

From: Lawrence Flynn <lflynn@popezeigler.com>
To: Veldran, KatherineKatherineVeldran@gov.sc.gov
CC: Patel, SwatiSwatiPatel@gov.sc.gov
Bakari T. Sellers (bsellers@stromlaw.com)bsellers@stromlaw.com
Brent Jeffcoatbjeffcoat@popezeigler.com
Soura, ChristianChristianSoura@gov.sc.gov
Date: 4/30/2014 10:20:50 AM
Subject: H5024 - Bamberg 2

Katherine,

Bakari forwarded me the chain of emails between you, Swati and Christian. While I certainly understand the concerns expressed in Christian's email, adding a referendum requirement undercuts the whole purpose of the bill.

The goal in implementing this legislation is to avoid the overwhelming tax burden associated with a traditional, general obligation borrowing. In stating that the "legislation does not impose taxes and there is no tax increased planned," I meant that this legislation merely provides a structure to finance the construction of the new school; no new levy of taxes is mandated or otherwise required. The school district has not precisely determined how a tax structure will be implemented because each public-private partnership is unique and the number one goal is to minimize any potential tax burden on the tax payers of Bamberg 2, which includes Representative Sellers.

While it is possible that taxes could (in the future, subject to the approval to the Board of Trustees) be levied as capital millage, any such millage would be substantially less than the associated tax burden of financing the facilities with general obligation bonds. To the extent tax credits, grants, utility credits and operational costs savings offset the costs of construction, the lease payments and operational costs to the school district will be also be substantially reduced.

This legislation is just the first step in getting these schools constructed. Many additional steps remain (i.e. finding a willing developer, finding available tax credits, creating a viable financing structure, etc...). Anyone of these additional steps is time-consuming and further delays the ultimate goal of constructing the needed school facilities.

With this in mind, any extra steps, like requiring a referendum, will only further slow the process and fundamentally defeats the purpose of the legislation. We are trying to avoid the general obligation methodology where you establish a project amount and have the electorate approve a massive tax hike. By requiring the capital millage levy by referendum, you are, essentially, making the capital millage a debt service millage. We are trying to avoid that structure as it is inefficient, unworkable and unnecessary for a P3.

The Board of Trustees is elected from five single member districts within Bamberg 2. As constituted, the Board is the epitome of representative government. In a representative government, decisions cannot be and should not be made by popular election. From discussions with the Board and despite the pressing needs for new schools, they are unwilling to simply pass along massive tax increases to make this project work. Importantly, in reviewing the Board's options, referendum-approved general obligation bonds or referendum-approved capital millage would create a long-term liability that definitively affects future tax-payers for the next 15 to 30 years. As written, the legislation imposing capital millage under the P3 operating lease structure would be subject to appropriation every year. As a result, any dissatisfied voters have a ballot box remedy that effectively limits any long term commitment to the term of the existing Board of Trustees (they can vote the Board out of office and elect Board members who decide not to appropriate funds to future lease payments, which is a known risk factor when the developer and any financiers are analyzing the financing structure).

Long story-short, if we add a referendum component, it defeats the whole purpose of the legislation – we are trying to get away from traditional financing methods and this change would simply re-enforce the traditional borrowing methodology.

Please call me if you have any questions. Best, LEF

Lawrence E. Flynn

Direct: 803 354.4902
www.popezeigler.com
v-card

1411 Gervais St., Ste 300
Columbia, SC 29201
803 354.4900 Main
803 354.4899 Fax

350 East St. John Street
Spartanburg, SC 29302
864 641.4898 Main



CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.