

By: Senator(s) Clarke

To: Appropriations

SENATE BILL NO. 2855  
(As Sent to Governor)

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

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

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

9 19-11-17. No expenditures shall be made, or liabilities  
10 incurred, or warrants issued, in excess of the budget estimates as  
11 finally determined by the board of supervisors, or as thereafter  
12 revised under the provisions of this chapter. The board of  
13 supervisors shall not approve any claim, and the clerk shall not  
14 issue any warrant for any expenditures in excess of the budget  
15 estimates thus made and approved by the board of supervisors, or  
16 as thereafter revised under the provisions of this chapter, except  
17 upon the order of a court of competent jurisdiction, or for an  
18 emergency as hereinafter provided. Any violation of the  
19 provisions of this section shall make the members of the board of



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

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

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



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

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



70           27-104-25. (1) The executive head and business manager of  
71 each state agency shall be responsible for all obligations or  
72 indebtedness incurred in the name of the agency, or by any  
73 employee for them when incurred by such employee acting within the  
74 scope of his employment.

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

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

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



94 (4) Agencies having special funds, as defined in Section  
95 27-103-103, shall not incur obligations or indebtedness against  
96 such special funds in an amount in excess of revenues actually  
97 anticipated and budgeted.

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

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

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

