**A** **JOINT RESOLUTION**

TO REQUIRE THE GOVERNOR TO APPLY FOR STATE FISCAL STABILIZATION FUNDS AVAILABLE PURSUANT TO THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, TO MAKE FINDINGS THAT IT IS IN THE BEST INTEREST OF THE STATE FOR THE GOVERNOR TO APPLY FOR THESE FUNDS AND THAT THE GENERAL ASSEMBLY HAS THE AUTHORITY TO REQUIRE THE GOVERNOR TO MAKE THE APPLICATION, TO PROVIDE THAT THE GOVERNOR MUST APPLY FOR THE FUNDS WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THE JOINT RESOLUTION, TO PROVIDE THAT THE ASSURANCES THAT MUST BE MADE TO OBTAIN THE FUNDS ARE THE POLICY OF THIS STATE, TO PROVIDE FOR BASELINE DATA ON THESE ASSURANCES, AND TO DESCRIBE HOW THE STATE WILL UTILIZE THE FUNDS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds:

(1) It is in the best interest of the citizens of the State of South Carolina, due to the precipitous decline in state revenue that has occurred during the pending economic crisis, that all action necessary must be taken to secure the maximum possible receipt by this State of funds available pursuant to the HR‑1, the American Recovery and Reinvestment Act of 2009 (ARRA).

(2) That pursuant to the ARRA, in order to receive the maximum amount of State Fiscal Stabilization Funds available pursuant to Title XIV of the ARRA, certain action must be taken by the Governor of this State.

(3) That pursuant to the Tenth Amendment to the United State’s Constitution, all power not specifically provided to the federal government is reserved to the States and the Constitution does not provide the United States Congress with the power to determine the constitutional balance of power in this State.

(4) That pursuant to the constitutional structure of this State, the General Assembly has the power to make the law, and it is the obligation of the Governor to faithfully execute the law.

(5) That the General Assembly has the exclusive power of appropriation and through the exercise of that authority the General Assembly may, by law, require executive officials to take certain action in order to secure the funds necessary to meet those appropriations.

(6) That pursuant to this authority, it is appropriate for the General Assembly to obligate the Governor, by law, to take certain action in order to secure funds available pursuant to the ARRA.

SECTION 2. (A) Within thirty days of the effective date of this joint resolution, the Governor shall submit an application to the United State’s Secretary of Education to obtain phase one State Fiscal Stabilization Funds in a manner that is consistent with and complies with the requirements of Title XIV of the ARRA and any additional requirements imposed by the United States Secretary of Education. The application must include any and all information required by the United States Secretary of Education and must specifically include the assurances required by Section 14005 of the ARRA that the State will:

(1)(a) In each of fiscal years 2009, 2010, and 2011 maintain state support for elementary and secondary education at least at the level of state support in fiscal year 2006.

(b) In each of fiscal years 2009, 2010, and 2011 maintain state support for public institutions of higher education at least at the level of state support provided in fiscal year 2006.

(2) Take action to improve teacher effectiveness and to address inequities in the distribution of high quality 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.

(3) Establish a longitudinal data system that includes the elements described in the America COMPETES Act.

(4) Enhance the quality of academic assessments, comply with ESEA and IDEA regarding the inclusion of children with disabilities and limited English proficiency in assessments, and improve state academic content standards and academic achievement standards consistent with the America COMPETES Act.

(5) Provide the support to struggling schools as defined and required by Sections 1116(b)(7)(C)(iv) and 1116(b)(8)(B) of the ESEA.

The General Assembly declares that these assurances are reasonable and further declares that achieving the goals required by these assurances to be the policy of the State.

(B) As part of the application, the Governor shall provide baseline data on the State’s current status in each of the assurance areas listed in subsection (A) by providing the United States Secretary of Education with the ARRA Assurances Baseline Current Status Report dated April 9, 2009, which the General Assembly adopts as the official report of the State’s current status in these areas.

(C) As part of the application, the Governor shall describe how the State intends to use its allocation of fiscal stabilization funds by providing that the State will divide its allocation between the support of K‑12 elementary and secondary education and the support of public institutions of higher education in proportion to the percentages of shortfall in state support of the two areas. The portion allocated to the support of K‑12 elementary and secondary education shall be used to meet the maintenance of effort requirements of the ESEA and IDEA through the state’s primary funding formula established by the Education Finance Act.

(D) The General Assembly recognizes that the current economic crisis has resulted in a precipitous drop in state revenue and that the phase one allocation of sixty‑seven percent of fiscal stabilizations funds will be insufficient to avoid the immediate lay off of local education personnel. In particular, the General Assembly estimates that the amount of fiscal stabilization funds to be dedicated to fiscal year 2010 will only represent $238 million of the $248 million decline in state revenue available to fund the base student cost at the higher of the fiscal year 2008 or 2009 level. As a result, the Governor shall provide this information in his application and request that the state’s percentage of phase one allocation of fiscal stabilization funds be increased to ninety percent of the funds available.

(E) The General Assembly recognizes that the Governor must assure in his application that the State will maintain the state level of support for K‑12 elementary and secondary education and public institutions of higher education at the level of support provided in fiscal year 2006. For any of fiscal years 2009, 2010, and 2011 that the General Assembly is not able to maintain state support at the 2006 level, the Governor shall request a waiver as provided in the ARRA. The General Assembly declares that in order to comply with the requirements of the waiver, it will take all action necessary to maintain the aggregate percentage of support for K‑12 elementary and secondary education and public institutions of higher education in relation to total funds available for all government services at or above the percentage for the preceding fiscal year.

SECTION 3. In order to obtain the phase two allocation of fiscal stabilization funds, the Governor shall submit an application to the United States Secretary of Education in a manner that is consistent with and complies with the requirements of Title XIV of the ARRA and any additional requirements imposed by the United States Secretary of Education. As part of the application, the Governor shall submit a plan detailing the state’s strategies to meet the reform objectives of the assurances that must be made in the initial application. The plan shall be developed by the State Secretary of Education and approved by the General Assembly by law. The application for the phase two allocation of fiscal stabilization funds must be submitted within thirty days of the submission of the approved plan to the Governor.

SECTION 4. At the beginning of fiscal years 2010, 2011, and 2012, the Governor shall submit a report to the U.S. Secretary of Education detailing the amount of jobs that were saved or created and the amount of tax increases that were averted during the preceding fiscal year. The report must be based on findings made by the General Assembly that are included by proviso in the annual appropriations act for the applicable year that references the preceding fiscal year.

SECTION 5. Upon request and based on information provided by the State Secretary of Education, the Governor shall apply for State Incentive Grants available pursuant to Section 14006 of the ARRA.

SECTION 6. This joint resolution takes effect upon approval by the Governor.

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