



ALAN WILSON  
ATTORNEY GENERAL

June 15, 2026

The Honorable Sean P. Duffy  
Secretary  
United States Department of Transportation  
1200 New Jersey Ave., SE  
Washington, DC 20590

The Honorable Sean McMaster  
Administrator  
Federal Highway Administration  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Re: Act No. 244, 2026 S.C. Acts

Dear Mr. Duffy and Mr. McMaster

You have requested that this Office provide a letter confirming that the State has waived sovereign immunity and accepted exclusive Federal court jurisdiction with respect to compliance, discharge, and enforcement of an assignment under the National Environmental Policy Act (NEPA) Assignment Program.

Act No. 244, 2026 S.C. Acts, the title to which references NEPA, provides as follows as to waiver of immunity and consent to federal court jurisdiction under that program:

Section 57-3-790. (A) The State waives its immunity under the 11th Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of the department's compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 U.S.C. Sections 326 and 327. The waiver of immunity under this section is valid only if:

- (1) the Secretary of Transportation executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. Sections 326(c) and 327(c);
- (2) before execution of the memorandum of understanding under subsection (A), the South Carolina Attorney General has issued an opinion letter to the Secretary of Transportation and the administrator of the Federal Highway Administration that the memorandum of understanding and the waiver of immunity are valid and binding upon the State;
- (3) the act or omission that is the subject of the lawsuit arises out of or relates to compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. Sections 326 and 327; and
- (4) the memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

The Office of the Attorney General has determined that the State of South Carolina has waived its immunity from suit and accepted the jurisdiction of the federal courts under the terms of Act 244 provided that all of the above conditions are met under that statute.<sup>1</sup>

Sincerely,



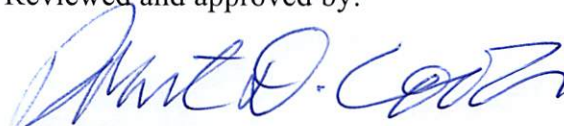
J. Emory Smith, Jr.  
General Counsel

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<sup>1</sup> “The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.” SC. Const. art. X, §10. The Appellate Courts have not questioned the authority of the General Assembly to waive sovereign immunity by statute. *See, eg, Murphy v. Richland Mem’l Hosp.*, 317 S.C. 560, 563–64, 455 S.E.2d 688, 690 (1995) (“In enacting such a limited waiver of immunity, it appears to us rational for the state to limit actions to those instances when the governmental entity is given reasonably early notice of the claim.”); *Hodges v. Rainey*, 341 S.C. 79, 92, 533 S.E.2d 578, 585 (2000) (“the legislature passed the Tort Claims Act, which waived sovereign immunity under certain circumstances.”); *Thompson v. Killian*, 447 S.C. 177, 194, 924 S.E.2d 606, 615 (2025), reh’g denied (Jan. 16, 2026) (“an example of the General Assembly using a clear and widely understood legal term to waive sovereign immunity only for contract claims in a statute.”).

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Reviewed and approved by:



Robert D. Cook  
Solicitor General Emeritus

cc: Mr. Jermaine R. Hannon, Division Administrator, Federal Highway Administration  
The Honorable Justin P. Powell, South Carolina Secretary of Transportation  
Ms. Barbara M. Wessinger, Chief Counsel, South Carolina Department of Transportation