

State of South Carolina

Office of the Governor

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GOVERNOR

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June 11, 2008

The Honorable André Bauer
President of the Senate
State House, First Floor, East Wing
Columbia, South Carolina 29201

Dear Mr. President and Members of the Senate:

I am hereby vetoing S. 1143, R-356. S. 1143 does the following three things: (1) creates a month-long sales tax holiday for the purchase of energy-efficient products; (2) creates a two-day sales tax holiday for the purchase of firearms; and (3) requires all gasoline suppliers to provide raw gasoline to retailers and distributors so that they can “splash blend” ethanol.

First, while we support the intent underlying sales tax holidays, we are vetoing this bill because we don't believe that sales tax holidays are an effective method of promoting energy efficiency or the Second Amendment. While we certainly support consumers purchasing energy-efficient products and firearms, we believe the best way to do that is to create a low-tax, consumer-friendly environment on a permanent basis. Several studies have shown that providing a temporary sales tax holiday does not have a significant impact on consumer demand for products and, by extension, the economy because it only affects the timing of a purchase. In short, we ought to be permanently lowering taxes and then leaving it to the individual to decide how and when to spend their money.

Second, we are vetoing this bill because the “splash blending” provisions of S. 1143 permanently entangle a misguided federal ethanol policy with state law. This bill requires that gasoline suppliers offer retailers and distributors raw gasoline that can be blended with ethanol and prohibits gas suppliers from denying retailers and distributors the opportunity to blend raw gasoline and ethanol on their own. Thus, gas suppliers would be prohibited from selling only blended ethanol to retailers and distributors. These provisions have arisen because a 2007 federal energy law requires gas suppliers to produce nine billion gallons of blended ethanol in 2008 and even more in following years. It is our strong hope that these misguided federal laws will be repealed. Nonetheless, to meet this requirement, many large gas suppliers have decided to stop supplying raw gasoline to retailers and distributors and to offer only blended ethanol

instead. If gas suppliers only offer blended ethanol, then local retailers and distributors will be prevented from obtaining federal tax credits for blending ethanol.

While we understand that local retailers and distributors want to preserve the opportunity to obtain blending tax credits, we don't believe it is wise to further support federal ethanol policies that have been proven ineffective and, in many ways, counterproductive. It is well documented that increasing ethanol production and consumption has not and likely will not lower gas prices or increase the nation's energy independence. Moreover, ethanol usage in its current form is not the environmentally-friendly alternative that many suggest it is. In fact, one recent study conducted by MIT showed that, on a life-cycle basis, gasoline and ethanol produce roughly the same amount of greenhouse gases. The federal policy of subsidizing and mandating ethanol production has caused food prices to rise and increased the amount of land devoted to farming, which often has damaging consequences to the environment.

As every day passes, there seems to be more evidence indicating that the federal ethanol policy is a bad idea and needs to be abandoned. The debacle of the federal government's ethanol policy is so bad that even the New York Times has stated in a recent editorial that "[i]t is time to end an outdated tax break for corn ethanol and to call a timeout in the fivefold increase in ethanol production mandated in the 2007 energy bill." It is time to remove our heads from the sand about ethanol and ensure that our laws do not reflect this flawed premise that ethanol will solve our current energy crisis.

Third, we are also concerned that providing preference to local retailers and distributors over the out-of-state suppliers could be unconstitutional under the Commerce Clause of the U.S. Constitution because this preference discriminates against interstate commerce. The Commerce Clause prevents states from regulating commerce in a manner that prefers in-state interests over out-of-state interests. In fact, the Supreme Court stated in *Brown-Forman Distillers Corp. v. New York State Liquor Authority* that while "a State may seek lower prices for its consumers, it may not insist that producers or consumers in other States surrender whatever competitive advantages they may possess." This legislation appears to do exactly that by insisting that out-of-state gas suppliers surrender their natural competitive advantage of controlling the supply of gas by dictating that they cannot supply only blended ethanol to retailers and distributors in South Carolina.

Fourth, even if we did not have these concerns about the blending provisions in S. 1143, we would veto this bill because it was added through the unconstitutional practice of bobtailing. This administration has consistently vetoed legislation which violates Article III, Section 17, of the South Carolina Constitution, which provides that "every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." S. 1143 clearly violates this mandate and would undoubtedly be held to be unconstitutional by our Supreme Court.

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S. 1143 was introduced by Senator McConnell with the title reflecting a single subject of the sales tax holiday for energy efficient products. The title of S. 1143 remained unchanged throughout the legislative process. The Senate passed the bill with this title intact and the bill related only to the single subject stated in the title. The House amended S. 1143 by adding a section that provided for an exemption from sales tax holiday for firearms. While this broadened the bill, the amendment remained related to sales tax holidays. Thus, as passed by the House the bill would very likely pass constitutional muster. However, when the bill was returned to the Senate, the bill was amended to include the ethanol blending provisions. This amendment is totally unrelated to the other provisions of the bill and, therefore, not within the "single subject" of the title.

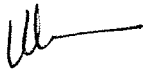
The South Carolina Supreme Court has most recently addressed the "single subject" or "bobtail" issue in *Sloan v. Wilkins*. Citing numerous prior cases, the Court said that the "purpose of Article III, Section 17 is (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the state of the matters with which the General Assembly concerns itself."

The ethanol blending amendment violates all three purposes the Supreme Court established because it was never introduced as a separate bill nor discussed as an amendment in any subcommittee or committee of the General Assembly. Thus, the deliberative process that is supposedly the hallmark of the legislative process was by-passed and the public was denied opportunity to be informed of and participate in the consideration of the ethanol blending provisions.

This constitutional infirmity was recognized by Senator McConnell, the author of the original bill. When the ethanol blending amendment was brought up on the Senate floor, he stated that it was unconstitutional and announced he wanted to be recorded as voting against it. While Senator McConnell and I do not always agree, we are in agreement that this measure is unconstitutional.

For these reasons, we are vetoing S. 1143, R-356.

Sincerely,



Mark Sanford