

CAPITOL REPORT



The South Carolina General Assembly adjourned for the year on May 11 but must reconvene to approve the State Budget on May 23. This is the first year of a two year legislative session. In Washington, discussions about Tax Reform and the Farm Bill have begun. On the local level, Right to Practice Forestry issues continue to arise.

State Issues

■ **FUNDING FOR ROADS AND BRIDGES:** On March 1, the House voted 97 to 18 to pass House Bill 3516 which increases the state gas tax by 10 cents over the next five years to raise about \$600 Million annually for repairs to SC roads and bridges.

Under the bill, SCDOT Commissioners would be appointed by the Governor with the advice and consent of the General Assembly. An amendment to make SCDOT a cabinet agency reporting solely to the Governor was defeated.

On April 26, the South Carolina Senate approved an amended version of H. 3516 which would raise \$800 Million annually by a 33 to 10 vote to fix South Carolina's crumbling roads and bridges. The Senate version increases the gas tax by 12 cents and increases driver's license fees and vehicle permitting costs. The Senate bill includes tax cuts and rebates including college tuition rebates, earned income credits, lowering of the manufacturing property tax rate, and providing for vehicle maintenance deductions. Also, the Senate bill allows the governor to appoint one additional commissioner to SCDOT.

A House-Senate conference committee of six legislators reached a compromise on the road funding bill on May 5 that includes a 12 cents per-gallon gas tax increase, but eliminates indexing the tax each year to keep pace with inflation. The new fees and taxes are projected to generate \$630 Million in new recurring revenue. The tax relief totals \$111 Million which comes from the General Fund (not the gas tax). The Senate approved the legislation by a 32 to 12 vote. The House voted 99 to 20 to approve the bill. Governor McMaster vetoed the bill on May 9.

On May 10, the General Assembly overrode the veto by a 95-18 vote in the House and 32-12 vote in the Senate.

■ **REFORMING THE AUTOMATIC STAY IN CONTESTED CASES:** The Forestry Association and 14 other industry associations and corporations signed a letter to the General Assembly supporting Senate Bill 105 and House Bill 3565. These bills deal with the issuance of automatic stays by the Administrative Law Court.

Under current law, a plaintiff can receive an automatic stay for an indefinite period of time when contesting a permit without offering any evidence that a permit should not be issued for a project. The Forestry Association feels this is unfair and can lead to unnecessary delays with important projects.

On March 9, the Senate passed S. 105 reforming the issuance of an automatic stay in contested cases which included a 90 day waiting period before the stay can be lifted. Governor Henry McMaster has urged the legislature to enact S. 105 to reform the automatic stay law saying that "Lengthy delays and uncertainty inhibit economic growth".

The House Judiciary Special Laws Subcommittee reduced the waiting period to 30 days before a stay can be lifted on April 20.

The House Judiciary Committee adjourned debate on the legislation on April 25 after Rep. James Smith proposed more than 200 amendments to the bill.

■ **DAMS SAFETY INSPECTIONS AND REGULATIONS:** This fall, DHEC proposed three amendments to the existing law regulating Dams and Ponds to the House Agriculture Dam Safety Ad Hoc Committee. On October 26, the Committee adopted two of those recommendations. The first adopted proposal requires registration of all regulated dams which would include owners annually filing a dam maintenance check list with DHEC. The second adopted proposal revises the regulatory size exemption for dams to provide regulatory oversight of dams which pose a risk to infrastructure or property regardless of size. The third proposal by DHEC to require dam owners to hire a professional engineer to conduct an assessment every five years for high hazard

dams and every ten years for significant hazard dams was rejected by the Committee. A dam assessment by a professional engineer costs up to \$10,000.

Speaker of the House Jay Lucas, House Agriculture Committee Chairman Davey Hiott and Dam Ad Hoc Committee Chairman Steve Moss introduced House Bill 3218 to implement the Dam Ad Hoc Committee's recommendations into law. In January, the House Agriculture Subcommittee adopted two amendments recommended by the Forestry Association to narrow the scope of dam owners' responsibilities related to downstream residents and businesses. The House passed the bill 104 to 3 on February 1.

According to a summary of the legislation prepared for the General Assembly:

This bill as amended increases the number of dams that would be regulated by the Department of Health and Environmental Control pursuant to the Dams and Reservoirs Safety Act. Under existing law, dams under twenty-five feet in height with an impounding capacity of less than fifty-acre feet are exempt from regulation unless dam failure or improper reservoir operation might result in the loss of human life. The bill expands the definition of regulated dams and reservoirs to those for which the department determines that dam failure or improper reservoir operation might result in serious damage to homes, industrial and commercial facilities, public utilities, main and secondary highways, or railroads.

The amended bill eliminates the regulation exemption for dams whose failure might threaten roadways for which maintenance responsibility has been accepted by the Department of Transportation or county or municipal governments. Regulated dam owners are required to provide current contact information regarding the owner and an emergency action plan including updated contact information for emergency management officials no later than July first of each year.

As amended, the emergency action plan, or any other provision of law or regulation, shall not require the owner of a dam classified as a high or significant hazard to notify any downstream residents or business owners. The owner must notify emergency officials and the department of the failure or potential failure.

The legislation is pending in the Senate Agriculture Committee. The Forestry Association and the Farm Bureau are working on a proposed amendment to provide Dam owners a tax credit for any repairs they are required to make under the provisions of this legislation.

■ **CONSERVATION BANK:** After a Legislative Audit Council Report was released that was critical of the Conservation Bank operations in February, Rep. Mike Pitts and House Ways and Means Chairman Brian White, introduced House Bill 4014. The legislation as introduced restricts funding from the Conservation Bank for conservation easements and encourages more public access when awarding Conservation Bank grants.

Here's a summary of the Legislative Audit Council findings:

- The Bank has a subjective and ineffective application process for scoring the required conservation, financial and public access criteria.
- There is no criteria or documented methodology as to how the agency determines the amount to award grant applicants — leading to some grantees receiving as low as 21% of fair market value and others receiving as high as 100% of fair market value.
- The Bank, in some cases, is not requiring proper documentation to determine if the threat of development, claimed in the application, is credible. This has possibly resulted in funding some grants to the exclusion of more deserving grants.
- The application score determined by the Bank is not used to determine whether an applicant receives a grant.

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- The Bank is awarding grants without sufficient revenues based upon future expected revenues, thereby exceeding its authorized budget.
 - The Bank does not properly weight its scoring of public access — given the importance the General Assembly has placed on public access as evidenced by the statute.
 - The Bank is providing grants to hunting clubs, which often have no or very minimal public access and, as a group, allow less public access than other grant classifications.
- After reviewing the recent Legislative Audit Council report regarding the Conservation Bank, the Forestry Association made the following recommendations to the General Assembly and the Governor:

- 1) The Mission of the Conservation Bank is vital to the State of South Carolina and the Conservation Bank should be preserved.
- 2) There should be a re-examination of the governance of the Conservation Bank.
- 3) The process for allocation of grant awards should be more transparent and based on objective standards.
- 4) The Conservation Bank should be mandated to provide a public benefit instead of public access when awarding grants for conservation easements. The overwhelming majority of private timberland owners will not agree to allow citizens unrestricted access on their private property.

In addition, the Forestry Association recommended that House Bill 4014 be amended to remove the public access requirement for conservation easements funded by the Bank, reconsider the 25% limitation on Bank funds being used to acquire conservation easements, and to remove the \$250,000 funding cap on the purchase of conservation easements.

■ **FOREST MANAGEMENT PLAN REQUIREMENT:** Last year, the Forestry Association was successful in its efforts to get the General Assembly to adopt a budget proviso authorizing the State Treasurer to withhold state funds from counties requiring timberland owners to obtain a forest management plan when applying for an agricultural use exemption. A budget proviso is a temporary one year law so we are dealing with this issue again in 2017. The House of Representatives and the Senate renewed the proviso in the 2017-2018 State Budget.

■ **PIPELINE EMINENT DOMAIN STUDY COMMITTEE:** When the General Assembly passed Senate Bill 868 in 2016 which prohibits petroleum pipeline companies from having eminent domain authority until June 30, 2019, the General Assembly also established a study committee to review our state's eminent domain laws relating to petroleum pipelines. Then-Governor Haley appointed 2017 Forestry Association Chairman Mac Rhodes to the study committee. The study committee met on November 30 and heard testimony from numerous stakeholders. The study committee met on March 9 and agreed to review legislation from Georgia dealing with eminent domain. The study committee plans to meet again this summer.

The committee must make recommendations to the General Assembly no later than December 31, 2017.

■ **WORKFORCE DEVELOPMENT FOR SKILLED WORKERS:** The Forestry Association and the SC Timber Producers Association are working with the SC Trucking Association and others in the transportation and construction sectors with starting a Public/Private Partnership to train skilled workers such as commercial truck drivers, diesel mechanics, heavy equipment operators, plumbers, electricians, and welders. The program will be modeled after the "Be Pro, Be Proud" campaign in Arkansas. Senator Tom Alexander was successful in obtaining \$950,000 in the Senate budget to fund this program. Governor McMaster endorsed the Workforce Development Initiative on April 25. The House of Representatives still needs to concur with the Senate proposal during the reconciliation of the State Budget.

■ **CDL LIABILITY INSURANCE STUDY COMMITTEE:** The Senate adopted a State Budget proviso that was supported by the Forestry Association to create a study committee to review the state's laws regarding liability insurance for CDL drivers. The Forestry Association will be able to designate a person to serve on this study committee.

Obtaining liability insurance for logging trucks is becoming a critical issue. There are only a few insurance companies willing to write policies for logging trucks and premiums have tripled for many companies.

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■ **AGRIBUSINESS AND RURAL JOBS TAX CREDITS:** The Senate Finance Sales & Tax Subcommittee held a hearing on Senate Bill 407 sponsored by Senator Paul Campbell on May 9. The legislation provides tax credits for agribusiness companies locating in rural counties. The Forestry Association is working on an amendment to clarify that the forest industry is included in the definition of agribusiness so as to ensure eligibility for these tax credits.

■ **STATE BUDGET:** The Senate provided Clemson PSA with an additional \$1,200,000 for its extension program. The SC Forestry Commission received \$2 million for firefighting equipment plus \$979,000 in additional funding was provided to the Commission for firefighting capacity, Forest Inventory Analysis, and Best Management Practices programs.

The House provided Clemson PSA with an additional \$600,000 for its extension program. The SC Forestry Commission received \$1 million for firefighting equipment but no other additional funding was provided to the Commission.

■ **OPEN BURNING BAN DURING EXTREME WEATHER CONDITIONS:** In February, the House passed H. 3719 sponsored by Rep. Mike Burns that provides when extreme conditions exist, the State Forester may prohibit all open burning including campfires, bonfires, and other fires for recreational purposes. This prohibition shall not apply to fires used for non-recreational purposes such as those for human warmth or for the preparation of food for immediate consumption. The legislation was approved 40-0 in the Senate on May 8 and received a final reading on May 9 and has been sent to the governor. The Forestry Association has requested that Governor McMaster sign the legislation into law.

Federal Issues

■ **WATERS OF THE UNITED STATES RULE (WOTUS RULE):** President Trump signed an Executive Order directing the EPA and the Army Corps of Engineers to begin the rulemaking process to rescind or revise the WOTUS Rule. The Executive Order also requires the agencies to notify the U.S. Attorney General of the rulemaking, so the Attorney General can inform the relevant courts of the review and take appropriate action including asking the courts to hold in abeyance the cases challenging the rule.

■ **FARM BILL 2018:** Hearings have begun on the 2018 Farm Bill. The Forestry Association is a member of the Forests in the Farm Bill Coalition. The five priorities outlined for the Farm Bill by the Coalition are: 1) Increasing the long-term protection and conservation of forest resources from threats such as wildfire, insects and diseases and promote the use of fire as an important forest management tool, 2) Conserving and enhancing wildlife habitat through voluntary conservation activities, particularly habitat for at-risk species, to prevent the need to list species under the Endangered Species Act, 3) Encouraging the retention and perpetuation of forestland and associated values, goods, and services, 4) Increasing employment, rural jobs, and active forest management through a strong forest products industry, and 5) Streamlining and otherwise improving forest and conservation programs to better enable use by private landowners and land managers to address many of the above issues.

■ **CONFIRMATION OF SONNY PERDUE AS UNITED STATES SECRETARY OF AGRICULTURE:** The Forestry Association endorsed Sonny Perdue as Secretary of Agriculture in a letter co-signed by hundreds of agriculture and forestry organizations that was written to the Chairman of the Senate Agriculture, Nutrition and Forestry Committee on February 2, 2017.

The Senate confirmed Secretary Perdue on April 24 by a 87 to 11 vote. The new Secretary of Agriculture has outlined four priorities 1) removing job stifling regulations for the agribusiness sector 2) prioritizing customer service from the agency 3) ensuring a safe food supply and 4) supporting conservation efforts for private landowners and the management of natural resources with a focus on sustainability and the most effective use.

The Secretary of Agriculture plays an important role with Farm Bill policies and programs impacting landowners.

■ **H2B GUESTWORKER PROGRAM:** Foreign guest workers are vitally important to tree planting operations in the United States. These workers come into the United States to work then return to their country.

The new Federal Budget provides the Secretary of Homeland Security, in consul-



tation with the Secretary of Labor, the authority to raise the H-2B cap when he determines that there is an economic need. It limits the total number of H-2B workers that may enter the U.S. during fiscal year 2017 to 129,547, the number of H-2B workers admitted to the U.S. in fiscal year 2007.

■ **CARBON NEUTRALITY OF FOREST BIOMASS:** The Federal Budget includes a provision recognizing the carbon neutrality of forest biomass energy. The language instructs the Secretary of Energy, the EPA Administrator, and the Secretary of Agriculture to ensure that Federal policy consistently reflects the carbon neutrality of forest biomass which should encourage more investment in the forest biomass sector.

■ **SOFTWOOD LUMBER AGREEMENT:** On April 24, the Trump administration imposed tariffs on Canada of up to 24% on lumber shipped into the United States.

The tariffs vary from 3% to 24% on five specific Canadian lumber companies including Canfor, Resolute Forest Products and West Fraser. West Fraser Mills will pay the highest duty of 24%. Other Canadian lumber companies will have a 20% tariff on exports to the U.S.

The tariffs are preliminary and a final determination will be made on September 7. The Commerce Department said the tariffs off-set the subsidies received by the Canadian lumber companies from the Canadian government which own the forests.

The Trump Administration is also considering imposing anti-dumping duties on Canadian lumber companies for selling lumber below costs. A preliminary determination will be issued by June 23.

The Canadian government has said it will oppose the tariffs.

■ **TAX REFORM**

The Trump Plan: President Trump announced his Tax Plan on April 26, 2017.

Here's a summary of the plan:

- Trump's plan will reduce the number of income tax brackets. The plan has only 3 brackets of 35 percent, 25 percent and 10 percent. Income ranges have not been released for the 3 brackets.
- The standard deduction would double.
- The proposal will reduce the corporate tax rate to 15 percent from 35 percent.
- It would eliminate tax deductions with the only exceptions for the mortgage interest and charitable contribution deductions.
- The plan would get rid of the estate tax, otherwise known as the "death tax."
- Trump's plan would also repeal the alternative minimum tax and 3.8 percent of Obamacare taxes.

Also, the U.S. House Ways & Means Committee has announced it will hold a full committee hearing on tax reform on Thursday, May 18.

Local Issues

■ **RICHLAND COUNTY:** The Forestry Association successfully worked with Richland County officials to reverse a decision that prevented harvesting timber on a tract in Northwest Richland County. Initially, the County based its decision to prevent harvesting on a zoning ordinance but reconsidered after reviewing the 2012 Right to Practice Forestry Act Attorney General's opinion.

■ **CITY OF GOOSE CREEK:** The Forestry Association has received a complaint that the City of Goose Creek is not correctly interpreting the Right to Practice Forestry Act regarding the harvesting of timber. Forestry Association Chairman-elect Bart Sabine is contacting city officials to address this issue.

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