COMMITTEE REPORT

February 13, 2013

**S. 92**

Introduced by Senators Davis, S. Martin, Verdin, Grooms, Bryant and Bright

S. Printed 2/13/13--S.

Read the first time January 8, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 92) to amend the Code of Laws of South Carolina, 1976, to enact the “NDAA Nullification Act of 2013”, by adding Section 8‑1‑15, relating to public officers and employees, 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 therein the following:

/ SECTION 1. The General Assembly declares that authority for this act is the following:

(1) The Tenth Amendment to the United States Constitution provides that the United States federal government is authorized to exercise only those powers delegated to it in the Constitution.

(2) Article VI, Clause 2 of the Constitution of the United States provides that laws of the United States are the supreme law of the land provided that they are made in pursuance of the powers delegated to the federal government in the Constitution.

(3) Article I, Section 9, Clause 2 of the Constitution provides that the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(4) The First Amendment provides that the Congress of the United States shall make no law prohibiting the right of the people to petition the government for a redress of grievances.

(5) The Fourth Amendment provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

(6) The Fifth Amendment provides that the people have a right to be free from deprivation of life, liberty, or property, without due process of law.

(7) The Sixth Amendment provides that the people have a right in criminal prosecutions to enjoy a speedy trial by an impartial jury in the state and district where the crime shall have been committed; to be informed of the nature and cause of the accusation; to confront witnesses; and to counsel.

(8) The Fourteenth Amendment provides that the people are to be free from deprivation of life, liberty, or property, without due process of law.

SECTION 2. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑15. No agency of the State, agency of a political subdivision of the State, officer or employee of the State, officer or employee of a political subdivision of the State, acting in his official capacity, to include any member of the South Carolina Military Department solely on official state duty, or employees of any state or local detention facility solely on official state duty, may engage in an activity that aids an agency of the armed forces of the United States in execution of 50 U.S.C. 1541, as provided by the National Defense Authorization Act for Fiscal Year 2012, or any subsequent provision of this law in the detainment of any citizen of the United States in violation of Section 3, Article I, and Section 14, Article I of the South Carolina Constitution.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

SHANE R. MARTIN JOHN L. SCOTT, JR.

For Majority. For Minority.

**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:**

The Adjutant General reports this bill would have no impact on the General Fund of the State or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “NDAA NULLIFICATION ACT OF 2013”, BY ADDING SECTION 8‑1‑15, RELATING TO PUBLIC OFFICERS AND EMPLOYEES, TO PROHIBIT ANY OFFICER OR EMPLOYEE OF THE STATE OR ANY OFFICER OR EMPLOYEE OF A POLITICAL SUBDIVISION FROM AIDING THE DETENTION OF ANY UNITED STATES CITIZEN WITHOUT TRIAL BY THE U.S. ARMED FORCES IN VIOLATION OF THE CONSTITUTION OF SOUTH CAROLINA.

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

SECTION 1. This act may be referred to and cited as the “NDAA Nullification Act of 2013.”

SECTION 2. The General Assembly finds that:

(1) Section 1021 of the National Defense Authorization Act of 2012 purports to assert the President’s authority to not only arrest suspected terrorists, but also to determine whether a trial, including the type of trial, will be held for those arrested;

(2) Section 1022 of the National Defense Authorization Act of 2012 requires detention without trial by the military for a certain class of terrorist and authorizes, but does not require, the same for citizens of the United States;

(3) The exemption for citizens of the United States in Section 1022 only exempts citizens from the requirement that detainees be detained in military custody; and

(4) The enactment into law by the United States Congress of Section 1021 and 1022 of the National Defense Authorization Act of 2012, P.L 112‑81, is a direct threat to the liberty, security, and well being of the people of South Carolina, and was adopted by the United States Congress in violation of the limits of federal power provided in the United States Constitution.

SECTION 3. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑15. No agency of the State, agency of a political subdivision of the State, officer or employee of the State, officer or employee of a political subdivision of the State, acting in his official capacity, to include any member of the South Carolina Military Department on official duty, or employees of any state or local detention facility may engage in any activity that aids an agency of the armed forces of the United States in execution of 50 U.S.C. 1541, as provided by the National Defense Authorization Act for Fiscal Year 2012, in the investigation, prosecution, or detainment of any citizen of the United States in violation of Section 3, Article I, and Section 14, Article I of the South Carolina Constitution.”

SECTION 4. This act takes effect upon approval by the Governor.

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