

*David Bowers
Planning*



South Carolina Department of Transportation

MINUTES

Department of Transportation Commission

Meeting of

October 28, 1999



Minutes

Department of Transportation Commission

Meeting of

October 28, 1999

MINUTES

DEPARTMENT OF TRANSPORTATION OF SOUTH CAROLINA

Meeting of
October 28, 1999

The regular monthly meeting of the Department of Transportation Commission was held at the Spartanburg County Public Library, 151 South Church Street, Spartanburg, South Carolina at 4:00 p.m. on October 28, 1999. In compliance with the Freedom of Information Act, the news media was advised in writing of the time, date and place of this meeting.

Present

L. Morgan Martin, Chairman Presiding
Hugh Atkins
Arnold S. Goodstein
John N. Hardee
Bobby T. Jones
W. M. "Mat" Self
J. "Moot" Truluck

Absent

Also present: Elizabeth S. Mabry, Executive Director

SECTION 1: The Minutes for the meeting of August 20, 1999, copies of which had been previously mailed to each member of the Commission, were approved.

SECTION 2: The Commission unanimously passed a motion approving the sale of surplus right of way property-land, as shown in detail in the Appendix.

SECTION 3: The Commission unanimously passed a motion approving the sale of surplus right of way property-land, as shown in detail in the Appendix.

SECTION 4: The Commission unanimously passed a motion authorizing the Department to advertise, select and negotiate for architectural engineering services for the Union Maintenance Complex construction, as shown in detail in the Appendix.

SECTION 5: The Commission unanimously passed a motion approving the action of the Department in extending existing construction contracts to include additional work, as shown in detail in the Appendix.

SECTION 6: The Commission unanimously passed a motion adding a road to the State Highway Primary System, as shown in detail in the Appendix.

SECTION 7: The Commission unanimously passed a motion rescinding it's action in adding a section of road to the State Highway System, as shown in detail in the Appendix.

SECTION 8: The Commission unanimously passed a motion correcting the description of sections of roads, as shown in detail in the Appendix.

SECTION 9: The Commission unanimously passed a motion adding roads to the State Highway System, as shown in detail in the Appendix.

SECTION 10: On motion of Commissioner Hardee, seconded by Commissioner Truluck, the Commission unanimously passed a motion approving the request of the Department to advertise, select and negotiate with consulting firms to provide a study of South Carolina High Speed Rail Corridor rail/highway crossings, as shown in detail in the Appendix.

SECTION 11: On motion of Commissioner Goodstein, seconded by Commissioner Hardee, the Commission unanimously passed a motion approving the request of the Department to amend SCDOT regulations so as to have administrative appeals of contractors heard by an Administrative Law Judge. The wording of the amended regulations shall be substantially similar to the draft contained in the Appendix.

SECTION 12: On motion of Commissioner Goodstein, seconded by Commissioner Hardee, the Commission unanimously passed a motion approving the request of the Department to amend the Contractor Pre-qualification Regulations to amend SCDOT regulations to remove the language concerning classification and ratings of contractors. The wording of the amended regulations shall be substantially similar to the draft contained in the Appendix.

SECTION 13: On motion of Commissioner Goodstein, seconded by Commissioner Hardee, the Commission unanimously passed a motion amending the Relocation Regulations to allow that appeals of agency decisions be made to an Administrative Law Judge. The wording of the amended regulations shall be substantially similar to the draft contained in the Appendix.

Minutes, October 28, 1999

SECTION 14: There being no further business to come before the Commission, the meeting was adjourned at 5:00 p.m.

Larry C. Duke
Secretary

L. Morgan Martin
Chairman



APPENDIX

Department of Transportation Commission

Meeting of

October 28, 1999

SURPLUS RIGHT OF WAY PROPERTY - LAND

1. File 23.299A – Southern Connector - Greenville County

During construction of improvements on Southern Connector, under File 23.299A in Greenville County, near the Town of Greenville, the Department acquired right of way for Southern Connector, by Title to Real Estate from Marjorie P. and Hoyt J. Martin dated September 10, 1998.

During negotiations for new right of way between Reece Construction Company and Property Acquisitions and Negotiations, Inc. (the right of way consultant for this project), a settlement was reached whereby Reece would be deeded the remainder of Tract 18A. Therefore, a Gratis Quitclaim Deed for approximately 1.31 of an acre of land to Reece Construction Company was executed on July 26, 1999.

2. File 23.450 – U.S. Route 29 & I-385 Spur- Greenville County

During construction of improvements on U.S. Route 29 under File 23.357 in the City of Greenville, Greenville County, the Department acquired right of way by Right of Way Easement dated May 22, 1957 from the Christ Church (Episcopal).

The City of Greenville has reconstructed the intersection of U.S. 29 (Church Street) and I-385 Spur (East North Street) to remove the channelized right-turn in the northbound direction from U.S. 29 to I-385 Spur. At the request of the adjacent owner to acquire the surplus parcel, it was determined by the Departments Engineering Sections that the parcel could be relinquished. Therefore, a quitclaim deed to Christ Church in consideration of \$13,000 was executed on August 5, 1999.

3. File Project 261- U.S. Route 21 (now U.S. Route 25)-Greenville County

During construction of improvements on U. S. Route 21, under Project 261 (1927) in Greenville County, near the Town of Moonville, the Department acquired right of way for U.S. Route 21, from J. Walter Moon.

At the request of the adjacent owner, Dr. Joseph T. Moon, a request was circulated to the Engineering Sections to determine if a parcel of the old right of way of U.S. Route 21 could be declared surplus. After review it was determined that the parcel was surplus to Department needs. Therefore a Gratis Quitclaim Deed for approximately 0.30 of an acre of land to Dr. Joseph T. Moon was executed on August 5, 1999.

4. File 46.891- S.C. Route 161 Ext. & S.C. Route 122 Ext.- York County

During construction of improvements on S. C. Rtes. 161 & 122 Ext., under File 46.891 in York County, near the City of Rock Hill, the Department acquired right of way for said Routes by Title to Real Estate from Barbara Garcia Talley dated July 10, 1995 (entire Talley Tract was acquired.)

At the request of the adjacent owner, First Land Company, to purchase the remainder of the Talley Tract, a request was circulated to the Engineering Sections to determine if said parcel could be declared surplus. After review it was determined that the parcel was surplus to Department needs, provided control of access is retained along the highway frontage at this location. Therefore, a Quit Claim Deed for approximately 0.966 of an acre of land to First Land Company in consideration of \$55,000.00 was executed on August 20, 1999.

5. File 4.512 – U.S Route I-85 – Anderson County

On June 15, 1993, the Department acquired 13.82 acres adjacent to I-85 from L Square Enterprises, Inc.

At the request of the adjacent owner to purchase the above referenced parcel that has no access except through his property, an investigation was made to determine if said parcel could be declared surplus. After review it was determined that the parcel was surplus to Department needs. Therefore, a Quitclaim Deed for approximately 13.82 acres of land to T. Walter Brashier in consideration of \$67,000 was executed on August 20, 1999.

6. File 43.700 – Road S-43-467- Sumter County

During construction of improvements on S-43-467, under File 43.700 in Sumter County, near the Town of Sumter, the Department acquired right of way for S-43-467, by Title to Real Estate from Lewis E. Leavell, Jr. dated August 10, 1994.

Pursuant to the above Title to Real Estate, the Department was to quit claim any portion of the right of way not needed for the relocation of S-43-467 at this location to Mr. Leavell upon completion of the project. Therefore, a Gratis Quitclaim Deed for approximately 1.27 of an acre of land to Lewis E. Leavell, Jr. was executed on August 20, 1999.

This matter is reported to the Commission in accordance with the requirements of Code Section 57-5-340.

9/15/99

SURPLUS RIGHT OF WAY PROPERTY - LAND

1. File 7.546 SHP-546 – U.S. Route 278 - Beaufort County

During construction of improvements on U.S. Rte. 278, under File 7.546 in Beaufort County, near the Town of Bluffton, the Department acquired right of way for U.S. Rte 278 by Notice of Condemnation from Lois G. McGarvey dated February 16, 1989.

At the request of the adjacent owner to re-purchase a 100' x 50' parcel of right of way at the above location, a request was circulated to the Engineering Sections to determine if said parcel could be declared surplus. After review it was determined that the parcel was surplus to Department needs. Therefore a Quitclaim Deed for 0.11 of an acre of land to Warren W. McGarvey and Dorothy M. McGarvey (Co-Trustees of Lois G. McGarvey Revocable Trust No. 1) in consideration of \$7,150.00 was executed on August 30, 1999.

2. File 4.642 – S.C. Route 28 (S.C. 18)- Anderson County

During construction of improvements on S.C. Route 28 under File 4.642 and Project WPMH-322 in Anderson County, near the City of Anderson, the Department acquired right of way for S.C. Route 28 By-Pass from James H. Hand by Right of Way Easement dated November 17, 1972, from Mrs. Josephine C. Hall by Condemnation Notice dated April 20, 1936, and from Mrs. Jane Major by Condemnation Notice dated April 20, 1936.

At the request of the adjacent owner to acquire a parcel of abandoned right of way as a result of relocating a connector at S.C. Route 28 and S.C. Route 28 By-Pass it was determined that the subject parcel could be relinquished. Therefore, a Quitclaim deed for approximately 0.35 of an acre of land to Hardee's Food System, Inc. was executed in consideration of \$47,000.00 on July 13, 1999.

3. File 810.439.3-Route I-526-Berkeley County

During construction of improvements on Route I-526, under File 810.439.3 (Construction) and 810.522 (Acquisition) in Berkeley County, near Daniel Island, the Department acquired right of way for Route I-526, by Title to Real Estate from The Harry Frank Guggenheim Foundation dated April 14, 1997.

At the request of the District Six Engineering Administrator to reduce the right of way on the off ramp of I-526 on behalf of the Daniel Island Development Company, a request was circulated to the Engineering Sections and the said parcel was declared surplus. Therefore a Gratis Quitclaim Deed for approximately 0.10 of an acre of land to "The Daniel Company, Inc." was executed on September 8, 1999.

4. File 40.446A-Road S-40-222 & S-40-1317-Richland County

During construction of improvements on Road S-40-222, under File 40.345, and Road S-40-1317, under File 40.477 in Richland County, near the Town of Hopkins, the Department acquired right of way for said roads, by Deed to Right of Way from J.H. Rawlinson dated June 6, 1950, Deed to Right of Way from S. Garris Moore dated June 2, 1950 and by Right of Way Easement from Pine Forest Development Company dated July 30, 1963.

During negotiations for Right of Way for the improvements at the above intersection it was agreed that the Department would quitclaim that portion of the existing right of way not needed for the improvements to Hickory Ridge LTD. Therefore a Gratis Quitclaim Deed was executed on July 23, 1999 for approximately 0.81 of an acre to Hickory Ridge LTD.

5. File 39.353 – Road S-135 (Rock Springs Road) – Pickens County

During construction of improvements on Road S-135 (Rock Springs Road), under File 39.353 in Pickens County, near the Town of Easley, the Department acquired right of way for Road S-135 (Rock Springs Road), by Dedication dated July 21, 1949 from The Beltline Act.

The City of Easley constructed improvements at their expense to relocate a portion of Road S-135 at the intersection of Road S-133. It was agreed that the Department would deed a 1.04 acre parcel of the old S-135 right of way to the City. Therefore a Gratis Quitclaim Deed was executed on September 25, 1999 for approximately 1.04 of an acre to The City of Easley.

This matter is reported to the Commission in accordance with the requirements of Code Section 57-5-340.

10/15/99

Facilities Engineering
September 27, 1999

PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
UNION MAINTENANCE COMPLEX CONSTRUCTION
STATE PROJECT NUMBER: U12-9657-CC
MSC: 452

The Department requests Commission approval to advertise, select and negotiate for Architectural Engineering Services for the Union Maintenance Complex Construction.

PROJECT DESCRIPTION: Architectural/Engineering Services for facility design and construction administration for a new Engineering Office, new Shop, new Vehicle Storage Shed and other miscellaneous buildings, paving, parking and necessary utility work. The new complex will be in the Union Industrial Park off US Highway 178. Funds for this project will come from MSC Allotment 452 as part of the Capital Improvements budget.

BUDGET: \$5,500,000.00

Recommendations: 09/16/99

EXTENSION OF A CONSTRUCTION CONTRACT

It is recommended that the Commission approve the action of the Department in extending an existing construction contract to include additional work, as follows:

GREENVILLE COUNTY:

Contract of Ashmore Brothers, Inc. - File 23.80981 - extended to include resurfacing (File No. 23.80981) with asphalt concrete surfacing, full-depth patching, milling of asphalt pavement and pavement markings on S-221 for 0.55 mile.

Estimated Cost of Extension

\$ 47,483.51

This extension was authorized by the Department prior to formal approval by the Commission since the adjacent work had reached such a stage of completion that the contractor involved could not accept the additional work unless it were authorized without delay.

COPIED TO CA 12
12-17-99

TYPED IN COMPUTER 1-10-2000

Recommendations 9/16/99

ADDITION TO STATE PRIMARY SYSTEM

Pursuant to the provisions of Section 57-5-60 of the Code of Laws of South Carolina 1976, it is recommended the Commission add the below section of road to the State Highway Primary System as follows:

Addition Number

Description

Chesterfield County

X 1048 X ✓

Jefferson Bypass from a point 1.77 miles northwest of S. C. Route 265 north of Jefferson to a point 1.44 miles southeast of S. C. Route 265 south of Jefferson – approximately 3.21 miles

To be designated S. C. Route 151

Note: This addition is recommended to show the road facility as was built by File 13.574. The old location of S. C. Route 151 through Jefferson will be re-designated S. C. Route 151 Business.

Recommendations 9/16/99

ORIGINAL ADD UPDATED

RESCIND ACTION ADDING ROAD TO THE STATE HIGHWAY SYSTEM

It is recommended the Commission rescind its action adding the following section of road of road to the State Highway System as follows:

Addition Number

Description

Colleton County

X 599 ✓

Street in and adjacent to Cottageville from U. S. Route 17-A approximately 0.35 mile northwest of Road S-35 easterly and northeasterly – approximately 0.9 mile

Designated S-599

Added to System 5/16/72

Note: This removal is recommended since this road was deleted from the construction program under File 15.433 due to right-of-way difficulties. This road is to be constructed by Colleton County.

ORIGINAL ADD UPDATES

Recommendations 9/16/99

CORRECTION OF DESCRIPTION OF STATE HIGHWAYS

It is recommended the Commission correct the description of the following sections of road as follows:

Addition Number

Description

Lexington County

X 1791 ✓
A frontage road west of I-26 from S-671 (Milepost 104) southeasterly to S-36 – approximately 2.32 miles
Designated S-1791
Added to System 3/16/89
Note: S-1791 was relocated by Files 32.761, 32.761.1, 32.761B, 32.809.1, 40.147A, and 40.147A.8. The above revision is recommended to provide the new terminus.

Y 1842 ✓
A frontage road (Fernandina Road) east of I-26 from Richland County Line (Milepost 106) near S-42 northwesterly to Richland County Line – approximately 2.18 miles
Designated S-1842
Added to System 3/16/89
Note: S-842 was relocated by Files 32.761, 32.761.1, 32.761B, 32.809.1, 40.147A, and 40.147A.8. It crosses into Richland County and then crosses back into Lexington County. The above section covers the first section from the Richland County Line to the Richland County Line.

Richland County

Y 1480 ✓
Hunt Club Road near Dentsville from Road S-1677 (O'Neal Court Extension) easterly to Road S-2354 (Chatsworth Street) – approximately 0.72 mile
Designated S-1975
Added to System 6/18/64
Revised 3/17/77
Note: This revision is recommended to correct the beginning point to S-1677 rather than S-151 (Decker Boulevard) and to change the mileage from 0.80 to 0.72 mile after construction by File 40.397A & File 40.397A1.

Recommendations 9/16/99

ADDITIONS TO STATE HIGHWAY SYSTEM

It is recommended the Commission add the following sections of road to the State Highway System as follows:

Addition Number

Description

Hampton County

- | | |
|---------|--|
| ✓ 835 ✓ | Extension of Road S-567 (Helen Street) in the Town of Hampton extending from end of present pavement at Road S-47 extending to Road S-741 -
to Road S-741 -
approximately 0.11 mile
To be designated S-567 |
| ✓ 836 ✓ | Clifton Drive (dirt road) extending from Road S-41 southwesterly -
approximately 0.73 mile
To be designated S-836 |
| ✓ 837 ✓ | Lonesome Dove Road (dirt road) extending from Road S-836 (Clifton Drive) westerly -
approximately 0.19 mile
To be designated S-837 |
| ✓ 838 ✓ | Shaffer's Corner Road (dirt road) near the Town of Varnville extending from Road S-141 southeasterly -
approximately 0.45 mile
To be designated S-838 |
| ✓ 839 ✓ | Goodwill Church Road (dirt road) near the Town of Estill extending from Road S-522 southeasterly to Goodwill Church -
approximately 0.44 mile
To be designated S-839 |
| ✓ 840 ✓ | Extension of Road S-69 (Deer Drive) (dirt road) near the Town of Gifford from end of present pavement on Road S-69 southerly to Road S-41 -
approximately 0.34 mile
To be designated S-69 |

Recommendations 9/16/99
Additions to State Highway System
Page Two

Addition Number

Description

Hampton County Continued

- ✓ 841 ✓ Extension of Road S-89 (Mill Pond Road) (dirt road) near the Town of Varnville extending from end of present pavement on Road S-89 northeasterly to Road S-381 - approximately 1.06 miles
To be designated S-89
- ✓ 842 ✓ County dirt road in the Town of Estill extending from Road S-303 (Long Street) forming a loop to Road S-303 (Long Street) - approximately 0.2 mile
To be designated S-842
- ✓ 843 ✓ Extension of Road S-303 (Long Street) in the Town of Estill extending from present end of pavement on Road S-303 extending from Road S-108 (Lawton Street) to Road S-167(Morrison Avenue) - approximately 0.31 miles
To be designated S-303

Lexington County

- ✓ 1923 ✓ A frontage road west of I-26 from S-1791 southwesterly to Forest Grove Road - approximately 0.11 mile
To be designated S-1923
Note: Road S-1791 was relocated by Files 32.761, 32.761.1, 32.761B, 32.809.1, 40.147A and 40.147A.8. The above addition is an access road to Forest Grove Road which is currently being maintained by the Department.
- ✓ 1924 ✓ A frontage road (old location of S-1792) west of I-26 from S-1792 (Milepost 104) southeasterly - approximately 0.34 mile
To be designated S-1924
Note: Road S-1791 was relocated by Files 32.761, 32.761.1, 32.761B, 32.809.1, 40.147A and 40.147A.8. The above section of the old S-1792 remains to provide access to the area. This road is being added since it is currently being maintained by the Department.

Recommendations 9/16/99
Additions to State Highway System
Page Three

Addition Number

Description

Lexington County Continued

✓ 1925 ✓

A frontage road (old Section of S-1842) east of I-26 from Richland County Line (Milepost 104) northerly to the Richland County Line – approximately 0.8 mile

To be designated S-1925

Note: Road S-1842 frontage road was relocated by Files 32.761, 32.761.1, 32.761B, 32.809.1, 40.147A and 40.147A.8. It crosses into Richland County and then crosses back into Lexington County. The above section covers the section once it crosses into Lexington County. It is recommended that the above section be added since it is currently being maintained by the Department.

Richland County

✓ 3044 ✓

O'Neal Court Extension near Columbia Mall from Jackson Creek southeasterly to S-1515 (Decker Boulevard) – approximately 0.4 mile

To be designated S-1677

Note: The above addition is recommended since it is already being maintained by the Department after construction by File 40.397A & File 40.397.A1.

✓ 3045 ✓

A frontage road east of I-26 (Milepost 104) from S-32-1842 at the Lexington County Line northerly to the Lexington County Line – approximately 0.24 mile

To be designated S-3045

Note: Road S-1842 frontage road was relocated by Files 32.761, 32.761.1, 32.761B, 32.809.1, 40.147A and 40.147A.8. It crosses into Richland County and then crosses back into Lexington County. A new addition will be added to cover the remaining portion of S-1842. It is recommended that the above section be added since it is currently being maintained by the Department.

Recommendations 10/20/99

ADDITION TO STATE HIGHWAY SYSTEM

It is recommended the Commission add the following section of road to the State Highway System as follows:

Addition Number

Description

Aiken County

X

2304

X

Powell Pond Road (CR-137) extending from Road S-2175 (I-20 frontage road)
extending to S. C. Route 19 –
approximately 1.38 miles
To be designated S-2304

October 25, 1999

Request for Consultant Services
to study South Carolina's High Speed Rail Corridors
for improvement and upgrades to crossing protection.

The Department requests Commission approval to advertise, select and negotiate with consulting firms to provide a study of South Carolina High Speed Rail Corridor rail/highway crossings.

The project would involve the following items:

- 1) Update South Carolina's national inventory of public and private rail/highway crossing.
- 2) Determine the types of grade crossing protection required and/or grade separations at crossings and the realignment of crossings for possible consolidation or closings.
- 3) determine the needed improvements and estimated costs to upgrade the corridors for high-speed passenger rail service.
- 4) Aid in the development of the Immediate Program and the Six-Year and Long Range Plans.

This project budget is \$150,000 and is funded with one hundred per cent federal funds from section 1103© of TEA-21.

63-300. Prequalifications of eligible contractors.

Persons, firms or corporations eligible to bid as a prime contractor on construction work for the Department of Transportation shall have prequalified as herein required. No bids for such work will be considered by the Department of Transportation except from persons, firms or corporations that have so prequalified.

63-301. Basis for prequalification.

Prequalification will be based on a verified showing of experience, responsibility record, and available equipment. A prerequisite to prequalification will be a sworn statement furnished to the Department by the applicant. The statement must be made on a form provided by the Department of Transportation and must include all information required by the Department.

Contractors making application for prequalification for the first time must file their statements with the Department at least seven (7) days prior to the date on which they desire to become qualified for bidding.

63-302. Certificate.

Each contractor qualifying under these rules and regulations will be furnished a Prime Contractor's Prequalification Certificate showing the contractor is prequalified and the expiration date of the certificate

63-303. Contents of sworn statement.

The sworn statement called for in 63-301 shall be made by filling in the Department's standard questionnaire form and shall show:

- (a) The experience of the applicant in handling the character of work for which it desires to become an eligible contractor.
- (b) A description of the equipment owned or leased by the applicant.
- (c) A list of references, giving names of responsible persons having knowledge of the applicant's character, experience and capabilities.
- (d) Such other information as may be called for in the Department's form.

63-304. Failure to carry out contract as disqualifications.

No applicant who has failed to carry out any contract awarded by the South Carolina Department of Transportation will be qualified as eligible. This requirement, however, shall not serve to bar persons having so failed from serving as employees of otherwise eligible contractors.

63-305. Disqualification of unsatisfactory contractors.

A contractor whose progress on work underway is not satisfactory to the Department will not be awarded additional work. Contractors whose conduct of their work shows incompetency or irresponsibility may be disqualified without notice.

63.306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

- (1) The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.
- (2) The opportunity to bid on contracts, to participate as a subcontractor or to supply goods or services to the Department is a privilege, not a right.
- (3) In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.
- (4) Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

B. Definitions.

- (1) **Affiliate:** Any business entity having direct or indirect control over, or which is controlled directly or indirectly by, any person who has been disqualified or suspended. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.
- (2) **Business Entity:** A corporation, partnership, limited partnership, association or sole proprietorship.
- (3) **Civil Judgment:** The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating a civil liability for the wrongful acts complained of.
- (4) **Commission:** The Commission of the Department of Transportation.
- (5) **Contractor's Certificate.** A Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.
- (6) **Conviction:** A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of non contendere.
- (7) **Department:** South Carolina Department of Transportation.
- (8) **Disqualification:** An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier or in any other role under any contract with the Department during the period of disqualification.

(9) Director: The Director of the South Carolina Department of Transportation.

(10) Person: Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.

(11) Principal: Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.

(12) Suspension: An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.

(13) Unlawful payment or gratuity: Transfer of anything of value to a Department employee in violation of state statutory or regulatory law or Departmental policy.

C. Disqualification. Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

(1) Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(2) Civil judgment for any acts or omissions reflecting a lack of business integrity or business honesty, including but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(3) Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(4) Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

(5) Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

(6) Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

(7) Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Director.

(8) Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

D. Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of the suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

E. Procedures.

(1) Notice of disqualification suspension, or sanctions may be issued by the Director and shall include:

(a) A reference to the particular sections of the statutes, regulations and rules involved;

(b) A short and plain statement of the matters asserted

(4) The SCDOT shall have broad equitable powers in the imposition of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

(a) disqualification for a specific period of time,

(b) monetary penalty; and

(c) restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions, and

(d) conditions which must be met prior to restoration of a Contractor's Certificate.

(5) A person may seek relief from the disqualification or suspension by requesting a contested case hearing before the Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT's Notice of Disqualification or Suspension.

F. Scope of Disqualification.

- (1) In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension/disqualification. A violation of the terms of any suspension/disqualification may be the basis of further sanctions.
- (2) In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.
- (3) In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

H. Reinstatement of Contractor's Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor's Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor's Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor's Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre-qualification of bidders.

63-300. ~~Classifications and ratings~~ Prequalifications of eligible contractors.

~~Effective January 1, 1960~~ Persons, firms or corporations eligible to bid as a prime contractor on construction work ~~on~~ for the State Highway Department of Transportation shall have prequalified as herein required. No bids for such work will be considered by the State Highway Department of Transportation after that date except from persons, firms or corporations that have so prequalified. ~~Each contractor will be given a rating designed to indicate the kind and quantity of work which he is eligible to be awarded. Eligible contractors will be classified as; paving contractors—these may be awarded projects that include paving, grading and minor drainage structures; grading contractors—these may be awarded projects that include grading and minor drainage structures; bituminous surfacing, grading and minor drainage structures; bridge contractors—these may be awarded projects that consist of bridges and other similar structures; seeding and grassing contractors; hydraulic embankment contractors; jetty or groin contractors; sign contractors; and general contractors—these may be awarded projects that embrace any of the foregoing classifications. Each contractor who qualifies for any one of the classifications will be rated according to the quantity of work that his experience (liquid capital) and responsibility record would, in the judgment of the Highway Department, warrant him to undertake.~~

63-301. ~~Basis for prequalification classifications and ratings; sworn statement.~~

Prequalification ~~Classifications and ratings~~ will in each case be based on a verified showing of experience, ~~(net liquid assets)~~ responsibility record, and available equipment. A prerequisite to ~~classification and ratings~~ prequalification will be a sworn statement furnished to the Department by the applicant. ~~this~~ The statement ~~to~~ must be made on a form provided by the Department of Transportation and ~~to carry~~ must include all information required by the Department.

Contractors making application for prequalification for the first time ~~and those desiring to revise their ratings~~ must file their statements with the Department at least seven (7) days prior to the date on which they desire to become qualified for bidding. ~~However, on projects of value less than \$20,000.00 contractors may bid after furnishing the required statements as to experience, capital and record of responsibility, without regard to the time limitation referred to above.~~

63.302 Certificate.

Each contractor qualifying under these rules and regulations will be furnished a Prime Contractor's Prequalification Certificate showing the contractor is prequalified and the expiration date of the certificate

~~63.302~~ 63-303. Contents of sworn statement.

The sworn statement called for in 63-301 ~~above~~ shall be made up by filling in the Department's standard questionnaire form and shall show:

- (a) The experience of the applicant in handling the character of work for which ~~he~~ it desires to become an eligible contractor.
- ~~(b) The liquid assets of the applicant available for carrying on construction work.~~
- (b)(c) A description of the equipment owned or leased by the applicant. ~~suitable for carrying on such work.~~
- (c)(d) A list of references, giving names of responsible persons having knowledge of the applicant's character, experience and capabilities.

(d)(e) Such other information as may be called for in the Department's form.

63-303. Rating Classification rules.

Qualified contractors will be rated according to the following rules:

(a) ~~Contractors must show net liquid assets (which may include verified bank credit) at least equal to 15% of the capacity or eligibility rating that will be assigned to them; that is to say, no contractor will be eligible to bid on any project of value so great that his net liquid assets will not be at least equal to 15% of the contract amount.~~

(b) ~~In addition to the net liquid assets necessary to be shown for a given capacity rating, Contractors must also show that they possess and have available appropriate and sufficient equipment to perform satisfactorily the kind and quantity of work contemplated by the classification and rating, or in lieu of actual equipment on hand, the showing of net liquid assets must be sufficient to provide the necessary equipment. in addition to meeting the percentage requirements stated above.~~

(c) ~~The experience showing made by qualified contractors will also affect their capacity ratings. Contractors who have performed work for the South Carolina State Highway Department in a satisfactory manner and who have demonstrated their responsibility to the satisfaction of the Department will be assigned capacity ratings without further limitations than those indicated by Paragraphs (a) and (b) above the classification in each case to be determined by the quality of work hitherto performed.~~

(d) ~~Contractors who have gained their experience and established their responsibility on comparable work for other agencies will be given capacity ratings commensurate with the magnitude of such work. unless limited by their net liquid assets and equipment as provided in Paragraphs (a) and (b) above. The classification in each case will be appropriate to the experience showing.~~

(e) ~~The capacity ratings referred to herein represent the largest single contract that the contractor may be awarded.~~

63-304. Failure to carry out contract as disqualifications.

No applicant who has failed to carry out any contract awarded him by the South Carolina State Highway Department of Transportation will be qualified as eligible. ~~in any classification.~~ This requirement, however, shall not serve to bar persons having so failed from serving as employees of otherwise eligible contractors.

63-305. Ratings limited by requirement affording maximum restrictions.

~~Classifications and capacity ratings of qualified contractors will be fixed by the Department subject to the foregoing limitations, the rating in each case to be limited by the requirement affording the maximum restriction.~~

63-306. Certificate. Contractor's Certificate; modification of ratings.

~~Each contractor qualifying under these rules and regulations will be furnished a prime contractor Precontractor's Certificate showing his classifications and ratings and bids form him will be and considered only for project within the limitations thus fixed. At its discretion the Department may call on any, or all, contractors for current statements and the contractor's rating may be modified to conform with the new showing, provided that should any contractor fail to~~

~~comply with the Department's request for additional sworn statement within thirty (30) days after they are called for, then the Department may change his capacity rating or declare him ineligible pending receipt of the new statement.~~

~~63-307~~ 63-305. Disqualification of unsatisfactory contractors.

~~Regardless of capacity rating, no~~ A contractor whose progress on work underway is not satisfactory to the Department will not be awarded additional work. ~~Also, Contractors whose~~ conduct of their work shows incompetency or irresponsibility may be disqualified without notice.

~~63-308. Validation of prior certificates.~~

~~Certificates of classification heretofore issued by the Department, and currently in effect, are hereby validated; and the same are hereby subject to all the provisions of these Rules and Regulations the same as if they had been issued under these Rules and Regulations.~~

63.306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

- (1) The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.
- (2) The opportunity to bid on contracts, to participate as a subcontractor or to supply goods or services to the Department is a privilege, not a right.
- (3) In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.
- (4) Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

B. Definitions.

- (1) Affiliate: Any business entity having direct or indirect control over, or which is controlled directly or indirectly by, any person who has been disqualified or suspended. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.
- (2) Business Entity: A corporation, partnership, limited partnership, association or sole proprietorship.
- (3) Civil Judgment: The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating a civil liability for the wrongful acts complained of.

- (4) Commission: The Commission of the Department of Transportation.
- (5) Contractor's Certificate. A ~~certificate~~ Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.
- (6) Conviction: A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of non contendere.
- (7) Department: South Carolina Department of Transportation.
- (8) Disqualification: An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier or in any other role under any contract with the Department during the period of disqualification.
- (9) Director: The Director of the South Carolina Department of Transportation.
- (10) Person: Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.
- (11) Principal: Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.
- (12) Suspension: An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.
- (13) Unlawful payment or gratuity: Transfer of anything of value to a Department employee in violation of state statutory or regulatory law or Departmental policy.

C. Disqualification. Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

- (1) Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.
- (2) Civil judgment for any acts or omissions reflecting a lack of business integrity or business honest, including but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.
- (3) Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or

omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(4) Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

(5) Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

(6) Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

(7) Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Director.

(8) Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

D. Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of the suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

E. Procedures.

(1) Notice of ~~proposed~~ disqualification ~~or suspension, or sanctions~~ may be ~~initiated~~ issued by the ~~Department's Legal Division~~ Director and shall include:

(a) ~~A statement of the time, place and nature of the hearing;~~

(b) ~~A statement of the legal authority and jurisdiction under which the hearing is to be held;~~

(c) ~~(a)~~ A reference to the particular sections of the statutes, regulations and rules involved;

~~(d)(b)~~ A short and plain statement of the matters asserted. If the Department is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

~~(2)~~ Any persons subject to a proposed disqualification shall be given a hearing not less than thirty days following notice and shall be entitled to all rights provided by the then existing provisions of the South Carolina Administrative Procedures Act. Any party to such proceedings may cause to be taken depositions within or without the state, including de bene esse depositions.

~~(3)~~ Any hearing held pursuant to this regulation shall be before a panel of not less than three or more than five Department employees appointed by the Director, with approval of a majority of the Commission. A legal counsel may be assigned to the panel to assist it in the conducting of the hearing and in the preparation of an order.

~~(4)~~ (4) The panel SCDOT shall have broad equitable powers in the imposition of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

~~(a)~~ disqualification for a specific period of time,

~~(b)~~ monetary penalty; and

~~(c)~~ restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions, and

~~(d)~~ The panel may also impose upon any person disqualified or suspended conditions which must be met prior to restoration of a Contractor's Certificate.

~~(5)~~ The decision of the panel shall be the final agency decision unless any party to the proceeding files exceptions and submits a brief in support to the Directory within thirty days of receipt of the panel's decision. Upon timely receipt of exceptions and a brief, the Director shall hear oral argument and render a final agency decision on the matter. Any party seeking to uphold the panel's decision shall also have the opportunity to submit a brief to the Director prior to a final decision.

~~(5)~~ A person may seek relief from the decision of the panel disqualification or suspension by requesting a contested case hearing before the Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT's Notice of Disqualification or Suspension.

F. Scope of Disqualification.

(1) In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension/disqualification. A violation of the terms of any suspension/disqualification may be the basis of further sanctions.

(2) In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the

Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.

(3) In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

H. Reinstatement of Contractor's Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor's Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor's Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor's Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre-qualification of bidders.



South Carolina
Department of Transportation
Office of Legal Services

Hart Baker
Chief Counsel
Linda C. McDonald
Deputy Chief Counsel

Assistant Chief Counsel
Natalie J. Moore
Glennith C. Johnson
Barbara M. Wessinger
Deborah Brooks Durden
and Legislative Liaison
Beacham O. Brooker, Jr.

MEMORANDUM

To: Elizabeth S. Mabry, Executive Director
Robert J. Probst, Chief of Staff
Hart Baker, Director of Legal Services
Linda C. McDonald, Deputy Chief Counsel
Don Freeman, State Highway Engineer
Danny Shealy, Director of Construction

From: Deborah Brooks Durden, Assistant Chief Counsel

Date: 15 October 1999

Re: Relocation Regulations

Attached is a copy of the proposed Amended Relocation Regulations for Commission approval.

Under the proposed amendments, current Regulation 63-321 would be deleted entirely. This section is outdated and unnecessary since the issues covered there are controlled by state statute and federal regulations. Regulation 63-322 would be revised to set forth a new procedure for review of relocation assistance eligibility decisions. Under the new regulations, an initial review would be conducted by the SCDOT Executive Director. An appeal to the Administrative Law Judge Division would follow. The revised wording for Section 63-322 is attached. I have included a copy with just the new wording and also a copy of a redlined version showing the changes from the old regulation.

DBD/dla
attachments
cc: Alice Davis, Administrative Coordinator

DBD/dla

63-322. Review of Applications for Relocation Assistance Payments Under Chapter 11 of Title 28 of the 1976 Code.

- A. An applicant for a relocation assistance payment under Chapter 11 of Title 28 of the 1976 Code shall be notified promptly, in writing, of (1) his eligibility for payment claimed, (2) the amount, if any, to which he may be entitled, and (3) the time and manner in which such payment, if any, will be made. Such notification shall also advise the applicant of his right to review and appeal and the procedures for review and appeal if he is dissatisfied with the Department's decision with respect to his application for a relocation assistance payment.
- B. All petitions or requests for review of a decision by the Department's Right-of-Way Office with respect to an applicant's eligibility, or the amount of a payment, if any, shall be submitted, in writing and must be filed within sixty (60) days of the Department's determination of the displaced person's claim. A form for use in filing requests for review may be requested from the Department's Right-of-Way Office.
- C. If a timely request for review is filed, the SCDOT Executive Director or her designee will review the application and all pertinent justification and other material submitted by the applicant as well as other available information. The Executive Director will furnish the applicant with a written decision following the review.
- D. An applicant may seek relief from the decision of the Executive Director by requesting a contested case hearing before the Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of the Executive Director's decision.
- E. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

63-322. **Review of Applications for Relocation Assistance Payments Under Chapter 11 of Title 28 of the 1976 Code.**

A. An applicant for a relocation assistance payment under Chapter 11 of Title 28 of the 1976 Code shall be notified promptly, in writing, of (1) his eligibility for payment claimed, (2) the amount, if any, to which he may be entitled, and (3) the time and manner in which such payment, if any, will be made. Such notification shall also advise the applicant of his right to review and appeal and the procedures for review and appeal if he is dissatisfied with the Department's decision with respect to his application for a relocation assistance payment.

B. All petitions or requests for review of a ~~final~~ decision by the Highway Department's Right-of-Way Office with respect to an applicant's eligibility, or the amount of a payment, if any, shall be submitted, in writing, ~~on a form to be provided by the Department's Right-of-Way Office~~ and must be filed ~~within the claimant's period of eligibility.~~ sixty (60) days of the Department's determination of the displaced person's claim. A form for use in filing requests for review may be requested from the Department's Right-of-Way Office.

C. If a timely request for review is filed, the SCDOT Executive Director or her designee will review the application and all pertinent justification and other material submitted by the applicant as well as other available information. The Executive Director will furnish the applicant with a written decision following the review.

D. ~~—~~ An applicant may seek relief from the decision of the Executive Director by requesting a contested case hearing before the Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of the Executive Director's decision.

E. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

C. ~~— A person who files a proper petition or request for review, within the time specified in this regulation, shall be given (1) full opportunity to be heard and (2) a prompt decision, in writing, setting forth the reasons for such decision, upon receipt of a proper request or petition for review. Receipt of such request or petition shall be promptly acknowledged and the applicant, or his attorney, shall be advised, in writing, of the time, date and place at which the petition or request for review shall be considered. An applicant may waive a formal hearing and submit written information or argument for the record. Failure of an applicant to appear at a hearing for which a date has been set shall be deemed a waiver of any right that he may have to a hearing under Chapter 11 of Title 28 of the 1976 Code and consent to disposition of the petition or request for review on the basis of such information as may be available.~~

~~D. — Hearings shall be held at the offices of the South Carolina State Highway Department in Columbia, South Carolina, at a time and date fixed by the Chief Highway Commissioner or by such other Highway Department official as he may designate, in writing. Hearings shall be held before the Chief Highway Commissioner, or at his discretion, before the State Highway Engineer or the Secretary-Treasurer, or both, as a panel before which a hearing will be held, in which event the panel's decision shall be final and not subject to further review.~~

~~E. — If a hearing is held by the State Highway Engineer or by the Secretary-Treasurer, they shall submit recommended findings and a proposed decision to the Chief Highway Commissioner for a final decision and a copy of such recommended findings and decision shall be mailed to the applicant or to his attorney. The applicant may, within ten days of the mailing of such notice, file with the Chief Highway Commissioner his exceptions. In the absence of exceptions, the Chief Highway Commissioner may, on his own motion, within fifteen days after receipt of the recommendations and proposed decision of the State Highway Engineer or Secretary-Treasurer, serve on the applicant notice that he will review such recommended findings and proposed decision. In the absence of either exceptions or a notice of a review, the recommended findings and proposed decision submitted by the State Highway Engineer or by the Secretary-Treasurer shall constitute the final decision of the Chief Highway Commissioner.~~

~~F. — All recommended findings and decisions of the State Highway Engineer or of the Secretary-Treasurer shall state whether or not an applicant is eligible for a relocation assistance payment and shall specify the amount, if any, to which an applicant is entitled. Such recommended findings and decisions shall be promptly transmitted to the Chief Highway Commissioner, who may approve, disapprove, modify, vacate, reverse, or remand any recommended decision of the State Highway Engineer or of the Secretary-Treasurer.~~

~~G. — If an applicant is represented by an attorney, any notice required by this regulation may be mailed or delivered to such attorney instead of the applicant, and notice to an applicant's attorney shall constitute notice to an applicant himself.~~

~~H. — Adoption of this regulation does not confer a legal right to a formal hearing upon any person who may be affected by acquisition of right-of-way for a State highway and the Chief Highway Commissioner may, in his discretion, dismiss a petition or request for review without a formal hearing if, in his judgment, such petition or request is frivolous or without merit.~~

~~I. — This regulation shall become effective when filed in the Office of the Secretary of State.~~

RECEIVED

NOV 22 1999

PLANNING

Total Printing Cost - \$35.25
Total Number of Documents Printed - 25
Cost Per Unit - \$1.41