State of South Carolina
Executive Department

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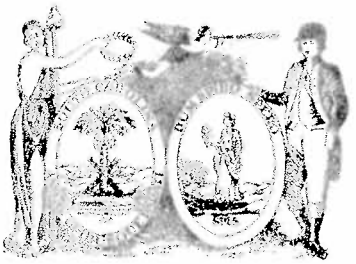
Mark Hammond
SECRETARY OF STATE 8



Office of the Governor

EXECUTIVE ORDER NO. 2012-03

WHEREAS, on November 1, 2011, the Town of Atlantic Beach held an election for Mayor and two at-large Council seats; and

WHEREAS, the results of that election were protested; and

WHEREAS, on November 5, 2011, the Municipal Election Commission for the Town of Atlantic Beach held a public hearing regarding the election protest. During this hearing, the Municipal Election Commission heard testimony and took evidence regarding voting irregularities associated with the November 1, 2011 election. At the conclusion of the hearing, the Municipal Election Commission declared the results of the November 1, 2011 election void and ordered that a new election for Mayor and two at-large Town Council members would be held within 180 days; and

WHEREAS, the Municipal Election Commission still has not reduced its November 5, 2011 ruling to a written order, nor has it set a date for the new election; and

WHEREAS, Section 5-15-50 of the South Carolina Code of Laws (1976), as amended, requires at least sixty days notice for municipal elections; and

WHEREAS, because of the Municipal Election Commission's delay, it is now too late for the Municipal Election Commission to conduct a new election for Mayor and Town Council members within the time period it previously ordered and comply with the notice requirements of Section 5-15-50; and

WHEREAS, Section 7-13-1170 of the South Carolina Code of Laws (1976), as amended, provides as follows: "When any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other

person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result."; and

WHEREAS, this is the second consecutive election for Mayor or Town Council that the Municipal Election Commission has overturned; and

WHEREAS, Town of Atlantic Beach election controversies have reached the South Carolina Supreme Court on three prior occasions. These controversies have highlighted problems in the Town's electoral process such as: poll workers not following proper procedures for challenged ballots (*Taylor v. Town of Atlantic Beach Election Commission*, 363 S.C. 8, 609 S.E.2d 500 (2005)); voters being denied the right to vote despite establishing residency (*Armstrong v. Atlantic Beach Municipal Election Commission* 380 S.C. 47, 668 S.E.2d 400 (2008)); and the Municipal Election Commission failing to comply with the statutory procedure for contesting election results (*Cole v. Town of Atlantic Beach Election Commission*, 393 S.C. 264, 712 S.E.2d 440 (2011)); and

WHEREAS, the South Carolina Supreme Court, in *Cole v. Town of Atlantic Beach Election Commission*, expressed grave doubts about the ability of the Municipal Election Commission to properly conduct future elections; and

WHEREAS, the Horry County Election Commission and the State Election Commission are competent and qualified to conduct and supervise an election in the Town of Atlantic Beach; and

WHEREAS, continued controversy in this election will erode the public trust in our system of municipal elections, and a properly conducted and supervised election is necessary to ensure the full and fair expression of the citizenry's choice for these elective offices.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of the State of South Carolina, I hereby (a) order that a new election be held for the office of Mayor and two at-large Town Council members of the Town of Atlantic Beach on May 22, 2012 or at the earliest possible date and time after sixty days notice has been provided to the citizenry and as is permitted by the United State Department of Justice; and (b) designate the Horry County Election Commission and the State Election Commission to perform the necessary official duties pertaining to the election, including noticing the election, conducting the election, counting the votes, declaring the result, and resolving any protest associated with the election.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 16TH DAY OF MARCH, 2012.

NIKKI R. HALEY
GOVERNOR

ATTEST:

MARK HAMMOND
SECRETARY OF STATE