

EXECUTIVE ORDER NO.

2023-12

WHEREAS, on March 23, 2023, the undersigned received and accepted the resignation of Richard Eckstrom as Comptroller General of the State of South Carolina, effective April 30, 2023, in accordance with section 8-1-145 of the South Carolina Code of Laws, as amended; and

WHEREAS, article VI, section 7 of the South Carolina Constitution provides, in relevant part, that “[t]here shall be elected by the qualified voters of the State a . . . Comptroller General, . . . who shall hold [his] respective office[] for a term of four years, coterminous with that of the Governor”; and

WHEREAS, section 1-1-120 of the South Carolina Code of Laws, as amended, provides, in pertinent part, that “[i]n case any vacancy shall occur in the office of . . . Comptroller General, . . . such vacancy shall be filled by election by the General Assembly, a majority of the votes cast being necessary to a choice,” and that “[i]f such vacancy occur during the recess of the General Assembly, the Governor shall fill the vacancy by appointment until an election by the General Assembly at the session next ensuing such vacancy”; and

WHEREAS, section 1-3-220(1) of the South Carolina Code of Laws, as amended, similarly provides that among the appointments which “shall be made by the Governor” is “[a]n appointment to fill any vacancy in an office of the executive department as defined in [s]ection 1-1-110 occurring during a recess of the General Assembly,” and “[t]he term of such appointment shall be until the vacancy be filled by a general election or by the General Assembly in the manner provided by law”; and

WHEREAS, in accordance with section 1-1-110 of the South Carolina Code of Laws, as amended, the Comptroller General is an officer of the “executive department of this State”; and

WHEREAS, pursuant to article IV, section 1 of the South Carolina Constitution, “[t]he supreme executive authority of this State shall be vested in” the Governor of the State of South Carolina; and

WHEREAS, on May 11, 2023, the regular annual session of the General Assembly of the State of South Carolina adjourned *sine die* in accordance with section 2-1-180 of the South Carolina Code of Laws, as amended; and

WHEREAS, the General Assembly did not elect a successor to fill the vacancy in the office of the Comptroller General pursuant to section 1-1-120 of the South Carolina Code of Laws prior to adjourning *sine die* on May 11, 2023; and

WHEREAS, in light of the foregoing, there is a vacancy in the office of the Comptroller General, said vacancy occurring during a recess of the General Assembly, which will continue to exist until such time as the General Assembly shall elect a successor to serve in said office for the remainder of the unexpired term; and

WHEREAS, as presently constituted, the office of Comptroller General is among those “important administrative positions, the functioning of which are necessary to effectively run a complex government,” *Senate ex rel. Leatherman v. McMaster*, 425 S.C. 315, 330, 821 S.E.2d 908, 916 (2018), and the undersigned has determined that it is critical to avoid a vacancy in said office and thereby imperative to designate and appoint an individual to assume the duties and attend to the responsibilities of the Comptroller General, *see, e.g.*, S.C. Code Ann. § 11-3-170 (“After the approval of the annual appropriation act by the Governor, monies may be obtained from the State Treasury only by drawing vouchers upon the Comptroller General. . . .”); *id.* § 11-3-185 (“The expenditure of money appropriated by the General Assembly is by warrant requisitions directed to the Comptroller General. . . .”); *id.* § 11-3-210. (“The Comptroller General shall enter in books, kept for that purpose, such statements of the accounts of persons having the distribution of public money, directed by law to be rendered to him, as will enable him, at any time, to show how such accounts stand between the parties, respectively.”); and

WHEREAS, for the aforementioned reasons, and in accordance with the cited authorities and other applicable law, the undersigned has determined that it is necessary and appropriate under the circumstances presented to designate and appoint a suitable person to serve as Comptroller General until such time as the General Assembly shall elect a successor or a successor shall otherwise qualify as provided by law, *see Op. Att’y Gen.*, 1984 WL 249919, at *2 (S.C.A.G. June 28, 1984); *see also Bradford v. Byrnes*, 221 S.C. 255, 262, 70 S.E.2d 228, 231 (1952) (“As nature abhors a void, the law of government does not ordinarily countenance an *interregnum*.”); and

WHEREAS, Brian J. Gaines, MPA, CPM, of Columbia, South Carolina, is a fit and proper person to serve as Comptroller General until such time as the General Assembly shall elect a successor or a successor shall otherwise qualify as provided by law.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby designate and appoint Brian J. Gaines, MPA, CPM to serve as Comptroller General until such time as the General Assembly shall elect a successor or a successor shall otherwise qualify as provided by law. This Order is effective immediately and shall remain in effect unless or until modified, amended, rescinded by subsequent Order.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 11th DAY OF
MAY, 2023.**

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State