AS PASSED BY THE SENATE

April 8, 2020

**H. 3411**

Introduced by Reps. G.R. Smith, W. Newton, Funderburk, Willis, Anderson, Weeks, Erickson, Elliott, R. Williams and Wheeler

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Read the first time February 5, 2019.

**A** **BILL**

TO MAKE APPROPRIATIONS AND TO PROVIDE REVENUES TO MEET THE ORDINARY EXPENSES OF STATE GOVERNMENT FOR THE FISCAL YEAR BEGINNING JULY 1, 2020, IN THE EVENT THAT THE GENERAL APPROPRIATIONS ACT FOR FISCAL YEAR 2020-2021 HAS NOT BEEN ENACTED BY THAT DATE, TO REGULATE THE EXPENDITURE OF SUCH FUNDS, AND TO FURTHER PROVIDE FOR THE OPERATION OF STATE GOVERNMENT.

Amend Title To Conform

Whereas, the most solemn duty of each member of the General Assembly is to exercise his or her constitutional duty to annually provide for the recurring expenses of our state’s government; and

Whereas, the public health emergency associated with the 2019 Novel Coronavirus (“COVID‑19”) has made satisfying that duty more difficult this year, nevertheless, the General Assembly will not fail in its duty to the residents of South Carolina; and

Whereas, given the extraordinary challenges facing our State, our nation, and the world due to COVID‑19, it is necessary to take emergency measures to combat the spread of this deadly virus; and

Whereas, by enacting this legislation the General Assembly is ensuring that the functions of our state government will continue unabated during this challenging time so that we as a State can combat the spread and address the impact of COVID‑19; and

Whereas, it is the intent of the General Assembly that the provisions of this act are temporary and that this act shall be replaced with a comprehensive general appropriations act when we reconvene. Now, therefore,

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

PART I

Continuing to Fund the Ordinary Expenses of State Government

SECTION 1. (A)(1) If the 2020‑2021 state fiscal year begins with no annual general appropriations act in effect for that year, the authority to pay the recurring expenses of state government continues at the level of amounts appropriated in Act 91 of 2019 for the recurring expenses of state government for Fiscal Year 2020‑2021 except as provided in subsection (A)(2).

(2) The effective dates of Parts IA and IB of Act 91 of 2019 are extended until the effective date for appropriations made in a general appropriations act for Fiscal Year 2020‑2021, after which appropriations made pursuant to this joint resolution are deemed to have been made pursuant to the general appropriations act for Fiscal Year 2020‑2021.

(B) Notwithstanding debt service appropriations in Act 91 of 2019 and until the effective date of the appropriations made in a general appropriations act for Fiscal Year 2020‑2021, there is appropriated whatever amount is necessary for timely debt service on state obligations and other amounts constitutionally required to be appropriated, including the General Reserve Fund, the Capital Reserve Fund, and to conduct the 2020 primary, runoff, and general elections, to include expenses to provide for protection of the health and safety of voters, poll workers, and employees of a county election commission. The General Reserve Fund is established in the amount required by law. The Executive Budget Office shall, in conjunction with the Comptroller General and the State Treasurer, implement the necessary and appropriate accounting transactions to implement the provisions in this paragraph.

PART II

Specific Provisions Related to the Operation of State Government

SECTION 2. (A) State boards, commissions, agencies, departments, and institutions of higher learning are authorized to receive funds directly from the federal government in response to the 2019 Novel Coronavirus (“COVID‑19”). Funds so received shall be expended for COVID‑19 preparedness and response and in accordance with applicable federal laws and regulations. Unexpended funds, without limitation, may be carried forward into the succeeding fiscal year and expended for the same purpose.

(B) The Governor is authorized to receive on behalf of the State of South Carolina federal funds designated for the Coronavirus Relief Fund.

(C)(1) The Executive Budget Office shall establish the Coronavirus Relief Fund as a federal fund account separate and distinct from all other accounts. All federal appropriations received by the Governor pursuant to subsection (B), shall be credited to the Coronavirus Relief Fund account. No other funds may be credited to this account. Funds in the account may be expended only in response to the evolving public health emergency caused by COVID‑19.

(2) Prior to the General Assembly reconvening pursuant to a Sine Die resolution, the Governor may direct the expenditure of funds from the account if the expenditure of those funds is (1) necessary and appropriate for the health, safety, and welfare of the public in response to the COVID‑19 pandemic and (2) in accordance with federal law. Prior to directing the expenditure of funds, the Governor must submit a plan for the use of the funds to the Joint Bond Review Committee. After review and comment by the Joint Bond Review Committee, the Governor may then direct the Executive Budget Office to release the funds for the purposes identified in the Governor’s plan. If an exigent circumstance exists that requires the Governor to direct the expenditure of funds immediately, the Governor must notify the Joint Bond Review Committee of the exigencies involved and the nature and amount of the expenditure. As soon as practicable thereafter the Governor shall provide the Joint Bond Review Committee with an accounting of the expenditures made under exigent circumstances.

(3) Beginning on May 1, 2020, and on the first day of each month thereafter, the Executive Budget Office shall provide a detailed accounting of the expenditure of all funds in the Coronavirus Relief Fund. The report shall be transmitted to the Governor and the General Assembly, and made available on the Governor’s website.

(D) Nothing herein limits any state board, commission, agency, department, or institution receiving funds from the Coronavirus Relief Fund from continuing to expend funds from other sources, including funds appropriated for the current fiscal year, that are necessary to address the state’s response to COVID‑19. Any unexpended funds from the Coronavirus Relief Fund, without limitation, may be carried forward into the succeeding fiscal year and expended for the same purpose.

SECTION 3. (A) From the Fiscal Year 2018‑2019 Contingency Reserve Fund, there is appropriated $200,000,000 to the Office of the State Treasurer. From the funds appropriated herein, the Treasurer shall credit $20,000,000 to the Disaster Trust Fund to be used for disaster relief assistance for a federally declared disaster or a state of emergency declared by the Governor. The Treasurer shall establish a COVID‑19 Response Reserve account which shall be separate and distinct from other accounts. From the funds appropriated herein, the Treasurer shall credit $180,000,000 to the COVID‑19 Response Reserve account.

(B)(1) The Governor may direct the expenditure of funds from the COVID‑19 Response Reserve account for expenditures necessary and appropriate for the health, safety, and welfare of the public in response to the COVID‑19 pandemic. The Governor may direct reimbursement to local governmental entities and hospitals for expenses related to the state’s COVID‑19 response, to include, but not limited to, emergency needs for hospitals to prevent closure or violation of bond covenants. Priority should be given to expenses related to the participation of first responders.

(2) The Governor may also direct the expenditure of up to $15,000,000 from the COVID-19 Response Reserve account to underwrite the cost for protection of the health and safety of voters, poll workers, and employees of a county election commission related to conducting the 2020 primary, runoff, and general elections.

(C) The Governor must submit to the Joint Bond Review Committee, for its review and comment, a plan for the use of the funds. The Governor may then direct the Executive Budget Office to release the funds for the purposes identified in the Governor’s plan. If an exigent circumstance exists that requires the Governor to direct the expenditure of funds immediately, the Governor must notify the Joint Bond Review Committee of the exigencies involved and the nature and amount of the expenditure. As soon as practicable thereafter the Governor shall provide the Joint Bond Review Committee with an accounting of the expenditures made under exigent circumstances.

SECTION 4. (A) The Superintendent of Education is authorized to exercise the following emergency powers if she determines that any, or all, of them are necessary and appropriate measures in response to the COVID‑19 public health emergency:

(1) waive statutory requirements concerning testing, assessments, and reporting, including, but not limited to, those requirements contained in Chapter 18, Title 59; Article 3, Chapter 18, Title 59; and Section 59‑155‑160 of the South Carolina Code;

(2) include all days of distance learning during which instruction was provided in good faith pursuant to a school district’s distance learning plan as an instructional day required to meet the one hundred eighty instructional day requirement contained in Section 59‑1‑425; and

(3) provide maximum programmatic and financial flexibility, including, but not limited to, the authority to carry forward any cash balances, to local school districts adjusting to operations in response to COVID‑19.

(B) The State Superintendent of Education is authorized to promote and encourage districts to use summer reading camps and all other available tools to ensure appropriate time is spent by students to keep them on grade level and satisfy their learning needs.

(C) The State Superintendent of Education is authorized to carry forward any cash balances maintained by the Department of Education. The superintendent is further authorized to transfer any appropriations within the department to assist local school districts adjusting operations in response to COVID‑19.

(D) The state teacher minimum salary schedule will remain at the Fiscal Year 2019‑2020 level. Step increases are suspended until the annual general appropriations act for Fiscal Year 2020‑2021 is enacted.

(E) On or before August 1, 2020, the State Superintendent of Education shall provide a report to the Senate Finance Committee, the House of Representatives Ways and Means Committee, the Senate Education Committee, and the House of Representatives Education and Public Works Committee concerning the emergency powers exercised in subsection (A). The report shall identify the statutory requirements waived and the reason for which the waiver was granted and identify and describe any actions taken in regards to subsection (A)(3).

SECTION 5. (A) In order to provide maximum flexibility to a state agency or institution of higher learning during the state’s COVID‑19 response, an agency or institution experiencing significant decreases in revenue sources or significant unanticipated expenditures as a result of the COVID‑19 response may implement a mandatory furlough subject to the review and approval of the Department of Administration Division of State Human Resources. Approved furloughs must comply with all federal laws. Implementation of furloughs should be in a manner similar to furloughs authorized in Title 8 Chapter 11, exceptions may be approved by the Division of State Human Resources.

(B) During a furlough, affected employees shall be entitled to participate in the same state benefits as otherwise available to them except for receiving their salaries. As to those benefits that require employer and employee contributions including, but not limited to, contributions to the South Carolina Retirement System or the optional retirement program, the state agencies, institutions, and departments are responsible for making both employer and employee contributions if coverage would otherwise be interrupted; and as to those benefits which require only employee contributions, the employee remains solely responsible for making those contributions.

(C) The division shall report to the President of the Senate, Speaker of the House of Representatives, the Chairman of Senate Finance Committee, and the Chairman of House Ways and Means Committee when any furloughs are implemented. This information shall also be published on the division’s website.

SECTION 6. In order to provide maximum flexibility to a state agency or institution of higher learning during the state’s COVID‑19 response, agencies and institutions are authorized to spend earmarked and restricted revenue sources to maintain critical programs impacted by the state’s COVID‑19 response. Any spending authorization for these purposes must receive the prior approval of the Executive Budget Office and must be reported to the Governor, Senate Finance Committee, and the House Ways and Means Committee. The Comptroller General is authorized to implement the procedures necessary to comply with this directive. This provision is provided notwithstanding any other provision of law restricting the use of earned revenue. Appropriation transfers may exceed twenty percent of the program budget upon approval of the Executive Budget Office in consultation with the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

SECTION 7. The Executive Budget Office is authorized to approve agency requests for federal and other fund authorization adjustments. Requests will be approved and reported by the Executive Budget Office pursuant to Title 2, Chapter 65 the “South Carolina Federal and Other Funds Oversight Act.”

SECTION 8. The Comptroller General is directed to accrue into Fiscal Year 2019‑20 General Fund revenues previously due for remittance to the Department of Revenue by April fifteenth or June fifteenth but allowed to be remitted as late as July fifteenth pursuant to federal directive or the Governor’s Executive Order 2020‑12 including but not limited to, individual and corporate income tax returns and quarterly estimated declarations.

SECTION 9. The increase in the employer contribution rate imposed by Section 9‑1‑1085 and Section 9‑11‑225 for Fiscal Year 2020‑2021, respectively, are suspended. The employer contribution rate for the South Carolina Retirement Systems and the Police Officers Retirement Systems during Fiscal Year 2020‑2021, expressed as a percentage of earnable compensation, shall remain at the same rate imposed for Fiscal Year 2019‑2020.

SECTION 10. (A) The provisions of Act 95 of 2019 are extended through September 24, 2020. The Public Service Authority (“Santee Cooper”) may not take any action which would impair, hinder, or otherwise undermine from an economic, operational, feasibility, or any other perspective the ability of the General Assembly to complete its consideration regarding Santee Cooper’s status.

(B) Without the approval of the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee, Santee Cooper is prohibited from:

(1) entering into any contracts with a duration of longer than one year, including, but not limited to, contracts for the purchase of energy or generation capacity;

(2) entering into employment contracts with executive management with a duration longer than six months; and

(3) beginning the construction, purchase, or lease of any new generation facility.

(C) Prior to approving any contracts of a duration longer than six months but less than one year, the authority must inform in writing and consult with the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee.

(D) Nothing in this section prohibits the Santee Cooper from:

(1) doing any and all things preparatory to closing and decommissioning the Winyah Generating Station;

(2) planning, permitting, and procuring one hundred megawatts of combustion turbines only with agreement with Central Electric Cooperative;

(3) doing any and all things preparatory to deploying new solar generation only with agreement from Central Electric Cooperative;

(4) entering into joint operational and energy saving agreements with neighboring utilities for a period of less than one year with annual renewals and mutual cancellation clauses thereafter;

(5) entering into hedge agreements for natural gas and coal for a term not to exceed the rate freeze period of the Cook Settlement, and supportive thereof;

(6) entering into purchase power arrangements needed for, but not in excess of, anticipated load for a term not to exceed the rate freeze period of the Cook Settlement, and supportive thereof;

(7) having the ability to borrow as currently anticipated for operational needs, or risk management as market conditions may allow;

(8) settling outstanding lawsuits;

(9) taking whatever steps are prudent and consistent with good utility practice to manage the COVID-19 pandemic;

(10) proceeding with appropriate resource discussions with Central;

(11) freezing rates as provided in the settlement of Cook v. Santee Cooper, et al.; and

(12) taking other actions consistent with this section that are court ordered or required pursuant to Cook v. Santee Cooper et al., provided that these actions may not include construction or acquisition of new generation facilities or any other agreement or activity that is prohibited by subsection (B).

(E) Nothing in this section alters or amends the powers and duties pursuant to S.C. Code Section 58‑31‑360, including the state’s covenant to not alter, limit, or restrict the Santee Cooper’s power to fix, establish, maintain, and collect rents, tolls, rates, and charges for the use of the facilities of or for the services rendered or for any commodities furnished by Santee Cooper, at least sufficient to provide for payment of all Santee Cooper’s expenses, the conservation, maintenance, and operation of its facilities and properties and the payment of the principal of and interest on its notes, bonds, evidences of indebtedness, or other obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, evidences of indebtedness, or obligations heretofore or hereafter issued or incurred.

(F) The provisions of this SECTION shall remain in effect through September 24, 2020 or until an act of the General Assembly expressly supersedes this provision.

SECTION 11. On June 30, 2020, the following provisos contained in Act 91 of 2019, the general appropriations act for Fiscal Year 2019‑2020 are deleted:

112.1. (DS: Excess Debt Service);

117.112. (GP: Employee Compensation)

118.16. (SR: Nonrecurring Revenue)

117.155. (GP: Higher Education Tuition Mitigation)

PART III

Miscellaneous Provisions

SECTION 12. Any provisions contained in Act 91 of 2019 that are in conflict with provisions contained in this act are superseded by the provisions contained herein.

SECTION 13. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 14. The provisions in this act take effect upon approval of the Governor.

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