HENRY MCMASTER
GOVERNOR

May 18, 2023

The Honorable G. Murrell Smith, Jr.
Speaker of the House
State House, Second Floor
Columbia, South Carolina 29201

Dear Mr. Speaker and Members of the House:

I am hereby vetoing and returning without my approval R-62, H. 4413, which seeks to amend Act No. 104 of 2021 so as to provide that members of the Board of Trustees of the recently consolidated Bamberg County School District ("District") shall continue to be appointed by the Bamberg County Legislative Delegation ("Delegation"), through at least July 1, 2028, instead of selected in popular elections in 2024 and 2026. For the reasons set forth below, I must veto H. 4413 and return the same without my signature.

As the General Assembly is well aware, like several of my predecessors, I have consistently vetoed local or special legislation that violates the South Carolina Constitution, which expressly prohibits the General Assembly from enacting legislation "for a specific county" and "where a general law can be made applicable." S.C. Const. art VIII, § 7; S.C. Const. art. III, § 34(IX). Although our courts have held that greater deference is warranted in the context of public education, "legislation regarding education is not exempt from the requirements of Article III, § 34(IX)." *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 558, 713 S.E.2d 604, 607 (2011). Therefore, I carefully review and consider all such legislation presented to me and scrutinize the same in view of the governing law. Absent other issues or infirmities, I have, on occasion, signed local or special legislation that is not clearly unconstitutional, such as where a general law could not be made applicable or where "a special law would best meet the exigencies of a particular situation." *Id.* at 559, 713 S.E.2d at 608. Regardless, I have repeatedly cautioned the General Assembly to avoid relying on local legislation instead of addressing the underlying issues by passing laws of uniform, statewide application. The regular resort to local or special legislation is particularly concerning in the context of public education, where the practice has produced a patchwork of authorities governing South Carolina's schools and school districts.

Here, H. 4413 plainly pertains to only Bamberg County and does not appear to satisfy any recognized exception to the constitutional prohibition on local or special legislation. Although I approved Act No. 104 of 2021, which advanced the commendable goal of consolidation by creating the District, it was readily apparent that such legislation was necessary to "best meet the exigencies of [that] particular situation" and it was not clear that a general law could be made applicable. *Id.* However, now, less than two years later, the Delegation seeks to tweak that enabling and consolidating legislation, seemingly for the sole purpose of retaining—and significantly extending the duration of—the Delegation's dominion and control over the Board of Trustees. In addition to failing to demonstrate that this special legislation is necessary, the General Assembly has not established that any requisite measures could not be implemented via general legislation. *See Richardson v. McCutchen*, 278 S.C. 117, 119, 292 S.E.2d 787, 788 (1982) (noting that "[t]he prohibition is applicable to . . . the amendment of prior special legislation"). Thus, H. 4413 appears to represent unconstitutional local or special legislation.

Notwithstanding the foregoing, even if H. 4413 did not constitute impermissible local or special legislation, I believe that this bill is problematic for reasons separate and apart from—but symptomatic of—the aforementioned issues. This bill illustrates and underscores a common feature (and problem) associated with local legislation: excessive legislative entanglement. In accordance with article I, section 8 of the South Carolina Constitution, the General Assembly may not "undertake[e] 'to both pass laws and execute them.'" *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 8, 558 S.E.2d 511, 514 (2002). As I have previously noted in vetoing special legislation, our constitutional separation of powers prohibits legislative delegations from unnecessarily controlling and micromanaging schools and school districts. *See Gould v. Barton*, 256 S.C. 175, 201–02, 181 S.E.2d 662, 674 (1971); *Charleston Cnty. Parents for Pub. Schs., Inc. v. Moseley*, 343 S.C. 509, 519, 541 S.E.2d 533, 539 (2001). Thus, while I wholeheartedly support school-district consolidation as part of the State's broader education-reform efforts, I have repeatedly urged the General Assembly to avoid unnecessary, and potentially unconstitutional, legislative meddling in the implementation process.

Despite my prior admonishments to avoid unnecessary legislative entanglement and micromanagement, this bill would subjugate and supplant the will of the District's electorate by extending the duration of the Delegation's exclusive control over the Board of Trustees beyond the contemplated transition period set forth in Act No. 104 of 2021. I cannot fathom, and have not been provided with, a reason to continue giving the Delegation, rather than the voters, the power to choose who will serve on the Board of Trustees through at least July 1, 2028. Such an extended, and unjustified, disenfranchisement of the people is antithetical to our constitutional system. *See, e.g.*, S.C. Const. art. I, § 1; *id.* art. I, § 5. Moreover, it is contrary to Home Rule, *see id.* art VIII, and reminiscent of the time when "legislative delegations of the General Assembly controlled virtually every aspect of local government." *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 224, 464 S.E.2d 113, 117 (1995). Whatever issues the District may be facing, the District's parents and taxpayers should be permitted to select the officials who will be charged with representing their interests and addressing any such issues. We must presume that whomever the people choose will fulfill their duty to learn about these issues and to resolve them in a thoughtful and productive manner. And if they do not, they should be held accountable at the

ballot box on election day. Additionally, consolidation should not require postponing popular elections by four years. Other school districts, such as the Hampton County School District, which was consolidated in 2020, *see* 2020 S.C. Acts No. 184, have managed to conduct elections for school-board members in far less time than the more than half a decade that H. 4413 would delay direct parental participation and public input.

Finally, I am compelled to note my concerns regarding the one or more instances of which I have been made aware that seemingly involve a member of the Delegation representing plaintiffs in a lawsuit against the District (or one of its predecessors), and thereafter obtaining a settlement between the litigants. *See Medina v. Bamberg Cnty. Sch. Dist.*, No. 2022-CP-05-11 (S.C. Ct. Comm. Pls.); *Shingler v. Bamberg Cnty. Sch. Dist. 1*, No. 2021-CP-05-473 (S.C. Ct. Comm. Pls.). As I noted most recently in my State of the State address earlier this year, legislators should stop suing public agencies or entities. This practice is troubling enough when it involves state agencies over which legislators have budgetary control, but the resulting actual, potential, or perceived conflicts of interest are even more egregious when the legislator appoints the officials on the other side of what could be seen as a sue-and-settle scenario. At the very least, the appearance of impropriety undermines the public's trust and confidence in government and in those they have elected (rather than retained) to represent their interests. In addition to ending the apparent absurdity here, members of the General Assembly must cease this practice in other contexts as well.

For the foregoing reasons, I am respectfully vetoing R-62, H. 4413 and returning the same without my signature.

Yours very truly,

Henry McMaster

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