**South Carolina General Assembly**

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**H. 3556**

**STATUS INFORMATION**

General Bill

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Introduced in the House on February 19, 2013

Currently residing in the House Committee on **Judiciary**

Summary: Balance of Powers Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/19/2013 House Introduced and read first time ([House Journal‑page 24](file:///h:\HJ%20Archive\2013\02-19-13.docx))

2/19/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 24](file:///h:\HJ%20Archive\2013\02-19-13.docx))

**VERSIONS OF THIS BILL**

[2/19/2013](file:///p:\pprever\2013-14\3556_20130219.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 36 TO TITLE 1 SO AS TO ENACT THE “SOUTH CAROLINA BALANCE OF POWERS ACT”, TO CLARIFY THE COMPACT ENTERED INTO BETWEEN THE STATE OF SOUTH CAROLINA AND THE UNITED STATES, TO ASSERT THE SOVEREIGNTY OF THE STATE UNDER THE SOUTH CAROLINA CONSTITUTION, TO PROHIBIT THE INFRINGEMENT OF THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE STATE OF SOUTH CAROLINA OR ITS PEOPLE BY MEANS OF ANY FEDERAL STATUTE, MANDATE, EXECUTIVE ORDER, JUDICIAL DECISION, OR OTHER ACT DEEMED BY THIS STATE TO BE UNCONSTITUTIONAL, TO CREATE THE JOINT LEGISLATIVE COMMITTEE ON THE NEUTRALIZATION OF FEDERAL LAW, AND TO PROVIDE FOR THE MEMBERSHIP AND DUTIES OF THE COMMITTEE AND FOR RELATED PURPOSES.

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

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

“CHAPTER 36

South Carolina Balance of Powers Act

Section 1‑36‑10. The provisions of this chapter may be cited as the ‘South Carolina Balance of Powers Act’.

Section 1‑36‑20. The South Carolina General Assembly declares the following:

(1) The Tenth Amendment to the United States Constitution guarantees and reserves to the states and the people, all powers not delegated to the federal government elsewhere in the Constitution as they were originally intended and publicly understood at the time that the amendment was ratified on December 15, 1791, and subject only to modifications by duly ratified subsequent amendments to the United States Constitution. The guarantee of those powers is a matter of compact between this State and people of South Carolina and the United States.

(2) In accordance with the compact between this State and people of South Carolina and the United States, the Tenth Amendment to the United States Constitution reserves to this State and people of South Carolina, other than the enumerated powers expressly delegated to the United States under Article 1, Section 8 of the United States Constitution, Congress and the federal government are prohibited from exercising any purported additional control over, or from commandeering rights belonging to, the State of South Carolina, or its people.

(3) The United States Constitution was ratified on June 21, 1788, and it affirms that the sole and sovereign power to regulate the state business and affairs rests in the state legislatures and that such power has always been a compelling state concern and central to state sovereignty and security. Accordingly, the foregoing public meaning and understanding of Article 1, Section 8, the Establishment Clause of the First Amendment and the Tenth Amendment, of the United States Constitution is a matter of compact between this State and the people of South Carolina and the United States.

Further, the power to regulate commerce among the several states as delegated to the Congress in Article 1, Section 8, Clause 3 of the United States Constitution as understood at the time of the founding, was meant to empower Congress to regulate the buying and selling of products made by others, of land under certain circumstances, including associated finance and financial instruments, and the navigation and other carriage across state jurisdictional lines. This power to regulate commerce does not include the power to regulate agriculture, manufacturing, mining, major crimes, or land use, nor does it include activities that merely substantially affect commerce.

(4) At the time the United States Constitution was ratified, the commerce clause was not meant or understood to authorize Congress, the executive branch, or the federal judiciary to regulate the state courts in the matter of state substantive law or state judicial procedure. This meaning and understanding of Article 1, Section 8, the Establishment Clause of the First Amendment and the Tenth Amendment, of the United States Constitution, as they pertain to the validity of religious, sectarian, or foreign law as being controlling or influential precedent has never been modified by any duly ratified amendment to the United States Constitution. Accordingly, the foregoing public meaning and understanding of Article 1, Section 8, and the Tenth Amendment, of the United States Constitution is a matter of compact between this State and people of South Carolina and the United States.

Further, under Article 1, Section 8, Clause 18 of the United States Constitution, the necessary and proper clause is not a blank check that empowers the federal government to do anything it deems necessary or proper. It is instead a limitation of power under the common law doctrine of principals and incidents, which restricts the power of Congress to exercise incidental powers. There are two main conditions required for something to be incidental, and therefore, necessary and proper. The law or power exercised must be (i) directly applicable to the main, enumerated power and (ii) it must be lesser than the main power.

(5) In accordance with Article 1, Section 8, Clause 1 of the United States Constitution, the general welfare clause does not empower the federal government with the ability to do anything it deems good. It is instead a general restriction limiting the exercise of the enumerated powers of Congress set forth in Article 1, Section 8 of the United States Constitution, requiring that Congress only enact laws which serve all citizens well and equally. When James Madison was asked if this clause were a grant of power, he replied, ‘If not only the means but the objects are unlimited, the parchment [the Constitution] should be thrown into the fire at once’. Thus, this clause is a limitation on the power of the federal government to act in the welfare of all when passing laws in pursuance of the powers delegated to the United States, showing no favor to any race, creed, color, or socioeconomic class. Likewise, the commerce clause was not meant or understood to authorize Congress or the federal judiciary to establish religious, sectarian or foreign statutes or case law as controlling or influential precedent. Accordingly, the foregoing public meaning and understanding of Article 1, Section 8, the Establishment Clause of the First Amendment, and the Tenth Amendment, of the United States Constitution is a matter of compact between this State and people of South Carolina and the United States.

(6) The commerce clause, the general welfare clause, and the necessary and proper clause of the United States Constitution were amended and made more specific and limiting at the peoples’ insistence through the creation of the Bill of Rights and, more specifically, the Second Amendment, the Ninth Amendment, and the Tenth Amendment. All amendments contained in the Bill of Rights were for the purpose of further restricting federal powers, vesting or retaining the ultimate power and control of the states by the people within the states. Therefore, South Carolina specifically rejects and denies any federal claim of expanded or additional authority which the federal government may attempt to exert, exercise, or enforce under these clauses, as these actions totally disrupt and degrade the emphasis on the balance of powers articulated by the founding fathers of this country.

Further, the people of the State of South Carolina are aware that the federal government has amended and altered the spirit and the meaning of the commerce clause, without proper legislative authority through amendment. Therefore, South Carolina rejects and denies this unauthorized and excessive abuse of power which has primarily acted as a detriment to states’ rights and individual rights, a deliberate attempt to negatively alter the balance of powers.

Section 1‑36‑30. (A) In accordance with the United States Constitution, Congress and the federal government are denied the power to establish or affect laws within this State which are repugnant and obtrusive to the United States Constitution, the South Carolina Constitution, state law, and the citizens of this State. The federal government is restrained and confined in authority by the eighteen items as set forth in Article 1, Section 8 of the United States Constitution.

(B) Congress and the federal government are hereby denied the power to bind the states under foreign statute, court order or opinion, or executive order, other than those provisions duly ratified by the Congress as a treaty, so long as the treaty does not violate the South Carolina Constitution or United States Constitution.

(C) No authority has ever been given to the legislative branch, the executive branch, or the judicial branch of the federal government, to preempt state legislation, or to destroy the balance of powers, which is set forth in the United States Constitution.

(D) The provisions of this chapter shall serve as a notice and demand to the federal government to cease and desist activities outside the scope of its designated constitutionally enumerated powers, and that attempt to diminish the balance of powers as established.

Section 1‑36‑40. (A) To enforce a constitutional balance of powers, the Joint Legislative Committee on the Neutralization of Federal Laws is created. The membership of the committee is as follows: the Lieutenant Governor to serve ex officio or his designee, six members of the Senate to serve ex officio appointed by the Lieutenant Governor, the Speaker of the House of Representatives to serve ex officio or his designee, and six members of the House of Representatives to serve ex officio appointed by the Speaker. No more than four members of the Senate and no more than four members of the House of Representatives may be from the same political party. Members shall serve at the pleasure of their appointing authority. A majority of the members constitute a quorum for the transaction of business. The Lieutenant Governor and the Speaker shall serve as cochairs of the committee, and the committee shall meet on the call of either cochair.

(B) The committee shall recommend, propose, and call for a vote by simple majority to neutralize in its entirety a specific federal law or regulation that is outside the scope of the powers delegated by the people to the federal government in the United States Constitution. The committee shall make its recommendation within thirty days after receiving the federal legislation for consideration and process.

(C) The committee may review existing federal statutes, mandates, and executive orders for the purpose of determining their constitutionality. The committee may recommend for neutralization any existing federal statutes, mandates, and executive orders enacted before the effective date of this chapter, if the committee determines that those measures are either beyond the scope and power assigned to the federal government under Article 1 of the United States Constitution or in direct violation of the South Carolina Constitution.

(D) Upon the committee’s recommendation for neutralization, each house of the General Assembly shall vote by joint resolution on whether to neutralize the action within sixty days after the committee’s recommendation. Until the vote, the issue in question is of no effect. The General Assembly’s vote must be documented in the journals of the respective houses.

(E) If the General Assembly by joint resolution votes by simple majority to neutralize any federal statute, mandate, or executive order on the grounds of its lack of proper constitutionality and upon signature or approval of the joint resolution by the Governor, then this State and its citizens shall not recognize or be obligated to live under the statute, mandate, or executive order.

(F) The committee also is charged to communicate the intentions of this chapter to the legislatures of the several states to assure that this State continues in the same esteem and friendship as currently exists, and that it considers union for specific national purposes and particularly those enumerated in the United States Constitution to be friendly to the peace, happiness, and prosperity of all the states.

Section 1‑36‑50. (A) It is the duty of the South Carolina General Assembly to adopt and enact measures that are necessary to prevent the wrongful enforcement of federal laws or regulations duly neutralized within the boundaries and limits of this State.

(B) Article 3, Section 2 of the United States Constitution states that in all cases affecting ambassadors, other public ministers and consuls, and those in which a state is party, the Supreme Court of the United States shall have original jurisdiction. In any cause of action between this State and the federal government regarding state neutralization of a federal legislation, judicial mandate, or executive order, the proper jurisdiction for these disputes will lie with the Supreme Court of the United States alone. If there is improper adjudication by the Supreme Court, then the people’s interest must be maintained and retained through state referendum.

(C) Under the Tenth Amendment, the people and State of South Carolina retain their exclusive power to regulate the State of South Carolina, subject only to the Fourteenth Amendment’s guarantee that the people and State of South Carolina shall exercise such sovereign power in accordance with each citizen’s lawful privileges or immunities, and in compliance with the requirements of due process and equal protection of the law.

(D) The Ninth Amendment to the United States Constitution secures and reserves to the people of South Carolina, as against the federal government, their natural rights to life, liberty, and property as entailed by the traditional Anglo‑American conception of ordered liberty and as secured by state law including, but not limited to, their rights as they were understood and secured by the law at the time that the amendment was ratified on December 15, 1791, as well as their rights as they were understood and secured by the law in the State of South Carolina at the time the South Carolina Constitution was adopted. The people and State hereby proclaim that the guarantee of those rights is a matter of compact between this State and people of South Carolina and the United States.”

SECTION 2. This act takes effect upon approval by the Governor.

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