**South Carolina General Assembly**

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**H. 3442**

**STATUS INFORMATION**

Joint Resolution

Sponsors: Reps. Erickson, Patrick, Loftis and Long

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Introduced in the House on January 25, 2011

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Agency Pilot Project

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/25/2011 House Introduced and read first time ([House Journal‑page 51](file:///h:\hj%20archive\2011\01-25-11.docx))

1/25/2011 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 51](file:///h:\hj%20archive\2011\01-25-11.docx))

**VERSIONS OF THIS BILL**

[1/25/2011](file:///p:\pprever\2011-12\3442_20110125.docx)

**A** **JOINT RESOLUTION**

TO ESTABLISH THE SELF‑DIRECTED SEMI‑INDEPENDENT AGENCY PILOT PROJECT SO AS TO CREATE CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AS SEPARATE AND DISTINCT INDIVIDUAL STATE AGENCIES TO THE EXTENT PROVIDED FOR IN THIS JOINT RESOLUTION AS OF JUNE 30, 2011, TO PROVIDE FOR THEIR POWERS AND DUTIES WITH REGARD TO THEIR FISCAL, REGULATORY, AND OPERATIONAL RESPONSIBILITIES, AND TO PROVIDE THAT THIS JOINT RESOLUTION IS REPEALED SEPTEMBER 1, 2015, UNLESS EXTENDED BY THE GENERAL ASSEMBLY.

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

SECTION 1. (A) There is established the Self‑directed Semi‑independent Agency Pilot Project. In accordance with the provisions of this joint resolution, this pilot project establishes that the South Carolina Board of Accountancy is a separate and distinct agency to the extent provided in this joint resolution and is no longer under the Department of Labor, Licensing and Regulation as of June 30, 2011:

(B) Notwithstanding another provision of law, the project agency must become self‑directed and semi‑independent as specified in this joint resolution and must be administered by the Department of Labor, Licensing and Regulation only to the extent the project agency contracts with the department for these administrative services.

(C) The project agency may not participate in the pilot project unless approved by both the chairman of a standing committee of the Senate designated by the President Pro Tempore of the Senate and the chairman of a standing committee of the House designated by the Speaker of the House.

(D) The project agency seeking to participate in this pilot project must submit a report to the General Assembly, through the chairmen designated pursuant to subsection (C), and to the Governor that includes a description of the activities of the agency in the previous fiscal year. The report must be submitted by June 30, 2011, and include:

(1) an audit conducted under the procedures of Section 4(A);

(2) a financial report of the previous fiscal year;

(3) a description of any changes in licensing fees;

(4) a report on the number of examination candidates, licensees, certificate holders, and enforcement activities and any changes in those figures;

(5) a description of all new rules adopted or repealed;

(6) the total amount of per diem expenses and travel expenses paid for each member of the governing body of each project agency;

(7) a detailed report of all revenue received including, but not limited to, fees, fines, settlements, gifts, grants, donations, and all expenses incurred by the proposed project agency in the previous fiscal year;

(8) job descriptions and salaries for all proposed project agency personnel and the total amount of projected per diem expenses and travel expenses for all prospective project agency employees; and

(9) the project agency’s operating plan and projected budget covering the initial two‑year period of the pilot project.

SECTION 2. In addition to the duties enumerated in Chapter 2, Title 40 or other enabling legislation specifically applicable to the project agency, the project agency shall:

(1) keep financial and statistical information as necessary to disclose completely and accurately the financial condition and operation of the project agency; and

(2) adopt a budget annually using generally accepted accounting principles. The budget must be reviewed and approved only by the governing board of the project agency notwithstanding another provision of law, including the general appropriations act. A cost may not be incurred by the general revenue fund. The project agency must be responsible for all direct and indirect costs.

SECTION 3. (A) The board of the project agency is vested with all authority and responsibilities conferred upon the Department of Labor, Licensing and Regulation in Chapters 1 and 2, Title 40. The board of the project agency may fulfill these responsibilities through internal or external means, including, but not limited to, direct employment of staff or by contract with the Department of Labor, Licensing and Regulation or a third party selected by the board of the project agency. To the extent that any provisions of Chapters 1 and 2, Title 40 are in conflict, Chapter 2, Title 40 will control.

(B) The board shall employ an executive director who serves at its pleasure. The executive director shall employ staff responsible for carrying out the board’s duties and responsibilities.

(C) In addition to other requirements established by law and for the purpose of determining the eligibility of an applicant for licensure or renewal of licensure to practice accountancy, the project agency may require a fingerprint‑based state criminal records check by the South Carolina Law Enforcement Division and a fingerprint‑based national criminal records check by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the project agency. The applicant must pay the cost of conducting these criminal background checks. The South Carolina Law Enforcement Division may retain the fingerprints for certification purposes and for notification of the project agency regarding criminal charges. The project agency must keep information received pursuant to this section confidential, except that information relied upon in denying licensure or renewal of licensure may be disclosed as necessary to support the administrative action.

(D) In an investigation or disciplinary proceeding concerning a licensee, the project agency may require a fingerprint‑based state criminal records check by the South Carolina Law Enforcement Division, and a fingerprint‑based national criminal records check by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the project agency. The project agency must pay the cost of conducting these criminal background checks and may recover costs as administrative costs associated with an investigation or hearing pursuant to this chapter unless ordered by the board as a cost in a disciplinary proceeding. The South Carolina Law Enforcement Division may retain the fingerprints for certification purposes and for notification of the project agency regarding criminal charges. The project agency must keep information received pursuant to this section confidential, except that information relied upon in an administrative action may be disclosed as may be necessary to support the administrative action.

SECTION 4. (A) Nothing in this joint resolution may affect the duty of the State Auditor to audit the project agency. The State Auditor shall enter into a contract and schedule with the project agency to conduct audits, including financial reports and performance audits. The project agency must reimburse costs incurred in performing these audits.

(B) The Legislative Audit Council must submit a performance and management report on the pilot project by September 15, 2014.

SECTION 5. The project agency annually shall submit to the Governor, the House Ways and Means Committee, the House Labor, Commerce and Industry Committee, the Senate Finance Committee and the Senate Labor, Commerce and Industry Committee a report that includes a description of the activities of the agency in the previous fiscal year. The project agency must submit this report by September fifteenth of the subsequent fiscal year. This report must include:

(1) an audit conducted under the procedures of Section 4(A);

(2) a financial report of the previous fiscal year;

(3) a description of any changes in licensing fees;

(4) a report on the number of examination candidates, licensees, certificate holders, and enforcement activities and any changes in those figures;

(5) a description of all new rules adopted or repealed;

(6) the salary for all project agency personnel and the total amount of per diem expenses and travel expenses paid for all project agency employees;

(7) the total amount of per diem expenses and travel expenses paid for each member of the governing body of each project agency;

(8) the operating plan and budget covering a two‑year period for each project agency; and

(9) a detailed report of all revenue received including, but not limited to, fees, fines, settlements, gifts, grants, donations, and all expenses incurred by the project agency in the previous fiscal year.

SECTION 6. (A) Subject to the limitations, if any, in the applicable enabling legislation, the project agency may set the amount of fees, penalties, and fines by statute or regulation as necessary for the purpose of carrying out the functions of the project agency.

(B) All fees and funds collected by the project agency during the pilot project and any funds appropriated to the project agency must be placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. No transfers may be made out of this fund to the Department of Labor, Licensing and Regulation except by a contractual agreement entered into by the project agency.

(C) On July 1, 2011, the Department of Labor, Licensing and Regulation shall deposit an amount equal to the existing cash carry forward of a project agency as of April 1, 2011.

SECTION 7. (A) If the project agency no longer has status under this joint resolution as a self‑directed semi‑independent project agency either because of the expiration of this joint resolution or for any other reason, the board or commission is liable for any expenses or debts incurred by the board or commission during the time the board or commission participated in the pilot project. The project agency’s liability under this section includes liability for any lease entered into by the project agency. The State is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt. The State will be liable for expenses incurred in defense and indemnification of employees, officers, and board members of the South Carolina Board of Accountancy as described in Section 10.

(B) If project agency loses its status under this joint resolution as a self‑directed semi‑independent project agency either because of the expiration of this joint resolution or for any other reason, ownership of any property or other asset acquired by the board during the time the board participated in the pilot project must be transferred to the State.

SECTION 8. An employee of the project agency is a state employee and is entitled to all of the benefits and privileges otherwise afforded to state employees including, but not limited to, membership in the South Carolina Retirement System. The transition of the project agency to independent status has no effect on the membership of its employee members in the South Carolina Retirement System pursuant to Chapter 1, Title 9.

SECTION 9. (A) The transfer of the project agency to semi‑independent status and the expiration of semi‑independent status does not cancel, suspend, or prevent a:

(1) debt owed to or by the project agency;

(2) fine, tax, penalty, or obligation of any party;

(3) contract or other obligation of any party; or

(4) action taken by the project agency in administration or enforcement of its duties.

(B) The project agency will continue to have and exercise the powers and duties allocated to it in its enabling legislation, except as specifically amended by this joint resolution.

(C) Title to all supplies, materials, records, equipment, books, and papers used by the project agency is transferred to each respective project agency. Nothing in this joint resolution has an effect on property already owned by the project agency. At its sole option, the project agency may continue to occupy its current premises at the rates prescribed by the State Budget and Control Board for costs for the duration of the pilot project.

(D) Any fees collected prior to January 1, 2012, collected for examinations conducted after January 1, 2012, must be made available to the project agency.

SECTION 10. (A) The State shall defend employees, officers, and board members of the South Carolina Board of Accountancy against liability arising out of their actions within the scope of their employment and indemnify them from resulting loss when they are sued in their official or individual capacities, or both.

(B) The South Carolina Board of Accountancy employees, officers and board members are acting within the scope of their employment when administering any South Carolina statute which has not been found to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction. For the purposes of this section, a final decision means a court decision declaring a South Carolina statute unconstitutional or otherwise unlawful and from which appropriate officials of this State may not or do not appeal or request a rehearing.

SECTION 11. Except as otherwise provided, this joint resolution takes effect June 30, 2011, and is repealed September 1, 2015, unless extended by action of the General Assembly.

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