THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Casey Edwards and Justin Williams..... Petitioners,

v.

The State of South Carolina..... Respondent.

PETITION FOR ORIGINAL JURISDICTION

The Petitioners, Casey Edwards and Justin Williams (hereinafter "Petitioners"), respectfully request that the South Carolina Supreme Court authorize the bringing of the attached suit within its original jurisdiction pursuant to Rule 229 of the South Carolina Appellate Court Rules, S.C. Code Ann. § 14-3-310 and S.C. Const. art. V, § 5. A proposed Complaint is attached as **Exhibit A**. In accordance with Rule 229(a), this Petition is further supplemented by the Affidavit of Petitioner Edwards attached as **Exhibit B**.

Due to the time-sensitive nature of this petition, the Petitioners respectfully request the Court conduct an expedited review of the matters contained herein.

I. The Act.

This matter arises in connection with the American Recovery and Reinvestment Act of 2009 ("ARRA" or "Stimulus Act"), Pub. L. No. 111-5, 123 Stat. 115 (2009), signed into law on February 17, 2009. Section 3 describes the several purposes of the ARRA, which include the creation and preservation of jobs; assistance to those impacted by the recession; "investments to increase economic efficiency by spurring technological

advances in science and health;" investments in infrastructure; and funds to stabilize state and local governments "in order to minimize and avoid reductions in essential services…." ARRA § 3. Congress has made clear by these and other provisions in the Act that it intended to "minimize and avoid reductions in essential services" by making available certain funds to the State of South Carolina. ARRA § 3.

Under the provisions of the ARRA, federal stimulus funds are available to the States for the specific purposes outlined in the Act, and a significant amount of these funds are available to be utilized by South Carolina. The majority of these funds would flow directly to South Carolina agencies for various purposes set forth in the Act. As for the remaining funds available to South Carolina, including the 48.6 billion dollar State Fiscal Stabilization Fund, provisions within the ARRA—which must be read as a whole—provide for two alternate means by which funds may be used to "minimize and avoid reductions in essential services."

The crux of this action involves § 1607 of the Act entitled "Additional Funding Distribution and Assurance of Appropriate Use of Funds." Section 1607 provides:

> (A) CERTIFICATION BY GOVERNOR- NOT LATER THAN 45 DAYS AFTER THE DATE OF ENACTMENT OF THIS ACT, FOR FUNDS PROVIDED TO ANY STATE OR AGENCY THEREOF, THE GOVERNOR OF THE STATE SHALL CERTIFY THAT (1) THE STATE WILL REQUEST AND USE FUNDS PROVIDED BY THIS ACT; AND (2) THE FUNDS WILL BE USED TO CREATE JOBS AND PROMOTE ECONOMIC GROWTH.
>
> (B) ACCEPTANCE BY STATE LEGISLATURE- IF FUNDS PROVIDED TO ANY STATE IN ANY DIVISION OF THIS ACT ARE NOT ACCEPTED FOR USE BY THE GOVERNOR, THEN ACCEPTANCE BY THE STATE LEGISLATURE, BY MEANS OF ADOPTION OF A CONCURRENT RESOLUTION, SHALL BE SUFFICIENT TO PROVIDE FUNDING TO SUCH STATE.
>
> (C) DISTRIBUTION- AFTER THE ADOPTION OF A STATE LEGISLATURE'S CONCURRENT RESOLUTION, FUNDING TO THE STATE WILL BE FOR DISTRIBUTION TO LOCAL

> GOVERNMENTS, COUNCILS OF GOVERNMENT, PUBLIC ENTITIES, AND PUBLIC-PRIVATE ENTITIES WITHIN THE STATE EITHER BY FORMULA OR AT THE STATE'S DISCRETION.

ARRA § 1607(a)-(c). Section 1607(a) provides for a certification by the Governor that the State will request and use the funds provided under the Act. Sections 1607(b) and (c), however, provide an alternate mechanism for a State to request and receive stimulus funds where the Governor opts to either not make the certification, or completes the certification but fails to accept available funds. Specifically, under § 1607(b), a State Legislature may accept stimulus funds not accepted by the Governor by adopting a concurrent resolution, and such a resolution "shall" be sufficient to allow funding to the State under the ARRA. ARRA§ 1607(b). The means by which the State Legislature can accept stimulus funds is coupled with § 1607(c), which provides for distribution of stimulus funds pursuant to a Legislature's concurrent resolution "by formula or at the State's discretion." ARRA§ 1607(c).

II. Background.

Petitioners, by this Petition and the attached proposed Complaint, seek to have this Court issue a declaratory judgment that through the enactment of § 1607(b) and (c), the intent of Congress was to allow the South Carolina Legislature, by concurrent resolution, to accept and/or request the ARRA funds, including the State Fiscal Stabilization Funds, and then to subsequently distribute such funds in the annual appropriations bill. In the alternative, Petitioners request that this Court declare that § 1607(b) and (c) allows the South Carolina General Assembly to request and accept any available stimulus funds, and where the Legislature, through the constitutionally prescribed legislative process, appropriates the ARRA funds for use by the State of South Carolina, the Governor and the Executive Branch must perform the required actions

necessary to accept the appropriated ARRA funds, including the State Fiscal Stabilization Fund money from the federal government.

A. The ARRA and the Effect of Governor Sanford's Actions.

Issues have arisen as to the meaning and effect of § 1607 and whether this section of the ARRA allows the South Carolina General Assembly to accept and distribute stimulus funds otherwise rejected by the Governor. These issues, if left unresolved, will have a detrimental and unfortunate effect upon South Carolina's ability to obtain stimulus funds appropriated and passed into law through the constitutionally prescribed legislative process—including South Carolina's almost 700 million dollar share of the Fiscal Stabilization Fund—designed to support elementary, secondary, and post-secondary education.

The ARRA was introduced in the U.S. House of Representatives on January 26, 2009. Prior to the introduction of the ARRA, Governor Sanford first voiced his opposition to the receipt of any federal stimulus money in December of 2008—almost two months before the bill was even introduced in Congress. For example, on December 2, 2008, Governor Sanford joined Texas Governor Rick Perry penning an article entitled "Governors Against State Bailouts; *Hard to believe, but not everyone in politics wants a free lunch.*" *See* Rick Perry & Mark Sanford, Op., "Governors Against State Bailouts," WALL ST. J., Dec. 2, 2008 ("We're asking other governors from both sides of the political aisle to join us in opposing further federal bailout intervention….") (attached as **Exhibit C**). Also on December 2, 2008, Governor Sanford wrote then President-Elect Obama stating, "[W]e don't believe economic problems… will be solved by more debt…. To emphasize again… we respectfully, but strongly, urge you to avoid large scale spending increases…." Letter from Governor Mark Sanford, Governor of South Carolina, to

President-Elect Obama, President-Elect of the United States of America (Dec. 2, 2008) (attached as **Exhibit D**).

In response to Governor Sanford's outspoken opposition to any federal stimulus funding, on or before January 28, 2009, House Majority Whip Jim Clyburn proposed the "Clyburn Amendment," what is now § 1607 of the ARRA. In a press release on January 28, 2009, Clyburn stated:

> Our Governor has repeatedly expressed political and philosophical aversion to using federal assistance as we work our way out of the economic conditions that are visiting significant difficulties upon businesses and families throughout our beloved state…. ***The leadership of the South Carolina General Assembly sees it differently, and I have worked with them to ensure that South Carolinians receive the benefits of these federal investments.***

United States Congressman James E. Clyburn, Congressman Clyburn's Influence Seen in House, http://clyburn.house.gov/pressroom-press-releases-detail.cfm?id=79 (Jan. 28, 2009) (last visited, April 15, 2009) (emphasis added) (attached as **Exhibit E**). The January 28, 2009 press release further described the purpose of § 1607: "As House Majority Whip, Congressman Clyburn had a seat at the table as the American Recovery and Reinvestment Act was being developed. Congressman Clyburn… insisted upon including in this bill provisions that allow the South Carolina General Assembly to receive and allocate federal investments if the Governor refuses to do so." Id.

On April 3, 2009, Governor Sanford made the certification provided for in § 1607(a) to certify the ARRA funds. Letter from Mark Sanford, Governor of the State of South Carolina, to Peter Orszag, Director of the Office of Management and Budget (April 3, 2009) (attached as **Exhibit F**). However, Governor Sanford's certification letter made clear his intention ***not*** to accept State Fiscal Stabilization Funds. Id. Specifically, Governor Sanford stated: "Let me be equally clear though that this letter in no way

represents an **application** for State Fiscal Stabilization Funds." Id. (emphasis in original). This letter represents just one indication among many that Governor Sanford will not accept funds provided under the ARRA.

Prior to the deadline for accepting funds under the Act, Governor Sanford expressed his unwillingness to accept funds under the ARRA, specifically State Fiscal Stabilization Funds, unless such money could be used to reduce South Carolina's debt. See Letter from Mark Sanford, Governor of the State of South Carolina, to President Obama, President of the United States (Mar. 11, 2009) (attached as **Exhibit G**). Peter Orszag responded and refused to allow Governor Sanford to use the ARRA funds, including the State Fiscal Stabilization Fund, to pay down the State's debt. See Letter from Peter Orszag, Director of the Office of Management and Budget, to Mark Sanford, Governor of the State of South Carolina (Mar. 20, 2009) (attached as **Exhibit H**).

The South Carolina General Assembly passed an appropriations bill that included the funds available through the State Fiscal Stabilization Fund. See H. 3560, Gen. Assem., 118th Sess. (S.C. 2009) (attached as **Exhibit I**). However, on May 19, 2009, Governor Sanford vetoed the federal stimulus money included in the appropriations bill. See Letter from Mark Sanford, Governor of the State of South Carolina, to The Honorable Robert W. Harrell, Jr., Speaker of the South Carolina House of Representatives, 1, 5 (May 19, 2009) (attached as **Exhibit J**).

Sanford, in his May 19, 2009, letter emphasized his stance on State Fiscal Stabilization Fund money: "For several months, I have laid out a clear marker for the General Assembly about where our administration is with regard to federal stimulus funds coming to our state: dedicate $700 million of state revenue to pay down state debt

and I will apply for the equivalent amount in State Fiscal Stabilization Funds (SFS Funds)." 05/19/09 Sanford Letter, at 4-5 (attached at **Exhibit J**).

On May 20, 2009, the General Assembly overrode Sanford's veto and enacted the 2009-2010 General Appropriations Law. Part III, section 1 of the General Appropriations Bill provides that:

> As a result of the Governor's action [certifying ARRA fund under § 1607(a)], the General Assembly recognizes $694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, ***the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section***."

H. 3560, Gen. Assem., 118th Sess. (S.C. 2009) (emphasis added). Part III, section 2 of the General Appropriations Law specifically distributes the State Fiscal Stabilization Fund money, much of which is to be distributed to educational institutions throughout the state.

Additionally, the South Carolina General Assembly has passed a Concurrent Resolution accepting the federal stimulus funds that fulfills the requirements of § 1607(b). S. 577, 118th Sess. (S.C. 2009). Specifically, the Concurrent Resolution states that "the South Carolina General Assembly… ***accepts the use of federal stimulus funds*** provided to this State if the Governor of South Carolina… fails to certify that he will request ***and use these funds*** for this State and to create jobs and promote economic growth." S. 577, 118th Sess. (S.C. 2009) (emphasis added) (attached as **Exhibit K**).

Because the General Assembly passed the budget including the State Fiscal Stabilization Fund money but did not include Sanford's requested debt reduction, it is clear that the funds will not be applied for by the Governor. Instead, the General

Assembly's Concurrent Resolution, per § 1607(b) and (c), supplies the required acceptance of the Fiscal Stabilization Fund money.

Indecision regarding the funds impairs the ability of South Carolina's public schools to create a budget (and ability to hire and retain teachers because teachers' contracts must be signed by mid-May of 2009) of schools across the State including all elementary, secondary, and post-secondary students in the State of South Carolina. More importantly, the indecision impedes the ability of South Carolina's schools to provide an adequate education to their students, including the Petitioner.

The Governor has clearly and repeatedly announced his intention to refuse to take certain ministerial and administrative steps that would have allowed the stimulus funds to freely flow to South Carolina.

The most fundamental purpose of any government is to provide certainty and stability. Without a determination by this Court as to the intent and meaning of Congress in the passage of § 1607, state government cannot provide this needed certainty and stability.

B. Relief Requested by Petitioners in this Action.

Petitioners seek a declaratory judgment from this Court that, to give effect to Congressional intent, § 1607(b) and (c) must be construed so as to permit the South Carolina Legislature, by concurrent resolution, to accept and distribute the ARRA funds where the governor makes the required certification, but fails to accept available funds. Alternatively, in the event that the role of the Governor in requesting and administering stimulus funds is not eliminated, Petitioners seek a declaratory judgment that § 1607(b) and (c) allows the South Carolina General Assembly to request and accept any available

stimulus funds, and where such funds are included in an appropriations bill that becomes law, the executive branch must faithfully execute that law.

III. Authority of the Court to Assume Original Jurisdiction.

Under Rule 229 of the South Carolina Appellate Court Rules, this Court may assume jurisdiction when "…the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised…." See also S.C. Const. art. V, § 5; Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991).

This Court has exercised its authority in the original jurisdiction in a number of recent cases that involved the public interest. See, e.g., South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006) (deciding whether the Ports Authority condemnation power is superior to that of Jasper County); Charleston County Public Schools v. Moseley, 343 S.C. 509, 541 S.E.2d 533 (2001) (deciding a school tax issue); Westside Quik Shop v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000) (deciding a challenge to video gaming law); Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 270 (2000) (determining the Governor's authority to remove Public Service Authority members); Doe v. Condon, 341 S.C. 22, 532 S.E.2d 879 (2000) (determining whether certain activities constitute the unauthorized practice of law); City of Hardeeville v. Jasper County, 340 S.C. 39, 530 S.E.2d 374 (2000) (determining the authority of a county to enact accommodations and hospitality taxes).

The public interest is plainly involved in this action, and the circumstances constitute grounds of emergency or other good reason for the exercise of this Court's original jurisdiction. The South Carolina Department of Education conducted a survey of South Carolina school districts and concluded that the districts will eliminate

approximately 5,200 jobs in next year's budgets, including 2,700 teachers. See "K-12 Job Losses Could Top 5,000 if Federal Stimulus Funds Rejected, State Survey Says," http://www.ed.sc.gov/news/ more.cfm?articleID=1174 (April 2, 2009) (last visited April 20, 2009). The Department of Education also found that if the federal stimulus funds are available to South Carolina's public schools, school districts would be able to approve budgets that eliminated only 1,600 jobs. *Id.* According to State Superintendent of Education Jim Rex, "'[w]ith or without federal stimulus dollars, schools are going to lose jobs. . . . The only question is how much we can cushion the blow.'" *Id.* The ability of the General Assembly to request and accept federal stimulus funds is dangerously undermined by the uncertainty present from the conflicting interpretations of § 1607.

Accordingly, this Court should accept jurisdiction of this case in order to clarify the meaning and effect of § 1607 and to ensure South Carolina's ability to take part in federal funding designed to promote economic growth, support education, and retain jobs and other essential services during this economic downturn.

IV. Reasons for Exercising Original Jurisdiction.

This case involves significant issues regarding the ability of South Carolina to avail itself of the ARRA's stimulus funds and ability of the General Assembly to fully exercise its appropriations power. On April 3, 2009, Governor Sanford purported to make the certification provided for in § 1607(a) to accept certain ARRA funds. However, Governor Sanford's certification letter made clear his intention ***not*** to accept State Fiscal Stabilization Funds. Specifically, Sanford stated: "Let me be equally clear though that this letter in no way represents an application for State Fiscal Stabilization Funds." Letter from Mark Sanford, Governor of the State of South Carolina, to Peter Orszag, Director of the Office of Management and Budget (April 3, 2009) (attached as

Exhibit F). Reiterating his refusal, Sanford further emphasized that his administration had "laid out a clear marker for the General Assembly" that he would not request State Fiscal Stabilization Fund money unless the budget allotted revenue to pay down state debt. 05/19/09 Sanford Letter, at 4 (attached as **Exhibit J**).

A declaratory judgment as to the meaning and effect of § 1607 is therefore necessary to ensure South Carolina's ability to accept the stimulus funds now available. At issue is South Carolina's 700 million dollar share of the State Fiscal Stabilization Fund, which is designed both to support schools and students throughout the State, including Petitioners, and to add funding for public safety and other government services. While this involves interpretation of a federal statue, this Court possesses jurisdiction to resolve this issue. Tafflin v. Levitt, 493 U.S. 455, 458-59 (1990) (holding that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States).

Additionally, this case involves significant, time-sensitive issues of South Carolina law. Specifically, this case concerns the ability of the General Assembly to make appropriations in accordance with the funds available and the purposes set forth under the ARRA. "The General Assembly has, beyond question, the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the condition under which the appropriated monies shall be spent." State ex rel. McCleod v. McInnis, 278 S.C. 307, 313-14, 295 S.E.2d 633, 637 (1982). Any federal funds obtained under the ARRA must be deposited in the State Treasury and treated as State funds. S.C. Code Ann. § 11-35-45. Such funds can only be expended through an appropriation by the General Assembly. S.C. Const. art. X., § 8;

see also S.C. Code Ann. § 11-9-10 (making it "unlawful for any moneys to be expended for any purpose except that for which it is specifically appropriated.").

To obtain and administer State Fiscal Stabilization Fund money, certain actions may be required to be carried out by the Governor and/or the executive branch of South Carolina's government. A declaratory judgment is necessary to clarify that any such executive action is not at the discretion of the Governor, but rather is required so as to take care that the laws of South Carolina be faithfully executed. See S.C. Const. art. IV, § 15.

The public interest of all of South Carolina would be best served and protected by proceeding in this Court's original jurisdiction. By these means, a final determination of the significant issues raised by this case can be expeditiously reached. Petitioners' request for declaratory judgment may be resolved by rulings on legal issues without the need for this Court to make specific findings of fact. Because the Supreme Court is likely to ultimately decide the merits of this case, the exigencies of time, judicial economy, and fairness warrant the Court's taking original jurisdiction of this case.

V. Conclusion.

Petitioners respectfully request that this Court accept this case into its original jurisdiction, and grant a declaratory judgment establishing the meaning and effect of § 1607 of the ARRA by declaring that § 1607(b) and (c) must be construed so as to permit the South Carolina Legislature, by concurrent resolution, to accept and distribute the ARRA funds where the governor makes the required certification, but fails to accept available funds. Alternatively, in the event that the role of the Governor in requesting and administering stimulus funds is not obviated, Petitioners request that this Court declare that § 1607(b) and (c) allows the South Carolina General Assembly to request and

accept any available stimulus funds, and where such funds are included in an appropriations bill that has become law, the executive branch must faithfully execute that law notwithstanding certain administrative and ministerial actions otherwise provided for in the Stimulus Act.

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EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Casey Edwards and Justin Williams, ... Plaintiffs,

v.

The State of South Carolina ..... Defendant.

COMPLAINT

Casey Edwards and Justin Williams ("Plaintiffs") complaining of the Defendant herein, alleges the following:

PARTIES

1. Plaintiff Edwards is a citizen of the State of South Carolina and an 18 year-old high school student who resides in Lexington County and who attends a South Carolina public school. Plaintiff Williams is a citizen of the State of South Carolina who resides in Richland County and who attends the University of South Carolina. Both Plaintiffs are taxpayers within the State of South Carolina and the issues presented within this case are of such public importance as to require their resolution for future guidance.

2. The Defendant is the State of South Carolina.

JURISDICTION

3. This Court has jurisdiction over the parties and the causes of action asserted by Plaintiffs pursuant to its original jurisdiction under Rule 229, South Carolina

Appellate Court Rules, S.C. Code Ann. § 14-3-310 (Law. Co-op. 1976), and S.C. Const. art. V, § 5.

4. This Court also has jurisdiction of this case pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (Law. Co-op. 1976), as amended and its equitable powers.

ALLEGATIONS AS TO MATTER OF ISSUE

5. This matter arises in connection to the American Recovery and Reinvestment Act of 2009 (referred to as either "ARRA" or "Act"), Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009), which was enacted by Congress and signed into law by the President.

6. Section 3 describes the several purposes of the ARRA: "(1) To preserve and create jobs and promote economic recovery. (2) To assist those most impacted by the recession. (3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health. (4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits. (5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases." ARRA § 3.

7. The ARRA was introduced in the U.S. House of Representatives on January 26, 2009.

8. Prior to the introduction of the ARRA, Governor Marshall Clement Sanford, Jr. (the present Governor of the State of South Carolina) first voiced his opposition to

the receipt of any federal stimulus money in December of 2008, almost two months before the bill was even introduced in Congress.

9. On December 2, 2008, Governor Sanford joined Governor James Richard Perry of Texas penning an article entitled "Governors Against State Bailouts; *Hard to believe, but not everyone in politics wants a free lunch.*" *See* Rick Perry & Mark Sanford, Op., "Governors Against State Bailouts," WALL ST. J., Dec. 2, 2008 ("We're asking other governors from both sides of the political aisle to join us in opposing further federal bailout intervention....") (attached as **Exhibit 1**).

10. Also on December 2, 2008, Governor Sanford wrote then President-Elect Obama stating, "[W]e don't believe economic problems... will be solved by more debt.... To emphasize again... we respectfully, but strongly, urge you to avoid large scale spending increases...." Letter from Governor Mark Sanford, Governor of South Carolina, to President-Elect Obama, President-Elect of the United States of America (Dec. 2, 2008) (attached as **Exhibit 2**).

11. In response to Governor Sanford's outspoken opposition to any federal stimulus funding, on or before January 28, 2009, House Majority Whip Jim Clyburn proposed the "Clyburn Amendment," what is now § 1607 of the ARRA.

12. In a press release on January 28, 2009, Clyburn stated: "'Our Governor has repeatedly expressed political and philosophical aversion to using federal assistance as we work our way out of the economic conditions.... ***The leadership of the South Carolina General Assembly sees it differently, and I have worked with them to ensure that South Carolinians receive the benefits of these federal investments.***" United States Congressman James E. Clyburn, Congressman Clyburn's Influence

Seen in House Passed, http://clyburn.house.gov/pressroom-press-releases-detail.cfm?id=79 (Jan. 28, 2009) (last visited, April 15, 2009) (emphasis added) (attached as **Exhibit 3**).

13. The January 28, 2009, press release further described the purpose of § 1607: "As House Majority Whip, Congressman Clyburn had a seat at the table as the American Recovery and Reinvestment Act was being developed. Congressman Clyburn... insisted upon including in this bill provisions that allow the South Carolina General Assembly to receive and allocate federal investments if the Governor refuses to do so." Id.

14. This action concerns § 1607 of the Act entitled "Additional Funding Distribution and Assurance of Appropriate Use of Funds."

15. Section 1607(a) provides a process for the Governor to certify acceptance of the funds no later than 45 days following the enactment of the ARRA.

16. Section 1607(a), entitled "Certification by Governor," provides that the Governor may certify that "(1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth."

17. Section 1607(b), styled "Acceptance by State Legislature," provides that where "funds provided to any state in any division of this Act are not accepted for use by the Governor," a State Legislature's concurrent resolution "shall be sufficient to provide funding to such State."

18. Section 1607(c) addresses distribution of funds in the situation where the State's Legislature accepts funds through a concurrent resolution.

19. Section 1607(c) states that upon adoption of a concurrent resolution, "funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion."

20. Several provisions of the ARRA provide for the Governor to apply for funds under the ARRA and to take certain administrative and ministerial actions upon his acceptance of funds; however these provisions must be read together with § 1607 because statutes are required to be construed as a whole.

21. Section 14005 (a) and (b) provide that in order for a State to receive funds from the State Fiscal Stabilization Fund, "the Governor of a State desiring to receive an allocation under sec. 14001 shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require" and provides for specific requirements in such an application.

22. Other provisions of the Act do not require the Governor to apply for funds, such as § 14007 of the ARRA.

23. Section 14007 states: "The Secretary shall make awards to eligible entities...."

24. By operation of § 1607(b) and (c), any ARRA requirement of action to accept State Fiscal Stabilization Fund money by the Governor or Executive Branch has been obviated because Congress clearly intended to provide for two alternative means of a State receiving funds.

25. Further, to the extent administrative and ministerial action by the Governor or Executive Branch is provided for to obtain ARRA funds, where such funds are

included in an appropriations bill passed pursuant to the constitutionally mandated process, such executive action is no longer discretionary.

26. South Carolina's portion of the ARRA funds, according to South Carolina Attorney General Henry McMaster, is approximately 8 billion dollars, including 2.5 billion in tax cuts. Letter from Henry McMaster, South Carolina Attorney General, to Glenn F. McConnell, President *Pro Tempore*, South Carolina Senate (Mar. 31, 2009) (attached as **Exhibit 4**).

27. The deadline for a Governor to certify federal funds per § 1607(a) was 45 days after the ARRA was enacted, or April 3, 2009.

28. Prior to the deadline for accepting funds under the Act, Governor Mark Sanford expressed his unwillingness to accept funds under the ARRA, specifically State Fiscal Stabilization Fund money, unless such money could be used to reduce South Carolina's debt. See Letter from Mark Sanford, Governor of the State of South Carolina, to President Obama, President of the United States (Mar. 11, 2009) (attached as **Exhibit 5**).

29. Peter Orszag, Director of the Office of Management and Budget ("OMB") responded and refused to allow Governor Sanford to use the ARRA funds, including the State Fiscal Stabilization Fund, to pay down the State's debt. See Letter from Peter Orszag, Director of the OMB, to Mark Sanford, Governor of the State of South Carolina (Mar. 20, 2009) (attached as **Exhibit 6**).

30. On April 3, 2009, Governor Sanford made the certification provided for in § 1607(a) to accept some of the ARRA funds. Letter from Mark Sanford, Governor of

the State of South Carolina, to Peter Orszag, Director of the OMB (April 3, 2009) (emphasis in original) (attached as **Exhibit 7**).

31. However, Governor Sanford's certification letter made clear his intention ***not*** to apply for State Fiscal Stabilization Fund money. Specifically, Sanford stated: "Let me be equally clear though that this letter in no way represents an **application** for State Fiscal Stabilization Funds." Id.

32. The State Fiscal Stabilization Fund would provide approximately 700 million dollars to support elementary, secondary, and post-secondary education in the State of South Carolina. See Letter from Mark Sanford, Governor of the State of South Carolina, to President Obama, President of the United States (Mar. 11, 2009) (attached as **Exhibit 5**).

33. Failure to accept money provided in the State Fiscal Stabilization Fund affects all elementary, secondary, and post-secondary students in the State of South Carolina, including the Petitioner.

34. According to the State Department of Education, the federal funds could save approximately 2,500 education jobs in South Carolina. South Carolina Department of Education, "K-12 job losses could top 5,000 if federal stimulus funds rejected, state survey says," http://ed.sc.gov/news/more.cfm?articleID=1174 (last visited April 7, 2009) (attached as **Exhibit 8**).

35. More importantly, South Carolina's failure to avail itself of the stimulus funds will have a detrimental and unfortunate effect upon all of its public school children who would not receive the benefits of increased education funding.

36. The South Carolina General Assembly passed an appropriations bill that included the money available through the State Fiscal Stabilization Fund. See H. 3560, Gen. Assem., 118th Sess. (S.C. 2009) (attached as **Exhibit 9**).

37. However, on May 19, 2009, Governor Sanford vetoed the federal stimulus money included in the appropriations bill. See Letter from Mark Sanford, Governor of the State of South Carolina, to The Honorable Robert W. Harrell, Jr., Speaker of the South Carolina House of Representatives, 1, 5 (May 19, 2009) (attached as **Exhibit 10**).

38. Sanford, in his May 19, 2009, letter emphasized his stance on State Fiscal Stabilization Fund money: "For several months, I have laid out a clear marker for the General Assembly about where our administration is with regard to federal stimulus funds coming to our state: dedicate $700 million of state revenue to pay down state debt and I will apply for the equivalent amount in State Fiscal Stabilization Funds (SFS Funds)." 05/19/09 Sanford Letter, at 4-5 (attached at **Exhibit 10**).

39. On May 20, 2009, the General Assembly overrode Sanford's veto and enacted the 2009-2010 General Appropriations Law.

40. Part III, section 1 of the General Appropriations Bill provides that:

> As a result of the Governor's action [certifying ARRA fund under § 1607(a)], the General Assembly recognizes $694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, ***the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section***."

H. 3560, Gen. Assem., 118th Sess. (S.C. 2009) (emphasis added).

41. Part III, section 2 of the General Appropriations Law specifically distributes the State Fiscal Stabilization Fund money, much of which is to be distributed to educational institutions throughout the state.

42. In addition to the General Appropriations Law, the South Carolina General Assembly passed a Concurrent Resolution—that fulfills the requirement of § 1607(b)—accepting the federal stimulus funds. S. 577, 118th Sess. (S.C. 2009) (attached as **Exhibit 11**).

43. Specifically, the concurrent resolution states that "the South Carolina General Assembly... ***accepts the use of federal stimulus funds*** provided to this State if the Governor of South Carolina... fails to certify that he will request ***and use these funds*** for this State and to create jobs and promote economic growth." Id.

44. Because the General Assembly passed the budget including the State Fiscal Stabilization Fund money but did not include Sanford's requested debt reduction, it is clear that the funds will not be applied for by the Governor. Instead, the General Assembly's concurrent resolution per § 1607(b) is sufficient to accept the funds.

45. Indecision regarding the funds impairs the ability of South Carolina's public schools to create a budget and, more importantly, to provide an adequate education to their students, including the Petitioner.

FOR A FIRST CAUSE OF ACTION

46. Each of the above allegations is incorporated by reference into the cause of action.

47. A justiciable controversy exists between the parties as to (1) whether the Legislature may, by concurrent resolution, accept and distribute certain funds under §

1607(b) and (c) of the ARRA; and (2) in the alternative, whether the Governor would be required to request the ARRA funds appropriated by the General Assembly through the constitutionally mandated South Carolina legislative process.

48. The justiciable controversy is now ripe and Plaintiffs have standing to raise the issues set forth herein.

49. The Plaintiffs seek a declaratory judgment from this Court declaring that § 1607(b) and (c) of the Act permit the South Carolina Legislature, by concurrent resolution, to accept and distribute the ARRA funds, specifically including any available State Fiscal Stabilization Funds.

50. In the alternative, Plaintiffs seek a declaratory judgment from this Court declaring that § 1607(b) and (c) allows the South Carolina General Assembly to request and accept any available stimulus funds, and where the Legislature, through the constitutionally prescribed legislative process, appropriates the ARRA funds for use by the State of South Carolina, the Governor and Executive Branch must perform the actions required to accept the appropriated ARRA funds.

51. Pursuant to Rule 57, SCRCP, Plaintiffs further request a speedy hearing of the matters contained within this complaint due to the time-sensitive nature of the dispute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court issue an Order granting the following relief:

a. Declaring that § 1607(b) and (c) of the Act permits the South Carolina Legislature, by concurrent resolution, to accept and distribute the ARRA

funds where the governor makes the required certification, but fails to accept available funds.

b. Declaring, in the alternative, that § 1607(b) and (c) allows the South Carolina General Assembly to request and accept any available stimulus funds, and where the Legislature, through the constitutionally prescribed legislative process, appropriates the ARRA funds for use by the State of South Carolina, the Governor and the Executive Branch must perform the actions required to accept the ARRA funds from the federal government.

c. Providing for such other and further declaratory relief, as may be just and appropriate.

Respectfully submitted,

RICHARD A. HARPOOTLIAN, P.A.

BY: _____

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MAY 22, 2009

EXHIBIT 1

THE WALL STREET JOURNAL.
WSJ.com

OPINION DECEMBER 2, 2008

Governors Against State Bailouts

Hard to believe, but not everyone in politics wants a free lunch.

By RICK PERRY and MARK SANFORD

As governors and citizens, we've grown increasingly concerned over the past weeks as Washington has thrown bailout after bailout at the national economy with little to show for it.

In the process, the federal government is not only burying future generations under mountains of debt. It is also taking our country in a very dangerous direction -- toward a "bailout mentality" where we look to government rather than ourselves for solutions. We're asking other governors from both sides of the political aisle to join with us in opposing further federal bailout intervention for three reasons.

First, we're crossing the Rubicon with regard to debt.

One fact that's been continually glossed over in the bailout debate is that Washington doesn't have money in hand for any of these proposals. Every penny would be borrowed. Estimates for what the government is willing to spend on bailouts and stimulus efforts for this year reach as much as $7.7 trillion according to Bloomberg.com -- a full half of the United States' yearly economic output.

With all the zeroes in the numbers, it's no wonder Washington politicians have lost track.

That trillion-dollar figure is the tip of the iceberg when it comes to checks written by the federal government that it can't cash. Former U.S. Comptroller General David Walker puts our nation's total debt and unpaid promises, like Social Security, at roughly $52 trillion -- an invisible mortgage of $450,000 on every American household. Borrowing money to "solve" a problem created by too much debt seems odd. And as fiscally conservative Republicans, we take no pleasure in pointing out that many in our own party have been just as complicit in running up the tab as those on the political left.

Second, the bailout mentality threatens Americans' sense of personal responsibility.

In a free-market system, competition and one's own personal stake motivate people to do their best. In this process, the winners create wealth, jobs and new

investment, while others go back to the drawing board better prepared to try again.

To an unprecedented degree, government is currently picking winners and losers in the private marketplace, and throwing good money after bad. A prudent investor takes money from low-yield investments and puts them in those that yield better returns. Recent government intervention is doing the opposite -- taking capital generated from productive activities and throwing it at enterprises that in many cases need to reorganize their business model.

Take for example the proposed Big Three auto-maker bailout. We think it's very telling that each of the three CEO's flew on their own private jets to Washington to ask for a taxpayer handout. No amount of taxpayer largess could fix a business culture so fundamentally flawed.

Third, we'd ask the federal government to stop believing it has all the answers.

Our Founding Fathers were clear and deliberate in setting up a system whereby the federal government would only step in for that which states cannot do themselves. An expansionist federal government of the last century has moved us light-years away from that model, but it doesn't mean that Congress can't learn from states that are coming up with solutions that work.

In Texas and South Carolina, we've focused on improving "soil conditions" for businesses by cutting taxes, reforming our legal system and our workers' compensation system. We'd humbly suggest that Congress take a page from those playbooks by focusing on targeted tax relief paid for by cutting spending, not by borrowing.

In the rush to do "something" to help, federal leaders would be wise to take a line from the Hippocratic Oath, and pledge to do no (more) harm to our country's finances. We can weather this storm if we commit to fiscal prudence and hold true to the values of individual freedom and responsibility that made our nation great.

Mr. Perry, a Republican, is the governor of Texas. Mr. Sanford, a Republican, is the governor of South Carolina.

Please add your comments to the Opinion Journal forum.

EXHIBIT 2

State of South Carolina
Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

December 2, 2008

Dear President-Elect Obama:

As governors, and more significantly as fellow Americans, we wanted to write in light of today's historic meeting in Philadelphia to say how much we appreciated you making the effort you did to meet. Thank you for consulting with us so early in your transition. Coming from a culture of balancing budgets, we understand the unique economic challenges and difficult decisions you will have to make in dealing with the trying economic times that will accompany your taking the office of President. We are committed to working with you and your administration to forge solutions that can make a difference in the lives of the very Americans we all represent.

It is with this hope, and in that spirit of seeking consensus with regard to ongoing economic recovery efforts, that we write to also respectfully submit earnest concerns with the direction some in Washington D.C. seem to be headed with the recent so-called "economic recovery efforts."

From our nation's infancy, our economy grew to become the world's largest because of a market-based system that rewarded effort, entrepreneurial spirit, and good decisions, and in turn permitted consequences for the opposite. As our country faces an economic crisis the likes of which we have not seen since the Great Depression, we believe it is vital that federal economic policies are rooted in that same business model that rewards American ingenuity. Equally important, we must be wary of the moral hazard present in the idea of bailing out the private or public sector – for what in some cases were poor decisions.

After healthy discussion, Republican governors reached a broad consensus on the four general principles outlined below, which we believe are keys to revitalizing our economy and keeping it strong in the future.

Accordingly, we'd suggest these four ideas should be borne in mind as further federal efforts are contemplated with respect to the states:

First, the most important thing that the federal government can do is to reward entrepreneurship by not punishing those who create wealth from it. We were heartened to read reports of your intention

to not raise taxes, and believe that our economy can be further spurred by implementing a new round of tax cuts for both our nation's workers and the businesses they represent.

Second, we believe we must also give our businesses viable and expanding markets in which to sell their goods. Undoubtedly, one of the great mistakes of the Great Depression was limiting international trade. President Hoover's protectionist policies reduced global trade by two-thirds from 1929 to 1933, badly damaging America's recovery efforts and driving up unemployment. Instead of limiting international trade, we urge you to expand it, and going forward with the Columbia Free Trade Agreement would be a good start.

Third, we believe we must maintain and encourage a competitive workforce. The proposed so-called "Card Check" legislation would repeat the expansion of labor union power that harmed job creation during the Great Depression. The Detroit automakers' labor model is a fundamentally flawed one, and now is not the time to harm the successful automotive business elsewhere in our country with the same unsound business practices. To keep America competitive, the federal government should not enact the so-called Employee Free Choice Act.

Finally, we don't believe economic problems that were in large measure created by too much debt will be solved by more debt. In this light, if government spending was the key to preventing recessions, then we'd never have a recession, because increasing government spending is often one of the easiest things for a government to do. To emphasize once again, as governors we live with the demands of balancing our budgets, and we respectfully, but strongly, urge you to avoid large scale spending increases that are paid for through further borrowing. Instead, we would encourage your administration to chart a new course at the federal level and to prioritize spending so new initiatives are paid for – as is now required in most states.

The idea of putting aside partisanship and focusing on the issues was central to your campaign, and accordingly we want to say again how much we appreciate this initial visit with our nation's Governors. We are committed to working with you to make our country much more competitive in today's global competition for jobs and way of life, and look forward to continued conversations toward these ends.

Sincerely,

Mark Sanford
Governor of South Carolina

EXHIBIT 3

Congressman Clyburn's Influence Seen in House Passed

January 28, 2009

(Washington, DC) -- Sixth District Congressman and House Majority Whip James E. Clyburn hailed passage of the American Recovery and Reinvestment Act today by the House of Representatives. This legislation is intended to create or save 3 to 4 million American jobs over the next four years, and will invest $3.2 billion over the next 10 years in strengthening South Carolina's economy. It also reflects the influence of the House Majority Whip.

"Whenever I approach legislation in Congress, I view the bill through the lens of South Carolina and the needs of my constituents," Congressman Clyburn said. "Because of the potential impact of this economic recovery package, I worked to protect South Carolina's interests and ensure the Palmetto state would benefit from these crucial federal investments.

"Our Governor has repeatedly expressed political and philosophical aversion to using federal assistance as we work our way out of the economic conditions that are visiting significant difficulties upon businesses and families throughout our beloved state," Congressman Clyburn continued. "The leadership of the South Carolina General Assembly sees it differently, and I have worked with them to ensure that South Carolinians receive the benefits of these federal investments."

As House Majority Whip, Congressman Clyburn had a seat at the table as the American Recovery and Reinvestment Act was being developed. Congressman Clyburn made his arguments before President Obama and the House and Senate leadership, and insisted upon including in this bill provisions that allow the South Carolina General Assembly to receive and allocate federal investments if the Governor refuses to do so.

He also championed the effort to invest in rural communities, especially those historically left behind. The legislation passed by the House today includes language that requires at least ten percent of rural development funds included in the package will be dedicated to persistent poverty counties that are defined by having 20 percent or more of its population living in poverty over the past 30 years. There are 12 South Carolina counties eligible for these funds -- Allendale, Hampton, Jasper, Colleton, Bamberg, Orangeburg, Clarendon, Lee Williamsburg, Marion, Dillon and Marlboro counties -- all along the I-95 corridor.

"South Carolina currently has the third highest unemployment rate in the nation, and in some of these persistent poverty counties the rate has soared as high as 19 percent," Congressman Clyburn continued. "It is time that investments are made where they are needed most. If the state is unwilling to provide adequate assistance to these communities, as their representative in Congress, it is my duty to make sure they are not neglected."

Congressman Clyburn also offered two amendments that were included in the final version of the bill. The first sets a timetable for Governors to request the federal. If the funds are not requested by the Governor within 45 days, the state legislature can make the request rather than have it revert back to the federal Treasury.

"With such challenging economic times, I would have failed my fellow South Carolinians if I had not worked to ensure that the federal money allocated for our state is spent on vital projects that will benefit the greater good and provide much needed jobs at home," Congressman Clyburn stated.

Congressman Clyburn's second amendment waives the match required for ready-to-go historic preservation projects on Historically Black College and University campuses and provides an additional 15 million dollars for such projects. These are projects that have already received approval of the National Parks Service and are simply waiting for adequate funding to begin renovations. This amendment temporarily suspends law authored by Congressman Clyburn in 2002 that lowered the match for HBCU historic preservation projects from 50 percent to 30 percent on building and structures that were identified by the National Trust as endangered treasures. Despite the lower match rate, many HBCUs struggled to raise the match needed to draw down the federal funding, and many worthy projects are sitting untouched or partially finished due to lack of financing.

"I am proud this amendment will help preserve our history, improve our historic higher education institutions, and create jobs in local communities," Congressman Clyburn concluded.

There are a number of other provisions in the legislation that Congressman Clyburn championed during its development:

- Rural Internet Access: $6 billion to expand broadband internet access so businesses in rural and other underserved areas can link up to the global economy.
- College Affordability: Making college more affordable through tax credits for college tuition for up to $2,500 per year of school and increasing the Pell Grant by $500. Expanding access to a college education builds the foundation for long-term economic growth.

- Title I Grants: $26 billion to boost learning in local school districts through Title I grants ($13 billion) to help disadvantaged students reach high academic standards and IDEA Special Education grants ($13 billion) to help special needs children succeed.
- Improving Bond Markets: Reinvigorating the Market for State and Local Government Bonds will create jobs by getting local projects moving, and providing tax credit and exempt bonds to areas hurt by the recession.
- Summer Jobs: Provide summer jobs for 1 million youth and job training to nearly 450,000 disadvantaged adults and dislocated workers.
- Rural Business-Cooperative Service: $100 million for rural business grants and loans to guarantee $2 billion in loans for rural businesses at a time of unprecedented demand due to the credit crunch. Private sector lenders are increasingly turning to this program to help businesses get access to capital.
- Education for Homeless Children and Youth: $66 million for formula grants to states to provide services to homeless children including meals and transportation when high unemployment and home foreclosures have created an influx of homeless kids.
- Community Health Centers: $1.5 billion, including $500 million to increase the number of uninsured Americans who receive quality healthcare and $1 billion to renovate clinics and make health information technology improvements. More than 400 applications submitted earlier this year for new or expanded CHC sites remain unfunded.
- Training Primary Care Providers: $600 million to address shortages and prepare our country for universal healthcare by training primary healthcare providers including doctors, dentists, and nurses as well as helping pay medical school expenses for students who agree to practice in underserved communities through the National Health Service Corps.
- Neighborhood Stabilization: $4.2 billion to help communities purchase and rehabilitate foreclosed, vacant properties in order to create more affordable housing and reduce neighborhood blight.
- Homeless Assistance Grants: $1.5 billion for the Emergency Shelter Grant program to provide short term rental assistance, housing relocation, and stabilization services for families during the economic crisis. Funds are distributed by formula.
- Rural Housing Insurance Fund: $500 million to support $22 billion in direct loans and loan guarantees to help rural families and individuals buy homes during the credit crunch. Last year these programs received a record number of applications.

Congressman Clyburn whipped the vote on the American Recovery and Reinvestment Act, and it passed with a vote of 244 to 188.

This legislation is still subject to change. The Senate is developing its own recovery package, which is expected to be very different than the House-passed legislation. The two versions must then be reconciled in a conference committee before it final bill can be sent to President Obama for his signature.

# # #

American Recovery and Reinvestment Act
Investments in South Carolina
Total = $3.2 Billion

Covering State Shortfalls

State budget deficit offset/fiscal stabilization: $ 905.09 million

Financial Assistance Programs

Food Stamps	$389.2 million
Supplemental Social Security Income (SSI)	$60.3 million

Transportation & Infrastructure

Highways/Bridges construction/repair:	$ 479.86 million
Public-transit systems	$34.19 million
Water-treatment plants/sewers/pipelines	$59.47 million

Education

School construction/modernization (K-12)	$ 208.72 million
Education/Disabled students	$ 200.79 million
Poor school districts (Title I)	$191.31 million
Education technology grants	$13.82 million
Head Start program	$9.92 million
Child-care and development grants	$36.32 million
College/University construction/modernization	$82.7 million
Pell Grants	$349.59 million
Law Enforcement	
Law-enforcement grants	$57.15 million
Health	
Preventative health/health services grant	$3.83 million
Elderly nutrition services	$3.11 million
Community Assistance	
Employment services/Job training	$65.98 million
Homeless shelters and services	$15.9 million
Community services block grant	$15.36 million
Low-Income Home Energy Assistance program	$6.64 million

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EXHIBIT 4

HENRY MCMASTER
ATTORNEY GENERAL

March 31, 2009

The Honorable Glenn F. McConnell
President *Pro Tempore*
The Senate of South Carolina
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

You have asked several questions concerning the American Recovery and Reinvestment Act of 2009 (ARRA), commonly known as the federal "stimulus" legislation. You wish to know the ramifications under federal and state law of the General Assembly's acceptance by concurrent resolution and subsequent appropriation of the federal funds authorized by Congress as part of the stimulus legislation. Certain of these funds may, pursuant to various provisions of the Act, remain under the direction and control of the Governor, who publicly opposes the use of these funds for anything other than debt reduction in South Carolina. Yet, you note, one provision of the Act may possibly be so interpreted to remove the Governor entirely from the process of applying for and administering these funds. You are concerned that the Governor's unwillingness to accept these funds for the purpose designated by Congress – job creation and economic recovery – may thus place such funds in jeopardy or legal peril or that the funds may go unused for the purpose for which Congress provided them.

More specifically, by way of background, your letter states:

> I am specifically interested in the portion of the Act that provides for acceptance of stimulus funding by a state legislature in the event a governor might decide not to accept those funds and whether acceptance, use and administration of those funds would require further action and participation by the governor and executive branch of state government or whether legislative action is sufficient to obtain funds even without the applications and certifications required elsewhere in the Act.
>
> The Act specifies in pertinent part that "if funds provided to any state in any division of this Act are not accepted for use by the Governor, the acceptance by the State Legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State." My question concerns the subsequent

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machinations, reporting, administrative support and procedures required if acceptance of funding is accomplished by the action of a legislature contrary to the governor's discretionary wishes.

The issue that concerns me is as follows: If a state passes a concurrent resolution to accept funding, does that acceptance satisfy the certification requirement provided in § 1607(a) and elsewhere in the Act or is the Governor still required to make a certification that the funds will be used in the manner prescribed in the Act.

Also, there are many other provisions in the Act where the Governor is required to make application for specific federal funding. Therefore, where a Governor has declined to accept the federal funds as provided in the Act, does the action of a state legislature by concurrent resolution in overriding his decision obviate any further gubernatorial action in applying for and receiving the federal funds as provided in the Act? Specifically, my concern is that a State may not be empowered to compel a Governor to participate when federal law makes that decision discretionary and when the participation of his office is needed to monitor and administer the use of the funds.

I would appreciate your interpretation as to whether acceptance by a State Legislature of federal funding as provided in § 1607(b) allows the federal government to provide funding to the state in accordance with the concurrent resolution of whether the Act still requires application and certification by a Governor before funds can be properly obtained and used.

If those certifications and applications are still required to be done by the Governor, my second question is whether the General Assembly has the power under our state constitution and the laws of South Carolina to mandate a Governor make the necessary certifications and applications necessary to ensure that South Carolina receives its share of the federal stimulus money. The issue seems to be can the state require Governor Sanford do something that federal law has given him discretion over doing or even if our constitution permits us to do so.

Finally, I would ask could a legal action that challenges the General Assembly's attempt to accept the stimulus money by requiring the Governor to make applications and certifications or that questions whether the money can be obtained absent the Governor's action because of the provisions of the federal law have a potential result of those funds being enjoined while the case is litigated. As you are aware, an enjoinment of the federal stimulus dollars after our budget is written would be disastrous.

Law / Analysis

The American Recovery and Reinvestment Act of 2009 (ARRA), PL 111-5, was recently enacted by the Congress and signed into law by the President. The Act's purposes are summarized in Section 3 thereof, as follows:

(1) To preserve and create jobs and to promote economic recovery.

(2) To assist those most impacted by the recession.

(3) To provide investments needed and to increase economic efficiency by spurring technological advances in science and health.

(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

(5) To stabilize State and local government budgets in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

As we understand it, South Carolina's share of federal stimulus monies amounts to approximately 8 billion dollars, including 2.5 billion in tax cuts. The majority of these funds flow directly to South Carolina agencies for various purposes. Governor Sanford's letter to President Obama, dated March 10, 2009, describes these funds and their breakdown as follows:

> ... approximately 75 per cent of the stimulus money is directed by federal statute to flow through programmatically to our state. Our administration is not able to redirect, or otherwise impact those funds. As our hands are tied in that regard, and while I find the restrictions of these funds' use highly regrettable, it is my hope that those funds are directed in the manner best able to promote job creation in our state.

The Governor's letter to the President continues:

> The governors of the nation have been granted discretion over the remaining 25 per cent of the stimulus funds, some $700 million in the case of South Carolina. As I see my duty to current and future generations of South Carolinians, for the reasons outlined above, I believe a blanket acceptance of the funds would be unwise. However, our taxpayers will still be required to pay for this federal spending in other states, so I therefore also think a blanket rejection of the funds would be unwise.
>
> To that end, I have decided to send the President a letter asking for a waiver from spending money we don't have .... [W]e will ask to allocate the money for

> which our administration has discretion to paying down our very sizable debt and contingent liabilities.

The President, through his Budget Director, Peter Orszag, rejected the Governor's request for a waiver on two separate occasions. In his second letter of rejection, Director Orszag addressed the purposes of the State Fiscal Stabilization Fund, which distributes the $700 million to South Carolina and places those funds under the Governor's direction. His letter stated:

> You [Governor Sanford] have proposed using the Stabilization Fund moneys for 'paying down (your) State's sizable debt. However, the (recovery) Act does not authorize the Department of Education to award Stabilization Fund money to a state for that purpose ....
>
> Although payment of public debt obligations is a necessary governmental expenditure, the Department of Education in consultation with the Department of Justice and my office, has concluded that the paying down of past debt does not constitute use of federal funds for 'government services' under the plain meaning of those words in the Act.

Director Orszag's most recent response is consistent with his earlier letter to Governor Sanford, dated March 16, 2009. There, the Director advised that the State Fiscal Stabilization Fund must be used as follows:

- 81.8 per cent 'for the support of elementary, secondary and post-secondary education and, as applicable, early childhood education programs and services." (ARRA § 14002(a)(1).

- 18.2 per cent "for public safety and other government services, which may include assistance for elementary and secondary education, and for modernization, renovations, or repair of public school facilities and institutions of higher education facilities, including modernization, renovations, and repairs that are consistent with a recognized green building system." (ARRA § 14002(b)(1)).

We turn now to your specific questions. You first ask about Section 1607 of ARRA. That Section provides as follows:

> (a) Certification by Governor – Not later than 45 days after the date of enactment of this Act, for funds provided to any state or agency thereof, the Governor of the State shall certify that: (1) the State *will request and use funds provided by this Act*; and (2) the funds will be used to create jobs and promote economic growth.

(b) Acceptance by State Legislature – If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) Distribution – After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of governments, public entities, and public private entities within the State either by formula or at the State's discretion.

Your question with regard to § 1607 is "whether acceptance by a State Legislature of federal funding as provided in § 1607(b) allows the federal government to provide funding to the State in accordance with the concurrent resolution or whether the Act still requires application and certification by a Governor before funds can be property obtained and used."

Of course, when construing ARRA, a court must consider provisions of the Act not in isolation, but together as a harmonious whole. As the Supreme Court stated in *Richards v. United States*, 369 U.S. 1, 11 (1962), "a section of a statute should not be read in isolation from the context of the whole." And, as observed in *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974):

> "[w]hen 'interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute ... and the objects and policy of the law, as indicated by its various, and give to it such a construction as will carry into execution the will of the Legislature.'"

Certain State Fiscal Stabilization funding is addressed in Section 14005(a) and (b) of ARRA. Pursuant to those provisions, "the Governor of a state desiring to receive an allocation under Section 14001 shall submit an application at such time, in such manner, and containing such information as the Secretary [of Education] may reasonably require." Subsection (b) sets forth the requirements for an application by the Governor for funding as follows:

(b) Application – In such application, the Governor shall –

(1) include the assurance described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and in such cases, what amount will be used to meet such requirements.

Subsection (d) requires the application under subsection (b) to include certain assurances such as maintenance of state effort, maintenance of support for higher education and the taking of actions to improve teacher effectiveness.

Pursuant to § 14001(c),the Secretary of Education is authorized to distribute "State Incentive Grants" to the states. Again, the Governor of a state is required to apply for such grants and must demonstrate the State's progress in meeting federal criteria.

It is our understanding that, pursuant to certain provisions in the Act, local authorities may apply for certain federal funds. For example, the Secretary of Education is permitted to reserve up to $650,000 for an Innovation Fund to be used for academic achievement awards. *See*, § 14007.

In our view, it would have been futile for Congress to insert these various provisions, requiring the Governor or local officials to make application to federal authorities for receipt of funds by the State if such provisions could be bypassed simply by the adoption of a concurrent resolution by the state Legislature. Such a conclusion would, in effect, nullify the various criteria which Congress has established for a State to receive federal funds under the Act. It must thus be presumed that Congress did not intend to impliedly repeal much of ARRA by the insertion of § 1607(b) in the same Act. *See, Sonnesyn v. Federal Cartridge Co.*, 54 F. Supp. 29 (D. C. Minn. 1944). And, as has been stated, "'[t]he presumption is stronger against implied repeals where provisions supposed to conflict are in the same act or were passed at nearly the same time.'" *U.S. ex rel. I. G. Farbenindustrie Aktiengesellschaft v. Burnett*, 65 F.2d 195, 196 (D. C. Cir. 1933). Thus, a court would likely construe the statute as a whole, rather than focusing solely upon § 1607(b).

We are aware of no court decision or interpretation by a state Attorney General of § 1607's impact upon the remainder of ARRA. The Act, having been enacted so recently, has, to our knowledge, not yet been subject to judicial construction. However, the Congressional Research Service, an independent arm of Congress, has formally attempted to reconcile these various provisions of the Act. The Memorandum, prepared by CRS, notes that

> Section 1607 may be a congressional response to statements by several state governors who indicated a disinclination to have entities in their State seek and receive funds provided under the Recovery Act .... The Act requires that, in order to be eligible for such funds, a governor must first either certify that such funds will be requested, or, if that does not occur, then a state legislature may fulfill the same condition by passing a concurrent resolution (which does not generally require a governor's signature ....

Further, the CRS Memorandum observed that the language of § 1607 is "ambiguous" and could be read in such a way such that a concurrent resolution has the effect of bypassing the Governor or other officials altogether in the process of applying for and receiving the federal funding authorized by

ARRA. Specifically, the CRS Memorandum noted that, on its face, § 1607(b)'s language, "acceptance ... shall be sufficient to provide funding" could be interpreted as controlling. The result of this interpretation would be that the concurrent resolution adopted by a state legislature is all that is necessary to receive federal Stabilization Fund funding.

Notwithstanding this possible interpretation, however, the CRS Memorandum concluded as follows:

> [a] more likely interpretation of this language is that an "acceptance ... [which] shall be sufficient to provide funding" would only trigger the authority of federal agencies to grant federal funds, but would not otherwise reallocate power within the state. Under this interpretation, "acceptance" by a state legislature by concurrent resolution under § 1607(b) is merely the functional equivalent of the "certification" that can be made by a governor under § 1607(a). Either of these actions would appear to be nothing more than preliminary conditions which must be met before a state became eligible to apply for and receive federal funds under the Recovery Act. In effect, § 1607(a) gives a governor the opportunity to exercise a veto over receipt of federal funding under the Act by failing to make such certification within 45 days, but then § 1607(b) gives the state legislature the opportunity to act to negate the effect of this veto.

Memorandum at 3.

Finally, the CRS *Memorandum* found that any broad construction of § 1607, which gives a state legislature the power to remove a governor completely from the application and administration process in receiving federal funding "would likely raise Tenth Amendment issues" as a significant reallocation of state powers "between a state legislature and a state executive branch." Accordingly, in the view of the CRS, "once either a governor's certification or the legislature's acceptance has been made, § 1607 would have little or no apparent effect on the power of a governor, state or local official to choose whether or not to seek and administer these funds." In CRS's view,

> [t]he language of § 1607(b), while adding an additional requirement to the federal funding process, does not otherwise appear to supplant or replace existing federal requirements, nor does it appear to change the allocation of power within a state to make decisions regarding the application, acceptance and use of such federal funds.

A subsequent Report of the CRS, dated March 25, 2009, reached essentially the same conclusion. [an interpretation which would raise Tenth Amendment issues "would be disfavored."].

We largely agree with the CRS's analysis.[1] In our opinion, ARRA does not give a state

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[1] The Tenth Amendment issues present here are difficult. This Amendment to the United States Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." In *New York v. U.S.*, 505 U.S. 144 (1992), as well as *Printz v.* U.S, 521 U.S.898 (1997), the Supreme Court concluded that the Amendment forbids the federal government from "commandeering" state governments. In *New York, supra*, the Court found that "[t]he Federal Government may not compel the states to enact or administer a federal regulatory program." *See also, Reno v. Condon*, 528 U.S. 141 (2000).

Here, the Tenth Amendment question posed is whether Congress may constitutionally authorize the General Assembly to bypass the Governor, as the chief executive of the State, to speak for the State in acceptance of these funds, or to apply for and use these funds. As noted above, we agree with the CRS Memorandum that the Recovery Act should be so interpreted that the Governor's prerogative to apply for and use these funds is preserved.

Pursuant to the South Carolina Constitution, of course, the Governor is given a right of veto over any legislative action. Art. IV, § 21 requires that every Bill or Joint Resolution passed by the General Assembly must be given to the Governor for his signature or objection. Section 1607(b), however, authorizes the Legislature to speak for the State without any input by the Governor whatsoever.

Nevertheless, this case may be somewhat different for Tenth Amendment purposes from the "commandeering" cases of *New York* and *Printz*. Involved here is the exercise of Congress' spending power. *See*, Art. I, § 8, cl. 1. The United States Supreme Court in *South Dakota v. Dole*, 483 U.S. 203, 206-207 (1987) emphasized that a state's receipt of federal funds is akin to a "contract" and that "[i]ncident to ... [its spending] power, Congress may attach conditions on the receipt of federal funds and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.'" *Dole* held that the spending power, while broad, and that great deference is given to Congress, is not unlimited. Thus, the decision established four criteria which must be met for a Congressional spending requirement to pass muster under the Tenth Amendment. *See, id.* at 207-208 [expenditure must serve general public purposes; the condition must be unambiguous; the expenditure must be related "to the federal interest in particular national projects or programs" and the condition must not be otherwise unconstitutional.]. In the Court's view, "a perceived Tenth Amendment limitation on congressional regulation of state affairs did not concomitantly limit the range of conditions legitimately placed on federal grants." *See also, Oklahoma v. Civil Service Comm.*, 330 U.S. 127 (1947). Further, the Court anticipated that in a particular case, a spending program "might be so coercive as to pass the point at which 'pressure turns into compulsion.'" *Id.* at 211, quoting *Steward Machine Co. v. Davis*, 301 US. 548, 590 (1937).

Legislature power, upon adoption of a concurrent resolution, to remove the Governor or other agencies or entities completely from the process of applying for, accepting, and expending in accordance with the provisions of the Recovery Act. Under South Carolina law, a concurrent resolution has no force or effect of law, binding only the particular legislature which adopts it. *Op. S.C. Atty. Gen.*, December 12, 2006. Thus, § 1607(b) provides an alternative avenue to the request of such funds by a state in the event the Governor does not make the required certification within 45 days of enactment pursuant to § 1607(a). Applying longstanding rules of construction, set forth above, it is our opinion that § 1607 does not affect the remaining federal requirements that the Governor, or other state or local officials apply for and utilize ARRA funds in accordance with the provisions of the Act.

Your next question is whether even if "those certifications and applications are still required to be done by the Governor, ... the General Assembly has the power under our state constitution and the laws of South Carolina to mandate a Governor [to] make the necessary certifications and applications necessary to ensure that South Carolina receives its share of the federal stimulus money." Your concern is whether "the state [may] require Governor Sanford to do something that federal law has given him the discretion over doing or even our constitution permits us to do so."

In order to address this question, some background information is required. Article I, § 8 of the South Carolina Constitution provides as follows:

In *Dole*, the Court, applying these criteria, upheld the requirement that, as a condition for receipt of highway funds, states must pass an act prohibiting drinking under age 21.

In our view, a Court would likely view the Recovery Act as a spending power case under the criteria set forth in *Dole*. Even so, the Recovery Act would still need to be evaluated to address Tenth Amendment concerns created by Section 1607(b). As noted, we read the Act as requiring that the Governor still must make application for and use of the funds as federal law requires; thus, as the CRS concluded, such a construction would obviate many Tenth Amendment concerns. With respect to acceptance of the funds on behalf of the State by the Legislature only, we note that, routinely, state agencies apply for and accept federal monies without input from the Governor. See *Williams v. Bitner*, 285 F.Supp.2d 593 (M. D. Pa. 2003) ["Legislation enacted pursuant to the spending clause does not violate the Tenth Amendment because states may choose to accept the conditions concomitant with acceptance of federal funds."] pursuant to Moreover, in light of the fact that these funds could not be spent without an appropriation under state law, the Governor would maintain a constitutional voice through the veto process. *See*, *Condon v. Hodges*, (Governor's role under South Carolina Constitution is through exercise of veto).

The Recovery Act must be presumed to be constitutional; however, it is our opinion that only a court can resolve these Tenth Amendment questions definitively.

> [i]n the government of this state, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the function of one of said departments shall assume or discharge the duties of any other.

Article III, Section 1 of our Constitution further states that "[t]he legislative power of this State shall be vested in ... the 'General Assembly of the State of South Carolina.'" Article IV, § 1 provides that '[t]he supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled 'The Governor of the State of South Carolina.'" And, pursuant to Article IV, § 15, it is stated that

> [t]he Governor shall take care that the laws be faithfully executed. To this end, the Attorney General shall assist and represent the Governor, but such power shall not be construed to authorize any action or proceeding against the General Assembly or the Supreme Court.

In recognizing these various provisions regarding the constitutional requirement of maintaining the separation of powers, our Supreme Court observed in *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312-313, 295 S.E.2d 633, 636 (1982) as follows:

> [h]istory reveals that there has been much litigation at the national level and at the state level because of conflicts which have arisen relative to the usurpation of power by one of the three branches of government. There is no forum for the settlement of such disputes other than the courts. The cases are legion upholding and denying constitutionality depending upon the facts. In many instances, a resolution of the dispute is simple. More often, the dispute is in the gray area.

McInnis, as here, involved the power to expend federal funds. In *McInnis*, the Court addressed the constitutionality of the statute creating the Joint Appropriations Review Committee (JARC), composed of certain members of the General Assembly. The Court noted that "[t]he inspiration for the creation of JARC arose from the fact that the federal government has, in recent years, after the appropriations bill had been approved, allocated substantial sums of money by way of revenue sharing, etc. to departments of South Carolina government and local government entities." Agencies were not only receiving and spending "appropriations which the legislature meant for them to have, but, in addition, substantial federal contributions." 278 S.C. at 314. Thus, JARC was enacted as a means for "controlling departmental programs and appropriations." *Id.*

The Court then addressed the constitutional problems under the separation of powers provision created by enabling certain members of the General Assembly, through JARC, to approve federal grant monies before such monies could be spent by agencies within the executive branch. In the Court's opinion,

> [a]n agency, by applying for and receiving grants, for all intents and purposes was, by indirection, coming to determine programs and policy matters which were the province of the General Assembly. The net effect was that the Assembly was not, in the last analysis, determining the total amount of money expended by state agencies. JARC, by exercising the powers allocated to it, makes determinations that should be those of the entire General Assembly. This it undertakes to do, *not through a legislative process, as it surely could*, but through the administration of appropriations which is the function of the executive department. The desirability of the General Assembly's "getting a handle" on these matters is understandable and appropriate but its effort to control these matters through a committee of twelve of its members is constitutionally impermissible.

Id at 314 (emphasis added).

Thus, *McInnis* makes it clear that the General Assembly possesses broad latitude "to determine programs and policy matters" and to determine "the total amount of money expended by state agencies." Such power, however, must be exercised by the "entire General Assembly." On the other hand, the Court stressed that the "administration of appropriations ... is the function of the executive department."

Reconciling these principles, it is also helpful to note that Art. X, § 8 of the State Constitution provides that "money shall be drawn from the treasury of the State ... only in pursuance of appropriations made by law." Indeed, the General Assembly has implemented this provision of the Constitution through enactment of S.C. Code Ann. Sections 11-9-10, making it "unlawful for any moneys to be expended for any purpose except that for which it is specifically appropriated ... ." Moreover, § 11-9-20 makes it a crime for any person charged with disbursement of state funds to exceed the amount and purposes of an appropriation or change or shift appropriations from one item to another.

Such constitutional and statutory limitations and restrictions also apply to federal funds received by the State. We have concluded, based upon *McInnis*, the State Constitution and other authorities that

> [j]ust as for any state-generated funds, federal funds in the State Treasury must be appropriated by the General Assembly before expenditure is permissible. Article X, Section 8 of the state Constitution provides that '[m]oney shall be drawn from the treasury of the State ... only in pursuance of appropriations made by law.' See also *State ex rel. McLeod v. McInnis*, 278 S.C. 307. 295 S.E.2d 633 (1982); *Anderson v. Regan*, 53 N.Y.2d 356, 425 N.E.2d 792 (1981); *Shapp v. Sloan*, 480 Pa. 449, 391 A.2d 595 (1978). Thus, for at least some purposes, federal funds assume the characteristics of state funds upon their receipt by the State Treasurer and appropriation by the General Assembly.

Op. S.C. Atty. Gen., Op No. 85-26 (March 25, 1985). See also, § 11-35-45 [federal funds must be deposited in State Treasury and treated same as state funds].

The foregoing principles are consistent with numerous decisions of our Supreme Court, as well as opinions of this Office. *See, e.g., State ex rel. Richards v. Moorer*, 152 S.C. 455, 150 S.E. 269 (1929) ["'The power of the Legislature over the matter of appropriations is plenary, except as restricted by Constitution."]; *Myers v. Patterson*, 315 S.C. 248, 433 S.E.2d 841 (1993) [recognizing "the Legislature's power to appropriate revenues as needed among legitimate government objectives ...."]; *Crawford v. Johnston*, 177 S.C. 399, 181 S.E. 476 (1935) ["unquestionably, the General Assembly may appropriate funds from the State treasury to whatever purpose it thinks proper so long as the acts are not in conflict with the Constitution, even if in doing so, it changes existing laws and requires the levy of additional taxes."]; *Knotts v. S.C. Dept. of Nat. Resources*, 348 S.C. 1, 8, 558 S.E.2d 511, 515 (2002) ["the Legislature does not have the power to create a law then execute it. The power to execute a law is not incidental to the power to appropriate, but is a separate executive power."] *Op. S.C. Atty. Gen.*, December 2, 2005 [Comptroller General's reduction of year end surplus in order to book such monies to pay down a "chronic deficit" is an expenditure without an appropriation by the General Assembly.].

While the General Assembly may not "execute" a law – such execution being an executive function – our Supreme Court has made clear that there is no constitutional impediment to the Legislature's specifying precisely how and in what manner the funds it appropriates must be spent. The Court stated in *McInnis* that the General Assembly could, legislatively, determine "the total amount of money expended by state agencies," including federal funds. Moreover, in *Knotts v. S.C. Dept. of Nat. Resources, supra* the Court concluded that the Legislature possessed full authority to mandate how funds of the Water Recreational Resource Fund (W.R.R.F.) must be spent. Rather than unconstitutionally delegating to the legislative delegation the power to execute a law, the court observed that

> [t]he Legislature has the power to delineate how an executive department may fund a request under the W.R.R.F. The Legislature may statutorily outline how D.N.R. must expend from the W.R.R.F. ....

348 S.C. at 8.

Several decisions of our Supreme Court illustrate vividly the willingness of our courts to enforce legislative appropriations or other statutory requirements by judicial order when executive officials fail to implement the legislative will. For example in *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992), the Court enjoined the Budget and Control Board from carrying out its efforts to make budget cuts based upon the rate of growth in each agency's budget over the past year rather than across the board. Emphasizing that "[t]he appropriation of public funds is a legislative function," the Court held that construing the applicable statute permitting the Board to make across the board cuts so as "to allow the Board to choose any method for reducing

the rate of expenditures with the only limitation being that the reductions be as uniform as practicable would violate the separation of powers provision of the State Constitution." 310 S.C. at 216.

Moreover, in *Grimball v. Beattie*, 174 S.C. 668, 177 S.E. 668 (1934), the Court issued a mandamus requiring the Comptroller General and Treasurer to issue and pay a warrant for the unpaid balance of the salary of a Circuit Judge. Rejecting the argument that the emergency imposed by the Depression was sufficient cause for the Judge receiving a lesser salary, the Court referenced a statute authorizing a permanent, continuing salary, one fixed in amount together with the time and method of payment. In the Court's view, this statute was legally sufficient to require members of the executive branch to pay the judge's salary. The Court stated:

> [i]t will be seen that the Constitution prohibits any money being paid out of the state treasury except in pursuance of an appropriation made by law. It is significant that the framers of our Constitution did not require that appropriations be made by an annual appropriations act. The provisions of the Constitution do not require any arbitrary form of expression or particular words in making an appropriation. No particular expression or set of words are requisite or necessary to carry out the provisions of the Constitution. The only limitation is that the appropriations must be made by law. The object of the constitutional provision prohibiting the payment of money from the state treasury except by appropriations made by law is to prohibit expenditures of the public funds at the mere will and caprice of those having the funds in custody without legislative sanction therefor.

State ex rel. Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002) is also particularly instructive. There, the General Assembly, in a budget proviso, had instructed the State Treasurer to transfer $38,500,000 from the Barnwell Fund to the State's colleges and universities, thereby restoring previous budget cuts to these institutions of higher learning. This Proviso was not vetoed. Instead, the Governor vetoed the Legislature's previous budget reductions, a veto which was sustained, thus rendering the budget out of balance. In response to this imbalance, Governor Hodges, together with the Comptroller and Treasurer, effectuated a transfer from the accounts of the schools and colleges to the General Fund in an account in the Governor's Office.

The Court addressed the question "of whether the combined actions of members of the executive branch violated the separation of powers doctrine by having funds that the General Assembly had specifically appropriated to the schools returned to the General Fund." 349 S.C. at 243. In its opinion, the Supreme Court emphasized the constitutional prerogative of the General Assembly to appropriate money as part of its lawmaking responsibilities, observing that the Legislature has

> the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the

> appropriated monies shall be spent. This the Assembly traditionally does by way of the annual State Appropriations Bill.

349 S.C. at 244, quoting *State ex rel. McLeod v. McInnis*, 278 S.C., *supra* at 313-314. According to the Court, the Governor, as Chief Executive, may voice his objection with respect to various provisions of the Appropriations Act, as he "has the ability, after the General Assembly has passed an appropriations act, of vetoing items or sections within the act." However, the Court also recognized,

> there is no provision in the South Carolina Code or Constitution which provides that the members of the executive branch have the ability to transfer funds from those to whom the General Assembly has appropriated money. In fact, there is clear legislative intent that the ability to transfer appropriated money will lie only with the General Assembly. See SC Code Ann. § 11-9-10 (1986) ("It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated, and *no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual appropriation act.*") [emphasis in original] ....

Id at 245. Accordingly, concluded the Court, "... the authority to transfer appropriated money lies with the General Assembly and not and not the executive branch." Thus, the Court held as follows:

> (b)ecause Proviso 72.109 was not vetoed, the Governor and other members of the executive branch were required to faithfully execute that proviso. S.C. Const. Art. IV, § 14 (Governor shall take care that the laws be faithfully executed). Instead, the proviso was undermined by the combined actions of certain members of the executive branch by transferring funds that had been appropriated to the schools to the General Fund.
>
> We emphasize that the Governor's simple request to the schools that they return the appropriated funds does not in and of itself violate the separation of powers doctrine. However, given the concerted effort of the Governor, the Comptroller General, and the State Treasurer to transfer the appropriated funds to the General Fund, we find the actions of the executive branch have resulted in a separation of powers violation....

Finally, we note that our Supreme Court has concluded that federal funding programs do not operate to alter South Carolina law. As was said in *Creative Displays, Inc. v. South Carolina Highway Dept.*, 272 S.C. 68, 73-74, 248 S.E.2d 916 (1978), the Court concluded that a federal Act "cannot and does not change the South Carolina Constitution and statutory law." This conclusion was reaffirmed in *M. Lowenstein & Sons v. South Carolina Tax Comm.*, 277 S.C. 561, 565, 290 S.E.2d 812, 815 (1982). *See also, Anderson v. Regan*, 53 N.Y.2d 356, 442 N.Y.S.2d 404, 425

N.E.2d 792 (1981) [New York Constitution prohibits monies being paid from state treasury without a legislative appropriation, notwithstanding that federal funds are involved]; *Legislative Research Comm v. Brown*, 664 S.W.2d 907 (Ky. 1984) [federal tax dollars delivered to state became state controlled money to be spent in accordance with state law]; *La. Associated Genl. Contractors v. State*, 669 So.2d 1185 (La. 1996) [federal funds must be spent in accordance with Louisiana Constitution].

Conclusion

It is our opinion that § 1607(b) of the Recovery Act, which permits the General Assembly, by concurrent resolution, to accept federal stimulus funds on behalf of the State if the Governor does not certify within 45 days of enactment that the State will request and use these funds as specified, serves as an alternative to the Governor's certification required by § 1607(a). The adoption of such resolution by the Legislature means that South Carolina has taken the first step in obtaining stimulus funds. We further advise that, in our opinion, the Legislature's concurrent resolution does not replace or supplant other provisions of the Recovery Act which require the Governor, and him alone, to apply for, administer and use these funds. A concurrent resolution has no force or effect of law; moreover, under the Recovery Act's express provisions, only the Governor (or in other cases, other officials pursuant to the particular terms of the Act) may apply to the Secretary of Education (or other federal agencies) for such funds, based upon the federal criteria for eligibility of such funds. Federal law bestows upon the Governor, as chief executive of the State, the discretion as to whether to apply for these funds. See also, CRS *Report*, March 25, 2009 ["once a state legislature has authorized the distribution of funds, then it is up to the discretion of state or local officials as to whether to apply for such funds or not."]

Nevertheless, in our view, an examination of the federal Recovery Act, does not end the inquiry. Our Supreme Court has made clear that a particular federal funding program "cannot and does not change the South Carolina Constitution and statutory law." *Creative Displays Inc. v. S.C. Highway Dept. supra.* Our Court, as well as this Office, have emphasized many times that the South Carolina Constitution (Art. X, § 8) does not permit either state or federal funds to be expended without an appropriation of the General Assembly. An appropriation need not take any particular form, but, nevertheless, such appropriation is constitutionally required before these funds may be expended. Thus, if Recovery Act funds are to be expended by South Carolina, the Legislature must, pursuant to state Constitutional requirements, authorize their expenditure by appropriation.

Moreover, the question becomes the scope and nature of the legal impact an appropriation of these funds by the General Assembly would have upon the Governor's discretion to apply for and use these funds pursuant to federal law. Our Supreme Court has, on numerous occasions throughout the State's history, enforced appropriations in accordance with the Legislature's directive. As the Court held in *State ex rel. Condon v. Hodges, supra*, appropriations which become law must be faithfully executed by the Governor and members of the executive branch. *Condon* concluded that the executive branch could not effectuate the diversion of funds to the general fund to balance the

budget when the Legislature had appropriated such funds to another purpose. In *Grimball v. Beattie, supra*, the Court issued a mandamus against members of the executive branch, thus ordering the payment of funds pursuant to an appropriation. And, in *Gilstrap, supra* the Court enjoined the Budget and Control Board from making proportionate budget cuts, concluding that such cuts would constitute a violation of separation of powers as an infringement of the Legislature's appropriation of funds by the executive branch.

These cases, however, while indicating how our courts have treated conflicts between co-ordinate branches of government, also reinforce the fact that the General Assembly itself may not coerce the executive branch to act in accordance with the legislative will. The Legislature, the Governor and the Supreme Court have been characterized as "branches of the Government coordinate in rank" with each other. *O'Shields v. Caldwell*, 207 S.C. 194, 195, 35 S.E.2d 184 (1945) (Oxner, dissenting in part). Although the Legislature may enact laws, it does not possess the power to execute or compel the executive branch to execute the law. Execution of the law is reserved to the executive branch under our system of separation of powers, and it would violate the constitutional provision requiring such separation for the Legislature to exercise such coercive power over the executive. Thus, if the Legislature appropriates these funds for the uses required in the Recovery Act, or, as you suggest in your letter, enacts a statute which mandates the Governor to apply for and expend these funds pursuant to the purposes specified in the Recovery Act, the Legislature, nevertheless, possesses no power to enforce its will against the Governor.

This enforcement role or coercive power is reserved to the courts. As our Supreme Court concluded in *McInnis, supra*, "[t]here is no forum for the settlement of... disputes [between the three branches of government] other than the courts." Each such dispute, the Court emphasized, depends "upon the facts."

Accordingly, only the courts possess the power to resolve this dispute between the coordinate and coequal legislative and executive branches. Should the Legislature choose to accept these funds on behalf of South Carolina, and appropriate such funds to the uses required in the Recovery Act, and should the Governor choose not to apply for and utilize the funds – as federal law gives him the power to do – a constitutional standoff would be created. Resort to the judiciary would be necessary to resolve the stalemate. As you suggest in your final question, such litigation could indeed result in enjoinment of the expenditure any Recovery Act funds while the case is proceeding.

In cases such as *Grimball, Gilstrap*, and *Condon v. Hodges, supra*, our Supreme Court has on previous occasions resolved conflicts between the legislative and executive branches by giving force to the legislative appropriation, thereby requiring the executive branch to faithfully execute the law. Here, however, federal law bestows broad discretion upon the Governor, as the chief executive of the State, to decide whether or not to apply for and utilize these funds. Thus, this situation may be perceived as somewhat distinct from the previous cases decided by our courts, referenced above. Moreover, here, a court would need to resolve the Tenth Amendment questions present. *See*, n. 1 above. Nevertheless, while there are distinctions here not present in previous cases, we advise that

McInnis strongly indicates our Supreme Court would not treat federal funds differently from state generated funds, and would thus require a legislative appropriation in order to expend such funds. See also, § 11-35-45 ["All federal funds received must be deposited in the State Treasury, if not in conflict with federal regulations, and withdrawn from the State Treasury as needed, as that provided for the disbursement of state funds."]; *Shapp v. Sloan, supra* ["Appellants have failed to prove their basic premise that funds not raised under general state law are constitutionally differentiated from other funds in the state Treasury, and thus constitutionally beyond the scope of the General Assembly's authority."]. We further advise that earlier precedents of our Supreme Court, referenced above, have required the executive to "faithfully execute" any state law or appropriation enacted by the General Assembly relative to the expenditure of state or federal funds. *See also, County of O'Neida v. Berle*, 404 N.E.2d 133 (N.Y. 1980) [state Constitution bestows *no implied power* in the executive branch to impound funds or reduce appropriations]; *Community Action Programs v. Ash*, 365 F.Supp. 1355 (D. N. J. 1973) [once funds are appropriated for a specific program, "the Executive Branch has a duty to spend them."].

Yours very truly,

Henry McMaster

HM/an

EXHIBIT 5

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

March 11, 2009

The Honorable Barack Obama
President
United States of America
1600 Pennsylvania Avenue, Southwest
Washington, D.C. 20502

Dear Mr. President,

It is with great respect and equal concern that I write today seeking more flexibility with regard to the stimulus dollars headed to South Carolina.

Specifically, I am requesting a waiver to direct the $700 million in the stimulus' Fiscal and Education Stabilization Funds to paying down our state's very sizable debt and contingent liabilities. As we both know, the nation's governors have been granted some degree of discretion over these funds. Retiring this debt would represent in comparable terms paying down $400 billion of the national debt and would give our state greater flexibility in dealing with the financial storm now facing our nation. We believe this financial flexibility vital to our state in weathering these challenging economic times. The other $2.1 billion in the stimulus package for our state would be spent in accordance with the existing federal programs now in place.

As you know, I've been an outspoken opponent of the stimulus legislation. I continue to believe that the massive spending involved will not achieve the economic stimulus proponents suggest, and will instead create an unprecedented level of debt for our children and grandchildren. That said, the legislation did win approval by Congress, and our team has spent the weeks since you signed it into law carefully examining the direct implications for current and future South Carolinians – and we have come to the following conclusions.

First, given the age-old notion that when one is in a hole the first order of business is stop digging, we think it is not in our state's best interest to spend all of these monies. In our case, 75 percent would be spent and 25 percent would prudently be used to pay down debt so that our state would have more flexibility should the recession be protracted – as I firmly believe it will. To do otherwise and spend it all would not only be financially reckless in our case, but over the next two years it would create a $1.2 billion financial hole. Unless your intention is to borrow

more money that we don't have to send to states like ours in 24 months. I don't know how we would dig out of this hole without substantially raising taxes and in turn making our state economy less competitive in producing jobs.

Second, this annualizations problem compounds the more treacherous issue of our state's long-term liabilities. South Carolina has roughly $20 billion in unfunded political promises and stands at the unenviable position of being number one in the entire Southeast in per capita debt – 57 percent above the Southeastern average and three times higher than neighboring Georgia.

Third, in the same way one could argue that the restructuring essential to the long-term survival and prosperity of General Motors (GM) was only postponed by federal aid, we believe these stimulus monies would postpone changes essential to South Carolina's competitiveness in the global economy. Just months after GM received billions in bailout funds it has returned to Congress asking for billions more and suggesting if these monies didn't come they would be faced with impending bankruptcy – which is the same thing they said the first time. In that exchange the taxpayers are poorer as billions have been spent with no effect – as is the company itself as it has been robbed of time it could have used in beginning the difficult, but necessary, process of restructuring. This illustrates an often debilitating aspect of federal money – it forestalls much-needed and admittedly difficult choices on restructuring and updating our government that in our case are vital to making South Carolina more competitive in producing jobs in the global economy.

Finally, we believe strongly in the Founding Fathers' notion of federalism, and specifically in the Jeffersonian precept that government closest to the people governs best. This idea of states being laboratories of democracy has a direct bearing on the stimulus in that it offers an opportunity to adapt solutions to each unique state environment. Under the budget conditions that prevail in many states, it may very well make sense to accept the funds. But in our state – where we have a retirement system less than 70 percent funded, the highest per capita debt load in the Southeast, and would look at beginning next year's budget $740 million in the hole if we took all of this money – we believe not spending all the money to be the most prudent course of action. Accordingly, we respectfully ask for the flexibility inherent in staying true to the larger precept of federalism.

As you know, approximately 75 percent of the stimulus money is directed by federal statute to flow through programmatic means to South Carolina. Our waiver as expressed earlier in this letter would not impact these funds and this $2.1 billion would be spent in accordance with the stimulus bill. The discretion to our nation's governors over the remaining 25 percent – including the Education and Fiscal Stabilization Funds – is the sole area for which we are requesting this waiver.

In all this I would like to underscore the degree to which I would rather not be making this request. Doing so invites all sorts of criticism, and the $1.2 billion financial hole that would be created in simply accepting the money would not come due for 24 months – though my term ends in roughly 20 months. So if I took the money my administration would avoid the criticism – and dealing with this extreme financial shortfall in 24 months would fall to the work of whoever follows me in this job and the future legislative leadership in our House and Senate. While it would be the easier decision, I do not believe it would be a wise course of action given its consequences for the near five million people I represent in South Carolina. Accordingly, I send you this waiver and humbly ask that you grant it to the people of this state.

In my opinion, this course will do more to ensure South Carolina's long-term economic strength, and help in avoiding our state's structural budget shortcomings, than would other contemplated uses of the funds. If your administration determines that it is unable to grant us this flexibility, we will in turn opt not to pursue these funds.

I would respectfully ask that you consider this request with all due haste, and we look forward to working with your administration during these challenging times.

Sincerely,

Mark Sanford

EXHIBIT 6

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 20, 2009

The Honorable Mark Sanford
Governor of South Carolina
Columbia, SC 29211

Dear Governor Sanford:

Thank you for your letter to the President dated March 17, 2009. The President has asked me to respond on his behalf concerning your proposed use of State Fiscal Stabilization Fund monies to pay down your State's debt.

As you know, the American Recovery and Reinvestment Act of 2009 ("ARRA," or the "Recovery Act") was enacted in response to the severe economic downturn we are currently experiencing. The Recovery Act is designed to spur economic activity and private sector job growth; provide relief to individuals and families, as well as States and localities that are facing the prospect of cutting services and laying off teachers, police officers, and other vital public servants; and make critical investments in long-term economic growth, such as providing every child the chance for a world-class education.

The State Fiscal Stabilization Fund is a one-time appropriation in Title XIV of the Recovery Act. The Fund consists of approximately $48.6 billion that the U.S. Department of Education will award to States to help address State and local budget shortfalls in order to minimize or avoid reductions in education and other essential services. As a condition of receiving stabilization funds, the Recovery Act requires States' assurances that they will advance essential education reform in four areas: (1) make progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students; (2) establish pre-K-to-college-and-career data systems that track longitudinal progress and foster continuous educational improvement; (3) make improvements in teacher effectiveness and in the equitable distribution of qualified teachers between high- and low-poverty schools; and (4) provide intensive support and effective interventions for the lowest-performing schools. In addition, States must assure that they will maintain State support for elementary, secondary, and higher education at certain levels for fiscal years 2009, 2010, and 2011. (ARRA § 14005(d).)

You have proposed using the Stabilization Fund monies for "paying down [your] state's sizable debt." However, the Act does not authorize the Department of Education to award Stabilization Fund monies to a State for that purpose.

With regard to the 81.8 percent of a State's allocation of Stabilization Fund monies that must be used "for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services" (ARRA § 14002(a)(1)), the Recovery Act further specifies that those Federal funds must be used "first" to restore State

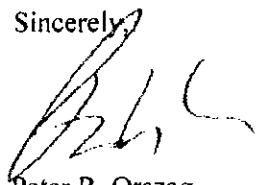
support to local educational agencies pursuant to the State's funding formula and to public institutions of higher education. (ARRA § 14002(a)(2).) Any remaining Federal funds within that percentage allocation must be used to provide subgrants to local educational agencies on the basis of a statutory formula. (ARRA § 14002(a)(3).)

With regard to the remaining 18.2 percent of a State's allocation of Stabilization Fund monies, the Act specifies that a State must use the monies "for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building system." (ARRA § 14002(b)(1).) Although payment of public debt obligations is a necessary governmental expenditure, the Department of Education, in consultation with the Department of Justice and my office, has concluded that the paying down of past debt does not constitute the use of Federal funds for "government services" under the plain meaning of those words in the Act.

The language of the Recovery Act, as enacted by Congress, accordingly does not support your proposed use of the State Fiscal Stabilization Fund monies to pay down the State's debt.

Thank you again for your letter.

Sincerely,



Peter R. Orszag
Director

EXHIBIT 7

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

April 3, 2009

The Honorable Peter Orszag, Director
The Office of Management and Budget
725 17th Street, Northwest
Washington, D.C. 20503

Dear Mr. Orszag,

This letter is written regarding Section 1607 of the American Recovery and Reinvestment Act (ARRA). As you know, this provision requires the Governor of the State to certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

On behalf of the people of South Carolina, please allow this letter to certify that we will accept funds and use them to create jobs and promote economic growth to the extent that our state and respective agencies and governmental programs are able to do so. Although we have questioned the effectiveness of this legislation, we have said all along that we will not prevent the state from certifying and receiving stimulus dollars which are scheduled to come to the state programmatically through existing federal formulas. We, therefore, would ask that this letter serve as a Section 1607 certification and that funds be released to the appropriate state agencies to spend in accordance with guidelines set forth in the ARRA and by federal agencies.

Let me be equally clear though that this letter in no way represents an **application** for State Fiscal Stabilization Funds. These monies are further defined as Educational Stabilization and Governmental Services funds in the US Department of Education guidelines issued on April 1, 2009. As you may be aware, our administration continues to have reservations about accepting these funds. If those reservations are satisfied by policy makers within the General Assembly of South Carolina, then at some later date my administration will apply for those funds.

In the interim, we remain committed to working with our General Assembly to use certified funds allocated in a responsible manner despite our reservations with regard to their ability to produce the intended effect of a more stable national economy. Thank you for your attention to these matters and we look forward to working with your administration in finding ways to make both the state I represent, and our country, stronger economically.

Sincerely,

Mark Sanford

EXHIBIT 8

News

K-12 job losses could top 5,000 if federal stimulus funds rejected, state survey says

A survey of South Carolina school districts indicates that more than 5,000 jobs would be eliminated next year due to budget cuts, although more than half could be saved if federal stimulus funds are accepted by Governor Mark Sanford.

State Superintendent of Education Jim Rex today urged Sanford to accept the federal dollars approved by Congress.

"Make no mistake, these federal dollars are going to be spent somewhere," Rex said. "If our governor says no – if this money isn't used to help our own kids – then it will go to other states, and South Carolina taxpayers will be on the hook for federal dollars that save teachers' jobs in Idaho and Oklahoma. That's not some abstract philosophy of macroeconomics. That's reality.

"What kind of message do we send to the rest of nation, not to mention to our own kids, if South Carolina becomes the only state to refuse funds aimed at helping public schools?"

Based on responses from two-thirds of the state's 86 school districts, the South Carolina Department of Education projected today that districts will eliminate 5,200 jobs in next year's budgets, including 2,700 teachers. If Sanford decides by Friday to accept federal funds targeted at public schools, districts would approve budgets that eliminate only 1,600 jobs.

"With or without federal stimulus dollars, schools are going to lose jobs," Rex said. "The only question is how much we can cushion the blow."

The survey results were released one day after the U.S. Department of Education published guidelines that rule out the possibility of states using federal stabilization funds to reduce state debts, a strategy advocated by Sanford. The federal agency said "the paying down of past debt or the paying of interest or other obligations on past debt does not constitute the use of funds for 'government services' under the plain meaning of those words" in the American Recovery and Reinvestment Act of 2009.

Rex said there were issues with Sanford's possible refusal that go beyond the immediate availability of federal funds. Billions of additional dollars will be made available to states for innovative K-12 programs, and most of those funds require state governors to take key roles in applying for them.

"We have a team at the State Department of Education that has been looking into all sorts of possibilities for these competitive grants, everything from expanding instructional choices at schools to developing a performance pay program for classroom teachers. We're still hoping that Gov. Sanford will work with us."

South Carolina schools have absorbed $387 million in cuts this year, and absorbing those midyear reductions has left many districts with few alternatives except to consider cuts to their most important assets – their classroom teaching positions. Eighty to 90 percent of a typical school district's budget is salaries, with most of

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those salaries going to classroom teachers.

Rex said that eliminating several thousand teaching positions would be a disaster for South Carolina, but federal stimulus dollars could forestall that possibility and give the state's economy a chance to recover. And he continued to stress the importance of local school districts using federal stimulus funds wisely and making certain that taxpayers know how they are being spent. "We have to make certain that we account for how these funds are used," he said.

Support for accepting the stimulus funds is widespread and bipartisan, Rex said. Republican legislators in the General Assembly have taken a lead role in advocating their use, and more than 80 mayors recently wrote a public letter to Sanford and legislators in which they urged acceptance of stimulus funds to "protect the vital services our state and local governments provide to our citizens."

Thursday, April 2, 2009

EXHIBIT 9

South Carolina General Assembly
118th Session, 2009-2010

H. 3560
General Appropriations Bill for fiscal year 2009-2010
As Amended by the House

PART III

FISCAL YEAR 2009-10 STATE STABILIZATION FUND

SECTION 1. Pursuant to Title XVI of the American Recovery and Reinvestment Act of 2009 (ARRA), the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create jobs and promote economic growth. As a result of the Governor's action, the General Assembly recognizes $694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section. The action required by this Part includes but is not limited to: (1) within five days of the effective date of this Part, the Governor shall submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds. The State Superintendent of Education shall take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section.

SECTION 2. (A) Upon the receipt of the funds in Section 1, the following sums must immediately be transferred to the following agencies to be expended for the specified purposes to supplement appropriations made for the expenses of state government in the annual general appropriation act for Fiscal Year 2009-10 and the Office of State Budget is directed to increase agency federal fund authorization for funds from the State Budget Stabilization Fund allocated herein:

(1) H63 - Department of Education
EFA Base Student Cost $ 184,922,339
(2) H09 - The Citadel $ 2,161,240
(3) H12 - Clemson University $ 14,691,917
(4) H15 - University of Charleston $ 4,692,447
(5) H17 - Coastal Carolina University $ 2,270,097
(6) H18 - Francis Marion University $ 2,588,272
(7) H21 - Lander University $ 1,440,348
(8) H24 - South Carolina State University $ 3,253,587
(9) H27 - University of South Carolina - Columbia $ 23,945,887
(10) H29 - University of South Carolina - Aiken $ 1,469,806
(11) H34 - University of South Carolina - Upstate $ 1,959,567
(12) H36 - University of South Carolina - Beaufort $ 481,777
(13) H37 - University of South Carolina - Lancaster $ 356,295
(14) H38 - University of South Carolina - Salkehatchie $ 310,271
(15) H39 - University of South Carolina - Sumter $ 575,463
(16) H40 - University of South Carolina - Union $ 138,095

(17) H47 - Winthrop University $ 3,092,270
(18) H51 - Medical University of South Carolina $ 12,671,177
(19) H53 - Consortium of Community Teaching Hospitals $ 2,012,569
(20) H59 - Board for Technical & Comprehensive Education $ 21,811,254
(21) N04 - Department of Corrections $ 22,000,000
(22) N12 - Department of Juvenile Justice $ 5,000,000
(23) N20 - Law Enforcement Training Council
Criminal Justice Academy $ 120,000
(24) N08 - Department of Probation, Parole, and Pardon Services $ 2,000,000
(25) K05 - Department of Public Safety $ 15,000,000
(26) H87 - State Library
State Aid for County Libraries $ 1,685,045
(27) H91 - Arts Commission
Statewide Education, Arts, and Cultural Grants $ 500,000
(28) H79 - Department of Archives and History $ 500,000
(29) H63 - Department of Education
Governor's School for the Arts and the Humanities $ 500,000
(30) H63 - Department of Education
Governor's School for Science and Mathematics $ 500,000
(31) H71 - Wil Lou Gray Opportunity School $ 500,000
(32) H75 - School for the Deaf and the Blind $ 500,000
(33) D10 - State Law Enforcement Division $ 2,000,000
(34) B04 - Judicial Department $ 4,000,000
(35) H67 - Educational Television Commission
Satellite Lease $ 540,000
(36) P20 - Clemson University - PSA $ 2,500,000
(37) P21 - South Carolina State University - PSA $ 500,000
(38) P32 - Department of Commerce
Regional Economic Development Organizations $ 3,450,000
(39) H03 - Commission on Higher Education
University Center of Greenville $ 364,440
(40) P12 - Forestry Commission $ 500,000
(41) P16 - Department of Agriculture $ 250,000
(42) P24 - Department of Natural Resources $ 250,000
Total Funds Authorized for Fiscal Year 2009-10 $ 348,004,163.

(B) Of the funds transferred to the Department of Commerce for Regional Economic Development Organizations in this section, the department shall divide $3,150,000 equally to the following seven economic development organizations:

(1) Central SC Economic Development Alliance;
(2) Charleston Regional Development Alliance;
(3) Economic Development Partnership;
(4) North Eastern Strategic Alliance (NESA);
(5) Southern Carolina Alliance;
(6) Upstate Alliance; and
(7) LowCountry Alliance.

The funds dispersed to each organization must be matched with an equal amount of private funds. The organization receiving state funds must certify that the private funds are new dollars specifically designated for the purpose of matching state funds and have not been previously allocated or designated for economic development.

The remaining $300,000 shall be provided to Chester County, Lancaster County, Union County, and York County provided they meet the requirements established above.

Upon receipt of the request for the funds and certification of the matching funds, the Department of Commerce shall disperse the funds to the requesting organization. Any funds remaining in the department's account for Regional Economic Development Organizations at the end of Fiscal Year 2009-2010 shall be transferred to the General Fund.

Funds recipients shall provide an annual report by November 1, to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of Commerce on the expenditure of the funds and on the outcome measures.

(C) Of the funds transferred to the State Law Enforcement Division in this section, the division must utilize the funds to maximize statutorily-mandated law enforcement services.

(D) Of the funds transferred to the Arts Commission in this section, the commission must utilize $100,000 of the funds for Spoleto and $10,435 of the funds for the McClellanville Arts Council.

(E) Of the funds transferred to the Department of Natural Resources in this section, the department must utilize $100,000 of the funds for the Southeastern Wildlife Exposition.

(F) For purposes of the expenditures authorized by this section, the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act.

(G) The remaining portion of the State Fiscal Stabilization funds received pursuant to Section 1 not necessary to meet the appropriations of this Part, must be deposited in a separate and distinct account in the State Treasurer's Office and may only be disbursed pursuant to an appropriation contained in a subsequent act of the General Assembly.

(H) The General Assembly recognizes that the receipt of the funds appropriated in this Part is designed to address a precipitous drop in revenue due to the pending economic crisis and the use of this money to fund recurring expenses is a means to address this shortfall in recurring funds until the economy improves. The General Assembly further recognizes that these funds are temporary in nature and may not be sufficient to address a shortfall in recurring revenue if the current economic crisis extends beyond the period currently contemplated. As a result, the General Assembly strongly encourages state agencies and institutions and school districts receiving these funds to limit the reliance on these funds and make contingency plans that include savings necessary to meet future recurring obligations.

SECTION 3. If any section, subsection, part, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this severability, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This part takes effect upon approval by the Governor.

END OF PART III

All acts or parts of acts inconsistent with any of the provisions of Parts IA, IB, II, or III of this act are suspended for Fiscal Year 2009-2010.

If any part, section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every part, section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other parts, sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Except as otherwise specifically provided, this act takes effect immediately upon its approval by the Governor.

This web page was last updated on Thursday, May 14, 2009 at 11:00 AM

EXHIBIT 10

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

May 19, 2009

The Honorable Robert W. Harrell, Jr., Speaker
South Carolina House of Representatives
508 Blatt Building
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I am vetoing in its entirety and returning without my approval Part IA and Part III of H. 3560, R. 49, the Fiscal Year 2009-10 General Appropriations Bill. Additionally, I am returning Part IB with individual line-item vetoes detailed later in this message.

We've chosen this course for two main reasons. One, legislative budget writers spent $348 million in State Fiscal Stabilization Funds while failing to pay down, or even address, an equal amount of state debt. Two, this budget misses a prime opportunity to take meaningful steps toward restructuring state government, eliminating waste, making tough choices, and setting the spending priorities needed to put our state on firmer financial footing for what we believe will be a protracted economic downturn. By vetoing effectively all $5.7 billion in state funding, I am giving the General Assembly one more opportunity to start over and send me an appropriations bill that meets the above criteria that I think fits with where taxpaying South Carolinians really stand on the common sense notion of paying down debt when afforded the chance to do so. This is particularly the case given the American Recovery and Reinvestment Act does not require stimulus funds that have been certified, but not applied for, be immediately shipped off to some other state – and for the way taking a different course of action would enable our state to avoid a potentially $920 million financial hole in two years that would come in dedicating these funds to recurring needs of this state.

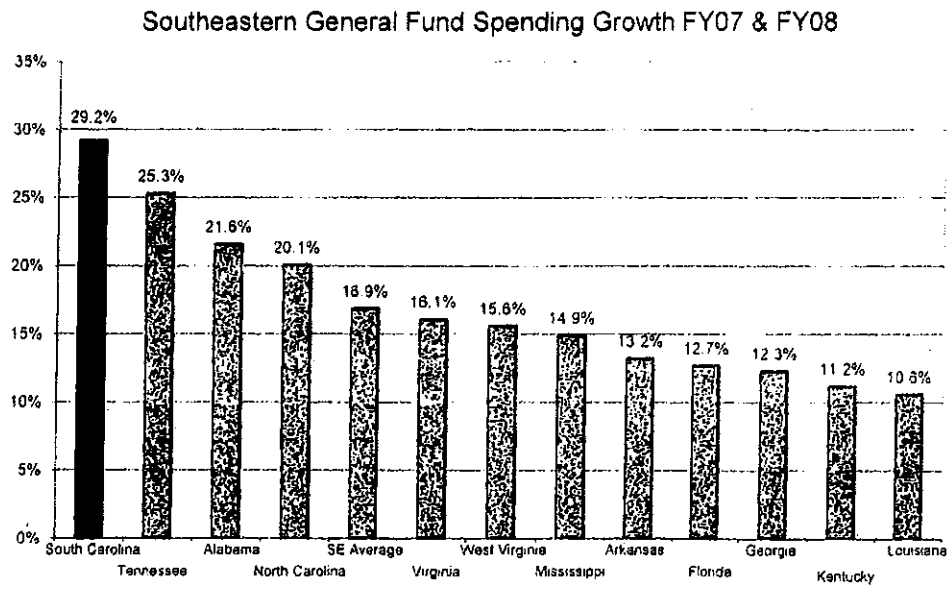
Before I go into further detail on these points, I think it is important to give some background that led me to my decision today.

I. Veto of Part IA and Part III

How We Got Here

South Carolina families are facing the most challenging economic times in recent memory. The collapse of the credit, housing, and stock markets, and in turn, the drop in tax revenues has negatively impacted government's ability to provide services. But even absent the global economic slowdown, let's be absolutely clear – the situation we find ourselves in was predictable, preventable, and guaranteed based on the run-up in government spending over the past several years.

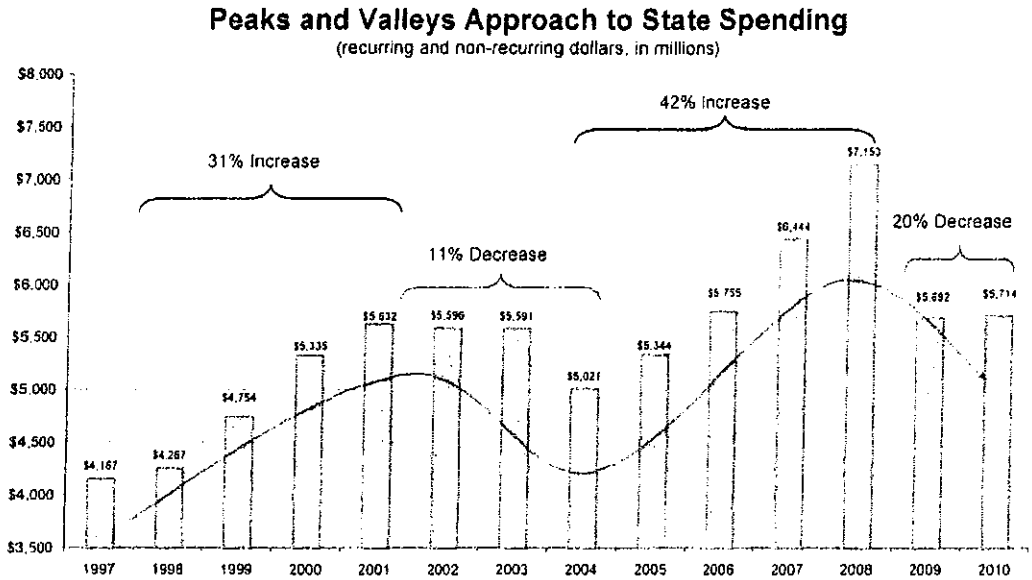
Prior to the mid-year budget reductions in FY 2008-09, state government grew by 43 percent in just four years. In FY 2006-07 and FY 2007-08 combined, the General Assembly spent an additional $1.3 billion in surplus revenues, *which does not include revenues dedicated to tax cuts* – leading the Southeast in state government spending growth at 29.2 percent. As far back as 2004, our administration pointed to the need for legislators to put a statutorily enforceable cap on government spending growth to counteract the political bias to spend every dime possible without heed for a rainy day. Given the business cycle that man has known about since Biblical times, a downturn was inevitable. Gravity always works, and what goes up must come down.



Source National Association of State Budget Officers

What is happening to our budget matches what has happened before. In 1999 and 2000, spending grew by 11.4 percent and 12.2 percent respectively – almost 25 percent in two years. After that, when the tech bubble burst, the economy slowed, and state tax revenues could not keep pace with government spending already set in place. Consequently, in 2001 the Budget and Control Board had to make painful and incredibly disruptive mid-year budget cuts – hurting "the

very least of these" that agencies like the Department of Juvenile Justice and programs like Medicaid are called to serve.



Had the Legislature adopted a population-plus-inflation spending cap, sustained more of the vetoes we have laid out, or adopted more of the cost-savings recommendations we have proposed, we may have been spared yet another budgetary roller-coaster ride. Still, we are where we are, and while nothing can undo what irresponsible budgeting and a souring economy has brought, we continue to believe that setting spending limits now – and sticking to them – can go a long way toward avoiding this very real pain now being endured by state government and will continue in future years.

Actions Have Consequences

It's a reasonable question to ask where the state would be now if the Legislature had set aside a large portion of the FY 2006-07 $1 billion surplus and the FY 2007-08 $1.5 billion in new money for a rainy day. In our 2006 veto message, responding to unprecedented 13 percent growth in state spending that year, we made the following points:

> *We have gone down this road before and paid the price. In 1999 and 2000, state government spending grew by 11.4 percent and 12.2 percent, respectively – an almost 25 percent increase in government spending over a two-year period. When the economy slowed, as it inevitably always does based on the business cycle, the revenues collected by the state could not keep pace with the needs of the government programs funded in the good years, and the Budget and Control Board had to make painful and incredibly disruptive mid-year budget cuts. ...*

We will have failed the people of South Carolina if we head back down the road of unsustainable growth and increase the likelihood of future mid-year budget cuts – but that is precisely where the Budget takes us.

And it is precisely where we are today, but in far worse shape. Even the Senate Finance Chairman recognized – but did nothing to prevent – the harmful levels of spending in 2006 as discussed in our veto message:

On January 7, 2006, in a news story titled "Senate Finance panel chief envisions rivers of red ink," it was reported that the Senate Finance Committee Chairman predicted that the full state coffers would "soon be replaced by years of deficits" and that "within three years, flat revenues will send the state's budget back into the red." The chairman was further quoted as saying the prospect of having to deal with flat revenues in the future "scared the pants off of him." The chairman concluded, according to that news story, by saying that "the looming lean times will force legislators to control spending."

Regrettably, however, as the state's economy continued to improve throughout the legislative session and the hundreds of millions of unanticipated new taxpayer dollars poured into state coffers and were certified, the commitment of many legislators to a spending limit went out the window. Forced to choose between spending the new revenues or remaining true to their pledge to limit state government spending to a reasonable and sustainable level, most chose to spend. The "looming lean times" that the Senate Finance Chairman said would "force legislators to control spending" suddenly became irrelevant in the face of the chance to spend an unprecedented amount of new money.

Those "looming lean times" are indeed no longer looming – and legislative leaders must to some degree be held accountable for the missed opportunities over the last five years to prepare for just this rainy day.

Today, with this appropriations bill, legislative leaders have failed once again to learn from past mistakes and have missed glaring opportunities to make long-lasting reforms. This lack of foresight and financial planning will continue to harm those working in state government and those served by it now and in future years.

All that said, I'd like briefly to offer five reasons why we feel compelled to veto Parts IA and III in their entirety and ask the General Assembly to start over and send me a new budget that takes these points into consideration.

1. Inclusion of State Fiscal Stabilization Funds Without Corresponding Debt Relief

For several months, I have laid out a clear marker for the General Assembly about where our administration is with regard to federal stimulus funds coming to our state: dedicate $700 million of state revenue to pay down state debt and I will apply for the equivalent amount in

State Fiscal Stabilization Funds (SFS Funds). Unfortunately, the majority in the General Assembly failed to meet our marker, or for that matter, failed to even attempt to meet us part of the way. Instead, they have ignored the requirements of the American Recovery and Reinvestment Act (ARRA), opinions of the Obama Administration, the Congressional Research Service and our state Attorney General, which have upheld the Governor's discretionary authority to apply for SFS Funds, and now, with H. 3560, are unconstitutionally attempting to force me to apply for the funds.

This is not the case with the growing and vocal group of legislators who understand the gravity of the problems that lie ahead in spending money we don't have and actually *won't* have in 24 months. I commend them for their support.

Our administration has remained steadfast and consistent over the past six years on the need for fiscal restraint and prudence. Our message on the use of stimulus funds is no different: spending an unprecedented amount of one-time federal funds on core, recurring needs without making sustainable budgetary and financial reforms, including paying down our high state debt load, allows the General Assembly to avoid the responsibility of making tough decisions. For this reason, explained in detail below, I am vetoing Part III of H. 3560 – appropriation of the State Fiscal Stabilization Fund.

Taking a Measured Approach

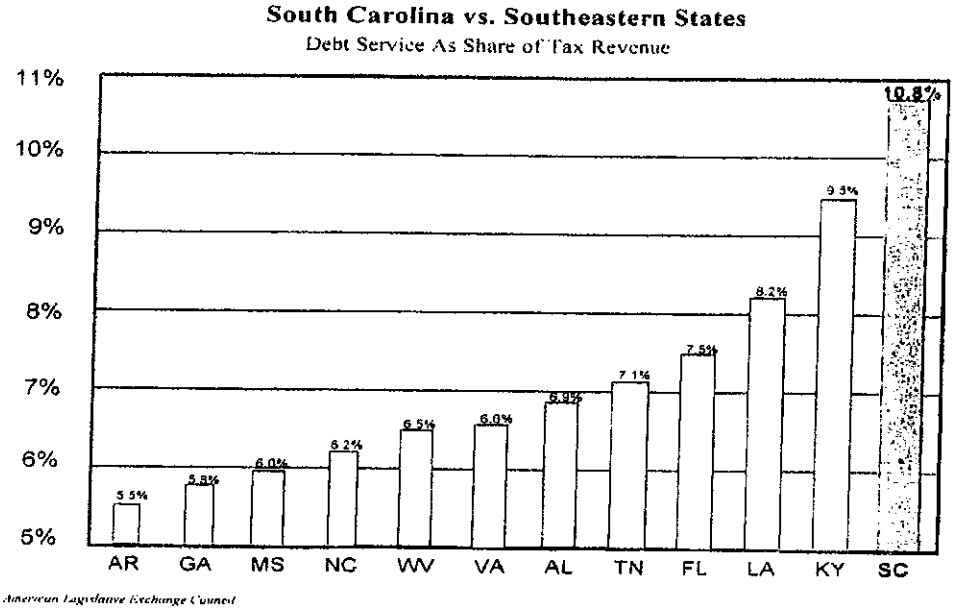
I did everything within my power to impede the federal stimulus legislation as it moved through Congress because I, along with almost every Republican Member of Congress in Washington, was concerned with the disastrous long-term consequences that would come from spending money we don't have – and in issuing yet more debt to solve a problem that was created in the first place by too much debt. We lost that fight, and Congress passed the American Recovery and Reinvestment Act which would allow a total stimulus package of roughly $8 billion to come to our state.

Out of this $8 billion, we took what we believed was a reasonable and measured approach by asking both the Obama Administration and then the South Carolina General Assembly to use a small fraction – around 10 percent – to pay down our state's high debt load. Again, while some in the Legislature would prefer the public to forget this fact, 90 percent of stimulus funds are reaching South Carolina – going to tax relief, building roads, and supporting schools.

We think it makes sense that when you get a financial windfall, it's worth setting aside a small amount to pay down debt. If a prudent family were to win the lottery, the family wouldn't go out and spend every dollar, but instead likely dedicate a portion of their winnings to paying down credit card debt or their mortgage, or in fact setting some aside for a rainy day.

It should not be any different for a state – particularly in South Carolina's case where we are first in the Southeast, and fourth in the entire nation, in the percentage of tax revenue that goes *not* to teachers or health care, but debt repayment, according to a recent report by the American Legislative Exchange Council. *Eleven percent of every dollar* in yearly state tax revenue goes to paying down debt, and we have $20 billion on top of that in unfunded long-term political

promises and commitments. Paying down debt would give us greater financial flexibility in 24 months when the federal gravy train runs out, at which time we could then use these saved funds to avert further cuts, increase spending on core functions, or set aside more for the tough times that are sure to come. In our case, it would also pay dividends well beyond the first 24 months because $162 million would be saved in debt service during this time and another $100 million in interest savings would occur over the next 13 years.



Source: American Legislative Exchange Council

Avoiding the Inevitable Questions

Part III of this bill appropriates $348 million in non-recurring federal stimulus funds for core recurring needs – like the base student cost, higher education and public safety funding. *What happens in 24 months when this funding stream ends?* Will teachers and law enforcement officers lose their jobs then? These are questions that have not been answered by the General Assembly, and hoping things will have turned around by then is not a realistic or acceptable strategy. As United States Army General Gordon Sullivan tells us, ***hope is not a method.***

Our answers have been the same for the past six years – implement budgetary reforms like spending caps, restructuring, retirement limits, and prioritize spending so that frontline services provided by teachers and police officers are adequately funded. Doing this requires that cuts be made to other non-core governmental programs, which I have proposed in each of our administration's executive budgets and which the General Assembly has time and again failed to adopt.

The tough decisions that should have been made in this unparalleled budget year will once again be put off for another time, or possibly not at all, in the hopes that the economy will suddenly

recover and our revenue stream will become flush with cash. This strategy has been used by the General Assembly time and again – the leadership waits for the Board of Economic Advisors to release a higher financial estimate or surprisingly finds a new, unsustainable revenue source and then they look like they have saved the day.

But this financial decline is much steeper and the recovery is likely to be much slower. Rather than continue the "let's wait and see" method of appropriation, it is incumbent upon those of us in seats of responsibility to make wise – and sometimes tough – decisions to protect priority government services in the long term. On this front, I believe the Legislature has fallen far short yet again.

Pulling Back the Curtain

Some have argued that without federal stimulus funds, education and law enforcement will be severely cut, and no other way exists to replenish their funding. This has certainly resonated in terms of making a political point and scoring a public relations victory, as opponents to fiscal responsibility have chosen to perpetuate disingenuous doomsday scenarios as the result of dedicating a portion of the stimulus dollars to paying down debt.

The truth is less clear-cut and, perhaps, far less dramatic. Indeed, Part III of this appropriations bill dedicates the majority of State Fiscal Stabilization funds to education and law enforcement while at the same time gutting general fund expenditures for those areas so that, without this section of the budget, these core services will be drastically cut. As several more forthright legislators have pointed out, this strategy, by Senator Leatherman in particular, is meant to ensure that our administration is perceived as allowing draconian cuts to be made to these services by not applying for the last 10 percent of the stimulus monies. The doomsayers' argument is disingenuous and without merit.

Budget writers in both the House and Senate could have done many things to sustain basic education, health care and law enforcement funding without using any of the $348 million in stimulus funds by (1) heeding our six-year call for sustainable government spending growth; (2) heeding our six-year call to prioritize spending so that core government services are adequately funded and other nonessential services are cut – because not all spending is created equal; and (3) working from the Ryberg-Davis alternative budget which would have limited expansions in unsustainable health care spending and increased funding for teachers and law enforcement agencies.

Legislative budget writers clearly missed several opportunities to put our financial house on a more solid foundation. Now, the same budget writers have once again missed a critical opportunity to correct their previous missteps by failing to send me a budget and legislative reforms that could alleviate future budget crises. Paying down our state's high debt load will save millions, $162 million in the first two years alone; restructuring state government will remove duplicative costs; capping spending will reduce the high cost of government; and reforming the State Retirement System will lessen our liabilities. All of these reforms will help put our fiscal house in order, and not undertaking them represents a missed opportunity of monumental proportions.

Without these reforms or a down payment on our state's $20 billion in unfunded liabilities, I cannot apply for State Fiscal Stabilization Funds, and I believe forcing me to do so with this legislation is legally invalid and unconstitutional. The General Assembly is taking this unprecedented step to undo federal law which clearly gives power only to governors to apply for SFS Funds and, in doing so, tramples on basic principles of separation of powers which requires the governor to carry out executive acts – in this case administering and applying for stimulus funds.

2. **Core Functions of State Government are Inadequately Funded in Part IA**

We are vetoing Part IA in its entirety because – as a stand-alone – Part IA inadequately funds core functions of state government. For several of these functions, General Fund levels were dangerously cut and backfilled with stimulus funds that will run dry in two years.

The result of this purely political maneuver – the so-called "Chaos Budget" – served its purpose: to scare the general public into believing teachers would be fired, troopers would be taken off the road, and health care would be slashed. An honest and responsible budget, following along the lines of the Ryberg-Davis alternative budget, would have fully funded the base student cost as well as law enforcement, and found a way to pay down debt.

Inadequate Funding for K-12 Education

Let me emphasize once again: budget writers' purpose was seemingly to induce fear that would cause people to lobby our office to change its mind, and it's disappointing, yet not entirely surprising, that those holding the legislative purse strings would prefer fear-mongering to responsible budgeting.

Such is the case with education, since budget writers consistently said that education could not be properly funded without every last stimulus dollar. Yet the alternative budget proposed by Senators Ryberg and Davis, and a handful of House Members, demonstrated that it was indeed possible to adequately fund K-12 education without using $348 million in State Fiscal Stabilization Funds while at the same time setting aside $200 million to pay down debt. In fact, the Ryberg-Davis budget would not have forced one teacher to lose his or her job.

It's also important to remember that the debate over the 10 percent we believe should be dedicated to debt relief in no way impacts over $200 million in stimulus funds that are already flowing directly to local school districts from the federal government, or the full flexibility that local districts were given in how they opt to utilize funds coming from Columbia.

Too few are asking what we believe to be a vital question: What happens to education funding in our state in two years when all of the stimulus funds are gone? At that point the state must find a way to plug the $185 million hole that will exist on the Education Finance Act (EFA) line in the budget because, prior to supplementing the EFA line with $185 million in SFS Funds, the General Assembly opted to cut $85 million from the EFA budget. Having vetoed Part III of the

budget, we could not simply veto individual lines in Part IA because vital state functions – like K-12 education – would be underfunded.

Inadequate Funding for Law Enforcement Agencies

As part of the "Chaos Budget," law enforcement agencies were also drastically cut before the addition of stimulus dollars. For example:

- The Department of Corrections would be left with a $22 million deficit without the use of SFS Funds.
- SLED received a $3 million cut before SFS Funds were added to its budget.
- The Department of Probation, Parole and Pardon Services received a $3 million cut before SFS Funds were added to its budget.
- The Department of Public Safety received a $12.7 million cut before SFS Funds were added to its budget.
- The Prosecution Coordination Commission received a $1.9 million cut and received no SFS Funds to offset this reduction in funds. Interestingly, at the same time, the Commission on Indigent Defense received an increase in funding of $3.3 million.

Since Day 1, we've put a priority on public safety as one of the core functions of state government and an integral part of quality of life in South Carolina. With the passage of this budget, our state's public safety agencies have now seen their base budgets reduced by as much as 31 percent over the course of the last year. And just as with K-12 funding, the question becomes how these agencies are going to be funded in two years after the stimulus funds run dry?

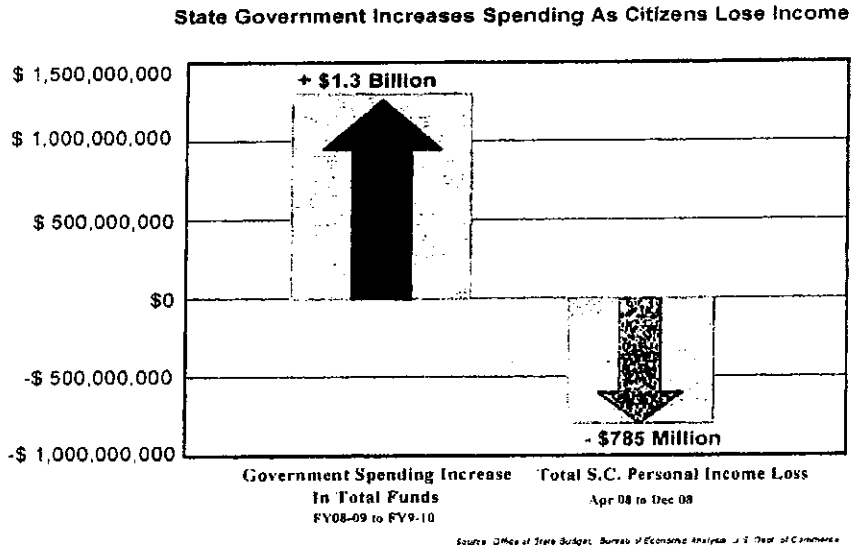
Also on the law enforcement front, this budget fails to adequately fund the South Carolina Illegal Immigration Act. Just last year we applauded the General Assembly for working with our administration to pass this important legislation. Many members of the Legislature called this legislation "the toughest illegal immigration bill in the country." What a difference a year makes. While the Department of Labor, Licensing, and Regulation (LLR), the agency tasked with enforcing the new law, requested $2 million to ensure that the agency has adequate funding to carry out its mandate once the law becomes fully effective, the General Assembly chose to provide merely $750,000 in funding to the agency. The agency has been very clear that while this level of funding will allow them to do some enforcement, it falls well short of the funding needed to carry out the full mandate of the law when the Act becomes fully effective. We believe that this program needs to be fully funded in this year's budget.

3. <u>Budget wastes chance to make long overdue reforms</u>

There has been much discussion about the roughly $1 billion in budget reductions that state government has experienced over the past year. What has not been publicized nearly as much is the fact that the budget passed by the General Assembly includes over $1 billion in federal stimulus funds. This $1 billion in stimulus funds effectively removes any incentive for the

General Assembly to consider changes to the structural deficiencies that exist in our state's government or consider other cost savings that are long overdue. In fact, the budget passed by the General Assembly actually increases funding from the current budget from $5.6 billion to $5.7 billion.

However, when looking at the state budget it is important to focus not only on the general funds appropriated by the General Assembly, but also on the total funds (which include general funds, fees and federal funds) spent in the state each year. When one looks at total funds, there will be over a $1 billion increase in the growth in the state's budget in FY 2009-10. *Not including SFS Funds*, total funds will increase from $19.7 billion in FY 2008-09 to $21 billion in FY 2009-10 – roughly a 7 percent increase. This increase occurred at a time when the people of the state have seen their personal incomes drop. Why should government grow faster than the incomes of the households that fund it?



Beyond the numbers, it's worth looking at this notion that tough decisions are often only made when times are indeed tough. For in the same way one could very reasonably argue that the restructuring essential to the long-term survival and prosperity of General Motors was only postponed by federal monies, I believe these stimulus monies – and subsequently, this budget – would postpone changes essential to South Carolina becoming more competitive in the global economy and thereby degrade the long-term economic prospects of our citizens. On this point it is interesting to note that though GM said federal money was key to its survival, it has now come back just months later laying out the choice of either bankruptcy or more federal aid from taxpayers. Though certainly well-intended to address real needs that do exist in this and other states, the debilitating thing about federal monies like these is the necessary, but hard, choices they forestall.

Need to Make Tough Decisions

When we released our Executive Budget in January, we included $266 million in cost savings – a record total. While many of these savings required difficult belt-tightening in some areas of government bureaucracy, we believe government should ultimately make some of the same types of tough decisions that families and small businesses are making all across South Carolina.

For over six years now, our administration has advocated structural reforms that would make state government leaner, more productive, and better able to serve what the Bible calls "the least of these." One example of a program we believe needs to be reformed, or indeed eliminated for new entrants, is the Teacher and Employee Retention Incentive (TERI) program. This program was initially created to encourage some outstanding teachers to remain in the classroom after they have met the threshold number of years of service to allow them to retire with full state benefits. After this program was implemented, a court decision changed the law and required that all employees in every agency of state government be allowed to participate. The result of this ruling is a program that costs the state over $17 million per year that could have been sent to schools or law enforcement.

We've also consistently pointed out the need to restructure many of the agencies in our state government – with a potential $21 million in savings. While we would give credit to the House of Representatives for passing the legislation creating a Department of Administration, the General Assembly has once again, barring some last minute heroics, allowed a session to slip by without moving forward on serious restructuring.

Just as we have seen the downturn in the economy force the automobile companies in Detroit to restructure and change the way they do business, the same should happen with our state government. The automobile companies have the potential to make some structural changes in their respective companies and emerge in a position that is more competitive in a global marketplace. Likewise, if South Carolina was to make long overdue changes in our structure of government, we could emerge from the current economic downturn better able to attract new industry to South Carolina.

Wasteful Spending Continues

In a year when most agencies have taken budget reductions or, in best case scenarios maintained their currently reduced budget levels, the General Assembly not only continues to ignore making tough decisions, but ignores the easy ones as well. A few examples are provided below.

In light of recent budget cuts, the Department of Commerce proposed downsizing the operations of the state plane and maintenance team to avoid cuts in airport planning or using one-time accounts to pay for ongoing services. The total savings associated with this proposal were $363,503. Instead of realizing these savings, the General Assembly chose to block this proposal by moving the Aeronautics Commission out of the Department of Commerce to the Budget and Control Board.

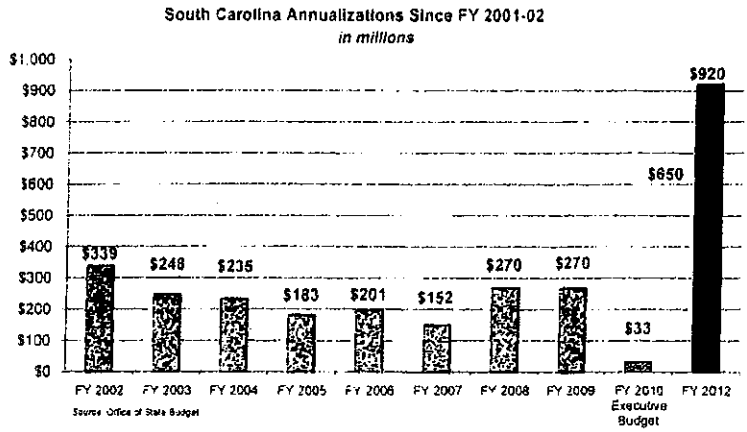
The Department of Public Safety spent $983,133 last year on taxpayer-funded traffic control for football games and horse races. Rather than the General Assembly allowing the Highway Patrol to recoup its costs from event organizers and the universities, which reap millions in revenue from broadcast contracts, each year it costs the taxpayers nearly $1 million to provide this service for special events across the state. When events like these produce big profits, does it make sense for one arm of government – and by extension taxpayers – to subsidize another arm of government reaping a windfall as a result of the event?

Another example is the $500,000 per year that the state spends to maintain two golf courses, when South Carolina has over 460 golf courses. The private sector has demonstrated that it is perfectly capable of maintaining golf courses in this state, so why should the taxpayers be asked to subsidize two of them?

Finally, the Budget and Control Board has managed to receive an increase in funding of $823,993. Part of this funding is for repayment of a hydrogen loan and part of it is for "deferred maintenance." It is perplexing that the General Assembly would opt to fund "deferred maintenance" at the Budget and Control Board, but not increase funding for some of the law enforcement agencies or other vital activities. This just doesn't seem like the right year to be funding maintenance projects, no matter how worthy the projects may be. However, even if the maintenance is necessary, we feel confident the Budget and Control Board can find the resources in the massive amount of carry forward funds retained by the agency to cover the costs of any needed maintenance. The General Assembly had no problem raiding LLR's carry forward funds for nearly $10 million, why should we not ask the Budget and Control Board to contribute $1.8 million for maintenance?

4. Annualizations at Highest Levels Ever

The level of annualizations in this budget have passed the point of being troublesome and become truly mind-boggling. For years we have talked about the need to put our state's fiscal house in order by putting an end to the practice of annualizations – using one-time money to fund recurring needs. Annualizations represent borrowing from Peter to pay Paul and, ultimately, serve only to delay tough decisions by putting off budget pain for another year. Never have we seen annualization totals anywhere close to the record levels seen in this budget. The Office of State Budget estimates the annualization total for FY 2010-11 to be $270 million – a difficult scenario that we will be facing this time next year. However, the challenge that this figure presents is small, relative to the potential ***$920 million*** in annualizations that the state will confront in FY 2011-12 after all stimulus funds have stopped flowing from Washington.



We recognize that, to some degree, annualizations are inevitable when incorporating over $650 million in increased FMAP rate funds from Washington that the state will have access to during FY 2009-10. However, when these funds are spent to fund, expand, or in some cases create new programs, a monumental hole is left to fill in the future. What is even more troubling is that nearly all of this money was appropriated for health programs that our state's most vulnerable citizens will come to rely upon – even though the Centers for Medicare and Medicaid Services (CMS) said that these funds could be used in other parts of state budgets. Next year, after citizens have come to rely upon these new programs, the General Assembly will be forced to make some tough choices when, instead of having $657 million in increased FMAP rate funds to appropriate, they are left with only $200 million. Unless the economy picks up dramatically – which no one is predicting – the Legislature will be forced to cut these health programs once again, redirect funds from other parts of the budget, or raise taxes to fund the difference. We do not find any of these options palatable – especially when this scenario is preventable. We would encourage the General Assembly to take another look at how the FMAP stimulus funds are appropriated in the budget and the impact that will be felt next year when the state has $450 million less coming in from Washington to fund health care expansions created this year.

As previously discussed, the SFS Funds also create an annualizations problem in two years when these funds have likewise stopped flowing from Washington. One of the reasons that we have been adamant in our request for a corresponding amount of debt repayment before we accept these funds is the havoc that these funds will have on our budget if they are spent on recurring items. Our fears were confirmed and the General Assembly chose to spend nearly all of the $348 million on recurring items.

Finally, not only did the Legislature rely upon stimulus funds to balance this budget, but they also raided reserve accounts. The General Assembly shifted $15 million from the Unclaimed Property Fund at the Treasurer's Office to, among other things, pay off Hydrogen Fuel Station Loans at the Budget and Control Board. The budget also takes $37 million from the Insurance Reserve Fund – money that would be needed should a catastrophic event, such as a hurricane, hit South Carolina. As the Chairman of Senate Finance pointed out on the Senate floor during the budget debate a couple of weeks ago, raiding these reserve funds does not represent sound

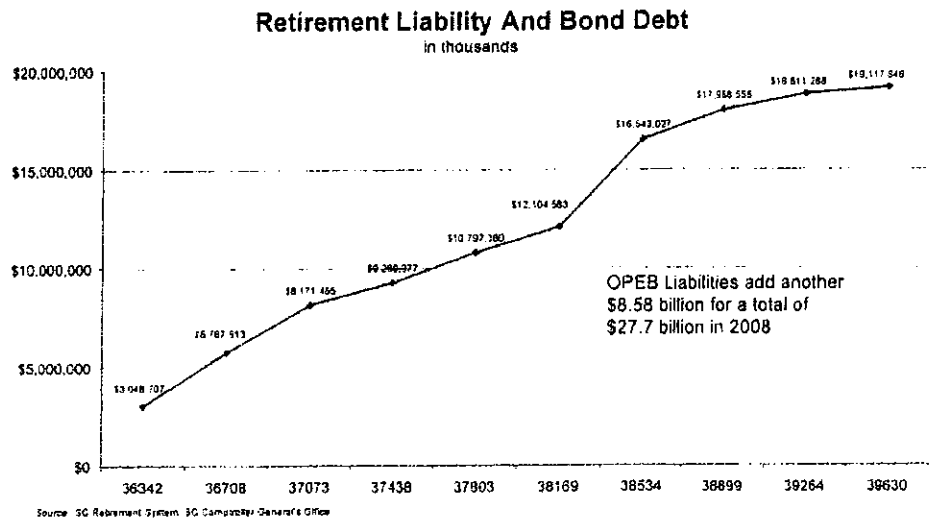
budgeting practices. We agree and encourage the General Assembly to reconsider the use of these funds in the budget.

The FMAP stimulus funds were going to inevitably present a difficult annualization scenario for future state budgets. Had a corresponding amount of general funds been set aside for debt repayment to offset the inclusion of SFS Funds, and not relied on one-time funds raided from trust funds, in two years the state would not need to dig itself out of an even larger hole. As it stands now, future budget writers will potentially confront a $920 million time bomb in two years.

5. Budget Does Not Provide Debt Relief or Sufficiently Address Unfunded Liabilities

At the end of the day, we believe legislative budget writers missed a tremendous opportunity this year to not only enact substantive reforms, but considerably reduce our state's debt load. It is plain and simply foolish to unsustainably grow government without first paying down debt, and it's equally foolish to make yet more political promises to increase retiree benefits that later must be paid for through tax increases.

The most notable debt that we have incurred is the over $20 billion in unfunded retiree pension benefits and health care costs. The Retirement System's unfunded liability has grown in the past 10 years from $178 million in 1999 to $10.964 billion in 2008, which means that our Retirement System's funding level has decreased from 99 percent to 69 percent in ten years. These numbers do not even reflect the huge losses – over $16 billion – that our retirement investments have suffered during the past year.



We've proposed changes to significantly reduce our liabilities, but these reforms have been largely rejected by the Legislature. For example, eliminating the TERI program would have not only generated $17 million in recurring savings for the general fund, but according to the Retirement System's actuary, could have also reduced our unfunded liability by up to $550 million. Other proposals include increasing the amount of service years for retirement and

taking a longer salary period for determining benefit payments would lead to annual savings. In our Executive Budget, we proposed reducing the employer surcharge for retiree health care costs and increasing retiree contributions for their insurance costs. Our proposal would have freed up to $62 million annually that could have been allocated to the retiree health care unfunded liability, lowering it by $2 billion. We believed that this was a reasonable measure given the fact that South Carolina taxpayers pay an average of $348 per month for retiree health care costs while the state of Florida pays a maximum of only $150 per month for their retiree health care costs.

We'd be remiss to not give legislators some credit for committing $3.2 million to the OPEB trust fund in this year's budget. Unfortunately, this down payment falls significantly short of the $314 million that we needed to keep our unfunded liabilities from growing even larger.

This budget also does nothing to reduce our bonded indebtedness. According to ALEC, we rank fourth highest in the nation with regard to annual debt service as a percentage of state tax revenue. This is an important figure because it not only accounts for our state's general obligation debt but also includes the total amount of local government and school district debt that must be paid by taxpayers in the form of property and local option taxes. Given the sizable amount of debt that we owe on a state and local basis, we believe that it is the responsible approach to use just 10 percent of the federal stimulus funds that South Carolina will receive to pay down outstanding bonds. One of our proposals would have reduced our state's debt service by $162 million over the next two years and saved over $100 million in interest payments over the next thirteen years. This proposal would have freed up millions of dollars that could have been spent on essential government services on a recurring basis.

We believe we have laid out several reasonable and compelling arguments upon which to ask the General Assembly to take a second look at crafting a responsible budget. I urge legislators to limit the costly effects to state services and taxpayers that will inevitably come in one, two or even ten years by acting responsibly now. Let's not miss another opportunity to get it right.

For the reasons set forth in the above sections, I am vetoing the following parts of the FY 2009-10 General Appropriations Bill:

Veto 1 Fiscal Year 2009-10 General Appropriation Act Part IA Funding, in its entirety, pages 1 - 281.

Veto 2 Part III Fiscal Year 2009-10 State Stabilization Fund, in its entirety, pages 484 - 487.

II. Vetoes of Part IB Temporary Provisos

We have taken a targeted approach to Part IB by using our line-item veto authority on the following provisos because, unlike Part IA, provisos typically contain one specific purpose and do not roll up large blocks of money used for many purposes on one line. The General Assembly's practice of making large appropriations on individual lines for general rather than specific purposes makes it impossible to veto individual items in a targeted way. In contrast, provisos include the necessary details regarding spending that are needed for accountable budgeting. Accordingly, we are able to use our veto pen on those provisos that we disagree with most.

We would also point out one common theme throughout many of these objectionable provisos is that most are permanent laws that blatantly violate not only the original purpose and intent of a proviso - to be related to funding matters and have a temporary effect - but also violate a Senate Rule that prohibits a proviso from temporarily or permanently changing the general permanent laws of the state. If the General Assembly wants to pass a law that is clearly intended to be permanent, then it should go through the deliberative process in both bodies so that the public has reasonable notice and opportunity to voice their opinion. We object to the following provisos not only for specific policy reasons, but also because many of these provisos are clearly permanent in nature and did not receive the needed deliberation afforded to permanent laws of this state.

Finally, this year we have chosen not to veto some items we have historically vetoed in the past in an effort to focus our objections on those truly flawed items that generally fall into the following egregious categories: (1) violating the state constitution; (2) permanently altering state government by temporary proviso; (3) raiding trust funds; and (4) unnecessarily micromanaging executive branch functions.

Veto 3 **Part IB; Section 21.11; Page 342; Department of Health and Human Services; Chiropractic Services.**

This proviso directs the Department of Health and Human Services (HHS) to provide coverage for chiropractic services. While there are obvious merits to chiropractic care, we are vetoing this proviso because in its present form we believe this coverage is abused at the younger end of the scale and thereby reduces the agency's flexibility to provide more crucial medical care.

Under federal rules, this proviso forces HHS to provide chiropractic coverage to literally every beneficiary regardless of age. Last year, HHS spent almost $221,000 to provide chiropractic services to nearly 1,500 children younger than the age of 12 even though there is not medical research supporting the benefits of those treatments for young children.

Veto 4 **Part IB; Section 21.13; Page 342; Department of Health and Human Services; Medically Fragile Children's Programs.**

This proviso requires that only the Children's Hospitals in South Carolina can provide the Medically Fragile Children's Program (MFCP). We are vetoing this proviso, as requested by HHS, because MFCP no longer exists. As of December 31, 2008, Centers for Medicare and Medicaid Services terminated MFCP and replaced it with a new Medically Complex Children's Waiver that serves the same participants in the MFCP.

Veto 5 **Part IB; Section 21.36; Page 346; Department of Health and Human Services; Prior Authorization -Formulary Changes.**

This proviso requires HHS to fund certain mental health medications without the patient receiving prior authorization. We are vetoing this proviso for two reasons. First, mental health drugs were "carved out" of the preferred drug list – which was originally set up by the General Assembly to encourage responsible prescribing and to allow HHS to negotiate supplemental rebates with drug manufacturers. If all mental health drugs are available, there is no reason for a company to provide a supplemental rebate.

Second, we believe that the HHS director should have flexibility to determine the best way to administer drug coverage without being restricted by the demands of special interests. Additionally, the State Health Plan and other commercial plans in South Carolina are not legally required to waive prior authorization for more expensive drugs as this proviso directs HHS. In contrast to our neighboring states, Georgia and North Carolina do not allow this special carve-out.

Veto 6 **Part IB; Section 22.49; Page 355; Department of Health and Environmental Control; Rural Hospital Grants.**

This proviso directs DHEC to administer rural hospital grants to areas whose largest town has a population of less than 25,000. We are vetoing this proviso for two reasons.

First, these grants are not equitably distributed to all of the state's rural hospitals because only 13 of the 23 designated rural hospitals in our state receive them. This creates the perception that the receipt of these grants is more dependent on political influence than need. Accordingly, we cannot support the continued disbursement of these grants without more objective criteria for grant eligibility.

Second, the program does not have any standards for determining whether the grants are effectively implemented. These grants are awarded without accounting for how the funds are

spent, and therefore, we cannot continue to support this program without checks to ensure that taxpayer money achieves quality health care.

It comes as no surprise this proviso was moved from HHS to the Department of Health and Environmental Control after this administration imposed standards on the grants awarded. In FY 2008-2009, HHS required that hospitals submit grant applications based on criteria and made awards based on the merits of the proposal. This left some of the hospitals without taxpayer support, so the former HHS director, who has lobbied to keep this in the budget throughout the years, convinced budget writers that DHEC would simply cut checks and not ask for accountability.

Veto 7 **Part IB; Section 37.1; Page 371; Department of Natural Resources; County Funds.**

Veto 8 **Part IB; Section 37.2; Page 371; Department of Natural Resources; County Game Funds/Equipment Purchase.**

These provisos allow the Department of Natural Resource's county funds and equipment to be spent or sold only upon approval of the respective county delegation. We are vetoing these two provisos because in *Knotts v. SCDNR* the Supreme Court found similar legislative involvement by county delegations in executive matters to be unconstitutional. The Founding Fathers' governmental philosophy was in large measure based on the separation of powers. These two provisos ignore that principle by having a legislative body execute the laws. In *Knotts*, the Supreme Court found that the legislature "may not undertake both to pass laws and to execute them by bestowing upon its own members functions belonging to other branches of government." But that is exactly what this proviso requires by granting county legislative delegations executive approval authority.

Veto 9 **Part IB; Section 37.15; Page 373; Department of Natural Resources; Sale of Existing Offices.**

This proviso gives the Joint Bond Review Committee, rather than the Budget & Control Board, ultimate authority over approving the sale of the Department of Natural Resource's property. We are vetoing this proviso because it unconstitutionally gives a legislative committee the executive authority to approve and veto property transactions. This is not a proper legislative function and constitutes a violation of the separation of powers doctrine. In *State ex rel. McLeod v. McInnis* and *Knotts v. DNR*, the South Carolina Supreme Court ruled that vesting this type of executive power in a legislative committee is unconstitutional. Therefore, we must veto yet another usurpation of executive authority by the General Assembly.

Veto 10 **Part IB; Section 39.4; Page 373-374; Parks, Recreation and Tourism; State Park Privatization Approval.**

This proviso prohibits the Department of Parks, Recreation and Tourism (PRT) from privatizing any portion of Cheraw State Park or Hickory Knob State Park without the General Assembly's approval. We are vetoing this proviso because it restrains PRT from pursuing public-private partnerships that will save taxpayers money. This is especially troublesome because the parks in question have continually been unprofitable. For example, Cheraw State Park lost $293,008 in FY 2007-08, and Hickory Knob State Park lost $204,095 in FY 2007-08.

Given the substantial losses incurred by these parks, we're surprised that a Republican-controlled legislature is resisting the idea of privatization, particularly considering the positive results it has yielded in other cases. For instance, PRT outsourced the state parks' reservation system to a private contractor who vastly improved services, lowered costs for taxpayers, and generated higher revenue. We strongly believe that officials at PRT should be free to pursue other similar arrangements to provide better services at lower costs without having to go through the timely and politically-driven legislative process.

Veto 11 **Part IB; Section 40.37; Page 379; Department of Commerce; Aeronautics Assets and Funds.**

Veto 12 **Part IB; Section 80A.63; Page 436; Budget and Control Board; Carry Forward Sale of Aircraft Proceeds.**

Veto 13 **Part IB; Section 80A.64; Page 436-437; Budget and Control Board; Aviation Grants.**

Veto 14 **Part IB; Section 89.127; Page 473; General Provisions; Transfer Division of Aeronautics.**

These provisos transfer the Division of Aeronautics from the Department of Commerce to the Budget and Control Board and prohibit Commerce from selling or transferring any property belonging to the Aeronautics Division. These provisos were apparently intended to prevent Commerce's attempt to save money at the Aeronautics Division by cutting pilots, relocating operations, and contracting out maintenance work – which would have saved over $360,000 annually. Disappointingly, we have seen a pattern of this type of thing from the legislative body as the executive branch will come up with a cost saving – only to have the function taken from the executive branch after change has been proposed.

We are vetoing these provisos because they will prevent Commerce from implementing cost-saving measures and will further weaken the executive branch by taking power away from the Governor's cabinet. This move makes no sense because the Budget and Control Board has no expertise or experience in managing our state's aerial resources. Rather, these provisos only

reinforce our state's antiquated structure that prevents us from making real changes that save taxpayer money. Accordingly, we must veto these provisos to ensure that the Aeronautics Division remains accountable for its spending and operations.

Veto 15 Part IB; Section 40.38; Page 379-380; Department of Commerce; Railway Transfer.

This proviso requires all railroad tracks, structures, and equipment on the Old Navy Base site in North Charleston to be transferred to the Division of Public Railways within the Department of Commerce. This transfer is to facilitate the development of an intermodal transportation facility that will provide CSX and Norfolk Southern railroad companies with access to transporting port cargo to and from the new State Ports Authority (SPA) terminal planned for the Base.

First, I am vetoing this proviso because it undermines the Memorandum of Agreement between the SPA and the City of North Charleston, in which those two parties agreed that the SPA would not grant railroad access on the northern section of the Base. The principle here is a simple one, your word is your bond – and this proviso would break with the words given that facilitated the SPA move from Daniel Island to North Charleston. Were it not for that agreement the port would likely have never come to this site in the first place. It isn't right to some years later and try and change the deal that got you were you are.

This agreement seems to have been sloppily arranged as from a legal standpoint, and the SPA had no legal authority to bind the Department of Commerce, Division of Public Railways or other areas of state government. This, however, does not change the spirit of the agreement – particularly since the same legislative principals like Senator Leatherman or McConnell who were there in negotiating this original agreement are now party to this proviso that would change it.

There is also an especially troubling pattern in the SPA seemingly not negotiating in good faith. This is evidenced in the heirs' property belonging to long-time families on the Cainhoy Peninsula still being held by the SPA, or in the disingenuous email from an employee of the SPA with regard to this contemplated rail line. These kinds of dealings highlight the lunacy of making the SPA board protected – as it would move it from what some would consider an arrogant or pushy entity to an imperial one.

Second, I am vetoing this proviso because we have doubts over whether the Division of Public Railways could enter into a public-private partnership for the operation of any intermodal facility that was built on property obtained through condemnation as this proviso potentially directs. The railroads that this proviso seeks to transfer is claimed to be private property and is the subject of pending litigation. If a court ruled that these railroads were private property, then the state would have to use the power of eminent domain to obtain them. In *Georgia Dept. of Transport. v. Jasper County,* the South Carolina Supreme Court held that the taking of private property to build a port facility that would be financed, designed, and operated by a private

company was impermissible because our Constitution forbids the taking of private property by the state for private use without the owner's consent. Thus, in this case, the Division of Public Railways would likely be prohibited from entering into a public-private partnership for the operation of an intermodal facility on property that was obtained through eminent domain.

Although we are vetoing this proviso, let me be equally clear that we support the development of an intermodal facility that provides access to both CSX and Norfolk Southern. From a business perspective, northern access probably makes the most sense and is, therefore, important for the way it could enhance the new port terminal and lower the cost of doing business in the port. From a taxpayer standpoint, we also think it makes the most sense to use what we have in the old Navy Base to create a world-class port operation. We are squandering the blessing of deepwater access with frivolous pursuits like Clemson's so called "restorative institute," and we believe we would be far better off using lands like this for port operations. I just don't think we should use edict from state law to get there. We think it is important that the interested parties pursue options in good faith. We believe a compromise workable to the people of North Charleston, the state and the SPA can be found when they know they don't have state law there to obviate the need for negotiation.

Veto 16 **Part IB; Section 49.1; Page 390; Department of Public Safety; Special Events Traffic Control.**

This proviso prohibits the Department of Public Safety (DPS) from charging fees for traffic control at special events, such as college football games, NASCAR and horse races, fairs, and golf tournaments. We are vetoing this proviso because colleges, universities, and other entities that use these services from DPS should pay for the costs from the revenue generated by the respective events. DPS will spend more than $980,000, including $567,450 for football games, in the next fiscal year on providing traffic control. DPS's budget has already been cut by $26 million, or 16 percent, since last year, and the agency should not be forced to subsidize traffic control for the entities that use this service, especially since the universities are achieving record revenue from the television broadcasts of athletic games. For example, the University of South Carolina will be using its additional television revenue to finance a $49.9 million athletic facilities project. If USC and other colleges can afford to begin multi-million dollar athletic infrastructure projects, then they can certainly afford to pay for the traffic control at the events that bring in this substantial revenue.

Veto 17 **Part IB; Section 49.15; Page 391; Department of Public Safety; Hunley Security.**

This proviso requires DPS to provide two officers for security services for the H. L. Hunley. We are vetoing this proviso because we believe that the Hunley Commission should be a self-

sustaining entity that can provide for its own private security with private donations and admission fees rather than using taxpayer funded DPS officers. Furthermore, this proviso includes no requirement that the Hunley Commission pay DPS for the security that it provides. While we are aware that the Hunley Commission currently pays for DPS's security services, nothing prevents it from completely stopping payments – in which case DPS could be required to provide security for the Hunley for free.

Veto 18	**Part IB; Section 48.11; Page 389; State Law Enforcement Division; Detective/Security Fee.**
Veto 19	**Part IB; Section 49A.1; Page 391-392; Capitol Police Force; Retention of Private Detective Fees.**
Veto 20	**Part IB; Section 49A.2; Page 392; Capitol Police Force; Commissioned Officers' Physicals.**
Veto 21	**Part IB; Section 49A.3; Page 392; Capitol Police Force; Meals in Emergency Operations.**
Veto 22	**Part IB; Section 49A.4; Page 392; Capitol Police Force; Carry Forward Authority.**
Veto 23	**Part IB; Section 49A.5(D); Page 393; Capitol Police Force; Dispositions if Agency Not Established.**
Veto 24	**Part IB; Section 68A.13; Page 409-410; Department of Transportation; Shop Road Farmers Market Bypass Carry Forward.**
Veto 25	**Part IB; Section 89.131; Page 474; General Provisions; Capitol Police Force Training.**
Veto 26	**Part IB; Section 89.132; Page 474; General Provisions; Capitol Police Force Storage and Maintenance.**

These provisos relate to the operations (Provisos 49A.1-4 and 89.131-132) and funding (Provisos 48.11, 49A.5(D), and creation 68A.13) of a Capitol Police Force that would perform the security functions currently performed by the Bureau of Protective Services (BPS) within the Department of Public Safety. We are vetoing these provisos, as well as the permanent legislation that authorizes the creation of the Capitol Police Force, for two reasons.

First, we are vetoing these provisos because a Capitol Police Force that is accountable to a committee of legislators and judges will further erode the executive authority in this state without doing anything to make the State House and Capitol grounds safer. The proposed Capitol Police Force is just another example of the General Assembly's unrelenting contempt for the doctrine of

separation of powers. There is no doubt that the provision of security is an executive function, and this new police entity will effectively allow legislators and judges on the Capitol Police Force Committee to execute the law. This is particularly troubling since the Capitol Police Force will have all of SLED's police powers, including the power to arrest. This means that the legislature and judicial branches will control their own police force without any check from another branch of government. By usurping the authority of the Governor to appoint and manage the security of the State House and Capitol grounds and giving it to a legislatively controlled committee, the General Assembly has further consolidated power for itself at the expense of liberty. As James Madison wrote in *The Federalist No. 47*, "The accumulation of all powers, legislative, executive, and judiciary, whether of one, a few, or many, and whether self-appointed, or elective, may justly be pronounced the very definition of tyranny." This attempt by the General Assembly to aggrandize executive police power for itself must be opposed, and we are, therefore, vetoing the above provisos.

Second, we are vetoing these provisos because it would effectively eliminate the BPS by transferring much of its resources and manpower to the Capitol Police Force. We believe the debate around the creation of the Capitol Police Force has been incredibly insulting to the law enforcement officers who have always been effective and professional in securing the State House and capitol grounds. The men and women in the BPS have served the state well and deserve better than to be denigrated by the General Assembly merely because legislators disagree with some of the decisions made by this administration regarding security measures in and around the State House. Given the commendable service by the BPS force, we are willing to stand by them by vetoing these provisos.

Finally, it is important to remember the origin of this push for a separate police force. In the view of this administration the General Assembly wasted more than $6 million in the State House security upgrades of several years ago. When confronted with the possibility of putting more good money into a faulty security system that would have required BPS officers to man remote guard shacks rather than actually patrol the state house grounds, we objected and in attempting to administer the optimal amount of security with limited dollars simply said we would not man these stations. This seemed to greatly offend several senior level legislators and they originated this legislation.

Veto 27 **Part IB; Section 49A.5(B); Page 392; Capitol Police Force; Dispositions if agency not established - Amending Part IB; Section 89.89; General Provisions; Lt. Governor Security Detail.**

This proviso requires SLED to provide security detail for the Lieutenant Governor if the legislation creating the Capitol Police Force is not enacted. We are vetoing this proviso because we continue to believe that money directed to the Lt. Governor's Office would be better spent on core functions of the Office on Aging, such as Meals on Wheels. Using this money for that purpose would be a small but important step toward ensuring the program's future funding.

We also have concerns as to whether the Lt. Governor's Office will reimburse SLED for the security services mandated under this proviso. According to various media reports, SLED has been effectively footing the bill for the Lt. Governor's security because the Lt. Governor has failed to reimburse SLED for its security services over the past two years. During tough budget times like these, we believe that SLED should be focused on its essential role of law enforcement rather than subsidizing the personal security of the Lt. Governor.

Veto 28 **Part 1B; Section 65.3; Page 405; Department of Labor, Licensing and Regulation; POLA – 110%, Other Funds.**

This proviso transfers $5.3 million from the Department of Labor, Licensing and Regulation's (LLR) Professional and Occupational Licensing Division to the general fund. We are vetoing this proviso because it will take away funds that LLR needs to implement the Immigration Reform Act that was enacted last year. Immigration reform was a priority for this administration and many in the legislature, and we must maintain last year's commitment to ensure that LLR has the necessary funds to enforce our immigration laws. Currently, the budget appropriates only $750,000 for immigration enforcement, which will only be enough to hire temporary employees. LLR needs $2 million to hire the necessary staff to fully enforce the new law, and before the General Assembly approved a total raid of $10 million on this agency, it would have been able to meet this need with the funding provided. Accordingly, we ask that the legislature stand by its commitment to adopt meaningful immigration reform by sustaining this veto, which will ensure that LLR has sufficient funding for immigration enforcement.

Veto 29 **Part IB; Section 65.14; Page 406; Department of Labor, Licensing and Regulation; Transfer to General Fund.**

This proviso directs LLR to transfer $4,362,265 in non-recurring dollars to the general fund to support "cultural agencies." We are vetoing this proviso because it is only a temporary funding solution for our disjointed, uncoordinated cultural agencies which urgently need to be consolidated. In our Executive Budget, we proposed consolidating the State Library, State Museum, Department of Archives and History, and the Arts Commission in order to realize an estimated $1.3 million in annual savings. This would have achieved longer lasting cost savings that cannot be achieved by merely taking money from one agency to give to others.

Also, as stated above, the General Assembly has failed to provide sufficient funds for LLR to fully enforce the Immigration Reform Act. Overall, this budget robs LLR of over $9.6 million that are needed for the agency's operations and full implementation of immigration reform.

Veto 30 **Part IB; Section 67.1; Page 407; Employment Security Commission; Salary Level.**

This proviso states that salaries for the Commissioners of the Employment Security Commission shall be no less than the amount agreed to by the United States Department of Labor. We are vetoing this proviso because the ESC Commissioners have been setting their six-figure salaries for years and the United States Department of Labor neither approves nor authorizes the salaries of the ESC Commissioners. The ESC Commissioners' practice of setting their own salaries without oversight from the legislature, who happens to elect them, reflects the flagrant irresponsibility and unaccountability that has plagued the ESC. It is time that the General Assembly finally exert command over the agency and implement salary controls that prevent the agency heads from determining their own salaries. Therefore, we are vetoing this proviso that tacitly allows the ESC Commissioners to set their own pay.

Veto 31 **Part IB; Section 72.23; Page 418-419; Governor's Office; OEPP Administration of Cabinet Agencies.**

This proviso requires cabinet agency directors to report to the Chairmen of Senate Finance and House Ways and Means Committees on a monthly basis about any time spent away from their main offices during business hours if that time is not related to their agency's mission. It also requires the Governor's Office of Executive Policies and Programs to create a new entity called the Cabinet Agency Administration which must consolidate administrative functions of only cabinet agencies. We are vetoing this proviso because it forces 14 agencies and directors in our cabinet to live by special rules that will not apply to **any other agency** in state government.

While we are pleased that the General Assembly is finally recognizing the need for restructuring, it is absurd that legislators limit this proviso to our cabinet agencies that have already made numerous internal reforms that have created long-term efficiencies and produced millions in cost savings. Our Department of Motor Vehicles has even returned over $40 million to the general fund that has been re-appropriated to other state agencies. Our newest cabinet agency, the Department of Transportation, has already realized over $26 million in cost savings. Yet, we haven't seen this level of cost savings in non-cabinet agencies.

It is also remarkably absurd that the General Assembly expects only cabinet agency directors to report to Chairmen Leatherman and Cooper on a monthly basis on their whereabouts, and yet gives a pass to all other state agency directors. What rationale could possibly defend this proviso's intent to treat cabinet agency heads differently from other state agency heads? If legislators want to know what cabinet heads are doing outside of their agency's mission during work hours, then shouldn't they also want to know what other agency heads are doing? Based on this bizarrely selective treatment of cabinet agency heads, it is fair to assume that this proviso is motivated more by ire towards this administration than enacting meaningful reform.

Veto 32 **Part IB; Section 80A.7; Page 427-428; Budget and Control Board; Compensation – Agency Head Salary.**

This proviso gives the legislatively controlled Agency Head Salary Commission final approval authority over all salaries for state agency heads and technical and community college presidents by eliminating the Budget and Control Board's oversight. We are vetoing this proviso because it represents another example of the legislature's unconstitutional usurpation of executive power. Because of this proviso the executive branch members of the Board will have no role in overseeing agency head salaries and providing a check to the legislative appointees that comprise a majority of the Agency Head Salary Commission. The approval authority exercised by the Agency Head Salary Commission is an executive function, and the vesting of such authority in a legislatively-dominated commission is an unconstitutional violation of the separation of powers doctrine.

Veto 33 **Part IB; Section 80A.25; Page 430; Budget and Control Board; Lawsuit Funding.**

This proviso forgives over $2 million in interagency loans that the House of Representatives and the Senate obtained from the Insurance Reserve Fund (IRF) for legal costs relating to the Abbeville school funding litigation. We are vetoing this proviso because it effectively raids the IRF of funds that the General Assembly promised to repay. The IRF is a necessary reserve fund that the state maintains to insure losses arising from unforeseen events like natural disasters and state employee negligence. It is not intended to be a slush fund for legislators to tap when they run out of money to pay their own debts. We find it shocking and hypocritical that the budget writers in the House and Senate have ridiculed our attempts to provide debt relief to state government with stimulus funds while they've knowingly raided trust funds to absolve their respective bodies' own debt. These actions would suggest to many that the chairmen of the House Ways and Means and Senate Finance Committees are more concerned about protecting their own legislative fiefdoms than looking out for current and future generations of taxpayers.

Veto 34 **Part IB; Section 80A.27; Page 430; Budget and Control Board; Competitive Grants.**

Veto 35 **Part IB; Section 22.39; Page 354; Department of Health and Environmental Control; Competitive Grants.**

Veto 36 **Part IB; Section 39.3; Page 373; Department of Parks, Recreation and Tourism; Competitive Grants.**

Veto 37 **Part IB; Section 40.20; Page 377; Department of Commerce; Competitive Grants.**

This proviso allows agencies to transfer competitive grant funds to local governments or non-profit organizations upon approval of the now-defunct Competitive Grants Committee. We are vetoing these provisos to finalize the long-deserved abolishment of the Competitive Grants program. It is no secret that this administration has strongly opposed this program, which was arguably nothing more than a politically-driven slush fund for legislators to deliver pork to their districts. We are pleased that the General Assembly finally ended the Competitive Grants program in last year's Rescission Act, but we fear that leaving these provisos in the budget could prolong the possibility that this program might be revived. Accordingly, we must veto these provisos to ensure that the Competitive Grants program is ended once and for all.

Veto 38 **Part IB; Section 86.6; Page 442; Aid to Subdivisions, State Treasurer; Legislative Delegations.**

This proviso directs county councils to fund their respective counties' legislative delegation budgets at a certain level or face deductions in their state-funded aid. We are vetoing this proviso because it is an affront to the principle of home rule. This administration has consistently argued that the government that is best is the one closest to the people. This proviso violates this principle by having the state legislature mandate that county governments fund their state legislative delegations even if the counties either do not have the resources to provide proper funding or do not think that funding their legislative delegation is a priority, especially when their budgets have already been cut significantly. If legislators think their county delegations deserve funding, then they should find the funds without putting the funding obligations on the backs of the county governments.

Veto 39 **Part IB; Section 89.96; Page 468-469; General Provisions; Flexibility.**

This proviso allegedly gives state agencies flexibility in determining its funding priorities and transfer funds appropriately to meet those priorities. While we support giving agencies

flexibility, we are vetoing this proviso because its application is anything but uniform and it actually hamstrings a number of agencies by making exceptions for certain programs and local interests at the expense of other worthwhile programs.

One of the most absurd parts of this proviso is the prohibition imposed on PRT from closing or reducing full-time employees at the State House Gift Shop and the Santee Welcome Center. This prohibition represents the worst example of legislative micro-management of an executive agency in this budget. Even more egregious is the fact that Proviso 39.12 requires PRT to close the Governor's Mansion Gift Shop even though it has lost less revenue than the State House Gift Shop. In response to our request for agencies to submit recommended cuts for non-essential programs, PRT offered potential cuts to the Mansion Gift Shop, the State House Gift Shop, and the Santee Welcome Center. The Mansion Gift Shop employs one full-time employee and lost roughly $35,000 last year. The State House Gift Shop has two full-time employees and spends approximately $40,000 on temporary employees. In FY 2007-08 it lost approximately $125,000.

The Santee Welcome Center is duplicative and is the least productive welcome center on I-95. For example, the Santee Welcome Center had 126,494 visitors and made 832 accommodations during FY 2007-08. By comparison, the Dillon Welcome Center had 222,183 visitors and made 5,246 accommodations and the Hardeeville Welcome Center had 265,065 visitors and made 7,402 accommodations during the same period.

While we are not opposed to PRT closing the Mansion Gift Shop to manage its budget reductions, we find it unbelievable that the General Assembly would give special protection to two other less productive shops in an effort to reward political patronage rather than make responsible budget cuts.

Perhaps the most disturbing example of a carve-out that ties the hands of an agency is the Medicaid program in serving the state's most needy citizens. This proviso prohibits HHS from making any cuts to Medicaid Adolescent Pregnancy Prevention Services (MAPPS) despite the fact that there are no conclusive evaluations showing that MAPPS is effective in delaying or preventing teen pregnancy. In addition, HHS found that the program is in non-compliance with Medicaid standards. While MAPPS's intent to prevent teen pregnancy is important, holding this program, as well as provider rates harmless, will not give HHS the flexibility it needs to absorb future cuts – that will inevitably come once FMAP money dries up in two years – without resorting to cutting people from the rolls or cutting services. We find it disturbing that, once again, a political agreement would force the protection of a *counseling* program and potentially cause the reduction in *medical services* to our state's most needy citizens.

Veto 40 Part IB; Section 89.118; Part 471-472; General Provisions; ARRA Oversight.

This proviso establishes a committee, co-chaired and organized by the State Treasurer and Comptroller General, to oversee the spending of federal stimulus dollars in South Carolina. We

are vetoing this proviso because this oversight committee is unnecessary, duplicative, and will lead to greater confusion regarding stimulus spending.

In our Executive Order 2009-03, we established the South Carolina Stimulus Oversight, Accountability, and Coordination Task Force (Task Force), which is chaired by the Comptroller General, includes the State Treasurer, has all the power of the oversight committee created by this proviso, and includes every state agency head that will receive significant stimulus funding. The Task Force has already begun working, and under the leadership of the Comptroller General, it has created a website, located at www.stimulus.sc.gov, to track stimulus spending in South Carolina. Importantly, the federal government's website created for stimulus transparency and oversight provides a link to the Task Force's website. The creation of another oversight committee with the same participants and powers will only make it more confusing for our citizens to find the information they need to ensure that their government is spending stimulus funds responsibly. Accordingly, we must veto this proviso.

Veto 41 **Part IB; Section 89.136; Page 474; General Provisions; Economic Activity Web-Based Applications.**

This proviso requires the Department of Commerce to transfer $75,000 to the Budget & Control Board to support a web-based application for public concerns about whether state agency regulations overly burden economic activity. We are vetoing this proviso because it unnecessarily transfers valuable funds from Commerce to the Board for functions that are similar to those currently performed by the Small Business Regulatory Review Committee.

The Small Business Regulatory Review Committee, housed within Commerce, has an established process for reviewing the economic impact and burden of state agency regulations, and it is more than capable of handling the web-based applications required by this proviso. Accordingly, the General Assembly should keep these funds at Commerce to support the Small Business Regulatory Review Committee rather than establishing a new bureaucracy within the Budget and Control Board for reviewing agency regulations.

Furthermore, H. 3882, the bill which would authorize the Board to develop the economic activity web-based applications, will not become law in this fiscal year. Thus, this proviso would effectively force Commerce to transfer its funds to the Board to fund a program that does not exist. However, if these funds remain at Commerce we will work with the agency and Small Business Regulatory Review Committee to implement the web-based application program to provide our citizens and small businesses with a more accessible forum to express concerns about heavy-handed state regulations.

Veto 42 **Part IB; Section 89.137; Page 474-475; General Provisions; South Carolina Research Authority Officers.**

This proviso states that the Governor's appointee to the South Carolina Research Authority (SCRA) board of trustees may not serve as the Chairman of that board during FY 2009-10. Instead the executive committee of the SCRA will appoint the positions of chairman and vice-chairman. We are vetoing this proviso because it removes our administration's appointee to this board from his current position of Chairman, and thereby, limits his ability to bring needed reform to the SCRA.

We believe that our appointee has served the state very well during the short time that he has been Chairman of the SCRA. While serving on this and other boards, he has been a strong advocate for ensuring that taxpayer dollars are spent on legitimate state government functions in an open, transparent manner. This is nothing less than an attempt by the General Assembly to remove an individual from a position of authority because he has willingly challenged the status quo and asked the tough questions about how the SCRA spends taxpayer money.

A few years ago our administration's appointee served as the Chairman of the DOT Commission. After asking tough questions about how taxpayer money was being spent in that agency, millions of dollars in waste were uncovered and the structure of the DOT was eventually overhauled. Most agree that this was a positive development, but it would not have occurred if the General Assembly had removed our appointee from the position of Chairman a few months into his term. In like manner, the current chairman of the SCRA deserves the full opportunity to direct the course of this agency without being undermined by this proviso.

Veto 43 **Part IB; Section 90.15; Page 479; Statewide Revenue; State Budget Stabilization Fund.**

Veto 44 **Part IB; Section 90.16; Page 480; Statewide Revenue; ARRA Fund Authorization.**

These provisos express the General Assembly's intent to accept and authorize the expenditure of all State Fiscal Stabilization (SFS) stimulus funds provided under the American Recovery and Reinvestment Act of 2009 (ARRA). We are vetoing this proviso because the General Assembly has no authority to accept or authorize the expenditure of SFS funds. As explained more fully in Veto 2 of Part III of the Appropriations Act, ARRA grants the governor the exclusive authority to apply for and accept SFS funds. Accordingly, this proviso expresses an intent to violate federal law, and it should not be enacted.

Veto 45 **Part IB; Section 90.19; Page 480-481; Statewide Revenue; Nonrecurring Revenue.**

This proviso raids the Insurance Reserve Fund (IRF) of nearly $37 million that it keeps in reserve to insure losses arising from events like natural disasters and state employee negligence. We are vetoing this proviso because the IRF is not intended to be a rainy day fund that legislators can tap whenever tax revenues fall. It is the height of fiscal irresponsibility for the General Assembly to use the IRF, a trust fund dedicated for damages resulting from unforeseen events, like hurricanes, to plug a revenue shortfall that was almost certain to happen after rapidly expanding government spending over recent years. Despite our repeated calls to reign in spending and implement spending caps, the Legislature has ignored our appeal for responsible budgeting and instead has chosen to expose our state to financial calamity in the unfortunate event of multiple devastating disasters by raiding this trust fund.

As appalling as this action it is, it is worsened by the abandonment of supposed fiscally conservative budgeting principles espoused by the lead Senate budget writer. During the budget debate on the floor of the Senate, the Senate Finance Committee Chairman vowed that he could not condone raiding the IRF as the House did in its budget. In a not-so-stunning reversal, he agreed in closed door meetings with the House Ways and Means Committee Chairman to raid the IRF, and he even voted to shut down debate when other Senators questioned this practice during the Senate's consideration of whether to concur with the House's amendments to the Senate version of the budget. If the Senate Finance Chairman is sincere in his opposition to raiding the IRF, we will welcome his efforts to sustain this veto.

Veto 46 **Part IB; Section 90.13; Page 477; Statewide Revenue; Health and Human Services FMAP Funding; Item X; MUSC Transplant Services; $100,000.**

This proviso item directs $100,000 in FMAP stimulus funds to MUSC for transplant services. Historically, these funds have been used for administrative services related to transplants provided to Medicaid recipients. We are vetoing this line item because MUSC has chosen not to provide these administrative services. They are currently provided by HHS. Accordingly, these funds should stay at HHS and not be directed to MUSC.

Veto 47 **Part IB; Section 90.13; Page 478; Statewide Revenue; Health and Human Services FMAP Funding; Item BB; MUSC Rural Dentist Program; $250,000.**

This proviso item is a pass-through from MUSC to the Area Health Education Consortium, which attempts to create incentives to increase the number of dentists serving rural South Carolina. We are vetoing this proviso because although attracting dentists to rural areas is a worthwhile goal, we doubt that the roughly $5,000 per county this program allows for would

have little if any impact on dentists' professional locales. Additionally, we'd like to point to the fact that a year ago, more than half of the six dentists receiving these rural grants to repay loans were MUSC dental school faculty members with state salaries averaging more than $110,000.

Veto 48 **Part IB; Proviso 90.13; Page 478; Statewide Revenue; Health and Human Services FMAP Funding; Item R; Rural Hospital Equipment and Facilities; $2,000,000.**

This proviso item is a $2 million pass-through from HHS to DHEC for rural hospital equipment and facilities. Hospitals receiving these funds are the same ones that are selected to receive a different grant through the Rural Hospital Grants proviso (22.49), which we vetoed. We are vetoing this proviso for the same reasons we vetoed 22.49.

This budget increases the Rural Hospital Grant program by 33 percent, going from $3 million to $4 million. In addition, the General Assembly proposes starting an entirely new program with an additional $2 million in the toughest budget year this state has seen in recent history. While scaring the public with threats of teachers and police being laid off, some in the legislature doubled funding for rural hospitals in this year's budget, while so many other front line services were left cut.

As previously stated, these grants are not equitably distributed to all of the state's rural hospitals since only 13 of the 23 designated rural hospitals in our state receive them. This creates the perception that the receipt of these grants is more dependent on political influence than need. Accordingly, we cannot support the continued disbursement of these grants without more objective criteria for grant eligibility.

Second, the program does not have any standards for determining whether the grants are effectively implemented. These grants are awarded without accountability for how the funds are spent, and, therefore, we cannot continue to support this program without checks to ensure that taxpayer money achieves quality health care.

Veto 49 **Part IB; Section 90.13; Page 478; Statewide Revenue; Health and Human Services FMAP Funding; Item S; USC Rural Health Clinics; $3,000,000.**

This proviso item is a $3 million pass-through from HHS to DHEC who, in turn, must forward to USC's School of Medicine, Rural Primary Care Center Network. This network trains physicians who serve the state's underserved population in three rural clinics. We are vetoing this line item because we believe this disportionally funds three rural health clinics and does not provide equal funding to the more than 100 health clinics in our state that may have similar needs.

Additonally, we encourage the USC Rural Primary Care Center Network to work with the South Carolina Office of Rural Health. For little or no cost, the South Carolina Office of Rural Health, according to their website, will help financially strapped rural practices and facilitate low-interest loans.

III. Conclusion

It is for the reasons above that I'd respectfully offer the vetoes of Parts IA, III, and the line-items individually detailed in Part IB for your consideration. I'd further ask, with current and future taxpayers' interests at heart and in the spirit of responsible budgeting, that you sustain these vetoes and work to craft a prioritized budget that both funds core government services and pays down debt. It's in this hope, and indeed with the knowledge that with great challenges come great opportunities, that I submit to you the position of this administration for your sincere consideration.

Sincerely,

Mark Sanford

EXHIBIT 11

South Carolina General Assembly
118th Session, 2009-2010

Download This Bill in Microsoft Word format

~~Indicates Matter Stricken~~
Indicates New Matter

S. 577

STATUS INFORMATION

Concurrent Resolution
Sponsors: Senators Leatherman, Land, Setzler, Malloy, McGill, O'Dell, Reese, Nicholson, Williams, Elliott and Knotts
Document Path: l:\s-financ\drafting\hkl\007arra.dag.hkl.docx

Introduced in the Senate on March 12, 2009
Introduced in the House on May 14, 2009
Adopted by the General Assembly on May 14, 2009

Summary: American Recovery and Reinvestment Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/12/2009	Senate	Introduced SJ-6
3/12/2009	Senate	Referred to Committee on **Finance** SJ-6
3/18/2009	Senate	Committee report: Favorable with amendment **Finance** SJ-3
5/13/2009	Senate	Adopted, sent to House SJ-81
5/14/2009	House	Introduced, adopted, returned with concurrence HJ-55
5/14/2009	House	Motion to reconsider tabled HJ-61

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VERSIONS OF THIS BILL

3/12/2009
3/18/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

COMMITTEE REPORT

March 18, 2009

S. 577

Introduced by Senators Leatherman, Land, Setzler, Malloy, McGill, O'Dell, Reese, Nicholson, Williams, Elliott and Knotts

S. Printed 3/18/09--S.

Read the first time March 12, 2009.

THE COMMITTEE ON FINANCE

To whom was referred a Concurrent Resolution (S. 577) to provide that pursuant to HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, the General Assembly accepts the use of federal stimulus funds provided, etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

A CONCURRENT RESOLUTION

TO PROVIDE THAT PURSUANT TO HR-1 OF 2009, THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, THE GENERAL ASSEMBLY ACCEPTS THE USE OF FEDERAL STIMULUS FUNDS PROVIDED TO THIS STATE IN THIS ACT IF THE GOVERNOR OF SOUTH CAROLINA, WITHIN THE REQUIRED FORTY-FIVE DAY PERIOD, FAILS TO CERTIFY THAT HE WILL REQUEST AND USE THESE FUNDS FOR THIS STATE AND THE AGENCIES AND ENTITIES THEREOF IN THE MANNER PROVIDED IN THE FEDERAL ACT, AND TO PROVIDE FOR THE MANNER OF DISTRIBUTION OF THESE FUNDS.

Whereas, in Section 1607 of HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, the Congress of the United States has provided as follows:

"(a) CERTIFICATION BY GOVERNOR. - Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

(b) ACCEPTANCE BY STATE LEGISLATURE. - If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) DISTRIBUTION. - After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion."; and

Whereas, pursuant to subsection (b) of the above provision, the South Carolina General Assembly accepts for use all or any applicable portion of the funds provided to the State of South Carolina or any agency thereof, if the Governor of South Carolina pursuant to subsection (a) above fails to certify not later than forty-five days after enactment of HR-1 of 2009, that he will on behalf of this State request the funds provided in HR-1 of 2009; and

Whereas, pursuant to subsection (c) above, the South Carolina General Assembly declares the distribution of these funds to state agencies, entities, and any other political subdivision of this State, including those distributed to local governments through the State of South Carolina, shall be provided by formula or as directed by the General Assembly; and

Whereas, to enhance the General Assembly's ability to utilize these funds to create the most jobs and promote as much economic growth as possible, the General Assembly shall create a joint review committee to provide recommendations to both the General Assembly and the executive branch regarding the most efficient policy for the receipt, appropriation, expenditure, and reporting of these funds. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the South Carolina General Assembly, pursuant to HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, accepts the use of federal stimulus funds provided to this State if the Governor of South Carolina within the required forty-five day period fails to certify that he will request and use these funds for this State and to create jobs and promote economic growth.

Be it further resolved that the South Carolina General Assembly further declares that the manner of distribution of these funds shall be as stipulated in this resolution.

Be it further resolved that a copy of this resolution be forwarded to the United States Senate, the United States House of Representatives, and to each member of the South Carolina Congressional Delegation.

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This web page was last updated on May 15, 2009 at 9:37 AM

EXHIBIT B

THE STATE OF SOUTH CAROLINA

In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Casey Edwards, ... Petitioner,

v.

The State of South Carolina ..... Respondent.

AFFIDAVIT OF CASEY EDWARDS

Personally appeared before me the undersigned who, being first duly sworn, deposes and says:

1. I am over eighteen (18) years of age and of sound mind.

2. I have reviewed the grounds set forth in the Petition and Complaint and to the best of my knowledge, the allegations are true and grounds exist for this Court to exercise its original jurisdiction.

FURTHER AFFIANT SAYETH NOT.

This 8 day of April, 2009.

Casey Edwards

Sworn to and subscribed before me,

this 8 day of April, 2009

Notary Public for State of South Carolina
My Commission Expires: May 12, 2018

EXHIBIT C

THE WALL STREET JOURNAL.
WSJ.com

OPINION DECEMBER 2, 2008

Governors Against State Bailouts

Hard to believe, but not everyone in politics wants a free lunch.

By RICK PERRY and MARK SANFORD

As governors and citizens, we've grown increasingly concerned over the past weeks as Washington has thrown bailout after bailout at the national economy with little to show for it.

In the process, the federal government is not only burying future generations under mountains of debt. It is also taking our country in a very dangerous direction -- toward a "bailout mentality" where we look to government rather than ourselves for solutions. We're asking other governors from both sides of the political aisle to join with us in opposing further federal bailout intervention for three reasons.

First, we're crossing the Rubicon with regard to debt.

One fact that's been continually glossed over in the bailout debate is that Washington doesn't have money in hand for any of these proposals. Every penny would be borrowed. Estimates for what the government is willing to spend on bailouts and stimulus efforts for this year reach as much as $7.7 trillion according to Bloomberg.com -- a full half of the United States' yearly economic output.

With all the zeroes in the numbers, it's no wonder Washington politicians have lost track.

That trillion-dollar figure is the tip of the iceberg when it comes to checks written by the federal government that it can't cash. Former U.S. Comptroller General David Walker puts our nation's total debt and unpaid promises, like Social Security, at roughly $52 trillion -- an invisible mortgage of $450,000 on every American household. Borrowing money to "solve" a problem created by too much debt seems odd. And as fiscally conservative Republicans, we take no pleasure in pointing out that many in our own party have been just as complicit in running up the tab as those on the political left.

Second, the bailout mentality threatens Americans' sense of personal responsibility.

In a free-market system, competition and one's own personal stake motivate people to do their best. In this process, the winners create wealth, jobs and new

investment, while others go back to the drawing board better prepared to try again.

To an unprecedented degree, government is currently picking winners and losers in the private marketplace, and throwing good money after bad. A prudent investor takes money from low-yield investments and puts them in those that yield better returns. Recent government intervention is doing the opposite -- taking capital generated from productive activities and throwing it at enterprises that in many cases need to reorganize their business model.

Take for example the proposed Big Three auto-maker bailout. We think it's very telling that each of the three CEO's flew on their own private jets to Washington to ask for a taxpayer handout. No amount of taxpayer largess could fix a business culture so fundamentally flawed.

Third, we'd ask the federal government to stop believing it has all the answers.

Our Founding Fathers were clear and deliberate in setting up a system whereby the federal government would only step in for that which states cannot do themselves. An expansionist federal government of the last century has moved us light-years away from that model, but it doesn't mean that Congress can't learn from states that are coming up with solutions that work.

In Texas and South Carolina, we've focused on improving "soil conditions" for businesses by cutting taxes, reforming our legal system and our workers' compensation system. We'd humbly suggest that Congress take a page from those playbooks by focusing on targeted tax relief paid for by cutting spending, not by borrowing.

In the rush to do "something" to help, federal leaders would be wise to take a line from the Hippocratic Oath, and pledge to do no (more) harm to our country's finances. We can weather this storm if we commit to fiscal prudence and hold true to the values of individual freedom and responsibility that made our nation great.

Mr. Perry, a Republican, is the governor of Texas. Mr. Sanford, a Republican, is the governor of South Carolina.

Please add your comments to the Opinion Journal forum.

EXHIBIT D

State of South Carolina
Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

December 2, 2008

Dear President-Elect Obama:

As governors, and more significantly as fellow Americans, we wanted to write in light of today's historic meeting in Philadelphia to say how much we appreciated you making the effort you did to meet. Thank you for consulting with us so early in your transition. Coming from a culture of balancing budgets, we understand the unique economic challenges and difficult decisions you will have to make in dealing with the trying economic times that will accompany your taking the office of President. We are committed to working with you and your administration to forge solutions that can make a difference in the lives of the very Americans we all represent.

It is with this hope, and in that spirit of seeking consensus with regard to ongoing economic recovery efforts, that we write to also respectfully submit earnest concerns with the direction some in Washington D.C. seem to be headed with the recent so-called "economic recovery efforts."

From our nation's infancy, our economy grew to become the world's largest because of a market-based system that rewarded effort, entrepreneurial spirit, and good decisions, and in turn permitted consequences for the opposite. As our country faces an economic crisis the likes of which we have not seen since the Great Depression, we believe it is vital that federal economic policies are rooted in that same business model that rewards American ingenuity. Equally important, we must be wary of the moral hazard present in the idea of bailing out the private or public sector – for what in some cases were poor decisions.

After healthy discussion, Republican governors reached a broad consensus on the four general principles outlined below, which we believe are keys to revitalizing our economy and keeping it strong in the future.

Accordingly, we'd suggest these four ideas should be borne in mind as further federal efforts are contemplated with respect to the states:

First, the most important thing that the federal government can do is to reward entrepreneurship by not punishing those who create wealth from it. We were heartened to read reports of your intention

to not raise taxes, and believe that our economy can be further spurred by implementing a new round of tax cuts for both our nation's workers and the businesses they represent.

Second, we believe we must also give our businesses viable and expanding markets in which to sell their goods. Undoubtedly, one of the great mistakes of the Great Depression was limiting international trade. President Hoover's protectionist policies reduced global trade by two-thirds from 1929 to 1933, badly damaging America's recovery efforts and driving up unemployment. Instead of limiting international trade, we urge you to expand it, and going forward with the Columbia Free Trade Agreement would be a good start.

Third, we believe we must maintain and encourage a competitive workforce. The proposed so-called "Card Check" legislation would repeat the expansion of labor union power that harmed job creation during the Great Depression. The Detroit automakers' labor model is a fundamentally flawed one, and now is not the time to harm the successful automotive business elsewhere in our country with the same unsound business practices. To keep America competitive, the federal government should not enact the so-called Employee Free Choice Act.

Finally, we don't believe economic problems that were in large measure created by too much debt will be solved by more debt. In this light, if government spending was the key to preventing recessions, then we'd never have a recession, because increasing government spending is often one of the easiest things for a government to do. To emphasize once again, as governors we live with the demands of balancing our budgets, and we respectfully, but strongly, urge you to avoid large scale spending increases that are paid for through further borrowing. Instead, we would encourage your administration to chart a new course at the federal level and to prioritize spending so new initiatives are paid for – as is now required in most states.

The idea of putting aside partisanship and focusing on the issues was central to your campaign, and accordingly we want to say again how much we appreciate this initial visit with our nation's Governors. We are committed to working with you to make our country much more competitive in today's global competition for jobs and way of life, and look forward to continued conversations toward these ends.

Sincerely,

Mark Sanford
Governor of South Carolina

EXHIBIT E

Congressman Clyburn's Influence Seen in House Passed

January 28, 2009

(Washington, DC) -- Sixth District Congressman and House Majority Whip James E. Clyburn hailed passage of the American Recovery and Reinvestment Act today by the House of Representatives. This legislation is intended to create or save 3 to 4 million American jobs over the next four years, and will invest $3.2 billion over the next 10 years in strengthening South Carolina's economy. It also reflects the influence of the House Majority Whip.

"Whenever I approach legislation in Congress, I view the bill through the lens of South Carolina and the needs of my constituents," Congressman Clyburn said. "Because of the potential impact of this economic recovery package, I worked to protect South Carolina's interests and ensure the Palmetto state would benefit from these crucial federal investments.

"Our Governor has repeatedly expressed political and philosophical aversion to using federal assistance as we work our way out of the economic conditions that are visiting significant difficulties upon businesses and families throughout our beloved state," Congressman Clyburn continued. "The leadership of the South Carolina General Assembly sees it differently, and I have worked with them to ensure that South Carolinians receive the benefits of these federal investments."

As House Majority Whip, Congressman Clyburn had a seat at the table as the American Recovery and Reinvestment Act was being developed. Congressman Clyburn made his arguments before President Obama and the House and Senate leadership, and insisted upon including in this bill provisions that allow the South Carolina General Assembly to receive and allocate federal investments if the Governor refuses to do so.

He also championed the effort to invest in rural communities, especially those historically left behind. The legislation passed by the House today includes language that requires at least ten percent of rural development funds included in the package will be dedicated to persistent poverty counties that are defined by having 20 percent or more of its population living in poverty over the past 30 years. There are 12 South Carolina counties eligible for these funds -- Allendale, Hampton, Jasper, Colleton, Bamberg, Orangeburg, Clarendon, Lee Williamsburg, Marion, Dillon and Marlboro counties – all along the I-95 corridor.

"South Carolina currently has the third highest unemployment rate in the nation, and in some of these persistent poverty counties the rate has soared as high as 19 percent," Congressman Clyburn continued. "It is time that investments are made where they are needed most. If the state is unwilling to provide adequate assistance to these communities, as their representative in Congress, it is my duty to make sure they are not neglected."

Congressman Clyburn also offered two amendments that were included in the final version of the bill. The first sets a timetable for Governors to request the federal. If the funds are not requested by the Governor within 45 days, the state legislature can make the request rather than have it revert back to the federal Treasury.

"With such challenging economic times, I would have failed my fellow South Carolinians if I had not worked to ensure that the federal money allocated for our state is spent on vital projects that will benefit the greater good and provide much needed jobs at home," Congressman Clyburn stated.

Congressman Clyburn's second amendment waives the match required for ready-to-go historic preservation projects on Historically Black College and University campuses and provides an additional 15 million dollars for such projects. These are projects that have already received approval of the National Parks Service and are simply waiting for adequate funding to begin renovations. This amendment temporarily suspends law authored by Congressman Clyburn in 2002 that lowered the match for HBCU historic preservation projects from 50 percent to 30 percent on building and structures that were identified by the National Trust as endangered treasures. Despite the lower match rate, many HBCUs struggled to raise the match needed to draw down the federal funding, and many worthy projects are sitting untouched or partially finished due to lack of financing.

"I am proud this amendment will help preserve our history, improve our historic higher education institutions, and create jobs in local communities," Congressman Clyburn concluded.

There are a number of other provisions in the legislation that Congressman Clyburn championed during its development:

- Rural Internet Access: $6 billion to expand broadband internet access so businesses in rural and other underserved areas can link up to the global economy.
- College Affordability: Making college more affordable through tax credits for college tuition for up to $2,500 per year of school and increasing the Pell Grant by $500. Expanding access to a college education builds the foundation for long-term economic growth.

- Title I Grants: $26 billion to boost learning in local school districts through Title I grants ($13 billion) to help disadvantaged students reach high academic standards and IDEA Special Education grants ($13 billion) to help special needs children succeed.
- Improving Bond Markets: Reinvigorating the Market for State and Local Government Bonds will create jobs by getting local projects moving, and providing tax credit and exempt bonds to areas hurt by the recession.
- Summer Jobs: Provide summer jobs for 1 million youth and job training to nearly 450,000 disadvantaged adults and dislocated workers.
- Rural Business-Cooperative Service: $100 million for rural business grants and loans to guarantee $2 billion in loans for rural businesses at a time of unprecedented demand due to the credit crunch. Private sector lenders are increasingly turning to this program to help businesses get access to capital.
- Education for Homeless Children and Youth: $66 million for formula grants to states to provide services to homeless children including meals and transportation when high unemployment and home foreclosures have created an influx of homeless kids.
- Community Health Centers: $1.5 billion, including $500 million to increase the number of uninsured Americans who receive quality healthcare and $1 billion to renovate clinics and make health information technology improvements. More than 400 applications submitted earlier this year for new or expanded CHC sites remain unfunded.
- Training Primary Care Providers: $600 million to address shortages and prepare our country for universal healthcare by training primary healthcare providers including doctors, dentists, and nurses as well as helping pay medical school expenses for students who agree to practice in underserved communities through the National Health Service Corps.
- Neighborhood Stabilization: $4.2 billion to help communities purchase and rehabilitate foreclosed, vacant properties in order to create more affordable housing and reduce neighborhood blight.
- Homeless Assistance Grants: $1.5 billion for the Emergency Shelter Grant program to provide short term rental assistance, housing relocation, and stabilization services for families during the economic crisis. Funds are distributed by formula.
- Rural Housing Insurance Fund: $500 million to support $22 billion in direct loans and loan guarantees to help rural families and individuals buy homes during the credit crunch. Last year these programs received a record number of applications.

Congressman Clyburn whipped the vote on the American Recovery and Reinvestment Act, and it passed with a vote of 244 to 188.

This legislation is still subject to change. The Senate is developing its own recovery package, which is expected to be very different than the House-passed legislation. The two versions must then be reconciled in a conference committee before it final bill can be sent to President Obama for his signature.

# # #

American Recovery and Reinvestment Act
Investments in South Carolina
Total = $3.2 Billion

Covering State Shortfalls

State budget deficit offset/fiscal stabilization: $ 905.09 million

Financial Assistance Programs

Food Stamps	$389.2 million
Supplemental Social Security Income (SSI)	$60.3 million

Transportation & Infrastructure

Highways/Bridges construction/repair:	$ 479.86 million
Public-transit systems	$34.19 million
Water-treatment plants/sewers/pipelines	$59.47 million

Education

School construction/modernization (K-12)	$ 208.72 million
Education/Disabled students	$ 200.79 million
Poor school districts (Title I)	$191.31 million
Education technology grants	$13.82 million
Head Start program	$9.92 million
Child-care and development grants	$36.32 million
College/University construction/modernization	$82.7 million
Pell Grants	$349.59 million
Law Enforcement	
Law-enforcement grants	$57.15 million
Health	
Preventative health/health services grant	$3.83 million
Elderly nutrition services	$3.11 million
Community Assistance	
Employment services/Job training	$65.98 million
Homeless shelters and services	$15.9 million
Community services block grant	$15.36 million
Low-Income Home Energy Assistance program	$6.64 million

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Business & Technology Center
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2135 Rayburn House Offic
Washington, 20515
Phone: (202)225-3315
Fax: (202)225-2313

Contact Field Offices Toll Free at 1-888-JIM-0006 (1-888-546-0006).

EXHIBIT F

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

April 3, 2009

The Honorable Peter Orszag, Director
The Office of Management and Budget
725 17th Street, Northwest
Washington, D.C. 20503

Dear Mr. Orszag,

This letter is written regarding Section 1607 of the American Recovery and Reinvestment Act (ARRA). As you know, this provision requires the Governor of the State to certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

On behalf of the people of South Carolina, please allow this letter to certify that we will accept funds and use them to create jobs and promote economic growth to the extent that our state and respective agencies and governmental programs are able to do so. Although we have questioned the effectiveness of this legislation, we have said all along that we will not prevent the state from certifying and receiving stimulus dollars which are scheduled to come to the state programmatically through existing federal formulas. We, therefore, would ask that this letter serve as a Section 1607 certification and that funds be released to the appropriate state agencies to spend in accordance with guidelines set forth in the ARRA and by federal agencies.

Let me be equally clear though that this letter in no way represents an **application** for State Fiscal Stabilization Funds. These monies are further defined as Educational Stabilization and Governmental Services funds in the US Department of Education guidelines issued on April 1, 2009. As you may be aware, our administration continues to have reservations about accepting these funds. If those reservations are satisfied by policy makers within the General Assembly of South Carolina, then at some later date my administration will apply for those funds.

In the interim, we remain committed to working with our General Assembly to use certified funds allocated in a responsible manner despite our reservations with regard to their ability to produce the intended effect of a more stable national economy. Thank you for your attention to these matters and we look forward to working with your administration in finding ways to make both the state I represent, and our country, stronger economically.

Sincerely,

Mark Sanford

EXHIBIT G

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

March 11, 2009

The Honorable Barack Obama
President
United States of America
1600 Pennsylvania Avenue, Southwest
Washington, D.C. 20502

Dear Mr. President,

It is with great respect and equal concern that I write today seeking more flexibility with regard to the stimulus dollars headed to South Carolina.

Specifically, I am requesting a waiver to direct the $700 million in the stimulus' Fiscal and Education Stabilization Funds to paying down our state's very sizable debt and contingent liabilities. As we both know, the nation's governors have been granted some degree of discretion over these funds. Retiring this debt would represent in comparable terms paying down $400 billion of the national debt and would give our state greater flexibility in dealing with the financial storm now facing our nation. We believe this financial flexibility vital to our state in weathering these challenging economic times. The other $2.1 billion in the stimulus package for our state would be spent in accordance with the existing federal programs now in place.

As you know, I've been an outspoken opponent of the stimulus legislation. I continue to believe that the massive spending involved will not achieve the economic stimulus proponents suggest, and will instead create an unprecedented level of debt for our children and grandchildren. That said, the legislation did win approval by Congress, and our team has spent the weeks since you signed it into law carefully examining the direct implications for current and future South Carolinians -- and we have come to the following conclusions.

First, given the age-old notion that when one is in a hole the first order of business is stop digging, we think it is not in our state's best interest to spend all of these monies. In our case, 75 percent would be spent and 25 percent would prudently be used to pay down debt so that our state would have more flexibility should the recession be protracted – as I firmly believe it will. To do otherwise and spend it all would not only be financially reckless in our case, but over the next two years it would create a $1.2 billion financial hole. Unless your intention is to borrow

more money that we don't have to send to states like ours in 24 months. I don't know how we would dig out of this hole without substantially raising taxes and in turn making our state economy less competitive in producing jobs.

Second, this annualizations problem compounds the more treacherous issue of our state's long-term liabilities. South Carolina has roughly $20 billion in unfunded political promises and stands at the unenviable position of being number one in the entire Southeast in per capita debt – 57 percent above the Southeastern average and three times higher than neighboring Georgia.

Third, in the same way one could argue that the restructuring essential to the long-term survival and prosperity of General Motors (GM) was only postponed by federal aid, we believe these stimulus monies would postpone changes essential to South Carolina's competitiveness in the global economy. Just months after GM received billions in bailout funds it has returned to Congress asking for billions more and suggesting if these monies didn't come they would be faced with impending bankruptcy – which is the same thing they said the first time. In that exchange the taxpayers are poorer as billions have been spent with no effect – as is the company itself as it has been robbed of time it could have used in beginning the difficult, but necessary, process of restructuring. This illustrates an often debilitating aspect of federal money – it forestalls much-needed and admittedly difficult choices on restructuring and updating our government that in our case are vital to making South Carolina more competitive in producing jobs in the global economy.

Finally, we believe strongly in the Founding Fathers' notion of federalism, and specifically in the Jeffersonian precept that government closest to the people governs best. This idea of states being laboratories of democracy has a direct bearing on the stimulus in that it offers an opportunity to adapt solutions to each unique state environment. Under the budget conditions that prevail in many states, it may very well make sense to accept the funds. But in our state – where we have a retirement system less than 70 percent funded, the highest per capita debt load in the Southeast, and would look at beginning next year's budget $740 million in the hole if we took all of this money – we believe not spending all the money to be the most prudent course of action. Accordingly, we respectfully ask for the flexibility inherent in staying true to the larger precept of federalism.

As you know, approximately 75 percent of the stimulus money is directed by federal statute to flow through programmatic means to South Carolina. Our waiver as expressed earlier in this letter would not impact these funds and this $2.1 billion would be spent in accordance with the stimulus bill. The discretion to our nation's governors over the remaining 25 percent – including the Education and Fiscal Stabilization Funds – is the sole area for which we are requesting this waiver

In all this I would like to underscore the degree to which I would rather not be making this request. Doing so invites all sorts of criticism, and the $1.2 billion financial hole that would be created in simply accepting the money would not come due for 24 months – though my term ends in roughly 20 months. So if I took the money my administration would avoid the criticism – and dealing with this extreme financial shortfall in 24 months would fall to the work of whoever follows me in this job and the future legislative leadership in our House and Senate. While it would be the easier decision, I do not believe it would be a wise course of action given its consequences for the near five million people I represent in South Carolina. Accordingly, I send you this waiver and humbly ask that you grant it to the people of this state.

In my opinion, this course will do more to ensure South Carolina's long-term economic strength, and help in avoiding our state's structural budget shortcomings, than would other contemplated uses of the funds. If your administration determines that it is unable to grant us this flexibility, we will in turn opt not to pursue these funds.

I would respectfully ask that you consider this request with all due haste, and we look forward to working with your administration during these challenging times.

Sincerely,

Mark Sanford

EXHIBIT H

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 20, 2009

The Honorable Mark Sanford
Governor of South Carolina
Columbia, SC 29211

Dear Governor Sanford:

Thank you for your letter to the President dated March 17, 2009. The President has asked me to respond on his behalf concerning your proposed use of State Fiscal Stabilization Fund monies to pay down your State's debt.

As you know, the American Recovery and Reinvestment Act of 2009 ("ARRA," or the "Recovery Act") was enacted in response to the severe economic downturn we are currently experiencing. The Recovery Act is designed to spur economic activity and private sector job growth; provide relief to individuals and families, as well as States and localities that are facing the prospect of cutting services and laying off teachers, police officers, and other vital public servants; and make critical investments in long-term economic growth, such as providing every child the chance for a world-class education.

The State Fiscal Stabilization Fund is a one-time appropriation in Title XIV of the Recovery Act. The Fund consists of approximately $48.6 billion that the U.S. Department of Education will award to States to help address State and local budget shortfalls in order to minimize or avoid reductions in education and other essential services. As a condition of receiving stabilization funds, the Recovery Act requires States' assurances that they will advance essential education reform in four areas: (1) make progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students; (2) establish pre-K-to-college-and-career data systems that track longitudinal progress and foster continuous educational improvement; (3) make improvements in teacher effectiveness and in the equitable distribution of qualified teachers between high- and low-poverty schools; and (4) provide intensive support and effective interventions for the lowest-performing schools. In addition, States must assure that they will maintain State support for elementary, secondary, and higher education at certain levels for fiscal years 2009, 2010, and 2011. (ARRA § 14005(d).)

You have proposed using the Stabilization Fund monies for "paying down [your] state's sizable debt." However, the Act does not authorize the Department of Education to award Stabilization Fund monies to a State for that purpose.

With regard to the 81.8 percent of a State's allocation of Stabilization Fund monies that must be used "for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services" (ARRA § 14002(a)(1)), the Recovery Act further specifies that those Federal funds must be used "first" to restore State

support to local educational agencies pursuant to the State's funding formula and to public institutions of higher education. (ARRA § 14002(a)(2).) Any remaining Federal funds within that percentage allocation must be used to provide subgrants to local educational agencies on the basis of a statutory formula. (ARRA § 14002(a)(3).)

With regard to the remaining 18.2 percent of a State's allocation of Stabilization Fund monies, the Act specifies that a State must use the monies "for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building system." (ARRA § 14002(b)(1).) Although payment of public debt obligations is a necessary governmental expenditure, the Department of Education, in consultation with the Department of Justice and my office, has concluded that the paying down of past debt does not constitute the use of Federal funds for "government services" under the plain meaning of those words in the Act.

The language of the Recovery Act, as enacted by Congress, accordingly does not support your proposed use of the State Fiscal Stabilization Fund monies to pay down the State's debt.

Thank you again for your letter.

Sincerely,

Peter R. Orszag
Director

EXHIBIT I

South Carolina Department of Education

Together, we can.

News

K-12 job losses could top 5,000 if federal stimulus funds rejected, state survey says

A survey of South Carolina school districts indicates that more than 5,000 jobs would be eliminated next year due to budget cuts, although more than half could be saved if federal stimulus funds are accepted by Governor Mark Sanford.

State Superintendent of Education Jim Rex today urged Sanford to accept the federal dollars approved by Congress.

"Make no mistake, these federal dollars are going to be spent somewhere," Rex said. "If our governor says no – if this money isn't used to help our own kids – then it will go to other states, and South Carolina taxpayers will be on the hook for federal dollars that save teachers' jobs in Idaho and Oklahoma. That's not some abstract philosophy of macroeconomics. That's reality.

"What kind of message do we send to the rest of nation, not to mention to our own kids, if South Carolina becomes the only state to refuse funds aimed at helping public schools?"

Based on responses from two-thirds of the state's 86 school districts, the South Carolina Department of Education projected today that districts will eliminate 5,200 jobs in next year's budgets, including 2,700 teachers. If Sanford decides by Friday to accept federal funds targeted at public schools, districts would approve budgets that eliminate only 1,600 jobs.

"With or without federal stimulus dollars, schools are going to lose jobs," Rex said. "The only question is how much we can cushion the blow."

The survey results were released one day after the U.S. Department of Education published guidelines that rule out the possibility of states using federal stabilization funds to reduce state debts, a strategy advocated by Sanford. The federal agency said "the paying down of past debt or the paying of interest or other obligations on past debt does not constitute the use of funds for 'government services' under the plain meaning of those words" in the American Recovery and Reinvestment Act of 2009.

Rex said there were issues with Sanford's possible refusal that go beyond the immediate availability of federal funds. Billions of additional dollars will be made available to states for innovative K-12 programs, and most of those funds require state governors to take key roles in applying for them.

"We have a team at the State Department of Education that has been looking into all sorts of possibilities for these competitive grants, everything from expanding instructional choices at schools to developing a performance pay program for classroom teachers. We're still hoping that Gov. Sanford will work with us."

South Carolina schools have absorbed $387 million in cuts this year, and absorbing those midyear reductions has left many districts with few alternatives except to consider cuts to their most important assets – their classroom teaching positions. Eighty to 90 percent of a typical school district's budget is salaries, with most of

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those salaries going to classroom teachers.

Rex said that eliminating several thousand teaching positions would be a disaster for South Carolina, but federal stimulus dollars could forestall that possibility and give the state's economy a chance to recover. And he continued to stress the importance of local school districts using federal stimulus funds wisely and making certain that taxpayers know how they are being spent. "We have to make certain that we account for how these funds are used," he said.

Support for accepting the stimulus funds is widespread and bipartisan, Rex said. Republican legislators in the General Assembly have taken a lead role in advocating their use, and more than 80 mayors recently wrote a public letter to Sanford and legislators in which they urged acceptance of stimulus funds to "protect the vital services our state and local governments provide to our citizens."

Thursday, April 2, 2009

EXHIBIT J

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

May 19, 2009

The Honorable Robert W. Harrell, Jr., Speaker
South Carolina House of Representatives
508 Blatt Building
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I am vetoing in its entirety and returning without my approval Part IA and Part III of H. 3560, R. 49, the Fiscal Year 2009-10 General Appropriations Bill. Additionally, I am returning Part IB with individual line-item vetoes detailed later in this message.

We've chosen this course for two main reasons. One, legislative budget writers spent $348 million in State Fiscal Stabilization Funds while failing to pay down, or even address, an equal amount of state debt. Two, this budget misses a prime opportunity to take meaningful steps toward restructuring state government, eliminating waste, making tough choices, and setting the spending priorities needed to put our state on firmer financial footing for what we believe will be a protracted economic downturn. By vetoing effectively all $5.7 billion in state funding, I am giving the General Assembly one more opportunity to start over and send me an appropriations bill that meets the above criteria that I think fits with where taxpaying South Carolinians really stand on the common sense notion of paying down debt when afforded the chance to do so. This is particularly the case given the American Recovery and Reinvestment Act does not require stimulus funds that have been certified, but not applied for, be immediately shipped off to some other state – and for the way taking a different course of action would enable our state to avoid a potentially $920 million financial hole in two years that would come in dedicating these funds to recurring needs of this state.

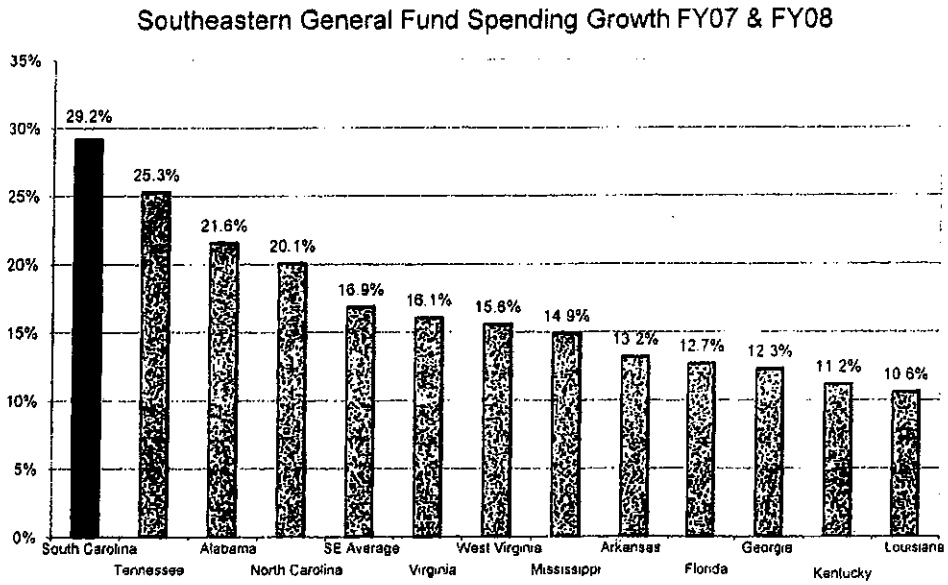
Before I go into further detail on these points, I think it is important to give some background that led me to my decision today.

I. Veto of Part IA and Part III

How We Got Here

South Carolina families are facing the most challenging economic times in recent memory. The collapse of the credit, housing, and stock markets, and in turn, the drop in tax revenues has negatively impacted government's ability to provide services. But even absent the global economic slowdown, let's be absolutely clear – the situation we find ourselves in was predictable, preventable, and guaranteed based on the run-up in government spending over the past several years.

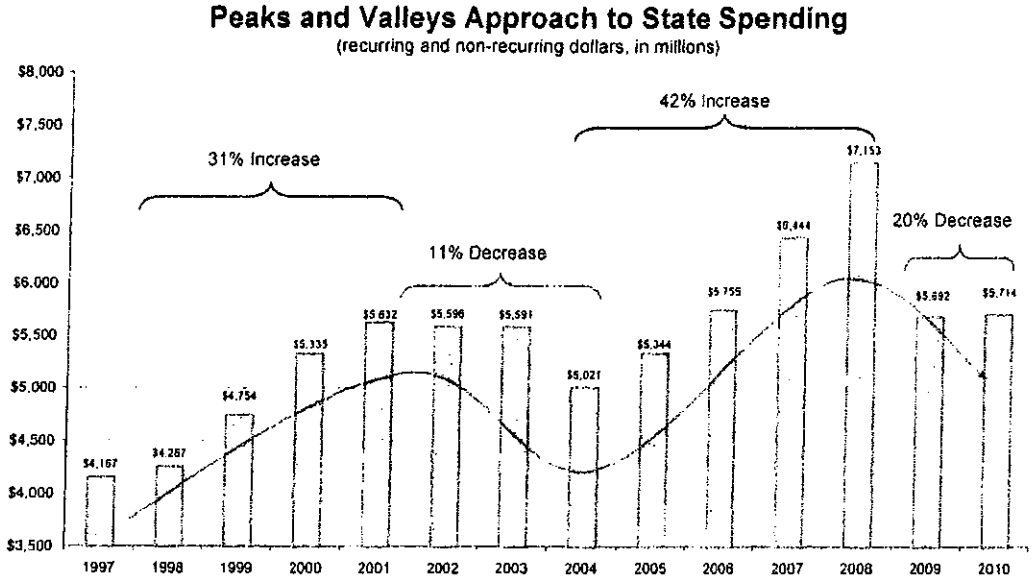
Prior to the mid-year budget reductions in FY 2008-09, state government grew by 43 percent in just four years. In FY 2006-07 and FY 2007-08 combined, the General Assembly spent an additional $1.3 billion in surplus revenues, *which does not include revenues dedicated to tax cuts* – leading the Southeast in state government spending growth at 29.2 percent. As far back as 2004, our administration pointed to the need for legislators to put a statutorily enforceable cap on government spending growth to counteract the political bias to spend every dime possible without heed for a rainy day. Given the business cycle that man has known about since Biblical times, a downturn was inevitable. Gravity always works, and what goes up must come down.



Source National Association of State Budget Officers

What is happening to our budget matches what has happened before. In 1999 and 2000, spending grew by 11.4 percent and 12.2 percent respectively – almost 25 percent in two years. After that, when the tech bubble burst, the economy slowed, and state tax revenues could not keep pace with government spending already set in place. Consequently, in 2001 the Budget and Control Board had to make painful and incredibly disruptive mid-year budget cuts – hurting "the

very least of these" that agencies like the Department of Juvenile Justice and programs like Medicaid are called to serve.



Had the Legislature adopted a population-plus-inflation spending cap, sustained more of the vetoes we have laid out, or adopted more of the cost-savings recommendations we have proposed, we may have been spared yet another budgetary roller-coaster ride. Still, we are where we are, and while nothing can undo what irresponsible budgeting and a souring economy has brought, we continue to believe that setting spending limits now – and sticking to them – can go a long way toward avoiding this very real pain now being endured by state government and will continue in future years.

Actions Have Consequences

It's a reasonable question to ask where the state would be now if the Legislature had set aside a large portion of the FY 2006-07 $1 billion surplus and the FY 2007-08 $1.5 billion in new money for a rainy day. In our 2006 veto message, responding to unprecedented 13 percent growth in state spending that year, we made the following points:

> *We have gone down this road before and paid the price. In 1999 and 2000, state government spending grew by 11.4 percent and 12.2 percent, respectively – an almost 25 percent increase in government spending over a two-year period. When the economy slowed, as it inevitably always does based on the business cycle, the revenues collected by the state could not keep pace with the needs of the government programs funded in the good years, and the Budget and Control Board had to make painful and incredibly disruptive mid-year budget cuts. ...*

We will have failed the people of South Carolina if we head back down the road of unsustainable growth and increase the likelihood of future mid-year budget cuts – but that is precisely where the Budget takes us.

And it is precisely where we are today, but in far worse shape. Even the Senate Finance Chairman recognized – but did nothing to prevent – the harmful levels of spending in 2006 as discussed in our veto message:

On January 7, 2006, in a news story titled "Senate Finance panel chief envisions rivers of red ink," it was reported that the Senate Finance Committee Chairman predicted that the full state coffers would "soon be replaced by years of deficits" and that "within three years, flat revenues will send the state's budget back into the red." The chairman was further quoted as saying the prospect of having to deal with flat revenues in the future "scared the pants off of him." The chairman concluded, according to that news story, by saying that "the looming lean times will force legislators to control spending."

Regrettably, however, as the state's economy continued to improve throughout the legislative session and the hundreds of millions of unanticipated new taxpayer dollars poured into state coffers and were certified, the commitment of many legislators to a spending limit went out the window. Forced to choose between spending the new revenues or remaining true to their pledge to limit state government spending to a reasonable and sustainable level, most chose to spend. The "looming lean times" that the Senate Finance Chairman said would "force legislators to control spending" suddenly became irrelevant in the face of the chance to spend an unprecedented amount of new money.

Those "looming lean times" are indeed no longer looming – and legislative leaders must to some degree be held accountable for the missed opportunities over the last five years to prepare for just this rainy day.

Today, with this appropriations bill, legislative leaders have failed once again to learn from past mistakes and have missed glaring opportunities to make long-lasting reforms. This lack of foresight and financial planning will continue to harm those working in state government and those served by it now and in future years.

All that said, I'd like briefly to offer five reasons why we feel compelled to veto Parts IA and III in their entirety and ask the General Assembly to start over and send me a new budget that takes these points into consideration.

1. Inclusion of State Fiscal Stabilization Funds Without Corresponding Debt Relief

For several months, I have laid out a clear marker for the General Assembly about where our administration is with regard to federal stimulus funds coming to our state: dedicate $700 million of state revenue to pay down state debt and I will apply for the equivalent amount in

State Fiscal Stabilization Funds (SFS Funds). Unfortunately, the majority in the General Assembly failed to meet our marker, or for that matter, failed to even attempt to meet us part of the way. Instead, they have ignored the requirements of the American Recovery and Reinvestment Act (ARRA), opinions of the Obama Administration, the Congressional Research Service and our state Attorney General, which have upheld the Governor's discretionary authority to apply for SFS Funds, and now, with H. 3560, are unconstitutionally attempting to force me to apply for the funds.

This is not the case with the growing and vocal group of legislators who understand the gravity of the problems that lie ahead in spending money we don't have and actually *won't* have in 24 months. I commend them for their support.

Our administration has remained steadfast and consistent over the past six years on the need for fiscal restraint and prudence. Our message on the use of stimulus funds is no different: spending an unprecedented amount of one-time federal funds on core, recurring needs without making sustainable budgetary and financial reforms, including paying down our high state debt load, allows the General Assembly to avoid the responsibility of making tough decisions. For this reason, explained in detail below, I am vetoing Part III of H. 3560 – appropriation of the State Fiscal Stabilization Fund.

Taking a Measured Approach

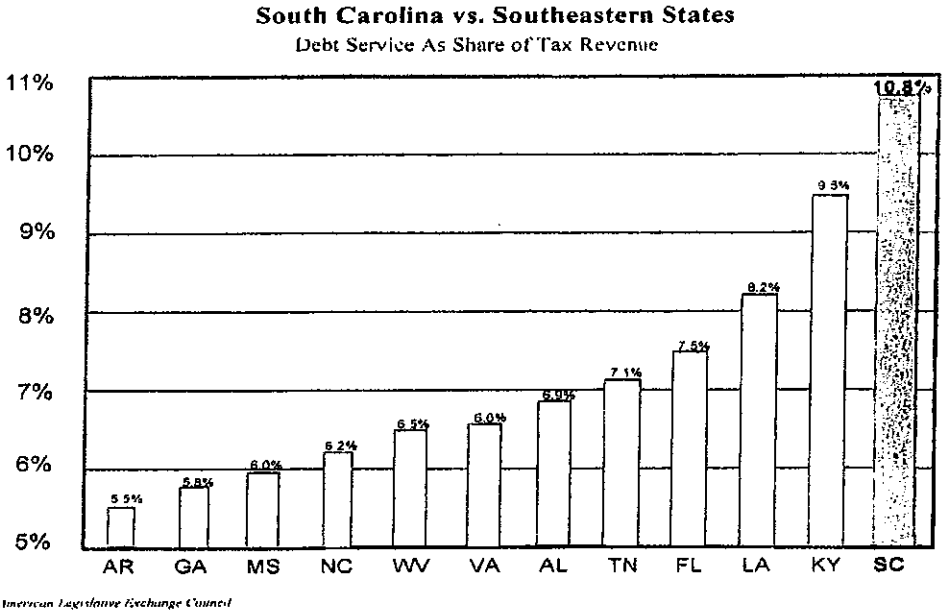
I did everything within my power to impede the federal stimulus legislation as it moved through Congress because I, along with almost every Republican Member of Congress in Washington, was concerned with the disastrous long-term consequences that would come from spending money we don't have – and in issuing yet more debt to solve a problem that was created in the first place by too much debt. We lost that fight, and Congress passed the American Recovery and Reinvestment Act which would allow a total stimulus package of roughly $8 billion to come to our state.

Out of this $8 billion, we took what we believed was a reasonable and measured approach by asking both the Obama Administration and then the South Carolina General Assembly to use a small fraction – around 10 percent – to pay down our state's high debt load. Again, while some in the Legislature would prefer the public to forget this fact, 90 percent of stimulus funds are reaching South Carolina – going to tax relief, building roads, and supporting schools.

We think it makes sense that when you get a financial windfall, it's worth setting aside a small amount to pay down debt. If a prudent family were to win the lottery, the family wouldn't go out and spend every dollar, but instead likely dedicate a portion of their winnings to paying down credit card debt or their mortgage, or in fact setting some aside for a rainy day.

It should not be any different for a state – particularly in South Carolina's case where we are first in the Southeast, and fourth in the entire nation, in the percentage of tax revenue that goes *not* to teachers or health care, but debt repayment, according to a recent report by the American Legislative Exchange Council. *Eleven percent of every dollar* in yearly state tax revenue goes to paying down debt, and we have $20 billion on top of that in unfunded long-term political

promises and commitments. Paying down debt would give us greater financial flexibility in 24 months when the federal gravy train runs out, at which time we could then use these saved funds to avert further cuts, increase spending on core functions, or set aside more for the tough times that are sure to come. In our case, it would also pay dividends well beyond the first 24 months because $162 million would be saved in debt service during this time and another $100 million in interest savings would occur over the next 13 years.



Source: American Legislative Exchange Council

Avoiding the Inevitable Questions

Part III of this bill appropriates $348 million in non-recurring federal stimulus funds for core recurring needs – like the base student cost, higher education and public safety funding. *What happens in 24 months when this funding stream ends?* Will teachers and law enforcement officers lose their jobs then? These are questions that have not been answered by the General Assembly, and hoping things will have turned around by then is not a realistic or acceptable strategy. As United States Army General Gordon Sullivan tells us, ***hope is not a method.***

Our answers have been the same for the past six years – implement budgetary reforms like spending caps, restructuring, retirement limits, and prioritize spending so that frontline services provided by teachers and police officers are adequately funded. Doing this requires that cuts be made to other non-core governmental programs, which I have proposed in each of our administration's executive budgets and which the General Assembly has time and again failed to adopt.

The tough decisions that should have been made in this unparalleled budget year will once again be put off for another time, or possibly not at all, in the hopes that the economy will suddenly

recover and our revenue stream will become flush with cash. This strategy has been used by the General Assembly time and again – the leadership waits for the Board of Economic Advisors to release a higher financial estimate or surprisingly finds a new, unsustainable revenue source and then they look like they have saved the day.

But this financial decline is much steeper and the recovery is likely to be much slower. Rather than continue the "let's wait and see" method of appropriation, it is incumbent upon those of us in seats of responsibility to make wise – and sometimes tough – decisions to protect priority government services in the long term. On this front, I believe the Legislature has fallen far short yet again.

Pulling Back the Curtain

Some have argued that without federal stimulus funds, education and law enforcement will be severely cut, and no other way exists to replenish their funding. This has certainly resonated in terms of making a political point and scoring a public relations victory, as opponents to fiscal responsibility have chosen to perpetuate disingenuous doomsday scenarios as the result of dedicating a portion of the stimulus dollars to paying down debt.

The truth is less clear-cut and, perhaps, far less dramatic. Indeed, Part III of this appropriations bill dedicates the majority of State Fiscal Stabilization funds to education and law enforcement while at the same time gutting general fund expenditures for those areas so that, without this section of the budget, these core services will be drastically cut. As several more forthright legislators have pointed out, this strategy, by Senator Leatherman in particular, is meant to ensure that our administration is perceived as allowing draconian cuts to be made to these services by not applying for the last 10 percent of the stimulus monies. The doomsayers' argument is disingenuous and without merit.

Budget writers in both the House and Senate could have done many things to sustain basic education, health care and law enforcement funding without using any of the $348 million in stimulus funds by (1) heeding our six-year call for sustainable government spending growth; (2) heeding our six-year call to prioritize spending so that core government services are adequately funded and other nonessential services are cut – because not all spending is created equal; and (3) working from the Ryberg-Davis alternative budget which would have limited expansions in unsustainable health care spending and increased funding for teachers and law enforcement agencies.

Legislative budget writers clearly missed several opportunities to put our financial house on a more solid foundation. Now, the same budget writers have once again missed a critical opportunity to correct their previous missteps by failing to send me a budget and legislative reforms that could alleviate future budget crises. Paying down our state's high debt load will save millions, $162 million in the first two years alone; restructuring state government will remove duplicative costs; capping spending will reduce the high cost of government; and reforming the State Retirement System will lessen our liabilities. All of these reforms will help put our fiscal house in order, and not undertaking them represents a missed opportunity of monumental proportions.

Without these reforms or a down payment on our state's $20 billion in unfunded liabilities, I cannot apply for State Fiscal Stabilization Funds, and I believe forcing me to do so with this legislation is legally invalid and unconstitutional. The General Assembly is taking this unprecedented step to undo federal law which clearly gives power only to governors to apply for SFS Funds and, in doing so, tramples on basic principles of separation of powers which requires the governor to carry out executive acts – in this case administering and applying for stimulus funds.

2. **Core Functions of State Government are Inadequately Funded in Part IA**

We are vetoing Part IA in its entirety because – as a stand-alone – Part IA inadequately funds core functions of state government. For several of these functions, General Fund levels were dangerously cut and backfilled with stimulus funds that will run dry in two years.

The result of this purely political maneuver – the so-called "Chaos Budget" – served its purpose: to scare the general public into believing teachers would be fired, troopers would be taken off the road, and health care would be slashed. An honest and responsible budget, following along the lines of the Ryberg-Davis alternative budget, would have fully funded the base student cost as well as law enforcement, and found a way to pay down debt.

Inadequate Funding for K-12 Education

Let me emphasize once again: budget writers' purpose was seemingly to induce fear that would cause people to lobby our office to change its mind, and it's disappointing, yet not entirely surprising, that those holding the legislative purse strings would prefer fear-mongering to responsible budgeting.

Such is the case with education, since budget writers consistently said that education could not be properly funded without every last stimulus dollar. Yet the alternative budget proposed by Senators Ryberg and Davis, and a handful of House Members, demonstrated that it was indeed possible to adequately fund K-12 education without using $348 million in State Fiscal Stabilization Funds while at the same time setting aside $200 million to pay down debt. In fact, the Ryberg-Davis budget would not have forced one teacher to lose his or her job.

It's also important to remember that the debate over the 10 percent we believe should be dedicated to debt relief in no way impacts over $200 million in stimulus funds that are already flowing directly to local school districts from the federal government, or the full flexibility that local districts were given in how they opt to utilize funds coming from Columbia.

Too few are asking what we believe to be a vital question: What happens to education funding in our state in two years when all of the stimulus funds are gone? At that point the state must find a way to plug the $185 million hole that will exist on the Education Finance Act (EFA) line in the budget because, prior to supplementing the EFA line with $185 million in SFS Funds, the General Assembly opted to cut $85 million from the EFA budget. Having vetoed Part III of the

budget, we could not simply veto individual lines in Part IA because vital state functions – like K-12 education – would be underfunded.

Inadequate Funding for Law Enforcement Agencies

As part of the "Chaos Budget," law enforcement agencies were also drastically cut before the addition of stimulus dollars. For example:

- The Department of Corrections would be left with a $22 million deficit without the use of SFS Funds.
- SLED received a $3 million cut before SFS Funds were added to its budget.
- The Department of Probation, Parole and Pardon Services received a $3 million cut before SFS Funds were added to its budget.
- The Department of Public Safety received a $12.7 million cut before SFS Funds were added to its budget.
- The Prosecution Coordination Commission received a $1.9 million cut and received no SFS Funds to offset this reduction in funds. Interestingly, at the same time, the Commission on Indigent Defense received an increase in funding of $3.3 million.

Since Day 1, we've put a priority on public safety as one of the core functions of state government and an integral part of quality of life in South Carolina. With the passage of this budget, our state's public safety agencies have now seen their base budgets reduced by as much as 31 percent over the course of the last year. And just as with K-12 funding, the question becomes how these agencies are going to be funded in two years after the stimulus funds run dry?

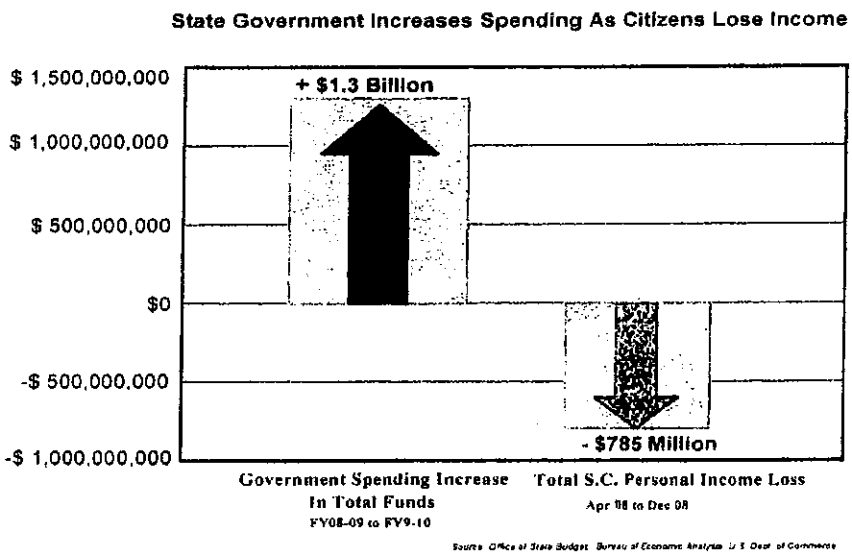
Also on the law enforcement front, this budget fails to adequately fund the South Carolina Illegal Immigration Act. Just last year we applauded the General Assembly for working with our administration to pass this important legislation. Many members of the Legislature called this legislation "the toughest illegal immigration bill in the country." What a difference a year makes. While the Department of Labor, Licensing, and Regulation (LLR), the agency tasked with enforcing the new law, requested $2 million to ensure that the agency has adequate funding to carry out its mandate once the law becomes fully effective, the General Assembly chose to provide merely $750,000 in funding to the agency. The agency has been very clear that while this level of funding will allow them to do some enforcement, it falls well short of the funding needed to carry out the full mandate of the law when the Act becomes fully effective. We believe that this program needs to be fully funded in this year's budget.

3. <u>Budget wastes chance to make long overdue reforms</u>

There has been much discussion about the roughly $1 billion in budget reductions that state government has experienced over the past year. What has not been publicized nearly as much is the fact that the budget passed by the General Assembly includes over $1 billion in federal stimulus funds. This $1 billion in stimulus funds effectively removes any incentive for the

General Assembly to consider changes to the structural deficiencies that exist in our state's government or consider other cost savings that are long overdue. In fact, the budget passed by the General Assembly actually increases funding from the current budget from $5.6 billion to $5.7 billion.

However, when looking at the state budget it is important to focus not only on the general funds appropriated by the General Assembly, but also on the total funds (which include general funds, fees and federal funds) spent in the state each year. When one looks at total funds, there will be over a $1 billion increase in the growth in the state's budget in FY 2009-10. *Not including SFS Funds*, total funds will increase from $19.7 billion in FY 2008-09 to $21 billion in FY 2009-10 – roughly a 7 percent increase. This increase occurred at a time when the people of the state have seen their personal incomes drop. Why should government grow faster than the incomes of the households that fund it?



Beyond the numbers, it's worth looking at this notion that tough decisions are often only made when times are indeed tough. For in the same way one could very reasonably argue that the restructuring essential to the long-term survival and prosperity of General Motors was only postponed by federal monies, I believe these stimulus monies – and subsequently, this budget – would postpone changes essential to South Carolina becoming more competitive in the global economy and thereby degrade the long-term economic prospects of our citizens. On this point it is interesting to note that though GM said federal money was key to its survival, it has now come back just months later laying out the choice of either bankruptcy or more federal aid from taxpayers. Though certainly well-intended to address real needs that do exist in this and other states, the debilitating thing about federal monies like these is the necessary, but hard, choices they forestall.

Need to Make Tough Decisions

When we released our Executive Budget in January, we included $266 million in cost savings – a record total. While many of these savings required difficult belt-tightening in some areas of government bureaucracy, we believe government should ultimately make some of the same types of tough decisions that families and small businesses are making all across South Carolina.

For over six years now, our administration has advocated structural reforms that would make state government leaner, more productive, and better able to serve what the Bible calls "the least of these." One example of a program we believe needs to be reformed, or indeed eliminated for new entrants, is the Teacher and Employee Retention Incentive (TERI) program. This program was initially created to encourage some outstanding teachers to remain in the classroom after they have met the threshold number of years of service to allow them to retire with full state benefits. After this program was implemented, a court decision changed the law and required that all employees in every agency of state government be allowed to participate. The result of this ruling is a program that costs the state over $17 million per year that could have been sent to schools or law enforcement.

We've also consistently pointed out the need to restructure many of the agencies in our state government – with a potential $21 million in savings. While we would give credit to the House of Representatives for passing the legislation creating a Department of Administration, the General Assembly has once again, barring some last minute heroics, allowed a session to slip by without moving forward on serious restructuring.

Just as we have seen the downturn in the economy force the automobile companies in Detroit to restructure and change the way they do business, the same should happen with our state government. The automobile companies have the potential to make some structural changes in their respective companies and emerge in a position that is more competitive in a global marketplace. Likewise, if South Carolina was to make long overdue changes in our structure of government, we could emerge from the current economic downturn better able to attract new industry to South Carolina.

Wasteful Spending Continues

In a year when most agencies have taken budget reductions or, in best case scenarios maintained their currently reduced budget levels, the General Assembly not only continues to ignore making tough decisions, but ignores the easy ones as well. A few examples are provided below.

In light of recent budget cuts, the Department of Commerce proposed downsizing the operations of the state plane and maintenance team to avoid cuts in airport planning or using one-time accounts to pay for ongoing services. The total savings associated with this proposal were $363,503. Instead of realizing these savings, the General Assembly chose to block this proposal by moving the Aeronautics Commission out of the Department of Commerce to the Budget and Control Board.

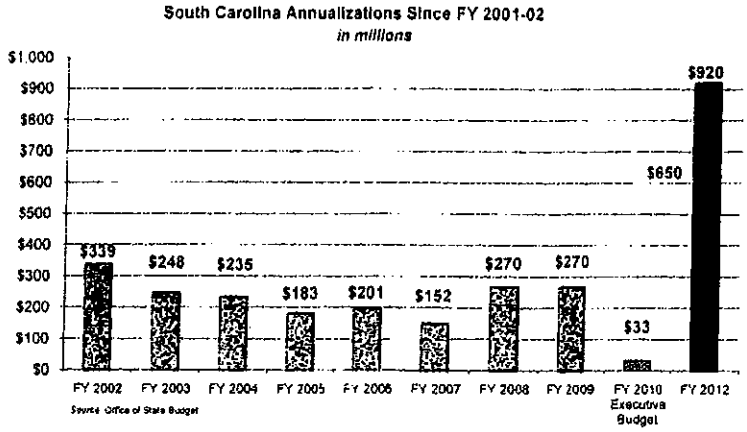
The Department of Public Safety spent $983,133 last year on taxpayer-funded traffic control for football games and horse races. Rather than the General Assembly allowing the Highway Patrol to recoup its costs from event organizers and the universities, which reap millions in revenue from broadcast contracts, each year it costs the taxpayers nearly $1 million to provide this service for special events across the state. When events like these produce big profits, does it make sense for one arm of government – and by extension taxpayers – to subsidize another arm of government reaping a windfall as a result of the event?

Another example is the $500,000 per year that the state spends to maintain two golf courses, when South Carolina has over 460 golf courses. The private sector has demonstrated that it is perfectly capable of maintaining golf courses in this state, so why should the taxpayers be asked to subsidize two of them?

Finally, the Budget and Control Board has managed to receive an increase in funding of $823,993. Part of this funding is for repayment of a hydrogen loan and part of it is for "deferred maintenance." It is perplexing that the General Assembly would opt to fund "deferred maintenance" at the Budget and Control Board, but not increase funding for some of the law enforcement agencies or other vital activities. This just doesn't seem like the right year to be funding maintenance projects, no matter how worthy the projects may be. However, even if the maintenance is necessary, we feel confident the Budget and Control Board can find the resources in the massive amount of carry forward funds retained by the agency to cover the costs of any needed maintenance. The General Assembly had no problem raiding LLR's carry forward funds for nearly $10 million, why should we not ask the Budget and Control Board to contribute $1.8 million for maintenance?

4. Annualizations at Highest Levels Ever

The level of annualizations in this budget have passed the point of being troublesome and become truly mind-boggling. For years we have talked about the need to put our state's fiscal house in order by putting an end to the practice of annualizations – using one-time money to fund recurring needs. Annualizations represent borrowing from Peter to pay Paul and, ultimately, serve only to delay tough decisions by putting off budget pain for another year. Never have we seen annualization totals anywhere close to the record levels seen in this budget. The Office of State Budget estimates the annualization total for FY 2010-11 to be $270 million – a difficult scenario that we will be facing this time next year. However, the challenge that this figure presents is small, relative to the potential ***$920 million*** in annualizations that the state will confront in FY 2011-12 after all stimulus funds have stopped flowing from Washington.



We recognize that, to some degree, annualizations are inevitable when incorporating over $650 million in increased FMAP rate funds from Washington that the state will have access to during FY 2009-10. However, when these funds are spent to fund, expand, or in some cases create new programs, a monumental hole is left to fill in the future. What is even more troubling is that nearly all of this money was appropriated for health programs that our state's most vulnerable citizens will come to rely upon – even though the Centers for Medicare and Medicaid Services (CMS) said that these funds could be used in other parts of state budgets. Next year, after citizens have come to rely upon these new programs, the General Assembly will be forced to make some tough choices when, instead of having $657 million in increased FMAP rate funds to appropriate, they are left with only $200 million. Unless the economy picks up dramatically – which no one is predicting – the Legislature will be forced to cut these health programs once again, redirect funds from other parts of the budget, or raise taxes to fund the difference. We do not find any of these options palatable – especially when this scenario is preventable. We would encourage the General Assembly to take another look at how the FMAP stimulus funds are appropriated in the budget and the impact that will be felt next year when the state has $450 million less coming in from Washington to fund health care expansions created this year.

As previously discussed, the SFS Funds also create an annualizations problem in two years when these funds have likewise stopped flowing from Washington. One of the reasons that we have been adamant in our request for a corresponding amount of debt repayment before we accept these funds is the havoc that these funds will have on our budget if they are spent on recurring items. Our fears were confirmed and the General Assembly chose to spend nearly all of the $348 million on recurring items.

Finally, not only did the Legislature rely upon stimulus funds to balance this budget, but they also raided reserve accounts. The General Assembly shifted $15 million from the Unclaimed Property Fund at the Treasurer's Office to, among other things, pay off Hydrogen Fuel Station Loans at the Budget and Control Board. The budget also takes $37 million from the Insurance Reserve Fund – money that would be needed should a catastrophic event, such as a hurricane, hit South Carolina. As the Chairman of Senate Finance pointed out on the Senate floor during the budget debate a couple of weeks ago, raiding these reserve funds does not represent sound

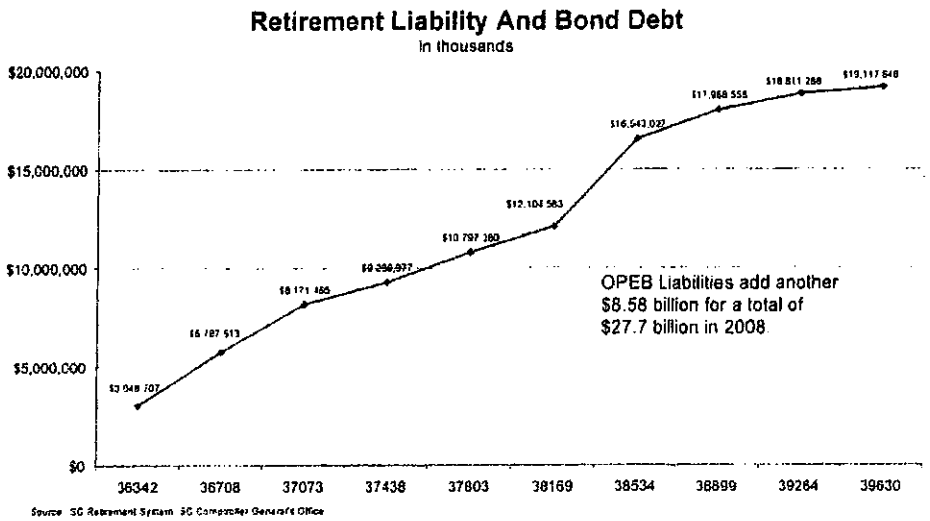
budgeting practices. We agree and encourage the General Assembly to reconsider the use of these funds in the budget.

The FMAP stimulus funds were going to inevitably present a difficult annualization scenario for future state budgets. Had a corresponding amount of general funds been set aside for debt repayment to offset the inclusion of SFS Funds, and not relied on one-time funds raided from trust funds, in two years the state would not need to dig itself out of an even larger hole. As it stands now, future budget writers will potentially confront a $920 million time bomb in two years.

5. Budget Does Not Provide Debt Relief or Sufficiently Address Unfunded Liabilities

At the end of the day, we believe legislative budget writers missed a tremendous opportunity this year to not only enact substantive reforms, but considerably reduce our state's debt load. It is plain and simply foolish to unsustainably grow government without first paying down debt, and it's equally foolish to make yet more political promises to increase retiree benefits that later must be paid for through tax increases.

The most notable debt that we have incurred is the over $20 billion in unfunded retiree pension benefits and health care costs. The Retirement System's unfunded liability has grown in the past 10 years from $178 million in 1999 to $10.964 billion in 2008, which means that our Retirement System's funding level has decreased from 99 percent to 69 percent in ten years. These numbers do not even reflect the huge losses – over $16 billion – that our retirement investments have suffered during the past year.



We've proposed changes to significantly reduce our liabilities, but these reforms have been largely rejected by the Legislature. For example, eliminating the TERI program would have not only generated $17 million in recurring savings for the general fund, but according to the Retirement System's actuary, could have also reduced our unfunded liability by up to $550 million. Other proposals include increasing the amount of service years for retirement and

taking a longer salary period for determining benefit payments would lead to annual savings. In our Executive Budget, we proposed reducing the employer surcharge for retiree health care costs and increasing retiree contributions for their insurance costs. Our proposal would have freed up to $62 million annually that could have been allocated to the retiree health care unfunded liability, lowering it by $2 billion. We believed that this was a reasonable measure given the fact that South Carolina taxpayers pay an average of $348 per month for retiree health care costs while the state of Florida pays a maximum of only $150 per month for their retiree health care costs.

We'd be remiss to not give legislators some credit for committing $3.2 million to the OPEB trust fund in this year's budget. Unfortunately, this down payment falls significantly short of the $314 million that we needed to keep our unfunded liabilities from growing even larger.

This budget also does nothing to reduce our bonded indebtedness. According to ALEC, we rank fourth highest in the nation with regard to annual debt service as a percentage of state tax revenue. This is an important figure because it not only accounts for our state's general obligation debt but also includes the total amount of local government and school district debt that must be paid by taxpayers in the form of property and local option taxes. Given the sizable amount of debt that we owe on a state and local basis, we believe that it is the responsible approach to use just 10 percent of the federal stimulus funds that South Carolina will receive to pay down outstanding bonds. One of our proposals would have reduced our state's debt service by $162 million over the next two years and saved over $100 million in interest payments over the next thirteen years. This proposal would have freed up millions of dollars that could have been spent on essential government services on a recurring basis.

We believe we have laid out several reasonable and compelling arguments upon which to ask the General Assembly to take a second look at crafting a responsible budget. I urge legislators to limit the costly effects to state services and taxpayers that will inevitably come in one, two or even ten years by acting responsibly now. Let's not miss another opportunity to get it right.

For the reasons set forth in the above sections, I am vetoing the following parts of the FY 2009-10 General Appropriations Bill:

Veto 1	Fiscal Year 2009-10 General Appropriation Act Part IA Funding, in its entirety, pages 1 - 281.
Veto 2	Part III Fiscal Year 2009-10 State Stabilization Fund, in its entirety, pages 484 - 487.

II. Vetoes of Part IB Temporary Provisos

We have taken a targeted approach to Part IB by using our line-item veto authority on the following provisos because, unlike Part IA, provisos typically contain one specific purpose and do not roll up large blocks of money used for many purposes on one line. The General Assembly's practice of making large appropriations on individual lines for general rather than specific purposes makes it impossible to veto individual items in a targeted way. In contrast, provisos include the necessary details regarding spending that are needed for accountable budgeting. Accordingly, we are able to use our veto pen on those provisos that we disagree with most.

We would also point out one common theme throughout many of these objectionable provisos is that most are permanent laws that blatantly violate not only the original purpose and intent of a proviso - to be related to funding matters and have a temporary effect - but also violate a Senate Rule that prohibits a proviso from temporarily or permanently changing the general permanent laws of the state. If the General Assembly wants to pass a law that is clearly intended to be permanent, then it should go through the deliberative process in both bodies so that the public has reasonable notice and opportunity to voice their opinion. We object to the following provisos not only for specific policy reasons, but also because many of these provisos are clearly permanent in nature and did not receive the needed deliberation afforded to permanent laws of this state.

Finally, this year we have chosen not to veto some items we have historically vetoed in the past in an effort to focus our objections on those truly flawed items that generally fall into the following egregious categories: (1) violating the state constitution; (2) permanently altering state government by temporary proviso; (3) raiding trust funds; and (4) unnecessarily micromanaging executive branch functions.

Veto 3 **Part IB; Section 21.11; Page 342; Department of Health and Human Services; Chiropractic Services.**

This proviso directs the Department of Health and Human Services (HHS) to provide coverage for chiropractic services. While there are obvious merits to chiropractic care, we are vetoing this proviso because in its present form we believe this coverage is abused at the younger end of the scale and thereby reduces the agency's flexibility to provide more crucial medical care.

Under federal rules, this proviso forces HHS to provide chiropractic coverage to literally every beneficiary regardless of age. Last year, HHS spent almost $221,000 to provide chiropractic services to nearly 1,500 children younger than the age of 12 even though there is not medical research supporting the benefits of those treatments for young children.

Veto 4 **Part IB; Section 21.13; Page 342; Department of Health and Human Services; Medically Fragile Children's Programs.**

This proviso requires that only the Children's Hospitals in South Carolina can provide the Medically Fragile Children's Program (MFCP). We are vetoing this proviso, as requested by HHS, because MFCP no longer exists. As of December 31, 2008, Centers for Medicare and Medicaid Services terminated MFCP and replaced it with a new Medically Complex Children's Waiver that serves the same participants in the MFCP.

Veto 5 **Part IB; Section 21.36; Page 346; Department of Health and Human Services; Prior Authorization -Formulary Changes.**

This proviso requires HHS to fund certain mental health medications without the patient receiving prior authorization. We are vetoing this proviso for two reasons. First, mental health drugs were "carved out" of the preferred drug list – which was originally set up by the General Assembly to encourage responsible prescribing and to allow HHS to negotiate supplemental rebates with drug manufacturers. If all mental health drugs are available, there is no reason for a company to provide a supplemental rebate.

Second, we believe that the HHS director should have flexibility to determine the best way to administer drug coverage without being restricted by the demands of special interests. Additionally, the State Health Plan and other commercial plans in South Carolina are not legally required to waive prior authorization for more expensive drugs as this proviso directs HHS. In contrast to our neighboring states, Georgia and North Carolina do not allow this special carve-out.

Veto 6 **Part IB; Section 22.49; Page 355; Department of Health and Environmental Control; Rural Hospital Grants.**

This proviso directs DHEC to administer rural hospital grants to areas whose largest town has a population of less than 25,000. We are vetoing this proviso for two reasons.

First, these grants are not equitably distributed to all of the state's rural hospitals because only 13 of the 23 designated rural hospitals in our state receive them. This creates the perception that the receipt of these grants is more dependent on political influence than need. Accordingly, we cannot support the continued disbursement of these grants without more objective criteria for grant eligibility.

Second, the program does not have any standards for determining whether the grants are effectively implemented. These grants are awarded without accounting for how the funds are

spent, and therefore, we cannot continue to support this program without checks to ensure that taxpayer money achieves quality health care.

It comes as no surprise this proviso was moved from HHS to the Department of Health and Environmental Control after this administration imposed standards on the grants awarded. In FY 2008-2009, HHS required that hospitals submit grant applications based on criteria and made awards based on the merits of the proposal. This left some of the hospitals without taxpayer support, so the former HHS director, who has lobbied to keep this in the budget throughout the years, convinced budget writers that DHEC would simply cut checks and not ask for accountability.

Veto 7 **Part IB; Section 37.1; Page 371; Department of Natural Resources; County Funds.**

Veto 8 **Part IB; Section 37.2; Page 371; Department of Natural Resources; County Game Funds/Equipment Purchase.**

These provisos allow the Department of Natural Resource's county funds and equipment to be spent or sold only upon approval of the respective county delegation. We are vetoing these two provisos because in *Knotts v. SCDNR* the Supreme Court found similar legislative involvement by county delegations in executive matters to be unconstitutional. The Founding Fathers' governmental philosophy was in large measure based on the separation of powers. These two provisos ignore that principle by having a legislative body execute the laws. In *Knotts*, the Supreme Court found that the legislature "may not undertake both to pass laws and to execute them by bestowing upon its own members functions belonging to other branches of government." But that is exactly what this proviso requires by granting county legislative delegations executive approval authority.

Veto 9 **Part IB; Section 37.15; Page 373; Department of Natural Resources; Sale of Existing Offices.**

This proviso gives the Joint Bond Review Committee, rather than the Budget & Control Board, ultimate authority over approving the sale of the Department of Natural Resource's property. We are vetoing this proviso because it unconstitutionally gives a legislative committee the executive authority to approve and veto property transactions. This is not a proper legislative function and constitutes a violation of the separation of powers doctrine. In *State ex rel. McLeod v. McInnis* and *Knotts v. DNR*, the South Carolina Supreme Court ruled that vesting this type of executive power in a legislative committee is unconstitutional. Therefore, we must veto yet another usurpation of executive authority by the General Assembly.

Veto 10 **Part IB; Section 39.4; Page 373-374; Parks, Recreation and Tourism; State Park Privatization Approval.**

This proviso prohibits the Department of Parks, Recreation and Tourism (PRT) from privatizing any portion of Cheraw State Park or Hickory Knob State Park without the General Assembly's approval. We are vetoing this proviso because it restrains PRT from pursuing public-private partnerships that will save taxpayers money. This is especially troublesome because the parks in question have continually been unprofitable. For example, Cheraw State Park lost $293,008 in FY 2007-08, and Hickory Knob State Park lost $204,095 in FY 2007-08.

Given the substantial losses incurred by these parks, we're surprised that a Republican-controlled legislature is resisting the idea of privatization, particularly considering the positive results it has yielded in other cases. For instance, PRT outsourced the state parks' reservation system to a private contractor who vastly improved services, lowered costs for taxpayers, and generated higher revenue. We strongly believe that officials at PRT should be free to pursue other similar arrangements to provide better services at lower costs without having to go through the timely and politically-driven legislative process.

Veto 11 **Part IB; Section 40.37; Page 379; Department of Commerce; Aeronautics Assets and Funds.**

Veto 12 **Part IB; Section 80A.63; Page 436; Budget and Control Board; Carry Forward Sale of Aircraft Proceeds.**

Veto 13 **Part IB; Section 80A.64; Page 436-437; Budget and Control Board; Aviation Grants.**

Veto 14 **Part IB; Section 89.127; Page 473; General Provisions; Transfer Division of Aeronautics.**

These provisos transfer the Division of Aeronautics from the Department of Commerce to the Budget and Control Board and prohibit Commerce from selling or transferring any property belonging to the Aeronautics Division. These provisos were apparently intended to prevent Commerce's attempt to save money at the Aeronautics Division by cutting pilots, relocating operations, and contracting out maintenance work – which would have saved over $360,000 annually. Disappointingly, we have seen a pattern of this type of thing from the legislative body as the executive branch will come up with a cost saving – only to have the function taken from the executive branch after change has been proposed.

We are vetoing these provisos because they will prevent Commerce from implementing cost-saving measures and will further weaken the executive branch by taking power away from the Governor's cabinet. This move makes no sense because the Budget and Control Board has no expertise or experience in managing our state's aerial resources. Rather, these provisos only

reinforce our state's antiquated structure that prevents us from making real changes that save taxpayer money. Accordingly, we must veto these provisos to ensure that the Aeronautics Division remains accountable for its spending and operations.

Veto 15 Part IB; Section 40.38; Page 379-380; Department of Commerce; Railway Transfer.

This proviso requires all railroad tracks, structures, and equipment on the Old Navy Base site in North Charleston to be transferred to the Division of Public Railways within the Department of Commerce. This transfer is to facilitate the development of an intermodal transportation facility that will provide CSX and Norfolk Southern railroad companies with access to transporting port cargo to and from the new State Ports Authority (SPA) terminal planned for the Base.

First, I am vetoing this proviso because it undermines the Memorandum of Agreement between the SPA and the City of North Charleston, in which those two parties agreed that the SPA would not grant railroad access on the northern section of the Base. The principle here is a simple one, your word is your bond – and this proviso would break with the words given that facilitated the SPA move from Daniel Island to North Charleston. Were it not for that agreement the port would likely have never come to this site in the first place. It isn't right to some years later and try and change the deal that got you were you are.

This agreement seems to have been sloppily arranged as from a legal standpoint, and the SPA had no legal authority to bind the Department of Commerce, Division of Public Railways or other areas of state government. This, however, does not change the spirit of the agreement – particularly since the same legislative principals like Senator Leatherman or McConnell who were there in negotiating this original agreement are now party to this proviso that would change it.

There is also an especially troubling pattern in the SPA seemingly not negotiating in good faith. This is evidenced in the heirs' property belonging to long-time families on the Cainhoy Peninsula still being held by the SPA, or in the disingenuous email from an employee of the SPA with regard to this contemplated rail line. These kinds of dealings highlight the lunacy of making the SPA board protected – as it would move it from what some would consider an arrogant or pushy entity to an imperial one.

Second, I am vetoing this proviso because we have doubts over whether the Division of Public Railways could enter into a public-private partnership for the operation of any intermodal facility that was built on property obtained through condemnation as this proviso potentially directs. The railroads that this proviso seeks to transfer is claimed to be private property and is the subject of pending litigation. If a court ruled that these railroads were private property, then the state would have to use the power of eminent domain to obtain them. In *Georgia Dept. of Transport. v. Jasper County,* the South Carolina Supreme Court held that the taking of private property to build a port facility that would be financed, designed, and operated by a private

company was impermissible because our Constitution forbids the taking of private property by the state for private use without the owner's consent. Thus, in this case, the Division of Public Railways would likely be prohibited from entering into a public-private partnership for the operation of an intermodal facility on property that was obtained through eminent domain.

Although we are vetoing this proviso, let me be equally clear that we support the development of an intermodal facility that provides access to both CSX and Norfolk Southern. From a business perspective, northern access probably makes the most sense and is, therefore, important for the way it could enhance the new port terminal and lower the cost of doing business in the port. From a taxpayer standpoint, we also think it makes the most sense to use what we have in the old Navy Base to create a world-class port operation. We are squandering the blessing of deepwater access with frivolous pursuits like Clemson's so called "restorative institute," and we believe we would be far better off using lands like this for port operations. I just don't think we should use edict from state law to get there. We think it is important that the interested parties pursue options in good faith. We believe a compromise workable to the people of North Charleston, the state and the SPA can be found when they know they don't have state law there to obviate the need for negotiation.

Veto 16 **Part IB; Section 49.1; Page 390; Department of Public Safety; Special Events Traffic Control.**

This proviso prohibits the Department of Public Safety (DPS) from charging fees for traffic control at special events, such as college football games, NASCAR and horse races, fairs, and golf tournaments. We are vetoing this proviso because colleges, universities, and other entities that use these services from DPS should pay for the costs from the revenue generated by the respective events. DPS will spend more than $980,000, including $567,450 for football games, in the next fiscal year on providing traffic control. DPS's budget has already been cut by $26 million, or 16 percent, since last year, and the agency should not be forced to subsidize traffic control for the entities that use this service, especially since the universities are achieving record revenue from the television broadcasts of athletic games. For example, the University of South Carolina will be using its additional television revenue to finance a $49.9 million athletic facilities project. If USC and other colleges can afford to begin multi-million dollar athletic infrastructure projects, then they can certainly afford to pay for the traffic control at the events that bring in this substantial revenue.

Veto 17 **Part IB; Section 49.15; Page 391; Department of Public Safety; Hunley Security.**

This proviso requires DPS to provide two officers for security services for the H. L. Hunley. We are vetoing this proviso because we believe that the Hunley Commission should be a self-

sustaining entity that can provide for its own private security with private donations and admission fees rather than using taxpayer funded DPS officers. Furthermore, this proviso includes no requirement that the Hunley Commission pay DPS for the security that it provides. While we are aware that the Hunley Commission currently pays for DPS's security services, nothing prevents it from completely stopping payments – in which case DPS could be required to provide security for the Hunley for free.

Veto 18 **Part IB; Section 48.11; Page 389; State Law Enforcement Division; Detective/Security Fee.**

Veto 19 **Part IB; Section 49A.1; Page 391-392; Capitol Police Force; Retention of Private Detective Fees.**

Veto 20 **Part IB; Section 49A.2; Page 392; Capitol Police Force; Commissioned Officers' Physicals.**

Veto 21 **Part IB; Section 49A.3; Page 392; Capitol Police Force; Meals in Emergency Operations.**

Veto 22 **Part IB; Section 49A.4; Page 392; Capitol Police Force; Carry Forward Authority.**

Veto 23 **Part IB; Section 49A.5(D); Page 393; Capitol Police Force; Dispositions if Agency Not Established.**

Veto 24 **Part IB; Section 68A.13; Page 409-410; Department of Transportation; Shop Road Farmers Market Bypass Carry Forward.**

Veto 25 **Part IB; Section 89.131; Page 474; General Provisions; Capitol Police Force Training.**

Veto 26 **Part IB; Section 89.132; Page 474; General Provisions; Capitol Police Force Storage and Maintenance.**

These provisos relate to the operations (Provisos 49A.1-4 and 89.131-132) and funding (Provisos 48.11, 49A.5(D), and creation 68A.13) of a Capitol Police Force that would perform the security functions currently performed by the Bureau of Protective Services (BPS) within the Department of Public Safety. We are vetoing these provisos, as well as the permanent legislation that authorizes the creation of the Capitol Police Force, for two reasons.

First, we are vetoing these provisos because a Capitol Police Force that is accountable to a committee of legislators and judges will further erode the executive authority in this state without doing anything to make the State House and Capitol grounds safer. The proposed Capitol Police Force is just another example of the General Assembly's unrelenting contempt for the doctrine of

separation of powers. There is no doubt that the provision of security is an executive function, and this new police entity will effectively allow legislators and judges on the Capitol Police Force Committee to execute the law. This is particularly troubling since the Capitol Police Force will have all of SLED's police powers, including the power to arrest. This means that the legislature and judicial branches will control their own police force without any check from another branch of government. By usurping the authority of the Governor to appoint and manage the security of the State House and Capitol grounds and giving it to a legislatively controlled committee, the General Assembly has further consolidated power for itself at the expense of liberty. As James Madison wrote in *The Federalist No. 47*, "The accumulation of all powers, legislative, executive, and judiciary, whether of one, a few, or many, and whether self-appointed, or elective, may justly be pronounced the very definition of tyranny." This attempt by the General Assembly to aggrandize executive police power for itself must be opposed, and we are, therefore, vetoing the above provisos.

Second, we are vetoing these provisos because it would effectively eliminate the BPS by transferring much of its resources and manpower to the Capitol Police Force. We believe the debate around the creation of the Capitol Police Force has been incredibly insulting to the law enforcement officers who have always been effective and professional in securing the State House and capitol grounds. The men and women in the BPS have served the state well and deserve better than to be denigrated by the General Assembly merely because legislators disagree with some of the decisions made by this administration regarding security measures in and around the State House. Given the commendable service by the BPS force, we are willing to stand by them by vetoing these provisos.

Finally, it is important to remember the origin of this push for a separate police force. In the view of this administration the General Assembly wasted more than $6 million in the State House security upgrades of several years ago. When confronted with the possibility of putting more good money into a faulty security system that would have required BPS officers to man remote guard shacks rather than actually patrol the state house grounds, we objected and in attempting to administer the optimal amount of security with limited dollars simply said we would not man these stations. This seemed to greatly offend several senior level legislators and they originated this legislation.

Veto 27 **Part IB; Section 49A.5(B); Page 392; Capitol Police Force; Dispositions if agency not established - Amending Part IB; Section 89.89; General Provisions; Lt. Governor Security Detail.**

This proviso requires SLED to provide security detail for the Lieutenant Governor if the legislation creating the Capitol Police Force is not enacted. We are vetoing this proviso because we continue to believe that money directed to the Lt. Governor's Office would be better spent on core functions of the Office on Aging, such as Meals on Wheels. Using this money for that purpose would be a small but important step toward ensuring the program's future funding.

We also have concerns as to whether the Lt. Governor's Office will reimburse SLED for the security services mandated under this proviso. According to various media reports, SLED has been effectively footing the bill for the Lt. Governor's security because the Lt. Governor has failed to reimburse SLED for its security services over the past two years. During tough budget times like these, we believe that SLED should be focused on its essential role of law enforcement rather than subsidizing the personal security of the Lt. Governor.

Veto 28 **Part IB; Section 65.3; Page 405; Department of Labor, Licensing and Regulation; POLA – 110%, Other Funds.**

This proviso transfers $5.3 million from the Department of Labor, Licensing and Regulation's (LLR) Professional and Occupational Licensing Division to the general fund. We are vetoing this proviso because it will take away funds that LLR needs to implement the Immigration Reform Act that was enacted last year. Immigration reform was a priority for this administration and many in the legislature, and we must maintain last year's commitment to ensure that LLR has the necessary funds to enforce our immigration laws. Currently, the budget appropriates only $750,000 for immigration enforcement, which will only be enough to hire temporary employees. LLR needs $2 million to hire the necessary staff to fully enforce the new law, and before the General Assembly approved a total raid of $10 million on this agency, it would have been able to meet this need with the funding provided. Accordingly, we ask that the legislature stand by its commitment to adopt meaningful immigration reform by sustaining this veto, which will ensure that LLR has sufficient funding for immigration enforcement.

Veto 29 **Part IB; Section 65.14; Page 406; Department of Labor, Licensing and Regulation; Transfer to General Fund.**

This proviso directs LLR to transfer $4,362,265 in non-recurring dollars to the general fund to support "cultural agencies." We are vetoing this proviso because it is only a temporary funding solution for our disjointed, uncoordinated cultural agencies which urgently need to be consolidated. In our Executive Budget, we proposed consolidating the State Library, State Museum, Department of Archives and History, and the Arts Commission in order to realize an estimated $1.3 million in annual savings. This would have achieved longer lasting cost savings that cannot be achieved by merely taking money from one agency to give to others.

Also, as stated above, the General Assembly has failed to provide sufficient funds for LLR to fully enforce the Immigration Reform Act. Overall, this budget robs LLR of over $9.6 million that are needed for the agency's operations and full implementation of immigration reform.

Veto 30 **Part IB; Section 67.1; Page 407; Employment Security Commission; Salary Level.**

This proviso states that salaries for the Commissioners of the Employment Security Commission shall be no less than the amount agreed to by the United States Department of Labor. We are vetoing this proviso because the ESC Commissioners have been setting their six-figure salaries for years and the United States Department of Labor neither approves nor authorizes the salaries of the ESC Commissioners. The ESC Commissioners' practice of setting their own salaries without oversight from the legislature, who happens to elect them, reflects the flagrant irresponsibility and unaccountability that has plagued the ESC. It is time that the General Assembly finally exert command over the agency and implement salary controls that prevent the agency heads from determining their own salaries. Therefore, we are vetoing this proviso that tacitly allows the ESC Commissioners to set their own pay.

Veto 31 **Part IB; Section 72.23; Page 418-419; Governor's Office; OEPP Administration of Cabinet Agencies.**

This proviso requires cabinet agency directors to report to the Chairmen of Senate Finance and House Ways and Means Committees on a monthly basis about any time spent away from their main offices during business hours if that time is not related to their agency's mission. It also requires the Governor's Office of Executive Policies and Programs to create a new entity called the Cabinet Agency Administration which must consolidate administrative functions of only cabinet agencies. We are vetoing this proviso because it forces 14 agencies and directors in our cabinet to live by special rules that will not apply to **any other agency** in state government.

While we are pleased that the General Assembly is finally recognizing the need for restructuring, it is absurd that legislators limit this proviso to our cabinet agencies that have already made numerous internal reforms that have created long-term efficiencies and produced millions in cost savings. Our Department of Motor Vehicles has even returned over $40 million to the general fund that has been re-appropriated to other state agencies. Our newest cabinet agency, the Department of Transportation, has already realized over $26 million in cost savings. Yet, we haven't seen this level of cost savings in non-cabinet agencies.

It is also remarkably absurd that the General Assembly expects only cabinet agency directors to report to Chairmen Leatherman and Cooper on a monthly basis on their whereabouts, and yet gives a pass to all other state agency directors. What rationale could possibly defend this proviso's intent to treat cabinet agency heads differently from other state agency heads? If legislators want to know what cabinet heads are doing outside of their agency's mission during work hours, then shouldn't they also want to know what other agency heads are doing? Based on this bizarrely selective treatment of cabinet agency heads, it is fair to assume that this proviso is motivated more by ire towards this administration than enacting meaningful reform.

Veto 32 **Part IB; Section 80A.7; Page 427-428; Budget and Control Board; Compensation – Agency Head Salary.**

This proviso gives the legislatively controlled Agency Head Salary Commission final approval authority over all salaries for state agency heads and technical and community college presidents by eliminating the Budget and Control Board's oversight. We are vetoing this proviso because it represents another example of the legislature's unconstitutional usurpation of executive power. Because of this proviso the executive branch members of the Board will have no role in overseeing agency head salaries and providing a check to the legislative appointees that comprise a majority of the Agency Head Salary Commission. The approval authority exercised by the Agency Head Salary Commission is an executive function, and the vesting of such authority in a legislatively-dominated commission is an unconstitutional violation of the separation of powers doctrine.

Veto 33 **Part IB; Section 80A.25; Page 430; Budget and Control Board; Lawsuit Funding.**

This proviso forgives over $2 million in interagency loans that the House of Representatives and the Senate obtained from the Insurance Reserve Fund (IRF) for legal costs relating to the Abbeville school funding litigation. We are vetoing this proviso because it effectively raids the IRF of funds that the General Assembly promised to repay. The IRF is a necessary reserve fund that the state maintains to insure losses arising from unforeseen events like natural disasters and state employee negligence. It is not intended to be a slush fund for legislators to tap when they run out of money to pay their own debts. We find it shocking and hypocritical that the budget writers in the House and Senate have ridiculed our attempts to provide debt relief to state government with stimulus funds while they've knowingly raided trust funds to absolve their respective bodies' own debt. These actions would suggest to many that the chairmen of the House Ways and Means and Senate Finance Committees are more concerned about protecting their own legislative fiefdoms than looking out for current and future generations of taxpayers.

Veto 34 **Part IB; Section 80A.27; Page 430; Budget and Control Board; Competitive Grants.**

Veto 35 **Part IB; Section 22.39; Page 354; Department of Health and Environmental Control; Competitive Grants.**

Veto 36 **Part IB; Section 39.3; Page 373; Department of Parks, Recreation and Tourism; Competitive Grants.**

Veto 37 **Part IB; Section 40.20; Page 377; Department of Commerce; Competitive Grants.**

This proviso allows agencies to transfer competitive grant funds to local governments or non-profit organizations upon approval of the now-defunct Competitive Grants Committee. We are vetoing these provisos to finalize the long-deserved abolishment of the Competitive Grants program. It is no secret that this administration has strongly opposed this program, which was arguably nothing more than a politically-driven slush fund for legislators to deliver pork to their districts. We are pleased that the General Assembly finally ended the Competitive Grants program in last year's Rescission Act, but we fear that leaving these provisos in the budget could prolong the possibility that this program might be revived. Accordingly, we must veto these provisos to ensure that the Competitive Grants program is ended once and for all.

Veto 38 **Part IB; Section 86.6; Page 442; Aid to Subdivisions, State Treasurer; Legislative Delegations.**

This proviso directs county councils to fund their respective counties' legislative delegation budgets at a certain level or face deductions in their state-funded aid. We are vetoing this proviso because it is an affront to the principle of home rule. This administration has consistently argued that the government that is best is the one closest to the people. This proviso violates this principle by having the state legislature mandate that county governments fund their state legislative delegations even if the counties either do not have the resources to provide proper funding or do not think that funding their legislative delegation is a priority, especially when their budgets have already been cut significantly. If legislators think their county delegations deserve funding, then they should find the funds without putting the funding obligations on the backs of the county governments.

Veto 39 **Part IB; Section 89.96; Page 468-469; General Provisions; Flexibility.**

This proviso allegedly gives state agencies flexibility in determining its funding priorities and transfer funds appropriately to meet those priorities. While we support giving agencies

flexibility, we are vetoing this proviso because its application is anything but uniform and it actually hamstrings a number of agencies by making exceptions for certain programs and local interests at the expense of other worthwhile programs.

One of the most absurd parts of this proviso is the prohibition imposed on PRT from closing or reducing full-time employees at the State House Gift Shop and the Santee Welcome Center. This prohibition represents the worst example of legislative micro-management of an executive agency in this budget. Even more egregious is the fact that Proviso 39.12 requires PRT to close the Governor's Mansion Gift Shop even though it has lost less revenue than the State House Gift Shop. In response to our request for agencies to submit recommended cuts for non-essential programs, PRT offered potential cuts to the Mansion Gift Shop, the State House Gift Shop, and the Santee Welcome Center. The Mansion Gift Shop employs one full-time employee and lost roughly $35,000 last year. The State House Gift Shop has two full-time employees and spends approximately $40,000 on temporary employees. In FY 2007-08 it lost approximately $125,000.

The Santee Welcome Center is duplicative and is the least productive welcome center on I-95. For example, the Santee Welcome Center had 126,494 visitors and made 832 accommodations during FY 2007-08. By comparison, the Dillon Welcome Center had 222,183 visitors and made 5,246 accommodations and the Hardeeville Welcome Center had 265,065 visitors and made 7,402 accommodations during the same period.

While we are not opposed to PRT closing the Mansion Gift Shop to manage its budget reductions, we find it unbelievable that the General Assembly would give special protection to two other less productive shops in an effort to reward political patronage rather than make responsible budget cuts.

Perhaps the most disturbing example of a carve-out that ties the hands of an agency is the Medicaid program in serving the state's most needy citizens. This proviso prohibits HHS from making any cuts to Medicaid Adolescent Pregnancy Prevention Services (MAPPS) despite the fact that there are no conclusive evaluations showing that MAPPS is effective in delaying or preventing teen pregnancy. In addition, HHS found that the program is in non-compliance with Medicaid standards. While MAPPS's intent to prevent teen pregnancy is important, holding this program, as well as provider rates harmless, will not give HHS the flexibility it needs to absorb future cuts – that will inevitably come once FMAP money dries up in two years – without resorting to cutting people from the rolls or cutting services. We find it disturbing that, once again, a political agreement would force the protection of a *counseling* program and potentially cause the reduction in *medical services* to our state's most needy citizens.

Veto 40 Part IB; Section 89.118; Part 471-472; General Provisions; ARRA Oversight.

This proviso establishes a committee, co-chaired and organized by the State Treasurer and Comptroller General, to oversee the spending of federal stimulus dollars in South Carolina. We

are vetoing this proviso because this oversight committee is unnecessary, duplicative, and will lead to greater confusion regarding stimulus spending.

In our Executive Order 2009-03, we established the South Carolina Stimulus Oversight, Accountability, and Coordination Task Force (Task Force), which is chaired by the Comptroller General, includes the State Treasurer, has all the power of the oversight committee created by this proviso, and includes every state agency head that will receive significant stimulus funding. The Task Force has already begun working, and under the leadership of the Comptroller General, it has created a website, located at www.stimulus.sc.gov, to track stimulus spending in South Carolina. Importantly, the federal government's website created for stimulus transparency and oversight provides a link to the Task Force's website. The creation of another oversight committee with the same participants and powers will only make it more confusing for our citizens to find the information they need to ensure that their government is spending stimulus funds responsibly. Accordingly, we must veto this proviso.

Veto 41 **Part IB; Section 89.136; Page 474; General Provisions; Economic Activity Web-Based Applications.**

This proviso requires the Department of Commerce to transfer $75,000 to the Budget & Control Board to support a web-based application for public concerns about whether state agency regulations overly burden economic activity. We are vetoing this proviso because it unnecessarily transfers valuable funds from Commerce to the Board for functions that are similar to those currently performed by the Small Business Regulatory Review Committee.

The Small Business Regulatory Review Committee, housed within Commerce, has an established process for reviewing the economic impact and burden of state agency regulations, and it is more than capable of handling the web-based applications required by this proviso. Accordingly, the General Assembly should keep these funds at Commerce to support the Small Business Regulatory Review Committee rather than establishing a new bureaucracy within the Budget and Control Board for reviewing agency regulations.

Furthermore, H. 3882, the bill which would authorize the Board to develop the economic activity web-based applications, will not become law in this fiscal year. Thus, this proviso would effectively force Commerce to transfer its funds to the Board to fund a program that does not exist. However, if these funds remain at Commerce we will work with the agency and Small Business Regulatory Review Committee to implement the web-based application program to provide our citizens and small businesses with a more accessible forum to express concerns about heavy-handed state regulations.

Veto 42 **Part IB; Section 89.137; Page 474-475; General Provisions; South Carolina Research Authority Officers.**

This proviso states that the Governor's appointee to the South Carolina Research Authority (SCRA) board of trustees may not serve as the Chairman of that board during FY 2009-10. Instead the executive committee of the SCRA will appoint the positions of chairman and vice-chairman. We are vetoing this proviso because it removes our administration's appointee to this board from his current position of Chairman, and thereby, limits his ability to bring needed reform to the SCRA.

We believe that our appointee has served the state very well during the short time that he has been Chairman of the SCRA. While serving on this and other boards, he has been a strong advocate for ensuring that taxpayer dollars are spent on legitimate state government functions in an open, transparent manner. This is nothing less than an attempt by the General Assembly to remove an individual from a position of authority because he has willingly challenged the status quo and asked the tough questions about how the SCRA spends taxpayer money.

A few years ago our administration's appointee served as the Chairman of the DOT Commission. After asking tough questions about how taxpayer money was being spent in that agency, millions of dollars in waste were uncovered and the structure of the DOT was eventually overhauled. Most agree that this was a positive development, but it would not have occurred if the General Assembly had removed our appointee from the position of Chairman a few months into his term. In like manner, the current chairman of the SCRA deserves the full opportunity to direct the course of this agency without being undermined by this proviso.

Veto 43 **Part IB; Section 90.15; Page 479; Statewide Revenue; State Budget Stabilization Fund.**

Veto 44 **Part IB; Section 90.16; Page 480; Statewide Revenue; ARRA Fund Authorization.**

These provisos express the General Assembly's intent to accept and authorize the expenditure of all State Fiscal Stabilization (SFS) stimulus funds provided under the American Recovery and Reinvestment Act of 2009 (ARRA). We are vetoing this proviso because the General Assembly has no authority to accept or authorize the expenditure of SFS funds. As explained more fully in Veto 2 of Part III of the Appropriations Act, ARRA grants the governor the exclusive authority to apply for and accept SFS funds. Accordingly, this proviso expresses an intent to violate federal law, and it should not be enacted.

Veto 45 **Part IB; Section 90.19; Page 480-481; Statewide Revenue; Nonrecurring Revenue.**

This proviso raids the Insurance Reserve Fund (IRF) of nearly $37 million that it keeps in reserve to insure losses arising from events like natural disasters and state employee negligence. We are vetoing this proviso because the IRF is not intended to be a rainy day fund that legislators can tap whenever tax revenues fall. It is the height of fiscal irresponsibility for the General Assembly to use the IRF, a trust fund dedicated for damages resulting from unforeseen events, like hurricanes, to plug a revenue shortfall that was almost certain to happen after rapidly expanding government spending over recent years. Despite our repeated calls to reign in spending and implement spending caps, the Legislature has ignored our appeal for responsible budgeting and instead has chosen to expose our state to financial calamity in the unfortunate event of multiple devastating disasters by raiding this trust fund.

As appalling as this action it is, it is worsened by the abandonment of supposed fiscally conservative budgeting principles espoused by the lead Senate budget writer. During the budget debate on the floor of the Senate, the Senate Finance Committee Chairman vowed that he could not condone raiding the IRF as the House did in its budget. In a not-so-stunning reversal, he agreed in closed door meetings with the House Ways and Means Committee Chairman to raid the IRF, and he even voted to shut down debate when other Senators questioned this practice during the Senate's consideration of whether to concur with the House's amendments to the Senate version of the budget. If the Senate Finance Chairman is sincere in his opposition to raiding the IRF, we will welcome his efforts to sustain this veto.

Veto 46 **Part IB; Section 90.13; Page 477; Statewide Revenue; Health and Human Services FMAP Funding; Item X; MUSC Transplant Services; $100,000.**

This proviso item directs $100,000 in FMAP stimulus funds to MUSC for transplant services. Historically, these funds have been used for administrative services related to transplants provided to Medicaid recipients. We are vetoing this line item because MUSC has chosen not to provide these administrative services. They are currently provided by HHS. Accordingly, these funds should stay at HHS and not be directed to MUSC.

Veto 47 **Part IB; Section 90.13; Page 478; Statewide Revenue; Health and Human Services FMAP Funding; Item BB; MUSC Rural Dentist Program; $250,000.**

This proviso item is a pass-through from MUSC to the Area Health Education Consortium, which attempts to create incentives to increase the number of dentists serving rural South Carolina. We are vetoing this proviso because although attracting dentists to rural areas is a worthwhile goal, we doubt that the roughly $5,000 per county this program allows for would

have little if any impact on dentists' professional locales. Additionally, we'd like to point to the fact that a year ago, more than half of the six dentists receiving these rural grants to repay loans were MUSC dental school faculty members with state salaries averaging more than $110,000.

Veto 48 **Part IB; Proviso 90.13; Page 478; Statewide Revenue; Health and Human Services FMAP Funding; Item R; Rural Hospital Equipment and Facilities; $2,000,000.**

This proviso item is a $2 million pass-through from HHS to DHEC for rural hospital equipment and facilities. Hospitals receiving these funds are the same ones that are selected to receive a different grant through the Rural Hospital Grants proviso (22.49), which we vetoed. We are vetoing this proviso for the same reasons we vetoed 22.49.

This budget increases the Rural Hospital Grant program by 33 percent, going from $3 million to $4 million. In addition, the General Assembly proposes starting an entirely new program with an additional $2 million in the toughest budget year this state has seen in recent history. While scaring the public with threats of teachers and police being laid off, some in the legislature doubled funding for rural hospitals in this year's budget, while so many other front line services were left cut.

As previously stated, these grants are not equitably distributed to all of the state's rural hospitals since only 13 of the 23 designated rural hospitals in our state receive them. This creates the perception that the receipt of these grants is more dependent on political influence than need. Accordingly, we cannot support the continued disbursement of these grants without more objective criteria for grant eligibility.

Second, the program does not have any standards for determining whether the grants are effectively implemented. These grants are awarded without accountability for how the funds are spent, and, therefore, we cannot continue to support this program without checks to ensure that taxpayer money achieves quality health care.

Veto 49 **Part IB; Section 90.13; Page 478; Statewide Revenue; Health and Human Services FMAP Funding; Item S; USC Rural Health Clinics; $3,000,000.**

This proviso item is a $3 million pass-through from HHS to DHEC who, in turn, must forward to USC's School of Medicine, Rural Primary Care Center Network. This network trains physicians who serve the state's underserved population in three rural clinics. We are vetoing this line item because we believe this disportionally funds three rural health clinics and does not provide equal funding to the more than 100 health clinics in our state that may have similar needs.

Additonally, we encourage the USC Rural Primary Care Center Network to work with the South Carolina Office of Rural Health. For little or no cost, the South Carolina Office of Rural Health, according to their website, will help financially strapped rural practices and facilitate low-interest loans.

III. Conclusion

It is for the reasons above that I'd respectfully offer the vetoes of Parts IA, III, and the line-items individually detailed in Part IB for your consideration. I'd further ask, with current and future taxpayers' interests at heart and in the spirit of responsible budgeting, that you sustain these vetoes and work to craft a prioritized budget that both funds core government services and pays down debt. It's in this hope, and indeed with the knowledge that with great challenges come great opportunities, that I submit to you the position of this administration for your sincere consideration.

Sincerely,

Mark Sanford

EXHIBIT K

South Carolina General Assembly
118th Session, 2009-2010

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~~Indicates Matter Stricken~~
Indicates New Matter

S. 577

STATUS INFORMATION

Concurrent Resolution
Sponsors: Senators Leatherman, Land, Setzler, Malloy, McGill, O'Dell, Reese, Nicholson, Williams, Elliott and Knotts
Document Path: l:\s-financ\drafting\hkl\007arra.dag.hkl.docx

Introduced in the Senate on March 12, 2009
Introduced in the House on May 14, 2009
Adopted by the General Assembly on May 14, 2009

Summary: American Recovery and Reinvestment Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/12/2009	Senate	Introduced SJ-6
3/12/2009	Senate	Referred to Committee on **Finance** SJ-6
3/18/2009	Senate	Committee report: Favorable with amendment **Finance** SJ-3
5/13/2009	Senate	Adopted, sent to House SJ-81
5/14/2009	House	Introduced, adopted, returned with concurrence HJ-55
5/14/2009	House	Motion to reconsider tabled HJ-61

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VERSIONS OF THIS BILL

3/12/2009
3/18/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

COMMITTEE REPORT

March 18, 2009

S. 577

Introduced by Senators Leatherman, Land, Setzler, Malloy, McGill, O'Dell, Reese, Nicholson, Williams, Elliott and Knotts

S. Printed 3/18/09--S.

Read the first time March 12, 2009.

THE COMMITTEE ON FINANCE

To whom was referred a Concurrent Resolution (S. 577) to provide that pursuant to HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, the General Assembly accepts the use of federal stimulus funds provided, etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

A CONCURRENT RESOLUTION

TO PROVIDE THAT PURSUANT TO HR-1 OF 2009, THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, THE GENERAL ASSEMBLY ACCEPTS THE USE OF FEDERAL STIMULUS FUNDS PROVIDED TO THIS STATE IN THIS ACT IF THE GOVERNOR OF SOUTH CAROLINA, WITHIN THE REQUIRED FORTY-FIVE DAY PERIOD, FAILS TO CERTIFY THAT HE WILL REQUEST AND USE THESE FUNDS FOR THIS STATE AND THE AGENCIES AND ENTITIES THEREOF IN THE MANNER PROVIDED IN THE FEDERAL ACT, AND TO PROVIDE FOR THE MANNER OF DISTRIBUTION OF THESE FUNDS.

Whereas, in Section 1607 of HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, the Congress of the United States has provided as follows:

"(a) CERTIFICATION BY GOVERNOR. - Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

(b) ACCEPTANCE BY STATE LEGISLATURE. - If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) DISTRIBUTION. - After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion."; and

Whereas, pursuant to subsection (b) of the above provision, the South Carolina General Assembly accepts for use all or any applicable portion of the funds provided to the State of South Carolina or any agency thereof, if the Governor of South Carolina pursuant to subsection (a) above fails to certify not later than forty-five days after enactment of HR-1 of 2009, that he will on behalf of this State request the funds provided in HR-1 of 2009; and

Whereas, pursuant to subsection (c) above, the South Carolina General Assembly declares the distribution of these funds to state agencies, entities, and any other political subdivision of this State, including those distributed to local governments through the State of South Carolina, shall be provided by formula or as directed by the General Assembly; and

Whereas, to enhance the General Assembly's ability to utilize these funds to create the most jobs and promote as much economic growth as possible, the General Assembly shall create a joint review committee to provide recommendations to both the General Assembly and the executive branch regarding the most efficient policy for the receipt, appropriation, expenditure, and reporting of these funds. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the South Carolina General Assembly, pursuant to HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, accepts the use of federal stimulus funds provided to this State if the Governor of South Carolina within the required forty-five day period fails to certify that he will request and use these funds for this State and to create jobs and promote economic growth.

Be it further resolved that the South Carolina General Assembly further declares that the manner of distribution of these funds shall be as stipulated in this resolution.

Be it further resolved that a copy of this resolution be forwarded to the United States Senate, the United States House of Representatives, and to each member of the South Carolina Congressional Delegation.

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This web page was last updated on May 15, 2009 at 9:37 AM

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Casey Edwards and Justin Williams, ... Petitioners,

v.

The State of South Carolina ..... Respondent.

CERTIFICATE OF SERVICE

To: Henry McMaster, Attorney General of the State of South Carolina

I, Patrick Sharpe, hereby certify that the Petitioners' Petition for Original Jurisdiction was served, via hand-delivery, upon Attorney General Henry McMaster on May 22, 2009.

Columbia, South Carolina
5/22, 2009