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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

Vol. 9

January 21, 1992

No. 1

CONTENTS

House Week in Review.....	2
Bills Introduced.....	3

Printed by the Legislative Council

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Legislative Update, January 21, 1992

House Week in Review

The second session of the 109th General Assembly convened Tuesday with the House of Representatives quickly getting down to work. By the end of the legislative week, two reapportionment bills -- S.1003, and H.3836 -- had been set for special order consideration for Tuesday, January 21 at 2 p.m.

On Wednesday, the House sustained a gubernatorial veto of one item in H.3651, the Capital Improvement Bond Bill. While stating he was pleased overall with the projects to be funded by the Bond Bill, Gov. Campbell vetoed \$50 million for the State Development Board's Airline Hub. The House voted 95-0 to sustained the veto, thereby reducing the overall Bond Bill to \$283.3 million.

By concurrent resolution, the General Assembly invited the governor to present his annual State of the State address at 7 p.m., Wednesday, January 22. Also on that day, the General Assembly will elect three commissioners to the Employment Security Commission, as well as fill the 13th Circuit, Seat 3 Family Court position.

Other judgeship elections will be held on February 5. At noon that day, the General Assembly will elect circuit judges for the 3rd, 7th and 8th Judicial Circuits and fill the 3rd Circuit, Seat 3 Family Court post. At 2:30 p.m. that day, vacancies on the State Reorganization Commission and the House Ethics Committee will be filled.

On Wednesday, the House voted 102-0 to amend its rules to conform with the new state ethics law. It also adjourned debate until February 17 on H.3117, a joint resolution to make the State Superintendent of Education an appointed position. Debate also was adjourned until January 30 on H.3314, which would ban corporal punishment in public schools. Both bills are on the House second reading contested calendar.

Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The summaries are arranged according to the standing committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

Chemical Catastrophe Prevention Act (H.4112, Rep. Danny Martin). Under this legislation, companies generating, storing or handling highly hazardous substances at or over a specified quantity must file a registration and a facility safety report with the state Department of Health and Environmental Control. A section of the bill defines which chemicals fall into the highly hazardous category and at what quantities. The registration would include information on the company's inventory of highly hazardous substances and insurance coverage, among other items, and must be updated if new substances are added to the inventory. The facility safety report must include the magnitude of any hazard at the plant, the likelihood of it happening, the number of people it would affect, emergency plans, and safety procedures. The two highest ranking corporate officers must sign the forms.

Every five years the facility using the substances would undergo a hazard analysis/risk assessment by an independent consultant chosen by DHEC from three consultants nominated by the company. At the conclusion of the assessment, DHEC would notify the facility owner of any changes to be implemented to its hazard abatement plan. Any changes to the plan must be aired at a public hearing.

Stiff penalties are proposed for violation of any section of this legislation. Some of the proposed penalties include: \$25,000 plus \$2,000 per day for failure to register; \$50,000 for failure to implement an accident reduction plan; \$25,000 for failing to provide information to DHEC, and up to \$10,000 for falsifying information to the department.

The bill also gives the governor the authority to name a risk management oversight committee in the event an accident poses significant danger to the public health, or a near accident occurs, or if the governor thinks such a committee would be in the best interest of the public health

Legislative Update, January 21, 1992

and safety. The bill specifies who would be named to such a committee. They would include the DHEC commissioner, local fire chiefs and law enforcement, employee union representatives, the Occupation Safety and Health Department, a representative of the owner, among others. The committee would have subpoena powers, and the bill specifically gives the committee members the right to make public statements. The committee would issue annual written reports of its comprehensive review and evaluation. All fees and fines collected in connection with this proposed act would be remitted by the state treasurer to the Chemical Catastrophe Prevention Act for administration of the act. The legislation directs that each facility pay an annual fee based on the highly hazardous substance inventory of the facility

Fees for Chartered Vessel Permits (H.4118, Rep. Bennett). Under this bill, the fees for chartered vessels would be reduced from the current \$300 to \$250 for vessels carrying 7 to 49 passengers and from \$500 to \$350 for vessels licensed to carry more than 49 passengers. The permit fee for charter boats carrying six or fewer passengers would remain at \$150.

Members Added to Coastal Council (H.4152, Rep. Altman). This legislation would increase the membership of the Coastal Council from 14 to 18 members. The four additional members would be one citizen representative from Beaufort, Charleston, Georgetown and Horry counties to be appointed by the governor.

Polystyrene Foam Packaging Ban (H.4156, Rep. Cromer). Restaurants could not provide prepared food in polystyrene foam packages, under this legislation. Any take-out packaging for restaurants would have to bear the label that the container contains no polystyrene foam. Within five years of the effective date, 100 percent of the food packaging must be recyclable or degradable. Food packaging required to be bought under contracts entered into before the effective date of this bill would be exempted. Each restaurant and retail food vendor would have to have separate receptacles for each type of recyclable food packaging waste, including glass, cans, newspapers, cardboard or mixed papers.

Education and Public Works

Additional Requirements for Home Schooling (H.4114, Rep. Wright). This legislation proposes that home instruction taught by parents under the auspices of the S.C. Association of Independent Home Schools be allowed under the current Home Schooling statutes.

Legislative Update, January 21, 1992

Parents would have to be bona fide members of the association and comply with the association's academic standards to be exempted from meeting further requirements under the Home School statutes.

Point System Deletions (H.4130, Rep. Cromer). Under this bill, three current motor vehicle violations would be removed from the point system schedule. These include the 2 point "improper dangerous parking," the 2 point "operating with improper lights," and the 4 point "failing to give signal or giving improper signal for stopping, turning, or sudden decrease in speed."

School Prayer (H.4160, Rep. Meacham). This bill would authorize a one-minute period of silent prayer to be observed at the beginning of each school day in all public elementary and secondary schools in South Carolina. The bill prohibits any other activity during this observance.

Sunscreen Devices (H.4171, Rep. Farr). This bill adds a few additional provisions to the state vehicle sunscreen law, which went into effect January 1. Law enforcement would be required to use check cards, as opposed to other methods, when checking the amount of light transmitted. This sunscreen provisions would be expanded to include all rear windows behind the driver, including the rear windows of pick-up truck. Drivers exempted for medical reasons must keep a copy of the required affidavit in the vehicle at all times, and the affidavit would have to be updated every two years. The bill amends the total transmission of light to include both the sunscreen and the glazing.

First Grade Age Change (H.4178, Rep. Whipper). Under current state law, children must be 6-years-old before November 1 to enter the first grade. Under this legislation, the first grade entrance age would be lower to age 5 for children who have attended public kindergarten or for those who have attended a private kindergarten program for one year and would be 6 by December 31. Also allowed to enter first grade at age 5 would be children who have substantially initiated a first grade program in another state that has a lower first grade age entrance requirement.

Tint Card Use (H.4179, Rep. Larry Martin). Under this legislation, law enforcement would use tint check cards only, as opposed to tint meters, in determining compliance with the state's sunscreen law in connection with vehicles manufactured on or before January 1, 1989.

Legislative Update, January 21, 1992

Winthrop University (H.4196, Rep. Foster). This legislation would change Winthrop College's name to Winthrop University, effective July 1. The bill specifically charges the institution's board of trustees to comply with current statutes that give the state Commission on Higher Education the authority to oversee budget requests for new programs and to monitor duplication of programs.

Winthrop University (H.4197, Rep. Foster) This legislation is identical to the previous bill except it does not include the provisions regarding to the Commission on Higher Education's oversight of new programs.

Teacher Loan Cancellation (H.4210, Rep. Phillips). Under this legislation, teachers who use the S.C. Teacher Loan program to pay for their educations may have the loan canceled at an accelerated rate if they teach in both a geographic and critical need area. Currently, the loans are canceled at 20 percent per year for teachers teaching in geographic or critical need areas. If the teacher teachers in both need areas, the loan would be canceled at a rate of 33 1/3 per year, if this legislation is enacted.

Judiciary

Crime of Stalking (H.4086, Rep. Rudnick). Under this bill, it would be a crime to wilfully, maliciously and repeatedly follow or harass another person and make a credible threat with the intent to place that person in reasonable fear of death or great bodily injury. This crime would carry up to a year in prison and/or up to a \$1,000 fine. A person under a restraining order and who repeatedly follows or harasses another person and makes a credible threat is also guilty of stalking and would fall under the same penalty. A person could be charged with stalking again if similar incidence occur within seven years of the first incidence in which the person was convicted of the crime.

Tougher Forfeiture Laws (H.4090, Rep. Larry Martin). This bill seeks to toughen the current statutes that allow forfeiture of a motor vehicle after a certain number of driving convictions. Under this legislation, the vehicle would be forfeited after the second Driving Under the Influence (DUI) conviction or Driving Under Suspension (DUS) conviction within a 10 year period. The current statutes allow four DUI or DUS convictions before the vehicle is subject to forfeiture. Added to this forfeiture list would be a second conviction within ten years of knowingly operating an uninsured vehicle.

Legislative Update, January 21, 1992

Removal of Judges (H.4117, Rep. Kirsh). This joint resolution seeks to amend the state constitution to allow the state Supreme Court, after a hearing, to remove a judge for misconduct in office.

Lethal Injection (H.4121, Rep. Waldrop). This would allow persons sentenced to death to choose to be electrocuted or to be executed by a lethal intravenous injection. Currently, state law only allows the death penalty to be carried out by electrocution.

Judicial Screening Committee Membership (H. 4128, Rep. Wilkins). This legislation would add three additional members to the Judicial Screening Committee. These three new members would be appointed by the governor -- one from a list of five people submitted by the S.C. Trial Lawyers Association, one from a list of five candidates submitted by the S.C. Defense Trial Attorneys Association and the last from the general public. This public representative could not be a lawyer, judge or member of the Legislature. The three gubernatorial appointees would serve coterminous with the governor. They would join the four House members and four senators who currently make up the Judicial Screening Committee.

More Stalking Crimes (H.4131, Rep. Cromer). This legislation is similar to proposed bill H.4086 regarding the crime of stalking. However under this legislation, the penalties are a little stricter for subsequent stalking convictions. If a person violates the stalking provisions while under a restraining order, the penalty would be up to two years in jail and/or a \$1,000 fine. If a second stalking conviction occurs within a 7 year period, the penalty would be three years imprisonment and/or a \$2,000 fine.

August Primaries (H.4132, Rep. Corning). This legislation would change the primary elections from the second Tuesday in June to the fourth Tuesday in August, with filing dates changed from April to June.

Handicapped Parking Violations (H.4133, Rep. Corning). Shopping centers and businesses that provide handicapped parking spaces on private property would be authorized to issue uniform citations for violation of the handicapped parking provisions if this bill is enacted.

Nudity Prohibited (H.4147, Rep. Fair). This legislation defines nudity and prohibits it in a public place. Those convicted under these provisions would be guilty of a misdemeanor and face a fine between \$500 and \$2,500 for first offense. Second and subsequent convictions would mean six months in prison.

Legislative Update, January 21, 1992

Any business that violates these provisions would also be guilty of a misdemeanor. The Alcoholic Beverage Control Commission could suspend the business's license for a year and the establishment would face a fine between \$1,000 and \$2,500. Second and subsequent offenses would mean revocation of the ABC license and a fine between \$2,500 and \$5,000.

Non-Rated Movie Videos (H.4148, Rep. Fair). This bill would prohibit the renting or selling of movie videos not rated by the Motion Picture Association of America. If a video has not been rated, its container must carry an explanation of why it has not been rated. Violation of this provision would be a misdemeanor with a first offense carrying a fine of \$200 or imprisonment for 30 days; second offense carries a \$500 or 60 days in jail.

Stopping Sunscreen Vehicles (H.4161, Rep. Smith). This bill would require motorists to roll down their window immediately upon being stopped by a law enforcement officer if their vehicle has a sunscreen device. Violation of this provision would be a misdemeanor carrying a \$500 fine or 90 days in jail.

Point System Changes (H.4164, Rep. Kirsh). This legislation would add a new 4 point violation to the motor vehicle point system -- "Violating a county or municipal ordinance involving the operation of a motor vehicle which is not otherwise assigned points."

Delinquency and Non-Custodial Parents (H.4167, Rep. Larry Martin). Under this legislation, non-custodial parents would be made a party to any abuse, neglect or delinquency matter brought before the Family Court. In addition, the bill would add provisions that would require authorities to determine whether there is a relative, including a non-custodial parent, with whom a child could be placed if the child is being removed from the custodial parent because of abuse or neglect.

Utility Liability (H.4172, Rep. Harrelson). Under this legislation, a utility would be liable for any damage or injury caused by an employee who gained entrance to a business or residence by using his employer-supplied identification.

Videotaping Defendants (H.4174, Rep. Jennings). This legislation would require law enforcement officers to videotape the conduct of any person taken for a breathalyzer test after being arrested for driving under the influence.

Legislative Update, January 21, 1992

The videotape could be taken by the arresting officer or another officer within the department. A copy of the tape must be made available to the defendant if he requests it before the trial. The defendant would have to pay for the copy of the videotape and either side could use the tape in court.

Under this bill, any person who operates a motor vehicle in South Carolina has consented to having his conduct videotaped if stopped for DUI.

Changes in Judicial Screening Committee (H.4189, Rep. M.O. Alexander). This legislation would change the make-up of the Judicial Screening Committee to the current eight legislators to a nine-member panel. This new panel would be made up of three House members, three senators and three members elected by the General Assembly. The three elected by the Legislature would be selected from a list of five candidates, none of them legislators, chosen by the South Carolina Bar Association. The General Assembly could reject some or all of the Bar's nominees, in which case the Bar would submit additional names.

Judicial Nominating Commission (H.4190, Rep. Waites). The legislation seeks to establish an 18-member Judicial Nominating Commission with six members appointed by the governor, six elected by the General Assembly and six appointed by the chief justice of the South Carolina Supreme Court. Each group of six would have to be selected from separate congressional districts. The six members appointed by the chief justice would be lawyers, as would three of the six selected by the governor and General Assembly. The remaining members must be non-lawyers. No member of the commission could serve more than two consecutive terms, and no member could be nominated or elected a judge while on the commission or for three years thereafter.

The legislation gives the commission the authority to investigate candidates for judgeships and to issue subpoenas. The commission would select three nominees to the General Assembly for election as a Supreme Court justice, appellate court judge, circuit court judge and family court judge. In the case of the chief justices of the State Supreme Court and the Court of Appeals, the commission may elect to submit only one name to the General Assembly. The commission may also decide to submit fewer than three nominees for judgeship if the commission concludes there are not three qualified candidates.

The nominations are binding on the General Assembly; however, the Legislature may reject all the nominees, requiring the commission to submit other nominees. An incumbent judge would submit his or her name to the General Assembly for re-election to the bench; however, the commission also could submit up to two additional candidates for the post.

Legislative Update, January 21, 1992

Members of the General Assembly seeking judgeship positions must resign their legislative seats before the commission can consider the application. The former legislator could not retain the privilege of the floor during the application process. Judgeship nominees could not solicit pledges, nor legislators give pledges, before the nomination process is completed.

Congressional Reapportionment Vehicle (H.4208, Rep. Sheheen). This skeleton bill could be used as the vehicle for a congressional reapportionment plan if needed during the current debate over redistricting the congressional districts of the state.

House Reapportionment Vehicle (H.4209, Rep. Sheheen). This skeleton bill could be used as the vehicle for a House reapportionment plan if needed during the court debate over redistricting the S.C. House of Representatives.

Labor, Commerce and Industry

Elected Chief Insurance Commissioner (H.4083, Rep. Rudnick). This legislation would change the chief insurance commissioner from an appointed to an elected position. The chief insurance commissioner would be elected in a statewide election, not selected by the Insurance Commission as currently allowed by law.

Auto Insurance Proposals (H.4109, Rep. Kempe). Provisions in this wide-ranging auto insurance bill would:

- Make the chief insurance commissioner position an elected, rather than an appointed, position.
- Allow the chief insurance commissioner to suspend up to 30 days the driver's license of any driver who who has caused two accidents in a single calendar year.
- Prohibit auto insurance companies from raising the premiums of a driver, or taking away his safe driver discount, if the driver has been accident-free and ticket-free for ten years, if the driver passes a safe driver course approved by the chief insurance commissioner. This benefit could be used by drivers one time. The bill states that the intent of this section is to "provide relief to drivers with a lengthy history of accident-free and ticket-free driving."
- Suspend the driver's license for six months of any person convicted of five traffic offenses in a one year period or has two DUI convictions in a 12 month period.

Legislative Update, January 21, 1992

- Require the chief insurance commissioner to consider all sources of income including both active and passive investment income and earned interest when determining the fairness of premiums.
- Require insurance companies to refund to policyholders any profits exceeding 10 percent per year.
- Allow rate increases to be denied if inefficiency, excessive overhead, excessive amounts paid to litigate claims, or excessive salaries or commissions are evidenced. The increase also could be denied if the insurance company makes a sufficient profit that the rate increase would not be in the best interest of the public.
- Eliminate the South Carolina Reinsurance Facility. The facility would be allowed to continue to operate until July 1, 1994.
- Require that all surcharges or loss of safe driver discounts be clearly stated on the premium.
- Not eliminate the mandate to write or compulsory insurance provisions.
- Direct the chief insurance commissioner to order a 10 percent reduction in auto insurance premiums upon the effective date of the legislation, if enacted.

Prizes and Gifts Act (H.4119, Rep. Haskins). This legislation would require more disclosure to consumers in connection with solicitations that involve contests or the sale or lease of goods. The bill specifically prohibits any solicitation from using language that suggests that the receiver has won a contest, unless the recipient is given the prize without obligation. The person soliciting must clearly disclose to consumers on whose behalf the promotion is being conducted and other information, such as the actual cost of the gift item plus no more than 700 percent, the actual number of prizes being won, and the odds of winning the prize. It would be illegal to notify a consumer that he has won a prize that includes hidden shipping or delivery rates, or that as a condition of the prize, the consumer must buy, lease or rent any goods or services. All these charges must be clearly and conspicuously disclosed to the consumer.

This bill would not apply to filling out local entry blanks or calling in information for a contest, or any situation in which the consumer does not have to listen to a sales presentation.

Sales language such as "you have been specially selected" could not be used unless the selection process is specific, nor could promotion companies use gimmicks such as solicitations that look like checks or invoices. Consumers could bring a civil action if the provisions of this bill are violated. Violations would also constitute a prohibited practice under the Unfair Trade Practices Act. Clubs regulated by the Federal Trade Commission for the purchase of books, videos, records and the like would not fall under the provisions of this legislation.

Legislative Update, January 21, 1992

900 Number Telephone Calls (H.4121, Rep. Cromer). This legislation proposed new provisions in connection with 900 telephone numbers that advertise employment opportunities. Such numbers would have to have an cost-free introductory message that describes the cost of the call and could not aim its services at children 16 or younger. Additionally, the bill prohibits the use of a toll free number that connects a caller to a pay-per-call service. Violations would be a misdemeanor carrying a \$5,000 fine. In addition, after 10 days of non-compliance with these provision, the company would be banned from providing advertising services in South Carolina.

Medical, Military, Public and Municipal Affairs

Bone Marrow Donor Program (H.4092, Rep. Rama). This program, to be established by the state Department of Health and Environmental Control, would educate the public for the need to donate bone marrow and how to go about it. A special effort to recruit minority donors would be included in the program. Employers would grant paid leave for employees to donate under the program, although the leave requested may not exceed 40 hours unless the employer agrees to a longer leave period. If a medical determination is made that the employee does not qualify as a bone marrow donor, the paid leave is not forfeited. Those employees denied leave could seek recourse through DHEC, which would contact the State Attorney General's Office regarding a civil action against the employer.

License Suspension (H.4102, Rep. Pat Harris). This legislation would give the state Department of Health and Environmental Control the authority to immediately suspend the license of any health care facility when it is determined that the conditions and practice of the facility pose an immediate threat to the safety and well being of the residents.

Health Care Providers and the HIV Virus (H.4151, Rep. Fair). Under this legislation, all health care workers -- doctors, nurses, osteopaths, dentists, dental hygienists and dental technicians -- must submit test results for the HIV-1 or HIV-2 viruses when they apply or reapply for their licenses. All tests results would be confidential, and the testing would be conducted by the state Department of Health and Environmental Control or another appropriate facility.

If the results are positive, the health care provider must present the information in writing to the patient before the provider may come in contact with the patient, or come into contact with the patient's blood, or perform an invasive procedure. If consent is not sought and given, a health care provider would be guilty of a misdemeanor and subject to a \$5,000 fine or three years in jail.

Legislative Update, January 21, 1992

The provider would not be liable if, in the judgment of an independent doctor, the patient was not capable of giving consent and the provider was faced with responding to a life threatening situation.

State House Committee (H.4202, Rep. Klapman). This legislation would turned over the responsibilities of the State House Committee to the Joint Operations and Management Committee of the House and Senate.

Ways and Means

EIA Tax Placards (H.4087, Rep. Rudnick). This legislation would require the State Tax Commission to give retailers a sign to display regarding payment of the Education Improvement Act penny sales tax by people over 85-years-old. The sign would state that the "one cent sales tax which funds the Education Improvement Act of 1984 does not apply on sales to an individual 85 years of age or older purchasing tangible personal property for his personal use." The sign would have to be displayed prominently in places of business.

Businesses could face a \$25 penalty by the Tax Commission for failing to deduct the one cent sales tax from the purchase of a person 85 or older if requested.

Homestead Exemption and Fair Market Value (H.4097, Rep. Pat Harris). Under this legislation, increases in the fair market value of a residence qualifying for homestead exemption could be exempted from ad valorem taxes. The amount of the fair market value increase would be measured from the time the residence qualified for the homestead exemption and attributable to routine maintenance. Increases in the fair market value attributed to permanent improvements would not qualify. If enacted, the fair market value increase provisions would apply after 1992.

Eldercare Trust Fund (H.4098, Rep. Pat Harris). This legislation would add contributions to the Eldercare Trust Fund to the state's income tax forms. The trust fund would be administered by the S.C. Commission on Aging. The funds received by this voluntary contribution system would be used to "award grants to public and private non-profit agencies and organizations to establish and administer innovative programs and services that assist older people to remain in their homes and communities with maximum independence and dignity." Until the fund reaches \$5 million, only 75 percent of the fund could be used for grants. After the fund reaches \$5 million, all earnings and annual contributions can be used for grants and awards.

Legislative Update, January 21, 1992

Self Sufficiency Trust Fund (H.4105, Rep. Pat Harris). This bill would establish the Self-Sufficiency Trust Fund, which would "provide a life-care planning option to meet the supplemental service needs of individuals with disabilities in order to enable parents and families to plan a more secure future for their disabled dependents without fear of loss of benefits or invasion of trust principal." Individuals cared for under this federal tax exempt trust fund would be developmentally disabled, mentally ill, or physically handicapped persons eligible for services by the Departments of Mental Retardation, Mental Health or Vocational Rehabilitation.

The departments would provide care for the beneficiary of the trust fund from the beneficiary's account; however, these self sufficiency funds would in no way diminish the benefits the person was eligible for by law from the state agencies involved. If it becomes apparent the money cannot be used for self sufficiency care or treatment, the funds must be returned to the self sufficiency trust fund which originally placed in the money into the account on behalf of the handicapped individual.

A similar, but separate, Disability Trust Fund would also be established by this legislation. The trust fund would be used to meet the needs of low income and indigent individuals with disabilities. The money for this trust fund would come from funds left to the Disability Trust Fund by donors of a self sufficiency trust fund on the death of the original beneficiary.

Separate State Education Budget Bill (H.4186, Rep. Cork). Under this legislation, the appropriation for the State Education Department would be placed in a separate appropriations bill to be considered by the General Assembly before the State General Appropriations Bill. This education budget bill must list a definite sum for each purpose and activity.

Corporate Headquarters Tax Credit (H.4187, Rep. Boan). This legislation would amend the current law outlining the tax credit allowed corporations locating their headquarters in South Carolina. Under this legislation, corporations establishing their headquarters in South Carolina would be allowed a state tax credit if they meet the following criteria:

- The real property costs of the headquarters establishment, expansion or addition must be at least \$50,000;
- The headquarters must result in the creation of at least 75 new jobs performing headquarters-related functions or research and development. These jobs must be permanent and full-time.

The amount of the credit would be equal to 20 percent of the qualifying real property costs.

Legislative Update, January 21, 1992

Another 20 percent credit would be allowed under additional criteria, which would include the creation of at least 150 new full-time jobs performing headquarters-related functions or research and development. These jobs must have an average compensation level of more than one and a half times the per capita income of South Carolina at the time the jobs are filled.

The tax credit for the facility could be claimed only for the year the headquarters is placed in service for federal income tax purposes. The bill outlines when the credits may be claimed for staffing purposes, and what action would be taken if the staffing requirements are not met. The bill also defines headquarters, national headquarters, regional headquarters and jobs performing headquarters-related functions.

Sales Tax Exemption (H.4195, Rep. Morgan Martin). Under this bill, greenhouses used in the cultivation of tobacco would be exempt from the state sales tax.