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RECALLED

April 22, 2010

**H. 3839**

Introduced by Reps. Edge, Harrison and Viers

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Read the first time April 1, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 21, TITLE 5 SO AS TO ENACT THE “MUNICIPAL FINANCE OVERSIGHT ACT OF 2009” TO CREATE THE MUNICIPAL FINANCE OVERSIGHT COMMISSION AND AN EXECUTIVE COMMITTEE OF THE COMMISSION, PROVIDE FOR THEIR COMPOSITION, POWERS, DUTIES, AND RESPONSIBILITIES, REQUIRE MUNICIPALITIES TO SUBMIT ANNUAL FINANCIAL REPORTS AND ANNUAL AUDITS, PROVIDE FOR SANCTIONS AGAINST MUNICIPALITIES THAT FAIL TO COMPLY WITH THE COMMISSION’S PLAN FOR REFINANCING, ADJUSTING, OR COMPROMISING A DEBT, PROVIDE PENALTIES FOR AN OFFICER OR EMPLOYEE OF A MUNICIPALITY WHO FAILS TO COMPLY WITH THE PROVISIONS OF ARTICLE 9, CHAPTER 21; AND TO AMEND SECTION 6‑1‑50, AS AMENDED, RELATING TO THE REQUIREMENT OF A FINANCIAL REPORT SUBMITTED BY COUNTIES AND MUNICIPALITIES TO THE STATE BUDGET AND CONTROL BOARD, OFFICE OF RESEARCH AND STATISTICS, ECONOMIC RESEARCH SECTION, SO AS TO DELETE THE REQUIREMENT THAT THE REPORT BE SUBMITTED BY A MUNICIPALITY.

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

SECTION 1. Chapter 21, Title 5 of the 1976 Code is amended by adding:

“Article 9

Municipal Finance Oversight Act of 2009

Section 5‑21‑910. This article may be cited as the ‘Municipal Finance Oversight Act of 2009’.

Section 5‑21‑920. (A) There is created the Municipal Finance Oversight Commission composed of the following members:

(1) The Governor or his designee;

(2) The Comptroller General or his designee;

(3) The State Auditor or his designee;

(4) The Executive Director of the State Budget and Control Board or his designee;

(5) A municipal elected official, currently serving in this State, appointed by the Governor upon the recommendation by the Municipal Association of South Carolina, who shall serve a term of two years;

(6) A city manager or administrator, currently serving in this State, appointed by the Governor upon the recommendation by the Municipal Association of South Carolina, who shall serve a term of two years; and

(7) A municipal finance officer, currently serving in this State, appointed by the Governor upon the recommendation by the Municipal Association of South Carolina, who shall serve a term of two years.

(B) The Governor or his designee shall serve as chairman.

(C) The commission shall meet quarterly. Action of the commission must be taken by resolution adopted by majority vote of those present and voting. A majority of the commission constitutes a quorum.

(D) Members of the commission shall serve without compensation but may receive mileage, subsistence, and per diem, authorized by law for members of state boards, committees, and commissions.

(E) The Attorney General shall provide such legal services as the commission considers necessary to carry out its duties and responsibilities.

(F) For administrative purposes, the commission shall operate as a division of the Executive Director’s office of the State Budget and Control Board.

(G) The commission may promulgate regulations under the provisions of the Administrative Procedures Act as it considers necessary.

Section 5‑21‑930. (A) The Governor, the Comptroller General, the State Auditor, the Executive Director of the State Budget and Control Board or their designees constitutes the executive committee of the commission. The executive committee is vested with all the powers of the commission when it is not in session, except the executive committee may not overrule, reverse, or disregard any action of the full commission. Action of the executive committee must be taken by resolution adopted by a majority of those present and voting. Any three members of the executive committee constitute a quorum. The chairman may call meetings of the executive committee at any time.

(B) A member of the commission or a person directly affected by an action of the executive committee may appeal to the full commission by filing a written request for review with the chairman within five days after the action is taken. Review of executive committee action by the full commission must be de novo.

(C) The chairman shall appoint a secretary of the commission, and may appoint other deputies and assistants as may be necessary, who are responsible to the chairman through the secretary. The secretary and his deputies and assistants have and may exercise any power that the chairman may exercise. All actions taken by the secretary, including signing documents and papers provided for in this article, are effective as though the chairman has taken the action or signed the documents or papers.

Section 5‑21‑940. The commission may charge and collect fees for all expenses incurred by the commission in connection with carrying out its duties and responsibilities under the provisions of this article. Fees are to be charged to the municipality being assisted by the commission. Fees may be withheld from the municipalities’ distribution of the Aid to Subdivisions. All fees must be established by regulation promulgated under the Administrative Procedures Act.

Section 5‑21‑950. The governing body of each municipality receiving revenues from state aid, currently known as Aid to Subdivisions, shall submit annually to the Comptroller General a financial report detailing sources of revenue, expenditures by category, indebtedness, and other information as the commission requires. The Comptroller General shall determine the contents and format and date of submission. Failure to submit the report results in the withholding of the current year’s state aid until the report is filed. The State Budget and Control Board, Office of Research and Statistics, is responsible for maintaining existing financial databases.

Section 5‑21‑960. (A) Each municipality shall have its financial statements audited annually as of the close of each fiscal year, by an independent accountant licensed by the South Carolina Board of Accountancy. The audited financial statements must be accomplished in accordance with the auditing standards generally accepted in this country and the standards applicable to financial audits contained in Governmental Auditing Standards, issued by the Comptroller General of the United States. The audit must be filed with the commission no later than six months after the close of the fiscal year. The auditor must be selected by and shall report directly to the governing body of the municipality. An engagement letter must be provided following auditing standards generally accepted in the United States.

(B) The mayor of the municipality shall file a copy of the audit report with the commission. Each officer and employee of the municipality having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge this information relating to fiscal affairs as he may request. A member of a governing board or any other public officer or employee who conceals, falsifies, or refuses to deliver or divulge any books, records, or information, with an attempt to mislead the auditor or impede or interfere with the audit, is guilty of a misdemeanor and, upon conviction, must be fined in an amount not to exceed one thousand dollars or imprisoned for a term not to exceed thirty days, or both.

Section 5‑21‑970. (A) If a municipality fails to:

(1) pay any installment of principal or interest on its outstanding debt which is secured by a pledge of the faith and credit of the municipality on or before the due date and remains in default for ninety days;

(2) transfer to the appropriate agency taxes withheld on the income of employees or employer, employer or employee contributions for social security, or any pension or retirement benefits owed to employees;

(3) pay wages or salaries owed to employees; or

(4) file an annual audit;

The commission may take such action as it considers advisable to investigate the municipality’s fiscal affairs, consult with the governing body of the municipality, and negotiate with its creditors in order to assist the municipality in working out a plan for refinancing, adjusting, or compromising the debt. The plan may also require any action necessary for the fiscal stability of the municipality.

(B) When a plan is developed that the commission finds to be fair and equitable and reasonably within the ability of the municipality to meet, the commission shall enter an order to the municipality to take the necessary steps to implement the order.

(C) If the municipality declines or refuses to do so within ninety days after receiving the commission’s plan, the commission may enter an order directing the governing body of the municipality to implement the plan. When an order is entered, the members of the governing body of the municipality and all officers and employees of the municipality are under an affirmative duty to do all things necessary to implement the plan. The commission may apply to the court of competent jurisdiction for an order to enforce the commission’s order.

(D) The commission has the authority to require any periodic reports on the municipality’s fiscal affairs considered necessary. If the commission recommends modifications in the budget, the governing body of the municipality is under an affirmative duty to make the modification before adopting the budget ordinance.

Section 5‑21‑980. (A) The commission has the authority to impound the books and records of a municipality and assume full control of all its financial affairs when the governing body of the municipality persists, after notice and warning from the commission, in failing or refusing to comply with the provisions of this article.

(B) When the commission takes action under this section, the commission is vested with all of the powers of the governing body of the municipality as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers conferred upon the governing body of the municipality by law.

Section 5‑21‑990. The power and authority granted to the commission in this article shall continue with respect to a municipality until the commission is satisfied that the municipality has performed and will perform the duties required of it in the refinancing plan.

Section 5‑21‑1000. If an officer or employee of a municipality persists, after notice and warning from the commission, in failing or refusing to comply with a provision of this article, he forfeits his office or employment. The commission may enter an order suspending the offender from further performance of his office or employment after first giving him notice and an opportunity to be heard in his own defense, pending the outcome of quo warranto proceedings. Upon suspending a local officer or employee under this section, the commission shall report the circumstances to the Attorney General, who shall initiate quo warranto proceedings against the officer or employee in circuit court. If an officer or employee persists in performing any official act in violation of an order of the commission, the commission may apply to circuit court for a restraining order and injunction.

Section 5‑21‑1010. If a person embezzles funds belonging to a municipality, in addition to the crimes and punishment otherwise provided by law, upon conviction, he forfeits his office or position and is forever barred from holding an office or place of trust or profit under the State of South Carolina or political subdivisions until the disability is removed.”

SECTION 2. Section 6‑1‑50 of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

“Section 6‑1‑50. Counties ~~and municipalities~~ receiving revenues from state aid, currently known as Aid to Subdivisions, shall submit annually to the State Budget and Control Board, Office of Research and Statistics, Economic Research Section a financial report detailing their sources of revenue, expenditures by category, indebtedness, and other information as the State Budget and Control Board, Office of Research and Statistics, Economic Research Section requires. The State Budget and Control Board, Office of Research and Statistics, Economic Research Section shall determine the content and format of the annual financial report. The financial report for the most recently completed fiscal year must be submitted to the State Budget and Control Board, Office of Research and Statistics, Economic Research Section by January fifteenth of each year. If ~~an entity~~ a county fails to file the financial report by January fifteenth, then the chief administrative officer of the ~~entity shall~~ county must be notified in writing that the ~~entity~~ county has thirty days to comply with the requirements of this section. The Director of the Office of Research and Statistics ~~may~~, for good cause, may grant a ~~local entity~~ county an extension of time to file the annual financial report. Notification by the Director of the Office of Research and Statistics to the Comptroller General that ~~an entity~~ a county has failed to file the annual financial report thirty days after written notification to the chief administrative officer of the ~~entity~~ county must result in the withholding of ten percent of subsequent payments of state aid to the ~~entity~~ county until the report is filed. The State Budget and Control Board, Office of Research and Statistics, Economic Research Section is responsible for collecting, maintaining, and compiling the financial data provided by counties ~~and municipalities~~ in the annual financial report required by this section.”

SECTION 3. This act takes effect upon approval by the Governor.

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