

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-01638

RECEIVED

FEB 08 2018

S.C. SUPREME COURT

RECEIVED

FEB 08 2018

S.C. SUPREME COURT

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

The South Carolina House of Representatives, The South Carolina Senate, The Honorable James H. "Jay" Lucas, as Speaker of the South Carolina House of Representatives, The Honorable Hugh K. Leatherman, in his Capacity as President Pro Tempore of the South Carolina Senate, and The State of South Carolina, ... Respondents.

Other Counsel of Record:

Alan Wilson, Atty. Gen.
Robert D. Cook, Solicitor Gen.
J. Emory Smith, Jr., Dep. Sol. Gen.
PO Box 11549
Columbia, SC 29211

Kenneth M. Moffett
Assistant Clerk, SC Senate
PO Box 142
Columbia, SC 29202

Matthew A. Abee
Allen Mattison Bogan
PO Box 11070
Columbia, SC 29211

Paul D. Harrill

Bradley S. Wright
PO Box 11390
Columbia, SC 29211

RECORD ON APPEAL

THE CARPENTER LAW FIRM, P.C

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellants

Matthew A. Abee
Kenneth M. Moffett
Allen Mattison Bogan
PO Box 11070
Columbia, SC 29211

Paul D. Harrill
Robert L. Widner
Bradley S. Wright
PO Box 11390
Columbia, SC 29211

Index

1. Judgment and Order filed July 6, 2017.....	1
2. Order granting motion to reform caption entered July 6, 2017	11
3. The Supreme Court of South Carolina Order dated February 13, 2017 Appellate Case No. 2016-002160	13
4. Court of Appeals Order filed December 4, 2017, transferring case to South Carolina Supreme Court	15
5. Summons and Complaint filed January 27, 2017.....	17
6. State of South Carolina Motion to Dismiss served March 17, 2017.	24
7. Memorandum in Support of State’s Motion to Dismiss	26
8. House of Representatives Motion to Dismiss served March 3, 2017	32
9. Memorandum in Support of Motion to Dismiss of Defendants The S.C. House of Representatives and The Hon. James H. “Jay” Lucas, as Speaker of the House, filed June 7, 2017	33
10. Senate Motion to Dismiss served March 14, 2017	42
11. Plaintiff’s Memorandum of Law in Opposition to the Motions to Dismiss.	46
12. Notice of Appeal Dated July 25, 2017.....	64
13. Trial Transcript	67
14. 2016 S.C. Acts 275	118
15. Certificate of Counsel	167
16. Certificate of Service	168

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017CP4000484

South Carolina Public Interest Foundation

S C House Of Representatives

Edward D Sloan Jr

S C Senate

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 7 July 2017 to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter

Paul D. Harrill
Matthew A. Abee
J. Emory Smith Jr.

Michael J. Anzelmo
Robert D. Cook

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The South Carolina Public Interest
Foundation and Edward D. Sloan, Jr.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

The South Carolina House of
Representatives; The South Carolina
Senate; the Honorable James H. "Jay"
Lucas, as Speaker of the South Carolina
House of Representatives; the Honorable
Hugh K. Leatherman, Sr., in his capacity
as President Pro Tempore of the South
Carolina Senate; and the State of South
Carolina,

Defendants.

Civil Action No. 2017-CP-40-00484

Order Granting Motion to Dismiss

RICHLAND COUNTY
FILED
JUL -6 PM 12:13
JENNIFER W. MCBRIDE
C.C.P. & G.S.

On January 27, 2017, Plaintiffs South Carolina Public Interest Foundation and Edward D. Sloan, Jr. filed their complaint for Declaratory Judgment claiming that Act 275 of 2016 ("Act 275") violates the one subject rule of the South Carolina Constitution. On March 3, 2017, the South Carolina House of Representatives and the Honorable James H. "Jay" Lucas, as Speaker of the South Carolina House of Representatives timely filed their motion to dismiss under Rule 12(b)(6), SCRCPP. On March 14, 2017, the South Carolina Senate and the Honorable Hugh K. Leatherman, Sr., in his capacity as President *Pro Tempore* of the South Carolina Senate¹ timely filed their motion to dismiss under Rule 12(b)(6), SCRCPP. On March 21, 2017, the Honorable

¹ The Senate simultaneously filed its motion to reform the caption, seeking to substitute the Honorable Hugh K. Leatherman for Governor Henry D. McMaster. This Motion has been granted by separate order and the caption above properly reflects the parties to this action.

Alan Wilson on behalf of the State of South Carolina timely filed its motion to dismiss under Rules 12(b)(1) and (6), SCRCP. The Court held a hearing on the motions on June 13, 2017. Present at the hearing was James G. Carpenter of the Carpenter Law Firm, PC on behalf of Plaintiffs, Michael J. Anzelmo and Matthew A. Abbe of Nelson Mullins Riley & Scarborough LLP on behalf of the South Carolina Senate and President *Pro Tempore* Leatherman, Paul D. Harrill and Bradley S. Wright of McNair Law Firm, P.A. for the South Carolina House of Representatives and Speaker Lucas, and Deputy Solicitor General J. Emory Smith, Jr. on behalf of the State of South Carolina.

Defendants request the Court to dismiss the complaint due to Plaintiffs' failure to properly plead any valid basis for the standing necessary to maintain the action, and Plaintiffs' failure to plead facts to sufficiently state a cause of action. After review of the pleadings, the parties' filing, and the arguments of counsel, the Court grants Defendants' motions and dismisses the action as set forth herein.

Plaintiffs Lack Standing

"[S]tanding cannot be granted to every individual who is disgruntled by a governmental decision or policy; otherwise, the government would be forced to defend a constant barrage of lawsuits questioning its every move." Newman v. Richland Cnty. Historic Pres. Com'n, 325 S.C. 79, 79, 480 S.E.2d 72, 75 (1997). "Standing to sue is a fundamental requirement in instituting any action." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). "Under our current jurisprudence, there are three ways in which a party can acquire this fundamental threshold of standing: (1) by statute; (2) through what is called 'constitutional standing'; and (3) under the public importance exception to standing." Bodman v. State, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013).

This Court finds that Plaintiffs failed to plead standing under any of the three recognized grounds. Plaintiffs do not allege that they possess standing under any statute. See Complaint ¶¶ 1–14. Thus, Plaintiffs cannot acquire standing under this rubric.

Plaintiffs instead allege that they “possess standing as a citizen, resident, and taxpayer” of South Carolina. See Complaint ¶ 7. This Court finds that Plaintiffs’ status as citizen taxpayers does not establish constitutional standing as a matter of law.

The Supreme Court has unequivocally foreclosed the ability to obtain constitutional standing via a plaintiff’s status as a taxpayer. See ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340–41 (2008 (“[Plaintiff] further relies on its status as a taxpayer to acquire standing. The injury to [plaintiff], however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he ‘suffers in some indefinite way in common with people generally.’”); Bodman, 403 S.C. at 66–67, 742 S.E.2d at 366 (“In ATC, we unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer”); Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012). Thus, this Court finds that Plaintiffs’ status as a taxpayer is insufficient to provide a basis to possess the standing necessary to maintain this action.

Plaintiffs further claim application of the public importance exception to standing by alleging that they “possess standing based on the great public importance of the issues they raise” in the Complaint. See Complaint ¶ 6. This Court finds that this bare statement, however, fails to plead the elements necessary for application of the public importance exception in this matter.

The Supreme Court in analyzing and discussing the public importance exception has recognized that the key for application of this exception is a need for "future guidance." Bodman, 403 S.C. at 68, 742 S.E.2d at 366; ATC, 380 S.C. at 199, 669 S.E.2d at 341. The Supreme Court noted that "[i]t is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." ATC, 380 S.C. at 199, 669 S.E.2d at 341. In its most recent analysis of the exception, the Supreme Court reiterated this need for future guidance as the seminal aspect of the public importance exception, stating that "standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." Bodman, 403 S.C. at 68, 742 S.E.2d at 366.

This Court finds that Plaintiffs do not adhere to the Supreme Court's pronouncement because they fail to plead that this matter requires "resolution for future guidance." See Complaint ¶ 6. Thus, this Court finds that Plaintiffs do not plead the required element necessary to allow standing under the public importance exception.

Based on the above, Plaintiffs have failed to properly plead a valid basis for standing necessary for Plaintiffs to maintain this action. Joytime, 338 S.C. at 639, 528 S.E.2d at 649 ("Standing to sue is a fundamental requirement in instituting an action."). Therefore, Plaintiffs lack standing and this Court grants the motion to dismiss.

Plaintiffs have failed to state a claim under the One Subject Rule

Alternatively, as discussed below, the Court finds and concludes that this matter must be dismissed for Plaintiffs' failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRPC. In considering a motion to dismiss, the Court must accept "well pled facts" as true, but it need not accept "unsupported conclusions" of law. See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 426, 559 S.E.2d 362, 364-65 (Ct. App. 2001). "The motion

must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case.” Gray v. State Farm Auto. Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct. App. 1997). The test for sufficiency of a declaratory judgment action “is not whether the complaint shows that the plaintiff is entitled to a declaration of rights according to his theory, but whether he is entitled to a declaration of rights at all.” See, e.g., Dimukes v. Carletta, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977). This Court finds that Plaintiffs failed to plead facts sufficient to constitute a cause of action under the Declaratory Judgment Act for several primary reasons. As a result, this Court grants the motion to dismiss.

First, this Court finds that Plaintiffs have relied in error upon the holding in South Carolina Public Interest Foundation v. Lucas, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016), as the lynchpin of Plaintiffs’ entire allegation that the Act violates Article III § 17. See Complaint ¶ 10-14. Paragraph 13 of the Complaint states as follows:

The Supreme Court ruled that changing the Governor’s appointment power over the Secretary of Transportation is not “reasonably and inherently related to the raising and spending of tax monies.” South Carolina Public Interest Foundation v. Lucas, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016)

Plaintiffs cannot state a cause of action by merely citing to a legal opinion without alleging facts to support how the opinion applies to the present case. Here, Plaintiffs fail to do so. More importantly, the Lucas opinion is not applicable in this case, because Lucas is limited to cases involving a general appropriations act. This Court finds that Plaintiffs have not alleged that Act 275 relates in any way to the general appropriations act for 2016. In fact, Act 275 is not part of and does not relate in any way to the general appropriations act of 2016. Therefore, Act 275 is not a general appropriations act, and Plaintiffs’ reliance on Lucas is fatal to their pleading.

Second, even if Plaintiffs’ pleading could survive the fatal flaw of relying on Lucas to state a claim and the other failings noted above, the allegations of the Complaint, taken as true at this stage

of the litigation, establish that no controversy exists as to the subject of Act 275. Plaintiffs' Complaint at paragraphs 10, 11, and 12 attempts to summarize Parts I, II and III of the Act. Those three paragraphs read as follows:

10. Part I of Act 275 restructures the governance of the **Department of Transportation** and the State Transportation Infrastructure Bank
11. Part II of Act 275 addresses the funding of the **Department of Transportation** and provides for the issuance of \$2.2 billion of new bond funding for the DOT.
12. Part III makes other structural changes including transferring the Chief Internal Auditor of the **Department of Transportation**, all of his associated support staff, and all associated appropriations to the State Auditor's Office.

(emphasis added). As such, the Complaint plainly states that each section of Act 275 is related to transportation, and Act 275 is not in violation of the one subject rule. Plaintiffs' bare legal conclusion that the Act relates to more than one subject is insufficient to state a claim, and Plaintiffs' own summaries of Act 275, taken in the light most favorable to Plaintiffs, demonstrate that the facts and inferences reasonably deducible from their pleading show that Plaintiffs cannot prevail on any theory of the case.

Third, this Court finds that no justiciable controversy exists because Act 275 relates to only one subject. See, e.g., Dimukes v. Carletta, 269 S.C. 110, 112, 236 S.E.2d 421, 422 (1977) (holding that the test for sufficiency of a declaratory judgment action "is not whether the complaint shows that the plaintiff is entitled to a declaration of rights according to his theory, but whether he is entitled to a declaration of rights at all.")

Article III, § 17 is to be liberally construed so as to uphold an Act if practicable. See, e.g., McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948). Doubtful or close cases are to be resolved in favor of upholding an Act's validity. See, e.g., Alley v. Daniel, 153 S.C. 217, 150 S.E. 691 (1929). Article III, § 17 does not preclude the legislature from dealing with several branches of one general subject in a single act. See, e.g., Keyserling v. Beasley, 322 S.C. 83, 470

S.E.2d 100 (1996). The statute complies with the one-subject rule when “the topics in the body of the act” are “kindred in nature.” South Carolina Pub. Interest Found. v. Harrell, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008). “[A]ll statutes are presumed constitutional and, if possible, will be construed to render them valid.” Curtis v. State, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001). Accordingly, we will not find a statute unconstitutional unless “its repugnance to the Constitution is clear beyond a reasonable doubt.” *Id.* at 570, 549 S.E.2d at 597. Abbeville County School Dist. v. State, 410 S.C. 619, 628, 767 S.E.2d 157, 161 (2014).

Here, this Court finds that Act 275 meets the standards of the “one subject” clause because each section relates directly to or in conjunction with other sections to the subject of improving the state’s transportation infrastructure system. Therefore, the “thing legislated about,” see McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948), the express subject of the Act, is improvement of the State’s transportation infrastructure system. All parts of Act 275 are pertinent to that subject.²

The “one subject” clause does not require the Court to “second guess” the Legislature regarding an Act that clearly pertains to the subject of transportation. Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996). Going beyond the requirements of the Constitution and the authority of this Court, the effect of Plaintiffs’ argument would be to require that the different parts of this Act be fragmented and passed separately. Fortunately, the Constitution does not require such action. As stated in South Carolina Public Service Authority v. Citizens and Southern Nat. Bank of South Carolina, 386 S.E.2d 775, 787, 300 S.C. 142, 162 (1989):

The Court recognized the breadth of this constitutional provision:

² Moreover, the Act itself states that the subject is “improving the state’s transportation infrastructure system.”

[T]here is a marked distinction between the object of a law and the subject of a law. Very few enactments have but one object or purpose in mind....

[T]he constitutional provision here invoked does not preclude the Legislature from dealing with several branches of one general subject in a single Act.

It would be impractical and time-consuming to require the legislature to pass a separate act on every separate branch of a subject."

(quoting *DeLoach v. Scheper* 188 S.C. 21, 28-29, 198 S.E. 2d 409, 412 (1938)).

Therefore, the General Assembly has properly dealt with the subject of transportation in the several parts of Act 275. In another "one subject" case, the Supreme Court stated that it "did not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly." Keyserling v. Beasley, *supra*. The Court stated that it "must . . . follow the law and decisions heretofore set forth in this state. Doing so, [it reached] the inevitable conclusion that the "One-Subject" provision of Article III, § 17 was not violated in [that] case." *Id*. Applying the above standards here, this Court finds that Act 275 is completely consistent with the one subject clause. Plaintiff's challenge to the Act fails.

Although Plaintiffs further argue that the subject of Act 275 is not expressed in the title as required by Article III, § 17, that claim, too, is meritless. This issue was not clearly raised in the Complaint, but even if raised, Act 275 meets the title standards of that article.

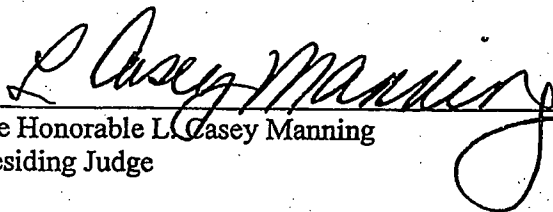
"The purpose of Article III, § 17 is (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the state of the matters with which the General Assembly concerns itself." Sloan v. Wilkins, 362 S.C. 430, 438, 608 S.E.2d 579, 583 (2005); South Carolina Pub. Interest Found. v. Harrell, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008) Article III, § 17 is "complied with if the

title of an act expresses a general subject and the body provides the means to facilitate accomplishment of the general purpose." Harrell, 378 S.C. at 445-46, 663 S.E.2d at 583.

The title to Act 275 clearly apprises the General Assembly of the contents of the Act and informs the people of South Carolina of the matter with which the General Assembly was concerning itself in passing Act 275. The title to Act 275 is replete with references to "Transportation" and matters directly relating to transportation, i.e., "highway fund," "resurfacing program," "road and bridge projects," etc. The title to Act 275 also specifically apprises the General Assembly and informs the people of the state of each statute that will be affected or amended by Act 275. In fact, as noted above, the Act, itself, states that the sections of the Act "relate[] directly to or in conjunction with other sections to the subject of improving the state's transportation infrastructure system as clearly enumerated in the title."

This Court finds that not only have Plaintiffs failed to overcome the presumption that Act 275 is unconstitutional, but this Court also finds that the statute satisfies the standards of art III, § 17. The title of Act 275 complies with the one subject rule and each of the topics in the body of Act 275 are "kindred in nature" and "branches of the general subject" of Act 275—transportation. Therefore, the motions are granted with prejudice pursuant to Rule 12(b)(6), SCRCF. See Dimukes, 269 S.C. at 112, 236 S.E.2d at 422.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Presiding Judge

Columbia, South Carolina

July 6, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The South Carolina Public Interest
Foundation and Edward D. Sloan, Jr.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

The South Carolina House of
Representatives; The South Carolina
Senate; the Honorable James H. "Jay"
Lucas, as Speaker of the South Carolina
House of Representatives; the Honorable
Hugh K. Leatherman, Sr., in his capacity
as President Pro Tempore of the South
Carolina Senate; and the State of South
Carolina,

Defendants.

Civil Action No. 2017-CP-40-00484

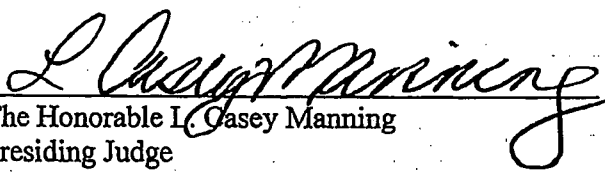
Order Granting the
Motion to Reform the Caption

RICHLAND COUNTY
FILED
2017 JUL -6 PM 12:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Before the Court is the motion of the South Carolina Senate and Senator Hugh K. Leatherman, Sr., in his capacity as President Pro Tempore of the South Carolina Senate, for an order reforming the caption to allow Senator Leatherman to substitute for the Honorable Henry D. McMaster, as President of the South Carolina Senate, in this action. Based on the motion and for good cause shown, this Court grants the motion.

The Court orders that the caption be reformed to remove "the Honorable Henry D. McMaster, as President of the South Carolina Senate" and add the "Honorable Hugh K. Leatherman, Sr., in his capacity as President Pro Tempore of the South Carolina Senate" as the representative of the Senate in this action.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Presiding Judge

Columbia, South Carolina

July 6, 2017

The Supreme Court of South Carolina

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually and on behalf of all others similarly situated, Petitioners,

v.

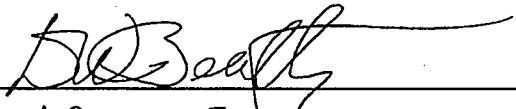
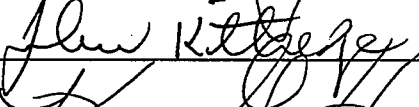
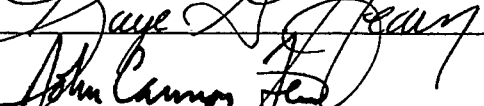
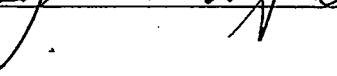
The S.C. House of Representatives, The S.C. Senate, The Hon. James H. "Jay" Lucas, as Speaker of the House, The Hon. Henry D. McMaster, as President of the S.C. Senate, and The State of South Carolina, Respondents.

Appellate Case No. 2016-002160

ORDER

Petitioners request this Court entertain this declaratory judgment action in its original jurisdiction pursuant to Rule 245(a), SCACR. Petitioners seek a declaratory judgment that Act 275 of 2016 relates to more than one subject and therefore violates Article III, § 17 of the South Carolina Constitution, rendering the Act null and void. The Honorable Hugh K. Leatherman, Sr., in his capacity as President Pro Tempore of the South Carolina Senate, moves for leave to intervene as a respondent pursuant to Rule 24(a), SCRCP, and to be substituted for the Honorable Henry D. McMaster, as President of the South Carolina Senate, pursuant to Proviso 91.28 of the General Appropriations Act for 2016-17. The South Carolina Senate filed a return to the petition for original jurisdiction stating it consents to the exercise of original jurisdiction in this matter in the event the Court believes such action is appropriate under Rule 245(a), SCACR. Similarly, the South Carolina House of Representatives consents to the petition for original jurisdiction, but states it views petitioners' claims as meritless and for that reason asks that the case be disposed of in an expedited manner should the Court accept the matter in its original jurisdiction. Finally, the State concurs in the requests that the Court consider this matter in its original jurisdiction and expedite proceedings and in the motion for intervention and substitution of Senator Leatherman.

As an initial matter, we grant Senator Leatherman's request to be substituted for Lieutenant Governor McMaster as the representative of the Senate in this action. However, we deny the petition for original jurisdiction. The motion to expedite is denied as moot.

	C.J.
	J.
	J.
	J.

Columbia, South Carolina

February 13, 2017

cc:

James G. Carpenter, Esquire
Jennifer J. Miller, Esquire
Alan McCrory Wilson, Esquire
Edward Houseal Bender, Esquire
Kenneth M. Moffitt, Esquire
J. Emory Smith, Jr., Esquire
Michael J. Anzelmo, Esquire
Blake Terence Williams, Esquire
Paul D. Harrill, Esquire
Robert L. Widener, Esquire
The Honorable Henry D. McMaster

The South Carolina Court of Appeals

The South Carolina Public Interest Foundation and
Edward D. Sloan, Jr., individually and on behalf of all
others similarly situated, Appellants,

v.

The South Carolina House of Representatives; the South
Carolina Senate; the Honorable James H. "Jay" Lucas, as
Speaker of the South Carolina House of Representatives;
the Honorable Hugh K. Leatherman, Sr., in his capacity
as President Pro Tempore of the South Carolina Senate;
and the State of South Carolina, Respondents.

Appellate Case No. 2017-001638

ORDER

This case is transferred to the Supreme Court pursuant to Rules 203(d)(1)(A)(ii)
and 204(a) of the South Carolina Appellate Court Rules because the principal issue
on appeal appears to be a question of the constitutionality of a law of this state.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

James G. Carpenter, Esquire
Alan McCrory Wilson, Esquire
Matthew A. Abee, Esquire
Paul D. Harrill, Esquire
J. Emory Smith, Jr., Esquire
Bradley Scott Wright, Esquire

FILED
12/4/17

Kenneth M. Moffitt, Esquire
Robert D. Cook, Esquire
Allen Mattison Bogan, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

South Carolina Public Interest Foundation and
Edward D. Sloan, Jr., individually and on behalf
of all others similarly situated)

Plaintiff(s))

vs.)

The S.C. House of Representatives, The S.C.
Senate, The Hon. James H. "Jay" Lucas, as
Speaker of the House, The Hon. Henry D.
McMaster, as President of the S.C. Senate, and
The State of South Carolina,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017 - CP - 40 - 00484

(Please Print)
Submitted By: James G. Carpenter
Address: 819 E. North St., Suite 230
Greenville, SC 29601

SC Bar #: 1136
Telephone #: 864-235-1269
Fax #: 864-331-3083
Other:
E-mail: james.carpenter@carpenterlawfirm.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

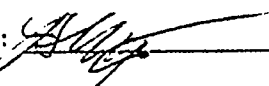
DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Label (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☒ Other (699)
<u>Unconstitutional legislation</u> | | |

Submitting Party Signature: 

Date: January 24, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

South Carolina Public Interest Foundation)
and Edward D. Sloan, Jr., individually, and)
on behalf of all others similarly situated,)
Plaintiffs,)

v.)

The S.C. House of Representatives, The)
S.C. Senate, The Hon. James H. "Jay" Lu-)
cas, as Speaker of the House, The Hon.)
Henry D. McMaster, as President of the)
S.C. Senate, and The State of South Caro-)
lina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 17-CP-40-_____

SUMMONS

JEANETTE W. MCBRIDE
C.C.P. & G.S.

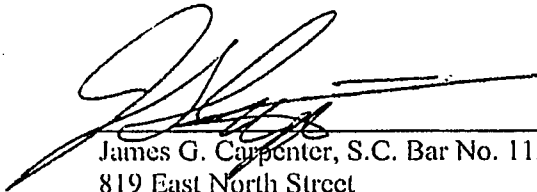
2017 JAN 27 AM 11:10

RICHLAND COUNTY
FILED

TO THE DEFENDANTS:

You are hereby summoned and required to serve upon the attorney at the address below and Answer to the attached Complaint within 30 days of the date of service hereof. If you failed to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

South Carolina Public Interest Foundation)
and Edward D. Sloan, Jr., individually, and)
on behalf of all others similarly situated,)
Plaintiffs,)

v.)

The S.C. House of Representatives, The)
S.C. Senate, The Hon. James H. "Jay" Lu-)
cas, as Speaker of the House, The Hon.)
Henry D. McMaster, as President of the)
S.C. Senate, and The State of South Caro-)
lina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 17-CP-40-_____

**COMPLAINT FOR
DECLARATORY JUDGMENT**

AMETTE W. MCBRIDE
C.C.P. & G.S.

JAN 27 AM 11:10

RICHLAND COUNTY
FILED

Plaintiffs, complaining of the Defendants would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution.
2. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of the State of South Carolina. He brings this action individually on his behalf and on behalf of all others similarly situated.
3. Defendants include the South Carolina House of Representatives, the South Carolina Senate, and the State of South Carolina.
4. Defendants James H. "Jay" Lucas and Henry D. McMaster are officers of the S.C. General Assembly and are named as Defendants in their official capacities.
5. This Court possesses jurisdiction under SCACR 245; the South Carolina Constitution Article III § 17; S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform

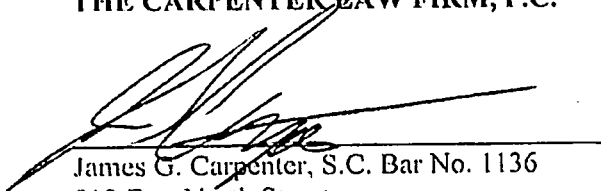
Declaratory Judgment Act; and the following decisions: *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Hurrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Cl. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Cl. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

6. Plaintiffs possess standing based on the great public importance of the issues they raise.
7. Sloan possesses standing as a citizen, resident, taxpayer, and registered elector of the State of South Carolina.
8. S.C. Constitution Article III § 17 states, "Every Act . . . shall relate to but one subject, and that shall be expressed in the title".
9. On June 2, 2016 Defendants enacted Act 275 of 2016.

10. Part I of Act 275 restructures the governance of the Department of Transportation and the State Transportation Infrastructure Bank.
11. Part II of Act 275 addresses the funding of the Department of Transportation and provides for the issuance of \$2.2 billion in new bond funding for the DOT.
12. Part III makes other structural changes including transferring the Chief Internal Auditor of the Department of Transportation, all his associated support staff, and all associated appropriations to the State Auditor's Office.
13. The Supreme Court ruled that changing the Governor's appointment power over the Secretary of Transportation is not "reasonably and inherently related to the raising and spending of tax monies." *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016).
14. Act 275 of 2016 relates to more than one subject, and thereby violates S.C. Constitution Article III § 17.

WHEREFORE, Plaintiffs pray the Court to declare that Act 275 violates the S.C. Constitution, III § 17 and is therefore null and void; to grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and to grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
South Carolina Public Interest Foundation	)	
and Edward D. Sloan, Jr., individually, and	)	
on behalf of all others similarly situated,	)	C/A No. 2017-CP-40-00484
	)	
Plaintiffs,	)	
	)	
v.	)	STATE OF SOUTH CAROLINA'S
	)	MOTION TO DISMISS
	)	
The S.C. House of Representatives, The	)	
S. C. Senate, The Hon. James H. "Jay"	)	
Lucas, as Speaker of the House,	)	
The Hon. Henry D. McMaster, as	)	
President of the S.C. Senate, and The	)	
State of South Carolina,	)	
	)	
Defendants.	)	
	)	

The State of South Carolina moves for the dismissal of the Complaint herein pursuant to Rule 12(b)(1) and (6), SCRCP in that, for reasons including those set forth below, this Court lacks subject matter jurisdiction and Plaintiffs have failed to state facts sufficient to constitute a cause of action:

1. The Plaintiffs lack standing to bring this action. Rules 12(b)(1) and (6).
2. This suit does not present a justiciable controversy. Rules 12(b)(1) and (6).
3. Act 275, 2016 S.C. Acts, does not violate the Constitution. Rule 12(b)(6).

For the foregoing reasons, the State respectfully requests that this case be dismissed.

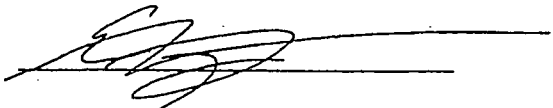
ALAN WILSON
Attorney General

[Signature block continues next page]

[As to foregoing Motion to Dismiss, 2017-CP-40-00484]

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR THE DEFENDANT STATE OF
SOUTH CAROLINA

March 17, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually, and
on behalf of all others similarly situated,

Plaintiffs,

v.

The S.C. House of Representatives, The
S. C. Senate, The Hon. James H. "Jay"
Lucas, as Speaker of the House,
The Hon. Henry D. McMaster, as
President of the S.C. Senate, and The
State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2017-CP-40-00484

**MEMORANDUM IN SUPPORT OF
STATE OF SOUTH CAROLINA'S
MOTION TO DISMISS**

The State of South Carolina submits this Memorandum in Support of its Motion to Dismiss the Complaint herein pursuant to Rule 12(b)(1) and (6), SCRCP. For reasons discussed below, this Court lacks subject matter jurisdiction and Plaintiffs have failed to state facts sufficient to constitute a cause of action.

INTRODUCTION AND BACKGROUND

Without standing and, therefore, without subject matter jurisdiction of this case, Plaintiffs challenge the constitutionality of Act No. 275, 2016 S.C. Acts, as violating S.C. Const. art. III, §17 which requires that "[e]very Act . . . having the force of law shall relate to but one subject, and that shall be expressed in the title." This challenge is baseless because the Act relates

entirely to transportation as demonstrates by its encompassing the following parts:

Part I “Governing The Improvement of the State’s Transportation Infrastructure System” including appointment and duties of the DOT Commission and a Joint Transportation Review Committee, the appointment of the Secretary of Transportation, audits of DOT, and approval of Transportation Infrastructure Bank loans

Part II. Funding the Improvement of the Transportation Infrastructure System including allocation of fees and fines

Part III Transition provisions including provisions for transferring DOT auditing staff to the State Auditor, and a statement that the Act “relates directly to or in conjunction with other sections to the subject of improving the state’s transportation infrastructure system as clearly enumerated in the title.”

Plaintiffs previously petitioned the Supreme Court to hear this case in its original jurisdiction. That Court denied the Petition on February 17, 2017. Plaintiffs then pursued their challenge in the Circuit Court. This Court should now dismiss this action.

ARGUMENT

I

PLAINTIFFS LACK STANDING TO BRING THIS ACTION

The State concurs in the legal arguments regarding standing made by the Senate and Senator Leatherman within their Motion to Dismiss dated March 14, 2017.

II

THIS COURT LACKS SUBJECT MATTER JURISDICTION OF THIS MATTER

Because Plaintiffs lack standing, this Court lacks subject matter jurisdiction of this case.

Lennon v. South Carolina Coastal Council, 498 S.E.2d 906, 907–08, 330 S.C. 414, 417–18 (S.C.App.,1998).¹

III

ACT 275 DOES NOT VIOLATE THE ONE SUBJECT CLAUSE

Art. III, §17 provides that “[e]very Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.” As discussed in *South Carolina Public Interest Foundation v. Harrell*, 663 S.E.2d 52, 54–55, 378 S.C. 441, 445–46 (S.C., 2008):

The purpose of Article III, § 17 is (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the state of the matters with which the General Assembly concerns itself. *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005). See also *Keyserling v. Beasley*, 322 S.C. 83, 470 S.E.2d 100 (1996). Article III, § 17 is to be liberally construed so as to uphold an Act if practicable. *Id.*; *McCollum v. Snipes*, 213 S.C. 254, 49 S.E.2d 12 (1948). Doubtful or close cases are to be resolved in favor of upholding an Act's validity. *Alley v. Daniel*, 153 S.C. 217, 150 S.E. 691 (1929). Article III, § 17 does not preclude the legislature from dealing with several branches of one general subject in a single act. It is complied with if the title of an act expresses a general subject and the body provides the means to facilitate accomplishment of the general purpose. *Keyserling*. However, Article III, section 17 requires that “the topics in the body of the act [be] kindred in nature and hav[e] a legitimate and natural association with the subject of the title,” and that the title conveys “reasonable notice of the subject matter to the legislature and the public.” *Hercules, Inc. v. S.C. Tax*

¹ As stated in *Lennon*:

[S]tanding acts as an element of the constitutional requirement that there be a “case or controversy”; when thus applied, it acts as a limitation on the subject matter jurisdiction of the federal courts. In this context, objections to standing, unlike Rule 17(a) objections, cannot be waived and may be raised by a federal court *sua sponte*. 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1542 (1990) (emphasis added) (footnotes omitted). South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached.

Comm'n, 274 S.C. 137, 141, 262 S.E.2d 45, 47 (1980).

Abrogated as to severability, *Am. Petroleum Inst. v. South Carolina Dep't of Rev.*, 382 S.C. 572, 677 S.E.2d 16 (2009), modified as to severability by *South Carolina Public Interest Foundation v. Lucas*, 786 S.E.2d 124, 126, 416 S.C. 269, 271 (2016); *see also*, *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016).

“As used in this section of the Constitution, ‘subject’ is the thing legislated about, or the matter or matters upon which the legislation operates, to accomplish a definite object, or objects reasonably related one to the other.” *Poulnot v. Cantwell*, 123 S.E. 651 (S.C. 1924). “The purpose of this section is to prevent deception of the public and to prevent insertion of matters not germane to the general subject.” *Dantzler v. Callison*, 94 S.E.2d 177, 185 (S.C. 1956).

As noted in the above quotation from *Harrell*, the one subject clause “is to be liberally construed so as to uphold the Act if practicable. *McCollum v. Snipes*, 213 S.C. 254, 49 S.E.2d 12 (1948). Doubtful or close cases are to be resolved in favor of upholding an Act's validity. *Alley v. Daniel*, 153 S.C. 217, 150 S.E. 691 (1929)” *Keyserling, supra*. As stated in *Dantzler, supra*, “[t]he requirement should not be enforced in any narrow or technical spirit. It was adopted to prevent certain abuses and it should be reasonably and liberally construed on the one hand so as to guard against these abuses, and on the other hand so as not to embarrass or obstruct needed legislation.” (Emphasis added).

The Act at issue is entirely consistent with the one subject clause. “[T]he topics in the body of the act” are “kindred in nature,” *Harrell, supra*, quoting *Hercules*. In fact, the Act, itself, states that “[t]he General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates directly to or in conjunction with other

sections to the subject of improving the state's transportation infrastructure system as clearly enumerated in the title." Therefore, the "thing legislated about" (*McCollum*), the subject of the Act, is improvement of the State's transportation infrastructure system. That subject distinguishes this case from *Lucas, supra*, which found that an Appropriations Act proviso was not germane to that Act in its suspension of a termination / devolution provision regarding the Governor's authority to appoint the Secretary of Transportation, Act 275 is not an Appropriations Act as was the statute in *Lucas*. Its transportation subject is defined and clear. All parts of Act 275 are pertinent to that subject.

The "one subject" clause does not require the Court to "second guess" the legislature regarding an Act that clearly pertains to the subject of transportation. Going beyond the requirements of the Constitution and the authority of this Court, the effect of Plaintiffs' argument would be to require that the different parts of this Act be fragmented and passed separately. Fortunately, the Constitution does not require such action. As stated in *South Carolina Public Service Authority v. Citizens and Southern Nat. Bank of South Carolina*, 386 S.E.2d 775, 787, 300 S.C. 142, 162 (1989):

In *DeLoach v. Scheper* [188 S.C. 21, 198 S.E. 2d 409 (1938)], the Court recognized the breadth of this constitutional provision:

[T]here is a marked distinction between the object of a law and the subject of a law. Very few enactments have but one object or purpose in mind....

DeLoach, 188 S.C. at 28, 198 S.E. at 412.

* * * * *

[T]he constitutional provision here invoked does not preclude the Legislature from dealing with several branches of one general subject in a single Act..

DeLoach, 188 S.C. at 29, 198 S.E. at 412. It would be impractical and time-consuming to require the legislature to pass a separate act on every separate branch of a subject.”

Therefore, the General Assembly has properly dealt with the subject of transportation in the several parts of Act 275.

In another “one subject” case twenty years ago, the Supreme Court stated that it “did not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.” *Keyserling v. Beasley*, *supra*, quoted in *Retail Services & Systems, Inc. v. South Carolina Department of Revenue*, 2017 WL 1162466, at *7 (S.C., 2017). The Court stated that it “must . . . follow the law and decisions heretofore set forth in this state. Doing so, [it reached] the inevitable conclusion that the “One-Subject” provision of Article III, § 17 was not violated in [that] case.” *Keyserling*.

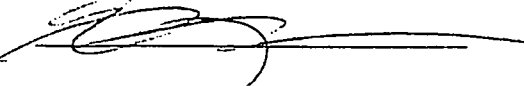
Because Act 275 is consistent with the “one subject” clause, and for the other grounds set forth above this action should be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

ATTORNEYS FOR THE DEFENDANT STATE OF
SOUTH CAROLINA

June 7, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2017-CP-40-00484

South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

The S.C. House of Representatives, The
S.C. Senate, The Hon. James H. "Jay"
Lucas, as Speaker of the House, The Hon.
Henry D. McMaster, as President of the S.C.
Senate, and The State of South Carolina,

Defendants.

**MOTION TO DISMISS
BY
THE S.C. HOUSE OF
REPRESENTATIVES AND THE HON.
JAMES H. "JAY" LUCAS, AS
SPEAKER OF THE HOUSE**

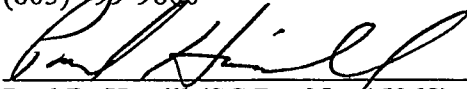
TO: JAMES G. CARPENTER, ESQUIRE, Attorney for the Plaintiffs:

The Defendants, The S.C. House of Representatives and The Hon. James H. "Jay" Lucas as Speaker Of The House ("Defendants"), hereby move for an Order dismissing the Complaint, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because the Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

Respectfully submitted,

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By:


Paul D. Harrill (SC Bar No. 15268)
Bradley S. Wright (SC Bar No. 16991)
Attorneys for the Plaintiff

March 3, 2017
Columbia, South Carolina

(2) Plaintiffs' mere conclusory statements about the Act, taken as true, demonstrate that the Act relates to "One Subject;" and

(3) Plaintiffs lack standing to bring this action.

STANDARD FOR RULE 16(b)(6) MOTION TO DISMISS

Pursuant to Rule 8(a) SCRPC, a cause of action shall state a "short plain statement of the *facts* showing that the pleader is entitled to relief." (*emphasis added*). "Rule 12(b)(6), SCRPC, allows the court to dismiss a party's claims for failure to state facts sufficient to constitute a cause of action. The content and detail of the pleadings are viewed in light of the general pleading rules and in the light most favorable to the non-moving party. The motion must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." *Gray v. State Farm Auto. Ins. Co.*, 491 S.E.2d 272, 274-275 (S.C. Ct. App. July 28, 1997) (citations omitted).

ARGUMENT

In the present case, Plaintiffs have failed to state in their complaint a short plain statement of *facts* that demonstrates they are entitled to relief as required by Rule 8(a) SCRPC. The Plaintiffs have relied completely upon the holding in *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016) in support of their allegation that the Act violates Article III § 17. Plaintiffs' reliance on *Lucas* is misplaced because the Act is not a general appropriations act.

If Plaintiffs survive the fatal flaw of relying on *Lucas*, Plaintiffs have merely pled three conclusory statements about the Act and a single legal conclusion that the Act violates the "One Subject Rule." Such allegations do not satisfy Rule 8 SCRPC and are subject to dismissal pursuant

to Rule 12(b)(6) because taken in the light most favorable to Plaintiffs they show that the Plaintiffs could not prevail on any theory.

Plaintiffs have also asserted that they have standing to raise these issues and bring this suit. Once again the conclusory allegations are insufficient to withstand this motion to dismiss because giving Plaintiffs the benefit of every inference reasonably deducible from the facts pled, the plaintiff cannot demonstrate any theory of standing to bring the suit. These issues are discussed more fully below.

A. Plaintiffs' Complaint is based entirely upon their misapplication of *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269,277, 786 S.E.2d 124, 129 (2016), because the Act in question is not a general appropriations act.

Plaintiffs filed this suit alleging the Act is in violation of the "One Subject Rule" as set forth in the South Carolina Constitution, Article III § 17:

"Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title."

In support of their claim, Plaintiffs pled three paragraphs attempting to summarize the Act (*see* Complaint, paras. 10-12) and a single legal conclusion that the Act "relates to more than one subject, and thereby violates S.C. Constitution Article III § 17" (Complaint, para. 14). Sandwiched between those four paragraphs is a paragraph citing *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016), which appears to be the lynchpin of Plaintiffs' entire claim (*see* Complaint, para. 13).

Paragraph 13 of the Complaint states as follows:

The Supreme Court ruled that changing the Governor's appointment power over the Secretary of Transportation is not "reasonably and inherently related to the raising and spending of tax monies." *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016)

Plaintiffs improperly relied upon *Lucas* when they filed the Complaint. Plaintiffs fail to understand that *Lucas* is limited to cases involving a general appropriations act. Moreover, Plaintiffs failed to tie the holding of *Lucas* to the present case in any way whatsoever.

Plaintiffs cannot state a cause of action by merely citing to a legal opinion without demonstrating in what way the opinion applies to the facts in the present case. Much more important, however, is the fact that the *Lucas* opinion is clearly not applicable in this case, and Plaintiffs' reliance on *Lucas* is fatal to their pleading.

The *Lucas* case involved a "One Subject" Constitutional challenge to a proviso that was added to the general appropriations act. The proviso affected the Governor's appointment power over the Secretary of Transportation. The *Lucas* Court relied on the "test" set forth in *S.C. Tax Comm'n v. York Elec. Coop.*, 275 S.C. 326, 270 S.E.2d 626 (1980) and *Hercules, Inc. v. S.C. Tax Comm'n*, 274 S.C. 137, 262 S.E.2d 45 (1980). That test was summarized in *Maner v. Maner*, 278 S.C. 377, 382, 296 S.E.2d 533, 536 (1982) as follows: "The test applied in *York* and *Hercules*, both of which involved appropriations acts, was whether the challenged legislation was reasonably and inherently related to the raising and expenditure of tax monies." *Id.*

The Court in *Lucas* held that the right to appoint the Secretary, regardless of that officer's authority to expend agency funds, does not meet the *York* and *Hercules* test. *Lucas* further held that the subject proviso was in violation of the One Subject Rule because "the suspension of the appointment authority in Proviso 84.10 does not 'reasonably and inherently' relate to the raising or spending of tax money and is therefore not germane to the purpose of the appropriations act." *Id.* at 127-28. (emphasis added).

Plaintiffs have not alleged that the Act in question here relates in any way to the general appropriations act for 2016. In fact, the Act is not part of and does not relate in any way to the general appropriations act of 2016.

Due to their improper reliance on *Lucas*, Plaintiffs mistakenly alleged in their Complaint that the Act violates the One Subject Rule of Article III § 17 because some portion of the Act does not “reasonably and inherently relate to the raising and spending of tax monies.” *See* Complaint, para. 13. This misunderstanding of the *Lucas* case and its holding is fatal to Plaintiffs’ pleading. Plaintiffs’ allegations and the facts and the inferences reasonably deducible from them show that Plaintiffs cannot prevail on any theory of their case. Therefore, Plaintiffs’ Complaint should be dismissed pursuant to Rule 12(b)(6).

B. Plaintiffs’ conclusory statements about the Act, even taken as true, demonstrate that the Act relates to “One Subject.”

Even if Plaintiffs’ pleading survives the fatal flaw of relying on *Lucas* to state a claim, it is clear from the Complaint that each section of the Act is related to the Department of Transportation, and as such, are not in violation of the One Subject Rule. Plaintiffs’ Complaint at paragraphs 10, 11, and 12 attempts to summarize Parts I, II and III of the Act. Those three paragraphs read as follows:

10. Part I of Act 275 restructures the governance of the **Department of Transportation** and the State Transportation Infrastructure Bank
11. Part II of Act 275 addresses the funding of the **Department of Transportation** and provides for the issuance of \$2.2 billion of new bond funding for the DOT.
12. Part III makes other structural changes including transferring the Chief Internal Auditor of the **Department of Transportation**, all of his associated support staff, and all associated appropriations to the State Auditor’s Office.

(emphasis added).

Article III, § 17 is to be liberally construed so as to uphold an Act if practicable. *See, e.g., McCollum v. Snipes*, 213 S.C. 254, 49 S.E.2d 12 (1948). Doubtful or close cases are to be resolved in favor of upholding an Act's validity. *See, e.g., Alley v. Daniel*, 153 S.C. 217, 150 S.E. 691 (1929). Article III, § 17 does not preclude the legislature from dealing with several branches of one general subject in a single act. It is complied with if the title of an act expresses a general subject and the body provides the means to facilitate accomplishment of the general purpose. *See, e.g., Keyserling v. Beasley*, 322 S.C 83, 470 S.E.2d 100 (1996).

Here, Plaintiffs' own Complaint demonstrates that each part of the Act relates to the Department of Transportation and one general subject: Transportation. Since the Act is not the general appropriations act of 2016, it is not necessary that each section of the Act relate to the raising and spending of tax money as implied by Plaintiffs. Taking Plaintiffs' allegations as true and admitted for the purposes of this motion, each part of the Act relates to Transportation, which is clearly set forth in the title to the Act.

Pursuant to long-standing and established law in South Carolina, Article III § 17 is to be liberally construed in favor of upholding the Act's validity. Plaintiffs' own allegations and the facts and the inferences reasonably deducible from them show that Plaintiffs cannot prevail on any theory of their case. Therefore, Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6).

C. Plaintiffs lack standing to bring this action.

Plaintiffs failed to properly plead that they have the requisite standing to bring this suit. Standing is a fundamental requirement in instituting any action. *See Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). There are three ways in which a party can acquire standing: "(1) by statute; (2) through what is called 'constitutional standing'; and (3) under the public importance exception to standing." *Bodman v. State*, 403 S.C. 60, 66-67, 742

S.E.2d 363, 366 (2013). As set forth below, Plaintiffs failed to plead standing under any of the three recognized grounds.

Plaintiffs failed to allege standing under any statute. *See* Complaint, paras. 1-14.

Plaintiffs allege that Sloan “possesses standing as a citizen, resident, taxpayer, and registered elector of the State of South Carolina” (*See* Complaint, para. 7). This allegation is fatally flawed and does not establish Constitutional standing. The South Carolina Supreme Court has unequivocally foreclosed the ability to obtain constitutional standing via a plaintiff’s status as a taxpayer unless he has suffered a particularized injury. *See, e.g. ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008); *Bodman*, 403 S.C. at 66-67, 742 S.E.2d at 366 (“In *ATC*, we unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer.”) Thus, it is well-established that Plaintiffs’ status as a taxpayer alone is insufficient to provide a basis to possess the standing necessary to maintain this action.

Finally, Plaintiffs allege that they “possess standing based on the great public importance of the issues they raise.” *See* Complaint, para. 6.¹ Plaintiffs fail to plead, however, the elements necessary for the public importance exception to confer standing upon them.

The Supreme Court in analyzing and discussing the public importance exception has recognized that the lynchpin for the exception is a need for “future guidance.” *Bodman*, 403 S.C. at 68, 742 S.E.2d at 366; *ATC*, 380 S.C. at 199, 669 S.E.2d at 341. The Supreme Court in *Bodman* addressed its holding in *ATC* and stated:

We tempered the application of the public importance exception somewhat in *ATC*. In doing so, we reminded the bench and bar that “[w]hether an issue of public importance exists necessitates a cautious balancing of the competing interests presented.” *ATC*, 380 S.C. at 198, 669 S.E.2d at 341. To avoid an overzealous use of [the public interest] exception, we said that “[t]he key to the

¹ This case was originally filed in the South Carolina Supreme Court, and Plaintiffs requested the Supreme Court here the case in its original jurisdiction based upon the “great public importance” of the issues presented. The Supreme Court declined to accept the case in its original jurisdiction.

public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.*

Bodman, 403 S.C. at 68, 742 S.E.2d at 367 (emphasis added).

Plaintiffs failed to plead that "resolution is needed for future guidance" of this matter. See Complaint, para. 6. As set forth in *ATC* and *Bodman*, that element is critical in seeking "public importance" standing. Therefore, Plaintiffs did not plead a required element necessary to assert standing under the public importance exception. Accordingly, Plaintiffs lack standing, and this Court should dismiss the Complaint with prejudice.

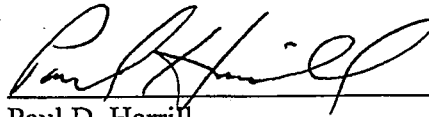
CONCLUSION

For the reasons set forth above, Defendants motion to dismiss should be granted.

Respectfully submitted,

McNAIR LAW FIRM, P.A.

By:



Paul D. Harrill

Bradley S. Wright

Post Office Box 11390

Columbia, SC 29211

P: (803) 799.9800

F: (803) 753-3278

pharrill@mcnair.net

Attorneys for the Defendants

The South Carolina House of Representatives and

The Honorable James H. "Jay" Lucas,

as Speaker of the South Carolina House of
Representatives

June 7, 2017

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2017-CP-40-00484

South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

The S.C. House of Representatives, The
S.C. Senate, The Hon. James H. "Jay"
Lucas, as Speaker of the House, The Hon.
Henry D. McMaster, as President of the S.C.
Senate, and The State of South Carolina,

Defendants.

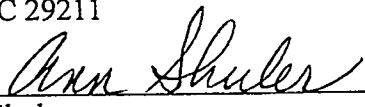
CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of McNair Law Firm, P.A., do hereby certify that I served the foregoing **Memorandum in Support of Motion to Dismiss of Defendants The S.C. House of Representatives and The Hon. James H. "Jay" Lucas, as Speaker of the House** upon counsel of record in the above-referenced matter, by depositing a true and correct copy of same in the United States Mail, with sufficient first-class postage affixed thereto, and addressed as follows, this 7th day of June, 2017:

James G. Carpenter, Esquire
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, SC 29601

Michael J. Anzelmo, Esquire
Matthew A. Abee, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211-1070

Robert D. Cook, Esquire
J. Emory Smith, Jr., Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211


Ann Shuler

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The South Carolina Public Interest) Civil Action No. 2017-CP-40-00484
Foundation and Edward D. Sloan, Jr.,)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

vs.)

The South Carolina House of)
Representatives; The South Carolina)
Senate; the Honorable James H. "Jay")
Lucas, as Speaker of the South Carolina)
House of Representatives; the)
Honorable Henry D. McMaster, as)
President of the South Carolina Senate,)
and the State of South Carolina,)

Defendants.)

Motion to Dismiss the Complaint

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure,
Defendants the South Carolina Senate and Senator Hugh K. Leatherman, Sr., in his capacity as
President Pro Tempore of the South Carolina Senate¹, move this Court for an order dismissing
the Complaint in this action with prejudice. The basis for this motion, as set forth more fully
herein, is that Plaintiffs did not properly plead any valid basis for the standing necessary to
maintain the action. As a result, Plaintiffs lack the standing necessary to maintain this action,
and the Complaint fails to state a claim upon which relief could be granted.

¹ Prior to the filing of the Complaint with this Court, the Supreme Court of South Carolina ordered that Senator Leatherman be substituted for then Lieutenant Governor McMaster as the representative of the Senate in this action. A motion to reform the caption to conform to the order of the Supreme Court has been filed contemporaneously with this motion to dismiss.

"[S]tanding cannot be granted to every individual who is disgruntled by a governmental decision or policy; otherwise, the government would be forced to defend a constant barrage of lawsuits questioning its every move." Newman v. Richland Cnty. Historic Preservation Com'n, 325 S.C. 79, 79, 480 S.E.2d 72, 75 (1997). "Standing to sue is a fundamental requirement in instituting any action." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). "Under our current jurisprudence, there are three ways in which a party can acquire this fundamental threshold of standing: (1) by statute; (2) through what is called 'constitutional standing'; and (3) under the public importance exception to standing." Bodman v. State, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013). Plaintiffs failed to plead standing under any of the three recognized grounds.

1. Plaintiffs do not allege that they possess standing under any statute. See Complaint ¶¶ 1-14.

2. Plaintiffs allege that they "possess standing as a citizen, resident, and taxpayer" of South Carolina. See Complaint ¶ 7. Plaintiffs' status as citizen taxpayers does not establish constitutional standing as a matter of law.

The Supreme Court has unequivocally foreclosed the ability to obtain constitutional standing via a plaintiff's status as a taxpayer. See ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008) ("[Plaintiff] further relies on its status as a taxpayer to acquire standing. The injury to [plaintiff], however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he 'suffers in some indefinite way in common with people generally.'"); Bodman, 403 S.C. at 66-67, 742 S.E.2d at 366 ("In

ATC, we unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer”); Freemantle v. Preston, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012). Thus, it is well-established that Plaintiffs’ status as a taxpayer is insufficient to provide a basis to possess the standing necessary to maintain this action.

3. Perhaps in acknowledgement of their lack of standing merely as taxpayers, Plaintiffs seek application of the public importance exception to standing by alleging that they “possess standing based on the great public importance of the issues they raise” in the Complaint. See Complaint ¶ 6. This statement, however, fails to plead the elements necessary for application of the public importance exception in this matter.

The Supreme Court in analyzing and discussing the public importance exception has recognized that the lynchpin for the exception is a need for “future guidance.” Bodman, 403 S.C. at 68, 742 S.E.2d at 366; ATC, 380 S.C. at 199, 669 S.E.2d at 341. The Supreme Court noted that “[i]t is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.” ATC, 380 S.C. at 199, 669 S.E.2d at 341. In its most recent analysis of the exception, the Supreme Court reiterated this need for future guidance as the seminal aspect of the public importance exception, stating that “standing may be conferred upon a party when an issue is of such public importance as to require **its resolution for future guidance**.” Bodman, 403 S.C. at 68, 742 S.E.2d at 366 (emphasis added).

Despite Plaintiffs’ participation in numerous cases involving the public importance exception, Plaintiffs do not adhere to the Supreme Court’s pronouncement. Plaintiffs fail to plead that this matter requires “resolution for future guidance.” See

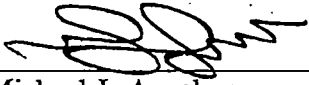
Complaint ¶ 6. Thus, Plaintiffs do not plead the required element necessary to allow standing under the public importance exception.

4. Based on the above, Plaintiffs have failed to properly plead a valid basis for standing necessary for Plaintiffs to maintain this action. Joytime, 338 S.C. at 639, 528 S.E.2d at 649 ("Standing to sue is a fundamental requirement in instituting an action.").

Therefore, Plaintiffs lack standing. This Court should dismiss the Complaint with prejudice.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo

SC Bar No. 72933

E-Mail: michael.anzelmo@nelsonmullins.com

Matthew A. Abee

SC Bar No. 101100

E-Mail: matt.abee@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, South Carolina 29201

803.799.2000

Attorneys for The South Carolina Senate and the Honorable
Hugh K. Leatherman, Sr., in his capacity as President Pro
Tempore of the South Carolina Senate

Columbia, South Carolina

March 14, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually, and
on behalf of all others similarly situated,
Plaintiffs,

v.

The S.C. House of Representatives, The
S.C. Senate, The Hon. James H. "Jay" Lu-
cas, as Speaker of the House, The Hon.
Henry D. McMaster, as President of the
S.C. Senate, and The State of South Caro-
lina,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 17-CP-40- 000484

**PLAINTIFFS' MEMORANDUM
OF LAW IN OPPOSITION
TO DEFENDANTS'
MOTIONS TO DISMISS**

NOW COME the Plaintiffs, by their undersigned attorney, and submit this Memorandum of Law in Opposition to the various Motions to Dismiss filed by Defendants. South Carolina House of Representatives and the Hon. James H. "Jay" Lucas as Speaker of the House ("House Motion") filed a Motion to Dismiss on or about March 3, 2017. The House Motion cites Rule 12(b)(6) in conclusory terms with no further explanation or memo.

The State of South Carolina filed a Motion to Dismiss on or about March 17, 2017 (State's Motion). The State's Motion relies on Rules 12(b)(1) and (6), and asserts the Plaintiffs lack standing, that this civil action does not present a justiciable controversy, and that Act 275 does not violate the Constitution.

President *Pro Tem* of the Senate, Hugh Leatherman, claimed a right to be heard, even though he was not named as a Defendant, and filed a Motion to Dismiss on or about March 14, 2017, alleging Plaintiffs lack standing.

Plaintiff will address the arguments of the Defendants.

I. PLAINTIFFS POSSESS PUBLIC IMPORTANCE STANDING AND TAX-PAYER STANDING.

Plaintiffs have asserted both taxpayer standing and public importance standing. The courts of South Carolina have addressed these matters many times, often in relation to the Plaintiffs herein. Illustrative cases include the following: *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997). Accordingly, the foregoing authorities confirm that the Plaintiffs possess both taxpayer standing and public importance standing.

A. Plaintiffs Possess Public Importance Standing

The issues in this case warrant a granting of public importance standing. The doctrine of public importance standing has a long history in South Carolina.

In 1873, the South Carolina Supreme Court addressed an indictment for practicing law without a license. The Court ruled that defects in the indictment disposed of the case, but then reasoned:

This view is sufficient to dispose of the whole case, but as both the defendant and the Attorney General have pressed this Court for a decision on the question whether the Legislature had constitutional authority to enact a tax law imposing taxes of the character imposed by the license law, and **as the question is of public importance, we will consider and decide it.**

State v. Hayne, 4 S.C. 403, 411, 4 Rich. 403 (1873) (emphasis added). The Court addressed the question and found several aspects of the statute unconstitutional.

Similarly, in *Ashmore v Greater Greenville Sewer District*, the South Carolina Supreme Court ruled that the board established to govern the Greenville Memorial Auditorium District was unconstitutionally composed. That ruling was sufficient to dispose of the case, but the Court continued:

If this were an ordinary case, our opinion might well stop here. The Board of Trustees of the projected Auditorium District has been held invalid in toto. The district is a headless body and cannot function under the present legislation. But the case is not an ordinary one; it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments; and raised on the record are earnestly argued **public questions of importance**. The last stated factor brings into play the principle, **now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance**, however abstract or moot they may have become in the immediate contest. 3 Am.Jur. 310, Annotation, 132 A.L.R. 1185.

Id. 211 S. C. 77, 95, 44 S.E.2d 88, 96-97 (1947) (emphasis added).

The South Carolina Supreme Court rendered a holding similar to *Ashmore* in *City of Columbia v. Sanders*, 231 S.C. 61, 97 S.E.2d 210 (1957). *Sanders* was a declaratory judgment action addressing the municipal merger of Columbia and Eau Claire and their water systems. The case raised questions about Columbia's revenue bonds issued to fund

further expansion of the water system. At the conclusion of the opinion, the Supreme Court stated:

We have been in considerable doubt as to whether the pleadings present a proper case for any kind of declaratory relief. But since the rule requiring the existence of a justiciable controversy is somewhat relaxed where the public interest is involved, Anderson, Declaratory Judgments, Second Edition, Volume I, Section 63, and Volume II, Sections 686, 707, 709 and 714, we have decided to make the foregoing limited declaration with respect to the issuance of further revenue bonds.

97 S.E.2d 213 (emphasis added). The Supreme Court repeated this holding in *State ex rel McLeod v. McGinnis*, 278 S.C. 307, 311, 295 S.E.2d 633, 635 (1982): “We held that where the public interest is involved, the rule requiring the existence of a justiciable controversy is somewhat relaxed.” See also, *Palmer v. Dunn*, 216 S.C. 558, 559, 59 S.E.2d 158, 159 (1950) (“This Court took original jurisdiction of the controversy because of its urgency and public importance”); *Thompson v. South Carolina Commission on Alcohol and Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719, 85 A.L.R.3d 692 (1976) (“the rule [of standing] is not an inflexible one, and we are of the opinion that the questions involved are of such wide concern, both to law enforcement personnel and to the public, that the court should determine the issues in this declaratory judgment action”); *Gilstrap v. South Carolina Budget & Control Bd.*, 310 S.C. 210, 213, 423 S.E.2d 101, 103 (1992) (“[T]he questions involved here are of such wide concern that the rules on standing will not be inflexibly applied”).

The South Carolina Supreme Court has ruled many times that public interest standing should be granted to address issues of great public importance. *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013). Plaintiffs’ allegations that Act 275 is unconstitutional make this an issue of great public importance. Accordingly, this body of case law leans

strongly toward the conclusion that Plaintiffs should be granted standing based on the public importance of the issues they raise.

The doctrine that the Court should decide questions of public importance has been recognized at least as far back as 1873. By 1947 the principal was “generally established,” and since 1947, South Carolina Courts have repeatedly applied the doctrine particularly when a civil action alleges the unconstitutionality of an Act or governmental action. *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (unconstitutionality of the governance of the State Transportation Infrastructure Bank); *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (an Act of the General Assembly violated the Constitution with by relating to than one subject); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (allegation that the Governor violated the Constitution by possession of a commission from another power).

B. Plaintiffs Possess Taxpayer Standing

All Plaintiffs have paid County and State taxes. Accordingly, each Plaintiff possesses standing as a taxpayer to contest the unconstitutional Act. Taxpayer standing

has a long history in South Carolina, and an even longer history in other states and in federal courts.

More than 125 years ago, in *Mauldin v City Council of Greenville*, the South Carolina Supreme Court recognized taxpayers' standing to contest allegedly illegal or *ultra vires* actions of a city. 33 S.C. 1, 11 S.E. 434 (1890). The City argued against taxpayer standing: "The individual tax-payer, as such merely, can obtain a standing in court only by alleging and proving that the illegal act complained of will inflict damage special and peculiar to himself, etc." The South Carolina Supreme Court rejected that presumption and reasoned,

Can it be that, in such case, a number of citizens, tax-payers of a city, cannot be heard against the corporate authorities in a court of equity asking for an injunction against the consummation of the contemplated wrongs, without alleging special damages to themselves individually? There is a certain relation in the nature of agency between the municipal authorities and all tax-payers of the corporation.

* * *

Here the tax-paying citizens of Greenville are not the whole public, but comparatively a small part of it. They are not strangers to the municipality. They, and they alone, are affected by their acts. As to them this is more in the nature of "a private" than "public" matter.

Id. 33 S.C. 1, 11 S.E. 434, 435 (emphasis added). The South Carolina Supreme Court ruled, "We think the plaintiffs had a standing in court, and were entitled to have their case heard on its merits." *Id.* 11 S.E. at 436.

In *Mauldin*, the South Carolina Supreme Court cited older South Carolina cases, and cases from Maryland, Connecticut, New Hampshire, Iowa, and Missouri, all acknowledging taxpayer standing. Finally, the Court cited Dillon on Municipal Corporations in

support of taxpayer standing. The South Carolina Supreme Court, quoting a case from Maryland, stated,

[T]he plaintiffs “as tax-payers of the city, and others similarly situated, *** constitute a class especially damaged by the alleged unlawful act of the corporation, in the alleged increase of the burden of taxation upon their property situated within the city. The complainants have therefore a special interest in the subject-matter of the suit, distinct from that of the general public;”

Id., quoting *Mayor, etc., v. Gill*, 31 Md. 375-394 (emphasis added).

The United States Supreme Court has also recognized taxpayer standing.

[R]esident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation. *Roberts v. Bradfield*, 12 App. D. C. 453, 459, 460. The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court. *Crampton v. Zabriskie*, 101 U. S. 601, 609, 25 L. Ed. 1070. Nevertheless, there are decisions to the contrary. See, for example, *Miller v. Grandy*, 13 Mich. 540, 550. The reasons which support the extension of the equitable remedy to a single taxpayer in such cases are based upon the peculiar relation of the corporate taxpayer to the corporation, which is not without some resemblance to that subsisting between stockholder and private corporation. 4 Dillon, Municipal Corporations (5th Ed.) § 1580 et seq.

Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 486-87, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923) (emphasis added).

Nearly 50 years before *Mellon*, the Supreme Court recognized taxpayer standing as a question so settled that there was “no serious question.”

Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property-holders of the county may otherwise be compelled to pay, there is at this day no serious question. The right has been recognized by the State courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irreparable injuries, it would seem eminently proper for courts of equity to interfere upon the application of the tax-payers of

a county to prevent the consummation of a wrong, when the officers of those corporations assume, in excess of their powers, to create burdens upon property-holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the State or county, there would seem to be no substantial reason why a bill by or on behalf of individual tax-payers should not be entertained to prevent the misuse of corporate powers. The courts may be safely trusted to prevent the abuse of their process in such cases. Those who desire to consult the leading authorities on this subject will find them stated or referred to in Mr. Dillon's excellent treatise on the Law of Municipal Corporations.

Crampton v. Zabriskie, 101 S.Ct. 601, 609, 11 Otto 601, 25 L.Ed. 1070 (1879) (emphasis added). For more than 135 years, there has been "no serious question" concerning a taxpayer's standing to bring a civil action to prevent unlawful use of taxpayer funds.

Likewise, in South Carolina, Plaintiffs possess standing to seek an injunction against illegal and private appropriations of public assets.

The principle is firmly settled in this State that a taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law. *Sligh v. Bowers*, 62 S.C. 409, 40 S.E. 885; *Mauldin v. City Council of Greenville*, 33 S.C. 1, 11 S.E. 434, 8 L.R.A. 291; *McCullough v. Brown*, 41 S.C. 220, 19 S.E. 458, 23 L.R.A. 410; Pom.Eq.Jur., Page 277, Sec. 260; 2 Dill.Mun.Corp., Sec. 736.

Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13, 15 (1939).

The court in *Kirk v. Clark* also noted:

"Perhaps the most frequent ground of application for relief by injunction against municipal corporations is for the prevention of an illegal or unlawful diversion of public funds. . . . [Courts] will . . . relieve in behalf of citizens and taxpayers against such official acts on the part of such bodies, when they move without authority or warrant of law and in excess of the corporate powers. High on Injunctions, Vol. 2, Sec. 1237."

Id.

The South Carolina Supreme Court has repeatedly acknowledged that a private citizen has standing to contest an illegal action by a governmental body. *Shillito v. City of*

Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948). In *Shillito*, the plaintiff sued for declaratory and injunctive relief when a tax was illegally collected. Shillito's action was aimed "(a) against the illegality of the tax; (b) against the levying of subsequent assessments under the alleged unlawful tax; and (c) against the disbursement of funds collected from such tax." The Court found that the plaintiff had standing for all three purposes.

As a rule, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally. An apparent exception to this rule exists when the Act sought to be enjoined is an unlawful diversion of public funds. 52 Am. Jur., Sec. 3, Page 3. **In such cases, a taxpayer who may be compelled to pay the assessment, or who has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal Act.** The decided preponderance of authority holds that **a taxpayer** singly or in a class suit, may maintain a suit in equity to **restrain unlawful municipal action** which leads, directly or indirectly, to taxation, and that **a taxpayer**, as specially damaged by the increase of the burden of taxation on his property, **has a special interest**, distinct from the general public, in the subject matter of such a suit **which entitles him to relief**. 52 Am. Jur., Sec. 3, Page 3.

A citizen and taxpayer has standing as such to contest the expenditure of public funds under an alleged unconstitutional statute. 52 Am. Jur., Sec. 15, Page 11. Under the foregoing authorities, we are satisfied that the action as brought can be maintained to challenge the validity of this special law **and the alleged unlawful diversion of public funds** to the designated beneficiary.

Id. at 22. (Emphasis added.) Thus, under *Shillito*, the Plaintiffs, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal expenditure.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), two taxpayers sued the Mayor and City Council of Greenwood because they had spent public money for expenses incurred by spouses of the Council members on a trip to the National League of Cities Convention. The taxpayers sought declaratory relief. Council members argued that the taxpayers lacked standing. The court found that the taxpayers had standing to contest the

unlawful expenditure. “As in *Lee* [*v. Clark*, 224 S.C. 138, 77 S.E.2d 485 (1953)], respondents, as taxpayers, have an interest in seeing that city officials disburse funds in a lawful manner. They have presented a justiciable controversy under the [Declaratory Judgment] Act, and the demurrer was properly overruled.” 285 S.C. at 480.

Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) is a similar holding. A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money collected for one purpose to a fund set up to address another purpose. The South Carolina Supreme Court ruled, “A taxpayer who . . . has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal act.” The Court ruled against the plaintiffs on the merits, but nevertheless found that they had standing as taxpayers to contest the illegal diversion of funds.

These cases finding taxpayer standing were not limited to acts and disbursements which violate some specific provision of the state or federal constitution. These rulings dealt in broad terms with the illegality of the actions, or the unlawful manner in which the funds were spent.

Not only does such a taxpayer have standing; such civil actions are commended by the South Carolina Supreme Court: “It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds.” *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948), quoting *Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139.

“A taxpayer’s standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina.” *Sloan v. School District of Greenville*

County, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Plaintiffs have standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an illegal act of the Defendants.

Defendants may contend that Plaintiffs lack a private right of action. Plaintiffs do not need a right of action under any statute to challenge an illegal appropriation of a public asset or an *ultra vires* act. Plaintiffs' standing does not originate in a statute; it arises from the equitable principles of the common law. *Shillito v. City of Spartanburg* ruled that the action was equitable, and analogous to a shareholders' derivative action. *Id.* at 214 S.C. 11, 51 S.E.2d 95 (1948),

Suits by tax-payers against towns and their officers to prevent or remedy misapplication of town funds, are not only allowed by statute, but it is the prevailing doctrine in America that tax-payers may maintain them in the absence of a statute. Their relations to the municipality are analogous to those of stockholders to a private corporation.

Id. at 28, quoting *Russell v. Tate*, 52 Ark. 541, 13 S.W. 130, 132, 7 R.L.A. 180, 20 Am. St. Rep. 193 (emphasis added). Thus, the Defendants could not require a statutory private right of action. Plaintiffs, instead rely on the common law under which they should be granted standing.

Plaintiffs possess standing as citizens and taxpayers to seek declaratory and injunctive relief for an *ultra vires* act. One clear statement of this rule of standing is Justice Toal's dissenting opinion in *Newman v. Richland County Historic Preservation Comm'n.*, 325 S.C. 79, 480 S.E.2d 72 (1997). The majority ruled that because the plaintiff was a member of the Commission whose actions she was attacking in court, she had no standing. If she had not been a member of the Commission whose decision she was attacking, the Supreme Court would likely have found that she had standing. The majority reasoned that other

citizens' right to sue would protect the public and denied standing to Ms. Newman. The court quoted from *Control Data Corporation v. Controlling Board*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). "Sufficient representation of the public's interest could be provided by a citizen affected by the decision of the Controlling Board and not by allowing a member of the Board to take a partisan position and challenge the outcome." *Newman*, at 83. The dissent would have granted plaintiff standing even though she was a member of the Commission.

Apart from this issue of Commission membership, Justice Toal's dissent provides a clarifying discussion of the history of citizen standing to seek declaratory and injunctive relief for *ultra vires* acts.

Generally, a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom. *Florence Morning News, Inc. v. Building Comm'n*, 265 S.C. 389, 218 S.E.2d 881 (1975). . . . **However, an exception to this rule exists for *ultra vires* acts by government officials.** For example, we have said that a court will not . . . interfere, by means of a taxpayer suit, to restrain the authorities of a county board from the exercise of their discretionary power . . . in the absence of illegality, fraud, or clear abuse of authority. *Owens v. Magill*, 308 S.C. 556, 419 S.E.2d 786 (1992) (emphasis added); see also *Ex Parte Hart*, 190 S.C. 473, 477, 2 S.E.2d 52, 53-54.

* * *

As with most things, moderation is required. A moderate balance is achieved by granting citizens standing when they bring actions **alleging *ultra vires* acts by a governmental agency**, while denying citizens standing to challenge discretionary actions. Thus, I would find that an individual has standing to contest a governmental action if he alleges particularized *ultra vires* acts by the governmental entity. The complaint cannot be a general assertion of *ultra vires* action on the part of the governmental actor, but must identify (1) the specific act or acts that have exceeded the actor's authority, and (2) the specific constitutional, statutory, or other law that has been exceeded.

Newman v. Richland County Historic Preservation Comm'n., 325 S.C. 79, 84-85, 480 S.E.2d 72, 75-76 (1997) (emphasis added).

An authoritative case on this kind of standing is *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Several doctors sued Charleston County alleging that the manner in which Charleston County had voted to fund the acquisition and renovation of a hospital for the Medical University of South Carolina was *ultra vires*. The doctors alleged that to use tax exempt bonds for this purpose would violate the authorizing statutes. Charleston County moved to dismiss, arguing among other things, that the doctors lacked standing to bring the action. The trial court granted the County's motion, and the doctors appealed. The Supreme Court, in a unanimous decision, reversed the ruling on standing. Justice Toal, writing for the court, ruled that when an issue was "of such public importance as to require its resolution for future guidance," then "a court may confer standing upon a party."

In this case, Doctors have specifically alleged that **County committed an ultra vires act** by exceeding its statutory authority to issue the hospital bonds. Moreover, the issuance of the hospital bonds clearly impacts a profound public interest--the public health and welfare. In fact, the express purpose of the Act is to promote the public health and welfare. See S.C. Code Ann. § 44-7-1420 (1985). It is hard to conceive of any greater societal interest [*16] than this one. Thus, **as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature** for funding hospital development. Thus, by virtue of the immense public interest at stake here, Doctors have standing to bring the present action, and any further determination of imminent prejudice is unnecessary.

333 S.C. 519, 531 (emphasis added). The issues Plaintiffs raise in this case, allegations of and unconstitutional act is also an important public issue, which calls for judicial intervention.

In *Baird v. Charleston County*, the doctors were granted standing, not because they were physicians in competition with the clinic, but rather because they were citizens of Charleston County, they challenged an *ultra vires* act, and the matter was of profound public interest. “Thus, as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature for funding hospital development.” *Id.*

In the case at bar, Plaintiffs have met the burden set out in the *Newman* dissent and in *Baird*. They have identified the specific act that is unconstitutional.

In the language cited by the Court’s opinion in *Newman*, each Plaintiff is “a citizen affected by the decision of the [defendant].” Lawsuits by such “citizens” provide “sufficient representation of the public’s interest.” *Newman*, quoting *Control Data Corporation v. Controlling Board*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). Hence, each Plaintiff has standing as a citizen to represent the public’s interest and to contest the *ultra vires* acts alleged in the Complaint.

Plaintiffs allege standing as citizens and taxpayers. They allege that the Defendants engaged in an *ultra vires* acts in violation of the Constitution. Just as the doctors in Charleston possessed standing to argue that the funding of the hospital acquisition was *ultra vires*, because of the profound public interest involved, these Plaintiffs should be granted standing to contest the unconstitutional Act in this case; there is a profound public interest involved. A decision is necessary for future guidance, “and any further determination of imminent prejudice is unnecessary.” *Id.*

This Court must follow the doctrines of taxpayer standing and cases of great public importance that have been established in the jurisprudence of the South Carolina Supreme Court and repeatedly recognized for more than 100 years.

II. PLAINTIFFS HAVE PROPERLY ALLEGED A JUSTICIABLE CONTROVERSY.

Second, the case does present a justiciable controversy. It is the unique role of the South Carolina Courts to interpret South Carolina Constitution, as they have done on many occasions, including many occasions involving these Plaintiffs. *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005). Accordingly, Plaintiffs' allegation that Act 275 of 2016 violates the South Carolina Constitution is a justiciable controversy. The State's Motion on this basis should be denied.

III. ACT 275 VIOLATES THE SOUTH CAROLINA CONSTITUTION.

Third, Act 275 violates the South Carolina Constitution. S.C. Constitution Article III, § 17 states, "Every Act . . . shall relate to but one subject, and that shall be expressed in the title." Act 275 violates both parts of S.C. Constitution Article III, § 17.

A. Act 275 "Relates to" More Than "One Subject."

On June 2, 2016, Defendants enacted Act 275 of 2016. In the Complaint, Plaintiffs alleged that Part I of Act 275 restructures the governance of the Department of Transportation and the State Transportation Infrastructure Bank; Part II of Act 275 addresses the funding of the Department of Transportation and provides for the issuance of \$2.2 billion

in new bond funding for the DOT; and Part III makes other structural changes including transferring the Chief Internal Auditor of the Department of Transportation, all his associated support staff, and all associated appropriations to the State Auditor's Office. The three different sections indicate at least three different subjects in the Act.

The Supreme Court ruled that changing the Governor's appointment power over the Secretary of Transportation is not "reasonably and inherently related to the raising and spending of tax monies." *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016). That holding would indicate that the structural changes in Part I do not "relate to" the same subject as Part II, the funding.

Futhermore, some parts relate to the Transportation Commission, some parts relate to the Secretary of Transportation, some parts relate to the Transportation Infrastructure Bank. Those are three separate entities, appointed three different ways, in our widely scattered government. Those amount to multiple subjects, in violation of the Constitution.

Upon further review and analysis, the Title to Act 275 of 2016 uses the phrase "relating to" 10 different times, indicating that the Act "relates to" 10 different subjects.

Because Act 275 does not relate to "but one subject" it violates S.C. Constitution Article, III § 17.

B. The Asserted "One Subject" Is Not Expressed in the Title.

The second provision of S.C. Constitution Article III, § 17 requires that the "one subject" be "expressed in the title" of the Act. The General Assembly states in Section 89 of Act 275 that the subject of the Act is "improving the state's transportation infrastructure system as clearly enumerated in the title." However, "improving the state's transportation infrastructure system" is not "expressed" or "enumerated" in the title. **It's just not there.**

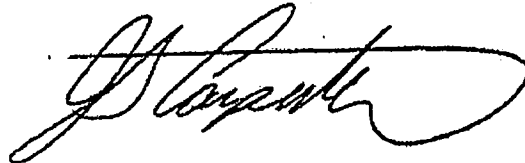
Not once does the title say that Act 275 relates to "improving the state's transportation infrastructure system." Accordingly, Act 275 does not "express" the "one subject" in the Title of the Act, and thereby it violates S.C. Constitution Article III, § 17. Instead, as stated above the Title "expresses" 10 different "subjects" that the Act is "relating to."

IV. DEFENDANTS' MOTIONS TO DISMISS ARE PREMATURE.

Finally, the constitutionality of Act 275 is a matter that should be addressed, not on a Motion to Dismiss, but after full and fair opportunity for development of the case. Defendants have not even filed Answers to the Complaint. For this reason as well, Defendants' Motions to Dismiss should be denied.

WHEREFORE, Plaintiffs pray the Court to deny all Defendants' Motions to Dismiss, and to grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter, S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiffs

James Carpenter

From: James Carpenter <james.carpenter@carpenterlawfirm.net>
Sent: Wednesday, June 07, 2017 4:54 PM
To: 'Emory Smith'; cmanninglc@sccourts.org; cmanningj@sccourts.org
Cc: 'Michael Anzelmo'; 'Matt Abee'; 'Wright, Brad'; 'Harrill, Paul'; rwidener@mcnair.net
Subject: RE: South Carolina Public Interest Foundation, et al v. The South Carolina House of Representatives, et al (2017-CP-40-00484)
Attachments: Plaintiffs' Memorandum of Law in Opposition to Motions to Dismiss.pdf

Judge Manning,

We attach a copy of the Plaintiffs' Memorandum of Law in Opposition to the Motions to Dismiss. This case alleges Act 275 is unconstitutional, and it is scheduled for hearing on Motions to Dismiss next Tuesday at 9:30 AM.

Jim Carpenter
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Mobile: (864) 380-4880
www.carpenterlawfirm.net



WHEN IT'S WORTH FIGHTING FOR!

From: Emory Smith [mailto:ESmith@scag.gov]
Sent: Wednesday, June 07, 2017 1:44 PM
To: cmanninglc@sccourts.org; cmanningj@sccourts.org
Cc: James Carpenter <james.carpenter@carpenterlawfirm.net>; Michael Anzelmo <Michael.Anzelmo@nelsonmullins.com>; Matt Abee <matt.abee@nelsonmullins.com>; Wright, Brad <BWright@mcnair.net>; Harrill, Paul <PHarrill@MCNAIR.NET>; rwidener@mcnair.net
Subject: RE: South Carolina Public Interest Foundation, et al v. The South Carolina House of Representatives, et al (2017-CP-40-00484)

Your Honor:

Attached is the State's memo, a cover letter to you, and for your reference, a copy of the Act at issue. The memo is being served and filed by mail today.

My understanding is that the hearing is TUESDAY, 6.13 at 9:30. NOT Monday as suggested in the email below.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-00484

South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

The S.C. House of Representatives, The S.C. Senate, The Hon. James H. "Jay" Lucas, as Speaker of the House, The Hon. Hugh K. Leatherman, in his Capacity as President Pro Tempore of the South Carolina Senate, and The State of South Carolina,
..... Respondents.

NOTICE OF APPEAL

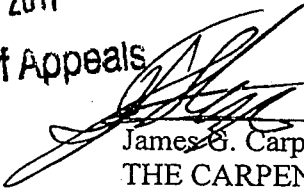
South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated appeal the Judgment and Order of the Honorable L. Casey Manning filed July 6, 2017. Appellants received written notice of the entry of the Order on July 6, 2017.

RECEIVED

AUG 02 2017

July 25, 2017

SC Court of Appeals


James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellants

Other Counsel of Record:

J. Emory Smith, Jr.
PO Box 11549
Columbia, SC 29211

Michael Anzelmo
Matthew A. Abee
PO Box 11070
Columbia, SC 29211

Paul D. Harrill
Robert L. Widner
Bradley S. Wright
PO Box 11390
Columbia, SC 29211

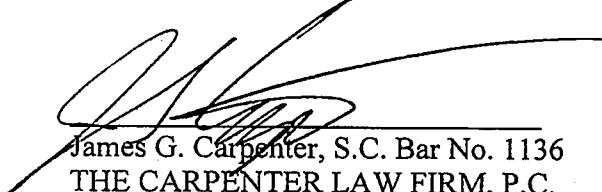
Certificate of Service

The undersigned attorney hereby certifies that he has served a copy of the foregoing Notice of Appeal on counsel for Defendants by US Mail, postage prepaid on Tuesday, July 25, 2017 to the following persons:

J. Emory Smith, Jr.
PO Box 11549
Columbia, SC 29211

Michael Anzelmo
Matthew A. Abee
PO Box 11070
Columbia, SC 29211

Paul D. Harrill
Robert L. Widner
Bradley S. Wright
PO Box 11390
Columbia, SC 29211



James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, P.C.
819 E. North Street
Greenville, South Carolina 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorneys for Plaintiffs

RECEIVED

AUG 02 2017

SC Court of Appeals

1	State of South Carolina	)	In the Court
2	County of Richland	)	Of Common Pleas
3	The South Carolina	)	Fifth Judicial Circuit
4	Public Interest	)	Civil Action No.: 2017-CP-40-00484
5	Foundation and Edward D.	)	
6	Sloan, Jr., individually	)	
7	and on behalf of all	)	
8	others similarly	)	
9	situated,	)	
10		)	
11	Plaintiffs,	)	
12	vs.	)	Transcript of Record
13		)	
14	The South Carolina House	)	
15	of Representatives; The	)	
16	South Carolina Senate;	)	
17	The Honorable James H.	)	
18	"Jay" Lucas, as Speaker	)	
19	of the South Carolina	)	
20	House of Representatives;	)	
21	The Honorable Hugh K.	)	
22	Leatherman, Sr., in his	)	
23	capacity as President	)	
24	Pro Tempore of the South	)	
25	Carolina Senate; and the	)	
	State of South Carolina,	)	
		)	
	Defendants.	)	
		)	

17
18
19
20
21
22
23
24
25

June 13, 2017

Columbia, South Carolina

BEFORE:

The Honorable L. Casey Manning, Judge

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 APPEARANCES:

2

3

James G. Carpenter, Esquire
The Carpenter Law Firm, PC
819 East North Street
Greenville, South Carolina 29601
Attorney for the Plaintiffs

6

7

Paul D. Harrill, Esquire
Post Office Box 11390
Columbia, South Carolina 29211
Attorney for Defendants House and Speaker

8

9

10

Michael J. Anzelmo, Esquire
Matthew A. Abee, Esquire.
Nelson, Mullins, Riley & Scarborough, LLP
1320 Main Street
Meridian / 17th Floor
Columbia, South Carolina 29201
Attorneys for Defendants Senate and Leatherman

11

12

13

14

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Defendant State

15

16

17

18 ALSO PRESENT:

19

Edward D. Sloan, Jr.

20

21

22

23

24 Certificate of Reporter

51

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 June 13, 2017

2 BAILIFF: All rise.

3 THE COURT: Thank you. Please be seated, ladies and
4 gentlemen. All right. We had a little brief meeting in
5 chambers regarding logistics and the questions by
6 Mr. Carpenter and Mr. Sloan. Mr. Sloan, good to see you
7 again. So, Mr. Smith, I'll let you introduce your crowd
8 and then everybody else can introduce themselves for the
9 record.

10 MR. SMITH: Thank you, Your Honor. I believe you
11 met Kevin Maroney, Assistant Attorney General with our
12 office, back in chambers. I have the pleasure of
13 bringing along three law clerks and an intern which our
14 office likes to give them an opportunity to visit court
15 in the summer when they're working with us and I'm gonna
16 introduce them briefly. On the right is Jordan Goewe.

17 THE COURT: Jordan who?

18 MR. SMITH: Goewe.

19 THE COURT: Goaway?

20 MR. SMITH: Goewe. G-o-e-w-e.

21 THE COURT: Goewe?

22 MR. GOEWE: Yes, sir.

23 MR. SMITH: Where you from, Mr. Goewe?

24 MR. GOEWE: I'm from Aynor, South Carolina.

25 THE COURT: Where?

1 MR. GOEWE: Aynor, South Carolina.
2 THE COURT: Yeah. That's right next door to Green
3 Sea Floyds.
4 MR. GOEWE: That's right next door.
5 THE COURT: Do you know Mitch Willouby?
6 MR. GOEWE: I do not.
7 THE COURT: That's all right.
8 MR. SMITH: That's next to Nichols, I think. Jordan
9 went to Wofford undergrad and he's at the University of
10 Alabama Law School now. And next to him is our intern
11 Michael Scarnecchia.
12 THE COURT: Where is he from, New Jersey?
13 MR. SMITH: He's from Florida, Your Honor.
14 MR. SCARNECCHIA: Originally from Ohio.
15 THE COURT: Okay.
16 MR. SMITH: He plays football for Carolina. He's a
17 rising senior. May be interested in law school.
18 THE COURT: All right. He's a quarterback you say.
19 Were you a quarterback?
20 MR. SCARNECCHIA: Yes, sir.
21 THE COURT: All right.
22 MR. SMITH: And then next to him is Asad Ansari.
23 Asad went to Carolina undergrad. He is a law student at
24 Emory Law School right now.
25 THE COURT: Emory. You're not related?

1 MR. SMITH: I wish I could say that the family trust
2 was responsible for the school.

3 THE COURT: Well, maybe you have some cousin on the
4 side. And last but not least.

5 MR. SMITH: And this is Keane Mossman. He went to
6 the University of Indiana undergrad. He is a third year
7 law, rising third-year law student at Carolina.

8 THE COURT: Are you from Indiana?

9 MR. MOSSMAN: I am. Yes, sir.

10 THE COURT: What part?

11 MR. MOSSMAN: Indianapolis.

12 THE COURT: Have you ever been to the Slippery
13 Noodle?

14 MR. MOSSMAN: I have. Yes.

15 MR. SMITH: Keane has a summer school class and may
16 need to slip out a little bit early and Kevin Maroney has
17 got court and may need to slip out a little early if
18 you'll excuse him.

19 THE COURT: They can leave now if they want to.

20 MR. SMITH: So anyhow, thank you, Your Honor, for
21 these introductions.

22 THE COURT: My pleasure.

23 MR. SMITH: These people may have the pleasure of
24 appearing before you themselves one day.

25 THE COURT: I don't know if it would be a pleasure

1 but they'll have the opportunity. Yes, sir.

2 MR. ANZELMO: Thank you, Your Honor. Michael
3 Anzelmo here for the Senate and Senator Leatherman.

4 THE COURT: Who sort of wanted to jump into the fray
5 I believe.

6 MR. ANZELMO: That's correct, Your Honor. As we
7 discussed Mr. Carpenter has consented to the order
8 granting that substitution and I have a proposed order
9 for you. You want me to hand it up?

10 THE COURT: All right, sir.

11 MR. ANZELMO: (Proffering.)

12 THE COURT: And who did you bring with you? You
13 don't have an entourage?

14 MR. ANZELMO: I have some people but not as much as
15 the --

16 THE COURT: Well, go ahead and introduce them.

17 MR. ANZELMO: Matt Abee, Your Honor, from my office
18 helping me with this case.

19 THE COURT: And where are you from?

20 MR. ANZELMO: Murrells Inlet, Your Honor.

21 THE COURT: Where?

22 MR. ANZELMO: Murrells Inlet, just south of Myrtle
23 Beach.

24 THE COURT: I'm from Dillon. We used to drive down
25 there and eat oysters on the weekend. That's all you

1 have? Mr. Harrill.

2 MR. HARRILL: Yes, sir. Paul Harrill. I'm here for
3 the House of Representatives and the Speaker of the
4 House. I also have Brad Wright here from the McNair firm
5 also with us today.

6 THE COURT: All right. That covers everybody?

7 MR. HARRILL: I believe so.

8 THE COURT: Of course, Mr. Sloan, Mr. Carpenter, I
9 know you all. All right. You want to start first,
10 Mr. Smith, or who wants to go first?

11 MR. SMITH: Well, Mr. Anzelmo addressed standing in
12 his motion and so it might be best if he went first and
13 then I can concur and do one subject and, Mr. Harrill,
14 however you want to do it.

15 THE COURT: All right, sir. Mr. Anzelmo.

16 MR. ANZELMO: Your Honor, as you know we filed a
17 motion to dismiss saying the plaintiffs failed to plead
18 any proper basis for standing. As they assert in their
19 memorandum they rely on the status as taxpayer and the
20 public importance exception for standing. They don't
21 plead either properly. Taxpayer standing was eliminated
22 in 2008 by the Supreme Court in the ATC case. That's 380
23 South Carolina 191. It was reaffirmed in the Bodman
24 versus State case in 2013 in which it said, the Supreme
25 Court said we unanimously close the door to a litigant

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 asserting standing simply by the virtue of his status as
2 a taxpayer. Plaintiffs cite a large number of cases and
3 devoted a significant number of pages in their memorandum
4 to the issue of taxpayer standing.

5 THE COURT: Mr. Carpenter gave me a history lesson
6 in taxpayer standing.

7 MR. ANZELMO: And it's all accurate. Unfortunately
8 it's all pre-2008, the repeal of taxpayer standing. And
9 there's a third basis for standing, statutory standing
10 which they haven't pled at all. But as you move into the
11 public importance exception for standing all they said in
12 paragraph 6 of the complaint is they have standing based
13 on the great public importance of the matter, i.e., the
14 fact that he challenged the constitutional nature of the
15 statute. Our public importance exception test requires
16 two things. One, great public importance and the need
17 for future guidance. The Supreme Court said the key to
18 the public importance analysis is the resolution needed
19 for future guidance. The complaint simply doesn't allege
20 any need for future guidance.

21 THE COURT: I think the point of your argument is
22 it's somewhat conclusory.

23 MR. ANZELMO: It is conclusory, Your Honor. At best
24 they don't put the two elements in and there's really no
25 explanation as to how this matter even fits into it other

1 than it's unconstitutional. And what the plaintiffs have
2 done is cited a large number of cases which they have
3 been involved with and others have been involved with in
4 which public importance exception to standing was applied
5 and allowed the litigation to proceed but --

6 THE COURT: I think the major case cited is one the
7 Attorney General agreed that the Supreme Court should
8 resolve that issue if I'm not mistaken.

9 MR. ANZELMO: That's correct. But in the other
10 cases there are three things as to why those cases don't
11 really apply here. One, we don't know how they pled
12 public importance exception to those cases. The courts
13 didn't address whether they properly pled public
14 importance exception and our Supreme Court has said in
15 the Beaufort County versus Trask case that standing is
16 the pleading requirement in addition to an element of
17 proof as you move through the litigation and that in ATC
18 said it's a case specific determination as to whether
19 standing exists for each action. The fact that they got
20 standing in other cases is simply irrelevant. It's akin
21 to a person coming in with a negligence complaint and
22 saying look at all these people who got negligence
23 verdicts. Don't dismiss my case because I forgot to
24 plead duty and it's just simply not the fact. So in
25 short taxpayer standing has been abrogated. No longer

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 exists as of 2008. Can't get standing that way. They
2 didn't plead the elements of public importance exception
3 so that can't apply. They don't have standing so it
4 should be dismissed.

5 THE COURT: All right. You want to respond
6 specifically?

7 MR. SMITH: Your Honor, we concur with the Senate
8 and House positions on standing. I don't know whether
9 Mr. Harrill wants to add anything on standing because he
10 did brief that issue.

11 THE COURT: All right. Mr. Harrill.

12 MR. HARRILL: Yes, sir. Only two quick points, Your
13 Honor. I agree and concur with what Mr. Anzelmo said. I
14 think I may have been the one or maybe we both did say
15 that this is a very conclusory pleading. It's just not
16 enough. And essentially what the plaintiffs have pled is
17 they have listed a laundry list of cases in which they
18 have been granted, I guess, standing in past cases and it
19 completely fails to address more recent cases that say
20 what the standard is and what you have to plead. You
21 don't get reputational standing. Because you have done
22 it before you don't get to just come in today and say
23 I've got standing. You have to plead it properly and
24 that's part of the issue and so we agree that it hasn't
25 been pled. They need to plead the need for future

1 guidance and I don't think they have done that and I
2 don't know if they can honestly. I don't think they can.

3 One other thing, Your Honor, and I'm not sure what
4 the relevance or significance is but this case was
5 originally brought --

6 THE COURT: In the Supreme Court, was it not?

7 MR. HARRILL: And it was brought in the Supreme
8 Court based upon the great public importance trying to
9 get the Supreme Court to utilize their public interest
10 exception to taking original jurisdiction and they
11 declined the case.

12 THE COURT: Was Justice - is Justice Toal author of
13 that opinion?

14 MR. HARRILL: She is not. She is not on that
15 opinion I don't think. She was not sitting.

16 THE COURT: Okay.

17 MR. HARRILL: But anyway, so they declined it for
18 whatever reason. There was no expressed discussion of
19 the public importance standing but he clearly asserted
20 standing there and wanted the original jurisdiction based
21 upon great public importance and the Supreme Court
22 declined to accept original jurisdiction. So I don't
23 know if that's res judicata but --

24 THE COURT: I understand.

25 MR. HARRILL: Yeah. I think it may be relevant to

1 the issues here. So that's all I have other than
2 concurring with what Mr. Anzelmo said.

3 THE COURT: All right. Thank you, Mr. Harrill.

4 MR. HARRILL: Thank you.

5 THE COURT: Mr. Carpenter.

6 MR. CARPENTER: Thank you, Your Honor. I have a
7 pretty strong disagreement with Mr. Anzelmo's argument
8 and whatever arguments were incorporated by reference by
9 the others. To hear them tell it if the General Assembly
10 passed a blatantly unconstitutional act and everybody
11 knew it was unconstitutional, we're just out of luck.

12 THE COURT: 275, right?

13 MR. CARPENTER: Yes.

14 THE COURT: All right.

15 MR. CARPENTER: But they argue that if the General
16 Assembly or an implication of their argument is that if
17 the General Assembly passes blatantly an unconstitutional
18 act --

19 THE COURT: When you say blatantly unconstitutional,
20 can you give me some examples or specifics,
21 Mr. Carpenter? How is it blatantly unconstitutional?

22 MR. CARPENTER: I'm not saying this one is. I'm
23 talking hypothetically here based on the argument they
24 have made.

25 THE COURT: So you're not saying 275 is blatantly

1 unconstitutional?

2 MR. CARPENTER: Not at this point I'm not.

3 THE COURT: Okay.

4 MR. CARPENTER: I'm arguing the standing point and
5 I'm trying to show the flaw in their argument.

6 THE COURT: All right, sir.

7 MR. CARPENTER: They say that if you don't need a
8 decision for future guidance, you can't get public
9 importance standing. So if a statute were blatantly
10 unconstitutional and everybody that looked at it knew it
11 was blatantly unconstitutional, nobody could come into
12 court because there's no need for future guidance because
13 it's blatantly unconstitutional. So this argument he
14 makes that you have got to have this need for future
15 guidance as an absolute prerequisite for public
16 importance standing is just wrong. A citizen taxpayer
17 has to be able to come into court and challenge an
18 unconstitutional act just because it's unconstitutional
19 and we have --

20 THE COURT: Mr. Carpenter, I have known you for a
21 long time and I don't want to interrupt you. Are you
22 saying to me now that Act 275 is unconstitutional?

23 MR. CARPENTER: Yes. Yes.

24 THE COURT: Okay. All right. All right.

25 MR. CARPENTER: It is unconstitutional.

1 THE COURT: In what regards do you say or claim that
2 it's unconstitutional?

3 MR. CARPENTER: Well, the constitution Article III,
4 section 17 says that every act shall relate to but one
5 subject and that shall be expressed in the title. If you
6 look at Act 275 and I have - Act 275 is like 50 pages
7 long but I have an abbreviated version and I would like
8 to pass that up to the Court and I have multiple copies
9 for counsel.

10 THE COURT: You gentlemen have seen his --

11 MR. SMITH: I have already mailed a copy of it to
12 the Court and a copy to counsel on it too, I believe
13 so...

14 THE COURT: All right.

15 MR. CARPENTER: You haven't seen mine. I put some
16 underlining in there because that's the points I want to
17 emphasize.

18 MR. HARRILL: I'll see what you have.

19 MR. CARPENTER: There you go (proffering.)

20 MR. HARRILL: Okay. Thank you.

21 MR. CARPENTER: And I have a copy for the Court and
22 one for your law clerk.

23 THE COURT: All right. Thank you.

24 MR. CARPENTER: What I have handed up is the, I
25 would say, I don't know what you call it, the index page,

1 whatever, and then there's two pages of all caps title
2 and then there are two pages at the end of the act, pages
3 45 and 46. But the constitution says that every act
4 shall relate to but one subject and that shall be
5 expressed in the title. So we look at this act and we
6 ask the question what does this act relate to and is it
7 expressed in the title?

8 If you look at the exhibit I just handed up on the
9 front page of it there is a line called summary and I
10 have underlined it and it says South Carolina
11 Transportation Infrastructure Bank as though this act
12 related to the Transportation Infrastructure Bank.
13 That's the summary of the act. Then if you look at page
14 46, the last page of my handout, the General Assembly
15 states this act constitutes one subject and the General
16 Assembly states that the subject is improving the state's
17 transportation infrastructure system as clearly
18 enumerated in the title. So the General Assembly says
19 this is not about the Infrastructure Bank, this is about
20 the infrastructure system. That's two different things.

21 So if you look at the title of the act, the all caps
22 portion which I have always found hard to read and that's
23 why I underlined some things for the Court's benefit, if
24 you look at the title of the act and you say, all right,
25 what does the title of the act say that this act relates

1 to? The language of the constitution says it shall
2 relate to but one subject and that shall be expressed in
3 the title. So what does the title express that this
4 relates to? Starting at the top. This is relating to
5 the Commission of the Department of Transportation which
6 is different from the Infrastructure Bank which is
7 different from what was stated in the body of the act.

8 Farther down it says it relates to the Secretary of
9 Transportation which is a different entity from any of
10 those previously listed. You go on down a little bit
11 farther and it relates to the Joint Transportation Review
12 Committee which is another entity separate from all the
13 others previously listed. It says that twice. Then it
14 says it relates to annual audits of the General Assembly,
15 which is a really different topic that this act relates
16 to. Then you go a little farther and it then says it is
17 relating to the powers of the South Carolina
18 Transportation Infrastructure Bank. Well, that at least
19 matches what the summary was on the opening page. The
20 Transportation Infrastructure Bank. But none of the rest
21 of this related to the bank.

22 You go a little farther and we have got another
23 section relating to the bank providing loans and other
24 financial assistance. That's another topic that this
25 relates to. You go to the next page. This act is

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 relating to fees or fines collected by the Department of
2 Motor Vehicles. So you have got another subject that
3 this act relates to. You read a little farther it's
4 relating to the tax revenues collected from the sale or
5 lease of motor vehicles. Another subject this act
6 relates to. And finally we have got this act relates to
7 the removal of the Department of Transportation
8 commissioners by the Governor.

9 Now, one thing that this summary doesn't say that
10 the act relates to is over here on page 45. Page 45,
11 Section 86, this act relates to the chief internal
12 auditor of the Department of Transportation is
13 transferred into the State Auditor's Office. Apparently
14 he had done something to make somebody want to remove him
15 from the Department of Transportation and put him under
16 the State Auditor's Office, which is another subject that
17 this act relates to.

18 So if you look back through this, it relates to the
19 commission of the Department of Transportation, the
20 Secretary of Transportation, the Transportation
21 Infrastructure Bank, the Department of Motor Vehicles,
22 the chief internal auditor and the state auditor. That's
23 six different subjects this relates to. And those are
24 not - you don't have a single subject. The constitution
25 says relates to but one subject and that shall be

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 expressed in the title. We went through relating to ten
2 different times in that title relating to nine different
3 subjects because one time they duplicated themselves.
4 But it's not relating to but one subject. Now, so that's
5 the unconstitutionality of it. Now, is that sufficient
6 to give standing to the plaintiffs to address the
7 unconstitutionality of this act? Well, if we look back
8 at recent cases from the Supreme Court --

9 THE COURT: How recent, Mr. Carpenter?

10 MR. CARPENTER: Well, 2016 is the most recent one.

11 THE COURT: All right.

12 MR. CARPENTER: But in the last 12 years there have
13 been four cases that have dealt with Article III, section
14 17 and acts of the General Assembly that do not relate to
15 but one subject. We brought one in 2005 Sloan versus
16 Wilkins that was referred to sometimes as the kitchen
17 sink bill, threw everything but the kitchen sink into it.
18 We petitioned the Supreme Court for a finding that it was
19 unconstitutional. The Supreme Court agreed with us and
20 they struck many portions out of the kitchen sink bill
21 also known as the Life Sciences Act. Three years later
22 South Carolina Public Interest Foundation versus Harrell.
23 Again, it was another act of the General Assembly that
24 related to more than one subject and didn't have that one
25 subject expressed in the title.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 THE COURT: One question. That was Bobby Harrell,
2 the then Speaker of the House?

3 MR. CARPENTER: Yes, sir.

4 THE COURT: All right.

5 MR. CARPENTER: It seems like every time we get a
6 new speaker we have to go through this litigation.

7 THE COURT: That's why we have the gentleman from
8 Hartsville now.

9 MR. CARPENTER: That's right and he's the most
10 recent one.

11 THE COURT: Yeah.

12 MR. CARPENTER: But in between those two there was a
13 case called American Petroleum Institute versus South
14 Carolina Department of Revenue. We were not the
15 plaintiffs. We did file an amicus brief in that case.
16 In that case the allegation was you had an act of the
17 General Assembly that related to more than one subject.
18 The plaintiff and the defendant in that case at the
19 Supreme Court both wanted the Supreme Court to strike out
20 the third section of that act. We filed an amicus brief
21 and we said, look, you know, 2005 there was the Wilkins
22 case, 2008 there was the Harrell case and you keep
23 striking out portions of the act and the General Assembly
24 doesn't learn. You need to strike the whole act.

25 Well, we went down there to watch the oral argument

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 and Justice Toal asked the attorneys for the parties
2 involved, well, what do you think about this suggestion
3 from the South Carolina Public Interest Foundation if we
4 just strike the whole thing and they all hadn't thought a
5 lot about it, didn't know what to say, but that's what
6 the Supreme Court did. They took that case, took the
7 opportunity to say we're not gonna do this anymore. We
8 are not going to be the ones who decide what is the
9 subject of the act and then we make everything else fit
10 into it or X it out.

11 With that decision they said we think this would be
12 the act of a super legislature which we are not. The
13 offense is when you have more than one subject in an act,
14 the act in its entirety is unconstitutional. And in the
15 American Petroleum Institute case they threw out the
16 whole act as unconstitutional. Well, in 2016 we filed
17 another lawsuit, South Carolina Public Interest
18 Foundation versus Lucas and that was an appropriations
19 act. And in that act one of the things that we said
20 violated the constitution was there was a proviso that
21 related to extending the Governor's power to appoint the
22 Secretary of Transportation and we argued that didn't
23 have a thing to do with appropriations.

24 The Supreme Court agreed with us and took the case
25 in original jurisdiction and ruled that that proviso was

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 unconstitutional. Now, they ruled on that one that they
2 were not going to strike the whole appropriations act
3 because it was clear that it was an appropriations act
4 and the subject of the act was appropriations so in that
5 circumstance they modified the holding from American
6 Petroleum to strike out that one provision.

7 That wasn't the only thing that they did in that
8 case. The House - the defendants were the House and the
9 Senate and the State. The House had argued in that case,
10 well, this appropriations act, read the title of it, the
11 appropriations act says it's an act to make
12 appropriations and provide revenues to meet the ordinary
13 expenses of the state government for the fiscal year
14 beginning July 1, 2015 and to regulate the expenditures
15 of such funds and to further provide for the operation of
16 the state government during this fiscal year and for
17 other purposes. The House argued that, oh, well, the
18 title says it's not just for appropriation, it's for to
19 further provide for the operation of state government
20 which is about as broad as you can get. And the Supreme
21 Court said two things. Number 1, if you accepted the
22 House's argument, that's two different subjects right
23 then and there. So it's blatantly unconstitutional on
24 its face. It says if respondent Lucas were correct and
25 in 2015 Act number 91 embraces both appropriations and

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 the entire operation of state government, it would ipso
2 facto violate the one subject requirement of Article III,
3 section 17.

4 And then they did a fall back position and they
5 said, well, this is all reasonably and inherently related
6 to the expenditure of funds, and the Supreme Court
7 rejected that as well, this changing of the Governor's
8 power to appoint the secretary or extending the
9 Governor's power to appoint the secretary. The
10 background was several years earlier the General Assembly
11 passed an act saying we're gonna give the Governor the
12 right to appoint the Secretary of Transportation but this
13 is going to expire as of 2015 unless we extend it
14 further.

15 THE COURT: Okay. Just continue.

16 MR. CARPENTER: Anything I can do for you, Judge?

17 THE COURT: Not in this context.

18 MR. CARPENTER: All right. I'm just trying to be
19 helpful.

20 THE COURT: No. I thought an exhibit had been
21 passed up.

22 MR. CARPENTER: No. The only one I passed up was
23 that abbreviated copy of the act itself.

24 THE COURT: Okay.

25 MR. CARPENTER: The Supreme Court said if Lucas were

1 correct in this argument, that appropriations act could
2 include any item however tangentially related to an
3 agency's operations so long as that item were included in
4 the agency's budget section, such a rule would
5 effectively exempt the appropriations act from Article
6 III, section 17. So the Court says again there has got
7 to be a line. You have to have an act that relates to
8 but one subject. Appropriations can be the subject but
9 then you can't put a lot of other things in there that
10 don't have to do with appropriations. It's a
11 constitutional provision that prevents log rolling, that
12 makes sure that people are on notice what's in the bill,
13 not only the General Assembly is on notice but the public
14 is on notice so it has to be one subject and it has to be
15 expressed in the title of the act. You have to be able
16 to pick up the title of the act and know what is in that
17 act.

18 Act 275 fails that test for the reasons that I
19 articulated earlier. It doesn't relate to one subject.
20 It relates to nine different subjects and it doesn't
21 relate to the subject articulated by the General Assembly
22 because that's not expressed in the title. And then
23 there's a summary that says this is about the
24 Infrastructure Bank when it's about the bank and several
25 other things. So this act fails to meet the

1 constitutional provision that says every act has to
2 relate to but one subject and that shall be expressed in
3 the title.

4 So getting back to the standing argument, the
5 Supreme Court has found that a plaintiff's allegation
6 that an act of the General Assembly violates Article III,
7 section 17 is an issue of great public importance. In
8 other cases they have said that when a citizen or
9 taxpayer brings an allegation that a government official
10 or public body has exceeded its statutory or
11 constitutional powers, that too is a case that authorizes
12 public importance exception standing. The idea of future
13 guidance has been used on some cases but when you have
14 got a constitutional violation four times in the last 12
15 years the Supreme Court has said this is sufficient for
16 taxpayer standing for a public importance standing.

17 Now, one thing I found interesting was as the Court
18 noted this case was filed initially at the Supreme Court.
19 And what did the defendants do? What did they do in
20 response to the petition for original jurisdiction in
21 which public importance is one of the factors that the
22 court considers? October 28th, 2016, the Senate consents
23 to the exercise of original jurisdiction over this
24 matter. November 4th, the House in Lucas consent to and
25 join in the petition for this court to hear the subject

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 matter in its original jurisdiction. November 7th, 2016,
2 the state concurs in the request that this court take
3 original jurisdiction of this case. So last fall
4 everybody was saying, yes, we have original jurisdiction
5 in this case. This is an issue of great public
6 importance but for whatever reason the court turned it
7 down and I would proffer an explanation although it's
8 risky.

9 THE COURT: I would invite you to speculate on what
10 they might have been thinking, Mr. Carpenter.

11 MR. CARPENTER: You do invite or you do not invite?

12 THE COURT: I'm not inviting you. I'm not going to
13 stop you if that's what you want to do.

14 MR. CARPENTER: That's what I want to do.

15 THE COURT: Go ahead.

16 MR. CARPENTER: Four times in the last 12 years they
17 have said, look, you can't violate Article III, section
18 17. And we have told you that. We've articulated that.
19 We've enunciated that. We've explained it. We don't
20 need to handle this. This can be handled by the lower
21 court with no problem. This is a clear violation
22 controlled by our precedence and this is a Article III,
23 section 17 violation. The court didn't explain why they
24 didn't take it. They don't have to. There's that sign
25 up there that says nil ultra. They didn't explain why

1 they didn't take it. It was totally discretionary with
2 them and they have got hundreds of petitions.

3 THE COURT: My guess is they wanted me to hear the
4 matter.

5 MR. CARPENTER: I think they did. I think they did.
6 They said Judge Manning, he's the man for this.

7 THE COURT: Go ahead, Mr. Carpenter, with what you
8 were saying.

9 MR. CARPENTER: But the point is each one of these
10 defendants consented and joined in our petition for
11 original jurisdiction meaning they thought it was an
12 issue of great public importance. Now they come in here
13 today and say, oh, it's not an issue of great public
14 importance.

15 THE COURT: My guess would be they thought they
16 wanted the Supreme Court to make that decision.

17 MR. CARPENTER: Well, they consented and they joined
18 in, joined in the petition. So we think we have a strong
19 case for public importance standing because of the
20 unconstitutionality of the act. I think any time the
21 general assembly violates the constitution it's a valid
22 basis for a citizen to come in and say no, the
23 constitution is the supreme law of this state and a court
24 needs to tell you whether you're violating the
25 constitution. I think we have made a good case. This

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 act does not relate to one but one subject and it's not
2 expressed in the title because the General Assembly says
3 it's one thing, the subject says it's another thing. The
4 title says it's nine different things and it's simply not
5 one subject expressed in the title.

6 THE COURT: All right. Thank you, sir. Response.

7 MR. ANZELMO: Yes. Thank you, Your Honor. As you
8 just heard from plaintiffs, they seem to believe that the
9 constitutional nature of the statute determines standing.
10 I have acknowledged they have pled it is publicly
11 important. What I am saying and what plaintiffs seem to
12 just simply ignore is the fact that they have to plead a
13 second element. A need for future guidance. The fact of
14 the matter is you can't simply not plead that and then
15 take refuge in previous cases as we mentioned earlier
16 where we don't know if this issue is even discussed and
17 where our courts have said for the court to relax general
18 standing rules the matter of importance must in the
19 context of the case be inextricably connected to the
20 public need for court resolution for future guidance.
21 That's the ATC case, Your Honor.

22 They have reiterated constantly and consistently
23 that the concept of future guidance gives meaning to an
24 issue which transcends a purely private matter and arises
25 to the level of public importance. These are all in the

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 context of cases where constitutionality of statutes is
2 challenged. You can't just ignore the second part of the
3 test and not plead it.

4 Plaintiffs have also argued that my argument somehow
5 converts it that no one can challenge the standing of an
6 unconstitutional statute. They absolutely can if they
7 plead it correctly and all that requires is two things.
8 One of which was omitted. So to say that no one can
9 challenge it is just a falsehood, Your Honor.

10 And the last thing about us accepting consent to the
11 original jurisdiction of the Supreme Court, it's just
12 irrelevant. The Carnival Cruise Line case authored by
13 Justice Hearn talks about the distinction of public
14 importance between original jurisdiction and the test for
15 that, the language in Rule 245 versus public importance
16 under standing and said they are not the same thing. So
17 the fact that we consented to it for whatever reason,
18 there is a myriad of reasons that we did as Your Honor
19 pointed out pretty would have been to have this issue
20 addressed at the Supreme Court is simply irrelevant. The
21 fact that they failed to plead the future guidance
22 element is fatal to this complaint and the context of
23 this case as the Supreme Court said in ATC.

24 THE COURT: Is this is 12(b)(1) or 12(b)(6)?

25 MR. ANZELMO: Mine's a 12(b)(6), Your Honor.

1 THE COURT: Thank you, sir. Mr. Smith.

2 MR. SMITH: Your Honor, just briefly, I concur in
3 the arguments of Mr. Anzelmo just then and Mr. Harrill
4 before that and Mr. Anzelmo is exactly right about the
5 Carnival decision. It does explain the difference
6 between public interest for purposes of original
7 jurisdiction and public importance for the purposes of
8 standing and in consenting to original jurisdiction that
9 doesn't mean that any party would be giving up an
10 argument that there was no standing present. So we
11 concur on those.

12 I would also note, it relates to standing but we did
13 point out in our memo, that because the plaintiffs lack
14 standing this court lacks subject matter jurisdiction of
15 the case. If, when Mr. Harrill gives his response, I
16 believe we can go on into the one subject issue if Your
17 Honor would like.

18 THE COURT: Mr. Harrill.

19 MR. HARRILL: Yes, Your Honor. Just a couple very
20 brief things, Your Honor. Again, on the consent issue, I
21 think that that's been covered reasonably well but and
22 no. It was not that we were trying to avoid you, Your
23 Honor. But --

24 THE COURT: Well, a lot of people have.

25 MR. HARRILL: Delighted to be here. But, you know,

1 this was a matter that we wanted heard quickly and so if
2 by consenting to the original jurisdiction by no means is
3 a consent to the public importance for standing purposes
4 and I just want to make sure that's clear.

5 THE COURT: It's clear to me.

6 MR. HARRILL: Yeah. I think that's all I have to
7 respond to that, Your Honor. I don't know if we want to
8 move into our motion on the sort of merits of the
9 12(b)(6) and failing to plead.

10 THE COURT: Well, let's see if Mr. Carpenter has a
11 reply or rebuttal to that reply.

12 MR. HARRILL: Sure.

13 THE COURT: Are you good, Mr. Carpenter? Anything
14 else you want to respond to what was just said in reply
15 to their argument?

16 MR. CARPENTER: I just disagree with them. That's
17 all.

18 THE COURT: I understand that. So, Mr. Harrill, you
19 may proceed.

20 MR. HARRILL: Thank you, Your Honor. And I will try
21 not to be too general or basic on this but for the record
22 I do want to make clear, Judge, we filed this motion
23 under 12(b)(6) because we don't think a claim has been
24 pled under the claim that they're asserting and the claim
25 that they're asserting is that Act 275 in 2016 is

1 unconstitutional under the one subject rule that's set
2 forth in Article III, section 17 of the South Carolina
3 constitution. And I know Your Honor is familiar with
4 that and we have set it out in our brief what it says and
5 Mr. Carpenter cited the language of the act.

6 Your Honor, it's rare that I have seen a pleading in
7 any complaint that's so cursory and conclusory as this.
8 Essentially what it seems they have said is, you know,
9 you passed the act and it relates to more than one
10 subject without much more analysis than that.

11 Now, I will point out that, and I'm looking at the
12 complaint here, in paragraphs 10, 11 and 12 of
13 plaintiffs' complaint they attempt to summarize the
14 contents of the three parts of the act and I don't think
15 for the purposes of today's argument, even though it's a
16 12(b)(6), you have to accept those as accurate. But
17 let's do that for the sake of this. It's a statute and
18 it's part of the pleadings so I think you can look at the
19 actual language and disagree with that. But let's for
20 the sake of now at least assume that he's accurately
21 summarized what they say. Then paragraph 13 seems to be
22 the crux of their entire complaint which is as he said
23 they have cited to their case, the South Carolina Public
24 Interest Foundation, the Lucas case that was decided and
25 handed down by the Supreme Court I think in May of 2016.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 You know, Mr. Carpenter gave a nice sort of history
2 from his perspective of the challenges that he and his
3 client have gone through over the years and I'm not sure
4 what the relevance of that was today but it was a nice
5 summary of some of these cases and things. What he's
6 done is he has in 13 said, which is a little unorthodox
7 but whatever, he's cited a case and said the Supreme
8 Court ruled that changing the Governor's appointment
9 power over the Secretary of Transportation is not quote
10 "reasonably and inherently related to the raising and
11 spending of tax monies" end quote. Then he cites Lucas.
12 Then the next and last paragraph just says the act
13 violates the one subject rule without any further
14 analysis, without any further discussion.

15 What we believe is fatal to their claim is they are
16 relying completely on the Lucas analysis and that just
17 doesn't apply in this case, Your Honor. And the reason
18 is that the Lucas case dealt with a General
19 Appropriations Act and we know that the act in question
20 does not. It was the transportation act of 2016. It is
21 not the General Appropriations Act. In fact, this was
22 the General Appropriations Act for 2016 (indicating),
23 some 570 some pages. That's the General Appropriations
24 Act.

25 And what we know, Your Honor, is that the Supreme

1 Court in numerous cases including one I have got here but
2 it cites to others ex parte Georgetown County Water and
3 Sewer District, that was a 1985 case, 284 South Carolina
4 466, the Supreme Court has determined that in a General
5 Appropriations Act the subject of any General
6 Appropriations Act is the raising and spending of tax
7 monies. So they have established a test that was applied
8 in Lucas to say if there's a provision in the General
9 Appropriations Act that is not reasonably and inherently
10 related to the raising and spending of tax monies, then
11 that is in violation of the one subject rule because the
12 one subject of the General Appropriations Act is the
13 raising and spending of tax money.

14 I think that the plaintiffs here are trying to cram
15 a round peg into a square hole. This case has nothing to
16 do with the General Appropriations Act. And so the
17 quotation and citation and reliance on the Lucas case and
18 the holding there in saying that, you know, in quoting
19 the language that I just read that the Governor's
20 appointment power of the Secretary of transportation is
21 not reasonably and inherently related to the raising and
22 spending of tax money is completely irrelevant to Act 275
23 of 2016 and they are applying a standard that just
24 doesn't apply here.

25 So, you know, we think, and it appears because the

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 pleading is so scant and so conclusory and so brief that
2 the reference to the Lucas case is the linchpin of their
3 entire pleadings and it's just fatally flawed because
4 it's talking about an appropriations act where we know
5 the subject of that act is the raising and spending of
6 taxes. What we know by looking at Act 275 despite what
7 Mr. Carpenter says is that that act is clearly dealing
8 with transportation. He likes to argue that it deals
9 with other issues. Well, Your Honor, the law is very
10 clear that you're not violating the one subject rule if
11 you have one general subject in a case and --

12 THE COURT: I'm a simple person. Maybe I'm just --

13 MR. HARRILL: Yes, sir.

14 THE COURT: Let's say you talk to him about let's
15 say the Harrill family. You tell about the wife, the
16 children, the nephews or whatever. It's not different.
17 It's all in the same family.

18 MR. HARRILL: Yes, sir.

19 THE COURT: Maybe that's just me, I'm simplifying it
20 too much.

21 MR. HARRILL: No. I think that's right. And the
22 cases say that, you know, it doesn't -- Article III,
23 section 17 quotes from cases. The Keyserling case for
24 one says the constitution, Article III, section 17 does
25 not preclude the legislature from dealing with several

1 branches like the Harrell family, you know, with several
2 branches of one general subject in a single act. So if
3 you are dealing with a transportation act, there's
4 nothing wrong with dealing with structural issues dealing
5 with transportation, monies, shifting of fees that relate
6 to transportation, and moving the auditor in the
7 Department of Transportation too. And he acts like it's
8 some nefarious issue to create a independence of this
9 auditor. You know, you don't want to report on the guy
10 that, you know, that oversees you.

11 So anyway, that's the point, Your Honor. This act
12 has nothing to do with the analysis in the Lucas case,
13 okay? And this act pertains to transportation and each
14 of the sections of which he cites and he discusses, all
15 of those are just branches of the same subject coming
16 under the one larger subject. So there's not a
17 violation. And I don't think under any theory he can
18 claim there's a violation there.

19 THE COURT: All right.

20 MR. HARRILL: Your Honor, we talked a lot -- Well,
21 Mr. Carpenter did about the title. He refers to the, I
22 guess the summary and then he goes into the other part.
23 That's not the title to the act, Your Honor. It is
24 important to understand that what has to be in the title
25 to an act under Article III, section 17 has been decided

1 by the Supreme Court. These litigants should be well
2 aware of it because it was enumerated and set out in
3 South Carolina Public Interest Foundation v. Harrell and
4 it was set forth in Sloan v. Wilkins and the Supreme
5 Court has said the purpose of Article III, section 17 is
6 to apprise the members of the General Assembly of the
7 contents of an act by reading the title.

8 I don't think there's any way you could read this
9 act and this title as cumbersome as it sometimes looks
10 and it's lengthy without realizing that this deals with
11 transportation. The word transportation appears eight
12 times in here. The General Assembly has to prepare these
13 titles like this because of the Supreme Court's decisions
14 in Harrell and Wilkins and other cases.

15 In fact, they have gone so far as to, I'm sure
16 Mr. Carpenter complains of this, but they go so far as to
17 list each section of the code that's being impacted so
18 that every member of the General Assembly is apprised of
19 what's covered in this bill. I don't think you can read
20 this title and I don't think you can read the act without
21 understanding that it deals with transportation
22 regardless of what the nuances that Mr. Carpenter wants
23 to put on it saying, well, up here it talks about
24 Transportation Infrastructure Bank and back here it talks
25 about improvement to the transportation infrastructure of

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 the state. All of that deals with transportation. And I
2 think that's just inherent and I don't see how you can
3 possibly read the title or the act without coming to that
4 conclusion and I think clearly the General Assembly had
5 been apprised of the contents of the act and everyone
6 knew what they were voting on and knew what it was.

7 Your Honor, I guess another issue -- Well, let me
8 say this: Based upon that we think that the reliance on
9 that Lucas case is fatal and we're entitled to our
10 dismissal.

11 THE COURT: Motion to dismiss.

12 MR. HARRILL: Yeah. Granting the motion of
13 dismissal on 12(b)(6). Another point and I'll be quick
14 --

15 THE COURT: Take your time.

16 MR. HARRILL: -- is again, looking at the pleading
17 itself, you know, where Mr. Carpenter attempted to
18 summarize the contents of the act himself and again this
19 is him paraphrasing but what his own summary says, part
20 one deals with the governance of the Department of
21 Transportation. Part two deals with funding of the
22 Department of Transportation. And part three deals with
23 transferring the chief internal auditor of the Department
24 of Transportation. I don't see how he can come in and
25 say those are not related to one general subject. I

1 think on its face his pleading and his summary of what
2 the act says clearly demonstrates that they can't win on
3 any theory. Those summaries that he has prepared all
4 deal with one topic, either the Department of
5 Transportation or transportation in general. And so we
6 think again based upon that, his own pleading and his own
7 interpretation of what the act says, that we are entitled
8 to a motion, the motion to dismiss being granted under
9 Rule 12(b)(6).

10 THE COURT: All right. Thank you, sir.
11 Mr. Smith.

12 MR. SMITH: Thank you, Your Honor --

13 MR. HARRILL: Let me make -- I think I'm done, Your
14 Honor. Let me make sure. I may have one more thing.

15 THE COURT: I'm sorry.

16 MR. HARRILL: No. No. That's my fault. Well, I
17 have already really dealt with the title issue, Your
18 Honor, but I suspect that Mr. Carpenter would argue these
19 issues about the title. And again, the word
20 transportation is in there eight times. The Harrell case
21 and the Sloan v. Wilkins case gave us guidance on how we
22 have to draft the title and I don't think they could have
23 done a better job apprising the General Assembly of what
24 was being dealt with in this act so based upon those
25 things we think we are entitled to the motion to dismiss

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 being granted. Thank you.

2 THE COURT: All right. Thank you. Mr. Smith.

3 MR. SMITH: Thank you, Your Honor. Just a few brief
4 points to make. First of all, I believe that this -- I
5 concur in Mr. Harrill's remarks. I also believe that
6 this court can take judicial notice that transportation
7 has been a big topic for the public and for the General
8 Assembly over the last several years.

9 THE COURT: Including how they get paid apparently
10 or if they get paid.

11 MR. SMITH: And this year. And this act in 2016 was
12 a successful attempt by the legislature to deal with
13 several aspects of transportation and we believe that
14 every part of this act relates to the one subject of
15 transportation. In fact, the act itself says that the
16 General Assembly finds that the sections presented in
17 this act constitute one subject as required by Article
18 III, section 17 of the constitution in particular finding
19 that each change and each topic relates directly to or in
20 conjunction with other sections to the subject of
21 improving the state's transportation infrastructure
22 system as clearly enumerated in the title and Mr. Harrill
23 has pointed out how the title lists all the various
24 aspects of transportation addressed within the act as
25 it's required to do by the Supreme Court.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 I don't think, Your Honor, that the plaintiffs have
2 made a proper title challenge here. They make a one
3 subject challenge but their complaint does not address in
4 particular any problems with the title and there are no
5 problems with the title as Mr. Harrill pointed out. I
6 think all we have here is their challenge that the act
7 does not relate to one subject but it clearly does, not
8 only in the statement of purpose but throughout the act
9 and throughout its title.

10 And the South Carolina Public Service Authority
11 versus CNS case that I cited in our memo addresses this
12 point about how not every legislature can address several
13 aspects of a subject in one act and the Court quoted in
14 De Loach v. Scheper saying there's a marked distinction
15 between the object of the law and the subject of the law.
16 Very few enactments have but one object or purpose in
17 mind and De Loach said that the constitutional provision
18 here invoked does not preclude the legislature from
19 dealing with several branches of one general subject in a
20 single act.

21 The court points out in the CNS case that it would
22 be impractical and time consuming to require the
23 legislature to pass a separate act on every separate
24 branch of a subject. But what the plaintiffs would have
25 the legislature do here is rather than trying to

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 compromise and address several aspects of transportation
2 within one act, they would require them to fragment and
3 pass it piecemeal, piece by piece by piece in separate
4 laws. The constitution does not require that and what
5 the legislature did here is entirely consistent with the
6 constitution.

7 And another one subject case 20 years ago,
8 Keyserling v. Beasley, the Supreme Court stated that it
9 did not sit as a super legislature to second guess the
10 wisdom or the folly of decisions of the General Assembly.
11 This decision of the General Assembly to pass these
12 various aspects of transportation in one act is entirely
13 consistent with the constitution and within its authority
14 and we believe that it should be upheld.

15 THE COURT: So, Mr. Smith, do you think Beasley
16 could actually run the nine five hundred?

17 MR. SMITH: I'm sorry, sir.

18 THE COURT: Never mind.

19 MR. SMITH: I didn't hear your question.

20 THE COURT: Could Beasley actually run the nine five
21 hundred?

22 MR. SMITH: Your Honor, I will take him at his word.

23 THE COURT: Yes, sir. Mr. Anzelmo.

24 MR. ANZELMO: Your Honor, my colleagues handled that
25 thoroughly. My clients join in their argument.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 THE COURT: Beg your pardon.

2 MR. ANZELMO: Nothing else to add. They handled it
3 thoroughly. We join in.

4 THE COURT: Okay. Let me take a little break. All
5 right?

6 (Short break.)

7 BAILIFF: Come to order. Remain seated please.

8 THE COURT: Is everybody ready? All right.

9 Mr. Carpenter.

10 MR. CARPENTER: The court alluded to this briefly
11 but one thing that hasn't been touched on a lot is where
12 we are procedurally in this case. We filed a complaint.
13 None of the defendants have filed an answer even.

14 THE COURT: I don't think they're required yet,
15 Mr. Carpenter, under 12(b)(6) to do an answer.

16 MR. CARPENTER: Right.

17 THE COURT: That's just a general rule. It might
18 have changed recently. So you file your motion to
19 dismiss on the pleadings of 12(b) whatever, then you file
20 your answer.

21 MR. CARPENTER: I understand.

22 THE COURT: Okay.

23 MR. CARPENTER: But my point is we are very early on
24 in the litigation.

25 THE COURT: That's what a 12(b) is for. Go ahead.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 MR. CARPENTER: Right. And we have alleged --

2 THE COURT: And you think I should deny their motion
3 to dismiss and give you a chance for summary judgment in
4 essence.

5 MR. CARPENTER: Well, and if - the Senate argued in
6 particular about this need for future guidance as though
7 it were a technical pleading defect. At this stage in
8 the litigation if the Court believes there is a technical
9 pleading defect --

10 THE COURT: I haven't made any decisions yet. I
11 don't believe anything yet until I hear all of the
12 arguments, Mr. Carpenter. I have no idea what I'm going
13 to decide at this point.

14 MR. CARPENTER: All I'm saying is if that were the
15 Court's inclination, then the appropriate remedy is not
16 to throw the whole case out, but if that is a technical
17 pleading defect, give us an opportunity to make that
18 pleading amendment since we are very early in the case
19 and there's no particular prejudice to anybody if that
20 were a technical pleading defect. I respectfully suggest
21 that we have pled the elements of the cause of action.
22 In a constitutional case we allege they enacted Act 275.
23 We allege that Act 275 relates to more than one subject.
24 We have alleged that the one subject whatever that is is
25 not expressed in the title as required by the

1 constitution and therefore it violates Article III,
2 section 17.

3 THE COURT: For the purposes of this motion I have
4 to assume that everything pled is true, in the pleading
5 is true.

6 MR. CARPENTER: That's right. And I think we have
7 pled a sufficient cause of action and that's what we are
8 here about today and those elements right there I think
9 are the heart of a cause of action and we have pled those
10 with no uncertainty. We have had similar cases, four of
11 them in the last 12 years in which the Supreme Court has
12 said that violation of Article III, section 17 is an
13 issue in which the court can make a decision and an issue
14 of great public importance and whenever the General
15 Assembly violates the constitution I think it's an issue
16 of great public importance.

17 In addition, the Supreme Court has said when a body
18 is acting in an ultra vires capacity or beyond their
19 authority, that's another reason why a citizen ought to
20 be granted standing to challenge that ultra vires act and
21 one articulation that we referenced in our memorandum but
22 it was the Newman case and Justice Toal says, however, an
23 exception, generally a private person may not invoke the
24 judicial power to determine the validity of an executive
25 or legislative action unless he has sustained or is in

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 danger of sustaining some prejudice therefrom. However,
2 an exception --

3 THE COURT: What was that last part saying?
4 Sustaining what?

5 MR. CARPENTER: Some prejudice therefrom.

6 THE COURT: Okay.

7 MR. CARPENTER: However, an exception to this rule
8 exists for ultra vires acts by government officials. An
9 unconstitutional act is ipso facto ultra vires. The
10 General Assembly has all power to enact statutes but only
11 within the constitution and an unconstitutional act is an
12 ultra vires act of the General Assembly. And this
13 distinction between discretionary acts which we are not
14 challenging, we're not challenging the wisdom or judgment
15 of the General Assembly, we are challenging the legality
16 of it because it violates the constitution, the higher
17 law, so it's an ultra vires act and it's an
18 unconstitutional act and therefore an issue of great
19 public importance and therefore a citizen taxpayer has
20 standing to make that challenge.

21 So I think that we have pled a good case both for
22 standing and on the merits. We have alleged the
23 essential elements that Act 275 relates to more than one
24 subject and it doesn't express one subject in the title.
25 We have talked about all the different subjects it

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 expressed, all the different subjects it contains and I
2 think we have pled a good case and for purposes of the
3 12(b)(6) motion we pled a good case and the motion should
4 be denied at this stage and then sometime later if
5 there's more argument on it and we have a better
6 opportunity to address it in full, then fine. We can
7 deal with it a little bit more later but we have pled a
8 sufficient case and that's what this motion is about and
9 I think the motion ought to be denied.

10 THE COURT: Thank you, Mr. Carpenter.

11 MR. HARRILL: I'll just address a couple quick
12 points, Your Honor. One, I agree with Your Honor's and
13 Mr. Carpenter's statement that in a 12(b)(6) if something
14 is pled, you've got to take it as factual or true but
15 that's facts that are pled. In this case there are a lot
16 of things -- There are almost no facts pled in this case.
17 He's summarized that which I don't think you have to take
18 that. You can look at that. He has summarized the Lucas
19 case which I don't think, you know, you can take it for
20 what it's worth, and then he just says we have violated
21 the one subject. He doesn't say anything about the
22 title. Never addresses that. And again, back to the
23 standing issue which I really rely more on Mr. Anzelmo's
24 argument there, we don't think he's pled sufficiently
25 there so we disagree with that.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 The one other thing I want to point out to Your
2 Honor and I don't think this is something that you are
3 hung up on but if you are, I would like to make sure it's
4 clear. The summary that Mr. Carpenter is referring to on
5 the front page of what he has handed up, he's handed up
6 to you a very abbreviated truncated version of that.
7 This cover page is not part of the act at all, nor is
8 that summary. That summary is put in there by someone
9 that is not part of the legislature just for reference
10 and ease of reference in looking at the history of the
11 bill. Again, in order to determine if this bill is
12 constitutional or not, you need to look at the title to
13 the act, not some summary placed on there by a third
14 party trying to create a document or a cover sheet for
15 ease of reference.

16 So we think again that the pleading is insufficient.
17 He can't prevail under any theory of the facts pled,
18 under the Lucas case and even the summaries he's produced
19 of what the act says. All are branches of the same
20 general subject which is the law which is what the
21 Supreme Court has said is the law and must be followed.
22 So we think the act is clearly constitutional and the
23 motion should be granted.

24 THE COURT: Thank you, sir. Yes, sir, Mr. Smith.

25 MR. SMITH: Just briefly, Your Honor. We agree that

1 the pleading lacks, has technical defects as pointed out
2 by Mr. Harrill. I don't even want to use the word
3 technical but it's defective. But even if it were not,
4 it's still clear that there is no need for future
5 guidance as to this law. It's clearly constitutional.
6 There's no public importance requiring future guidance as
7 to this law and that if this - even if they for the sake
8 of argument did have standing, if this Court is satisfied
9 with the law as constitutional, there's nothing further
10 to be - that needs to be heard or considered or weighed.
11 The motion to dismiss should be granted on that basis
12 because it is all right there on the face of the act and
13 the contents of the act. There's no need for development
14 of the facts. It's all right here and we believe that
15 this law fits squarely within precedent and it would
16 hamstring the General Assembly in passing laws in an
17 attempt to deal with several aspects of one subject in
18 the same act as it is properly done here.

19 THE COURT: All right. Thank you, sir. Mr.
20 Anzelmo.

21 MR. ANZELMO: Very briefly and in follow up to what
22 Mr. Smith just said, that's accurate. There's no need to
23 allow any changes to the complaint. The test isn't
24 whether there's an allegation of unconstitutionality
25 under 12(b)(6). For a declaratory judgment the Supreme

1 Court said the test is quote "not whether the complaint
2 shows that the plaintiff is entitled to declarational
3 rights according to his theory here of a unconstitutional
4 nature but whether he's entitled to a declaration of
5 rights at all." That's the Carletta case, 269 South
6 Carolina 110. Mr. Smith just adequately addressed why
7 there isn't a need for that.

8 And then plaintiffs seemed to circle back a little
9 quickly to the standing issue citing the Newman versus
10 Richland County case and seems to take refuge in the fact
11 that Justice Toal said you can challenge ultra vires acts
12 and therefore you have standing. The critical
13 distinction in Newman is Newman was challenging the
14 constitutionality of an act which cost him his job so he
15 had standing to challenge an ultra vires act because he
16 lost a job. He actually had concrete particularized
17 injuries. It wasn't public importance exception. It
18 wasn't taxpayer standing that no longer exists. He had a
19 concrete injury under the constitution so that got him
20 standing.

21 THE COURT: Thank you, sir. Anything further?

22 MR. CARPENTER: I need two more guys to stand up and
23 say the same thing I said I think, Judge.

24 THE COURT: Well, in theory you've got two more
25 guys.

1 MR. CARPENTER: Thank you, Your Honor.

2 THE COURT: That would be Clarence Darrow and Daniel
3 Webster.

4 MR. CARPENTER: Thank you.

5 THE COURT: Gentlemen, thank you for your lively
6 presentation. I - always good to see Mr. Sloan.
7 Mr. Sloan, I will tell you that I admire your patriotism
8 in bringing these lawsuits. You win some, you lose some,
9 but I'm sure you don't take these things personally but I
10 would encourage you to continue your patriotic pursuit in
11 what you think the truth is but in this particular case I
12 have read the pleadings, I have heard the arguments and
13 my conclusion is the motion to dismiss should be granted
14 for the reasons so stated. Thank you all so very much.
15 I guess I need to talk to y'all logistically about how
16 y'all want to do a global order. You need to include
17 everything. Mr. Carpenter, you know you have your 59(e)
18 you can do and each side is entitled to appeal. Thank
19 you all so very much.

20 MR. SMITH: Thank you, Your Honor.

21 MR. HARRILL: Thank you, Your Honor.

22 MR. CARPENTER: Thank you, Your Honor.

23 MR. ANZELMO: Thank you, Your Honor.

24 WHEREUPON, THE HEARING WAS CONCLUDED.

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 13th day of June, 2016.

11 I FURTHER CERTIFY that the forgoing 50 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 15th day of June, 2017.

17

18

19

20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

South Carolina General Assembly
121st Session, 2015-2016

A275, R246, S1258

STATUS INFORMATION

General Bill

Sponsors: Finance Committee

Document Path: l:\s-res\hkl\017fee .kmm.hkl.docx

Introduced in the Senate on April 20, 2016

Introduced in the House on April 28, 2016

Last Amended on May 31, 2016

Passed by the General Assembly on June 1, 2016

Governor's Action: June 8, 2016, Signed

Summary: S.C. Transportation Infrastructure Bank

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/20/2016	Senate	Introduced, read first time, placed on calendar without reference (Senate Journal-page 3)
4/21/2016		Scrivener's error corrected
4/26/2016	Senate	Read second time (Senate Journal-page 50)
4/27/2016	Senate	Read third time and sent to House (Senate Journal-page 39)
4/27/2016	Senate	Roll call Ayes-34 Nays-4 (Senate Journal-page 39)
4/28/2016	House	Introduced and read first time (House Journal-page 16)
4/28/2016	House	Referred to Committee on Ways and Means (House Journal-page 16)
5/19/2016	House	Committee report: Favorable with amendment Ways and Means (House Journal-page 106)
5/20/2016		Scrivener's error corrected
5/24/2016	House	Amended (House Journal-page 96)
5/24/2016	House	Read second time (House Journal-page 96)
5/24/2016	House	Roll call Yeas-102 Nays-3 (House Journal-page 97)
5/25/2016	House	Returned to Senate with amendments (House Journal-page 20)
5/25/2016	House	Roll call Yeas-72 Nays-2 (House Journal-page 21)
5/25/2016		Scrivener's error corrected
5/31/2016	Senate	House amendment amended (Senate Journal-page 114)
5/31/2016	Senate	Roll call Ayes-31 Nays-10 (Senate Journal-page 114)
5/31/2016	Senate	Returned to House with amendments (Senate Journal-page 114)
6/1/2016	House	Concurred in Senate amendment and enrolled (House Journal-page 55)
6/1/2016	House	Roll call Yeas-109 Nays-2 (House Journal-page 56)
6/2/2016		Ratified R 246
6/8/2016		Signed By Governor
6/21/2016		Effective date See Act for Effective Date
6/21/2016		Act No. 275

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

4/20/2016
4/20/2016-A
4/21/2016
5/19/2016
5/20/2016
5/24/2016
5/25/2016
5/31/2016

AN ACT TO AMEND ARTICLE 3, CHAPTER 1, TITLE 57, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, SO AS TO RESTRUCTURE THE COMMISSION, TO PROVIDE FOR REVIEW OF APPOINTEES TO THE COMMISSION, TO PROVIDE A MAXIMUM NUMBER OF YEARS A COMMISSIONER MAY SERVE, TO PROVIDE FOR REMOVAL OF A COMMISSIONER, AND TO PROVIDE FOR AUDITING PROCEDURES FOR THE DEPARTMENT OF TRANSPORTATION; TO AMEND SECTION 57-1-410, AS AMENDED, RELATING TO THE SECRETARY OF TRANSPORTATION, SO AS TO PROVIDE THAT THE COMMISSION SHALL APPOINT THE SECRETARY AND TO PROVIDE FOR REVIEW BY THE GENERAL ASSEMBLY; TO AMEND SECTIONS 57-1-720, 57-1-730, AND 57-1-750, RELATING TO THE JOINT TRANSPORTATION REVIEW COMMITTEE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 57-1-740, AS AMENDED, RELATING TO THE JOINT TRANSPORTATION REVIEW COMMITTEE, SO AS TO DELETE THE LANGUAGE; TO AMEND SECTION 57-1-490, AS AMENDED, RELATING TO ANNUAL AUDITS OF THE GENERAL ASSEMBLY, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 11-43-150, RELATING TO THE POWERS OF THE SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK, SO AS TO REQUIRE THE APPROVAL OF THE DEPARTMENT OF TRANSPORTATION COMMISSION BEFORE THE BANK MAY PROVIDE LOANS OR OTHER FINANCIAL ASSISTANCE; TO AMEND SECTION 11-43-180, RELATING TO THE BANK PROVIDING LOANS AND OTHER FINANCIAL ASSISTANCE, SO AS TO REQUIRE THAT THE ELIGIBLE COSTS OF A PROJECT BE AT LEAST TWENTY-FIVE MILLION DOLLARS TO RECEIVE A LOAN OR ASSISTANCE; BY ADDING SECTION 11-43-265 SO AS TO REQUIRE THE BANK TO PRIORITIZE ALL PROJECTS IN ACCORDANCE WITH THE PRIORITIZATION CRITERIA ESTABLISHED IN ACT 114 OF 2007, AND TO PROVIDE AN EXCEPTION; BY ADDING SECTION 11-43-167 SO AS TO DIRECT THE REVENUE FROM CERTAIN FEES AND FINES TO THE STATE HIGHWAY FUND FOR THE RESURFACING PROGRAM AND TRANSFERS TO THE BANK FOR ROAD AND BRIDGE PROJECTS; TO AMEND

SECTIONS 12-37-2740, 38-73-470, 56-1-140, AS AMENDED, 56-1-143, AS AMENDED, 56-1-148, AS AMENDED, 56-1-170, AS AMENDED, 56-1-200, AS AMENDED, 56-1-220, 56-1-286, AS AMENDED, 56-1-390, 56-1-395, 56-1-400, AS AMENDED, 56-1-460, AS AMENDED, 56-1-550, 56-1-740, 56-1-746, AS AMENDED, 56-1-1320, AS AMENDED, 56-1-2080, AS AMENDED, 56-1-3350, AS AMENDED, 56-3-210, 56-3-355, 56-3-1290, AS AMENDED, 56-3-1335, 56-3-1920, AS AMENDED, 56-3-2330, AS AMENDED, 56-3-2335, AS AMENDED, 56-3-2340, AS AMENDED, 56-3-3500, AS AMENDED, 56-3-3600, 56-3-3710, 56-3-3950, 56-3-4100, AS AMENDED, 56-3-4200, AS AMENDED, 56-3-4410, AS AMENDED, 56-3-4510, AS AMENDED, 56-3-4600, AS AMENDED, 56-3-4800, AS AMENDED, 56-3-4910, 56-3-5200, AS AMENDED, 56-3-5400, AS AMENDED, 56-3-7200, 56-3-7300, AS AMENDED, 56-3-7310, 56-3-7320, 56-3-7330, AS AMENDED, 56-3-7360, AS AMENDED, 56-3-7700, 56-3-7750, AS AMENDED, 56-3-7780, AS AMENDED, 56-3-7860, AS AMENDED, 56-3-7910, AS AMENDED, 56-3-7950, 56-3-8000, AS AMENDED, 56-3-8100, AS AMENDED, 56-3-8200, AS AMENDED, 56-3-8300, AS AMENDED, 56-3-8400, 56-3-8600, AS AMENDED, 56-3-8710, AS AMENDED, 56-3-9400, AS AMENDED, 56-3-9600, AS AMENDED, 56-3-9710, 56-3-10010, 56-3-13710, 56-5-750, 56-5-2942, AS AMENDED, 56-5-2951, AS AMENDED, 56-9-330, 56-10-240, 56-10-245, 56-10-260, 56-10-552, AS AMENDED, 56-19-265, AS AMENDED, 56-19-420, AS AMENDED, AND 56-19-520, ALL RELATING TO FEES OR FINES COLLECTED BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO PROVIDE THAT ALL OR A PORTION OF THE FEES SHALL BE CREDITED TO THE STATE HIGHWAY FUND; TO AMEND SECTION 12-36-2647, RELATING TO THE TAX REVENUES COLLECTED FROM THE SALE OR LEASE OF A MOTOR VEHICLE, SO AS TO CREDIT ALL THE REVENUES TO THE STATE HIGHWAY FUND EXCEPT FOR CERTAIN AMOUNTS THAT ARE USED FOR THE EDUCATION IMPROVEMENT ACT; AND TO REPEAL SECTION 1-3-240(C)(1)(b) RELATING TO THE REMOVAL OF DEPARTMENT OF TRANSPORTATION COMMISSIONERS BY THE GOVERNOR.)

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

PART I
GOVERNING THE IMPROVEMENT
OF THE
STATE'S TRANSPORTATION INFRASTRUCTURE SYSTEM

Commission of the Department of Transportation

SECTION 1. Article 3, Chapter 1, Title 57 of the 1976 Code is amended to read:

"Article 3
Commission of the Department of Transportation

Section 57-1-310. (A) The congressional districts of this State are constituted and created Department of Transportation Districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The Commission of the Department of Transportation shall be composed of one member from each transportation district and one member from the State at large, all appointed by the Governor, upon the advice and consent of the Senate, subject to the provisions of Section 57-1-325. In making appointments to the commission, the Governor shall take into account race, gender, and other demographic factors, such as residence in rural or urban areas, so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

(B) The at-large appointment made by the Governor must be transmitted to the Joint Transportation Review Committee.

(C) The qualifications that each commission member must possess, include, but are not limited to:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face-to-face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; or

(2) a background of at least five years in any combination of the following fields of expertise:

(a) transportation;

- (b) construction;
- (c) finance;
- (d) law;
- (e) environmental issues;
- (f) management; or
- (g) engineering.

(D) A member of the General Assembly or member of his immediate family may not be appointed to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be appointed to the commission for a period of four years after the member either:

- (1) ceases to be a member of the General Assembly; or
- (2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

Section 57-1-320. A county within a Department of Transportation district may not have a resident commission member for more than eight consecutive years and in no event shall any two persons from the same county serve as a commission member simultaneously.

Section 57-1-325. (A) The Governor shall submit his transportation district appointees to the Senate and the House of Representatives for referral to the appropriate legislative delegation. Legislative delegation for these purposes means legislators residing in the congressional district corresponding to the transportation district of the appointee.

(B) Upon receipt of a referral, the legislative delegation shall meet to approve or disapprove the Governor's appointee. The legislative delegation shall report its findings to the House of Representatives, the Senate, and the Governor. If the legislative delegation approves the Governor's appointee, the appointment shall be referred to the Joint Transportation Review Committee. If the delegation disapproves the appointee, the Governor shall make another appointment. If the legislative delegation fails to approve of the Governor's appointee within forty-five days of the appointee's referral to the delegation, the appointee is deemed to have been disapproved.

Section 57-1-330. (A) All commission members are appointed to a term of office of four years which expires on February fifteenth of the appropriate year. However, a commission member may not serve more than two consecutive terms, and may not serve more than twelve years, regardless of when the term was served. Commissioners shall continue to serve until their successors are appointed and confirmed, provided that a commissioner only may serve in a hold-over capacity for a period not

to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by appointment in the manner provided in this article for the unexpired term only. Except for the at-large member, a person is not eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by such commission member to maintain residency in the district for which he is appointed shall result in the forfeiture of his office.

(B) The at-large commission member may be appointed from any county in the State unless another commission member is serving from that county. Failure by the at-large commission member to maintain residence in the State shall result in a forfeiture of his office.

Commission members may be removed from office at the discretion of the Governor subject to the prior approval of the appropriate legislative delegation.

Section 57-1-340. Each commission member, within thirty days after his appointment, and before entering upon the discharge of the duties of his office, shall take, subscribe, and file with the Secretary of State the oath of office prescribed by the Constitution of the State.

Section 57-1-350. (A) The commission may adopt an official seal for use on official documents of the department.

(B) The commission shall elect a chairman and adopt its own rules and procedures and may select such additional officers to serve such terms as the commission may designate.

(C) Commissioners must be reimbursed for official expenses as provided by law for members of state boards and commissions as established in the annual general appropriations act.

(D) All commission members are eligible to vote on all matters that come before the commission.

Section 57-1-360. (A) The State Auditor shall employ an individual to serve as the chief internal auditor of the department, and other professional, administrative, technical, and clerical personnel as the State Auditor determines to be necessary. The State Auditor also must provide professional, administrative, technical, and clerical personnel, as the State Auditor determines to be necessary, for the chief internal auditor to properly discharge his duties and responsibilities authorized by the State Auditor or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the State Auditor.

(B)(1) The chief internal auditor must be a Certified Public Accountant and possess any other experience the State Auditor may

require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The State Auditor shall set the salary for the chief internal auditor as allowed by statute or applicable law.

(2) The audits performed by the chief internal auditor must comply with recognized governmental auditing standards. The department and any entity contracting with the department must fully cooperate with the chief internal auditor in the discharge of his duties and responsibilities and must timely produce all books, papers, correspondence, memoranda, and other records considered necessary in connection with an internal audit. All final audit reports must be submitted to the commission and the Chairman of the Senate Transportation Committee, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Education and Public Works Committee, and the Chairman of the House of Representatives Ways and Means Committee before being made public.

(3) The State Auditor is vested with the exclusive management and control of the chief internal auditor.

(C) The department, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies, for the chief internal auditor and his support staff.

Section 57-1-370. (A) The commission must develop the long-range Statewide Transportation Plan, with a minimum twenty-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The plan must be developed in a manner consistent with all federal laws or regulations and in consultation with all interested parties, particularly the metropolitan planning organizations and the nonmetropolitan planning organization area local officials. The plan may be revised from time to time as permitted by and in the manner required by federal laws or regulations.

(B) Concerning the development, content, and implementation of the Statewide Transportation Improvement Program, the commission must:

(1) develop a process for consulting with nonmetropolitan local officials, with responsibility for transportation, that provides an opportunity for their participation in the development of the long-range Statewide Transportation Plan and the Statewide Transportation Improvement Program;

(2) approve the Statewide Transportation Improvement Program and ensure that it is developed pursuant to federal laws and regulations

and approve an updated Statewide Transportation Improvement Program from time to time as permitted by and in the manner required by federal laws or regulations;

(3) develop and revise the transportation plan for inclusion in the Statewide Transportation Improvement Program, for each nonmetropolitan planning area in consultation with local officials with responsibility for transportation;

(4) work in consultation with each metropolitan planning organization to develop and revise a transportation improvement program for each metropolitan planning area;

(5) select from the approved Statewide Transportation Improvement Program the transportation projects undertaken in nonmetropolitan areas in consultation with the affected nonmetropolitan local officials with responsibility for transportation;

(6) select projects to be undertaken, in consultation with each metropolitan planning organization, from the metropolitan planning organization's approved transportation improvement plan in metropolitan areas not designated as a transportation management area;

(7) consult with each metropolitan planning organization, in metropolitan areas designated as transportation management areas, concerning the projects selected to be undertaken from the approved transportation improvement program and in accordance with the priorities approved by the transportation improvement program; and

(8) when selecting projects to be undertaken from nontransportation management area metropolitan planning organizations' transportation improvement programs, or selecting the nonmetropolitan area projects to be undertaken that are included in the Statewide Transportation Improvement Program, and when consulting with metropolitan planning organizations designated as transportation management areas, the commission shall establish a priority list of projects to the extent permitted by federal laws or regulations, taking into consideration at least the following criteria:

(a) financial viability including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project;

(b) public safety;

(c) potential for economic development;

(d) traffic volume and congestion;

(e) truck traffic;

(f) the pavement quality index;

(g) environmental impact;

(h) alternative transportation solutions; and

(i) consistency with local land use plans.

(C)(1) To the extent that state funds are available to address the needs of the state highway system, the commission must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Non-Federal Aid Highway Fund or other state revenue source. When developing the plan required by this subsection, the commission must consider, but is not limited to, considering the criteria in subsection (B)(8).

(2) When state funding is programmed for a project selected from the plan to be undertaken, the department may use federal law, regulations, or guidelines relevant to the type of project being undertaken to be eligible for federal matching funds.

(D) The commission must approve the department's annual budget.

(E) The commission shall have any other rights, duties, obligations, or responsibilities as specifically provided by law."

Secretary of Transportation

SECTION 2. Section 57-1-410 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

"Section 57-1-410. The commission shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at the pleasure of the commission. A person appointed to this position shall possess practical and successful business and executive ability and be knowledgeable in the field of transportation. The Secretary of Transportation shall receive such compensation as may be established under the provisions of Section 8-11-160 and for which funds have been authorized in the general appropriations act."

Joint Transportation Review Committee

SECTION 3. A. Section 57-1-730 of the 1976 Code, as added by Act 114 of 2007, and Section 57-1-740, as last amended by Act 253 of 2010, are amended to read:

"Section 57-1-730. The review committee has the following powers and duties:

- (1) to screen appointees to the commission;
- (2) in screening appointees and making its findings, the review committee must give due consideration to:

(a) ability, area of expertise, dedication, compassion, common sense, and integrity of each appointee; and

(b) the impact that each appointee would have on the racial and gender composition of the commission, and each appointee's impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State;

(3) to determine if each appointee is qualified and meets the requirements provided by law to serve as a member of the Department of Transportation Commission; and

(4) to submit the names of all qualified appointees to the Senate for advice and consent.

Section 57-1-740. Reserved."

B. Section 57-1-720(C) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

"(C) The review committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the review committee may consider necessary. Thereafter, the review committee must meet as necessary to screen appointees to the commission and at the call of the chairman or by a majority of the members. A quorum consists of six members."

C. Section 57-1-750(B) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

"(B) The expenses associated with the review committee's duties to screen appointees to the Department of Transportation Commission must be paid from the legislative appropriation of the general fund of the State."

Audits of Department of Transportation

SECTION 4. Section 57-1-490 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

"Section 57-1-490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial

statements must be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

(B) The Materials Management Office of the State Fiscal Accountability Authority annually must audit the department's internal procurement operation to ensure that the department has acted properly with regard to the department's exemptions contained in Section 11-35-710. The audit must be performed in accordance with applicable state law, including, but not limited to, administrative penalties for violations found as a result of the audit. The results of the audit must be made available by October fifteenth to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees. The costs and expenses of the audit must be paid by the department out of its funds.

(C) The Legislative Audit Council shall contract for an independent performance and compliance audit of the department's finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, 2010. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the audit's initial findings. The costs of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

(D) Copies of every audit conducted pursuant to this section must be made available to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees."

Approval of Transportation Infrastructure Bank loans

SECTION 5. Section 11-43-150 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"() Before providing a loan or other financial assistance to a qualified borrower on a qualified project, the board of directors must submit the decision to the Department of Transportation Commission for its consideration. The Department of Transportation Commission can approve or reject the board of directors' decisions or request additional

information from the board of directors. This requirement does not apply to decisions by the board that relate to any payment or contractual obligations that the Department of Transportation has to the bank that are pledged to any bonds issued by the bank.”

Minimum project costs for Transportation Infrastructure Bank loans

SECTION 6. Section 11-43-180 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

“() The bank may not provide any loans or other financial assistance, including bond proceeds, to any project unless the eligible costs of the project are at least twenty-five million dollars.”

Prioritization of Transportation Infrastructure Bank projects

SECTION 7. Article 1, Chapter 43, Title 11 of the 1976 Code is amended by adding:

“Section 11-43-265. (A) Notwithstanding any other provision of law and subject to the provisions of subsection (B), the bank must prioritize all projects in accordance with the prioritization criteria provided in Section 57-1-370(B)(8).

(B) The General Assembly may enact a joint resolution allowing the bank to fund a project without using the prioritization criteria provided in subsection (A). The joint resolution must be specific as to the project and the amount authorized to be funded.”

PART II

**FUNDING THE IMPROVEMENT
OF THE**

STATE’S TRANSPORTATION INFRASTRUCTURE SYSTEM

Fees and fines credited to the State Highway Fund

SECTION 8. Article 8, Chapter 43, Title 11 of the 1976 Code is amended by adding:

“Section 11-43-167. (A) The fees and fines collected pursuant to Sections 12-37-2740(D), 38-73-470, 56-1-140(B)(2), 56-1-143, 56-1-148(D), 56-1-170(B)(3), 56-1-200, 56-1-220(B), 56-1-286(K)(1),

56-1-390(2), 56-1-395(G), 56-1-400(A), 56-1-460(A)(1)(e)(iii), 56-1-550, 56-1-740(B)(3), 56-1-746(D)(3), 56-1-1320(B), 56-1-2080, 56-1-3350(B)(2), 56-3-210(B), 56-3-355, 56-3-1335, 56-3-1290, 56-3-1920(C), 56-3-2330(B), 56-3-2335(B)(2), 56-3-2340(C), 56-3-3500(B), 56-3-3600(B), 56-3-3710(B), 56-3-3950, 56-3-4100(B), 56-3-4200(C), 56-3-4410(B), 56-3-4510(C), 56-3-4600(B), 56-3-4800(B), 56-3-4910(B), 56-3-5200(B), 56-3-5400(B), 56-3-7200(B), 56-3-7300(B), 56-3-7310, 56-3-7320, 56-3-7330(B)(2), 56-3-7360, 56-3-7700(B), 56-3-7750(B), 56-3-7780(B), 56-3-7860, 56-3-7910(B), 56-3-7950(B), 56-3-8000(C), 56-3-8100(B), 56-3-8100(F), 56-3-8200(A), 56-3-8300(A), 56-3-8400(A), 56-3-8600(B), 56-3-8710(C), 56-3-9400(B), 56-3-9600(B), 56-3-9710(B), 56-3-10010(B), 56-3-13710(B), 56-5-750(G)(3), 56-5-2942(J), 56-5-2951(B)(1), 56-5-2951(H)(3), 56-9-330, 56-10-240(C), 56-10-245, 56-10-552, 56-10-260(B)(3), 56-19-265(D), 56-19-420(C), and 56-19-520(A)(4) must be credited to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in this section.

(B)(1) The Department of Transportation shall allocate the funds credited to the State Highway Fund pursuant to subsection (A) to the state-funded resurfacing program. The Department of Transportation shall develop and implement a needs-based methodology to distribute revenue within the state-funded resurfacing program, which shall include consideration on a county-by-county basis, to ensure that each county in the State is guaranteed funding for resurfacing.

(2) The Department of Transportation shall reduce the allocation to the state-funded resurfacing program required in item (1) in proportion to the amounts transferred to the South Carolina Transportation Infrastructure Bank pursuant to subsection (C).

(C)(1) The Department of Transportation shall identify bridge and road projects to be financed utilizing non-tax revenue transferred to the bank by the Department of Transportation in an amount equal to the financing requirements related to projects selected pursuant to this section.

(2) Funds transferred to the bank pursuant to this section may not be used to finance projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed pursuant to subsection (B) to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

(3) Following consideration by the Joint Bond Review Committee, the bank shall approve the projects to be financed. Upon approval, the bank shall provide the Department of Transportation with written notice that identifies each project selected, the amount of non-tax

revenue that must be transferred to the bank for financing each project, a schedule for the transfers, and any other information necessary to carrying out the financing of each project.

(4) Upon receipt of the notice provided in item (3), the Department of Transportation shall transfer non-tax revenue to the bank in the amounts and upon the schedule provided in the notice. The department shall take any other action identified in the notice that is necessary for financing each project.

(5) Projects financed utilizing funds transferred pursuant to this subsection shall not require a local match.

(D) The Secretary of Transportation shall apply funds supplanted by the operation of this section to prioritized bridge and resurfacing needs.”

Fees and fines credited to the State Highway Fund

SECTION 9. Section 12-37-2740(D) of the 1976 Code is amended to read:

“(D)Before the reinstatement of a driver’s license or vehicle registration suspended pursuant to this section, a fee of fifty dollars must be paid to the Department of Motor Vehicles. An amount equal to the actual departmental direct costs related to suspension and reinstatement actions pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Fees collected in excess of actual departmental direct costs related to suspension and reinstatement actions pursuant to this section must be deposited to the credit of the general fund of the State at the end of each fiscal year.”

Fees and fines credited to the State Highway Fund

SECTION 10. Section 38-73-470 of the 1976 Code is amended to read:

“Section 38-73-470. Two dollars of the yearly premium for uninsured motorist coverage is directed to be paid to the South Carolina Department of Motor Vehicles to be allocated in the manner provided in Section 56-10-552 on a quarterly basis. Interest earned by the ‘Uninsured Fund’ must be retained by that fund. There is no requirement for an insurer or an agent to offer underinsured motorist coverage at limits less than the statutorily required bodily injury or property damage limits.”

Fees and fines credited to the State Highway Fund

SECTION 11. Section 56-1-140(B)(2) of the 1976 Code, as last amended by Act 147 of 2012, is further amended to read:

“(2) payment of a one dollar fee that must be collected by the department and placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 12. Section 56-1-143 of the 1976 Code, as last amended by Act 42 of 2009, is further amended to read:

“Section 56-1-143. An applicant for a new or renewal driver’s license, commercial driver’s license, motorcycle driver’s license, identification card, issuance of a vehicle title or transfer of title, or issuance or renewal of a vehicle license plate must be given an opportunity in writing to make a voluntary contribution of five dollars, more or less, to be credited to Donate Life South Carolina established in Section 44-43-1310. Any voluntary contribution must be added to the driver’s license, identification card, title, or license plate fee and must be transferred to the State Treasurer and credited to Donate Life South Carolina as provided for in Section 44-43-1310. An amount equal to the incremental cost of administration of the contribution must be paid by the trust fund from amounts received pursuant to this section to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 before funds are expended by the trust fund.”

Fees and fines credited to the State Highway Fund

SECTION 13. Section 56-1-148(D) of the 1976 Code, as added by Act 277 of 2010, is amended to read:

“(D) The department shall charge a fee of fifty dollars for affixing the identifying code provided in subsection (B). This fee is in addition to the fee provided for in Section 56-1-140. This fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 14. Section 56-1-170(B)(3) of the 1976 Code is amended to read:

“(3) The fee for each special restricted driver’s license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee, twenty dollars must be distributed to the general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 15. Section 56-1-200 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

“Section 56-1-200. (A) If a driver’s license is lost or destroyed, the person to whom the license was issued, upon payment of a fee of ten dollars, may obtain a duplicate or substitution of it upon furnishing proof satisfactory to the Department of Motor Vehicles that the license has been lost or destroyed.

(B) Three dollars of the revenue from each fee collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund based on the actual date of receipt by the Department of Motor Vehicles.

(C) The balance of the revenue from each fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 16. Section 56-1-220(B) of the 1976 Code is amended to read:

“(B) During the fifth year of a ten-year license, the licensee must submit by mail to the department a certificate from an ophthalmologist or optometrist licensed in any state or appear in person at a department office to complete a vision screening. If a licensee fails to submit a certificate or fails to appear in person, the licensee must be fined fifty dollars. The department shall waive the fine if the person completes the requirements of this section within ninety days after the end of the fifth

year of a ten-year license. This fine must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 17. Section 56-1-286(K)(1) of the 1976 Code, as last amended by Act 264 of 2012, is further amended to read:

“(1) obtain a temporary alcohol license by filing with the Department of Motor Vehicles a form for this purpose. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee collected by the Department of Motor Vehicles must be distributed to the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The temporary alcohol license allows the person to drive a motor vehicle without any restrictive conditions pending the outcome of the contested case hearing provided for in this section or the final decision or disposition of the matter; and”

Fees and fines credited to the State Highway Fund

SECTION 18. Section 56-1-390(2) of the 1976 Code, as last amended by Act 176 of 2005, is further amended to read:

“(2) The fees collected by the Department of Motor Vehicles under this provision must be distributed as follows: seventy dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, and one dollar must be credited to the ‘Keep South Carolina Beautiful Fund’ established pursuant to Section 56-3-3950. From the ‘Keep South Carolina Beautiful Fund’, the Department of Transportation shall expend funds necessary to employ, within the Department of Transportation, a person with training in horticulture to administer a program for beautifying the rights-of-way along state highways and roads. The remainder of the fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund.”

Fees and fines credited to the State Highway Fund

SECTION 19. Section 56-1-395(G) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

“(G) The payment program administrative fee of thirty-five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 20. Section 56-1-400(A) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

“(A) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that the license be surrendered to the department. At the end of the suspension period, other than a suspension for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or pursuant to the point system, the department shall issue a new license to the person. If the person has not held a license within the previous nine months, the department shall not issue or restore a license which has been suspended for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or for violations under the point system, until the person has filed an application for a new license, submitted to an examination as upon an original application, and satisfied the department, after an investigation of the person’s driving ability, that it would be safe to grant the person the privilege of driving a motor vehicle on the public highways. The department, in the department’s discretion, where the suspension is for a violation under the point system, may waive the examination, application, and investigation. A record of the suspension must be endorsed on the license issued to the person, showing the grounds of the suspension. If a person is permitted to operate a motor vehicle only with an ignition interlock device installed pursuant to Section 56-5-2941, the restriction on the license issued to the person must conspicuously identify the person as a person who only may drive a motor vehicle with an ignition interlock device installed, and the restriction must be maintained on the license for the duration of the period for which the ignition interlock device must be maintained pursuant to Sections 56-1-286, 56-5-2945, and 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, or 56-5-2990. For

purposes of Title 56, the license must be referred to as an ignition interlock restricted license. The fee for an ignition interlock restricted license is one hundred dollars, which shall be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Unless the person establishes that the person is entitled to the exemption set forth in subsection (B), no ignition interlock restricted license may be issued by the department without written notification from the authorized ignition interlock service provider that the ignition interlock device has been installed and confirmed to be in working order. If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended indefinitely. If the person subsequently decides to have the ignition interlock device installed, the device must be installed for the length of time set forth in Sections 56-1-286, 56-5-2945, and 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, or 56-5-2990. This provision does not affect nor bar the reckoning of prior offenses for reckless driving and driving under the influence of intoxicating liquor or narcotic drugs, as provided in Article 23, Chapter 5 of this title.”

Fees and fines credited to the State Highway Fund

SECTION 21. Section 56-1-460(A)(1)(e)(iii) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“(iii) The fee for a route restricted driver’s license issued pursuant to this item is one hundred dollars, but no additional fee is due when changes occur in the place and hours of employment, education, or residence. Of this fee, eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remainder of the fees collected pursuant to this item must be credited to the Department of Transportation State Non-Federal Aid Highway Fund.”

Fees and fines credited to the State Highway Fund

SECTION 22. Section 56-1-550 of the 1976 Code, as added by Act 353 of 2008, is amended to read:

“Section 56-1-550. The Department of Motor Vehicles may collect a fee not to exceed twenty dollars per document to expedite a request for copies of documents and records it maintains. This fee is in addition to the normal fees associated with the request. Expedited requests must be

available within seventy-two hours of receipt of the request and standard requests within thirty days. Nothing in this section may be construed as circumventing the requirements of Section 30-4-30 of the Freedom of Information Act. The funds collected pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 23. Section 56-1-740(B)(3) of the 1976 Code, as last amended by Act 176 of 2005, is further amended to read:

"(3) The fee for each special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee, eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remainder of the fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

Fees and fines credited to the State Highway Fund

SECTION 24. Section 56-1-746(D)(3) of the 1976 Code is amended to read:

"(3) The fee for a special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 25. Section 56-1-1320(B) of the 1976 Code is amended to read:

"(B) Ninety-five dollars of the collected fee must be credited to the state's general fund for use of the Department of Public Safety in the hiring, training, and equipping of members of the South Carolina

Highway Patrol and Transportation Police and in the operations of the South Carolina Highway Patrol and Transportation Police. Five dollars of the collected fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 26. Section 56-1-2080(A)(1) of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

“(1) A person may not be issued a commercial driver’s license unless that person is a resident of this State and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with the minimum federal standards established by 49 C.F.R. Part 383, subparts F, G, and H and has satisfied all other requirements of the CMVSA as well as any other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. The first commercial driver’s license skills test administered by the department to an individual is free of charge; thereafter, the Department of Motor Vehicles is authorized to charge a fee of twenty-five dollars for each subsequent commercial driver’s license skills test administered to that individual. State agency and school district employees who are required to possess a commercial driver’s license in the course of their normal job duties are exempt from this requirement. This fee must be placed into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 by the Comptroller General.”

Fees and fines credited to the State Highway Fund

SECTION 27. Section 56-1-3350(B)(2) of the 1976 Code, as last amended by Act 147 of 2012, is further amended to read:

“(2) payment of a one dollar fee that must be collected by the department and placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 28. Section 56-3-210(B) of the 1976 Code is amended to read:

“(B) The Department of Motor Vehicles or the county auditor’s office must, upon proper application, issue a temporary license plate designed by the Department of Motor Vehicles to a casual seller or buyer of a vehicle pursuant to subsection (A) of this section. The county auditor’s office may obtain temporary license plates from the Department of Motor Vehicles. If the applicant is a casual buyer of a vehicle, the Department of Motor Vehicles or the county auditor’s office must insert clearly and indelibly on the face of the temporary license plate the date of expiration and other information the Department of Motor Vehicles may require. If the applicant is the casual seller of a vehicle, at the time of the sale, he must insert clearly and indelibly on the face of the temporary license plate the date of expiration and other information the Department of Motor Vehicles may require. The expiration date may not extend beyond forty-five days from the vehicle’s date of purchase. Neither the casual seller nor the casual buyer may place the temporary license plate on the vehicle until the sale has been completed. The bill of sale, title, rental contract, or a copy of either document must be maintained in the vehicle at all times to verify the vehicle’s date of purchase to a law enforcement officer. The bill of sale, title, rental contract, or a copy of either document must provide a description of the vehicle, the name and address of both the seller and purchaser of the vehicle, and its date of sale. A casual seller who issues a temporary license plate or allows a temporary license plate to be issued in violation of this subsection is guilty of a misdemeanor and, upon conviction, must be fined one hundred dollars for each occurrence. The Department of Motor Vehicles may charge a five dollar fee for the temporary license plate which the Comptroller General must place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The county auditor’s office also may charge a five dollar fee for the temporary license plate to defray the expenses of the county auditor’s office associated with the production and issuance of the temporary license plates.”

Fees and fines credited to the State Highway Fund

SECTION 29. Section 56-3-355 of the 1976 Code is amended to read:

“Section 56-3-355. The Department of Motor Vehicles must suspend, revoke, or not issue a registration card and license plate to a person for a commercial motor vehicle greater than twenty-six thousand pounds which operates with an apportioned license plate if the commercial motor carrier who is responsible for the safety of the vehicle has been

prohibited from operating by a federal agency. The registrant must promptly surrender to the department any item suspended or revoked under this section. If the registrant unlawfully refuses to surrender the suspended or revoked items as required under this section, the department, through its designated agents or by request to a county or municipal law enforcement agency, shall take possession of the suspended or revoked license plate and registration card. A registration card or license plate may not be reissued for that vehicle until the motor carrier has been allowed to operate by a federal agency or the vehicle is properly transferred to a motor carrier that is not prohibited from operating by a federal agency. Before a suspended vehicle registration card can be reinstated, a fee of fifty dollars for each registration card suspension must be paid to the department. The fifty dollar fee must be placed in the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 by the Comptroller General."

Fees and fines credited to the State Highway Fund

SECTION 30. Section 56-3-1290 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 56-3-1290. The Department of Motor Vehicles, upon application and the payment of a fee of ten dollars, shall transfer the license plate assigned for one vehicle to another vehicle of the same general type owned or leased by the same person without a paid tax receipt for the vehicle. However, subsequent transfers of a license plate to the same vehicle may not be processed without a paid tax receipt based upon the value of the vehicle to which the plate is being transferred. Three dollars of the fees paid pursuant to this section must be deposited in the state general fund, and the remaining seven dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 31. Section 56-3-1335 of the 1976 Code, as added by Act 267 of 2006, is amended to read:

"Section 56-3-1335. The Department of Motor Vehicles shall suspend a motor vehicle's current registration and shall not register or reregister a motor vehicle that was operated when its driver failed to pay

a toll and whose owner has an outstanding judgment for failure to pay a toll pursuant to Section 57-5-1495(E) entered against him. The suspension or denial of registration or reregistration shall remain in effect until the judgment is satisfied, evidence of the satisfaction has been provided to the Department of Motor Vehicles, and a reinstatement fee of fifty dollars has been paid. The reinstatement fee collected must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 32. Section 56-3-1920(C) of the 1976 Code, as added by Act 147 of 2012, is amended to read:

“(C) A fee not to exceed five dollars may be charged to each applicant issued a placard in accordance with this section. These fees must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 33. Section 56-3-2330(B) of the 1976 Code is amended to read:

“(B) A motor vehicle manufacturer shall apply for manufacturer license plates on a form prescribed by the department and shall provide proof the applicant is a bona fide motor vehicle manufacturer. The cost of each manufacturer plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the principal facility of the manufacturer is located. Forty dollars of the fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Each plate is valid for two years.”

Fees and fines credited to the State Highway Fund

SECTION 34. Section 56-3-2335(B)(2) of the 1976 Code, as last amended by Act 15 of 2011, is further amended to read:

“(2) Application for research and development license plates must be made by the research and development business on a form prescribed by

the department and submitted with proof of the applicant's status as a bona fide research and development business. The cost of each research and development license plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the testing facility of the business is located. Forty dollars of the fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Each plate is valid for two years. A maximum of one hundred research and development license plates may be issued for the two-year period."

Fees and fines credited to the State Highway Fund

SECTION 35. Section 56-3-2340(C) of the 1976 Code, as last amended by Act 201 of 2014, is further amended to read:

"(C) The department is authorized to collect a transaction fee from entities who either transmit or retrieve data from the department pursuant to this section. The fee must not exceed the fee authorized in Section 56-19-265(B) for each transaction. These fees must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 36. Section 56-3-3500(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be distributed to Penn Center, Inc., to support its activities."

Fees and fines credited to the State Highway Fund

SECTION 37. Section 56-3-3600(B) of the 1976 Code is amended to read:

“(B) Of the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Nurses Foundation to endow scholarships for all of the state’s registered nursing programs.”

Fees and fines credited to the State Highway Fund

SECTION 38. Section 56-3-3710(B) of the 1976 Code is amended to read:

“(B) The fees collected pursuant to this section must be distributed to a separate fund for each of the respective colleges, universities, or independent institutions of higher learning. Each fund must be administered by the school and may be used only for academic scholarships. Funds collected for state colleges and universities must be deposited with the State Treasurer. Funds collected for independent institutions must be deposited in an account designated by the respective school. The distribution of the fee is forty dollars to the school for each special license plate sold for the respective school and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 39. Section 56-3-3950 of the 1976 Code, as last amended by Act 31 of 2005, is further amended to read:

“Section 56-3-3950. The department may issue a special commemorative ‘Keep It Beautiful’ motor vehicle license plate for use by owners on their private passenger motor vehicles to establish a special fund to be used by the Department of Transportation for the purposes of enhancing the state’s roads and highways. These enhancements may include landscaping, wildflower plantings, scenic easements, or other highway enhancement projects. The Department of Transportation, in implementing this program, may not expend beautification funds for wildflowers without prior approval of the South Carolina Department of Agriculture. The Department of Agriculture shall ensure, before granting approval, that the varieties of wildflowers used in beautification are not

harmful to agriculture at or near a proposed project. The biennial fee for the commemorative license plate is fifty-four dollars. Notwithstanding any other provision of law, of the fees collected for this special license plate, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the department's expenses in producing and administering this special license plate. Any remaining funds must be placed in a special 'Highway Beautification Fund' established within and administered by the Department of Transportation. This biennial fee is in addition to the regular motor vehicle registration fee set forth in Article 5, Chapter 7 of this title. The commemorative plate must be of the same size and general design of regular motor vehicle license plates and must be imprinted with the words 'Keep It Beautiful'. The plates must be issued or revalidated for a biennial period which expires twenty-four months from the month they are issued."

Fees and fines credited to the State Highway Fund

SECTION 40. Section 56-3-4100(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, of the fees collected for the special license plate, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plate. Any remaining funds must be deposited in a special account, separate and apart from the general fund, designated for use by the South Carolina Elks Association to be used to support its Alzheimer's state project."

Fees and fines credited to the State Highway Fund

SECTION 41. Section 56-3-4200(C) of the 1976 Code is amended to read:

"(C) Notwithstanding another provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering the plates. The remaining funds collected from the special motor vehicle license fee must be

distributed to the South Carolina Department of Parks, Recreation and Tourism and used by the State Park Service for recreational enhancements and improvements.”

Fees and fines credited to the State Highway Fund

SECTION 42. Section 56-3-4410(B) of the 1976 Code is amended to read:

“(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be distributed to the Palmetto Cycling Coalition, Inc., or another nonprofit fund designated by the Palmetto Cycling Coalition, Inc., for the promotion of bicycling safety and education programs. Any remaining funds must be administered by the Palmetto Cycling Coalition, Inc., used only for efforts to promote bicycle safety and education programs, and deposited in an appropriate nonprofit account designated by the Palmetto Cycling Coalition, Inc.”

Fees and fines credited to the State Highway Fund

SECTION 43. Section 56-3-4510(C) of the 1976 Code, as last amended by Act 79 of 2009, is further amended to read:

“(C) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate collection. The remaining funds collected from each special motor vehicle license plate fee must be deposited in the Game Protection Fund provided for in Title 50.”

Fees and fines credited to the State Highway Fund

SECTION 44. Section 56-3-4600(B) of the 1976 Code is amended to read:

“(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be administered by the South Carolina Association of Realtors and deposited in an appropriate nonprofit account designated by the association for distribution to Habitat for Humanity International or another nonprofit fund designated by the association for the construction of new homes for low income families in South Carolina.”

Fees and fines credited to the State Highway Fund

SECTION 45. Section 56-3-4800(B) of the 1976 Code is amended to read:

“(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Division of the Sons of Confederate Veterans.”

Fees and fines credited to the State Highway Fund

SECTION 46. Section 56-3-4910(B) of the 1976 Code is amended to read:

“(B) The fees collected pursuant to this section must be deposited in a separate fund for the South Carolina Fire Academy. The fund must be administered by the Department of Labor, Licensing and Regulation Division of State Fire Marshal and must be used only to train in-state public firefighters, paid and volunteer, to comply with state and federal mandated training standards. Funds collected must be deposited with the State Treasurer. The distribution of the funds is based on twenty dollars to the academy for each special license plate sold and fifteen dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 47. Section 56-3-5200(B) of the 1976 Code, as last amended by Act 264 of 2012, is further amended to read:

“(B) The fees collected pursuant to this section must be distributed to a special ‘South Carolina: First In Golf’ fund established within and administered by the Department of Parks, Recreation and Tourism to promote the South Carolina Junior Golf Association. The distribution is forty dollars to the fund and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 48. Section 56-3-5400(B) of the 1976 Code is amended to read:

“(B) Of the fees collected pursuant to this section, the Comptroller General shall place the regular motor vehicle license fee into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remaining funds collected from the special motor vehicle license fee must be distributed to the State Lodge of the Fraternal Order of Police to be used to support the families of officers killed in the line of duty.”

Fees and fines credited to the State Highway Fund

SECTION 49. Section 56-3-7200(B) of the 1976 Code, as added by Act 55 of 2005, is amended to read:

“(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be deposited in a separate fund for the South Carolina Arts Commission and be used solely to support activities that build a thriving arts environment in South Carolina.”

Fees and fines credited to the State Highway Fund

SECTION 50. Section 56-3-7300(B) of the 1976 Code is amended to read:

“(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be deposited in a special account, separate and apart from the general fund, established within and administered by the Department of Natural Resources to manage and conserve the marine resources of the State.”

Fees and fines credited to the State Highway Fund

SECTION 51. Section 56-3-7310 of the 1976 Code, as added by Act 398 of 2006, is amended to read:

“Section 56-3-7310. The Department of Motor Vehicles may issue ‘Support Our Troops’ special license plates to owners of private passenger motor vehicles registered in their names. The requirements for production and distribution of the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of thirty dollars. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to defray costs of production and distribution. Any portion of the additional thirty dollar fee not placed in the State Highway Fund by the Comptroller General must be distributed to Support Our Troops, Inc.”

Fees and fines credited to the State Highway Fund

SECTION 52. Section 56-3-7320 of the 1976 Code, as added by Act 398 of 2006, is amended to read:

“Section 56-3-7320. The Department of Motor Vehicles may issue ‘Emergency Medical Service’ special license plates to owners of private passenger motor vehicles registered in their names. The requirements for production and distribution of the plate are those set forth in Section

56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of thirty dollars. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the department's costs of production and distribution. Any portion of the additional thirty-dollar fee not placed in the State Highway Fund by the Comptroller General must be distributed to the South Carolina Emergency Medical Services Association."

Fees and fines credited to the State Highway Fund

SECTION 53. Section 56-3-7330(B)(2) of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"(2) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production. That portion of the fees collected pursuant to this section in excess of the cost of production must be distributed to the South Carolina Indian Waters Council, Boy Scouts of America, to then be distributed to the other five Boy Scout councils serving counties in South Carolina."

Fees and fines credited to the State Highway Fund

SECTION 54. Section 56-3-7360 of the 1976 Code, as last amended by Act 253 of 2012, is further amended to read:

"Section 56-3-7360. The Department of Motor Vehicles may issue 'Korean War Veterans' special license plates to owners of private passenger motor vehicles and motorcycles registered in their names who are Korean War Veterans who served on active duty at anytime during the Korean War. The applicant must present the department with a DD214 or other official documentation that states that he served on active duty upon initial application for this special license plate. The requirements for production and distribution of the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of twenty dollars. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production. Any portion of the additional twenty-dollar fee not placed

by the Comptroller General into the State Highway Fund must be distributed to the state general fund.”

Fees and fines credited to the State Highway Fund

SECTION 55. Section 56-3-7700(B) of the 1976 Code is amended to read:

“(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production and distribution of this special license plate. The fees collected pursuant to this section in excess of those placed in the State Highway Fund, must be distributed to the South Carolina Special Olympics.”

Fees and fines credited to the State Highway Fund

SECTION 56. Section 56-3-7750(B) of the 1976 Code, as last amended by Act 90 of 2007, is further amended to read:

“(B) The fees collected pursuant to this section must be distributed to a separate fund for each of the respective fraternities or sororities. Each fund must be administered by the fraternity or sorority and may be used for academic scholarships, or to fund programs that send boys and girls who are at least eight years old and not more than sixteen years old to summer camp, or both. Funds collected for each fraternity or sorority must be deposited in an account designated by the fraternity or sorority. The distribution is forty dollars to the respective fund and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 57. Section 56-3-7780(B) of the 1976 Code is amended to read:

“(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering the special

license plates. The remaining funds collected from the special motor vehicle license fee must be placed in the state's general fund."

Fees and fines credited to the State Highway Fund

SECTION 58. Section 56-3-7860 of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"Section 56-3-7860. The Department of Motor Vehicles may issue special motor vehicle license plates to members of the Shriners for private motor vehicles and motorcycles registered in their names. The fee for the issuance of this special plate must be the regular motor vehicle registration fee contained in Article 5, Chapter 3 of this title which must be deposited in the state general fund and the special fee required by Section 56-3-2020 which the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The department shall assess the cost of production, administration, and issuance of this plate and provide this information to the General Assembly every five years."

Fees and fines credited to the State Highway Fund

SECTION 59. Section 56-3-7910(B) of the 1976 Code is amended to read:

"(B) The fees collected pursuant to this section must be distributed to the Fund to Save the Hunley created by the Hunley Commission or another nonprofit fund designated by the commission for the continued curation of the Hunley submarine. Any such fund must be administered by the Hunley Commission and may be used only for efforts to raise, restore, and preserve the Hunley submarine. Any funds collected must be deposited in an appropriate nonprofit account designated by the Hunley Commission. The distribution of these funds is sixty dollars to the Hunley Commission and forty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 60. Section 56-3-7950(B) of the 1976 Code, as added by Act 287 of 2006, is amended to read:

“(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to The Friends of Hunting Island State Park, Inc., for use on projects benefiting Hunting Island State Park.”

Fees and fines credited to the State Highway Fund

SECTION 61. Section 56-3-8000(C) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

“(C) The license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued. The biennial fee for this special license plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the license plate. The initial fee amount requested may be changed only every five years from the first year the license plate is issued. Of the additional fee collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate.”

Fees and fines credited to the State Highway Fund

SECTION 62. A. Section 56-3-8100(B) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

“(B) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (A)(1) into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

B. Section 56-3-8100(F) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

“(F) Of the additional fee collected pursuant to subsections (D) and (E), the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing and administering special license plates.”

Fees and fines credited to the State Highway Fund

SECTION 63. Section 56-3-8200(A) of the 1976 Code, as last amended by Act 398 of 2006, is further amended to read:

“(A) The Department of Motor Vehicles may issue motor vehicle license plates to members of Rotary International for private passenger motor vehicles registered in their names. The fee for this special license plate must be the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title, and an additional special fee of fifty dollars which must be distributed to the Rotary District in which the purchaser’s home club is located in this State. The department must report to the South Carolina Rotary District designee the district chosen as a result of the license plate issuance to which this fee must be distributed. The fee must be deposited in an account designated by each South Carolina Rotary District, and must be distributed properly by each district. Notwithstanding any other provision of law, of the fees collected for the special license plate, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special plate. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the organization.”

Fees and fines credited to the State Highway Fund

SECTION 64. Section 56-3-8300(A) of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

“(A) The Department of Motor Vehicles may issue special motor vehicle license plates to members of the Marine Corps League for private passenger motor vehicles and motorcycles registered in their names. The fee for this license plate is the fee set forth for special license plates in Section 56-3-8100. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production

and distribution of this special license plate. Any portion of the additional thirty-dollar fee not placed in the State Highway Fund by the Comptroller General must be distributed to the South Carolina Department of the Marine Corps League. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the organization.”

Fees and fines credited to the State Highway Fund

SECTION 65. Section 56-3-8400(A) of the 1976 Code is amended to read:

“Section 56-3-8400. (A) The Department of Motor Vehicles may issue special motor vehicle license plates to members of the Lions Club for private motor vehicles registered in their names. The fee for this special license plate must be the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title which must be deposited in the state general fund and the special fee required by Section 56-3-2020 which must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the organization.”

Fees and fines credited to the State Highway Fund

SECTION 66. Section 56-3-8600(B) of the 1976 Code is amended to read:

“(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering the plates. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Ducks Unlimited State Committee for wetlands conservation projects in South Carolina. Any remaining funds must be administered by the South Carolina Ducks Unlimited State Committee and deposited in an appropriate nonprofit account designated by the South Carolina Ducks Unlimited State Committee.”

Fees and fines credited to the State Highway Fund

SECTION 67. The introductory paragraph of Section 56-3-8710(C) of the 1976 Code is amended to read:

“(C) From the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing the special license plates. The remaining funds must be distributed in the following manner:”

Fees and fines credited to the State Highway Fund

SECTION 68. Section 56-3-9400(B) of the 1976 Code is amended to read:

“(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be distributed to Save the Light, Inc., or another nonprofit fund designated by Save the Light, Inc., for the restoration and preservation of the Morris Island Lighthouse. Any remaining funds must be administered by Save the Light, Inc., used only for efforts to restore and preserve the Morris Island Lighthouse, and deposited in an appropriate nonprofit account designated by Save the Light, Inc.”

Fees and fines credited to the State Highway Fund

SECTION 69. Section 56-3-9600(B) of the 1976 Code, as last amended by Act 158 of 2005, is further amended to read:

“(B) Notwithstanding any other provision of law, of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be deposited in a special account, separate and apart from the general fund, designated for use by the South Carolina

Department of Agriculture to support local animal spaying and neutering programs. The South Carolina Department of Agriculture may use up to ten percent of the fees deposited in the special account for the administration of the program. Local private nonprofit tax exempt organizations offering animal spaying and neutering programs may apply for grants from this fund to further their tax exempt purposes. Grants must be awarded not more than once a year, and an applicant must receive as a grant an amount of the total revenues in the fund multiplied by the percentage that the applicant's caseload in the preceding calendar year was of the total caseload of all applicants in that year."

Fees and fines credited to the State Highway Fund

SECTION 70. Section 56-3-9710(B) of the 1976 Code is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to the Heritage Classic Foundation."

Fees and fines credited to the State Highway Fund

SECTION 71. Section 56-3-10010(B) of the 1976 Code, as added by Act 286 of 2006, is amended to read:

"(B) From the fees collected pursuant to this article, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses associated with producing and administering the distribution of the license plate. The remaining funds collected from the special motor vehicle license fee shall be distributed to the South Carolina Parrot Head Club Council, which shall only use the funds to support the Palmetto Chapter of the Alzheimer's Association and the Upstate South Carolina Chapter of the Alzheimer's Association."

Fees and fines credited to the State Highway Fund

SECTION 72. Section 56-3-13710(B) of the 1976 Code, as added by Act 55 of 2015, is amended to read:

“(B) Notwithstanding another provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license plate fee must be disbursed to the American Red Cross.”

Fees and fines credited to the State Highway Fund

SECTION 73. Section 56-5-750(G)(3) of the 1976 Code is amended to read:

“(3) The fee for each special restricted driver’s license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee twenty dollars must be distributed to the general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 74. Section 56-5-2942(J) of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“(J) A fee of fifty dollars must be paid to the department for each motor vehicle that was suspended before any of the suspended registrations and license plates may be registered or before the motor vehicle may be released pursuant to subsection (F). This fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Fees and fines credited to the State Highway Fund

SECTION 75. Section 56-5-2951(B)(1) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

“(1) obtain a temporary alcohol license from the Department of Motor Vehicles. A one hundred dollar fee must be assessed for obtaining a

temporary alcohol license. Twenty-five dollars of the fee must be distributed by the Department of Motor Vehicles to the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The temporary alcohol license allows the person to drive without any restrictive conditions pending the outcome of the contested case hearing provided for in subsection (F) or the final decision or disposition of the matter. If the suspension is upheld at the contested case hearing, the temporary alcohol license remains in effect until the Office of Motor Vehicle Hearings issues the hearing officer's decision and the Department of Motor Vehicles sends notice to the person that the person is eligible to receive a restricted license pursuant to subsection (H); and"

Fees and fines credited to the State Highway Fund

SECTION 76. Section 56-5-2951(H)(3) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

"(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state's general fund, and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 77. A. Section 56-9-330 of the 1976 Code is amended to read:

"Section 56-9-330. (1) The Department of Motor Vehicles, upon request and the payment of a fee, shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, which abstract must also fully designate the motor vehicles, if any, registered in the name of that person, and, if there is no record of any conviction of that person for violating any laws relating to the operation of a motor vehicle or of any injury or damage caused by that person, the department shall so certify. The department, upon request and the payment of a reasonable fee, shall furnish a monthly listing by magnetic or other electronic media of all driver's license

numbers that had driving violations posted on their records during the previous month. These abstracts are not admissible as evidence in any action for damages or criminal proceedings arising out of motor vehicle accidents.

(2) The department shall, upon request, and the payment of a fee furnish any person a copy of a vehicle accident report. Revenue generated by the fee imposed pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

B. If the provisions regarding distribution of the fee authorized in this SECTION conflict with the provisions for distribution contained in Proviso 82.4 included in the Fiscal Year 2016-2017 General Appropriations Act, the provisions contained in this act shall control.

Fees and fines credited to the State Highway Fund

SECTION 78. Section 56-10-240(C) of the 1976 Code is amended to read:

"(C) If the vehicle owner unlawfully refuses to surrender the suspended items as required in this article, the department through its designated agents or by request to a county or municipal law enforcement agency shall take possession of the suspended license plates and registration certificates and may not reissue the registration until proper proof of liability insurance coverage is provided and until the owner has paid a reinstatement fee of two hundred dollars. A person who voluntarily surrenders his license plates and registration certificates before their suspension shall not be charged a reinstatement fee. Revenue generated by the fee imposed pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 79. Section 56-10-245 of the 1976 Code is amended to read:

"Section 56-10-245. Whenever a person furnishes proof of liability insurance, or surrenders or has his registration or license tags confiscated for failure to produce proof of insurance, after the Department of Motor Vehicles receives notice of the lapse or termination of the required liability insurance, the department shall compare the effective date of the

lapse or termination with the date of the proof of insurance or the date of the confiscation or surrender. If the department determines there was a lapse in the required coverage, the department shall assess, in addition to other fines or penalties imposed by the law, a per diem fine in the amount of five dollars. The fine provided for in this section and the two hundred dollar reinstatement fee pursuant to Section 56-10-240 of the 1976 Code must not be assessed if the person furnishes proof, as documented by his sworn statement, that the motor vehicle upon which the coverage has lapsed or been terminated has not been operated upon the roads, streets, or highways of this State during the lapse or termination, and the lapse or termination is due to military service or illness as documented by a signed physician's statement. The total amount of the fine provided for in this section may not exceed two hundred dollars for a first offense. Revenue generated by the fine imposed pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 80. Section 56-10-260(B)(3) of the 1976 Code is amended to read:

"(3) The fee for each special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee, twenty dollars must be distributed to the general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 81. Section 56-10-552 of the 1976 Code, as last amended by Act 264 of 2012, is further amended to read:

"Section 56-10-552. (A) For each two dollars of the yearly premium for uninsured motorist coverage paid to the Department of Motor Vehicles pursuant to Section 38-73-470, one dollar and twenty cents must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remaining eighty cents must be placed in a special fund, to be known as the 'Uninsured Enforcement Fund', to be

used by the Department of Public Safety for the purpose of enforcement and administration of Article 3, Chapter 10, Title 56.

(B) Fifty percent of the reinstatement fee as provided by Section 56-10-510(1) must be transferred by the Department of Public Safety and recorded to the Uninsured Enforcement Fund to be used by the Department of Public Safety as provided by subsection (A) of this section. The remaining fifty percent of the reinstatement fee as provided by Section 56-10-510 must be retained in the Uninsured Motorist Fund to be used as provided in Sections 56-10-550, 38-77-151, and 38-77-154."

Fees and fines credited to the State Highway Fund

SECTION 82. Section 56-19-265(D) of the 1976 Code, as last amended by Act 201 of 2014, is further amended to read:

"(D) The department is authorized to collect a transaction fee from commercial entities who either transmit or retrieve data from the department pursuant to this section. The fee must not exceed five dollars for each transaction and must be agreed to as part of the program specifications developed by the working group. These fees must be placed by the State Treasurer into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 83. Section 56-19-420(C) of the 1976 Code is amended to read:

"(C) Notwithstanding any other provision of law, five dollars of the fee contained in this section must be placed in the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 by the Comptroller General."

Fees and fines credited to the State Highway Fund

SECTION 84. Section 56-19-520(A)(4) of the 1976 Code is amended to read:

"(4) payment of a fee established by the department not to exceed fifty dollars for retirement of the title certificate and, notwithstanding any other provision of law, the fee collected by the department must be

placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.”

Tax revenue on sales of motor vehicles

SECTION 85. Section 12-36-2647 of the 1976 Code, as added by Act 98 of 2013, is amended to read:

“Section 12-36-2647. (A) Notwithstanding the provisions of Section 59-21-1010, the revenues of sales, use, and casual excise taxes derived pursuant to Sections 12-36-2620(1) and 12-36-2640(1) on the sale, use, or titling of a motor vehicle required to be licensed and registered by the South Carolina Department of Motor Vehicles, otherwise required to be credited as provided pursuant to Section 59-21-1010, instead must be credited to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in this section.

(B)(1) The Department of Transportation shall allocate the funds credited to the State Highway Fund pursuant to subsection (A) to the state-funded resurfacing program. The Department of Transportation shall develop and implement a needs-based methodology to distribute revenue within the state-funded resurfacing program, which shall include consideration on a county-by-county basis, to ensure that each county in the State is guaranteed funding for resurfacing.

(2) The Department of Transportation shall reduce the allocation to the state-funded resurfacing program required in item (1) in proportion to the amounts transferred to the South Carolina Transportation Infrastructure Bank pursuant to subsection (C).

(C)(1) The Department of Transportation shall identify bridge and road projects to be financed utilizing non-tax revenue transferred to the bank by the Department of Transportation in an amount equal to the financing requirements related to projects selected pursuant to this section, provided that:

(a) Fifty million dollars in revenue utilized by the bank shall be used to finance bridge replacement, rehabilitation projects, and expansion and improvements on existing roads in the State Highway System.

(b) Funds in excess of fifty million dollars utilized by the bank shall be used to finance expansion and improvements to existing mainline interstates.

(2) Funds transferred to the bank pursuant to this section may not be used to finance projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed pursuant to

subsection (B) to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

(3) Following consideration by the Joint Bond Review Committee, the bank shall approve the projects to be financed. Upon approval, the bank shall provide the Department of Transportation with written notice that identifies each project selected, the amount of non-tax revenue that must be transferred to the bank for financing each project, a schedule for the transfers, and any other information necessary to carrying out the financing of each project.

(4) Upon receipt of the notice provided in item (3), the Department of Transportation shall transfer non-tax revenue to the bank in the amounts and upon the schedule provided in the notice. The department shall take any other action identified in the notice that is necessary for financing each project.

(5) Projects financed utilizing funds transferred pursuant to this subsection shall not require a local match.

(D) The Secretary of Transportation shall apply funds supplanted by the operation of this section to prioritized bridge and resurfacing needs."

PART III

Transition Provisions and Effective Date

Repeal

SECTION 86. Section 1-3-240(C)(1)(b) of the 1976 Code is repealed.

Chief internal auditor of the Department of Transportation

SECTION 87. (A) The chief internal auditor of the Department of Transportation and all associated support staff, and all authorized appropriations associated with the chief internal auditor and associated support staff are transferred to and become part of the State Auditor's Office, State Fiscal Accountability Authority. The chief internal auditor of the Department of Transportation and all associated support staff, whether classified or unclassified personnel, employed by the Department of Transportation on the effective date of this act, either by contract or by employment at will, shall become employees of the State Auditor's Office, State Fiscal Accountability Authority, with the same compensation, classification, and grade level, as applicable.

(B) The chief internal auditor of the Department of Transportation on June 30, 2016, shall continue to serve until the State Auditor employs a successor. Nothing in this section shall prevent the State Auditor from retaining the chief internal auditor of the Department of Transportation as of June 30, 2016, pursuant to the provisions of Section 57-1-360, as amended in this act, found in SECTION 1.

Severability

SECTION 88. If any 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 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.

Act constitutes one subject

SECTION 89. The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of improving the state's transportation / infrastructure system as clearly enumerated in the title. /

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

Time effective

SECTION 90. (A) This act takes effect July 1, 2016.

(B) The members of the Commission of the Department of Transportation serving on June 30, 2016, shall continue to serve until their current term expires, and until their successor is appointed and confirmed. If a vacancy occurs in the seat of a member serving on June 30, 2016, before the member's term otherwise expires, the vacancy must be filled in the manner specified in Chapter 1, Title 57 of the 1976 Code, as amended by this act, and the member filling the vacancy shall serve

until the term expires. The members serving on June 30, 2016, if otherwise eligible, may be reappointed pursuant to Section 57-1-310, as amended by this act.

(C) The Secretary of Transportation serving on June 30, 2016, shall continue to serve at the pleasure of the commission as provided in this act. No further confirmation proceedings are required. Thereafter, any new appointee to the office of Secretary of Transportation must be filled in the manner specified in Chapter 1, Title 57 of the 1976 Code, as amended by this act.

(D) Notwithstanding the effective date provided in subsection (A), SECTION 6 and SECTION 7 take effect upon approval by the Governor. The provisions contained in SECTION 6 and SECTION 7 only apply to projects selected by the bank thereafter.

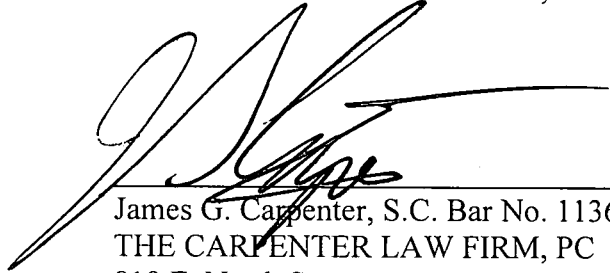
Ratified the 2nd day of June, 2016.

Approved the 8th day of June, 2016.

CERTIFICATE OF COUNSEL

Pursuant to Appellate Rule 210(g), the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

THE CARPENTER LAW FIRM, P.C

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorney for Appellants

February 7, 2018