



2011 Legislative Year-in-Review

As the first regular session of the 119th South Carolina General Assembly convened in January, the legislative session looked promising. For months, elected officials from both political parties touted job creation and economic development as their main priority for the year.

The South Carolina House of Representatives hit the ground running, passing a host of job creating initiatives early in the session. Led by Speaker Bobby Harrell (Charleston), the House passed comprehensive tort reform, state spending limits, major government restructuring and angel investment legislation. The House also passed charter school reform, allowing more options for parents and students in their educational choices.



Speaker Bobby Harrell

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On the other hand, the business community was disappointed in the Senate's slow pace, as it spent weeks on raffles, voter I.D. and immigration legislation, while avoiding real job creators like tort reform and unemployment insurance (UI) tax relief. Finally, during the last weeks of the legislative session, the Senate got down to business, passing tort reform, UI tax relief and the budget. However, it failed to take action on numerous pro-business issues, including state spending limits, charter school reform and government restructuring, among other items.

Much of the legislative session was spent debating the budget and redistricting. Because of significant population growth, South Carolina is gaining a 7th congressional district, which will likely be anchored in the Grand Stand/Pee Dee region.

BUSINESS COMMUNITY ACHIEVES TORT REFORM

After passing the House early in the session by a bipartisan vote of 100-7, being gutted by the Senate Judiciary Committee and then held up on the Senate calendar for months, tort reform finally passed the Senate just before the legislative session adjourned. Senators Larry Martin (Pickens) and Brad Hutto (Orangeburg) worked closely to forge a compromise, and Governor Nikki Haley signed the legislation as soon as it reached her desk. As part of her legislative agenda, the governor played a critical role in the waning days of the session by publicly urging senators to move forward on tort reform.

The new law includes a cap on punitive damages modeled after the state of Florida. The legislation caps punitive damages greater than \$500k or three times the compensatory damages awarded. However, if it is found a defendant is motivated primarily by financial

gain or a defendant's actions rise to the level of felony charges, then the award can be increased to the greater of \$2 million or four times compensatory damages. If it is proven the defendant intended to harm the claimant, was convicted of a felony arising out of the same act or acted under the influence of drugs or alcohol, there is no cap for punitive damages.

The legislation includes an appeals bond cap and revisions to the statute of repose for construction cases. The legislation also requires the attorney general to approve civil actions by circuit court solicitors.

Of the legislation's passage, Senate Majority Leader Harvey Peeler (Cherokee) said, "No other bill this year will improve our state's business climate like tort reform."

COMPETITIVENESS AGENDA REPORT CARD		
119th South Carolina General Assembly		
TERM: January-June 2011		
Subject	House	Senate
Angel Investment Act	Pass	Incomplete
Charter School Reform	Pass	Incomplete
Government Restructuring	Pass	Incomplete
✓ Environmental Regulatory Relief	Pass	Pass
State Spending Limits	Pass	Incomplete
✓ Tort Reform	Pass	Pass
✓ UI Tax Relief	Pass	Pass

UI TAX RELIEF PROVIDED FOR EMPLOYERS

In 2010, the General Assembly passed legislation restructuring the South Carolina Department of Employment and Workforce (DEW) and also recalculated unemployment insurance rates to rebuild South Carolina's Unemployment Insurance (UI) Trust Fund in an effort to begin paying back the nearly \$1 billion debt owed to the federal government. Many employers engaged in the legislative process during the 2011 session to attempt to extend the time to repay the federal debt or find some sort of tax relief.

The Senate Labor, Commerce and Industry (LCI) Committee, chaired by Senator Greg Ryberg (Aiken), held numerous hearings that led to more than 40 potential tax relief scenarios for employers. The South Carolina Chamber of Commerce worked with numerous business partners and legislators to find a solution that everyone could support that did not negatively impact one business over another.

Ultimately, Senator Hugh Leatherman (Florence), along with Senator Ryberg, offered a scenario that provides employers nearly 25 percent tax relief this year. The legislation was signed into law by Governor Nikki Haley. The solution reduces the number of state benefit weeks from 26 weeks to 20 weeks, ultimately saving all employers roughly 8 percent and encouraging workers to apply for the nearly 50,000 available jobs in the state. The solution also allows seasonal employers the ability to restrict benefits to seasonal workers, saving another 3 percent.

The most significant component of the Leatherman/Ryberg solution provides roughly \$100 million in direct tax relief by paying down a portion of the federal loan due this year. This provision passed in the Senate budget. The House, through the leadership of Chairman Dan Cooper (Anderson), House Majority Leader Kenny Bingham (Lexington),

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House Minority Leader Harry Ott (Calhoun) and Representatives Gilda Cobb-Hunter (Orangeburg) and Brian White (Anderson), increased the amount of relief for employers to \$146 million, paying back the entire federal loan for 2011.

Then, after several weeks of negotiations, the General Assembly agreed to provide \$146 million in tax relief, totaling nearly 25 percent in relief for employers.

GENERAL ASSEMBLY GRANTS SALES TAX SAFE HARBOR

In May, after Amazon increased its economic development announcement to 2,000 full-time jobs and investment of at least \$125 million, the House reversed its previous decision and exempted Amazon from collecting sales taxes.

After contentious debate in the Senate, a compromise was reached between Amazon and other retailers to require Amazon to notify customers that sales taxes may be owed on items purchased online. The compromise also directs Amazon customers to the South Carolina Department of Revenue (DOR) to submit payment.

The South Carolina Chamber believes the compromise is fair since residents will now be notified of taxes owed. However, the Chamber has long advocated against retail incentives because retail jobs do not create measurable spin-off jobs like the manufacturing industry. In addition, the Chamber continues to support comprehensive tax reform, and any meaningful component of tax reform would be the collection of Internet taxes to broaden the tax base, while lowering overall tax rates.

EEDA ADVANCES, CHARTER SCHOOL REFORM STALLED

In 2005, the General Assembly passed landmark workforce development legislation called the Education and Economic Development Act (EEDA). Now known as Personal Pathways to Success, the law provides a host of initiatives designed to give South Carolina students the educational tools they need to prepare for the workforce and build prosperous, successful futures.

The EEDA Coordinating Council, the body in charge of overseeing implementation of Personal Pathways, would expire unless the legislature extended its existence. The General Assembly agreed with the business community, and legislation offered by House Education and Public Works Chairman Phil Owens (Pickens) extending the EEDA Coordinating Council for an additional year was signed by Governor Nikki Haley.

Over the last two years, total high school dropouts have decreased by 22 percent. The message is simple. The EEDA is working, and the General Assembly should support it because future results are extremely promising.

Additionally, Chairman Phil Owens led the House effort to pass charter school reform legislation early in the legislative year. Unfortunately, as with many other key business priorities, the Senate failed to take action. The bill would have equalized funding for public charter schools, allowing more choices for students and parents, among other provisions.

REGULATORY RELIEF PROVIDED FOR BUSINESSES

Senate President Pro Tempore Glenn McConnell (Charleston) and Senate Majority Leader Harvey Peeler (Cherokee) offered legislation to provide regulatory relief to the South Carolina Department of Health and Environmental Control (DHEC) and the business community. The legislation allows South Carolina to automatically revert to a previous regulatory standard if federal courts halt the implementation of a federal regulation.

The Chamber's Environmental Technical Committee (ETC) suggested the legislation to prevent businesses from being forced to follow more stringent environmental standards compared with neighboring states.

**KEY BUSINESS SPENDING ITEMS
IN STATE BUDGET:**

- CATT FUNDING (\$14 million)
- DEPARTMENT OF COMMERCE CLOSING FUND (\$5 million)
- ECONOMIC DEVELOPMENT REGIONAL ALLIANCES FUNDING (\$5 million)
- EEDA FUNDING (\$25 million)
- TOURISM DESTINATION SPECIFIC MONEY (\$5.4 million)
- UNEMPLOYMENT INSURANCE FEDERAL LOAN REPAYMENT (\$146 million)

The legislation passed the Senate unanimously in April. House Judiciary Chairman Jim Harrison (Richland) quickly took it up, and it passed the House unanimously. Governor Nikki Haley signed the legislation into law in June.

MANDATORY E-VERIFY BECOMES LAW

In 2008, the General Assembly passed one of the nation's toughest state immigration laws that adds new verification requirements for employers of all sizes. With the recent U.S. Supreme Court ruling on the Arizona immigration law, Republican legislators felt compelled to change South Carolina's law in the waning days of the session to mandate e-Verify for employers. Currently, roughly 60 percent of employ-

ers use the free federal database to verify employees, but many small businesses rely on the federal I-9 form or a South Carolina driver's license. The new requirements take effect January 1, 2012.

ON THE FEDERAL FRONT:

PORT STUDY FUNDING SECURED

U.S. Senator Lindsey Graham, alongside Congressmen Jim Clyburn and Tim Scott, announced that federal funding has been secured to begin a study on deepening the Port of Charleston. The amount of \$150,000 has been set aside by the U.S. Army Corps of Engineers for a deepening study, a crucial starting point for the project. The three also said work would continue to secure funding for dredging of the Port of Georgetown.

Senator Graham noted the major impact of the announcement is that it allows the South Carolina State Ports Authority (SCSPA) to enter into a legal partnership with the federal government (U.S. Army Corps of Engineers) to share in future costs of harbor deepening. The business community aggressively advocated the need for federal dollars to study the harbor deepening project because it is critical that South Carolina's ports are capable of accommodating the larger ships that will call on the East Coast once the widening of the Panama Canal is complete in 2014.

Senators Graham and Jim DeMint also introduced the Army Corps of Engineers Reform Act of 2011 to reform the way water resources projects are funded by eliminating the need for earmarks, focusing on national priorities and giving states flexibility to meet critical needs.

NLRB OVERSTEPS ITS BOUNDS

Both the South Carolina House and Senate introduced and passed resolutions condemning the National Labor Relations Board (NLRB) for filing a complaint against Boeing, which called for the facility to open a second 787 facility in the state of Washington to remedy what the NLRB calls an illegal transfer of work to non-union facilities in North Charleston.

In addition, U.S. Senators Lindsey Graham and Jim DeMint introduced the Right to Work Protection Act to protect right-to-work states and prohibit the federal government from punishing those states through contract awards or federal action. More than 20 states currently have right-to-work laws.

U.S. Senators Lamar Alexander (R-Tenn.), Lindsey Graham and Jim DeMint have introduced the Job Protection Act, a bill to preserve federal law's existing protections of state right-to-work laws. The Job Protection Act would clarify that the NLRB could not order an employer to relocate

jobs from one location to another, guarantee an employer the right to decide where to do business within the United States and protect an employer's free speech regarding costs associated with a unionized workforce without fear of such communication being used as evidence in an anti-union discrimination claim.



Senator Lindsey Graham



Senator Jim DeMint