

From: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
To: Patel, SwatiSwatiPatel@gov.sc.gov
Pisarik, HollyHollyPisarik@gov.sc.gov
Baker, JoshJoshBaker@gov.sc.gov
Date: 5/9/2016 7:21:44 PM
Subject: Re: 2016-XX Establishing Emergency Industry Access Process

Instead of an executive order alternative, then I would also propose we draft an amendment clarifying and fixing some of the issues identified.

Sent from my iPhone

On May 9, 2016, at 7:07 PM, Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov> wrote:

Swati, Holly, and Josh – Please see train below with Retailers. Attached is the draft EO that I presented as the alternative to legislation (pending NH approval, of course). Below is my response to their feedback. ***A Senate Subcommittee hearing has been scheduled for 3pm on Wednesday with S. Martin, Bright, Campbell, Kimpson, and Nicholson. Kim Stenson has been asked to be there. I am awaiting a call back from Rick Todd.***

I do not understand what concerns this bill would alleviate. The current bill is drafted to explicitly allow local officials to deny access to a pass holder. Therefore, regardless of a statute, local officials and law enforcement would still retain their current level of authority to grant or deny re-entry. Additionally, this bill would still require that a governor issue an executive order to trigger recognition of certification. Again, regardless of a statute, the process is entirely dependent upon the issuance of an executive order by the governor, which then is entirely dependent upon the recognition by law enforcement or local officials.

Furthermore, the Governor already has the power to do Subsection (A) regarding setting an exemption for a curfew: Section 25-1-440(a)(9) already provides that the Governor may – in addition to her duties during a declared emergency – authorize by executive order a party to exceed the terms of a curfew for businesses selling commodities, for employees of businesses selling commodities, or for ensuring that emergency commodities are available to the public to sustain public health or well-being.

Similarly, the Governor already has the power to do Subsection (B) regarding waiving hours of service for truckers: Section 56-5-70 provides that the Governor may – notwithstanding other provisions of law – during a state of emergency suspend requirements relating to time of service for commercial and utility vehicles traveling on interstate and noninterstate routes for 30 days unless extended in accordance with 49 CFR 390-399.

The only new item of law is Subsection (C), regarding a certification process to be established by EMD, which could be done via Executive Order as indicated by the previously circulated draft. See attached.

Moreover, it appears as if the bill would create a new class of emergency or at least create a requirement for a new, specific finding – an emergency specifically for the “health, safety, and economic well-being of individuals or property”. Therefore, the bill would actually impose an additional burden for a governor to trigger recognition of the certification, which would specifically limit the Governor’s unenumerated emergency power to set conditions for a curfew. In the past, governors have set local curfews for the disregard of law and order and also have ordered state officials to enforce local curfews during natural disasters.

The better path forward would be for the Governor to issue an Executive Order directing EMD to incorporate a certification process within the State Emergency Plan, which would not restate or confuse the Governor’s authority and which would allow for flexibility to improve and review the process as needed.

From: Lisa McGill [mailto:lisam@cretail.org]
Sent: Monday, May 09, 2016 5:07 PM
To: Schimsa, Rebecca
Cc: 'Sunnie Harmon (sunnie@lobbysc.com)'
Subject: RE: 2016-XX Establishing Emergency Industry Access Process

Hey Becca!

We have asked our members to elaborate on the Florida issues and we are awaiting those responses. What we have learned is that Florida initially implemented a non-statutory process that included a certification pass with their EMD and local officials, but there were issues with local officials not complying, because it wasn't in statute. So this year, a statute was passed in Florida to implement a system similar to North Carolina's, which, as you know, is what we have done with our current legislation. States are looking to NC because of the success with their program.

Probably the most pressing concern is that Governor Haley and future governors would need to include the curfew provision expressed in Section (D) of the legislation (below) during each state of emergency if the route of the Executive Order is taken.

(D) Notwithstanding the existence of any curfew, a person who is certified pursuant to subsection (C) must be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of goods or assisting in the restoration of utility services and must be allowed to provide service that exceeds otherwise applicable hour maximums, to the extent authorized by an executive order executed pursuant to subsection (A)

Please let us know your feedback on these two concerns mentioned above.

Many thanks,
Lisa

From: Sunnie Harmon [mailto:sunnie@lobbysc.com]
Sent: Monday, May 09, 2016 10:41 AM
To: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
Cc: Lisa McGill <lisam@cretail.org>
Subject: RE: 2016-XX Establishing Emergency Industry Access Process

We explained that to them and included it in our followup e-mail to them as well.

----- Original Message -----

Subject: RE: 2016-XX Establishing Emergency Industry Access Process
From: "Schimsa, Rebecca" <RebeccaSchimsa@gov.sc.gov>
Date: Mon, May 09, 2016 10:39 am
To: Sunnie Harmon <sunnie@lobbysc.com>
Cc: Lisa McGill <lisam@cretail.org>

Do they understand that the Order would add the new process into the State Emergency Plan, which stays in place from administration to administration? I am not sure how other states work, but I would be happy to explain how this works in our state to anyone with concerns. Here is a link to EMD's state plans: <http://scemd.org/planandprepare/plans>

From: Sunnie Harmon [mailto:sunnie@lobbysc.com]
Sent: Monday, May 09, 2016 10:27 AM
To: Schimsa, Rebecca
Cc: Lisa McGill
Subject: RE: 2016-XX Establishing Emergency Industry Access Process

There were some general concerns on the phone about the Executive Order carrying with future administrations. Some of SCRA's members who conduct business in Florida have had some issues recently with Executive Orders.

We gave them until the close of business today to run the proposal up the flag pole within each of their organizations. As soon as we hear back, we will let you know.

Thank you!

----- Original Message -----

Subject: Re: 2016-XX Establishing Emergency Industry Access Process
From: "Schimsa, Rebecca" <RebeccaSchimsa@gov.sc.gov>
Date: Mon, May 09, 2016 10:23 am
To: Sunnie Harmon <sunnie@lobbysc.com>

Hi Sunnie - Any word from Friday's call?

On May 6, 2016, at 3:59 PM, Sunnie Harmon <sunnie@lobbysc.com> wrote:

Thank you Becca!

----- Original Message -----

Subject: 2016-XX Establishing Emergency Industry Access Process
From: "Schimsa, Rebecca" <RebeccaSchimsa@gov.sc.gov>
Date: Fri, May 06, 2016 9:57 am
To: Sunnie Harmon <sunnie@lobbysc.com>, "lisam@scretail.org"
<lisam@scretail.org>
Cc: "Pisarik, Holly" <HollyPisarik@gov.sc.gov>, "Baker, Josh"
<JoshBaker@gov.sc.gov>

Sunnie and Lisa,

Attached is a first draft of an order. As you will see, there is room to enumerate certain guidelines or timelines in the order, which could include such items as requiring state agencies to coordinate with the private sector in the development of a process, requiring a deadline for when the process must be in place, etc.

I spoke with Director Stenson this morning, and EMD is very much in favor of the Executive Order approach to provide flexibility for revision and improvement. We look forward to hearing from you after your call.

Thank you,

Rebecca