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Chapter No. 434
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SENATE BILL NO. 2855

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2855

AN ACT TO AMEND SECTIONS 19-11-17, 21-35-17 AND 27-104-25, MISSISSIPPI CODE OF 1972, TO EXEMPT UNFUNDED LIABILITY FOR EMPLOYEE RETIREMENT FUNDS FROM THE REQUIREMENT THAT COUNTY, MUNICIPAL AND STATE BUDGET ESTIMATES SHALL NOT BE EXCEEDED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 19-11-17, Mississippi Code of 1972, is amended as follows:

19-11-17. No expenditures shall be made, or liabilities incurred, or warrants issued, in excess of the budget estimates as finally determined by the board of supervisors, or as thereafter revised under the provisions of this chapter. The board of supervisors shall not approve any claim, and the clerk shall not issue any warrant for any expenditures in excess of the budget estimates thus made and approved by the board of supervisors, or as thereafter revised under the provisions of this chapter, except upon the order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any violation of the provisions of this section shall make the members of the board of

supervisors voting for same, and the surety upon their official bonds, liable for the full amount of the claim allowed, the contract entered into, or the public work provided for, and the State Auditor, as the head of the State Department of Audit, shall be authorized to sue for the recovery of the sum or sums so voted. Provided, however, that the term "budget estimates" for purposes of personal liability of the members of the board of supervisors under this section shall not include any unfunded liability for county employee retirement or pension funds. Nothing in this section shall diminish any responsibility of the members of the board of supervisors to fund any employee retirement or pension plans, or any liability as a result of any failure to fund such plans as otherwise required by law.

SECTION 2. Section 21-35-17, Mississippi Code of 1972, is amended as follows:

21-35-17. Expenditures made, liabilities incurred, or warrants issued in excess of any of the budget detailed appropriations as originally and finally determined, or as thereafter revised by transfer as provided by this chapter, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The governing authorities shall not approve any claim and the city clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised

under the provisions of this chapter, except upon an order of a court of competent jurisdiction or for an emergency, as provided in this chapter. Any one or more of the governing authorities, or clerk, approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the municipality twice the amount of such claim or warrant, which shall be recovered in an action against such member, or members, of the governing authorities, or clerk, or all of them, and the several sureties on their official bonds, and it shall be the duty of the governing authorities of such municipality, or the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, or any taxpayer of such municipality, to bring an action therefor through the city attorney, or any attorney designated and empowered so to do by a court of competent jurisdiction. Provided, however, that the term "budgeted expenditures" for purposes of personal liability of members of the local governing authorities under this section shall not include any unfunded liability for municipal employee retirement or pension funds. Nothing in this section shall diminish any responsibility of the members of the local governing authorities to fund any employee retirement or pension plans, or any liability as a result of any failure to fund such plans as otherwise required by law.

SECTION 3. Section 27-104-25, Mississippi Code of 1972, is amended as follows:

27-104-25. (1) The executive head and business manager of each state agency shall be responsible for all obligations or indebtedness incurred in the name of the agency, or by any employee for them when incurred by such employee acting within the scope of his employment.

(2) No obligations or indebtedness shall be incurred by any such person during any allotment period in excess of the amount of the estimate approved by the Department of Finance and Administration or in the agency appropriation bill.

If a claim arising from orders for goods or services from the prior fiscal year is presented within one (1) year and (a) the payment of a claim does not cause an agency to exceed the amount of its prior year budget estimate as approved by the Department of Finance and Administration or its appropriation bill, and (b) sufficient funds remain in the current fiscal year's allotment to pay the claim, the State Treasurer, upon approval of the claim by the Department of Finance and Administration, shall draw a warrant in payment of the claim.

(3) Contractual obligations, such as salary contracts, shall be considered as incurred within the fiscal period in which they are to be paid, and are to be encumbered against funds to be available in that fiscal period, and shall include appropriate cancellation clauses in the event the anticipated revenues from which they are to be paid do not become available

(4) Agencies having special funds, as defined in Section 27-103-103, shall not incur obligations or indebtedness against such special funds in an amount in excess of revenues actually anticipated and budgeted.

(5) If obligations or indebtedness shall be incurred contrary to the provisions hereof, then neither the State of Mississippi nor the agency shall have any liability therefor, and the person, firm or corporation to whom the obligation or indebtedness is due may recover the amount of the obligation or indebtedness and twenty-five percent (25%) of the amount as liquidated damages from the responsible officers, either personally or upon their official bonds, either severally of jointly.

(6) Provided, however, that no personal liability of the responsible officers under this section shall include any unfunded liability for employee retirement or pension funds. Nothing in this section shall diminish any responsibility of the responsible officers to fund any employee retirement or pension plans, or any liability as a result of any failure to fund such plans as otherwise required by law.

SECTION 4. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE SENATE
March 27, 2018

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 27, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

April 12, 2018
10:40 Am