

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School AdministratorsPlaintiffs,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Defendants.

ANSWER

Co-Defendant Jim Rex, State Superintendent of Education (hereinafter “Superintendent Rex”), hereby responds to the Complaint of Plaintiff, the South Carolina Association of School Administrators, in accordance with the numbered paragraphs thereof, as follows:

General Allegations

1. Superintendent Rex admits paragraph 1.
2. Superintendent Rex admits paragraph 2.
3. Superintendent Rex admits paragraph 3.
4. Superintendent Rex admits paragraph 4.
5. Superintendent Rex admits paragraph 5.
6. Superintendent Rex admits paragraph 6.
7. Superintendent Rex admits paragraph 7.
8. Superintendent Rex admits paragraph 8.

9. Superintendent Rex admits paragraph 9.
10. Superintendent Rex admits paragraph 10.
11. Superintendent Rex admits paragraph 11 as an accurate statement of the American Recovery and Reinvestment Act of 2009 (hereinafter "ARRA"); however, Superintendent Rex asserts that § 14012 of the ARRA includes a waiver provision for a state's failure to meet the maintenance of effort provision in § 14005. Superintendent Rex prepared the waiver document and submitted such to the Defendant Governor Sanford and to the best of his knowledge and belief South Carolina qualifies for the maintenance of effort waiver.
12. Superintendent Rex admits paragraph 12.
13. Superintendent Rex admits paragraph 13.
14. Superintendent Rex admits paragraph 14.
15. Superintendent Rex admits paragraph 15. Superintendent Rex submitted a copy of the completed application to the Governor via facsimile on May 23, 2009, and via hand delivery on May 26, 2009 (Attachment). Superintendent Rex and his staff at the South Carolina Department of Education worked with members of the General Assembly and its staff, the Office of State Budget, and the Commission on Higher Education in assembling the required documentation for the application.
16. Superintendent Rex admits paragraph 16.
17. Superintendent Rex admits paragraph 17.

FOR A FIRST CLAIM
Declaratory Judgment and Appropriate Relief

18. Superintendent Rex incorporates by reference herein his responses to paragraphs 1 through 17 of the Complaint.
19. Superintendent Rex admits paragraph 19.
20. Superintendent Rex admits paragraph 20.
21. Superintendent Rex admits paragraph 21.
22. Superintendent Rex agrees with Plaintiff's statement of the law in paragraph 22.
23. Superintendent Rex agrees with Plaintiff's statement of the law in paragraph 23.
24. Admitted in part and denied in part. Superintendent Rex admits Plaintiff seeks a declaratory judgment; however, he is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24, and therefore denies same.

FOR A SECOND CLAIM
Writ of Mandamus

25. Superintendent Rex incorporates by reference herein his responses to paragraphs 18 through 24 of the complaint.
26. Superintendent Rex concurs with this prayer of relief expressed in paragraph 26 and joins in asking the Court and agrees with Plaintiff's statement of the law with regard to the rights of the courts to compel ministerial acts by the Governor.
27. Superintendent Rex agrees with Plaintiff's statement of the law in paragraph 27.
28. Superintendent Rex agrees with Plaintiff's statement of the law in paragraph 28.
29. Superintendent Rex agrees with Plaintiff's statement of the law in paragraph 29.

30. Superintendent Rex admits paragraph 30. Superintendent Rex submitted a copy of the completed application to the Governor via facsimile on May 23, 2009, and via hand delivery on May 26, 2009. Superintendent Rex and his staff at the South Carolina Department of Education worked with members of the General Assembly and its staff, the Office of State Budget, and the Commission on Higher Education in assembling the required document for the application.
31. Superintendent Rex is without knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 31, and therefore denies same.
32. Superintendent Rex is without knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 32, and therefore denies same.
33. Superintendent Rex concurs with this prayer of relief expressed in paragraph 33.

FOR A THIRD CLAIM
Further Declaratory Relief

34. Superintendent Rex incorporates by reference herein his responses to paragraphs 25 through 33 of the complaint.
35. Admitted in part and denied in part. Superintendent Rex admits only that he is ready to take all ancillary steps necessary to perfect the application and receive funds, and will make the application if the Court declares that he has a right to do so. In addition, the application, as prepared by the United States Education Department, allows for the application to be signed by “Governor or Authorized Representative of the Governor.” (Part 1: Application Cover Sheet; OMB Form Number 1810-0690). Superintendent Rex stands ready to “take all actions necessary. . . to assist the Governor” as required by the Appropriations Act, up to and including signing the

application as an “authorized representative of the Governor” if the Court so declares.
The remaining allegations of paragraph 35 are denied.

36. Superintendent Rex is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 36, and therefore denies same.

For An Affirmative Defense

37. Section 1607 of the ARRA provides for two separate methods for states to draw down ARRA funds.
38. Section 1607(a) allows for certification by the Governor. It states, “Not later than 45 days after the date of enactment of this Act, for funds provided any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.”
39. Section 1607(b) provides for acceptance by the State legislature if the governor fails to accept funds. That section states, “If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.”
40. In his certification letter dated April 3, 2009, Governor Sanford certified he would accept funds per § 1607, but stated “this letter in no way represents an application for State Fiscal Stabilization Funds.”
41. In other public statements, the Governor has stated he will not apply for SFSF funds if the Legislature does not use the funds to reduce State debt.
42. The Legislature’s final budget did not include debt reduction.

43. On May 14, 2009, the South Carolina General Assembly passed Senate Bill 577, a concurrent resolution, which states in pertinent part:

Be it resolved by the Senate, the House of Representatives concurring:

That the South Carolina General Assembly, pursuant to HR-1 of 2009, the American Recovery and Reinvestment Act of 2009, accepts the use of federal stimulus funds provided to this State if the Governor of South Carolina within the required forty-five day period fails to certify that he will request and use these funds for this State and to create jobs and promote economic growth.

Be it further resolved that the South Carolina General Assembly further declares that the manner of distribution of these funds shall be as stipulated in this resolution.

Be it further resolved that a copy of this resolution be forwarded to the United States Senate, the United States House of Representatives, and to each member of the South Carolina Congressional Delegation.

44. Superintendent Rex asserts that § 1607(b) of the ARRA is not inconsistent with § 1607(a) but the sections must be read in total with the ARRA.
45. The ARRA does not provide discretionary authority with the Governor of South Carolina where under State law such discretionary authority does not exist.
46. Section 14005 of the ARRA, which addresses the State Application for the Fiscal Stabilization Funds, states, “The Governor of a State desiring to receive the allocation under § 14001 shall submit an application at such time and in such manner, and containing such information as the Secretary may reasonably require.”
47. Section 14005 of the ARRA does not create discretionary authority of the Governor, it simply provides that the Governor shall provide the administrative or ministerial function of applying for the funds, while acknowledging that the “State” has the authority to decide to draw down funds, in a manner established by state law.

48. Sections 1607 and 14005 of the ARRA do not change state law but should be read within the context of the division of authority as set forth in state law.
49. Section 1607(b) allows the General Assembly to accept funds in cases where the Governor fails to apply.
50. Section 1607(b) is consistent with State and federal constitutional law.
51. Superintendent Rex pleads that the Court declare that Senate Bill 577 provides the authority for State Fiscal Stabilization Funds to flow to South Carolina.
52. All allegations herein not admitted are therefore denied.

PRAYER FOR RELIEF

WHEREFORE, Superintendent Rex request the Court to declare that he as Superintendent of Education has complied with the law in providing the completed application to Governor Sanford and that the Court order such other and further relief as is just and proper.

Respectfully submitted:

By: _____
Shelly Bezanson Kelly
Karla McLawhorn Hawkins
Barbara A. Drayton
Wendy Bergfeldt Cartledge

South Carolina Department of Education
1429 Senate Street, Suite 1015
Columbia, SC 29201
(803) 734-8783

Attorneys for Co-Defendant Jim Rex
State Superintendent of Education

May _____, 2009
Columbia, South Carolina

ATTACHMENT

May 22, 2009

The Honorable Mark Sanford
Governor, State of South Carolina
Post Office Box 12267
Columbia, SC 29211

Dear Governor Sanford:

This letter is in reference to the Application of Initial Funding under the State Fiscal Stabilization Fund (SFSF) pursuant to the American Recovery and Reinvestment Act (ARRA). In an effort to facilitate the completion of the SFSF application, I am enclosing a draft application prepared by the South Carolina Department of Education (SCDE).

With regard to Part One (Application Cover Sheet), I endorsed a statement of support that the SCDE will cooperate with you in the implementation of the SFSF program. In accordance with Part Two (Education Reform Assurances), the SCDE assures on behalf of our state, it will uphold the ARRA's principle of improving student achievement through school improvement and reform. The SCDE confirms that data described in Appendix B of the SFSF application for the education reform assurances—Achieving Equity in Teacher Distribution, Improving Collection and Use of Data, Improving Standards, and Supporting Struggling Schools are the most current available baseline data for these areas. Additionally, the draft application contains an assurance for Part Four, Section A (Maintenance-of-Effort), as it pertains to state support for elementary and secondary education and maintenance-of-effort baseline data for Part Four, Section C. Also enclosed is data for Part Five, Section A (State Uses of the Education Stabilization Fund). Please note, you may wish to confirm SCDE's data for Parts Four and Five of the application with the Office of State Budget

If I can provide additional information or further assistance to facilitate this process, please do not hesitate to contact me.

Sincerely,

Jim Rex
State Superintendent of Education

cc: The Honorable André Bauer, President of the Senate & Lt. Governor, State of SC
The Honorable Robert W. Harrell, Speaker of the House, SC House of Representatives (via e-mail)
The Honorable Daniel T. Cooper, Chairman of the House Ways & Means Committee
SC House of Representatives (via e-mail)
The Honorable Hugh K. Leatherman, Sr., Chair, Senate Finance Committee, SC Senate (via e-mail)
The Honorable Glenn McConnell, President Pro Tempore, SC Senate (via e-mail)

Enclosure:

Note Regarding Application

This application was prepared with information available to the South Carolina Department of Education (SCDE). The SCDE staff has been working closely with members of the Office of State Budget and the Commission on Higher Education to verify the information provided. However, the Governor may wish to have the Commission on Higher Education and the Office of State Budget review the application prior to final submission.

The following items appear only in a “pdf” format.

Letter to The Honorable Mark Sanford

Note Regarding Application

Application for Initial Funding under the State Fiscal Stabilization Fund Program

Request for Waiver of the Maintenance-of-Effort (MOE) Requirements Governing the
State Fiscal Stabilization Fund Program

Attachment to the SFSF Application

Attachment A

Attachment B

Attachment C

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School AdministratorsPetitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina.....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he/she has served the forgoing RETURN PETITION FOR ORIGINAL JURISDICTION and ANSWER pursuant to Rule 229, SCACR and Rule 4(d)(5), SCRCP, upon:

South Carolina Association of School Administrators
Childs and Halligan, PA
The Tower at 1301 Gervais Street, Suite 900
Columbia, SC 29201

The Honorable Governor Mark Sanford
Office of the Governor
State House, 1st Floor
Columbia, SC 29201

The Honorable Henry McMaster
Attorney General, State of South Carolina
1000 Assembly Street, Room 319
Columbia, SC 29201

As shown in the attached affidavits.

This ___ day of May, 2009.

SC Department of Education
1429 Senate Street
Columbia, SC 29201
(803) 734-8783

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School AdministratorsPetitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he/she has served the forgoing RETURN FOR ORIGINAL JURISDICTION and ANSWER pursuant to Rule 229, SCACR and Rule 4(d)(5), SCRCF, upon:

The Honorable Governor Mark Sanford
Office of the Governor
State House, 1st Floor
Columbia, SC 29201

This ___ day of May, 2009.

SC Department of Education
1429 Senate Street
Columbia, SC 29201
(803) 734-8783

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators Petitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Respondents.

AFFIDAVIT OF SERVICE

Personally appeared before me _____, who being first duly sworn,
deposes and says as follows:

1. I am employed with the S.C., Department of Education.
2. I attest that I served by hand delivery the RETURN TO THE PETITION FOR ORIGINAL JURISDICTION AND ANSWER in the above-captioned lawsuit to _____ in the Office of the Governor, State House, 1st Floor, Columbia, SC 29201 at _____ a.m. on Tuesday, May 26, 2009.

AFFIANT FURTHER SAYETH NAUGHT

Noelle Redd

SWORN TO BEFORE ME THIS ____
DAY OF May, 2009

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: _____

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators Petitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he/she has served the forgoing RETURN FOR ORIGINAL JURISDICTION and ANSWER pursuant to Rule 229, SCACR and Rule 4(d)(5), SCRCF, upon:

The Honorable Henry McMaster
Attorney General, State of South Carolina
1000 Assembly Street, Room 319
Columbia, SC 29201

This ___ day of May, 2009.

SC Department of Education
1429 Senate Street
Columbia, SC 29201
(803) 734-8783

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School AdministratorsPetitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Respondents.

AFFIDAVIT OF SERVICE

Personally appeared before me _____, who being first duly sworn,
deposes and says as follows:

3. I am employed with the S.C., Department of Education.

4. I attest that I served by hand delivery the RETURN TO THE PETITION FOR
ORIGINAL JURISDICTION AND ANSWER in the above-captioned lawsuit to
_____ in the Office of Attorney General, 1000 Assembly Street, Room
319, Columbia, SC 29201 at _____ a.m. on Tuesday, May 26, 2009.

AFFIANT FURTHER SAYETH NAUGHT

Noelle Redd

SWORN TO BEFORE ME THIS ____
DAY OF May, 2009

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: _____

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators Petitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he/she has served the forgoing RETURN FOR ORIGINAL JURISDICTION and ANSWER pursuant to Rule 229, SCACR and Rule 4(d)(5), SCRCF, upon:

South Carolina Association of School Administrators
Childs and Halligan, PA
The Tower at 1301 Gervais Street, Suite 900
Columbia, SC 29211

This ___ day of May, 2009.

SC Department of Education
1429 Senate Street
Columbia, SC 29201
(803) 734-8783

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators Petitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina Respondents.

AFFIDAVIT OF SERVICE

Personally appeared before me _____, who being first duly sworn,
deposes and says as follows:

5. I am employed with the S.C., Department of Education.

6. I attest that I served by hand delivery the RETURN TO THE PETITION FOR
ORIGINAL JURISDICTION AND ANSWER in the above-captioned lawsuit to
_____ in the law firm of Childs & Halligan, The Towers at 1301 Gervais
Street, Suite 900, Columbia, SC 29201 at _____ a.m. on Tuesday, May 26, 2009.

AFFIANT FURTHER SAYETH NAUGHT

Noelle Redd

SWORN TO BEFORE ME THIS ____
DAY OF May, 2009

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: _____



Together, we can.

May 22, 2009

The Honorable Mark Sanford
Governor, State of South Carolina
Post Office Box 12267
Columbia, SC 29211

Dear Governor Sanford:

This letter is in reference to the Application of Initial Funding under the State Fiscal Stabilization Fund (SFSF) pursuant to the American Recovery and Reinvestment Act (ARRA). In an effort to facilitate the completion of the SFSF application, I am enclosing a draft application prepared by the South Carolina Department of Education (SCDE).

With regard to Part One (Application Cover Sheet), I endorsed a statement of support that the SCDE will cooperate with you in the implementation of the SFSF program. In accordance with Part Two (Education Reform Assurances), the SCDE assures on behalf of our state, it will uphold the ARRA's principle of improving student achievement through school improvement and reform. The SCDE confirms that data described in Appendix B of the SFSF application for the education reform assurances—Achieving Equity in Teacher Distribution, Improving Collection and Use of Data, Improving Standards, and Supporting Struggling Schools are the most current available baseline data for these areas. Additionally, the draft application contains an assurance for Part Four, Section A (Maintenance-of-Effort), as it pertains to state support for elementary and secondary education and maintenance-of-effort baseline data for Part Four, Section C. Also enclosed is data for Part Five, Section A (State Uses of the Education Stabilization Fund). Please note, you may wish to confirm SCDE's data for Parts Four and Five of the application with the Office of State Budget

If I can provide additional information or further assistance to facilitate this process, please do not hesitate to contact me.

Sincerely,

Jim Rex
State Superintendent of Education

- cc: The Honorable André Bauer, President of the Senate & Lt. Governor, State of SC
The Honorable Robert W. Harrell, Speaker of the House, SC House of Representatives (via e-mail)
The Honorable Daniel T. Cooper, Chairman of the House Ways & Means Committee
SC House of Representatives (via e-mail)
The Honorable Hugh K. Leatherman, Sr., Chair, Senate Finance Committee, SC Senate (via e-mail)
The Honorable Glenn McConnell, President Pro Tempore, SC Senate (via e-mail)

Enclosure:

Note Regarding Application

This application was prepared with information available to the South Carolina Department of Education (SCDE). The SCDE staff has been working closely with members of the Office of State Budget and the Commission on Higher Education to verify the information provided. However, the Governor may wish to have the Commission on Higher Education and the Office of State Budget review the application prior to final submission.

Application for Initial Funding under the State Fiscal Stabilization Fund Program

**CFDA Numbers: 84.394 (Education Stabilization Fund) and
84.397 (Government Services Fund)**



**U.S. Department of Education
Washington, D.C. 20202**

**OMB Number: 1810-0690
Expiration Date: 9/30/2009**

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0690. The time required to complete this information collection is estimated to average 17 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4537. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: State Fiscal Stabilization Fund Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E108, Washington, D.C. 20202-3118

APPLICATION INSTRUCTIONS

GENERAL INSTRUCTIONS

To receive the initial 67 percent of the State's allocation under the State Fiscal Stabilization Fund (Stabilization) program, a Governor must submit to the Department an application that provides the following information:

- A completed application cover sheet. *(Part 1 of the Application)*
- Assurances that the State will commit to advancing education reform in four specific areas:
 - (1) Achieving equity in teacher distribution;
 - (2) Improving collection and use of data;
 - (3) Enhancing the quality of standards and assessments; and
 - (4) Supporting struggling schools. *(Part 2 of the Application)*
- Confirmation that the initial baseline data identified in Appendix B of the application is acceptable for purposes of demonstrating the State's current status in each of the four education reform areas for which the State provides assurances, or submission of alternative initial baseline data. *(Part 3 of the Application)*
- The following maintenance-of-effort (MOE) information:
 - (1) An assurance that the State will comply with the Stabilization program MOE requirements;
 - (2) If applicable, an assurance that the State meets or will meet the eligibility criterion for a waiver of those requirements; and
 - (3) MOE baseline data. *(Part 4 of the Application)*
- A description of how the State intends to use the funds allocated under:
 - (1) The Education Stabilization Fund – CFDA No. 84.394; and
 - (2) The Government Services Fund – CFDA No. 84.397. *(Part 5 of the Application)*
- Accountability, transparency, and reporting assurances. *(Part 6 of the Application)*
- Other assurances and certifications. *(Part 7 of the Application)*

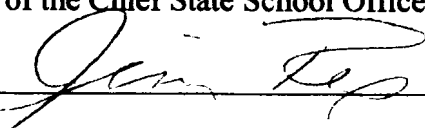
APPENDICES TO THE APPLICATION

- Appendix A – State Allocation Data
- Appendix B – Instructions for Part 3: Initial Baseline Data for Education Reform Assurances
- Appendix C – Instructions for Part 4: Maintenance of Effort
- Appendix D – Instructions for Part 5: State Uses of Funds
- Appendix E – Application Checklist and Submission Information

STATE FISCAL STABILIZATION FUND APPLICATION

**PART 1: APPLICATION COVER SHEET
(CFDA Nos. 84.394 and 84.397)**

Legal Name of Applicant (Office of the Governor):	Applicant's Mailing Address:	
State Contact for the Education Stabilization Fund (CFDA No. 84.394) Name: Position and Office: Contact's Mailing Address: Telephone: Fax: E-mail address:	State Contact for the Government Services Fund (CFDA No. 84.397) <i>(Enter "same" if the same individual will serve as the contact for both the Education Stabilization Fund and the Government Services Fund.)</i> Name: Position and Office: Contact's Mailing Address: Telephone: Fax: E-mail address:	
To the best of my knowledge and belief, all of the information and data in this application are true and correct.		
Governor or Authorized Representative of the Governor (Printed Name):	Telephone:	
Signature of Governor or Authorized Representative of the Governor:	Date:	

Recommended Statement of Support from the Chief State School Officer <i>(Optional)</i> : The State educational agency will cooperate with the Governor in the implementation of the State Fiscal Stabilization Fund program.	
Chief State School Officer (Printed Name): Jim Rex	Telephone: 803-734-8491
Signature of the Chief State School Officer: 	Date: May 22, 2009

PART 2: EDUCATION REFORM ASSURANCES

The Governor or his/her authorized representative assures the following:

- (1) The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. (*Achieving Equity in Teacher Distribution Assurance*)
- (2) The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871(e)(2)(D)). (*Improving Collection and Use of Data Assurance*)
- (3) The State will –
 - (3.1) Enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of the ESEA (20 U.S.C. 7301a(a)); (*Improving Assessments Assurance*)
 - (3.2) Comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; (*Inclusion Assurance*) and
 - (3.3) Take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act. (*Improving Standards Assurance*)
- (4) The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA with respect to schools identified under these sections. (*Supporting Struggling Schools Assurance*)

Governor or Authorized Representative of the Governor (Printed Name):	
Signature:	Date:

PART 3: INITIAL BASELINE DATA FOR EDUCATION REFORM ASSURANCES

SPECIAL NOTES:

- In completing this portion of the application, please refer to Appendix B – Instructions for Part 3: Initial Baseline Data for Education Reform Assurances.
- The data described in Appendix B for two of the education reform assurances in Part 2 of the application – the Improving Assessments Assurance and the Improving Standards Assurance – are the most current available baseline data for these areas. Thus, the Department is not inviting States to submit additional information with respect to these two assurances.
- The Governor or his/her authorized representative should confirm whether the initial baseline data sources described in Appendix B for the four assurances referenced below – Achieving Equity in Teacher Distribution; Improving Collection and Use of Data; Improving State Academic Content and Student Achievement Standards; and Supporting Struggling Schools – reflect the State’s current status with respect to these assurances. A State that confirms the use of these initial baseline data sources does not have to submit additional baseline data with this application. If a State elects not to use the identified data sources for one or more of these four assurances, it must submit other initial baseline data for that assurance.

The Governor or his/her authorized representative confirms that the data sources that are currently available to the Department and described in Appendix B are a reasonable reflection of the current status of the State with respect to the following education reform assurances that he/she provided in Part 2 of the Application (*check only those assurances for which the State accepts the data described in Appendix B*):

Achieving Equity in Teacher Distribution Assurance.

Improving Collection and Use of Data Assurance.

Improving Standards Assurance.

Supporting Struggling Schools Assurance.

Governor or Authorized Representative of the Governor (Printed Name):

Signature:

Date:

PART 4, SECTION A: MAINTENANCE-OF-EFFORT (MOE) ASSURANCE

SPECIAL NOTES:

- In completing Part 4 of the application, please refer to Appendix C – Instructions for Part 4: Maintenance of Effort.
- The Governor or his/her authorized representative should check only those MOE requirements that he or she anticipates the State will meet. If the Governor or his/her authorized representative anticipates that the State will be unable to meet one or more of the requirements, he or she must sign the additional waiver assurance in Part 4, Section B.
- For the purpose of determining MOE, State support for public institutions of higher education (IHEs) must not include support for capital projects or for research and development or tuition and fees paid by students.

The Governor or his/her authorized representative assures the following (*check appropriate assurances that apply*):

Yes In FY 2009, the State will maintain State support for elementary and secondary education at least at the level of such support in FY 2006.

No In FY 2010, the State will maintain State support for elementary and secondary education at least at the level of such support in FY 2006.

Unknown In FY 2011, the State will maintain State support for elementary and secondary education at least at the level of such support in FY 2006.

No In FY 2009, the State will maintain State support for public IHEs at least at the level of such support in FY 2006.

No In FY 2010, the State will maintain State support for public IHEs at least at the level of such support in FY 2006.

Unknown In FY 2011, the State will maintain State support for public IHEs at least at the level of such support in FY 2006.

---OR---

X To the best of his/her knowledge and based on the best available data, the State will be unable to meet any of the above-referenced maintenance-of-effort requirements.

Governor or Authorized Representative of the Governor (Printed Name):	
Signature:	Date:

PART 4, SECTION B: MAINTENANCE-OF-EFFORT WAIVER ASSURANCE

SPECIAL NOTES:

- If a State anticipates that it will be unable to comply with one or more of the Stabilization program MOE requirements referenced in Part 4, Section A of the application, the State must provide the assurance below.
- States that anticipate meeting all of the Stabilization program MOE requirements should not complete the waiver assurance in this section of the application. *See Appendix C – Instructions for Part 4: Maintenance of Effort. The criterion for a waiver of the MOE requirements is provided in Appendix C.*
- The Department will be providing additional guidance to States regarding the process for applying for waivers of the Stabilization program MOE requirements.

The Governor or his/her authorized representative assures the following:

To the best of his/her knowledge and based on the best available data, the State meets or will meet the eligibility criterion for a MOE waiver for each of the Stabilization program MOE requirements that the Governor or his/her authorized representative anticipates the State will be unable to meet.

Governor or Authorized Representative of the Governor (Printed Name):	
Signature:	Date:

PART 4, SECTION C: MAINTENANCE-OF-EFFORT BASELINE DATA

SPECIAL NOTES:

- A State has some flexibility in determining the “levels of State support” for MOE purposes. For example, for the purpose of the elementary and secondary education MOE requirements, a State may use the level of support that the State provides through its primary elementary and secondary funding formulae, or it may use other relevant data. *See Appendix C – Instructions for Part 4: Maintenance of Effort.*

1. Levels of State support for elementary and secondary education *(the amounts may reflect the levels of State support on either an aggregate basis or a per-student basis):*

FY 2006 \$2,525,689,106

FY 2009* \$2,573,002,107

FY 2010* \$2,501,011,528

FY 2011* \$Unknown

(* Provide data to the extent that data are currently available.)

2. Levels of State support for public institutions of higher education *(enter amounts for each year):*

FY 2006 \$671,345,807

FY 2009* \$597,311,556

FY 2010* \$588,044,518

FY 2011* \$Unknown

(* Provide data to the extent that data are currently available.)

3. Additional Submission Requirements: In an attachment to the application –

- (a) Identify and describe the data sources used in determining the levels of State support for elementary and secondary education; - and -
- (b) Identify and describe the data sources used in determining the levels of State support for public IHEs.

PART 5, SECTION A: STATE USES OF THE EDUCATION STABILIZATION FUND

SPECIAL NOTES:

- Section A of Part 5 requests data on the Education Stabilization Fund (CFDA No. 84.394). In completing this portion of the application, please refer to Appendix D – Instructions for Part 5: State Uses of Funds.
- At a later date, the Department will collect data on the levels of State support for elementary, secondary, and postsecondary education in FY 2011.
- These data may differ from the data in the levels of support for maintenance-of-effort purposes. See instructions in Appendix D.
- The term “postsecondary education” refers to public IHEs.

1. Levels of State Support for Elementary, Secondary, and Postsecondary Education

Provide the following data on the levels of State support for elementary, secondary, and postsecondary education:

- | | |
|---|-------------------------|
| (a) Level of State support for elementary and secondary education in FY 2008 provided through the State’s primary elementary and secondary education funding formulae | \$ <u>2,812,562,001</u> |
| (b) Level of State support for public IHEs in FY 2008 | \$ <u>795,208,180</u> |
| (c) Level of State support for elementary and secondary education in FY 2009 provided through the State’s primary elementary and secondary education funding formulae | \$ <u>2,573,002,107</u> |
| (d) Level of State support for public IHEs in FY 2009 | \$ <u>597,311,556</u> |
| (e) Level of State support for elementary and secondary education in FY 2010 provided through the State’s primary elementary and secondary education funding formulae | \$ <u>2,501,011,528</u> |
| (f) Level of State support for public IHEs in FY 2010 | \$ <u>588,044,518</u> |

Additional Information: Did the State, prior to October 1, 2008, approve formula increases to support elementary and secondary education in FY 2010 or 2011, or to phase in State equity and adequacy adjustments?*

Yes

No

* See Appendix D Worksheets for further guidance on how such increases affect a State’s “use of funds” calculations.

2. State's Primary Education Funding Formulae

Additional Submission Requirement: In an attachment to the application, identify and describe each of the State's primary elementary and secondary education funding formulae that were used in determining the calculations provided above for the levels of State support for elementary and secondary education.

3. Data on State Support for Postsecondary Education

Additional Submission Requirement: In an attachment to the application, identify and describe the specific State data sources that were used in determining the calculations provided above for the levels of State support for public IHEs.

4. Restoration Amounts

Based on the Worksheets included in Appendix D, calculate and provide the amount of Education Stabilization funds that the State will use to restore the levels of State support for elementary, secondary, and postsecondary education in FYs 2009 and 2010. As explained in the Instructions in Appendix D, a State must determine the amount of funds needed to restore fully the levels of State support for elementary, secondary, and postsecondary education in FY 2009 before determining the amount of funds available to restore the levels of such support in FY 2010.

SPECIAL NOTES:

- At a later date, the Department will collect data on the amount of funds, if any, that remain available to (1) restore the levels of State support for elementary, secondary, and postsecondary education in FY 2011, and (2) award subgrants to local educational agencies (LEAs) based on their proportionate shares of funding under Part A of Title I of the ESEA.
- The calculations for these data must be based on the State's total Education Stabilization Fund allocation as reflected in Appendix A and not on the State's initial Education Stabilization Fund award.
- Although the State must follow the Instructions in Appendix D, in order to determine the amount of funds that LEAs and IHEs will receive under the program (i.e., the "restoration amounts"), the Governor has discretion in determining when to release these funds to LEAs and IHEs.

- (a) Amount of the State's total Education Stabilization Fund allocation to be used to restore the level of State support for elementary and secondary education in FY 2009 \$ 239,559,894
- (b) Amount of the State's total Education Stabilization Fund allocation to be used to restore the level of State support for public IHEs in FY 2009 \$ 197,896,624

Restoration Amounts (continued)

- (c) Amount of the State's total Education Stabilization Fund allocation to be used to restore the level of State support for elementary and secondary education in FY 2010 \$ 130,284,784*
- (d) Amount of the State's total Education Stabilization Fund allocation to be used to restore the level of State support for public IHEs in FY 2010 \$ *included in above
- (e) Amount of funds, if any, remaining after restoring State support for elementary, secondary, and postsecondary education in FY 2009 and FY 2010 \$ 0

5. Process for Awarding Funds to Public IHEs

Additional Submission Requirement: In an attachment to the application, describe the process that the State will use to determine the amount of funding that individual public IHEs will receive from the funds that the State sets aside to restore the levels of State support for these institutions.

**PART 5, SECTION B: STATE USES OF THE
GOVERNMENT SERVICES FUND**

SPECIAL NOTES:

- Section B of Part 5 requests data on the Government Services Fund (CFDA No. 84.397).
- In this section, provide preliminary estimates of the percentage of the Government Services Fund that the State intends to spend under various broad categories (to the extent such estimates are available). The total percentages in the chart should equal 100 percent.
- To the extent such estimates are available, the estimated percentages must be based on the State's total Government Services Fund allocation and not on the State's initial Government Services Fund award.

Uses of the Government Services Fund

Category	Estimated Percentage of Funds to Be Used
Public Safety	\$46,120,000
Elementary and secondary education (excluding modernization, renovation, or repair of public school facilities)	\$2,000,000
Public IHEs (excluding modernization, renovation, or repair of IHEs)	\$3,364,440
Modernization, renovation, or repair of public school facilities	0
Modernization, renovation, or repair of IHEs	0
Medicaid	0
Public assistance	0
Transportation	0
Other (please describe) (see attached Part III, of General Appropriations Bill for fiscal year 2009-2010)	\$11,675,045
Undetermined	0
TOTAL	100%

**PART 6: ACCOUNTABILITY, TRANSPARENCY, AND
REPORTING ASSURANCES**

The Governor or his/her authorized representative assures that the State will comply with all of the accountability, transparency, and reporting requirements that apply to the Stabilization program, including the following:

- For each year of the program, the State will submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes:
 - the uses of funds within the State;
 - how the State distributed the funds it received;
 - the number of jobs that the Governor estimates were saved or created with the funds;
 - tax increases that the Governor estimates were averted because of the funds;
 - the State's progress in reducing inequities in the distribution of highly qualified teachers, implementing a State longitudinal data system, and developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;
 - the tuition and fee increases for in-State students imposed by public IHEs and a description of any actions taken by the State to limit the increases;
 - the extent to which public IHEs maintained, increased, or decreased enrollment of in-State students, including those students eligible for Pell Grants or other need-based financial aid; and
 - a description of each modernization, renovation or repair project funded, including the amounts awarded and project costs. (ARRA Division A, Section 14008)
- The State will cooperate with any Comptroller General evaluation of the uses of funds and the impact of funding on the progress made toward closing achievement gaps. (ARRA Division A, Section 14009)
- If the State uses funds for any infrastructure investment, the State will certify that the investment received the full review and vetting required by law and that the chief executive accepts responsibility that the investment is an appropriate use of taxpayer funds. This certification will include a description of the investment, the estimated total cost, and the amount of covered funds to be used. The certification will be posted on the State's website and linked to www.Recovery.gov. A State or local agency may not use funds under the ARRA for infrastructure investment funding unless this certification is made and posted. (ARRA Division A, Section 1511)
- The State will submit reports, within 10 days after the end of each calendar quarter, that contain the information required under section 1512(c) of the ARRA in accordance with any guidance issued by Office of Management and Budget or the Department. (ARRA Division A, Section 1512(c))
- The State will cooperate with any Inspector General examination of records under the program. (ARRA Division A, Section 1515)

Governor or Authorized Representative of the Governor (Printed Name):	
Signature:	Date:

PART 7: OTHER ASSURANCES AND CERTIFICATIONS

The Governor or his/her authorized representative assures or certifies the following:

- The State will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
- With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the State will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and the State will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
- The State will comply with all of the operational and administrative provisions in Title XV and XIV of the ARRA, including Buy American Requirements (ARRA Division A, Section 1605), Wage Rate Requirements (ARRA Division A, Section 1606), and any applicable environmental impact requirements of the National Environmental Policy Act of 1970 (NEPA), as amended, (42 U.S.C. 4371 *et seq.*) (ARRA Division A, Section 1609). In using ARRA funds for infrastructure investment recipients will comply with the requirement regarding Preferences for Quick Start Activities (ARRA Division A, Section 1602).
- Any LEA receiving funding under this program will have on file with the State a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
- To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede access to, or participation in, the program.

- The State and other entities will comply with the following provisions of Education Department General Administrative Regulations (EDGAR), as applicable: 34 CFR Part 74 -- Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 34 CFR Part 76 -- State-Administered Programs, including the construction requirements in section 75.600 through 75.617 that are incorporated by reference in section 76.600; 34 CFR Part 77 -- Definitions that Apply to Department Regulations; 34 CFR Part 80 -- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including the procurement provisions; 34 CFR Part 81 -- General Education Provisions Act—Enforcement; 34 CFR Part 82 -- New Restrictions on Lobbying; 34 CFR Part 85 -- Governmentwide Debarment and Suspension (Nonprocurement).

Governor or Authorized Representative of the Governor (Printed Name):	
Signature:	Date:

**Request for a Waiver of the Maintenance-of-Effort (MOE)
Requirements Governing the State Fiscal Stabilization Fund Program**

The State of South Carolina requests a waiver of the following Stabilization program MOE requirements (check applicable lines):

- The FY 2009 elementary and secondary education MOE requirement.
- The FY 2009 public IHE MOE requirement.
- The FY 2010 elementary and secondary education MOE requirement.
- The FY 2010 public IHE MOE requirement.
- The FY 2011 elementary and secondary education MOE requirement.
- The FY 2011 public IHE MOE requirement.

In support of this request, the State provides the following data:

1. For waivers of a FY 2009 MOE requirement:

- \$ N/A The aggregate level of State support for elementary, secondary, and public higher education for FY 2009.
- \$ N/A The total revenues available to the State (for education and other purposes) for FY 2009.
- \$ N/A The aggregate level of State support for elementary, secondary, and public higher education for FY 2008.
- \$ N/A The total revenues available to the State (for education and other purposes) for FY 2008.

2. For waivers of a FY 2010 MOE requirement:

\$ 3,089,056,046 The aggregate level of State support for elementary, secondary, and public higher education for FY 2010.

\$ 5,491,965,230 The total revenues available to the State (for education and other purposes) for FY 2010.

\$ 3,170,313,663 The aggregate level of State support for elementary, secondary, and public higher education for FY 2009.

\$ 5,762,437,148 The total revenues available to the State (for education and other purposes) for FY 2009.

3. For waivers of a FY 2011 MOE requirement:

\$ N/A The aggregate level of State support for elementary, secondary, and public higher education for FY 2011.

\$ N/A The total revenues available to the State (for education and other purposes) for FY 2011.

\$ N/A The aggregate level of State support for elementary, secondary, and public higher education for FY 2010.

\$ N/A The total revenues available to the State (for education and other purposes) for FY 2010.

I assure that the State of South Carolina has available for inspection documentation that demonstrates that these data are accurate, valid, and reliable.

Governor or Authorized Representative of the Governor (Printed Name):	
Signature:	Date:

ATTACHMENT TO THE SFSF APPLICATION

Part 4, Section C: Maintenance-of-Effort Baseline Data

3. Additional Submission Requirements:

- (a) Identify and describe the data sources used in determining the levels of State support for elementary and secondary education:
--and--

Response: The Appropriation Act for the applicable years.

- (b) Identify and describe the data sources used in determining the levels of state support for public IHEs.

Response: The Appropriation Act for the applicable years.

Part 5, Section A: State Uses of the Education Stabilization Fund

2. State's Primary Education Funding Formulae

Additional Submission Requirement: In an attachment to the application, identify and describe each of the State's primary elementary and secondary education funding formulae that were used in determining the calculations provided above to the levels of State support for elementary and secondary education.

Response: The primary elementary and secondary education funding formulae were determined to be the major appropriation line items in the general fund, Education Improvement Act, and lottery (see Attachment A).

3. Data on State Support for Postsecondary Education

Additional Submission Requirement: In an attachment to the application, identify and describe the specific State data sources that were used in determining the calculations provided above for the levels of State support for public IHEs.

Response: The specific State data sources used were determined to be the major appropriation lines items in the general fund and lottery (see Attachment B).

5. Process for Awarding Funds to Public IHEs

Additional Submission Requirement: In an attachment to the application, describe the process that the State will use to determine the amount of

funding that individual public IHEs will receive from the funds that the State sets aside to restore the levels of State support for these institution.

Response: This is explained in Part III of the 2009–10 General Appropriation Act (see Attachment C).

ATTACHMENT A

ARRA MOE Calculation.xls-ARRA MOE4-090522

1	TITLE	FY2006	FY2006	FY2009	FY2009 REDUCED	FY2010 PROJECTED	
3	H63 GENERAL FUND (GF) RECURRING (R)	\$2,005,436,288	\$2,313,906,157	\$2,441,044,773	\$2,144,937,477	\$2,115,037,477	(\$296,107,296)
4	H63 GENERAL FUND (GF) NONRECURRING (NR)	\$0	\$2,024,302	\$0	\$0	\$0	
5	H63 AGENCY GENERAL FUND (GF) TOTAL	\$2,005,436,288	\$2,315,930,459	\$2,441,044,773	\$2,144,937,477	\$2,115,037,477	
7	H63 RESTRICTED EIA	\$625,948,389	\$690,236,203	\$644,714,375	\$554,794,107	\$532,044,107	(\$89,920,268)
8	H63 RESTRICTED BARNWELL FACILITIES	\$19,817,500	\$10,300,000	\$10,300,000	\$10,300,000	\$10,300,000	(\$112,670,268)
9	H63 RESTRICTED FIRST STEPS	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	
10	H63 RESTRICTED AGENCY TOTAL	\$648,565,889	\$703,536,203	\$658,014,375	\$568,094,107	\$545,344,107	
12	H63 EARMARK (R)	\$18,326,909	\$18,326,909	\$18,326,909	\$18,326,909	\$18,326,909	
13	H63 EARMARKED (NR)	\$0	\$0	\$0	\$0	\$0	
14	H63 EARMARKED TOTAL	\$18,326,909	\$18,326,909	\$18,326,909	\$18,326,909	\$18,326,909	
16	H63 FEDERAL (R)	\$584,867,843	\$689,892,684	\$696,083,882	\$696,083,882	\$705,232,622	
17	H63 FEDERAL	\$584,867,843	\$689,892,684	\$696,083,882	\$696,083,882	\$705,232,622	
19	H63 SUBTOTAL	\$3,257,196,929	\$3,727,686,255	\$3,815,469,939	\$3,429,442,375	\$3,383,941,115	
21	H63 PROVISO AMOUNTS NONRECURRING (NR) (FY2006 Includes \$14,229,833 in Proviso 73.17, and \$10,290,000 in Proviso 73.18); (FY2008 PROVISO 73.12 = \$101,228,456; 9696 = \$10,000,000); (FY2009 PROVISO 90.13 = \$32,913,984); (ACT-300-2008-HEALTH PREM = EST = \$19M)	\$24,476,833	\$111,226,456	\$62,113,257	\$71,299,410	\$0	
23	ARRA = TITLE I + IDEA					\$196,968,971	
24	ARRA STABILIZATION					\$184,922,339	
25	TOTAL ARRA					\$381,891,310	
27	CRF (NR)	\$9,134,957	\$44,141,690	\$20,863,307	\$0	\$0	
29	H63 SUBTOTAL	\$3,290,807,719	\$3,883,054,401	\$3,888,436,503	\$3,500,741,785	\$3,765,832,425	
31	H63 RESTRICTED LOTTERY RECURRING (R)	\$49,614,527	\$49,614,527	\$49,614,527	\$49,614,527	\$43,891,798	
32	H63 RESTRICTED LOTTERY NONRECURRING (Unclaimed Prize) (NR)	\$500,000	\$500,000	\$0	\$0	\$5,722,729	
43	H63 RESTRICTED LOTTERY TOTAL	\$50,114,527	\$50,114,527	\$49,614,527	\$49,614,527	\$49,614,527	
35	H63 TOTAL	\$3,340,922,246	\$3,933,168,928	\$3,938,051,030	\$3,550,356,312	\$3,815,446,952	
38	H63 GF + RESTRICTED EIA	\$2,631,384,677	\$3,006,166,662	\$3,085,759,148	\$2,699,731,584	\$2,647,081,584	(\$438,677,564)
39	H63 GF + RESTRICTED + EARMARKED + PROVISO + CRF	\$2,705,939,876	\$3,193,161,717	\$3,190,352,621	\$2,802,657,903	\$2,678,708,493	
40	H63 GF + RESTRICTED + EARMARKED + PROVISO + CRF + LOTTERY	\$2,756,054,403	\$3,243,276,244	\$3,239,967,148	\$2,852,272,430	\$2,728,323,020	
41	H63 GF + RESTRICTED + EARMARKED + PROVISO + CRF + LOTTERY + FEDERAL	\$3,340,922,246	\$3,933,168,928	\$3,938,051,030	\$3,550,356,312	\$3,433,556,642	
44	H63 TOTAL RECURRING STATE (EXCLUDES NR+LOTTERY)	\$2,672,329,066	\$3,035,789,269	\$3,117,386,057	\$2,731,358,493	\$2,678,708,493	
45	H63 TOTAL NONRECURRING STATE (NR+LOTTERY)	\$68,725,317	\$207,506,975	\$122,581,091	\$120,913,937	\$49,614,527	
47	STATE SOURCES OF FUNDS						
48	TOTAL STATE GENERAL FUND	\$6,723,274,385	\$6,723,274,385	\$6,736,063,547			
49	TOTAL STATE CASH SURPLUS 2ND PY OR PROVISO (NR)	\$0	\$0	\$0			
50	TOTAL STATE SUPPLEMENTAL/SURPLUS PY (NR) OR PROVISO (FY2008 PROVISOS 73.12 OR 73.14); (FY2009 PROVISOS 90.12 OR 90.13)	\$483,293,311	\$483,293,311	\$151,882,341		\$2,647,081,584	
51	CONTINGENCY RESERVE FUND FY2009 PROVISO 90.6	\$171,541,103	\$171,541,103	\$0		\$184,922,339	
52	TOTAL STATE CRF (NR)	\$111,821,213	\$111,821,213	\$33,878,307		\$2,832,603,823	
54	STATE GENERAL FUND	\$6,723,274,385	\$6,723,274,385	\$6,736,063,547		\$3,028,972,684	
56	FEDERAL FUND	\$6,875,615,240	\$6,875,615,240	\$7,094,258,829			
56	EARMARKED FUND	\$3,965,616,080	\$3,965,616,080	\$0			
57	RESTRICTED FUND	\$2,702,344,212	\$2,702,344,212	\$0			
58	OTHER FUND	\$0	\$0	\$7,028,242,724			
59	GRAND TOTAL ALL FUND SOURCES (Section 70/87)	\$20,266,849,917	\$20,266,849,917	\$20,858,585,100			
61	EFA	\$1,367,140,076	\$1,508,721,768	\$1,586,767,788	\$1,338,732,987	\$1,253,732,987	(\$248,034,801)
62	EMPLOYER CONTRIBUTIONS	\$401,128,299	\$449,768,445	\$482,943,402	\$482,943,402	\$482,943,402	\$0
63	SUBTOTAL	\$1,768,268,375	\$1,958,490,213	\$2,069,711,190	\$1,821,676,389	\$1,736,676,389	(\$333,034,801)
64	EIA	\$625,948,389	\$690,236,203	\$644,714,375	\$554,794,107	\$532,044,107	
65	TOTAL	\$2,394,216,764	\$2,648,726,414	\$2,714,425,565	\$2,376,470,496	\$2,268,720,496	(\$448,034,801)
66					\$17,746,286	(\$125,496,268)	
67							
73				\$2,302,874,044			(\$314,945,374)
74				\$559,274,655			(\$95,606,324)
75				\$49,614,527			\$0
76				\$0			\$0
77				\$2,911,563,226			(\$410,551,698)
78				\$763,052,679			(\$207,163,662)
79							
80				\$3,674,615,905			
81	GENERAL FUND PASS THRU + EIA PASS THRU	2,477,189,106	2,782,947,474	2,861,948,699	2,523,387,580	2,451,397,001	
82							
83	EFA+FRINGE	1,768,268,375	1,958,490,211	2,069,711,190	1,821,676,389	1,736,676,389	(\$333,034,801)
84	EIA PASS THRU	562,308,983	599,514,481	559,274,655	482,274,439	463,668,331	(\$95,606,324)
85	SUBTOTAL	2,330,577,358	2,558,004,692	2,628,985,845	2,303,950,828	2,200,344,720	(\$428,641,125)
86	LOTTERY	48,500,000	49,614,527	49,614,527	49,614,527	49,614,527	
87	TOTAL				2,353,565,355		(\$428,641,125)
88							
89				2,878,600,372	2,553,225,863	(125,374,509)	
90				2,678,600,372	2,373,376,921	(305,221,451)	

ATTACHMENT B

**Higher Ed Summary of Appropriations
To Be Used In ARRA Calculations**

	FY 05-06 <u>Act</u>	FY 07-08 <u>Act</u>	FY 08-09 <u>Act</u>	FY 08-09 Adjusted after <u>Mid-year Reductions</u>
Higher Ed				
General Fund	656,258,307	780,120,680	743,965,179	578,224,056
Lottery	15,087,500	15,087,500	19,087,500	19,087,500
Total Higher Ed	671,345,807	795,208,180	763,052,679	597,311,556

FY 09-10
Act

578,427,111
9,617,407

588,044,518

ATTACHMENT C

****PART III**

FISCAL YEAR 2009-10 STATE STABILIZATION FUND

SECTION 1. Pursuant to Title XVI of the American Recovery and Reinvestment Act of 2009 (ARRA), the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create jobs and promote economic growth. As a result of the Governor's action, the General Assembly recognizes \$694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section. The action required by this Part includes but is not limited to: (1) within five days of the effective date of this Part, the Governor shall submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds. The State Superintendent of Education shall take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section.

SECTION 2. (A) Upon the receipt of the funds in Section 1, the following sums must immediately be transferred to the following agencies to be expended for the specified purposes to supplement appropriations made for the expenses of state government in the annual general appropriation act for Fiscal Year 2009-10 and the Office of State Budget is directed to increase agency federal fund authorization for funds from the State Budget Stabilization Fund allocated herein:

(1) H63 - Department of Education EFA Base		
Student Cost.....	\$	184,922,339
(2) H09 - The Citadel.....	\$	2,161,240
(3) H12 - Clemson University.....	\$	14,691,917
(4) H15 - University of Charleston.....	\$	4,692,447
(5) H17 - Coastal Carolina University.....	\$	2,270,097
(6) H18 - Francis Marion University.....	\$	2,588,272
(7) H21 - Lander University.....	\$	1,440,348
(8) H24 - South Carolina State University.....	\$	3,253,587
(9) H27 - University of South Carolina - Columbia	\$	23,945,887
(10) H29 - University of South Carolina - Aiken.	\$	1,469,806
(11) H34 - University of South Carolina - Upstate	\$	1,959,567
(12) H36 - University of South Carolina - Beaufort	\$	481,777
(13) H37 - University of South Carolina - Lancaster	\$	356,295
(14) H38 - University of South Carolina - Salkehatchie	\$	310,271
(15) H39 - University of South Carolina - Sumter	\$	575,463
(16) H40 - University of South Carolina - Union.	\$	138,095
(17) H47 - Winthrop University.....	\$	3,092,270
(18) H51 - Medical University of South Carolina	\$	12,671,177
(19) H53 - Consortium of Community Teaching Hospitals.....	\$	2,012,569
(20) H59 - Board for Technical & Comprehensive Education.....	\$	21,811,254
(21) N04 - Department of Corrections.....	\$	22,000,000
(22) N12 - Department of Juvenile Justice.....	\$	5,000,000
(23) N20 - Law Enforcement Training Council Criminal Justice Academy.....	\$	120,000

(24) N08 - Department of Probation, Parole, and Pardon Services.....	\$	2,000,000
(25) K05 - Department of Public Safety.....	\$	15,000,000
(26) H87 - State Library State Aid for County Libraries.....	\$	1,685,045
(27) H91 - Arts Commission Statewide Education, Arts, and Cultural Grants	\$	500,000
(28) H79 - Department of Archives and History.	\$	500,000
(29) H63 - Department of Education Governor's School for the Arts and the Humanities	\$	500,000
(30) H63 - Department of Education Governor's School for Science and Mathematics	\$	500,000
(31) H71 - Wil Lou Gray Opportunity School.....	\$	500,000
(32) H75 - School for the Deaf and the Blind.....	\$	500,000
(33) D10 - State Law Enforcement Division.....	\$	2,000,000
(34) B04 - Judicial Department.....	\$	4,000,000
(35) H67 - Educational Television Commission Satellite Lease.....	\$	540,000
(36) P20 - Clemson University - PSA.....	\$	2,500,000
(37) P21 - South Carolina State University - PSA	\$	500,000
(38) P32 - Department of Commerce Regional Economic Development Organizations	\$	3,450,000
(39) H03 - Commission on Higher Education University Center of Greenville.....	\$	364,440
(40) P12 - Forestry Commission.....	\$	500,000
(41) P16 - Department of Agriculture.....	\$	250,000
(42) P24 - Department of Natural Resources.....	\$	250,000
Total Funds Authorized for Fiscal Year 2009-10	\$	348,004,163

(B) Of the funds transferred to the Department of Commerce for Regional Economic Development Organizations in this section, the department shall divide \$3,150,000 equally to the following seven economic development organizations:

- (1) Central SC Economic Development Alliance;**
- (2) Charleston Regional Development Alliance;**
- (3) Economic Development Partnership;**
- (4) North Eastern Strategic Alliance (NESAs);**
- (5) Southern Carolina Alliance;**
- (6) Upstate Alliance; and**
- (7) LowCountry Alliance.**

The funds dispersed to each organization must be matched with an equal amount of private funds. The organization receiving state funds must certify that the private funds are new dollars specifically designated for the purpose of matching state funds and have not been previously allocated or designated for economic development.

The remaining \$300,000 shall be provided to Chester County, Lancaster County, Union County, and York County provided they meet the requirements established above.

Upon receipt of the request for the funds and certification of the matching funds, the Department of Commerce shall disperse the funds to the requesting organization. Any funds remaining in the department's account for Regional Economic Development Organizations at the end of Fiscal Year 2009-2010 shall be transferred to the General Fund.

Funds recipients shall provide an annual report by November 1, to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of Commerce on the expenditure of the funds and on the outcome measures.

(C) Of the funds transferred to the State Law Enforcement Division in this section, the division must utilize the funds to maximize statutorily-mandated law enforcement services.

(D) Of the funds transferred to the Arts Commission in this section, the commission must utilize \$100,000 of the funds for Spoleto and \$10,435 of the funds for the McClellanville Arts Council.

(E) Of the funds transferred to the Department of Natural Resources in this section, the department must utilize \$100,000 of the funds for the Southeastern Wildlife Exposition.

(F) For purposes of the expenditures authorized by this section, the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act.

(G) The remaining portion of the State Fiscal Stabilization funds received pursuant to Section 1 not necessary to meet the appropriations of this Part, must be deposited in a separate and distinct account in the State Treasurer's Office and may only be disbursed pursuant to an appropriation contained in a subsequent act of the General Assembly.

(H) The General Assembly recognizes that the receipt of the funds appropriated in this Part is designed to address a precipitous drop in revenue due to the pending economic crisis and the use of this money to fund recurring expenses is a means to address this shortfall in recurring funds until the economy improves. The General Assembly further recognizes that these funds are temporary in nature and may not be sufficient to address a shortfall in recurring revenue if the current economic crisis extends beyond the period currently contemplated. As a result, the General Assembly strongly encourages state agencies and institutions and school districts receiving these funds to limit the reliance on these funds and make contingency plans that include savings necessary to meet future recurring obligations.

SECTION 3. *If any section, subsection, part, paragraph, subparagraph, sentence, clause, phrase, or word of this act 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 act, the General Assembly hereby declaring that it would have passed this severability, 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.*

SECTION 4. *This part takes effect upon approval by the Governor.*

END OF PART III

All acts or parts of acts inconsistent with any of the provisions of Parts IA, IB, II, or III of this act are suspended for Fiscal Year 2009–2010.

If any part, section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act 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 act, the General Assembly hereby declaring that it would have passed this act, and each and every part, section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other parts, sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Except as otherwise specifically provided, this act takes effect immediately upon its approval by the Governor.

---XX---

Ratified the 13th day of May 2009.

PLEASE NOTE

Text printed in italic, boldface indicates sections vetoed by the Governor on May 19, 2009.

*Indicates those vetoes sustained by the General Assembly on May 20 and 21, 2009.

****Indicates those vetoes overridden by the General Assembly on May 20 and 21, 2009.**

Provisions not vetoed by the Governor took effect May 19, 2009, and generally apply for the fiscal year beginning July 1, 2009.

stify;text-autospace:none'>Indicates those vetoes overridden by the General Assembly on May 20 and 21, 2009.**

Provisions not vetoed by the Governor took effect May 19, 2009, and generally apply for the fiscal year beginning July 1, 2009.

Legislative Printing, Information and Technology Systems
<http://www.scstatehouse.gov>