

REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE

(Cobb-Hunter, Hayes, Bannister, Moss, Willis - Staff Contact: Sarah Hearn)

HOUSE BILL 4048

H. 4048 -- Rep. G.M. Smith: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-11-445 SO AS PROVIDE THAT THE STATE OF SOUTH CAROLINA MUST PROVIDE A LEGAL DEFENSE FOR AND INDEMNIFICATION TO A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY AGAINST A CLAIM OR SUIT THAT ARISES OUT OF OR BY VIRTUE OF THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY, AND TO PROVIDE A SIMILAR DEFENSE AND INDEMNIFICATION TO BOARD MEMBERS AND EMPLOYEES, AND OFFICERS OF THE ENTITY; TO REPEAL SECTION 1-11-440 RELATING TO LEGAL DEFENSES AND INDEMNIFICATIONS PROVIDED TO MEMBERS OF THE FISCAL ACCOUNTABILITY AUTHORITY AND ITS DIRECTOR; AND TO REPEAL SECTION 12-4-325 RELATING TO LEGAL DEFENSES AND INDEMNIFICATION PROVIDED TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF REVENUE.

Received by Ways and Means:

March 9, 2021

Summary of Bill:

This bill requires that the State must defend and indemnify state agencies, departments, instrumentalities, board members, employees, and officers of the like against a claim or suit that arises out of or by virtue of performance of official duties, regardless of whether the claim or suit is brought against someone in their individual and/or official capacities. The bill also repeals sections 1-11-440 and 12-4-325 relating to the legal defenses and indemnifications provided to members of SFAA and its director, and to officers and employees of DOR, respectively.

Estimated Revenue Impact:

Pending

Other Notes/Comments:

Reported out favorably from subcommittee on March 29, 2022.

South Carolina General Assembly
124th Session, 2021-2022

H. 4048

STATUS INFORMATION

General Bill

Sponsors: Rep. G.M. Smith

Document Path: I:\council\bill\ncd\11204sd21.docx

Introduced in the House on March 9, 2021

Currently residing in the House Committee on **Ways and Means**

Summary: Duty to defend and indemnify

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/9/2021	House	Introduced and read first time (House Journal-page 34)
3/9/2021	House	Referred to Committee on Ways and Means (House Journal-page 34)

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VERSIONS OF THIS BILL

3/9/2021

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A BILL

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11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING SECTION 1-11-445 SO AS PROVIDE THAT
13 THE STATE OF SOUTH CAROLINA MUST PROVIDE A
14 LEGAL DEFENSE FOR AND INDEMNIFICATION TO A
15 STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY
16 AGAINST A CLAIM OR SUIT THAT ARISES OUT OF OR BY
17 VIRTUE OF THE PERFORMANCE OF OFFICIAL DUTIES ON
18 BEHALF OF A STATE AGENCY, DEPARTMENT, OR
19 INSTRUMENTALITY, AND TO PROVIDE A SIMILAR
20 DEFENSE AND INDEMNIFICATION TO BOARD MEMBERS
21 AND EMPLOYEES, AND OFFICERS OF THE ENTITY; TO
22 REPEAL SECTION 1-11-440 RELATING TO LEGAL
23 DEFENSES AND INDEMNIFICATIONS PROVIDED TO
24 MEMBERS OF THE FISCAL ACCOUNTABILITY
25 AUTHORITY AND ITS DIRECTOR; AND TO REPEAL
26 SECTION 12-4-325 RELATING TO LEGAL DEFENSES AND
27 INDEMNIFICATION PROVIDED TO OFFICERS AND
28 EMPLOYEES OF THE DEPARTMENT OF REVENUE.

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

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33 SECTION 1. Chapter 11, Title 1 of the 1976 Code is amended by
34 adding:

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36 "Section 1-11-445. (A) The State of South Carolina must defend
37 a state agency, department, or instrumentality, and the members of
38 a governing board of a state agency, department, or instrumentality,
39 as applicable, against a claim or suit that arises out of or by virtue
40 of the performance of official duties on behalf of the state agency,
41 department, or instrumentality and must indemnify them for a loss
42 or judgment incurred by them as a result of the claim or suit, without

1 regard to whether the claim or suit is brought against them in their
2 individual or official capacities, or both. The State also must defend
3 officers and management employees of the entity, and legislative
4 employees performing duties for the entity against a claim or suit
5 that arises out of or by virtue of the performance of official duties
6 unless the officer, management employee, or legislative employee
7 was acting in bad faith and must indemnify these officers,
8 management employees, and legislative employees for a loss or
9 judgment incurred by them as a result of such claim or suit, without
10 regard to whether the claim or suit is brought against them in their
11 individual or official capacities, or both. This commitment to defend
12 and indemnify extends to members of the entity, the entity's officers
13 and management employees, the entity's director and officers and
14 management employees, and legislative employees after they have
15 left their employment with the entity, the General Assembly, or the
16 entity, as applicable, if the claim or suit arises out of or by virtue of
17 their performance of official duties on behalf of their employer.

18 (B) The term 'instrumentality' as used in this section includes an
19 entity where a specific duty or function is imposed on the entity by
20 law and includes any function where the entity must exercise a
21 portion of the state's sovereignty. Entities to which this provision
22 applies includes, but is not limited to, the State Fiscal Accountability
23 Authority, the Joint Legislative Merit Selection Commission, the
24 Public Utilities Review Commission, the Retirement Systems
25 Investment Panel, and all joint special legislative committees.

26 (C) The provisions of subsection (A) also apply to employees
27 and officers while acting within the scope of their employment when
28 administering any South Carolina statute which has not been held to
29 be unconstitutional or unlawful by a final decision of a court of
30 competent jurisdiction. For purposes of this section, a final decision
31 is the decision of a court declaring the South Carolina statute
32 unconstitutional or otherwise unlawful and from which the
33 appropriate officials of this State may not or do not take an appeal
34 or request a rehearing. ”

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36 SECTION 2. Sections 1-11-440 and 12-4-325 are repealed on the
37 effective date of this act.

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

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