



# State of South Carolina

## Office of the Governor

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May 28, 2008

The Honorable Robert W. Harrell, Jr.  
Speaker of the House of Representatives  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I am hereby vetoing and returning without my signature H. 4328, R-290.

H. 4328 amends the Administrative Procedures Act's sections dealing with review of final agency decisions, including DHEC permitting decisions, by the administrative law court. Among other things, this bill makes changes to the automatic stay provisions in the APA by exempting some permitting matters from automatic stays, by adding a three-day time frame for an administrative law judge to hold a hearing on lifting an automatic stay, and by creating a standard for an administrative law judge to apply when deciding whether to lift an automatic stay.

I struggled with this bill over the last few days because I very much agree with the thinking behind it. There is something fundamentally wrong in leaving so much uncertainty to our permitting process that no more than a \$250 check for filing an appeal can halt a project or investment involving millions. Too often, some in the environmental community use stays as their most ready tool in thwarting development efforts. While I understand their sentiment, I think it would be far more productive to have tighter regulations where appropriate rather than simply continuing the use of stays as a relatively weak substitute for tighter laws.

For this reasons I would like to sign a bill that brings a greater degree of certainty to our permitting process, but the way in which this bill seeks to do this is flawed on several fronts.

This Administration is committed to meeting over the summer with affected stakeholders to find a remedy, and I believe we would sign a bill making the following changes:

1. While anyone making a business decision has a fundamental need to move on with that decision, I don't know if three days allows critics enough time to fairly mount their case. We don't think the time frame for challenging a motion to lift a stay needs to be a long time period - but we think it needs to be a little longer. Something closer to a week would be reasonable to us. If our concerns on this bill had been limited to this item, we still ultimately would have signed the bill. Unfortunately, they were not, and this brings me to my second point.
2. This bill's proposed Section 1-23-600(H)(2) leaves undefined the conditions and situations under which automatic stays can be applied. I believe that this sort of nebulous and open-ended lawmaking creates a legal Pandora's box and gives judges of different ideological persuasions the ultimate decision on how this law would, in fact, be applied. Because the current language in the bill is undefined, one could imagine a situation where once a minor permit was approved, no automatic stays would be allowed for related, but subsequent permits. After our legal shop looked at this clause of the bill, they had grave concerns about the uncertainty tied to this portion of the bill.

In general, I also happen to be concerned about the process by which this proposal has come to my desk. Rather than having a broad debate on the stay process, this bill went through the House, and only in the last week and one half of the session was the stay provision added in the Senate. Without the Socratic process of both the House and Senate having hearings and mark-ups on this bill, no one fully defined how this law would be applied and there is an absolute lack of clarity on how the bill might be applied.

I also think it is telling who, at this point, began much of the push for the bill – the Ports Authority. Their interest in moving forward with the North Charleston site is well documented, and some believe this bill is an attempt to limit legal challenges to their work based on traffic congestion issues and challenges on I-26. While this administration is as committed as anyone in the state to more port capacity on our coast, we think there is wisdom in not snuffing out debates that can ultimately lead to better solutions.

It needs to be remembered in this instance the debate is not about someone unfairly holding a private developer hostage with a stay, but concerned citizens being able to fully voice their concerns on a large state entity's use of public funds and its impact to a citizen's ability to not be stuck in traffic on I-26. Not so many years ago it was a small local activist on the Cain Hoy peninsula by the name of Fred Lincoln who used as his only tool the stay process to stop government's condemnation of private property to build a railroad that was ultimately proven not to be in the public interest.

Long story short we are committed to creating certainty in the permitting process for individual and corporate investors and businesses, but want to make certain this bill does not jeopardize those same private individuals and entity's ability to question how their tax dollars are being used in governmental projects.

We believe that if we give definition to the conditions under which stays can be applied and a slightly longer time frame to challenge the lifting of a stay, we think this could be a great bill. As mentioned earlier we are committed to gathering other stakeholders over the summer to determine ways to make this bill better. Consequently, it's our hope over the next few months that this legislation will be improved and we will have the chance to sign a bill that would both better our regulatory framework - and at the same time retain environmental protections key to the quality of life in South Carolina.

For these reasons, I am vetoing H. 4328, R-290.

Sincerely,

A handwritten signature in black ink, appearing to be 'MS', with a long horizontal line extending to the right.

Mark Sanford