

TOM DAVIS

SENATOR, BEAUFORT COUNTY
SENATE DISTRICT 46

COLUMBIA OFFICE:

602 GRESSETTE SENATE BLDG.
POST OFFICE BOX 142
COLUMBIA, SC 29202
(803) 212-6008 (TEL)
(803) 212-6299 (FAX)
TOMDAVIS@SCSENATE.ORG



BEAUFORT OFFICE:

POST OFFICE DRAWER 1107
1001 CRAVEN STREET
BEAUFORT, SC 29901-1107
(843) 252-8583 (TEL)
(843) 524-6401 (FAX)
TOM@SENATORTOMDAVIS.COM

December 19, 2012

The Honorable Alan Wilson
South Carolina Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: Request for Legal Opinion on the Statutory Budget Process in South Carolina

Dear General Wilson:

As a new member of the South Carolina Senate Finance Committee, I respectfully ask that you issue a legal opinion on some questions I have about the state budgeting process.

The South Carolina Code of Laws provides for the process to start with the Governor submitting a budget. Section 11-11-70 provides that, within five days after the beginning of the legislative session, the Governor shall submit to the presiding officer of each house a budget that sets forth "a complete and itemized plan of all proposed expenditures for each state department, bureau, division, officer, board, commission, institution, or other agency or undertaking, classified by functions, character, and object, and of estimated revenues and borrowings for each year, beginning with the first day of the next fiscal year."

Section 11-11-90 then requires the House Ways and Means Committee and the Senate Finance Committee to sit jointly in open sessions to consider the Governor's budget "within five days after the budget has been submitted," and with all persons interested in the estimates under consideration having the right to be heard. Further, as provided by Section 11-11-100, the General Assembly is permitted to increase or decrease items in the Governor's budget "as it may deem to be in the interest of greater economy and efficiency in the public service."

It is, of course, critically important to have an orderly budgeting process; spending the people's money is by far the most important thing state government does. In the past three years, state general-fund expenditures have increased by 19 percent (from \$5.11 billion to \$6.08 billion), and so-called "Other Funds" expenditures by state government have increased from \$4.8 billion in 2002 to \$8.2 billion in the current fiscal year. The budgeting process provided by the state code seems to provide a reasonably good framework for legislators to debate how to spend the people's money, with an opportunity for interested members of the public to participate.

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In practice, however, this statutory budgeting procedure is ignored. Instead of the House Ways and Means Committee and the Senate Finance Committee sitting jointly in open sessions to consider the Governor's budget, and receiving comments from all persons interested in the proceedings, the budget process starts with the House Ways and Means subcommittees separately debating portions of the budget in piecemeal fashion. Each of these subcommittees eventually agrees on the piece of the budget assigned to it, and the various approved pieces are then considered by the full Ways and Means Committee. After that committee passes the budget, it is considered and ultimately passed by the members of the House of Representatives, whereupon it is sent to Senate. And the Senate then begins its own separate deliberations, independent of the House budget.

As a result, there is never any consideration of the Governor's budget as a whole, by the House Ways and Means Committee and the Senate Finance Committee sitting jointly in open sessions. There are no joint deliberations on increasing or decreasing of the items in the budget presented by the Governor. Moreover, although Section 11-11-70 requires the Governor to submit, and the General Assembly to consider, a budget that consists of "a complete and itemized plan of *all* proposed expenditures" (emphasis provided), less than half of state-government expenditures actually gets any executive or legislative scrutiny.

I request your opinion as to whether the budget process as it exists in practice conforms to the process mandated by the South Carolina Code of Laws. I have set forth above the areas where I believe the actual budgeting process fails to conform with what is required by law, but invite you to consider other areas where there may be derelictions, whether inadvertent or otherwise.

Further, in the event you find the budget process in practice does not comply with the budget process that is mandated by law, I ask that you identify the specific areas in which it fails to comply and opine as to who has the duty to ensure the laws are fully and properly discharged, and the manner in which that duty ought to be discharged. Thanking you in advance for your consideration in this matter, I am,

Sincerely,



Tom Davis

State Senator for District 46

