

NEXSEN | PRUET

SCEDA Annual Meeting

SC Economic Development Competitiveness Act of 2010 H.4478

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Harrell Bill

PROCESS

Last summer Speaker Bobby Harrell appointed an Economic Development Committee consisting of:

April Allen

Lewis Gossett, Executive Director, SCMA

Nick Krymedes, Executive Director, Realtors Assoc.

Burnie Maybank

Otis Rawl, Executive Director, State Chamber

George Wolfe

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PROCESS

The Committee started meeting in August 2010 and took testimony from many, including:

SCEDA

Department of Commerce

County Folks

Utilities

Site Selection Consultants

Port

Alliances

Railroads

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PROCESS

H.4478 was introduced in the House on January 28, 2010, and was co-sponsored by Speaker Harrell and 102 House Members.

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PROCESS

The Legislation passed the House on March 5, 2010; was subsequently voted out of Senate Finance Subcommittee and full Senate Finance on April 14, 2010.

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PROCESS

The Legislation currently sits on the Senate Calendar for second reading. As of April 5th at 4:00pm the following Senators have put their names on the bill:

Tom Davis
Mike Mulvaney
Lee Bright
Mike Rose
Glen Resse
Kevin Bryant
Brad Hutto
Shane Massey
Shane Martin
Danny Verdin
Greg Ryberg

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PROCESS

Lobbyists for SCEDA, SCMA, State Chamber and SCSPA are talking with these 11 Senators and remain hopeful of passage. The General Assembly goes out first Thursday in June.

Harrell Bill

SUBSTANTIVE PROVISIONS

SC PORTS TAX CREDIT

House Version

Allows Ports Authority to award up to \$4 million of withholding tax credits in addition to \$4 million of income tax credits; simplifies the allocation process; lowers the base year; and allows the Ports Authority to award up to \$1 million of withholding tax credits to new warehouse and distribution facilities.

Harrell Bill

SUBSTANTIVE PROVISIONS

SC PORTS TAX CREDIT

Senate Version

Transfers administration of the credit from the SCSPA to the Coordinating Council (same as in the original Harrell bill.)

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SUBSTANTIVE PROVISIONS

ENDOWED CHAIRS

House Version

Centers of Excellence

Allows the Coordinating Center for Economic Development (CCED) to award Research Universities up to one-third of the Centers of Excellence Matching Endowment and waives match requirement for large projects (\$100m). Removes CCED from normal application and review process of the Center of Excellence.

Harrell Bill

SUBSTANTIVE PROVISIONS

ENDOWED CHAIRS

Senate Version

Keeps under current Review Board, does not create a separate process. Reduces separate pot from 1/3 to 1/4. Ties to list of eligible Industries already in Endowed Chairs statute (and adds "distribution of logistics sciences: while allowing Commerce to deviate from that list for "other sciences and research that create well-paying jobs and enhanced economic opportunities for the people of South Carolina". Adds language ensuring Commerce can use funds to support an Endowed Chair already in existence or to create a new one. Further clarifies House language by ensuring funds eligible for this new set aside are not just new funds that may be appropriated to the program by the lottery, but existing funds that have not yet been awarded including funds that have been awarded but are returned "to the pot" for various reasons including "dissolution, withdrawal, or termination of a center of excellence" to include when funds are returned when requisite match money hasn't been granted.

Harrell Bill

SUBSTANTIVE PROVISIONS

STIMULUS BOND PROVISIONS

House Version

Federal Recovery Zone Bond Reallocation

Allows Budget and Control Board to pool unused city and county ARRA Recovery Zone Facility bonds, Recovery Zone Economic Development bonds, Qualified Energy Conservation bonds and certain other federal bonds.

Harrell Bill

SUBSTANTIVE PROVISIONS

STIMULUS BOND PROVISIONS

Senate Version

No Change

Harrell Bill

SUBSTANTIVE PROVISIONS

STIMULUS BOND PROVISION

Federal bond provisions expire this year!

SC has not issued a single bond.

Georgia and North Carolina adopted similar statutes last year.

Harrell Bill

SUBSTANTIVE PROVISIONS

RENEWABLE ENERGY MANUFACTURERS

House Version

- Adds renewable energy manufacturers (REM) to existing Life Sciences Act.
- Defines a Renewable Energy Manufacturer to include manufacturers of solar, wind turbine, lithium ion batteries and batteries for alternate energy vehicles certified by the South Carolina Energy Office.
- Allows REMs to collect 95% of their JDCs
- Exempts alternative energy manufacturers and life sciences facilities with a capital investment of \$100 million from corporate income taxes for a period of ten years.
- Adds REM to Life Sciences Act provisions regarding 15-year allocation and apportionment agreements.
- Adds REM to the Life Sciences Act accelerated depreciation schedule. (20% vs. 11%)

Harrell Bill

SUBSTANTIVE PROVISIONS

RENEWABLE ENERGY MANUFACTURERS

Senate Version

DOR (not energy office) certifies eligible M&E.

Deletes ten year corporate income tax moratorium.

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SUBSTANTIVE PROVISIONS

ALTERNATIVE ENERGY

House Version

- Adds Demethylation of glycerin byproduct from biodiesel fuel to alternative fuel tax credit.
- Adds nonhazardous industrial solid waste and materials recovered by a materials recovery facility to the definition of biomass for tax credit purposes.

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SUBSTANTIVE PROVISIONS

ALTERNATIVE ENERGY

Senate Version

Deletes these provisions.

Harrell Bill

SUBSTANTIVE PROVISIONS

ALTERNATIVE ENERGY

House Version

This section would grant a tax credit equal to thirty-five percent of the costs of solar energy equipment used for water heating, space heating or cooling, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat placed into service by a taxpayer. This bill also provides ceilings on the amount of credit that can be claimed per installation. For solar energy equipment placed into service for residential purposes, the ceilings range from \$1,400 to \$10,500 based upon the purpose of the solar energy equipment. For solar energy systems placed into service for any other purpose than residential, the ceiling amount equals \$2,500,000 and must be taken in five equal installments. Note currently, Section 12-6-3587 allows an income tax credit equal to twenty-five percent for not only the costs of purchasing certain solar energy system, but also allows the income tax credit to be applied to installation costs capped at \$3,500 per facility.

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SUBSTANTIVE PROVISIONS

ALTERNATIVE ENERGY

Senate Version

Retains residential solar credit; deletes commercial incentive.

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SUBSTANTIVE PROVISIONS

ALTERNATIVE ENERGY

House Version

Creates the "SC Renewable Energy Tax Incentive Program". This section would add Section 12-6-3588 to enact the "South Carolina Renewable Energy Tax Incentive Program" to encourage business investment and employment opportunities by providing tax incentives to companies in the solar, wind, geothermal, and other renewable energy industries who are expanding or locating in South Carolina. Beginning in 2010, a taxpayer is allowed a nonrefundable tax credit of 10% of the total qualifying investments in plant and equipment for renewable energy operations. The taxpayer must meet the following conditions: manufacture renewable energy systems and components in South Carolina for solar, wind, geothermal, or other renewable energy uses, invest at least \$500 million in the year the tax credit is claimed, have created one and one-half fulltime jobs for every \$500,000 of capital investment that pays at least 125% of the state average annual median wage. Tax credits may be earned for a five year period beginning January 1, 2010 and ending December 31, 2015. A taxpayer's total credit for all qualifying expenditures may not exceed \$500,000 for any year and \$5,000,000 for all years.

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SUBSTANTIVE PROVISIONS

ALTERNATIVE ENERGY

Senate Version

No change.



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PRACTICE AREAS

- Alcohol: Beverages and Products
- Distressed Property and Workout Practice Group
- Hospitality Law
- Stimulus Response Team
- Economic Development
- Tax
- Governmental Representation
- Public Finance
- Startups - Innovation Team
- Financial Services
- Alternative Energy Law

INDUSTRIES

- Economic Development
- Finance
- Hospitality & Tourism
- Manufacturing
- Technology & e-Commerce

BAR & COURT ADMISSIONS

- South Carolina State and

Burnie Maybank is a member of Nexsen Pruet's economic development and banking & finance practice groups. He represents both public and private entities. Mr. Maybank returned to the firm's Columbia office in 2006 after serving as Director of the South Carolina Department of Revenue under Governor Mark Sanford from 2003 through 2005. He also served in that position under Governor David Beasley from 1995 to 1999.

Mr. Maybank's practice focuses on:

- Economic Development incentives
- State and Local Tax Controversy Work
- Exempt Organizations and Charitable Giving, including Conservation Easements
- Alcohol Beverage Control
- Regulatory Work before the Public Service Commission
- Public Finance

At the request of Senate President *Pro Tempore* Glenn McConnell, Maybank serves on the South Carolina Transportation Infrastructure Study Committee. The Senate created the group in August 2008 to examine the feasibility and benefits of public/private partnerships to improve the state's roads, highways and bridges.

Maybank received national press in 2005 regarding the Department of Revenue's investigation of potentially abusive conservation easement donations, as well as the Department's investigation under IRS Circular 230 of tax professionals who were involved in tax shelters.

CAREER HIGHLIGHTS

- *Best Lawyers in America*

continued

Federal Courts

EDUCATION

- University of North Carolina, B.A.
- University of South Carolina, J.D.
- Emory University, LL.M. in Taxation

Burnet R. Maybank, III, *continued*

- Chair, S.C. Tax Realignment Commission (TRAC)
- S.C. Transportation Infrastructure Study Committee
- 2006 Palmetto Leadership Award from the S.C. Policy Council
- Director of the SC Department of Revenue (2003-2005)
- South Carolina's first Director of the Department of Revenue and Taxation (1995-1999)
- Member of the Coordinating Council for Economic Development and Chair of the Enterprise Zone Subcommittee (1995-99 and 2003-05)
- Legal Counsel to Former SC Governor Carroll Campbell
- Former Commissioner on the SC Public Service Commission
- Former Member of the Board of South Carolina's Department of Health and Environmental Control
- Received Order of the Palmetto from both Governor Carroll Campbell and Governor David Beasley
- Former SC Deputy Securities Commissioner in SC Secretary of State's Office
- Former General Counsel in the SC Secretary of State's Office
- Received the Compleat Lawyer Award from USC School of Law (1998)
- Past Board Member, South Carolina Economic Developers Association (SCEDA)
- L.H. "Sonny" Siau Award of Excellence from the South Carolina Association of Auditors, Treasurers, and Tax Collectors
- Past President, S.C. Agency Directors Organization
- Mr. Maybank served on the Transition Team for Governor Mark Sanford. Mr. Maybank is co-author of a number of books and law review articles including *South Carolina Tax Incentives for Economic Development*; *Local, State, and Federal Tax Incentives for Conservation Easements*; and *State Tax Crimes*, all published for the Department of Revenue; as well as *South Carolina Limited Liability Companies & Limited Liability Partnerships* (1st & 3rd Editions); *The Law of Automobile Insurance* (1st-5th Editions); and *South Carolina Nonprofit Corporate Practice Manual* (2007), published by the South Carolina Bar.

CIVIC AND PROFESSIONAL MEMBERSHIPS

- Board Member, Palmetto Conservation Foundation

continued

Burnet R. Maybank, III, *continued*

- Past Board Member, South Carolina Economic Developers Association (SCEDA)
- South Carolina Administrative and Regulatory Law Association (SCAARLA)