

SENATE FINANCE COMMITTEE BILL SUMMARY

Bill No. S. 12

Subject: S.C. Taxation Realignment Commission

Primary Sponsor: Sen. Leatherman

Date Introduced: January, 13, 2009

SFC Analyst: Parks/Shealy

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BILL TITLE

S. 12 -- Senators Leatherman, Alexander, O'Dell, Cleary, Leventis, Elliott and Lourie: A BILL TO ESTABLISH THE SOUTH CAROLINA TAXATION REALIGNMENT COMMISSION, TO PROVIDE FOR THE COMMISSION'S MEMBERSHIP, POWERS, DUTIES, AND RESPONSIBILITIES, TO PROVIDE THAT THE COMMISSION MUST CONDUCT A COMPREHENSIVE STUDY OF THE STATE'S TAX SYSTEM AND SUBMIT A REPORT OF ITS RECOMMENDED CHANGES TO FURTHER THE GOAL OF MAINTAINING AND ENHANCING THE STATE AS AN OPTIMUM COMPETITOR IN THE EFFORT TO ATTRACT BUSINESSES AND INDIVIDUALS TO LOCATE, LIVE, WORK, AND INVEST IN THE STATE, AND TO PROVIDE FOR PROCEDURES GOVERNING THE CONSIDERATION OF LEGISLATION RESULTING FROM THE COMMISSION'S RECOMMENDATIONS.

CODE SECTION N/A

SUMMARY OF BILL AS FILED

This Joint Resolution creates a temporary commission known as the "Taxation Realignment Commission" (or TRAC) whose purpose is to: 1) assess the effectiveness of the state's current state level tax structure and 2) in doing so, make recommendations to the General Assembly regarding necessary changes, if any, to that structure. In concept, TRAC is modeled after the federal "Base Closure and Realignment Commission" (see brief description of the Base Closure and Realignment Commission (or BRAC) attached)).

Such changes must be designed to ensure that the state's tax structure is "balanced" so that the system is a) adequate, b) equitable, and c) efficient.

The goal of TRAC, and ultimately of the state's tax structure, is creation of a system that enhances the state's reputation as a "...optimum competitor in efforts to attract business and individuals to locate, live, work and invest..." in South Carolina.

TRAC's focus will be on the entire statewide tax code to include individual and business tax rates and structure(s), exemptions, credits and other incentives as well as the state's sales tax rate and bases including comprehensive review and recommendations regarding the state's more than 75 specific sales tax exemptions, the value of which the BEA estimates to total \$2.75 Billion this fiscal year. TRAC will not make recommendations regarding local tax levies or property tax relief provided by the General Assembly.

TRAC must accomplish the following tasks (within a specified timeframe) prior to its termination on January 1, 2011 (unless extended by the General Assembly):

- 1) Within 6 months of passage of this bill (roughly year-end 2009), provide the General Assembly with the criteria it (TRAC) will use to assess the effectiveness of the state's current tax structure,
- 2) By February 25, 2010, provide the Chairmen of the House Ways and Means and Senate Finance Committees a report as to which sales tax exemptions should be kept, modified or repealed, and

- 3) By January 1, 2011, a comprehensive report with recommendations provided to the General Assembly regarding the remainder of the state's tax structure (i.e., everything else other than the sales tax exemptions).

In response, the General Assembly, via the process outlined below, must:

- 1) Enact TRAC's sales tax exemption recommendations in full with their effective date being January 1, 2011 or
- 2) Reject in mass the recommendations; however,
- 2a) Purely technical amendments can be made to TRAC's recommendations by a simple majority vote while substantive amendments can be made with a two-thirds vote.

As for the additional (i.e., non-sales tax exemption related) recommendations made by TRAC, such recommendations must also be introduced in both houses by the Chairmen of the House Ways and Means and Senate Finance Committees, but their enactment is not required under this bill.

Additional details of TRAC, its membership and qualifications, staffing and reimbursement issues are outlined below:

MEMBERSHIP: Eleven members as follows

- President Pro Tempore of the Senate to appoint one member
- Speaker of the House to appoint one member
- Chairman of the Senate Finance Committee to appoint one member
- Chairman of the House Ways and Means Committee to appoint one member
- Majority Leader of the Senate to appoint one member
- Majority Leader of the House to appoint one member
- Minority Leader of the Senate to appoint one member
- Minority Leader of the House to appoint one member
- Governor to appoint two members
- Director of the Department of Revenue to serve ex officio

No sitting members of the General Assembly may serve.

QUALIFICATIONS: Members must have substantial academic or professional experience or specialization in public finance, government budgeting and administration, tax administration, economics, accounting or tax law.

CHAIRMANSHIP: The membership chooses a chairman.

STAFFING: The Commission may employ staff or consultants with relevant background and experience. In addition, staffs of the Senate Finance Committee and House Ways and Means Committee are available to assist the Commission.

REIMBURSEMENT: There is no compensation for service on the Commission. Members shall receive per diem and mileage for any travel. Financial responsibility attributed to appointer.

SUMMARY OF BILL AS AMENDED BY FULL COMMITTEE - 01/27/09

HOW MANY TRAC COMMISSIONERS?: 11 - Appointed by respective Speaker/Pres. Pro-Tem, Majority and Minority leaders, Finance chairs and Governor (2 appointments) and DOR ex officio. The membership chooses a Chairman.

WHO'S ELIGIBLE TO BE A COMMISSIONER?: First, no *current member* of the General Assembly is eligible. Members must have substantial academic or professional experience or specialization in one or more areas

of public finance, government budgeting and administration, tax administration, economics, accounting, tax law or business. Full committee felt it important to require that members file a statement of economic interest with the State Ethics Commission.

DO MEMBERS GET PAID?: No. Members shall receive per diem and mileage for any travel. Financial responsibility is attributed to appointer's organization.

WILL THERE BE A DIRECTOR AND STAFF?: Yes, if the Commission sees fit. The Executive Director must have a Master's or Bachelor's degree and professional experience. Subject to funding by the General Assembly, the director shall be paid equally from approved accounts of each house of the General Assembly, subject to the approval of the respective Operations and Management Committees. Any staff or consultants must possess an academic background or substantial career experience in one or more fields including economics, government budgeting and administration, urban and regional economic development, economic forecasting, state and local public finance or business.

WHO CAN'T BE HIRED AS DIRECTOR?: No member of the General Assembly (existing or previous), nor anyone employed by the General Assembly from January 1, 1997, nor anyone defined as a lobbyist since January 1, 1997.

HOW LONG WILL THE COMMISSION BE AROUND?: The Commission is in existence until January 1, 2015. The duration of the Commission may be extended by a subsequent enactment (sunset provision).

WHAT IS THE COMMISSION'S GOAL?: The goal of TRAC, and ultimately of the state's tax structure, is creation of a system that enhances the state's reputation as a "...optimum competitor in efforts to attract business and individuals to locate, live, work and invest..." in South Carolina.

WHAT ARE THEIR DUTIES?: Develop criteria within the first six months of the effective date of the legislation for assessing the effectiveness of the current tax system and structure.

By February 25, 2011, deliver recommendations to the Chairmen of the Senate Finance Committee and House Ways and Means Committee. In preparing their recommendations the Commission shall consider:

- Sales tax exemptions to be retained, modified or repealed.
- An assessment of STATE and LOCAL taxes levied and other provisions affecting state and local revenue to fund the operation and responsibilities of state and local government.
- At the discretion of the Commission, any state fee, fine or forfeiture.

After the initial TRAC report, the commission continues to work through 2015, providing periodic reports, along with recommendations it feels necessary, to the two money committees.

SO WHAT IS MEANT BY LOCAL TAXES?: For purposes of the scope of the commission's study, local taxes are defined as local levies related to ad valorem taxation, including, but not limited to, assessment ratios, classification and valuation of property, assessable transfers of interest, valuation limitation, local millages, and fee in lieu of taxes agreements. NOTE: The commission's report may **not** recommend any action that would nullify any existing agreement entered into by a local government.

WHAT IS THE PROCESS: The Code Commissioner must prepare TRAC's findings to be codified and the Chairman of Ways and Means and Senate Finance must file the bill. Full Committee reduced the threshold for substantive amendments from 2/3 to 3/5's and requires that future recommendations made by TRAC after its initial report (remember – TRAC stays around 5 years and is then dissolved) must be introduced by the Chairmen of the money committees.

WHAT ABOUT THE JOINT SALES TAX EXEMPTIONS REVIEW COMMITTEE?: Act 388 of 2006 (The "Swap" bill) established a Joint Sales Tax Exemptions Review Committee to review and make recommendations

regarding sales tax exemptions no later than the 2010 legislative session. As the TRAC commission would now be charged with this task, it makes little sense to have two potentially competing study committees meeting at the same time. The Full Committee therefore voted to repeal the Joint Committee.

EFFECTIVE DATE: The legislation takes effect upon approval by the Governor.

CHANGES TO COMMITTEE AMENDMENT BY FULL SENATE – 2/25/09

P2A – Leatherman, L Martin, Peeler

TRAC can say “no changes” are needed if finds tax code is ok.

*NOTE: Remainder of P2A rendered moot by Shoopman by P8 below.

P9 – Setzler, Knotts and Leatherman

Clarifies that changes to homeowner tax relief under Act 388 can’t recommended.

P3 – Setzler, Leatherman, Sheheen, Lourie

Moves report date up one year to Feb 2010; plus requires their criteria to be delivered 3 months earlier, in 3 months rather than 6.

P4 – Leatherman

Ensures TRAC commissioners have to be SC residents.

P7A – Bryant

Requires the BEA to do a Revenue Impact Statement on whatever TRAC recommends.

P8 – Shoopman

Deletes Full Committee’s recommended 3/5’s voting requirement as well as P2A’s (previously adopted) simple majority of membership voting requirements when taking action on any TRAC recommendations. Still requires recommendations of TRAC to be delivered to money committees and any member of the GA that requests it.

P10 – Davis and Sheheen

Mandates TRAC to study all OTHER FUNDS which would include tuition, etc.

A5 – Mulvaney

TRAC commissioners can’t receive info from Lobbyists unless in a public meeting.

CHANGES TO SENATE VERSION BY HOUSE WAYS & MEANS – 3/31/09

The House Ways & Means Committee proposed a “strike and insert” amendment with only the most significant changes from the Senate version highlighted below:

Commission Membership: Upped from 11 to 17, deleted appointments by the minority party, added six sitting members of the General Assembly (to serve ex officio). Deleted “business” as an eligible experience criteria for service on the commission and made appointments to serve “at the will” of their appointers. Like Senate version, commissioners not eligible for pay, but, unlike the Senate version, also not eligible for mileage/per diems either.

Removed provisions related to hiring of an Executive Director, which was permitted under the Senate version. Language allowing hiring of staff or consultants in a general sense was retained in the bill, but TRAC commissioners have to first get approval of Senate Pres. Pro-tem and House Speaker.

Report timeline(s): Amends language regarding requirement of TRAC to develop criteria for assessing the effectiveness of the current tax system and structure from within the first three months to the first “six months” of the effective date of the legislation (note: this was the original Senate position prior to amendments). Also, divides

the required reporting on “all taxes, state and local”, from March 2010 as was required under the Senate bill to 1) Sales tax exemptions by December 2009 and 2) all other state taxes one year later (December 2010).

Note: The version recommended by Ways & Means specifically excluded from TRAC’s purview the property tax system of the state.

Unlike the final Senate version, the Ways & Means version did include a requirement that TRAC’s recommendations must be introduced as stand-alone legislation in each body. The final Senate version had no such requirement. The Ways & Means version also contained language relating to the amendment process regarding TRAC recommendations introduced.

Lastly, the Ways & Means version did not repeal the Joint Committee charged in Act 388 with reviewing the state’s sales tax exemptions by 2010; ie, the practical effect being two separate bodies studying which exemptions to retain or repeal.

VERSION ADOPTED BY THE FULL HOUSE OF REPRESENTATIVES - 4/30/09

The Full House adopted many of the changes recommended by the Ways & Means committee (noted above) with the following (further) changes:

Adopted the Senate’s position regarding the timeline of the initial reports (3 months instead of 6 for the “criteria”; entire report in March 2010 rather than separate reports in December 2009 and 2010).

Adopted Senate version which removed the requirement that TRAC recommendations must be introduced by both bodies.

Adopted Senate version allowing study of local taxes, including property (with exception that TRAC cannot recommending repeal of the homeowner relief from Act 388 - this was in the Senate version as well).

Adopted Senate version regarding lobbyist prohibitions relating to contact with TRAC members, and adding language making such contact by lobbyists a misdemeanor.

Added language requiring TRAC to study the “Fair Tax”.

Adopted the Senate version regarding the repeal of the Joint Committee charged in Act 388 with reviewing the state’s sales tax exemptions by 2010; ie, meaning only TRAC would be charged with studying the sales tax exemptions.

FINAL VERSION ADOPTED BY CONFERENCE COMMITTEE - 6/16/09

Creation of Commission – Appointment Details

There was a compromise between the Senate and House version about who appoints in each body. There will be 11 total members as in the Senate version (the House called for 17). The appointments will be as in the Senate version for the Senate to include appointments by the Minority. The House will not be required to have an appointer from the Minority.

There will be no sitting legislators on the Commission, ex officio or otherwise. This was the Senate position.

Members must have substantial background in the areas enumerated in the Senate version including business experience, and have to have been SC residents since 1997.

Members will not serve “at the will” of their respective appointers. This was the Senate position.

Appointees will NOT have to file a "Statement of Economic Interest". House version.

Appointees will NOT receive mileage and per diem. House version.

Staffing and Funding Provisions

Compromise. Language in BOTH versions remains stating that the commission may hire staff or consultants. As does the language that requires these staff or consultants to have experience in a number of areas similar to what commissioners must have.

Staffs of Senate Finance and Ways & Means remain available to assist as in both versions.

Funding subject to approval of Senate O&M and House speaker (compromise) would be paid equally from both bodies.

Qualifications related to Executive Director removed (House version) as no longer needed. Provision remains that Commission "may" hire staff or consultants, and those provisions contain sufficient qualifications.

Commission Duration and Other Matters

House version, ie, Commission will dissolve in 2011, not 2015 as called for in Senate Bill. However, as was in both bills, the Commission could be extended by the General Assembly.

Senate version remains, ie, further reports can be made up thru 2011. The House did not provide that.

"Fair Tax" remains. House version. Ie, the Commission will look at, among other things, specifically the Fair Tax concept and report back pros and cons, etc.

Lobbyist misdemeanor remains. House version. The Lobbyist provision requires that lobbyists may only provide information in a public meeting.

FISCAL/REVENUE IMPACT

General Funds: * See below.

Federal/Other Funds: \$0

*According to the State Budget Office, based on per diem and travel allowances, the total cost for committee member expenses would be \$2,090 per one-day meeting to be paid by the appointing entity, with all other expenses to be paid equally by the Senate and House of Representatives.

SFC SUBCOMMITTEE RECOMMENDATION

1/22/09 – Favorable to Full

ADDITIONAL NOTES

1/13/09 – SENATE, Introduced, referred to Finance Committee

1/22/09 – SENATE, Subcommittee reported favorable to Full Committee

1/27/09 – SENATE, Full committee favorable with amendments

2/25/09 – SENATE, Full committee amendment adopted with amendments, read 2nd time

2/26/09 – SENATE, Read 3rd time, sent to House

2/26/09 – HOUSE, Introduced, read 1st time, referred to Ways & Means

3/31/09 - HOUSE, Ways and Means, favorable with amendment

4/29/09 - HOUSE, Amended

4/30/09 - HOUSE, Amended, read 2nd time

5/12/09 - HOUSE, Read 3rd time, returned to Senate with amendments
5/13/09 - SENATE, Non-concurred in House amendments
5/14/09 - HOUSE, Insists on amendments, appoints conferees
5/14/09 - SENATE, Appoints conferees
6/16/09 - SENATE/HOUSE, Conference report adopted
6/24/09 - Ratified
6/30/09 - Signed by Governor (effective date)
7/7/09 - Given Act number (81)

