**A** **BILL**

TO ENACT THE SOUTH CAROLINA VALUE BASED BUDGETING ACT; TO AMEND TITLE 2 OF THE 1976 CODE, RELATING TO THE GENERAL ASSEMBLY, BY ADDING CHAPTER 9 TO PROVIDE FOR THE JOINT VALUE BASED BUDGET AGENCY AND ACCOUNTABILITY COMMITTEE, TO PROVIDE FOR THE MEMBERSHIP OF THE COMMITTEE, AND ITS FUNCTIONS, DUTIES, AND RESPONSIBILITIES; TO AMEND SECTION 11‑11‑15, RELATING THE BUDGET FUNCTIONS OF THE GOVERNOR, TO PROVIDE FOR THE TIME WITHIN WHICH THE RECOMMENDED BUDGET MUST BE SUBMITTED, TO PROVIDE THAT THE RECOMMENDED STATE BUDGET MUST BE PREPARED UTILIZING VALUE BASED BUDGETING PRINCIPALS, TO PROVIDE FOR THE CONTENTS OF THE RECOMMENDED BUDGET, AND TO PROVIDE FOR THE STATEMENTS, BALANCE SHEETS, AND GENERAL SURVEYS THAT MUST ACCOMPANY THE GOVERNOR’S RECOMMENDED BUDGETS; TO AMEND SECTION 11‑11‑30, RELATING TO ANNUAL AGENCY FUNDING ESTIMATES, TO PROVIDE THAT THE ESTIMATES MUST BE PREPARED UTILIZING VALUE BASED BUDGETING PRINCIPALS AND MUST CONTAIN THE SAME INFORMATION THAT IS REQUIRED TO BE IN THE GOVERNOR’S PROPOSED BUDGET; TO AMEND CHAPTER 15, TITLE 2, RELATING TO THE LEGISLATIVE AUDIT COUNCIL, BY DIVIDING THE CHAPTER INTO SEPARATE ARTICLES, AND BY ADDING AGENCY REVIEW EXAMINATIONS TO THE LEGISLATIVE AUDIT COUNCIL’S DUTIES AND RESPONSIBILITIES, TO PROVIDE FOR THE MANNER IN WHICH AND THE PROCEDURE BY WHICH THE AGENCY REVIEWS MUST BE CONDUCTED, TO PROVIDE THAT THE LEGISLATIVE AUDIT COUNCIL MUST MAKE A REPORT OF ITS FINDINGS AND RECOMMENDATION AND WHAT MUST BE CONTAINED IN THE REPORT; TO AMEND CHAPTER 1, TITLE 2, RELATING TO THE GENERAL PROVISIONS CONCERNING THE GENERAL ASSEMBLY, BY ADDING SECTION 2‑1‑260 TO PROVIDE THAT FOR THE CONSIDERATION OF AGENCY REVIEW EXAMINATION REPORTS BY THE RELEVANT LEGISLATIVE COMMITTEES OF JURISDICTION, AND TO PROVIDE FOR LEGISLATION CONCERNING THE REPORTS; TO AMEND CHAPTER 11, TITLE 11, RELATING TO THE STATE BUDGET SYSTEM, BY ADDING AN ARTICLE 7, TO ESTABLISH A INNOVATIONS AND COST SAVINGS RESERVE FUND FOR EACH STATE AGENCY, TO PROVIDE FOR THE FUNDING METHOD FOR EACH TRUST FUND, AND TO PROVIDE THE APPROPRIATE USE OF THE REVENUE IN THE FUNDS; TO AMEND CHAPTER 11, TITLE 11, RELATING TO THE STATE BUDGET SYSTEM, BY ADDING AN ARTICLE 9 TO PROVIDE THE PARAMETERS WITHIN WHICH STATE AGENCIES MAY EXERCISE FLEXIBILITY IN SPENDING AGENCY EARMARKED AND RESTRICTED ACCOUNTS TO ABSORB GENERAL FUND REDUCTIONS MANDATED IN AN ANNUAL APPROPRIATIONS ACT; AND TO REPEAL SECTION 11‑11‑70, SECTION 11‑11‑80, AND TO DEFINE TERMS AND MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. This act may be cited and referred to as the “South Carolina Value Based Budgeting Act.”

SECTION 2. Title 2 of the 1976 Code is amended by adding:

“Chapter 9

Joint Value Based Budget

and Agency Accountability Committee

Section 2‑9‑10. As used in this chapter:

(1) ‘Activity’ means a distinct subset of functions or services within a program.

(2)(a) ‘Agency’ means and includes any office, department, board, commission, institution, division, instrumentality, or functional group, existing before or created after the enactment of this joint resolution, that is authorized to exercise, or that does exercise, a function in the executive branch of state government.

(b) ‘Agency’ does not mean a public institution of postsecondary education, a postsecondary education governing or management board, an entity under the control of a public institution of postsecondary education or postsecondary education governing or management board, or an entity whose operating budget is not appropriated by the South Carolina General Assembly through the annual appropriations bill.

(3) ‘Functions’ means duties, jurisdiction, powers, rights, and obligations, conferred or imposed upon, or vested in, an agency by law, or exercised, performed, or discharged by an agency without contravention of a provision of law.

(4) ‘Performance standard’ means the expected level of performance associated with a particular performance indicator for a particular period.

(5) ‘Program’ means a grouping of activities directed toward the accomplishment of a clearly defined objective or set of objectives.

Section 2‑9‑20. (A) There is created the Joint Value Based Budget and Agency Accountability Committee. The committee shall examine each agency’s constitutional and statutory activities, functions, programs, services, powers, duties, and responsibilities to determine the value that each agency is providing to the State and measure the efficiency with which that value is being delivered. To improve each agencies value to the State or improve the efficiency with which that value is being delivered, the committee also must determine which activities, functions, programs, services, powers, duties, and responsibilities of each agency may be eliminated, streamlined, consolidated, privatized, or outsourced.

(B) The committee is composed of:

(1) three members of the House of Representatives Ways and Means Committee appointed by the committee’s chairman;

(2) three members of the Senate Finance Committee appointed by the committee’s chairman;

(3) two members of the House of Representatives that do not serve on the Ways and Means Committee, appointed by the Speaker of the House of Representatives; and

(4) two Senators that do not serve on the Finance Committee, appointed by the President Pro Tempore.

(C) The committee must organize itself by electing one of its members as chairman and such other officers as the committee may consider necessary. The chairmanship of the committee must rotate between a member of the House of Representatives and a Senator. The chairmanship shall reside with each chamber for two years. A quorum consists of a majority of members from each chamber.

(D) For each agency examined, the committee must establish the procedures by which the committee will conduct the examination and the criteria by which it will determine which agency activities, functions, programs, services, powers, duties, and responsibilities may be eliminated, streamlined, consolidated, privatized, or outsourced.

(E) The committee may vest its examination authority in a subcommittee comprised of committee members to lead an examination. When a subcommittee is given the authority to conduct an examination, it shall have all of the power and authority of the full committee. A subcommittee leading an examination must make a full report of its findings and recommendations to the full committee at the conclusion of the examination. No subcommittee leading an examination may consist of fewer than four members comprised of an equal number of members of the House of Representatives and Senators.

Section 2‑9‑30. (A) The committee must annually review at least twenty percent of the state’s agencies or a smaller percentage if the agencies reviewed constitute at least twenty percent of the total amount appropriated in the annual appropriations act for the previous fiscal year. In any event, each state agency must be examined at least every five years.

(B) The committee must establish a five‑year agency review schedule. The review schedule must be published in the journals of the House of Representatives and the Senate on the first day of each regular session of the General Assembly. Any changes to or modifications of the schedule must be published in the journals of the House of Representatives and the Senate for the next statewide legislative day if the legislature is in session, or posted in a conspicuous place on the legislature’s internet website if the legislature is not in session.

Section 2‑9‑40. (A) The committee must hold public hearings as part of its examination process. The agency undergoing an examination may appear at public hearings to make presentations to the committee and to address any issues that arise during the examination.

(B) The committee may appoint advisory groups to conduct studies, research, or analyses, and make reports and recommendations with respect to a matter within the jurisdiction of the committee. At least one member of the committee shall serve on each advisory group.

Section 2‑9‑50. (A) At the completion of its examination, the committee must issue a report containing its findings and recommendations.

(B) The report must address whether:

(1) each of the agency’s constitutional or statutory activity, function, program, service, power, duty, and responsibility are necessary;

(2) any of the agency’s constitutional or statutory activity, function, program, service, power, duty, and responsibility are duplicative;

(3) the agency is meeting or exceeding performance standards, and whether the agency is meeting the needs of the state’s residents;

(4) whether eliminating, streamlining, consolidating, privatizing, or outsourcing any of the agency’s constitutional and statutory activities, functions, programs, services, powers, duties, or responsibilities would provide the same or greater value or greater efficiency or effectiveness; and

(5) whether the agency could utilize alternative resources to provide more cost‑effective delivery of its activities, functions, programs, services, powers, duties, or responsibilities without impacting the quality or availability of needed services.

(C) The report must also contain recommendations for standards, processes, and guidelines the agency should use in order to review and evaluate its activities, functions, programs, services, powers, duties, and responsibilities to improve the value it is providing to the state’s residents and the efficiency with which it is performing its activities, functions, programs, services, powers, duties, and responsibilities..

(D) The report must be submitted to the Governor, the Speaker of the House of Representatives, the Chairman of the House of Representatives Ways and Means Committee, the President Pro Tempore of the Senate, the Chairman of the Senate Finance Committee, and the chairman of the standing committee in each house with jurisdiction over the agency examined.

Section 2‑9‑60. The staffs of the Senate, House of Representatives, and State Budget and Control Board may provide staff support and otherwise assist the committee as requested by the committee. The committee may submit a written request to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, or the State Budget and Control Board for specific support and assistance to be provided by the staffs of their respective agencies.

Section 2‑9‑70. (A) Each agency shall furnish aid, services, and assistance as may be requested by the committee.

(B) To the extent permitted by and in accordance with applicable laws, each agency shall make available all facts, records, information, and data requested by the committee and in all ways cooperate with the committee in carrying out the committee’s functions and duties.

(C) All information requested by the committee must be submitted to the committee within fifteen business days after the date of the request. The committee chairman may extend this time period for good cause shown.

(D) The committee may issue subpoenas and subpoenas duces tecum pursuant to Title 2, Chapter 69.

Section 2‑9‑80. The committee may apply for, contract for, receive, and expend for purposes of this joint resolution any appropriation or grant from the State, its political subdivisions, the federal government, or any other public or private source to carry out duties and responsibilities.

SECTION 3. A. Section 11‑11‑15 of the 1976 Code is amended to read:

“Section 11‑11‑15. (A)The functions of the State Budget and Control Board in the preparation and submission to the General Assembly of the recommended state budget are devolved upon the Governor. ~~Wherever the phrase ‘State Budget and Control Board’ appears in the context of preparing and submitting budget recommendations to the General Assembly, it means the Governor.~~ In preparing the recommended state budget, the Governor may consult with the State Treasurer, the Comptroller General, or other state officials as needed. The Budget Division of the State Budget and Control Board shall assist the Governor in preparing the budget recommendations, but this function of the Budget Division may not be construed as altering the overall management and administration of the Budget Division as an entity of the State Budget and Control Board.

(B) Within five days after the beginning of each regular session of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of a recommended budget, based on his own conclusions and judgments, containing a complete and itemized plan of all proposed expenditures for each state department, bureau, division, officer, board, commission, institution, or other agency or undertaking, classified by functions, character, and object, and of estimated revenues and borrowings for each year, beginning with the first day of the next fiscal year. Opposite each item of the proposed expenditures the budget must show in separate parallel columns the amount appropriated for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The recommended budget which is submitted by the Governor to the presiding officer of each house must be certified as being in balance and conform to the funding requirements contained in Section 36 of Article III of the Constitution of this State.

(C)(1) Beginning with fiscal year 2013, and continuing with each succeeding fiscal year, the Governor must utilize value based budgeting principals in preparing the recommended state budget.

(2) The Governor’s value based recommended state budget must include:

(a) a description of activities, functions, programs, services, powers, duties, and responsibilities administered by each agency;

(b) the statutory authority upon which each agency undertakes its activities, functions, programs, services, powers, duties, and responsibilities;

(c) appropriations made to each agency in the previous annual appropriations act, including the amounts appropriated for specific activities, functions, programs, services, powers, duties, and responsibilities;

(d) an itemized list of expenditures associated with each of the agency’s activities, functions, programs, services, powers, duties, and responsibilities;

(e) a short, quantitative estimate of the effects on the budget of each agency resulting from the agency providing each of the agency’s activities, functions, programs, services, powers, duties, and responsibilities at the following levels of service:

(i) discontinuation;

(ii) minimally required;

(iii) current;

(iv) enhanced;

(f) a prioritized ranking of activities, functions, programs, services, powers, duties, and responsibilities according to the relative importance of each to the overall mission of each agency; and

(g) an explanation of how the agency will deliver the services requested.

(D) The Governor shall accompany the budget with:

(1) a statement of the revenues and expenditures for each of the two appropriation years next preceding, classified and itemized in accordance with the official budget classification adopted by the board;

(2) a statement of the current assets, liabilities, revenues, and surplus or deficit of the State;

(3) a statement of the debts and funds of the State;

(4) a statement showing the board’s itemized estimates of the condition of the State Treasury as of the beginning and end of each year;

(5) an itemized and complete financial balance sheet for the State at the close of the last preceding fiscal year ending June thirtieth; and

(6) a general survey of the state’s financial and natural resources, with a review of the general economic, industrial, and commercial condition of the State.”

B. Section 11‑11‑30 of the 1976 Code is amended to read:

“Section 11‑11‑30. On or before the first day of November, annually, each of the several ~~State~~ state departments, bureaus, divisions, officers, commissions, institutions, and other agencies and undertakings receiving or asking financial aid from the State shall report to the ~~State Budget and Control Board~~ Governor, on official estimate blanks furnished for ~~such~~ that purpose, an itemized estimate ~~in itemized form~~ showing the amount needed for the year beginning with the first day of ~~July thereafter~~ of the next fiscal year. The official estimate blanks which must be used in making these reports shall be furnished by the ~~Board~~ Governor, shall be uniform, and shall clearly designate the kind of information to be ~~given thereon~~ provided. The estimates must be calculated pursuant to the value based budgeting process implemented by the Governor and contain the information required in the Governor’s recommended budget pursuant to Section 11‑11‑15(C).”

C. Section 11‑11‑70 of the 1976 Code, relating to budgets submitted to the General Assembly by the Governor, and Section 11‑11‑80 of the 1976 Code, relating to statements, balance sheets, and general surveys that must accompany the budgets submitted to the General Assembly by the Governor, are repealed.”

D. In Chapter 11, Title 11, the Code Commissioner is directed to change all references to the “State Budget and Control Board” that appear in the context of preparing and submitting budget recommendations to the General Assembly to the “Governor”.

SECTION 4. Chapter 15, Title 2 of the 1976 Code is amended to read:

“CHAPTER 15.

LEGISLATIVE AUDIT COUNCIL

Article 1

Organization

Section 2‑15‑10. (A) There is created the Legislative Audit Council consisting of five members, one of whom must be a practicing certified public accountant or a licensed public accountant and one of whom must be an attorney. The council must be elected by the General Assembly in a joint session from the nominees presented by the nominating committee.

(B)(1) The council also includes ~~as ex officio members~~ the following ex officio members:

(a) the Chairmen of the Senate and House Judiciary Committees or a designee by either chairman from the membership of the respective committees; and

(b) the Chairmen of the Senate Finance Committee and the House Ways and Means Committee or a designee by either chairman from the membership of the respective committees.

(2) The ex officio members, including their designees, are voting members on all matters except those pertaining to auditing functions and personnel matters.

(C) The council is directly responsible to the General Assembly and is independent of any other state agency, board, or department.

Section 2‑15‑20. (A) The nominating committee must be composed of six members, three of whom must be appointed by the President Pro Tempore of the ~~South Carolina~~ Senate and three of whom must be appointed by the Speaker of the ~~South Carolina~~ House of Representatives.

(B)(1) ~~The nominating committee shall present not more than three nominees for each vacancy.~~ ~~When a vacancy occurs, the director shall immediately notify those charged with appointing the nominating committee.~~ When a vacancy occurs, the director shall immediately notify those charged with appointing the nominating committee.

(2) If the General Assembly is in session at the time notice is given, a nominating committee must be appointed within fifteen days of the notification and the election must be held within forty‑five days of the notification and no later than sine die adjournment of the General Assembly.

(3) If the General Assembly is not in session and a vacancy exists in the non ex officio members of the council, the Speaker and President ~~of the Senate~~ Pro Tempore, acting jointly, shall fill the vacancy until an election can be held.

(C) The nominating committee shall present not more than three nominees for each vacancy.

Section 2‑15‑30. The terms of office of the members of the ~~Council~~ council shall be for six years and until their successors are appointed and qualify~~, except that of the initial members, one shall be elected for the term of two years, one for a term of four years and one for a term of six years~~. No person who is either a member of the General Assembly or has served in the General Assembly during the preceding two years shall be elected to the ~~Council~~ council. Any member may succeed himself on the ~~Council~~ council. The ~~Council~~ council shall elect its own chairman.

Section 2‑15‑40. (A) The ~~Council~~ council shall ~~be in charge of~~ a ~~Director who shall be elected by a majority vote of the Council and he shall hold office~~ elect a director for a term of four years and until his successor ~~shall have been~~ is elected and qualifies.

(B) The ~~Director~~ director shall be ~~chosen solely on the grounds of fitness~~ fit to perform the duties assigned to him and shall possess the following minimum qualifications:

~~(a)~~(1) a Baccalaureate Degree from an accredited college or university; and

~~(b)~~(2) at least five years of experience in public, industrial or governmental accounting with at least three years in a responsible managerial capacity.

(C) No member of the General Assembly nor anyone who shall have been a member for two years previously shall be appointed as ~~Director~~ director.

(D) The ~~Director~~ director shall act as ~~Secretary~~ secretary for the ~~Council~~ council and he shall have authority to employ, with the approval of the ~~Council~~ council, ~~such~~ technical, legal, clerical, and stenographic assistance as may be necessary to carry out the duties of the office; provided, however, that at least one staff member shall be qualified to audit or to supervise the audit of State programs and activities in order to determine if funds have been used in a faithful, effective, economical and efficient manner.

Article 2

Council’s Audit Duties and Responsibilities

Section 2‑15‑50. For the purpose of this ~~chapter~~ article:

(1) ‘state agencies’ means all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of state government or corporate outgrowth of state government, expending or encumbering state funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but does not mean or include counties~~.~~; and

(2) ~~For the purposes of this chapter,~~ ‘audit’ means a full‑scope examination of and investigation into all state agency matters necessary to make a determination of:

(a)~~(1)~~(i) whether the entity is acquiring, protecting, and using its resources, such as personnel, property, and space, economically and efficiently;

~~(2)~~(ii) the causes of inefficiencies or uneconomical practices; and

~~(3)~~(iii) whether the entity has complied with laws and regulations concerning matters of economy and efficiency; and

(b)~~(1)~~(i) the extent to which the desired results or benefits established by the General Assembly or other authorizing body are achieved;

~~(2)~~(ii) the effectiveness of organizations, programs, activities, or functions; and

~~(3)~~(iii) whether the entity has complied with laws and regulations applicable to the program.

Section 2‑15‑60. It is the duty of the council:

(a) ~~To~~ to respond to any request concerning a fiscal matter or information related to the purposes set forth in Section 2‑15‑50 which may be referred to it by the General Assembly or any of its members or committees~~.~~;

(b) ~~To~~ to conduct audits, if authorized by the council, upon request of the General Assembly or either of its respective bodies, a standing committee, the Speaker of the House, the President Pro Tempore of the Senate, or not less than five members of the General Assembly, and to submit a report containing its findings and recommendations to the requesting entity or persons and to any member of the General Assembly who may request a copy~~.~~;

(C) ~~To~~ to assist the General Assembly in the performance of its official functions by providing its members and committees with impartial and accurate information and reports concerning the fiscal problems presented to them as members of the General Assembly~~.~~;

(d) ~~To~~ to establish a system of post audits for all fiscal matters and financial transactions for all state agencies of the state government.

Section 2‑15‑61. For the purposes of carrying out its audit duties under this chapter, the ~~Legislative Audit Council~~ council shall have access to the records and facilities of every state agency during that agency’s operating hours with the exception of reports and returns of the South Carolina Department of Revenue as provided in Sections 12‑7‑1680 and 12‑35‑1530.

Section 2‑15‑62. In the performance of their audit duties, ~~Legislative Audit Council~~ council staff members are subject to the statutory provisions and penalties regarding confidentiality of records of the agency under review.

Section 2‑15‑63. (A) Beginning in December 2004 and every three years after that, the ~~Legislative Audit Council~~ council shall conduct a management performance audit of the South Carolina Lottery Commission. The cost of this audit is an operating expense of the commission.

(B) Nothing in this section limits, abridges, or otherwise affects the provisions of Section 2‑15‑60.

(C) The ~~Legislative Audit Council~~ council may contract with an independent firm experienced in security procedures including, but not limited to, computer security and systems security, to periodically conduct a comprehensive study and evaluation of all aspects of security in the operation of the commission and the lottery. This firm must not have a financial interest in a lottery vendor with whom the commission is under contract. The cost of this evaluation is an operating expense of the commission. The commission shall pay directly to the ~~Legislative Audit Council~~ council the cost of the evaluation.

Section 2‑15‑65. Notwithstanding any other provision of law, in order to further comply with federal requirements and increase the oversight abilities of the General Assembly, the ~~Legislative Audit Council~~ council shall ensure that an appropriate amount is budgeted for audit purposes in all Title XX federal programs and shall designate and assign audit responsibility in accordance with state and federal laws and regulations and the intent of the General Assembly.

Section 2‑15‑70. ~~The facilities of the State institutions of higher learning and any other tax supported agencies shall be available for use by the Council in carrying out its functions.~~ (A) As used in this section, ‘records’ includes, but is not limited to, books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the council.

(B) All records and audit working papers of the council with the exception of its final audit reports provided for by Section 2‑15‑60 are confidential and not subject to public disclosure. The court, in determining the extent to which any disclosure of all or any part of a council record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(C) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, he must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.

~~Section 2‑15‑80.~~ ~~Neither the Director nor any other employee of the Council shall urge or oppose any legislation or give financial advice to any person except members of the legislature.~~

~~Section 2‑15‑90.~~ ~~It shall not be a function of the Council staff to prepare legislation and all suggested legislation resulting from staff studies shall be channeled through the Legislative Council which shall cooperate with the staff.~~

~~Section 2‑15‑110.~~ ~~The members of the nominating committee and the members of the Legislative Audit Council shall be entitled to per diem, mileage and subsistence as provided by law for members of boards, committees and commissions.~~

~~Section 2‑15‑120.~~ ~~All records and audit working papers of the Legislative Audit Council with the exception of its final audit reports provided for by Section 2‑15‑60 are confidential and not subject to public disclosure. The court in determining the extent to which any disclosure of all or any part of a council record is necessary shall impose appropriate safeguards against unauthorized disclosure.~~

~~As used in this section, ‘records’ includes, but is not limited to books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Legislative Audit Council.~~

~~Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, he must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.~~

Article 3

Council’s Agency Review Duties and Responsibilities

Section 2‑15‑300. For the purposes of this article:

(1) ‘Activity’ means a distinct subset of functions or services within a program.

(2)(a) ‘Agency’ means and includes any office, department, board, commission, institution, division, instrumentality, or functional group, existing before or created after the enactment of this joint resolution, that is authorized to exercise, or that does exercise, a function in the executive branch of state government.

(b) ‘Agency’ does not mean a public institution of postsecondary education, a postsecondary education governing or management board, an entity under the control of a public institution of postsecondary education or postsecondary education governing or management board, or an entity whose operating budget is not appropriated by the South Carolina General Assembly through the annual appropriations bill.

(3) ‘Functions’ means duties, jurisdiction, powers, rights, and obligations, conferred or imposed upon, or vested in, an agency by law, or exercised, performed, or discharged by an agency without contravention of a provision of law.

(4) ‘Performance standard’ means the expected level of performance associated with a particular performance indicator for a particular period.

(5) ‘Program’ means a grouping of activities directed toward the accomplishment of a clearly defined objective or set of objectives.

Section 2‑15‑310. (A) It is the duty of the council to conduct agency review examinations of each agency’s constitutional and statutory activities, functions, programs, services, powers, duties, and responsibilities.

(B) Each year the council shall conduct examinations of the same agencies that the Joint Value Based Budget and Agency Accountability Committee is also examining that year pursuant to Chapter 9, Title 2.

Section 2‑15‑320. (A) In conducting agency reviews, the council shall consider the examined agency’s constitutional and statutory activities, functions, programs, services, powers, duties, and responsibilities and the extent to which each activity, function, program, service, power, and duty is being fulfilled. The commission shall examine the necessity and performance of activities, functions, programs, services, powers, duties, and functions to ensure that they are meeting current performance standards effectively and efficiently and they are meeting the needs of South Carolina residents.

(B) In conducting an agency review, the council must identify:

(1) the agency’s constitutional and statutory activities, functions, programs, services, powers, duties, and responsibilities;

(2) any activity, function, program, service, power, duty, or responsibility being performed by the agency that extends beyond the scope of constitutional or legislative authority granted to the agency and identify the authority by which the agency is acting;

(3) the objectives for each of the agency’s activities, functions, programs, services, powers, duties, and responsibilities, determine whether the objectives have been achieved, and determine whether each activity, function, program, service, power, duty, or responsibility is still necessary; and

(4) any of the agency’s activities, functions, programs, service, powers, duties, and responsibilities that are also being provided by another federal, state, or local agency or entity.

(C) In conducting an agency review, the council must analyze:

(1) the agency’s compliance with applicable state and federal laws and regulations;

(2) how effectively and efficiently the agency is carrying out each activity, function, program, service, power, duty, and responsibility, including an analysis of the effectiveness and efficiency of the agency’s management process and structure. The efficiency analysis must also include a comparison with similar activities, functions, programs, and services provided in the private and nonprofit sector, and the relative value provided to the state’s residents;

(3) the actual cost, including manpower, associated with operating the agency;

(4) the extent to which the agency has encouraged public participation in the administration of its activities, functions, programs, services, powers, duties, and responsibilities;

(5) the extent to which the agency’s activities, functions, programs, services, powers, duties, and responsibilities are prioritized, and whether that prioritization is congruent with the agency’s mission and expenditures; and

(6) the economic, fiscal, social, and other impact that would result from the elimination, streamlining, consolidation, privatization, or outsourcing of the agency’s activities, functions, programs, services, powers, duties, and responsibilities.

Section 2‑15‑330. (A) The council must hold a public hearing as part of its agency review process. The agency undergoing an examination may appear at the public hearing to make presentations to the committee and to address any issues that arise during the examination or at the hearing.

(B) The chairmen of the House of Representatives and Senate standing committees with jurisdiction over the agency that is the subject of the public hearing may attend the hearing and participate with council members during the hearing.

Section 2‑15‑340. The council shall submit a report of its findings, analysis, and recommendations for each agency reviewed to the chairman of the House of Representatives and Senate standing committees with jurisdiction over the agency. The report must be submitted no later than January second. The report must be posted on the council’s internet webpage and notice must be provided to each member of the General Assembly that the report is complete and has been posted.

Section 2‑15‑350. At the conclusion of an agency review, the council may assess the agency the costs associated with the review, not to exceed one half of one percent of the agency’s operating budget, including state appropriations, federal, and other funds.

Section 2‑15‑360. At least one council staff member must be assigned to each agency to monitor the operations of the agency and serve as an internal auditor. The agency to which the staff member is assigned, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies.

Section 2‑15‑370. (A) As used in this section, ‘records’ includes, but is not limited to, books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the council.

(B) All the council’s records and agency review working papers are confidential and not subject to public disclosure. The court, in determining the extent to which any disclosure of all or any part of a council record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(C) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, he must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.

Section 2‑15‑380. For the purposes of carrying out its agency review duties under this chapter, the council shall have access to the records and facilities of every state agency during that agency’s operating hours with the exception of reports and returns of the South Carolina Department of Revenue as provided in Sections 12‑7‑1680 and 12‑35‑1530.

Section 2‑15‑390. In the performance of their agency review duties, council staff members are subject to the statutory provisions and penalties regarding confidentiality of records of the agency under review.

Article 4

General Provisions

Section 2‑15‑400. The facilities of the state institutions of higher learning and any other tax supported agencies shall be available for use by the council in carrying out its functions.

Section 2‑15‑410. Neither the director nor any other employee of the council shall urge or oppose any legislation or give financial advice to any person except members of the legislature.

Section 2‑15‑420. It shall not be a function of the council staff to prepare legislation and all suggested legislation resulting from staff studies shall be channeled through the council which shall cooperate with the staff.

Section 2‑15‑430. The members of the nominating committee and the members of the council shall be entitled to per diem, mileage, and subsistence as provided by law for members of boards, committees, and commissions.”

SECTION 5. Chapter 1, Title 2 of the 1976 Code is amended by adding:

“Section 2‑1‑260. (A) The standing committees of the House of Representatives and the Senate must establish joint committees to consider each agency review report prepared and submitted pursuant to Article 4, Chapter 15, Title 2. Each joint committee must be comprised of three members of each house that serve on the standing committee with jurisdiction over the agency reviewed and the Chairman of the House of Representatives Ways and Means Committee, or his designee, and the Chairman of the Senate Finance Committee, or his designee.

(B) During its consideration of the agency review report, the joint committee must hold a public hearing no later than fifteen days after the report is made available to members of the General Assembly. The agency may appear at the public hearing to make presentations to the joint committee and to address any issues that arise during the hearing or raised in the report.

(C) The joint committee must prepare appropriate legislation to address matters that arise as a result of the agency review and the public hearing. The legislation must be completed and introduced into both houses no later than fifteen days after the completion of public hearings or April first, whichever is sooner.

(1) The legislation must identify any activity, function, program, service, power, duty, or responsibility that is going to be eliminated and provide a schedule for the elimination of the program.

(2) The legislation must include that a function, program, service, power, duty, or responsibility eliminated by the legislation may only be subsequently reinstated for a period not to exceed five years.

(D) The standing committees to which the legislation introduced pursuant to subsection (C) must act upon the legislation within thirty days of referral or April fifteenth, whichever is later.”

SECTION 6. Chapter 11, Title 11 of the 1976 Code is amended by adding:

“Article 7

Innovations and Cost Savings Reserve Fund

Section 11‑11‑700. For the purposes of this section, ‘agency’ means a state agency, department, institution, or entity receiving general fund appropriations.

Section 11‑11‑710. There is created in the State Treasury a separate and distinct Innovations and Cost Savings Reserve Fund for each agency. One half of any balance maintained by an agency at the end of a fiscal year resulting from innovation and cost savings that it instituted must be credited to that agency’s fund; with the remaining one half being credited to the general fund. Earnings and interest for each agency’s fund must be credited to that fund and any balance in each agency’s fund at the end of the fiscal year must be carried forward in the fund to the succeeding fiscal year. The fund is a special restricted account and any funds in the fund be used solely by the appropriate agency for the purposes permitted by this article.

Section 11‑11‑720. (A) Up to fifty percent of the fund balance may be used by an agency to:

(1) offset decreases in appropriations from the previous fiscal year; or

(2) fund costs associated with one‑time capital improvement costs.

(B) Up to ten percent of the fund balance may be used by an agency to operate an employee incentive program.

(C) Under no circumstances may an agency use more than fifty percent of the funds available in the fund in any single fiscal year when the funds available exceed one thousand dollars. When the funds available is equal to or less than one thousand dollars, an agency may utilize all of the available funds for reasonable purposes.

Section 11‑11‑730. No agency shall maintain a balance in the agency’s fund that is equal to or exceeds the appropriation to that agency during the previous fiscal year.

Article 9

Flexibility

Section 11‑11‑900. (A) Notwithstanding any other provision of law restricting the use of earned revenue, in order to provide maximum flexibility in absorbing general fund reductions mandated in an annual appropriations act as compared to the appropriations contained in the previous fiscal year’s annual appropriations act, agencies are authorized to spend agency earmarked and restricted accounts designated as ‘special revenue funds’ as defined in the Comptroller General’s records, to maintain critical programs previously funded with general fund appropriations.

(B) Any spending authorization for these purposes must receive the prior approval of the Office of State Budget and must be reported to the Governor, the Senate Finance Committee, and the House Ways and Means Committee. The Comptroller General is authorized to implement the procedures necessary to comply with this section.

(C) Appropriation transfers may exceed twenty percent of the program budget upon approval of the Office of State Budget in consultation with the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.”

SECTION 7. (A) The first agencies to be examined by the Joint Value Based Budget and Agency Accountability Committee must receive notice of the examination no later than July 1, 2011. All state agencies must be reviewed by the committee by June 30, 2017.

(B) No additional revenue may be appropriated to carry out the budgeting process described in SECTION 2 and SECTION 3.

(C) The provisions contained in Section 11‑11‑900, as added by this act, apply to an agency only after the agency has undergone its initial examination by the Joint Value Based Budget and Accountability Committee pursuant to SECTION 2 of this act and the Legislative Audit Council pursuant to Article 3, Chapter 15, Title 2.

SECTION 8. This act takes effect upon approval by the Governor.

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