From: Glaccum, David <DavidGlaccum@gov.sc.gov>
To: Baker, JoshJoshBaker@gov.sc.gov
CC: Veldran, KatherineKatherineVeldran@gov.sc.gov
Pisarik, HollyHollyPisarik@gov.sc.gov
Schimsa, RebeccaRebeccaSchimsa@gov.sc.gov
Mottel, HaleyHaleyMottel@gov.sc.gov
Date: 5/6/2016 10:10:18 AM
Subject: Re: Concerns with Local Bill - H.5195 (Charleston rural school closures)

I am at EBO for the next couple hours.

David M. Glaccum
Office of Governor Nikki R. Haley

Sent from iPhone

On May 6, 2016, at 10:07 AM, Baker, Josh <JoshBaker@gov.sc.gov> wrote:

> I think that most folks are pretty tied up until almost 1.
>
> ---
>
> From: Veldran, Katherine
> Sent: Friday, May 06, 2016 10:06 AM
> To: Glaccum, David; Pisarik, Holly
> Cc: Schimsa, Rebecca; Baker, Josh; Mottel, Haley
> Subject: RE: Concerns with Local Bill - H.5195 (Charleston rural school closures)
>
> Can anyone meet now?
>
> ---
>
> From: Glaccum, David
> Sent: Friday, May 06, 2016 7:48 AM
> To: Pisarik, Holly
> Cc: Schimsa, Rebecca; Baker, Josh; Veldran, Katherine; Mottel, Haley
> Subject: RE: Concerns with Local Bill - H.5195 (Charleston rural school closures)
>
> Works for me.
>
> ---
>
> From: Pisarik, Holly
> Sent: Thursday, May 05, 2016 8:10 PM
> To: Glaccum, David
> Cc: Schimsa, Rebecca; Baker, Josh; Veldran, Katherine; Mottel, Haley
> Subject: Re: Concerns with Local Bill - H.5195 (Charleston rural school closures)
>
> Can we discuss tomorrow?
>
> Sent from my iPhone
>
> On May 5, 2016, at 1:15 PM, Glaccum, David <DavidGlaccum@gov.sc.gov> wrote:
>
> > Looping in Katherine and Haley. We should all discuss how best to remedy.
> >
> > Bill received third reading in the House today.

From: Schimsa, Rebecca
Sent: Wednesday, May 04, 2016 12:20 PM
To: Pisarik, Holly; Baker, Josh; Glaccum, David
Subject: Concerns with Local Bill - H.5195 (Charleston rural school closures)

Today, this local bill was given 2nd Reading in the House (no RCV yet posted). Please see my analysis, and then let's discuss – quickly, as it may move rapidly through the Senate.

H.5195 (RL Brown, Gilliard, Tinkler):

- Text: http://www.scstatehouse.gov/billsearch.php?billnumbers=5195
- This is a local bill that amends a local act, Act 340 of 1976, which has previously been amended, at least twice: Act 721 of 1978 and Act 131 of 2007.
- This bill limits the school district board's authority to close a rural school only when the closure will reduce the district's operating budget and also requires three public hearings to be held, among other things.

Current Law – Re. School Closures:

- Pursuant to Section 59-19-90, the functions of a school district board shall include to: Provide school houses; Control school property; and Transfer and assign pupils.
- The Supreme Court has held, "In determining whether the Board properly exercised its discretion under this statute [to close or consolidate a school], the inquiry is whether the action under consideration measures up to any fair test of reason." *Gamble v. Williamsburg County School Dist. (1991)*
- Further, the Court has held that "a clear abuse of discretion is required to warrant judicial interference", giving almost unfettered authority to a school district. (see *Sarratt v. Cash (1916))*

Constitutional Analysis:

- This bill deals with public education, which generally is an exception to Home Rule – however, this bill only applies to the Charleston School District Board's authority to close schools for which the General Assembly has already passed a general law providing authority to school district boards to close schools (59-19-90).
- Because the bill gives special treatment to Charleston County, it is most likely unconstitutional special legislation in violation of Article III, Section 34(IX), prohibiting the adoption of a special law where a general law may be made applicable.
- The Supreme Court has opined on the analysis of a similar situation without ultimately drawing a conclusion on the constitutionality (see *Charleston County School Dist. v. Harrell (2011)):*
    - "Article XI, Section 3 of the South Carolina Constitution gives the General Assembly the right to "provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable."
    - "This section imbues the General Assembly with more discretion with respect to legislation impacting a school district than it enjoys in other areas. *See McElveen v. Stokes,* 240 S.C. 1, 10, 124 S.E.2d 592, 596 (1962) ("[T]he scope of the legislative power is much broader in dealing with school matters than is the scope in dealing with various other subjects.").
    - "However, this right is not without certain limitations.
    - "Article III, Section 34 of the South Carolina Constitution states, in pertinent part: "In all other cases, where a general law can be made applicable, no special law shall be enacted."
    - "'[L]egislation regarding education is not exempt from the requirements of Art. III, § 34(IX).' *See Horry County v. Horry County Higher **608 Educ. Comm'n,* 306 S.C. 416, 419, 412 S.E.2d 421, 423 (1991) (citations omitted)."

Policy Analysis:

- Beyond the constitutional concerns, this bill also raises policy concerns regarding a school district board's ability to maintain and operate schools.
- While perhaps it is good policy to require public hearings and to close a school for the purpose of cost savings, it is poor policy to mandate that a district find a cost savings, limiting it from finding some other reasonable basis for closure or consolidation.
- Further, it is odd to draw a distinction for only closures of rural schools (fewer than 750 students), rather than all school closures. It is unknown how many schools this bill would affect – however that information could surely be obtained from the SDE.
- If the General Assembly seeks to place controls on a school district board's ability to close schools, then it should do so generally – requiring public hearings, findings of cost savings measures, etc. – for all school districts, not just for one.
- Recall that school closures have been a recent issue in Pickens County as well.