My name is William Halligan. Our law firm, Childs & Halligan, represents school districts of all sizes and types throughout the state. I have worked on school financial issues since my two terms on the Richland One Board of Trustees from 1986 to 1994. In addition to the remarks of Scott Price of the South Carolina School Boards Association and Bob Davis of Richland Two, I want to add several general points.

First, the property tax system governs the distribution of $1.5 billion ($2 billion before the recession) in state revenue for the Education Finance Act ("EFA") and employee benefits. It is imperative for you to realize that changes in the property tax system change the distribution of state revenue among school districts. They are inextricably tied together.

Second, during the past decade every variable in the property tax formula has been limited, flattened or reduced. Fair market value as the starting point for taxation has been abandoned by the 15% reassessment limit. Exemptions have been relentlessly expanded, which include both the homestead for school operations and the older exemption for fees in lieu of taxes and multi-county industrial or business parks. Assessment ratios have been reduced; millage rates have been tightly limited; and revenue can be and has been diverted to other purposes. The result is that property tax revenue to school districts simply cannot grow very much, whether to accommodate the loss of state revenue, meet the EFA local share funding requirements or pay new regulatory costs.

Third, the property tax system as a whole is unbalanced and distorted. School operating tax rates vary from 90 to more than 250 mills, which before Act 388 was thought to be a very serious problem in itself. I believe it still very much aggravates the property tax burden on commercial property. Also, as you have often heard, the assessment ratio of 10.5% for manufacturing is way too high for South Carolina to be competitive.

Fourth, Act 388 has created many problems, but undeniably one of the most serious is that the reimbursements are not adequate to replace the revenue from houses in suburban areas. There is a large and growing gap between the property tax revenue that houses would be paying if not exempt and the reimbursement from the state's homestead exemption fund. This is killing suburban districts. According to Dr. Harry Miley, Richland One's gap was $3.5 million last year. In rough numbers, the gap in Lexington One was $6.3 million, Spartanburg 5 was $1.8 million, Charleston was $7.1 million, Berkeley was $3.4 million, and Dorchester 2 was $6.8 million. Spartanburg 5 is the home of BMW, and the three Charleston area districts are the home of Boeing. The inability of these districts to finance growth is a minefield for the State of South Carolina.

Fifth, the state's tax structure does not produce enough revenue to pay the cost of economic development, such as roads, water and sewer service, stormwater drainage systems, and so on. School Districts, through the parallel property tax systems of fees-in-lieu-of-taxes, multi-county parks, and tax increment financing, have become a prime source of funding for economic development. School districts simply cannot absorb the expanded homestead exemption and the effective exemption for these other purposes, without losing the fiscal capacity to provide sound public schools.

Sixth, I believe the school districts will be making specific proposals to you for the reform of the property tax system in ways that help achieve and are consistent with changes in the school finance system.

Seventh, I submit for your consideration that new revenue from eliminating sales tax exemptions should be used to alleviate the economically distorting characteristics of the property tax system, not to reduce the sales tax rate. The General Assembly, through the exemption and reimbursement of Act 388, has already tied sales and property taxes together. Making school operating tax rates more uniform at lower levels, reducing the manufacturing assessment ratio to 6%, using property taxes on extremely large investments as a part of state revenue, and producing more revenue to pay the costs of economic development without invading the schools' portion of revenue

from new economic development investment, are tremendously worth policy objectives. I believe they deserve your consideration in making recommendations to the General Assembly.

As an aside and to help understand some of these points, attached to my written statement is a copy of our memorandum to the Berkeley County Board of Education. It includes charts explaining the property tax formula and the effect on school districts of hypothetical tax increment financing and fees-in-lieu-of-taxes and multi-county parks.

I would be pleased to respond to your questions.

CHILDS & HALLIGAN

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MEMORANDUM

TO: Berkeley County Board of Education
Dr. Anthony Parker, Superintendent

FROM: William F. Halligan
Keith R. Powell

DATE: June 8, 2010

RE: Property Taxes and Economic Development Incentives

The Berkeley County School District faces unprecedented fiscal pressure. The School District is at the center of the collision of three trends: (1) tremendous industrial, commercial, and residential development; (2) declining state (and soon federal) educational funding and more restrictive property tax laws; and (3) increasing state and federal academic performance requirements.

The purpose of this memorandum and our presentation on June 8, 2010 is to place economic development incentives and changes in school finance within the legal structure of property tax law. The District has retained Dr. Harry M. Miley, Jr. to evaluate the fiscal impact of specific economic development proposals. Dr. Miley also has been retained to analyze the District's local revenue, specifically incorporating the impact of Act 388 on the District's revenue from property taxes. His analysis will disaggregate property tax categories, study those categories over time, and make projections based upon various assumptions. His analyses of both specific economic development proposals and the District's revenue will be presented at a later time.

I.   Four Major Recent Changes in the Law

A.   Suspension of EIA Minimum Local Effort – No Floor for Revenue

The minimum local effort which was part of the Education Improvement Act of 1984 ("EIA Minimum Local Effort" of *S.C. Code* § 59-21-1030), has been suspended for the last two fiscal years and appears likely to be repealed. The EIA Minimum Local Effort required the county auditor to levy a millage rate sufficient to assure that the District received, per pupil, at

least the same amount of local revenue as it received the previous year, adjusted upward for an inflation factor.

This "floor" protected the District's local property tax *revenue* regardless of any erosion of assessed value or diversion of tax revenue. The EIA Minimum Local Effort requirement shifted the school property tax burden away from property involved in economic development schemes, and onto all other property in the District, in order to produce the required minimum tax revenue for operations. This could only be achieved by a higher millage rate than would otherwise be needed. The county auditor did not have any authority to drop below whatever millage rate was needed to meet the EIA Minimum Local Effort.

Regardless of the precise factor by which an economic development method operated, the District's operating millage rate on all other taxable property would increase enough to make up the lost revenue, so that the District's property tax revenue per pupil increased to meet the EIA Minimum Local Effort. This method of protecting the School District from a loss of operating revenue no longer exists.

B. Act 388 – Millage Rate Cap

Even as the EIA "floor" on *revenue* is disappearing, a new "ceiling" on school operating millage *rates* has been enacted. Act 388 of 2006 (S.C. Code § 6-1-320) limits annual increases in the millage rate for operations to a formula based on the consumer price index and population growth. This cap on rates is regardless of revenues, although there are a few exceptions to the cap for extreme or catastrophic situations. The millage rate cap creates a mathematically fixed upper limit on available local revenue. Establishing school operating millage rates has previously been a local political question, but no political decision can avoid the legal cap on the millage rate, even if it results in insufficient local revenue to fund the budget. Where the millage rate is constrained, the only way to increase local revenue is by increases in assessed value. Thus, economic development incentives that limit assessed value reduce revenue.

The millage cap creates two enormous difficulties for districts under the Education Finance Act of 1977 ("EFA"). First, many districts have reached the point where the millage cap prevents them from generating the annual incremental increase in the local share of the EFA and employee benefits. The State, by definition, funds only 70% of the annual increase in the base student cost and employee benefits, which varies by district according to the index of taxpaying ability. If a district cannot fund its local share annual increment (30% statewide), it cannot pay the expenses that are mandated and must reduce other, discretionary expenses (i.e. expenses which exceed minimum regulatory standards).

Second, the millage cap and limitations on increases in assessed value have made it almost impossible for districts to replace reductions in State revenue. Reductions can be the result of state cuts or changes in the Index of Taxpaying Ability. As a district gets "wealthier" (compared to other districts), as measured by the assessed values used in the Index of Taxpaying Ability, State revenue declines; the assumption of the EFA is that the district will have access to more local revenue to replace the decrease in State revenue. If the assessed value does not grow to the extent necessary to replace the State revenue with the same tax rate, there is no exception

in the millage cap to increase the operating millage rate to replace the lost State revenue. In other words, the school district can be caught in the inconsistency between the millage cap of Act 388 and the local revenue requirements of the EFA, and the inconsistency is aggravated to the extent assessed value does not increase.

The property tax millage limitation of Section 6-1-320 also applies to cities and counties, but they have other sources of local revenue, such as business license taxes, water and sewer rates, transportation or road fees, storm water drainage fees, and special tax districts with higher rates, none of which are available to school districts. While cities and counties are affected by reductions in state aid to local government, they do not face anything nearly as complex as the EFA, employee benefits, index, and local share calculations, and the State does not control the compensation and benefits of city and county employees as the State does with teachers.

C.   Act 388 - Limitation of 15% on Increase in Taxable Fair Market Value

Another strategic threat to the School District's access to taxable assessed value is the recent amendment of the State Constitution concerning how property is valued for taxation purposes. Prior to these amendments, properties were assessed on actual fair market value. Now and going forward, "for the tax year beginning 2007, each parcel of real property in this State shall have a *maximum* value for ad valorem taxes that does not exceed its fair market value." S.C. Const. art. XI, sec. 6 (emphasis added). Moreover, now and in the future, "the General Assembly is authorized, by general law, to define 'fair market value' ...." S.C. Const. art. XI, sec. 6. Thus, the General Assembly has the power to define "fair market value" in nearly any way it wants to do so, and that definition is merely the "maximum" value that the property can have for purposes of property taxes.

The recent amendment also provides that the "value of each parcel of real property, adjusted for improvements and losses, does not increase more than fifteen percent every five years unless, as defined by the General Assembly, an assessable transfer of interest occurs." *Id.* The fifteen (15%) percent limit was enacted as party Act. 388, is codified as S.C. Code § 12-37-3140 and applies to tax years beginning after 2006.

D.   Act 388 - Possible Requirement to Pay Reimbursement (Tiers 1, 2 and 3) to a TIF

As part of the Act 388 "tax swap," for tax year 2007 a "reimbursement payment" was paid "dollar for dollar" to school districts for the amount lost to the exemption. Tiers 1 and 2 are frozen and Tier 3 increases by a formula and is no longer controlled by the amount of exempted value. We believe the Tiers 1, 2 and 3 reimbursement revenue is potentially threatened by the statutory provision below pertaining to the "reimbursement" payments:

> (D) Notwithstanding another provision of this section, in the case
> of a redevelopment project area ... the reimbursements provided
> pursuant to this section for the property tax exemption allowed by
> Section 12-37-220(B)(47) must include full payment to the city ...
> creating the redevelopment project area for *amounts that would*

have been payable to the special tax allocation fund created pursuant to that chapter *if no such exemption existed.*

S.C. Code § 11-11-156(D) (emphases added). This language appears to require the District, if it participates in a TIF, not just to forego revenue, but also to *pay to the TIF the full dollar value of the exemption on any legal residence in the TIF District, whether pre-existing or new.* This is because "if no such exemption existed," then owner-occupied legal residences would pay the full amount of operating millage. Although each homeowner in the TIF would still enjoy the 100% exemption from operating millage, the District might have to pay its *full dollar-for-dollar value* of the TIF legal residences exemptions to the TIF under this provision of law, which would reduce the "reimbursement" by the State for the exemption granted to non-TIF legal residences.

II.   Legal Structure of Property Taxes and Economic Development Incentives

During the presentation on June 8, 2010, we will review the components of the property tax formula and how they are affected by tax increment financing ("TIF"), fees-in-lieu-of-taxes ("FILOT") and multi-county industrial and business parks ("MCIBP"). The basic property tax formula is as follows:

Fair Market Value (FMV)	X	Assessment Ratio	=	Assessed Value (AV)	X	Tax (Millage) Rate	=	Property Tax Revenue

A.   Property Tax Base (FMV x Assessment Ratio = Assessed Value)

1. **Fair Market Value** (ad valorem - according to value)
    a.   Real property - land and buildings
    b.   Personal property - cars and equipment
    c.   Agricultural use - rollback taxes (5 years)
    d.   Depreciation
       • State reimbursements for reduction from 20% to 10% residual
    e.   "Reassessment": updates fair market value
       • **Act 388**: 15% cap limits increase in taxable FMV – capped amount is used in assessed value for EFA
    f.   Sales ratio factor adjusts FMV to "full market value" for index of taxpaying ability (huge factor in freezing index for 2010-11)

2. **Assessed Value**
    a.   Assessment ratios (% of fair market value) based on use of property
       Manufacturing property: 10.5% (**FILOT** reduces to 6, 4 or 3%)
       Personal property (cars): 6% (reduced from 10.5%)
       Commercial property (offices, retail, apartments): 6%
       Residential property (single family houses): 4%
    b.   Constitutional debt limit is 8% of assessed value (Article X, § 15)
    c.   Index of taxpaying ability under EFA uses assessed value
    d.   TIFs remove increasing assessed value from tax base for schools

        e.   **FILOT/MCIBP**: "imputed" assessed value for the Index:
             school revenue ÷ school millage = school assessed value

3.   **Exemptions**

All real and personal property is subject to taxation, unless exempt.

    a.   **True (or total) exemption - nothing is owed**
          Examples: state; church; pollution control equipment; many more

    b.   **Partial exemption**
         (1) County tax is owed - school tax is not
              Example: 100% homestead exemption from school operating taxes
              (State reimbursement)
         (2) School tax is owed - county tax is not ("5 year abatement")
              Example: Manufacturing, research and development, corporate office,
              distribution (S.C. Code § 12-37-220(A)(7), (B)32, (B)34) (**MCIBPs**
              trump)
         (3) Limited amount. Example: homestead exemption for retired/disabled
              up to $50,000 (State reimbursement to counties, cities, school district
              Tier 2)

    c.   **"Fictional" exemption, but substitute payment (2)**
          taxpayer owes the amount equivalent to property taxes.
         (1) **FILOT** for manufacturing property
             • (school revenue nominally protected, but lower assessment ratio,
                fixed millage agreements, special source revenue credits/bonds)
         (2) Property in a **MCIBP**
             • Counties have right to use <u>all</u> funds generated from schools'
                rate for non-school purposes; no limits on land area, value, time,
                or partial exemptions (subject only to abuse of discretion
                standard)

    d.   **State reimbursement for some exemptions**
         (1) **Act 388**: exemption for school operating taxes and reimbursement
              from 1¢ sales tax in Homestead Exemption Fund; annual statewide
              increase limited to CPI and all-age population growth; school district
              increase based on WPUs – large gap between amount homesteads
              would be paying and reimbursement.
         (2) **BIG ISSUE: How to value reimbursement within Index (EFA)?**

B.   <u>**Tax Rate (Millage Rate) (Tax Levy)**</u>

   1. millage:
       1 mill=.001=$1/$1000
       $1 of tax revenue per $1000 of assessed value
   2. applies to assessed value
   3. same tax rate applies to all property in the jurisdiction
   4. fiscal autonomy of school board (local legislation for each district)
      a. unlimited: does not exist any more

    b. limited: millage cap or restriction on increasing tax rate

    c. none: county council or county board sets tax rate

5. **Act 388**: millage limitation of § 6-1-320

    a. all-age population growth plus CPI

    b. school districts, cities and counties

    c. exceptions

6. Reassessment rollback millage: prior year's revenue divided by assessed value is new base for increase; can be roll "up" if AV declines

7. **FILOT** fixed millage agreements (county council freezes school rate)

C.   <u>Tax Revenue ($cash$)</u>

1. EIA Minimum Local Effort - § 59-21-1030 required local property tax revenue (on a per pupil basis) to increase from year to year by the inflation rate.
   - EIA minimum local effort has no relationship to actual increases in costs
   - suspended/repealed

2. tax collections

3. collection rate

4. delinquencies, penalties, interest

5. Local Option Sales Tax (LOST): at least 71% of sales tax revenue creates credit used to reduce city and county property taxes
   - in **MCIBP**, LOST credit increases school's loss of revenue

6. **FILOT, MCIBP,** not **TIF**: Special source revenue bonds/credits reduce tax revenue by paying for "infrastructure" for developer or by giving developer credit (reduction in amount paid)
   - commonly 20-50% of amount owed

7. **MCIBP**: County keeps cash "off the top" to reimburse County for economic development expenses, such as land acquisition, roads, utilities, speculative buildings; some counties have kept <u>all</u> cash for 2-3 years

8. **MCIBP** – County keeps cash "off the top" for County economic development office, county operating expenses or county debts

9. **TIF** Revenue: **TIF** Assessed Value x School Tax Rate (debt and operating)

III.   <u>Attachments</u>

    A.   **Property Tax Formula**

    B.   **Effect of Hypothetical TIF on School District**

    C.   **Effect of Hypothetical FILOT/MCIBP on School District**

    D.   **Property Tax and "Fee" Formulas (Expanded)**

    E.   **Comparison of Economic Development Incentives Concerning Property Taxes (not updated)**

PROPERTY TAX FORMULA

Fair Market Value (FMV)	X	Property Tax Base			Tax Rate		Tax Revenue
		Assessment Ratio	=	Assessed Value (AV)	X	Millage	=	$Cash$
						Tax Levy	

FMV	Assessment Ratio	Assessed Value (AV)	Tax Rate / Millage	Tax Revenue
1) exemptions: → 100% homestead for school operating → many more	1) cars (10.5% to 6%)	1) TIF: increase over initial value	1) Act 388: operating millage cap on city, county and school districts	1) No EIA Local Minimum Effort
2) Act 388: 15% reassessment cap	2) FILOT (10.5% to 6/4/3%)	2) How to value reimbursement for exemption in Index (ITA)?	2) reassessment rollback (up) millage	2) large gap between property tax on homestead and reimbursement
3) depreciation		3) used for Index major factor in distribution of State EFA and employee benefits → "imputed" AV for FILOT/MCIBP	3) FILOT: frozen	3) FILOT: credit reduces payment
4) MCIBP: unlimited land and time				4) MCIBP: → county controls → "off the top" county expenses, operations, debt
5) Index (ITA) sale ratio "full market value"				5) TIF: school district reimburses TIF for homestead exemption

Effect of Hypothetical TIF on School District Revenue

Year / Event	Year 1 No TIF	Year 2 TIF New Building on Tax Roll	Year 3 School District millage increase (+ 10 mills)	(1) Year 4 Reassessment (15% millage)	(2) Year 4 Reassessment (25% increase)
Fair Market Value	$500,000	$10,000,000	$10,000,000	$11,500,000	$12,500,000
Assessment Ratio	x .06	x .06	x .06	x .06	x .06
Assessed Value	$30,000	$600,000	$600,000	$690,000	$750,000
School Tax Rate (Mills)	x .150	x .150	x .160	x .160	x .160
Revenue from School Tax Rate	$4,500	$90,000	$96,000	$110,400	$120,000
School Revenue	$4,500	$4,500	$4,800	$4,800	$4,800
TIF Revenue	$0	$85,500	$91,200	$105,600	$115,200

Effect of Hypothetical FILOT/MCIBP on the School District

	Scenario #1 No FILOT	Scenario #2 FILOT/NO MCIBP	Scenario #3 FILOT/MCIBP		
			YEAR 1	YEAR 2	YEAR 3
1 Investment (FMV)	$20,000,000	$20,000,000	$20,000,000	$20,000,000	$20,000,000
2 Value less Depreciation (8%)	$18,400,000	$18,400,000	$18,400,000	$16,800,000	$15,200,000
3 Assessment Ratio	x 0.105	x 0.060	x 0.060	x 0.060	x 0.060
4 Assessed Value	$1,932,000	$1,104,000	$1,104,000	$1,008,000	$912,000
5 Total Tax Rate (Mills)	x 0.150	x 0.200	x 0.200	x 0.200	x 0.200
6 Total "Owed"	$289,800	$220,800	$220,800	$201,600	$182,400
7 Special Source Revenue Credit/Bonds (35%)			-$77,280	-$70,560	-$63,840
8 Real $$$ Paid	$289,800	$220,800	$143,520	$131,040	$118,560
9 County Economic Dev. (5%)			-$11,040	-$10,080	-$9,120
10 County General Fund (10%)			-$22,080	-$20,160	-$18,240
11 County Expenses ($200,000)			-$110,400	-$89,600	-0-
12 Distributed by Millage	$289,800	$220,800	-0-	$11,200	$91,200
13 School Portion (.150)	$289,800	$165,500	-0-	$8,400	$68,400
14 School Operations (.125)	$241,500	$138,000	-0-	$7,000	$57,000
15 School Debt (.025)	$48,300	$27,600	-0-	$1,400	$11,400
16 County Portion (.050)	(5 yr. exempt) -0-	$55,200	-0-	$2,800	$22,800
17 School's Assessed Value	$1,932,000 yr. 3: $1,596,000	$1,104,000 yr. 3: $912,000	-0-	$56,000 (line 13 ÷ .150)	$456,000 (line 13 ÷ .150)
18 Constitutional Debt Limit	x 0.08	x 0.08	x 0.08	x 0.08	x 0.08
19 Increase in Debt Limit	$154,560	$88,320	-0-	$4,480	$36,480

FILOT: Fee In Lieu-Of Taxes

MCIBP: Multi-County Industrial or Business Park

PROPERTY TAX (AND "FEE") FORMULAS

TAX ("FEE") BASE	X	TAX ("FEE") RATE	=	TAX ("FEE")/REVENUE
Traditional Formula – all property				
FMV × assessment ratio	x	total tax rate	=	total amount owed to County Treasurer	=	total amount paid to County Treasurer	County Treasurer transfers money to school district based on operating millage and pays debt • EIA Minimum • Local Effort – suspended • transfers TIF portion to TIF district
• less depreciation if applicable • agriculture or timber rollback • index (TDA) • sales ratio factor • 15% cap • taxable FMV • exemptions		• assessment by classification mfg. 10.5% utility 10.5% cars 6.0% comm'l 6.0% res. 4.0%	• varies by year • 1 mill = .001 = $1 revenue for $1,000 of assessed value • operating Act 388 cap • debt • Reassessment rollback (up)		• used in EIA index • used in 8% debt limit • the District AV ex/frozen initial value • reimbursement to exemptions		

b. "Fee" Formula for business property (FILOT or property tax in MCIBP) – fictional exemption, but substitute payment in same amount

TAX ("FEE") BASE	X	TAX ("FEE") RATE	=	TAX ("FEE")/REVENUE
FMV × assessment ratio	x	total tax rate millage	=	total amount owed to County Treasurer	=	total amount paid to County Treasurer	County expenses/general fund
• less depreciation if applicable • FILOT – by agreement between county and company – negotiated from 10.5% to 6/4/3% • MCIBP same as traditional formula		• FILOT not used for school district not used in EIA index or debt limit • MCIBP assessed value for school district EIA index 8% debt limit	• FILOT: up to 20 yrs. frozen • MCIBP: varies by year = schools tax rate		• credit to business • decided by county council (often 25-50%)		County Treasurer transfers money to school district based on county ordinance (MCIBP) • balance divided pro rata by millage rate or % split

Comparison of Economic Development Incentives Concerning Property Taxes (not updated)

	Controlling Entity	School Consent	Criteria for Use	Time Limit	Limit on Acreage	Property Tax Effect	Basis for Division of Revenue
City TIF	City	Yes	·blight (5/14) ·almost blight (3/12)	·5 yrs to issue bonds ·up to 15 yrs to repay ·extension	·5% of City ·contiguous or scattered site	·real, not personal ·Shifts increases in assessed value to TIF	·Millage on frozen assessed value ·surplus
County TIF	County	Yes	·blight ·almost blight ·sprawl	·5 yrs to issue bonds ·up to 15 yrs to repay ·extension	·5% of County ·contiguous or scattered site	·real, not personal ·Shifts increases in assessed value to TIF ·per student payment if residential	·Millage on frozen assessed value ·surplus
Military Base Redevelopment TIF	Authority (no school) and City	No	Closed Military Base (Horry, Berkeley & Charleston)	·15 yrs to issue ·30 yrs to repay	Closed Base	Same as City TIF (initial assessed value is zero, therefore <u>all</u> to TIF)	Same as City TIF (All to TIF)
Multi-County Park (MCIBP)	Two Counties (99%/1%) Home County ·property ·division within county	No	Industry or business ·old or new property	None	None ·scattered site	·real and personal ·exemption but payment equivalent to property tax/FILOT ·reduces assessed value for debt and EFA index	·County controls · abuse of discretion standard
Fees-In-lieu of Taxes (FILOT)	County	No	·manufacturing and commercial (i.e. almost no limits) · new investment	·base: 20 years ·jumbo: 30 yrs ($400 million) ·many extensions possible	None	·real and personal ·reduces assessed value (10.5%, 6%, 4%) ·fixed millage rate (20 years) ·can be put into MCIBP	·Proportionate to millage ·If county puts FILOT into MCIBP, then county controls
Special Source Revenue Bonds or Credits	County	No	·builds infra-structure for developer or gives credit on tax bill ·FILOT or MCIBP	Same as FILOT or MCIBP	Same as FILOT or MCIBP	·reduces tax revenue ·reduces assessed value for debt and EFA index	County controls