



ALAN WILSON
ATTORNEY GENERAL

October 21, 2026

The Honorable Sean P. Duffy
Secretary
United States Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

The Honorable Sean McMaster
Administrator
Federal Highway Administration
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Re: Authority of South Carolina Department of Transportation to enter a Memorandum of Understanding with USDOT and Freedom of Information Act comparability

Dear Mr. Duffy and Mr. McMaster:

I am writing you regarding two matters: the attached memorandum of understanding (MOU) to be executed by the South Carolina Secretary of Transportation with the United States Department of Transportation (See S.C. Code Ann. §57-3-790 (A)(1)) and the comparability of the Freedom of Information Acts of the State of South Carolina and the United States. I wrote you on June 10, 2026, confirming that the State had waived its immunity pursuant to S.C. Code Ann. §57-3-790 of Act No. 244, 2026 S.C. Acts. Federal regulations 23 C.F.R. §773.109 (6) and 7) require certifications by the Attorney General regarding these matters.¹ I have reviewed these

¹ 23 C.F.R. § 773.109 provides these requirements as follows:

(6) Certification and explanation by the State's Attorney General, or other State official legally empowered by State law to issue legal opinions that bind the State, that the State has legal authority to assume the responsibilities of the Secretary for the Federal environmental laws and projects requested, and that the State consents to exclusive Federal court jurisdiction with respect to the responsibilities the State is requesting to assume. Such consent must be broad enough to include future changes in relevant Federal policies and procedures or allow for its amendment to include such future changes;

matters with General Counsel for the South Carolina Department of Transportation who concurs in this Opinion..

Section 57-3-790(A) addresses the memorandum of understanding in providing that the waiver of immunity under that statute is valid only under several conditions including the following:

- (1) the Secretary of Transportation executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. Sections 326(c) and 327(c);
- (2) before execution of the memorandum of understanding under subsection (A), the South Carolina Attorney General has issued an opinion letter to the Secretary of Transportation and the administrator of the Federal Highway Administration that the memorandum of understanding and the waiver of immunity are valid and binding upon the State. . . .

The Opinion of this Office is that the MOU is valid and binding on the State upon its execution. The MOU is expressly authorized by §57-3-790, and State law provides that the South Carolina Department of Transportation “shall coordinate all state and federal programs relating to highways among all departments, agencies, and other bodies politic and legally constituted agencies of this State and the performance of such other duties and matters as may be delegated to it pursuant to law.” Section 57-1-50 provides that “[t]he assent of the State is hereby given to the terms and provisions of any act providing for federal aid to the states for the construction of highways and other related transportation projects. The good faith of the State is hereby pledged to provide sufficient funds to meet the requirements of said federal act, so as to acquire the benefits thereof. The terms of the MOU appear to be consistent with State law.

We have reviewed and compared the South Carolina (§30-4-10, *et seq.*) and federal Freedom of Information Acts, and they appear to be comparable as written. For your information, among other provisions in South Carolina’s FOIA, § 30-4-30 sets forth provisions for requesting records, § 30-4-50 makes certain categories of information public information (see also §30-4-20(c)(“public records” defined)), and §30-4-100 provides for enforcement actions.

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- (7) Certification by the State's Attorney General, or other State official legally empowered by State law to issue legal opinions that bind the State, that the State has laws that are comparable to FOIA, including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction;

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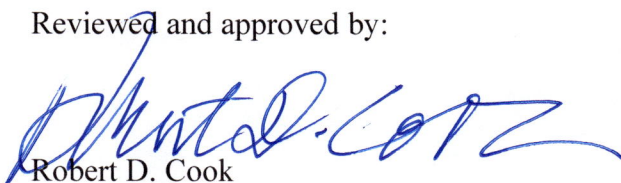
I trust that this letter provides the information that you need.

Sincerely,



J. Emory Smith, Jr.
General Counsel

Reviewed and approved by:



Robert D. Cook
Solicitor General Emeritus

cc: Mr. Jermaine R. Hannon, Division Administrator, Federal Highway Administration
The Honorable Justin P. Powell, South Carolina Secretary of Transportation
Ms. Barbara M. Wessinger, Chief Counsel, South Carolina Department of Transportation