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Date: 5/27/2016 5:53:36 PM
Subject: RE: Proviso Review

Holly,

Here are the DMV provisos as they are currently in the budget bill. The DMV's thoughts and comments are below the provisos.

**SECTION 82 - R400 - DEPARTMENT OF MOTOR VEHICLES**

**82.1.** (DMV: Miscellaneous Revenue) Miscellaneous revenue shall be retained by the department and expended in budgeted operations and other related services or programs as the Director of the Department of Motor Vehicles may deem necessary. The Department of Motor Vehicles shall report annually to the General Assembly the amount of miscellaneous revenue retained and carried forward.

**82.2.** (DMV: Federal, Other Flow Through Funds) In order to complete projects begun in a prior fiscal year, the Department of Motor Vehicles is authorized to expend federal and earmarked funds in the current fiscal year for expenditures incurred in the prior fiscal year.

**82.3.** (DMV: Publish Headquarters Call Center Telephone Number) From the funds appropriated in Part IA, Section 82 to the Department of Motor Vehicles, it is the intent of the General Assembly that the Department of Motor Vehicles in each county should have the Headquarters Call Center telephone number published.

**82.4.** (DMV: Cost Recovery Fee/Sale of Photos or Digitized Images) The Department of Motor Vehicles may collect processing fees and fees to recover the costs of the production, purchase, handling and mailing of documents, publications, records and data sets. The amount charged by the Department of Motor Vehicles for any fees collected pursuant to this proviso may not exceed the rates that the department charged as of February 1, 2001. The Department of Motor Vehicles may not sell, provide or otherwise furnish to private parties, copies of photographs, whether digitized or not, taken for the purpose of a driver's license or personal identification card. Photographs and digitized images from a driver's license or personal identification card are not considered public records. Funds derived from these sources shall be retained by the department.

**82.5.** (DMV: DPPA Compliance Audit) The Department of Motor Vehicles may charge fees to defray the costs associated with auditing and enforcing compliance of all Federal or State statutes and regulations pertaining to personal information for customers receiving information disseminated by the department as allowed by law. This provision does not pertain to state agencies. The Comptroller General shall place the funds into a special restricted account to be used by the department.

**82.6.** (DMV: Underutilized Offices) The Director of the Department of Motor Vehicles is authorized to develop and implement a plan to reduce the hours of operation in underutilized DMV field offices; however the legislative delegation of the county in which the affected field office is located must be notified prior to implementation of the plan. In addition, the director shall review field offices which have a high volume of traffic to determine whether it would be beneficial to expand the hours of operation.

**82.7.** (DMV: Facial Recognition Program) The Department of Motor Vehicles is directed to utilize the funds authorized for the agency to continue the Facial Recognition Program.

**82.8.** (DMV: Five Year Eye Exam Suspension) For the current fiscal year, Section 56-1-220(B), relating to the requirement for a vision screening certificate during the fifth year of a ten-year driver's license, is suspended. The department may use the savings recognized from the suspension of this requirement to support

necessary technology upgrades.

**82.9.** (DMV: Activities Allowed on Special Restricted Driver's License) In the current fiscal year, employing funds authorized or appropriated to the Department of Motor Vehicles pursuant to Section 82, Part IA of this act, the department must include employment, school, church related or sponsored activities, and parentally approved sports activities in the categories for which it may waive or modify restrictions in the special restricted driver's license for certain minors. The licensee must provide the department a statement of the purpose of the waiver or modification of restrictions executed by the parents or legal guardian of the licensee and documents executed by church representatives and/or representatives of the sports entity for which the waiver is being requested.

**82.10.** (DMV: Study of Motorcycle Usage and Safety) From the funds appropriated to the Department of Motor Vehicles, a committee shall be established to study motorcycle usage and safety in South Carolina.

The composition of the study committee shall be as follows: one member appointed by the governor; two members appointed by the Chairman of the Senate Transportation Committee, one of whom must be a member of A Brotherhood Against Totalitarian Enactments (ABATE) of South Carolina; two members appointed by the Chairman of the House Education and Public Works Committee, one of whom must be a member of ABATE of South Carolina; the Secretary of Transportation or his designee who shall have expertise in motorcycle safety issues; the Director of the Department of Public Safety or his designee who shall have expertise in motorcycle safety issues; and the Director of the Department of Motor Vehicles or his designee who shall have expertise in motorcycle safety issues.

The committee shall study available data related to motorcycle usage and applicable laws and regulations. Before December 15, 2015, the committee shall issue its findings and recommendations to the Governor and to the members of the General Assembly.

82.11. (DMV: DOT Transfer) The Department shall transfer $10,000,000 in the current fiscal year from any available cash balances to the Non-Federal Aid Highway Fund at the Department of Transportation.

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As we read the Supreme Court opinion in *SC Public Interest Foundation v. Lucas*, three of DMV's provisos might not meet the Court's standards.

82.3 tells the DMV to publish the phone number for headquarters. This has nothing to do with budget. Since we have done this, the proviso is of no importance.

82.8 deals with an ill-advised statutory requirement put in the driver's license renewal statute. When the Legislature decided to extend the life of driver's licenses to ten years, eye professionals said that was too long between eye exams. So the Legislature said, in so many words, "okay, then citizens will have to get eye exams every five years or pay a $50 fine." But there is no way for a citizen to know about the requirement and no way to enforce the fine. If this proviso is struck, there will (a) be a tremendous cost to the DMV to implement this nearly unworkable system and (b) there will be extreme anger among several million citizens when they are charged an extra $50 to get their driver's licenses renewed.

82.9 is an expansion of the uses of special restricted licenses held by teenagers. The proviso uses the words "employing funds authorized or appropriated to the Department of Motor Vehicles pursuant to Section 82, Part IA of this act," but that is as close as it gets to this having anything to do with the raising or expenditure of monies.

82.1 and 82.4 have been stricken. If they are put back in, they are definitely budget-related.

Call or email if you have any questions.

Thanks,
Val

*Frank L. 'Val' Valenta, Jr.*

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Sent: Monday, May 23, 2016 2:20 PM
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Subject: Proviso Review

Good Afternoon GCs,

As you are likely aware, the SC Supreme Court recently issued a ruling striking down a 2015-2016 budget proviso as unconstitutional. I've attached that case for your review and summarized its holding below.

***The "test" for provisos under the one subject rule appears to be whether the proviso reasonably and inherently relates (not directly relates) to the raising and spending of tax monies – it must be a monetary matter, not an administrative or procedural matter. E.g. reenacting tort claims caps, requiring local governments to remit real estate fees to state, creating a committee to negotiate new contracts and fees, altering definition of machines subject to licensing fees, etc. Examples where content was not germane: permitting referendums in SPDs to decide nature of budget, amending an act creating Court of Appeals, and giving state custody of certain unclaimed property.

In light of this case, please review provisos contained in your 2016-2017 agency budget, and let me know if you think any of them violate the one subject rule. Although the budget is not yet final, we have begun our review, so please reply to me with your analysis by no later than this Thursday (May 26th). Even if you find no problems, please respond. Let me know if you have questions.

Thanks, Holly

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