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SC Court of Appeals

June 23, 2023

**VIA ELECTRONIC MAIL** [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Court of Appeals Letter regarding the effect of 2023 S.C. Act No. 20 (S.164)  
CareAlliance Health Services v. SCDHEC, Appellate Case No. 202-001323

Dear Ms. Kitchings:

The S.C. Department of Health and Environmental Control (“DHEC”) submits this letter in response to your June 13, 2023 letter that requested the parties confer and advise the Court whether the amendments of Act No. 20 affect this litigation and, if so, how this litigation should proceed. Counsel for the parties conferred, but an agreement amongst all parties could not be reached. DHEC’s position is as follows.

First, the subject of the present appeal is the approval of a Certificate of Need (“CON”) application for the construction or other establishment of a new hospital in Berkeley County. While Act No. 20 made significant amendments to the projects requiring CON review, it is undisputed that the construction or other establishment of a new hospital still requires a CON. *See* 2023 S.C. Act No. 20 (S. 164), Section § 44-7-160(B)(1).<sup>1</sup>

Secondly, Act No. 20 made various changes to the provisions addressing judicial review of Administrative Law Court (“ALC”) decisions pertaining to CONs. Prior to Act No. 20, judicial review of ALC decisions was with the Court of Appeals. *See* S.C. Code Ann. § 44-7-220 (2017). As a result of Act No. 20, judicial review is with the Supreme Court. *See* 2023 S.C. Act No. 20 (S.164), Section 13, § 44-7-210(G) and § 44-7-220(B), -(C), and -(D). The intent of the General Assembly in making such amendments is to have swift resolution of CON challenges. As explained below, these amendments are remedial and/or procedural and, thus, should be applied retroactively. Consequently, the Supreme Court is the appropriate court to hear this appeal.

“A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt.” *State v. Brown*, 402 S.C. 119, 127, 740 S.E.2d 493, 496 (2013) (Internal citations omitted). “The statute must contain express words evincing intent that it be retroactive or words necessarily implying such intent.” *Id.* “The only exception to this rule is a statutory enactment that effects a change in remedy or procedure.” *Id.* A statute is remedial when it creates new remedies

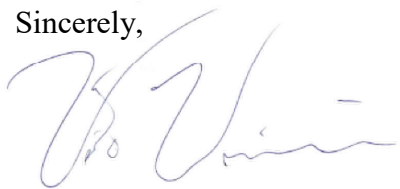
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<sup>1</sup> Attached as Exhibit 1 is a comparison of the previous and current versions of Sections 44-7-160, -210, and -220.

for existing rights. *Hooks v. Southern Bell Tel. and Tel. Co.*, 291 S.C. 41, 43, 351 S.E.2d 900, 902 (Ct. App. 1986). A statute is procedural when it “sets out a mode of procedure for a court to follow” or “prescribes a method of enforcing rights.” *Edwards v. State Law Enforcement Div.*, 395 S.C. 571, 580, 720 S.E.2d 462, 466 (2011). Act No. 20 does not contain language specifically addressing whether it is intended to apply retroactively; however, the amendments pertaining to judicial review are remedial and/or procedural and, accordingly, the appeal should be transferred to the Supreme Court.

Furthermore, “[u]nless a contrary legislative intent appears, changes in statute law which pertain only to procedure are generally held to apply to pending cases.” *Montgomery v. Dist. of Columbia*, 598 A.2d 162, 166 (D.C. Ct. App. 1991) (quoting 2 N. Singer, *Sutherland Statutory Construction* § 41.09 at 396 (4th rev. ed. 1986)). “[W]hen a change of law merely affects the remedy or law of procedure, all rights of action will be enforced under the new procedure without regard to whether they accrued before or after such change of law and without regard to whether or not the suit has been instituted, unless there is a savings clause as to existing litigation.” *Davis v. Hughes*, 229 Kan. 91, 101, 622 P.2d 641, 650 (1981). There is no savings clause in Act No. 20 directing that pending litigation proceed under the old statute’s provisions for judicial review. *Compare with* 2006 S.C. Act No. 387 (H. 3285), Sections 55 and 57, attached as Ex. 2. Therefore, Act No. 20 applies retroactively to transfer the pending appeal to the Supreme Court.

Sincerely,



Vito Wicevic  
Assistant General Counsel  
S.C. Department of Health and Environmental Control

VMW/rdd

Enclosures (Exhibits 1 and 2)

cc: via electronic mail: David B. Summer, Jr., William R. Thomas, and Faye A. Flowers  
Elizabeth Crum, Celeste Jones, Pam Baker, and Robert Widener  
Jennifer Hollingsworth, Shannon Lipham, and Cheryl Shoun

# **Exhibit 1**

Showing differences between versions effective July 1, 2010 to May 15, 2023 and May 16, 2023 [current]

Key: ~~deleted text~~ added text

8 deletions · 12 additions

Code 1976 § 44-7-160

§ 44-7-160. Certificate of Need ~~required under certain circumstances~~ requirements.

(A) A person or ~~health care facility~~ nursing home as defined in this article is required to obtain a Certificate of Need from the department before undertaking any of the following:

- (1) the construction or other establishment of a new ~~health care facility~~ nursing home;
- (2) a change in the existing bed complement of a ~~health care facility~~ nursing home through the addition of one or more beds or change in the classification of licensure of one or more beds;
- (3) an expenditure by or on behalf of a ~~health care facility~~ nursing home in excess of an amount to be prescribed by regulation which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure except those expenditures exempted in Section 44-7-170(B)(1). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the development, acquisition, improvement, expansion, or replacement of any plant or equipment must be included in determining if the expenditure exceeds the prescribed amount;
- (4) a capital expenditure by or on behalf of a ~~health care facility~~ nursing home which is associated with the addition or substantial expansion of a health service for which specific standards or criteria are prescribed in the South Carolina Health Plan;
- (5) the offering of a health service by or on behalf of a ~~health care facility~~ nursing home which has not been offered by the facility in the preceding twelve months and for which specific standards or criteria are prescribed in the South Carolina Health Plan;
- (6) the acquisition of medical equipment by or on behalf of a nursing home which is to be used for diagnosis or treatment if the total project cost is in excess of that prescribed by regulation.

(B) A person or health care facility, as defined in this article, is required to obtain a Certificate of Need from the department before undertaking the following:

- (1) the construction or other establishment of a hospital;
- (2) a change in the existing bed complement of a hospital through the addition of one or more beds or change in the classification of licensure of one or more beds.

(C) Effective January 1, 2027, Section 44-7-160(B) is repealed.

**Credits**

HISTORY: 1962 Code § 32-765; 1952 Code § 32-765; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 § 1; 1988 Act No. 670, § 1; 1992 Act No. 511, § 6; ~~2010 Act No. 278, § 5, eff July 1, 2010~~; 2010 Act No. 278, § 5, eff July 1, 2010; 2023 Act No. 20 (S.164), § 6, eff May 16, 2023.

Code 1976 § 44-7-160, SC ST § 44-7-160

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Showing differences between versions effective July 1, 2010 to May 15, 2023 and May 16, 2023 [current]

Key: ~~deleted text~~ added text

17 deletions · 17 additions

Code 1976 § 44-7-210

§ 44-7-210. Certificate of Need review procedures.

(A) After the department has determined that an application is complete, affected persons must be notified in accordance with departmental regulations. The notification to affected persons that the application is complete begins the review period; however, in the case of competing applications, the review period begins on the date of notice to affected persons that the last of the competing applications is complete and notice is published in the State Register. The staff shall issue its decision to approve or deny the application no earlier than thirty calendar days, but no later than ~~one hundred twenty~~ninety calendar days, from the date affected persons are notified that the application is complete, unless a public hearing is timely requested as may be provided for by department regulation. If a public hearing is properly requested, the staff's decision must not be made until after the public hearing, but in no event shall the decision be issued more than one hundred ~~fifty~~twenty calendar days from the date affected persons are notified that the application is complete. The staff may reorder the relative importance of the project review criteria no more than one time during the review period. The staff's reordering of the relative importance of the project review criteria does not extend the review period provided for in this section.

(B) The department may not issue a Certificate of Need unless an application complies with the South Carolina Health Plan, Project Review Criteria, and other regulations. Based on project review criteria and other regulations, which must be identified by the department, the department may refuse to issue a Certificate of Need even if an application complies with the South Carolina Health Plan. In the case of competing applications, the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department.

(C) On the basis of staff review of the application, the staff shall make a staff decision to grant or deny the Certificate of Need and the staff shall issue a decision in accordance with [Section 44-1-60\(D\)](#). Notice of the decision must be sent to the applicant and affected persons who have asked to be notified. The decision becomes the final agency decision unless a timely written request for a final review is filed with the department as provided for in [Section 44-1-60\(E\)](#).

However, a person may not file a request for final review in opposition to the staff decision on a Certificate of Need unless the person provided written notice to the department during the staff review that he is an affected person and specifically states his opposition to the application under review.

(D) The staff's decision is not the final agency decision until the completion of the final review process provided for in [Section 44-1-60\(F\)](#).

(E) A contested case hearing of the final agency decision must be requested in accordance with [Section 44-1-60\(G\)](#). The issues considered at the contested case hearing considering a Certificate of Need are limited to those presented or considered during the staff review.

(F) Notwithstanding any other provision of law, including Section 1-23-650(C), in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the following apply:

(1) each party may name no more than ~~ten~~ five witnesses who may testify at the contested case hearing;

(2) each party is permitted to take only the deposition of a person listed by an opposing party as a witness who may testify at the contested case hearing, ~~unless otherwise provided~~ and one Federal Rules of Civil Procedure Rule 30(b)(6) ~~for by the Administrative Law Court~~ deposition;

(3) each party is permitted to serve only ten interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure;

(4) each party is permitted to serve only ten requests for admission, including subparts; ~~and~~

(5) each party is permitted to serve only ~~thirty~~ fifteen requests for production, including subparts; and

~~(6) The limitations provided for in this subsection are intended to make the contested case process more efficient, less burdensome, and less costly to the parties in Certificate of Need cases. Therefore, the Administrative Law Court may, by court order, lift these limitations beyond the parameters set forth in this subsection only in exceptional circumstances when failure to do so would cause substantial prejudice to~~ shall complete discovery within one hundred twenty days after the assignment of the ~~party seeking additional discovery~~ administrative law judge.

(G) Notwithstanding any other provision of law, in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the Administrative Law Court shall file a final decision no later than ~~eighteen~~ twelve months after the contested case is filed with the Clerk of the Administrative Law Court, ~~unless all parties~~. An affected person who was a party to the contested case ~~consent to an extension~~ has a right to appeal to the Supreme Court final decisions issued by the Administrative Law Court for a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or denial of a request for exemption under Section 44-7-170, or the ~~court finds substantial cause otherwise~~ issuance of a determination regarding the applicability of Section 44-7-160.

### Credits

HISTORY: 1962 Code § 32-771; 1952 Code § 32-771; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 § 1; 1988 Act No. 670, § 1; 1990 Act No. 471, §§ 2, 3; 1992 Act No. 511, § 10; 1998 Act No. 303, § 4; ~~2010 Act No. 278, § 11, eff July 1, 2010;~~ 2010 Act No. 278, § 11, eff July 1, 2010; 2023 Act No. 20 (S.164), § 13, eff May 16, 2023.

Code 1976 § 44-7-210, SC ST § 44-7-210

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Showing differences between versions effective July 1, 2010 to May 15, 2023 and May 16, 2023 [current]

Key: ~~deleted text~~ added text

17 deletions · 19 additions

Code 1976 § 44-7-220

§ 44-7-220. Administrative Law Court review of Certificate of Need decisions.

(A) A party who is aggrieved by the Administrative Law Court's final decision may seek judicial review of the final decision in accordance with Section 1-23-380.

(B)(1) If a party does not prevail in a contested case at the Administrative Law Court when requesting the reversal of the department's decision concerning a Certificate of Need application, when claiming an exemption under Section 44-7-170, or when claiming that the article is not applicable pursuant to Section 44-7-160, the Administrative Law Court shall award the party whose project is the subject of the appeal reasonable attorney's fees and costs incurred in the contested case.

(2) If a party does not prevail in an appeal to the Supreme Court when requesting the reversal of the Administrative Law Court's decision concerning a Certificate of Need application, when claiming an exemption under Section 44-7-170, or when claiming that the article is not applicable pursuant to Section 44-7-160, the Supreme Court shall award the party whose project is the subject of the contested case reasonable attorney's fees and costs incurred in the appeal.

(~~B~~C) If the relief requested in the appeal is the reversal of the Administrative Law Court's decision to approve the Certificate of Need application or approve the request for exemption under Section 44-7-170 or approve the determination that Section 44-7-160 is not applicable, the party filing the appeal shall deposit a bond with the Clerk of the Supreme Court ~~of Appeals~~ within five calendar days after filing the petition to appeal. The bond must be secured by cash or a surety authorized to do business in this State in an amount equal to five percent of the total cost of the project or one hundred thousand dollars, whichever is greater, up to a maximum of one million five hundred thousand dollars. If the Supreme Court ~~of Appeals~~ affirms the Administrative Law Court's decision or dismisses the appeal, the Supreme Court ~~of Appeals~~ shall award to the party whose project is the subject of the appeal all of the bond ~~and also may award reasonable attorney's fees and costs incurred in the appeal~~. If a party appeals the denial of its own Certificate of Need application or of an exemption request under Section 44-7-170 or appeals the determination that Section 44-7-160 is applicable and there is no competing application involved in the appeal, the party filing the appeal is not required to deposit a bond with the ~~Court of Appeals~~ Supreme Court.

(~~C~~D)(1) ~~Furthermore, if~~ If at the conclusion of the contested case or judicial review the Administrative Law Court or the Supreme Court ~~of Appeals~~ finds that the contested case or a subsequent appeal was frivolous, the Administrative Law Court or the Supreme Court ~~of Appeals may~~ shall award damages incurred as a result of the delay, as well as reasonable attorney's fees and costs, to the party whose project is the subject of the contested case or judicial review.

(2) As used in this subsection, "frivolous appeal" means ~~any one of the following~~ a reasonable person in the same circumstances would believe that:

(a) ~~taken solely for purposes of delay~~ the contested case or subsequent appeal was clearly not warranted under existing

law and that a good faith or reasonable argument did not exist for the extension, modification, or ~~harassment~~ reversal of existing law;

(b) ~~where no question of law is involved~~ the procurement, initiation, or continuation of the contested case or subsequent appeal was intended merely to harass or injure the other party; or

(c) ~~where~~ the contested case or ~~judicial review is without merit~~ subsequent appeal was not reasonably founded in fact or was interposed merely for delay or was merely brought for a purpose other than securing proper discovery or adjudication of the claim upon which the proceedings are based.

(3) This subsection must not be construed to prohibit any party from seeking sanctions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act pursuant to [Section 15-36-10](#), et. seq.

(E)(1) The court must not assess attorney's fees or costs awarded against or to the department in any contested case or appeal involving a Certificate of Need application or an exemption request pursuant to [Section 44-7-170](#) or a request for a determination as to the applicability of [Section 44-7-160](#).

(2) This subsection must not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provisions of any written contract between the parties to the action.

#### Credits

HISTORY: 1962 Code § 32-772; 1952 Code § 32-772; 1947 (45) 510; 1979 Act No. 51 § 1; 1988 Act No. 670, § 1; 1990 Act No. 471, § 4; ~~2010 Act No. 278, § 12, eff July 1, 2010~~; 2010 Act No. 278, § 12, eff July 1, 2010; 2023 Act No. 20 (S.164), § 14, eff May 16, 2023.

Code 1976 § 44-7-220, SC ST § 44-7-220

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# **Exhibit 2**

2006 South Carolina Laws Act 387 (H.B. 3285)

SOUTH CAROLINA 2006 SESSION LAWS

REGULAR SESSION

Additions and deletions are not identified in this document.

Vetoed provisions within tabular material are not displayed.

Act 387

H.B. No. 3285

APPEALS

**AN ACT AN ACT TO AMEND SECTION 1-13-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HEARINGS AND ORDERS OF THE STATE HUMAN AFFAIRS COMMISSION, SO AS TO PROVIDE FOR APPEAL OF A COMMISSION DECISION TO THE ADMINISTRATIVE LAW COURT; TO AMEND SECTIONS 1-23-380, 1-23-390, AND 1-23-600, AS AMENDED, AND SECTION 1-23-610, ALL RELATING TO JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS, SO AS TO PROVIDE THAT JUDICIAL REVIEW OF AN ADMINISTRATIVE DECISION MUST BE MADE BY AN ADMINISTRATIVE LAW JUDGE, TO PROVIDE THAT DECISION MAY BE APPEALED TO THE SOUTH CAROLINA COURT OF APPEALS, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 1-23-650, RELATING TO PROMULGATION OF RULES GOVERNING THE OPERATIONS OF THE ADMINISTRATIVE LAW COURT, SO AS TO PROVIDE RULES OF PROCEDURE FOR THE HEARING OF CONTESTED CASES OR APPEALS BY INDIVIDUAL AGENCIES ARE OF NO FORCE AND EFFECT IN PROCEEDINGS BEFORE AN ADMINISTRATIVE LAW JUDGE; TO AMEND SECTION 1-23-660, AS AMENDED, RELATING TO HEARINGS OF THE DIVISION OF MOTOR VEHICLES, SO AS TO CREATE THE DIVISION OF MOTOR VEHICLE HEARINGS WITHIN THE ADMINISTRATIVE LAW COURT AND TO PROVIDE FOR ITS COMPOSITION AND OPERATION; TO AMEND SECTION 8-13-320, RELATING TO AN ORDER OF THE STATE ETHICS COMMISSION, SO AS TO PROVIDE FOR APPEAL FROM A FINAL DECISION OF THE COMMISSION TO THE SOUTH CAROLINA COURT OF APPEALS AS PROVIDED IN THE SOUTH CAROLINA APPELLATE COURT RULES; TO AMEND SECTION 8-17-340, AS AMENDED, RELATING TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE, SO AS TO PROVIDE FOR APPEAL OF A COMMISSION'S DECISION TO THE ADMINISTRATIVE LAW COURT; TO AMEND SECTION 9-21-70, RELATING TO APPEALS FROM A DECISION OF THE ADMINISTRATIVE LAW COURT, SO AS TO APPEAL TO THE COURT OF APPEALS AS PROVIDED IN THE SOUTH CAROLINA APPELLATE COURT RULES; TO AMEND SECTION 11-35-4410, AS AMENDED, RELATING TO APPEALS REGARDING PROCUREMENT BY THE PROCUREMENT REVIEW PANEL, SO AS TO PROVIDE THAT THE ADMINISTRATIVE PROCEDURES ACT DOES NOT APPLY TO THE PANEL UNDER CERTAIN CIRCUMSTANCES AND APPEAL FROM A PANEL DECISION IS ONLY TO THE CIRCUIT COURT; TO AMEND SECTIONS 12-60-3370, 12-60-3380, AND 12-60-3390, ALL AS AMENDED, RELATING TO TAXPAYER APPEALS, ALL SO AS TO PROVIDE THAT APPEALS ARE TO THE COURT OF APPEALS RATHER THAN THE CIRCUIT COURT; TO AMEND SECTION 14-8-200, AS AMENDED, RELATING TO THE JURISDICTION OF THE COURT OF APPEALS, SO AS TO ADD FINAL DECISIONS OF AN AGENCY, OR A FINAL DECISION OF AN ADMINISTRATIVE LAW JUDGE TO THE LIST OF CASES THE COURT OF APPEALS HAS JURISDICTION OVER; TO AMEND SECTION 31-21-130, RELATING TO APPEALS TO THE HUMAN AFFAIRS COMMISSION REGARDING THE SOUTH CAROLINA FAIR HOUSING LAW, SO AS TO PROVIDE THAT APPEAL IS TO THE ADMINISTRATIVE LAW COURT RATHER THAN THE CIRCUIT COURT; TO AMEND SECTION 33-56-140, RELATING TO INVESTIGATIONS, HEARINGS, AND APPEALS REGARDING SOLICITATION OF CHARITABLE FUNDS, SO AS TO PROVIDE THAT ACTIONS BROUGHT BY THE SECRETARY OF STATE FOR CERTAIN CHARITABLE SOLICITATION VIOLATIONS ARE TO**

BE BROUGHT BEFORE AN ADMINISTRATIVE LAW JUDGE; TO AMEND SECTION 39-37-100, AS AMENDED, RELATING TO APPEALS OF THE DEPARTMENT OF AGRICULTURE REGARDING LICENSES OF MANUFACTURERS OF CERTAIN FROZEN DESSERTS, SO AS TO PROVIDE THAT APPEAL IS TO THE ADMINISTRATIVE LAW COURT RATHER THAN THE CIRCUIT COURT; TO AMEND SECTION 41-35-750, AS AMENDED, RELATING TO THE PROCEDURE TO OBTAIN JUDICIAL REVIEW OF A DECISION BY THE EMPLOYMENT SECURITY COMMISSION, SO AS TO PROVIDE THAT A PARTY TO THE PROCEEDING MAY APPEAL A COMMISSION DECISION WITHIN THIRTY DAYS FROM THE DATE OF THE MAILING OF THE COMMISSION'S DECISION; TO AMEND SECTION 43-25-90, RELATING TO A DECISION OF THE COMMISSION FOR THE BLIND, SECTION 45-9-75, RELATING TO A DETERMINATION BY A PANEL OF THE STATE HUMAN AFFAIRS COMMISSION, SECTION 46-3-220, RELATING TO AN ORDER OR DECISION BY THE COMMISSIONER OF AGRICULTURE, SECTION 46-9-90, AS AMENDED, RELATING TO PENALTIES FOR VIOLATING A PROVISION OF THE CHAPTER ON THE STATE CROP PEST COMMISSION, SECTION 47-4-130, AS AMENDED, RELATING TO PENALTIES FOR VIOLATING A PROVISION OF TITLE 47 DEALING WITH ANIMALS, LIVESTOCK, AND POULTRY, SECTIONS 47-17-50 AND 47-19-60, BOTH RELATING TO A DETERMINATION BY THE DIRECTOR OF THE LIVESTOCK-POULTRY HEALTH DEPARTMENT OF CLEMSON UNIVERSITY, SECTIONS 48-20-160, AS AMENDED, 48-20-190 AND 48-20-200, ALL RELATING TO A DECISION OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SECTION 48-39-150, AS AMENDED, RELATING TO THE APPROVAL OR DENIAL OF A PERMIT BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SECTION 54-3-470, RELATING TO AN ORDER OF THE STATE PORTS AUTHORITY, SECTIONS 55-5-230, 55-5-240, 55-5-250, ALL AS AMENDED, AND SECTION 55-8-20, ALL RELATING TO AN ORDER OF THE DIVISION OF AERONAUTICS, ALL SO AS TO PROVIDE FOR JUDICIAL REVIEW OF THE ADMINISTRATIVE DECISION BY AN ADMINISTRATIVE LAW JUDGE AND THAT DECISION APPEALED TO THE SOUTH CAROLINA COURT OF APPEALS; TO AMEND SECTION 56-5-2952, AS AMENDED, RELATING TO THE FILING FEE FOR A HEARING BEFORE THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO INCREASE THE FEE AND PROVIDE FOR ITS RETENTION BY THE ADMINISTRATIVE LAW COURT; TO AMEND SECTIONS 58-5-330, 58-5-340, 58-5-990, 58-9-1410, AND 58-27-2310, AS AMENDED, ALL RELATING TO AN ORDER OR DECISION BY THE PUBLIC SERVICE COMMISSION, SO AS TO PROVIDE FOR APPEAL FROM A FINAL DECISION OF THE COMMISSION TO THE SOUTH CAROLINA SUPREME COURT OR COURT OF APPEALS AS PROVIDED BY STATUTE OR THE SOUTH CAROLINA APPELLATE COURT RULES; TO AMEND SECTIONS 59-25-260, 59-25-830, AND 59-40-90, ALL RELATING TO DECISIONS BY THE STATE BOARD OF EDUCATION, AND SECTION 59-58-120, RELATING TO A DECISION OF THE COMMISSION ON HIGHER EDUCATION, ALL SO AS TO PROVIDE FOR JUDICIAL REVIEW OF THE ADMINISTRATIVE DECISION BY AN ADMINISTRATIVE LAW JUDGE AND THAT DECISION APPEALED TO THE SOUTH CAROLINA COURT OF APPEALS; TO AMEND SECTION 44-1-50, RELATING TO APPEALS FROM THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO PROVIDE FOR ADMINISTRATIVE REVIEW BY THE BOARD AND FOR FINAL AGENCY DETERMINATIONS; BY ADDING SECTION 44-1-60 SO AS TO PROVIDE PROCEDURES IN A CONTESTED CASE BEFORE THE BOARD; AND TO AMEND SECTIONS 48-39-180, 48-39-280, AND 48-39-290, ALL AS AMENDED, ALL RELATING TO JUDICIAL REVIEW OF PERMIT DETERMINATIONS BY THE COASTAL ZONE MANAGEMENT APPELLATE PANEL, ALL SO AS TO PROVIDE FOR APPEAL TO THE ADMINISTRATIVE LAW COURT AND THEN THE COURT OF APPEALS; AND TO REPEAL SECTIONS 58-5-350, 58-5-360, 58-9-1420, 58-9-1440, 58-9-1460, 58-9-1470, 58-9-1480, AND 58-27-2330 ALL RELATING TO JUDICIAL REVIEW OF A DECISION BY THE PUBLIC SERVICE COMMISSION.

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

**State Human Affairs Commission, appeals**

SECTION 1. Section 1-13-90(c)(19) of the 1976 Code is amended to read:

<< SC ST § 1-13-90 >>

(19)(i) If an application for review is made to the commission within fourteen days from the date the order of the

commission is given, the commission, for good cause shown, shall review the order and evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the order.

(ii) The order of the commission, as provided in item (16) of subsection (c) of this section, if not reviewed in due time, or an order of the commission upon review, as provided for in subitem (i) of item (19) of this subsection, is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of notice to be sent by registered mail of the order may appeal the decision of the commission to the Administrative Law Court as provided in Sections 1–23–380(B) and 1–23–600(D). In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless otherwise ordered by the administrative law judge, and the respondent is required to comply with the order involved in the appeal or certification until the questions at issue are fully determined in accordance with the provisions of this chapter.

(iii) The commission may institute a proceeding for enforcement of its order of item (16) of subsection (c) of this section, or its amended order of subitem (i) of item (19) of this subsection after thirty days from the date of the order, by filing a notice of appeal in the court of common pleas of the county in which the hearing occurred, or where a person required in the order to cease and desist from a practice which is the subject of the commission’s order, or to take other affirmative action, resides, or transacts business.

If no appeal pursuant to subitem (ii) of item (19) of this subsection is initiated, the commission may obtain a decree of the court for enforcement of its order upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission’s order.

**Judicial review of administrative decisions, appeals**

SECTION 2. Section 1–23–380 of the 1976 Code is amended to read:

<< SC ST § 1–23–380 >>

Section 1–23–380. (A) A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this article, Article 1, and Article 5. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency, the Administrative Law Court, and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency or administrative law judge may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency or the Administrative Law Court, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency or the Administrative Law Court for action as the court considers appropriate.

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

- (b) in excess of the statutory authority of the agency;
  - (c) made upon unlawful procedure;
  - (d) affected by other error of law;
  - (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
  - (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (B) Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner prescribed in subsection (A) for judicial review of final agency decisions, with the presiding administrative law judge exercising the same authority as the court of appeals; provided, that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of that decision by the court of appeals pursuant to the provisions of subsection (A) and Section 1-23-610(C).

**Judicial review of administrative decisions, appeals**

SECTION 3. Section 1-23-390 of the 1976 Code is amended to read:

<< SC ST § 1-23-390 >>

Section 1-23-390. An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

**Judicial review of administrative decisions, appeals**

SECTION 4. Section 1-23-600 of the 1976 Code, as last amended by Act 202 of 2004, is further amended to read:

<< SC ST § 1-23-600 >>

Section 1-23-600. (A) A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by any party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge must render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

(B) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-310 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except those arising under the Occupational Safety and Health Act, those matters which are otherwise provided for in Title 56, those matters arising under the Consolidated Procurement Code, those matters heard by the Public Service Commission, the Employment Security Commission, the Workers' Compensation Commission, or other cases or hearings which are prescribed for or mandated by federal law or regulation, unless otherwise by statute or regulation specifically assigned to the jurisdiction of the Administrative Law Court.

(C) All requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure. Any party that files a request for a hearing with the Administrative Law Court must simultaneously serve a copy of the request on the affected agency. Upon the filing of the request, the chief judge shall assign an administrative law judge to the case.

(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11-35-4410, an appeal from the Workers' Compensation Commission is to the circuit court as provided in Section 42-17-60, and an appeal from the Employment Security Commission is to the circuit court as provided in Section 41-35-750.

(E) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

(F) Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by a department of the executive branch of government, as defined in Section 1-30-10, such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department of the executive branch of government authorized by law to seek an administrative process may apply to the chief

administrative law judge or his designee to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department of the executive branch of government may apply to the chief administrative law judge for relief from the process as provided in the Rules of the Administrative Law Court.

(G)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; matters not affected by the request may not be stayed by the filing of the request. Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

(3) The general rule of subsection (F)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, any party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court, the court of appeals, or in cases when Section 1-23-610(A) applies, the appropriate board or commission.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.

**Judicial review of administrative decisions, appeals**

SECTION 5. Section 1-23-610 of the 1976 Code is amended to read:

<< SC ST § 1-23-610 >>

Section 1-23-610. (A) For quasi-judicial review of any final decision of an administrative law judge of cases involving departments governed by a board or commission authorized to exercise the sovereignty of the State, except the Department of Natural Resources and the Department of Health and Environmental Control, a petition by an aggrieved party must be filed with the appropriate board or commission and served on the opposing party not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right. A party aggrieved by a final decision of a board in such a case is entitled to judicial review of that decision by the court of appeals under the provisions of (A) of this section.

(B) For judicial review of a final decision of an administrative law judge of cases in which review is not governed by subsection (A), including cases involving the Department of Natural Resources and the Department of Health and Environmental Control, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(C) The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner has been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(D) Where appropriations in the annual general appropriations act, or where fees, fines, forfeitures, or revenues imposed or collected by agencies or commissions were required to be used for the hearing of contested cases, these appropriations or monies must continue to be used for these purposes after the effective date of this article.

**Administrative Law Court, rules governing proceedings**

SECTION 6. Section 1-23-650 of the 1976 Code is amended to read:

<< SC ST § 1-23-650 >>

- Section 1–23–650. (A) Rules governing the internal administration and operations of the Administrative Law Court must be:
- (1) proposed by the chief judge of the court and adopted by a majority of the judges of the court; or
  - (2) proposed by any judge of the court and adopted by seventy-five percent of the judges of the court.
- (B) Rules governing practice and procedure before the court which are:
- (1) consistent with the rules of procedure governing civil actions in courts of common pleas; and
  - (2) not otherwise expressed in Chapter 23, Title 1; upon approval by a majority of the judges of the court must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution.
- (C) All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

**Administrative Law Court, Division of Motor Vehicle hearings**

SECTION 7. Section 1–23–660 of the 1976 Code, as last amended by Act 128 of 2005, is further amended to read:

<< SC ST § 1–23–660 >>

Section 1–23–660. There is created within the Administrative Law Court the Division of Motor Vehicle Hearings. The Chief Judge of the Administrative Law Court shall serve as the Director of the Division of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Division of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their present Department of Motor Vehicle functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court shall prescribe. All employees of the division shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the division, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding the foregoing, and in addition to the assistant provided for in Section 1–23–580(B), the Administrative Law Court must hire and supervise a law clerk or other assistant solely to assist the judges who hear Department of Motor Vehicle Hearing appeals with the administration of those appeals. The law clerk or other assistant must be selected by a majority of the judges who hear Department of Motor Vehicle Hearing appeals. The position must be funded from the appropriations to hear cases from the Department of Motor Vehicles and shall be filled before the support staff of the division shall assume their functions and duties with the court. The Budget and Control Board shall assist with all necessary actions to be taken to accomplish this transfer in consultation with the agency head of the transferring and receiving agencies.

Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23 of Title 1, the Administrative Procedures Act, and the rules of procedure for the Administrative Law Court, at suitable locations as determined by the chief judge. The Department of Motor Vehicles shall continue to provide the existing locations within their facilities for such hearings as prescribed by the chief judge. The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. Appeals from decisions of the hearing officers must be taken to the Administrative Law Court pursuant to the court's appellate rules of procedure. The chief judge shall not hear any appeals from these decisions. Nonetheless, the chief judge is not disqualified from, and remains responsible for, adjudicating cases under Section 1–23–600.

**State Ethics Commission, appeals**

SECTION 8. Section 8–13–320(10)(m) of the 1976 Code, as added by Act 248 of 1991, is amended to read:

<< SC ST § 8–13–320 >>

- (m) Within ten days after service of an order, report, or recommendation, a respondent may apply to the commission for a full commission review of the decision made by the commission panel. The review must be made on the record established in the panel hearings. This review is the final disposition of the complaint before the commission. An appeal to the court of appeals, pursuant to Section 1–23–380 and as provided in the South Carolina Appellate Court Rules, stays all actions and recommendations of the commission unless otherwise determined by the court.

**State Employee Grievance Committee, appeals**

SECTION 9. Section 8–17–340(F) of the 1976 Code, as last amended by Act 284 of 1996, is further amended to read:

<< SC ST § 8-17-340 >>

(F) The decision of the committee members must be transmitted in writing to the employee and the employing agency and is final in terms of administrative review. As a result of this decision, either the covered employee or the agency may request a rehearing or reconsideration within thirty calendar days from receipt of the decision. A notice of appeal seeking appellate review of the final decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). Only after an agency submits a written request to the Office of Human Resources seeking approval of the board may the agency file a notice of appeal seeking appellate review to the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the board. The covered employee or the agency who first files the notice of appeal seeking appellate review is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the audio tapes of a hearing required for certification of the record to the Administrative Law Court. Neither the board nor the Office of Human Resources nor the State Human Resources director nor the committee may be named in this notice of appeal. However, any of these entities are entitled to make a motion in the Administrative Law Court to be allowed to intervene to participate in the appeal for appropriate reasons including their interest in defending their policies.

**Administrative Law Court, appeal procedures**

SECTION 10. Section 9-21-70 of the 1976 Code, as added by Act 12 of 2003, is amended to read:

<< SC ST § 9-21-70 >>

Section 9-21-70. A claimant may appeal a final decision of the Administrative Law Court in a case brought pursuant to this chapter to the court of appeals pursuant to Section 1-23-380 and the South Carolina Appellate Court Rules. If a claimant brings an action covered by this chapter in the court of common pleas, the court must dismiss the case without prejudice.

**Procurement Review Panel, appeals**

SECTION 11. Section 11-35-4410 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

<< SC ST § 11-35-4410 >>

Section 11-35-4410. (1) Creation. There is created the South Carolina Procurement Review Panel which is charged with the responsibility to review and determine de novo:

- (a) requests for review of written determinations of the chief procurement officers pursuant to Sections 11-35-4210(6), 11-35-4220(5), and 11-35-4230(6); and
- (b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, are not the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determinations, decisions, policies, and procedures.

(2) Membership. The panel shall be composed of:

- (a) [Reserved]
- (b) [Reserved]
- (c) [Reserved]
- (d) the chairman, or his designee, of the Procurement Policy Committee;
- (e) five members appointed by the Governor from the State at large who must be representative of the professions governed by this title including, but not limited to:
  - (i) goods and services;
  - (ii) information technology procurements;
  - (iii) construction;
  - (iv) architects and engineers;
  - (v) construction management; and
  - (vi) land surveying services;
- (f) two state employees appointed by the Governor.

(3) Chairperson and Meetings. The panel shall elect a chairman from the members at large and shall meet as often as necessary to afford a swift resolution of the controversies submitted to it. Five members present and voting shall constitute a

quorum. At-large members of the panel must be paid per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees. State employee members must be reimbursed for meals, lodging, and travel in accordance with current state allowances.

(4) Jurisdiction. (a) Notwithstanding the provisions of Chapter 23, Title 1 or another provision of law, the Administrative Procedures Act does not apply to administrative reviews conducted by either a chief procurement officer or the Procurement Review Panel. The Procurement Review Panel is vested with the authority to:

- (i) establish its own rules and procedures for the conduct of its business and the holding of its hearings;
- (ii) issue subpoenas;
- (iii) interview any person it considers necessary; and
- (iv) record all determinations.

(b) A party aggrieved by a subpoena issued pursuant to this provision shall apply to the panel for relief.

(5) Procedure. Within fifteen days of receiving a grievance filed under Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6), or 11-35-4410(1)(b), the chairman shall convene the review panel to conduct an administrative review. The review panel shall record its determination within thirty days and shall communicate its decision to those involved in the determination. In the alternative, the chairman, within ten days, may appoint a hearing officer to conduct the administrative review and report his recommendations to the review panel for its determination. If a hearing officer is appointed, his report must be submitted to the review panel within ten days after his appointment, and the review panel must still record its decision within thirty days after being convened for this purpose.

(6) Finality. Notwithstanding any other provision of law, including the Administrative Procedures Act, the decision of the Procurement Review Panel is final as to administrative review and may be appealed only to the circuit court. The standard of review is as provided by the provisions of the South Carolina Administrative Procedures Act. The filing of an appeal does not automatically stay a decision of the panel.

**Taxpayer appeals, appeal procedures**

SECTION 12. Section 12-60-3370 of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

<< SC ST § 12-60-3370 >>

Section 12-60-3370. Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals. For property tax cases covered by Section 12-60-2140 or 12-60-2550, the taxpayer need pay only the amount assessed pursuant to the appropriate section.

**Taxpayer appeals, appeal procedures**

SECTION 13. Section 12-60-3380 of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

<< SC ST § 12-60-3380 >>

Section 12-60-3380. Except as otherwise provided in this chapter, a party may appeal a decision of the Administrative Law Court to the court of appeals. Appeal of a decision of the Administrative Law Court must be made in accordance with Section 1-23-610(B).

**Taxpayer appeals, appeal procedures**

SECTION 14. Section 12-60-3390 of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

<< SC ST § 12-60-3390 >>

Section 12-60-3390. If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.

**Court of Appeals, jurisdiction**

SECTION 15. Section 14-8-200 of the 1976 Code, as last amended by Act 55 of 1999, is further amended to read:

<< SC ST § 14-8-200 >>

Section 14-8-200. (a) Except as limited by subsection (b) and Section 14-8-260, the court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, or a final decision of an administrative law judge. This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case. The court has the same authority to issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case. The court, to the

extent the Supreme Court may by rule provide for it to do so, has jurisdiction to entertain petitions for writs of certiorari in post-conviction relief matters pursuant to Section 17-27-100.

(b) Jurisdiction of the court does not extend to appeals of the following, the appeal from which lies of right directly to the Supreme Court:

- (1) a final judgment from the circuit court which includes a sentence of death;
- (2) a final decision of the Public Service Commission setting public utility rates pursuant to Title 58;
- (3) a final judgment involving a challenge on state or federal grounds, to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; however, in a case where the Supreme Court finds that the constitutional question raised is not a significant one, the Supreme Court may transfer the case to the court for final judgment;
- (4) a final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness authorized by Article X of the Constitution of this State;
- (5) a final judgment from the circuit court pertaining to elections and election procedure;
- (6) an order limiting an investigation by a state grand jury pursuant to Section 14-7-1630; and
- (7) an order of the family court relating to an abortion by a minor pursuant to Section 44-41-33.

**Human Affairs Commission, appeals**

SECTION 16. Section 31-21-130(O) of the 1976 Code is amended to read:

<< SC ST § 31-21-130 >>

(O)(1) If an application for review is made to the commission within fourteen days from the date of the order of the commission, the commission, for good cause shown, shall review the order and evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the order.

(2) The order of the commission, as provided in subsection (L), if not reviewed in due time, or an order of the commission upon the review, as provided for in item (1), is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of notice to be sent by registered mail of the order, but not after that time, may appeal from the decision of the commission to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless otherwise ordered by the administrative law judge, and after that the respondent is required to comply with the order involved in the appeal or certification until the questions at issue in it are determined fully in accordance with the provisions of this chapter.

(3) The commission may institute a proceeding for enforcement of its order of subsection (L), or its amended order of item (1) after thirty days from the date of the order, by filing a petition in the court of common pleas of the county in which the hearing occurred, or where a person against whom the order is entered resides or transacts business.

(4) If no appeal pursuant to item (2) is initiated, the commission may obtain a decree of the court for enforcement of its order upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission's order.

**Solicitation of charitable funds, appeals**

SECTION 17. Section 33-56-140(C) of the 1976 Code is amended to read:

<< SC ST § 33-56-140 >>

(C) In addition to other actions authorized by law, the Secretary of State, if he has reason to believe that one or more of the following acts or violations listed below has occurred or may occur, may bring an action before an administrative law judge to enjoin the charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, or other person from continuing the act or violation, or committing other acts in furtherance of it, and for other relief as the court considers appropriate:

- (1) a person knowingly and wilfully operates in violation of the provisions of this chapter;
- (2) a person knowingly and wilfully makes a false statement in any registration application, statement, report, or other information required to be filed by this chapter;
- (3) a person fails to file a registration statement, annual financial report, or other document required to be filed by this chapter;
- (4) a person is using in the solicitation or collection of contributions any device, scheme, or artifice to defraud or to obtain money or property by means of false pretense, representation, or promise;

- (5) the officers or representatives of a charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer refuse or fail, after notice, to produce records of the organization; or
- (6) the funds raised by solicitation activities are not devoted to the charitable purposes of the charitable organization.

**Solicitation of charitable funds, appeals**

SECTION 18. Section 33–56–140(E) of the 1976 Code is amended to read:

<< SC ST § 33–56–140 >>

(E) A person who is assessed an administrative fine, has had his registration suspended, or who is denied registration has thirty days from receipt of certified notice from the Secretary of State to pay the fine or request an evidentiary hearing before an administrative law judge. If a person fails to remit fines or request a hearing after the required notice is given and after thirty days from the date of receipt of certified notice has elapsed the Secretary of State may suspend his registration pending final resolution and may bring action before the administrative law judge to enjoin the person from engaging in further charitable solicitation activities in this State. The decision of the administrative law judge may be appealed as provided in Section 1–23–610.

**Department of Agriculture, appeals**

SECTION 19. Section 39–37–100 of the 1976 Code, as last amended by Act 55 of 1999, is further amended to read:

<< SC ST § 39–37–100 >>

Section 39–37–100. The action of the Department of Agriculture in refusing to grant a license or in revoking or suspending a license is subject to review by the Administrative Law Court according to its appellate rules as provided in Sections 1–23–380(B) and 1–23–600(D). An appeal from the decision of the Administrative Law Court must be taken in the manner provided by the South Carolina Appellate Court Rules.

**Employment Security Commission, appeals**

SECTION 20. Section 41–35–750 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

<< SC ST § 41–35–750 >>

Section 41–35–750. Within thirty days from the date of mailing of the commission’s decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the commission’s decision may secure judicial review of the decision by commencing an action in the court of common pleas, either in the county in which the employee resides or the county in which he was last employed, against the commission for the review of its decision, in which action every other party to the proceeding before the commission must be made a defendant. In this action a petition, which need not be verified but which must state the grounds upon which a review is sought, must be served upon a member of the commission or upon a person as the commission may designate within the time specified by this section. Service is deemed complete service on all parties, but there must be left with the person served as many copies of the petition as there are defendants, and the commission promptly shall mail one copy to each defendant. With its answer the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision. The commission also may certify to the court questions of law involved in any decision by the commission. In a judicial proceeding under this chapter, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the court must be confined to questions of law. These actions, and the questions so certified, must be heard in a summary manner and must be given precedence over all other civil cases except cases arising under the Workers’ Compensation laws of this State. An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules. It is not necessary in a judicial proceeding under this article to enter exceptions to the rulings of the commission, and no bond is required for entering the appeal. Upon the final determination of the judicial proceeding, the commission shall enter an order in accordance with the determination. In no event shall a petition for judicial review act as a supersedeas or stay unless the commission orders a supersedeas or stay.

**Commission for the Blind, appeals**

SECTION 21. Section 43–25–90 of the 1976 Code is amended to read:

<< SC ST § 43–25–90 >>

Section 43–25–90. A person aggrieved by an action of the commission must be granted, upon request, a hearing before a hearing officer assigned by the commission. The hearing officer may not be a member of the commission. The hearing officer

has the authority to conduct hearings, to issue subpoenas requiring the attendance of witnesses and the production of records and other documents, to administer oaths and to take testimony. An appeal may be taken from the decision of the hearing officer to the Commission for the Blind. The commission shall hold a hearing on the matter which must be attended by at least three members. An appeal may be taken from the decision of the commission to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). The appellant, within thirty days after notice of the decision of the commission, shall serve notice of appeal upon the chairman of the commission, stating grounds upon which the appeal is founded and file the notice with the Administrative Law Court in accordance with its rules of procedure. The appeal acts as a supersedeas until it is finally determined.

**Human Affairs Commission, appeals**

SECTION 22. Section 45-9-75 of the 1976 Code, as added by Act 423 of 1990, is amended to read:

<< SC ST § 45-9-75 >>

Section 45-9-75. The final decision or order of the panel must be in writing and must include the findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The panel must list licenses or permits to be revoked in its order. No finding or conclusion may be included in the order of the panel unless it is supported by substantial evidence in the record before the panel.

The commission shall send copies of the final order of determination to each party named in the complaint, all attorneys of record, and other interested parties within fifteen days of the conclusion of the hearing.

Notwithstanding another provision of law, the determination by the panel is not subject to appeal to the full commission and is the final administrative action. Appeal must be to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D) and then judicial review as provided in Sections 1-23-380 and 1-23-390.

**Commission of Agriculture's decisions, appeals**

SECTION 23. Section 46-3-220 of the 1976 Code is amended to read:

<< SC ST § 46-3-220 >>

Section 46-3-220. An order, decision, or other official act which revokes a registration or license issued by the commissioner, may be appealed by a person concerned by filing a notice of appeal with the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D) and by serving the commissioner or someone of discretion at his office, within thirty days after receipt of written notice of the order, decision, or official act affecting the registration or license of the person concerned. The commissioner, within thirty days after service of the notice of appeal, shall make a return to the Administrative Law Court as provided in its appellate rules.

**State Crop Pest Commission, appeals**

SECTION 24. Section 46-9-90(B) of the 1976 Code, as last amended by Act 39 of 2005, is further amended to read:

<< SC ST § 46-9-90 >>

(B) The director after opportunity for a hearing may deny, suspend, modify, or revoke a license or certificate for a violation of state or federal law or regulation. In addition to denial, suspension, revocation, or modification of a license or certificate or other penalty set forth in this chapter, any person subject to this chapter who violates this chapter or another chapter under the cognizance of the commission may be assessed a civil penalty by the director of not more than one thousand dollars for each violation. Each day a violation continues constitutes a separate violation. The director may suspend a license or certificate against which a civil penalty has been imposed if the license or certificate holder has not satisfied the penalty within thirty days after the license or certificate holder receives notification of the final decision of the director to impose the penalty. The license or certificate holder is entitled to a hearing on the suspension, but the suspension remains in effect pending the hearing and the decision of the director. Matters considered by the hearing officer are limited to whether a duly issued final order of the director existed, whether the license or certificate holder had notice of the final order, and whether the assessed penalty was paid within thirty days of the notice. A determination by the director is final unless within thirty days after the receipt of the notice of final determination the person adversely affected appeals to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). The filing of a judicial appeal does not act as an automatic stay of enforcement of the civil penalty or of the suspension.

**Animals, livestock, and poultry; Title 47 penalties; appeals**

SECTION 25. Section 47-4-130(B) of the 1976 Code, as last amended by Act 362 of 1994, is further amended to read:

<< SC ST § 47-4-130 >>

(B) The director, after opportunity for a hearing, may deny, suspend, modify, or revoke a permit for a violation of state or federal law or regulation or duly published requirements of the commission. In addition to denial, suspension, revocation, or modification of a permit or other penalties set forth in this chapter, the permittee who violates the provisions in subsection (A) may be assessed a civil penalty by the director of not more than one thousand dollars for each violation. Each day a violation continues constitutes a separate violation. The director may suspend a permit against which a civil penalty has been imposed if the permittee has not satisfied the penalty within thirty days after the permittee receives notification of the final decision of the director to impose the penalty. The permittee is entitled to a hearing on the suspension, but the suspension remains in effect pending the hearing and the decision of the director. Matters considered by the hearing officer are limited to whether a duly issued final order of the director existed, whether the permittee had notice of the final order, and whether the assessed penalty was paid within thirty days of the notice. A determination by the director is final unless within thirty days after the receipt of the notice of final determination the person adversely affected appeals to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D). The filing of a judicial appeal does not act as an automatic stay of enforcement of the suspension.

**Livestock-Poultry Health Department of Clemson University, appeals**

SECTION 26. Section 47-17-50 of the 1976 Code is amended to read:

<< SC ST § 47-17-50 >>

Section 47-17-50. (A) Each shipping container of meat, meat food product, or meat by-product inspected pursuant to the authority of this article and found to be wholesome and not adulterated, must at the time the product leaves the official establishment, bear in distinctly legible form, the official inspection mark and the approved plant number of the official establishment in which the contents were processed. Each immediate container of meat, meat food product, or meat by-product inspected under the authority of this article and found to be wholesome and not adulterated, must at the time the product leaves the official establishment, bear in addition to the official inspection mark in distinctly legible form, the name of the product, a statement of ingredients if fabricated from two or more ingredients, including a declaration as to artificial flavors or colors, if any, the net weight or other appropriate measure of the contents, the name and address of the processor, and the approved plant number of the official establishment in which the contents were processed. The name and address of the distributor may be used in lieu of the name and address of the processor if the approved plant number is used to identify the official establishment in which the article was prepared and packed. Each livestock carcass and each primal part of the carcass shall bear the official inspection mark and approved plant number of the establishment. The director, by rules or regulations, may require additional marks or label information to appear on livestock carcasses or its parts, meat food products, or meat by-products when they leave the official establishments or at the time of their transportation or sale in this State, and he may permit reasonable variations and grant exemptions from the marking and labeling requirements of this paragraph in any manner not in conflict with the purposes of this article. Marks and labels required under this paragraph may be applied only by, or under the supervision of an inspector.

(B) The use of any written, printed, or graphic matter upon or accompanying any livestock carcass, or its parts, meat food product, or meat by-product inspected or required to be inspected pursuant to the provisions of this article, or the container which is false or misleading in any particular is prohibited. No livestock carcasses or its parts, meat food products, or meat by-products inspected or required to be inspected pursuant to the provisions of this article may be sold or offered for sale by a person under any false or deceptive name; but established trade names which are usual to those articles and which are not false or deceptive and which are approved by the director are permitted. If the director has reason to believe that a label in use or prepared for use is false or misleading in any particular, he may direct that the use of the label be withheld unless it is modified in a manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the label does not accept the determination of the director, he may request a hearing, but the use of the label, if the director so directs, must be withheld pending hearing and final determination by the director. A determination by the director is conclusive unless within thirty days after the receipt of notice of the final determination the person adversely affected appeals to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D).

**Livestock-Poultry Health Department of Clemson University, appeals**

SECTION 27. Section 47-19-60 of the 1976 Code is amended to read:

<< SC ST § 47-19-60 >>

Section 47-19-60. (A) All poultry products inspected at an official establishment under the authority of this chapter and

found to be not adulterated at the time they leave the establishment, must bear in distinctly legible form on their shipping containers and immediate containers, as the director may require, the information required by this chapter. In addition, the director, whenever he determines action is practicable and necessary for the protection of the public, may require nonconsumer-packaged carcasses at the time they leave the establishment to bear directly in distinctly legible form any information required by this chapter.

(B) The director, whenever he determines action is necessary for the protection of the public, may prescribe:

- (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marking or otherwise labeling the articles or poultry subject to this chapter;
- (2) definitions and standards of identity or composition for articles subject to this chapter and standards of fill of container for the articles not inconsistent with standards established under the Federal Food, Drug and Cosmetic Act, or under the Federal Poultry Products Inspection Act, and there must be consultation between the director and the Secretary of Agriculture of the United States prior to the issuance of these standards to avoid inconsistency between such standards and the federal standards.

(C) No article subject to this chapter may be sold or offered for sale by a person in intrastate commerce, under a name or other marking or labeling which is false or misleading or in a container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the director are permitted.

(D) If the director has reason to believe that the marking or labeling or the size or form of a container in use or proposed for use with respect to the article subject to this chapter is false or misleading in any particular, he may direct that the use be withheld unless the marking, labeling, or container is modified in a manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the director, the person may request a hearing, but the use of the marking, labeling, or container, if the director so directs, must be withheld pending hearing and final determination by the director. A determination by the director is conclusive unless, within thirty days after receipt of notice of the final determination, the person adversely affected appeals to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D).

**Department of Health and Environmental Control, appeals**

SECTION 28. Section 48-20-160 of the 1976 Code, as last amended by Act 8 of 1997, is further amended to read:

<< SC ST § 48-20-160 >>

Section 48-20-160. (A) If the department believes a violation of this chapter, a regulation promulgated by it, or the terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of that fact upon the operator, specifying the facts constituting the apparent violation and informing the operator of his right to a hearing at a stated time and place. The date for the hearing may not be less than thirty nor more than sixty days after the date of the notice, unless the department and the operator mutually agree on another date. The operator may appear at the hearing, either personally or through counsel, and present evidence he desires in order to prove that no violation has taken place or exists. If the operator or his representative does not appear at the hearing, or if the department following the hearing finds that there has been a violation, the department may suspend the permit until the violation is corrected or may revoke the permit where the violation appears to be wilful.

(B) The effective date of a suspension or revocation is sixty days following the date of the decision. An appeal to the council pursuant to Section 48-20-190 stays the effective date until the council's decision. A further appeal to the Administrative Law Court pursuant to Section 48-20-200 stays the effective date until the date of the administrative law judge's final decision. If the department finds at the time of its initial decision that a delay in correcting a violation may result in imminent peril to life or danger to property or to the environment, it shall initiate promptly a proceeding for injunctive relief pursuant to Section 48-20-230. The pendency of an appeal from a suspension or revocation of a permit has no effect upon the action.

(C) An operator whose operating permit is suspended or revoked shall be denied a new permit or a reinstatement of the suspended permit to engage in mining until he gives evidence satisfactory to the department of his ability and intent to comply fully with the provisions of this chapter, regulations promulgated by it, and the terms and conditions of his permit, including the approved reclamation plan, and that he has corrected satisfactorily all deficiencies or previous violations.

(D) A general permit, as provided for in Section 48-20-55, may be revoked or suspended if the operator is cited for violations of this chapter, a regulation promulgated by it, or the terms and conditions of that general permit. If this authority is suspended or revoked and mining is ordered to be stopped pursuant to Section 48-20-220, the operator whose eligibility to mine under a general permit that has been suspended or revoked shall be denied further eligibility under that or other general permits or an individual operation permit until satisfactory evidence is presented to the department that the operation intends to comply fully with the provisions of this chapter, regulations promulgated under it, and the terms and conditions of his

permit, including satisfactorily correcting all deficiencies or previous violations.

**Department of Health and Environmental Control, appeals**

SECTION 29. Section 48–20–190 of the 1976 Code, as added by Act 454 of 1990, is amended to read:

<< SC ST § 48–20–190 >>

Section 48–20–190. An applicant for a certificate of exploration or operating permit or a person who is aggrieved and is directly affected by the permit may appeal to the council from a decision or determination of the department issuing, refusing, modifying, suspending, revoking, or terminating a certificate of exploration or operating permit or reclamation plan, or imposing a term or condition on the certificate, permit, or reclamation plan. An explorer or operator may appeal to the council from a decision or determination of the department issuing a notice of deficiencies or violations and administrative fees or assessing civil penalties. The person taking the appeal within thirty days after the department's decision shall give written notice to the council through its secretary that he desires to appeal and file a copy of the notice with the department at the same time. If more than one appeal regarding the same certificate, permit, or reclamation plan is filed with the council within the thirty-day period following the decision by the department, the council may consolidate the hearing and review of the appeals by the council. The chairman of the council shall fix a reasonable time, not less than twenty nor more than forty days from the receipt of the appeal, and place for a hearing, giving reasonable notice to the applicant, appellant, and to the department. The council, or a committee of the council designated by the council's rules of procedure, or if agreed by appellant, the council, the operator, and the department, a hearing panel consisting of one or more individuals shall conduct a full and complete hearing as to the matters in controversy, and within thirty days shall give a written decision setting forth its findings of fact and its conclusions. The council or its designated committee or the hearing panel may affirm, affirm with modifications, or overrule the decision of the department and may direct the department to take action required to effectuate its decision. A further appeal may be taken from the appellate decision to the Administrative Law Court as provided in Section 48–20–200.

**Department of Health and Environmental Control, appeals**

SECTION 30. Section 48–20–200 of the 1976 Code, as added by Act 454 of 1990, is amended to read:

<< SC ST § 48–20–200 >>

Section 48–20–200. An appeal to the Administrative Law Court as provided in Sections 1–23–380(B) and 1–23–600(D) may be taken from any decision of the council, or its designated committee or the hearing panel. An appeal also may lie against the department's refusal to release part or all of a bond or other security posted pursuant to Section 48–20–110 as provided in Section 48–20–130.

**Department of Health and Environmental Control, appeals**

SECTION 31. Section 48–39–150(D) of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 48–39–150 >>

(D) An applicant having a permit denied or a person adversely affected by the granting of the permit has the right of direct appeal from the decision of the administrative law judge pursuant to Section 1–23–610. An applicant having a permit denied may challenge the validity of any or all reasons given for denial.

**State Ports Authority, appeals**

SECTION 32. Section 54–3–470 of the 1976 Code is amended to read:

<< SC ST § 54–3–470 >>

Section 54–3–470. A person may appeal from an order, ruling, or requirement of the authority pursuant to this article to the Administrative Law Court as provided in Sections 1–23–380(B) and 1–23–600(D). The appeal shall stay the execution of an order, ruling, or requirement. No fines or penalties imposed by the authority are operative or commence to run until the final determination of the appeal.

**Division of Aeronautics, appeals**

SECTION 33. Section 55–5–230 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 55–5–230 >>

Section 55–5–230. A person against whom an order is entered may appeal within thirty days after the service to the

Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D) for the purpose of having the reasonableness or lawfulness of the order inquired into and determined.

**Division of Aeronautics, appeals**

SECTION 34. Section 55-5-240 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 55-5-240 >>

Section 55-5-240. The person taking the appeal shall file the notice of appeal in the office of the clerk with the Administrative Law Court and serve a copy on the director or his designee and all other parties of record. Upon appellate review, the administrative law judge shall enter an order either affirming or setting aside the order of the court; or may remand the matter to the court for further hearing. The filing of the notice of appeal operates as a supersedeas.

**Division of Aeronautics, appeals**

SECTION 35. Section 55-5-250 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 55-5-250 >>

Section 55-5-250. If no appeal is taken from the order of the Division of Aeronautics within the period fixed, the party against whom the order is entered is deemed to have waived the right to have the reasonableness or lawfulness of the order reviewed by the Administrative Law Court, and there may be no trial of that issue in a court in which suit may be instituted for the penalty for failure to comply with the order.

**Division of Aeronautics, appeals**

SECTION 36. Section 55-8-20 of the 1976 Code is amended to read:

<< SC ST § 55-8-20 >>

Section 55-8-20. (a) The agency shall administer and enforce the provisions of this chapter and may promulgate regulations necessary for its administration, which become effective pursuant to Chapter 23, Title 1.

(b) The agency shall provide for hearings upon request of a person who may be affected by its orders or acts pursuant to the provisions of this chapter and may provide for a stay until a hearing may be held.

A person aggrieved by an order or act of the agency may have appellate review by appeal to the Administrative Law Court by the filing of a notice of appeal with the Administrative Law Court within thirty days after the order or act becomes final in accordance with its rules of procedure. The Administrative Law Court shall determine whether the filing of the appeal as a stay of an order or act of the agency and the terms of the stay.

**Division of Motor Vehicles, appeals**

SECTION 37. Section 56-5-2952 of the 1976 Code, as last amended by Act 128 of 2005, is further amended to read:

<< SC ST § 56-5-2952 >>

Section 56-5-2952. The filing fee to request any administrative hearing before the Division of Motor Vehicle Hearings of the Administrative Law Court, is one hundred fifty dollars, or as otherwise prescribed by the rules of procedure for the Administrative Law Court. Funds generated from the collection of this fee shall be retained by the Administrative Law Court.

**Public Service Commission, appeals**

SECTION 38. Section 58-5-330 of the 1976 Code is amended to read:

<< SC ST § 58-5-330 >>

Section 58-5-330. Within twenty days after an order or decision is made by the commission, any party to the action or proceeding may apply for a rehearing as to any matter determined in the action or proceeding and specified in the application for rehearing and a rehearing must be granted if in the judgment of the commission sufficient reason exists. No right of appeal arising out of an order or decision of the commission accrues in any court to any corporation or person unless the corporation or person makes application to the commission for a rehearing within the time specified. The application must set forth specifically the ground on which the applicant considers the decision or order to be unlawful. The determination must be made by the commission within thirty days after it is finally submitted. If, after the hearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion that the original order or decision, or any part of it, is in any respect unjust or unwarranted or should be changed, the commission may abrogate, change or modify it and, if changed or modified, the modified order must be substituted in the place of the order

originally entered and with like force and effect.

**Public Service Commission, appeals**

SECTION 39. Section 58–5–340 of the 1976 Code is amended to read:

<< SC ST § 58–5–340 >>

Section 58–5–340. A decision of the commission may be reviewed by the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules upon questions of both law and fact, as provided pursuant to this section.

No order of determination of the commission reducing any rate, fare, charge, or toll may be in force during the pendency of the action if the utility affected executes and files with the clerk of court a bond undertaking in a sum as the court prescribes, and approved by the court, conditioned to secure the refund to customers of any sum that may be collected in excess of the rates, fares, charges, or tolls that are finally adjudged to be lawful and valid.

**Public Service Commission, appeals**

SECTION 40. Section 58–5–990 of the 1976 Code is amended to read:

<< SC ST § 58–5–990 >>

Section 58–5–990. A gas utility which is or will be adversely affected by a rule or order of the commission adopted or established pursuant to this article may file an application for rehearing and may seek judicial review in accordance with provisions of Section 58–5–340.

**Public Service Commission, appeals**

SECTION 41. Section 58–9–1410 of the 1976 Code is amended to read:

<< SC ST § 58–9–1410 >>

Section 58–9–1410. A party in interest dissatisfied with an order of the commission may appeal to the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules. No right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission except an order on a rehearing, unless a petition to the commission for a rehearing is filed and refused or considered refused because of the commission's failure to act within twenty days.

**Public Service Commission, appeals**

SECTION 42. Section 58–27–2310 of the 1976 Code, as last amended by a 2006 act bearing ratification number R.321, is further amended to read:

<< SC ST § 58–27–2310 >>

Section 58–27–2310. A party in interest dissatisfied with an order of the commission may appeal to the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules. No right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission, except an order on a rehearing, unless a petition to the commission for a rehearing is filed and refused or considered refused because of the commission's failure to act within twenty days. The commission must not be a party to any action.

**State Board of Education, appeals**

SECTION 43. Section 59–25–260 of the 1976 Code is amended to read:

<< SC ST § 59–25–260 >>

Section 59–25–260. The findings of fact by the State Board of Education are final and conclusive. A person aggrieved by the order of the State Board of Education, within thirty days, may appeal to the Administrative Law Court as provided in Sections 1–23–380(B) and 1–23–600(D), to review errors of law only, by filing with the Administrative Law Court and the State Board of Education notice of appeal. The State Board of Education shall file a certified copy of the record with the Administrative Law Court in accordance with its rules of procedure. An appeal from the order of the Administrative Law Court must be taken in the manner provided by the South Carolina Appellate Court Rules.

**State Board of Education, appeals**

SECTION 44. Section 59–25–830 of the 1976 Code is amended to read:

<< SC ST § 59–25–830 >>

Section 59–25–830. The findings of fact by the State Board of Education are final and conclusive as to all parties, but any party, within thirty days, may appeal to the Administrative Law Court as provided in Section 1–23–380(B) and Section 1–23–600(D), to review error of law only, by filing with the State Board of Education and the Administrative Law Court notice of the appeal and of the grounds for the appeal. The state board shall file a certified copy of the record with the Administrative Law Court in accordance with its rules of procedure. A party may have judicial review of the decision of the administrative law judge as provided by law.

**State Board of Education, appeals**

SECTION 45. Section 59–40–90(D) of the 1976 Code is amended to read:

<< SC ST § 59–40–90 >>

(D) A final decision of the state board may be appealed by any party to the Administrative Law Court as provided in Sections 1–23–380(B) and 1–23–600(D).

**Commission on Higher Education, appeals**

SECTION 46. Section 59–58–120 of the 1976 Code is amended to read:

<< SC ST § 59–58–120 >>

Section 59–58–120. A person aggrieved by the final decision of the commission in refusing to issue a license or permit, or revoking or suspending a license or permit previously granted, is entitled to appeal the commission's order to the Administrative Law Court in accordance with its appellate rules of procedure.

**Board of Health and Environmental Control, appeals**

SECTION 47. Section 44–1–50 of the 1976 Code is amended to read:

<< SC ST § 44–1–50 >>

Section 44–1–50. The board may conduct such administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1. The board shall provide for the administrative organization of the department and shall consolidate and merge existing duties, functions, and officers of the former agencies as may be necessary for economic and efficient administration. Provided, however, that the board may appoint such advisory boards as it considers necessary to carry out the functions of Sections 44–1–10 to 44–1–70, and there shall be provided a compensation for their services as provided by the law for members of boards and commissions.

**Board of Health and Environmental Control, appeals**

SECTION 48. Chapter 1, Title 44 of the 1976 Code is amended by adding:

<< SC ST § 44–1–60 >>

Section 44–1–60. (A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this section.

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

(C) The initial decision involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other action of the department shall be a staff decision.

(D) In making a staff decision on any permit, license, certification or other approval, the department staff shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny or condition such permit, license, certification or other approval. At the time that such staff decision is made, the department shall issue a department decision, and shall base its department decision on the administrative record which shall consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification or other approval. The administrative record may also include material readily available at the department, or published materials which are generally available and need not be physically included

in the same file as the rest of the record as long as such materials are specifically referred to in the department decision. The department decision need not be issued for routine permits for which no adverse public comments have been received.

(E) Notice of the department decision must be sent to the applicant, permittee, licensee, and affected persons who have asked to be notified by certified mail, return receipt requested. The department decision becomes the final agency decision fifteen days after notice of the department decision has been mailed to the applicant, unless a written request for final review is filed with the department by the applicant, permittee, licensee, or affected person.

(F) No later than sixty days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten days' written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:

(1) Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the department must explain the department decision and the materials relied upon in the administrative record to support the department decision. The applicant or affected party shall state the reasons for protesting the department decision and may provide evidence to support amending, modifying, or rescinding the department decision. The department may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the department. Any final review conference officer may request additional information and may question the applicant or affected party, the department, and anyone else providing information at the conference.

(2) After the administrative review, the board, its designee, or a committee of three members of the board appointed by the chair shall issue a written final agency decision based upon the evidence presented. The decision may be announced orally at the conclusion of the administrative review or it may be reserved for consideration. The written decision must explain the bases for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. In either event, the written decision must be mailed to the parties no later than thirty days after the date of the administrative review. Within thirty days after the receipt of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. The court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.

(3) Prior to the initiation of the final conference, an applicant, permittee, licensee, or affected person must be notified of their right to request a transcript of the proceedings of the final conference. If a transcript is requested, the applicant, permittee, licensee, or affected person making the request must be responsible for all costs.

(G) Applicants, permittees, licensees, and affected persons are encouraged to engage in mediation during the final agency review process.

(H) The department may promulgate regulations providing for procedures for final administrative reviews.

(I) Any statutory deadlines applicable to permitting and licensing programs administered by the department shall be extended to allow for this final review process.

**Coastal Zone Management Appellate Panel, appeals**

SECTION 49. Section 48-39-180 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 48-39-180 >>

Section 48-39-180. Any applicant whose permit application has been finally denied, revoked, suspended or approved subject to conditions of the department, or any person adversely affected by the permit, may obtain judicial review as provided in Chapter 23 of Title 1, or may file a petition in the circuit court having jurisdiction over the affected land for a review of the department's action "de novo" or to determine whether the department's action so restricts or otherwise affects the use of the property as to deprive the owner of its existing practical use and is an unreasonable exercise of the state's police power because the action constitutes the equivalent of taking without compensation. If the court finds the action to be an unreasonable exercise of the police power it shall enter a finding that the action shall not apply to the land of the plaintiff, or in the alternative, that the department shall pay reasonable compensation for the loss of use of the land. The use allowed by any permit issued under this chapter may, in the discretion of the court, be stayed pending decision on all appeals that may be taken. The court may in its discretion require that a reasonable bond be posted by any person.

**Coastal Zone Management Appellate Panel, appeals**

SECTION 50. Section 48-39-280(A)(4) of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 48-39-280 >>

(4) Notwithstanding any other provision of this section, where a department-approved beach nourishment project has been completed, the local government or the landowners, with notice to the local government, may petition an administrative law judge to move the baseline as far seaward as the landward edge of the erosion control structure or device or, if there is no existing erosion control structure or device, then as far seaward as the post project baseline as determined by the department in accordance with Section 48-39-280(A)(1) by showing that the beach has been stabilized by department-approved beach nourishment. If the petitioner is asking that the baseline be moved seaward pursuant to this section, he must show an ongoing commitment to renourishment which will stabilize and maintain the dry sand beach at all stages of the tide for the foreseeable future. If the administrative law judge grants the petition to move the baseline seaward pursuant to this section, no new construction may occur in the area between the former baseline and the new baseline for three years after the initial beach nourishment project has been completed as determined by the department. If the beach nourishment fails to stabilize the beach after a reasonable period of time, the department must move the baseline landward to the primary oceanfront sand dune as determined pursuant to items (1), (2), and (3) for that section of the beach. Any appeal of an administrative law judge's decision under this section may be made pursuant to Title 23 of Chapter 1.

**Coastal Zone Management Appellate Panel, appeals**

SECTION 51. Section 48-39-280(E) of the 1976 Code, as last amended by Act 607 of 1990, is further amended to read:

<< SC ST § 48-39-280 >>

(E) A landowner claiming ownership of property affected who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error, upon submittal of substantiating evidence, must be granted a review of the setback line, baseline, or erosion rate, or a review of all three. The requests must be forwarded to the department board in accordance with Section 44-1-60 and the final decision of the board may be appealed to the Administrative Law Court as provided in Chapter 23 of Title 1.

**Coastal Zone Management Appellate Panel, appeals**

SECTION 52. Section 48-39-290(D)(4) of the 1976 Code, as last amended by Act 607 of 1990, is further amended to read:

<< SC ST § 48-39-290 >>

(4) A party aggrieved by the decision to grant or deny a special permit application may appeal pursuant to Section 48-39-150(D).

**Intent, conflicts**

SECTION 53. This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.

**Repealer**

<< Repealed: SC ST §§ 58-5-350, 58-5-360, 58-9-1420, 58-9-1440, 58-9-1460, 58-9-1470, 58-9-1480, 58-27-2330 >>

SECTION 54. Sections 58-5-350, 58-5-360, 58-9-1420, 58-9-1440, 58-9-1460, 58-9-1470, 58-9-1480, and 58-27-2330 of the 1976 Code are repealed.

**Savings clause**

SECTION 55. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Severability clause**

SECTION 56. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the

remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 57. This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.

Ratified the 7th day of June, 2006.

Approved the 9th day of June, 2006.

SC LEGIS 387 (2006)

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