



State of South Carolina

Office of the Governor

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May 14, 2008

The Honorable Andre Bauer
President of the Senate
State House, 1st Floor, East Wing
Columbia, South Carolina 29202

Dear Mr. President and Members of the Senate:

I am hereby returning S. 1066, R-240, a joint resolution which appropriates and authorizes funding to relocate the State Farmers' Market to a new site in Lexington County and create a new statewide farmers' market system, using line-item veto authority granted to the Governor by the South Carolina Constitution.

Before discussing the line item veto, it bears repeating that this Administration believes the proposed public-private partnership for the State Farmers' Market in Lexington County could benefit the people and the state. It has long been our belief that probably the most advantageous step for the taxpayers would have been to leave it where it now is – and I have voted accordingly several times at the Budget Control Board. Given that the decision has been reached to move it, to, in large part, make way for parking at USC football games, we have urged the General Assembly to pass legislation that would provide strong protection for the taxpayers as this transfer to the Lexington County site takes place. We are pleased that some of those safeguards made their way into this bill.

The attempt to move the market to another Richland County location highlighted the need for oversight on how and when state dollars would be spent in the process of the relocation – as taxpayers were bled to the tune of more than \$3.8 million in that situation. Though the version sent to my desk is weaker than the House version, we obviously believe it is better than the failed model that produced this financial fiasco in Richland County. This joint resolution contains two significant steps that ensure the taxpayers are adequately protected.

First, there is a cap on how much state money can go into the project. This was a marker we laid out in the March Budget and Control Board meeting and a component that has been adopted by the General Assembly. This cap is important to preventing taxpayers from being left with the bill for cost overruns in the project – like those experienced not only in the failed Richland County farmers' market proposal, but also those recently in Columbia like the \$18 million in cost overruns for the USC baseball stadium.

Secondly, there is now oversight on how and when the money can be spent. Only \$5 million can be released for the purpose of site preparatory work, with the remainder of the funds being held and subject to oversight. This was also a component of the resolution we adopted through the Budget and Control Board and offered as part of an amendment by Representative Kenny Bingham. I'd give credit to Representative Bingham for his leadership on this issue and the House for taking a strong stand on accountability measures in the bill.

In all this, there may be a constitutional question as to the entity charged with overseeing the state's investment. Disappointingly, in the Senate version, oversight is moved from the Coordinating Council for Economic Development to, not so surprisingly, a panel now controlled by Senator Leatherman. I will discuss this in detail on the next page.

So the bottom line in this line item veto is that we support the Lexington County site because it is the best of the available options. In financial terms, this represents about half of the bill. The other nearly \$21 million is devoted to building mini-farmers' markets across the state. We are vetoing this portion because it is financially reckless in these times to embark on a new program of farmers' markets – and for the way it would dilute the effectiveness of the new state farmers' market for which the taxpayers are being asked for nearly \$21 million. The farmers I know live by common sense and believe it makes sense to pay for the promises you already have on the table before beginning new ones.

A more detailed explanation of these things lies in the following pages:

Line Item Veto

SECTION 1, Subsection (E), page 3. This subsection appropriates nearly \$21 million to implement a statewide farmers' market system and authorizes the Commissioner of Agriculture and Clemson University to determine which markets across the state shall receive funding at a level not to exceed \$1.5 million per market. This year, I have consistently communicated to the members of the General Assembly and the public that our state cannot afford to spend our limited resources during the current fiscal crisis on "mini-farmers' markets" around the state.

As you know, for only the second time in the last fifty years, revenue (taxes) coming into the state will fall below that of the previous year. The operating budget is short by \$250 million this year – and we believe this new grant program should not be used to crowd out other items already in the state budget ranging from law enforcement to education and health care. The operating shortfall is also just the tip of the problem as we are confronted with an unfunded liability of more than \$20 billion in our retirement system and health care systems. In addition, policy makers are currently papering over still other shortfalls as money is being raided from critical Medicaid reserve funds, Corrections and Commerce. In this setting, it again makes no sense to ignore these economic realities and begin yet another state commitment that will further tax the taxpayers of this state.

To their credit, the House proposed lapsing \$14 million in the FY 2008-2009 Appropriations Bill. The budget conference committee will ultimately determine whether or not the mini-markets are funded, and we'd urge the General Assembly to sustain this veto which would free up nearly \$21 million that could be directed elsewhere.

For these reasons, I am vetoing Section 1, Subsection (E), page 3 of S. 1066, R-240 pursuant to the authority granted to the Governor by Article IV, Section 21 of the South Carolina Constitution.

Line Item Veto Authority

Article IV, Section 21 of the South Carolina Constitution authorizes the Governor to exercise the line item veto on “[b]ills appropriating money out of the Treasury....” Section 11-13-125 requires that “all funds received by any department or institution of the State Government shall be deposited and maintained in appropriate accounts in the State Treasury” The law in South Carolina is clear that no particular language is needed for a bill to appropriate money. The South Carolina Supreme Court has noted the following regarding appropriations: “It is significant that the framers of our Constitution did not require that appropriations be made by an annual appropriation act. The provisions of the Constitution do not require any arbitrary form of expression or particular words in making an appropriation. No particular expression or set of words is requisite or necessary to carry out the provisions of the Constitution. The only limitation is that the appropriations must be made by law.” *Grimball v. Beattie*, 174, S.C. 422, 177 S.E. 668, 672 (1934).

Our courts have defined an appropriation as follows: “To appropriate money is to set it apart, to designate some specific sum of money for a particular purpose or individual.” *Id.*, at 672. An appropriation does not have to identify a specific sum when “it is as definite as it could have been made when the law was enacted.” *Cox v. Bates*, 237 S.C. 198, 116 S.E.2d 828, 837 (1960).

S. 1066 appropriates money in two ways. First, subitems (2) and (5) of subsection (B) provide: “The following funds are authorized and reauthorized to be used for the relocation project: ... (2) a minimum of fourteen million eight hundred fifty thousand dollars from the sale of the existing market; ... (5) the proceeds of the sale of the Columbia Metrology Laboratory and the contiguous tract of state land.” These subitems appropriate new funds in both specific and non-specific amounts and for a particular purpose. Even though the appropriation consists of proceeds of an impending sale of state property, no additional legislative authority is needed to effectuate this appropriation because once the sale is complete, the funds will be available from the State Treasury to the Department of Agriculture to spend on the relocation project and statewide farmers’ markets.

Second, subitems (1), (3), and (4) of subsection (B) re-appropriate specific amounts for a new specific purpose – relocation of the Farmers’ Market to Lexington County and creation of statewide farmers’ markets – from three different sources that were authorized by the General Assembly for expenditure in previous years. Subitem (1) re-appropriates \$10 million from the 1999 Capital Improvement Bond Act; subitem (3) re-appropriates \$2.5 million from the Ordinary Sinking Fund; and subitem (4) re-appropriates \$15 million from the 2007 Capital Reserve Fund. Even though these funds were previously appropriated, the General Assembly has designated a new purpose for them, which means S. 1066 has made a new appropriation for these funds.

For these two reasons, S. 1066 is an appropriation bill subject to line item veto authority pursuant to Article IV, Section 21 of the South Carolina Constitution.

Legal Concerns

In addition to exercising line item veto authority, I would also like to point out some legal concerns I have with S. 1066. This legislation requires the Joint Bond Review Committee (JBRC), made up of six members of the General Assembly, to approve the Department of Agriculture’s expenditure of the balance of \$22.5 million allocated for the market relocation project. I believe this provision of S. 1066 violates Article I, Section 8 of the South Carolina Constitution, which states that “[t]he legislative, executive and judicial powers of government shall be separate and distinct from each

other, and no person or persons exercising the functions of one of the said departments shall assume or discharge the duties of any other.”

The South Carolina Supreme Court has held that an entity similar to the JBRC, the Joint Appropriations Review Committee (JARC), violated the separation of powers provision because it exercised final approval over the “administration of appropriations which is a function of the executive department.” *McLeod v. McInnis*, 278 S.C. 307, 295 S.E.2d 633 (1982). Typically, the JBRC reviews and recommends capital projects to the Budget and Control Board which exercises final approval of the expenditure of funds. S. 1066 clearly requires the JBRC – a legislative body – to exercise final approval of the expenditure of funds for the relocation project before the Department of Agriculture can spend the funds. This is an executive function and violative of Article 1, Section 8 of the South Carolina Constitution.

I believe S. 1066 may present another legal problem due to two potentially conflicting provisions in this legislation and the 2008-2009 Appropriations Bill once enacted into law. S. 1066 provides: “This joint resolution modifies and supersedes any conflicting language found in the 2007-2008 and the 2008-2009 General Appropriations Act.” This language conflicts with the language found at the end of all appropriations acts which provides “All acts or parts of acts inconsistent with any of the provisions ... of this act are suspended for [the fiscal year].”

If the 2008-2009 Appropriations Act does not appropriate funds for an item which S. 1066 has already made an appropriation, then a question arises as to which law will govern. Our courts have held that “where two legislative acts are ... in conflict with each other, the last one passed, being the latest expression of the legislative will, will ... govern, control, or prevail” *City of Newberry v. Public Service Commission of South Carolina*, 287 S.C. 404, 339 S.E.2d 124 (1986).

I am raising these legal concerns to point out potential flaws in S. 1066 that should be addressed. However, my primary objection to S. 1066 is the appropriation of funds for the mini-farmers’ markets which I have detailed earlier in this message and for which I am vetoing a distinct section of this joint resolution.

For these reasons, I am exercising line-item veto power over SECTION 1, Subsection (E), page 3 of S. 1066, R-240 pursuant to the authority given to the Governor in Article IV, Section 21 of the South Carolina Constitution.

Sincerely,



Mark Sanford