

EXECUTIVE ORDER NO.

2022-19

WHEREAS, transparency must be absolute and uncompromised to maintain the public’s trust and confidence in government and to ensure that the public is aware of the manner in which public funds are appropriated and expended and can hold the relevant individuals, entities, and officials accountable for the same; and

WHEREAS, for the foregoing reasons, the undersigned has consistently objected to the General Assembly’s practice of appropriating public funds to—or, more appropriately, through—state agencies, which often did not request such funds and were not consulted regarding the intended use of the public funds, and directing or expecting such agencies to provide these “earmarked” appropriations to private entities or projects selected by individual members of the General Assembly; and

WHEREAS, in many instances, these earmarked appropriations are not accompanied by sufficient information identifying the intended recipient of the public funds or the purposes for which such funds were appropriated and are intended to be utilized; and

WHEREAS, after decades of overriding vetoes of successive Governors, including the undersigned, the leadership of the Senate and the House of Representatives recently began publicly disclosing the legislative sponsors and intended recipients of earmarked appropriations; and

WHEREAS, although the aforementioned development is a positive step—which will subject previously undisclosed information regarding earmarked appropriations to public inspection, debate, and scrutiny—additional safeguards are necessary to ensure that appropriations serve a valid public purpose and that the recipients expend the appropriations in accordance with the Appropriations Act and comply with other applicable law; and

WHEREAS, it is axiomatic that the appropriation of public funds is a distinctly legislative function entrusted to the General Assembly, *see* S.C. Const. art. III, § 1; *Gilstrap v. S.C. Budget*

& *Control Bd.*, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992), and that the General Assembly “has the right to specify the conditions under which the appropriated monies shall be spent,” *State ex rel. Condon v. Hodges*, 349 S.C. 232, 244, 562 S.E.2d 623, 630 (2002); and

WHEREAS, in exercising this legislative authority, the General Assembly has determined to appropriate hundreds of millions of dollars in public funds each year to private entities or projects through earmarked appropriations to, or through, state agencies without subjecting such entities or projects to any competitive process or objective, merits-based public evaluation; and

WHEREAS, although the Governor “has the ability, after the General Assembly has passed a budget, to veto items or sections contained within the budget,” *Edwards v. State*, 383 S.C. 82, 91, 678 S.E.2d 412, 417 (2009) (citation omitted); *see* S.C. Const. art. IV, § 21, “[o]nce the legislature enacts a law, all that remains is the efficient enforcement and execution of that law,” *Knotts v. S.C. Dep’t of Nat. Res.*, 348 S.C. 1, 7, 558 S.E.2d 511, 514 (2002); and

WHEREAS, while “[e]xecutive agencies are required to comply with the General Assembly’s enactment of a law until it has been otherwise declared invalid,” *Edwards*, 383 S.C. at 91, 678 S.E.2d at 417 (citation omitted), “[t]he administration of appropriations is a function of the executive department,” *id.* (citation omitted); and

WHEREAS, “[t]he power to execute a law is not incidental to the power to appropriate, but is a separate executive power,” *Knotts*, 348 S.C. at 7, 558 S.E.2d at 514, and the Governor exercises the executive power of this State, *see* S.C. Const. art. IV, §§ 1, 15; and

WHEREAS, to ensure that sufficient context, description, justification, and information regarding earmarked appropriations be made available for South Carolinians to evaluate the merit of those entities or projects funded with public funds and to enable the proper exercise of the undersigned’s authority to approve or veto the same, *see* S.C. Const. art. IV, § 21, the undersigned sent a letter to the Members of the General Assembly, dated May 16, 2022, requesting specific information regarding each earmarked appropriation in the 2022–23 Appropriations Act, Act No. 239 of 2022; and

WHEREAS, pursuant to the information, or lack thereof, submitted by Members of the General Assembly in response to the aforementioned request, the undersigned vetoed seventy-three earmarked appropriations, of which the General Assembly sustained forty-six, which ultimately prevented \$35,664,029 in public funds from being allocated to, or through, state agencies for use by private entities or projects without sufficient explanation of the intended purpose or justification of merit; and

WHEREAS, the South Carolina Constitution imposes limitations relating to the expenditure of public funds and requires certain reporting regarding the same, to include mandating that “[m]oney shall be drawn from the treasury of the State . . . only in pursuance of appropriations made by law,” S.C. Const. art. X, § 10, dictating that “[a]n accurate statement of the receipts and expenditures of the public money shall be published annually in such a manner as

may be prescribed by law,” S.C. Const. art. X, § 9, and providing that “[b]ills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections,” S.C. Const. art. IV, § 21; and

WHEREAS, section 11-9-10 of the South Carolina Code of Laws, as amended, similarly provides that “[i]t shall be unlawful for any moneys to be expended for any purpose or activity except for which it is specifically appropriated”; and

WHEREAS, in addition to requiring the disclosure of additional information regarding earmarked appropriations, the General Assembly also recently amended and strengthened the requirements in Proviso 117.21 of the Appropriations Act, specifying that “[e]ach state agency receiving funds that are a direct appropriation to a non-profit organization, prior to disbursing the funds, shall require from each recipient organization a plan of how the state funds will be spent and how the expenditures will provide a public benefit”; providing that “[a]fter receiving the funds, non-profit organizations shall provide quarterly spending updates to the respective state agency”; requiring that “[a]fter all state funds have been expended, each organization shall provide an accounting of how the funds were spent”; and directing that the state agencies receiving such information shall report the same to the Executive Budget Office, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee by June 30; and

WHEREAS, article IV, section 17 of the South Carolina Constitution provides that “[a]ll State officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices, agencies, and institutions, including itemized accounts of receipts and disbursements”; and

WHEREAS, section 1-1-840 of the South Carolina Code of Laws, as amended, similarly authorizes the Governor to “call upon any department or institution at any time for such special reports as may be deemed in the interest of the public welfare”; and

WHEREAS, section 1-3-10 of the South Carolina Code of Laws, as amended, also requires that “[t]he departments, bureaus, divisions, officers, boards, commissions, institutions and other agencies or undertakings of the State, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities”; and

WHEREAS, at present, South Carolinians are better positioned than ever to hold Members of the General Assembly to account for discharging their duty to be good stewards of public funds, but the undersigned is authorized to take additional proactive action and impose additional safeguards in the administration of appropriations to facilitate transparency and accountability, to enhance the public’s trust and confidence in government, and to ensure that the public is aware of the manner in which public funds are appropriated and expended and can hold the appropriate individuals, entities, and officials accountable.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Directing Additional Safeguards to Ensure Transparency and Accountability in Appropriations

A. I hereby order and direct that any and all earmarked appropriations, as further defined herein, provided to, or through, any Executive Branch agency or department, as further defined herein, shall be expended and administered in strict compliance with the purposes specified in the annual Appropriations Act and may only be expended or administered in a manner that serves a public purpose and is consistent with the agency or department's authorizing or enabling legislation or other applicable law.

B. I hereby order and direct that any Executive Branch agency or department, as further defined herein, that receives earmarked appropriations, as further defined herein, in the annual Appropriations Act shall ensure strict and timely compliance with the terms of, and requirements set forth in, Proviso 117.21 of the 2022–23 Appropriations Act, Act No. 239 of 2022, and any subsequent version thereof appearing in any annual Appropriations Act, as applicable.

C. I hereby order and direct, pursuant to article IV, section 17 of the South Carolina Constitution and sections 1-1-840 and 1-3-10 of the South Carolina Code of Laws, that any Executive Branch agency or department, as further defined herein, that receives earmarked appropriations, as further defined herein, in the annual Appropriations Act shall promptly make available for public review and inspection on the agency or department's website any and all reports, accountings, forms, updates, communications, or other materials required by Proviso 117.21.

D. I hereby order and direct that any Executive Branch agency or department, as further defined herein, that receives earmarked appropriations, as further defined herein, in the annual Appropriations Act shall deliver, tender, disburse, or transmit any resulting funds or payments directly to any entity designated in the Appropriations Act and shall be prohibited from providing any such funds to any intermediary for presentment. Any such Executive Branch agency or department that receives earmarked appropriations shall not deliver, tender, disburse, or transmit any resulting funds or payments to the identified or intended recipient until the recipient and the agency or department have demonstrated compliance with the directives set forth in this Section and other applicable law.

E. I hereby order and direct that any Executive Branch agency or department, as further defined herein, that receives earmarked appropriations, as further defined herein, in the annual Appropriations Act shall certify to the undersigned and the Executive Budget Office, in writing, compliance with the foregoing directives, as applicable, on an annual basis prior to the conclusion of the corresponding fiscal year.

F. For purposes of this Section, “Executive Branch agency or department” is defined as any agency, department, or official within the undersigned’s Cabinet or any other agency, department, or official within the Executive Branch, as defined by section 1-30-10(A) of the South Carolina Code of Laws, as amended, including any boards or commissions that are part of, comprised within, or under the jurisdiction of such agency or department, as well as any and all other departments, bureaus, divisions, officers, boards, commissions, institutions, and other agencies or undertakings of the State, to the maximum extent provided by law.

G. For the purposes of this Section, “earmarked appropriations” are defined as any non-recurring appropriation to an Executive Branch agency or department that is not requested by the agency or department to which it is allocated or appropriated to and received by and is specifically identified in an annual Appropriations Act as a direct appropriation to, or is otherwise intended to be distributed or dispersed directly to, a non-profit organization, private entity, political subdivision of the State, or other external organization, without regard to whether any such earmarked appropriation was vetoed by the Governor.

H. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to alter or conflict with provisions of the Appropriations Act or any other applicable law, to include the Consolidated Procurement Code or the Administrative Procedures Act.

I. I hereby supersede, rescind, and replace Executive Order Nos. 2004-29 and 2016-16, with any modified or remaining provisions thereof incorporated, in whole or in part, herein.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede, or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

D. I hereby expressly authorize the Office of the Governor and the Executive Budget Office to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

E. This Order is effective immediately and shall remain in effect unless otherwise expressly stated herein or modified, amended, extended, or rescinded by subsequent Order.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 1st DAY OF
JULY, 2022.**

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State