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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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STATE DOCUMENTS

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House Week in Review

Upcoming debate on the annual State Appropriations bill was on the minds of legislators last week as the House of Representatives agreed to set H.4500 for special order debate.

Under the special order provision, the House will begin debating the \$3.7 billion budget bill on Monday, March 9, at 2 p.m. The House will continue to debate the budget bill until the legislation is approved.

One significant bill to receive third reading approval by the House last week was H.3681, the Local Government Consolidation bill. The legislation received second reading on Wednesday and a final reading Thursday. The bill now goes to the Senate for consideration. Although a constitutional amendment was approved a number of years ago giving local governments the authority to consolidate services, the General Assembly has not passed the enabling legislation to allow them to do this. The Consolidation bill gives local governments that enabling legislation.

Objections by House members put two noteworthy bills on the House contested calendar. These are H.4331, the Informed Consent for Abortion Act, and S.221, which would make changes in the current judicial screening process. Both bills are now on the House second reading contested calendar.

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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 following bill summaries are arranged according to the standing committee to which the legislation was referred.

Education and Public Works

School Buses and Seat Belts (H.4524, Rep. Joe Brown). This legislation would require all school buses to be equipped with seat belts. There would have to be enough seat belts to accommodate all the students riding the bus, and the belts must be of the shoulder and lap belt variety.

Reinstatement Fee Waived (H.4490, Rep. Smith). Under this legislation, the director of the Motor Vehicle Division would have the authority to waive the driver's license reinstatement fee in cases where the driver's license was mistakenly revoked for lack of insurance when the driver was indeed insured when the revocation was ordered.

Judiciary

Training for Magistrates (H.4498, Rep. Clyborne). This legislation would require all magistrates appointed for their first terms in 1993 or later to complete a training program and pass a certification examination devised by the State Supreme Court. The new magistrates must complete the course and pass the examination during their first six months in office. If a new magistrate does not pass the certification examination within the first six months of his appointment, his office would be declared vacant.

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Further, the bill would require old magistrates to pass the certification examination before they could be re-appointed. Once the examination is successfully taken, no other certification examinations would be required.

Age Change for Child Sexual Abuse Charges (H.4501, Rep. Tim Rogers). This legislation would raise the age of a person who could be charged with the offense of willfully committing lewd acts upon a child. The bill further raises the age of the child victim on whose behalf the charge could be brought. The current age for the victim and offender is 14-years-old or older. This bill would raise both to age 16.

Communication of Husband and Wife in Child Abuse Cases (H.4503, Rep. Wofford). Communication in any form between husband and wife must be disclosed in proceedings held in connection with a child abuse offense or the death of a child under this legislation. The information would have to be disclosed, whether made confidentially or not.

Seizing of License Plates (H.4511, Rep. Ross). Under this legislation, if a driver is arrested for driving under suspension, with a revoked license, or for failure to have insurance, the arresting officer would immediately seize the registration and license tag of the vehicle. Within 24 hours, the tag and registration must be forwarded to the court having jurisdiction over the case. At the time of the arrest, the officer would give the driver a form that would serve as a temporary registration and license tag for ten days.

If the person is the owner of the car and arrested for driving with a suspended or revoked license, he may have his tag and registration returned to him by the court if, after ten days, he has a valid driver's license and pays a \$25 fine. If the person does not have a valid driver's license at the end of the ten day period, another driver, possessing a valid license and insured to drive the vehicle in question, could come to the court and retrieve the tag and registration after paying a \$25 fine.

If the driver is arrested for driving without insurance, he may reclaim his tag and registration at the end of the ten day period by paying a \$25 fine and furnishing proof of automobile insurance. These provisions would be in addition to the penalties already in the law for these offenses.

Jury Service Excuses (H.4512, Rep. Chamblee). Citizens, exempt from jury duty because of age, could be excused "upon telephone confirmation of date of birth and age" to the clerk of court or chief magistrate.

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Child Endangerment (H.4517, Rep. Tim Rogers). If a person is charged with reckless homicide, driving under the influence, or causing great bodily harm while DUI and a child is in the vehicle when the offenses occur, the driver could be charged with the additional offense of child endangerment. If convicted, the penalty for the child endangerment offense would be one-half the maximum sentence or half the fine or both. Additionally, these provisions would prohibit any part of the sentence from being suspended and probation could not be awarded. The legislation allows for law enforcement to take the child in question into emergency protective custody.

Traumatic Injury To A Child (H.4526, Rep. Waites). This bill would create the felony offense of traumatic injury to a child. This charge could be brought against a person who wilfully inflicts cruel or inhuman corporal punishment or injury resulting in a traumatic condition upon a child under 12-years-old. Punishment for this offense would be a jail term of not more than 20 years.

Labor, Commerce and Industry

Consumer Freedom of Choice in Motor Vehicle Insurance Act (H.4521, Rep. Larry Martin). The legislation is designed to give motorists the right to choose between the kinds of personal protection available in case of an automobile accident and the amount of financial protection they think appropriate and affordable. The bill would eliminate the requirement of motorists to buy traditional fault liability insurance, and instead, motorists would have the opportunity to buy a policy to protect themselves and their families regardless of fault in an automobile accident. However, motorists could choose to retain their current right to sue and be sued in automobile accident liability cases. This concept of automobile insurance is commonly referred to as "No Fault Choice."

Under this system, motorists who choose to retain the traditional system of insurance and are involved in an accident with any other motorist would retain the right to sue or be sued based on fault. Motorists who choose the No Fault provisions, called the "new personnel protection policy system" in the bill, and are involved in an accident with a motorist who retains the old fault system, would be compensated by their insurance carrier for their own economic losses regardless of fault. However, these no-fault motorists also could sue the fault motorist for economic damages, based on fault, if the damages exceed their protection limits and for non-economic damages if the injuries exceed the verbal threshold. No fault drivers, who are at fault in accidents with traditional fault drivers, are subject to being sued.

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Two no-fault drivers involved in an accident would be compensated for economic loss by their own insurance companies regardless of fault. These motorists would not have the right to sue for full damages based on fault unless the damages exceed the verbal threshold; however, the motorist could sue the at-fault driver for economic damages that are uncompensated.

If a motorist who has chosen traditional fault insurance is involved in an accident with an uninsured motorist, the insured motorist would be compensated by the uninsured motorist provisions of his insurance policy based on fault and could sue the uninsured motorist based on fault. The uninsured motorist forfeits any right to claim property damage up to \$10,000 or to claim injury against the insured driver, except if the traditionally insured motorist is driving under the influence or is guilty of intentional misconduct.

The motorist insured by a no fault policy, who is involved in an accident with an uninsured motorist, will be compensated for his economic losses regardless of fault. He also has the right to sue the uninsured driver, based on fault, for injuries that exceed the verbal threshold. The uninsured driver forfeits any right to claim for the first \$10,000 of property damage or for injury against the no fault driver, unless the no fault driver was driving under the influence or committed intentional misconduct.

Verbal threshold as defined in the bill is an injury that consists of permanent and serious disfigurement, permanent and serious bodily injury, permanent and serious loss of an important bodily function, or death.

The legislation directs that no fault policies be set at a rate 15 percent lower than the traditional fault policies. This rate could not be raised or renewed between Jan. 1, 1993 to Dec. 1, 1993. No fault drivers would be required to carry mandatory \$5,000 property damage coverage. Basic personal protection benefits (no fault) would cover an aggregate limit of \$15,000 per person arising out of one accident. This coverage would consist of medical expenses, loss of income, replacement services and death benefits of \$5,000. No fault drivers would have the option of purchasing additional uninsured and underinsured driver coverage; however, a no fault driver could not collect on these coverages if he is at fault in an accident.

Insurers providing no fault insurance could require a covered driver to obtain care for injuries from a preferred provider or a designated managed health care system, if the injured driver consents to being subject to this care at an appropriately reduced premium. Incentives also could be offered to no-fault drivers to use seat belts, air bags and child restraint seats.

The bill lifts the mandate to write physical damage coverage and disbands the State Reinsurance Facility. The State Reinsurance Facility would be replaced by the South Carolina Joint Underwriting Association. The recoupment fee for the facility would be halted as of July 1, 1994.

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The underwriting association, in order to be self-sustaining as required by these provisions, would have two rates. These would be a standard rate, which would be 20 percent less than the substandard rate, and the substandard rate for driver's who have lost their safe driver discount. Substandard rate drivers are charged the association's self-sustaining rate. The standard rate is for those drivers who still qualify for a safe driver's discount.

Drivers who have retained their safe driver discount would be allowed to drive without insurance upon the payment of \$250. This would allow them to drive without insurance without violating the Financial Responsibility statutes. The fee would go into the uninsured motorist fund. All other drivers would be required by law to carry insurance.

Under this bill, four rates would replace the current two rates -- the objective rate and the base rate -- now in the law. The four rates would be the preferred rate, the standard rate, the non-preferred rate and the substandard rate. Anyone who has maintained a safe driver discount for the past seven years must be given the preferred rate and could not be ceded to the Joint Underwriting Association. A person who has lost the safe driver discount could only qualify for the non-preferred and substandard rates.

The legislation also increases fines for driving uninsured, adding public service requirements.

Lower Auto Insurance Rates for Older Drivers (H.4488, Rep. Cromer). Under this legislation, a person, 55-years-old or older and the principal operator of an insured car, would receive a reduction in his automobile insurance premium if he successfully completes a motor vehicle accident prevention course. The course would have to be a minimum of 8 hours of classroom instruction and would be approved by the state Highway Department. The course would have to be taken and passed every three years to maintain the premium reduction. Insurance companies also could require that the driver not be involved in a chargeable accident in order to keep the reduction.

Medical, Military, Public and Municipal Affairs

Physician's Patient Records Act (H.4510, Rep. Harrison). This legislation spells out the parameters physicians must follow in releasing medical information about their patients. The legislation stipulates that medical records of patients belong to the physician. Among the provisions of this bill:

- A patient or his legal representatives have a right to receive a copy or summary of his medical record or to have the record transferred to another doctor.

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- Doctors could not honor requests for the medical records of a patient without written consent of the patient or his legal representative.
- A doctor may refuse to release a patient's entire medical record if the doctor feels the release would harm the physical or emotional well-being of the patient or of another person named in the records. However, an unreasonable refusal to release the entire medical record would constitute unprofessional conduct and subject the doctor to disciplinary action by the S.C. Board of Medical Examiners.
- Medical records could not be withheld because of unpaid bills.
- Doctors could charge reasonable fees for making copies of medical records or for other services, if the request involves more than making copies of documents.
- Doctors would be required to keep, from the last date of treatment, the medical records of adult patients for ten years and juvenile patients for 13 years. After this, the records may be destroyed.
- A doctor could not sell his record to anyone other than another doctor or osteopath licensed by the state Board of Medical Examiners.

Medical Examinations for Sexual Abuse (H.4516, Rep. Tim Rogers). This legislation would allow those individuals, required by law to report suspected child abuse, to authorize a medical examination of a child for sexual and/or physical abuse without the consent of the parents.

Ways and Means

Money for State Mandates (H.4530, Rep. Waites). This legislation would require the state to pay for programs mandated back to the counties. Without the funding, counties would not have to implement the state-approved program, according to this bill. Specifically, the bill states that if a county is directed by the state to start or expand a program, the county would not be required to do so until the state appropriates the money to fund the program or its expansion. A state law that grants exemptions from paying property taxes also would not have to be implemented by local governments until the state appropriated funding to make up for the revenue loss. In addition, these provisions would extend to the passage of state regulations that impose costs upon county governments.

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The bill provides the mechanism the counties must follow when determining whether or not the state has met its funding obligations. The mechanism allows for the court of common pleas to exempt the county from implementing the program if it finds that funding has not been forthcoming from the state. The State Budget and Control Board would provide evidence as to whether the state has paid its obligation in full.

The bill also allows a county to accept the state-passed program even if it is not funded if the county governing board passes a resolution accepting the program. The State Budget and Control Board would provide an annual report to the General Assembly detailing the total estimated cost to local government of all laws, rules and regulations passed by the state during the previous year that have a fiscal impact upon the county governments.

Retirement Division Building (S.1343, Sen. Leatherman). This legislation would allow money to be transferred from various state retirement systems for use in purchasing or building adequate office and parking space for the state Retirement System. The bill notes that the retirement system has relocated its offices three times during the past 15 years and is currently unable to provide adequate parking for state employees or retirees who use its services. The legislation also makes a number of minor changes to state projects approved for capital improvement bonds.

Campus Incentive Program (S.1344, Sen. Setzler). This legislation would authorize the school districts to reallocate Education Improvement Act funding for the Campus Incentive Model to other programs within the EIA parameters. The bill notes that the guideline for the Campus Incentive Model program has not yet been implemented, and because of the severe budget cut backs sustained during the 1991-92 school year, the EIA money should be reallocated to meet other needs within the program.

Without Reference

Filing and Primary Date Changes (S.1346, Sen. Williams). This bill gives legislative authorization to any changes in the filing dates or primary dates ordered by the federal court for the 1992 election year only. Hearings currently are being held in U.S. District Court in connection with the reapportionment of House, Senate and Congressional districts following the 1990 U.S. Census.