



Senate Week in Review

May 4, 2018

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THIS WEEK IN REVIEW:

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THE WEEK WE LOST IN MORE WAYS THAN ONE

South Carolinians lost a legislative week and no work got done on the VC Summer issue or any other issue. We legislators lost a lot of sleep arguing about abortions. And we Republicans lost a good bill when a calculated risk backfired.

I believe the senate was poised to overwhelmingly pass the dismemberment bill which was designed to prevent late term abortions performed around 20 weeks. These babies are ripped apart, sometimes alive, in the womb. Last year, 22 such abortions were conducted in South Carolina and all of those procedures were done in a hospital setting. Many occur because the parents have learned of serious birth defects or the life of the mother is at risk. We heard medical testimony of ways to lessen the pain felt by the babies and we all wanted to protect the life of the mother. The dismemberment procedures (also called a D&E) are terrible for all involved including the baby, the parents and the doctors.

SO WHAT HAPPENED, HOW I VOTED and WHY?

If you have followed my posts this session, you will recollect that back in February I refused to vote for the Personhood Bill which was a bill that in my judgment went overboard and into the realm of unconstitutionality. I felt the bill, which was designed to challenge Roe v. Wade would cost our taxpayers dearly to wage a legal

battle that we would lose. I ended up not voting against the bill because I did not want to vote against a pro-life measure, but I did not vote for it either because as a fiscal conservative and a lawyer, I thought it was irresponsible to pursue what would likely be a loss both in court and to the taxpayers. I felt at least the bill should have a chance to advance to the floor and let the whole senate decide, and not just a committee. As a reminder and to read a link to a story about my vote on Personhood back in February, [click here](#).

Fast forward to the floor this week and a bill that did not come through the judiciary committee but rather came through medical affairs was put on special order by our leaders. A supermajority was needed to win any abortion issue and I believe Dismemberment would have had that supermajority. As I reported last week, it would have had my vote. BUT...as promised, Senator Brad Hutto (D-Orangeburg) began the filibuster and surprised all of us (including many members of his own party) when he put up an amendment that passed which turned the dismemberment bill on its' head. The bill then became a clone of Personhood as far as constitutionality is concerned. I have to admit my own error of allowing the amendment because I voted for it. It passed overwhelmingly. But at the time there were more than 100 amendments on the desk. Senator Hutto then withdrew 80 of his amendments and after the dust settled, no more substantive amendments were made other than adding definitions and the bill then got stuck in the form of Personhood.

One of the definitions, filed by Republican senators, had the Democrats calling into question whether birth control measures would also be outlawed. I did not read the amendment to disallow birthcontrol, but just to be safe, I did file an amendment making it clear that contraceptives were not banned in the bill, but the amendment I sponsored was never reached. In what I call the Hutto Personhood form, the bill lost the supermajority including what would have been my vote.

WHAT IS CLOTURE? It is a disfavored parliamentary procedure designed to end debate when a supermajority of the membership feels that the minority view should be heard no more and the senator holding the floor should be sat down by his or her colleagues. Ever since my arrival, I have been told that it is disrespectful to vote cloture because it tells the senator holding the floor that his or her opinion is not worth hearing.

In this instance, and since we were poised to turn law existing since the mid-70's on its head and then buying ourselves an expensive trip to the supreme court, I felt that the minority deserved to be heard more than just a few hours.

Yesterday, the debate did not really get started until about 1:00 P.M. I along with others refused to vote cloture on the minority the first four times our leader called for it. On the fifth time and after twelve hours (at least I think it was the fifth time but then again it was 1:00 AM by that point and we were all tired) I did vote cloture at the very last minute. By then I had covered up with a blanket, put my earbuds in my ears and started listening to a book on tape. In other words, I needed to hear no more on the topic. It was time to cast the final vote and even with my vote it still was not enough. A supermajority was not had and quite frankly could not be had from the get-go for reasons set forth below.

SO WHAT WERE THE CALCULATED RISKS?

Within our own party, everyone knew that there was not a supermajority of votes to pass Hutto's Personhood bill. My fellow Republicans knew I did not support Personhood and thus they did not count on my vote or several other Republican votes when deciding if they could muster the needed 26 votes. In order to attain that number of votes, the prevailing assumption was that there were four Democratic senators who usually vote pro-life who could be swayed to vote for Hutto's Personhood bill. Also, usually a number of senators get tired late into a filibuster and throw in the towel and go home. If that had happened, even fewer senators would be needed to make up the supermajority. But, the Dems voted along party lines and none of them, not a single one, left the chambers. Nor did we. But that meant that the 26 votes were not there. The calculated risk failed.

Within the Democratic party, Hutto's brave move to change a bill into something less Democratic caused we Republicans to bite the hook a little too fast. Even many of the Democrats feared that the move would end up causing an upheaval in current abortion law if indeed it passed. Instead, the risk he took succeeded and it killed Dismemberment which was a good bill that otherwise would have sailed into law.

Meanwhile, leadership in the House indicated that they would not concur with Hutto's Amended Personhood bill citing the same concerns I had (unconstitutionality and fiscally irresponsible). To read more about it, [click here](#).

The represented church groups equivocated about the amendment. They feared such a drastically changed bill would die and also kill the original good bill. They were correct. The bottom line is we Republicans made a mistake by taking the bait and adopting the "Hutto Personhood amendment."

ON DECK FOR NEXT WEEK: We will finally get back to the calendar. There are two bills addressing VC Summer that I hope will pass.

H. 4379 sets forth the duties and qualifications of the Utilities Consumer Advocate who must be a lawyer and who will challenge matters that may negatively affect ratepayers. I was actively involved in this discussion and I thought many of you might want to see what we have done to try and protect ratepayers in the future. To see discussions of H. 4379 click the link here: [Legislative Archives - Thursday April 26th - Labor, Commerce, and Industry Committee](#)

H. 4375 would prospectively repeal the Baseload Review Act by demanding that the PSC not accept any new applications but it will not retrospectively repeal the Act thus the nuclear debacle is still a debacle.

As always I really appreciate any feedback, positive or negative. Also, I am thankful that next week is Sine Die (end of session)! I will write next week's review then a complete session in review, after which I will not write again until next January unless we are called back into session for some reason. Until then, do you have any thoughts about needed legislation? Or, do you think any legislation needs to be repealed? If so, let me know regardless of whether you are my constituent.

SUMMARY OF THIS WEEK IN REVIEW: *April 30-May 4, 2018*

Senate Session

The Senate had third reading on the following bill, they were sent to the House for consideration:

S1190 Dams: A joint resolution to direct the DHEC to focus the resources of the Department's dams and reservoirs safety program on regulating the state's high and significant hazard dams.

The Senate had third reading on the following House bill, returning them with amendment:

H3895 Revenue and Fiscal Affairs Office Duties and Conforming Changes: A bill updating and clarifying the duties of the RFA's Office.

The Senate had second Reading on the following bills:

H3440 Commission for the Blind: A bill to require that three members of the Commission meet the legal definition of Blindness. To further provide for the use of counselors to assist teachers of students with certain visual impairments.

H3548 Dismemberment Abortion: A bill to enact the “South Carolina Unborn Child Protection from Dismemberment Abortion Act”. This Act will prohibit dismemberment abortions, with exceptions, and provide injunctive relief and civil remedies to enforce the provisions of the Act. An amendment was adopted that prohibited all abortions except for circumstances of rape, incest or life of the mother.

H4077 Exceptional Needs Tax Credit: A bill codifying income tax credits for the education of the children with exceptional needs. These provisions have been included as a budget proviso in general appropriation acts for the last five years.

H4487 Controlled Substances: A bill to require the code commissioner be added in to the persons to be notified upon the rescheduling or deletion of controlled substances by DHEC.

H4628 South Carolina Telephone Privacy Protection Act: A bill to update and enhance consumer protection provisions relating to telemarketers. The bill establishes provisions governing the conduct of telephone solicitations that include requirements for a telephone solicitor to provide identifying information, contact information and the option to be added to the telephone solicitor’s in house “do not call list”. It establishes prohibitions on directing telephone solicitations to telephone numbers that have been added to the in house list or the national do not call registry. It prohibits the practice of falsifying caller identification system information known as spoofing, by disallowing a telephone solicitor from making a consumer telephone call with a telephone number that displays a South Carolina area code on the recipient's caller identification system unless the telephone solicitor maintains a physical presence in the state. A telephone solicitor is also prohibited from displaying the receiving party's telephone number on the contacted party's caller identification system. A private cause of action is established for those harmed by violations. The Attorney General is authorized to investigate and enforce violations.

H4657 Department of Insurance Procedures: A bill which will update administrative penalties for insurers based upon the recommendations of the DOI.

H4675 Captive Insurance Companies: A bill updating and enhancing captive insurance provisions. It would enact changes recommended by the DOI as a means of making SC more competitive in the captive insurance markets.

H4962 Retaliatory Tax Filings for Title Insurance: A bill to provide title insurers may only include their portion of the premium in the retaliatory tax computations and are prohibited from including these amounts in the SC column of retaliatory tax worksheets.

Enrolled for Ratification/Ratified:

H3886 South Carolina Homeowners Association Act: A bill to establish new provisions governing the operation of homeowner associations. A HOA must record the governing document or declaration in the local clerk of court's office in order to be enforceable. It will establish new requirements for disclosing to potential owners whether property is subject to the governance of a HOA and how copies of governing documents may be obtained. A HOA is required to provide at least 48 hours' notice before a meeting to take action to increase the annual budget.

H4672 Driver's License: A bill to provide that individuals will be required to satisfy vision screening requirements in order to renew a driver's license by either passing a vision test administered at the DMV or providing a certificate of vision examination form executed by an ophthalmologist or optometrist.

H4673 Beneficiary Designations: A bill revoking certain beneficiary designations by divorce, annulment or an order termination marital property rights under employee benefit plans administered by PEBA.

H4705 Mandatory Reporters: A bill to add clerical and non-clerical religious counselors who are charging for services as mandated reporters.

H4807 Turkey Seasons and Limits: A bill to extend the period in which wild turkey seasons and bag limits for certain counties are suspended, until July 1, 2019.

Conference/Conferee's Appointed:

Senators Davis, Corbin & Hutto/Representatives Fry, Henderson & Ridgeway

H3819 Prescribing Opioids: A bill to establish requirements related to prescribing opioids to minors.

Senators Martin, Hembree & Sheheen/Representatives Felder, Clary & Brown

H4434 Dyslexia Screening: A bill to require the DOE to establish and provide training and support for a statewide multi-tiered support system (MTSS) framework with three tiers of interventions. The MTSS framework will consist of a data based system to match instructional resources to educational needs, an ongoing system of student assessment, and a layered continuum of support. The department would develop a universal screening process to screen for identifying students who may be at risk for problems in reading, math, writing and social/emotional development. The screening would be used by local school districts through their existing response to intervention framework. Beginning the 2019/2020 school year, school districts are to use the universal screening process to screen each child from kindergarten to second grade at least three times a year.

Senators Leatherman, Bennett & Matthews/Representatives White, Cole & Clyburn

H4950 Appropriations

Transportation Committee

Favorable Reports:

H4466 Unlicensed Vehicles: A bill to provide that a county may adopt an ordinance that regulates the operation of certain unlicensed vehicles upon the public streets and highways within its jurisdiction when the vehicles are offered to the public for rental on a daily, weekly or monthly basis and to provide that municipalities may adopt a similar ordinance in the absence of a county ordinance.

H4676 Driver's License: A bill to make changes as to who may sign the application for a license or identification card for an individual who is less than eighteen years of age as it relates to registration with the Selective Service System.

H4795 Motor Vehicle Dealer Exemption: A bill that provides an exemption from provisions governing motor vehicle dealers for persons conducting a limited number of charitable auctions each year of investment grade, collector or other special interest motor vehicles. The bill will help facilitate the annual Hilton Head Island Concours D'Elegance.

H4973 Special License Plates: A bill allowing a former member of the general assembly to be issued a second special license plate.

Judiciary Committee

Favorable Reports:

S890 Energy: A bill to require the PSC to conduct a proceeding to review and approve electrical utilities' avoided cost methodologies, standard offers, and adherence to commission approved interconnection standards and to form power purchase agreements consistent with the PURA of 1978. This must take place no later than ninety days after the effective date of the act and at least every two years thereafter. The proceedings must be separate from the electrical utilities' annual fuel cost proceedings and must include an opportunity for intervention, discovery, testimony, and an evidentiary hearing. Also, every six months, each electrical utility must submit to PSC for approval updates to the inputs used to calculate its standard offer avoided cost rates. After providing interested parties the opportunity to participate in the proceeding, PSC must establish updated standard offer avoided cost rates for the electrical utility. Additionally, PSC must approve a standard offer power purchase agreement to be used by each electrical utility in purchasing energy, capacity, and other related services from small power producers eligible for the standard offer. PSC must either require the use of the standard power purchase agreement or approve a separate form power purchase

agreement to be used by each electrical utility. Further, an electrical utility's standard offer avoided cost rates must serve as its avoided costs for the purpose of recovering fuel costs associated with an approved distributed energy resource plan.

H3146 State Superintendent of Education: A joint resolution for a proposed amendment to the South Carolina Constitution that the State Superintendent of Education be appointed by the Governor upon the advice and consent of the Senate, rather than elected by the state's voters. Under the proposed state constitutional amendment, the Superintendent of Education would be removed from the list of Constitutional Officers who are elected statewide and the State Superintendent would instead be appointed by the Governor, upon the advice and consent of the Senate, to serve at the Governor's pleasure. The General Assembly would provide by law for the duties, compensation, and qualifications for the office. Should the legislation be approved by the General Assembly, the proposed amendment to South Carolina's Constitution would be placed before the voters as a ballot question at the next general election. If the proposed amendment is approved by the voters, the appointment provisions would begin in January 2023, or earlier should a vacancy in the office of Superintendent of Education occur after the date of ratification.

H4304 Off Shore Wind Resource Development Activities: A bill facilitating offshore wind resource development activities undertaken by an electrical utilities. The legislation authorizes the South Carolina Public Service Commission to adopt procedures that encourage electrical utilities, subject to the jurisdiction of the commission, to invest in offshore wind-resource development activities if the commission determines that adopting these procedures would be in the best interest of South Carolina ratepayers in terms of reduced electric rates, economic development benefits for state residents, and environmental impacts. Any wind-resource structure installed must not be visible by the human eye from land.

H4375 Base Load Review Act: A bill to upon effective date, require that the PSC not accept a base load review application nor consider any requests other than in a docket currently pending before the commission. The provisions of the Act are repealed upon conclusion of litigation concerning the abandonment of VC Summer Units 2 and 3.

H4379 Utilities Consumer Advocate: A bill creating a Utilities Consumer Advocate to safeguard the interests of consumers in dealings with public utilities that offer such essential services as electrical power, gas pipelines for heating and cooking needs, water, sewerage, and telecommunications. The new Utilities Consumer Advocate must be an attorney qualified to practice in all the state's courts.

Medical Affairs Committee

H3775 Birth Certificates: A bill allowing an adult adoptee (21 years old or older) to obtain a copy of the adoptee's own original birth certificate information. The bill requires the development of a contact preference form and a medical history form to provide to a biological parent upon request. Upon completion, these forms must be filed with the state registrar and accompany with an original sealed birth certificate issued to an adoptee. The contact preference form must allow the biological parent to indicate whether he has completed or updated a medical history form and must allow the biological parent to choose from various contact options.

H4698 Board of Medical Examiners: A bill that provides an exemption for licensed physicians employed with the disability determination services unit of the state agency of vocational rehabilitation from additional examination requirements with the State Board of Medical Examiners.

H4799 Physical Therapy Licensure Compact: A bill to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

Labor, Commerce and Industry Committee

Favorable Reports:

H3846 Homebuilders Licensure Requirements: A bill to exempt an owner of residential property who makes general cosmetic improvements, inside or outside the home, such as the installation or repair of interior and exterior paint or trim, flooring, toilets, showers, tubs, sinks, fixtures, cabinetry, shelving, appliances, doors, windows, drywall, driveways, landscaping, external storage buildings, decks, patios, porches, and fencing, if the owner does the work himself. A residential property owner is exempt from building permit application requirements for these cosmetic improvements if he performs the work himself. The legislation also specifies that a licensed residential builder may also obtain licensure as a residential specialty contractor.

H4093 Employment First Initiative Act: The bill directs all of South Carolina's state agencies and political subdivisions to consider adopting a policy that encourages competitive integrated employment for individuals with disabilities. To further those employment goals, state agencies and local governments are encouraged to coordinate their efforts, adopt rules and promulgate regulations for implementation, and share data and information across systems in order to track the progress of the initiative. A seventeen-member South Carolina Employment First Oversight Commission is created to coordinate the implementation of the initiative and make annual progress reports to the Governor and members of the General Assembly.

H4601 Licensure of Addiction Counselors: A bill that will require an addiction counselor to be licensed by the Department of Labor, Licensure, and Regulation. After October 1, 2018, an addiction counselor applicant must have a master's degree or higher and meet the other licensure requirements imposed on professional counselors and marriage and family therapists.

H4815 Speech/Language Pathologists: A bill updating and revising the practice act to better facilitate that needs for these services are met.

H4877 Board of Pyrotechnic Safety: A bill to revise the composition of the Board by designating two additional seats.

Coming Next Week:

May 8-Session starts at 11:00 a.m. Judiciary will begin at 10:00 a.m.

May 9-Senate picture 11:45 a.m. Senate Chamber Please wear Dark Suit

May 10-Joint assembly election of PSC candidates

Judiciary Committee:

Public Service Authority Statewide Appointments

H3208 Terrorism: A bill to provide for the offense of terrorism, its elements and penalties, to also provide for the offense for providing financial or other assistance in support of an act of terrorism.