact between the child and these persons as is reasonably possible and consistent with the best interests of the child;

(3) social and other supportive services to be provided to the child and the foster parents, including counseling or other services to assist the child in dealing with the effects of separation from the child's home and family; and

(4) the minimum number and frequency of contacts that a caseworker with the department will have with the child, which must be based on the particular needs and circumstances of the individual child but which must not be less than once a month for a child placed in this State.

(F) The court shall approve the plan only if it finds that:

(1) the plan is consistent with the court's order placing the child in the custody of the department;

(2) the plan is consistent with the requirements for the content of a placement plan set forth in subsections (B) through (E);

(3) if the parents or guardian of the child did not participate in the development of the plan, that the department made reasonable efforts to secure their participation; and

(4) the plan is meaningful and designed to address facts and circumstances upon which the court based the order of removal.

If the court determines that any of these criteria are not satisfied, the court shall require that necessary amendments to the plan be submitted to the court within a specified time but no later than seven days. A hearing on the amended plan must be held if requested by a party.

(G) The court shall include in its order and shall advise defendants on the record that failure to remedy the conditions that caused the removal within six months, may result in termination of parental rights, subject to notice and a hearing as provided in Article 7. Before the court orders return of the child, the court must find that the changes in the home and family situation specified in section one of the plan have occurred and that the child can be safely returned to the home. Completion of the tasks specified in section two of the plan is not in itself sufficient basis for return of the child.

(H) The department immediately shall give a copy of the plan to the parents or guardian of the child, and any other parties identified by the court, including the child if the court considers it appropriate. If a copy of the plan is not given to the child, the department shall provide the child with age-appropriate information concerning the substance of the plan unless the court finds that disclosure of any part of the plan to the child would be inconsistent with the child's best interests. A copy of any part of the plan that directly pertains to the foster family or the foster child must be provided to the foster parents.

(I) The plan may be amended at any time if all parties agree to the revisions, and the revisions are approved by the court. The amended plan must be submitted to the court with a written explanation for the proposed change. The plan also may be amended by the court upon motion of a party after a hearing based on evidence demonstrating the need for the amendment. A copy of the amended plan immediately must be given to the parties specified in subsection (H).

(J) Any objections to the sufficiency of a plan or the process by which a plan was developed must be made at the hearing on the plan. Failure to request a hearing or to enter an objection at the hearing constitutes a waiver of the objection. The sufficiency of the plan or of the process for developing the plan may not be raised as an issue in a proceeding for termination of parental rights under Article 7.

(K) Upon petition of a party in interest, the court may order the state or county director or other authorized representative of the department

to show cause why the agency should not be required to provide services in accordance with the plan. The provisions of the plan must be incorporated as part of a court order issued pursuant to this section. A person who fails to comply with an order may be held in contempt and subject to appropriate sanctions imposed by the court."

Contents and review procedures for Permanent Placement Plans

SECTION 4. Section 63-7-1700 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-1700. (A) The family court shall review the status of a child placed in foster care upon motion filed by the department to determine a permanent plan for the child. The permanency planning hearing must be held no later than one year after the date the child was first placed in foster care. At the initial permanency planning hearing, the court shall review the status of the child and the progress being made toward the child's return home or toward any other permanent plan approved at the removal hearing. The court's order shall make specific findings in accordance with this section. An action for permanency planning must be brought for a child who enters the custody of the department by any mechanism, including subarticle 3 or Section 63-7-1660 or 63-9-330. If the child enters the custody of the department pursuant to Section 63-9-330 and no action is pending in the family court concerning the child, the department may initiate the permanency planning hearing with a summons and petition for review. All parties must be served with the motion or the summons and petition at least ten days before the hearing, and no responsive pleading is required.

(B) The department shall attach a supplemental report to the motion or summons and petition which must contain at least:

(1) that information necessary to support findings required in subsections (C) through (H), as applicable;

(2) the recommended permanent plan and suggested timetable for attaining permanence;

(3) a statement of whether or not the court has authorized the department to forego or terminate reasonable efforts pursuant to Section 63-7-1640; and

(4) any reports of the local foster care review board which pertain to the child.

The department may use the same form for the supplemental report, reports from the department to the local foster care review board, and reports compiled for internal department reviews.

(C) At the permanency planning hearing, the court shall review the department's plan for achieving permanence for the child. If the department's plan is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights, the department must show compelling reasons for the selection of another permanent plan. If the court approves a plan that is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights, the court must find compelling reasons for approval of the plan and that the plan is in the child's best interests.

(D) If the court determines at the permanency planning hearing that the child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the court shall order the child returned to the child's parent. The court may order a specified period of supervision and services not to exceed twelve months.

(E) Unless subsection (C), (F), or (G) applies, if the court determines at the permanency planning hearing that the child should not be returned to the child's parent at that time, the court's order shall require the department to file a petition to terminate parental rights to the child not later than sixty days after receipt of the order. If a petition to terminate parental rights is to be filed, the department shall exercise and document every reasonable effort to promote and expedite the adoptive placement and adoption of the child, including a thorough adoption assessment and child-specific recruitment. Adoptive placements must be diligently sought for the child and failure to do so solely because a child is classified as 'special needs' is expressly prohibited. An adoption may not be delayed or denied solely because a child is classified as 'special needs'. For purposes of this subsection:

(1) 'thorough adoption assessment' means conducting and documenting face-to-face interviews with the child, foster care providers, and other significant parties; and

(2) 'child specific recruitment' means recruiting an adoptive placement targeted to meet the individual needs of the specific child including, but not be limited to, use of the media, use of photo listings, and any other in-state or out-of-state resources which may be utilized to meet the specific needs of the child, unless there are extenuating

circumstances that indicate that these efforts are not in the best interest of the child.

(F) If the court determines that the criteria in subsection (D) are not met but that the child may be returned to the parent within a specified reasonable time not to exceed eighteen months after the child was placed in foster care, the court may order an extension of the plan approved pursuant to Section 63-7-1680 or may order compliance with a modified plan, but in no case may the extension for reunification continue beyond eighteen months after the child was placed in foster care. An extension may be granted pursuant to this section only if the court finds:

(1) that the parent has demonstrated due diligence and a commitment to correcting the conditions warranting the removal so that the child could return home in a timely fashion;

(2) that there are specific reasons to believe that the conditions warranting the removal will be remedied by the end of the extension;

(3) that the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being;

(4) that, at the time of the hearing, initiation of termination of parental rights is not in the best interest of the child; and

(5) that the best interests of the child will be served by the extended or modified plan.

(G) If after assessing the viability of adoption, the department demonstrates that termination of parental rights is not in the child's best interests, the court may award custody or legal guardianship, or both, to a suitable, fit, and willing relative or nonrelative if the court finds this to be in the best interest of the child; however, a home study on the individual whom the department is recommending for custody of the child must be submitted to the court for consideration before custody or legal guardianship, or both, are awarded. The court may order a specified period of supervision and services not to exceed twelve months, and the court may authorize a period of visitation or trial placement prior to receiving a home study.

(H) If at the initial permanency planning hearing the court does not order return of the child pursuant to subsection (D), in addition to those findings supporting the selection of a different plan, the court shall specify in its order:

(1) what services have been provided to or offered to the parents to facilitate reunification;

(2) the compliance or lack of compliance by all parties to the plan approved pursuant to Section 63-7-1680;

(3) the extent to which the parents have visited or supported the child and any reasons why visitation or support has not occurred or has been infrequent;

(4) whether previous services should continue and whether additional services are needed to facilitate reunification, identifying the services, and specifying the expected date for completion, which must be no longer than eighteen months from the date the child was placed in foster care;

(5) whether return of the child can be expected and identification of the changes the parent must make in circumstances, conditions, or behavior to remedy the causes of the child's placement or retention in foster care;

(6) whether the child's foster care is to continue for a specified time and, if so, how long;

(7) if the child has attained the age of sixteen, the services needed to assist the child to make the transition to independent living;

(8) whether the child's current placement is safe and appropriate;

(9) whether the department has made reasonable efforts to assist the parents in remedying the causes of the child's placement or retention in foster care, unless the court has previously authorized the department to terminate or forego reasonable efforts pursuant to Section 63-7-1640; and

(10) the steps the department is taking to promote and expedite the adoptive placement and to finalize the adoption of the child, including documentation of child specific recruitment efforts.

(I) If after the permanency planning hearing, the child is retained in foster care, future permanency planning hearings must be held as follows:

(1) If the child is retained in foster care and the agency is required to initiate termination of parental rights proceedings, the termination of parental rights hearing may serve as the next permanency planning hearing, but only if it is held no later than one year from the date of the previous permanency planning hearing.

(2) If the court ordered extended foster care for the purpose of reunification with the parent, the court must select a permanent plan for the child other than another extension for reunification purposes at the next permanency planning hearing. The hearing must be held on or before the date specified in the plan for expected completion of the plan; in no case may the hearing be held any later than six months from the date of the last court order.

(3) After the termination of parental rights hearing, the requirements of Section 63-7-2580 must be met. Permanency planning

hearings must be held annually, starting with the date of the termination of parental rights hearing. No further permanency planning hearings may be required after filing a decree of adoption of the child.

(4) If the court places custody or guardianship with the parent, extended family member, or suitable nonrelative and a period of services and supervision is authorized, services and supervision automatically terminate on the date specified in the court order. Before the termination date, the department or the guardian ad litem may file a petition with the court for a review hearing on the status of the placement. Filing of the petition stays termination of the case until further order from the court. If the court finds clear and convincing evidence that the child will be threatened with harm if services and supervision do not continue, the court may extend the period of services and supervision for a specified time. The court's order must specify the services and supervision necessary to reduce or eliminate the risk of harm to the child.

(5) If the child is retained in foster care pursuant to a plan other than one described in items (1) through (4), future permanency planning hearings must be held at least annually.

(J) A named party, the child's guardian ad litem, or the local foster care review board may file a motion for review of the case at any time. Any other party in interest may move to intervene in the case pursuant to the rules of civil procedure and if the motion is granted, may move for review. Parties in interest include, but are not limited to, the individual or agency with legal custody or placement of the child and the foster parent. The notice of motion and motion for review must be served on the named parties at least ten days before the hearing date. The motion must state the reason for review of the case and the relief requested.

(K) The pendency of an appeal concerning a child in foster care does not deprive the court of jurisdiction to hear a case pursuant to this section. The court shall retain jurisdiction to review the status of the child and may act on matters not affected by the appeal."

Grounds for termination of parental rights

SECTION 5. That portion of Section 63-7-2570 of the 1976 Code, as added by Act 361 of 2008, preceding item (2) is amended to read:

"The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interest of the child:

(1) The child or another child while residing in the parent's domicile has been harmed as defined in Section 63-7-20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child may be considered."

Grounds for termination of parental rights

SECTION 6. Section 63-7-2570(6) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(6) The parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child. It is presumed that the parent's condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program."

Grounds for termination of parental rights

SECTION 7. Section 63-7-2570(9) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(9) The physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in Section 16-25-20, criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65, or the common law offense of assault and battery of a high and aggravated nature."

Nonresident adoptions

SECTION 8. Section 63-9-60(A)(2) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(2) Before a child is placed within or outside the boundaries of this State for adoption with nonresidents of this State, compliance with Article 11 (Interstate Compact on the Placement of Children) is required, and a judicial determination must be made in this State that one of the circumstances in items (a) through (f) of subsection (A)(1) applies, whether or not the adoption proceedings are instituted in this State. Additionally, in order to determine if any of the circumstances in items (a) through (f) of subsection (A)(1) apply so as to permit placement with a nonresident for the purpose of adoption or adoption by a nonresident, a petition may be brought for the determination before the birth of the child or before placement of the child with the prospective adoptive parents. In ruling on this question the court must include in its order specific findings of fact as to the circumstances allowing the placement of a child with a nonresident or the adoption of a child by a nonresident. The court also must analyze the facts against the objective criteria established in Sections 16-3-1060 and 63-9-310(F) and make specific findings in accordance with the pertinent law and evidence presented. The order resulting from this action does not prohibit or waive the right to refuse to consent to a release of rights or relinquish rights at a later time or to withdraw a consent or relinquish at a later time as provided in this article. The order must be merged with and made a part of any subsequent adoption proceeding, which must be initiated and finalized in this State."

Advertising prohibited to place or accept child for adoption; exception; penalties

SECTION 9. Subarticle 1, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

"Section 63-9-70. (A) No person or entity other than the Department of Social Services, a child placing agency licensed in this State, or an attorney licensed in this State may advertise that the person or entity will place or accept a child for adoption.

(B) Notwithstanding the provisions of subsection (A), a person is not prohibited from advertising that the person desires to adopt if the

person has a current preplacement home investigation finding that the person is suitable to be an adoptive parent.

(C)(1) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(2) The family court shall enjoin a person or entity from violating a provision of this section.

(D) For purposes of this section, 'advertise' means to communicate by newspaper, radio, television, hand bills, placards or other print, broadcast or electronic medium that originates within this State."

Stepparent and family adoptions

SECTION 10. Section 63-9-1110 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-9-1110. Any person may adopt his spouse's child, and any person may adopt a child to whom he is related by blood or marriage. In the adoption of these children:

(1) no investigation or report required under the provisions of Section 63-9-520 is required unless otherwise directed by the court;

(2) no accounting by the petitioner of all disbursements required under the provisions of Section 63-9-740 is required unless the accounting is ordered by the court;

(3) upon good cause shown, the court may waive the requirement, pursuant to Section 63-9-750, that the final hearing must not be held before ninety days after the filing of the adoption petition;

(4) upon good cause shown, the court may waive the requirement, pursuant to Section 63-9-320(A)(2), of the appointment of independent counsel for an indigent parent; and

(5) upon good cause shown, the court may waive the requirement, pursuant to Section 63-9-60(A)(2), that the adoption proceeding must be finalized in this State."

Severability clause

SECTION 11. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem,

paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 12. This act takes effect upon approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 12th day of May, 2010.

No. 161

(R188, S1131)

AN ACT TO AMEND SECTION 4-29-67, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INDUSTRIAL DEVELOPMENT PROJECTS REQUIRING A FEE IN LIEU OF PROPERTY TAX AGREEMENT, SO AS TO ADD CERTAIN DEFINITIONS, TO FURTHER PROVIDE FOR THE MINIMUM LEVEL OF INVESTMENT FOR A QUALIFIED NUCLEAR PLANT FACILITY, TO PROVIDE FOR THE TIMELINE WHEN THE SPONSOR MUST ENTER INTO AN INITIAL LEASE AGREEMENT WITH THE COUNTY IN REGARD TO A QUALIFIED NUCLEAR PLANT FACILITY, AND THE TIMELINES WHEN THE SPONSOR MUST MEET MINIMUM INVESTMENT REQUIREMENTS IN THE CASE OF A QUALIFIED NUCLEAR PLANT FACILITY AND PLACE THE PROJECT INTO SERVICE; TO AMEND SECTION 12-44-30, AS AMENDED, RELATING TO DEFINITIONS IN REGARD TO THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO REVISE CERTAIN DEFINITIONS AND ADD CERTAIN DEFINITIONS; AND TO AMEND SECTION 12-44-40, AS AMENDED, RELATING TO THE REQUIRED FEE AGREEMENT BETWEEN THE SPONSOR AND THE COUNTY UNDER THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO PROVIDE THE TIME

WITHIN WHICH A SPONSOR HAS TO ENTER INTO A FEE AGREEMENT IN REGARD TO A QUALIFIED NUCLEAR PLANT FACILITY.

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

Fee in lieu, qualified nuclear plant facility, schedule

SECTION 1. A. Section 4-29-67(A)(1) of the 1976 Code, as last amended by Act 313 of 2008, is further amended to read:

"(1) As used in this section:

(a) 'Department' means the South Carolina Department of Revenue.

(b) 'Lease agreement' means an agreement between the county and a sponsor leasing the property at the project from the county to a sponsor.

(c) 'Project' means land, buildings, and other improvements on the land including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. 'Project' also may consist of or include aircraft hangered or utilizing an airport in a county so long as the county expressly consents to its inclusion. Aircraft previously subject to taxation in South Carolina qualify pursuant to this provision.

(cc) 'Qualified nuclear plant facility' means a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of one billion dollars.

(d) 'Sponsor' means one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.

(e) 'Sponsor affiliate' means an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project."

B. Section 4-29-67(B)(4)(a) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(a) A sponsor and a sponsor affiliate may qualify for the fee if each sponsor and sponsor affiliate invests the minimum level of investment at the project. If the project consists of a manufacturing, research and development, corporate office, or distribution facility as those terms are defined in Section 12-6-3360(M) and including a qualified nuclear plant facility as defined in Section 12-44-30(16A), each sponsor or sponsor affiliate is not required to invest the minimum investment required by subsection (B)(3) if the total investment at the project exceeds forty-five million dollars."

C. Section 4-29-67(C)(1) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(1) Except as provided in subsection (X)(1), from the end of the property tax year in which the sponsor and the county execute an inducement agreement, the sponsor has five years in which to enter into an initial lease agreement with the county."

D. Section 4-29-67 of the 1976 Code, as last amended by Act 352 of 2008, is further amended by adding a new subsection at the end to read:

"(X)(1) Notwithstanding subsection (C)(1), in the case of a qualified nuclear plant facility, the sponsor has five years from the end of the calendar year in which the Nuclear Regulatory Commission grants the sponsor a combined license to construct and operate a nuclear power plant to enter into an initial lease agreement with the county but in no event more than fifteen years from the latter of the adoption of an inducement resolution or execution of an inducement agreement by the county.

(2) Notwithstanding subsection (C)(2)(d), in the case of a qualified nuclear plant facility, the sponsor has fifteen years from the end of the calendar year in which the initial lease agreement is executed to meet the minimum investment and fifteen years from the end of the calendar year in which the first piece of property is placed into service to complete the project."

Fee in lieu, qualified nuclear plant facility, schedule, sponsor

SECTION 2. A. Section 12-44-30(2) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

If the last act shown on the opposite page is not complete, it will be continued in the next Advance Sheet.

STEPHEN T. DRAFFIN
Code Commissioner
P. O. Box 11489
Columbia, S.C. 29211