



South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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HOUSE WEEK IN REVIEW

The House of Representatives approved and sent to the Senate **H.3817**. This bill provides that an object containing the words of the **TEN COMMANDMENTS MAY BE DISPLAYED ON REAL PROPERTY OWNED BY THE STATE** along with other documents of historical significance that have formed and influenced the United States legal or governmental system. The bill further provides that the display of an object containing the words of the Ten Commandments must be in the same manner and appearance generally as other documents and objects displayed and must not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects.

The House concurred in Senate amendments to **H.3634** and enrolled the bill for ratification. This bill provides that the Public Service Commission may not impose requirements related to the terms, conditions, rates, or availability of, or otherwise regulate **COMMERCIAL MOBILE SERVICE** for as long as federal laws governing mobile services remain in effect.

The House approved and enrolled for ratification **S.458**, legislation pertaining to **ANNUITIES**. This bill provides for minimum nonforfeiture amounts for individual deferred annuities. The bill revises provisions for the calculation of minimum nonforfeiture amounts of contracts issued after June 30, 2007, so as to change the time of applicability on these contracts. The bill revises temporary provisions relating to minimum values of any paid-up annuity, cash surrender, or death benefits available under certain annuities, so as to change the date of applicability from 2005 to 2007 to these contracts and provide that contracts entered into after the effective date of this act and before July 1, 2007, may apply, at the insurer's option, the minimum values as provided in this act on certain annuities on a contract-form-by-contract-form basis.

The House approved **S.216**, pertaining to **MILITARY CORPORATIONS**, and enrolled the bill for ratification. Currently, enlisted men and women in the National Guard of South Carolina may organize themselves into corporations for social purposes and for the purpose of holding, acquiring and disposing real and personal property. **S.216** limits the purpose of these social corporations to include the following: (1) enlisted, officer or all-ranks clubs; (2) family support groups; (3) auxiliary organizations; (4) service branch organizations; (5) battalion, brigade, or unit fund organizations; (6) or other organizations that provide support to personnel and their families. The bill requires the Adjutant General and the Secretary of State to standardize applications for incorporation. Under the bill, the Adjutant General and the State Judge Advocate must approve these incorporations. Funds raised and services provided by these corporations may be retained, if funds are used for unit support, eleemosynary causes or charitable purposes. **S.216** also allows these organizations the use of the armory or National Guard facilities, if there is no expense to the government. However, the State and the National Guard will have access to the area. The sale of alcoholic beverages must conform to the limitations of sales under other provisions of law, except that sales within the unit, and not for profit, do not require licensing by the State.

The House approved **S.106**, pertaining to **MOTOR CARRIER TRANSPORTATION CONTRACTS** and enrolled the bill for ratification. As used in this legislation the term

'motor carrier transportation contract' means a contract, agreement, or understanding covering: (1) the transportation of property for compensation or hire by the motor carrier; (2) the entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or (3) a service incidental to activity described in items (1) or (2) including, but not limited to, storage of property. However, the term 'motor carrier transportation contract' does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America. Under this bill, a provision affecting a motor carrier transportation contract that indemnifies, defends or holds harmless the contract's promisee from or against liability for loss or damage resulting from the negligence or intentional acts or omissions of the contract's promisee is against the public policy of the State. There is an exception for damages caused by and resulting from negligence of the motor carrier, its agents, employees, servants or independent contractors who are directly responsible to the motor carrier.

The House concurred in Senate amendments to **H.3579** and enrolled the bill for ratification. This bill makes revisions pertaining to the **STATE CROP PEST COMMISSION**. The legislation clarifies that any person subject to the jurisdiction of the State Crop Pest Commission may be subject to civil penalties from the Commission. The bill also provides that the Commission has the authority to issue and enforce written stop sale, use or distribution orders to certain persons selling, distributing or growing plant material in violation of the law.

The House amended, approved and sent to the Senate **H.3189**, a bill **EXPANDS THE JURISDICTION OF THE STATE GRAND JURY TO INCLUDE ENVIRONMENTAL OFFENSES**. The bill extends the subject matter jurisdiction of the state grand jury to include wilful criminal violations that result in actual and substantial harm to the water, ambient air, soil or land, or both soil and land. Violations include, but are not limited to, violations of: the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Pollution Control Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or any crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the environment if the anticipated damages, including, but not limited to the cost of remediation, are one million dollars or more as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control (DHEC). If the knowing and willful crime is a violation of federal law, then a conviction or an acquittal under federal law for the same act is a bar to the impaneling of a state grand jury. The bill requires that in investigations of crime, except in matters where DHEC or its officers or employees are subjects of investigation, the Commissioner of DHEC must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division (SLED). The Attorney General and the Chief of SLED must consider the impaneling of a state grand jury necessary before the Attorney General presents a petition, which includes the Commissioner's written recommendation, to the Chief Administrative Judge. In the case of evidence brought to the attention of law enforcement by an employee or former employee of the alleged violating entity, the bill provides that there must also be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee. Where an individual employee performs

a wilful criminal violation of the environmental laws, only the individual employee is subject to investigation unless or until there is separate, credible evidence that the individual's employer knew of, concealed, directed, or condoned the employee's actions.

The House approved and sent to the Senate **H.3285**. This bill provides that a **FINAL DECISION BY AN ADMINISTRATIVE LAW JUDGE INVOLVING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL** may be appealed as a matter of right to the Court of Appeals.

The House amended, approved, and sent to the Senate **H.3614**, a bill relating to **PROCEDURES FOR WITHHOLDING WAGES TO SECURE PAYMENT OF SUPPORT OBLIGATIONS**. This bill provides that amounts collected through the centralized wage withholding system are subject to a five percent court cost. This bill further provides that the payor of this additional five percent agrees, by paying through the court or a centralized system, (1) that this payment is for satisfaction of court costs, (2) that it is not child support, as defined by federal law, and (3) to the distribution of this payment to the State for court costs.

The House approved and sent to the Senate **H.3411**, a bill relating to **CONTESTED MUNICIPAL ELECTIONS**. Current law provides that in the case of a contested municipal election incumbents hold over until the contest is finally determined. This bill eliminates this particular provision. This bill also eliminates the requirement that the notice of appeal of the decision of the Municipal Election Commission acts as a stay of further proceedings pending the appeal.

The House approved and sent to the Senate **H.3646**. The bill clarifies that the Nurse Practice Act does not prohibit a person, who is not a nurse, from providing **ATTENDANT CARE SERVICES** directed by or on behalf of an individual in need of in-home care or from performing an act that a person would normally perform if the person were physically and cognitively able.

The House amended, approved, and sent to the Senate **H.3402**. This bill pertains to definition of terms in matters relating to campaign practices and in matters relating to lobbyists and lobbying. Under this bill, the **DEFINITION OF A LEGISLATIVE CAUCUS IS AMENDED TO INCLUDE A REPRESENTATION OF SPORTSMEN AND WOMEN DESIRING TO ENHANCE AND PROTECT HUNTING, FISHING, AND SHOOTING SPORTS**.

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full committee did not meet this week.

EDUCATION AND PUBLIC WORKS

The Education and Public Works Committee reported favorable with amendment on **H.3499**, the **STUDENTS HEALTH AND FITNESS ACT OF 2005** (the Act). As reported by the Committee, this bill:

- Decreases the current 800:1 student-teacher ratio in physical education to 500:1, phased in over three years;
- States that the goal of the Act is to provide students with the equivalent of thirty minutes of physical education instruction daily, and provides that the weekly minutes of instruction must be distributed in a developmentally appropriate manner for each grade level;
- Limits physical education classes to a student-teacher average ratio of 28:1;
- Requires and provides for public school physical education program assessments, requires the State Department of Education (SDE) to develop a method of calculating a district and school physical education program effectiveness score, and requires that this score be reported through the district and school report card;
- Requires that assessment of students in grades two, five, eight, and high school be used to assess the effectiveness of the school's physical education program and its adherence to the standards;
- Requires elementary schools to designate a physical education teacher to serve as its Physical Education Activity Director responsible for coordinating additional physical activity for students and teachers before, during, and after school;
- Requires the General Assembly, beginning with school year 2006-07, to appropriate funds to be used for providing grants for licensed nurses in elementary public schools;
- To promote optimal healthy eating patterns, requires SDE to place recommendations of the SDE Task Force on Student Nutrition and Physical Activity Report in policy to be implemented in elementary schools;
- Requires SDE to make available coordinated school health model designed to address health issues of children, and outlines eight components which the program must provide;
- Requires and provides for school districts to establish and maintain a Coordinated School Health Advisory Council (CSHAC) to assess, plan, implement, and monitor district and school health policies and programs, including development of a district wellness policy;
- Requires districts to work with the CSHAC to develop school health plans which will be a part of the district's currently-required strategic plan;
- Provides for annual professional development in health, safety, and nutrition education to K-12 teachers;
- Prohibits elementary schools from providing to students foods of minimal nutritional value but does not restrict foods which parents may provide for the child to consume at school;
- Restricts what foods may be offered in public-area vending machines in elementary schools, and requires the CSHAC to determine which snacks may be sold in these machines;
- Requires that elementary school students must have at least twenty minutes to eat munch once they have received their food;

- Requires that students in grades K-5 receive nutrition education weekly;
- Stipulates that implementation of these provisions is contingent upon funding from the General Assembly.

The Committee reported favorable on **S.406**. This bill **REQUIRES THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES TO ADMINISTER THE SOUTH CAROLINA COMMERCIAL DRIVER'S LICENSE PROGRAM IN ACCORDANCE WITH THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS**, and makes numerous revisions of commercial driving provisions to bring these provisions into conformity with these federal regulations.

The Committee reported favorable on **H.3735**. This bill **REQUIRES AND PROVIDES FOR THE DEPARTMENT OF MOTOR VEHICLES (DMV) TO SUSPEND THE REGISTRATION OF, AND NOT REREGISTER, A MOTOR VEHICLE THAT WAS OPERATED WHEN ITS DRIVER FAILED TO PAY A TOLL AND WHOSE OWNER HAS AN OUTSTANDING JUDGEMENT FOR FAILURE TO PAY A TOLL**. The bill provides a procedure for entering a judgement against the owner or operator of the vehicle and provides that the suspension or denial of registration or reregistration must remain in effect until the judgement is satisfied as provided in the bill.

The Committee reported favorable on **H.3299**, a bill which **PROVIDES THAT A SPECIFIED SECTION OF ROADWAY IN BEAUFORT COUNTY IS DESIGNATED AS A SOUTH CAROLINA SCENIC BYWAY**, to be known as Old Sheldon Church Road Scenic Byway.

The Committee adjourned debate on **H.3555**, a bill which designates a specified portion of U.S. Highway 17 in Colleton County as a scenic parkway and adjourned debate on **S.352**, a bill which allows the Department of Transportation to mow beyond thirty feet from the pavement roadside vegetation at a specified location in Colleton County.

JUDICIARY

The Judiciary Committee met on Tuesday, April 5, 2005.

H.3213, which enacts the "**RIGHT TO LIFE ACT OF SOUTH CAROLINA**," received a favorable report from the full committee. The bill provides that the right to due process and the right to equal protection vest at fertilization.

The full committee gave a favorable report to **S.106**, a bill pertaining to **MOTOR CARRIER TRANSPORTATION CONTRACTS**. As used in this legislation the term 'motor carrier transportation contract' means a contract, agreement, or understanding covering: (1) the transportation of property for compensation or hire by the motor carrier; (2) the entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or (3) a service incidental to activity described in items (1) or (2) including, but not limited to, storage of property. However, the term 'motor carrier transportation contract' does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America. Under this bill, a provision affecting a motor carrier transportation contract that indemnifies, defends or holds harmless the contract's

promisee from or against liability for loss or damage resulting from the negligence or intentional acts or omissions of the contract's promisee is against the public policy of the State. There is an exception for damages caused by and resulting from negligence of the motor carrier, its agents, employees, servants or independent contractors who are directly responsible to the motor carrier.

H.3543, which enacts “**MARY LYNN’S LAW**,” received a favorable with amendment report. This bill makes revisions pertaining to **VICTIM NOTIFICATION, DEFENDANT PARTICIPATION IN DIVERSIONARY PROGRAMS SUCH AS MENTAL HEALTH COURT AND DRUG COURT, RESTRAINING ORDERS, BOND HEARINGS**, and the **CRIMINAL OFFENSES OF HARASSMENT AND STALKING**.

H.3543 provides that (1) a person with a current charge or a prior conviction for a violent offense or a harassment or stalking offense, or (2) a person subject to a restraining order or valid order of protection, or (3) a person currently on parole or probation for any offense, or (5) if the consent of the victim has not been obtained, then that person may not be considered for a diversion program such as drug court or mental health court. These provisions do not apply to a program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor.

H.3543 also requires diversionary programs, except a diversionary program administered by the South Carolina Prosecution Coordination Commission or a circuit solicitor, to make reasonable attempts to notify the victim of a crime prior to the defendant’s release from the program, unless the defendant is released to a law enforcement agency. Likewise, in every case where there is a court-ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation must make reasonable attempts to notify the victim of the crime prior to the defendant’s release from the facility, unless the defendant is released to a law enforcement agency. Notification of a victim may not be only by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach a victim by electronic or automated communication or recording, the appropriate agency or division shall attempt to make personal contact with the victim.

H.3543 requires a department or agency having custody of a person accused, convicted, or adjudicated guilty of committing a crime involving a victim, to inform each victim, upon request, before any transfer of the person to a less secure facility or to a diversionary program. These provisions do not apply to transfers to other law enforcement agencies and transfers to other non-law enforcement locations if the person remains under security supervision. All victims, upon request, must be notified of interdepartmental transfers after the transfer occurs. Notification to a victim may not be only by electronic or other automated communication or recording, except in the case of interdepartmental transfers.

H.3543 requires that the written victim impact statement to be transmitted by the prosecuting agency or summary court to the Department of Corrections or Department of Probation, Parole and Pardon Services, as appropriate, no later than 10 days after sentencing.

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H.3543 provides that a law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving a victim, must also provide to a mental health facility the appropriate contact information for each victim.

H.3543 creates the offenses of harassment in the first degree, harassment in the second degree, as well as redefines the offense of stalking. Penalties are outlined for violations. There are exceptions for licensed private investigators and electronic mail service providers. The bill authorizes a law enforcement officer or another person with knowledge of the circumstances to sign a warrant in place of the victim for a person alleged to have committed a harassment or stalking offense. Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. The evaluation may not take place until the facility conducting the evaluation has received all of the necessary documentation. If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person's release. All reasonable efforts must be made to notify the victim personally.

H.3543 authorizes magistrate's court to assess a filing fee against the nonprevailing party in an action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee. A restraining order remains in effect for a fixed period of time for not less than one year, as determined by the court on a case-by-case basis. A restraining order issued by a court must not contain the social security number of a party to the order and must contain as little identifying information as necessary of the party it seeks to protect. Current law provides that temporary restraining orders must be for a fixed period not to exceed six months; this bill increases that time frame to one year.

Prior to setting bail, a magistrate or municipal judge may order a defendant charged with harassment in the first or second degree or stalking to undergo a mental health evaluation. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within 10 days of the order's issuance. Once the evaluation is complete, the examiner must, within 48 hours, issue a report to the local solicitor's office, summary court judge, or other law enforcement agency. Upon receipt of the report, a bond hearing must be arranged before a circuit court judge or the summary court judge.

H.3543 requires at a bond hearing that the court shall have, if available, all incident reports generated as a result of the offense charged and a copy of the accused's criminal record.

H.3543 creates a task force to examine and design statewide standards for the operation of mental health courts.

The Judiciary Committee gave a favorable with amendment report to **H.3614**, a bill relating to **PROCEDURES FOR WITHHOLDING WAGES TO SECURE PAYMENT OF SUPPORT OBLIGATIONS**. This bill provides that amounts collected through the centralized wage withholding system are subject to a five percent court cost. This bill further provides that the payor of this additional five percent agrees, by paying through the court or a centralized system, (1) that this payment is for satisfaction of court costs, (2) that it is not child support, as defined by federal law, and (3) to the distribution of this payment to the State for court costs.

H.3438, a bill requiring the **ELECTION OF COUNTY ASSESSORS**, was recommitted to the Special Laws Subcommittee.

The full committee gave a favorable with amendment report to **H.3647**, a bill pertaining to **SUNDAY BLUE LAWS AND WORKING ON SUNDAYS**. This bill provides that an employee of a business that operates on Sunday has the option of refusing to work on Sunday if the employee is conscientiously opposed to Sunday work. A proprietor of a retail establishment who is opposed to working on Sunday may not be forced by his lessor or franchisor to open his or her establishment on Sunday and discrimination against a person whose regular day of worship is Saturday is prohibited. This provision does not apply to employees, including support, maintenance, repair, and other service personnel, of a manufacturing establishment or a research and development operation that by its nature or for economic reasons involves processes requiring continuous and uninterrupted operation. The manufacturing of bakery products is a chemical manufacturing process requiring continuous, uninterrupted operation.

H.3647 repeals what are popularly known as "Sunday Blue Laws," which relate to the prohibition against the sale of certain items on Sunday except during specified hours of operation. "Sunday Blue Laws" also prohibit the conduct of certain work or events or the operation of certain businesses or manufacturing establishments on Sunday. The bill does not affect the provisions of law prohibiting or otherwise regulating the sale of alcohol on Sunday.

The Judiciary Committee adjourned debate on **H.3039**. Under this bill, Family Court and Probate Court would have concurrent **JURISDICTION TO HEAR ACTIONS CONCERNING THE VALIDITY OF MARRIAGES AND THE PATERNITY OF AN INDIVIDUAL**.

The full committee did not take any action on **H.3141**, relating to **AGENCY PROCEDURES FOR PROMULGATING REGULATIONS**. During debate on the legislation, a point of order was made and sustained that a quorum was no longer present.

On March 29, 2005, **H.3184** received a favorable with amendment report from the full committee; the amendment was not available in time for the bill summary to be included in last week's *Legislative Update*. This legislation makes comprehensive **REVISIONS WITH REGARDS TO APPEALS TO AND FROM THE ADMINISTRATIVE LAW COURT AND VARIOUS AGENCIES AND COMMISSIONS**. The stated intention of the legislation is to provide a uniform procedure for contested cases and appeals from administrative agencies. State entities affected by this legislation include: the State Ethics Commission, the Employment Security Commission, the Public Service Commission, the State Human Affairs Commission, the State Employee Grievance Committee, the Procurement Review Panel, the Secretary of State (Solicitation of Charitable Funds), the Securities Commission, the South Carolina Commission for the Blind, the Commissioner of Agriculture, the State Crop Pest Commission, the State Livestock-Poultry Health Commission, the Department of Health and Environmental Control (SC Mining Act and Coastal Tidelands and Wetlands); SC State Ports Authority, Division of Aeronautics of the Department of Commerce, the State Board of Education (teacher licenses, charter schools, and non-public- postsecondary institution licensing), and the Department of Motor Vehicles.

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Provisions of the legislation include:

- In general, the bill grants the court of appeals jurisdiction to hear cases in which an appeal is taken from a final decision of an administrative law judge or a final decision of an agency.
- A final decision of the Public Service Commission setting public utility rates is appealable directly to the Supreme Court.
- Unless otherwise provided by law, the standard of proof in a contested case is by a preponderance of the evidence.
- Except as otherwise provided, the serving and filing of notice of appeal does not itself stay enforcement of an agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed.
- Notwithstanding any other provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief. This does not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.
- Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by a department of the executive branch of government such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department of the executive branch of government authorized by law to seek an administrative process may apply to the chief administrative law judge or his or her designee to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department of the executive branch of government may apply to the chief administrative law judge for relief from the process as provided in the Rules of the Administrative Law Court.
- After a contested case is initiated before the Administrative Law Court, any party may move before the presiding administrative law judge to lift the stay imposed.
- All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.
- A party aggrieved by the decision of the Chief Procurement Officer in a contract controversy, when the amount in controversy exceeds \$250,000 thousand dollars, may remove the contract controversy from the Procurement Review Panel to the Administrative Law Court by filing a notice of removal with the court and the panel within 10 days after a hearing was requested before the Procurement Review Panel. Upon filing of the notice of removal, the administrative law judge shall decide all issues in the contract controversy

presented to and ruled upon by the chief procurement officer. The administrative law judge shall apply the applicable public contract law and the precedents of the Procurement Review Panel.

- A person aggrieved by a final order of the Securities Commissioner may obtain appellate review of the order filing, a notice of appeal in the Administrative Law Court within 30 days after the entry of the order praying that the order be modified or set aside in whole or in part. The aggrieved person, upon filing a notice of appeal, may move before the Administrative Law Court for a stay of the commissioner's final order until the administrative law judge has reviewed the order. If the administrative law judge orders a stay, the aggrieved person must post a bond if set by the administrative law judge. A copy of the notice of appeal must be served upon the securities commissioner, and the securities commissioner shall certify and file in the Administrative Law Court a copy of the filing and evidence upon which the order was entered. The findings of the securities commissioner as to the facts, if supported by reliable, probative, and substantial evidence, are conclusive.
- An order, decision, or other official act which revokes a registration or license issued by the Commissioner of Agriculture, may be appealed by a person concerned by filing a notice of appeal with the Administrative Law Court and by serving the commissioner or someone of discretion at his or her office, within 30 days after receipt of written notice of the order, decision, or official act affecting the registration or license of the person concerned. The commissioner, within 30 days after service of the notice of appeal, shall make a return to the Administrative Law Court as provided in its appellate rules.
- The duties, functions, and responsibilities of all hearing officers of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective July 1, 2005.

LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce and Industry Committee met on April 5 and reported out several bills.

The Committee gave a report of favorable with amendment on **S.49**, a bill that **REQUIRES HEALTH INSURERS TO PROVIDE COVERAGE FOR TREATMENT OF MENTAL HEALTH CONDITIONS**. The legislation's coverage requirement pertains to treatment of the following mental conditions: (1) Bipolar Disorder, (2) Major Depressive Disorder, (3) Obsessive Compulsive Disorder, (4) Paranoid and Other Psychotic Disorder, (5) Schizoaffective Disorder, (6) Schizophrenia, (7) Anxiety Disorder, (8) Post-traumatic Stress Disorder, and (9) Depression in childhood and adolescence. The legislation requires a health insurance plan to provide the insured at least one choice for treatment of mental health conditions within the plan that has rates, terms, and conditions that place no greater financial burden on the insured than for access to treatment of physical conditions in similar settings and for similar types of treatment. Any required deductible or out-of-pocket limits must be comprehensive for coverage of both mental health and physical health conditions. The bill provides that a health

insurance plan is not prohibited from limiting coverage for mental health conditions to a total of forty-five days of inpatient care and sixty outpatient visits for each insured for a plan year. The legislation establishes provisions under which a health insurer may provide coverage for treatment of mental health conditions through a managed care organization even if the insurer does not otherwise provide for management of care. The legislation provides that the State Employee Insurance Program shall continue to provide mental health parity in the same manner and with the same management practices as included in the plan beginning in 2002, and is not under the jurisdiction of the Department of Insurance. Before July 1, 2008, The Department of Insurance is required to report to the General Assembly an estimate of the impact of this legislation on health insurance costs.

The Committee gave a report of favorable with amendment to **H.3478**. This bill revises **GROUNDS FOR DENIAL OF LICENSURE OR FOR DISCIPLINARY ACTION AGAINST REAL ESTATE PROFESSIONALS** (including brokers, agents, and property managers) by clarifying that payment of a commission or compensation to an unlicensed individual is prohibited for conducting activities requiring a license.

The Committee gave a favorable report on **S.458**, legislation pertaining to **ANNUITIES**. This bill provides for minimum nonforfeiture amounts for individual deferred annuities. The bill revises provisions for the calculation of minimum nonforfeiture amounts of contracts issued after June 30, 2007, so as to change the time of applicability on these contracts. The bill revises temporary provisions relating to minimum values of any paid-up annuity, cash surrender, or death benefits available under certain annuities, so as to change the date of applicability from 2005 to 2007 to these contracts and provide that contracts entered into after the effective date of this act and before July 1, 2007, may apply, at the insurer's option, the minimum values as provided in this act on certain annuities on a contract-form-by-contract-form basis.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The House Medical, Military, Public and Municipal Affairs Committee met on Tuesday, April 5, 2005.

The full committee adjourned debate on **H.3254**, the "**REGISTERED SURGICAL TECHNOLOGIST AND LICENSED SURGICAL ASSISTANT ACT.**"

H.3646 received a favorable report from the full committee. The bill clarifies that the Nurse Practice Act does not prohibit a person, who is not a nurse, from providing **ATTENDANT CARE SERVICES** directed by or on behalf of an individual in need of in-home care or from performing an act that a person would normally perform if the person were physically and cognitively able.

The full committee gave a favorable report to **S.216**. Currently, enlisted men and women in the **NATIONAL GUARD OF SOUTH CAROLINA** may organize themselves into corporations for social purposes and for the purpose of holding, acquiring and disposing real and personal property. **S.216** limits the purpose of these social corporations to include the following: (1) enlisted, officer or all-ranks clubs; (2) family support groups; (3) auxiliary organizations; (4) service branch organizations; (5)

battalion, brigade, or unit fund organizations; (6) or other organizations that provide support to personnel and their families. The bill requires the Adjutant General and the Secretary of State to standardize applications for incorporation. Under the bill, the Adjutant General and the State Judge Advocate must approve these incorporations. Funds raised and services provided by these corporations may be retained, if funds are used for unit support, eleemosynary causes or charitable purposes. **S.216** also allows these organizations the use of the armory or National Guard facilities, if there is no expense to the government. However, the State and the National Guard will have access to the area. The sale of alcoholic beverages must conform to the limitations of sales under other provisions of law, except that sales within the unit, and not for profit, do not require licensing by the State.

H.3175 received a favorable report from the full committee. Currently, the Department of Health and Environmental Control (DHEC) administers hearing aid dealer registration and licensure. A Commission of Hearing Aid Specialists made up of five hearing aid dealers, one otolaryngologist (ear, nose, and throat doctor), a lay member, and the State health officer prepare the licensure examinations and advise DHEC in the administration of this program. This bill establishes the Board of Examiners for **HEARING INSTRUMENT SPECIALISTS AND FITTERS** under the Department of Labor, Licensing, and Regulation and transfers permit and licensure authority for hearing aid dealers from DHEC to this new board. The board would be made up of five hearing instrument specialists, one otolaryngologist, and one layperson.

H.3175 amends the current definition of the term, 'practice of specializing in hearing aids,' to allow a practitioner, at the request of a physician or related profession, to prepare audiograms for that professional's use.

H.3175 requires hearing instrument specialists to conduct a hearing assessment prior to dispensing a hearing aid to measure pure tone audiometry, speech audiometry, and hearing aid evaluation.

H.3175 requires practitioners to be licensed either as a hearing instrument specialist or as a hearing aid fitter. To be licensed as a specialist the applicant must: (1) be certified by the National Board for Certification in Hearing Instrument Sciences; (2) have at least a GED; and (3) pass an examination approved by the board. To be licensed as a fitter an applicant must: (1) be supervised by a licensed hearing instrument specialist; (2) have at least a GED; and (3) pass an examination approved by the board. The board may issue to an applicant a temporary permit valid for 12 months; the permit may be renewed for another 12 months. During the temporary permit period, the permit holder must pass an examination approved by the board. The bill further requires that licensed hearing instrument specialists and fitters must receive at least 16 hours of continuing education every two years.

WAYS AND MEANS

The full Ways and Means Committee did not meet this week.

BILLS INTRODUCED IN THE

HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

S.290 UNLAWFUL TO TAKE CERTAIN FISH WITHOUT FISHERIES HATCHERY PERMIT Sen. Gregory

This bill provides that it is unlawful for a person to take and reduce to possession striped bass, hybrid striped bass, brook trout, brown trout, rainbow trout, or small mouth bass without first procuring a fisheries hatchery permit. Persons taking, in possession of, or transporting these particular fish must have a valid permit in their possession. Taking does not include catching and immediately releasing the fish. The bill outlines requirements for these permits. Violations are misdemeanors punishable by a fine of not less than \$50 nor more than \$500 dollars or imprisonment for not more than 30 days.

S.515 RABIES INOCULATION FEE Sen. Land

This bill increases the fee from three dollars to five dollars for rabies inoculations at rabies clinics.

S.544 ADMINISTERING RABIES INOCULATIONS Sen. Grooms

This bill requires that a licensed veterinarian or someone under a licensed veterinarian's direct supervision administer rabies inoculations.

H.3879 COMPUTER ASSISTED REMOTE HUNTING Rep. M.A. Pitts

This bill makes it unlawful to engage in computer assisted remote hunting. Computer-assisted remote hunting means the use of a computer or any other device, equipment, or software, to remotely control the aiming and discharge of a firearm to hunt an animal, including a bird. The bill does outline certain exceptions. Violations are misdemeanors punishable by a fine not exceeding \$200 dollars, or by a term of imprisonment not exceeding 60 days, or both.

H.3889 SALTWATER FISHING Rep. Limehouse

With regards to the emergency authority of the Department of Natural Resources to close commercial or recreational fishing seasons, areas, or activities in the salt waters of this State, this bill provides that a threat to a fishery resource includes a substantial mortality of the resource or a decrease in its reproduction rates. The bill provides that the taking and immediate release of saltwater fish covered by the emergency closure is not a violation of this provision.

With regards to catch limits on certain saltwater fish, the bill authorizes the Board of Natural Resources to establish take and possession limits and size limits for eleven specific types or groups of saltwater finfish. The bill provides for the review, approval, notification, and implementation procedures in regard to the above, to provide that these procedures are in lieu of those for promulgation of regulations under the Administrative Procedures Act. This bill provides that this authority is granted to the board for a period of five years only.

The bill revises the game fish designation for saltwater game fish and provides for the manner in which take, possession, and size limits apply to certain saltwater game fish and nongame fish. The bill revises take and possession limits for tarpon and take periods for spotted sea trout and red drum. The bill deletes certain sea bass requirements.

H.3896 *HIKING AND EQUESTRIAN ACTIVITIES IN HERITAGE PRESERVES*

***OR OTHER STATE NATURAL AREAS* Rep. Clemmons**

In all heritage preserves or other State natural areas maintained for the use and enjoyment of the general public by the Department of Natural Resources, this bill provides that hiking and equestrian activities are permitted in such a manner as determined by the department. The bill also implements a \$5 dollar per day hiking and equestrian fee to offset the cost of maintenance in and infrastructure improvements to these areas. In the alternative, a person desiring to hike or engage in equestrian activities may pay an annual \$50 dollar fee for these privileges.

H.3901 *AGRICULTURAL PRODUCTS GROWN IN ANOTHER STATE SOLD AT ROADSIDE MARKETS OR LOCAL STANDS* Rep. Funderburk

Under this bill, agricultural products grown in another state may be sold at roadside markets or local stands in this South Carolina by the out-of-state producer or his/her authorized agency in the same manner in-state producers are permitted to sell such products, only if the other state permits agricultural producers from South Carolina the same privilege. Otherwise, the bill requires the out-of-state producer to comply with all licensing and other regulatory requirements.

EDUCATION AND PUBLIC WORKS

S.533 *INSTRUCTION IN PREVENTION OF LYNCHING* Sen. Anderson

This bill requires school districts, during the opening weeks of school, to provide instruction to students regarding the state's lynching law and its penalties, and the seriousness of this crime.

H.3844 *SPECIAL IDENTIFICATION CARDS FOR CERTAIN PERSONS OVER THE AGE OF TWELVE* Rep. Bales

This bill requires that a person over the age of twelve who is not a licensed driver must obtain a special identification card from the Department of Motor Vehicles which must be presented to a law enforcement officer upon request.

H.3882 *YEAR OF MANUFACTURE VEHICLE LICENSE PLATES* Rep. Harrell

This bill authorizes and provides for the Department of Public Safety to allow year of manufacture South Carolina license plates to serve as the official license plates for motor vehicles that are a 1972 or older model year vehicle.

H.3890 *BOAT AND UTILITY TRAILERS* Rep. Kennedy

This bill requires that boat trailers under 2500 pounds, farm trailers, and other utility trailers which are privately owned and not for hire, must be licensed and registered, and must have a vehicle identification number conspicuously engraved on them.

JUDICIARY

S.22 STATE GRAND JURY JURISDICTION EXPANDED TO INCLUDE ENVIRONMENTAL OFFENSES Sen. Knotts

This bill extends the subject matter jurisdiction of the state grand jury to include wilful criminal violations that result in actual and substantial harm to the water, ambient air, soil or land, or both soil and land. Violations include, but are not limited to, violations of: the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Pollution Control Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or any crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the environment if the anticipated damages, including, but not limited to the cost of remediation, are one million dollars or more as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control (DHEC). If the knowing and wilful crime is a violation of federal law, then a conviction or an acquittal under federal law for the same act is a bar to the impaneling of a state grand jury.

The bill requires that in investigations of crime, except in matters where DHEC or its officers or employees are subjects of investigation, the Commissioner of DHEC must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division (SLED). The Attorney General and the Chief of SLED must consider the impaneling of a state grand jury necessary before the Attorney General presents a petition, which includes the Commissioner's written recommendation, to the Chief Administrative Judge.

In the case of evidence brought to the attention of law enforcement by an employee or former employee of the alleged violating entity, the bill provides that there must also be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee. Where an individual employee performs a wilful criminal violation of the environmental laws, only the individual employee is subject to investigation unless or until there is separate, credible evidence that the individual's employer knew of, concealed, directed, or condoned the employee's actions.

S.85 CENTRAL REGISTRY FOR CHILD ABUSE AND NEGLECT Sen. McConnell

Under this bill, a court must order a person's name to be entered in the Central Registry of Child Abuse and Neglect (the "registry") if there is a finding by the preponderance of the evidence that the person physically or sexually abused or recklessly neglected a child. Placement on the registry cannot be waived by any party or by the court.

When a statute or regulation makes determination of a person's history of child abuse or neglect a condition for employment or volunteer service in a facility or other entity

regulated by the Department of Social Services (DSS), this bill provides that the person must be screened against the registry before employment or service in the volunteer role. The bill further provides that the person must be screened each time the license, registration, or other operating approval of the facility or other entity is renewed.

When a statute or regulation makes determination of an applicant's history of child abuse or neglect a condition for issuance of a license, registration, or other operating approval by DSS, this bill provides that the applicant must be screened against the registry before issuance of the initial license, registration, or other approval and each time the license, registration, or other operating approval is renewed.

S.227 ADOPTION AND TERMINATION OF PARENTAL RIGHTS WHEN THE CHILD IS CONCEIVED AS A RESULT OF CRIMINAL SEXUAL CONDUCT OR INCEST Sen. Fair

Under this bill, in an adoption proceeding the consent or relinquishment of a biological parent is not required if the child who is the subject of the adoption proceeding was conceived as a result of that parent's criminal sexual conduct or incest, as found by a court of competent jurisdiction. The bill further provides that it is a ground for termination of parental rights if the child was conceived as a result of criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction.

S.277 INGRESS AND EGRESS TO A CEMETERY, BURIAL GROUND OR GRAVE LOCATED ON PRIVATE PROPERTY Sen. Martin

This bill provides a right of ingress and egress to a cemetery, burial ground, or grave located on private property for certain people, including: family members, close friends, or descendants of deceased persons buried on the property, persons participating in a burial, a cemetery or plot owner, or a person engaging in genealogy research. This right of ingress and egress is limited to certain purposes, such as: visiting graves, maintaining the gravesite or cemetery, burying a person or conducting genealogy research. The bill outlines the responsibilities of the person exercising a right of ingress or egress as well as limits the liabilities of the landowner. The bill also outlines a procedure where a person denied the right of ingress and egress may institute a proceeding in magistrate court.

S.560 CREATION OF OFFENSE OF TAKING A WEAPON OR FIREARM FROM THE POSSESSION OF A LAW ENFORCEMENT OR CORRECTIONS OFFICER Sen. Hayes

This bill provides that, under certain circumstances, it is unlawful to take a weapon or firearm from the lawful possession of a law enforcement or corrections officer. Taking a weapon other than a firearm from a law enforcement or corrections officer is a felony punishable by imprisonment for not more than five years, or a fine of not more than \$1,000, or both. Taking a firearm from a law enforcement or corrections officer is a felony punishable by imprisonment for not more than 10 years, or a fine of not more than \$5,000, or both.

H.3842 PROCEDURE FOR ENACTMENT OR AMENDMENT OF A ZONING REGULATION OR MAP Rep. Rutherford

This bill relates to local planning and zoning; specifically, the bill relates to the procedure for enactment or amendment of a zoning regulation or map. This bill provides that the governing authority, when it holds the required public hearing, may change or depart

from the planning commission recommendation provided that the extent of the change or departure is disclosed fully during the public hearing.

H.3871 EDUCATIONAL TELEVISION COMMISSION Rep. Altman

Current law provides that the Governor appoints seven individuals to the Educational Television Commission. Under this bill, the Governor would make appointments to this commission with the advice and consent of the General Assembly. The bill further provides that upon approval by the Governor that the terms of all appointed members of the commission must end and that new members must be appointed.

H.3872 CREATION OF THE OFFENSES OF ILLEGAL ALIEN TRESPASS AND AIDING OR ABETTING AN ILLEGAL ALIEN Rep. Altman

This bill provides that a person whose presence in the United States is unlawful and who is found in this State must be charged with the offense of illegal alien trespass. The bill further provides that it is unlawful for a person to aid or abet an illegal alien. Violation are felonies punishable by a fine of not less than \$10,000 or imprisonment for not less than three years nor more than five years. No part of the fine or imprisonment may be suspended nor may probation be granted. The bill outlines procedures for the forfeiture of property, monies, negotiable instruments, securities and other things of value when a person violates these provisions. The bill also provides for the distribution of forfeited items after a conviction.

H.3877 PROPOSED CONSTITUTIONAL AMENDMENT TO ESTABLISH RECALL PROCEDURES FOR PUBLIC OFFICIALS Rep. Davenport

This joint resolution proposes to submit to the electors at the next general election whether or not to amend the State Constitution so as to provide procedures for recalling and removing individuals from public office including: persons holding public offices of the State, a specified district of the State, or a political subdivision thereof in the executive, judicial, and legislative branches of government. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers. The joint resolution outlines procedures for implementing a recall of a public official.

H.3878 PROPOSED CONSTITUTIONAL AMENDMENT TO ESTABLISH A SPECIFIED PROCEDURE FOR THE ENACTMENT OF LAWS AND CONSTITUTIONAL AMENDMENTS BY INITIATIVE PETITION Rep. Davenport

This joint resolution proposes to submit to the electors at the next general election whether or not to amend the State Constitution so as to establish a specified procedure for the enactment of laws and constitutional amendments by initiative petition. The joint resolution provides that no fewer than 10 percent of the qualified electors eligible to vote at the last general election must sign the petition. The joint resolution provides that the proposed law or constitutional amendment must be considered by the General Assembly and that the qualified electors must vote on the proposed law or constitutional amendment if the General Assembly or Governor have not acted on it. The joint resolution further provides that the proposed law or constitutional amendment takes effect if a majority of the qualified electors vote in favor of it. The joint resolution also provides that the General Assembly may prescribe additional requirements for an initiative petition.

H.3881 "SOUTH CAROLINA PRIORITY INVESTMENT ACT" Rep. Hagood

Current law provides that a local comprehensive plan of local planning commissions must include certain elements. Among other things, this bill amends the housing element requirements. The bill requires that these comprehensive plans include transportation, intergovernmental coordination, and priority investment elements. With regards to the regulation of zoning districts, the bill allows local governments to develop market-based incentives. The bill provides for elimination of 'unnecessary housing regulatory requirements' to encourage private development, traditional neighborhood design, and affordable housing in priority investment areas. Under the bill, the term 'unnecessary housing regulatory requirements' is defined as those development standards and procedures that are not essential to protect the public health, safety, or welfare and that may otherwise make a proposed housing development economically infeasible.

H.3900 IDENTIFICATION CARDS ISSUED TO AND FIREARM QUALIFICATION PROVIDED FOR RETIRED LAW ENFORCEMENT PERSONNEL Rep. M.A. Pitts

This bill provides that a law enforcement agency or department certified by this State must issue picture identification to any person that has retired from that agency or department for any reason other than mental disability. The bill requires the picture identification to be updated every five years once that person has undergone a criminal background check. This bill further provides that a certified South Carolina law enforcement officer who has retired in good standing for any reason other than for a mental disability must be allowed to qualify annually with a firearm with the agency or department from which he/she retired. The agency or department may charge a reasonable fee for this service. A law enforcement agency or department that does not comply with these provisions shall not receive any grants or monies from the State. These privileges may not be conferred upon a person convicted of a crime that would have prevented him/her from becoming a certified law enforcement officer in this State.

LABOR, COMMERCE AND INDUSTRY

H.3840 EXCLUSIVE LAND USE ARRANGEMENTS PROHIBITED FOR COMMUNICATIONS SERVICE PROVIDERS Rep. Sandifer

This bill provides that no communications service provider or parent, subsidiary, or affiliate of such a provider may enter into any contract or agreement that requires another person to restrict or limit the ability of any other communications service provider from obtaining easements or rights-of-way for the installation of facilities or equipment to provide communications services in this state or otherwise deny or restrict access to the real property by any other communications service provider. The bill prohibits the offering of grants, incentives, or rewards to an owner of real property or the owner's agent that are contingent upon the provision of communications service on the premises by a single communications service provider. Civil penalties are established for violations.

H.3853 QUALIFICATIONS FOR LICENSURE AS A REAL ESTATE BROKER, SALESPERSON, OR PROPERTY MANAGER Rep. Huggins

This bill expands qualifications for licensure as a real estate broker, salesperson, or property manager by providing for criminal record reports and satisfactory evidence that the applicant is of good moral character.

H.3880 RECORD REQUIREMENTS FOR RETAILERS Rep. Breeland

This bill provides that the record requirements for retailers apply to all retailers subject to the retail license and tax requirements and who sell new or used merchandise, or both.

H.3883 SALE OF A USED MANUFACTURED HOME IN CONJUNCTION WITH THE SALE OF UNDERLYING REAL ESTATE Rep. Duncan

This bill exempts from the manufactured housing license requirement a licensed real estate salesman or licensed real estate broker who negotiates or attempts to negotiate the sale or other disposition of a used manufactured or mobile home in conjunction with the sale or other disposition of the underlying real estate.

H.3884 MINIMUM LIABILITY LIMITS INCREASED ON AUTOMOBILE INSURANCE POLICIES Rep. Altman

This bill increases the minimum liability limits on an automobile insurance policy as follows: (1) twenty-five (currently fifteen) thousand dollars because of bodily injury to one person in any one accident and, subject to the limit for one person; (2) fifty (currently thirty) thousand dollars because of bodily injury to two or more persons in any one accident; and, (3) twenty-five (currently ten) thousand dollars because of injury to or destruction of property of others in any one accident.

H.3899 REQUIREMENTS FOR ATHLETIC TRAINER CERTIFICATION Rep. Cato

This bill revises requirements for athletic trainer certification by requiring an applicant to pass the National Athletic Trainer's Board of Certification, Inc., Examination and eliminating specific Bachelor of Science or four-year college degree requirements.

H.3902 HEALTH INSURANCE PLANS REQUIRED TO PROVIDE COVERAGE FOR TREATMENT OF MENTAL ILLNESS OR ALCOHOL/SUBSTANCE ABUSE Rep. Davenport

This bill requires health insurance plans to provide coverage for treatment of mental illness or alcohol or substance abuse. The legislation allows a plan that does not provide for management of care or the same degree of management of care for all health conditions to provide coverage for such treatment through a managed care organization. The bill establishes treatment conditions to qualify for coverage. The Department of Insurance is required to report to the General Assembly on the fiscal impact of the new provisions.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.3848 AMENDMENTS TO S.C. PHARMACY PRACTICE ACT Rep. Edge

This bill amends the S.C. Pharmacy Practice Act. The bill exempts federally qualified health centers from certain pharmacy permit and regulatory requirements. The bill provides that federally qualified health centers must be recognized as a covered entity under certain provisions of the S.C. Pharmacy Practice Act so that a licensed practitioner may dispense drugs or devices that are the lawful property of the practitioner or the corporation.

WAYS AND MEANS

H.3841 SOUTH CAROLINA RETAIL FACILITIES REVITALIZATION ACT Rep. Talley

This bill, entitled the *South Carolina Retail Facilities Revitalization Act*, is intended to create an incentive for the renovation, improvements, and redevelopment of abandoned retail facility sites located in South Carolina. The bill establishes and provides for real property or state income tax credits for taxpayers who improve, renovate, or redevelop an eligible site as provided in the bill.

H.3845 PROPERTY TAX ON MOTOR HOMES Rep. Bales

This bill includes trailers used for camping and recreational travel that are pulled by a motor vehicle as motor homes which may qualify as a primary or secondary residence for purposes of property tax.

H.3846 CONSTITUTIONAL AMENDMENT PROPOSALS RE STATE FUNDS Rep. Harrell

This joint resolution requires a referendum with four separate questions to determine whether the South Carolina Constitution should be amended so as to:

1. Provide that the State's General Reserve Fund shall consist not only of three percent of the General Fund Revenue of the latest completed fiscal year, but also the first ten percent of any surplus general fund revenues accruing for any fiscal year;
2. Provide that appropriations from the Capital Reserve Fund take effect on September first of the following fiscal year;
3. Provide that surplus General Fund Revenues for any fiscal year not otherwise obligated and appropriations to the Capital Reserve Fund are deemed to have occurred and are available for expenditure after September first of the next fiscal year and after the state's financial books for the previous fiscal year have been closed;
4. Provide that if the Comptroller General determines upon the closing of the state's financial books for a fiscal year that the State has a negative Generally Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations contained in a general or supplemental appropriations act which expends surplus general fund revenues or in a Capital Reserve Fund appropriations act to be effective during the next fiscal year are suspended and must be used to the extent necessary to offset the GAAP Fund deficit in the manner the General Assembly shall provide.

H.3847 STATE FUNDS Rep. Harrell

This bill requires that, upon the ratification of a specified corresponding amendment to the South Carolina Constitution (see **H.3846** above, #1) the first ten percent of any surplus general fund revenues for any fiscal year must be placed in the General Reserve Fund for use in offsetting operating deficits. The bill provides that no restoration within three fiscal years is required for General Reserve Funds used to cover an operating deficit which were derived from the requirement that the first ten percent of any surplus general fund revenue for any fiscal year be placed in the General Fund.

The bill further provides that, upon ratification of a specified corresponding amendment to the State Constitution (see **H.3846** above, #2) appropriations from the Capital Reserve Fund take effect on September first of the following fiscal year. The bill provides that unobligated surplus General Fund revenues are also available for expenditure after September first of the next fiscal year and after the state's financial books for the previous year have been closed.

The bill provides that if the Comptroller General determines upon the closing of the state's financial books for a fiscal year that the State has a negative Generally Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations contained in a general or supplemental appropriations act which expends surplus general fund revenues or in a Capital Reserve Fund appropriations act to be effective during the next fiscal year are suspended and must be used to the extent necessary to offset the GAAP Fund deficit in the manner the General Assembly shall provide.

The bill requires that each state entity receiving three percent or more of the State's General Fund appropriations for any fiscal year must provide an estimate of its planned General Fund expenditures for the next three fiscal years. The bill requires the Office of State Budget to use this estimate and the Board of Economic Advisors' long-term revenue estimate to compile a three-year financial plan which shall be updated annually and distributed as provided in the bill.

H.3849 STATE TAX PENALTIES Rep. Kirsh

This bill revises current provisions regarding filing an exemption certificate claiming an excessive number of exemptions for tax purposes. The bill makes it an additional violation to refuse or fail to provide a withholding exemption certificate; to provide a withholding exemption certificate that claims the employee is exempt from withholding; or to request a waiver to withholding for which the employee is not entitled. The bill provides a five hundred dollar penalty for each of these violations, and imposes an additional five hundred dollar penalty each January first that a violation is not corrected.

**H.3850 BUSINESS-LICENSE TAX/OTHER MISCELLANEOUS
TAX REVISIONS Rep. Kirsh**

This bill makes numerous revisions to current tax provisions. These revisions include, but are not limited to:

- Authorizing a county to require a business registration fee of up to fifteen dollars in lieu of any business license tax;
- Providing that a county treasurer may not issue a tax receipt to a taxpayer unless the taxes and all other charges on the tax bill have been paid in full;
- Providing that a boat used in interstate commerce having a tax situs in South Carolina and at least one other state is subject to property tax in this State, and a boat which is not present in South Carolina on December 31 and is not used exclusively in interstate commerce is subject to State property taxes if it is present in the State for sixty consecutive days or ninety aggregate days in a property tax year;

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- Authorizing and providing for a code enforcement officer to issue an ordinance summons to a person he believes has failed to remit property taxes or failed to fully comply with vehicle registration laws;
- Providing that a taxpayer's rental of his residence for fewer than fifteen days in a taxable year does not disqualify the residence from receiving the four percent assessment ration allowed owner-occupied residential property;
- Revising the method of determining the sale price of personal property in the event of delinquent tax execution when there is no bid for as much as the tax and costs due;
- Providing that no interest is due on an overpayment of property taxes if the overpayment is refunded within seventy-five days after the county receives notice from the Department of Revenue that the taxpayer is due a credit of refund.

S.589 GOLF COURSE REAL PROPERTY Sen. McConnell

This bill provides that the value of tangible and intangible personal property and any income or expense derived from such property must not be included in the determination of fair market value of golf course real property for *ad valorem* tax purposes.

The bill also provides that if the fair market value of golf course real property for *ad valorem* tax purposes is determined pursuant to the capitalize income approach, the taxpayer shall provide income and expense data for golf course rentals, food and beverage services, and pro shop sales on a form as provided in the bill. This data is not public.

H.3885 COMPANIES USING STATE PORTS AUTHORITY FACILITIES Rep. Hagood

This bill authorizes and provides for either an additional jobs tax credit or an additional investment tax credit for companies which use South Carolina port facilities and which increase their base port cargo volume at these facilities by a minimum of five percent over 2005 totals.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (<http://www.scstatehouse.net>) and click on "*Publications*," then click on "*Legislative Update*." This will list all of the *Legislative Updates* by date. Click on the date you need.

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