



South Carolina Association of Counties

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December 17, 2014

**To: Her Excellency, The Governor of the State of South Carolina
Members of the General Assembly of the State of South Carolina**

From: South Carolina Association of Counties Board of Directors

Re: Infrastructure and Local Government Fund

The South Carolina Association of Counties completed its Legislative Policy Development Process for the 2015 legislative session on December 5. Although a complete publication containing our policy positions is forthcoming, it is imperative SCAC address two issues prior to the convening of the 121st General Assembly. The significance of State infrastructure needs and the Local Government Fund to the people of South Carolina cannot be overstated, and we believe must be resolved in a way that benefits our citizenry, and not in a manner that merely represents delay or expediency.

State Infrastructure Needs

SCAC opposes any legislative efforts to transfer roads from SCDOT to local governments. This legislative position is not born out of caprice, but rather arises from a thoughtful consideration of what is best for South Carolina. A resolution adopted by the SCAC Board of Directors regarding the transfer of roads to local governments is attached.

For over 50 years the General Assembly adopted an approach to state infrastructure which included the intake of secondary roads into the state highway system. It is estimated that the percentage of secondary roads in good condition is as low as 10%. Counties do not have the financial resources to fund the necessary maintenance costs on the roads within the state system. Recently passed legislation limiting local governments ability to raise revenue, and a failure to receive statutory state-shared revenues have strangled the financial ability for counties to provide minimal services for their constituents. Adding the secondary highway system as a burden on county government and county taxpayers will ensure the financial collapse of many local governments. Many counties, especially rural counties, have neither the residential nor commercial tax base to assume the perpetual maintenance cost of roads, even if given a new source of revenue. Furthermore, the state has failed to establish that even if given the financial resources in one fiscal year, that counties would be able to rely on continued financial resources for the next. Absent a constitutional amendment, no revenue source is safe from the whimsy of a future General Assembly.

SCAC is ready and willing to assist the General Assembly regarding any issue. However, Article III, Section I of the South Carolina Constitution clearly grants the legislative power of the State to the

General Assembly. SCAC believes in the plenary power of the General Assembly in all *statewide* issues and the county officials in this state will not intrude on that power. Devolution would merely cloak as local an issue which is obviously one of overarching concern. South Carolina's infrastructure needs represents a statewide concern and should be tackled in a fashion which benefits the state in its entirety.

Local Government Fund

Fiscal year 2014-15 represents the 7th consecutive year the LGF has not been fully funded. In order to fully apprise the membership regarding the background and use of this important resource we have included a copy of the History of the Local Government Fund and the Executive Summary of The Fiscal Impact of Selected State Mandates on County Governments, a joint project by Francis Marion University, Clemson University and the University of South Carolina.

Full statutory funding this year would require an increase of around \$90 million dollars. This amount is a result of the failure to fully fund the LGF in previous years combined with the significant increase in General Fund revenue. State revenues this year are projected to eclipse the General Fund Revenues collected prior to the Great Recession. Now is the time to renew this tax relief to your constituents.

SCAC supports funding of the Local Government Fund in accordance with statutory law. In order to achieve restoration of this important source of property tax relief for our citizens, SCAC supports legislation that would achieve a phased-in full funding of the Local Government Fund within three years.

Taxpayers dollars are sent to the state and deposited into the General Fund. The LGF represents some of that revenue being sent back to the locality from which it originated. If the money is not sent back, then counties must either raise taxes or cut services. ***This is why a failure to fund the LGF is detrimental to the property taxpayers of this state, they are paying the same or more taxes and getting less services.***

Most counties have implemented dramatic measures to deal with both a decline in revenues at the local level and the decrease in the LGF. These measures include: freezing employee pay for several years, elimination of retiree health benefits, reductions in the size of their workforce, reducing the replacement schedule on emergency vehicles, and reducing county support of local organizations. Counties desperately need this funding to avoid widespread property tax increases.

At its core, the LGF represents property tax relief for your constituents and ours. An increase in the LGF means lower taxes and better services. We ask that you commit to increasing this vital source of revenue for the taxpayers of South Carolina.

County Councils *do not* want to raise property taxes on our neighbors, friends and families! Current state obligations funded at the county level already overburden local budgets and county taxpayers. If the General Assembly, either by failing to meet its financial obligations though the funding of the LGF, or by choosing to dump state roads on local governments, forces massive property tax increases upon our citizens, elected officials at both the state and local level will surely meet with the wrath of the taxpayers at the polls in 2016.

RESOLUTION
Of the South Carolina Association of Counties

**IN OPPOSITION TO LEGISLATIVE EFFORTS TO TRANSFER STATE-OWNED ROADS
TO LOCAL GOVERNMENTS**

WHEREAS, pursuant to §57-5-10, the state highway system shall consist of a statewide system of connecting highways that shall be constructed to the Department of Transportation's standards and that shall be maintained by the department in a safe and serviceable condition as state highways; and

WHEREAS, in 1946 the General Assembly passed legislation authorizing and directing the State Highway Commission to expend \$6 million a year for three years for construction improvements on the state highway secondary system. This original authorization became the "C" fund system which used state gas tax revenues to enlarge and improve the secondary highway system, sometimes called the Farm-to-Market roads; and

WHEREAS, Act No. 824 of 1952 was instrumental in carrying out the program in that it provided for adding roads to the state highway system in those counties where there was insufficient mileage of unpaved roads already in the secondary system; and

WHEREAS, the General Assembly so evidenced its desire for the state to build and maintain the secondary highway system that the Supreme Court in *Dean v. Timmerman* (234 S.C.35, 106 S.E.2d 665 (1959)) stated:

A review of legislation on this subject since 1946 reveals that the General Assembly desired that the State Highway Department take over from the counties more and more of the burden of maintaining and operating the Secondary Roads. . . We are of the opinion that the history of the legislation on this subject clearly shows that the Legislature has for many years intended that the State Highway Department shall assume an increasing portion of the burden of maintaining and operating the Secondary Roads. . . ; and

WHEREAS, 41,758 of the 90,530 lane miles in the state highway system, or 46% of the state system, are non-federal aid eligible secondary roads; and

WHEREAS, it appears that the General Assembly wishes to relinquish the operation and maintenance of the state secondary road system now that only 10% of these roads are in good condition; and

WHEREAS, the average maintenance cost per lane mile per road in the state system is \$18,565; and

WHEREAS, counties already have a growing road system. The Department of Transportation has, as a matter of policy, closed the state highway system to new miles of road. Any new miles of road from a subdivision or some other project are by necessity accepted by local government, if they are to be made publicilymaintained roads. So, the locally maintained road system grows each year; and

WHEREAS, counties do not have the financial resources to fund these necessary maintenance costs on the roads within the state system; and

WHEREAS, the General Assembly has recently pursued actions which have strangled the financial ability for counties to provide minimal services for their constituents and adding the secondary highway system as a burden on county government and county taxpayers shall ensure the financial collapse of many local governments; and

WHEREAS, the state has failed to establish that even if given the financial resources in one fiscal year, that counties would be able to rely on continued financial resources for the perpetual costs involved in maintaining a highway system; and

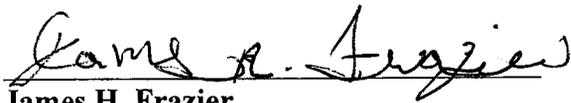
WHEREAS, the Department of Transportation is in a much better position to assess the needs and to perform the necessary maintenance on these roads in the state system; and

WHEREAS, many counties already contribute maintenance costs to the state highway system through property taxes, road fees, or through the enactment of local option sales taxes; and

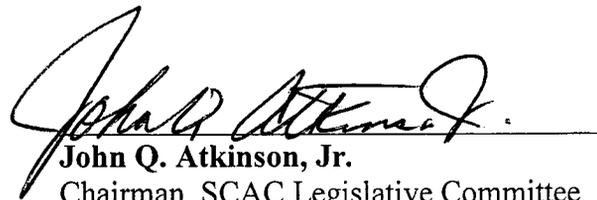
WHEREAS, a transfer of a portion of these non-federal aid secondary roads from the state system to the counties would be detrimental to the counties' financial stability.

NOW THEREFORE, BE IT RESOLVED by the South Carolina Association of Counties that it opposes any legislative efforts to transfer state-owned roads to local governments and requests that all members of the South Carolina General Assembly refuse further consideration of any proposed legislation.

Adopted the 4th day of December, 2014.

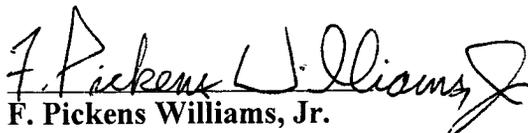


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John Q. Atkinson, Jr.
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Attested By:



F. Pickens Williams, Jr.
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The History of the Local Government Fund

Timothy C. Winslow, Assistant General Counsel

Aid to Subdivisions is the section of the General Appropriations Act that allocates state shared revenue to local governments. The Local Government Fund is the largest component of the State Aid to Subdivisions. The LGF has been governed by a funding formula since 1991 for both the amount distributed and the way it is distributed among counties and municipalities.

To a large degree, Aid to Subdivisions has always served the same purpose: to blunt the impact of property taxes, especially when local government is performing a state role. In addition to being providers of basic services at the local level, counties also serve as an administrative arm of the state. Counties have dual roles: (1) as a local government providing basic, essential services, and (2) as an administrative arm of the state to assist the state in providing state agency support.

Aid to Subdivisions predates Home Rule and harkens back to an era when the legislative delegation controlled county government budgets. Allocations to local government in the state budget stretch back to the 1943 General Appropriations Act which provided that 10% of the state's income taxes would be distributed to the counties.¹ This allocation would become the LGF. Headlines describing the 1943 legislative session proclaimed, "Property Owners to Benefit from Legislative Acts." The General Assembly that passed this measure heralded the move as important property tax relief. Speaker Sol Blatt said of the 1943 session, and specifically of this allocation, "...more beneficial legislation has been passed this session than by any other legislature – provided relief to property taxpayers and enacted a ninth month for schools."

However, prior to this distribution, counties were sharing in the revenues derived from certain statewide taxes and fees.² In the General Appropriations Act of 1946 the income tax distribution to counties transitioned to 7½% of the state's income taxes. The first reference to "Aid to Subdivisions" appears in the 1947 budget.³ That budget lists two items, Aid to Counties, which encompassed the income tax, the alcoholic liquors tax, the beer and wine tax, the insurance tax, Motor Vehicle Dealers' Licenses, the gasoline tax and the game protection fund; and Aid to Municipalities, which included the alcoholic liquors tax, the beer and wine tax, the insurance tax, the bank tax, and Motor Transport Fees. The total "Aid to Subdivisions" in 1947 was \$10,775,000. (The total state General Fund in 1947 was \$94,713,988.15. Aid to Subdivisions represented roughly 11% of the total General Fund.)

¹ 1943 Act No. 211, §9

² For instance the Gasoline Tax, Act No. 34 of 1925; the Beer and Wine Tax, Act No. 288 of 1933; the Bank Tax, Act No. 349 of 1937; and the Insurance Tax, see 1942 Code §7948.

³ 1947 Act No. 286, §69

From its inception, Aid to Subdivisions was an integral part of funding operations at the county level and reducing the burden on property taxes. The FY 1944-45 Horry County Supply bill, for instance, shows a grand total of expenditures for Horry County being \$140,175.30. State shared revenues made up \$72,100 of Horry County's budget that fiscal year, and only \$43,175.30 of the county budget needed to be raised by a millage levy.⁴

Aid to Subdivisions, as a formula based distribution of eleven different state revenue sources to local governments, remained largely unchanged until 1975. Generally the allocation represented around 10% of the state's General Fund. In 1975, the General Assembly passed Act No. 283, the Home Rule Act. Perhaps unsurprisingly, the legislature froze Aid to Subdivisions at its FY 1974-75 level in the 1975 budget.⁵

The General Assembly would continue to alter this revenue stream every fiscal year until passage of the State Aid to Subdivisions Act.⁶ In FY 90-91 local governments received only 78.3% of their Aid to Subdivisions allocation.⁷

The unpredictability resulting from legislature's budget allocations severely hampered local government's ability to effectively plan for budgetary needs.

In its report, "Aid to Subdivisions: An Examination of State-Shared Revenue in South Carolina," issued in March of 1990, the South Carolina Advisory Commission on Intergovernmental Relations recommended the following:

"In order to streamline and simplify the Aid to Subdivisions process and to create a stable funding source that will grow at a reasonable rate, it is recommended that the eleven "formula funded" shared revenue sources be replaced by a single revenue source. It is further recommended that the annual growth of the total Aid to Subdivisions distribution pool be based on the annual percentage growth of the State General Fund."

Using this suggestion, the legislature proposed and passed the State Aid to Subdivisions Act in the FY 1991-92 budget.⁸ The act requires that the state appropriate 4.5% of General Fund revenues of the most recently completed fiscal year to the LGF.⁹ 83.278% of the LGF is distributed to the counties and 16.722% to the municipalities. The fund is then distributed on a per capita basis according to the most recent census.¹⁰

⁴ 1944 Act No. 615

⁵ 1975 Act No. 237 §88

⁶ In 1984 the legislature "fully funded" the revenue streams which comprised Aid to Subdivisions, but altered the income tax allocation of 7½% to counties to reflect a phased in 7% income tax allocation to counties and a ½% income tax allocation to municipalities. 1984 Act No. 512, Part II §11

⁷ 1990 Act No. 612, Part I §122.1

⁸ 1991 Act No. 191, Part II §22

⁹ §6-27-30

¹⁰ §6-27-40

The LGF was intended to be protected from reductions except in extreme circumstances. The statute requires a majority vote of the Budget & Control Board to reduce the LGF when imposing mid-year cuts, and such vote must be separate from other reductions.¹¹ Additionally, the legislature is not permitted to amend or repeal a section of the State Aid to Subdivisions Act except in separate legislation solely for that purpose.¹² Despite these protections, the Budget and Control Board cut the LGF mid-year in FY 2001-02, FY 2002-03, FY 2008-09 and FY 2009-10, and the formula has been suspended by the legislature since FY 2009-10.

Unfortunately, even prior to the suspension of formula funding in 2009, the General Assembly has managed to reduce the formula funding provided in the State Aid to Subdivisions Act. In 1998, for instance, the legislature established the "Trust Fund for Tax Relief" separate from the General Fund.¹³ General fund revenue was transferred into accounts for the homestead exemption, the business inventory tax exemption, residential property tax relief and the manufacturing depreciation tax reimbursements. This "reduced" the General Fund by \$354.3 million in FY 1999-2000, resulting in a loss of \$16 million to the LGF in FY 2000-2001. In 2012, this trust fund was at \$549.2 million, a loss of \$24 million to the LGF.

In 2009, the General Assembly adopted legislation which suspended for FY 2009-10 the requirement that the Aid to Subdivisions Act may not be amended or repealed except in separate legislation solely for that purpose.¹⁴ This enabled the General Assembly to suspend the provisions of §6-27-30 and reduce the LGF in the state budget.¹⁵ The LGF was cut \$50 million.

In FY 2010-11, FY 2011-12, FY 2013-14 and FY 2014-15, the General Assembly again suspended the provisions of §6-27-30 and §6-27-50¹⁶ and failed to fund the LGF at the statutorily mandated formula. For FY 2014-15 the General Assembly funded the LGF at \$187.6 million in recurring dollars and \$25 million in non-recurring money. This amount is roughly \$75 million below the statutory level.

¹¹ §6-27-20

¹² §6-27-50

¹³ 1998 Act No. 419, Part II §29

¹⁴ 2009 Act No. 87

¹⁵ 2009 Act No. 23, Part IA, Provisos 86.8 and 90.14

¹⁶ The General Assembly failed to pass separate legislation to amend or repeal the State Aid to Subdivisions Act in FY 2010-11, FY 2011-12, FY 2012-13, FY 2013-14 and FY2014-15. Instead the legislature adopted temporary provisos to both suspend the separate legislation requirement and the formula funding requirement.