**South Carolina General Assembly**

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**H. 4856**

**STATUS INFORMATION**

General Bill

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

Summary: Municipal Finance Oversight Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/15/2010 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2010\04-15-10.docx)‑29

4/15/2010 House Referred to Committee on **Ways and Means** [HJ](file:///h:\HJ%20Archive\2010\04-15-10.docx)‑30

**VERSIONS OF THIS BILL**

[4/15/2010](file:///p:\pprever\2009-10\4856_20100415.docx)

**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 2010” TO CREATE THE MUNICIPAL FINANCE OVERSIGHT COMMISSION; PROVIDE FOR ITS COMPOSITION, POWERS, DUTIES, AND RESPONSIBILITIES; REQUIRE MUNICIPALITIES TO SUBMIT ANNUAL FINANCIAL REPORTS AND ANNUAL AUDITS, PROVIDE FOR THE FORMULATION AND IMPLEMENTATION OF A PLAN BY THE COMMISSION TO ENSURE THAT A MUNICIPALITY DOES NOT PRACTICE ACTIONS OF FISCAL MISMANAGEMENT OR MATTERS WHICH COULD LEAD TO IMPENDING FISCAL INSTABILITY, PROVIDE FOR THE FORFEITURE OF OFFICE OR EMPLOYMENT OF AN OFFICIAL OR EMPLOYEE OF A MUNICIPALITY WHO PERSISTS IN FAILING OR REFUSING TO COMPLY WITH THE PROVISIONS OF ARTICLE 9, CHAPTER 21, TITLE 5, PROVIDE FOR ORIENTATION PROGRAMS, APPROVED BY THE COMMISSION, WHICH MUNICIPAL OFFICIALS ARE REQUIRED TO COMPLETE; TO AMEND SECTION 5-7-200, RELATING TO GROUNDS FOR FORFEITURE OF OFFICE OF A MAYOR OR COUNCIL MEMBER, SO AS TO INCLUDE THE VIOLATION OF THE PROVISIONS OF CHAPTERS 1 TO 21, TITLE 5 WITHIN THE REASONS FOR FORFEITURE; TO AMEND SECTION 5-7-240, RELATING TO THE REQUIREMENT FOR A MUNICIPAL COUNCIL TO PROVIDE AN ANNUAL INDEPENDENT AUDIT OF FINANCIAL STATEMENTS, RECORDS, AND TRANSACTIONS, SO AS TO PROVIDE WHEN THE AUDIT MUST BE PERFORMED, PROVIDE THAT CERTAIN AUDITING STANDARDS MUST BE USED, REQUIRE AN AUDIT BE DONE BY AN INDEPENDENT ACCOUNTANT RATHER THAN BY A CERTIFIED PUBLIC ACCOUNTANT, REQUIRE THE PRODUCTION OF BOOKS AND RECORDS REQUESTED BY THE AUDITOR, AND PROVIDE PENALTIES FOR VIOLATIONS; AND TO AMEND SECTION 5-21-50, RELATING TO THE REQUIREMENT OF MUNICIPALITIES WITH A POPULATION OVER TWO HUNDRED TO PUBLISH FINANCIAL STATEMENTS, SO AS TO REQUIRE ALL MUNICIPALITIES TO PREPARE A QUARTERLY STATEMENT OF FINANCES TO INCLUDE A CASH BALANCE REPORT AND A STATEMENT OF ACCOUNTS WITH COMPARISONS OF ACTUAL TO BUDGETED REVENUES AND EXPENDITURES, AND PROVIDE THAT THE STATEMENT MUST BE PROVIDED TO THE MUNICIPAL COUNCIL AND, UPON REQUEST, TO MEMBERS OF THE PUBLIC OR INTERESTED ORGANIZATION.

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 Accountability Act of 2010

Section 5‑21‑910. For purposes of this article:

(1) ‘Employee’ means an employee of a municipality.

(2) ‘Official’ means the mayor or council member of a municipality.

Section 5‑21‑920. This article may be cited as the ‘Municipal Finance Accountability Act of 2010’.

Section 5‑21‑930. (A) There is created the Municipal Finance Accountability Commission composed of the following members:

(1) the State Treasurer;

(2) the Chairman of the Senate Finance Committee or member of Senate Finance Committee designated by the Chairman;

(3) the Chairman of the House Ways and Means Committee or member of the House Ways and Means Committee designated by the Chairman;

(4) four members appointed by the Governor upon the recommendation of the Municipal Association of South Carolina of which at least one must be a current or former elected municipal official and at least one must be a current or former city manager, administrator, or municipal finance officer currently or formerly serving in this State. The remaining two members appointed by the Governor must be elected municipal officials, city managers or administrators, municipal finance officers currently or formerly serving in this State, or independent accountants licensed by the South Carolina Board of Accountancy who practice in the field of municipal accounting.

(B) Appointed members shall serve for terms of four years and until their successors are appointed and qualify, except that of those first appointed, two shall serve for a term of two years and the term must be noted on the appointment. Regardless of the date of appointment, all terms expire July first of the applicable year. A vacancy must be filled in the manner of original appointment for the unexpired portion of the term.

(C) The State Treasurer shall serve as chairman.

(D) The commission shall meet at least 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.

(E) 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.

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

(G) For administrative purposes, the commission shall operate as a division of the Office of the State Treasurer.

Section 5‑21‑940. The chairman shall appoint a secretary of the commission, and may appoint other deputies and assistants as necessary, who are responsible to the chairman through the secretary. The commission may delegate powers to the secretary and his deputies to act in the name of the commission. Actions taken by the secretary or his deputies, 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. Actions taken by the secretary or his deputies and assistants may be appealed to the full commission.

Section 5‑21‑950. The commission may establish, charge, and collect fees for expenses incurred by the commission in connection with carrying out its duties and responsibilities under the provisions of this article. Fees may be charged to the municipality being assisted by the commission and may be withheld from that municipality’s state‑shared revenues and the monies distributed to a municipality pursuant to Chapter 27, Title 6, the State Aid to Subdivisions Act, and other funds distributed to a municipality by the State Treasurer for credit to the municipality’s general fund including, but not limited to, distributions from the County/Municipal Revenue Fund pursuant to Section 4‑10‑50, and distributions of state accommodations tax revenue pursuant to Section 6‑4‑10(1).

Section 5‑21‑960. This State designates the commission and its staff as agents and attorneys‑in‑fact authorized to request and receive information from the Internal Revenue Service and other federal and state agencies related to a municipality of this State that is subject to an order issued or investigation being conducted pursuant to the terms of this article. A certificate signed by the secretary of the commission is conclusive evidence of the commission’s right to proceed under this article.

Section 5‑21‑970. (A) The mayor of the municipality shall file a copy of the audit report required by Section 5‑7‑240, to include documents referenced in or accompanying the audit report, or the annual financial report allowed by subsection (B), with the commission no later than nine months after the close of the municipality’s fiscal year. After this date, the State Treasurer shall hold in escrow all state‑shared revenues distributed by the Office of the State Treasurer monies distributed to a municipality pursuant to Chapter 27, Title 6, the State Aid to Subdivisions Act, and other funds distributed to a municipality by the State Treasurer for credit to the municipality’s general fund including, but not limited to, distributions from the County/Municipal Revenue Fund pursuant to Section 4‑10‑50, and distributions of state accommodations tax revenue pursuant to Section 6‑4‑10(1) due the municipality until the required financial report is received or the commission directs payments be made to the municipality.

(B) Instead of the annual audit report required by Section 5‑7‑240, the council of a municipality that has annual revenues of less than three hundred thousand dollars may provide for an annual financial report with agreed upon procedures as established by the commission. A municipality that files an annual financial report as allowed by this section shall comply with the requirements of Section 5‑7‑240 for use and selection of an independent licensed accountant and for public presentation of the statement by the accountant. A municipality that files an annual financial report as allowed by this section and that operates a municipal court also shall comply with the review, supplementary schedule, and other requirements of Section 14‑1‑208(E). The minimum amount of designated annual revenue for substitution of an annual financial report may be adjusted by the commission as warranted by current economic conditions.

Section 5‑21‑980. (A) The commission may take action as it considers advisable to evaluate the municipality’s fiscal affairs, consult with the municipal council, and take other action as authorized by this chapter if a municipality:

(1) fails to pay any installment of principal or interest on its outstanding general obligation debt or revenue debt by the due date and remains in default for thirty days;

(2) fails to transfer to the appropriate agency:

(a) taxes withheld on the income of employees;

(b) employer or employee contributions for social security or pension or retirement plans;

(c) other employee benefits; or

(3) fails to file an annual audit or an annual financial report as required by Section 5‑21‑970; or

(4) files with the commission an annual audit report or annual financial report that, in the determination of the commission, shows substantial evidence of fiscal mismanagement or impending fiscal instability.

(B) In cases where the conditions of subsection (A) exist:

(1) the commission first shall make written inquiry of the municipal council to request clarification and the municipality’s plan for resolution;

(2) if the response is not sufficient to resolve the commission’s concerns, or if no response is received by the commission within thirty days, the commission shall evaluate the necessity for action and if necessary shall formulate a plan for restoring the municipality to fiscal stability or otherwise resolving the situation;

(3) the plan adopted by the commission may require appropriate action necessary to establish the fiscal stability of the municipality and the commission may negotiate with the municipality’s creditors in order to assist the municipality in formulating a resolution; and

(4) during its implementation, the plan may be amended by the commission after consultation with the municipality.

(C) 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 plan. When an order is entered, the members of the municipal council and all officials and employees of the municipality shall 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) Pursuant to the provisions of this section, the commission may require periodic reports on the municipality’s fiscal affairs. If, when acting under the authority of this section, the commission recommends modifications to the municipality’s current or proposed budget, the municipal council shall amend the budget ordinance or make the modification before adopting the proposed budget ordinance.

Section 5‑21‑990. (A) The commission has the authority to take possession and control books and records of a municipality it considers necessary and assume full control of its financial affairs if the governing body of the municipality persists in failing or refusing to comply with the provisions of this article after notice and warning from the commission.

(B) If the commission takes action pursuant to the provisions of this section, the commission is vested with the powers of the municipal council as to the levy of taxes, expenditure of monies, adoption of budgets, and other financial powers conferred upon the municipal council by law. The commission shall provide appropriate public notice of its exercise of these powers.

(C) Nothing done pursuant to the authority of this article or under color of authority granted under this article shall make the commission or this State liable for the debt, liability, or obligation of a municipality.

Section 5‑21‑1000. The power and authority granted to the commission in this article shall continue with respect to a municipality until the commission issues an order finding that the municipality has performed and continues to perform the duties required of it in the plan for restoring the municipality to financial stability.

Section 5‑21‑1010. If an official 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 is subject to forfeiture of his office or employment. The commission may enter an order suspending the official or employee 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 an official or employee under this section, the commission shall report the circumstances to the Attorney General, who shall initiate and prosecute quo warranto proceedings against the official or employee in circuit court. If an official or employee persists in performing an official act in violation of an order of the commission, the commission also may apply to circuit court for a restraining order and injunction.

Section 5‑21‑1020. In addition to other duties, the commission shall approve orientation programs that satisfy the educational requirements in Section 5‑21‑1030 and distribute a list of approved programs to municipal officials.

Section 5‑21‑1030. (A) An official of a municipality, who was not serving as an official on the effective date of this article, shall enroll in, attend, and complete an orientation program approved by the commission, of no fewer than seven hours, on matters pertaining to the administration and operations of municipal governments. This orientation program must be completed within one year of taking office or within one year of an orientation program being approved by the commission. An approved course includes, but is not be limited to, orientation in municipal finance and budgeting; methods of taxation; planning, zoning, and land use; municipal services and governance; the Freedom of Information Act; the ethics, duties, and responsibilities of members of a municipal council; and other matters as considered necessary and appropriate by the commission.

(B) The reasonable cost of tuition, fees, housing, travel, and meals incurred by a public official to satisfy the requirements of subsection (A) must be paid from funds appropriated by the municipal council for these purposes. Reasonable costs are determined by the municipal council in its reimbursement policies.

Section 5‑21‑1040. An elected municipal official who satisfied the educational requirements in Section 5‑21‑1030 for a prior term as an elected municipal official is not required to comply with the training requirement for a subsequent term except after a break in service.

Section 5‑21‑1050. (A) An elected municipal official shall certify that he has satisfied the educational requirements in Section 5‑21‑1030 by filing a certification form and documentation with the municipal clerk no later than the date he shall complete satisfactorily the educational requirements of Section 5‑21‑1030.

(B) Each certification form substantially must conform to the following form and all applicable portions of the form must be completed:

‘To report compliance with educational requirements required in Section 5‑21‑1030, a person elected to the office of mayor or municipal council and who is not serving as a mayor or council member on the effective date of Article 9, Chapter 21, Title 5 of the 1976 Code, shall complete and file this form with the municipal clerk within one year of taking office or within one year of an orientation program being approved by the Municipal Finance Accountability Commission.

Name of elected municipal official: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First day in office:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Filing date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I have attended an approved course that meets the educational requirements in Section 5‑21‑1030.

Also attached with this form is documentation that I attended the program.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’

Section 5‑21‑1060. The clerk shall keep in the official public records originals of all filed forms and documentation that certify compliance with educational requirements.

Section 5‑21‑1070. An elected municipal official is subject to forfeiture of office pursuant to the provisions of Section 5‑7‑210 or 5‑21‑1010 if he:

(1) fails to satisfactorily complete the requisite number of hours of education and training within the time frame required pursuant to Section 5‑21‑1030; or

(2) fails to file the certification form and documentation required by the commission pursuant to Section 5‑21‑1050.”

SECTION 2. Section 5‑7‑200 of the 1976 Code is amended to read:

“Section 5‑7‑200. (A) A mayor or ~~councilman~~ council member shall forfeit his office if he:

(1) lacks at any time during his term of office any qualification for the office prescribed by the ~~general~~ law and the Constitution of this State;

(2) violates any express prohibition or affirmative duty or requirement of Chapters 1 to ~~17~~ 21; or

(3) is convicted of a crime involving moral turpitude.

(B) A vacancy in the office of mayor or council ~~shall~~ must be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more ~~prior to~~ before the next general election.”

SECTION 3. Section 5‑7‑240 of the 1976 Code is amended to read:

“Section 5‑7‑240. (A) Except as allowed by Section 5‑21‑970, the council shall provide for an independent annual audit of all financial statements, records, and transactions of the municipality and any agency funded in whole by municipal funds. The audit must be performed at the close of each fiscal year and council may provide for more frequent audits as it ~~deems~~ considers necessary. Special audits may be provided for ~~any~~ an agency receiving municipal funds as the municipality ~~deems~~ considers necessary. 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. ~~Such~~ These audits ~~shall~~ must be made by ~~a certified public~~ an independent accountant ~~or public accountant or firm of such accountants~~ licensed by the South Carolina Board of Accountancy who ~~have~~ has no personal interest, direct or indirect, in the fiscal affairs of the municipal government or ~~any of~~ its officers. The council ~~may~~, without requiring competitive bids, may designate ~~such~~ an accountant ~~or firm~~ annually or for a period not exceeding four years, provided, that the designation for any particular fiscal year ~~shall~~ must be made no later than thirty days after the beginning of ~~such~~ that fiscal year. The auditor must be selected by and reports directly to the governing body of the municipality. An engagement letter must be provided following auditing standards generally accepted in the United States. The report of the audit ~~shall~~ must be presented by the auditor at a public meeting of the governing body and must be made available for public inspection. The council, ~~may~~ in its discretion, may accept independent audits of municipal agencies and departments and include ~~such~~ these audits in its general report of the audit of the municipality.

(B) Each official and employee of the municipality having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce books and records requested by the auditor and shall divulge this information relating to fiscal affairs as requested. A member of a governing body or employee who conceals, falsifies, or refuses to deliver or divulge 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 not more than one thousand dollars or imprisoned not more than thirty days, or both.”

SECTION 4. Section 5‑21‑50 of the 1976 Code is amended to read:

“Section 5‑21‑50. ~~All towns in this State of more than two hundred population shall keep an itemized account of all receipts and disbursements and shall publish quarterly statements of such accounts in some newspaper in the county in which such town is situated or shall post such quarterly statements at some conspicuous place or places in the town.~~ A municipality shall prepare on at least a quarterly basis a summary statement of finances to include a cash balance report and a statement of accounts with a comparison of actual to budgeted revenues and expenditures. This statement must be provided to the municipal council and, upon request, to members of the public or interested organizations.”

SECTION 5. This act takes effect upon approval by the Governor.

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