



ALAN WILSON  
ATTORNEY GENERAL

May 15, 2019

The Honorable David R. Hiott  
Member  
South Carolina House of Representatives  
District No. 4  
411 Blatt Bldg.  
Columbia, SC 29201

The Honorable James M. Burns  
Member  
South Carolina House of Representatives  
District No. 17  
326B Blatt Bldg.  
Columbia, SC 29201

Dear Representatives Hiott and Burns:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states:

The South Carolina General Assembly passed Joint Resolution S. 1190 (A272, R231 of 2018), which Governor McMaster signed into law on May 17, 2018.

The Joint Resolution states, "The General Assembly hereby directs the Department of Health and Environmental Control to focus the resources of the department's Dams and Reservoirs Safety Program on regulating the state's high and significant hazard dams only and reclassifying dams when the failure or improper operation of a dam will likely result in loss of human life. The joint resolution takes effect upon approval by the Governor."

We would appreciate the Attorney General's office issuing an opinion as to whether Act 272 (S.1190, R231 of 2018) is still the binding and controlling authority for the Department of Health and Environmental Control Dam Safety and Reservoirs Program as it relates to reclassification and regulation of the state's high and significant hazard dams.

#### Law/Analysis

It is this Office's opinion that a court would likely find the Joint Resolution, 2018 Act No. 272, continues to be binding and controlling authority for the South Carolina Department of Health and Environmental Control Dam Safety and Reservoirs Program. The South Carolina Constitution establishes that joint resolutions have the force of law when the following conditions are met:

No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

S.C. Const. art. III, § 18 (emphasis added). This Office's June 17, 1987 opinion to Senator John Courson explained the distinction between joint and concurrent resolutions and why, in South Carolina, the former has the effect of law and the latter does not.

This commentator has described joint resolutions as closely resembling statutes. Sutherland Stat. Const. §§ 29.04 & 29.05 (4th ed. 1984). Distinguishing between joint and concurrent resolutions, this commentator has stated:

Although the terms "joint" and "concurrent" are frequently used synonymously such reference is inaccurate and leads to confusion. In those states which give the joint resolution the effect of law, it must be signed by the governor. This requirement is not imposed with respect to concurrent resolutions, although in some states they, too, must be submitted to the governor "for his approval." Likewise, the greater procedural safeguards and the delays intended to insure more sober judgment in the enacting of joint resolutions do not apply to concurrent resolutions. "In the current practice, concurrent resolutions have been developed as a means of expressing fact, principles, opinions and purposes of the two houses. Joint committees, adjournments and recesses of the Congress are authorized by resolutions in this form."

Sutherland Stat. Const. § 29.06 (4th ed. 1984). Accord, S.C. Atty. Gen. Op., Aug. 6, 1974 ("Although a concurrent resolution, unlike a joint resolution, does not have the force and effect of law, but is, instead, an expression of the sense of the two Houses concurrently, it does, nevertheless, carry great weight.").

Op. S.C. Att'y Gen., 1987 WL 342683, at 5 (June 17, 1987).

The opinion will next review the legislative history regarding the Joint Resolution to determine whether a court would likely find that it meets all the conditions of S.C. Const. art. III, § 18 such that it would have the force of law. The Joint Resolution's legislative history shows that it was introduced in the Senate, amended, read three times on separate days, and approved by a vote of 43-0. See [https://www.scstatehouse.gov/sess122\\_2017-2018/bills/1190.htm](https://www.scstatehouse.gov/sess122_2017-2018/bills/1190.htm). The Joint Resolution was then sent to the House of Representatives, read three times on separate days, and

The Honorable David R. Hiott  
The Honorable James M. Burns  
Page 3  
May 15, 2019

approved by a vote of 101-3. Id. It was ratified on May 14, 2018 and subsequently signed by the Governor on May 17, 2018. Id. This Office is not aware if the additional formalities, such as affixing the Great Seal of the State, were satisfied. However, if these formalities were satisfied, it is this Office's opinion that a court would likely find the Joint Resolution has the force of law and, therefore, would be binding and controlling authority for the South Carolina Department of Health and Environmental Control.

### Conclusion

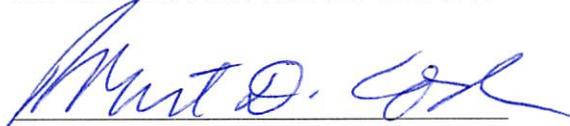
It is this Office's opinion that a court would likely find the Joint Resolution, 2018 Act No. 272, continues to be binding and controlling authority for the South Carolina Department of Health and Environmental Control Dam Safety and Reservoirs Program.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General