

STATE BUDGET AND CONTROL BOARD

Meeting of Tuesday, December 20, 2011 -- 10:00 A. M.

Room 252, Edgar A. Brown Building

AGENDA INDEX

<u>Item</u>	<u>Agency</u>	<u>Subject</u>
A.		ADOPTION OF PROPOSED AGENDA
B.		REGULAR SESSION
1.	Division of General Services	Emergency Regulations prohibiting use of State House grounds and buildings for camping, sleeping or any living accommodation and confirming the hours the State House Building is open to the general public; Authorization to the Division of General Services to draft regulations for the use of the State House grounds, steps and lobby areas and take all steps and proceedings necessary to promulgate such regulations.

AGENCY: Division of General Services

SUBJECT: Emergency Regulations prohibiting use of State House grounds and buildings for camping, sleeping or any living accommodation and confirming the hours the State House Building is open to the general public; Authorization to the Division of General Services to draft regulations for the use of the State House grounds, steps and lobby areas and take all steps and proceedings necessary to promulgate such regulations.

The Budget and Control Board is asked to approve the immediate promulgation of emergency regulations prohibiting the use of the State House grounds and all buildings located on the grounds for camping, sleeping or any living accommodation and confirming the hours that the State House Building is open to the general public.

It is necessary to immediately promulgate emergency regulations to implement the past policy of the Division of General Services prohibiting camping, sleeping, and taking up any living accommodations upon the State House grounds and all buildings located on the grounds in order to protect the public health, safety and welfare, including the public fisc. It is also necessary to immediately promulgate emergency regulations to address this issue because of concerns with public health and safety and public liability. In addition, with the 2012 session of the General Assembly commencing on January 10, 2012, it is imperative to confirm by regulation the hours that the State House Building is open to the general public.

The Budget and Control Board is also asked to authorize the Division of General Services to draft regulations for the use of the State House grounds, steps and lobby areas and take all steps and proceedings necessary to promulgate such regulations.

BOARD ACTION REQUESTED:

- A) Approve the immediate promulgation of emergency regulations prohibiting the use of the State House grounds and all buildings located on the grounds for camping, sleeping or any living accommodation and confirming the hours that the State House Building is open to the general public.
- B) Authorize the Division of General Services to draft regulations for the use of the State House grounds, steps and lobby areas and take all steps and proceedings necessary to promulgate such regulations.

ATTACHMENTS:

Emergency Regulations for Use of State House and State House Grounds
Section 10-1-30 of the South Carolina Code of Laws
Section 1-23-130 of the South Carolina Code of Laws

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STATE BUDGET AND CONTROL BOARD

CHAPTER 19

Statutory Authority: 1976 Code Section 10-1-30

19.480. Use of State House, State House Grounds, State Buildings and State Grounds.

Emergency Situation:

The South Carolina Budget and Control Board has determined that, in order to protect the public health, safety and welfare including the public fisc, it is necessary to enact an emergency regulation to implement the past policy of the Division of General Services prohibiting camping, sleeping, and taking up living accommodations upon State House grounds and all buildings located on the grounds. The Board further believes that, with the 2012 session of the General Assembly commencing on January 10, 2012, it is imperative to confirm by regulation the hours that the State House Building is open to the general public.

The Board believes that existing statutes and its past policy provided the authority for prohibiting camping, sleeping, and taking up living accommodations upon State House grounds and all buildings located on the grounds. However, by Order issued on December 14, 2011, the United States District Court ruled that the Board was required to enact a regulation to effect such a prohibition. The Board is concerned that the Order has the effect of invalidating its authority to regulate the types of conduct specifically addressed in the emergency regulation. Therefore, given the Order of the District Court, the Board has determined that an emergency regulation is needed to address this issue immediately because of concerns with the public health and safety and public liability.

The Board recognizes that the presence of persons living on the State House grounds increases the opportunities for criminal conduct and that persons when asleep in tents or on the ground are more vulnerable to criminal attack as well as the commission of property crimes. The Board has been informed of recent confrontations involving the group of individuals currently living on the State House grounds which has caused the group to form a "protection unit" to stand watch and defend the group during night time hours when the individuals are sleeping. The Board believes that the use of such a "protection unit" raises serious public safety concerns in addition to public liability concerns that need to be addressed immediately. The Board is concerned not only about the confrontations that have given rise to the formation of the "protection unit" but is likewise concerned regarding any actions that may be taken by the "protection unit" and the potential liability for those actions.

The Board further recognizes that there exists a significant risk of liability arising from the use of the State House grounds and buildings for camping, sleeping, and living accommodation purposes. Under South Carolina premises liability laws, a property owner has a duty to reasonably provide for the safety and security of those persons lawfully on its property. The habitation of the State House grounds and buildings for camping, sleeping, and living accommodation purposes increases the risk of liability. This increased risk of liability is imminent given the present use of the State House grounds by individuals for camping, sleeping, and living accommodations purposes.

The Board further recognizes that the presence of persons living on the State House grounds has an impact on the public health. The continuous storage of food items and the preparation and consumption of food multiple times per day for an extended period of time raises health and

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safety issues and further has the effect of attracting wildlife to the grounds. In addition, the grounds and surrounding areas do not provide those living on the grounds with appropriate, sanitary bathroom facilities for 24 hours a day.

Text:

19-480. Use of State House and State House Grounds.

A. "State House grounds" means the steps of the State House Building and the outside areas of the Capitol Complex which is that area bounded by Gervais, Sumter, Pendleton and Assembly Streets.

B. The use of the State House grounds and all buildings located on the grounds for camping, sleeping, or any living accommodation purposes is strictly prohibited. This prohibition is inclusive of sleeping, making preparations to sleep (including the laying down of bedding for the purpose of sleeping), storing personal belongings, making any fire, using any camping tents, using other structures for sleeping, doing any digging or earth breaking, and carrying on cooking activities. This prohibition is strictly applicable regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

C. The State House Building is open to the general public Monday through Friday from 9:00 a.m. to 5:00 p.m., except for state holidays and other instances in which state government is closed. When a daily session of the General Assembly or of either house thereof convenes on Saturday or Sunday or a daily session extends beyond 5:00 p.m. or convenes after 5:00 p.m., the State House Building remains open to the general public until the session is adjourned.

SECTION 10-1-30. Use of State House lobbies, steps, and other public buildings and grounds.

The Director of the Division of General Services of the State Budget and Control Board may authorize the use of the State House lobbies, the State House steps and grounds, and other public buildings and grounds in accordance with regulations promulgated by the board. The director shall obtain the approval of the Clerk of the Senate before authorizing any use of the Gressette Building and shall obtain the approval of the Clerk of the House of Representatives before authorizing any use of the Blatt Building. The regulations must contain provisions to insure that the public health, safety, and welfare will be protected in the use of the areas including reasonable time, place, and manner restrictions and application periods before use. If sufficient measures cannot be taken to protect the public health, safety, and welfare, the director shall deny the requested use. Other restrictions may be imposed on the use of the areas as are necessary for the conduct of business in those areas and the maintenance of the dignity, decorum, and aesthetics of the areas.

SECTION 1-23-130. Emergency regulations.

(A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

(B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the division pursuant to Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111.

(C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

(D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refileing emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

(E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

Agency Name: Budget and Control Board

Statutory Authority: 10-1-30

Document Number: 4277

Final in State Register Volume and Issue:36/1

Status: Emergency, effective for 90 days

Subject: Use of State House, State House Grounds, State Buildings and State Grounds

History: 4277

<u>By</u>	<u>Date</u>	<u>Action Description</u>	<u>Jt. Res. No.</u>	<u>Expiration Date</u>
-	12/20/2011	Emergency Reg Published in SR		
-	12/20/2011	Effective Date unless otherwise provided for in the Regulation		

Filed: December 20, 2011 12:23pm

Document No. 4277
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CHAPTER 19
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The South Carolina Budget and Control Board has determined that, in order to protect the public health, safety and welfare including the public fisc, it is necessary to enact an emergency regulation to prohibit camping, sleeping, and taking up living accommodations upon State House grounds and all buildings located on the grounds. The Board further believes that, with the 2012 session of the General Assembly commencing on January 10, 2012, it is imperative to confirm by regulation the hours that the State House Building is open to the general public.

The Board believes that existing statutes and the common law provided the authority for prohibiting camping, sleeping, and taking up living accommodations upon State House grounds and all buildings located on the grounds. However, by Order issued on December 14, 2011, the United States District Court ruled that the Board was required to enact a regulation to effect such a prohibition. The Board is concerned that the Order has the effect of invalidating its authority to regulate the types of conduct specifically addressed in the emergency regulation and its authority to manage the State House grounds and protect the grounds and visitors to the grounds. Therefore, given the Order of the District Court, the Board has determined that an emergency regulation is needed to address this issue immediately because of concerns with the public health and safety and public liability.

The Board recognizes that the presence of persons living on the State House grounds increases the opportunities for criminal conduct and that persons when asleep in tents or on the ground are more vulnerable to criminal attack as well as the commission of property crimes. The Board has been informed of recent confrontations involving the group of individuals currently living on the State House grounds which has caused the group to form a "protection unit" to stand watch and defend the group during night time hours when the individuals are sleeping. The Board believes that the use of such a "protection unit" raises serious public safety concerns in addition to public liability concerns that need to be addressed immediately. The Board is concerned not only about the confrontations that have given rise to the formation of the "protection unit" but is likewise concerned regarding any actions that may be taken by the "protection unit" and the potential liability for those actions.

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