~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 18, 2012

**S. 372**

Introduced by Senators McConnell, Rose, Campsen, Massey, Shoopman and Knotts

S. Printed 1/18/12--S.

Read the first time January 18, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 372) to amend the Code of Laws South Carolina, 1976, to enact the “State Agency Deficit Prevention and Recognition Act” by adding Chapter 79 to Title 2 so as to provide, 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 SECTION 2 in its entirety and inserting:

/ SECTION 2. Section 1-11-495 of the 1976 Code, as last amended by Act 152 of 2010, is repealed. /

Renumber sections to conform.

Amend title to conform.

LARRY A. MARTIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

State Budget and Control Board

Enactment of the bill should have no direct impact on the Board – Office of State Budget (OSB). The responsibilities and procedures for monitoring agency expenditures and recognizing an agency deficit already exist within current statutes and provisos. This estimate assumes the number of requests for pay increases and purchases of equipment and vehicles that OSB would have to review before approval would not be voluminous for those agencies where a deficit is formally recognized (see Section 2-79-50).

The Senate and the House of Representatives

The Legislature indicates this bill will have a minimal fiscal impact but can be absorbed within existing resources.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS SOUTH CAROLINA, 1976, TO ENACT THE “STATE AGENCY DEFICIT PREVENTION AND RECOGNITION ACT” BY ADDING CHAPTER 79 TO TITLE 2 SO AS TO PROVIDE THAT A STATE AGENCY, DEPARTMENT, OR INSTITUTION MAY NOT OPERATE IN A MANNER THAT RESULTS IN A YEAR‑END DEFICIT UNLESS THE DEFICIT IS RECOGNIZED BY THE GENERAL ASSEMBLY, TO PROVIDE THE MANNER IN WHICH THE GENERAL ASSEMBLY MAY RECOGNIZE A DEFICIT, TO PROVIDE THAT AN OFFICER OR EMPLOYEE OF THIS STATE MAY NOT MAKE OR AUTHORIZE AN EXPENDITURE OR OBLIGATION EXCEEDING THE AMOUNT AVAILABLE IN AN EXISTING STATE APPROPRIATION, TO PROVIDE EXCEPTIONS, AND TO PROVIDE PENALTIES; AND TO AMEND SECTION 1‑11‑495, AS AMENDED, RELATING TO YEAR END DEFICITS, SO AS TO ELIMINATE THE BUDGET AND CONTROL BOARD AUTHORITY TO RECOGNIZE AN AGENCY DEFICIT.

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

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

“CHAPTER 79

State Agency Deficit Prevention and Recognition

Section 2‑79‑10. This chapter may be cited as the ‘State Agency Deficit Prevention and Recognition Act’.

Section 2‑79‑20. It is the responsibility of each state agency, department, and institution to operate within the limits of appropriations set forth in the annual general appropriations act, appropriation acts, or joint resolution supplemental thereto, and any other approved expenditures of monies. A state agency, department, or institution shall not operate in a manner that results in a year‑end deficit except as provided in this chapter.

Section 2‑79‑30. If at the end of each quarterly deficit monitoring review by the Office of State Budget, it is determined by either the Office of State Budget or a state agency, department, or institution that the likelihood of a deficit for the current fiscal year exists, the state agency shall submit to the Office of State Budget and the General Assembly within fourteen days, a plan to eliminate the projected deficit. After submission of the plan, if it is determined that the deficit cannot be eliminated by the state agency, department, or institution on its own, the state agency is required to officially notify the General Assembly within fifteen days of the determination that the state agency is requesting that a deficit be recognized.

Section 2‑79‑40. (A) Upon notification from the state agency, department, or institution, as provided in Section 2‑79‑30, the General Assembly, by joint resolution, may make a finding that the cause of, or likelihood of, a deficit is unavoidable due to factors which are outside the control of the state agency, department, or institution, and recognize the deficit. Any legislation to recognize a deficit must be in a separate joint resolution enacted for the sole purpose of recognizing the deficit of a particular state agency, department, or institution. A deficit only may be recognized by an affirmative vote of each branch of the General Assembly.

(B) If the General Assembly recognizes the deficit, then the actual deficit at the close of the fiscal year must be reduced as necessary from surplus revenues or surplus funds available at the close of the fiscal year in which the deficit occurs and from funds available in the General Reserve Fund and the Capital Reserve Fund, as required by the Constitution of this State.

Section 2‑79‑50. Once a deficit has been recognized by the General Assembly, the state agency, department, or institution shall limit travel and conference attendance to the minimum required to perform its core mission. In addition, the General Assembly, when recognizing a deficit may direct that any pay increases and purchases of equipment and vehicles must be approved by the Office of State Budget.

Section 2‑79‑60. (A)(1) An officer or employee of this State may not:

(a) except following the enactment of a joint resolution pursuant to Section 2‑79‑40, make or authorize an expenditure or obligation exceeding the amount available in an existing state appropriation or existing state fund for the expenditure or obligation; or

(b) unless otherwise authorized by law, involve the state government in a contract or obligation for the payment of money before an appropriation to fund the contract or obligation is made.

(B) Except following the enactment of a joint resolution pursuant to Section 2‑79‑40, an officer or employee of this State may not make or authorize an expenditure or obligation exceeding appropriated funds available as allowed in a quarterly allocation plan instituted pursuant to Section 1‑11‑495(B).

(C)(1) An officer or employee of this State may not employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

(2) As used in this subsection, ‘emergencies involving the safety of human life or the protection of property’ do not include ongoing, regular functions of state government the suspension of which would not imminently threaten the safety of human life or the protection of property.

(D)(1) If an employee of this State covered by the State Employee Grievance Protection Act is determined by his employing authority knowingly and wilfully to have violated a provision of this section, the officer may be suspended with or without pay, as appropriate and, pending final action pursuant to that act, dismissed, demoted, or otherwise disciplined.

(2) If an ‘at will’ employee or an officer of this State is determined by his employing or appointing authority knowingly and wilfully to have violated a provision of this section, the officer or employee may be dismissed, demoted, or otherwise disciplined. An ‘at will’ employee subject to a personnel action pursuant to this section is nevertheless entitled to appeal that action to his employing or appointing authority at a hearing at which the officer or employee may be represented by a person of his choosing. The decision of the hearing body or officer is final with respect to the disposition of this personnel action.

(E) The provisions of subsection (D) of this section are in addition to and not in lieu of any other administrative or criminal penalties provided by law for violating similar provisions of law, including, specifically, the criminal penalties provided for violations pursuant to Section 11‑1‑40.”

SECTION 2. Section 1‑11‑495 of the 1976 Code, as last amended by Act 152 of 2010, is further amended to read:

“Section 1‑11‑495. (A) The State Budget and Control Board is directed to survey the progress of the collection of revenue and the expenditure of funds by all agencies, departments, and institutions. If the board determines that a year‑end aggregate deficit may occur by virtue of a projected shortfall in anticipated revenues, it shall utilize those funds as may be available and required to be used to avoid a year‑end deficit and after that take action as necessary to restrict the rate of expenditure of all agencies, departments, and institutions consistent with the provisions of this section. No agencies, departments, institutions, activity, program, item, special appropriation, or allocation for which the General Assembly has provided funding in any part of this section may be discontinued, deleted, or deferred by the board. A reduction of rate of expenditure by the board, under authority of this section, must be applied as uniformly as may be practicable, except that no reduction must be applied to funds encumbered by a written contract with the agency, department, or institution not connected with state government. This reduction is subject to any bill or resolution enacted by the General Assembly.

(B) As far as practicable, all agencies, departments, and institutions of the State are directed to budget and allocate appropriations as a quarterly allocation, so as to provide for operation on uniform standards throughout the fiscal year and in order to avoid an operating deficit for the fiscal year. It is recognized that academic year calendars of state institutions affect the uniformity of the receipt and distribution of funds during the year. The Comptroller General or the Office of State Budget shall make reports to the board and the General Assembly as they consider advisable on an agency, department, or institution that is expending authorized appropriations at a rate which predicts or projects a general fund deficit for the agency, department, or institution. The board is directed to require the agency, department, or institution to file a quarterly allocations plan and is further authorized to restrict the rate of expenditures of the agency, department, or institution if the board determines that a deficit may occur. ~~It is the responsibility of the agency, department, or institution to develop a plan, in consultation with the board, which eliminates or reduces a deficit. If the board makes a finding that the cause of, or likelihood of, a deficit is unavoidable due to factors which are outside the control of the agency, department, or institution, then the board may determine that the recognition of the agency, department, or institution is appropriate and shall notify the General Assembly of this action or the presiding officer of the House and Senate if the General Assembly is not in session. The board only may recognize a deficit by a vote of at least four members of the board.~~

~~(C)~~ ~~Upon receipt of the notification from the board, the General Assembly may authorize supplemental appropriations from any surplus revenues that existed at the close of the previous fiscal year. If the General Assembly fails to take action, then the finding of the board shall stand, and the actual deficit at the close of the fiscal year must be reduced as necessary from surplus revenues or surplus funds available at the close of the fiscal year in which the deficit occurs and from funds available in the Capital Reserve Fund and General Reserve Fund, as required by the Constitution of this State. If the board finds that the cause of or likelihood of a deficit is the result of the agency, department, or institution management, then the state officials responsible for management of the agency, department, or institution involved must be held liable for it and the board shall notify the Agency Head Salary Commission of this finding. In the case of a finding that a projected deficit is the result of the management of the agency, department, or institution, the board shall take steps immediately to curtail agency, department, or institution expenditures so as to bring expenditures in line with authorized appropriations and avoid a year‑end operating deficit.~~”

Section 3. This act takes effect upon approval by the Governor and applies to fiscal years beginning after fiscal year 2010‑2011.

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