

ALERTS

South Carolina Legislative Report - March 9, 2012

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On the Floor

Pollution Control Act

The House took up debate this week on H.4654, and an amendment was placed on the bill that runs counter to the intent of the legislation. The House adjourned debate on the bill until March 21st. Additionally, S. 1126, the Senate companion bill, set for consideration in a Medical Affairs subcommittee next week. Advocates of the bill are pushing to have a subcommittee hearing scheduled as soon as possible.

The legislation amends the Pollution Control Act and is intended to clarify the law to ease the unintended burden on businesses stemming from the recent South Carolina Supreme Court opinion in *Georgetown League of Women Voters vs. Smith Land Company* while keeping the state's right to protect the environment.

In the Smith Land case, the Court ruled that the SC Pollution Control Act requires DHEC to regulate by permit any release into the environment and that a third party may seek enforcement of an environmental standard through a cause of action. The bill clarifies that a permit is not required if DHEC does not regulate the release or the release is below a certain threshold. Additionally, the bill prohibits a private cause of action under the PCA.

Flow Control

The Business Freedom of Choice Act (H. 4721) was amended this week and passed by the House and sent to the Senate for consideration. The legislation proposes to prohibit an ordinance on the local level that restricts or prohibits disposal of waste at any permitted solid waste management facility regardless of location or impedes the development or implementation of a *public or private recycling program* regardless of location.

Senate Confirms Workers' Comp Commissioner

By a vote of 27-0, the Senate confirmed the nomination of Gene McCaskill to fill a term on the Workers' Compensation Commission that expires June 30. McCaskill served the previous nine years as Senior Executive Assistant at the Office of the Attorney General and two decades as a grocer in Camden. Prior to his employment with the Attorney General's Office, he served as Director of Admissions for Camden Military Academy and was a member of the SC Commission on Consumer Affairs and the SC Educational Television Commission.

Budget - Provisos

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The House of Representatives will begin debating the budget on Monday, March 12th. This week the Ways & Means committee gave a series of briefings for House Members on the key points for the Appropriations bill, budget provisos and the Capital Reserve Fund. To view the related documents on the budget briefings, please click the following: [Proviso changes](#), [Budget - key points](#) and [Summary Control Document](#).

In Committee**Certificate of Need Reform**

Regulation # 4181 regarding Certificate of Need was passed out of a Senate Medical Affairs subcommittee this week without a report. Members of the subcommittee had concerns with the fee increases contained in the regulation but did not want to kill the regulation before giving the full committee time to review the matter. Regulation # 4181 is the Department of Health and Environmental Control's proposed regulation based on Act 278 of 2010 dealing with Certificate of Need (CON) reform.

There will be a public hearing on S. 999 before the full Medical Affairs Committee on Thursday, March 15, 2012 at 9:30am. The bill's objective is to eliminate the CON process for licensing of certain healthcare facilities. It is our understanding the committee will take testimony, but it is unclear if it will take any formal action. The bill is hotly contested by various stakeholders, including the Hospital Association.

Unemployment Benefits

The House Labor, Commerce and Industry gave favorable report to H. 4786, as amended. The amendment inserted H. 4592, a bill regarding unemployment insurance fraud investigation, fines and penalties. The H. 4592 was previously rejected by the House on third reading because a poison-pill amendment was inserted during the floor debate.

School Choice

The House Ways and Means committee passed H. 4894, a scaled back version of previous school choice proposals, this week. The current version of the legislation is targeted toward helping low-income students and children with special educational needs through privately funded scholarships. The legislation also contains tax-reductions for parents who home-school.

State Tax Reform

Tax reform is likely going to be an issue for the South Carolina General Assembly by the end of the session in early June. A South Carolina House Republican Caucus Tax Reform Study Committee has spent the last several months taking testimony, reviewing recommendations from the South Carolina Tax Realignment Commission (TRAC), and studying the current state tax structure in an effort to produce a comprehensive overhaul. In December 2010, the South Carolina Tax Realignment Commission produced a final report and recommendations for the General Assembly's consideration. For the most part, the report was shelved until this fall when the House Republican Caucus appointed a Tax Reform Study Committee to address comprehensive tax reform. It is anticipated several proposals will be introduced in the House in the near future and referred to the House Ways and Means Committee for its consideration.

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Furthermore, the constitutionality of sales tax exemptions are currently being challenged in *Bodman vs. State of South Carolina and the South Carolina Department of Revenue*. Oral arguments in the case have already been heard by the South Carolina Supreme Court and a ruling is anticipated shortly. The outcome of this case can have a detrimental impact on the sales tax exemptions and exclusion for items such as energy, raw materials, and machinery. Sales tax collections account for close to 40% of the State's annual revenue and the current exemptions total over \$2 billion.

Based on discussions with leadership and media reports, the proposed bills will address several issues crucial to industry and individuals. Below are a few of the highlights:

- Eliminate two-thirds of exemptions on state sales taxes and reducing the state sales tax rate to 5.5 percent. (Energy, groceries, and prescription drugs exemptions should remain intact)
- Phase in a reduction on the property tax rate on manufacturing from 10.5 percent to 6 percent.
- Lower taxes on small business owners, who pay profits as personal income taxes.
- Eliminate corporate income taxes gradually.
- Streamline personal income taxes from six tax brackets to three.

Require a review of sales tax exemptions every five years.

In the News**Lieutenant Governor Resigns**

Embattled Lieutenant Governor Ken Ard resigned his office Friday March 8th at 10:00am, hours before the Attorney General's office announced that the Grand Jury had indicted him on 7 counts of ethics violations. Read the Grand Jury Report, [here](#).

The South Carolina constitution calls for the Senate President Pro Tempore to vacate his seat and assume the office of Lieutenant Governor, should a vacancy occur. Senator Glenn McConnell (R-Charleston) announced that he would be taking the oath of office to be the next Lieutenant Governor, setting-up a special election scenario to fill his seat. The move by McConnell was a surprise, as many believed that he would not give up his position, which is viewed as vastly more powerful than that of Lieutenant Governor. The move sets up a domino effect for various chairmanships and jockeying by the next Senate President Pro Tempore.

DNR Board Chairwoman

This week, Democratic Senators called for an investigation and removal of Department of Natural Resources Board Chairwoman Caroline Rhodes for lying to the Senate Fish, Game, and Forestry Committee during the controversial Savannah River Port decision. At issue is Rhodes testimony under oath that she did not direct staff to stay away the Savannah River Maritime Commission meeting. Emails uncovered through Freedom of Information Act requests to DNR seem to show members of DNR staff discussing direct orders to stay away from the meetings.

The Fish, Game, and Forestry Committee will investigate the matter. Governor Haley has said that she stands behind Rhodes, but that she may be replaced through natural turn-over in the Board.

Senator John Land Retiring

Senator John Land (D-Clarendon) announced this week that he would be retiring after serving nearly 40 years in the Senate. Senator Land served as the Minority Leader for the Democratic Caucus and was widely respected by Senators of both parties.

Senator Land joins a number of Members who have announced their intention to step-down after this year including: Senator Phil Leventis (D-Sumter), Senator Greg Ryberg (R-Aiken), Representative Jim Harrison (R-Richmond) and Representative Jim Battle (D-Marion).