



State of South Carolina

Office of the Governor

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GOVERNOR

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May 24, 2005

The Honorable André Bauer
President of the Senate
State House, 1st Floor, East Wing
Columbia, South Carolina 29202

Dear Mr. President and Members of the Senate:

I am hereby returning without my approval S. 573, R-82.

I am vetoing this legislation because, despite the assertions of some supporters, this legislation will have a chilling effect on accountability to the people of South Carolina and ultimately serves as a threat to ratepayers of Santee Cooper.

We have tried fixed terms with the Santee Cooper board and did not see positive results. It was during the time of protected terms that political contributions from the money that belonged to ratepayers were given and a new addition to a private school was named after a Santee Cooper board member after he provided ratepayer money to build the addition. It was during this time that Santee Cooper was swept up in a federal grand jury that implicated its former vice president for receiving kickbacks from coal companies that cost ratepayers millions. As a result of scandals and poor stewardship the governor was given removal powers as a part of the Restructuring Act of 1993.

All that having been said, if this bill were only about removal of board members, I would not object as strongly as I do to this legislation.

This bill goes on to do many things that I think are harmful to both ratepayers and taxpayers. First, this legislation increases the number of board members who must have "substantial work experience" with relation to cooperatives from one to two. This provision goes in the opposite direction the corporate world is now moving under the Sarbanes-Oxley legislation, which expects more, not less independence from boards of directors. In the private sector, corporations typically do not provide a bloc of votes to the largest consumer, no matter how insignificant the number may seem. Ultimately, this legislation only serves to further dilute the representation of the primary customer that Santee Cooper is supposed to serve, in exchange for the group with the most powerful lobby. However, the board is supposed to ultimately act in the best interest of Santee Cooper as a whole and not any one interest.

Second, the bill creates liability against individual directors for failing to act "in the best interests of the Public Service Authority" among other things. Though the state cannot provide coverage for the directors, liability insurance is provided by Santee Cooper and would be extended to cover any litigation under this provision. Current law requires a director to be held liable for criminal or unethical actions taken as a member of the board. This legislation now opens to interpretation the good faith provision to nearly 4 million people and leaves for the courts to arbitrate the due diligence or thoughts behind an individual's actions. This will allow any individual the right to litigate the actions of the board, regardless of merit, simply because they happen to disagree with a specific outcome. As an example, recreational fisherman, one of Santee Cooper's constituencies may feel differently about modification of lake levels than those who lease lakefront parcels from the utility. Alternatively, destruction of water hyacinths may be viewed as necessary for electrical generation efforts, but once again hurt the recreational fisherman. If the board went in one direction to benefit those who lease land or to destroy aquatic vegetation, the recreational fisherman could quite possibly take legal action against some or all of the board members. In all, I believe this provision will have a chilling effect on attracting the best and brightest of the state to service on the Santee Cooper board.

Third, the legislation requires all future appointments to the board must first be screened by the State Regulation of Public Utilities Review Committee before being considered for confirmation by the Senate. This Committee is comprised of six legislative members, equally represented by the House and the Senate, and four additional appointments picked from the general public. This simply defies logic. Under current law, every appointee to the board requires confirmation by the Senate. Creating yet another committee presupposes the Senate is incapable of their current responsibility in screening executive branch appointments. This review committee allows for the first time, a group of unelected citizens the power to do what only elected legislators have done since the founding of the state – take part in confirming executive branch appointments. This is de facto "destructuring" and shifts some of the current responsibilities vested in elected officials over to an unelected, and therefore, less accountable, group of individuals.

Finally, the legislation reconfirms the General Assembly's role in disposing of all material energy generating facilities or property needed for power generation. However, it adds further that Santee Cooper or its board cannot even inquire or consider the feasibility of such an act without prior approval of the General Assembly.

In total, this legislation attempts to cement some of the worst characteristics of our current state government. The bill diffuses accountability for members of the board and the people who confirm them to the point that prospective board appointments will need to be as knowledgeable of Columbia politics as they might be in power generation – hardly a trait ratepayers or management should want from their board. The bill also creates limitless litigation possibilities against any and all members of the board, which will make serving far less attractive to some of the most qualified citizens of the state and will add further costs to ratepayers, who will ultimately pay for the liability coverage for members of the board. However, it is the legislative micromanagement of the board's actions, right down to its ability to speak on the issue of asset disposal that is the most chilling. We should not allow muzzles to be dispensed in the court of public policy when the point of view does not reflect our own. This legislation is clearly an attempt by some to censor a debate that has been brought on by members of the General Assembly, members of the media, and even their own Legislative Audit Council (LAC).

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The members of the Santee Cooper board have asked questions relating to the benefits of employees, funds given to non-profit and other organizations, revenues returned to the state, and procurement issues. This same mandate was given to the Legislative Audit Council a decade ago. These were fair and legitimate questions to ask of an agency whose senior management either engaged in suspicious activity or allowed it to happen. While some of the concerns originally raised by the LAC have been resolved, there are still more questions that need to be answered.

While this legislation may prevent members of the Santee Cooper board from raising concerns about the value of contributions or the possibility of additional contributions to the state, it will not stop the debate from continuing. This bill is clearly designed to intimidate board members, current and future, into not asking questions, not looking for efficiencies, not proposing sale of property, even if they are surplus, or suggesting any increased contributions to the state. If the General Assembly doesn't stop them legislatively, then any one person can tie them up in the courts.

The issue of privatization has been raised numerous times. Let us be clear: any attempt to sell the asset could only happen if legislation were introduced and approved by the General Assembly. Several legislators, including senior leadership in the House of Representatives, have proposed over the last 15 years to do just that and the legislation has gone nowhere. Not surprisingly, the operations of Santee Cooper have continued and the flow of electricity to the customers, both direct and indirect, has not suffered in the slightest.

Questions have been raised for more than two decades about how much Santee Cooper should return to the taxpayers, as mandated in the enabling statute. Despite what proponents of this legislation assure ratepayers, there are ways of increasing contributions without once raising rates. The company could reduce expenditures, as it has for two consecutive years under the current board, approve the sale of surplus assets, or increase efficiencies. The scare tactics employed by some over the last few months ignores the debate on increased contributions over more than 20 years. Simply put, I would not accept ratepayer increases to increase contributions to the state.

Fundamentally, I believe this legislation is destructive, both to the ratepayers of Santee Cooper and the people of South Carolina. It will not provide the stability or accountability that the proponents allege, nor does it offer enticement to some of the most qualified citizens in South Carolina to serve on its board. Further, this bill turns restructuring of state government on its head and sends one more state institution back to the state government of 1895. This bill should not be enacted and I encourage the members of the General Assembly to go back to the drawing board on this legislation.

For this reason, I am returning S. 573, R-82 to you without my signature.

Sincerely,



Mark Sanford