**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3539**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Magnuson, Beach, Burns, Chumley, B.J. Cox, Cromer, Haddon, Harris, S. Jones, Kilmartin, Long, May, McCabe, A.M. Morgan, T.A. Morgan, O'Neal, Oremus, Pace, Trantham, White, McCravy, Leber, Nutt and Landing

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Introduced in the House on January 10, 2023

Currently residing in the House

Summary: Executive Orders

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/15/2022 House Prefiled

12/15/2022 House Referred to Committee on **Judiciary**

1/10/2023 House Introduced and read first time ([House Journal‑page 203](h:\hj\20230110.docx))

1/10/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 203](h:\hj\20230110.docx))

2/1/2023 House Member(s) request name added as sponsor: Landing

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**VERSIONS OF THIS BILL**

[12/15/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3539_20221215.docx)

A bill

to amend the South Carolina Code of Laws by enacting the “South Carolina Sovereignty Act”; by adding Article 17 to Chapter 1, Title 1 so as to prohibit the implementation of unconstitutional federal orders at the state or local level; and by amending Section 2-11-50, relating to duties of legislative council, so as to authorize legislative council to review ANY PRESIDENTIAL EXECUTIVE ORDER, ACT, LAW, TREATY, REGULATION, RULE, OR REGULATORY ORDER ISSUED, ADOPTED, OR IMPLEMENTED ON OR AFTER JANUARY 1, 2021, AND REFER THE MATTER TO THE ATTORNEY GENERAL FOR A CONSTITUTIONAL DETERMINATION AND TO SUBMIT ANY FINDINGS TO THE GENERAL ASSEMBLY FOR CONSIDERATION.

Whereas, the State of South Carolina declared independence from Great Britain on March 26, 1776, and since that time has remained a sovereign state; and

Whereas, Clause 2 of Article VI of the United States Constitution provides that “This Constitution, and the laws of the United States which shall be made in pursuance thereof… shall be the supreme law of the land”; and

Whereas, the tenth amendment to the United States Constitution declares, “The powers not delegated to the United States by this Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people”; and

Whereas, the U.S. Supreme Court has consistently affirmed that the federal government of the United States has no authority to commandeer state resources or state personnel, nor to compel or direct a state to enforce any federal law, in particular with the rulings of Mack and Printz v. U.S. (1997) and NFIB v. Sebelius (2012); and

Whereas, a long train of abuses and usurpations has been imposed by the federal government of the United States against the people of South Carolina; and

Whereas, it is the intent of the people and General Assembly of South Carolina to abide by the United States Constitution and to reject all laws and orders not made in pursuance thereof. Now, therefore,

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

SECTION 1. This act may be cited as the “South Carolina Sovereignty Act”.

SECTION 2. Chapter 1, Title 1 of the S.C. Code is amended by adding:

Article 17

Nonenforcement of Unconstitutional Federal Orders

Section 1‑1‑1100. Notwithstanding another provision of law, no state agency, local government, other political subdivision, or publicly funded organization, or any elected or appointed official or employee of the same, may employ state funds, personnel, or facilities to implement, attempt to implement, or assist in the implementation of an unconstitutional federal order, as defined in Section 2‑11‑50(B)(8).

SECTION 3. Section 2‑11‑50 of the S.C. Code is amended to read:

Section 2‑11‑50.  (A) The Legislative Council shall be responsible for the organization and operation of the research, reference, and bill drafting facilities herein provided to serve the General Assembly. The Legislative Council shall make preliminary studies and recommendations upon proposed legislation when so requested by committees or members of the General Assembly and conduct investigations when so directed by either any Joint, Senate, or House Resolutions.

(B)(1) The Legislative Council may, on its own initiative, review any unconstitutional federal order, as defined in item (8), and must review any federal order upon the request of the Governor or any twenty members of the General Assembly.

(2) After review, the Legislative Council may recommend to the South Carolina Attorney General and Governor that the federal order should be further examined by the Attorney General to ascertain its constitutionality, and if constitutional, to determine whether the State should expend funds or personnel to assist in its enforcement. In their recommendation to the Attorney General, the Legislative Council must specifically cite one or more locations within the text of the United States Constitution where, in their opinion, the federal order in question is likely authorized.

(3) In conducting the review, the Attorney General must consider whether the federal order infringes upon:

(a) any of the individual rights guaranteed by the Bill of Rights including, but not limited to, the establishment or free exercise of religion, freedom of speech, freedom of the press, the right to peaceably assemble, the right to petition for redress of grievances, the right to keep and bear arms, security from unreasonable searches and seizures, due process of law, a speedy public trial by an impartial jury, and freedom from excessive bail, or cruel and unusual punishments; and

(b) any powers reserved to the State under the Tenth Amendment to the United States Constitution including, but not limited to, mandates relating to a pandemic or other public health emergency, improper interference with the state’s election laws and procedures, improper interference with the state’s use and regulation of its natural resources, regulation of the agricultural industry, regulations of local land use and zoning policies, or the imposition of social policies or governance standards upon state or local governmental bodies or agencies, educational and nonprofit institutions, or industries regulated by the State or operating wholly within its borders.

(4) Within thirty days of receipt of the initial request, the Attorney General shall submit a report containing findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and shall post this report on the official website of the Office of the Attorney General. If the Attorney General determines that the federal order, or any portion thereof, is constitutional, he shall issue guidance to the applicable state agencies and political subdivisions of the state that expenditure of state resources or state personnel is permitted.

(5) Each chamber of the General Assembly may consider the Attorney General’s report. If the General Assembly adopts a concurrent resolution rejecting the Attorney General's finding that a federal order is constitutional, the federal order, or the applicable portion thereof, shall again be designated an “unconstitutional federal order”, subject to the provisions of Section 1‑1‑1100.

(6) Nothing in this section limits the authority of the Attorney General to seek an injunction, a declaratory judgment, or otherwise challenge the constitutionality or legality of any federal order, notwithstanding any action taken or not taken by the General Assembly with respect to his report, or the failure of the Legislative Council to conduct a review or to request a report with respect to such federal order.

(7) Nothing in this section limits the authority of the General Assembly to declare a federal order unconstitutional or to prohibit state resources or state personnel from assisting in the enforcement of any action by the federal government of the United States.

(8) For purposes of this section, “unconstitutional federal order” includes any act, law, treaty, presidential executive order, regulation, rule, or regulatory order issued, adopted, or implemented by the government of the United States on or after January 1, 2021, which has not been held to be constitutional under the provisions of this section.

SECTION 4. This act is enacted under the authority of the Tenth Amendment to the United States Constitution and the inherent authority reserved to South Carolina as a sovereign state.

SECTION 5. This act takes effect upon approval by the Governor.

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