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Date: 6/23/2013 3:42:09 AM
Subject: Another Legal Question

I'm pasting in Proviso 3.5 below (lottery). The legal question is this...take a look at §59-150-350(D)...there's a sentence that begins with "Funds made available from the Education Lottery Account must be used to..." The question...how prescriptive is that? Does "must be used to" lay out a minimal use of those funds? Or does it really mean "may only be used to..."?

And how do you read that with the immediately preceding sentence from (D): "Appropriations from the Education Lottery Account must be allocated only for educational purposes and educational programs by the General Assembly in its annual general appropriations bill or any bill appropriating monies for previous or current fiscal years."

Are the "educational purposes and educational programs" that follow narrowly defined as what appears in the rest of that paragraph (D)? Or is that laundry list an "including but not limited to"?

The punchline...we're trying to figure out if P3.5's subitem 14 is legal, since several of the 6 components of it (defined later in the proviso) appear to be non-HBCU construction projects.

Also, I read (D) to mean that any money for libraries has to go on a "per capita basis," making #17 a no-go. And I'm guessing #18 is questionable, too. Maybe we can discuss first-thing Monday? Thanks.

CLS

3.5. (LEA: FY 2013-14 Lottery Funding) *There is appropriated from the Education Lottery Account for the following education purposes and programs and funds for these programs and purposes shall be transferred by the Budget and Control Board as directed below. These appropriations must be used to supplement and not supplant existing funds for education.*

The Budget and Control Board is directed to prepare the subsequent Lottery Expenditure Account detail budget to reflect the appropriations of the Education Lottery Account as provided in this section.

All Education Lottery Account revenue shall be carried forward from the prior fiscal year into the current fiscal year including any interest earnings, which shall be used to support the appropriations contained below.

For Fiscal Year 2013-14 certified net lottery proceeds and investment earnings and any other proceeds identified by this provision are appropriated as follows:

- (1) Commission on Higher Education and State Board for Technical and Comprehensive Education--Tuition Assistance \$ 47,400,000;*
- (2) Commission on Higher Education--LIFE Scholarships as provided in Chapter 149, Title 59 \$ 109,306,354;*
- (3) Commission on Higher Education--HOPE Scholarships as provided in Section 59-150-370 \$ 7,779,856;*
- (4) Commission on Higher Education--Palmetto Fellows Scholarships as provided in Section 59-104-20 \$ 30,777,240;*
- (5) Commission on Higher Education--Need-Based Grants \$ 13,000,000;*
- (6) Tuitions Grants Commission--Tuition Grants \$ 8,000,000;*
- (7) Commission on Higher Education--National Guard Tuition Repayment Program as provided in Section 59-111-75 \$ 4,545,000;*
- (8) South Carolina State University \$ 2,500,000;*
- (9) Technology--Public Four-Year Universities, Two-Year Institutions, and State Technical Colleges \$ 7,301,816;*

- (10) Department of Education--K-5 Reading, Math, Science & Social Studies Program as provided in Section 59-1-525 \$ 26,291,798;
- (11) Department of Education--Grades 6-8 Reading, Math, Science & Social Studies Program \$ 2,000,000;
- (12) School for the Deaf and the Blind--Technology \$ 200,000;
- (13) Commission on Higher Education--Higher Education Excellence Enhancement Program \$ 1,028,053;
- (14) Commission on Higher Education--Public Four-Year Universities, Two-Year Branch Campuses, and State Technical Colleges--Academic Facility Building, Repair and Maintenance, and Training \$ 10,509,883;
- (15) Department of Education--Digital Instructional Material \$ 4,000,000
- (16) Department of Education--New School Buses \$ 3,510,000;
- (17) State Library--Union County Carnegie Library Renovations \$ 1,250,000; and
- (18) Department of Education--New Carolina Transformation in Education \$ 100,000.

Fiscal Year 2013-14 funds appropriated to the Commission on Higher Education for Tuition Assistance must be distributed to the technical colleges and two-year institutions as provided in Section 59-150-360. Annually the State Board for Technical and Comprehensive Education and the Commission on Higher Education shall develop the Tuition Assistance distribution of funds appropriated.

Of the funds appropriated to South Carolina State University, \$250,000 may be used for the BRIDGE Program.

The funds appropriated above in subitem (14) to the Commission on Higher Education for Public Four-Year Universities, Two-Year Branch Campuses, and State Technical Colleges--Academic Facility Building, Repair and Maintenance, and Training shall be distributed as follows:

- (1) Four-Year University and Two-Year Branch Campus Repair and Maintenance - 1:1 Match \$ 1,919,883;
- (2) Spartanburg Community College - Academic Student Center/Industrial Training \$ 840,000;
- (3) Midlands Technical College - Quick Jobs Program \$ 500,000;
- (4) Francis Marion University - Health Sciences Building - 2:1 Match \$ 3,250,000;
- (5) Horry-Georgetown Technical College - Culinary Arts Academic Building 1:1 Match \$ 2,000,000; and
- (6) Tri-County Technical College - Oconee Economic Development and Workforce Center - 1:1 Match \$ 2,000,000.

The provisions of Section 2-75-30 of the 1976 Code regarding the aggregate amount of funding provided for the Centers of Excellence Matching Endowment are suspended for the current fiscal year.

The Commission on Higher Education is authorized to temporarily transfer funds between appropriated line items in order to ensure the timely receipt of scholarships and tuition assistance. It is the goal of the General Assembly to fund the Tuition Assistance program at such a level to support at least \$996 per student per term for full time students.

Fiscal Year 2013-14 net lottery proceeds and investment earnings in excess of the certified net lottery proceeds and investment earnings for this period are appropriated and must be used to ensure that all LIFE, HOPE, and Palmetto Fellows Scholarships for Fiscal Year 2013-14 are fully funded.

If the lottery revenue received for Fiscal Year 2013-14 is less than the amounts appropriated, the projects and programs receiving appropriations for any such year shall have their appropriations reduced on a pro rata basis, except that a reduction must not be applied to the funding of LIFE, HOPE, and Palmetto Fellows Scholarships.

The Commission on Higher Education is authorized to use up to \$260,000 of the funds appropriated in this provision for LIFE, HOPE, and Palmetto Fellows scholarships to provide the necessary level of program support for the scholarship award process.

The Higher Education Tuition Grants Commission is authorized to use up to \$70,000 of the funds appropriated in this provision for Tuition Grants to provide the necessary level of program support for the grants award process.

For Fiscal Year 2013-14, of the funds certified from unclaimed prizes, \$1,700,000 shall be appropriated to the Department of Education for the purchase of new school buses; \$1,700,000 shall be appropriated to the Commission on Higher Education and State Board for Technical and Comprehensive Education for Tuition Assistance Two Year Institutions; \$50,000 shall be appropriated to the Department of Alcohol and Other Drug Abuse Services for gambling addiction services; \$2,950,000 shall be appropriated to the Commission on Higher Education for the Higher Education Excellence Enhancement Program; and \$1,600,000 shall be appropriated to the Department of Education for K-5 Reading, Math, Science & Social Studies Program as provided in Section 59-1-525.

If the lottery revenue received from certified unclaimed prizes for Fiscal Year 2013-14 is less than the amounts appropriated, the projects and programs receiving appropriations for any such year shall have their appropriations reduced on a pro rata basis.

Of any unclaimed prize funds available in excess of the Board of Economic Advisors estimate, the first \$3,300,000 shall be directed to the Department of Education for new school buses. The next \$1,500,000 shall be directed to the Commission on Higher Education for the Partnership Among South Carolina Academic Libraries (PASCAL) Program. The next \$5,470,093 shall be directed for Technology: Public Four-Year Universities, Two-Year Institutions, and State Technical Colleges. The next \$2,000,000 shall be directed to the State Library for Aid to County Libraries. The next \$1,000,000 shall be directed to the Commission on Higher Education for the Higher Education Excellence Enhancement Program. The next \$4,000,000 shall be directed to the State Board for Technical and Comprehensive Education for the Allied Health Initiative. The next \$1,000,000 shall be directed to the Commission on Higher Education for the Critical Needs Nursing Program. All additional revenue in excess of the amount certified by the Board of Economic Advisors for unclaimed prizes shall be distributed to the Commission on Higher Education for LIFE, HOPE, and Palmetto Fellows Scholarships.

For Fiscal Year 2013-14, net lottery proceeds and investment earnings realized in the prior fiscal year above the amounts needed to fund the appropriations in this provision are appropriated as follows on a pro-rata basis:

- (1) Department of Education--New School Buses \$ 3,500,000;*
- (2) Department of Education--Textbooks \$ 1,500,000;*
- (3) Commission on Higher Education--Public Four-Year Universities, Two-Year Branch
Campuses-- Repair and Maintenance 1:1 Match \$ 12,075,000;*
- (4) State Board for Technical and Comprehensive Education--Manufacturing Skills Standards
Council Initiative \$ 1,275,000;*
- (5) Commission on Higher Education--Technology--Public Four-Year Universities,
Two-Year Institutions, and State Technical Colleges \$ 2,275,000;*
- (6) Department of Alcohol and Other Drug Abuse Services for Gambling Addiction Services
\$ 100,000;*
- (7) School for the Deaf and the Blind--Technology \$ 200,000; and*
- (8) University of South Carolina-Aiken--Science Center/Building-Roof and HVAC
Repair/Replacement \$ 575,000.*

Based on the methodology described below, funds allocated in this provision to the Commission on Higher Education for repair and maintenance at public four-year universities and two-year

branch campuses may only be distributed to an institution to the extent the funds are matched by the institution for repair and maintenance. Matching funds exclude supplemental, capital reserve, lottery, or other non-recurring state funds appropriated to an institution either in the current fiscal year or from a prior fiscal year for repair and maintenance or deferred maintenance projects.

Prior to the distribution of these funds, institutions must certify to the commission, in a manner it prescribes, the extent to which they have met this requirement, including the sources of funds utilized to meet this requirement. The commission shall notify the Joint Bond Review Committee of the certification received pursuant to this provision. Upon certification, the funds shall be distributed to institutions on a pro rata basis based on the distribution methodology described below provided that the distribution does not exceed an institution's pro rata share or the amount matched by the institution if less than that share. The distribution methodology to be used by the commission shall be based on each institution's proportion of general fund appropriation in Part IA of Act 288 of 2012 as compared to the total general fund appropriation in that Act for all public four-year universities and two-year branch campuses. Funds not matched and distributed shall be carried forward by the commission and used for LIFE, HOPE, and Palmetto Fellows Scholarships. Not later than 120 days after the close of the fiscal year, the commission shall report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee regarding the utilization of this provision specifically, as well as the amount spent in the current fiscal year by each public institution of higher learning, by source of funds, on repair and maintenance projects generally, including restoration and renewal of existing facilities or infrastructure, and the amount of repair and maintenance, including restoration and renewal projects, deferred to a subsequent fiscal year by each institution, if any, and the reasons for the deferral.

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