

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

S.C. Supreme Court

C.A. No.: 2007-065159

Abbeville County School District, *et al.* Appellants-Respondents,

v.

The State of South Carolina, *et al.*, of whom John E. Courson, as
President Pro Tempore of the Senate and as a representative of the
South Carolina Senate, and Robert W. Harrell, Jr., as Speaker of the
House of Representatives and as a representative of The South
Carolina House of Representatives, are Respondents-Appellants,

and

State of South Carolina, Nikki R. Haley, as Governor of the State of
South Carolina are..... Respondents.

AMICUS CURIAE BRIEF OF
SOUTH CAROLINA ASSOCIATION OF SCHOOL ADMINISTRATORS
AND SOUTH CAROLINA SCHOOL BOARDS ASSOCIATION

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I. STATEMENT OF ISSUES ON APPEAL

Amici Curiae adopt the Statement of Issues on Appeal of Appellants-Respondents Abbeville County School District and other plaintiffs.

II. STATEMENT OF THE CASE

Amici Curiae adopt the Statement of the Case of Appellants-Respondents Abbeville County School District and other plaintiffs.

III. STATEMENT OF FACTS

A. Identity of *Amici Curiae*

The South Carolina Association of School Administrators ("SCASA") is a South Carolina non-profit corporation. Its membership is a united alliance of diverse school leaders, including superintendents, principals and other school administrators. It is a leading force for public education in South Carolina. SCASA advocates for a superior education for the citizens of South Carolina by influencing education legislation and policy, stimulating and fostering support, building successful coalitions, ensuring a cadre of effective leaders, and providing programs and services for its members.

The South Carolina School Boards Association ("SCSBA"), a non-profit organization, serves as a source of information and as a statewide voice for boards governing the 83 public school districts. The mission of SCSBA is to be the leading voice advocating for quality public education while ensuring excellence in school board performance through training and service.

B. Factual Background—Wide Disparity Among School Districts in State and Local Revenue Per Pupil and in Property Tax Rates

The purpose of this brief is to help the Court understand the effect of enactments of the General Assembly since 2005 on revenue for the operation of all school districts. While no one change in the law can be said to cause the results discussed in this brief, the cumulative effect over time has been profound. Changes in the law since 2005 affect

different districts in different ways, but the overall result is wide disparity among school districts in state and local revenue per pupil and in property tax rates.

During the past two years, *Amici Curiae* have sponsored an effort to develop a restructured system of public school finance, addressing the generation and distribution of revenue from state and local sources to provide the educational program required by state law and regulation. Historical state-published data for all districts was collected and organized using (1) school district revenue for school and fiscal years 2008-09 and 2009-10 as reported in audits submitted to the State Department of Education pursuant to S.C. Code Regs. § 43-172; (2) assessed values of property by property tax classification, by school district, as used for the index of taxpaying ability and operating property tax millage rates for tax years 2008 and 2009, from the Department of Revenue; and (3) average daily membership and weighted pupil units for school years 2008-09 and 2009-10 as reported by the State Department of Education. See <http://www.sctax.org/lgs/default.htm>; <http://ed.sc.gov/agency/ac/Data-Management-and-Analysis/>.

The revenue data includes all property taxes, fees-in-lieu-of-taxes, and most state revenue, including the EFA, employee benefits, property tax reimbursements including payments from the Homestead Exemption Fund under S.C. Code Ann. § 11-11-156, and about 75% of the EIA. Revenue was used because the sources are tracked by the state's accounting system, distinct, defined by state law, and current, while expenditures are often made from commingled sources of revenue, including revenue carried-forward from previous years.

The data does not include federal revenue because it is received and distributed based on the criteria of federal law, including grants, waivers, and programs dependent upon state or federal discretion, and is variable annually and among districts. State revenue is not included if it is distributed to school districts on some basis other than

weighted pupils such as transportation funds (based on mileage), National Board certification funds (paid to specific individual teachers), retirement funds (based on payrolls), and the Child Development Education Pilot Program ("CDEPP") and some other funds which are distributed for pupils not included within the pupil weights for five-year-old kindergarten through high school. Lottery funds were regarded as simply too uncertain. In all of these cases, the funds excluded are received and must be spent on specific, narrow purposes.

Attached to this brief are tables (Appendix pp. 1-2) summarizing this data for all school districts for school and fiscal year 2009-10, which is tax year 2009, in both rank and alphabetical orders. The tables show for each school district the revenue per pupil by average daily membership (ADM) and by weighted pupil unit (WPU) and operating millage rates. The data presented in these tables reflect the cumulative effect of the laws and the varying economic circumstances of the school districts. The disparity in revenue per pupil and millage rates is extreme. Based on average daily membership, the lowest per pupil revenue (\$5,300) is 47% of the highest (\$11,189). Based on weighted pupil units, which vary by student cost factors, the lowest per pupil revenue (\$4,268) is 49% of the highest (\$8,700). The extremes are not just outliers; there is wide dispersion of districts with 14 districts below \$6,000 and 7 districts above \$9,000 in per pupil revenue by ADM. Thus, nearly one-fourth (21) of the state's school districts are at opposite ends of the spectrum. Even among the eight plaintiff districts, the differences are enormous. Revenue per pupil based on ADM in Dillon Two (\$5,325) is 56% of Allendale (\$9,505).

The parties have used data from In\$ite to compare the eight plaintiff districts. In contrast to *Amici Curiae's* analysis using state and local revenue, In\$ite presents all expenditures from all local, state, and federal sources. In\$ite shows a wide disparity among the plaintiff districts: Dillon Two (\$8,532 per pupil) is 60% of Hampton Two

(\$14,159 per pupil). (Brief of Respondents/Appellants John E. Courson and Robert W. Harrell, Jr., dated June 11, 2012, at 9.) While the criteria for comparison is different, the differences among all districts is about as wide in InSite as in the state and local revenue data in *Amici Curiae's* project: Anderson One (\$6,997) is only 49% of Hampton Two (\$14,159) and even Dillon Three (\$7,356) is only 52% of Hampton Two (\$14,159). The attached tables (Appendix p. 3) present InSite per pupil expenditures by district for fiscal year 2009-10, in both rank and alphabetical orders, as presented on the website of the State Department of Education. <http://ed.sc.gov/agency/cfo/finance/Insite.cfm>.

Furthermore, in 2010 the Berkeley County School District requested Dr. Harry W. Miley, Jr. to evaluate the effect of the changes in law on its property tax base and revenue. Dr. Miley's report, entitled "An Assessment of the Property Tax Base of the Berkeley County School District" was issued October 22, 2010, and is available on the website of the Berkeley County School District: <http://www.berkeley.k12.sc.us/documents.cfm?id=39.40> (hereinafter cited as "Miley Berkeley Tax Base Study"). This study is the most complete and accurate analysis of which *Amici Curiae* are aware concerning the effect on one district of enactments of the General Assembly since 2005.

On April 23, 2012, the Berkeley County Council adopted Ordinance No. 12-04-09, describing the distribution of revenue from a multi-county industrial or business park. (Appendix pp. 4-6): http://www.berkeleycountysc.gov/aadm/2012/12043_crm_m.pdf (pp. 5-9). This ordinance illustrates the effect of amendments since 2007 of the laws discussed below concerning fees-in-lieu-of-taxes and multi-county parks.

IV. ARGUMENT

A. Summary of Argument

The system of school finance is composed of many different laws, and their constitutionality as individual enactments is not at issue. However, *Amici Curiae* submit

that these laws as a whole do not meet the constitutional standard of offering each child in the state an opportunity to receive a minimally adequate education. Furthermore, regardless of which party prevails in this case, the Court should not give its blanket approval to the current school funding system.

This case places at issue the constitutionality of the State's system of public school financing for all primary and secondary schools, but the record focuses on eight school districts. It is vital for the Court to comprehend the serious disorder throughout the state in both the generation and distribution of tax revenue for the operation of schools. As this Court has noted, "[t]he purpose of providing a public education is to benefit not just the individual receiving it, but also the public at large." *Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 66, 515 S.E.2d 535, 539 (1999). While the eight districts display wide differences in funding per pupil and property tax rates, the discrepancy across all districts is much more significant. The mix of funding per pupil and property tax rates among districts is haphazard and has little connection to the purposes and goals of educating students statewide. Changes in the law since 2005 drive and entrench the disparities.

In 1977, the State sought to use funding policy to overcome the negative educational effects of "geographic differences and varying local economic factors" through the Education Finance Act of 1977 ("EFA"). S.C. Code Ann. § 59-20-30(1); *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470 (1988). The General Assembly, through the EFA, recognized that the educational success of every South Carolina student is important to the entire state and sought to balance the statewide and local taxation burdens and educational opportunities.

South Carolina's policy makers, concerned with equity in education, changed the method of State funding to local school districts. The Education Finance Act is to be phased in over a five-year period and fully implemented in 1983. ... With this method,

inequities of education funding caused by the happenstance of property wealth should be reduced.

Legislative Audit Council, *Study of the Implementation of the Education Finance Act of 1977* at 13 (1980). The State's commitment to high expectations and a strong academic foundation for all students was emphasized in both the Education Improvement Act of 1984 ("EIA") and the Education Accountability Act of 1998 ("EAA"). S.C. Code Ann. §§ 59-18-100 to -1930.

The standards must be reflective of the highest level of academic skills with the rigor necessary to improve the curriculum and instruction in South Carolina's schools so that students are encouraged to learn at unprecedented levels and must be reflective of the highest level of academic skills at each grade level.

S.C. Code Ann. § 59-18-300.

Thus, over the last decade, school districts have been operating within a statewide system of curriculum standards, performance accountability, and "the highest" expectations, but supported by a financing system that has unfortunately become ever more complex, fragmented, and inconsistent. There have been many changes in the state's tax laws, including but not limited to Act 388 of 2006, which have had significant effects on educational funding, both in amount and in changes to funding formulas. Furthermore, the General Assembly and county governments have continued policies of making non-education-related "tax expenditures"¹ of both State education sales taxes² and school district property tax revenues, which reduce the revenue available to fund

¹ The Federal government has a useful definition of "tax expenditures," *i.e.*, "revenue losses attributable to provisions of ... tax laws which allow a special exclusion, exemption, or deduction ... or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." 2 U.S.C.A. § 622(3).

² The fundamental five-cent sales tax is supposed to be directed to use for the EFA and the EIA. S.C. Code Ann. §§ 12-36-2620 to -2630; § 59-21-1010. Tax expenditures of sales tax directly reduce the educational resources of the State; one is hard-pressed to find any exemption from sales or use tax in S.C. Code Ann. §§ 12-36-2110 to -2130, that constitutes a bona fide alternative (Cont'd.)

school operations. *See Horry County Sch. Dist. v. Horry County*, 346 S.C. 621, 635, 552 S.E.2d 737, 744 (2001); Section IV.E.2 and G, below.

The result for funding has been haphazard and arbitrary, with wide discrepancies among school districts (Appendix, pp. 1-3), as shown by two simple indicators:

- (1) revenue from state and school district sources for school operations per pupil in average daily membership (ADM) varies by a factor of two, from a low of just \$5,300 to a high of nearly \$11,200; and
- (2) property tax rates for school operations vary by a factor of three, from a low of less than 100 mills to a high of more than 300 mills.

At bottom, the State's funding scheme, now characterized by suspension of the EIA minimum financial effort, the multifarious effects of Act 388 of 2006, subordination to county purposes, and other changes discussed in this brief, result in revenue for the State's system of free public schools that neither represents nor correlates to the actual cost of providing a minimally adequate education. As a result, it is mere happenstance if any particular school district has sufficient funds to provide students with a minimally adequate education. The State cannot satisfy its constitutional responsibility under Article XI, § 3 when it has failed to reasonably align funding formulas to the actual cost of providing a minimally adequate education. *See, e.g., McCleary v. State*, 269 P.3d 227, 253-54, 173 Wash.2d. 477 (Wash. 2012).

B. The Effect of Changes in the Property Tax System is Magnified Because it Governs the Distribution of State Revenue.

Property value undergirds the current South Carolina school finance system in two basic ways. First and most obviously, *ad valorem* tax produces schools' local property tax revenue through millage rates applied to taxable assessed value.

Second, the geography of property values governs the distribution of state revenue

use of tax resources for support of the system of public schools. *See* Section VI, below.

(mostly generated from uniform statewide sales taxes) to school districts for the EFA and employee benefits, through the index of taxpaying ability; the index affects the distribution of about \$1.78 billion in state revenue in fiscal year 2012-13. Act 288 of 2012, Part 1A, Section 1. Changes in the property tax system that modify assessed taxable value thus not only affect the *ad valorem* revenue of a school district, but also alter its relative position for purposes of access to foundational state school revenues. See *Horry County Sch. Dist.* 552 S.E.2d at 744 ("Policy Considerations").

The basic property tax formula is deceptively simple, involving five components:

- (1) Fair Market Value ("FMV"), multiplied by
- (2) Assessment Ratio, equals
- (3) Assessed Value ("AV") which, when multiplied by
- (4) Property Tax Rate ("Millage Rate"), equals
- (5) Property Tax Revenue for use in the budget.

All five components have been changed legally since 2005, with very little attention paid to the effect of a change in one variable upon any other variable in the equation. The two-fold effect of the property tax system and the mathematical symmetry of the property tax equation is producing an arbitrary patchwork of results. One common result, however, is the determinative fact of geography upon the funding resources under state law for the education of children in different places but otherwise living in substantially the *same* socio-demographic circumstances.

C. School District Property Tax Millage Rates.

1. Suspension of the EIA Minimum Local Effort – No Floor on Revenue

The minimum local effort which was part of the Education Improvement Act of 1984 ("EIA Minimum Local Effort"), S.C. Code § 59-21-1030, has been suspended by

budget proviso each fiscal year since 2008-09. *See* Act No. 310 of 2008, Part 1B, Proviso 1.45 ("For Fiscal Year 2008-2009, Section 59-21-1030 is suspended."); Act No. R-330 of 2012, Part 1B, Proviso 1.38 ("For the current fiscal year, Section 59-21-1030 is suspended."). The EIA Minimum Local Effort required the county auditor to levy a millage rate sufficient to assure that the school district received, per pupil, at least the same amount of local property tax revenue as it received the previous year, adjusted upward for an inflation factor. *Laurens County Sch. Districts 55 & 56 v. Cox*, 308 S.C. 171, 417 S.E.2d 560 (1992); *Richland County Sch. Dist. One v. Richland County Council*, 310 S.C. 106, 425 S.E.2d 747 (1992). This "floor" protected the school district's local property tax revenue regardless of changes in the other components of the property tax formula. Pupils of school districts were protected from new exemptions eliminating FMV, reductions in assessment ratio, or a county's grant of property tax (or fee-in-lieu-of-tax) credits to a taxpayer or diversion of revenue to the county. While changes reducing assessed value would affect the distribution of state revenue based on the index of taxpaying ability, actual local property tax revenue was preserved by the EIA Minimum Local Effort requirement, which spread the burdens across all remaining taxable property through a millage rate increase. The General Assembly—at least for now—ended this method of protecting school districts from loss of operating property tax revenue.

In effect, with the EIA Minimum Local Effort, the General Assembly made a tax policy election for higher rates as a consequence of tax expenditures on economic development; eliminating both the ability and the mandate to reach the EIA Minimum Local Effort "floor" reversed State policy by restraining access to local resources for the support of the free public education system, all in order to pay for property tax expenditures unrelated to that system.

2. Act 388 of 2006 – Millage Rate Cap

Even as the EIA Minimum Local Effort "floor" on local revenue has disappeared, a new hard "ceiling" on school operating millage rates has been imposed. Act 388 of 2006 amended S.C. Code Ann. § 6-1-320(A)(1) to limit annual increases in the millage rate for school operations to a formula based on the consumer price index and an estimate of all-age population growth within a school district.³ This cap on rates exists regardless of the other variables (assessed value and revenue) although there are a few exceptions to the cap for extreme or catastrophic situations.⁴ Before Act 388, the millage rate limitation of § 6-1-320(A) contained exceptions for the purpose of meeting EFA and EIA minimum requirements. The combination of the exception and the EIA Minimum Effort mandate protected local revenue from legal changes reducing the other variables, albeit at the cost of higher rates for other taxpayers. Act 388 deleted these exceptions and made § 6-1-320(A)(1) a "hard" cap.

The § 6-1-320(A) millage rate cap creates a mathematically fixed upper limit on available local revenue. Establishing school operating millage rates had previously been a local political question with explicit exceptions for the EFA and EIA minimums, but no political decision can avoid the legal cap on the millage rate, even if there are other changes that reduce revenue. In effect, the General Assembly has locked into place the disparity in millage rates among districts, despite the declaration of legislative purpose in the EFA that the minimum educational program could be provided by each school district "with an equal local tax effort." S.C. Code § 59-20-30(4).

The millage cap adopted in Act 388 creates two enormous difficulties for school

³ The millage cap is an annual percentage limit applied to the then current rate, which varies from 90 mills to more than 300 mills. The effect is anomalous: the higher the current tax rate, the higher the annual limit, which increases the disparity in rates.

⁴ S.C. Code Ann. § 6-1-320(B). There is also some ability to recapture "unused" -320(A)(1) (Cont'd.)

districts under the EFA. First, many districts have reached the point where the millage cap prevents them from generating the annual incremental increase in the local share of the EFA and employee benefits. The state, by definition, funds only 70% of the annual increase in the base student cost and employee benefits, which varies by district according to the index of taxpaying ability. If a district cannot fund its local share annual increment (30% statewide), it cannot pay the expenses that are mandated and must therefore reduce other, discretionary expenses (*i.e.*, expenses exceeding minimum regulatory standards).

Second, the millage cap and limitations on increases in assessed value have made it almost impossible for districts to replace reductions in state revenue. Reductions can be the result of state budget cuts or changes in the index of taxpaying ability. As a district gets "wealthier," compared to other districts, as measured by the assessed values used in the index of taxpaying ability, state revenue declines; the assumption of the EFA is that the district will have access to more local revenue to replace the decrease in state revenue. If the assessed value does not grow to the extent necessary to replace the state revenue with the same tax rate, there is no exception in the millage cap to increase the operating millage rate to replace the lost state revenue. In other words, the school district can be caught in the inconsistency between the millage cap of Act 388 and the local revenue requirements of the EFA, and the inconsistency is aggravated to the extent assessed value does not increase.

The 2012-2013 fiscal year will be the first year since the enactment of Act 388 that the General Assembly has not funded "hold harmless" funds to make whole those districts negatively affected by a change in the index of taxpaying ability.⁵ At least two

millage rate increases of the three prior tax years. § 6-1-320(A)(2).

⁵ The FY 2012 Budget provided an "Education Foundation Supplement ... to public school (Cont'd.)"

districts are now caught in the contradiction between the EFA and the millage limitation of Act 388. Spartanburg School District One will lose an estimated \$759,027 as a result of the change in the index. The millage cap of Act 388 is 7.3 mills and the estimated value of a mill for school operations is \$43,000, so that Spartanburg One is limited to an increase in local revenue of \$316,000. It is impossible for Spartanburg One to replace the loss of EFA revenue. For Spartanburg School District Two, the EFA loss is estimated to be \$1,067,892. The Act 388 millage cap for Spartanburg Two is 8.89 mills with an estimated mill value for school operations of about \$87,000. Thus, Spartanburg Two can generate only about \$772,425. The limit is nearly reached in Dorchester School District Two, which will lose an estimated \$1,837,367. Dorchester Two has a millage limit of 9.9 mills and a mill value for school operations of \$217,000, so that 8.5 mills would be required to replace the loss in EFA funding.

One other effect of the cap enacted with Act 388 is that it effectively freezes the relative positions among school districts, both at the top and at the bottom. A school district with a low property tax rate has very little authority to increase it, regardless of the "aspirations of the people of the district." S.C. Code § 59-20-50(2).

D. Fair Market Value, Assessment Ratio, and Assessed Value.

1. Act 388 – Exemption of Homestead Property and Reimbursement

The most well-known part of Act 388 is the exemption of owner-occupied residential property ("homestead property") from school operating millage rates and reimbursement from an additional sales tax. S.C. Code Ann. § 12-37-220(47)(a). The Act 388 exemption completed the removal of about \$165 billion in FMV from the tax

districts which would in the current fiscal year recognize a loss ... by utilizing an Index of Taxpaying Ability which imputes the assessed value of owner occupied property compared to the State financial requirement of same Index of Taxpaying Ability as utilized in the prior fiscal year." S.C. Act 73 of 2011, Part 1B, Proviso 1.98.

base for school operations. As modified by Act 57 of 2007, Act 388 of 2006 established the reimbursement scheme so that Tier 1 was defined as the homestead exemption for the first \$100,000 in FMV, Tier 2 as the homestead exemption for taxpayers aged 65 and older, blind and disabled, and Tier 3 as the balance of the entire FMV of all homes in tax year 2007. S.C. Code Ann. § 11-11-156(A)(1). Tiers 1 and 2 were frozen at the levels of 2007-08, but Tier 3 increases by separate formulas for the statewide increase and for the distribution of the statewide increase to school districts. S.C. Code Ann. § 11-11-156(A)(2). The statewide increase is determined by the consumer price index and the estimate of the increase of the all-age population of the state. S.C. Code Ann. § 11-11-156(A)(3); <http://ors.sc.gov/economics/tierIII.html>. The amount of the statewide increase is then apportioned among the school districts by weighted pupil units, with an additional .20 weighting for children in poverty, as defined in the statute. S.C. Code Ann. § 11-11-156(A)(2). Thus, the poverty weighting applies only to the distribution of about \$30 million among all of the districts of the state.

The "reimbursement" formula is not a reimbursement, since it does not take into account new homes or increases in value of older homes since the base year of 2007-08, which are 100% exempt. Nor does the marginal increase in Tier 3 follow current exempted value. To a school district, each new "homestead" is a new *un-reimbursed* cost if school children live in it. Since homestead property is still taxed for counties, cities, and school district debt service, the reimbursement gap can be calculated by comparing the revenue from the Homestead Exemption Fund with the amount that homestead property otherwise would have paid for school operations. For the Berkeley County School District in 2009-10, the assessed value of homestead property, when multiplied by the school district's operating millage, would have generated estimated operating revenue of \$34.9 million. The total reimbursement under Tiers 1, 2, and 3 totaled \$32 million, so

that the reimbursement gap was \$2.9 million. (Miley Berkeley Tax Base Study p. 13: [http://www.berkeley.k12.sc.us/documents.cfm?id=39.40.](http://www.berkeley.k12.sc.us/documents.cfm?id=39.40))

2. Limitation of 15% on Increase in Taxable Fair Market Value

In 2006, a two-step process was followed to implement a limitation on the value of property for purposes of taxation. Part IV, Section I of Act 388 added the South Carolina Real Property Valuation Reform Act. This act limited the increase in the fair market value of real property attributable to the countywide appraisal and equalization program to fifteen (15%) percent within a five-year period, unless an assessable transfer of interest occurred. Before the act could take effect, certain amendments to the South Carolina Constitution were proposed by a joint resolution, House Bill 4450, which was approved in November 2006.

Article X, section 6 of the State Constitution now provides:

[E]ach parcel of real property in this State shall have a maximum value for ad valorem taxes that does not exceed its fair market value. The General Assembly is authorized, by general law, to define "fair market value" and to define when property has been improved or when losses have occurred to change the value of the real property.

S.C. Const. Art. X, § 6. We have abandoned a bedrock starting point for *ad valorem* taxation—that there is some objectively determinable "value" of property independent of legislative fiat and caprice. When laws or ordinances artificially adjust downward what would otherwise be the assessed value derived from fair market value, such adjustments mathematically limit the revenue that a millage rate can produce.

Dr. Miley estimated the effect on the Berkeley County School District of the 15% reassessment cap. The 15% limit on taxable fair market value eliminated \$414.6 million in property with an assessment ratio of 6%. Based on the then-current millage rate, eliminating \$414.6 million from the tax base reduced the Berkeley County School

District's operating revenues by \$3.4 million in 2009-10. (Miley Berkeley Tax Base Study p. 12: <http://www.berkeley.k12.sc.us/documents.cfm?id=39.40>.)

3. Effect of Act 388 on the Index of Taxpaying Ability

"An index of the relative taxpaying ability of the several counties of South Carolina to support schools must not be an index of theoretical taxpaying ability but a measure of relative wealth in order to be equitable because local taxes for schools are largely derived from property." South Carolina Education Survey Committee, *Public Schools of South Carolina* at 322 (1948).

Two years after the enactment of Act 388, the State confronted the question of the effects on the index of taxpaying ability of the homestead exemption and the 15% reassessment cap. Each change reduced assessed value which is the critical component of the index. The General Assembly resolved the exemption and reimbursement issue by imputing the value of homestead property based upon the amount of reimbursement and the operating tax rate of each district. The State resolved the statistical problems created by the 15% reassessment cap by abandoning the sales ratio factor which is part of the definition of the index. S.C. Code Ann. § 59-20-20(3). *See* SCDOR Information Letter 11-13 at 18.

Imputing assessed value changes the property tax formula from:

- (3) Assessed Value multiplied by
- (4) Millage Rate equals
- (5) Property Tax Revenue

to the following:

- (5) Property Tax Revenue divided by
- (4) Millage Rate equals
- (3) Assessed Value

For purposes of the index, the known property tax revenue is the reimbursement, which is divided by the school district's known operating millage rate to equal the assessed value to be determined and included within the index. The mathematical certainty of the formula for imputing the value means that the higher the tax rate, the lower the assessed value that will be imputed. This results in the anomaly that homestead property of exactly the same fair market value and reassessment position in different school districts will have different assessed values within the index which governs the distribution of all state revenue for the EFA and employee benefits.

Most importantly, the property value that is imputed is not subject to taxation and generation of local revenue. The premise of the EFA and its use of an index of taxpaying ability is that school districts will be able to generate more tax revenue from their tax base (*i.e.*, assessed value) as state revenue is withdrawn and redirected to districts with less tax base. In reality, about one-third of the state's assessed value is homestead property and is not subject to school district operating millage rates. Thus, only about two-thirds of the actual value of property is subject to taxation to generate the local share portion of the EFA.

However, school districts vary greatly from the state average. In the Berkeley County School District in 2009, homestead property is 34% of assessed value; homestead property had an assessed value of \$253.3 million and all other taxable property \$487.7 million. (Miley Berkeley Tax Base Study p. 12: <http://www.berkeley.k12.sc.us/documents.cfm?id=39.40>.) Other districts have much higher proportions. In 2009, for Spartanburg School District One, the percentage of homestead property was about 50%; for Spartanburg School District Two, about 45%; and for Dorchester School District Two about 48%. One of the main reasons that the Act 388 millage cap prevents school districts from generating enough revenue to replace reductions in state revenue caused by

changes in the index is that almost one-half of the tax base in these districts is exempt. The premise of the EFA is that the proper proportion for shared funding between state and local sources to support the state's foundation educational program is seventy percent (70%) state and thirty percent (30%) local. The homestead exemption has reduced the ability of the school districts to generate the local share of thirty percent (30%) by reducing the tax base statewide by one-third and in the school districts mentioned by one-half.

The General Assembly resolved the issue of the effect of the 15% assessment cap by eliminating the sales ratio factor. Act No. R-330 of 2012, Part 1B, Proviso 1.81. The purpose of the sales ratio factor was to derive statistically the "full market value of all taxable property of the district," S.C. Code § 59-20-20(3), so that districts with the most recent reassessment program were not punished by having higher values compared to districts that were later in the reassessment cycle. The legal separation of taxable values from fair market values made the sales ratio factor statistically invalid, because current market sales would not reflect current taxable values within the tax base.

The method used to impute the value of homestead property is the same method used to impute an assessed value for property generating school operating revenue from fees-in-lieu-of-taxes and multi-county industrial or business parks. However, as reflected on the summary of values within the index of taxpaying ability, about 4% of assessed value statewide in 2009 were derived from fees-in-lieu-of-taxes and multi-county parks. Imputing this assessed value is subject to the same problems as imputing the assessed value of homestead property. It is a smaller problem, but also subject to wide variation among school districts. For example, although the statewide proportion is 4%, it is about 8% in the Berkeley County School District.

4. Continued Phase-In of Reduction in Assessment Ratio of Vehicles

A reduction in the assessment ratio for personal property, principally automobiles, from 10.5% to 6% was phased-in between 2002 and 2007. Based upon Dr. Miley's study, the assessed value of personal property in the Berkeley County School District declined by just over 7% from 2000 to 2009. (Miley Berkeley Tax Base Study p. 12: <http://www.berkeley.k12.sc.us/documents.cfm?id=39.40.>)

E. Property Tax Revenue.

1. Act 388 - \$2.5 Million Minimum Per County

Act 388 also provided that the minimum reimbursement for each county for the Tier 3 homestead exemption would be \$2.5 million, regardless of the actual amount of reimbursement determined from the assessed value and operating millage rate of the school district or districts within a county. S.C. Code Ann. § 11-11-156(B)(1). For multi-school district counties, each district received its actual reimbursement, and the balance up to \$2.5 million per county was allocated among districts in the county on the basis of pupils in average daily membership. The extra amount is referred to as a "supplement" and is not taken into account in the index of taxpaying ability. S.C. Code Ann. § 11-11-156(B)(3). Annual increases in Tier 3 change the relative proportion of Tier 3 reimbursement and supplement, but there is no increase in the \$2.5 million.

Twenty-one counties qualified for the \$2.5 million minimum in the base year of 2007-08, for a supplemental distribution of about \$30.1 million. Multi-district counties which exceeded the \$2.5 million minimum did not receive a supplement. For example, among the eight districts, Florence Four and Orangeburg Three did not receive a supplement, but Dillon Two, Hampton Two, and Marion Seven did. Allendale, Lee, and Jasper each received a supplement.

The effect of the \$2.5 million minimum is to increase the revenue per pupil, but

the supplement per pupil varies widely among districts. Among the eight Plaintiff districts in 2009-10, the effect of the supplement varies from zero per pupil in Florence Four and Orangeburg Three, to \$800 per pupil (ADM) in Lee and \$1,523 (ADM) in Allendale. See "Final FY 2011-12 Homestead Exemption Fund Reimbursement (Tier III) as of June 13, 2012" (<http://ors.sc.gov/economics/tierIII.html>) and "Average Daily Membership and Attendance" (<http://ed.sc.gov/data/student-counts/AverageDailyMembershipandAttendance.cfm>). The \$2.5 million minimum is an important factor in creating the range of per pupil revenue in the tables in Appendix pages 1 and 2.

2. Changes Affecting Fees-In-Lieu-of-Taxes and Multi-County Parks

Fees-in-lieu-of-taxes ("FILOTs") and Multi-County Industrial or Business Parks ("Multi-County Parks") are statutory schemes that play a very important role in the state's legal structure for economic development. S.C. Code Ann. § 4-29-67 *et seq.* ("Big Fee"); § 4-12-10, *et seq.* ("Little Fee"); § 12-44-10, *et seq.* ("Simple Fee"); S.C. Code Ann. §§ 4-1-170 to -175. The statutes constitute an alternative property tax system with two features: (1) reducing the FILOTs or "property taxes" paid by property owners qualifying for FILOTs or being placed within multi-county parks; and (2) allowing county councils to redistribute revenue actually paid by property owners in multi-county parks to a wide variety of uses by county councils rather than distribute revenue to the taxing entity by millage rate.

Very briefly stated, although not taxes, revenue from FILOTs and Multi-County Parks is determined by the property tax formula, and all five components are affected. First, property within a FILOT or Multi-County Park is exempt from property taxation, but the fair market value is determined in the same way as property under the property tax laws. Second, the assessment ratio for manufacturing is reduced from 10.5% to 6%

or lower, depending on the amount of the investment. Third, assessed value for the purpose of the index of taxpaying ability is determined by imputing the assessed value from the school operating millage rate and actual revenue received by the school district. S.C. Code § 59-20-20(3). Thus, assessed value is reduced both by lower assessment ratios and by county redistribution of revenue. Fourth, school operating millage rates are used to determine the FILOT and multi-county park revenue, but they are frozen for varying periods of time and are not subject to annual change. Fifth, the revenue to the school district is subject to the unlimited, completely deregulated control of the county council by the use of credits or county use of funds.

Since 2005, there have been many changes in the laws concerning fees-in-lieu-of-taxes, which generally have had the effect of lowering eligibility requirements, extending time periods or expanding their scope. For example, nuclear power plants may qualify for FILOTs and be placed in multi-county parks. S.C. Act No. 290 of 2010.

Two amendments, however, greatly expand the power of county councils to reduce revenue to school districts. Before 2007, S.C. Code Ann. § 4-1-175 authorized a county council to issue special source revenue bonds "secured by and payable from" the revenue from a multi-county park "for the purposes set forth in Section 4-29-68." Before 2010, S.C. Code Ann. § 4-29-68 allowed a county to issue special source revenue bonds to pay for infrastructure serving the county or real estate used in a manufacturing or commercial project. Both § 4-1-175 and § 4-29-68 have been amended since 2005.

In 2007, § 4-1-175 was amended to provide that a county council, rather than issuing special source revenue bonds, could simply provide a credit to the property owner "against the fee payment or a payment derived from the fee payment." S.C. DOR Information Letter 07-116 at 46. County councils are no longer subject to the complications and restrictions of issuing special source revenue bonds, but can, with

utmost simplicity, eliminate all or any portion of the revenue to be paid by a property owner.⁶ When coupled with the unlimited authority to place property within a multi-county park for an unlimited time, the General Assembly effectively has delegated to county councils the authority to reduce the revenue received by a school district by *any* amount the county council desires (up to the aggregate of the putative fee liability of the occupants of the county's multi-county parks), and in so doing to change the statewide distribution of funds through the formulas using the index.

In 2010, § 4-29-68(A)(2)(i) was amended to add "personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise...." SC DOR Information Letter No. 10-9, at 34. The effect of the amendment is to vastly increase the amount of special source revenue bonds or credits available for use by county councils.

Examples from Berkeley County illustrate the use of these statutes by a county council. The Berkeley County Council used the authority of § 4-1-175 to grant a 100% credit for fifteen (15) years for a large investment. The County also allocated to itself 100% of the fee-in-lieu-of-taxes from another company, with no distribution to the school district. (Miley Berkeley Tax Base Study pp. 4-7: <http://www.berkeley.k12.sc.us/documents.cfm?id=39.40>.) This combination of 100% credit for one FILOT/Multi-County Park property owner and redistribution of revenue from another enabled the County to replace the revenue it lost from the credit by keeping the District's share from

⁶ For example, "Charleston County also offered Boeing Special Source Revenue Credits (SSRC) under S.C. Code Ann. § 4-29-68. As a result, for the first 15 years of the FILOT program, a 50% credit will be applied. In other words, 50% of the revenue from the FILOT payments is returned to Boeing during the first fifteen years, essentially reducing Boeing's assessment rate to 2%." Kuker, *An Analysis of South Carolina's Incentives to the Boeing Company*, 8 S.C. J. Int'l. L. & Bus. 165, 182 (2011).

other fee revenue. The school district receives nothing from either, while the County Council protects itself.

Moreover, §§ 4-1-175 and 4-29-68(A)(2)(i) authorize a county council to issue special source revenue bonds for the purpose of constructing the county's infrastructure unrelated to the location of any particular company, FILOT, or multi-county park. By Ordinance No. 12-04-09 (Appendix pp. 4-6), the Berkeley County Council repealed its previous ordinances governing distribution of revenue from a multi-county park and adopted a new distribution scheme effective July 1, 2012. After the first one percent (1%) to the adjoining county, the County Council distributes to itself the next five percent (5%) for an economic development fund, then \$500,000 per year for at least five years to the County's Water and Sanitation Department, and then "funds not to exceed" \$2,000,000 for a new interchange on Interstate Highway 26, with amounts for the interchange determined annually thereafter. The remaining funds, if any, are distributed among the taxing entities, including the County again and finally the school district, by the percentage of millage.

There is no legal impediment to the County's expansion of the multi-county park to include any existing or new FILOT or property taxpayer or using whatever amount of multi-county park revenue the County Council deems appropriate to pay for county infrastructure anywhere in the county. It is hard to imagine a more clear subordination of school funding to other governmental purposes. The General Assembly has delegated to county councils the authority to use an alternative financing system that uses the school district's power to tax for school purposes to generate the revenue to fund the construction of federal, state and county roads, water and sewer systems, and other county improvements. This curtails school resources and/or increases the property tax burden others must bear, both of which are reflected in the per pupil revenue and tax rates

shown in the tables in Appendix pages 1 and 2. The impact of decisions by one county council is felt not just within the countywide school district, but within the statewide school system.

F. Special Legislation and School Resources

Another financially destabilizing and geographically haphazard feature of the General Assembly's system of public education is the multiplicity of arrangements for local school operating budget and taxing authority. "[T]he manner in which school district budgets are formulated and approved continues to vary county by county." *Bd. of Trs. of Sch. Dist. of Fairfield County v. State*, 395 S.C. 276, 295, 718 S.E.2d 210, 220 (2011), reh'g denied (Oct. 20, 2011) (Toal, J., dissenting). Whether any particular one is constitutional or not, as debated by this Court in *Fairfield County*, in the aggregate this situation contributes to a geographic lottery of educational opportunity. For example, by its terms, the millage cap of Section 6-1-320(A) does not apply statewide because subsection (E) provides that a more restrictive limit in local legislation controls any particular district. S.C. Code Ann. § 6-1-320(E); S.C. Act No. 57 of 2007, § 3. As noted over sixty years ago:

[T]he extreme tendency to rely on local laws ... results in a chaotic school program based in many instances on expedience, caprice, or politics rather than on sound educational principles. ... A more serious and absurd situation could hardly be imagined. It is a situation which must be faced realistically and corrected promptly if South Carolina is to have a satisfactory educational program.

South Carolina Education Survey Committee, *Public Schools of South Carolina* at 136 (1948). Faced with the consequences of the general workings of the school finance system described in this Brief, some school district trustees can make limited efforts under § 6-1-320(A) and (B) to mitigate adverse results and sustain opportunities locally,

but others cannot because of special legislation and/or fiscal dependence on a county council that is not part of the Article XI system. *See* S.C. Code Ann. § 6-1-320(E); S.C. Code Ann § 4-9-70; *Moye v. Caughman*, 265 S.C. 140, 143, 217 S.E.2d 36, 37 (1975) ("public education is not the duty of the counties, but of the General Assembly").

G. Sales Taxes

The state's basic sales and use tax must be used "for school purposes only." The four percent tax is "placed to the credit of the general fund of this State and must be used for school purposes only"; a one percent tax must be deposited in the EIA Fund; and a one percent tax must be deposited in the Homestead Exemption Fund. S.C. Code §§ 12-36-2620, 2630 and -2640; § 59-21-1010; §§ 12-36-1110, 1120; and § 11-11-155. Thus, every exemption from or limitation of sales taxes is a loss of revenue otherwise available for distribution to school districts.

The South Carolina Department of Revenue publishes annually a "Tax Legislation Update." (http://www.sctax.org/Tax+Policy/Tax_Manuals-OGCPolicy.htm "South Carolina Legislative Update for 2011" and "Prior Years Legislative Updates"). Each update is replete with new sales tax exemptions, limitations, rebates or holidays. Except for the increase in the general sales and use tax rate in Act 388 of 2006 for the purpose of funding the Homestead Exemption Fund, it is difficult to find an increase in the sales and use tax since 2005. Each reference is to the annual Tax Legislation Update, describing each year's sales tax exemptions, limitations, rebates or holidays:

- 2006: S.C. Information Letter No. 06-17, p. 69-83;
- 2007: S.C. Information Letter No. 07-16, pp. 51-60;
- 2008: S.C. Information Letter No. 08-17, pp. 42-48;
- 2009: S.C. Information Letter No. 09-14, pp. 18-22;
- 2009: S.C. Information Letter No. 09-20, pp. 2-3;
- 2010: S.C. Information Letter No. 10-9, p. 36;

2011: "Tax Legislation Update for 2011," pp. 24-28.

V. CONCLUSION

Amici Curiae submit that the current widely disparate results of the state's system of financing public schools violates the constitutional standard of an opportunity for each child in the state to receive a "minimally adequate" education.

Perhaps the State will convince this Court that the children in the eight plaintiff school districts are provided with a "minimally adequate" education. Yet there are ten times as many school districts as there are plaintiffs, and there is no rational explanation for how their children are treated by a single General Assembly with a single mandate, now in its second decade, to make provision for *all* the school children of the State. Even if this Court is inclined to find that a minimally adequate education has been provided to the plaintiffs on the record before the Court, the Court is not in a position to say categorically that the State school finance system provides any kind of guarantee that each child in the State is minimally provided for, or treated better for any rational reason, by these arrangements. Regardless of which party prevails in this case, *Amici Curiae* believe that the Court should not, and essentially cannot upon this record, put a blanket constitutional imprimatur on the current school funding system as applied to the entire state.

Our precedents say a "decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 332 S.E.2d 539 (Ct. App. 1985). Our school financing system, particularly as affected by the recent tax policy changes summarized above, has all of these defects.

While each separate law described in this brief may have its own explanation and constitutional justification standing alone, the school finance system is composed of the whole group of laws. The system of school finance must be judged by its overall results, not its individual components. The core problem with the state's system is that taxable property value is the critical component of per pupil revenue, but taxable property value for school purposes has no consistent statewide meaning. State law, exacerbated by the changes since 2005 described in this brief, has created a system condemning many students to one-half of the revenue of other students, while taxpayers in some districts pay three-times the tax rates of other taxpayers. Simply put, funding educational opportunity is subordinate to other objectives of state and county government.

Amici Curiae do not argue that any of these individual laws are unconstitutional. Rather, the school finance system developed over time by the General Assembly is arbitrary and does not meet the constitutional standard of a statewide system that offers the opportunity for each child, regardless of where they live, to receive a minimally adequate educational opportunity. State and local revenue for school operations is now disconnected from the purposes and goals of public education.

The General Assembly is not mandated to do very many things by the State Constitution, but providing for a system of public education is one of them. The public schools are a communal investment in future prosperity. A first-order undertaking of the State mandated by the people through their Constitution ought, at the very least, to be carried out rationally and competently. Regardless of the deference typically accorded to the General Assembly, and regardless of good intentions shown over the years, there is no way one can look at the present system and conclude that a rational actor could have thought the whole thing up as a rational, comprehensive system. There are no guiding principles to explain the widespread disparities.

The State Seal speaks to our situation. We are not *Animus Opibusque Parati* (Prepared in Mind and Resources); the reality is much closer to *Dum Spiro Spero* (While I Breathe I Hope) – a hope which is now focused upon this Court and this case.

Respectfully submitted,

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Columbia, South Carolina

Revenue per ADM PK-12		Revenue per Weighted Pupil Units		Operating Millage Rates	
School District	2009-10	School District	2009-10	School District	2009-10
Fairfield	\$11,189	Fairfield	\$8,700	Hampton 2	302.0
Richland 1	\$10,534	Richland 1	\$8,275	Lexington 4	267.3
McCormick	\$10,135	McCormick	\$8,181	Clarendon Three	259.6
Dorchester Four	\$9,665	Dorchester Four	\$7,700	Bamberg Two	258.9
Allendale	\$9,505	York 2	\$7,598	Allendale	256.0
York 2	\$9,309	Allendale	\$7,553	Lexington 3	251.9
Beaufort	\$9,192	Beaufort	\$7,422	Richland 2	250.3
Hampton 2	\$8,607	Calhoun	\$6,881	Bamberg One	246.8
Calhoun	\$8,574	Bamberg Two	\$6,811	Lexington 1	242.0
Spartanburg 7 **	\$8,560	Hampton 2	\$6,662	Dorchester Four	238.7
Bamberg Two	\$8,555	Spartanburg 7	\$6,657	Spartanburg 3	232.2
Orangeburg 5	\$8,443	Orangeburg 5	\$6,654	Richland 1	231.4
Lexington 3	\$8,343	Lexington 3	\$6,606	Florence Five	226.1
Lexington 5	\$8,220	Spartanburg 5	\$6,557	Orangeburg 5	224.3
Spartanburg 5	\$8,187	Lexington 5	\$6,530	Greenwood 51	217.3
Oconee	\$7,974	Charleston	\$6,386	Lexington 5	212.5
Horry	\$7,944	Richland 2	\$6,362	Fairfield	203.1
Spartanburg 3	\$7,941	Greenwood 52	\$6,334	Hampton 1	202.0
Richland 2	\$7,901	Oconee	\$6,289	Spartanburg 1	199.8
Charleston	\$7,863	Horry	\$6,245	Spartanburg 5	198.8
Anderson Four	\$7,769	Spartanburg 3	\$6,232	Orangeburg 3	198.0
Greenwood 52	\$7,747	Lexington 1	\$6,171	Spartanburg 7 **	197.2
Lexington 1	\$7,668	Anderson Four	\$6,114	Newberry	194.0
Marion 7	\$7,615	Georgetown	\$6,070	Marion 7	193.0
Georgetown	\$7,545	Jasper	\$6,061	Spartanburg 4	191.0
Orangeburg 3	\$7,524	Orangeburg 3	\$5,876	Edgefield	188.7
Jasper	\$7,458	Newberry	\$5,823	Marlboro	185.3
Newberry	\$7,338	Spartanburg 1	\$5,761	York 1	184.6
Bamberg One	\$7,302	Bamberg One	\$5,731	Chester	182.2
Darlington	\$7,228	Darlington	\$5,703	Anderson Two	180.9
Spartanburg 1	\$7,191	Marion 7	\$5,673	York 2	177.0
Clarendon One	\$7,158	SC Average	\$5,658	Spartanburg 2	176.3
Barnwell 19	\$7,153	Barnwell 19	\$5,630	Florence Three	174.0
SC Average	\$7,098	Clarendon One	\$5,611	Florence Two	173.9
Florence One	\$7,047	York 4	\$5,573	Barnwell 45	173.0
Lexington 2	\$7,031	Florence One	\$5,530	Florence One	171.7
York 1	\$6,901	Lexington 2	\$5,518	SC Average	171.7
York 3	\$6,875	Chester	\$5,515	Abbeville	170.8
Abbeville	\$6,861	York 1	\$5,496	Anderson Five	169.6
Spartanburg 6	\$6,858	Spartanburg 6	\$5,477	Chesterfield	169.1
Edgefield	\$6,846	York 3	\$5,473	Orangeburg 4	169.0
York 4	\$6,840	Hampton 1	\$5,415	Barnwell 29	168.7
Greenwood 51	\$6,840	Edgefield	\$5,408	Darlington	168.7
Chester	\$6,837	Abbeville	\$5,398	York 4	168.4
Marlboro	\$6,684	Greenwood 51	\$5,390	York 3	167.9
Hampton 1	\$6,652	Cherokee	\$5,383	Cherokee	166.9
Orangeburg 4	\$6,648	Orangeburg 4	\$5,324	Greenwood 50	165.5
Cherokee	\$6,627	Marlboro	\$5,273	Dorchester Two	165.0
Berkeley	\$6,577	Berkeley	\$5,228	Laurens 55	161.5
Anderson Five	\$6,549	Anderson Five	\$5,172	Laurens 56	161.5
Barnwell 45	\$6,519	Greenwood 50	\$5,166	Marion 1	160.0
Lexington 4	\$6,516	Spartanburg 2	\$5,116	Marion 2	160.0
Williamsburg	\$6,506	Barnwell 45	\$5,115	Anderson Three	159.8
Greenwood 50	\$6,433	Saluda	\$5,092	Barnwell 19	159.3
Saluda	\$6,352	Lexington 4	\$5,074	Spartanburg 6	158.6
Spartanburg 2	\$6,349	Williamsburg	\$5,018	Anderson Four	158.1
Laurens 56	\$6,287	Chesterfield	\$5,017	Kershaw	153.8
Lee	\$6,275	Kershaw	\$5,002	Sumter 2	153.5
Florence Three	\$6,251	Aiken	\$4,997	Lexington 2	148.9
Florence Four	\$6,247	Florence Four	\$4,993	Lee	148.0
Kershaw	\$6,237	Spartanburg 4	\$4,978	Sumter 17	147.7
Spartanburg 4	\$6,217	Lee	\$4,967	Berkeley	137.9
Chesterfield	\$6,207	Lancaster	\$4,902	Aiken	137.5
Laurens 55	\$6,196	Laurens 56	\$4,881	Dillon One	136.3
Aiken	\$6,181	Laurens 55	\$4,870	Dillon Two	136.3
Colleton	\$6,161	Colleton	\$4,869	Dillon Three	136.3
Lancaster	\$6,134	Dorchester Two	\$4,862	Florence Four	135.1
Anderson Three	\$6,115	Florence Three	\$4,857	Anderson One	133.6
Barnwell 29	\$6,076	Barnwell 29	\$4,843	Lancaster	133.5
Marion 2	\$6,040	Anderson Three	\$4,778	Williamsburg	132.0
Dorchester Two	\$6,039	Sumter 17	\$4,758	Calhoun	129.0
Union	\$6,008	Greenville	\$4,755	Jasper	129.0
Anderson Two	\$5,982	Marion 2	\$4,700	McCormick	127.9
Greenville	\$5,961	Union	\$4,698	Greenwood 52	125.4
Sumter 17	\$5,951	Pickens	\$4,685	Saluda	123.9
Pickens	\$5,849	Anderson Two	\$4,617	Union	119.9
Sumter 2	\$5,781	Sumter 2	\$4,599	Clarendon Two	119.3
Marion 1	\$5,778	Clarendon Three	\$4,564	Horry	119.3
Florence Five	\$5,730	Marion 1	\$4,539	Greenville	114.2
Clarendon Three	\$5,711	Dillon One	\$4,430	Clarendon One	113.3
Clarendon Two	\$5,703	Clarendon Two	\$4,411	Oconee	111.4
Dillon One	\$5,619	Anderson One	\$4,408	Pickens	109.0
Florence Two	\$5,593	Florence Five	\$4,369	Colleton	104.4
Anderson One	\$5,486	Dillon Two	\$4,323	Georgetown	98.9
Dillon Two	\$5,325	Florence Two	\$4,315	Charleston	98.7
Dillon Three	\$5,300	Dillon Three	\$4,268	Beaufort	90.3

SCSBA/SCASA Education Finance Restructuring Project
Data: FY:2009-10, Tax Year:2009

School District	Revenue per	Revenue per	Operating
	Weighted Pupil Units 2009-10.	ADM PK-12. 2009-10	Millage Rates 2009-10
Abbeville:	\$5,398	\$6,861	170.8
Alken	\$4,997	\$6,181	137.5
Allendale	\$7,553	\$9,505	256.0
Anderson One	\$4,408	\$5,486	133.6
Anderson Two	\$4,617	\$5,982	180.9
Anderson Three	\$4,778	\$6,115	159.8
Anderson Four	\$6,114	\$7,769	158.1
Anderson Five	\$5,172	\$6,549	169.6
Bamberg One	\$5,731	\$7,302	246.8
Bamberg Two	\$6,811	\$8,555	258.9
Barnwell 19	\$5,630	\$7,153	159.3
Barnwell 29	\$4,843	\$6,076	168.7
Barnwell 45	\$5,115	\$6,519	173.0
Beaufort	\$7,422	\$9,192	90.3
Berkeley	\$5,228	\$6,577	137.9
Calhoun	\$6,881	\$8,574	129.0
Charleston	\$6,386	\$7,863	98.7
Cherokee	\$5,383	\$6,627	166.9
Chester	\$5,515	\$6,837	182.2
Chesterfield	\$5,017	\$6,207	169.1
Clarendon One	\$5,611	\$7,158	113.3
Clarendon Two	\$4,411	\$5,703	119.3
Clarendon Three	\$4,564	\$5,711	259.6
Colleton	\$4,869	\$6,161	104.4
Darlington	\$5,703	\$7,228	168.7
Dillon One	\$4,430	\$5,619	136.3
Dillon Two	\$4,323	\$5,325	136.3
Dillon Three	\$4,268	\$5,300	136.3
Dorchester Two	\$4,862	\$6,039	165.0
Dorchester Four	\$7,700	\$9,665	238.7
Edgefield	\$5,408	\$6,846	188.7
Fairfield	\$8,700	\$11,189	203.1
Florence One	\$5,530	\$7,047	171.7
Florence Two	\$4,315	\$5,593	173.9
Florence Three	\$4,857	\$6,251	174.0
Florence Four	\$4,993	\$6,247	135.1
Florence Five	\$4,369	\$5,730	226.1
Georgetown	\$6,070	\$7,545	98.9
Greenville	\$4,755	\$5,961	114.2
Greenwood 50	\$5,166	\$6,433	165.5
Greenwood 51	\$5,390	\$6,840	217.3
Greenwood 52	\$6,334	\$7,747	125.4
Hampton 1	\$5,415	\$6,652	202.0
Hampton 2	\$6,662	\$8,607	302.0
Horry	\$6,245	\$7,944	119.3
Jasper	\$6,061	\$7,458	129.0
Kershaw	\$5,002	\$6,237	153.8
Laconia	\$4,902	\$6,134	133.5
Laurens 55	\$4,870	\$6,196	161.5
Laurens 56	\$4,881	\$6,287	161.5
Lee	\$4,967	\$6,275	148.0
Lexington 1	\$6,171	\$7,668	242.0
Lexington 2	\$5,518	\$7,031	148.9
Lexington 3	\$6,606	\$8,343	251.9
Lexington 4	\$5,074	\$6,516	267.3
Lexington 5	\$6,530	\$8,220	212.5
McCormick	\$8,181	\$10,135	127.9
Marion 1	\$4,539	\$5,778	160.0
Marion 2	\$4,700	\$6,040	160.0
Marion 7	\$5,673	\$7,615	193.0
Marlboro	\$5,273	\$6,684	185.3
Newberry	\$5,823	\$7,338	194.0
Oconee	\$6,289	\$7,974	111.4
Orangeburg 3	\$5,876	\$7,524	198.0
Orangeburg 4	\$5,324	\$6,648	169.0
Orangeburg 5	\$6,654	\$8,443	224.3
Pickens	\$4,685	\$5,849	109.0
Richland 1	\$8,275	\$10,534	231.4
Richland 2	\$6,362	\$7,901	250.3
Saluda	\$5,092	\$6,352	123.9
Spartanburg 1	\$5,761	\$7,191	199.8
Spartanburg 2	\$5,116	\$6,349	176.3
Spartanburg 3	\$6,232	\$7,941	232.2
Spartanburg 4	\$4,978	\$6,217	191.0
Spartanburg 5	\$6,557	\$8,187	198.8
Spartanburg 6	\$5,477	\$6,858	158.6
Spartanburg 7	\$6,657	\$8,560	197.2
Sumter 2	\$4,599	\$5,781	153.5
Sumter 17	\$4,758	\$5,951	147.7
Union	\$4,698	\$6,008	119.9
Williamsburg	\$5,018	\$6,506	132.0
York 1	\$5,496	\$6,901	184.6
York 2	\$7,598	\$9,309	177.0
York 3	\$5,473	\$6,875	167.9
York 4	\$5,573	\$6,840	168.4
SC Average	\$5,658	\$7,098	171.7
Minimum (Dillon 3)	\$4,268	\$5,300	90.3 (Beaufort)
Maximum (Fairfield)	\$8,700	\$11,189	302.0 (Hampton 2)

InSite 2009-10	
School District	Per Pupil Revenue
Abbeville	\$9,702
Aiken	\$7,537
Allendale	\$12,543
Anderson Five	\$8,356
Anderson Four	\$9,785
Anderson One	\$6,997
Anderson Three	\$8,498
Anderson Two	\$7,995
Bamberg One	\$9,751
Bamberg Two	\$11,513
Bamwell 19	\$11,525
Bamwell 29	\$9,627
Bamwell 45	\$8,821
Beaufort	\$10,606
Berkeley	\$8,332
Calhoun	\$11,506
Charleston	\$9,279
Charter School District	\$217
Cherokee	\$8,294
Chester	\$8,823
Chesterfield	\$8,513
Clarendon One	\$12,247
Clarendon Three	\$8,452
Clarendon Two	\$7,973
Colleton	\$8,818
Darlington	\$8,780
Dillon One	\$8,891
Dillon Three	\$7,356
Dillon Two	\$8,532
Dorchester Four	\$11,826
Dorchester Two	\$7,790
Edgefield	\$8,080
Fairfield	\$12,450
Florence Five	\$9,865
Florence Four	\$10,515
Florence One	\$9,221
Florence Three	\$10,524
Florence Two	\$8,529
Georgetown	\$9,739
Greenville	\$7,662
Greenwood 50	\$8,726
Greenwood 51	\$9,824
Greenwood 52	\$8,744
Hampton One	\$10,343
Hampton Two	\$14,159
Horry	\$9,944
Jasper	\$10,351
Kershaw	\$8,567
Lancaster	\$8,820
Laurens 55	\$8,028
Laurens 56	\$9,771
Lee	\$9,657
Lexington Five	\$10,371
Lexington Four	\$8,820
Lexington One	\$9,006
Lexington Three	\$10,768
Lexington Two	\$9,033
Marion One	\$9,059
Marion Seven	\$13,273
Marion Two	\$9,750
Marlboro	\$9,777
McCormick	\$12,692
Newberry	\$9,901
Oconee	\$9,671
Orangeburg Five	\$11,427
Orangeburg Four	\$8,890
Orangeburg Three	\$10,750
Pickens	\$7,805
Richland One	\$12,360
Richland Two	\$9,999
Saluda	\$9,245
Spartanburg Five	\$8,877
Spartanburg Four	\$7,482
Spartanburg One	\$9,227
Spartanburg Seven	\$11,165
Spartanburg Six	\$8,655
Spartanburg Three	\$9,938
Spartanburg Two	\$7,622
Sumter 17	\$8,611
Sumter Two	\$8,332
Union	\$8,298
Williamsburg	\$10,838
York Four	\$8,270
York One	\$8,875
York Three	\$8,887
York Two	\$9,828
State Average	\$9,008

InSite 2009-10	
School District	Per Pupil Revenue
Hampton Two	\$14,159
Marion Seven	\$13,273
McCormick	\$12,692
Allendale	\$12,543
Fairfield	\$12,450
Richland One	\$12,360
Clarendon One	\$12,247
Dorchester Four	\$11,826
Bamwell 19	\$11,525
Bamberg Two	\$11,513
Calhoun	\$11,506
Orangeburg Five	\$11,427
Spartanburg Seven	\$11,165
Williamsburg	\$10,838
Lexington Three	\$10,768
Orangeburg Three	\$10,750
Beaufort	\$10,606
Florence Three	\$10,524
Florence Four	\$10,515
Lexington Five	\$10,371
Jasper	\$10,351
Hampton One	\$10,343
Richland Two	\$9,999
Horry	\$9,944
Spartanburg Three	\$9,938
Newberry	\$9,901
Florence Five	\$9,865
York Two	\$9,828
Greenwood 51	\$9,824
Anderson Four	\$9,785
Marlboro	\$9,777
Laurens 56	\$9,771
Bamberg One	\$9,751
Marion Two	\$9,750
Georgetown	\$9,739
Abbeville	\$9,702
Oconee	\$9,671
Lee	\$9,657
Bamwell 29	\$9,627
Charleston	\$9,279
Saluda	\$9,245
Spartanburg One	\$9,227
Florence One	\$9,221
Marion One	\$9,059
Lexington Two	\$9,033
State Average	\$9,008
Lexington One	\$9,006
Dillon One	\$8,891
Orangeburg Four	\$8,890
York Three	\$8,887
Spartanburg Five	\$8,877
York One	\$8,875
Chester	\$8,823
Bamwell 45	\$8,821
Lancaster	\$8,820
Lexington Four	\$8,820
Colleton	\$8,818
Darlington	\$8,780
Greenwood 52	\$8,744
Greenwood 50	\$8,726
Spartanburg Six	\$8,655
Sumter 17	\$8,611
Kershaw	\$8,567
Dillon Two	\$8,532
Florence Two	\$8,529
Chesterfield	\$8,513
Anderson Three	\$8,498
Clarendon Three	\$8,452
Anderson Five	\$8,356
Berkeley	\$8,332
Sumter Two	\$8,332
Union	\$8,298
Cherokee	\$8,294
York Four	\$8,270
Edgefield	\$8,080
Laurens 55	\$8,028
Anderson Two	\$7,995
Clarendon Two	\$7,973
Pickens	\$7,805
Dorchester Two	\$7,790
Greenville	\$7,662
Spartanburg Two	\$7,622
Aiken	\$7,537
Spartanburg Four	\$7,482
Dillon Three	\$7,356
Anderson One	\$6,997
Charter School District	\$217

ORDINANCE NO: 12-04-09

AN ORDINANCE PROVIDING FOR THE ALLOCATION OF REVENUES GENERATED BY THE BERKELEY/WILLIAMSBURG JOINT INDUSTRIAL AND BUSINESS PARK; REPEALING ORDINANCE NO: 96-1-2, AS AMENDED, IN ITS ENTIRETY; AND REPEALING ALL RESOLUTIONS PERTAINING TO THE ALLOCATION OF REVENUES GENERATED BY THE JOINT INDUSTRIAL AND BUSINESS PARK IN THEIR ENTIRETY

NOW, THEREFORE, BE IT ORDAINED by the Berkeley County Council in a meeting duly assembled that:

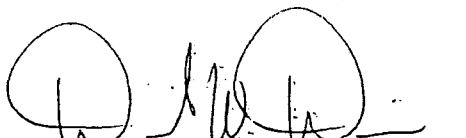
Section 1. After making provision for the one percent (1%) due to Williamsburg County, the next five percent (5%) of all sums collected from the fee-in-lieu of ad valorem property taxes shall be deposited upon receipt by the County in an economic development fund and used for economic development purposes of the County. Of the remaining funds, Five Hundred Thousand Dollars (\$500,000) shall be allocated to the Berkeley County Water and Sanitation Department until such time as a total of Two Million Five Hundred Twenty-Seven Thousand, Three Hundred Ten Dollars (\$2,527,310) has been transferred. In addition, funds not to exceed Two Million Dollars (\$2,000,000) shall be set aside for the construction of the Sheep Island Interchange. The annual amount required for the construction of the Sheep Island Interchange shall be determined annually by a resolution of County Council. The amounts remaining shall be paid to each of the Berkeley County taxing entities in the same percentage as is equal to the each taxing entity's percentage of the millage being levied in the then current tax year for property tax purposes.

Section 2. All ordinances, portions of ordinances, and resolutions in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall take effect July 1, 2012.

ADOPTED this 23rd day of April, 2012.

BERKELEY COUNTY, SC



Daniel W. Davis, Chairman
Berkeley County Council

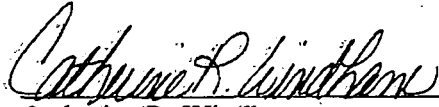
Certified True and Correct Copy of Original Record




Clerk to Council
County Council Berkeley County SC

12-04-09

ATTEST:


Catherine R. Windham,
Interim Clerk of County Council

Approved as to form:


Nicole Scott Ewing,
County Attorney

READINGS:

First Reading:	February 27, 2012
Second Reading:	March 26, 2012
Public Hearing:	April 23, 2012
Third Reading:	April 23, 2012

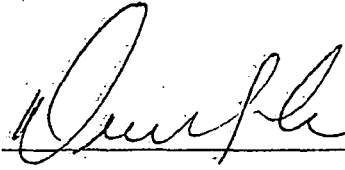
12-04-09

MEMBERS OF COUNTY COUNCIL



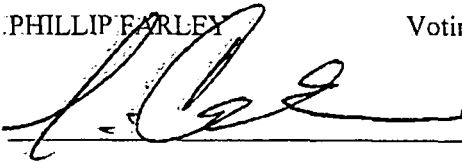
PHILLIP FARLEY

Voting AUE



DENNIS L. FISH

Voting NAY



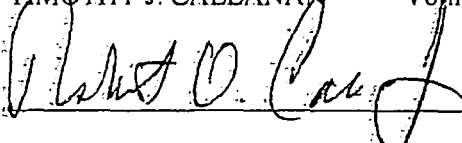
TIMOTHY J. CALLANAN

Voting NAY



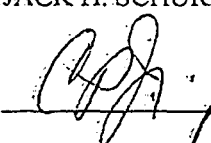
JACK H. SCHURLKNIGHT

Voting AUE



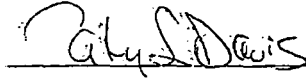
ROBERT O. CALL, JR.

Voting AUE



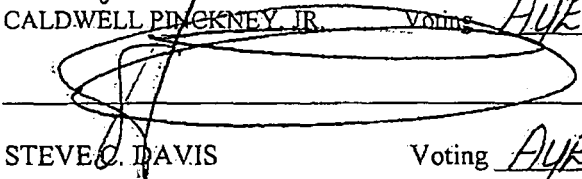
CALDWELL PINKNEY, JR.

Voting AUE



CATHY S. DAVIS

Voting NAY



STEVE C. DAVIS

Voting AUE