Ethics Reform Continues to Dominate Session
House Deals with CON, Abortions, FOIA

Senate Ethics Reform

Senator Larry Martin updated the Senate Tuesday on S.0001, Ethics Reform. He said the committee was working to find common ground if they could not reach a consensus, they would make recommendations on how to proceed. He said they were looking at amendments on the desk to see if they could incorporate some of them into the bill. He wants to address the bill this week. Senator Malloy reiterated there was nothing wrong with the current system saying, “It is a duty to sit on a committee and judge your peers.”

Leatherman on SC State

As the Senate Finance committee completed their agenda Tuesday, Senator Leatherman said, “I have heard rumbling across the hall to close SC State for a year. I want you to know that this is a House idea.” Senator Jackson responded, “This takes the cake. Thank God for your leadership and thank God for this Senate.”

Forfeited Lands

The Senate Finance committee met Tuesday and gave a favorable as amended report to S.0078, Forfeited Lands Emergency Development Act. Senator Hayes explained the bill saying that several counties have unproductive land. The subcommittee amended the bill to allow for land clean-up funds to “get the land back to useful property.” Up to 50 percent of the sales revenue goes into a revolving fund for clean-up. They also provided that the emergency provisions don’t apply to inherited land. Senator Matthews indicated he had experienced problems in this arena. Hayes said the bill would not address all the problems but would “give counties the wherewithal to get land back on the books for taxing.” Senator Nicholson pointed out it would help McCormick County and was not an unfunded mandate. Matthews offered an amendment to require there not be a closed sale by family members unless there has been a notification of the land sale published. His amendment and the subcommittee amendments were adopted.

House Ethics

The House of Representatives discussed and passed H.3199 and H.3194, Ethics. H.3199 clarifies funds raised for debt after elections cycles are completed must be used to retire debt. Representative Hill
offered an amendment on H.3194. The amendment would strike sections 1 and 2, making no allowance between active and inactive candidates. Representative Cole said, “Sections 1 and 2 are the heart of the bill itself—we must have those sections to get to section 3.” Representative Norman questioned why this was an issue, to which Cole replied that Hill’s amendment would delete clarification of who is a candidate. Norman raised a 24 hour point that was overruled. Hill defended his amendment stating that unsuccessful candidates should not fall under this category when he or she has money left in the campaign account 2 years later. Cole suggested that the candidate might seek office again and made a motion to table the Hill amendment. His motion failed. All other amendments were withdrawn.

The House amended H.3189 Wednesday before it was placed on the contested calendar. Representative Powers Norrell amended the bill regarding expanding disclosures by groups who do not meet the criteria to clarify when disclosures would be made. Representative Norman and Powers Norrell discussed electioneering. Representative Toole amended the bill to require any person or entity who contributes $100 must be identified. Toole said this would capture donations toward ballot issues. He said it was tailored after the North Carolina law which was working well. Norman and other requested debate. The House gave second reading as amended Thursday to H.3189 and unanimous consent for third reading the next legislative day. Powers Norrell said her amendment would not change the methodology of reporting and would strengthen the main bill. Norman made a motion to table that failed and the amendment was adopted. Representative Wells asked about electioneering communication and Powers Norrell said it was defined specifically in the bill. Hill questioned Powers Norrell about absentee ballots and Norrell replied, “Absentee ballot is not electioneering communication.”

H.3195, use of campaign funds, was amended and passed by the House of Representatives this week. Representative Pope offered an amendment which was adopted to clarify the use of campaign funds in their official capacity. Representative Rutherford said, “Official capacity? Anything I am invited to because I am a member of the House?” Pope said yes but used an example of not using the campaign if he were to be invited to a meeting as a former solicitor.

FOIA

The House Judiciary committee met Tuesday and gave a favorable as amended report to H.3191, to create the Office of Freedom of Information Act Review. Representative Newton explained the bill, which would establish the office of Freedom of Information Act Review in the Administrative Law Court, expand the right to inspect public records to include receipt of existing electronic transmissions, to establish fees (max of 25% of total cost to fulfill) and establish a timeframe for response to a FOIA request. The timeframe for response is tiered, depending on the age of the requested document(s): 10 business days for initial response to grant or not and 30 days from then to furnish the request; or if a requested document is more than two years old, 20 days for initial response and 35 days to furnish. H.3191 has a fiscal impact of over $141,000.

There were several amendments adopted. The Newton amendment adds language relating to attorney fees, indicating that in a good faith determination, no attorney fees will be rewarded. The second Newton amendment addresses abuses by inmates and does not allow them to bypass the judicial process through FOIA requests. Representative Walt McLeod’s amendment strikes the line, “public body may not collect fees for the first 2 hours of work…” on a FOIA request. The fourth amendment, from Representative Delleney, ensures that Administrative Law Court is held under the same ethics standards
as any other court. Representative J. Smith offered the last two amendments indicating that if a deposit is required to fulfill a granted FOIA request (30 days or 35 days for requests older than two years), the timeframe to answer begins when the deposit is paid and adds new language to clarify current law in regards to incident reports and what is open to FOIA.

The committee also gave a favorable, as amended, report to H.3192, public notice of meetings/agenda additions. H.3192 establishes that agendas are required and an amended agenda must be posted 24 hours before a meeting. An agenda may be modified during a meeting by a 2/3 vote and a finding of irreparable harm if an item is not added. The bill was amended by Representative W. McLeod to read “after the meeting begins, an item upon which action can be taken” may be added to the agenda with 2/3 vote and a “finding that an emergency circumstance exists by council members.”

Alexander Point of Personal Interest

Senator Alexander took the Senate floor Wednesday on a point of personal interest regarding Seneca. The town was rated 15th nationally as one of the best places to retire.

Senate Ethics

The Senate spent almost 6 hours Wednesday debating S.0001, Ethics Reform, to no avail, as they failed to give the bill second reading by a vote of 19-24. The 5 member committee was not able to reach a consensus. Senator Shane Martin began the debate discussing an amendment which he said created more bureaucracy. He ceded to an amendment by Senator Rankin “with me retaining the floor after the outcome of this amendment.”

Rankin offered what he called a compromise amendment. He asked what they were fixing. He later added, “I am not against change but you are being asked to chuck the good and the bad of this Senate.” He said the issue was the Governor and the House, not the Senate. His amendment creates a committee of 2 House members and 2 Senate members with each body appointing a majority and minority member. The Governor will appoint 3 members and the Attorney General will appoint 2 members for a total of 9 members. All members will be vetted and screened by the General Assembly. Rankin said, “This group will hear complaints and deal only with the House and Senate.” He said the current Ethics Commission needed “to have their house cleaned up” and would handle county and other elected officials. Rankin clarified minority appointments for Senator Scott. Senator Leatherman said the new commission would be a full time job. He pointed out if the finding of the new commission is turned down by the House and Senate, there would be no public reporting and no opportunity to appeal.

Senator Larry Martin said he had hoped there would be a consensus and spoke against the amendment. He said they needed to move on and address other issues before the Senate. He said the amendment creates a new commission and “puts us right in the soup bowl.” He said House and Senate members should not be on an independent commission. He said the public wanted them to abide by the law and that if they broke the law they would be treated like everyone else. He said if the amendment passed, he would vote against the bill. “This doesn’t represent reform. It does not represent independence. Do not under any circumstances vote for this amendment,” said Martin.

Leatherman said there are two prongs – a criminal violation goes to the Attorney General and if there is a civil violation, the commission members become judges. Martin said he had served in both chambers.
longer than anyone else. He said they should not be treated differently. Rankin said, “We treat each other differently right now with the House and Senate Ethics committees. If the Ethics Commission took care of its business, we wouldn’t be here right now.” Martin called the bill a “red herring” and said the public will not accept the amendment as ethics reform. Rankin disagreed. Martin asked why not put in amendment to “take out this whole thing.” Rankin said Martin was trying to fix a problem that did not exist and asked Martin if he saw any problems when he was the chairman of the rules committee. Martin simply responded Rankin should take out the independent commission. Rankin said they were treated differently by the Constitution. He added, “It is reform but not strong enough for you.”

Senator Setzler said it was healthy to have the debate and said they are held to a different standard than county officials. He pointed out they can be suspended if they violate the law. Senator Campsen said their committees enforce rules, not statutes. Martin said, “I believe in separation of powers. People know the rules in enforcing rules and statutes.” Campsen said the difference between the two versions is that they suspend a member by a 2/3 vote.

Senator Campbell spoke against the amendment. Martin told him the “public will not buy it.” Leatherman said they had an ethics law on the books and asked what was wrong with it. He asked Martin if it had worked and Martin said, “To a point.” Leatherman said, “The ones who have left this body will tell you it works.” They continued their discussion.

Martin moved to table the amendment and the Senate refused. The amendment passed by a vote of 25-20. Amendments were carried over or withdrawn. Senators Hembree and Corbin offered an amendment to prevent spouses and immediate family members from running for judicial office. A point of germaneness was made and sustained. Senator Shane Martin and others offered an amendment which was adopted to provide income source exceptions for disclosure. Setzler and others offered an amendment which was adopted to provide for a $3500 aggregate contribution for statewide candidates elected jointly beginning in 2018. Senator Bright later amended the amount to $4500.

Senator Sheheen offered an amendment which was adopted to increase the time delay for becoming a lobbyist to 5 years. Sheheen also offered another amendment which was adopted to provide elected officials cannot willfully solicit campaign contributions from those they supervise. Sheheen offered other amendments which were ruled out of order, withdrawn or tabled.

Senator Hutto offered an amendment which was adopted to strike the recusal language to keep their current practice in place. Senator Peeler asked for clarification and Senator Coleman said you could discuss but not vote. There was further explanation and Senator Massey moved to table the amendment which failed. Additional amendments were carried over or tabled.

Rankin offered a technical amendment which was adopted. Debate continued on amendments withdrawn or tabled. Sheheen offered an amendment which was adopted to change the financial threshold of a contract and campaign contributions. Hutto offered an amendment regarding the effective date which was adopted.

Additional amendments were withdrawn or tabled. The committee amendment was adopted as amended. Second reading of the bill failed by a vote of 19-24.

Martin made the motion Thursday having voted on the prevailing side to reconsider the vote on S.0001. “This will enable the Senate to reconsider the bill at a future time,” said Martin. Senator Cromer moved to carry over the motion and the motion passed.
Matthews Point of Personal Interest

Senator Matthews took the Senate floor Wednesday on a point of personal interest regarding the potential closing of SC State. He said the Democratic Caucus believes it would be irresponsible for the members not to work on the issue of SC State. “We think it is the SC State Board directors to make this decision,” said Matthews.

DOA Appointment

The Senate Finance Special subcommittee met Wednesday and gave a favorable report on Marcia Adams’ appointment as the Director of the Department of Administration. Adams began working in state government in 1987 at the Department of Motor Vehicles. The subcommittee questioned her improvements made at the DMV that included working more with stakeholders and using technology as a platform. The subcommittee then began discussion on Adam’s role with the Department of Administration. Adams informed the committee that she would be looking at the needs of citizens, looking to partner with other agencies, and looking at the overall effectiveness of the agency as a whole. Senator Nicholson commented, “I believe in partnership and working together using procurement.” Senator Sheheen moved for a favorable report.

Pollution Control Act Revisions

A Senate Medical Affairs subcommittee met Wednesday and gave a favorable report to S.0229, to allow legal action against a potential violator of the SC Pollution Control Act. It states that only DHEC or an agency, commission, department or political subdivision of the state may initiate legal action against a violator. The general public must first petition DHEC for a declaratory ruling; and also states these DHEC decisions are not subject to judicial review in a civil proceeding.

Senator Johnson opposed the bill. Proponents of the bill claim that it closes a loophole from the 2012 Act.

Bill Stangler, Congaree River Keeper, said, “This bill takes away the rights of citizens from illegal pollution. Citizens should be able to protect themselves and their communities from illegal pollution.” Senator Davis responded, “A compromise had been worked out. I was in favor of a private cause of action. I am with you on the merits, but the deal was broken.”

Senator Johnson, who was not part of the 2012 Act, said, “I think people have the right to change their minds. This is a big issue back in my district now.” Davis responded, “In my neck of the woods, environment is paramount. The process matters.” Referring to a video of the 2012 legislation, he added, “It’s a matter of keeping your word.”

Frank Holloman, an environmental attorney from Greenville, testified, “This is a proposal to eliminate the rights of citizens. This proposed solution has not worked in North Carolina. Pollution control can create jobs in the state.” He added, “The General Assembly should be celebrating citizens’ rights. The state Constitution requires citizens’ rights.” Holloman indicated future bills if they move this one forward. He said contamination in the state is terrible and he has filed two suits to public utilities. He claimed these are not frivolous suits because DHEC has documentation of pollution violations. Holloman reminded the panel that South Carolina is the only state in the southeast where public
utilities are cleaning up waste. Davis said, “There is ambiguity in the case. My problem is from a moral standpoint.” Holloman was insistent, “When you settle a case what counts is what is in writing. The judge said that the language was clear – there was no private cause of action.” Senator Campbell defended the bill, “There is within the bill the ability for citizens to contact DHEC with petitions.” Holloman was adamant, “DHEC and other environmental agencies never took action for clean-up until litigation was pursued.”

Randy Lowell testified, “I was in the room when the deal was made. There were no more PCA lawsuits after June 6, 2012. There were plenty of remedies out there too.”

Campbell said, “Politics is the principal of compromise. Sometimes when it is put in writing we miss the intent.”

DHEC Decisions Appeals

A Senate Medical Affairs subcommittee met Wednesday and gave a favorable as amended report to S.0228, which transfers the responsibility of adjudicating appeals of decisions made by DHEC to the Administrative Law Court. The amendment was technical. Chester Sandsbury, a retired 26-year DHEC employee who has since worked with the League of Women Voters, said “This bill in general takes away the ability of citizens like myself to influence the process.” He said this goes against the philosophy of the government process of transparency and needs to be taken more seriously. He added, “This bill fails to foster trust and confidence in citizen activity. It sends a message that money matters.” He urged the subcommittee to table the bill.

Senator Campbell replied, “This bill still allows for citizens to petition DHEC.” Senator Davis said, “It is my opinion that this bill is rooted in personal experience. I see this as moving away from rules of law that DHEC Board circumvents.” Frank Holloman testified, “The DHEC Board review is very public. These board members are confirmed by the legislature. Stupid decisions get made.” He continued, “The ALC is worse than a regular court and more costly. This bill is designed to constrict people coming in to take action.” He added, “It will make it harder to seek administrative review than people seeking a liquor license or Certificate of Need.” He offered, “Just look at the cumulative effect – the public is moved out of the process.” Campbell disagreed, “DHEC staff makes final decisions but you can make petitions to the board initially.”

Regulations

The House of Representatives amended and passed this week H.3006, Sunset of Regulations. Representative Toole offered an amendment that would make the bill not retroactive. Representative Cobb-Hunter questioned why Toole offered this amendment to which he responded, “It will make it easier to pass the body.” The Toole amendment was adopted. Representative Walt McLeod offered a second amendment that would allow for the bill to take effect July 1, 2017, allowing agencies to have an adequate amount of time to adjust. Toole made a motion to table the McLeod and the amendment was a tabled. McLeod then offered another amendment that would allow agencies the ability to determine if public interest requires a regulation to be retained then the agency may submit a request to the General Assembly to obtain approval. Cobb Hunter questioned why the Legislative Oversight Committee could
McLeod responded, “This bill cuts the legs off the table of this committee.” The McLeod amendment was tabled.

**Pain Capable Unborn Child**

The House of Representatives debated and passed **H.3114**, Pain Capable Unborn Child. Representative Ridgeway offered an amendment to the bill. He said, “My amendment is directed to medical personnel; it does nothing to change the meaning, it only changes the wording.” The Ridgeway amendment calls for the OB/GYN to use Naegele's Rule to calculate the pregnancy date. Representative Delleney moved to table the Ridgeway amendment and it was tabled.

Representative Nanney took the floor to further explain the bill. Representative Rutherford interrupted to ask Nanney why she voted against the Ridgeway amendment since he is a physician. Nanney replied, “His bill would change conception.” Rutherford and Nanney continued to argue over the issue. Nanney argued, “This bill deals with the unborn child.” Rutherford rebutted, “This bill says we don’t care about a woman’s emotional state. Republican women on the congressional level rejected a bill just like this earlier in the month because federal courts have found it unconstitutional.” Nanney refuted, “Medical science says babies feel pain, it is overwhelming science.” Rutherford commented that the General Assembly should not interfere with a doctor and his or her patient. Representative Bernstein raised the issue of fetal anomalies. She said, “This bill does not allow a woman to have an abortion even when the fetus is not compatible with life—that’s my problem with this bill.” Nanney responded to Bernstein stating, “It is not our place to play God.” Representative Hart interjected asking Nanney if she had even read Roe v. Wade. Representative King asked Nanney how she voted on Medicaid expansion. King asked, “What about these children who are born to parents who cannot afford healthcare?” Representative Cobb Hunter brought up issues involving incest to which Nanney responded, “There are other options such as adoptions.” Cobb Hunter replied, “Those who are pro-life love the baby in the womb but when it’s born that love dissipates.” Other representatives continued to join this debate and the questioning of Nanney continued. Bernstein gave the final comment saying, “This legislation puts us in the room with doctor and his or her patient, and I have a problem with this.”

**Malloy Point of Personal Interest**

Senator Malloy took the Senate floor Thursday on a point of personal interest regarding SC State. He said the Senate was not asking for the resignation of the university president. He said there was no bill moving in the Senate. Senator Courson reminded him of the 20 day furlough bill. Malloy said they should be part of the solution. He thanked Senators Leatherman and Courson for their leadership on the issue.

**Powdered Alcohol**

Senator Bryant objected Thursday to **S.179** to ban powdered alcohol. Senator Larry Martin said the product would come to South Carolina could be sold in convenience stores if not banned. He said, “It keeps powdered alcohol away from children.”
nate Finance Subcommittee on Transportation Funding

The Senate Finance subcommittee on Transportation Funding met Thursday afternoon but did not take up any legislation on their agenda. Mark Lester, SC Department of Transportation, spoke of the need to have $27.6 billion to address all of the funding needs. Senator Cleary asked Secretary Oakley what they would do with the planned appropriation of $400 million by the House of Representatives. She said they would use the funding for a preservation strategy to maintain the road system and possible expansion of the most heavily travelled areas. Cleary quizzed Oakley about the current operations of the agency. Oakley spoke about project delays. Senator Thurmond asked how they could help accelerate projects and she responded $1 billion in bonds. Thurmond suggested requiring new gas station owners to “present a bond so we don’t have to take dollars for clean-up of tanks.”

CON

The House 3M Subcommittee I Health and Environmental Affairs met Wednesday and recommended disapproval for R.4551, Certificate of Need Facilities and Services. Representative Murrell Smith informed the subcommittee that the CON Ad Hoc Committee had discussed particular regulation in the summer. Smith said, “We need to deal with CON via statutes, not regulations or joint resolutions. The CON system needs to be reformed and we need to work off of a bill.” Smith then requested that the subcommittee instruct DHEC to withdraw the regulation.

Uber All the Way

The House LCI Public Utilities subcommittee met Thursday and gave a favorable as amended report to H. 3525, Regulation of Transportation Network. The bill provides that Uber must be licensed through PSC, but a person would appeal to the Administrative Law Court where limits of liability will be adhered to. The uninsured motor coverage of $1 million will be provided by transportation network companies (TNC), so the public as a whole is protected. The owner has up to 30 days for the vehicle to be inspected and the type of vehicle and capacity it carries will then be identified. Representative Sandifer made a motion to strike the 150,000 miles and replace with vehicle no older than 10 years and the inspection of the vehicle is required on a yearly basis. Sandifer said, “This is an evolving document. It is necessary to move this rapidly. This must be in the law by June 30, 2015. The written form will be presented next week. ORS will audit TNC.” Once the driver logs into the system they are covered by the network insurance, not their personal insurance. The insurance on the vehicle must be what auto insurance rates are today. Jim Irvin, SC Safety Transportation Association, stated that there was no stipulation for sliding fees. Myrtle Beach has used a taxi service for 40+ years and has a business license. Irvin said, “I have seen no evidence that TNC would require a business license. Nobody knows who the TNC drivers are. We want the state to get revenue from TNC drivers for DOR, and we don’t want them exempt from getting a business license.” He also stated that license plates should be displayed so that a passenger would know who the Uber drivers are, because citizen safety is at risk. Sandifer referred to page five of the bill, saying that there are specific qualifications required for Uber drivers that are not required for taxi drivers. Mark Tillman, State Farm agent, discussed insurance issues
ing to TNC. He said, “We believe Uber is innovative, no problem with operations, but just want to make sure there is coverage. There are potential coverage gaps if a driver does not have TNC coverage.” He continued, saying that the “insurance is not priced to handle additional risks and not intended to cover this activity. To prevent gaps in coverage, Uber should get a policy designed to cover the intended activity. Primary coverage is needed for when the driver is working and that time period is considered commercial activity. TNC’s policy is to provide coverage for entire time.” Representative Atwater asked about liability insurance, and it was suggested that that bill will be forthcoming. Tom Sellany, American Insurance Company, agreed with what Tillman said, and added that there are two issues with the bill: the app on and off and primary insurance. He said that this amendment resolves the issues, and that the amount of coverage was a public policy issue. Atwater asked Sellany to clarify what is meant by app on and off. Sellany said the driver uses personal insurance until they have the passenger in the car, then it switches to commercial insurance.

Atwater asked what triggers the insurance, and Sellany said the regulation by PSC, but the statute says that city council has jurisdiction. Sandifer made it clear that Uber does not work like taxi, by not “trolling” dispatch to pick up a specific person at specific location and deliver them. Dave Barner, Uber employee, asked to be allowed a chance to sit down and come to agreement on the insurance policy. He explained their background check system and that the driver is required to show proof of own coverage. Barner said, “There are no gaps in the insurance coverage. From the moment the app is on to the moment the rider is let out, the driver is covered. Uber provides this commercial coverage, and personal policies apply when the driver has no one in the car.” He said that Uber has provided a dramatic decrease in DUI arrest rates, as much as 10% in some places. Brad Neil, Uber employee, spoke on insurance saying that their insurance policy has been in place for over a year and there have not been coverage disputes. Neil suggested that he has issues with the amendment and wants to talk to the legislators. Sandifer said he should have tried yesterday when they were looking for input. “The amendment was drafted based on what the attorney said Uber wanted.” Sandifer continued, “We depend on good information and input from your company and we feel like we have done due diligence here. If the bill passes as amended, you will have opportunity between now and next Tuesday to further amend.” Neil informed Sandifer that they have set up a time to meet with staff. Representative Forrester replied saying “July 1st could be another cease and desist. We need you and the insurance folks to work together and we need it by next Tuesday.”