



COMPETITIVENESS UPDATE

February 10, 2012

No. 5

Pollution Control Act Clears First Hurdle

Legislation reversing the controversial *Smith Land Company* ruling unanimously passed a House Agriculture and Natural Resources subcommittee this week. The legislation, offered by Chairman Nelson Hardwick (Horry) and dozens of bipartisan co-sponsors, would restore 62 years of balance and precedent that was overturned when a recent Supreme Court ruling created an extremely unfair position for businesses and citizens.

Under the Supreme Court's ruling, all discharges or emissions into the environment now require a permit. The ruling also creates a private right of action for any citizen or citizens group to bring suit against those "violating" the Pollution Control Act, even when there is no permit for businesses to obtain.

Top business environmental attorneys testified on behalf of the South Carolina Chamber of Commerce and the South Carolina Manufacturers Alliance regarding the negative impacts on economic development. The business community testified that the state Supreme Court was clearly wrong in its

decision, which creates regulatory uncertainty and will likely drive investment out of the state.

The South Carolina Department of Health and Environmental Control (DHEC) also testified in support of the legislation, saying the court's decision means, "you can inhale, but you can't exhale," a reference to having to obtain a permit if you discharge any pollutant into the environment. The South Carolina Farm Bureau said the private right of action for citizens in the decision will lead to litigation where environmental groups will, "sling mud on the wall and see what sticks."

The South Carolina Trial Lawyers Association also testified, but in the one case they cited, the representative admitted the Pollution Control Act did not weigh-in on the outcome. Amy Armstrong, of the Southern Environmental Law Project, said the business community's legislation should be called "The Polluters Bill." She also misled legislators by saying the *Smith Land Company* did not contact DHEC when in fact the Office of Ocean and Coastal Resource

THUMBS UP THUMBS DOWN

Thumbs Up: To Reps. David Hiott (Pickens), Bill Crosby (Charleston), Chandra Dillard (Greenville) and Chris Murphy (Dorchester) for supporting legislation to restore balance to the Pollution Control Act.

Thumbs Up: To Chairman Bill Sandifer (Oconee) for his work to strengthen the state's right-to-work law.

Thumbs Up: To Governor Nikki Haley for proactively establishing an initiative to better match skill sets with available jobs.

Management, which it did contact, is part of DHEC.

Fortunately, the subcommittee, led by Rep. David Hiott (Pickens), had the courage and common sense to pass the legislation. In addition, Reps. Bill Crosby (Charleston), Chandra Dillard (Greenville) and Chris Murphy (Dorchester) supported the legislation.

While environmentalists say the Supreme Court ruling will not lead to a great deal of new litigation, four lawsuits have already been filed since the egregious ruling. South Carolina businesses are currently under attack even though they are following the laws passed by the General Assembly and regulations enforced by DHEC.

COMPETITIVENESS AGENDA

Description	Bill No.	Position	Status
Angel Investment Act	H.3779	Support	Passed House; In Senate Finance Committee
Business License Fees	H.3472	Support	In House Ways and Means
Charter Schools	H.3241	Support	Passed House; On Senate Floor
Department of Administration	H.3066	Support	Passed House; On Senate Floor
Gov. Restructuring – Jointly Electing Gov./Lieut. Gov.	H.3152	Support	Passed House; In Senate Judiciary Committee
Gov. Restructuring – Superintendent of Education	H.3070	Support	Passed House; In Senate Judiciary Committee
Highway Funding	S.37/ S.101	Support	In Senate Finance Committee
Pollution Control Act	S.1126/ H.4654	Support	In Senate Medical Affairs Committee; In House Agriculture, Natural Resources and Environmental Affairs Committee
Spending Limits	H.3368	Support	Passed House; In Senate Finance Committee
Unemployment Insurance - Drug Testing	H.4043	Support	Passed House Judiciary Committee
Unemployment Insurance – Part Time	S.1026	Support	Passed Senate Labor, Commerce and Industry Committee
Unemployment Insurance – Seasonal	S.1069	Support	Passed Senate Labor, Commerce and Industry Committee

Drug Testing Provision Passes House Committee

This week, the House Judiciary Committee passed H.4043, legislation introduced by Rep. Eddie Tallon (Spartanburg) that would allow prospective employers to submit failed certified drug tests to the South Carolina Department of Employment and Workforce (DEW) as a basis for disqualification of unemployment benefits. The measure contends that prospective employees failing drug tests are not "able and available for work," a key component to draw benefits. Also this week, *The State* newspaper associate editor Cindi Scoppe released a scathing attack on business in an opinion titled *One unemployment proposal is truly scandalous*. The South Carolina Chamber is responding with its own piece.

South Carolina Chamber Continues Fight Against Big Labor

The South Carolina Chamber of Commerce is engaged in litigation against the National Labor Relations Board (NLRB) to challenge a proposed rule that would require employers to post a notice informing their employees of certain selected rights under the National Labor Relations Act. The required notice is biased in favor of unions and omits important information about employees' rights under South Carolina's Right to Work law.

Since the lawsuit, the NLRB has twice delayed implementation of the posting requirement, and the

rule will not go into effect until at least April 30, 2012. The parties have filed cross-motions for summary judgment in the case, and a hearing was held on those motions on February 6. It is likely that a decision will be rendered prior to April 30.

The South Carolina Chamber remains committed to preserving the positive business climate in South Carolina. Efforts by a pro-union federal bureaucracy or any other source to undermine the business climate in the state will not be tolerated.

House Passes Right-to-Work Act

By a vote of 86-25, the House passed legislation to strengthen the right-to-work laws in South Carolina and continue the protection of workers' freedoms to choose whether or not to join a labor union. The bill's author, House Labor, Commerce and Industry (LCI) Chairman Bill Sandifer (Oconee), explained the legislation as neither a pro-union or anti-union bill. The legislation is rooted in freedom of choice without coercion. During debate on the House floor,

several democratic legislators stood in opposition, maintaining that unions are not prevalent in South Carolina, thus the bill is not needed.

During the House committee process, the South Carolina Chamber supported an amendment to tweak a section of the bill that would require all employers to display a poster outlining provisions of the Act. The committee deleted the requirement post and replaced it with "may post."

Pension Reform Addressed in House

A House subcommittee, led by Rep. Jimmy Merrill (Berkeley), worked this week on a plan to shore up the state retirement fund. The state retirement system's unfunded liability has grown exponentially since the beginning of the decade. In the early 2000s, the unfunded liability was several hundred million dollars. Last year, that amount ballooned to \$17 billion.

The subcommittee's proposal increases current state employees' contributions into the retirement system by 1 percent, prohibits including vacation or sick days in retirement benefit calculations and uses five years of salary to calculate benefits versus three. New hires would be required to work 30 years before becoming eligible for benefits. The TERI program would also be terminated.

Corps Funding Advances Charleston Harbor Project

The South Carolina State Ports Authority (SCSPA) has announced that Charleston's harbor deepening project received another boost with the release of the U.S. Army Corps of Engineers' Work Plan for the remainder of Fiscal Year 2012. In it, the Corps included \$2.5 million for the continued work on the Charleston Harbor post-45 foot deepening project. The \$2.5 million included in the Work Plan will continue progress on the feasibility study that began last summer.

South Carolina Chamber President and CEO Otis Rawl applauded the news. "The business community has worked with leaders of the port as well as our federal and state leaders to ensure that necessary funding for the port feasibility study is achieved. Harbor deepening is critical to the future of South Carolina, with businesses in all 46 counties of the state depending on the Charleston port on a daily basis. The business community applauds Jim Newsome, president and CEO of the Ports Authority, for his

leadership and diligent work in ensuring this crucial funding. Today's announcement is a great step in the right direction for South Carolina and the entire Southeast region," he said.

The total cost of the project is estimated to be \$300 million of which South Carolina's shared responsibility is estimated to be \$180 million. The South Carolina Chamber is asking members of the General Assembly to dedicate funding for the full cost of the project, especially with the current uncertainty in the federal budgeting process. It is critical that South Carolina leaders begin planning today for the future project construction costs.

In related news, President Barack Obama is expected to release his 2013 budget proposal early next week. The business community and South Carolina's congressional leaders are hopeful that the president will include funding for the Port of Charleston.

Governor Announces Work Skills Initiative

Governor Nikki Haley has announced an initiative to better match skill sets with available jobs, streamlining current efforts and creating one database of work ready applicants. The program, called ACT Certified Work Ready Communities Academy, will enable counties to use employee skill tests to assess job related skills. County officials will then use the test results to create needed job training programs. In turn, businesses will utilize the test results to find prospective employees. South Carolina is one of four states to participate in the pilot program.

The South Carolina Chamber of Commerce is encouraged by the governor's announcement because its membership has been a leading voice in the use and expansion of WorkKeys for many years.

In Other News...

H.3506, job tax credit legislation that includes a number of **economic development incentives**, passed the Senate, returned to the House and then was returned to the Senate with amendments. Included in the legislation are many issues from Speaker Bobby Harrell's (Charleston) working group on economic development, on which the South Carolina Chamber of Commerce participated.

The Senate made progress on **government restructuring** legislation, creating a Department of Administration under the governor's cabinet and eliminating the South Carolina Budget and Control Board. The South Carolina Chamber supports this legislation in an effort to better streamline state government and provide more accountability in government processes.

By a vote of 13-0, a Senate committee approved current Department of Labor, Licensing and Regulation Director **Catherine Templeton** as the new commissioner of the Department of Health and Environmental Control. Senators Brad Hutto (Orangeburg), Joel Lourie (Richland) and Clementa Pinckney (Jasper) abstained from the vote citing reservations for Ms. Templeton's nomination moving forward. The full Senate will likely begin addressing the nomination next week.

A resolution to disregard decisions made by the **South Carolina Department of Health and Environmental Control** (DHEC) since 2007 is on its way to Governor Nikki Haley's desk. The governor is expected to veto the measure that was recently amended to specifically apply to the Savannah port issue and not other permits issued by DHEC. The General Assembly is anticipated to unanimously override the governor's veto in the next two weeks.

The Southern Environmental Law Center has filed a **lawsuit** on behalf of the Coastal Conservation League and the South Carolina Wildlife Federation alleging the U.S. Army Corps of Engineers did not obtain a pollution control permit for its project to deepen the **Savannah River**.