COMMITTEE REPORT

March 31, 2022

**H. 4048**

Introduced by Rep. G.M. Smith

S. Printed 3/31/22--H. [SEC 4/1/22 3:35 PM]

Read the first time March 9, 2021.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4048) to amend the Code of Laws of South Carolina, 1976, by adding Section 1‑11‑445 so as provide that the State of South Carolina must provide a legal, 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, SECTION 1, by striking Section 1-11-445(A) and inserting:

/ “Section 1‑11‑445. (A) The State of South Carolina, by and through the Insurance Reserve Fund, must defend a state agency, department, or instrumentality, and the members of a governing board of a state agency, department, or instrumentality, as applicable, against a claim or suit that arises out of or by virtue of the performance of official duties on behalf of the state agency, department, or instrumentality and must indemnify them for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State also must defend officers and management employees of the entity, and legislative employees performing duties for the entity against a claim or suit that arises out of or by virtue of the performance of official duties unless the officer, management employee, or legislative employee was acting in bad faith and must indemnify these officers, management employees, and legislative employees for a loss or judgment incurred by them as a result of such claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the entity, the entity’s officers and management employees, the entity’s director and officers and management employees, and legislative employees after they have left their employment with the entity, the General Assembly, or the entity, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer. /

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1‑11‑445 SO AS PROVIDE THAT THE STATE OF SOUTH CAROLINA MUST PROVIDE A LEGAL DEFENSE FOR AND INDEMNIFICATION TO A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY AGAINST A CLAIM OR SUIT THAT ARISES OUT OF OR BY VIRTUE OF THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY, AND TO PROVIDE A SIMILAR DEFENSE AND INDEMNIFICATION TO BOARD MEMBERS AND EMPLOYEES, AND OFFICERS OF THE ENTITY; TO REPEAL SECTION 1‑11‑440 RELATING TO LEGAL DEFENSES AND INDEMNIFICATIONS PROVIDED TO MEMBERS OF THE FISCAL ACCOUNTABILITY AUTHORITY AND ITS DIRECTOR; AND TO REPEAL SECTION 12‑4‑325 RELATING TO LEGAL DEFENSES AND INDEMNIFICATION PROVIDED TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF REVENUE.

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

SECTION 1. Chapter 11, Title 1 of the 1976 Code is amended by adding:

“Section 1‑11‑445. (A) The State of South Carolina must defend a state agency, department, or instrumentality, and the members of a governing board of a state agency, department, or instrumentality, as applicable, against a claim or suit that arises out of or by virtue of the performance of official duties on behalf of the state agency, department, or instrumentality and must indemnify them for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State also must defend officers and management employees of the entity, and legislative employees performing duties for the entity against a claim or suit that arises out of or by virtue of the performance of official duties unless the officer, management employee, or legislative employee was acting in bad faith and must indemnify these officers, management employees, and legislative employees for a loss or judgment incurred by them as a result of such claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the entity, the entity’s officers and management employees, the entity’s director and officers and management employees, and legislative employees after they have left their employment with the entity, the General Assembly, or the entity, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer.

(B) The term ‘instrumentality’ as used in this section includes an entity where a specific duty or function is imposed on the entity by law and includes any function where the entity must exercise a portion of the state’s sovereignty. Entities to which this provision applies includes, but is not limited to, the State Fiscal Accountability Authority, the Joint Legislative Merit Selection Commission, the Public Utilities Review Commission, the Retirement Systems Investment Panel, and all joint special legislative committees.

(C) The provisions of subsection (A) also apply to employees and officers while acting within the scope of their employment when administering any South Carolina statute which has not been held to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction. For purposes of this section, a final decision is the decision of a court declaring the South Carolina statute unconstitutional or otherwise unlawful and from which the appropriate officials of this State may not or do not take an appeal or request a rehearing.”

SECTION 2. Sections 1‑11‑440 and 12‑4‑325 are repealed on the effective date of this act.

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

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