

2016 South Carolina Legislative Outlook

The 2016 session of the South Carolina Legislature will begin on Tuesday, January 12, 2016, as it enters the second year of the 2015-2016 two-year term.

Several issues were resolved in the first year of the term, but most attempts to address greater concerns, including infrastructure funding, failed. Flood relief, permanent road and bridge repairs, and addressing the decades-old education funding equality lawsuit are immediate needs for the state. With these larger issues looming, as well as the 2016 elections, the Legislature faces a challenging and busy 2016 session.

Flood Relief

The historic, statewide October floods, which are estimated to cost the state \$114 million, will undoubtedly affect the 2016 session. Losses statewide are estimated at nearly \$1.5 billion, including \$587 million in agricultural losses, \$181 million in insurance claims, and \$35 million in tourism losses.

Governor Nikki Haley plans to include the \$114 million in her January budget proposal. Governor Haley has already approved \$9.3 million from the state's unclaimed property fund to help cover the \$40 million in flood-related costs incurred by the South Carolina National Guard and its Emergency Management Division.

The Senate immediately appointed a special nine-member committee in late October to oversee the state's flood relief efforts and to determine how much money is needed from the state for recovery. The committee has met twice to hear from a variety of state agencies and FEMA.

FEMA has approved \$67.8 million in disaster aid for individuals and households in South Carolina, but less than 28% of the 90,000 applications have been approved for aid. The US Small Business Administration (SBA) has also approved more than \$83 million statewide in disaster loans for homeowners, renters, and businesses. On Monday, November 30, FEMA announced a 30-day extension of its application deadline to January 3, 2016.

Local governments have appointed recovery teams to lead efforts to rebuild infrastructure, to restore services, and to aid residents in rebuilding. Richland County, one of the most affected areas, estimates that more than \$15.1 million will be needed beyond federal funds, and it already has 8,000 applications certified through federal assistance programs. Richland County reported that more than \$13.5 million in federal funds have been disbursed to its residents and nearly \$29.2 million in SBA disaster loans have been approved. Richland County also plans to create a long-term plan to focus on ensuring structures can withstand future natural disasters, helping homeowners raise their homes, and initiating property buyback for commercial and residential buildings.

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Infrastructure Funding

Road repair quickly became the hot policy issue of 2015 after Governor Haley presented a road repair funding plan in her January State of the State, which called for a phased-in 10-cent increase in the gas tax, coupled with a 2% decrease in the state's income tax. At the time, most legislators agreed that a plan to fund repairs was necessary, but disagreed on how to fund the overdue and much-needed repairs.

Now, after the total devastation of the state's infrastructure by the October floods, infrastructure funding remains the No. 1 policy concern for 2016.

For 2016, expect the gas tax to dominate the discussion, as it is likely that an increase will ultimately be a part of the road repair funding package. Several senators support the increase because it effectively functions as a user fee that allows those who use the roads, including out-of-state residents, to shoulder the cost of upkeep and improvements, and the House and governor both included a gas tax increase in their original plans. However, some legislators do not support any increase in the gas tax, and instead want to utilize the state's budget surplus to repair the roads. A potential showdown is brewing over the use of these funds, which many believe are not the sustainable source of revenue that road repair and future maintenance may require.

Education Equality Plan, Abbeville v. South Carolina Order

The South Carolina Supreme Court ruled against the state in the decades-old Abbeville v. South Carolina education funding equality suit and recently ordered the Legislature to submit a plan to remedy the inequality. The original order contained a hard February 1, 2016, deadline for submission of the plan, which the Legislature refused to accept based on a usurpation of powers expressly granted to the Legislature by the state constitution.

The court issued a second order with the less-stringent requirement that the state make a good faith effort at changing the education funding system. The order requires that the state address "alarmingly-low student and school district performance, insufficient transportation, poor teacher quality, high teacher turnover, local legislation, school district size, and poverty." Both the House and Senate have special panels working to make recommendations for the 2016 session.

The Bond Bill

The original \$500 million dollar bond proposal of 2015 included funding for an aeronautical training center, a children's hospital at MUSC, education capital improvement projects as required by the Supreme Court under the Abbeville decision, and other state building maintenance needs. It was ultimately killed, with the help of Governor Haley and the discovery of new sources of revenue, including unclaimed property and an upcoming lawsuit settlement.

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However, the Senate revived bond bill efforts with a smaller \$237 million plan, which includes funding for capital improvement projects for higher education institutions, the state's technical colleges, and state armories. Governor Haley has told the Senate she will veto the bill, but the bill is not yet dead in the Senate. It will likely be revisited in 2016 and may be rewritten to cover some or all of the state's \$114 million in flood-related costs.

Focus on Updating CON, Medicaid Expansion Unlikely

South Carolina's Certificate of Need (CON) Program was originally enacted to promote health care cost containment, prevent unnecessary duplication of health care facilities and services, and ensure high quality health care services. Some believe the law now functions as a barrier to the state's health care market and effectively increases health care costs for the consumer. *H. 3250* in its current form would ease the state's CON restrictions on the ability of health providers to build or open new health care facilities, and it is scheduled to be taken up by the Senate in 2016. Many interests are at play and *H. 3250* may be amended before Senate passage.

Medicaid expansion is unlikely to be debated in 2016 given the number of larger issues the Legislature must handle, but it remains in recent news after US Representative Jim Clyburn (D-SC) renewed his call for the Legislature to expand Medicaid.

Eliminating the Income Tax

Two senators from areas heavily affected by the October floods will seek to eliminate the state's income tax in 2016, which will likely be an uphill battle given the immediate infrastructure and education funding needs of the state.

Please contact a member of the McGuireWoods Consulting team if you would like more detailed information about any of the above issues or any other policy issues in South Carolina.

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