



South Carolina House of Representatives

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Robert J. Sheheen, Speaker of the House

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OFFICE OF RESEARCH

Room 324, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803)734-3230

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House Week in Review

The House of Representatives continues to move quickly on its calendar, debating and acting on a number of significant issues last week.

On Wednesday, the House concurred in the Senate's amendments to H.3122, the Parental Consent for Abortion bill. The bill was ratified as an act on Thursday and will go to the Governor for his signature. This legislation originated in the House last session and received House approval in May. The Senate amended the legislation and gave it third reading approval on Feb. 14. A summary of this legislation appears in this issue of the Legislative Update.

The House Judiciary Committee bill to strengthen lobbying laws was given House approval last week. After extended debate on the issue Wednesday, the House gave the bill a second reading by a 109-0 vote. Third reading approval was given Thursday and the bill was sent to the Senate. A summary of this important legislation also is included in this issue of the Update.

The House also acted on two environmental bills. Objections placed H.4246, legislation that would limit the amount of infectious waste that commercial waste incinerators could burn in South Carolina, on the House second reading contested calendar.

However, by a vote of 109-0, the House gave second reading approval to H.3169. This bill would limit the amount of hazardous waste being landfilled in South Carolina. By July 1, 1990, the amount would be limited to 120,000 tons of hazardous waste. By July 1, 1991, the amount would be further limited to 110,000 tons a year. The bill also requires that preference be given to the disposal of hazardous waste generated in South Carolina. The Department of Health and Environmental Control would be required to evaluate how to further reduce the waste being landfilled and report back to the General Assembly with recommendations each February 1, beginning in 1991.

Bills Introduced

Here is a sampling of bill introduced in the House during the past week. Not all the bills introduced are featured here. The bills are organized by the standing committees to which they were referred.

Agriculture and Natural Resources Committee

S.C. Mining Act (H.4722, Rep. Sharpe). This bill will serve as the vehicle for the repeal of the current S.C. Mining Act and the rewriting of the statutes regulating mining in the state.

Education and Public Works Committee

Student Choice of School (H.4720, Rep. Jaskwich). This legislation would enact the South Carolina Public School Choice Act of 1990. It would establish a public school choice program to enable a student to attend a school in a district in which the student does not reside, subject to some restrictions.

These restrictions include a prohibition against any student transferring to a nonresident district where the percentage of enrollment for the student's race, plus or minus five percent, exceeds that percentage in his resident district. Additionally, in any circumstance where the transfer would result in a conflict with a desegregation court order, the terms of the order would govern.

By resolution, school boards would have the authority to restrict admittance of students from outside the district, or could set standards for acceptance or rejection of applications. Standards could include the capacity of a program, class, grade level or school building. However, the standards could not include an applicant's previous academic achievement, athletic or extracurricular ability, handicapping conditions, English proficiency, or previous disciplinary proceedings. And nothing in this legislation would require a school district to add teachers or classrooms or in any way exceed requirements and standards set in law.

For purposes of the Education Finance Act and the Education Improvement Act, out-of-district students must be counted as part of the average daily enrollment of the district to which they transferred.

A student who transfers to a nonresident district is not eligible for interscholastic athletic competition for one year from the date of the transfer.

Mopeds (S.580, Sen. Horace Smith). This legislation would amend the laws dealing with mopeds. The definition of mopeds would be changed to include a cycle with or without pedals. The maximum propelling speed of the vehicle would be increased so that it may not exceed 30 mph; however, there would be penalties for anyone driving a moped over 30 mph or for modifying the vehicle so it can go faster than 30 mph. The bill also would require all mopeds to display license tags, designed by the State Highway Department.

Judiciary Committee

Fraudulent Check Record (H.4691, Rep. McAbee). Under the present law, first offenders of the state's bad check law may apply to have their record expunged one year after conviction if they have no other violations. The law stipulates that a person may apply for this record-cleaning provision only once. Under this legislation, the State Law Enforcement Division would keep a confidential file on all first offense bad check convictions and the date of expungement. This record, which would not be subject to the State Freedom of Information Act and would be open only to court officials, would ensure that no one convicted of bad checks could take advantage of the expungement privilege more than once.

County Procurement Ordinances (H.4706, Rep. Quinn). This legislation would require that all county procurement ordinances parallel the state Consolidated Procurement Code. If the bill is enacted, counties would submit their ordinances to the State Budget and Control Board to determine whether or not the ordinance is "substantially similar" to the Consolidated Procurement Code. If the county ordinance is not, it will have one year to conform its ordinance.

Solid Waste Disposal Property (H.4707, Rep. M.O. Alexander). This bill stipulates that in any sale, lease or transfer transaction of property used as a solid waste disposal site, the deed must contain a statement that the property was previously used as a solid waste storage or disposal facility. If the seller fails to provide the statement, the transaction could be voided by the purchaser.

Neglecting or Exploiting Client-Patients (S.931 Sen. McLeod). This legislation would define what would constitute client-patient neglect or exploitation. Under this bill, neglect of a client-patient's health or welfare may occur when the person responsible for his welfare fails to provide the goods or services necessary to avoid physical harm, mental anguish or mental illness. Examples of neglect would include failure to provide adequate food, shelter, health care, safety or clothing or failure to notice the client-patient's condition and take appropriate action.

Exploitation would be defined as an illegal, improper or unjust act by a administrator or staff member using the resources of the client-patient for monetary or personal benefit.

Compensation Following Emergencies (H.4716, Rep. Whipper). This proposed constitutional amendment would allow the General Assembly to authorize extra compensation for services rendered during state emergencies including hazardous weather. Currently, the only constitutional exception allowed is for expenditures in "repelling invasions, preventing or suppressing insurrection." If approved by the General Assembly, this proposal must be submitted to the voters in a statewide referendum.

Labor, Commerce and Industry Committee

Health Insurance Coverage Fiscal Impact Statement (4695, Rep. Boan). Under this legislation, any bill, resolution or amendment mandating health insurance coverage for an individual or group policy must have a financial impact statement attached to it before it is reported out of committee. The impact statement must be prepared by the Division of Research and Statistical Services and signed by the Insurance Commissioner.

The fiscal statement must include an assessment as to what extent:

- the coverage would increase or decrease the cost of treatment or services;
- the coverage would increase or decrease the use of the treatment or services;
- the mandated treatment or services would substitute for more expensive treatment or service;

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- does the coverage increase or decrease the administrative expenses of the insurance company and the premium and administrative expenses of policyholders;
- the coverage would have an impact on the total cost of health care.

Grocery Sticker Prices (H.4697, Rep. Rudnick). If this legislation is approved, grocery stores would be required to mark each item for sale with a sticker showing the price of the item.

Motor Vehicle Rental Agreements (H.4703, Rep. Mappus). The contents of car rental agreements would be specified by this bill. Under this legislation, the authorized driver of a vehicle, rented for 30 days or less, could not be held liable for the loss or damage of over \$100 done to the car, with some exceptions. These exceptions include:

- damage caused intentionally;
- operating the vehicle under the influence of drugs or alcohol;
- racing the vehicle;
- basing the rental agreement on false information;
- using the vehicle in the commission of a felony;
- using the vehicle to carry people or property for hire or to push or tow anything;
- damage caused when the vehicle is driven by someone other than the authorized driver;
- damage is caused when the vehicle is used outside the U.S. or Canada;

The legislation also would eliminate the requirement of a security or deposit for damages and would prohibit any waiver from being offered by the car rental agencies to provide coverage for the exceptions outlined in the bill.

Rules Committee

Blood and Bodily Organs Committee (H.4683, Rep. M.O. Alexander). This legislation would establish a nine-member Committee on Donations of Blood and Bodily Organs and Tissue. The purpose of the committee would be to promote and publicize the largest possible number of donors of blood, bodily organs and tissue for sustaining life. The committee would also determine state residents in need of these donations. An annual report would be submitted by the committee to the governor and General Assembly.

Medical, Military, Public or Municipal Affairs Committee

Human Body Waste Disposal (H.4704, Rep. J. Rogers). This legislation would prohibit the dumping of human body wastes on any right-of-way in this state, including railroad tracks and roadways. Violation would be a misdemeanor.

Volunteer Fire Departments (H.4710, Rep. Lanford). Under this bill, a volunteer fire department could provide protection to property outside its territorial boundary, as long as the property the department is protecting is not covered by any other city, county or volunteer fire department.

Junk Car Screen (H.4711, Rep. Lanford). A property owner who has two or more inoperable motor vehicles on his property would have to screen the vehicles from public view by a hedge or tree barrier if they could not be put out of sight in a building, under this bill.

Ways and Means Committee

Accommodation Tax Limitations (S.1215, Senate Finance Committee). Under this legislation, the accommodations tax would be limited only to the charges imposed for room or accommodation rental. It could not be imposed on additional guest charges, including room service, amenities, entertainment, special items in promotional tourist packages, laundry and dry cleaning charges, in-room movies, telephone charges, meeting room rentals, or other guest services.

Summary of Lobbying Legislation

By a vote of 109-0, the House of Representatives passed H.4613, legislation strengthening lobbying regulations. The following is a brief summary of the House Judiciary Committee bill, as it was passed by the House.

H.4613

Lobbying Legislation

This bill tightens up the reporting requirements of lobbyists for private businesses and lobbyists for state agencies, departments, and commissions. It includes lobbying to influence gubernatorial and executive department action, as well as legislative action. Here are highlights of the bill:

- The bill requires registration of lobbyists with the State Ethics Commission and annual reports filed with the commission. The bill contains civil and criminal penalties for noncompliance that are higher than the current law, which has just criminal penalties and a bar on lobbying.

Under the current law, the lobbyist files with the Secretary of State an annual statement of "all contributions and expenditures made, paid, incurred or promised in connection with promoting or opposing in any manner any legislation...A legislative agent with other duties is required to report only that income or expense directly related to lobbying." Violations of these provisions is a misdemeanor punishable by \$200-\$500, or 60 days, as well as a two year ban on lobbying.

Under H.4163, the penalties are increased to \$1,000 and 90 days, plus a three year ban on lobbying. For failure to file timely reports, the civil penalty is \$100 if filed up to five days late; \$10 per day for each additional day to up a maximum of \$500.

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- The bill requires a lobbyist to register with the State Ethics Commission within 15 days of employment. The fee would be \$200. If the lobbyist receives no money or expends none while lobbying, then the fee would be \$50. The current fee is \$10. The registration form would include full identification of the lobbyist, the businesses to be lobbied for, and identification, so far as possible, of each person, including state agency, board, commission or committee, with whom contact will be made while lobbying.

- The lobbyist would maintain records for five years on his total income received attributable to lobbying, identification of each person from whom money is received, and the amount received, and the total expenditures of the lobbyist. If money is received from a voluntary membership organization, then just those who contribute over \$500 would be listed.

The annual report would be submitted within 30 days of the sine die adjournment. It would contain:

- Full identification of the reporting lobbyist;
 - Each person the lobbyist has lobbied;
 - Each person who has worked for the lobbyist as a lobbyist;
 - Each legislative, executive or state agency action which the lobbyist sought to influence by subject matter;
 - Identification of each person from whom money was received as well as the amount received with the exception listed above;
 - Totals of all expenditures made or incurred for the benefit of the public official or employee by the lobbyist while lobbying. These totals must be listed by category. Also the lobbyist would list the total number of public officials or employees on whose behalf these expenditures were made and list the names of public employees or officials on whom more than \$100 was spent in any calendar day;
 - In the case of special events for public employees, such as dinners or athletic events, the date, location, name of the public body invited and total expense must be listed;
 - Statement of any money promised or loaned to a legislator, public official, employee or the governor;
 - Statement of direct business association with a legislator, the governor, public official or employee.
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- This legislation places the same reporting requirements on the lobbying activities of state agencies, departments and commissions as is required of other lobbyists.

- Under this legislation, the power of the Ethics Commission regarding lobbying requirements are outlined, including the power to investigate and subpoena, the promulgation of regulations, and requests of the Attorney General to take civil or criminal action. It also directs the commission to maintain files, issue identification cards to lobbyists, receive complaints, etc. Civil penalties also are proposed against a lobbyist who never files or files late.

Summary of Parental Consent Legislation

Last week, the House of Representative concurred with the Senate's amendments to H.3122, the Parental Consent for Abortion legislation, and enrolled the bill for ratification. The House passed its version of this bill last May. The Senate amended the legislation, giving it third reading approval February 14. The legislation was ratified on Thursday, and now goes to the Governor for his signature. Here is a summary of that act.

H.3122

Parental Consent for Abortion

This bill defines the requirements that must be followed before an abortion could be performed on a minor.

Under this legislation, no abortion could be performed on a girl under the age of 17 unless one of the following three criteria is met:

1. The attending or referring physician has received the informed, written, signed and witnessed consent of the minor and
 - one of the minor's parents, or
 - a legal guardian of the minor, or
 - a grandparent of the minor, or
 - any person who has been standing in loco parentis (in the place of the parent) to the minor for at least 60 days. Under this law, in loco parentis means any person over 18-years-old who has placed his or herself in the position of the legal parent by assuming obligations which are incidental to the parental relationship.

Any person who consents to an abortion under the in loco parentis provision, must sign an affidavit indicating the nature and length of his or her relationship with the minor. To knowingly falsify this statement would be a misdemeanor carrying a fine of not more than \$3,000 or not more than a year in jail. The new law will require the affidavit to state the penalties for false information.

2. The attending physician receives the informed, written, signed consent of a minor who is emancipated. Under this act, an emancipated minor is one who has been married or has by court order been freed from the care, custody and control of her parents.
3. The attending physician has obtained the informed, written and signed consent of a minor and has received a court order obtained by the minor allowing the abortion.

Under this new law, if a minor has a baby after a parent or legal guardian refuses to give the informed written consent for the minor's abortion, and there has been a judicial finding of the refusal of consent, then the minor, the natural father and the refusing parent or legal guardian are legally responsible for the support of the baby until the minor reaches 18-years-old or is emancipated.

Judicial By-Pass

The act gives every minor girl the right to petition the court for an order granting her the right to consent to abortion on her own behalf without meeting one of the three criteria listed above. This is known as judicial by-pass.

In order to obtain this court order, the girl would file a "Jane Doe" petition with either the Circuit or Family Court. The Adoption and Birth Parents Services division of the state Department of Social Services must provide assistance in preparing and filing the petition, if requested. The act requires the division to file the petition on behalf of the minor within 48 hours of the request.

Once the petition is filed, the court will appoint a guardian ad litem for the girl. The minor petitioning the court will be advised she may participate in the court proceedings on her own behalf; however, she also will be advised she has the right to legal representation and that a lawyer will be appointed to represent her, if she requests it.

Within 72 hours of the petition being filed, the court will hold a hearing on the matter. This time could be extended if requested by the petitioning minor. In evaluating whether the minor should be granted the right to consent to an abortion on her own behalf, the court would evaluate the girl's emotional development, maturity, intellect and understanding; the nature and possible consequences of the abortion and the alternatives available, and whether the abortion is in the best interest of the minor.

In issuing the order, the court could:

- Grant the minor the right to consent on her own behalf to an abortion if the court finds she is mature and well-informed enough to make the abortion decision on her own;
- Grant the consent for abortion if the court finds that the performance of an abortion is in the girl's best interest;
- Deny the petition if the court finds that the minor is immature and that performance of the abortion is not in the girl's best interest. If the father of the unborn child is identified during the court proceeding, then he will share in the expense of delivering and rearing the child as determined by the court. The court also will specify that the girl will have the right to counseling, prenatal care, delivery, neo-natal and post-partum care, the cost of which may be paid by the state.

The minor has the right to appeal the court decision to the state Supreme Court. The notice of intent to appeal must be filed within 72 orders of the lower court issuing its decision. The appeal would be anonymous and take precedence over other matters before the Supreme Court. The minor will not have to pay the cost of this appeal if she declares she cannot afford it.

Penalties

Any person performing an abortion on a minor, knowing that the procedure would violate provisions of this act or would recklessly disregard these provisions, would be guilty of a misdemeanor, carrying a fine of \$2,000 to \$10,000 and/or not more than three years in jail. The act stipulates no part of the minimum fine can be suspended. For a third or subsequent offense, the sentence would be jail time for not less than 60 days nor more than three years, none of which can be suspended.

Information Distribution

Any doctor counseling a minor on the question of abortion must inform her of the procedures she must follow to obtain an abortion without the consent required by this act.

The Adoption and Birth Parent Services division will develop and distribute a brochure to health and education professionals for use in counseling pregnant girls. The brochure will outline how to get in touch with her local health department for prenatal care; how to get in touch with the Adoption and Birth Parent division or any private, non-profit adoption service; the parental consent

requirements of the new law; the judicial by-pass procedure, and how to get in touch with her local mental health clinic for counseling.

When any abortion is performed, the doctor must file a report with the state Department of Health and Environmental Control within seven days. The name of the patient must not be reported. However, the report must state who gave permission for the abortion or the circumstances for waiving the consent requirements.

Emergency Situations

State law requires that a pregnant woman must give consent before any abortion is performed and that special consent provisions be followed in the case of girls under the age of 17. If the woman is not mentally competent, consent may be given by her spouse or legal guardian if married, or a parent or legal guardian if not married.

Consent must be waived, however, if a doctor determines that a medical emergency exists involving the life of, or grave physical injury to, the pregnant woman, or if the pregnancy is a result of incest. In cases of incest, the doctor performing the abortion must report the alleged incest to the local county Department of Social Services or to a local law enforcement agency. Failure to make the report is a violation punishable under the state's child abuse laws. However, none of these provisions permits a doctor to perform an abortion without first obtaining the permission of the pregnant woman if she is capable of giving consent.