



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

STATEMENT OF ESTIMATED FISCAL IMPACT

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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

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| Bill Number: | S. 0369 | Introduced on February 20, 2025 |
| Subject: | Commodity Code Execution | |
| Requestor: | Senate Agriculture and Natural Resources | |
| RFA Analyst(s): | Gardner | |
| Impact Date: | March 18, 2025 | |

Fiscal Impact Summary

This bill transfers the authority to execute the State Commodity Code to the South Carolina Attorney General from the Office of Secretary of State, among other charges. Currently, the Office of Secretary of State receives no General Funds for commodities, and general counsel manages the responsibilities related to the execution of the State Commodity Code along with other job duties.

Judicial reports this bill may result in an increase in caseloads for general sessions court for the Richland County Court of Common Pleas. However, Judicial intends to manage any increase in caseloads using existing appropriations and staff.

The Attorney General's Office anticipates being able to manage the additional responsibilities required to execute the State Commodity Code with existing staff and within existing appropriations. The Secretary of State anticipates no cost savings due to this bill as any resources will be allocated within the office.

Additionally, this bill enables the Attorney General to retain the first \$750,000 in fines and penalties received as part of settlement litigation enforcement actions for State Commodity Code cases. These funds will be used to offset the costs of investigative, prosecutorial, and administrative expenses the Office of the Attorney General will incur in managing these cases. Should the Attorney General receive fines and penalties in excess of the authorized amount, those monies must be deposited into the General Fund. Currently these fines are deposited in the General Fund. The Secretary of State indicated that over the last several years, only one fine of \$10,000 was levied as part of a multistate settlement. As there has been only one fine over the last several years, this bill will have a minimal impact on General Fund revenue due to the shift from depositing to the General Fund to allowing the Attorney General to retain the first \$750,000 in fines.

This bill may increase General Fund, Other Funds, and local revenue due to the potential increase in court fees and fines, and it may increase the General Fund if excess fines and penalties are collected by the Attorney General. However, it is unknown as to whether there will be an increase in fees and fines collected by the court and whether there will be excess fines and penalties collected by the Attorney General.

Explanation of Fiscal Impact

Introduced on February 20, 2025

State Expenditure

This bill revises State Commodity Code definitions to provide that the Attorney General is the administrator of the code and likewise transfers the authority to execute the code to the South Carolina Attorney General from the Office of Secretary of State. Currently, the Secretary of State is the administrator of the code.

The bill provides that an order issued by the Attorney General is effective upon the date of issuance, and such order must be served to each person subject to the order and include a statement of any civil penalty or investigatory costs sought by the Attorney General. The hearing must be held within thirty days after receipt of a request in a record from the person. In the instance a person subject to such order does not request a hearing and none is ordered by the Attorney General within thirty days of the order service date, the order, including any civil penalty or investigatory costs sought, becomes final. If a hearing is requested or ordered, the Attorney General may modify or vacate the order or extend it until final determination. A final order may not be issued unless the Attorney General makes findings of fact and conclusions of law in a record.

Civil penalties assessed for violations of the State Commodity Code may not exceed \$10,000 for each violation. While the Attorney General may petition the court to enforce any order brought under this section against a person who is non-compliant with the order, the court may not require the Attorney General to post a bond in an action or proceeding. The court is authorized to adjudge the person in civil contempt of the order and may impose an additional civil penalty against him in an amount not less than \$500 nor more than \$5,000 for each violation. All orders issued under this section are subject to the provisions of the Freedom of Information Act and must be published on the Attorney General's website.

In addition, the bill provides that the Attorney General may file an action in the Richland County Court of Common Pleas against a person whom the Attorney General believes has engaged, is engaging, or is about to engage in in violation of the State Commodity Code. The court is authorized to issue a permanent or temporary injunction, restraining order, or declaratory judgment; to order other appropriate or ancillary relief; or to order such other relief it considers appropriate. The Attorney General will not be required to post a bond in such actions. The bill also amends guidelines for judicial review and requires an aggrieved person to petition the court to stay the effectiveness of the Attorney General's final order, pending further review by the court and posting of appropriate bond by the aggrieved person.

This bill authorizes other appropriate prosecution, law enforcement, or licensing authorities to institute appropriate criminal proceedings against a person who willfully violates the State Commodity Code. It also provides that an offer to sell or to buy is not made in this State when the publisher circulates a bona fide newspaper or other publication not circulated in this State--or the majority of whose circulation is outside this State--and a radio or television program or other electronic communication originating outside the State is received in the State. Generally, a

communication of this nature is considered as originating in the state if the broadcast studio or originating source is located within the state.

The Attorney General may retain the first \$750,000 in fines and penalties received in a fiscal year in settlement litigation enforcement actions and reimbursements of expenses to offset investigative, prosecutorial, and administrative costs of enforcing the State Commodity Code. Should the Attorney General receive fines and penalties in excess of the authorized amount, those monies must be deposited into the General Fund.

Judicial. Judicial reports that it anticipates the bill may result in an increase in caseloads for general sessions court for the Richland County Court of Common Pleas, as it provides for criminal enforcement of violations of Chapter 73, Title 39 without need for an order or regulation of the Attorney General. Judicial intends to manage any increase in caseloads using existing appropriations and staff.

Office of the Attorney General. The Attorney General's Office anticipates being able to manage the additional responsibilities required to execute the State Commodity Code with existing staff and within existing appropriations. Therefore, the bill will have no expenditure impact on the Office of the Attorney General. Additionally, this bill enables the Attorney General to retain the first \$750,000 in fines and penalties received as part of settlement litigation enforcement actions for State Commodity Code cases. These funds will be used to offset the costs of investigative, prosecutorial, and administrative expenses the Office of the Attorney General will incur in managing these cases. Should the Attorney General receive fines and penalties in excess of the authorized amount, those monies must be deposited into the General Fund.

Secretary of State. The Secretary of State anticipates reallocating any savings due to this bill to other needs within the agency. Therefore, this bill will have no expenditure impact for the Secretary of State.

State Revenue

A person who willfully violates the State Commodity Code may be fined up to \$20,000 for a violation or a regulation or order of the administrator. Also, civil penalties assessed for violations of the State Commodity Code may not exceed \$10,000 for each violation. Fines assessed for violations of the code are currently deposited into the General Fund. The Secretary of State indicated that a \$10,000 payment was received for a violation of the State Commodity Code; however, this is the only payment that has been made in multiple years. Based on this information, we anticipate this bill will have a minimal General Fund revenue impact due to the shift of the first \$750,000 of fines from the General Fund to Other Funds for the Attorney General.

Additionally, the bill may increase General Fund and Other Fund revenue due to the potential increase in court fees and fines. Also, it may increase the General Fund if fines and penalties over \$750,000 are collected by the Attorney General. However, it is unknown as to whether

there will be an increase in fees and fines. Therefore, the impact of the bill on General Fund and Other Funds revenue is undetermined.

Local Expenditure

N/A

Local Revenue

This bill may result in an increase in court fines and fees due to the potential increase in the caseload. Other than the fines specifically designated for the Attorney General within this bill, court fines and fees are distributed to the General Fund, Other Funds and local funds. Therefore, this bill may increase local revenue due to the potential increase in court fees and fines.



Frank A. Rainwater, Executive Director