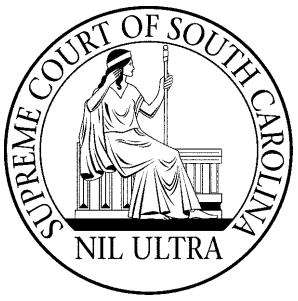

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 22
June 30, 2021
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

None

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

5819-In Re: Venture Engineering	Denied 06/25/21
5820-State v. Eric Dale Morgan	Denied 06/25/21
5822-Vickie Rummage v. BGF Industries	Pending
5823-Stacy Singletary v. Kelvin Shuler	Pending
2021-UP-013-Federal National Mortgage Assn. v. Richard C. Ivey	Pending
2021-UP-045-Kenneth Davis v. Cole Dunn	Pending
2021-UP-099-Boyd Rashaeen Evans v. State	Denied 06/25/21
2021-UP-112-John Cross and Steven Cross v. Gregory Weaver	Pending
2021-UP-121-State v. George Cleveland, III	Pending
2021-UP-125-Rico Dorsey v. Allwaste Services, Inc.	Pending
2021-UP-129-State v. Warren Tremaine Duvant	Pending
2021-UP-141-Evelyn Hemphill v. Kenneth Hemphill	Pending
2021-UP-146-State v. Santonio T. Williams	Pending
2021-UP-147-Gavin V. Jones v. State	Pending
2021-UP-151-Elvia Stoppiello v. Williams Turner	Pending
2021-UP-158-Nathan Albertson v. Amanda Byfield	Pending
2021-UP-161-Wells Fargo Bank, N.A. v. Albert Sanders (2)	Pending
2021-UP-162-First-Citizens Bank v. Linda Faulkner	Pending
2021-UP-163-In the interest of Channon P.	Pending
2021-UP-166-Thelma R. Garrick v. Dr. George H. Khoury	Pending
2021-UP-171-Anderson Brothers Bank v. Dazarhea Monique Parson (3)	Pending
2021-UP-176-State Ethics Commission v. Charles Houston	Pending

2021-UP-180-State v. Roy Gene Sutherland	Pending
2021-UP-182-State v. William Lee Carpenter	Denied 06/25/21
2021-UP-191-Quality Lawn Care v. Coogler Construction	Pending
2021-UP-196-State v. General T. Little	Pending
2021-UP-204-State v. Allen C. Williams, Jr.	Pending
2021-UP-206-Wilmington Savings Fund v. Leroy Hooks, II	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5588-Brad Walbeck v. The I'On Company	Pending
5691-Eugene Walpole v. Charleston Cty.	Pending
5725-In the matter of Francis A. Oxner	Pending
5726-Chisolm Frampton v. SCDNR	Pending
5731-Jericho State v. Chicago Title Insurance	Pending
5735-Cathy J. Swicegood v. Polly A. Thompson	Pending
5736-Polly Thompson v. Cathy Swicegood	Pending
5749-State v. Steven L. Barnes	Pending
5751-State v. Michael Frasier, Jr.	Pending
5755-Stephen A. Connelly v. The Main Street America Group	Pending
5758-State v. Deshanndon M. Franks	Pending
5759-Andrew Young v. Mark Keel	Pending
5764-State Farm v. Myra Windham	Pending
5769-Fairfield Waverly v. Dorchester County Assessor	Pending

5773-State v. Mack Seal Washington	Pending
5783-SC Dep't of Commerce, Division of Public Railways v. Clemson	Pending
5784-Arrowpointe Federal Credit Union v. Jimmy Eugene Bailey	Pending
5790-James Provins v. Spirit Construction Services, Inc.	Pending
5792-Robert Berry v. Scott Spang	Pending
5797-In the interest of Christopher H.	Pending
5798-Christopher Lampley v. Major Hulon	Pending
5800-State v. Tappia Deangelo Green	Pending
5802-Meritage Asset Management, Inc. v. Freeland Construction	Pending
5805-State v. Charles Tillman	Pending
5806-State v. Ontavious D. Plumer	Pending
5807-Road LLC and Pinckney Point, LLC v. Beaufort County	Pending
5808-State v. Darell O. Boston (2)	Pending
2019-UP-331-Rajinder Parmar v. Balbir S. Minhas	Pending
2020-UP-148-State v. Ronald Hakeem Mack	Pending
2020-UP-178-State v. Christian A. Himes	Pending
2020-UP-196-State v. Arthur J. Bowers	Pending
2020-UP-198-State v. Sidney Moorer	Pending
2020-UP-219-State v. Johnathan Green	Pending
2020-UP-236-State v. Shawn R. Bisnauth	Pending
2020-UP-241-State v. Mimi Joe Marshall	Pending

2020-UP-244-State v. Javon Dion Gibbs	Pending
2020-UP-245-State v. Charles Brandon Rampey	Pending
2020-UP-269-State v. John McCarty	Pending
2020-UP-271-State v. Stewart Jerome Middleton	Pending
2020-UP-272-State v. Heyward L. Martin, III	Pending
2020-UP-275-Randall Seels v. Joe Smalls	Pending
2020-UP-284-Deonte Brown v. State	Pending
2020-UP-290-State v. Phillip Wesley Walker	Pending
2020-UP-307-State v. Craig C. Busse	Pending
2020-UP-310-Christine Crabtree v. Donald Crabtree (3)	Pending
2020-UP-323-John Dalen v. State	Pending
2020-UP-336-Amy Kovach v. Joshua Whitley	Pending
2021-UP-009-Paul Branco v. Hull Storey Retail	Pending
2021-UP-029-State v. Tyrone A. Wallace, Jr.	Pending
2021-UP-032-Reginald Swain v. Daniel Allen Bollinger	Pending
2021-UP-156-Henry Pressley v. Eric Sanders	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Mercury Funding, LLC, Petitioner,

v.

Kimberly Chesney, in her official capacity as Tax Collector of Beaufort County, Respondent,

And Jason P. Phillips, in his official capacity as the Anderson County Treasurer and Delinquent Tax Collector; Jill Catoe, in her official capacity as Kershaw County Treasurer and Delinquent Tax Collector; David A. Adams, in his official capacity as Richland County Treasurer and Delinquent Tax Collector; and Jennifer Page, in her official capacity as Lancaster County Delinquent Tax Collector, Intervenors-Respondents.

Appellate Case No. 2020-001572

ORIGINAL JURISDICTION

Opinion No. 28040
Heard May 6, 2021 – Filed June 30, 2021

DECLARATORY JUDGMENT ISSUED

Steve A. Matthews, A. Parker Barnes III, Costa M. Pleicones, Haynsworth Sinkler Boyd, PA, of Columbia; Sarah P. Spruill, Haynsworth Sinkler Boyd, PA, of Greenville, all for Petitioner.

Mary Bass Lohr, Howell Gibson & Hughes, PA, of Beaufort, for Respondent.

Jonathan M. Robinson, Shanon N. Peake, and Austin T. Reed, Smith Robinson Holler DuBose Morgan, LLC, of Columbia; G. Murrell Smith Jr., Smith Robinson Holler DuBose Morgan, LLC, of Sumter, all for Intervenors-Respondents.

PER CURIAM: We accepted this petition in our original jurisdiction to determine whether Act 174 of 2020 violates the constitutional requirement that "Every Act . . . shall relate to but one subject . . . ." S.C. Const. art. III, § 17. We hold Act 174 is unconstitutional.

The South Carolina House of Representatives adopted House Bill 3755 on March 19, 2019, and sent it to the South Carolina Senate. The Senate amended the bill on second reading, but then deleted the amendments on third reading. The Senate adopted the bill on September 15, 2020, and returned it to the House of Representatives. At that time, the bill comprised two sections relating exclusively to the law of automobile insurance. On September 22, 2020, the House of Representatives amended the bill by adding Section 3, which provided "if real property was sold at a delinquent tax sale in 2019 and the twelve-month redemption period has not expired . . . , then the redemption period for the real property is extended for twelve additional months." Act No. 174, 2020 S.C. Acts 1422, 1423-24; *see* S.C. Code Ann. § 12-51-90 (2014) ("The defaulting taxpayer . . . may within twelve months from the date of the delinquent tax sale redeem each item of real estate . . . ."). Section 3 also included other details related to the implementation of the extension. The Senate adopted the amended bill on September 23, 2020, and the Governor signed it as Act 174 on September 30, 2020.

Petitioner filed this action in our original jurisdiction on December 1, 2020, asking that this Court "[g]rant the relief requested in the Complaint, which is to declare that Act 174 with Section 3 included violates S.C. Const. art. III, § 17's 'one subject rule' and that either . . . Section 3 or all of Act 174 is void." Neither Respondent nor Intervenors-Respondents take any position as to the constitutionality of Act 174.

Both the original petition and the Intervenors-Respondents' petition to intervene were served on the Attorney General of South Carolina as required by Rule 24(c) of the South Carolina Rules of Civil Procedure. *See also* S.C. Code Ann. § 1-7-40 (2005) (providing the Attorney General "shall appear for the State in the Supreme Court . . . in the trial and argument of all causes . . . in which the State is a party or interested"). The Attorney General did not ask to intervene. After oral argument, at the request of the Justices, the Clerk of this Court offered the Attorney General the opportunity to file a brief addressing the merits of the constitutional challenge. The Attorney General declined in writing. No person on behalf of the State appeared in favor of the constitutionality of Act 174.

We find Act 174 relates to two subjects: (1) automobile insurance and (2) the redemption period to follow a tax sale of real property. Therefore, Act 174 is unconstitutional.

The parties requested we consider other issues related to the question for which we accepted original jurisdiction. We decline to do so because we find the other issues should be vetted initially by a trial court. It appears the parties have resolved most of these other issues, but we are concerned those issues might affect the rights of parties not before the Court at this time. Accordingly, we respectfully decline to address any issue other than the constitutionality of Act 174.

DECLARATORY JUDGMENT ISSUED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

James Mikell "Mike" Burns, Garry R. Smith and Dwight A. Loftis, Appellants,

v.

Greenville County Council and Greenville County, Respondents.

Appellate Case No. 2018-002255

Appeal from Greenville County
Charles B. Simmons Jr., Circuit Court Judge

Opinion No. 28041
Heard August 20, 2020 – Filed June 30, 2021

REVERSED

Robert Clyde Childs III, Childs Law Firm; J. Falkner Wilkes, both of Greenville for Appellants.

Sarah P. Spruill and Boyd Benjamin Nicholson Jr., Haynsworth Sinkler Boyd, PA, both of Greenville for Respondents.

JUSTICE FEW: Greenville County Council implemented what it called a "road maintenance fee" to raise funds for road maintenance and a "telecommunications fee" to upgrade public safety telecommunication services. The plaintiffs—three members of the South Carolina General Assembly—claim the two charges are taxes

and, therefore, violate section 6-1-310 of the South Carolina Code (2004). We agree. We declare the road maintenance and telecommunications taxes are invalid under South Carolina law.

I. Facts and Procedural History

Greenville County Council enacted the two ordinances at issue in 2017. Ordinance 4906 was enacted "to change the road maintenance fee to . . . $25." Ordinance 4906 amended Ordinance 2474—enacted in 1993—which required the owner of every vehicle registered in Greenville County[1] to pay $15 a year to the Greenville County Tax Collector. County Council stated in Ordinance 4906 it increased the charge because "the current fee is insufficient to keep up with increased costs of maintenance."

Ordinance 4907 was enacted "for . . . the lease, purchase, . . . or maintenance of County-wide public safety telecommunications network infrastructure and network components" and related costs. This ordinance requires the owner of every parcel of real property in Greenville County to pay $14.95 a year for ten years to the Greenville County Tax Collector. County Council stated in Ordinance 4907 it imposed the charge to "mov[e] all County-wide public safety telecommunications to a single network platform" to "promote the safety of life and property in Greenville County by providing much needed modernization of current public safety telecommunications infrastructure."

The plaintiffs filed this lawsuit to challenge the validity of the ordinances on several grounds, including their claim the ordinances impose a tax and not a permissible fee. The parties consented to an order referring the case to the master in equity for trial pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure. The master found the ordinances did not violate the law. Because one of the grounds on which the plaintiffs brought the challenge was the Equal Protection Clause, they filed their notice of appeal with this Court pursuant to Rule 203(d)(1)(A)(ii) of the South Carolina Appellate Court Rules and subsection 14-8-200(b)(3) of the South Carolina

[1] Section 56-3-110 of the South Carolina Code (2018) requires every motor vehicle in the State to be registered and licensed, and subsection 56-3-195(A) of the South Carolina Code (2018) assigns the registration process to each county for vehicles owned by residents of the county.

Code (2017). Though we find the Equal Protection Clause question is not a significant issue, we elect not to transfer the case to the court of appeals. *See* Rule 203(d)(1)(A)(ii), SCACR (providing "where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case"); § 14-8-200(b)(3) (same).

II. Analysis

South Carolina law permits counties "to . . . levy ad valorem[2] property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); *see also* S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("'Service or user fee' also includes 'uniform service charges'."). Except for value-based property taxes, a county "may not impose a new tax . . . unless specifically authorized by the General Assembly." § 6-1-310.

Neither ordinance imposes a value-based property tax, and the General Assembly has not authorized Greenville County to impose any other new taxes. Therefore, unless the charges in the ordinances are "uniform service charges" under subsection 4-9-30(5)(a) or a "service or user fee" under subsection 6-1-330(A), the charges imposed pursuant to the ordinances are invalid under State law.

In 1992, this Court addressed the question of what is a "uniform service charge authorized under [section] 4-9-30," and in particular, whether a "road maintenance fee" imposed by Horry County was "a service charge or a tax." *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992). We later explained, summarizing our extensive analysis in *Brown*,

> Under *Brown,* a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by

[2] "Ad valorem" is a Latin term sometimes used to mean "value-based." *See Ad Valorem*, BLACK'S LAW DICTIONARY (11th ed. 2019) (stating "ad valorem" means "proportional to the value of the thing taxed").

> the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

C.R. Campbell Const. Co., Inc. v. City of Charleston, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (citing *Brown*, 308 S.C. at 184-86, 417 S.E.2d at 567-68).

In 1997, the General Assembly enacted subsection 6-1-300(6), which defines "service or user fee"—including "uniform service charges"—as "a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee." After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6).

Our analysis of the two ordinances at issue in this case begins and ends with subsection 6-1-300(6). In its brief, Greenville County argues Ordinance 4906 meets the subsection 6-1-300(6) requirement of a "government service or program . . . that benefits the payer in some manner different from the members of the general public" because "the funds collected are 'specifically allocated for road maintenance,'" as this Court approved in *Brown*. The argument conveniently ignores the fact subsection 6-1-300(6) was enacted in 1997, five years after *Brown* and four years after Greenville County enacted its original road maintenance fee in Ordinance 2474. The fact the funds are allocated for road maintenance says nothing of any benefit peculiar to the payer of the fee. In fact, every driver on any road in Greenville County—whether their vehicles are registered in Greenville County, Spartanburg County, or in some other state—benefits from the fact the funds are "specifically allocated for road maintenance."

At oral argument, Greenville County made the additional argument Ordinance 4906 satisfies subsection 6-1-300(6) because the property owners who pay the charge are the drivers who "most use the roads" maintained by the funds collected. We do not agree this satisfies subsection 6-1-300(6). While Greenville County residents who use the roads every day may derive more benefit from having the roads maintained in good condition, it is still the same benefit every driver gets, no matter where their car is registered.

Greenville County argues Ordinance 4907 satisfies subsection 6-1-300(6) because the improved telecommunications system will "enhance[] real property values." We find this argument fails. When County Council enacted Ordinance 4907, it did not address the factual question of whether an improved telecommunications system will enhance property values, and Greenville County presented only speculative evidence of such an enhancement at trial. The County Administrator testified the new system "could . . . enhance property values for individual property owners." One County Council member testified his own property "stands to benefit from better coordinated, faster, first responder services." Plaintiff Mike Burns testified on cross-examination the new telecommunication system "would benefit [him] as a property owner," but he said nothing about any benefit to his property value.

The plaintiffs argue any claim of an increase in property value from the new telecommunication system is "too tenuous" to satisfy subsection 6-1-300(6). Greenville County argues this Court already approved enhanced property value as a satisfactory benefit in *C.R. Campbell Construction*. *See* 325 S.C. at 237, 481 S.E.2d at 438 (finding "the payers benefit because their real property values are enhanced"). We find *C.R. Campbell Construction* is not helpful to Greenville County. In that case, "City Council made a specific finding that parks and recreational facilities add to the value of real estate within the City." 325 S.C. at 236, 481 S.E.2d at 437. We stated, "This finding is supported by evidence in the record that property values are in fact enhanced by such amenities." *Id.* In this case, neither County Council when it adopted the ordinance nor Greenville County when it tried this case put any effort into demonstrating the new telecommunications system would meaningfully enhance property values.

Taxpayers should hope every action taken by local government is calculated to not damage property values. What governing body would attempt—and what electorate would accept—an act that is calculated to damage property value? Every action of local government, therefore, in at least some minor way, should be calculated to enhance property value. In some instances, as in *C.R. Campbell Construction*, the enhancement of property value may be significant. If the governing body actually addresses the effect on property value and deems an anticipated enhancement significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the decision, as we did in *C.R. Campbell Construction*. In the first instance, however, the question whether an ordinance actually enhances property values must be addressed by the local governing body. In Ordinance 4907, County Council described the aged equipment

previously used in multiple networks, and it stated the new single network would improve the delivery of emergency and public safety communications in multiple ways. But the ordinance says nothing of whether property owners would see any benefits from the new network. Even if property owners will see benefits, this Court has no idea whether the impact is significant enough to affect property value. We hold that simply declaring a fee will enhance property value does not make the property owner paying the fee the beneficiary of some unique benefit, as required by subsection 6-1-300(6).

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the "government service or program . . . benefits the payer in some manner different from the members of the general public."[3]

III. Conclusion

Greenville County Ordinances 4906 and 4907 purport to impose a "uniform service charge" on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN and JAMES, JJ., concur. KITTREDGE, J., concurring in a separate opinion in which BEATTY, C.J., joins.

[3] The plaintiffs raised other issues we find it unnecessary to address. *See Whiteside v. Cherokee Cty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) ("In view of our disposition of this issue, we need not address appellants' remaining exceptions." (citations omitted)).

JUSTICE KITTREDGE: I concur with the majority opinion. I write separately to offer two points. First, the post-*Brown*[4] enactment of section 6-1-300(6) of the South Carolina Code (2004) is the standard set by out legislature for determining what constitutes a "service or user fee." In my judgment, the *Brown* factors may inform the analysis, particularly factors (3) and (4), but section 6-1-300(6) is controlling. Second, this Court in recent years has received an increasing number of challenges to purported "service or user fees." Local governments, for obvious reasons, want to avoid calling a tax a tax. I am hopeful that today's decision will deter the politically expedient penchant for imposing taxes disguised as "service or user fees." I believe today's decision sends a clear message that the courts will not uphold taxes masquerading as "service or user fees." Going forward, courts will carefully scrutinize so-called "service or user fees" to ensure compliance with section 6-1-300(6).

BEATTY, C.J., concurs.

[4] *Brown v. Cty. of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Thomas J. Torrence, Respondent,

v.

South Carolina Department of Corrections, Appellant.

Appellate Case No. 2016-000285

Appeal From The Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Opinion No. 5829
Submitted May 26, 2021 – Filed June 30, 2021

AFFIRMED

Lake E. Summers, of Malone, Thompson, Summers & Ott, LLC, of Columbia, for Appellant.

Thomas J. Torrence, pro se.

HUFF, J.: The South Carolina Department of Corrections (the Department) appeals two orders of the administrative law court (the ALC), which reversed the Department's final decision in the matter of inmate Thomas Torrence's grievance and remanded the case back to the Department to calculate and pay wages to

Torrence in accordance with the Prevailing Wage Statute.[1] On appeal, the Department argues the ALC erred by: (1) finding Torrence timely filed the grievance at issue, (2) finding the doctrine of equitable tolling applied to Torrence's grievance, (3) calculating the prevailing wage in its order, and (4) finding the Department erred by failing to allow Torrence to designate persons or authorities under section 24-3-40 of the South Carolina Code.[2] We affirm on the submitted briefs.[3]

FACTS/PROCEDURAL HISTORY

Torrence is currently serving a life sentence without the possibility of parole. Between June 1997 and November 2004, Torrence participated in the prison industries service project (PIP) operated at Evans Correctional Institution. During this time, Torrence performed work for Insilco Global Industries/ESCOD (ESCOD). For the first 320 hours of Torrence's labor, the Department paid him a "training wage" of $0.25 per hour for the first 160 hours and $0.75 per hour for the remaining 160 training hours. After the completion of his training period, the Department paid Torrence a wage of $5.25 per hour and $7.86 per hour for overtime.

In 2001, Torrence and other inmates filed a class action suit against the Department in the circuit court, seeking a declaratory judgment finding the Department violated South Carolina law by (1) improperly diverting portions of inmate wages, (2) paying inmates less than the prevailing wage, and (3) preventing immediate distribution of inmate wages placed in escrow. Pursuant to *Wicker*[4] and *Adkins*,[5] the circuit court granted the Department's motion to dismiss, and Torrence

---

[1] S.C. Code Ann. § 24-3-430(D) (2007).

[2] Upon our initial review, this court dismissed the Department's appeal as interlocutory, but our supreme court reversed the dismissal and remanded to this court to address the merits of Department's appeal. *See Torrence v. S.C. Dep't of Corr.*, ___ S.C. ___, 857 S.E.2d 549 (2021).

[3] We decide this case without oral argument pursuant to Rule 215, SCACR.

[4] *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004).

[5] *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004).

appealed. The South Carolina Supreme Court subsequently affirmed the circuit court's dismissal, holding inmates do not have a private right of action against the Department but do have a right to pursue their claims through the Department's internal grievance procedure. *See Torrence v. S.C. Dep't of Corr.*, 373 S.C. 586, 593-95, 646 S.E.2d 866, 869-70 (2007).

On May 21, 2007, Torrence submitted a step one grievance raising eight grounds "objecting to the Department's payment, disbursement, and retention of wages" for his work under PIP. Specifically, Torrence argued the Department violated state law by paying him an hourly wage below the prevailing wage in the industry. Torrence argued he was entitled to the difference between his wage and the prevailing wage for his work performed for ESCOD both during and after his training period as well as for any overtime hours. Torrence additionally argued the Department deprived him of his property rights by denying him the option of designating persons or entities to receive immediate distribution of his wages placed in escrow pursuant to section 24-3-40 of the South Carolina Code. Torrence argued that because he was serving a life sentence, he should be allowed to designate persons or entities to receive the escrowed wages for "his personal benefit." On December 1, 2011, the Department denied Torrence's claims, finding Torrence failed to timely file his grievance "within either seven . . . days or even [fifteen] days of the incident upon which [he] anchored the claims . . . presented in [his] [s]tep [one]" as required by Paragraph 13.1 of the Department's Policy GA-01.12.[6] On December 5, 2011, Torrence appealed the Department's decision in a step two grievance, which raised the same grounds as his step one. Additionally, in his step two, Torrence argued the Department erred in finding he failed to timely file his step one because (1) the class action lawsuit, which was filed four years before *Wicker*, tolled the statute of limitations and (2) he filed his step one "immediately" after receiving notice of the supreme court's decision. On February 9, 2012, the Department reiterated its response to Torrence's step one and denied his step two.

[6] Paragraph 13.1 of Policy GA-01.12 requires that step one grievances be filed within fifteen days of the alleged incident that led to the grievance.

On May 7, 2012, Torrence appealed to the ALC. The ALC subsequently bifurcated the issues on appeal to determine the timeliness of Torrence's grievance before reaching the merits of his case. On January 30, 2014, the ALC issued an order finding Torrence timely filed his step one. In its order, the ALC found Torrence timely filed his step one because Torrence's claims fell within Paragraph 13.9 of the Department's Policy GA-01.12, which provides "[e]xceptions to the [fifteen-]day time limit requirement will be made for grievances concerning policies/procedures." The ALC noted,

> The Inmate Grievance System Policy fails to define either "incident" or "policies/procedures." . . . Based on the "plain and ordinary meaning" of both of these words, it is clear that an incident would be a one-time, specific event, and a policy would be continuous course of action. In the present case, it was not a one-time event, in which [Torrence] was not paid a prevailing wage. The Department continuously failed to pay [Torrence] a prevailing wage. Therefore, the grievance involved is related to a policy or procedure.
>
> . . . .
>
> Prior to the *Wicker* opinion issued by the [s]upreme [c]ourt, the Department maintained that wage issues were not grievable under the internal grievance system. . . . Thus, any attempt by [Torrence] to file a grievance prior to August 22, 2004[,] would have been futile. By that time, [Torrence's] lawsuit initiated as a class action in [the c]ircuit [c]ourt was pending . . . , representing ongoing litigation between these same parties over the same issue. [Torrence] filed his grievance within fifteen days of the date the [s]upreme [c]ourt issued its decision in his case . . . .

The ALC additionally found Torrence timely filed his step one because his grievance "present[ed] the type of extraordinary circumstances in which fairness demands that the doctrine of equitable tolling be applied." The ALC further stated it would address the merits of Torrence's claims upon receiving the parties' briefs.

On January 21, 2016, the ALC issued its order addressing the merits of Torrence's claims. In its order, the ALC found the Department erred by failing to pay Torrence the prevailing wage for his labor pre- and post-training, stating "there is no construction of law under which the Department could pay [Torrence] less than the prevailing wage." The ALC further stated, "The question then becomes, what is the 'prevailing wage' that must be paid for all hours worked in both the training period and thereafter?" Addressing this question, the ALC stated,

> The [PIP] Guideline . . . states that the prevailing wage must be obtained from the state agency that determines wage rates. . . . In South Carolina, this agency would have been the Employment Security Commission (ESC) at the times relevant to this case, but would now be the Department of Employment and Workforce (DEW).

The ALC continued,

> The Department cites a [c]ircuit [c]ourt order in another case as support for the theory that [s]ection [24-3]-410, and not [s]ection [24-3]-430, governs the wage standard applicable in this case. Not only is this [c]ircuit [c]ourt order not binding, the argument for which it is cited contradicts the statements of the higher courts in this state. This [c]ourt declines to further address the argument that only [s]ection [24-3]-410 applies, noting that the South Carolina Supreme Court has already stated that the program at issue in this case operated under [s]ection 24-3-430.

The ALC continued, "While the [c]ourt agrees that verification of wage rates by the ESC is the method for determining the prevailing wage that the federal [g]uideline and state statutes contemplate, the [c]ourt does not agree that the $5.25 regular hourly rate conforms to the ESC data in the record." The ALC stated,

> [Torrence] has asked this [c]ourt to determine the prevailing wage based on the record in this case. In so doing, the [c]ourt reaches an issue not yet addressed by South Carolina courts. While it has been decided that the Department may not pay less than the prevailing wage during training, no inmate has successfully raised the issue of how the prevailing wage is calculated.

In calculating the prevailing wage, the ALC interpreted section 24-3-430 of the South Carolina Code (2007). The court stated,

> The Merriam-Webster Dictionary defines "prevail" as "to be frequent: predominate." . . . Predominate is defined as "to hold advantage in numbers or quantity." . . . The affidavit in the record of Rebecca Eleazor of the ESC supports the conclusion that the "average" wage in South Carolina for a given occupational category would be the ordinary interpretation of the statutory phrase prevailing wage. The [c]ourt therefore concludes that the "prevailing wage" *equals the mean average wage* for an occupation.
>
> The [PIP] Guideline requires that the prevailing wage must be obtained from the state agency that determines wage rates. . . . Further, the Guideline states that the prevailing wage must be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers and that no other cost variables may be taken into consideration. . . . In referring to the ESC data in the record, the [c]ourt concludes that "locality" means the state of South Carolina. Further, the [c]ourt concludes

> that the data necessary to determine the mean average wage for "work of a similar nature" as contemplated by the state statutes and federal guidelines may be found by referring to the appropriate Occupational Employment Statistics (OES) or OCC code used by ESC/DEW.

(emphasis added). Based on the aforementioned analysis, the ALC found, "The record simply d[id] not support a finding that the mean average wage for an assembler [was] as low as the $5.25 paid [to Torrence]"; rather, the record showed the mean average wage for an electronic assembler was $8.82 in 1997 and $9.92 for 1998 and 1999. The ALC additionally found "the evidence in the record [was] insufficient to calculate the wage for all of the relevant years," specifically the years 2000 through 2004. It therefore ordered Torrence's claim be remanded to the Department to determine the prevailing wage for the remaining years of Torrence's labor.

Regarding Torrence's access to his escrowed wages, the ALC discussed the parties' varying interpretations of section 24-3-40, stating,

> The parties disagree on when [Torrence's] escrowed wages may be distributed to persons or entities of the inmate's choosing—i.e. whether they may be distributed only after the inmate's death. While there is nothing in [section 24-3-40(B)(2)] explicitly stating that the distribution of the funds to persons or entities chosen by the inmate can occur only after the inmate's death, the Department's interpretation of an ambiguous statute that it administers is entitled to deference unless there is a compelling reason to differ. . . .

Applying the principles of statutory construction, the ALC found,

> [A] construction of the statute that gives full effect to both [s]ubsections (B)(2) and (A)(5) requires reading [s]ubsection (B)(2) to allow a prisoner serving a life

> sentence without opportunity for parole the option of having the escrowed funds distributed to the persons or entities of his choice during his lifetime.

The ALC therefore concluded Torrence "must be allowed the opportunity to designate persons or entities to receive an immediate distribution of funds held in escrow pursuant to [s]ection 24-3-40(A)(5)."

Based on the foregoing, the ALC reversed and remanded the Department's final decision. This appeal followed.

STANDARD OF REVIEW

"In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). "Section 1-23-610 of the South Carolina Code ([Supp. 2020]) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). "The review of the [ALC's] order must be confined to the record." S.C. Code Ann. § 1-23-610(B) (Supp. 2020). "Th[is] court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact." *Id.* "In determining whether the ALC's decision was supported by substantial evidence, th[is c]ourt need only find, . . . evidence from which reasonable minds could reach the same conclusion as the ALC." *Kiawah*, 411 S.C. at 28, 766 S.E.2d at 715. However, when the issue on review raises a question of law, this court "may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." *Id.* "Statutory interpretation is a question of law." *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017) (quoting *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010)). "Unless there is a compelling reason to the contrary, appellate courts 'defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations.'" *Id.* at 188, 801 S.E.2d at 403 (quoting *Kiawah*, 411 S.C. at

34, 766 S.E.2d at 718); *see also Kiawah*, 411 S.C. at 34-35, 766 S.E.2d at 718 ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984))).

LAW/ANALYSIS

I. TIMELINESS OF GRIEVANCE

The Department argues the ALC erred in finding Torrence timely filed his step one grievance because he failed to file it within fifteen days of "the date upon which [the Department] began paying Torrence for his labor," as required by Paragraph 13.1 of Policy GA-01.12. The Department contends the ALC erred in finding Torrence's grievance fell within the filing exception under Paragraph 13.9 because Torrence did not specifically allege his grievance challenged a policy or procedure of the Department. Additionally, the Department asserts the ALC erred in finding the doctrine of equitable tolling applied to Torrence's claims because the Department "did nothing whatsoever to hinder Torrence's discovery of his wage claims or his ability to pursue his claims." We disagree.

"[The Department's] Inmate Grievance System Policy, designated as Policy GA-01.12, provides for formal review of inmate complaints in two steps." *Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 414, 782 S.E.2d 757, 758 (Ct. App. 2016). "Paragraph 13.1 of Policy GA-01.12 requires an inmate to file a [s]tep [one] Inmate Grievance Form within fifteen days of the alleged 'incident.'" *Id.* at 418, 782 S.E.2d at 760. "Policy GA-01.12 does not define the term 'incident,' but [P]aragraph 13.9 provides . . . [e]xceptions to the [fifteen-]day time limit requirement *will* be made for grievances concerning *policies/procedures.*" *Id.* (quoting Paragraph 13.9, Policy GA-01.12).

Although the Department does not define "policies and procedures" in its policy, it provided this court with the following definition in *Ackerman*:

> [T]he terms "policies" and "procedures" constitute approved guidelines for handling the [Department's]

> day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms "policies" and "procedures" constitute agency directives deemed by the responsible agency officials as "necessary to preserve internal order and discipline, and to maintain institutional security in prison."

Id. at 419, 782 S.E.2d at 761 (first alteration by court). Because the Department operates PIP as a part of its day-to-day operations, this court found that an inmate grievance challenging a specific pay rate and invoking the Prevailing Wage Statute[7] constitutes a grievance challenging a policy or procedure under Paragraph 13.9, rather than a grievance involving a specific incident under Paragraph 13.1. *Id.* at 418-20, 782 S.E.2d at 760-61. Additionally, this court found grievances invoking the Prevailing Wage Statute involve "a topic governed by statute and, thus, an expression of the legislature's policy on inmate pay." *Id.* at 420, 782 S.E.2d at 761. The court explained,

> As [the Department] is mandated to carry out these legislative policies, [the Department], in turn, expresses its own, more specific policies regarding pay rates and other working conditions for inmates in its contracts with [PIP] sponsors. . . .
>
> Moreover, the provisions of these contracts are *enduring and have the same effect on numerous inmates*. Therefore, they cannot realistically be characterized as "incidents," which are temporally limited and rarely affect more than a few inmates.

Id. at 420-21, 782 S.E.2d at 762 (emphasis added). Accordingly, this court held these types of grievances are exempt from the fifteen-day deadline enumerated in Paragraph 13.1 and the Department's "attempt to characterize [inmate] wage

[7] S.C. Code Ann. § 24-3-430(D) (2007).

grievances as incident grievances was arbitrary and capricious." *Id.* at 421, 782 S.E.2d at 762.

In the instant case, we find Torrence timely filed his step one grievance. As in *Ackerman*, Torrence's claims involved "topic[s] governed by statute" that reflect the Department's "expression of the legislature's policy on inmate pay." 415 S.C. at 420-21, 782 S.E.2d at 761-62 (finding inmate grievances raising topics governed by statute that involve enduring conditions, such as inmate wages, "cannot realistically be characterized as 'incidents,' which are temporally limited and rarely affect more than a few inmates"). Specifically, Torrence alleged the Department failed to pay him the prevailing wage for his labor under PIP and erroneously prevented him from designating "persons or entities" to receive immediate distributions of his escrowed wages. Because Torrence's claims involve continuous conditions potentially affecting numerous inmates, we find Torrence's grievance involves Department policies and procedures, rather than an isolated incident. Therefore, we find Torrence's grievance falls within the exception enumerated in Paragraph 13.9 of the Department's Policy GA-01.12, and thus, Paragraph 13.1's fifteen-day filing rule does not apply. *See id.* at 421, 782 S.E.2d at 762 (holding the Department's attempt to characterize inmate wage grievances as "incident" grievances under Paragraph 13.1 was arbitrary and capricious). Accordingly, we affirm the ALC's finding that Torrence timely filed his step one grievance.

Because our finding on this issue is dispositive as to the timeliness of Torrence's grievance, we need not address whether the ALC erred in applying the doctrine of equitable tolling. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of a prior issue is dispositive).

II. CALCULATION OF THE PREVAILING WAGE

The Department argues the ALC erred by calculating the prevailing wage for Torrence's labor performed through PIP because it "misapprehended the applicable state law, federal law, and federal regulations." Specifically, the Department

asserts section 24-3-410(B)(7)[8] is the controlling authority over inmate wages received through PIP, rather than section 24-3-430(D). Arguing the ALC erroneously ignored the analysis of the circuit court in *Adkins*, the Department urges this court to adopt the circuit court's holding, which found pursuant to section 24-3-410(B)(7), inmates were only entitled to a comparable wage in the industry and not the prevailing wage. The Department therefore asserts the wage Torrence received complied with South Carolina law because it was ten cents over the federal minimum wage for similar labor. The Department further argues the ALC erred in its calculation of the prevailing wage because the record did not contain sufficient evidence to support the calculation. We disagree.

Preliminarily, we find the Department's assertion that section 24-3-410(B)(7) preemptively governs inmate wages earned through PIP is a misinterpretation of the law. Section 24-3-410 provides:

> (A) It is unlawful to sell or offer for sale on the open market . . . articles or products manufactured or produced wholly or in part by inmates . . . .
>
> (B) The provisions of this section do not apply to: . . .
>
> > (7) products . . . produced by inmates of the Department . . . employed in [PIP] if the inmate workers participate voluntarily, *receive comparable wages*, and the work does not displace employed workers.

S.C. Code Ann. § 24-3-410(A), (B)(7) (2007) (emphasis added). Section 24-3-430(D) provides, "No inmate participating in the program may earn *less than*

---

[8] S.C. Code Ann. § 24-3-410(B)(7) (2007) (stating the prohibition on selling prison made products on the open market does not apply to "products . . . produced by inmates of the Department . . . employed in [PIP] if the inmate workers . . . *receive comparable wages*, and the work does not displace employed workers" (emphasis added)).

the prevailing wage for work of [a] similar nature in the private sector." S.C. Code Ann. § 24-3-430(D) (2007) (emphasis added). Although both statutes refer to inmate wages earned through PIP, we find section 24-3-430(D) is the controlling authority, as it directly addresses the rate of inmate wages. *See Bruning v. S.C. Dep't of Health and Env't Control*, 418 S.C. 537, 545, 795 S.E.2d 290, 294 (Ct. App. 2016) ("Generally, '[a] specific statutory provision prevails over a more general one.'" (quoting *Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999))). Further, as stated in the ALC's order, our precedent has primarily addressed inmate wage claims within the context of section 24-3-430(D). *See S.C. Dep't of Corr. v. Cartrette*, 387 S.C. 640, 646, 694 S.E.2d 18, 21 (Ct. App. 2010) (finding "sections 24-3-315 and 24-3-430(D) compel the Department to ensure inmate workers who are employed under those sections receive the same pay rates and employment conditions as their non-inmate peers"); *Wicker*, 360 S.C. at 425, 602 S.E.2d at 58 (holding "there is simply nothing in the [PIP] statutory scheme authorizing the [Department] to pay Wicker a training wage less than the prevailing wage" as provided by section 24-3-430).

However, we find section 24-3-410 and other sections within Article 3 still bear importance in determining the legislative intent behind the statutes governing PIP. *See Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) ("When statutes address the same subject matter, they are *in pari materia[]* and must be construed together, if possible, to produce a single, harmonious result."). In comparing these sections with our precedent, it is clear the legislature intended to provide inmates with employment opportunities that would not displace workers in the private sector. *See* S.C. Code Ann. § 24-3-315 (2007) ("The director must determine prior to using inmate labor in a [PIP] project that it will not displace employed workers, . . . and that the rates of pay and other conditions of employment are not less than those paid and provided for work of [a] similar nature in the locality in which the work is performed."); S.C. Code Ann. § 24-3-430(E) (2007) ("Inmate participation in [PIP] may not result in the displacement of employed workers in the State of South Carolina and may not impair existing contracts for services."); *see also Cartrette*, 387 S.C. at 646, 694 S.E.2d at 22 (holding "[f]ailure of the Department's contracts with PIP sponsors to provide inmate workers with time-and-a-half pay for overtime hours when their non-inmate counterparts receive it

would create an impermissible and unfair advantage for inmate labor over private labor"). Therefore, we find the legislature created section 24-3-430(D) as a safeguard to prevent inmates from becoming a cheaper alternative to their counterparts in the private realm. Accordingly, we find the pivotal inquiry in the instant case becomes how the prevailing wage for a particular industry is calculated.

"The issue of interpretation of a statute is a question of law for the court." *Bruning*, 418 S.C. at 544, 795 S.E.2d at 294 (quoting *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 648 (Ct. App. 2008)). "The cardinal rule of statutory interpretation is to ascertain and effectuate the legislature's intent." *Blue Ribbon Taxi*, 380 S.C. at 607, 670 S.E.2d at 677. "*Legislative intent must prevail* if it can be reasonably discovered in the language employed and that language must be construed in the light of the intended purpose of the statute." *Id.* at 607, 670 S.E.2d at 678 (emphasis added). "The plain language of the statute is the principal guidepost in discerning the General Assembly's intent." *Id.* "Words in the statute should be given their plain and ordinary meaning without [resorting] to forced or subtle construction." *Id.* at 608, 670 S.E.2d at 678.

Because Article 3 fails to define the term "prevailing wage," we must apply its customary meaning. *See Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998) ("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning."); *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002) ("Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning."). According to the *Merriam-Webster Dictionary*, "prevailing" means to be frequent or predominant. It further defines "predominant" as being most frequent or common. Therefore, based on a plain reading of section 24-3-430(D) and its legislative intent, we agree with the ALC's interpretation that to determine the prevailing wage for an industry, the Department must determine the mean average wage for the occupation at issue using records and data from DEW. *See Average*, *Black's Law Dictionary* (11th ed. 2019) (defining "average" as "[t]he ordinary or typical level; the norm"); *Average*, *Merriam-Webster Dictionary* (defining "average" as a level typical of a group, class, or series). Accordingly, we affirm the ALC's

calculation of the prevailing wage for the years 1997 to 1999 and its decision to remand Torrence's grievance to the Department for the calculation of the prevailing wage for the years 2000 to 2004.

III. DISTRIBUTION OF ESCROWED WAGES

The Department argues the ALC erred by finding section 24-3-40 of the South Carolina Code allowed Torrence to designate persons or entities to receive immediate distributions of his escrowed wages. According to the Department, section 24-3-40 is an unambiguous statute and therefore requires a plain reading of its text. The Department asserts a plain reading of the statute reveals an inmate sentenced to life imprisonment "may only distribute the monies held in escrow for his benefit by operation of § 24-3-40(A)(5) upon his natural death."

Torrence argues section 24-3-40(B)(2) allows him the option of electing either immediate distribution of his escrowed wages to persons and entities of his choosing or the inclusion of the escrowed wages in the distribution of his estate. Torrence therefore asserts the ALC properly harmonized sections 24-3-40(A)(5) and (B)(2) in its construction of the statute.

"Interpreting and applying statutes and regulations administered by an agency is a two-step process." *Kiawah*, 411 S.C. at 32, 766 S.E.2d at 717. "First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Id.* "Words in the statute should be given their plain and ordinary meaning without [resorting] to forced or subtle construction." *Blue Ribbon Taxi*, 380 S.C. at 608, 670 S.E.2d at 678. "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." *Kiawah*, 411 S.C. at 33, 766 S.E.2d at 717 (quoting *Chevron,* 467 U.S. at 843).

Section 24-3-40 provides:

> (A) Unless otherwise provided by law, the employer of a prisoner authorized to work . . . [under PIP] . . . shall pay the prisoner's wages directly to the Department . . . . The Director of the Department . . . shall deduct the following amounts from the gross wages of the prisoner: . . .
>
> > (5) Ten percent must be held in an interest bearing escrow account *for the benefit of the prisoner*.
> >
> > . . . .
>
> (B) The Department . . . shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows: . . .
>
> > (2) A prisoner serving life in prison . . . *shall be given the option* of having his escrowed wages included in his estate *or* distributed to the persons or entities of his choice.

S.C. Code Ann. § 24-3-40(A)(5), (B)(2) (Supp. 2020) (emphases added).

We construe subsections (A)(5) and (B)(2) to allow for *either* immediate distribution of an inmate's escrowed wages to persons or entities of his choosing *or* inclusion of these assets in the distribution of his estate. *See Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012) ("In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law must be construed together and each one given effect."). Subsection (B)(2) states an inmate serving a life sentence *shall be given the option* to include his withheld wages in his estate *or* to distribute them to persons or entities of his choosing. Further, subsection (A)(5) provides these wages will be held in an escrow account *for the benefit of the prisoner*. Because an inmate serving a life sentence will never receive the benefit of his wages outside of prison unlike those who will be released during their lifetime, we find the Department's interpretation of section 24-3-40 arbitrary and capricious. Accordingly, we affirm the ALC's construction of section 24-3-40 and find the

Department erred by refusing Torrence the option of designating persons or entities for immediate distribution of his escrowed wages.

CONCLUSION

Accordingly, the decision of the ALC is

AFFIRMED.

GEATHERS and MCDONALD, JJ., concur.