



State of South Carolina Office of the Inspector General

December 11, 2020

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The Honorable Henry McMaster
Governor of South Carolina
1201 Pendleton Street
Columbia, SC 29201

The Honorable Richard A. Harpootlian
Senator – District 20
602 Gressette Building
Columbia, South Carolina 29201

RE: Summary of the State Inspector General's review of transparency and accountability in earmark funding and the impact on Executive Branch agencies for Fiscal Years 2018-19 and 2019-20

Dear Governor McMaster and Senator Harpootlian:

The South Carolina Office of the State Inspector General (SIG) conducted a review of the use of Executive Branch agencies to distribute earmark funding to non-governmental organizations, regardless of whether the recipient was a non-profit, charity, or private corporation. The SIG conducted this review at the request of the Office of the Governor and by letter from South Carolina Senator Richard A. Harpootlian, dated 1/9/2020.

The SIG noted the requests for this review contained no allegation of wrongdoing within any Executive Branch (EB) agency (cabinet or non-cabinet) or by an EB employee.

The purpose of this letter is to provide the results of the SIG's limited review of transparency and accountability in earmark appropriations and their impact on EB agencies for fiscal years (FY) 2018-19 and 2019-20.

SIG Authority and Jurisdiction

South Carolina Code Laws §1-6-10, et seq., limits the SIG's jurisdiction and authority to conduct investigations, reviews, and audits to the executive branch of state government. The SIG regularly receives complaints alleging fraud, waste, abuse, mismanagement, and misconduct across all aspects of government (state, county, and municipal), as well as private businesses. The SIG's authority to investigate these matters is limited to state agencies within the executive branch of government.

Scope and Objectives

The scope and objectives of this review were to determine the manner in which the EB agencies complied with the requirements set forth in Executive Order 2016-16 ([EO 2016-16](#)), [Proviso 117.21](#), and the associated provisos in the appropriations acts for FYs 2018-19 and 2019-20.

The SIG did not conduct a review of the legislature's appropriation process and allocation of earmark funding as this falls outside of the SIG's authority and jurisdiction. Additionally, the SIG did not conduct an audit of the non-governmental organizations' ("organizations") expenditures of earmark funding. Proviso 117.21 provides for the State Auditor to review and audit "the financial structure and activities of each organization receiving contributions and make a report to the General Assembly of such review and/or audit, when requested to do so by the State Fiscal Accountability Authority."

Methodology

The SIG's methodology included a review of each EB agency's Hidden Earmark Survey reported to the Executive Budget Office (EBO), SC Department of Administration, as well as the supporting documentation for these surveys. The SIG communicated directly with the agencies when supplemental documentation or clarification was required. Additionally, the SIG reviewed the associated provisos and appropriation acts for FYs 2018-19 and 2019-20 available to the public.

Executive Summary

The SIG identified three groups with equities in addressing transparency and accountability in earmark funding: the General Assembly as the appropriator, the EB agencies as the earmark pass-through vehicles, and the organizations that received the earmark distributions.

Given the fact the appropriations process is a function of the legislative branch of state government, the SIG did not review this process. This included the identification of sponsors of earmark funding for non-governmental organizations, private businesses, charities, non-profit groups, as well as counties and municipalities.

While EB agencies participate in the budget process through legislative hearings, the legislative branch is the sole authority over the appropriations process and the enactment of the appropriation laws and provisos. The EB agencies as pass-through vehicles for earmark distribution, and to a limited extent the EB agencies' receipt of documentation from the organizations, fall within the SIG's investigative authority for purposes of this review. The SIG conducted its analysis of this documentation.

Accountability Framework

Executive Order 2016-16 and Proviso 117.21 set forth the accountability framework for EB agencies and earmark beneficiaries. Executive Order 2016-16, issued on 7/6/2016, established specific criteria for EB agencies, in particular cabinet agencies, to follow in the distribution of these funds.

Executive Order 2016-16 required the EBO to coordinate with all state agencies to prepare a public report by November 1 with specific information regarding "all grants and contracts awarded with funds

appropriated through a hidden earmark” to these organizations. The EBO developed a [Hidden Earmark Survey](#) that captured this information and posted these surveys to its website for transparency purposes.

Proviso 117.21, also known as the “*Organizations Receiving State Appropriations Report*,” required the organization receiving state appropriations to provide an accounting to the state agency on how the funds would be spent, the goals to be accomplished, the measures to evaluate success, an adopted budget, and the organization’s most recent operating financial statement by November 1 of the fiscal year in which the funds were received. The proviso prohibited the organization from expending the funds until the required financial statements were filed with the appropriate state agency. Additionally, the proviso required the organization to provide a report to the state agency by June 30 that included an accounting of how the funds were spent and the outcome measures used to determine the success of the stated goals. Furthermore, the proviso required the state agencies to forward the organizations’ end of year expenditure reports to the chairs of the Senate Finance Committee and House Ways & Means Committee.

Analysis of Earmark Distributions

The SIG review determined sixteen EB agencies made 208 earmark distributions to 187 organizations totaling \$43,223,525 for the two-year period of FY 2018-19 and FY 2019-20. The EB agencies’ distributions of earmark funds complied with the associated provisos and the appropriation acts for the respective fiscal years.¹

The breakdown of recipient organizations is set forth in the table below.

FY 2018-19			FY 2019-20			Two-Year Distribution Totals
Number	Organization Type	Earmark Distribution	Number	Organization Type	Earmark Distribution	
27	Public	\$8,417,000	54	Public	\$15,792,829	\$24,209,829
34	Non-Profit	\$7,689,985	70	Non-Profit	\$11,123,711	\$18,813,696
1	Private	\$100,000	1	Private	\$100,000	\$200,000
*62	Totals	\$16,206,985	*125	Totals	\$27,016,540	\$43,223,525

*The gross total of 187 recipient organizations includes 27 recipients that received appropriations in both FYs.

The SIG identified 27 recipient organizations that received earmark distributions totaling \$15,724,141 repeated across the two-year period.² Additionally, the SIG identified 14 recipient organizations that received multiple earmark distributions within the same fiscal year through multiple EB agencies totaling \$11,187,115.

¹ The allocation of earmark funding between EB agencies for the benefit of another EB agency through the appropriations process is not included in the 208 distribution totals.

² The net number of individual recipient organizations is 160, which only counts the 27 organizations that received appropriations in both FYs one time. (Formula: 187 – 27 = 160)

Earmark Recipients' Non-Compliance with Proviso 117.21

Proviso 117.21 required the organizations receiving state funding to account for their expenditures by reporting this information to the EB agencies by June 30 each fiscal year. Additionally, Proviso 117.21 required the EB agencies to forward this information to the Senate Finance and House Ways & Means committees.

For the seven cabinet agencies, the SIG determined only 13 recipient organizations provided a year-end accounting over the two-year period. In fact, none of the recipients (0%) provided an expenditure report to the seven cabinet agencies for FY 2018-19.

For the nine non-cabinet agencies, only 30 recipient organizations reported on their expenditure of earmark funds for the two-year period. Overall, for the sixteen EB agencies only 43 of the 160 individual organizations³ (27%) reported on their earmark expenditures to the EB agencies for the two-year period. Proviso 117.21 did not include a mechanism for the EB agencies to ensure the recipient organizations provided their reports.

The SIG analysis of the earmark distributions determined the EB agencies complied with the associated provisos, appropriation acts, and EO 2016-16. However, the failure to provide a year-end expenditure report by 73% of the recipient organizations hindered the EB agencies' ability to provide the accountability to the Senate Finance and House Ways & Means committees as set forth in Proviso 117.21.

Broad Interpretation of Reportable Information – EO 2016-16

The SIG's review of the EB agencies' survey responses identified minimal errors. Follow-up requests for clarification and interviews conducted of agency heads and financial officers identified a diverse interpretation of what constituted reportable information pursuant to EO 2016-16.

The common understanding among the EB agencies was to report any appropriation not requested in the agency's budget submission to the EBO, regardless of the final recipient. However, several EB agencies interpreted this differently when non-budgeted appropriations were distributed to one agency for the benefit of multiple EB agencies for various state government operations.

The largest and best example of this involved South Carolina Education Television (SCETV), a non-cabinet EB agency. For FYs 2018-19 and 2019-20, SCETV received a total of \$73,912,762 in non-budgeted appropriations; however, this funding was derived from other EB agencies' budgets with the associated provisos.

The SIG's analysis and interview with the SCETV executive director and chief financial officer determined these funds remained under the control of SCETV for the restricted application and support of the Division of Technology Operations (Department of Administration), SC Department of Education, SC Criminal Justice Academy (SCCJA), and the transparency broadcasts of the Legislative Branch (public affairs and hearings).

³ See footnote #2 for the net total explanation.

The SCETV reported these restricted allocations pursuant to EO 2016-16 and included the associated provisos for the beneficiary agencies, even though no distribution of funds occurred. The SCCJA, however, submitted a Hidden Earmark Survey for FY 2019-20 to account for the \$140,000 appropriated to SCETV on its behalf; whereas, none of the other EB agencies whose funds were allocated to SCETV submitted a Hidden Earmark Survey with their corresponding proviso.

A second example related to the set-aside of \$105,000 for the renovation of the chapel at the Perry Correctional Institution (SC Department of Corrections) by the SC Department of Public Safety from the \$3,360,000 in local law enforcement grants in FY 2019-20. Both agencies reported this as an earmark distribution on their individual Hidden Earmark Survey.

The SIG also determined certain EB agencies have specific exemptions to the procurement code and statutory authority to issue non-competitive contracts to non-profits and other organizations to support services delivered to South Carolinians on behalf of the agencies (e.g., the Departments of Mental Health, Health and Human Services, and Social Services). In these instances, some agencies reported the earmark distribution while others did not.

Summary

The existing accountability framework provides a means of transparency and stewardship regarding the use of the funds by recipient organizations. The failure by 73% of the recipient organizations to provide a year-end expenditure report and the EB agencies' inability to enforce the submission of this report undermined the strength of this accountability framework.

It is incumbent upon each recipient organization to provide a year-end expenditure report to each EB agency in order for each EB agency to comply with Proviso 117.21. This is an area in Proviso 117.21 that should be considered for revision to ensure the Senate Finance and House Ways & Means committees receive the necessary information from the recipient organizations.

The sixteen EB agencies (7 cabinet & 9 non-cabinet) complied with EO 2016-16, Proviso 117.21, and the associated provisos of the appropriation acts for the respective fiscal years.

In closing, the SIG extends its gratitude to each of the sixteen EB agencies and the EBO for the assistance provided to the SIG during this review. The SIG is available to answer any questions you may have regarding this review.

Sincerely,



Brian D. Lamkin
State Inspector General

Cc: The Honorable Hugh K. Leatherman, Sr., Chairman of the Senate Finance Committee
The Honorable G. Murrell Smith, Jr., Chairman of the House Ways and Means Committee