South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Editorial Note

This will likely be the last regular issue of the *Legislative Update* during the 1986 session, so it makes a fitting place to register some thanks and acknowledgements for the past year.

First of all, to my colleagues in the House Research Office, Sam Carter and Francine Jones, who made publication of the *Update* possible.

Next, to the staffs of the House Committees, who provided so much help and assistance—their aid is essential! Thanks must also go to the staffs of the Joint Committees, and to Senate Research, who were more than willing to share their information.

The Legislation Council also provided much valuable information, and indispensible technical assistance in publishing the weekly issues of the *Update*. When it comes to requests promptly handled, and data quickly gathered, the *Update* owes a particular debt of gratitude to the staff of the State Library.

Although I write most of the *Update* from week to week, it would be impossible to prepare it without the facts, figures and data provided by the people listed above. Any errors which may have crept in during translation are mine.

Thanks are also due to the readers of the *Update,* in particular the members of the South Carolina House of Representatives. The *Update* is here to serve you, and I am glad that a number of you have expressed your approval, and given your valuable suggestions for improvements.

Finally, and most importantly, acknowledgement is due to Speaker of the House Ramon Schwartz, Jr. It was Speaker Schwartz who decided upon the publication of the *Update,* and who set its editorial guidelines: prompt, factual distribution of information of value to the members of the House. If the *Legislative Update* is helpful to the South Carolina House of Representatives, the credit must go, in largest part, to Speaker Schwartz.

Michael Witkoski
Editor, *Legislative Update & Research Reports*

Bills Introduced

Change Terms of Governor, General Assembly (H.3951, Rep. Phil Bradley, Davenport, and many others). This measure proposes amending the State Constitution to change the terms of office for the Governor and for members of the General Assembly.

The measure would have House members elected for four-year terms; Senators chosen for six-year terms; and the Governor to serve a term of six years. The Governor could not serve two consecutive terms, but could be eligible after six years out of office.

The new terms would be phased in gradually, so that, for example, in the first election (1988) half the House members would be elected for two-year terms, and half would be elected for four-year terms. The lucky ones elected for four-year terms would be determined "as the General Assembly by law shall prescribe." A similar provision would take effect for the senate, except that the upper body would be selected in three divisions, of two- four- and six-year terms. The purpose of this, of course, is to stagger the election to the chambers.

The idea of a six-year term for the Governor is only the latest in plans which would re-arrange the length of time any single person could occupy that office. For some more information on this matter, please see page 7 of this issue of the *Legislative Update*.

Videotaping of Testimony (S.962, Senator E. Patterson). This bill, essentially the same as H.3414, would allow witnesses under sixteen to testify via videotape in cases of alleged unlawful sexual offenses. Procedures are outlined. (See *Legislative Update*, number 5, February 11, 1986.)

Oil Overcharge Money: Some Preliminary Questions

Editorial Note

A federal judge has recently ruled that the Exxon company must replay some $2.1 billion in oil overcharge fees. This money will be sent to the states to be used in several energy-related programs. South Carolina stands to receive $25.4 million from the settlement.

Frank Fusco, of the House Ways and Means Committee staff, recently attended a National Conference of State Legislatures (NCSL) conference on the oil overcharge refund situation. He notes that there were as many questions raised as answers provided at the conference; he has agreed to share a summary of the major points in this issue of the Legislative Update.

Because of the complexity and importance of this issue, Legislative Update *plans to return to it during the upcoming months, going into more detail about the situation, and tapping other resources in state government to help members assess their options.*

At present, however, these questions should provide a good initial overview of the situation. Many thanks to staffer Fusco for sharing his information with the Update *and the House members.*

Some background

How did it come about that Exxon owes so much money? In the early 1970's the Nixon Administration wrote up oil industry regulations which were supposed to encourage the production of more domestic product. Oil pumped after 1972 (or in excess of 1972 levels) could be priced higher than oil pumped before that date. The difference could be considerable: $5 to $8 a barrel for "old oil," but $11 to $16 per barrel for "new oil."

According to the Department of Energy, Exxon took "old oil" from its fields in east Texas and sold it at the higher price of "new oil." The Department alleged that Exxon continued this practice from 1975 through 1981, when President Reagan dropped the oil pricing policy.

Exxon was taken to court, and in 1983 Judge Thomas Flannery of U.S. District Court ordered Exxon to pay the overcharge plus accrued interest. In the summer of 1985 an appeals court upheld the earlier ruling that the Exxon Corporation had violated price controls during

the 1970's, overcharging its customers by some $900 million in oil prices. In addition, the court decided that Exxon owed the government the $1 billion in accumulated interest.

The overcharged prices should, theoretically, be returned to the persons who suffered. Since it would be impossible to track down all those persons, the Department of Energy has apportioned off the funds to the states.

[From *Legislative Update,* Number 8, March 4, 1986]

Oil overcharge refund highlights

South Carolina recently received $25.4 million for the Exxon settlement. This share comes from a national pot of $2.1 billion. These funds must be used in five energy programs:

1. Weatherization assistance
2. State energy conservation
3. Schools and hospitals
4. Energy extension services
5. Low-income energy assistance

Can these funds be used for administration?

Conflicting answers.

1. Not presently; however, a motion has been filed with the court to allow administrative costs up to 5% (the outcome is uncertain.)

2. According to the Staff Director for the Fossil and Synthetic Fuel Subcommittee, oil overcharge funds can be used to compute to the total program costs to which the 5% administrative limit is applied. A higher dollar amount of administrative cost then becomes allowable, but only from state and federal funds.

Are matching funds required for oil overcharge funds?

This question will also be resolved by the court since it is included in a motion recently filed by a group of states. The judge is expected to rule that no match is required.

What is the status of future oil overcharge refunds?

Between $1.6 and $5 billion is believed to be coming from future refunds as result of the Stripper Well Case. Up to $500 million of this amount may be paid to oil refiners. The status of the balance is unclear and depends on the actions of the courts, and the budget and appropriations committees of Congress. The court is expected to

allow broader uses of these refund monies. However, actions now pending in Congress could determine whether the states will receive any new money from this settlement.

The U.S. Senate version specifically includes the funds, and, therefore, if the court settlement if not reached the budget will be short $4.5 billion ($2.25 for energy and $2.25 for the deficit). The budget strategy of the U.S. Senate placed the $4.5 billion at the forefront for bringing the Federal budget in line with the Gramm-Rudman-Hollings deficit limit. It is possible that all or a portion of the money could be used to fund existing energy programs and pay off federal debt, this being assumed to benefit the "injured parties."

The House proposes to fund energy programs at a "freeze" level for four years which avoids future cuts, but would return a third of the refund money to the states. The assumption is that, without these funds, energy programs will be reduced in future years. Therefore, the "freeze" level passes some of the funds to the states.

The bottom line

There may be no new money in the next several years.

* * *

The Governorship: How Long In Office? How Many Terms In Office?

Background

From time to time there are suggestions to change the governor's term in office--sometimes these suggestions are acted upon. It was only recently, for example, that the governor was allowed to serve two consecutive terms. Since then, another idea has been put into bill form: one, six-year term for the governor.

The Question of Succession

It was only recently that South Carolina voters approved amending the state's constitution to permit the governor to serve two consecutive terms. Governor Richard Riley was the first governor in modern state history to be permitted to seek, and in his case win, a second term. He won it in the 1982 election.

Last year, legislation was introduced into the General Assembly to repeal the changes, and return the governorship to a single term of four years. The measure was defeated, but still has a number of supporters, both in the legislature and in the state at large.

Why One Term Only?

Too much power in the hands of the governor is an often cited reason for limiting his or her term in office. South Carolina prides itself on being a "legislative state" and members of the General Assembly wish to keep it that way. A two-term governor would have increased opportunity to create alliances in the legislature, to reward supporters with appointments, and to orchestrate public opinion to support his programs.

On the other hand, too little power has been cited as a reason for restricting the governor to a single term. This argument runs as follows: under a two-term option, a governor in his first term will be thinking primarily of re-election, and his tendency will be to play it safe, following a strategy of not offending anyone. During the second term, the governor will be a "lame duck," unable to bring influence or pressure on the legislature, because his time is strictly limited.

Because of this situation, some say a single term would be better. The governor would not have to worry about re-election, and could concentrate on pushing programs through the General Assembly. There would be more concentrated effort on running the state government, rather than securing re-election—and this would be true not only for the governor, but for the governor's staff.

Indeed, say some opponents of the two-term option, the governor's staff becomes a purely political instrument during the two years preceding the re-election campaign. Primary emphasis is focused on potential opponents of the governor, not possible problems for the state; there is an inevitable tendency to do "what looks good" rather than "what needs to be done."

The political factor weighs on the party nomination even before the general election. An incumbent governor, like an incumbent president, is rarely denied renomination. This reduces the competition within the party, which in turn keeps new leaders and new ideas from surfacing as often as they might. With a one-term governor, vigorous competition is assured—or at least likely—every four years. New leadership, and hopefully new ideas, offer new opportunities to the state.

So much for the opponents of the two-term plan. What do supporters have to say?

Why Two Terms Are Better Than One (To Some)

Supporters of allowing the governor to serve two terms consecutively have a number of arguments on their side.

Leave it to the people, say supporters. Succession is not an automatic privilege granted the governor; it is a right retained by the people. After all, if the voters selected the governor in the first election, why should they be denied the right to pass judgement on him if he seeks a second term? In a democracy, the right of the voters to select whomever they please should be restricted as little as possible.

Four years gives too little time for planning, control, and general leadership. By the time the governor is getting a feel for the office, his term is half over. With a one-term limit, long-range planning is impossible, which means many worthwhile projects are never started, because their completion cannot be assured. Without the promise of such continuity, the governor is unable to provide the strong, effective leadership needed.

Better staffs could be assembled by a two-term governor. The possibility of working eight years versus four years could mean the difference in attracting qualified persons to government service. Why leave a secure, well-paying job for a temporary and uncertain four years of frustration?

Accountability to the people could be better accomplished through the two-term option. As noted above, the second term is not an inevitable occurrence; it depends entirely upon the voters' judgement of the governor. A governor with an eye to re-election is apt to be more, not less responsive, knowing that his performance will be evaluated at the end of his first term. A one-term governor, on the other hand, faces no such test.

There is the possibility that a governor would spend too much time campaigning during the first term for re-election to a second term. However, this underestimates the intelligence of the voters, who would soon realize that they were not be served by their governor, and who could make their displeasure known at the next election.

Four, Eight—Or Six?

The question of one term or two has been settled—at least for the moment—in South Carolina. The governor is now allowed to serve two consecutive terms, or eight years, if the voters will permit it. There is, however, another option: a single term of six years.

The idea has been batted around before: former governors McNair and West have both expressed support of the concept. Now, a measure has been introduced into the General Assembly which would put the concept into practice, along with granting six-year terms to Senators and four-year terms to House members (H.3951).

Six Years—Why?

Supporters of the single, six-year term claim that it combines the best of a single four-year term and the option of a second, consecutive, term.

Six years is enough time for a chief executive to learn the job, to establish control over the bureaucracy, to appoint persons into positions of responsibility, and generally to assume leadership of the executive aspects of state government.

With the assurance of six years in office, a governor could attract and keep qualified staff, and could make the long-range plans necessary to run a modern state government. There would, in addition, be no need to devote any time towards thoughts of running for re-election. This would allow the governor to concentrate on his job, and take stands that might be unpopular but necessary.

On the other hand, six years would not allow the governor to solidify his hold over the government to the point where the legislature is weakened. In essence, there would be a balance struck, one that would allow the best of both possibilities.

Six Years—Why Not?

Opponents of the idea find these reasons unconvincing. A chief point: the six-year term removes the governor from his accountability to the voters. Once safe in office, the governor is free from any pressure exerted by re-election. With the power to grant or deny appointments and other favors, the governor would have inordinately increased powers, especially over boards and commissions. There would be no restraint exercised by the public.

If the governor were bad, there would be little recourse except to suffer through over a half decade of political misery. A four-year term, whether or not it can be repeated, allows voters more prompt relief from incompetence. Supporters of the six-year measure claim that a recall movement could be used to oust a truly bad governor—but just how often has recall worked? Opponents say recall is not a practical remedy.

The governor would be a lame duck from inauguration day. The lameness might be extended, but that would not necessarily eliminate the condition. In a struggle between the governor and the legislature, the legislature would be inclined to dig in, trusting to its appropriation powers, its ability to over-ride vetoes, and its self-renewing nature. At best, this would lead to legislative leadership; at worst, it would bring about a deadlock between the two branches of government.

Finally, there is the question: if this is so good, why hasn't someone else done it? While perhaps not strictly logical, the argument has a certain practical validity—no other state has adopted a single, six-year term for its governor. Most, in fact, are content with four-year terms, with provisions for succession. (See the chart on the next page.) Why should South Carolina be the first to embark on this unique experiment?

Conclusion

The question of gubernatorial succession seems unlikely to change in the near future. Even those who maintain that two terms gives too much power to the governor must acknowledge that the General Assembly maintains control of the essential instrument of government: writing the budget.

Considering the question of a single, six-year term—one is reminded of what the Governor of South Carolina observed to the Governor of North Carolina: "It's a long time between drinks." With the adoption of a single, six-year term, it would be a long time between governors, as well.

Other States--What Do They Do?

What other states have varied terms? Which ones put limitations on the governor succeeding himself/herself in office? (And what about age and special requirements? Let's get some information, here.) The following fact comes from the latest edition of the *Book of the States*, published by the Council of State Governments.

Terms of Governors in the States

Two-Year Terms

Arkansas, New Hampshire, Rhode Island, Vermont.

Four-Year Terms

All the rest.

No Limit on Terms

Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Rhode Island, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming

Maximum Two Consecutive Terms

Alabama, Alaska, Florida, Georgia, Hawaii, Indiana, Kansas, Louisiana, Maine, Maryland, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, West Virginia

Maximum Two Terms - Special Provisions

Governors in the following states are limited to two terms, not necessarily consecutive: Delaware, Missouri, and North Carolina.

Special Limitations on Terms

In the following states there is no limit on total number of terms, but successive terms are forbidden: Kentucky, Mississippi, and New Mexico.

Some Qualifications to be Governor in the States

A minimum age is used by all but seven states as a requirement for the goverorship. The youngest requirement is 18; the oldest, 31. (American Samoa and Puerto Rico have 35 as the minimum age.)

Special requirements, usually relating to criminal records, are employed by four of the states.

No Minimum Age

Kansas, Massachusetts, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin

18 Years Old

California, Washington

25 Years Old

Arizona, Illinois, Louisiana, Minnesota, Montana, Nevada

30 Years Old

Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming

31 Years Old

Oklahoma

Special Requirements

In Michigan, a person convicted of felony or breach of public trust is not eligible for 20 years after the conviction. In Montana the convicted felon is not eligible until final discharge from state supervision. Ohio disqualifies anyone convicted of embezzlement of public funds, while Rhode Island draws the line at those convicted of bribery.

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NOTE:

A Complete Index of Update *Volume 3 (1986 session) will be published in the first Summer Issue (July, 1986)*