~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 24, 2010

**S. 2**

Introduced by Senators McConnell, Peeler, Leatherman, Sheheen, Rose, Courson, Elliott, Massey, Hayes, Davis, Bright and L. Martin

S. Printed 3/24/10--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 2) to amend Section 11‑11‑410, Code of Laws of South Carolina, 1976, relating to implementation of the limit on state spending imposed pursuant to Section, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 11‑11‑410 of the 1976 Code is amended to read:

“Section 11‑11‑410. (A) ~~State appropriations in any fiscal year may not exceed appropriations authorized by the spending limitation prescribed in this section. State appropriations subject to the spending limitation are those appropriations authorized annually in the State General Appropriation Act and acts supplemental thereto which fund general, school, and highway purposes. A statement of total ‘General, School, and Highway Revenues’ must be included in each annual General Appropriation Act. As used in this section the appropriations so limited as defined above must be those funded by ‘General, School, and Highway Revenues’ that must be defined as such in the 1985‑86 General Appropriation Act; it being the intent of this section that all additional nonfederal and nonuser fee revenue items must be included in that category as they may be created by act of the General Assembly.~~

~~(B)~~ ~~The limitation on state appropriations prescribed in subsection (A) is an amount equal to either those state appropriations authorized by the spending limit for the previous fiscal year increased by the average percentage rate of growth in state personal income for the previous three completed calendar years or nine and one‑half percent of the total personal income of the State for the calendar year ending before the fiscal year under consideration, whichever is greater. As used in this section, ‘state personal income’ means total personal income for a calendar year as determined by the Budget and Control Board or its successor based on the most recent data of the United States Department of Commerce or its successors. During the initial year this spending limit is in effect, the actual state appropriations for general, school, and highway purposes for the fiscal year 1985‑1986 must be used as the base figure for computation of the spending limitation if the average rate of growth method is used.~~

~~(C)~~ ~~The Comptroller General, or any other authorized agency, commission, or officer, may not approve or issue warrants which would allow disbursements above the amount appropriated for general fund purposes unless and until the General Assembly authorizes expenditures in excess of the limitation through procedures provided for in this article. This subsection may not apply to funds transferred from the reserve fund to the general fund.~~

~~(D)~~ ~~The Division of Research and Statistical Services of the Budget and Control Board shall annually compute and certify to the General Assembly a current figure to limit appropriations as provided in subsection (B) of this section prior to the Budget and Control Board’s submission of its recommended budget to the House Ways and Means Committee.~~

~~(E)~~ ~~Notwithstanding the provisions of subsection (A) of this section, the General Assembly may declare a financial emergency and suspend the spending limitation for any one fiscal year for a specific amount by a special vote as provided in this subsection by enactment of legislation which relates only to that matter. The authorized state appropriations for the fiscal year following the suspension must be determined as if the suspension had not occurred and, for purposes of determining subsequent limits, must be presumed to have been the maximum limit which could have been authorized if such limitation had not been suspended.~~

~~The special vote referred to in this subsection means an affirmative vote in each branch of the General Assembly by two‑thirds of the members present and voting but not less than three‑fifths of the total membership in each branch.~~

As used in this section:

(1) ‘Annual limit’ means the total of general fund revenues that may be appropriated in the immediately upcoming fiscal year for which the General Assembly is considering the annual appropriations bill. The annual limit shall be the base year amount plus seventy‑five percent of any increase in recurring general fund revenues. Any increase in recurring general fund revenues shall be calculated by subtracting the base year amount from the BEA’s February fifteenth forecast for the immediately upcoming fiscal year. The annual limit shall not be less than the base year amount.

(2) ‘Base year amount’ means the general fund revenues collected in the latest completed fiscal year, not including BSF transfers, made pursuant to subsection (C)(1) of this section.

(3) ‘BEA’ means the Board of Economic Advisors established pursuant to Article 9, Chapter 9 of Title 11, or any successor agency performing similar functions.

(4) ‘Budget Stabilization Fund’ or ‘BSF’ means a fund established in the State Treasury separate and distinct from the general fund of the State and all other funds to which must be credited automatically twenty‑five percent of any increase in recurring general fund revenues. Any increase in recurring general fund revenues shall be calculated by subtracting the base year amount from the BEA’s February fifteenth forecast for the upcoming fiscal year. The amount that must be credited is not subject to mid‑year cuts. If there is no increase in recurring general fund revenues, no funds shall be credited to the BSF. Earnings on the BSF must be credited to it and balances in the BSF carry forward in it to succeeding fiscal years.

(5) ‘Emergency’ means:

(a) the existence of an operating deficit in the general fund of the State for a completed fiscal year after the exhaustion of the Capital Reserve Fund as made in a finding by the Budget and Control Board upon sequestering the Capital Reserve Fund;

(b) a catastrophic event outside the control of the General Assembly including, but not limited to, a natural disaster, severe weather event, act of God, or act of terrorism, fire, war, or riot;

(c) compliance with an order or decree entered by a court of competent jurisdiction; and

(d) compliance with a federal statute or regulation imposing a nonfunded mandate on this State.

(6) ‘General fund revenues’ means the revenues of state‑imposed taxes and fees, earnings on investments, and miscellaneous revenues to the State accruing in the applicable fiscal year, all of which by law must be credited to the general fund of the State and used for the general operation of state government, but not including any amounts credited to the BSF. General fund revenues also include those revenues credited to the general fund of the State but which by law are required to be appropriated from the general fund of the State for a specific purpose or purposes. By way of illustration but not limitation, general fund revenues do not include revenues of taxes, user fees, other fees, or miscellaneous revenues required by law to be credited to funds in the State Treasury separate and distinct from the general fund of the State and which by law must be appropriated for some special use or uses, whether or not those uses include the general operation of state government. By way of illustration but not limitation, revenues credited to the following separate funds in the State Treasury are not general fund revenues:

(a) the General Reserve Fund and the Capital Reserve Fund established, respectively, pursuant to Section 36(A) and (B), Article III of the Constitution of this State and Sections 11‑11‑310 and 11‑11‑320;

(b) the State Highway Fund and the State Non‑Federal Aid State Highway Fund established pursuant to Section 57‑11‑20;

(c) the Education Improvement Act of 1984 Fund established pursuant to Section 59‑21‑1010(B);

(d) the Trust Fund for Tax Relief established pursuant to Section 11‑11‑150(B);

(e) the Homestead Exemption Fund established pursuant to Section 11‑11‑155; and

(f) the State Institution Bonds and State Highway Bonds Debt Service Fund established pursuant to Section 11‑11‑340.

(7) ‘OSB’ means the Office of State Budget of the State Budget and Control Board, or a successor agency performing similar functions.

(B) Except as provided in subsection (D) of this section, the General Assembly may not appropriate general fund revenues for the immediately upcoming fiscal year in an amount that totals more than the annual limit. The annual limit applies in all stages of the budget process, including the Governor’s proposed budget, and this compliance must be certified by the OSB in an addendum to the Governor’s proposed budget, the House Ways and Means Committee’s report on the annual general appropriations bill, the bill as it passes the House of Representatives, the Senate Finance Committee’s report on the bill, the bill as it passes the Senate, and the report of a conference or free conference committee on the bill. The same certification must accompany any other bill or joint resolution appropriating general fund revenues.

(C)(1) When the BEA makes or adjusts its February fifteenth forecast of state revenues, that forecast or adjustment must include a forecast or adjustment of general fund revenues as defined pursuant to subsection (A)(6) of this section, not including a BSF transfer. Also, any legislated increase or decrease in general fund revenue, as estimated by the BEA, must be added to or subtracted from the then applicable annual limit. If the forecast or adjustment of the general fund revenues is less than the annual limit and the Budget and Control Board makes mid-year cuts after the appropriation to the Capital Reserve Fund is exhausted, the Comptroller General shall transfer whatever BSF balance is available to offset as much of the mid-year cut to each agency as possible. If the balance of the BSF is not sufficient to fully restore each agency, the Comptroller General shall restore each agency as uniformly as possible. The amount transferred from the BSF shall not be more than the amount of the mid-year cut.

(2) If revenues in the General Reserve Fund established pursuant to Section 36(A), Article III of the Constitution of this State and Section 11‑11‑310 are used to offset a year‑end operating deficit, and a balance then exists in the BSF, then the Comptroller General shall transfer so much of the BSF balance as is available to the General Reserve Fund to replace revenues used from the General Reserve Fund. This transfer does not replace or supplant the minimum replenishment amount otherwise required to be made to the General Reserve Fund.

(3)(a) Cash balances in the BSF not exceeding fifteen percent of general fund revenues for the last completed fiscal year as certified by OSB may be appropriated by the General Assembly in separate legislation upon an affirmative recorded vote in the House of Representatives and the Senate by two‑thirds of the members present and voting, but not less than three‑fifths of the total membership of the House of Representatives and the Senate.

(b) Cash balances in the BSF in excess of fifteen percent of general fund revenues for the last completed fiscal year as certified by the OSB may be appropriated by the General Assembly for capital improvements, retirement of debt, non‑recurring tax rebates, and other nonrecurring purposes in separate legislation solely for that purpose receiving an affirmative majority vote in the House of Representatives and the Senate.

(D) If there is a finding of an emergency, the annual limit may be exceeded for the fiscal year, and transfers may be made from the BSF to the general fund of the State for that fiscal year. General fund revenue appropriations above the annual limit and transfers from the BSF pursuant to a finding of an emergency shall not be included in the calculation of the base year in subsequent years. An emergency exists if the General Assembly makes a finding enacted as part of the annual general appropriations act or other act or joint resolution appropriating general fund revenues which:

(1) specifies the emergency; and

(2) which is adopted by an affirmative recorded vote in the House of Representatives and the Senate.

~~(F)~~(E) In ~~any~~ a year when surplus ~~funds~~ general fund revenues are collected, ~~such revenue~~ this surplus may be appropriated by the General Assembly ~~to match funds for public education, public welfare, public health, road and highway construction, rehabilitation, replacement, or maintenance financed in part with federal participation funding or federal grants or tolls, or to accelerate the retirement of bonded indebtedness~~ in the manner, for the purposes, and at the times provided by law, or transferred to the general fund reserve~~, or tax relief or for avoiding the issuance of bonds for projects that are authorized but not issued or any combination of these purposes~~ without regard to the ~~spending~~ limitation imposed by this section. For the purposes of this section, surplus ~~funds~~ general fund revenues mean that portion of such revenues, as defined in subsection (A)(6) of this section, ~~over and above revenues authorized for appropriation in subsection (B)~~ which are available for appropriation and have not been appropriated and that are not required to becredited to the BSF.”

SECTION 2. This act becomes effective after the ratification of an amendment to Section 7(c), Article X of the Constitution of this State authorizing its terms and first applies for appropriations in the first state fiscal year beginning after general fund revenues meet or exceed general fund revenues collected in fiscal year 2006‑2007. Prior to this act taking effect, the unamended version of Section 11‑11‑410 of the 1976 Code continues to apply. /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**A** **BILL**

TO AMEND SECTION 11‑11‑410, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO IMPLEMENTATION OF THE LIMIT ON STATE SPENDING IMPOSED PURSUANT TO SECTION 7(C), ARTICLE X OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, SO AS TO REVISE THIS LIMIT BY IMPOSING AN ANNUAL LIMIT ON THE APPROPRIATION OF STATE GENERAL FUND REVENUES BY ADJUSTING SUCH REVENUES BY A ROLLING TEN‑YEAR AVERAGE IN ANNUAL CHANGES IN GENERAL FUND REVENUES AND THE CREATION OF A SEPARATE BUDGET STABILIZATION FUND IN THE STATE TREASURY TO WHICH MUST BE CREDITED ALL GENERAL FUND REVENUES IN EXCESS OF THE ANNUAL LIMIT, THE REVENUES OF WHICH MUCH FIRST BE USED TO STABILIZE GENERAL FUND REVENUES AVAILABLE FOR APPROPRIATION, TO DEFINE EMERGENCIES AND TO PROVIDE FOR SUSPENSION OF THIS APPROPRIATIONS LIMIT IN EMERGENCIES, TO PROVIDE THAT A CASH BALANCE IN THE BUDGET STABILIZATION FUND IN EXCESS OF FIFTEEN PERCENT OF GENERAL FUND REVENUES OF THE MOST RECENT COMPLETED FISCAL YEAR MAY BE APPROPRIATED IN SEPARATE LEGISLATION FOR VARIOUS NONRECURRING PURPOSES, AND TO DEFINE SURPLUS GENERAL FUND REVENUES.

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

SECTION 1. Section 11‑11‑410 of the 1976 Code is amended to read:

“Section 11‑11‑410. (A) ~~State appropriations in any fiscal year may not exceed appropriations authorized by the spending limitation prescribed in this section. State appropriations subject to the spending limitation are those appropriations authorized annually in the State General Appropriation Act and acts supplemental thereto which fund general, school, and highway purposes. A statement of total ‘General, School, and Highway Revenues’ must be included in each annual General Appropriation Act. As used in this section the appropriations so limited as defined above must be those funded by ‘General, School, and Highway Revenues’ that must be defined as such in the 1985‑86 General Appropriation Act; it being the intent of this section that all additional nonfederal and nonuser fee revenue items must be included in that category as they may be created by act of the General Assembly.~~

~~(B)~~ ~~The limitation on state appropriations prescribed in subsection (A) is an amount equal to either those state appropriations authorized by the spending limit for the previous fiscal year increased by the average percentage rate of growth in state personal income for the previous three completed calendar years or nine and one‑half percent of the total personal income of the State for the calendar year ending before the fiscal year under consideration, whichever is greater. As used in this section, ‘state personal income’ means total personal income for a calendar year as determined by the Budget and Control Board or its successor based on the most recent data of the United States Department of Commerce or its successors. During the initial year this spending limit is in effect, the actual state appropriations for general, school, and highway purposes for the fiscal year 1985‑1986 must be used as the base figure for computation of the spending limitation if the average rate of growth method is used.~~

~~(C)~~ ~~The Comptroller General, or any other authorized agency, commission, or officer, may not approve or issue warrants which would allow disbursements above the amount appropriated for general fund purposes unless and until the General Assembly authorizes expenditures in excess of the limitation through procedures provided for in this article. This subsection may not apply to funds transferred from the reserve fund to the general fund.~~

~~(D)~~ ~~The Division of Research and Statistical Services of the Budget and Control Board shall annually compute and certify to the General Assembly a current figure to limit appropriations as provided in subsection (B) of this section prior to the Budget and Control Board’s submission of its recommended budget to the House Ways and Means Committee.~~

~~(E)~~ ~~Notwithstanding the provisions of subsection (A) of this section, the General Assembly may declare a financial emergency and suspend the spending limitation for any one fiscal year for a specific amount by a special vote as provided in this subsection by enactment of legislation which relates only to that matter. The authorized state appropriations for the fiscal year following the suspension must be determined as if the suspension had not occurred and, for purposes of determining subsequent limits, must be presumed to have been the maximum limit which could have been authorized if such limitation had not been suspended.~~

~~The special vote referred to in this subsection means an affirmative vote in each branch of the General Assembly by two‑thirds of the members present and voting but not less than three‑fifths of the total membership in each branch.~~

As used in this section:

(1) ‘Annual limit’ means the total of general fund revenues that may be appropriated in the next state fiscal year. This annual limit is calculated by adjusting general fund revenues available for appropriation in the current fiscal year by a percentage equal to the average annual percentage change in the total of general fund revenues over the preceding ten completed state fiscal years as calculated by the Board of Economic Advisors. For purposes of the annual limit, a legislated increase or decrease in general fund revenues as estimated by the BEA must be added to or subtracted from the then applicable annual limit. The general fund revenues of the current fiscal year may include BSF transfers, made pursuant to subsection (C)(1) of this section.

(2) ‘BEA’ means the Board of Economic Advisors established pursuant to Article 9, Chapter 9 of Title 11, or any successor agency performing similar functions.

(3) ‘Budget Stabilization Fund’ or ‘BSF’ means a fund established in the State Treasury separate and distinct from the general fund of the State and all other funds to which must be credited automatically general fund revenues accruing in a fiscal year in excess of the annual limit. Earnings on the BSF must be credited to it and balances in the BSF carry forward in it to succeeding fiscal years.

(4) ‘Emergency’ means:

(a) the existence of an operating deficit in the general fund of the State for a completed fiscal year after the exhaustion of the Capital Reserve Fund as made in a finding by the Budget and Control Board upon sequestering the Capital Reserve Fund;

(b) a catastrophic event outside the control of the General Assembly including, but not limited to, a natural disaster, severe weather event, act of God, or act of terrorism, fire, war, or riot;

(c) compliance with an order or decree entered by a court of competent jurisdiction; and

(d) compliance with a federal statute or regulation imposing a nonfunded mandate on this State.

(5) ‘General fund revenues’ means the revenues of state‑imposed taxes and fees, earnings on investments, and miscellaneous revenues to the State accruing in the fiscal year to which the annual limit applies, all of which by law must be credited to the general fund of the State and used for the general operation of state government, but not including any amounts credited to the BSF. General fund revenues also include those revenues credited to the general fund of the State but which by law are required to be appropriated from the general fund of the State for a specific purpose or purposes. By way of illustration but not limitation, general fund revenues do not include revenues of taxes, user fees, other fees, or miscellaneous revenues required by law to be credited to funds in the State Treasury separate and distinct from the general fund of the State and which by law must be appropriated for some special use or uses, whether or not those uses include the general operation of state government. By way of illustration but not limitation, revenues credited to the following separate funds in the State Treasury are not general fund revenues:

(a) the General Reserve Fund and the Capital Reserve Fund established, respectively, pursuant to Section 36(A) and (B), Article III of the Constitution of this State and Sections 11‑11‑310 and 11‑11‑320;

(b) the State Highway Fund and the State Non‑Federal Aid State Highway Fund established pursuant to Section 57‑11‑20;

(c) the Education Improvement Act of 1984 Fund established pursuant to Section 59‑21‑1010(B);

(d) the Trust Fund for Tax Relief established pursuant to Section 11‑11‑150(B);

(e) the Homestead Exemption Fund established pursuant to Section 11‑11‑155; and

(f) the State Institution Bonds and State Highway Bonds Debt Service Fund established pursuant to Section 11‑11‑340.

(6) ‘OSB’ means the Office of State Budget of the State Budget and Control Board, or a successor agency performing similar functions.

(B) Except as provided in subsection (D) of this section, the General Assembly may not appropriate general fund revenues for a fiscal year in an amount that totals more than the annual limit. The annual limit applies in all stages of the budget process, including the Governor’s proposed budget, and this compliance must be certified by the OSB in an addendum to the Governor’s proposed budget, the Ways and Means Committee’s report on the annual general appropriations bill, the bill as it passes the House of Representatives, the Senate Finance Committee’s report on the bill, the bill as it passes the Senate, and the report of a conference or free conference committee on the bill. The same certification must accompany any other bill or joint resolution appropriating general fund revenues.

(C)(1) When the BEA makes or adjusts a forecast of state revenues, that forecast or adjustment must include a forecast or adjustment of general fund revenues as defined pursuant to subsection (A)(5) of this section, not including a BSF transfer and the then applicable annual limit. If the forecast or adjustment of the general fund revenues is less than the annual limit, there is transferred for that fiscal year whatever BSF balance is available to offset as much of this projected shortfall as the balance permits, but in no case more than the amount necessary, that when added to the forecast, equals the annual limit. This transfer must be accomplished by a separate line item in the annual general appropriations bill.

(2) If revenues in the General Reserve Fund established pursuant to Section 36(A), Article III of the Constitution of this State and Section 11‑11‑310 are used to offset a year‑end operating deficit, and a balance then exists in the BSF, then the Comptroller General shall transfer so much of the BSF balance as is available to the General Reserve Fund to replace revenues used from the General Reserve Fund. This transfer does not replace or supplant the minimum replenishment amount otherwise required to be made to the General Reserve Fund.

(3)(a) Cash balances in the BSF not exceeding fifteen percent of general fund revenues for the last completed fiscal year as certified by OSB may be appropriated by the General Assembly in separate legislation upon an affirmative recorded vote in the House of Representatives and the Senate by two‑thirds of the members present and voting, but not less than three‑fifths of the total membership of the House of Representatives and the Senate.

(b) Cash balances in the BSF in excess of fifteen percent of general fund revenues for the last completed fiscal year as certified by the OSB may be appropriated by the General Assembly for capital improvements, retirement of debt, non‑recurring tax rebates, and other nonrecurring purposes in separate legislation solely for that purpose receiving an affirmative majority vote in the House of Representatives and the Senate.

(D) If there is a finding of an emergency, the annual limit may be exceeded for a fiscal year and a concomitantly larger transfer made from the BSF to the general fund of the State for that fiscal year up to the amount by which the annual limit is exceeded. General fund revenue appropriations above the annual limit pursuant to a finding of an emergency are not included in the calculation of the annual limit. Transfers to the BSF for a fiscal year for which there is a finding of an emergency apply only to general fund revenues accruing in excess of the annual limit plus the amount by which the annual limit is exceeded. An emergency exists if the General Assembly makes a finding enacted as part of the annual general appropriations act or other act or joint resolution appropriating general fund revenues which:

(1) specifies the emergency; and

(2) which is adopted by an affirmative recorded vote in the House of Representatives and the Senate.

~~(F)~~(E) In ~~any~~ a year when surplus ~~funds~~ general fund revenues are collected, ~~such revenue~~ this surplus may be appropriated by the General Assembly ~~to match funds for public education, public welfare, public health, road and highway construction, rehabilitation, replacement, or maintenance financed in part with federal participation funding or federal grants or tolls, or to accelerate the retirement of bonded indebtedness~~ in the manner, for the purposes, and at the times provided by law, or transferred to the general fund reserve~~, or tax relief or for avoiding the issuance of bonds for projects that are authorized but not issued or any combination of these purposes~~ without regard to the ~~spending~~ limitation imposed by this section. For the purposes of this section, surplus ~~funds~~ general fund revenues mean that portion of such revenues, as defined in subsection (A)(5) of this section, ~~over and above revenues authorized for appropriation in subsection (B)~~ which are available for appropriation and have not been appropriated and that are not required to becredited to the BSF.”

SECTION 2. This act becomes effective after the ratification of an amendment to Section 7(c), Article X of the Constitution of this State authorizing its terms and first applies for appropriations for the first state fiscal year beginning more than one year after that date, prior to which the unamended version of Section 11‑11‑410 of the 1976 Code continues to apply.

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