

STATE OF NORTH CAROLINA

COUNTY OF WAKE

HOKE COUNTY BOARD OF
EDUCATION, et al.,

Plaintiffs,

and

CHARLOTTE-MECKLENBURG BOARD
OF EDUCATION,

Plaintiff-Intervenor,

and

RAFAEL PENN, et al.,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA and the
STATE BOARD OF EDUCATION,

Defendants,

and

CHARLOTTE-MECKLENBURG BOARD
OF EDUCATION,

Realigned Defendant,

and

PHILIP E. BERGER, in his official capacity
as President Pro Tempore of the North
Carolina Senate, and TIMOTHY K. MOORE,
in his official capacity as Speaker of the
North Carolina House of Representatives,

Intervenor-Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95-CVS-1158

AFFIDAVIT OF MARK TROGDON

I, Mark Trogdon, after being duly sworn, aver as follows:

1. I am the Director of Fiscal Research for the Fiscal Research Division (“FRD”), a nonpartisan staff division of the North Carolina General Assembly.

2. I am over 18 years of age and of sound mind and am competent to testify to the matters discussed in this Affidavit, and the statements contained in this Affidavit are based upon my personal knowledge.

3. I hold a Masters of Public Administration, Public Policy Analysis, from the University of North Carolina at Chapel Hill and a Bachelor of Arts in Economics from Guilford College.

4. I have over 27 years of experience serving with FRD. I joined FRD in 1995 as a Fiscal Analyst, and was later promoted to Senior, and then Principal, Fiscal Analyst. In August 2011, I was appointed Acting Director of FRD, and then Director in June 2012. Prior to joining FRD, I served as a fiscal analyst with the Maryland legislature.

The Fiscal Research Division

5. FRD was established in 1971 to provide nonpartisan fiscal expertise and analysis concerning the State’s finances and budget to the General Assembly’s elected members. FRD serves as part of the General Assembly’s nonpartisan, central staff and, in such capacity, provides neutral, fact-based research and analysis to all members of the General Assembly regardless of the party to which they belong. As director, I am responsible for overseeing and directing the more than 30 analysts and staff that serve within FRD.

6. FRD’s powers and duties are set forth in Article 7A, Chapter 120, of the General Statutes. *See* N.C. Gen. Stat. § 120-36.1, *et seq.* These include (i) analyzing the receipts and

expenditures of State departments, agencies, and institutions; (ii) evaluating requests and recommendations for appropriations to those departments, agencies, and institutions through the State budget; and (iii) reviewing and evaluating the compliance of State departments, agencies, and institutions with the legislative directions contained in the State budget. *See* N.C. Gen. Stat 120-36.3.

7. During the legislative session, FRD's fiscal staff primarily serves as staff to the House and Senate Finance and Appropriations Committees as well as their subcommittees. This includes assisting the committees' elected members in (i) developing a balanced State budget; (ii) evaluating the fiscal impact of proposed legislation; (iii) projecting State revenue through economic analysis; and (iv) developing legislation (with the assistance of central staff legal divisions in the Legislative Drafting (Bill Drafting) and Legislative Analysis Divisions) to enact members' desired budget and tax directives into law.

8. When the General Assembly is out of session, fiscal staff monitor the Executive Branch's compliance with the enacted budget and other legislative initiatives; track State spending throughout the fiscal year; follow major federal policy issues that may affect the future fiscal condition of the State; and provide staff support to non-session, interim, and other oversight and study committees that prepare recommendations for the General Assembly's future consideration.

The Legislative Budget Process

9. In North Carolina, the budget process normally occurs on a two-year cycle that corresponds with the two-year term of each General Assembly. In odd-numbered years, when the General Assembly holds its long session, it typically develops and adopts a current operations

appropriations act¹ that establishes a budget for the next two fiscal years, known as a biennium. In even-numbered years, when the General Assembly holds its short session, it typically passes one or more appropriations bills that make revisions to the budget for the second year. In addition to these primary appropriations acts, the General Assembly may also adopt other acts that make or modify appropriations covering only a portion of the State budget.

10. North Carolina's fiscal year starts on July 1 and ends on the following June 30.

11. The process for adopting the State budget and making appropriations from the State treasury are set out in the State Constitution as well as the State Budget Act. N.C. Gen. Stat. §143C-1-1, *et seq.*

12. The State Constitution provides that the Governor "shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State" for the ensuing fiscal year, *see* N.C. CONST. art. III, § 5(3). The Constitution also provides that "[t]he budget as enacted by the General Assembly shall be administered by the Governor." *Id.*

13. Article V, section 7, of the State Constitution provides that "No money shall be drawn from the State treasury but in consequence of appropriations made by law" Thus, while the Governor has responsibility for preparing a proposed budget and administering the budget enacted by the General Assembly, no money can be drawn from the State treasury until it has been appropriated by the General Assembly through a duly enacted appropriations bill.

¹ The State Budget Act defines a "Current Operations Appropriations Act" as "[a]n act of the General Assembly estimating revenue availability for and appropriating money for the current operations and capital improvement needs of the State government during one or more budget years." N.C. Gen. Stat. § 143C-1-1(d)(9). The act defines the "Budget" as "a plan to provide and spend money for specified programs, functions, activities, or objects during a fiscal year." *Id.* § 143C-1-1(d)(3).

14. The House and Senate alternate which chamber initiates the budget process each cycle. For the FY 2021-22 and 2022-23 biennium, the budget process began with the Senate.

15. Pursuant to General Statute § 143C-3-5(a), the General Assembly passes a joint resolution at the beginning of each budget cycle inviting the Governor to present a recommended budget. The Chairs of the Appropriations Committees for each chamber then introduce an appropriations bill reflecting the Governor's proposed budget in their respective chamber.

16. In addition to the Governor's proposed budget, members from the chamber initiating the budget typically introduce their own budget proposal in the form of an appropriations bill, which sets out the available revenues and appropriations to each State agency and department. That appropriations bill typically serves as the legislative vehicle for the adoption of a comprehensive State budget.

17. Although the General Assembly typically adopts a comprehensive budget on a biennial basis, appropriations are made for specific fiscal years. Accordingly, unless otherwise provided by law, an appropriation serves only as authorization for an agency or department to spend money in a single fiscal year.

18. When the fiscal year ends, unspent appropriations revert to the fund from which the appropriation is made, and the unspent net General Fund appropriations remain available for appropriation in the next year's budget. The primary exceptions to this rule are moneys that have been appropriated for capital improvement or information technology projects, *see* N.C. Gen. Stat. § 143C-1-2(b).

Revenue Forecasts and Availability Statements

19. The State Constitution requires the State to maintain a balanced budget, N.C. CONST. art. III, § 5(3), and prohibits the State from engaging in deficit spending during any fiscal

year. *Id.* (“The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State treasury at the beginning of the period.”)

20. Because the State must have a balanced budget, the budget process typically begins each year with the Consensus Revenue Forecast, which is an estimate of the anticipated taxes, fees and other money the State is expected to receive in the General Fund and thus will be available to be appropriated during the fiscal year. The Consensus Revenue Forecast is prepared jointly by economists from the Office of State Budget and Management (“OSBM”), which is an Executive Branch agency, and FRD, which is an agency of the Legislative Branch. The Consensus Revenue Forecast provides a common starting point for the Governor and General Assembly as they prepare their respective budget proposals.

21. In order to prepare the Consensus Revenue Forecast, economists with FRD and OSBM must analyze the economic conditions in the State to project the amount of tax and other revenue the State is anticipated to receive during the fiscal year. As with any economic forecast, this requires consideration of numerous variables, including economic conditions and trends in the State, historical relationships between the State and the national economy, the projected impact of recent changes to the State tax code, changes to federal law and regulation, and changes to other laws that may affect other revenue the State receives over the course of the year. Because the forecast is only a projection, the actual revenues the State receives during the year may vary significantly from the figures provided in the forecast.

22. During the legislative biennium, FRD and OSBM typically publish a minimum of three Consensus Revenue Forecasts—one at the outset of the legislative budget process, a second after the April tax filing deadline to account for actual revenue collections, and a third typically

issued in May of the short session, to be used when making revisions to the budget in the second year of the biennium. Additional Consensus Revenue Forecasts may be issued depending on further changes in economic conditions and the length of the legislative session.

23. The State Budget Act requires that the General Assembly include an availability statement for the General Fund, Highway Fund, and Highway Trust Fund, as part of each appropriations act that it adopts. *See* N.C. Gen. Stat. § 143C-5-3. The purpose of the availability statement is to inform the General Assembly of the total amount of money available within a fund for appropriation in a given fiscal year, including the unreserved fund balance and all revenue and receipts. *See* N.C. Gen. Stat. § 143C-1-1(d)(1b). The Consensus Revenue Forecast is a primary component of the availability statement. The Governor's proposed budget is also required to contain an availability statement. *See* N.C. Gen. Stat. § 143C-3-5(e).

24. FRD updates the availability statement to ensure that legislators have up-to-date figures regarding the amount of revenue that is available for further appropriations. These updates may occur as a result of an updated Consensus Revenue Forecast, legislative changes to tax and non-tax revenue, and other enacted legislation affecting the budget. These updates are typically reflected in FRD reports as well as availability statements that are incorporated into appropriations acts and which show the balance of unappropriated, unreserved moneys that the State is anticipated to have at the end of the fiscal year.

25. FRD also publishes other briefs and reports on a periodic basis, including summaries of major budget and fiscal developments. **Exhibit A**, attached hereto, is an example of one such Fiscal Brief, dated January 20, 2022. It provides a high-level summary of major Budget and Fiscal Policy Developments during the course of the 2021 Legislative Session.

2021 Appropriations Act

26. On November 18, 2021, Governor Cooper signed into law the Current Operations Appropriations Act of 2021, 2021 N.C. Sess. L. 180 (the “2021 Appropriations Act”). The act was the product of months of negotiations between the House, Senate, and Executive Branch.

27. The 2021 Appropriations Act was first filed in the General Assembly on February 17, 2021, as Senate Bill 105. After proceeding through the Senate Appropriations Committee and subcommittees, the bill was approved by the Senate on June 25, 2021. It then proceeded to the House and went through the committee process in that chamber. On August 12, 2021, the House approved its version of the budget, and the bill was referred to a Conference Committee to resolve the differences between the House and Senate versions. On November 15, 2021, the Conference Committee reported a Conference Report reflecting its compromise budget. The Senate approved the Conference Report on November 17, 2021, and the House approved it on November 18, 2021. Governor Cooper then signed the 2021 Appropriations Act into law on November 18, 2021.

28. The 2021 Appropriations Act established a comprehensive, balanced budget for FY 2021-22 and 2022-23. The act included a total net General Fund appropriation of \$25.9 billion for FY 2021-22 and approximately \$27 billion for FY 2022-23. *See* 2021 N.C. Sess. L. 180, § 2.1(a). The 2021 Appropriations Act was subsequently modified through the enactment of two technical corrections bills, one of which appropriated additional funding. *See* 2021 N.C. Sess. L. 189; 2022 N.C. Sess. L. 6.

Determining Available, Unappropriated, and Unreserved Revenue in the General Fund

29. I have been advised that the Court’s November 10, 2021, order directed OSBM, the Treasurer, and Controller, to transfer the funds at issue from the “unappropriated balance within the General Fund.” (November 10 Order at p. 19.) I understand that the Court has requested that

the parties provide information regarding the “amount of funds remaining in the General Fund currently, both in gross and net of appropriations in the 2021 Appropriations Act.” (March 25 Order at p. 2). In order to properly address that question, it is important to first explain several concepts.

30. First, the General Fund is defined by statute. The State Budget Act requires the Controller to account for moneys in one of several types of funds listed in the act. N.C. Gen. Stat. § 143C-1-3(a). These include, among other things, (i) *Capital Project Funds*, which account for moneys to be used for capital projects, as well as capital outlays financed through the issuance of public bonds; (ii) *Special Revenue Funds*, which account for moneys that come from specific revenue sources, other than debt service or major capital projects, and are legally restricted such that they can only be spent for specified purposes (such as the Highway Fund or the Highway Trust Fund); (iii) *Enterprise Funds*, which account for activities funded by fees paid by external users for goods or services (such as public utilities or the North Carolina State Lottery Fund); (iv) *Custodial Funds*, which are used to account for moneys the State holds purely in a custodial capacity on behalf of others; (v) *Investment Trust Funds*; (vi) *Pension and Employee Benefit Funds*; and (vii) the *General Fund*, which is used to account for revenues used to fund the State’s general operating expenses. *Id.*

31. The moneys in the General Fund are used to support the State’s general, day-to-day operating expenses. The General Fund includes all cash inflows and outflows that are not otherwise associated with a special purpose fund. *See* N.C. Gen. Stat. § 143C-1-3(3)(a).

32. The moneys in the General Fund comprise tax and non-tax revenues and departmental receipts. The General Fund also includes interest earned on moneys held by the

State, unless otherwise directed by law to accrue to a different fund. *See* N.C. Gen. Stat. § 143C-1-4.

33. In addition to making appropriations for the State's current operating expenses, the General Assembly may also transfer and appropriate net General Fund revenue to a number of reserves that have been established under the State Budget Act. These include the Savings Reserve, N.C. Gen. Stat. § 143C-4-2; the State Capital and Infrastructure Fund, N.C. Gen. Stat. § 143C-4-3.1; the Contingency and Emergency Fund, N.C. Gen. Stat. § 143C-4-4; and the Pay Plan Reserve, N.C. Gen. Stat. § 143C-4-9, among others.

34. In the case of several of these reserves, the General Assembly has authorized transfers to occur automatically each year by operation of statute. For instance, the State Budget Act requires that the Governor's proposed budget, and each current operations appropriations act passed by the General Assembly, appropriate fifteen percent (15%) of the estimated growth in State tax revenues for the fiscal year to the Savings Reserve until the balance of the reserve reaches a statutorily-reflected level. *See* N.C. Gen. Stat. §§ 143C-3-5(b)(6); 143C-4-2(d).² At the end of the fiscal year, the Controller is required to reconcile the amount to be transferred to the Savings Reserve based on actual tax-revenue growth. *See* N.C. Gen. Stat. § 143C-4-2(e).

35. Pursuant to the State Budget Act, moneys that the General Assembly appropriates into a reserve "may be expended only for the purpose or purposes for which the reserve was established." *See* N.C. Gen. Stat. § 143C-4-8. (Use of funds appropriated to a reserve).

² Tax law changes enacted during the 2021 legislative session are projected to reduce State tax revenue each year of the biennium such that there is not forecasted growth in net General Fund tax revenues year over year. As a result, there are not expected to be any statutorily-required transfers to the Savings Reserve during the FY 2021-22, 2022-23 biennium under G.S 143C-4-2. Recognizing this situation, the General Assembly directed the additional transfers of \$1.1 billion from the General Fund to the Savings Reserve each year.

36. The General Fund includes both appropriated and unappropriated moneys. Moneys are “appropriated” when the General Assembly enacts a law authorizing a withdrawal of money from the State treasury. Moneys that have been appropriated or transferred to a reserve are referred to as “reserved” funds. Moneys that have not been appropriated or reserved are referred to as the “unappropriated balance remaining” on the availability statement and remain available for future appropriation.

*Available Unappropriated, Unreserved Revenues
Following Passage of the 2021 Appropriations Act*

37. The availability statement in the 2021 Appropriations Act indicates an anticipated unappropriated, unreserved fund balance of \$2,487,245,242 at the conclusion of FY 2021-22. That does not imply, however, that this money can be spent without causing a budget shortfall in the next fiscal year. *See* 2021 N.C. Sess. L. 180, § 2.2(a). The 2021 Appropriations Act anticipates that the unappropriated balance remaining at the conclusion of FY 2021-22 will remain available to fund appropriations and reservations in FY 2022-23. The act thus shows an unappropriated fund balance of \$128,208,446 would remain in the General Fund at the end of FY 2022-23 once all appropriations have been made. *Id.* Subsequently, 2021 N.C. Sess. L. 189 appropriated an additional \$106,750,000 in FY 2021-22 to support a high-yield economic development project, reducing the unappropriated fund balance to \$21,458,446 at that time. *See* 2021 N.C. Sess. L. 189 § 4.4A.

38. In order to provide the Court with the most up-to-date figures, I have also attached an availability statement showing current figures as of March 28, 2022, to this affidavit as **Exhibit B**. The availability statement updates the amount stated in line 3 to reflect the actual amount of FY 2020-21 overcollections reported by OSBM and the Controller. It also incorporates the modifications to the State budget made as part of the two subsequent technical corrections bills.

39. As shown in the updated availability statement, the State is currently projected to have an unappropriated, unreserved balance of \$2,359,141,444 remaining at the conclusion of FY 2021-22. Once again, this does not imply that this money can be spent without causing a budget shortfall in the next fiscal year. The biennial budget uses the unappropriated fund balance remaining at the end of FY 2021-22 to support appropriations in FY 2022-23 and serves as the starting point to fund appropriations for that year. The State is currently projected to have an unappropriated balance of \$104,638 at the end of FY 2022-23.

40. I have reviewed Kristin Walker's affidavit filed on April 4, 2022, by the Department of Justice. I concur that the fiscal amounts cited in Sections 8 and 9 of Exhibit A are factual. However, due to subsequently enacted legislation, the numbers cited in Section 8 of Exhibit A would not currently be accurate for determining the amount of funds available for future appropriations.

41. First, Ms. Walker states that the 2021 Appropriations Act "anticipates a net of \$2.38 billion unappropriated and unreserved [funds] at the end of Fiscal Year 2021-22." (Walker Aff. ¶ 8). I concur that this is an accurate statement about the budget. However, the 2021 Appropriations Act anticipates that the fund balance left at the end of FY 2021-22 will remain available to fund FY 2022-23 appropriations. As a result, there is not available unreserved General Fund moneys to make the transfer anticipated by the Court's November 10, 2021, Order. Ms. Walker also states that the State is projected to have an unappropriated, unreserved balance of approximately \$22 million for FY 2022-23. That figure appears to come from the availability statement published in 2021 N.C. Sess. L. 189, which was adopted on December 6, 2021. The updated availability statement I have provided with this affidavit, which is current as of March 28, 2022, accounts for all legislation impacting the budget (2021 N.C. Sess. L. 180, 2021 N.C. Sess.

L.189, and 2022 N.C. Sess. L. 6), and projects that the State will have an unappropriated, unreserved balance of \$104,638 at the conclusion of FY 2022-23. Based on the current availability, this does not leave enough available, unappropriated, unreserved revenue to transfer the amounts equivalent to those specified in the November 10, 2021, Order.

42. Second, Ms. Walker states that “in each fiscal year the Budget reserves \$1.134 billion to the State’s Savings Reserve, which would bring the total of unappropriated funds in the Savings Reserve to \$4.25 billion.” (Walker Aff. ¶ 8). I concur in the amounts noted in Ms. Walker’s affidavit. However, I would clarify that there will be \$4.25 billion in the Savings Reserve after the FY 2022-23 legislatively-mandated transfer and absent other legislative action. The amount of money held in reserve, however, is not available for transfer without an act of the General Assembly.

43. The statute that establishes the Savings Reserve provides that money in that reserve can only be appropriated for specific purposes and only by a vote of a majority (or, in certain cases super-majority) of the membership of the Senate and House of Representatives present. N.C. Gen. Stat. §§ 143C-4-2(b) and (b1).

44. Finally, Ms. Walker cites the Controller’s cash reports to state that “[a]s of March 25, 2022, the [State’s] gross cash balance was \$9.84 billion and the net unreserved cash balance was \$4.79 billion.” (Walker Aff. ¶ 9). I concur in the amounts stated in Section 9 of Ms. Walker’s affidavit. However, the State’s daily cash balance does not reflect the amount of funds available for appropriation.

45. The Cash Reports issued by the Controller provide a snapshot of the State’s accounts on a given day. The State’s daily cash balance can fluctuate significantly over even a short period of time based on, among other things, when the State pays certain expenses (such as

payroll) and variations in the tax revenues the State receives from month-to-month. For instance, while the Cash Report attached to Ms. Walker's affidavit shows that the State had an unreserved cash balance of approximately \$4.8 billion on Friday, March 25, 2022, the next weekly cash report shows that the State had an unreserved cash balance of \$3.8 billion on Friday, April 1, 2022. (*See* Cash Report for week ended April 1, 2022, attached hereto as **Exhibit C**).

46. Moreover, the numbers provided in the Cash Reports do not take into account whether money has been appropriated. Ms. Walker cites two figures in her affidavit. The first is what she refers to as the "gross cash balance." (Walker Aff. ¶ 9). That figure, however, includes cash that is reserved and therefore is not available to support appropriations for general expenditures.³ Second, Ms. Walker states that the State had a "net unreserved cash balance of \$4.79 billion" as of March 25, 2022. (*Id.*) That figure, however, does not show how much money has or has not been appropriated under the budget. Instead, the "unreserved cash balance" reflects the amount of cash the State has on hand to pay appropriated expenses.⁴

47. For all of these reasons, the Controller's Cash Reports are not used to determine the amount available for further appropriation during the fiscal year.

Items Funded in the Comprehensive Remedial Plan

48. In addition to the items discussed above, I understand that the Court has requested the parties provide information regarding, "[t]he amount of funds appropriated in the 2021

³ The "Glossary" to the Controller's Cash Reports, states that "Reserved Cash" "[d]esignates the portion of cash which has been set aside by the legislature for a specific purpose and is generally *unavailable* to finance appropriation expenditures." *See* "Glossary for Cash Watch", available at, <https://www.osc.nc.gov/news/press-releases/glossary-cash-watch> (last visited April 6, 2022).

⁴ The Glossary defines "unreserved cash" as "cash available to finance appropriation expenditures." *Id.*

Appropriations Act . . . that directly fund the various programs and initiatives called for in the Comprehensive Remedial Plan.” (March 25 Order, p. 2).

49. In accordance with the Court’s request, I, with the assistance of FRD’s nonpartisan fiscal staff under my supervision, prepared the chart attached hereto as **Exhibit D**, which compares the funding appropriated for FY 2021-22 and 2022-23 for each action item to the amounts requested for Years 2 and 3 in the Comprehensive Remedial Plan (“CRP”) submitted by the Plaintiffs and the Executive Branch.

50. Based, on our analysis, we agree with OSBM’s conclusions regarding the amounts of funding provided for many of the CRP’s action items. However, there are several instances where our numbers differ because (i) OSBM did not take into account funding that was made available for certain action items, (ii) it recorded revenue that has been made available on a multi-year basis in years other than when appropriated, and (iii) it included items that we did not consider within the scope of the programs or initiatives contemplated in the CRP and/or effected in this budget. The places where our analysis differs from OSBM’s submission are follows:

- a. ESSER III Funds. The enacted State budget appropriates \$65,442,000 from the federal Elementary and Secondary School Emergency Relief (ESSER) III Fund for items included in the CRP. ESSER III was part of the federal government’s COVID-relief program under the American Rescue Plan Act.⁵ As this money has been made available through a federal grant, and appropriated by the General Assembly, the full \$65,442,000 is available to the NC Department of Public Instruction (“NCDPI”) starting in FY 2021-22, and will remain available to the department through September

⁵ American Rescue Plan Act of 2021 (“ARPA”), Public Law 117-2, 50 Stat. 664 (March 11, 2021).

30, 2024. For this reason, we listed the full amount of the appropriations (\$65,442,000) in FY 2021-22. OSBM, however, has split the appropriation, listing \$32,721,000 in each fiscal year, even though the full amount is available immediately. This difference appears in the following lines of Exhibit D:

- i. Line 18 – National Board Certification
- ii. Line 27 – Professional Development (Science of Reading)
- iii. Line 30 – Instructional Support (school psychologist recruitment program)
- iv. Line 39 – District and Regional Support
- v. Line 61 – College Advising Corps

b. Items Whose Timing Differs from the CRP. The enacted State budget appropriates recurring General Fund money in the amount of \$59,750,575 in FY 2021-22 and \$174,701,150 in FY 2022-23 on items that appear in the CRP but are not funded until Year 4 of that plan, the FY 2023-24 fiscal year. This difference appears in the following lines of Exhibit D:

- i. Line 35 – Noninstructional Support
- ii. Line 36 – Classroom Supplies
- iii. Line 37 – Central Office Staff

c. Items Included by FRD but not Included by OSBM. OSBM's calculations assume no money was appropriated to fund three CRP action items that were funded in the enacted budget.

- i. Line 44 (Child Care Subsidy). The request in the CRP for this item was \$10 million in recurring funds for each fiscal year. OSBM's analysis shows a deficit. However, the General Assembly appropriated money from the federal Child

Care and Development Block Grant under ARPA to the NC Department of Health and Human Services (NCDHHS) to provide for child care subsidies, which covers this item. *See* 2021 N.C. Sess. L. 180, § 9L.2.(b)(1)(a). The appropriation requires NCDHHS to spend a minimum of \$206 million from this block grant for this purpose, although it is authorized to spend more, up to a maximum of \$215 million. *Id.* Funds are available to NCDHHS in full starting in FY 2021-22 and will remain available through September 30, 2024.

- ii. Line 52 (Workforce Data System) This item corresponds with section VI.G.ii.1 of the CRP, which calls for the implementation of “a real-time early childhood workforce data system.” However, while not required to use the ARPA Child Care and Development Block Grant for this purpose, the General Assembly appropriated \$50 million of this block grant to NCDHHS in FY 2021-22 to modernize and improve early childhood technology infrastructure. *See* 2021 N.C. Sess. L. 180, § 9L.2.(b)(1)(b). The enacted budget requires that NCDHHS spend at least \$50 million of this block grant for this technology modernization, but they may spend up to a maximum of \$59 million. *Id.* Like with the child care subsidy appropriation discussed above, for accuracy, FRD included only the minimum appropriation required to be spent by NCDHHS and included that amount in FY 2021-22’s calculations since that is when these federal block grant funds are made available.
- iii. Line 59 (CTE Credentials). The enacted State budget appropriates \$400,000 from ESSER for students to receive credentials in the hospitality industry, as contemplated by Section VII.B.iii.2 of the CRP, “[e]xpand funds for credentials

and certifications for Career and Technical Education students.” OSBM has not included these funds in their analysis.

d. Items Included by OSBM but not Included by FRD. OSBM included four items in their analysis that do not appear in FRD’s analysis.

i. Line 27 – Professional development. The enacted budget appropriates \$2.5 million in nonrecurring funds for computer science in FY 2021-22 for several purposes, including for providing training to K-12 teachers. However, the budget does not clearly state which funds are specifically earmarked for training. OSBM has included the entire \$2.5 million in professional development. OSBM has also included in their estimate of professional development funds \$1,411,256 that were appropriated in FY 2021-22 to the North Carolina Center for the Advancement of Teaching (NCCAT). While NCCAT’s mission is to provide professional development, the appropriation does not outline a specific use for these funds.

ii. Line 33 – Teacher salaries. OSBM has included an additional \$305,000 that the enacted budget appropriated in FY 2021-22 and FY 2022-23 for salary increases for teachers at the three residential schools for students who are deaf or blind. As these schools are not referenced in the CRP, we do not include these funds.

iii. Program Enhancement Teachers. Section III.C.ii.1 of the CRP calls for the completion of the “final two years of funding of the enhancement teacher allotment.” The General Assembly appropriated these funds in 2018 N.C. Sess.

L. 2, § 5.(d). As our analysis focuses on funds newly appropriated in the 2021-23 Fiscal Biennium, we did not include these funds.

Total Education Spending

51. The CRP-related appropriations discussed above do not provide the full context with respect to the total amount of education spending appropriated by the enacted budget. **Exhibit E** to this Affidavit lists all K-12 and early education changes the General Assembly made to appropriations to NCDPI and NCDHHS as part of the State budget for the FY 2021-22 and 2022-23 biennium.

52. To highlight just a few of these items, in addition to General Fund net appropriations made for the purposes of funding K-12 education, the State budget includes the following additional appropriations to NCDPI:

- a. \$48,748,522 in FY 2021-22 and \$37,850,910 in FY 2022-23 for school business systems modernization, appropriated from the information technology reserve;
- b. \$70,252,612 in FY 2021-22 and \$78,232,612 in FY 2022-23 for needs-based public school capital projects, appropriated from net revenue generated by the North Carolina Education Lottery, *see* 2021 N.C. Sess. L. 180, § 4.3(a); *see also* N.C. Gen. Stat. § 115C-546.10; and
- c. \$30,000,000 in FY 2021-22 and \$50,000,000 in FY 2022-23 for the Public School Building Repair and Renovations Fund, also derived from the Lottery, *see* 2021 N.C. Sess. L. 180, § 4.3(a); *see also* N.C. Gen. Stat. § 115C-546.15 and .16.

53. An additional \$235,000,000 was transferred from surplus net Lottery revenue to needs-based public school capital projects in accordance with Section 5.3(c) of 2017 N.C. Sess. L.

57.

54. In addition to General Fund revenues, the General Assembly has also appropriated additional funds from federal grants to support early childhood education. These include:

- a. \$247 million from the ARPA Child Care and Development Block Grant in addition to the \$256 million shown in **Exhibit D** and
- b. \$170 million in State Fiscal Recovery Funds:
 - i. \$150 million in lead and asbestos remediation for public school units and child care facilities and
 - ii. \$20 million for start-up and capital grants for NC Pre-K classrooms and child care centers.

Effects of Implementing the November 10, 2021, Order

55. In my experience, there is no precedent for how to implement the November 10, 2021, Order instructing the Treasurer, OSBM, and the Controller to transfer approximately \$1.75 billion from unappropriated revenues in the General Fund to NCDPI, NCDHHS, and the University of North Carolina System to fund Years 2 and 3 of the CRP without an appropriation by the General Assembly and a process to ensure that the budget remains in balance. Even if the amounts in the Order were reduced to reflect those items that have already been funded, implementing the order would still be problematic for some fiscal-related reasons.

56. First, as discussed above, based on the current Consensus Revenue Forecast, as reflected in the most recent availability statement, the State is not anticipated to have sufficient unappropriated, unreserved revenue to fund the items in the November 10, 2021 Order. While the State is currently projected to have an unappropriated fund balance of \$2.39 billion at the end of the FY 2021-22, that money is necessary to fund appropriations in FY 2022-23.

57. Second, the Order directs treasury and budget officials to transfer two years' worth of funding to the specified agencies in one allotment. In the usual process of implementing the State budget, OSBM makes periodic allotments to each department or agency, which the department or agency uses to pay current expenses. Typically, these allotments are made on a quarterly basis. However, they can be made on a monthly, or even shorter, basis if doing so is necessary. This allows OSBM to spread out cash allotments to support appropriations in order to ensure that there is sufficient cash on hand to meet current expenses without causing a possible or potential deficit. Moreover, allotments for appropriations for general operations are normally made only one year at time—not transferred to departments or agencies for multiple years at once.

FURTHER AFFIANT SAYETH NOT.

This the 8th day of April, 2022.



Mark Trogdon

Sworn to and subscribed before
me this 8th day of April, 2022.



Notary Public

My Commission Expires: 12/16/2024



CERTIFICATE OF SERVICE

The undersigned certifies that on April 8, 2022, he electronically filed using the Court's electronic filing system, which will automatically send notification of such filing to the following counsel of record:

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Counsel for Linda Combs

/s/ Matthew F. Tilley

Matthew F. Tilley