



HENRY McMASTER  
GOVERNOR

May 18, 2022

The Honorable Thomas C. Davis  
203 Gressette Building  
Columbia, South Carolina 29201

Dear Senator Davis:

I have signed into law R-178, S. 934, which amends section 6-9-63 of the South Carolina Code of Laws, relating to the South Carolina Building Codes Council ("Council"), so as to provide that the Governor appoint the member of the Council who must be a licensed architect "from a list of qualified candidates submitted to the Governor by the South Carolina Chapter of the American Institute of Architects." S. 934, § 1.

As you know, the South Carolina Constitution prohibits the General Assembly from delegating appointive authority to a private entity or organization. *E.g.*, *Gold v. S.C. Bd. of Chiropractic Examiners*, 271 S.C. 74, 77, 245 S.E.2d 117, 119 (1978) (noting that S.C. Const. art. III, § 1 "prohibits the delegation of the appointive power to a private person or organization"). Although the South Carolina Supreme Court has sanctioned other statutory provisions providing for "recommendation[s] by private bodies with legitimate relationships to particular public offices of persons to fill those offices," *Hartzell v. State Bd. of Examiners in Psychology*, 274 S.C. 502, 506, 265 S.E.2d 265, 267 (1980), private organizations in other contexts have occasionally attempted to circumscribe or restrict the Governor's authority by submitting less-than-comprehensive "lists" of qualified candidates for consideration. Accordingly, while I recognize and appreciate that architects, engineers, contractors, and other relevant industry professionals provide the Council with valuable input and important perspectives, my general preference in such instances is to allow for and invite recommendations from any interested parties. *See, e.g.*, Act No. \_\_\_ of 2022 (R-169, S. 227) ("Nominations for appointment to the [South Carolina Massage Therapy Board] may be submitted to the Governor from any individual, group, or association.").

In light of the foregoing, because the South Carolina Chapter of the American Institute of Architects is a private organization, I have carefully considered whether this legislation represents an unconstitutional delegation of appointive authority or imposes an impermissible requirement that formal affiliation with a private organization is a "prerequisite to membership" on the Council. *Gold*, 271 S.C. at 78-79, 245 S.E.2d at 120. I have determined that S. 934 does not unconstitutionally delegate appointive authority to a private organization, both because the

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legislation does not contain a membership requirement and because the Governor retains the ultimate discretion in making such appointments to the Council. *See Hartzell v. State Bd. of Examiners in Psychology*, 274 S.C. 502, 505, 265 S.E.2d 265, 267 (1980) ("Here, while a private body, the South Carolina Psychological Association, submits a list of qualified candidates to the Governor who ultimately appoints members to the Board of Examiners in Psychology, there is nothing on the face of this statute which requires a qualified candidate to be a member of the private body which compiles the list."). Moreover, I trust that the South Carolina Chapter of the American Institute of Architects will heed the aforementioned considerations and provide comprehensive lists of qualified candidates.

For the foregoing reasons, I have signed R-178, S. 934 into law. I look forward to continuing to work with the South Carolina Chapter of the American Institute of Architects and other organizations and individuals to ensure that qualified candidates are appointed to the Council and to other important boards and commissions.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Henry McMaster", written in a cursive style.

Henry McMaster