

WHAT IS A DISTRICT COMMISSIONER ?



AN OVERVIEW OF THE COMMISSIONER'S ROLES

TABLE OF CONTENTS

WHAT IS A COMMISSIONER?	3
AUTHORITY AND OVERVIEW	4
COMMISSIONER'S ROLES	5
THE BOARD OF COMMISSIONERS	8
BOARD MEETINGS	10
DISTRICT EMPLOYEES	12
THE PARTNERSHIP	15
DISTRICT ACTIVITIES	17
DISTRICT PROGRAMS	19
LAWS AND AGREEMENTS	21
ABBREVIATIONS	22

WHAT IS A DISTRICT COMMISSIONER?

A District Commissioner is an appointed or elected member of the governing body of a conservation district. In taking the Oath of Office, a commissioner commits to exercising the rights and responsibilities of Commissioners as spelled out in Soil and Water Conservation Districts Law, Section 48-9-10 of the South Carolina Code of Laws.

This law charges conservation districts with the responsibility of providing first-line leadership in developing and implementing plans to meet conservation needs of the district. It also charges commissioners with the responsibility of finding the resources with which to plan and implement programs that will address the conservation needs of the district.

In order to be an effective member of the conservation district board a commissioner must:

- Be familiar with the state law.
- Help identify conservation needs and assist with the planning to address these needs. Planning should be done on an annual and long-range basis.
- Work with all agencies with conservation interests and expertise to meet conservation needs.
- Cooperate with other districts and/or agencies to develop and carry out conservation plans.
- Determine funding needs and find sources of funds to meet the conservation needs.
- Keep the public informed about the conservation programs and other local, state, and federal conservation programs.
- Stay abreast of conservation issues and speak out wherever and whenever you have the opportunity to educate the public on issues that affect our natural resources.
- Find ways to evaluate the progress of your conservation programs. Evaluations should be done annually and on a long-range basis.
- Support the mission and goals of the South Carolina Association of Conservation District (SCACD) by participating in SCACD conference, workshops and events; paying annual dues; promoting programs of SCACD.
- **Finally, never relinquish your responsibilities to your staff!** Staff, whether district, SCDNR or Natural Resources and Conservation Service, exist to help you carry out the programs you help formulate. Your responsibility is to plan and to implement these programs; theirs is to assist you in this effort.

CONSERVATION DISTRICT AUTHORITY AND OVERVIEW

State law created conservation districts to provide grass roots leadership for developing and implementing conservation activities. Conservation districts are subdivisions of state government. In South Carolina, there are 46 conservation districts, with the same boundaries as county boundaries.

Soil and water conservation districts are organized pursuant to Section 48-9-10 of the South Carolina Code of Laws. The Soil and Water Conservation Districts Law provides general powers and authorities of conservation districts and conservation district commissioners.

Each Conservation District has 5 commissioners authorized by the Districts Law. Two are appointed by the SCDNR Board and three are elected in the General Election. Both elected and appointed positions are for four-year terms. The elected positions appear on the ballot on a county-wide election. Commissioner appointment and election procedures are outlined in the Soil and Water Conservation District Law Sections 48-9-1210, 48-9-1220 and 48-9-1230.

In the event of an expiration of term or resignation in the appointed positions, or resignation in an elected position, the district board must recommend a candidate to fill the vacancy by completing the appropriate forms for review by the Land, Water, and Conservation Advisory Committee and final action by the SCDNR Board.

CONSERVATION DISTRICT PURPOSES

Conservation districts are unique; no other agency has the responsibility that districts have. If conservation activities are to take place within a district, the district should initiate them. Other government agencies and groups may assist in these efforts, but the responsibility rests, by law, with the conservation district.

- To be responsible to the citizens of the district in matters involving resource conservation.
- To promote the wise and responsible use of natural resources.
- To develop and implement programs to protect and conserve soil, water, farmland, wood land, wildlife, energy, and riparian and wetland resources.

This handbook will provide more information about districts and the details on how you, as a commissioner, can accomplish your responsibilities.

AN OVERVIEW OF THE COMMISSIONER'S ROLES

Commissioners must identify local conservation needs, set goals, and develop plans to achieve those goals, and ensure implementation of the plan in order to maintain effective programs.

PLANNING

Planning is the basic tool for developing conservation district programs.

A **Long-Range Plan** is developed by the district and updated as needed. A major revision is completed every five years. This plan serves as a broad outline of your district's response to long term shifts in land use, population patterns and improvements in technology. It includes goals for all Partners: NRCS, SCDNR, District Employees and the Board of Commissioners.

An **Annual Work Plan** outlines specific objectives and activities to achieve long-range plans. The following are **guidelines** for all plans:

- The district, with its partners, must assess and define the conservation problems and needs of the district.
- All commissioners, associate commissioners, cooperating agency representatives and interested citizens should be involved.
- Commissioners should do the planning, not the paid staff. They provide you with basic information and advice.
- Keep the plan simple.
- Evaluate your success after the plan is implemented.

INFORMATION AND EDUCATION

Conservation districts encourage volunteer cooperation of land users and the general public through information and education programs. Landowners and operators must be educated so they will understand and adopt conservation values and practices. The general public must be reached so they will understand their stake in conservation and contribute their financial, political, and volunteer support to district programs. You must also inform local, state, and federal legislators on conservation issues. Commissioners should be aware of the many ways available to communicate their message. A few examples are as follows:

- personal contact
- inviting persons to district board meetings
- newsletters
- field tours
- demonstrations
- workshops
- awards programs
- newsletters

LEGISLATORS

Legislators are an important audience. Local, state, and federal laws affect district programs. Make personal contacts with all of your legislators by letter or phone calls and inform them of your conservation accomplishments and of your conservation needs. Bring your statewide and national legislative concerns to The South Carolina State Association of Conservation Districts (SCACD) and the National Association of Conservation Districts (NACD). Both the State and National Association depend on support from all conservation districts in order to inform legislators of the conservation districts' needs and concerns.

YOUTH EDUCATION

A major aim of conservation education is to enrich the conservation values of people. Youth education offers one of the most fertile avenues for this enrichment. Conservation districts should develop a wide variety of methods to reach youth. Some are as follows:

- sponsoring conservation workshops
- training teachers in conservation
- providing educational materials
- involving youth leaders in board meetings
- organizing a "youth board"
- developing programs and projects that involve youth
- locating conservation projects that are meaningful to youth
- assisting in developing outdoor classrooms
- planning demonstrations and tours

A wide variety of conservation education materials and programs can be found on the Internet and through SCDNR and USDA-NRCS websites.

PUBLIC RELATIONS

Your conservation district's public image affects every aspect of your work. Public relations is a continuing program to help people understand what your conservation district is, what you are doing and why it is important. Good public relations can:

- inform the public of what the conservation district is and does
- promote favorable recognition of the district
- ensure that all the people in your district are aware of the availability of district assistance
- build rapport with other groups
- increase the amount of funds that your district receives
- increase the quality and amount of assistance the district obtains from cooperating agencies
- improve the quality of people who serve as conservation district commissioners or on conservation committees

The district should set goals for the basic understanding you would like the public to have about your district. In developing and maintaining your district's public relations program, make sure all information is consistent.

- Board members and associate commissioners should represent the board in person.
- Pay attention to public relations details throughout your district program; treat people warmly over the phone and in correspondence. Follow through on commitments, pay attention to cultural differences, and give adequate recognition to agencies, associations and other groups with whom you work.
- The board should determine who speaks on its behalf. Do not rely solely the staff to carry the message.

WORKING WITH THE MEDIA

Whether you are engaging in information, education, public relations, or all three, you will use a whole range of media from personal contacts to mass media. Establish friendly, mutually helpful relationships with the media representatives. If you convince them of the importance of your program, they can help convince the public. In order that your district may have effective media relations you must decide:

- why you want media coverage
- who your audiences are
- which media would be most effective in reaching different audiences

COMMITTEES

Conservation districts may accomplish their work through committees. Committees study district business in specific areas, and sift out important matters for the board to consider. Committees also implement and monitor decisions made by the board and gather support from organizations and agencies represented on the committee.

There are many different types of committees. A “standing committee” is a permanent committee charged with working on a basic aspect of district work. Conservation districts typically have standing committees for planning, district operations, education, finance, research, land-use planning, water quality, recreation, water resources, and soil stewardship.

Other functions of your district may require short term or “ad hoc” committees for a specific task or time period. Examples may include watershed, nominating, annual meeting, or grant committees.

The chair and board members appoint themselves, associate commissioners, district advisors, representatives of cooperating agencies and associations, or interested citizens as committee members. Look to people with an active or personal or professional interest in the committee’s purpose. Committees also serve as an entry point and training ground for people who may eventually become a District Commissioner.

Committees have no legal or official authority and cannot vote on the district board’s business or obligate district funds. However, encourage their participation. Be sure to include opportunities at board meetings for recognition of committee progress. Regardless of whether a committee is “ad hoc” or “standing”, each should have a specific mission similar to a job description for an individual.

YOUR BOARD OF COMMISSIONERS

As a commissioner, you should be asking some primary questions.

As an individual board member, are you:

- attending and actively participating in all board meetings?
- carrying out your committee responsibilities?
- keeping abreast of local natural resource issues?
- attending area and state conservation meetings of SCACD?

As a District Board are you:

- identifying local conservation district goals and achieving them?
- keeping your conservation district's mission in focus?
- working effectively with district staff and cooperating agencies?
- effectively implementing district programs?
- making sure your board's policies and activities are consistent with state law?
- following correct budget and audit procedures?
- reporting to the public on your district programs?

COMMISSIONER DEVELOPMENT

After a new commissioner takes office, welcome them with a letter or phone call and issue news releases announcing their new position. Formally orient new commissioners at board meetings and through personal visits. Special training workshops are held by the SCDNR-LWC, and SCACD. It is also useful to periodically rotate board members to different positions and committee assignments to broaden their experience.

ASSOCIATE COMMISSIONERS

Associate commissioners are officially appointed by the board as advisors and representatives. Associates do not vote on board decisions but augment the board's knowledge and experience and assist with conservation district programs. They also offer a way to cultivate potential new commissioners, allow former commissioners to remain active in the district, and broaden community input to the district. Every two years, districts should review their roster of associate commissioners. Be sure to orient associates just as you would commissioners, and involve them in meaningful activities and projects.

COMMISSIONER EMERITUS

The dedicated men and women who have served as Conservation District Commissioners do so without compensation and give freely of their time to the management of the Palmetto State's natural resources. Many of these Individuals have demonstrated exemplary service as a Conservation District Commissioner. Upon retirement, the SC Department of Natural Resources Board, upon a recommendation from a Conservation District Board and approved by the Land Water and Conservation Advisory Committee, may confer the title of Conservation District Commissioner Emeritus upon deserving individuals.

The title "Emeritus" conferred upon an individual is used to formally designate someone who has been honorably discharged from the performance of public duty for long and faithful service but still is interested in continuing to serve the conservation district. This title does not confer any powers or responsibilities but is in recognition of faithful service to the organization.

The Candidate shall be a former Conservation District Commissioner and shall be recommended for Commissioner Emeritus in writing by their conservation district. The letter should include the following information:

- Length of Service as a district commissioner
- Positions of leadership held with the conservation district
- Significant accomplishments
- Service to the community and state

OFFICERS OF THE BOARD

District Boards of Commissioners normally elect the following officers in February and they take office immediately.

- Chair
- Vice-Chair
- Secretary
- Treasurer

Some boards combine the positions of Secretary and Treasurer. According to SCACD Policy, offices should rotate among the board members.

THE CHAIR calls, convenes, oversees and adjourns all meetings of the Board. The Chair assures that:

- A quorum is present to conduct business.
- Freedom of Information requirements are met (see Appendix).
- All partners who are making reports are present. At a minimum the Chair assures that the Board will receive reports from NRCS, SCDNR and the Districts' staff.
- Agenda is ready for each meeting and is adhered to during the meetings.
- Keeps the meeting discussions short and relevant to the business at hand.
- Oversees the establishment of committees.
- Makes sure the long-range plan and annual plan of work are written and enacted on time and carried out on an appropriate time schedule.
- Checks in with the office frequently to assure its efficient operation.
- Discusses issues that arise and keeps up good communication between the staff and the board
- Is familiar with NRCS and SCDNR programs, as well as any other agency programs that might affect the District.

THE VICE-CHAIR assists the Chair, performs the duties of the Chair in the absence of the Chair, and does whatever the Board assigns the position.

THE SECRETARY

- Develops complete records of all district proceedings.
- Record dates, place and purpose (regular monthly, committee or special meetings).
- Records persons invited, who are absent, all who are present and the organizations they represent (if applicable) and the person who presides over the meeting.
- Records all motions in full and insists action be completed on each item of business.
- Informs the Chair of any business that should come before the board.

THE TREASURER

- Develops complete and accurate records of all income and expenditures and any periodic financial reports.
- Pays bills approved by the Board and issues receipts for incoming funds.
- Maintains separate accounting of any funds received for specific purposes.
- Assures that bills authorized for payment are paid on time and recorded in the minutes.
- Arranges for surety bonds.

MEETINGS OF THE BOARD

MEETINGS

Meetings are fundamental to conducting conservation district business. Commissioners participate in the district board meetings, committee meetings of the SCACD, and other organizations and agencies. Regardless of the nature of the meetings, there are many techniques for making them run smoothly and efficiently whether you are presiding or not.

Participants, including the general public, should be notified well ahead of the meeting (preferably at least one week). This notification should include an agenda listing the reason for the meeting, location, time, estimated meeting length and important reference material. Most meeting agendas follow this basic order:

1. Call meeting to order
2. Minutes of previous meeting
3. Treasurer's report
4. Correspondence received
5. Reports from district staff, NRCS, SCDNR, and others
6. Old business
7. New business plans
8. Plans for next meeting
9. Adjournment

It is a good idea to give the people attending a reminder phone call a day or two before the meeting.

Pay close attention to meeting arrangements. Plan in advance for a comfortable room, parking, refreshments, etc. Arrange the room so that everyone can make eye contact. Use a round table when possible and consider placing nameplates in front of everyone.

Regularly Scheduled Meetings

All conservation districts should hold monthly board meetings. Board meetings should have two basic purposes: to determine conservation district policy and to monitor its implementation.

Board meetings also serve educational, social, and communication purposes.

At these meetings, the board of commissioners takes official action on plans, programs, and functions of the district. The minutes are the official record of the transactions and proceedings of the board of commissioners and should contain complete and accurate information.

- Many districts utilize the guidebooks published by NACD for meetings guidelines
- NACD guidelines

Closed or Executive Session

Under certain conditions, the district board may go into executive session for discussion of a specific issue. Upon a formal motion made, seconded and carried, all parties may recess but not adjourn. Any motion to recess for a closed or executive session shall include a statement of the justification for closing the meeting, the subjects to be discussed during the time of executive session, and the time and place the meeting shall resume.

The motion to recess into executive session, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as part of the permanent records of the district. Discussion during the closed or executive session shall be limited to those subjects stated in the motion. No subjects shall be discussed at any closed meeting except for the following:

- personal matters of nonelected personnel
- consultation with an attorney for the district which would be deemed privileged in the attorney-client relationship
- matters relating to employer-employee negotiations whether or not in consultation with the representatives of the district
- preliminary discussions relating to the acquisition of real property

NO BINDING ACTION shall be taken during closed or executive recesses, and such recess shall not be used as a subterfuge to defeat the purposes of the Act.

After the completion of the closed or executive session, the chairman shall reconvene the regular or special meeting at the time and place specified in the original motion. The minutes shall reflect the time of the reconvening of the meeting, persons in attendance and official action taken in the reconvened meeting as a result of the closed or executive session.

Quorum

You must have a quorum of at least three of the five commissioners (not associate commissioners) to conduct any official business at a conservation district board meeting.

Agenda

The purpose of an agenda is to ensure orderly transaction of business and to give notice to the public regarding what will transpire at the meeting. Under the Freedom of Information Act, the agenda must be made available to the public at their request and posted in the office 24 hours in advance of the meeting.

The agenda must list the time, date and place of the meeting and all items to be considered at the meeting. To ensure that nothing requiring board action is overlooked, the secretary should retain a file of all incoming and outgoing correspondence and notes on any other topics the board needs to consider at the meeting. The chair of the board should work with the district staff to develop a list of all topics to be placed on the agenda. The information contained in the agenda should be reasonably detailed to inform the public of the business to be considered at the meeting and to facilitate meeting efficiency.

Any decision or act that results in expenditure of funds, establishes or changes policy, represents an aspect, opinion or approval of an issue, or causes an obligation of any kind on the part of the district requires official action of the board of commissioners in an open meeting.

Parliamentary Procedure

Most meetings, especially formal meetings, are conducted according to parliamentary procedure, such as Roberts Rules of Order. Under these rules, a voting member suggests that the board make a decision by stating a motion (“I make a motion that we...”). A second member of the board states his or her support for the motion by seconding the motion (“I second the motion.”). If not seconded, the motion is not considered. If a motion is made and seconded, the board can then discuss the merits of the motion.

If a board member wants to change the motion, he or she can move to amend the motion (“I move that we make an amendment of the motion that...”). This amendment must be seconded and voted on. Several amendments can be added to the original motion. After discussion, the chair restates the motion and the board votes on the motion or “motion amended” and the decision is made.

A simple majority of the members present is required to pass the motion.

The above is a brief description of parliamentary procedure. Use some restraint in applying parliamentary procedure to provide the flexibility needed to address the details of issues. If the discussion becomes too controversial, such procedures may be useful and you may wish to appoint a parliamentarian.

DISTRICT EMPLOYEES

Many district employees serve as the initial contact between the general public and federal, state and local programs and activities. As such, well-trained, knowledgeable employees with abilities that cover a wide range of skills are important to daily district operations.

Volunteer board members often have limited time. Conservation District employees can help you implement your programs and policy more efficiently. They can also:

- Help coordinate board activities
- Provide objective input and professional expertise
- Provide information and data as requested
- Serve as an agent of the district to contact landowners, other agencies and others regarding district business
- Provide technical assistance to landowners, provide technical and educational assistance to the public

There are a variety of paid positions that may be filled: **District Manager, District Education Coordinator, Administrative Assistant, and District Technical Personnel.**

Employment Procedures

Before hiring, you should identify your needs for an employee. Analyze the tasks that need to be accomplished. Develop and/or revise the position description and establish minimum qualifications. Know what the position will cost the district and where the funds are coming from to support the position.

After deciding what the district needs and how the funds will be acquired, the district board of commissioners may authorize the hiring of an employee. Before starting active recruiting, the board needs to consider the following items:

- Details of employment
- Whether the position is full or part-time
- Probationary period
- Supervision
- Pay range
- Term of the position (permanent or temporary)
- Amount of sick and annual leave and other benefits or
- Other facts important to the position

Prepare an application form and a position announcement. Advertise the position and take applications, check references and interview the applicants. The entire board, if not on the interview team, should be briefed on applicants and interviewers' recommendations so it can make its choice.

After a candidate has accepted, notify the other applicants and establish a starting date. Make sure a new employee understands his or her responsibilities and how to carry them out .

Salaries and Benefits

Just as natural resources must be stewarded with care, so should conservation district employees. Staff turnover can be very costly in time and dollars. Benefits are an excellent way to retain quality employees.

Provide employees with a fair salary, professional development opportunities and benefits. Legally required employee programs include social security, state and federal income tax and workman's compensation. The district must also adhere to equal employment opportunity and other laws that must be followed by any employer.

Supervision

People are the primary resource of a conservation district. Part of your board responsibility is to supervise the paid district staff, associate commissioners, committees, and volunteers. You must also coordinate with agency personnel so everyone can carry out the conservation district mission effectively.

Staff Evaluations

Conservation District employees should be evaluated yearly to clarify expectations, identify continual professional development needs, and share concerns. This is the immediate supervisor's and the chairman's responsibility. The evaluation should be in writing and discussed with the employee. You can reasonably expect the following from staff:

- Attention to details of meetings
- Complete, concise, and accurate information
- Honesty in individual and organizational relationships
- Judicious use of time
- Meeting agreed-upon deadlines with notification if deadlines cannot be met
- Prompt response to requests for information
- Prompt return of phone calls
- Excellent quality of service to the public

In return for this, staff working for your board can reasonably expect of the board:

- Fulfillment of commitments within the agreed-upon deadlines
- Proper training
- Knowledge of district organization and programs
- Candid performance appraisal and assistance in meeting performance goals
- Support in controversial situations
- Easy access to commissioners by phone or visitation
- Loyalty, confidentiality, and sensitivity
- Incentives and rewards to promote and recognize accomplishments

Board and Staff Relationships

Relationships between your board and staff must be effective. It can be very difficult for a district employee to have “five bosses at once,” especially if they offer conflicting input. The Board Chairman or his designee is normally the board member who works directly with the staff and is the supervisor of the district employee. He or she should maintain a keen awareness of employee concerns and initiate evaluations, salary increases and other personnel actions. The District Manager (if your district has one) should supervise the other district employees and the Board Chairman should work through the manager.

The types of tasks performed by board members and staff should be very clear. The board sets the policy and the staff implements it. Let the staff do their respective jobs and don’t expect them to do your job, too. Keep your respective roles as clear as possible at all times.

Volunteers

Most people involved in your district are volunteering their time and energy as commissioners, associates, and committee members or in other roles. For these volunteers to feel their service is worth contributing, they must see concrete achievements, and to do this they must be supervised and coordinated.

In many ways, supervising volunteers is similar to supervising paid staff. Develop position descriptions for volunteers just as you would for paid employees. This will help you focus on concrete needs for the position and assure the volunteer that you need someone to do a real job. The position description also acts as a written agreement, legally protecting the volunteer and the district. The district jointly sponsors the Earth Team Volunteer program with NRCS, which automatically provides these benefits.

Do everything you can to make volunteers feel comfortable and fulfilled in the service they are rendering to conservation. Volunteers are motivated by a variety of factors such as self-expression, philanthropy, and many others. The board should encourage these. Treat volunteers as coworkers, provide good working conditions, and promote them to greater responsibility as appropriate. Let them know how much you appreciate them, personally and professionally.

Commissioners and other conservation district volunteers serve without monetary compensation, but if they incur other expenses in the service of your district, try to reimburse them.

THE CONSERVATION PARTNERSHIP

The Conservation Partnership is an agreement entered into by the three parties (**SCDNR Land, Water and Conservation Division, S.C. Association of Conservation Districts and the USDA Natural Resources Conservation Service**) to facilitate the working relationship within each conservation district.

As partners, we are interdependent, having independent responsibilities, and yet we depend on each other for successful delivery of programs.

SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES LAND, WATER AND CONSERVATION DIVISION

The primary mission of the SCDNR-Land, Water and Conservation Division is to ensure that the natural resources of the state are managed wisely.

As the division of state government charged with administering the Soil and Water Conservation Districts Law, the SCDNR-LWCD provides professional, technical, and financial assistance to the state's 46 conservation districts in carrying out conservation programs. The division also includes program areas in geology, hydrology, climate, habitat protection, and flood mitigation. Division staff collects and makes available to the public a wealth of information about the land and related resources for wise land resource planning decisions. The SCDNR-LWCD, assists conservation districts by:

- Providing professional and technical staff assistance
- Providing financial assistance through state-appropriated funds
- Assisting in developing annual and long-range plans for carrying out district goals and objectives
- Providing timely training for all district commissioners, associate commissioners, district staff, and other volunteers
- Developing, conducting and evaluating conservation education programs in cooperation with conservation districts
- Promoting programs of districts through the news media, exhibits, tours, conferences, visual aids, and brochures
- Securing the cooperation of State and Federal agencies in assisting districts and land users
- Informing districts of the activities of SCDNR
- Disseminating information on the activities and programs of all districts

The SCDNR has four additional divisions that contribute to the conservation of South Carolina's natural resources as well. They are the Outreach and Support Services Division, Law Enforcement Division, Wildlife and Freshwater Fisheries Division and Marine Resources Division.

U.S. DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE (NRCS)

The USDA-NRCS works with landowners through conservation planning and assistance to benefit the soil, water, air, plants, and animals for productive lands and healthy ecosystems. Working at the local level, – in field offices at USDA Service Centers throughout South Carolina -- NRCS employees' understanding of local resource concerns and challenges result in conservation solutions that last. Seventy percent of the land in the United States is privately owned, making stewardship by private landowners absolutely critical to the health of our Nation's environment.

NRCS succeeds through partnerships and a cooperative working agreement with SC's Soil & Water Conservation Districts and the SC DNR-LWCD outlines how this partnership will work closely with individual farmers and ranchers, landowners, local conservation districts, government agencies, Tribes, Earth Team volunteers and many other people and groups to care for our state's natural resources.

The District is served by a NRCS field office, usually located within the District.

NRCS assistance to Districts includes:

- Providing assistance to private landowners in developing whole-farm conservation plans
- Consulting with realtors, developers, commodity organizations, units of government, planning commission, county and city councils who need information about protecting natural resources on a watershed scale.

Technical services include:

- Whole farm and total planning to use, manage and sustain our natural resources
- Designing, surveying, laying out and inspecting construction of all practices outlined in the Field Office Technical Guide (FOTG)
- Inventorying and evaluating soil conditions
- Inventorying natural resource concerns and offering sustainable solutions

Legal responsibilities include:

Planning and implementing conservation practices through Farm Bill cost-share programs including Conservation Technical Assistance (CTA), Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP), Farm and Ranch Lands Protection Program (FRPP), Emergency Watershed Protection Program (EWP), and the Wetlands Reserve Program (WRP).

In addition to providing services to the public, NRCS personnel are required to attend regularly scheduled District board meetings, special meetings called by the Board of Commissioners, and District, Area, and State Association meetings. NRCS also assists the Board in establishing priorities and developing annual and long-range plans to address conservation problems.

NRCS also:

- Provides leadership in incorporation of NRCS concerns into the Partnership's annual and long-range plans
- Keeps the board informed about NRCS activities in the district, and requests that the board takes action on issues that require it
- Reviews and discusses with district officials the civil rights policies contained in the Cooperative and Mutual Working Agreements on an annual basis

S.C. ASSOCIATION OF CONSERVATION DISTRICTS (SCACD)

A non-governmental association of SC's Conservation Districts and their commissioners. The mission of the SCACD is to protect the natural resources of South Carolina through its 46 member Conservation Districts by providing leadership, information and tools which enable Districts to achieve their goals. SCACD offers support through conferences, workshops, awards, educational activities, and promotional assistance to maximize the effectiveness of District programs. SCACD provides Districts a voice in state and federal policy-making and legislative processes.

DISTRICT ACTIVITIES

Listed here is a synopsis of most, if not all, of the items a district will be involved with each year.

Annual Report

The annual report is a published report of the district's yearly activities. The annual report can be timed to coincide with the end of the calendar year or the fiscal year. The best advise is preparing for the annual report is to collect photos and documentation throughout the course of the year. Record keeping is critical to having an accurate, comprehensive annual report to present to the public. In preparing to release this information to the public, plan your draft to be complete at the monthly board meeting prior to your scheduled publication date. This will give everyone the opportunity to make any needed changes prior to publishing.

Annual Plan

This document should be derived directly from the long-range plan. It should be 1/5th-scale model of your long-range plan with additional goals based on current needs. Specific short-term goals, which might not be included in the long-range plan, such as the completion of a grant proposal and its subsequent implementation or a pilot or trial project are examples of items that may be included in an annual plan but not the long range plan. Input from all the partners and from cooperating agencies and groups is critical to having a usable document that will product results.

Audit

Each district is required to conduct an annual financial audit. A true audit will be done by a CPA and will involve some expense on the part of the district. In addition, there will be the time involved preparing the district's financial records for the CPA. The alternative to a true audit is to have the board conduct its own financial check. The requirements for this form of audit are for two board members other than the treasurer to perform a complete review of the status of the finances of the district, including a close examination of the checking and saving account records. The DNR-LWCD should be notified upon completion of the audit. DNR-LWCD does not receive the actual results of an audit, only the notification that one has been done for the current fiscal year.

Awards

There are many award categories. Some districts have their own awards in combination with the SCACD awards. For a complete listing of the various awards, check with your District Employee. Due dates vary by contest and re typically sent with the notification forms. Rules likewise vary as to the content and the amount of supplemental documentation allowed. Districts have the option of deciding to enter a contest. The District Board will make the decision as to which awards competitions to enter. Record-keeping throughout the year will enhance your ability to put together a good awards entry.

Budget Request

Both state and county governments require the submission of requests for appropriations. The timing will vary based on the planning schedule of the government unit, but will generally take place in January or February in anticipation of a July budget approval. It is extremely important that all the partners consider the district's needs for funding prior to the actual request. Be realistic with your requests, but don't be shy! It is a good idea, especially at the county level to be prepared to present your request in person. If your district provides benefits for the county, be sure to emphasize that in the proposal or request. Also, it is advantageous to "toot your own horn." Let county council know what you are doing for the citizens of the county.

Elections

District responsibilities include insuring that all potential candidates know the rules and regulations regarding election to either a district commissioner or a watershed director position. It is also your responsibility to attend to petition filing requirements and deadlines and the required documentation such as ethics forms or campaign disclosure forms. You should conduct a follow-up inquiry with the local election commission to determine if the potential candidate has met the requirements for being included on the printed ballot. Following the election, a second inquiry should be done to determine the successful candidate (s). The results should be forwarded to DNR-LWCD.

Equipment

Most districts own equipment for public use. It can range from the no-till type drills to mulch-laying equipment. Periodic inspection, maintenance, record keeping, and advertisement may be part of your responsibilities. Tasks will vary greatly from district to district.

Ethics Forms

Responsibilities concerning ethics forms will include being familiar with the deadline for submission, and working with the district employee to insure that the copies are submitted and filed. District employees participation varies greatly from district to district. The District Employee's manual contains more information regarding the preparation of these forms. The deadline for submission is April 15th of each year. Failure to comply can result in a fine for the commissioner affected.

Financial Reports

Financial reports are generally considered to be a function of the district employee. However, in your own interest, the board should be familiar with the accounting system used in the district and what reports are needed, including the due dates of each. A major part of the boards' responsibility may lie in helping to train a new district employee in the financial record keeping system.

Oath of Office

Each elected official must receive the Oath of Office prior to assuming the role as an official or voting member of the District Board. A Notary Public must legally give the Oath. Documentation of who is to take the oath will generally be sent from the DNR-LWCD. Maintain the appropriate copies in the district files. A news release with an accompanying photo is also needed. (Save an extra photo for your annual report.)

DISTRICT PROGRAMS

Your support and assistance with district programs is vital! The paid staff can do a great deal, but your assistance can mean the difference between an ordinary program and a very successful program.

Below is a guide to District Programs:

Arbor Day

This is an annual observation that is not participated in by all districts. Use records of past events to guide your preparation for such an event or call on a staff member with experience in conducting Arbor Day observations. Typically, such an observation will involve planting one or more trees in a public place such as a school, church, or park.

Clinics

A clinic is just a mini-workshop. A clinic generally is geared to one topic such as pond management, beaver control, wildlife habitat establishment, installing water bars, or irrigation. Clinics are targeted to a specific audience. Usually the district will receive a request from an individual or group for information or the district will see a need to share information on a timely subject or program.

Conservation Districts Youth Workshop

This annual event for high school students is held at Lander University and focuses on natural resource conservation. Commissioners can assist in getting delegates to attend by taking advertising fliers to the schools, writing articles promoting the workshop for the local paper, speaking to youth groups or individuals regarding the workshop, and selecting the final applicants from your district. Invite your delegates to a board meeting after they have attended the workshop. This will give you an idea of how the workshop is being conducted and what the young people are learning.

Earth Day

Earth Day is celebrated in many districts. Participating in this global environmental observation may provide an opportunity for the district to spread its conservation message. Tasks could be as simple as photographing the event for the news release and the annual report to completely organizing the event, manning an exhibit, or giving a presentation to a group.

Envirothon

This is a team competition for high school students in which they are tested in the areas of soil, water, forestry, wildlife and a current topic such as recycling or groundwater. Any high school in the state will be eligible to register through their conservation district for the statewide competition. You may be involved with recruiting or training the team.

Essay Contest

This annual writing competition topics include soil, water, forestry and wildlife. Tasks may range from distributing essay fliers, to visiting schools, putting together a judging panel, and handing out the awards. This program will vary from district to district.

Farm-City

This observation is an excellent opportunity for the district to join with the agricultural and business communities to promote conservation and to celebrate the partnership of the two. Tasks might include preparing for a meeting, including organizing speakers, planning meal functions, arranging transportation and tour sites. Whether you are part of the planning or not, your presence at the functions is evidence of the district's support of both business and agriculture.

Photography and Poster Contest

Sponsored for various grades, these contests are conducted annually. Rule fliers are distributed each year with the current topic and due dates for submission of entries. NACD and the NACD Auxiliary annually partner to host the National Poster Contest and the Photo Contest. Rules for the NACD contest can be found at <http://www.nacdnet.org/education/contests/>.

Recognition Programs

These vary from district to district. Recognition of accomplishments, whether it is youth, board members or some segment of the public or one of your area land users, is a win-win situation. It shows the person or persons that you recognize and appreciate their work. It may also motivate others to become active in conservation. News releases should be prepared on all recognition meetings.

SCACD Committees

Each commissioner is asked to serve on one of the South Carolina Association of Conservation Districts' standing committees. Commissioners should attend the meetings and provide the committee with your insight and knowledge.

Soil and Water Stewardship Week

This annual program sponsored through NACD incorporates both religious and educational aspects of natural resources management. A district may be involved in distributing the materials to churches and/or schools as well as holding dinners and tours to promote the event.

SCACD Conferences

These conferences are held throughout the year in partnership with SCACD, USDA Natural Resources Conservation Service, and the SCDNR-LWCD. All commissioners should attend. This is the only opportunity that you have to meet with your fellow commissioners from around the state. It is an excellent time for exchanging ideas, renewing old friendships and also finding out what is happening on the state and national conservation scene. The annual conference is also the business meeting for the SCACD.

SC Conservation Districts Foundation

The Foundation is publicly supported, tax exempt organization, which seeks to promote and support education, understanding, and actions related to all phases of the conservation and protection of South Carolina's natural resources.

Teacher Workshop

Sponsored by the district, these programs are held on a county and multi-county basis. Commissioners should be involved in various aspects of this district program including the planning, coordination and implementation. These courses are open to all teachers in the specific conservation district (s) that is/ are sponsoring the workshop. Depending on how the program is set up, a teacher may receive recertification and/or graduate credit.

Watershed Conservation Districts—A watershed conservation district is Special Purpose District created by state law covering a specific watershed (drainage area). An elected board of watershed district directors oversees maintenance and repairs to the dams and drainage canals and monitors structures from being located in the flood pool. Many flood control structures are also used for municipal and industrial water supply, fire protection and recreation. In South Carolina, there are 35 watershed conservation districts in 25 counties.

LAWS AND AGREEMENTS

LAWS and why they are important:

Conservation District Law—so Commissioners can understand the powers and authorities granted to them and act accordingly.

Watershed Law—so Commissioners can oversee the Watershed Districts and their Boards of Directors and understand how these powers and authorities fit with the Districts.

Freedom of Information Act—so Boards do not meet illegally or render their decisions void because they did not properly notify the public; so the Commissioners understand what materials in the local office are subject to the Act and which are not.

Ethics Law—so Commissioners understand what they can and cannot do as part of an elected Board as an individual elected official; so Commissioners do not ask the staff to do anything illegal; so Commissioners are not fined for not filing their Ethics Forms annually.

Civil Rights Titles of the Voting Rights Act of 1964—so the Board can assume that all its operations are conducted according to law and policy. It is the policy of Districts that they will comply with the state equal employment opportunity and civil rights policies. Therefore, Commissioners as individuals and elected officials must comply with these policies.

FORMAL AGREEMENTS:

Mutual Agreement with USDA and State of SC—covers the Partners' relationship, cooperation, administrative commitment, and alliance for nondiscrimination.

Cooperative Working Agreement with NRCS and SCDNR-LWCD—supplements the Working Agreement, says how the partnership of NRCS, SCDNR and the District will work together on partnering, personnel, program delivery to customers, technical standards, facilities, equipment, data sharing, funding, liability and civil rights.

Local Agreement— agreement with no-till drill vendors or maintenance people, small farmer groups, or local governments for work during emergencies.

Partnership Agreements—agreement between SC Association of Conservation Districts, SCDNR-LWCD, and NRCS to work together cooperatively to provide services to all customers.

PLANNING TOOLS:

Long-range Partnership Plan—is a list of the districts' long-range goals and how they are to be achieved. This plan is updated every five years and used to produce the annual plan at the beginning of the work year. Input from the public and all partners is included.

Annual Partnership Plan— is a list of annual goals and how they are to be achieved. This plan is updated annually and comes from the long-range Partnership Plan.

Local Work Group— under the Farm Bill, a group of people in a county identified and convened by the District to design federal conservation programs.

ABBREVIATIONS

For more education and information about the services and programs offered by NRCS in SC, visit their website at www.sc.nrcs.usda.gov.

APO— Annual Partnership Plan—annual plan of operations for the District, SCDNR, and NRCS within a District.

BMP—Best Management Practice—conservation practice which is chosen as most practical for an individual site.

COG—Council of Governments, a multi-county planning office which provides resources to the local counties cities and towns in their regions. The Councils are also partners with numerous federal and state agencies, obtaining and administering grants for a variety of community-based programs and economic development initiatives. There are 10 COGs in South Carolina.

Conservation Plan—official NRCS and District records of land users' decisions over time to perform conservation practices. Required for conservation compliance.

Conservation Planning—(holistic, ecosystem, whole-farm, etc.) - working with land users to plan the best use of land and to decide on systems of conservation practices to use.

CSP—Conservation Stewardship Program is a voluntary conservation program that encourages producers to address resource concerns in a comprehensive manner by: undertaking additional conservation activities; and improving, maintaining, and managing existing conservation activities.

CRP—Conservation Reserve Program—enacted by the Farm Bill; retires cropland to trees, grass, perennial wildlife foods or a combination of the three.

DC-District Conservationist—NRCS position that oversees the NRCS work in a District

EQIP- The Environmental Quality Incentives Program (EQIP) is a voluntary program that provides financial and technical assistance to agricultural producers through contracts up to a maximum term of ten years in length. These contracts provide financial assistance to help plan and implement conservation practices that address natural resource concerns and for opportunities to improve soil, water, plant, animal, air and related resources on agricultural land and non-industrial private forestland.

EWP—The purpose of the Emergency Watershed Protection (EWP) program is to undertake emergency measures, including the purchase of flood plain easements, for runoff retardation and soil erosion prevention to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood or any other natural occurrence is causing or has caused a sudden impairment of the watershed.

FOTG - Field Office Technical Guide. Written by NRCS, it is also the District's standards and specifications for each conservation practice.

FRPP - The Farm and Ranch Land Protection Program (FRPP) provides matching funds to help purchase development rights to keep productive farm and ranchland in agricultural uses. Working through existing programs, USDA partners with State, tribal, or local governments and non-governmental organizations to acquire conservation easements or other interests in land from land-owners. USDA provides up to 50 percent of the fair market easement value of the conservation easement.

FSA -USDA Farm Service Agency

GIS -Geographic Information System - computer mapping system used to identify important resources.

GPS - Global Positioning System - uses satellites for exact ground locations.

HFRP—Healthy Forests Reserve Program -The purpose of HFRP is to assist landowners, on a voluntary basis, in restoring, enhancing and protecting forestland resources on private lands through easements, 30-year contracts and 10-year cost-share agreements.

LTA - Long-term agreement - Conservation agreement covering several years of installing conservation practices with cost-share funds.

MOA - Memorandum of Agreement - previous agreement with Partners

MOU - Memorandum of Understanding - previous agreement with Partners

NACD - National Association of Conservation Districts

NRCS -Natural Resources Conservation Service

SCACD-South Carolina Association of Conservation Districts

SCDEA- S.C. Conservation District Employees Association

SCDHEC - SC Department of Health and Environmental Control

SCDNR- LWCD - S. C. Department of Natural Resources, Land, Water and Conservation Division

Standards and Specifications - Requirements of individual conservation practices (see FOTG)

SWCD- Soil and Water Conservation District

USACE—U.S. Army Corps of Engineers—the division of the Army that administers laws relating to navigable waterways and wetlands

USDA— U.S. Department of Agriculture

WHIP—Wildlife Habitat Incentives Program—enacted by 1996 Farm Bill. Provides cost-sharing for wildlife practices.

WRP—Wetland Reserve Program—pays landowners to restore wetlands and puts them under long-term contracts

SOUTH CAROLINA CONSERVATION PARTNERSHIP



DNR



USDA NRCS

Ethics Rules of Conduct

Section 8-13-700, et al.

SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

- (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
- (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
- (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;
- (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

(C) Where a public official, public member, or public employee or a member of his immediate family holds an economic interest in a blind trust, he is not considered to have a conflict of interest with regard to matters pertaining to that economic interest, if the existence of the blind trust has been disclosed to the appropriate supervisory office.

(D) The provisions of this section do not apply to any court in the unified judicial system.

(E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply.

SECTION 8-13-705. Offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official, or to influence testimony of witness; exceptions; penalty for violation.

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

(1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;

(2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or

(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

(1) influenced in the discharge of his official responsibilities;

(2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

(3) induced to perform or fail to perform an act in violation of his official responsibilities.

(C) A person may not, directly or indirectly, give, offer, or promise to give anything of value to another person with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(D) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(E) Subsections (C) and (D) of this section do not prohibit the payment or receipt of witness fees provided by law or the payment by the party on whose behalf a witness is called and receipt by a witness of the reasonable costs of travel and subsistence at trial, hearing, or proceeding, or, in the case of an expert witness, of the reasonable fee for time spent in the preparation of the opinion and in appearing or testifying.

(F) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten years and a fine of not more than ten thousand dollars and is permanently disqualified from being a public official or a public member. A public official, public member, or public employee who violates the provisions of this section forfeits his public office, membership, or employment.

(G) This section does not apply to political contributions unless the contributions are conditioned upon the performance of specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.

SECTION 8-13-710. Reporting of particular gifts received by public employee, official, or member on statement of economic interests.

(A) Unless provided by subsection (B) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8-13-1110 who accepts anything of value from a lobbyist's principal must report the

value of anything received on his statement of economic interests pursuant to Section 8-13-1120(A)(9).

(B) A public official, public member, or public employee required to file a statement of economic interests under Section 8-13-1110 who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year must report on his statement of economic interests pursuant to Section 8-13-1120 the thing of value from:

(1) a person, if there is reason to believe the donor would not give the thing of value but for the public official's public member's, or public employee's office or position;

(2) a person, or from an officer or director of a person, if the public official, public member, or public employee has reason to believe the person:

(a) has or is seeking to obtain contractual or other business or financial relationships with the public official's, public member's, or public employee's governmental entity;

(b) conducts operations or activities which are regulated by the public official's, public member's, or public employee's governmental entity.

(C) Nothing in this section requires a public official, public member, or public employee to report a gift from a parent, grandparent, or relative to a child, grandchild, or other immediate family member for love and affection.

SECTION 8-13-715. Speaking engagements of public officials, members or employees; only expense reimbursement permitted; authorization for reimbursement of out-of-state expenses.

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group. A public official, public member, or public employee is not prohibited by this section from accepting a meal provided in conjunction with a speaking engagement where all participants are entitled to the same meal and the meal is incidental to the speaking engagement. Notwithstanding the limitations of Section 2-17-90, a public official, public member, or public employee may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. A public official, public member, or public employee required to file a statement of economic interests under Section 8-13-1110 must report on his statement of economic interests the organization which paid for or reimbursed actual expenses, the amount of such payment or reimbursement, and the purpose, date, and location of the speaking engagement. A public official, public member, or public employee who is not required to file a statement of economic interests but who is paid or reimbursed actual expenses for a speaking engagement must report this same information in writing to the chief administrative official or employee of the agency with which the public official, public member, or public employee is associated.

If the expenses are incurred out of state, the public official, public member, or public employee incurring the expenses must receive prior written approval for the payment or reimbursement from:

- (1) the Governor, in the case of a public official of a state agency who is not listed in an item in this section;
- (2) a statewide constitutional officer, in the case of himself;
- (3) the President Pro Tempore of the Senate, in the case of a member of the Senate;
- (4) the Speaker of the House, in the case of a member of the House of Representatives; or
- (5) the chief executive of the governmental entity in all other cases.

SECTION 8-13-720. Offering, soliciting, or receiving money for advice or assistance of public official, member or employee.

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

SECTION 8-13-725. Use or disclosure of confidential information by public official, member, or employee for financial gain; examination of private records; penalties.

(A) A public official, public member, or public employee may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

(B)(1) A public official, public member, or public employee may not wilfully examine, or aid and abet in the wilful examination of, a tax return of a taxpayer, a worker's compensation record, a record in connection with health or medical treatment, social services records, or other records of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.

(2) A person convicted of violating this subsection must be fined not more than five thousand dollars, or imprisoned not more than five years, or both, and shall reimburse the costs of prosecution. Upon conviction, the person also must be discharged immediately from his public capacity as an official, member, or employee.

SECTION 8-13-730. Membership on or employment by regulatory agency of person associated with regulated business.

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated. An employee of the regulatory agency which regulates a business with which he is associated annually shall file a statement of economic interests notwithstanding the provisions of Section 8-13-1110. No person may be an employee of the regulatory agency which regulates a business with which he is associated if this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

SECTION 8-13-735. Participation in decision affecting personal economic interests by one employed by and serving on governing body of governmental entity.

No person who serves at the same time on:

(1) the governing body of a state, county, municipal, or political subdivision board or commission, and

(2) as an employee of the same board or commission or serves in a position which is subject to the control of that board or commission may make or participate in making a decision which affects his economic interests.

SECTION 8-13-740. Representation of another by a public official, member, or employee before a governmental entity.

(A)(1) A public official occupying statewide office, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except as otherwise required by law.

(2) A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except:

(a) as required by law;

(b) before a court under the unified judicial system; or

(c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina

Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

(3) A public member occupying statewide office, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before the same unit or division of the governmental entity for which the public member has official responsibility, except as otherwise required by law.

(4) A public official, public member, or public employee of a county may not knowingly represent a person before an agency, unit, or subunit of that county for which the public official, public member, or public employee has official responsibility except:

- (a) as required by law; or
- (b) before a court under the unified judicial system.

(5) A public official, public member, or public employee of a municipality may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the public official, public member, or public employee has official responsibility except as required by law.

(6) A public employee, other than those specified in items (4) and (5) of this subsection, receiving compensation other than reimbursement or per diem payments for his official duties, an individual with whom he is associated, or a business with which he is associated may not knowingly represent a person before an entity on the same level of government for which the public official, public member, or public employee has official responsibility except:

- (a) as required by law;
- (b) before a court under the unified judicial system; or
- (c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or the South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:

- (a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;
- (b) representation by a public official, public member, or public employee in the course of the public official's, public member's, or public employee's official duties;
- (c) representation by the public official, public member, or public employee in matters relating to the public official's, public member's or public employee's personal affairs or the personal affairs of the public official's, public member's, or public employee's immediate family.

(8) A state, county, or municipal public official, public member, or public employee, including a person serving on an agency, unit, or subunit of a governmental entity shall not be required to resign or otherwise vacate his seat or position due to a conflict of interest that arises under this section as long as notice of the possible conflict of interest is given and he complies with the recusal requirements of Section 8-13-700(B). A governmental entity includes, but is not limited to, a planning board or zoning commission.

(9) Notwithstanding another provision of law, a governmental entity shall not prohibit a state, county, or municipal public official, public member, or public employee, including a person serving on an agency, unit, or subunit of a governmental entity from service in office or employment based solely on race, color, national origin, religion, sex, disability, or occupation.

(B) A member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities.

(C) A member of the General Assembly may not vote on the section of that year's general appropriation bill relating to a particular agency or commission if the member, an individual with whom he is associated, or a business with which he is associated has represented any client before that agency or commission as permitted by subsection (A)(2)(c) within one year prior to such vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

SECTION 8-13-745. Paid representation of clients and contracting by member of General Assembly or associate in particular situations.

(A) No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the twelve preceding months.

(B) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or any individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1-23-310, before an agency, a commission, board, department, or other entity elected, appointed, recommended, or confirmed by the House, the Senate, or the General Assembly if that member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(C) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.

(D) The provisions of this section do not apply to any court in the unified judicial system.

(E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply.

(F) The provisions of subsections (A), (B), and (C) do not apply in the case of any vote or action taken by a member of the General Assembly prior to January 1, 1992.

SECTION 8-13-750. Employment, promotion, advancement, or discipline of family member of public official, member, or employee.

(A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's, public member's, or public employee's family member.

SECTION 8-13-755. Restrictions on former public official, member, or employee serving as lobbyist or accepting employment in field of former service.

A former public official, former public member, or former public employee holding public office, membership, or employment on or after January 1, 1992, may not for a period of one year after terminating his public service or employment:

(1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or

(2) accept employment if the employment:

(a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and

(b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

SECTION 8-13-760. Employment by government contractor of former public official, member, or employee who was engaged in procurement.

Except as is permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11-35-310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official responsibilities.

SECTION 8-13-765. Use of government personnel or facilities for campaign purposes; government personnel permitted to work on campaigns on own time.

(A) No person may use government personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official's use of an official residence.

(B) A government, however, may rent or provide public facilities for political meetings and other campaign-related purposes if they are available on similar terms to all candidates and committees, as defined in Section 8-13-1300(6).

(C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time and on nongovernment premises.

SECTION 8-13-770. Members of General Assembly prohibited from serving on state boards and commissions; exceptions.

A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Budget and Control Board, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Information Systems, the Judicial Council, the Commission on Prosecution Coordination, the South Carolina Tobacco Community Development Board, the Tobacco Settlement Revenue Management Authority, the South Carolina Transportation Infrastructure Bank, the Commission on Indigent Defense, and the joint legislative committees.

SECTION 8-13-775. Public official, member, or employee with official function related to contracts not permitted to have economic interest in contracts.

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract.

SECTION 8-13-780. Remedies for breaches of ethical standards by public officials, members, or employees.

(A) The provisions of this section are in addition to all other civil and administrative remedies against public officials, public members, or public employees which are provided by law.

(B) In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose an oral or written warning or reprimand.

(C) The value of anything received by a public official, public member, or public employee in breach of the ethical standards of this chapter or regulations promulgated hereunder is recoverable by the State or other governmental entity in an action by the Attorney General against a person benefitting from the violations.

(D) Before a public employee's employment or a public official's or public member's association with the governmental entity is terminated for a violation of the provisions of this chapter, notice and an opportunity for a hearing must be provided to the public official, public member, or public employee.

SECTION 8-13-785. Communication by elected official with state board or commission on behalf of constituent.

Nothing in Chapter 13 of Title 8 prevents an elected official from communicating with a board or commission member or employee, on behalf of a constituent relating to delays in obtaining a hearing, discourteous treatment, scheduling, or other matters not affecting the outcome of pending matters, provided that the elected official, an individual with whom the elected official is associated, or a business with which the elected official is associated is not representing the constituent for compensation.

SECTION 8-13-790. Recovery of amounts received by official or employee in breach of ethical standards; recovery of kickbacks.

(A) The value of anything transferred or received in breach of the ethical standards of Articles 1 through 11 of this chapter or regulations promulgated under it by a public employee, public official, or a nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.

(B) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order under it, it is conclusively presumed that the amount of the kickback was included in the price of the subcontract or order and ultimately borne by the State or governmental entity and is recoverable hereunder from the subcontractor making the kickback. Recovery from one offending party does not preclude recovery from other offending parties.

SECTION 8-13-795. Receipt of award, grant, or scholarship by public official or family member.

Nothing in Chapter 13 of Title 8 prevents a public official or a member of his immediate family from being awarded an award, a grant, or scholarship, or negatively reflects on a public official because of an award, a grant, or scholarship awarded to the public official or to a member of his immediate family on a competitive, objective basis if the public official has not wilfully contacted any person involved in the selection of the recipient, on behalf of the recipient, before the award.

FORMS AND REPORTS BY CANDIDATES FOR ELECTION BY THE GENERAL ASSEMBLY

SECTION 8-13-910. Candidates elected or consented to by General Assembly to file statements of economic interests; authority with whom to file.

(A) No person who is a candidate for public office which is filled by election by the General Assembly may be voted upon by the General Assembly until at least ten days following the date on which the candidate files a statement of economic interests as defined in this chapter with the Chairman of the Senate Ethics Committee and the Chairman of the House of Representatives Ethics Committee.

(B) No person who is appointed to an office which is filled with the advice and consent of the Senate or the General Assembly may be confirmed unless the appointment, when received by the Senate and/or the House, is accompanied by a current original copy of a statement of economic interests which has been filed with the appointing authority and is transmitted with the appointment and until at least ten days following the date on which the appointment, with the attached original economic interest statement, has been received by the Senate and/or the House.

SECTION 8-13-920. Report of campaign expenditures.

A person running for an office elected by the General Assembly must file a report with the Chairman of the Senate Ethics Committee and the Chairman of the House of Representatives Ethics Committee of money in excess of one hundred dollars spent by him or in his behalf in seeking the office. The report must include the period beginning with the time he first announces his intent to seek the office. The report must not include travel expenses or room and board while campaigning. Contributions made to members of the General Assembly during the period from announcement of intent to election date must be included. The report must be updated quarterly with an additional report filed five days before the election and the final report filed thirty days after the election. Persons soliciting votes on behalf of candidates must submit expenses in excess of one hundred dollars to the candidate which must be included on the candidate's report. A copy of all reports received by the Senate Ethics Committee and the House of Representatives Ethics Committee must be forwarded to the State Ethics Commission within two business days of receipt.

SECTION 8-13-930. Seeking or offering pledges of votes for candidates.

No candidate for an office elected by the General Assembly may seek directly the pledge of a member of the General Assembly's vote until the qualifications of all candidates for that office have been determined by the appropriate joint committee to review candidates for that office. No member of the General Assembly may offer a pledge until the qualifications of all candidates for that office have been determined by the appropriate joint committee to review candidates for that office.

SECTION 8-13-935. Public Service Commission election requirements; violations and penalties.

(A) No candidate for or person intending to become a candidate for the Public Service Commission may seek, directly or indirectly, the pledge of a member of the General Assembly's vote or contact, directly or indirectly, a member of the General Assembly regarding screening for the Public Service Commission, until: (1) the qualifications of all candidates for that office have been determined by the State Regulation of Public Utilities Review Committee, and (2) the review committee has formally released its report as to the qualifications of all candidates for the office to the General Assembly. For purposes of this section, "indirectly seeking a pledge" means the candidate, or someone acting on behalf of and at the request of the candidate, requests a person to contact a member of the General Assembly on behalf of the candidate before nominations are formally made by the review committee. The prohibitions of this section do not extend to an announcement of candidacy by the candidate or statement by the candidate detailing the candidate's qualifications.

(B) No member of the General Assembly may offer his pledge until: (1) the qualifications of all candidates for the Public Service Commission have been determined by the State Regulation of Public Utilities Review Committee, and (2) the review committee has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications must occur no earlier than forty-eight hours after the names of nominees have been initially released to members of the General Assembly.

(C) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member's pledge to vote for a candidate for the Public Service Commission.

(D)(1) Violations of this section may be considered by the State Regulation of Public Utilities Review Committee when it considers the candidate's qualifications.

(2) Violations of this section by members of the General Assembly must be reported by the review committee to the House or Senate Ethics Committee, as may be applicable.

(3) Violations of this section by incumbent commissioners seeking reelection must be reported by the Public Service Commission to the State Ethics Commission.

A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22-3-545.

SECTION 8-13-100. Definitions.

(1)(a) "Anything of value" or "thing of value" means:

(i) a pecuniary item, including money, a bank bill, or a bank note;

(ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money;

(iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;

(iv) a stock, bond, note, or other investment interest in an entity;

(v) a receipt given for the payment of money or other property;

(vi) a chose-in-action;

(vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;

(viii) a loan or forgiveness of indebtedness;

(ix) a work of art, an antique, or a collectible;

(x) an automobile or other means of personal transportation;

(xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty;

(xii) an honorarium or compensation for services;

(xiii) a promise or offer of employment;

(xiv) any other item that is of pecuniary or compensatory worth to a person.

(b) "Anything of value" or "thing of value" does not mean:

(i) printed informational or promotional material, not to exceed ten dollars in monetary value;

(ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

(iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;

(iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;

(v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;

(vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; or

(vii) a campaign contribution properly received and reported under the provisions of this chapter.

(2) "Appropriate supervisory office" means:

(a) the State Ethics Commission for all persons required to file reports under this chapter except for those members of or candidates for the office of State Senator or State Representative;

(b) the Senate Ethics Committee for members of or candidates for the office of State Senator and the House of Representatives Ethics Committee for members of or candidates for the office of State Representative.

(3) "Business" means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

(4) "Business with which he is associated" means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

(5) "**Candidate**" means a person who seeks appointment, nomination for election, or election to a state or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election. It also means a person on whose behalf write-in votes are solicited if the person has knowledge of such solicitation. 'Candidate' does not include a person within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976.

(6) "**Compensation**" means money, anything of value, an in-kind contribution or expenditure, or economic benefit conferred on or received by a person.

(7) "**Confidential information**" means information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

(8) "**Consultant**" means a person, other than a public official, public member, or public employee who contracts with the State, county, municipality, or a political subdivision thereof to:

(a) evaluate bids for public contracts, or

(b) award public contracts.

(9) "**Contribution**" means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money or anything of value made to a candidate or committee, as defined in Section 8-13-1300(6), for the purpose of influencing an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. "Contribution" does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

(10) "**Corporation**" means an entity organized in the corporate form under federal law or the laws of any state.

(11)(a) "**Economic interest**" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(12) "Election" means:

- (a) a general, special, primary, or runoff election;
- (b) a convention or caucus of a political party held to nominate a candidate; or
- (c) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or the Constitution of this State.

(13) "Elective office" means an office at the state, county, municipal, or political subdivision level. For the purposes of Articles 1 through 11, the term "elective office" does not include an office under the unified judicial system except that for purposes of campaign practices, campaign disclosure, and disclosure of economic interests, "elective office" includes the office of probate judge.

(14) "Expenditure" means a purchase, payment, loan, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit, transfer of funds, a gift of money, or anything of value for any purpose.

(15) "Family member" means an individual who is:

- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild;
- (b) a member of the individual's immediate family.

(16) "Gift" means anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official, public member, or public employee to the extent that consideration of equal or greater value is not received. A gift includes a rebate or discount on the price of anything of value unless it is made in the ordinary course of business without regard to that person's status. A gift does not include campaign contributions accepted pursuant to this chapter.

(17) "Governmental entity" means the State, a county, municipality, or political subdivision thereof with which a public official, public member, or public employee is associated or employed. "Governmental entity" also means any charitable organization or foundation, but not an athletic organization or athletic foundation which is associated with a state educational institution and which is organized to raise funds for the academic, educational, research, or building programs of a college or university.

(18) "Immediate family" means:

- (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public employee; or

(c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

(19) "**Income**" means the receipt or promise of any consideration, whether or not legally enforceable.

(20) "**Individual**" means one human being.

(21) "**Individual with whom he is associated**" means an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

(22) "**Loan**" means a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or in part.

(23) "**Official responsibility**" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(24) "**Person**" means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

(25) "**Public employee**" means a person employed by the State, a county, a municipality, or a political subdivision thereof.

(26) "**Public member**" means an individual appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

(27) "**Public official**" means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office. "Public official" does not mean a member of the judiciary except that for the purposes of campaign practices, campaign disclosure, and disclosure of economic interests, a probate judge is considered a public official and must meet the requirements of this chapter.

(28) "**Represent**" or "**representation**" means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

(29) "**Substantial monetary value**" means a monetary value of five hundred dollars or more.

(30) "Official capacity" means activities which:

- (a) arise because of the position held by the public official, public member, or public employee;
- (b) involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and
- (c) are services the agency would normally provide and for which the public official, public member, or public employee would be subject to expense reimbursement by the agency with which the public official, public member, or public employee is associated.

(31) "State board, commission, or council" means an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State.

PENALTIES

SECTION 8-13-1510. Penalty for late filing of or failure to file report or statement required by this chapter.

Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

- (1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; or
- (2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement is not filed.

SECTION 8-13-1520. Violation of chapter constitutes misdemeanor; violation not necessarily ethical infraction.

- (A) Except as otherwise specifically provided in this chapter, a person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.
- (B) A person who violates any provision of this Article 13 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred percent of the amount of contributions or anything of value that should have been reported pursuant to the provisions of this Article 13 but not less than five thousand dollars or imprisoned for not more than one year, or both.

(C) A violation of the provisions of this chapter does not necessarily subject a public official to the provisions of Section 8-13-560.

Title 48 – Environmental Protection and Conservation

CHAPTER 9

SOIL AND WATER CONSERVATION DISTRICTS LAW

ARTICLE 1

GENERAL PROVISIONS

SECTION 48-9-10. Short title.

This chapter may be known and cited as the “Soil and Water Conservation Districts Law.”

SECTION 48-9-15. Definitions.

As used in this chapter:

- (1) “Department” means the Department of Natural Resources.
- (2) “Division” means Land Resources and Conservation Districts Division of the Department of Natural Resources.
- (3) “Director” means the administrative head of the department appointed by the board.

SECTION 48-9-20. Legislative declaration of purpose.

It is declared, as a matter of legislative determination:

- (1) All lands of the State are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of lands of this State by wind and water; the breaking of natural grass, plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; the topsoil is being washed and blown from the land; there has been an accelerated washing of sloping lands; these processes of erosion by wind and water speed up with the removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erodible subsoil; failure of any landowner or occupier to conserve the soil and control erosion upon his lands causes a washing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;
- (2) The consequences of such soil erosion in the form of soil-washing and soil-blowing are the silting and sedimentation of stream channels, reservoirs, dams, ditches and harbors; the loss of fertile soil and material in dust storms; the piling up of soil on the lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease and death; impoverishment of families attempting to farm eroding and eroded lands and damage to roads, highways, railways, farm buildings and other property from floods and from severe dust storms; and losses in navigation, hydroelectric power, municipal water supply, drainage developments, farming and grazing; and

(3) To conserve soil and water resources and control or prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, development, utilization, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving and land-use practices and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water be adopted and carried out; among the procedures necessary for widespread adoption are the carrying on of engineering operations, such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage and drainage control structures, irrigation, seeding and planting of waste, sloping, abandoned or eroded lands in water conserving and erosion preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes and other thick growing, soil-holding crops; the addition of soil amendments, manurial materials and fertilizers for the correction of soil deficiencies or for the promotion of increased growth of soil protecting crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erodible areas and areas now badly gullied or otherwise eroded.

And it is further declared to be the policy of the General Assembly to provide for the conservation of the soil and water resources of this State and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, promote recreational development, provide water storage for beneficial purposes, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State.

SECTION 48-9-30. Definitions.

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) "District" or "soil and water conservation district" means a governmental subdivision of this State, a public body corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions herein set forth;
- (2) "Commissioner" means one of the members of the governing body of a district elected or appointed in accordance with the provisions of this chapter;
- (3) [Deleted]
- (4) "Petition" means a petition filed under the provisions of Section 48-9-510 for the creation of a district;
- (5) "Nominating petition" means a petition filed under the provisions of Section 48-9-1220 to nominate candidates for the office of commissioner of a soil and water conservation district;
- (6) "State" means the State of South Carolina;
- (7) "Agency of this State" includes the government of this State and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this State;
- (8) "United States" or "agencies of the United States" includes the United States of America, the soil and water conservation service of the United States Department of Agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America;
- (9) "Government" or "governmental" includes the government of this State, the government of the United States and any subdivision, agency or instrumentality, corporate or otherwise, or either of them;
- (10) "Landowner" or "owner of land" includes any person who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter;
- (11) "Land occupier" or "occupier of land" includes any person, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this chapter, whether as lessee, renter, tenant or otherwise;

(12) "Qualified elector" includes any person qualified to vote in elections by the people under the Constitution of this State; and

(13) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, when possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

SECTION 48-9-40. Department of Natural Resources; change of name

The name of the State Land Resources Conservation Commission is hereby changed to the Department of Natural Resources.

SECTION 48-9-45. Land Resources and Conservation Districts Division accountable to director of department.

The Land Resources and Conservation Districts Division, shall be directly accountable to and subject to the director of the department.

SECTION 48-9-50. Agencies operating public lands shall cooperate and observe regulations.

Agencies of this State which shall have jurisdiction over or be charged with the administration of any State-owned lands and agencies of any county or other governmental subdivision of the State which shall have jurisdiction over or be charged with the administration of any county owned or other publicly owned lands, lying within the boundaries of any district organized under this chapter, shall cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter. The commissioners of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to Article 13 of this chapter shall be in all respects observed by the agencies administering such publicly owned lands.

SECTION 48-9-60. Adjournment of hearings.

At any hearing pursuant to due notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

ARTICLE 3.

STATE LAND RESOURCES CONSERVATION COMMISSION

SECTION 48-9-220. Geographic areas for selection of members of Commission.

For the purpose of selecting the five soil and water conservation district commissioners to serve as members of the State Land Resources Conservation Commission, the State is divided into five areas, to wit:

- (1) Area 1, the counties of Abbeville, Anderson, Cherokee, Greenville, Laurens, Oconee, Pickens, Spartanburg and Union;
- (2) Area 2, the counties of Aiken, Calhoun, Edgefield, Greenwood, Lexington, McCormick, Newberry, Richland and Saluda;
- (3) Area 3, the counties of Chester, Chesterfield, Darlington, Fairfield, Kershaw, Lancaster, Lee, Marlboro and York;

(4) Area 4, the counties of Berkeley, Clarendon, Dillon, Florence, Georgetown, Horry, Marion, Sumter and Williamsburg; and

(5) Area 5, the counties of Allendale, Bamberg, Barnwell, Beaufort, Charleston, Colleton, Dorchester, Hampton, Jasper and Orangeburg.

SECTION 48-9-230. Advisors to the division.

The following shall serve ex officio in an advisory capacity to the Land Resources and Conservation Districts Division of the Department of Natural Resources: The Director of the State Agricultural Extension Service, the Director of the South Carolina Agricultural Experiment Station, the president of Clemson University, the State Forester, the State Supervisor of the State Department of Vocational Agriculture, the Secretary of Commerce, the Commissioner of Agriculture and, with the concurrence of the Secretary of the United States Department of Agriculture, the State Conservationist of the Soil and Water Conservation Service, the chairman of the Purchasing and Marketing Administration State Committee and the Director of the Farmers' Home Administration.

SECTION 48-9-260. Employees; legal services.

The Department of Natural Resources may employ an administrative officer and such technical experts and other agents and employees, permanent and temporary, as it may require and shall determine their qualifications, duties and compensation. The department may call upon the Attorney General for such legal services as it may require or may employ its own counsel and legal staff.

SECTION 48-9-270. Seal; hearings; rules and regulations.

The Department of Natural Resources shall adopt a seal which shall be judicially noticed and may perform such acts, hold such public hearings and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

SECTION 48-9-280. Bonds; records; audit.

The Department of Natural Resources shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all its proceedings and activities and of all resolutions, regulations and orders issued or adopted and shall provide for an annual audit of the accounts of receipts and disbursements.

SECTION 48-9-290. General duties and powers.

In addition to the duties and powers otherwise conferred upon the Department of Natural Resources, it shall have the following duties and powers:

- (1) To offer such assistance as may be appropriate to the commissioners of soil and water conservation districts, organized as provided in this chapter, in the carrying out of any of their powers and programs;
- (2) To keep the commissioners of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized under this chapter and to facilitate an interchange of advice and experience between such districts and cooperation between them;
- (3) To coordinate the programs of the several soil and water conservation districts organized under this chapter so far as this may be done by advice and consultation;
- (4) To secure the cooperation and assistance of the United States and any of its agencies and of agencies and counties of this State, in the work of such districts;

- (5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder and to encourage the information of such districts in areas where their organization is desirable;
- (6) To receive gifts, appropriations, materials, equipment, lands and facilities and to manage, operate and disburse them for the benefit of the soil and water conservation districts;
- (7) To coordinate the development of comprehensive conservation plans for environmental improvement on all lands owned or controlled by the State;
- (8) To coordinate the development of a statewide landscape inventory and formulate guidelines for assisting local conservation districts, municipalities, counties, and other groups in implementing landscape and beautification programs;
- (9) To coordinate the development of a comprehensive plan for implementation of the standard soil survey information and to prepare guidelines for local conservation districts, counties, municipalities and other agencies of State and local government in the use of soil survey data for land use planning, development and conservation;
- (10) To coordinate the development of a statewide flood plain lands area inventory and to formulate guidelines for the conservation, protection and use of flood plain lands, excluding tidelands and marshlands;
- (11) To coordinate and assist local conservation districts, counties, and municipalities in developing policies and procedures for an adequate erosion and sediment control program; and engage in an educational informational program to acquaint municipalities, conservation districts, counties, and developers with sedimentation control management measures applicable to their activities, and familiarize these people with the program of the district;
- (12) To coordinate the development of a statewide irrigable land inventory and to formulate guidelines for the conservation, protection and use of such lands;
- (13) To coordinate the development of a statewide inventory of the availability of rural lands for recreational uses, and to formulate guidelines for the conservation, protection and use of such lands; and
- (14) To coordinate the development of conservation guidelines for incorporation into local and statewide land use plans.

SECTION 48-9-300. Delegation of powers and duties; cooperation with other agencies.

The department may delegate to one or more agents or employees such powers and duties as it may deem proper and it may furnish information as well as call upon any or all State or local agencies for cooperation in carrying out the provisions of this chapter.

SECTION 48-9-310. Estimates of financial needs.

On or before the first day of November, annually, the department shall transmit to the Governor, on official blanks to be furnished by him, an estimate, in itemized form, showing the amount of expenditure requirements for the ensuing fiscal year. The estimates submitted shall state, in addition to the requirements of existing law, the following information:

- (1) The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing fiscal year;
- (2) A statement of the balance of funds, if any, available to the department and to the districts; and
- (3) The estimates of the department as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing fiscal year.

The department may require the commissioners of the respective soil and water conservation districts to submit to it such statements, estimates, budgets and other information as it may deem necessary for the purposes of this section.

SECTION 48-9-320. Allocation of State appropriations.

Unless otherwise provided by law all moneys which may from time to time be appropriated out of the State Treasury for the use of soil and water conservation districts shall be available to pay the administrative and other expenses of such districts and shall be allocated by the department among the districts already organized and to be organized during the fiscal year for which such appropriation is made. Such allocation shall be fair, reasonable and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done and the special importance of instituting erosion control and soil and water conservation operations immediately. In making allocations of such moneys, the department shall reserve an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized within the current fiscal year after the initial allocations are made. All appropriations made for the purpose of this chapter shall be disbursed by the State Treasurer on warrants approved and signed by the department.

ARTICLE 5.

CREATION OF SOIL AND WATER CONSERVATION DISTRICTS

SECTION 48-9-510. Petition for creation of a district.

Any twenty-five owners of land lying within the limits of territory proposed to be organized into a soil and water conservation district may file a petition with the department asking that a soil and water conservation district be organized to function in the territory described in the petition.

SECTION 48-9-520. Content of petition.

Any such petition shall set forth:

- (1) The proposed name of the district;
- (2) That there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory described in the petition;
- (3) A description of the territory proposed to be organized as a district, which shall not be required to be given by metes and bounds or by legal subdivisions but shall be deemed sufficient if generally accurate; and
- (4) Requests
 - (a) that the department duly define the boundaries for the district,
 - (b) that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory and
 - (c) that the department determine that such a district be created.

SECTION 48-9-530. Consolidation of overlapping petitions.

When more than one petition is filed covering parts of the same territory the department may consolidate all or any of such petitions.

SECTION 48-9-540. Hearing on petition.

Within thirty days after such a petition has been filed with the department it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety and welfare, of the creation of such district, upon the question of the appropriate

boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter and upon all questions relevant to such inquiries. All owners and occupiers of land within the limits of the territory described in the petition and of the lands within the limits of the territory considered for addition to such described territory and all other interested parties shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further shall be given throughout the entire area considered for inclusion in the district and such further hearing held.

SECTION 48-9-550. Determination against establishment; filing of subsequent petition.

If the department shall determine after such hearing, after due consideration of the facts presented at such hearing and such other relevant facts and information as may be available, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as provided in Section 48-9-510 and new hearings held and determinations made thereon.

SECTION 48-9-560. Determination of need for district; boundaries.

After such hearing, if the department shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries the department shall give due weight and consideration to the topography of the area considered and of the State, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions and to other soil and water conservation districts already organized or proposed for organization under the provisions of this chapter and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determinations set forth in Section 48-9-20. The territory to be included within such boundaries need not be contiguous.

SECTION 48-9-570. Boundaries to not include portions of other districts.

The boundaries of any such district shall include the territory as determined by the department as provided in Section 48-9-560, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this chapter.

SECTION 48-9-580. Referendum on establishment of district.

After the department has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county(ies)

of (and)” and “Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of (and)” shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the department. All owners of lands lying within the boundaries of the territory, as determined by the department, shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote.

SECTION 48-9-590. Conduct of hearings and referenda; expenses.

The department shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as provided in Section 48-9-540 and such referendum shall have been fairly conducted.

SECTION 48-9-600. Final determination as to establishment of district.

The department shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the department shall determine that the operation of such district is not administratively practicable and feasible it shall record such determination and deny the petition. If the department shall determine that the operation of such district is administratively practicable and feasible it shall record such determination and shall proceed with the organization of the district in the manner provided in Sections 48-9-610 to 48-9-630. In making such determination the department shall give due regard and weight to the attitudes of the owners and occupiers of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners and occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in Section 48-9-20. The department shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

SECTION 48-9-610. Appointment of two commissioners of new district.

If the department shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible it shall appoint two commissioners to act with the three commissioners elected as provided in Article 11 of this chapter as the governing body of the district.

SECTION 48-9-620. Filing and contents of application by appointed commissioners with Secretary of State.

The two appointed commissioners shall present to the Secretary of State an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals) that:

- (1) A petition for the creation of the district was filed with the department pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to such petition;
- (2) The application is being filed in order to complete the organization of the district under this chapter and the department has appointed the signers as commissioners;
- (3) The name and official residence of each of the commissioners, together with a certified copy of the appointments evidencing their right to office;
- (4) The term of office of each of the commissioners;
- (5) The name which is proposed for the district; and
- (6) The location of the principal office of the commissioners of the district.

The application shall be subscribed and sworn to by each of the commissioners before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as affirmed in the application and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the department which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued and hearing held as provided in Sections 48-9-510 and 48-9-540; that the department did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; and that thereafter the department did duly determine that the operation of the proposed district is administratively practicable and feasible. Such statement shall set forth the boundaries of the district as defined by the department.

SECTION 48-9-630. Action by Secretary of State on application.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the department, which shall thereupon submit to the Secretary of State a new name for the district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as provided in Section 48-9-620 and this section, the district shall constitute a governmental subdivision of this State and a public body corporate and politic exercising public powers. The Secretary of State shall make and issue to the commissioners a certificate, under the seal of the State, of the due organization of the district and shall record such certificate with the application and statement.

SECTION 48-9-640. Subsequent petition if previous determination was against feasibility of district.

After six months shall have expired from the date of entry of a determination by the department that the operation of a proposed district is not administratively practicable and feasible and a denial of a petition pursuant to such determination, subsequent petitions may be filed as provided in Section 48-9-510 and action taken thereon in accordance with the provisions of this chapter.

SECTION 48-9-650. Certificate conclusive as to establishment of district; admissibility of certificate as evidence.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of State as provided in Section 48-9-630. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ARTICLE 7.

EXTENSION OR SUBDIVISION OF DISTRICTS

SECTION 48-9-810. Petition for enlarging existing district.

Petitions for including additional territory within an existing district may be filed with the department and the proceedings provided for in Article 5 of this chapter in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The department shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in Article 5 of this chapter for petitions to organize a district. When the total number of landowners in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by a majority of the landowners of such area and in such case no referendum need be held. In referenda upon petitions for such inclusion, all owners of land lying within the proposed additional area shall be eligible to vote.

SECTION 48-9-820. Petition for subdivision of district.

A portion of a soil and water conservation district, such portion being composed of one or more entire counties, may withdraw from such district and constitute itself a separate soil and water conservation district by the procedure set forth in this section and Sections 48-9-830 and 48-9-840. A petition signed by a majority of the members of the governing body of the soil and water conservation district or a petition signed by twenty-five landowners of the county or counties wishing to withdraw and constitute themselves a separate district may be filed with the department asking that the subdivision be made and constitute a district. Such petition shall (a) set forth the name of the district, (b) describe the existing boundary lines of the district and boundary lines of the proposed district (subdivision) and (c) request that the department hold a public hearing upon the question of the proposed subdivision and that the department duly define the boundary lines as set out in the petition.

SECTION 48-9-830. Hearing on petition for subdivision of district.

Within thirty days after such a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing upon the question of the proposed subdivision. All occupiers of land lying within the proposed district and all other interested parties shall have the right to attend such hearing and to be heard.

SECTION 48-9-840. Determination as to subdivisions.

After such hearing the department shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, whether there is need in the interest of the public health, safety and welfare for the proposed subdivision and whether the operation of the districts within the proposed boundaries will be administratively practicable and feasible. In making such determination, the department shall give due weight and consideration to the legislative determinations set forth in Section 48-9-20 and to the standards provided in Sections 48-9-560 and 48-9-600 for the guidance of the department in making its determinations in connection with the organization of districts.

If the department determines that the proposed subdivision is not necessary in the interest of the public health, safety and welfare, or that the operation of the districts within the proposed boundaries would not be administratively practicable or feasible, it shall record such determination and deny the petition. If the department shall determine in favor of the proposed subdivision, it shall record such determination and define the boundary lines between the districts and shall notify the chairman of the governing body of the district to be divided of its determination.

SECTION 48-9-850. Organization of subdivision as district.

The department shall then proceed in accordance with Sections 48-9-610 to 48-9-630 to organize the subdivision into a district and to inform the Secretary of State of the change in the boundaries of the remaining district and to complete the organization of the governing body of the remaining district.

ARTICLE 9.

DISCONTINUANCE OF DISTRICTS

SECTION 48-9-1010. Petition for discontinuance of district; hearings on discontinuance.

At any time after five years after the organization of a district under the provisions of this chapter any twenty-five owners of land lying within the boundaries of such district may file a petition with the department praying that the operations of the district be terminated and the existence of the district discontinued. The department may conduct such public meetings and public hearings upon the petition as may be necessary to assist it in the consideration thereof.

SECTION 48-9-1020. Referendum on discontinuance.

Within sixty days after such a petition has been received by the department it shall give due notice of the holding of a referendum and shall supervise such referendum and issue appropriate regulations governing the conduct thereof. The question shall be submitted by ballots upon which the words "For terminating the existence of the (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of such district. All owners of land lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in the matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as provided in this section and the referendum shall have been fairly conducted.

SECTION 48-9-1030. Decision as to discontinuance.

The department shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the department shall determine that the continued operation of such district is administratively practicable and feasible it shall record such determination and deny the petition. If the department shall determine that the continued operation of such district is not administratively practicable and feasible it shall record such determination and shall certify such determination to the commissioners of the district. In making such determination the department shall give due regard and weight to the attitude of the owners and occupiers of lands lying within the district, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and

income of the landowners and occupiers of the district, the probable expense of carrying on erosion-control operations within the district and such economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Section 48-9-20. But the department shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

SECTION 48-9-1040. Termination of affairs and dissolution of district.

Upon receipt from the department of a certification that the department has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this article, the commissioners shall forthwith proceed to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be converted into the State Treasury. The commissioners shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district and shall transmit with such application the certificate of the department setting forth the determination of the department that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

SECTION 48-9-1050. Effect of dissolution.

Upon issuance of a certificate of dissolution under the provisions of this article all ordinances and regulations theretofore adopted and in force within such district shall be of no further force and effect. All contracts theretofore entered into to which the district or commissioners are parties shall remain in force and effect for the period provided in such contracts. The department shall be substituted for the district or commissioners as a party to such contracts. The department shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon and to modify or terminate such contracts by mutual consent or otherwise as the commissioners of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of Section 48-9-1630 nor the pendency of any action instituted under the provisions of Section 48-9-1610 and the department shall succeed to all the rights and obligations of the district or commissioners as to such liens and actions.

SECTION 48-9-1060. Petitions for dissolution need not be entertained more than once in five years.

The department shall not be required to entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this article more often than once in five years.

ARTICLE 11.

COMMISSIONERS AND POWERS OF COMMISSIONERS AND DISTRICTS

SECTION 48-9-1210. Qualifications of appointed commissioners.

The two commissioners appointed by the board shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties under this chapter.

SECTION 48-9-1220. Nomination and election of commissioners.

Effective November, 1982, and in November of the appropriate years thereafter, three commissioners from each district must be elected. The election must be nonpartisan and must be conducted by the county election commission at the same time as other county officers are elected in the general election.

To be placed on the ballot for county offices, each candidate shall submit to the county election commission a nominating petition with the signatures of one hundred qualified registered electors or one percent of the qualified registered electors of the district, whichever is lesser.

The official number of qualified registered electors of the geographical area of any office is the number of registered electors of the area registered one hundred twenty days before the date of the election for which the nomination petition is being submitted.

The nominees in the petition must be placed on the appropriate official ballot for the election if the petition is submitted to the county election commission not later than twelve noon on August first or, if August first falls on Sunday, not later than twelve noon on the following Monday. The form of the petition must comply with the requirements in Section 7-11-80 pertaining to the conduct of general elections not conflicting with this section. Candidates must be qualified registered electors and residents of the district in which elected.

The three candidates who receive the largest number of votes cast in the election are elected and shall assume office the following February first.

This election must be conducted pursuant to Title 7, mutatis mutandi, except as otherwise provided for in this section.

Effective with the 1990 election, the two candidates who receive the highest number of votes shall serve for terms of four years each and the other candidate who receives the next highest number of votes shall serve for a term of two years. Thereafter, their successors must be elected in a nonpartisan election to be held at the same time as the general election for terms of four years each.

SECTION 48-9-1230. Terms of office; vacancies; removal.

Except as otherwise provided in Section 48-9-1220, the term of office of each commissioner is four years, except that in newly created districts the elected commissioners' terms of office are until the next regular election is held under the provisions of Section 48-9-1220 and the first appointed commissioners must be designated to serve for terms of one and two years, respectively, from the date of their appointment. A commissioner shall hold office until his successor has been elected or appointed and has qualified. Vacancies must be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, must be made in the same manner in which the retiring commissioners shall, respectively, have been selected, except that in the case of a vacancy in the unexpired term of an elected commissioner a successor may be appointed by the board upon the unanimous recommendation of the remaining commissioners. Any commissioner may be removed by the board upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

SECTION 48-9-1240. Chairman; quorum; majority vote; compensation.

The commissioners shall designate a chairman and may, from time to time, change such designation. A majority of the commissioners shall constitute a quorum and the concurrence of a majority of the commissioners in any matter within their duties shall be required for its determination. A commissioner shall receive no compensation for his services, but he shall be entitled to expenses, including travel expenses, necessarily incurred in the discharge of his duties.

SECTION 48-9-1250. Use of county agricultural agents; other agents and employees; legal services.

Each county agricultural agent may be the secretary to the board of commissioners of each district within his county. The commissioners may also utilize in other respects the services of the agricultural agents and the facilities of the county agricultural agent's officers insofar as practicable and feasible and may employ such additional employees and agents, permanent and temporary, as they may require and shall determine their qualifications, duties and compensation. The commissioners may delegate to their chairman or to one or more agents, or employees such powers and duties as they may deem proper. The commissioners may call upon the Attorney General of the State for such legal services as they may require or may employ their own counsel and legal staff.

SECTION 48-9-1260. Bonds; records; audit.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted and shall provide for an annual audit of the accounts of receipts and disbursements.

SECTION 48-9-1270. General powers of districts and commissioners.

A soil and water conservation district organized under the provisions of this chapter and the commissioners thereof shall have the following powers, in addition to others granted in other sections of this chapter:

- (1) To conduct surveys, investigations and research relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, development, utilization, and disposal of water, and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations or research and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this State or one of its agencies or with the United States or one of its agencies;
- (2) To conduct demonstrational projects within the district on lands owned or controlled by this State or one of its agencies with the cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupiers of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods and measures by which soil and water resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water may be carried out; provided, however, that in order to avoid duplication of demonstrational activities, no district shall initiate any demonstrational program except in cooperation with the government of this State or one of its agencies or with the United States or one of its agencies;
- (3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, recreational development, water storage facilities, and the measures listed in item (3) of Section 48-9-20 on lands owned or controlled by this State or one of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;
- (4) To cooperate, or enter into agreements with and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or to any owner or occupier of lands within the district in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter;

(6) To make available, on such terms as it shall prescribe, to landowners and occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and such other material or equipment as will assist such landowners and occupiers to carry on operations upon their lands for the conservation of soil and water resources and for the prevention or control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(8) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, changes in use of land, recreational developments, and water storage facilities; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil conservation, flood-prevention, drainage, irrigation, water management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries undertaken by the United States or one of its agencies or by this State or one of its agencies; to manage, as agent of the United States or one of its agencies or of this State or one of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or one of its agencies or for this State or one of its agencies in connection with the acquisition, construction, operation or administration of any soil-conservation, flood-prevention, drainage, irrigation, water management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts and contributions in money, services, materials or otherwise from the United States or one of its agencies or from this State or one of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations; and

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in Article 9 of this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, amend and repeal rules and regulations not inconsistent with this chapter to carry into effect its purposes and powers.

SECTION 48-9-1280. Commissioners may require contributions or agreements by landowners or occupiers as to permanent use.

As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this State or one of its agencies the commissioners may require contributions in money, services, materials or otherwise to any operations conferring such benefits and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon.

SECTION 48-9-1290. Provisions as to acquisitions; operations or dispositions by other public bodies; property of districts tax free.

No provisions with respect to the acquisition, operation or disposition of property by other public bodies of this State shall be applicable to a district organized under the provisions of this chapter unless the General Assembly shall specifically so state. The property and property rights of every kind and nature acquired by any district organized under the provisions of this chapter shall be exempt from State, county and other taxation.

SECTION 48-9-1300. Commissioners of different districts cooperation.

The commissioners of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

SECTION 48-9-1310. Consultation with governing bodies of nearby localities.

The commissioners of any district may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply or other interests of such municipality or county.

SECTION 48-9-1320. Information to be furnished to State Land Resources Conservation Commission.

The commissioners shall furnish to the department, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ and such other information concerning their activities as it may require in the performance of its duties under this chapter.

ARTICLE 13.

LAND-USE REGULATIONS

SECTION 48-9-1510. Formulation of land-use regulations

The commissioners of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The commissioners may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

SECTION 48-9-1520. Referendum before adoption of regulations.

The commissioners shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the commissioners have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notice of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined.

SECTION 48-9-1530. Conduct of referendum on regulations.

The question shall be submitted by ballots upon which the words, “For approval of proposed ordinance no. ___ prescribing land-use regulations for conservation of soil and prevention of erosion” and “Against approval of proposed ordinance no. ___ prescribing land-use regulations for conservation of soil and prevention of erosion” shall appear, with a square before each proposition and a direction to insert an X-mark in the square before one or the other of such propositions as the voter may favor or oppose approval of such proposed ordinance. The commissioners shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matter relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as provided in Section 48-9-1520 and the referendum shall have been fairly conducted.

SECTION 48-9-1540. Two-thirds vote prerequisite to adoption of regulations.

The commissioners shall not have authority to enact such proposed ordinance into law unless at least two thirds of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by two thirds of the votes cast in such referendum shall not require the commissioners to enact such proposed ordinance into law.

SECTION 48-9-1550. Regulations shall have force and effect of law.

Land-use regulations prescribed in ordinances enacted pursuant to the provisions of this article by the commissioners of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all owners and occupiers of land within such district, including the agencies administering publicly owned lands.

SECTION 48-9-1560. Amendment, supplementation, or repeal of regulations.

Any owner or occupier of land within such district may at any time file a petition with the commissioners asking that any or all of the land-use regulations prescribed in any ordinance adopted by the commissioners under the provisions of this article shall be amended, supplemented or repealed. Land-use regulations adopted pursuant to the provisions of this article shall not be amended, supplemented or repealed except in accordance with the procedure prescribed in this article for adoption of land-use regulations. Referenda on adoption, amendment, supplementation or repeal of land-use regulations shall not be held more often than once in six months.

SECTION 48-9-1570. Subjects which regulations may include.

The regulations to be adopted by the commissioners under the provisions of this article may include:

- (1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches and other necessary structures;
- (2) Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, changes in cropping systems, seeding and planting of lands with water-conserving and erosion-preventing plants, trees and grasses, forestation and reforestation;
- (3) Specifications of cropping programs and tillage practices to be observed;
- (4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; and

(5) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in Section 48-9-20.

SECTION 48-9-1580. Uniformity of regulations; exceptions.

The regulations shall be uniform throughout the territory comprised within the district except that the commissioners may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type.

SECTION 48-9-1590. Printing of copies of regulations.

Copies of land-use regulations adopted under the provisions of this article shall be printed and made available to all owners and occupiers of lands lying within the district.

SECTION 48-9-1600. Entry on lands to check observance.

The commissioners may go upon any lands within the district to determine whether land-use regulations adopted under the provisions of this article are being observed.

SECTION 48-9-1610. Petition to court for enforcement.

When the commissioners of any district shall find that any of the provisions of land-use regulations adopted in accordance with the provisions of this article are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the commissioners may present to the court of common pleas for the county or any county within which the lands of the defendant may lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant landowner or occupier to observe such regulations and to perform particular work, operations or avoidances as required thereby and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district and praying the court to require the defendant to perform the work, operations or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the commissioners may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the owner of such land.

SECTION 48-9-1620. Hearing and order of court on petition for enforcement.

Upon the presentation of such petition the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report it to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition or it may require the defendant to perform the work, operations or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute it to completion with reasonable diligence, the commissioners may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into

conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five percent per annum, from the owner of such lands.

SECTION 48-9-1630. Judgment for commission's expenses after completion of work; costs and attorney fees.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the commissioners may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five percent per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

ARTICLE 15.

BOARDS OF ADJUSTMENT

SECTION 48-9-1810. Establishment and appointment of members of board of adjustment.

When the commissioners of any district organized under the provisions of this chapter shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of Article 13 of this chapter they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three members, each to be appointed for a term of three years, except that the members first appointed shall be appointed for terms of one, two and three years, respectively. The members of each such board shall be appointed by the department, with the advice and approval of the commissioners of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the department and the commissioners of the district. Vacancies in the board shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant.

SECTION 48-9-1820. Eligibility and compensation of members; expenses.

Members of the board and the commissioners of the district shall be ineligible to appointment as members of the board during their tenure of such other office. The members of the board shall receive compensation for their services at a per diem rate to be determined by the department for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The commissioners shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

SECTION 48-9-1830. Chairman; rules; quorum; meetings; records.

The board shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter and with the provisions of any ordinance adopted pursuant to Article 13 of this chapter. The board shall designate a chairman from among its members and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents

filed with it and of all orders entered, which shall be filed in the office of the board and shall be a public record.

SECTION 48-9-1840. Hardship petitions.

A land occupier may file a petition with the board alleging that there are great practical difficulties or unnecessary hardships in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the commissioners and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the commissioners of the district within which his lands are located and upon the director of the department.

SECTION 48-9-1850. Hearing and action on hardship petition.

The board shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The commissioners of the district and the department may appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardships. Upon the basis of such findings and determination the board may by order authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardships and will not be contrary to the public interest and such that the spirit of the land-use regulations shall be observed, the public health, safety and welfare secured and substantial justice done.

SECTION 48-9-1860. Petition for court review.

Any petitioner, the commissioners of the district or any intervening party, aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, may obtain a review of such order in the court of common pleas for the county or any county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered and the findings, determination and order of the board.

SECTION 48-9-1870. Hearing and order of court on petition for review.

Upon such filing the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein and may grant such temporary relief as it deems just and proper and make and enter a decree enforcing, modifying and enforcing as so modified or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material

and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive and shall file with the court its recommendation, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that it shall be subject to review in the same manner as are other judgments or decrees of the court.

Title 48 - Environmental Protection and Conservation

CHAPTER 11

WATERSHED CONSERVATION DISTRICTS

SECTION 48_11_10. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

- (1) "Watershed conservation district" means a governmental subdivision of this State and a public body corporate and politic organized and functioning in accordance with this chapter for the purposes and with the powers and duties provided in this chapter and subject to its restrictions.
- (2) "Director" means one of the members of the governing body of a watershed conservation district selected in accordance with this chapter. "Board of directors" means the governing body of a watershed conservation district.
- (3) "Soil and water conservation district" means a governmental subdivision of this State and a public body corporate and politic organized in accordance with Chapter 9 of Title 48 for the purposes, with the powers, and subject to the restrictions in the chapter. It applies to all districts organized under law including districts originally designated as "soil conservation districts".
- (4) "Commissioner" means one of the members of the governing body of each soil and water conservation district in which part of a watershed conservation district is situated. "Board of commissioners" means the governing body of the soil and water conservation district in which a watershed conservation district is situated or, if the watershed conservation district is situated in more than one soil and water conservation district, the joint governing bodies of the districts.
- (5) "Petition" means a petition filed under Section 48_11_40 for the creation of a watershed conservation district.
- (6) "Nominating petition" means a petition filed under Section 48_11_100(B) or (C) to nominate candidates for the office of director of a watershed conservation district.
- (7) "State" means South Carolina.
- (8) "Owner of land" includes a person, firm, or corporation holding legal or equitable title to lands or interest in lands lying within a watershed conservation district organized under this chapter.
- (9) "Qualified elector" includes a person qualified to vote in elections by the people under the Constitution of this State.
- (10) "Due notice" means notice published at least twice, with an interval of at least one week between the two publication dates, in a publication of general circulation within the appropriate area or, if no publication of general circulation is available, notice posted at a reasonable number of conspicuous places within the appropriate area. When possible, notice must be posted at public places where it is customary to post notices concerning county or municipal affairs generally.
- (11) "Watershed" means the drainage area contributing stormwater runoff to a single point.
- (12) "Department" means the Department of Natural Resources.
- (13) "Division" means Land Resources and Conservation Districts Division.
- (14) "Board" means the board of the Department of Natural Resources.

SECTION 48_11_15. Department of Natural Resources to assist in organization and function of watershed conservation districts.

The Department of Natural Resources shall assist boards of commissioners of soil and water conservation districts and boards of directors of watershed conservation districts with the organization and function of watershed conservation districts. For the purpose of this chapter, the responsibility of the department is limited to this activity. The construction, operation, and maintenance of watershed works of improvement are the sole responsibility of watershed conservation districts and others as specified in documents for the works of improvement.

SECTION 48_11_20. Establishment of watershed conservation districts authorized; purpose; effect on existing procedures.

Watershed conservation districts may be established as provided in this chapter within one or more soil and water conservation districts to develop and execute plans and programs relating to a phase of the control or prevention of soil erosion or flooding; the conservation, protection, improvement, development, or utilization of soil and water resources; stormwater management; or the disposal of water. This authority applies, but is not limited to, the planning and carrying out of works of improvement for the foregoing purposes which may be considered by the United States Secretary of Agriculture under the Watershed and Flood Prevention Act, 68 Stat. 666, as amended, and does not affect the existing procedures followed by local interests in the planning and construction of water resources development projects of other agencies. However, this chapter may be used when, in the opinion of those agencies, the use is advisable or expedient.

SECTION 48_11_30. Area of district.

The area embraced in a watershed conservation district must be contiguous, must lie within a well-defined watershed, and must be situated within one or more soil and water conservation districts. The area may not include lands located within the boundary of an incorporated municipality, unless approved by its governing body, or another watershed conservation district. The boundary of each watershed conservation district in existence on the effective date of this chapter, as amended, is not affected unless otherwise provided in this chapter.

SECTION 48_11_40. Petition for formation of district.

When twenty-five or more qualified electors residing within a proposed watershed conservation district, or, if less than fifty qualified electors are involved, a majority of the qualified electors, desire to form a watershed conservation district, they shall file a petition with the board of commissioners of the soil and water conservation district in which the proposed watershed conservation district is situated, asking that a watershed conservation district be organized to function in the area described in the petition. The petition must:

- (1) set forth the proposed name of the watershed conservation district;
- (2) state that there is need in the interest of the public health, safety, and welfare for a watershed conservation district to function in the territory described in the petition;
- (3) include a map of the proposed watershed conservation district;
- (4) state the approximate number of acres in the proposed watershed conservation district;
- (5) state the authority for taxes to be levied each fiscal year for the purposes of the watershed conservation district;
- (6) include a request that the area described in the petition be established as a watershed conservation district.

SECTION 48_11_50. Petition and procedure where proposed district is situated in more than one soil and water conservation district.

If the proposed watershed conservation district is situated in more than one soil and water conservation district, a copy of the petition must be presented to the board of commissioners of each soil and water conservation district in which part of the proposed watershed conservation district is situated. The commissioners of all the soil and water conservation districts shall act as a joint board of commissioners with respect to all matters concerning the watershed conservation district, including its creation. The watershed conservation district must be organized in like manner and have the same powers and duties as a watershed conservation district situated entirely in one soil and water conservation district.

SECTION 48_11_60. Hearing and determination of commissioners of soil and water conservation district on petition.

(A) Within thirty days after the petition has been filed with the board of commissioners of the soil and water conservation district, the board shall cause due notice to be given of a public hearing on the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the watershed conservation district and the administrative practicability and feasibility of the operation of the watershed conservation district. All interested parties may attend the hearing and be heard. If it appears at the hearing that other lands must be included in the petition or that land included in the petition must be excluded, the board of commissioners may permit the inclusion or exclusion if the land area involved still meets the requirements of Section 48_11_30.

(B) If it appears upon the hearing that it may be desirable to include within the proposed watershed conservation district territory outside of the area within which due notice of the hearing has been given, the hearing must be adjourned and, within thirty days, due notice of a further hearing must be given throughout the entire area considered for inclusion in the proposed watershed conservation district, and the further hearing must be held. Within sixty days after final hearing the board of commissioners shall determine whether the proposed watershed conservation district is needed. If the commissioners determine, upon the facts presented at the hearing and upon other available information, that there is need in the interest of the public health, safety, and welfare for a watershed conservation district to function in the territory considered at the hearing and that the operation of the watershed conservation district is administratively practicable and feasible, they shall record in their minutes the determination and shall submit the determination in writing to the clerks of court of the applicable counties. The determination shall define the boundaries of the proposed watershed conservation district.

(C) If the board of commissioners determine after the hearing that there is no need for a watershed conservation district to function in the territory considered at the hearing, or that the operation of the watershed conservation district is not administratively practicable or feasible, the board shall record in its minutes the determination and shall deny the petition. A new petition must not be filed until two years after the date of determination of denial of the previous petition.

SECTION 48_11_70. Referendum shall be held on establishment of district.

After the board of commissioners of the soil and water conservation district has recorded a determination that there is need in the interest of the public health, safety, and welfare for a watershed conservation district to function in the territory considered at the hearing and that the operation of the watershed conservation district is administratively practicable and feasible and has defined its boundaries, the board shall determine whether the majority of the qualified electors residing in the proposed watershed conservation district desire that the district be

created. To make this decision a referendum to approve or disapprove the creation of the watershed conservation district must be held by the county election commission in the next scheduled countywide election in the counties in which the proposed district is located. Only qualified electors residing in the watershed are eligible to vote in the referendum. Applicable rules of the election apply to the referendum. Due notice of the referendum must be given by the board of commissioners. The notice must describe the boundaries of the proposed watershed district as determined by the board of commissioners of the soil and water conservation district, as provided in Section 48_11_60(B) and must state the authority for taxes to be levied each fiscal year for the purposes of the watershed conservation district. If the majority of the qualified electors voting in the referendum approve the creation of the watershed conservation district, the district is established and must be organized pursuant to this chapter.

SECTION 48_11_80. [1962 Code Section 63_178; 1967 (55) 1158]. Repealed by 1992 Act No. 408, Section 1, effective June 1, 1992.

SECTION 48_11_90. Tabulation, certification, and recordation of results of referendum; resulting district to constitute governmental subdivision and public body corporate and politic. The county election commission shall tabulate the results of the referendum at the close of the polls and certify the results to the clerks of court of the counties in which part of the district is situated. Upon proper recordation of the referendum results by the clerks of court the watershed conservation district constitutes a governmental subdivision of this State and a public body corporate and politic. After recording the results the clerks of court shall notify the board of commissioners in writing that the watershed conservation district has been created, and the soil and water conservation district board shall submit to the department a copy of the notification.

SECTION 48_11_100. Governing body of district.

(A) The governing body of each watershed conservation district consists of five directors selected as provided in this section. No person may be a director who is not a qualified elector residing in the district.

(B) The first directors of the watershed conservation district after the district has been created must be elected in a nonpartisan election conducted by the county election commission when county officers are elected in the general election. To be placed on the ballot each candidate shall submit to the county election commission a declaration of candidacy not later than noon, September 1, or if this date falls on a Saturday, Sunday, or a legal holiday, not later than noon the following Monday. If a watershed district lies in more than one county the required declaration of candidacy must be filed with the State Election Commission. This election must be conducted pursuant to Title 7, mutatis mutandis, except as otherwise provided in this section. The five elected directors, under the general supervision of the board of commissioners of the soil and water conservation district, are the governing body of the watershed conservation district.

(C)(1) Of the directors first elected, the three receiving the largest number of votes serve for terms of four years, and the two receiving the next largest number of votes serve for terms of two years.

(2) The term of office of each of their successors is four years, except in lieu of election successors may be appointed in watershed conservation districts if:

(a) one of the sponsors, other than the watershed conservation district board of directors, of each phase of each work of improvement conducted by the district, including operation and maintenance of the work of improvement, has the authority to levy an annual tax on the real property in the district for that phase of the work of improvement;

(b) the watershed conservation district has sufficient funds, other than taxes levied by the district on real property in the district, to pay the expenses of the district.

(3) Twenty-five or more qualified electors residing in a watershed conservation district may submit a petition to the board of commissioners of the soil and water conservation district for the procedure by which watershed conservation district directors are selected to be changed from election to appointment. The board of commissioners shall determine whether the prerequisites for appointment described in item (1) are met. To help make this decision the board shall give due notice of and hold a public hearing on the proposed change within sixty days after receiving the petition. After the public hearing the board of commissioners shall determine whether the prerequisites are met.

(4) If the board of commissioners determine that the prerequisites are met, a referendum to approve or disapprove the change in the procedure for selecting watershed conservation district directors must be held by the county election commission in the next scheduled countywide election in the counties where the watershed conservation district is located. Applicable rules of the scheduled election apply to the referendum. Due notice of the referendum must be given by the county election commission. Notice must state that, if the procedure for selecting watershed conservation district directors is changed from election to appointment, the change is effective as current terms expire and that the authority of the watershed conservation district to levy an annual tax on real property in the district ceases when the first of the current terms expires and has been filled by appointment and continues as long as directors are appointed instead of elected. Only qualified electors residing in the watershed conservation district may vote in the referendum.

(5) The county election commission shall tabulate the results of the referendum, submit the results in writing to the board of commissioners of the soil and water conservation district, and certify the results to the clerks of court of the counties in which the watershed conservation district is located. If a majority of the votes cast in the referendum favor changing the procedure for selecting watershed conservation district directors from election to appointment, the board of commissioners shall submit written notification to the county election commission, county auditors, sponsors of works of improvement of the watershed conservation district, watershed district directors, and the department that the selection procedure is changed when current terms expire and that the authority of the watershed conservation district board to levy an annual tax on real property in the district ceases, when the first of the current terms expires and has been filled by appointment and continues as long as directors are appointed instead of elected.

(6) The governing body of each county in which the watershed conservation district is located shall appoint one director each, and the board of commissioners of the soil and water conservation district shall appoint the remaining directors. To be considered for appointment by the board of commissioners of the soil and water conservation district or the county governing body, an individual shall submit to the board or body from which appointment is sought a nominating petition with the signatures of twenty-five qualified electors residing in the watershed conservation district, or, if less than fifty qualified electors reside in the district, a majority of the qualified electors. The official number of qualified electors residing in a watershed conservation district is the number of registered electors residing in the district and registered one hundred twenty days before the date by which nominating petitions must be submitted. The board of commissioners and the county governing body shall give due notice that they will receive petitions to nominate candidates to be appointed as watershed conservation

district directors. Due notice must be given at least sixty days before the date by which petitions must be submitted.

(7) The board of commissioners of the soil and water conservation district shall:

(a) maintain records on the election and appointment of directors;

(b) coordinate appointments by the county governing bodies, including written notification to the county governing bodies at least ninety days before the expiration of each term to be filled through appointment by the county governing body;

(c) submit in writing to the department the name of each elected or appointed director within thirty days of election or appointment.

(8) When each phase of a work of improvement of a watershed conservation district for which directors are appointed does not have a sponsor with authority to levy an annual tax on real property in the district for that phase of the work of improvement, or when the watershed conservation district does not have sufficient funds to pay the expenses of the district, the procedure for selecting watershed conservation district directors must be changed from appointment to election, and the board of commissioners shall notify in writing the county election commission, county auditor, sponsors of works of improvement of the watershed conservation district, watershed conservation district directors, and the department that the selection procedure is changed when current terms expire and that when current terms expire and have been filled by election, the watershed conservation district board may levy an annual tax on real property in the district as long as directors are elected instead of appointed. For a vacancy occurring before the expiration of the term of an elected director, a successor to serve for the unexpired portion of the term must be appointed by the board of commissioners.

(D) For a vacancy occurring before the expiration of the term of an appointed director, a successor to serve for the unexpired portion of the term must be appointed by the body that made the original appointment. A director may be removed from office by the board of commissioners upon notice and hearing for neglect of duty or malfeasance in office but for no other reason.

(E) For each calendar year the directors annually shall elect from among their number a chairman, secretary, and treasurer and so notify the soil and water conservation district and the department by March thirty-first each year. The board of directors, with the approval of the board of commissioners of the soil and water conservation district, may employ officers, agents, and other employees it requires and determine their qualifications, duties, and compensation. The board of directors shall provide for the execution of surety bonds for the officers, agents, or employees entrusted with funds or property of the watershed conservation district, tort liability insurance for each director of the watershed conservation district board, for the keeping of a full and accurate record of the proceedings, resolutions, and other actions of the board, and for the making and publication of an annual audit of the accounts of receipts and disbursements of the watershed conservation district. The watershed conservation district board shall submit a copy of the audit to the county treasurer and to the board of commissioners of the soil and water conservation district. The watershed conservation district board shall submit written notification to the department within one hundred twenty days following the end of the district's fiscal year that the audit has been made, the date of the audit, and the name of the firm that or individual who made the audit.

(F) The directors may receive no compensation for their services, but they may be reimbursed from the budget of the watershed conservation district or from another local source for expenses, including traveling expenses, necessarily incurred in the discharge of their powers and duties as approved by the board of commissioners.

SECTION 48_11_110. Powers of district generally.

A watershed conservation district organized under this chapter constitutes a governmental subdivision of this State, and a public body corporate and politic, exercising public powers. The district and its board of directors, to develop and execute plans and programs for the control or prevention of soil erosion or flooding, to conserve, protect, improve, develop, or utilize soil and water resources, to provide stormwater management, or to dispose of water, subject to the general supervision of the board of commissioners of the soil and water conservation district, have the following powers and duties in addition to others granted by this chapter:

- (1) acquire by purchase, exchange, lease, gift, grant, bequest, devise, or through condemnation actions lands, easements, or rights_of_way needed to carry out an authorized purpose of the watershed conservation district, and sell, lease, or otherwise dispose of its property or interests in the property for the purposes and provisions of this chapter. The condemnation of an existing public use must be denied unless it may be shown that the specific property to be condemned is absolutely essential to the watershed conservation district, and the use to be condemned materially does not impair the existing public use;
- (2) construct, reconstruct, repair, enlarge, and improve the works of improvement as necessary or convenient for the performance of the operations authorized by this chapter and shall provide operation and maintenance for works of improvement;
- (3) borrow money and execute promissory notes and other evidences of debt in connection with them for payment of the costs and expenses of organizing the watershed conservation district or for carrying out an authorized purpose of the district, if promissory notes are issued, execute the mortgages on real property owned by the district or assign or pledge the revenues, including anticipated tax revenues, of the district as required by the lender as security for the repayment of the loan, and issue, negotiate, and sell its bonds, notes, and other evidences of debt as provided in Section 48_11_120;
- (4) sue and be sued in the name of the district, have a judicially noticed seal, have perpetual succession unless terminated as provided in this chapter, and make and execute contracts and other instruments necessary or convenient to the exercise of its powers;
- (5) levy an annual tax as provided in this chapter on the real property within the district for payment of the costs and expenses of organizing the watershed conservation district or for carrying out an authorized purpose, power, or duty of the district;
- (6) receive services and receive and disburse funds from federal, state, local, or other governmental or private sources;
- (7) employ appropriate consultants, advisors, and employees and fix and pay them compensation from funds available to the district.

SECTION 48_11_120. Issuance of bonds, notes and other evidences of debt; tax levy for payment thereof.

(A) Bonds, notes, and other evidences of debt authorized by Section 48_11_110(3) must not be issued until proposed by order or resolution of the directors of the watershed conservation district specifying the purpose for which the funds are to be used and the proposed undertaking, the amount of bonds to be issued, and the maximum rate of interest they are to bear. A copy of the order or resolution must be certified to the board of commissioners of the soil and water conservation district.

(B) The board of commissioners shall hold a hearing on a proposal for bonds or other long term indebtedness required by law to be voted upon at an election after having given due notice of the hearing. If it appears that the proposal is within the scope and purpose of this chapter and meets

all other requirements of the law, the proposal must be submitted to the qualified electors residing in the watershed conservation district by a referendum held in the next scheduled countywide election in the counties.

(C) Applicable rules of the election apply to the referendum. Due notice of the referendum must be given by the county election commission.

(D) If two-thirds of the votes cast in the referendum favor the proposal, the directors may issue the bonds.

(E) The type of indebtedness incurred or bonds issued is that adopted by the board of directors of the watershed conservation district.

(F) The board of directors, if necessary for the payment of interest or indebtedness incurred or bonds issued by the district or to amortize indebtedness or bonds, shall levy an annual tax on real property within the watershed conservation district. For the purposes of the tax levy the assessed valuation of the real property is the same assessed valuation used for the general county levy. The tax must be levied and collected in the same manner provided for the levy and collection of other taxes authorized by this chapter.

SECTION 48_11_130. Preparation and approval of budgets.

(A) At least once every five years the board of directors of each watershed conservation district shall establish an operating budget for the purposes of the district. The budget must be established only after the board provides due notice of and conducts a public hearing at which all residents of the watershed conservation district and owners of land lying in the district have an opportunity to be heard concerning the proposed budget. After the hearing the operating budget must be set by the board of directors after it is approved by the board of commissioners of the soil and water conservation district. The annual itemized budget prepared by the watershed conservation district board according to subsection (B) may not exceed the most recently established operating budget.

(B) Within the first quarter of each calendar year the board of directors of the watershed conservation district shall prepare an itemized budget of the funds needed during the upcoming fiscal year for costs and expenses of organizing the district, for administration of the district, and for carrying out an authorized purpose, power, or duty of the district, including construction, operation, and maintenance of works of improvement. The budget must be approved by the board of commissioners of the soil and water conservation district. A surplus or deficit in a fiscal year must be carried forward and applied to the next fiscal year's account and calculated into the budget for that year.

SECTION 48_11_140. Preparation of list of landowners; computation of tax due from each landowner.

(A) The board of directors of a watershed conservation district for which directors are elected, at its discretion, may levy a tax each fiscal year on real property in the watershed conservation district to meet all or part of the budget prepared according to Section 48_11_130(B) for the purposes of the district. After approval of the budget by the board of commissioners of the soil and water conservation district, if the board of directors desires to levy a tax, the board of commissioners shall submit a copy of the budget in writing to the county auditors of the corresponding counties, and the county auditors shall levy a tax on all real property in the watershed conservation district at the millage rate sufficient to meet the budget, or a portion of it, as specified by the board of directors. The board of directors of the watershed conservation district shall provide the boundaries of the district to the county auditor.

(B) When the property tax rolls are delivered to the county treasurer by the county auditor as required by law, the county treasurer shall compute the tax due the watershed conservation district from each landowner in accordance with the millage rate set by the county auditor pursuant to subsection (A) and the assessed valuation of the real property shown on the tax roll. The computation must be made on the regular tax bills.

SECTION 48_11_150. Collection of taxes.

The county treasurer shall collect the taxes due the watershed conservation district at the same time and in the same manner as other taxes of the county are collected. The taxes are subject to the same provisions of law for due and delinquency dates, discounts, penalties, and interest and tax liens applicable to county taxes.

SECTION 48_11_160. Transfer of tax funds collected to district; expenditures.

Tax funds collected must be transferred to and held by the treasurer of the watershed conservation district for the purposes of the district. Expenditures of the funds must be made by the board of directors of the watershed conservation district.

SECTION 48_11_170. Annexation of lands to district.

(A) One or more owners of land may petition the board of commissioners of the soil and water conservation district to have their lands added to a watershed conservation district. The petition must include a map of the boundaries of the land desired to be annexed, the number of acres of land involved, and other information pertinent to the proposal. When the boundary described embraces lands of others than the petitioners, the petition must state that fact and must be signed by a majority of the landowners within the territory described in the petition. If the land area does not meet the requirement of Section 48_11_30, the board of commissioners of the soil and water conservation district shall deny the petition.

(B) If the land described in the petition meets the requirement of Section 48_11_30, within sixty days after the petition is filed, the commissioners shall cause due notice to be given of and hold a hearing on the petition. Interested parties may attend the hearing and be heard. After the hearing the commissioners shall determine whether the lands described in the petition or portion of them must be included in the watershed conservation district. If the commissioners determine that the land must be added, they shall certify this fact to the county auditors of the counties involved for recording.

SECTION 48_11_180. Detachment of lands from district.

The owner of lands which have not and cannot be benefited by their inclusion in the watershed conservation district may petition the commissioners of the soil and water conservation district to have the lands detached. The petition must describe the lands and state the reasons why they should be detached. A hearing must be held by the commissioners within thirty days after the petition is filed. Due notice of the hearing must be given by the commissioners. If it is determined by the commissioners that the lands must be detached, the determination must be certified to the county auditors of the counties involved for recording.

SECTION 48_11_185. Consolidation of watershed conservation districts into single district.

(A) The boards of directors of two or more watershed conservation districts may petition the board of commissioners of the soil and water conservation district for the watershed conservation districts to be consolidated into a single district but only if the new single watershed conservation district meets the provisions of Section 48_11_30. The petition must be signed by a majority of the board of directors of each of the affected watershed conservation districts. The board of commissioners shall deny the petition if the proposed watershed conservation district does not meet the provisions of Section 48_11_30.

(B) Within sixty days after receiving a petition that meets these requirements, the board of commissioners of the soil and water conservation district shall give due notice of and hold a public hearing on the proposed consolidation. After the hearing the board of commissioners shall determine whether the operation of the newly proposed single watershed conservation district is administratively practicable and feasible.

(C) If the board of commissioners determines that the operation of the new single watershed conservation district is administratively practicable and feasible, a referendum to approve or disapprove the consolidation of the watershed conservation districts must be held by the county election commission in the next scheduled countywide election in the counties in which the watershed is located. Applicable rules of the scheduled election apply to the referendum. Due notice of the referendum must be given by the county election commission. The notice must name the proposed watershed conservation district and describe its boundaries and state the authority for taxes to be levied each year for the purposes of the watershed conservation district. Only qualified electors residing in the proposed watershed conservation district may vote in the referendum.

(D) The county election commission shall tabulate the results of the referendum at the close of the polls, submit a written report of the results to the board of commissioners of the soil and water conservation district, and certify the results of the referendum to the clerks of court of the counties in which the district is situated. If a majority of the votes cast in the referendum are in favor of consolidation of the watershed conservation districts into the single district, upon proper recordation of the referendum results by the clerks of court of the counties, the watershed conservation district constitutes a governmental subdivision of this State and a public body corporate and politic and must be organized and shall function fully in accordance with this chapter. After recording the results the clerks of court shall notify the board of commissioners of the soil and water conservation district in writing that the watershed conservation district has been established. The board of commissioners shall submit to the department a copy of the notification from the clerks of court.

SECTION 48_11_190. Discontinuance of district.

(A) Any time after five years after the organization of a watershed conservation district twenty-five or more qualified electors residing in the district, or if less than fifty qualified electors are involved a majority of them, may file a petition with the board of commissioners of the soil and water conservation district asking that the existence of the watershed conservation district be discontinued. The petition must state the reasons for discontinuance and that all obligations of the watershed conservation district have been met. After giving due notice the commissioners shall conduct a hearing on the petition to determine whether the reasons given for discontinuance are valid and that all obligations have been met. If it is determined that all obligations have not been met, the petition for discontinuance must be denied. If the watershed conservation district has begun or completed implementation of a work of improvement that requires or will require operation or maintenance, the board of commissioners shall determine that all obligations have not been met and deny the petition.

(B) If it is determined that the reasons given for discontinuance are valid and all obligations have been met, the board of commissioners shall notify the county election commission who, after giving due notice, shall hold a referendum on the discontinuance of the watershed conservation district in the next countywide election in the county. Due notice of the referendum must contain a description of the watershed conservation district proposed to be discontinued. Only qualified electors of the watershed conservation district may vote in the election. The county election

commission shall tabulate the results of the referendum at the close of the polls, deliver a written report of the results to the board of commissioners of the soil and water conservation district, and certify the results to the clerks of court and auditors of the counties involved.

(C) After recording the results of the referendum, the clerks of court shall notify the board of commissioners of the soil and water conservation district and the board of directors of the watershed conservation district in writing that the watershed conservation district has been discontinued, and the directors immediately shall terminate the affairs of the watershed conservation district. The board of commissioners shall submit to the department a copy of the notification from the clerks of court.

SECTION 48_11_200. Effect of discontinuance of soil and water conservation district.

If a soil and water conservation district in which part of a watershed conservation district is situated is discontinued, all supervisory authority over the affairs of the watershed conservation district which previously was exercised by the board of commissioners of the soil and water conservation district must be exercised by the governing bodies of the counties involved.

SECTION 48_11_210. Revision of organization and function of watershed conservation districts to comply with chapter; reorganization of certain districts.

(A) The organization and function of each of the following watershed conservation districts which have implemented works of improvement must be revised to comply with this chapter. Each watershed conservation district retains the authority to levy the millage rate for the district, established previously by the General Assembly or through the local creation or administration of the watershed conservation district, at which taxes may be levied each fiscal year on the real property in the district, until the millage rate is changed as provided in this chapter or increased by action of county council. This chapter applies to those districts notwithstanding contrary provisions in acts which may have created the districts. The districts and related acts, where created by separate acts, include:

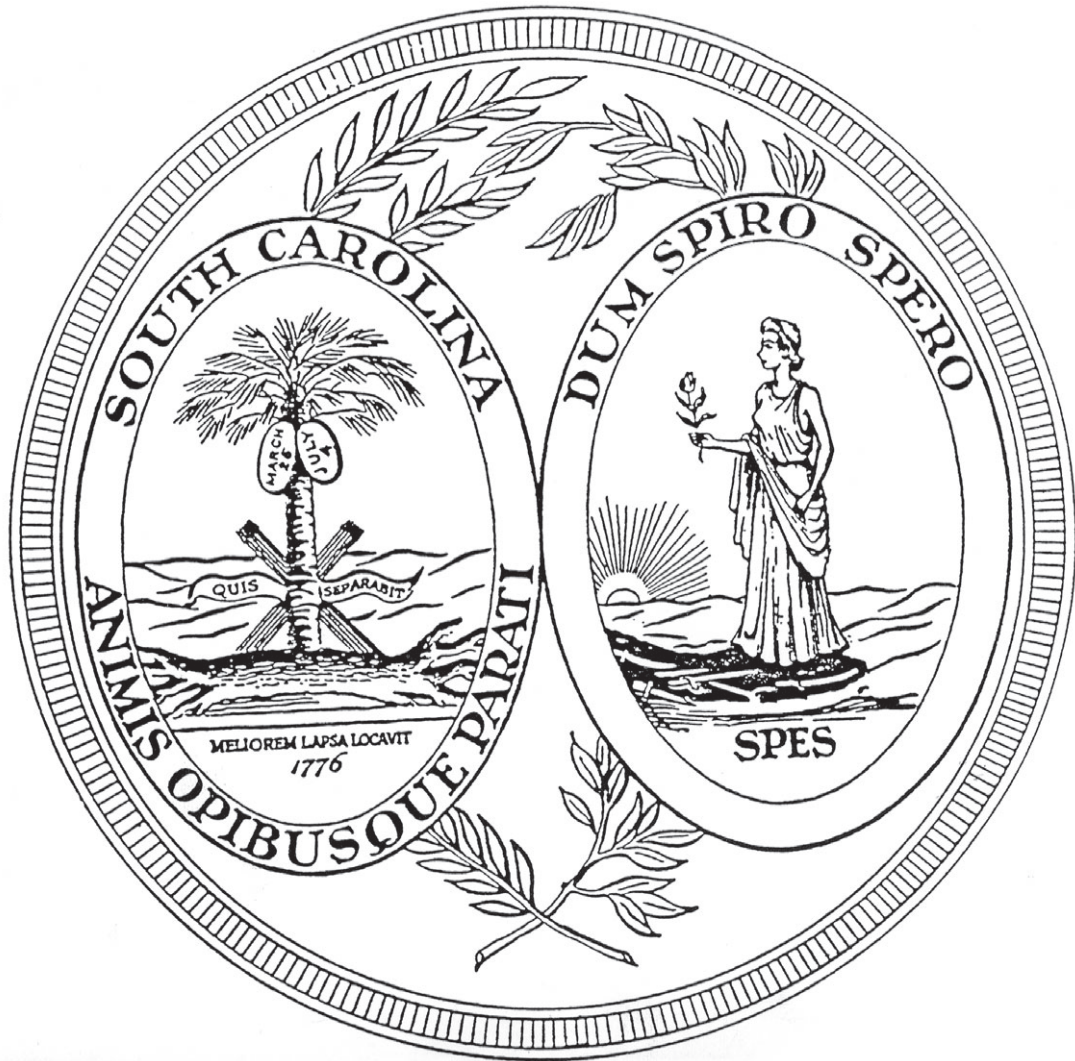
- (1) Beaverdam Creek, Edgefield County, Act 1407 of 1974;
- (2) Beaverdam Creek, Oconee County, Act 1178 of 1962;
- (3) Beaverdam_Warriors Creek, Laurens County, Act 599 of 1961;
- (4) Big Creek, Anderson County;
- (5) Broadmouth Creek, Anderson County;
- (6) Brown's Creek, Union County;
- (7) Brushy Creek, Anderson and Pickens Counties;
- (8) Buck Creek, Horry County, Act 579 of 1961;
- (9) Carters Branch_Muddy Creek, Marlboro County, Act 1355 of 1966;
- (10) Crabtree Swamp, Horry County, Act 579 of 1961;
- (11) Duncan Creek, Laurens County, Act 599 of 1961;
- (12) Fishing Creek, York County, Act 1219 of 1958;
- (13) Gapway Swamp, Horry County, Act 579 of 1961;
- (14) George's Creek, Pickens County, Act 633 of 1963;
- (15) Hill's Creek, Chesterfield County, Act 513 of 1961;
- (16) Hollow Creek, Lexington and Saluda Counties, Act 1335 of 1966;
- (17) Horse Range Swamp, Orangeburg County, Act 816 of 1967;
- (18) Little Lynches Creek, Kershaw and Lancaster Counties, Act 1316 of 1966 and Act 583 of 1963;
- (19) Little Walnut_Tom and Kate, Dorchester County, Act 584 of 1965;
- (20) Lynches Lake_Camp Branch, Florence County, Act 1007 of 1960;

- (21) Maple Swamp, Dillon County;
- (22) Oolenoy River, Pickens County, Act 631 of 1961;
- (23) Rabon Creek, Laurens and Greenville Counties;
- (24) St. George_Gum Branch, Dorchester County;
- (25) Salem Community, Florence County;
- (26) Simpson Creek, Horry County, Act 579 of 1961;
- (27) Rocky Creek, Chester and Fairfield Counties;
- (28) South Tyger River, Greenville County, Act 544 of 1963;
- (29) Thicketty Creek, Cherokee and Spartanburg Counties;
- (30) Three and Twenty Creek, Anderson and Pickens Counties;
- (31) Tinkers Creek, Chester and York Counties;
- (32) Todd Swamp, Horry County, Act 579 of 1961;
- (33) Wateree Creek, Fairfield County, Act 1077 of 1958;
- (34) Wilson Creek, Anderson and Abbeville Counties;
- (35) Willow Swamp, Colleton and Bamberg Counties, Act 1032 of 1962.

(B) The existing Bear Creek Watershed Conservation District, Camp Creek Watershed Conservation District, Cane Creek Watershed Conservation District, Gills Creek Watershed Conservation District, and Hannah's Creek Watershed Conservation District in Lancaster County, created pursuant to Act 583 of 1963, are combined into a single watershed conservation district named Cane Creek Watershed Conservation District which encompasses the combined area of the five existing watershed conservation districts. The organization and function of the new Cane Creek Watershed Conservation District must be revised to comply with this chapter. The district retains the authority to levy the millage rate authorized in Act 583 of 1963 until the millage rate is changed as provided in this chapter or increased by action of county council. This chapter applies to this district notwithstanding contrary provisions in Act 583 of 1963.

(C) The existing Jackson Creek Watershed Conservation District and Mill Creek Watershed Conservation District in Fairfield County, created pursuant to Act 596 of 1965, are combined into a single watershed conservation district named Jackson_Mill Creek Watershed Conservation District which encompasses the combined area of the two existing watershed conservation districts. The organization and function of the new Jackson_Mill Creek Watershed Conservation District must be revised to comply with this chapter. The district retains the authority to levy the millage rate authorized in Act 596 of 1965 until the millage rate is changed as provided in this chapter or increased by action of county council. This chapter applies to this district notwithstanding contrary provisions in Act 596 of 1965.

(D) The board of commissioners of each of the soil and water conservation districts in which a part or all of each of the watershed conservation districts in subsections (A), (B), and (C) is located shall initiate action with the board of directors of the watershed conservation district and the county government to carry out this revision in the organization and function of the watershed conservation district. The department shall assist each of the boards of commissioners of the affected soil and water conservation districts with this responsibility. The department shall initiate this assistance by providing written directions and guidance to each of the affected soil and water conservation districts within ninety days of the effective date of this chapter, as amended. The department may adopt policy and has broad authority to carry out this section.../homepage.htm



PUBLIC OFFICIAL'S
GUIDE TO COMPLIANCE
WITH
SOUTH CAROLINA'S
FREEDOM OF INFORMATION ACT

Correct as of November 2015

PUBLIC OFFICIAL'S GUIDE TO COMPLIANCE WITH SOUTH CAROLINA'S FREEDOM OF INFORMATION ACT

This booklet includes the full text and a plain-language guide to applications of the Freedom of Information Act concerning public meetings and public records in South Carolina. It is designed as an easy-to-use guide for both public officials and citizens.

TABLE OF CONTENTS

An Introduction to the South Carolina Freedom of Information Act	page 2
How to respond to an FOIA request	page 2
The law's text and its interpretation	pages 3-14
A public official's liability in releasing public records	page 15
FOIA Index by subject	page 16



Additional copies of this booklet are available from the South Carolina Press Association, 106 Outlet Pointe Blvd., Columbia, S.C. 29210. Please call (803) 750-9561 or email jfaulkner@scpress.org to request copies. The cost is \$3 each, which includes shipping and handling. It can also be downloaded as a PDF at scpress.org.



ATTORNEY GENERAL



Dear Public Official:

The Freedom of Information Act (FOIA) was enacted to provide direct access to the functions of government to the general public and the press. In fact, sunlight is essential to the survival of our representative democracy.

Government agencies and public officials have a duty to disclose any public information requested through FOIA- unless that information is protected as described in this handbook.

While drafting South Carolina's FOIA, the General Assembly offered the following:

"The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.

Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings."

As public officials, the people of this state have placed a great amount of trust in our ability to perform the tasks of government. In turn, we have an obligation not only to adhere to the letter of this law, but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public information.

The Attorney General's Office uses and recommends the following FOIA guidelines:

- When in doubt, disclose requested information
- When in doubt, post the time, place, and purpose of the meeting
- When in doubt, open the meeting to the public
- When in doubt, release the document

The following guide provided by the S.C. Press Association should answer the majority of questions you may have regarding FOIA requests.

When fulfilling a request, remember a vigilant press corps is a requisite for good government. As public officials, we have an added obligation to aid members of the media with their quest to properly inform the public.

Sincerely,

Alan Wilson
Attorney General

AN INTRODUCTION TO THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT

There should be no need for our state to have a Freedom of Information Act. Clearly, our founding fathers knew that a government operating behind closed doors, unchecked by and unaccountable to its citizenry, is not a government of, by and for the people. Rather, it is a government of, by and for itself.

But our forefathers' intentions in framing the Constitution need shoring up with individual states' Sunshine Laws.

Our state's Freedom of Information Act (or Sunshine Law) was born in 1976, appropriately during our nation's bicentennial, and has since been revised and updated on several occasions.

It is a fluid document that must continue to be updated and revised, especially with the changes wrought by this digital age when emails, texts, FaceTime and Skype can provide the means to skirt the law for those who want to do so deliberately.

While the FOIA is written for the people of South Carolina as a means to strengthen the people's access to public information, it is also the vehicle by which the media, long held as the people's representative as the governmental watchdog, access and share public information.

As such, the media, particularly the S.C. Press Association and its FOI Committee, remain on the front line in defending the public's right to know and in leading effective changes in the state's FOIA law that strengthen public access. Such efforts are often in concert with like-minded lawmakers who recognize the need for and see the inherent value in government transparency.

This booklet spells out the state's Freedom of Information Act, plus provides clarity regarding the law's intent and application, with additional plain-language text. The booklet's intent is to help guide both governmental bodies and the public through the law's intent in an effort to keep government operating as it should – openly, honestly, transparently and for the people it serves.

As a newspaper journalist for more than 30 years, I leave you with the words of President Thomas Jefferson, who made no secret of his emphatic belief in the need for open government:

“The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.”

– *By Richard Whiting, chairman, S.C. Press Association Freedom of Information Committee, and executive editor of the Index-Journal in Greenwood*

RESPONDING TO AN FOIA REQUEST

These are some simple tips for government officials on how to respond when an FOIA letter is received from the public or the news media:

1. Jot down the date on the letter immediately so you'll know later when it arrived.

2. Calculate how many “working” days, excluding weekends and holidays, between the arrival date and the end of the time allowed for a reply.

3. Check to see if the request is for copies of documents or for an opportunity to inspect documents. The public and news media are entitled to both.

4. Determine whether there will be costs other than those for simple copying. You may charge a fee not to exceed the actual cost of searching for and making copies. Keep in mind that costs can be waived if the information is in the “public interest” to release. Many citizen and news media requests fall into this classification.

5. Notify in writing the requesting party that the request has been received and give an reasonable timetable for your response. Include information about costs. Try not to wait the maximum time limit. Some public bodies tend to delay as long as possible but this runs contrary to the intent of the law and doesn't help your relationships with the public or press.

6. Try to determine the best way to make the requested information available. In other words, a phone conversation with the requesting party might be in order.

7. Remember that the public is granted access to public records and that includes all books, maps, photos, papers, cards, magnetic tapes, computer data, or other documentary materials in the possession of a public body.

8. Invest a little effort in being cordial. It'll be time well-spent.

The exact words of the law are shown in regular type. Plain language explanations are printed in italic type within the double rules above the section to which they refer.

FREEDOM OF INFORMATION ACT

Chapter 4, Title 30, Code of Laws of South Carolina

SECTION 30-4-10. Short title.

This chapter shall be known and cited as the “Freedom of Information Act”.

The following section should be considered the Golden Rule for government officials who are trying to obey the law and follow the spirit of the Freedom of Information Act. Whether you’re deciding to open a meeting or how much to charge for copying documents, these words explain the intent of the law. The section spells out the basic premise behind the FOIA and should be used when in doubt about whether an official action passes FOIA muster. Public officials who take this section to heart will seldom find themselves at odds with the public, the news media or the courts on FOI matters.

SECTION 30-4-15. Findings and purpose.

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

The next section defines a public body. If a body is supported by public funds, even in part, or expends public funds, it is subject to the FOIA. Calling your group or meeting something other than its common name does not relieve it from responsibility. It simply does not matter what the group is called – including study committee, ad hoc committee or advisory committee. It is the composition, not the name, that is the deciding factor. Calling a meeting a “work session” does not exempt it from the FOIA. The section also says that If you are involved in health care, such things as medical disciplinary matters, case evaluations or peer reviews are exempt from the FOIA.

SECTION 30-4-20. Definitions.

(a) “Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

The definition of “person” also includes businesses and organizations.

(b) “Person” includes any individual, corporation, partnership, firm, organization or association.

This subsection defines public records covered by the FOIA. These include all types of records, including computer data, prepared by or in the possession of a public body. There are exceptions, including some domestic security information.

(c) “Public record” includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical re-

ports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

Here the FOIA clears up any doubt about what constitutes a meeting. Some public bodies have had difficulty determining whether they were actually meeting or not. Under terms of this subsection, you are having a meeting when you have a quorum – enough present for an official vote – regardless of whether you are meeting in person, at a social gathering or on a conference telephone call. In other words, if you’re discussing public business and you have a quorum present, such meetings should be announced to the public and press beforehand and be open.

(d) “Meeting” means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

No complicated language here: A quorum is a simple majority unless some other section of the law states otherwise.

(e) “Quorum” unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

The next section sets basic rules for access to public records. It says any person has the right to inspect a public document unless it is specifically exempt by other parts of the law. It also says the public body may set “reasonable” rules for time and place of access.

SECTION 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.

(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access.

The message below is that you may charge for copying and for searching out documents. But charging is NOT mandatory and setting costs that are clearly prohibitive ranks as a bad way to make friends with the public and the press. Important language in this subsection again is the word “reasonable.” Public bodies cannot charge one fee for one person and a different fee for another. The language is also clear in that the records must be furnished at the lowest possible cost and in a convenient and practical form. There is also a provision to provide the documents free when the information is “primarily benefiting the general public.” News reports based on public documents almost always benefit the public.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

This is the so-called “15-Day Rule.” Public bodies must respond in a timely fashion — in this case no longer than 15 working days. If there will be a delay beyond 15 days, that fact should be discussed in writing with the requesting party. Failure to respond at all within 15 days makes the requested information automatically public. Public bodies that routinely wait the maximum 15 days are not acting in the

spirit of the FOIA and risk ruining relationships they have with the public and news media. Public bodies that routinely require formal written FOIA requests run the same risks.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

This section requires that certain basic records be made available to the public without a written request during business hours. There is no waiting period to view these records. These records are: minutes of meetings, records containing basic details of a crime and documents showing who is being held in jail. To ease the burden on public officials, there are time limits as to how far back these records must be kept ready for immediate access.

(d) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

- (1) minutes of the meetings of the public body for the preceding six months;
- (2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day; and
- (3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months.

This section begins the list of documents exempt from the FOIA. It points out that exemptions are not mandatory and a public body may release exempt documents. Please note that the Supreme Court, in Bellamy v. Brown, ruled that a public official faces no liability for releasing a public document.

SECTION 30-4-40. Matters exempt from disclosure.

(a) A public body may but is not required to exempt from disclosure the following information:

If you're doing business or dealing with a company whose proprietary interests are contained in records, those documents do not have to be made public. Other documents exempt from the law are records containing paid subscriber information and customer lists. The definition of trade secret establishes the outer limit of what may be withheld.

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards. They not only need to be clean in the performance of their duties but they need to be perceived as clean. Private details about public officials, when such information has no bearing on official duties, may be withheld.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

The following list of law enforcement records allows secrecy for records about: informants, information that may lead to an arrest or prosecution, special investigation methods, information that could lead to personal harm, and intercepted communication.

(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

- (A) disclosing identity of informants not otherwise known;
 - (B) the premature release of information to be used in a prospective law enforcement action;
 - (C) disclosing investigatory techniques not otherwise known outside the government;
 - (D) by endangering the life, health, or property of any person; or
 - (E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.
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Here's where it becomes necessary to be familiar with other sections of law where FOIA exemptions exist. Those include: Social Security numbers, medical peer review documents and student academic records.

(4) Matters specifically exempted from disclosure by statute or law.

If there's a contract or a property sale being negotiated, such records may be sheltered from view until after the deal is done. Certain confidential proprietary information, such as a loan application, is not required to be disclosed.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

- (A) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;
 - (B) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;
 - (C) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.
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Some years ago the salaries paid public officials were easily kept from public view, except for those paid agency or department heads. Then along came Jehan Sadat, widow of former Egyptian President Anwar Sadat and instructor at the University of South Carolina. Records of her salary and perks were withheld from the public and news media and a FOIA lawsuit was brought. Under a landmark ruling, the records were opened and they showed that Mrs. Sadat was paid an amazingly high salary and had other lavish benefits. The attention brought to this case prompted the General Assembly to revise this section of the law to make certain salaries are public record within certain limits. Those are explained on this and the following page.

(6) All compensation paid by public bodies except as follows:

It is worth noting that the word compensation is used here, not merely "salary." Such income may include honoraria, payment for speeches and performances, etc. The public is entitled to know the "exact compensation" paid such persons. Part-time employees such as Mrs. Sadat would be clearly covered by this section.

- (A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part-time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;
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Classified and unclassified employees not covered by subsection A above are covered under this language if they make between \$30,000 and \$50,000 annually. Such government salaries are public record in ranges with \$4,000 increments.

- (B) For classified and unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;
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Classified employees who make less than \$30,000 annually may have their salaries disclosed according to classification and longevity.

- (C) For classified employees not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

Unclassified employees and contract teachers who make less than \$30,000 per year may have their salaries released in ranges starting at \$2,000 and increasing in stages of \$4,000.

(D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars.

The following section ensures that agency or department heads are clearly defined.

(E) For purposes of this subsection (6), “agency head” or “department head” means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

Because some legal documents should be kept confidential to protect lawyer-client privilege, this section was placed in the FOIA. It was not put there, however, to protect all documents ever handled by a lawyer or his staff.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

This is where the General Assembly exempts itself from the FOIA when it comes to legislation in progress. Other supporting information kept by lawmakers, however, is probably available under the FOIA.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

This provides access to financial details on economic development agreements and applies at all levels of government.

(9) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business:

- (1) requiring the expenditure of public funds or the transfer of anything of value,
- (2) reducing the rate or altering the method of taxation of the business or industry, or
- (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:
 - (A) the offer to attract an industry or business to invest or locate in the offeror’s jurisdiction is accepted by the industry or business to whom the offer was made; and
 - (B) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

If there were a way to determine the chances of getting audited by the tax man, the language below keeps the public and press from finding it.

(10) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

This language was placed in the FOIA to protect the identity of university donors, except those who do business with a school or other arm of government. The reasoning behind not protecting those with business ties is obvious – the legislature wants to make sure there is no quid pro quo for gift givers.

(11) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, “gift to a public body” includes, but is not limited to, gifts to any of the state-supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

This language refers to other sections of S.C. law dealing with discussion of investment of retirement funds.

(12) Records exempt pursuant to Section 9-16-80(B) and 9-16-320(D).

This section exempts employment applications from release except for information regarding persons seriously considered for a position. It requires that all material relating to no fewer than three final applicants for a public job must be made public. Certain material, including tax or medical records can be blacked out before release.

(13) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item “materials relating to not fewer than the final three applicants” do not include an applicant’s income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

This section of the law shields from view research records and data collected by faculty members at state institutions of higher education. This exemption does not deal with financial or administrative records – just the research material itself.

(14)(A) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

(B) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(C) The exemptions in this item do not extend to the institution’s financial or administrative records.

Here the Legislature exempts from release the names of environmental whistle blowers and others making complaints to state regulatory agencies.

(15) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

*The following exemptions deal with reports and plans for investment of endowment and pension funds (Section 16), bridge structural plans and designs [Sections 17(a) and 17(b)] and autopsy images but not reports (Section 18). ***The S.C. Supreme Court ruled in 2014 that autopsy records are medical records and may not be disclosed.***

(16) Records exempt pursuant to Sections 59-153-80(B) and 59-153-320(D).

(17) Structural bridge plans or designs unless:

(A) the release is necessary for procurement purposes; or

(B) the plans or designs are the subject of a negligence action, an action set forth in Section 15-3-530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos, and other visual images, and audio recordings of an related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17-5-535 for the purposes contemplated or provided for in that section.

This is a very important clause in the FOIA. It tells government officials and employees that they can only withhold those portions of records that are exempt from disclosure. In other words, if parts of the record or document are not exempt, those portions must be made available. Exempt portions may be blacked out, or redacted.

(19) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11-45-30.

(b) If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

Unlike other records, which may be withheld from public inspection and copying, those records identified in 30-4-45 (which pertain to facilities vulnerable to terrorism) must be withheld.

(c) Information identified in accordance with the provisions of Section 30-4-45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30-4-30, 30-4-50, and 30-4-100 notwithstanding, no custodian of information subject to the provisions of Section 30-4-45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.

Certain information regarding facilities vulnerable to terrorism must not be provided except to government authorities or people who live or work within a "vulnerable zone."

SECTION 30-4-45. Information concerning safeguards and off-site consequence analyses; regulation of access; vulnerable zone defined.

(a) The director of each agency that is the custodian of information subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400 "Distribution of Off-site Consequence Analysis Information", or 10 CFR 73.21 "Requirements for the protection of safeguards information", must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions.

(b) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and Section 1-23-130, to regulate access to the information in accordance with the provisions of this section.

(c) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for:

- (1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions; and
- (2) disclosure of information to persons who live or work within a vulnerable zone.

For purposes of this section, "vulnerable zone" is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment.

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction. Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose.

In the following section, the Legislature makes certain that specified types of information are clearly public record. The list is very straightforward.

SECTION 30-4-50. Certain matters declared public information; use of information for commercial solicitation prohibited.

(a) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

- (1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
- (5) written planning policies and goals and final planning decisions;
- (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

- (7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;
 - (8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.
 - (9) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.
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The following subsection is on the books at the behest of law enforcement officials who want to keep certain businessmen from getting names and addresses from incident reports and using that information to solicit business. The key words here are "commercial solicitation." Neither the general public nor the press are affected.

(b) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

The following section mandates that state, county and city governments make a clean breast of any deals they cut with business or industry they are recruiting. Once the deals are cut, the terms are public record, along with fiscal impact statements that outline the affect on the tax base. Trade secrets, as defined in Section 30-4-40 and including marine terminal service agreements, may remain closed to the public along with proprietary corporate information. Documents pursuant to the final deal may also remain secret as is specified earlier in the FOIA.

SECTION 30-4-55. Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. Notwithstanding the requirements of this section, information that is otherwise exempt from disclosure under Section 30-4-40(a)(1), (a)(5)(c), and (a)(9) remains exempt from disclosure.

The next sentence presents a simple statement of purpose regarding meetings: THEY ARE OPEN unless otherwise specified.

SECTION 30-4-60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of this chapter.

The following section would give the governor the option of closing his or her cabinet meetings unless they are convened to act upon a matter over which the governor has granted the cabinet jurisdiction or advisory power. Most governors favor open government so this section would clearly present a conflict should cabinet meetings be closed in the future.

SECTION 30-4-65. Cabinet meetings are subject to chapter provisions; cabinet defined.

(a) The Governor's cabinet meetings are subject to the provisions of this chapter only when the Governor's cabinet is convened to discuss or act upon a matter over which the Governor has granted to the cabinet, by executive order, supervision, control, jurisdiction, or advisory power.

(b) For purposes of this chapter, 'cabinet' means the directors of the departments of the executive branch of state government appointed by the Governor pursuant to the provisions of Section 1-30-10(B)(1)(i) when they meet as a group and a quorum is present.

Meetings must start in public, but may be closed for certain, specified discussions.

SECTION 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

This exemption deals with individual employment matters. However, employees have the right to demand an open hearing.

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

This section addresses exemptions for discussions related to contract negotiations and the receipt of legal advice. Contracts are open once they are entered into, but may be discussed behind closed doors. Note that any vote on a contract must be taken in public. Public bodies may receive legal advice behind closed doors when it relates to a pending claim, the position of the public body in an adversarial matter or any matter covered by attorney-client privilege. Such exemptions are put into the law to provide shelter when necessary. Having an attorney present is not a carte blanche excuse for secrecy.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

When it comes to government security, it is reasonable to expect discussions of it be held in private.

(3) Discussion regarding the development of security personnel or devices.

This subsection protects discussions that may lead to criminal prosecution.

(4) Investigative proceedings regarding allegations of criminal misconduct.

This is a business recruitment/economic development exemption. Competition to bring business and industry into a state, county or community can be intense. Other government entities may be trying to lure the same company so it is understandable that premature knowledge of the deal could harm such efforts. Once an industrial contract is entered into, it is open to the public under Section 30-4-40(a)(5).

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

Certain meetings to discuss investment of public employee retirement funds may be closed to the public.

(6) The Retirement System Investment Commission, if the meeting is in executive session specifically pursuant to Section 9-16-80(A) or 9-16-320(C).

There are two keys for public bodies preparing to enter an executive session: "votes" and "specific purposes." To adjourn into executive session, a vote must be taken in public. The only actions that can be taken in executive sessions are to adjourn or return to public session. The law says the presiding officer must state the specific purpose of the executive session. This statement of specific purpose requirement is not satisfied by making a general statement such as "personal matter" or "contractual matter. However, the identity of individuals or firms otherwise shielded from release need not be disclosed. Finally, no informal polling about a course of action may be taken in executive session.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

Some public bodies have abused the FOIA through "chance" meetings at parties, over meals or through telephone or internet conferences. This kind of activity is illegal and the following language spells it out.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

The next sentence gives public bodies the right to expel disruptive people.

(d) This chapter does not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

The state Constitution lets the General Assembly or houses thereof have executive sessions. Some legislators believe such meetings run contrary to the concept of open government. But these secret meetings are allowed.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

(f) The Board of Trustees of the respective institution of higher learning, while meeting as the trustee of its endowment funds, if the meeting is in executive session specifically pursuant to Sections 59-153-80(A) or 59-153-320(C).

This section of the FOIA is important, particularly for the staff employed by public bodies. It spells out notice requirements for meetings and the content of such notices. It says an agenda should be made available at least 24 hours before scheduled meetings. For special meetings, notice of the time, place and agenda must be given. Again, the deadline is no later than 24 hours in advance. Emergency meetings are the exception and they can be held on a moment's notice, but the purpose must be clearly of an emergency nature. Meeting notices must be in writing. Agendas can be amended within 24 hours with a 2/3rd vote. If a final action is added, and there is no chance for public comment, a finding of an emergency or exigent circumstance is required.

SECTION 30-4-80. Notice of meetings of public bodies.

(A) All public bodies, except as provided in subsections (b)(B) and (c)(C) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board or website, if any, public notice for any called, special, or rescheduled meetings. Such notice must include the agenda, date, time, and place of the meeting, and must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies. This requirement does not apply to emergency meetings of public bodies. Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any statutorily required public hearing.

Standing legislative committees also must post notices of their meetings while the General Assembly is in session or when special meetings are called. Subcommittees should also give notice during the session if "practicable."

(B) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.

This subsection covers all other non-legislative subcommittees, which are required to give notice in a reasonable and timely fashion.

(C) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (a), must make reasonable and timely efforts to give notice of their meetings.

If there were any doubt about meeting notices being in writing, this clears it up. Such efforts must include posting a meeting announcement where the public body commonly meets.

(D) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

Here's where some public bodies cross swords with citizens and the press. This area of the law requires that public bodies notify those who ask for notification and that they record, in their minutes, that such efforts were made and how they were made. Public bodies that ignore or forget this requirement can expect to hear from aggravated citizens and reporters.

(E) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

The following section requires that written minutes be kept of all public meetings.

SECTION 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

- (1) The date, time and place of the meeting.
- (2) The members of the public body recorded as either present or absent.
- (3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.
- (4) Any other information that any member of the public body requests be included or reflected in the minutes.

The public and press are entitled to copies of minutes and they should be available soon after the meeting. Minutes of meeting for the preceeding six months are to be made available for inspection without a written request being made. Section 30-4-(d)(1).

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with Section 30-4-70 of this chapter.

Public meetings, except for executive sessions, may be recorded by the public body or by any citizen or journalist.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. Provided, further, that the public body is not required to furnish recording facilities or equipment.

This section puts teeth into the FOIA. It gives any citizen the right to ask their Circuit Court to intervene and determine whether an FOIA violation has occurred. The statute of limitations is one year. A judge determines appropriate relief.

SECTION 30-4-100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

If a member of the public or press sues a public body and wins, all costs of litigation – including attorney fees – may be awarded. Courts set such awards.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

Those who violate the FOIA might find themselves poorer and/or in prison. Both are possibilities under this statute. It is a misdemeanor that can result in a \$100 fine and not more than 30 days in jail for first offenders. The penalties double and then triple for subsequent offenses.

SECTION 30-4-110. Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

Following a national trend of protecting personal information, the legislature has put Social Security numbers and drivers' license photographs off limits, with the onus being placed on the state Department of Public Safety to withhold that information, including other personal data such as height, weight or race.

SECTION 30-4-160. Sale of Social Security number or driver's license photograph or signature.

(a) This chapter does not allow the Department of Motor Vehicles to sell, provide, or otherwise furnish to a private party Social Security numbers in its records, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card.

(b) Photographs, signatures, and digitized images from a driver's license or personal identification card are not public records.

SECTION 30-4-165. Privacy of driver's license information.

(a) The Department of Motor Vehicles may not sell, provide, or furnish to a private party a person's height, weight, race, social security number, photograph, or signature in any form that has been compiled for the purpose of issuing the person a driver's license or special identification card. The department shall not release to a private party any part of the record of a person under fifteen years of age who has applied for or has been issued a special identification card.

(b) A person's height, weight, race, photograph, signature, and digitized image contained in his driver's license or special identification card record are not public records.

(c) Notwithstanding another provision of law, a private person or private entity shall not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically-stored information was obtained from a driver's license record.

SUPREME COURT'S BELLAMY VS. BROWN RULING PROTECTS PUBLIC OFFICIALS WHEN RELEASING PUBLIC RECORDS

By Jay Bender

Reid H. Montgomery Freedom of Information Chair
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Many public officials are concerned that if they release information from a public record about a private citizen, they could be sued for an invasion of privacy.

In 1991, the S.C. Supreme Court decided the case of Bellamy v. Brown, 408 S.E.2d 219, which should give comfort to public officials wishing to disclose information contained in public records.

In that case, the court ruled that even if information identifying an individual came within one of the statutory exceptions to mandatory disclosure, a citizen identified in the record had no claim against the government for an invasion of privacy.

The Supreme Court said forcefully, “[W]e find that the essential purpose of the FOIA is to protect the public from secret government activity.”

Addressing the question of the release of information that could lawfully be withheld from disclosure under the FOIA, the court said:

“The FOIA creates an affirmative duty on the part of public bodies to disclose information. The purpose of the Act is to protect the public by providing for the disclosure of information. However, the exemptions from disclosure contained in (sections) 30-4-40 and -70 do not create a duty not to disclose.

“These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. No legislative intent to create a duty of confidentiality can be found in the language of the Act.”

Following this Supreme Court decision, the General Assembly amended the FOIA to state clearly that a public body may disclose any record that is subject to an exemption from mandatory disclosure. Section 30-4-40 (a).

FREEDOM OF INFORMATION ACT INDEX

TOPIC	PAGE # / FOIA SECTION	TOPIC	PAGE # / FOIA SECTION
Definitions		Records	
Agency head	page 7 / 30-4-40(a)(6)(E)	Charges/ Fees	page 4 / 30-4-30(b)
Department head	page 7 / 30-4-40(a)(6)(E)	Commercial Solicitation	page 10 / 30-4-50(b)
Meeting	page 4 / 30-4-20(d)	Contract Negotiations	page 11 / 30-4-70(a)(2)
Person	page 3 / 30-4-20(b)	Copying (right to)	page 4 / 30-4-30(a)
Public body	page 3 / 30-4-20(a)	Court judgements	page 13 / 30-4-100(a)
Public record	pages 3-4 / 30-4-20(c)	Dept. of Public Safety Info	page 14 / 30-4-160,165
Quorum	page 4 / 30-4-20(e)	Employee data (basic)	page 9 / 30-4-50(a)(1)
Meetings		Exemptions	pages 5 - 9 / 30-4-40
Agendas	page 12 / 30-4-80(a)	Contracts	page 6 / 30-4-40(a)(5)
Basic law of openness	page 10 / 30-4-60	Gift givers	page 7 / 30-4-40(a)(11)
Chance meetings	page 12 / 30-4-70(c)	Job finalists paperwork	page 8 / 30-4-40(a)(13)
Committees	page 3 / 30-4-20(a)	Land buys	page 6 / 30-4-40(a)(5)(A)
Disruptions	page 12 / 30-4-70(d)	Law enforcement	page 6 / 30-4-40(a)(3)
Executive sessions		Legal work products	page 7 / 30-4-40(a)(7)
Entering	page 11 / 30-4-70(a)	Legislative papers	page 7 / 30-4-40(a)(8)
Polling forbidden	pages 11-12 / 30-4-70 (b)	Private information	page 5 / 30-4-40(a)(2)
Reasons to close	page 11 / 30-4-70(a)(1-5)	Recruitment, industrial	pages 7 / 30-4-40(e)(9) & page 11 / 30-4-70(a)(5)
Voting to close	pages 11-12 / 30-4-70(b)	Scholarly research	page 8 / 30-4-40(a)(14)
Exemptions for closing		Structural plans	page 8 / 30-4-40 (a)(17)
Contract negotiations	pgs. 11 / 30-4-70(a)(2)	Trade secrets	page 5 / 30-4-40(a)(1)
Discipline/firing	page 11 / 30-4-70(a)(1)	Vulnerable Zone data	page 9 / 30-4-45
Employment matters	page 11 / 30-4-70(a)(1)	Financial info	page 9 / 30-4-50(a)(6)
General Assembly	page 12 / 30-4-70(e)	Minutes (copies of)	pages 9-10 / 30-4-50(a)(7) & page 13 / 30-4-90(b)
Industrial expansion	page 11 / 30-4-70(a)(5)	Opinions (final)	page 9 / 30-4-50(a)(3)
Investigations, criminal	page 11 / 30-4-70(a)(4)	Planning policies & goals	page 9 / 30-4-50(a)(5)
Security	page 11 / 30-4-70(a)(3)	Police crime reports	page 10 / 30-4-50(a)(8) & page 6 / 30-4-40(a)(3)
Legislative committees	page 12 / 30-4-80(b)	Policy statements/rules	page 9 / 30-4-50(a)(4)
Minutes (taking of)	page 13 / 30-4-90(a)	Salaries	pages 6-7 / 30-4-40(a)(6)(A-E)
Notice requirements	pages 12-13 / 30-4-80(a-e)	Staff manuals	page 9 / 30-4-50(a)(2)
Subcommittees	page 3 / 30-4-20(a) & page 12 / 30-4-80(b,c)	Statute of limitations	page 13 / 30-4-100(a)
Tape recording	page 13 / 30-4-90(c)	Tax commission standards	page 7 / 30-4-40(a)(10)
Voting	pages 11-12 / 30-4-70(b)	Time limits	page 5 / 30-4-30(c)
Penalties and enforcement		Purpose statement	
Attorney fees	page 13 / 30-4-100(b)		page 3 / 30-4-15
Fines	page 14 / 30-4-110		

Introduction to Robert's Rules of Order

1. What is Parliamentary Procedure?
 2. Why is Parliamentary Procedure Important?
 3. Example of the Order of Business
 4. Motions
 5. Types of Motions
 6. How are Motions Presented?
 7. Voting on a Motion
-

What Is Parliamentary Procedure?

It is a set of rules for conduct at meetings, that allows everyone to be heard and to make decisions without confusion.

Why is Parliamentary Procedure Important?

Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. Today, Robert's Rules of Order newly revised is the basic handbook of operation for most clubs, organizations and other groups. So it's important that everyone know these basic rules!

Organizations using parliamentary procedure usually follow a fixed order of business. Below is a typical example:

1. Call to order.
2. Roll call of members present.
3. Reading of minutes of last meeting.
4. Officers reports.
5. Committee reports.
6. Special orders --- Important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Announcements.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.
4. Vote on motions.

There are four Basic Types of Motions:

1. **Main Motions:** The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. **Subsidiary Motions:** Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.

3. Privileged Motions: Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. Incidental Motions: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How are Motions Presented?

1. Obtaining the floor
 - a. Wait until the last speaker has finished.
 - b. Rise and address the Chairman by saying, "Mr. Chairman, or Mr. President."
 - c. Wait until the Chairman recognizes you.
2. Make Your Motion
 - a. Speak in a clear and concise manner.
 - b. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
 - c. Avoid personalities and stay on your subject.
3. Wait for Someone to Second Your Motion
4. Another member will second your motion or the Chairman will call for a second.
5. If there is no second to your motion it is lost.
6. The Chairman States Your Motion
 - a. The Chairman will say, "it has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action.
 - b. The membership then either debates your motion, or may move directly to a vote.
 - c. Once your motion is presented to the membership by the chairman it becomes "assembly property", and cannot be changed by you without the consent of the members.
7. Expanding on Your Motion
 - a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
 - b. The mover is always allowed to speak first.
 - c. All comments and debate must be directed to the chairman.
 - d. Keep to the time limit for speaking that has been established.
 - e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.
8. Putting the Question to the Membership
 - a. The Chairman asks, "Are you ready to vote on the question?"
 - b. If there is no more discussion, a vote is taken.
 - c. On a motion to move the previous question may be adapted.

Voting on a Motion:

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

1. By Voice -- The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
2. By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. By General Consent -- When a motion is not likely to be opposed, the Chairman says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.

4. By Division -- This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
5. By Ballot -- Members write their vote on a slip of paper, this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to Table -- This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the membership.
2. Motion to Postpone Indefinitely -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.
Most importantly, *BE COURTEOUS*.