

# IT'S ALL ABOUT THE MONEY.

Businesses need it to succeed. Our citizens need it to survive. And our state needs it to grow.

That's why the South Carolina Chamber of Commerce is committed to keeping the costs of doing business affordable. In the coming year, several legislative initiatives will help decrease business costs and better your bottom line. In this three-part series, South Carolina Chamber business leaders explain the issues and lay out the solutions.

## A MULTIMILLION DOLLAR PROBLEM CHALLENGES FOR S.C.'S UNEMPLOYMENT COMPENSATION SYSTEM

By William Floyd

There is a record-breaking deluge of unemployment claims in South Carolina due to the current economic recession. Unemployment hit 11.5 percent statewide in August 2009, giving South Carolina the third highest unemployment rate in the nation (Michigan and Rhode Island have the highest unemployment rates). Some counties are harder hit than others, with Allendale and Union counties presently enduring unemployment rates of 21.8 percent and 20.8 percent, respectively. As employees are laid off or lose their jobs, they are turning to the South Carolina Employment Security Commission (ESC) in record numbers and filing claims for unemployment benefits.

Confronted by these unemployment claims, the ESC is running a deficit and relying on federal loans to stay afloat. Absent huge loans from the federal government, ESC would not be able to pay claims for unemployment benefits. Since December 2008, ESC has borrowed more than \$370 million from the federal government. More loans are expected during the remainder of 2009. South Carolina must eventually repay the loans. If not repaid, the loan balance will begin accruing interest, making the state's financial problems even worse.

In sunnier economic times, the ESC enjoyed a multimillion dollar surplus in its trust fund. Since 2001, though, the trust fund's balance has been declining every year. In recent years, the South Carolina Chamber warned the trust fund was insufficient and problems lay ahead if action was not taken. Unfortunately, changes were not made to reverse this concerning trend. When the current recession hit, the trust fund quickly evaporated, leaving the ESC and South Carolina in a deep financial hole.

As a result, South Carolina confronts some extreme challenges regarding unemployment compensation. For example, how will the state repay its almost half-billion dollar debt to the federal government? There are no easy answers to this tough question, but ultimately cutting expenditures or raising taxes will be part of the solution, which will impact employees and employers alike.

What changes could be made to avoid similar financial predicaments in the future? No quick fixes here either, but the solution requires effective leadership and involves short and long-term changes. Members of the legislature recognize the challenges confronting the ESC and have begun discussing possible solutions. One proposal, H.3442/S.391, would, among other things, significantly overhaul the ESC. Debate over this bill will likely resume when the legislature reconvenes in January.

Possible repairs to the unemployment compensation system could include some major and minor changes. They are:

- Restructure the ESC to create a cabinet-level director who reports directly to the governor.



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- Re-focus the ESC's mission: re-employment rather than unemployment.
- Deduct severance pay, if received, from unemployment compensation available to a claimant.
- Raise the earning threshold required before unemployment compensation.
- Completely disqualify employees who are discharged for cause (as opposed to being laid off, etc.) from receiving unemployment benefits.
- Make unemployment compensation available after two weeks, rather than the current one week, following unemployment.
- Restrict the option of a claimant continuing to receive unemployment benefits despite other work being available.

Repairs to the system are essential as the trust fund's deficit grows. Making these changes will be challenging. Nonetheless, changes are absolutely necessary and will benefit the state's employees and employers by having a stable, deficit-free system.



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# PIPELINE TO PROFIT

## NEW TAX COMMISSION COULD EASE BURDEN

By Chris Barras

The South Carolina Chamber of Commerce's 2009 *Competitiveness Agenda* stated an objective to promote tax policy that is equitable – ensuring fairness, stability, predictability and balance. This objective underscores such tax policy should be structured to “create a sustainable business environment, attract and retain investors, and increase individual wealth for all citizens.”

For many years, South Carolinians have generally enjoyed such a tax structure. But many of our current tax statutes were enacted in a prior economy where business, industry and government had a very different look than it does today. Arguably, the transformation of business and industry has outpaced the evolution of our tax laws, and the accumulation of piecemeal legislation over time has diluted the balance of our tax structure. This fact has been accentuated with the unprecedented economic downturn that is currently providing challenges to government budgets and businesses alike.

That said, we now have a unique opportunity to step back and take a comprehensive look at South Carolina's tax policy. The Tax Realignment Commission (TRAC) that will evaluate our tax structure is currently scheduled to report observations and recommendations to the General Assembly by March 15, 2010. The report will include text of an amendment that effectuates such recommendations. In outlining its duties, S.12 provides the Commission with a mission statement to “develop criteria for assessing the effectiveness of the current tax system structure...with an emphasis on the systematic balance of the state's revenue structure from the standpoint of adequacy, equity and efficiency and with the goal of maintaining and enhancing the state as an optimum competitor in efforts to attract business and individuals to locate, live, work and invest in the state.”

This mission statement is notably similar to the South Carolina Chamber's objective on tax policy. Further, these objectives largely capture the spirit underlying discussions of the Chamber's Tax Committee in recent years as it has evaluated various tax initiatives and legislative items. The Chamber's Tax Committee has proactively sought to evaluate and influence state tax structure with these principles in mind, including recent support for the Chamber's efforts around the TRAC. With the TRAC now in place, the Chamber Tax Committee looks forward to supporting the work of the Commission. A few topics likely to be considered by TRAC are discussed below.

**PROPERTY TAX** - In 2006, the Chamber adamantly opposed Act 388, a property tax relief plan for residential homeowners. Act 388 intended to supplement the reduction of property tax revenues with an increase in sales tax rates. However, the tax swap has been clouded by a change in economic



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circumstances where revenue projections and sales tax collections have fallen well below expectations, providing a real threat to school funding. With the enactment of Act 388, businesses are now feeling increasing pressure on commercial property taxes as local governments face budget challenges of their own.

South Carolina businesses already pay some of the highest property tax rates in the nation, creating an environment that is certainly unfavorable for investment by existing business and recruitment of prospective business. The 10.5 percent rate on manufacturing property was established more than 30 years ago when manufacturers agreed to pay more as long as all property (including residential) was assessed at fair market value. This is a prime example of a dated tax policy, and it is hardly congruent with the objectives of the property tax relief for residential homeowners under Act 388.

**FEES** - In addition to property taxes, fees like the local business license fee are a growing concern to business. In recent years, local municipalities have become more aggressive in assessing fees to fulfill budget requirements. The Chamber has worked hard to synchronize and manage fees, and we hope the TRAC will prove to be an effective forum to address them.

**SALES AND USE TAXES** - Proponents of the TRAC believe today's economy warrants a tax structure founded by lower rates applied to a broader base. Another example of tax policy that has evolved over time, is our sales tax statutes, which provide for numerous specific exemptions, including certain usual items that need to be protected, such as exemptions for manufacturing inputs and prescription drugs. However, the extensive list of current exemptions includes various items that have been added piecemeal over time, such as exemptions for platinum bullion, exhibit rentals, etc., which is hardly an indication of a broadly-applied tax base. S.12 calls for a review of sales tax exemptions, and the TRAC will likely consider expanding the tax base and reconsider the numerous special purpose exemptions that exist today.

**INCOME TAX** - Our income tax structure is arguably complex, providing for higher costs for compliance and administration relative to overall contribution to the state's revenue base. In fact, Governor Mark Sanford's original budget proposal for 2010 called for an elimination of the corporate income tax. The corporate income tax should certainly be considered by the TRAC, with an objective of addressing existing complexities, costs and other competitive restraints.

**EMPLOYMENT RATES** - Finally, South Carolina's unemployment rate is among the highest in the nation, fluctuating around 12 percent. Perhaps

more than ever, the Palmetto State must have a competitive tax structure to promote maintenance of current jobs and creation of new jobs.

In conclusion, South Carolina has generally enjoyed a favorable business climate supported by a reasonably balanced tax structure. However, our current tax structure certainly reflects components enacted over time that made sense when enacted but do not necessarily position South Carolina for the current economy and future years. The accumulation of piecemeal tax legislation has arguably impaired our competitiveness, not only for existing business but also from the perspective of recruiting, which is increasingly important in a global economy.

Studies show businesses are increasingly bearing a higher percentage of overall state budgets. The General Assembly is to be applauded for enacting the TRAC, and the Chamber looks forward to proactively supporting it in efforts to manage costs for businesses and enhance South Carolina's competitiveness.



*Chris Barras is executive director of Ernst & Young LLP and is chairman of the South Carolina Chamber of Commerce Tax Committee.*

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# BRINGING COMMON SENSE BACK TO COURTROOMS

By Cam Crawford

As the cost of doing business continues to rise, further progress needs to be made to reform our civil justice system and improve South Carolina's business climate. The General Assembly must enact common sense solutions to restore predictability and fairness in the courtrooms and protect businesses, especially small businesses, from going bankrupt.

Currently, South Carolina ranks fifth worst in the nation in non-economic damages, sixth worst in punitive damages and 10<sup>th</sup> worst in class action lawsuits.

In a recent report issued by the Pacific Research Institute, Indiana Governor Mitch Daniels explained that "(A)n efficient tort system leads to increased job creation, lower prices and greater innovation...States with burdensome tort laws deprive consumers of choices and impose unfair and unnecessary costs on every resident."

A state's litigation environment is a critical aspect of business site selection. In fact, the most recent State Liability Systems Ranking Study conducted by the U.S. Chamber of Commerce reported 64 percent of senior corporate litigators said they felt the litigation environment of a state could impact important decisions, such as where to locate or do business. We cannot afford to miss these economic opportunities, especially since our southeastern neighbors, Georgia, North Carolina, Tennessee and Virginia, all have better rankings.

Many of the common sense solutions the South Carolina Civil Justice Coalition (SCCJC) recommends for bringing fairness and predictability back to the courtroom are outlined in Senate Bill 350 (S.350) and House Bill 3489 (H.3489), sponsored by Senator Larry Martin (Pickens) and Speaker of the House Bobby Harrell (Charleston).

They include:

- Place reasonable limits on punitive and non-economic damages.
- Reform and place reasonable limits on class action lawsuits.
- Bring accountability to state government's hiring of trial lawyers to sue industry.

- Limit the amount of bond a business has to post when appealing an extremely large verdict.
- Close loopholes in the Statute of Repose that trial lawyers are exploiting.
- Allow the introduction of non-use of seat belts in civil cases.
- Reinstate the longstanding economic loss rule that was the legal standard prior to the *Colleton Prep Academy v. Hoover Universal* decision last year by the S.C. Supreme Court.
- Promote congruity between the state's regulatory system and the civil justice system to ensure these two important areas of law do not work against each other.

S.350 is currently in subcommittee, and after holding a series of hearings this fall, a final report will be issued. Quick action is expected in the House as well.

States that have enacted similar, common sense solutions are seeing positive results. For instance, Mississippi and Texas have reported significant reductions in insurance rates for medical malpractice premiums since the states enacted tort reform, including non-economic damage caps. In 2009, Mississippi's largest medical liability insurer, the Medical Assurance Company, decreased rates by 20 percent, and Medical Protective, a Texas medical liability insurer, reduced rates by an average of 37 percent since its passage of non-economic damage caps. In South Carolina, we also have experienced positive results from passing significant tort legislation in 2005, which placed reasonable limits on medical malpractice and non-economic damages. Claims against medical doctors have been reduced by nearly 30 percent.

However, we cannot afford to fall further behind while waiting to pass more critical legislation. In order for our state to remain competitive on an increasingly global playing field, South Carolina businesses must encourage policy-makers to support S.350 and H.3489 and bring common sense back to our courtrooms.



Cam Crawford is the executive director of the South Carolina Civil Justice Coalition, which serves as the united voice for the business community on civil justice issues. E-mail Crawford at [scciviljusticecoalition@yahoo.com](mailto:scciviljusticecoalition@yahoo.com)

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