

A4R
8.255
VII/7

Copy 3



South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

Vol. 11

March 1, 1994

No. 7

CONTENTS

House Week in Review.....2

Bills Introduced.....4

S. C. STATE DOCUMENTS

STATE DOCUMENTS

OFFICE OF RESEARCH

Room 309, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211 / (803) 732-3220

Legislative Update, March 1, 1994

House Week in Review

The House spent the final full week of February on a variety of matters, including judicial elections, an abortion bill known as the "Woman's Right to Know Act," and several other bills.

On Tuesday, the House gave second reading to several bills, among them being H. 4004, which increases the maximum imprisonment for reckless homicide from 5 to 10 years; H. 4056, which creates a Crime Victims' Ombudsman within the Governor's Office to assist crime victims in dealing with the criminal justice system and obtaining victim assistance; and H. 4283, the South Carolina Limited Liability Company Act, which provides for the formation, merger, dissolution and other matters pertaining to limited liability companies.

On Wednesday, the General Assembly convened in joint session for several judicial elections. The joint session began with the election of Associate Justice A. Lee Chandler as Chief Justice of the South Carolina Supreme Court. Justice Chandler replaces Chief Justice David Harwell, who is retiring from the Court this summer after 3 years as Chief Justice and 11 years as Associate Justice. Following the election of Justice Chandler, the General Assembly then elected Senator Alexander Macaulay of Oconee County as Circuit Judge for the 10th Judicial Circuit (Anderson and Oconee Counties) and elected Walter Brown, Jr. as a Family Court Judge in the 6th Judicial Circuit (Chester, Lancaster and Fairfield Counties). The General Assembly concluded the joint session by electing three administrative law judges, positions which were created under the 1993 Government Restructuring Act. Elected as chief administrative law judge was Marvin Kittrell, who currently serves as a commissioner on the State Workers' Compensation Commission. The General Assembly elected Stephen Bates and Allison Lee, respectively, to seats 2 and 3 of the Administrative Law Judge Division. Mr. Bates is a former counsel to the Speaker of the House, while Ms. Lee is a staff attorney with the Legislative Council of the General Assembly. An additional three administrative law judges will be elected at a later date. Administrative law judges will be responsible for hearing appeals of decisions of professional and occupational licensing boards (such as the Pharmacy Board, Board of Medical Examiners, etc.), presiding over hearings in which a single hearing officer (usually an individual employee of the agency) currently determines the legal rights, duties or privileges of a party, and making findings as to the need for and reasonableness of proposed regulations.

Legislative Update, March 1, 1994

On Thursday, several acts were ratified. Among the acts ratified were the following: H. 3033, which lists provisions under which evidence of a victim's sexual conduct is admissible in prosecution of spousal sexual battery and expands the definition of aggravated force, as pertains to the felony of spousal sexual battery, to include the use or threat of use of a weapon; H. 4535, which moves the date of the state primary for 1994 only from the second Tuesday in June to the second Tuesday in August (or August 9, with the runoff scheduled for August 23); H. 3550, which requires school administrators to contact law enforcement officials immediately upon notice that anyone has engaged in activities on school property or at school events resulting in injury or serious threat of injury to a person or his property; S. 488, a proposed constitutional amendment to allow the General Assembly, by law, to provide for the age and qualifications of coroners; and S. 435, which prohibits all smoking in child day care facilities.

Also on Thursday, following over a month of debate, the House voted to approve H. 3267, the Woman's Right to Know Act. This bill requires information concerning abortion, adoption and pregnancy to be provided to a woman before she may seek an abortion. The information may be mailed to the woman by a clinic or picked up at a local health department, in which case she must receive the information at least 24 hours before obtaining the abortion, or the woman may obtain the information in person at the clinic, in which case she must wait at least 2 hours before obtaining an abortion. It would be a misdemeanor, punishable by a fine of \$1,000-\$5,000 (for first offense), or imprisonment of 1-5 years and fine of \$1,000-\$5,000 (for second or subsequent offenses) to perform an abortion in violation of these provisions. Approval of this measure was by a vote of 92-9.

The week of March 1 marks the final week before the full House begins debate on the 1994-1995 General Appropriation Act (state budget). Debate on this measure is scheduled to begin on Monday, March 7 at 2:00 pm.

Bills Introduced

The following bills were introduced in the House last week. Not all bills introduced in the House are listed in this Update. The bill summaries are listed under the standing committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

Establishment of No Wake Zone in Wapoo Creek (H. 4814, Rep. Fulmer). This bill establishes a no wake zone on Charleston County's Wapoo Creek between the Scarborough Bridge and the end of the Wapoo Cut.

Education and Public Works

Cost of Duplicate Driver's License (H. 4790, Rep. Keyserling). Under current law, a person whose driver's license is lost or destroyed may obtain a duplicate license for a fee of 50 cents. This bill provides that the cost of obtaining the duplicate license must be the actual cost of producing the license, but not to exceed the fee for renewing a license.

Length of Instructional Day in Schools and Procedure for Early Dismissal of Schools Necessitated by Emergency Conditions (S. 778, Sen. Setzler). This bill provides that the required instructional day of at least 6 daily hours for secondary or elementary students may also consist of a weekly equivalent. Before varying the length of the school day, however, the school administration must consult with the affected school faculty. The bill also expands the conditions under which elementary and secondary schools may reduce the length of the instructional day on no more than 3 days each school year, so as to also allow shortened instructional days for staff development or administration of end-of-semester examinations. (Current law allows the instructional day to be shortened no more than 3 days a school year for administration of end-of-year examinations.)

The bill also requires that any early dismissal of school necessitated by emergency conditions related to weather or other extreme circumstances affecting the health, safety and welfare of students be reported in writing to the Director of the Office of Organizational Development of the Department of Education for approval. This report must be made within 10 days of the

Legislative Update, March 1, 1994

conclusion of the emergency and must include a justification for the early dismissal. If early dismissal is approved, then the day or days missed do not have to be made up.

Prohibited Activities on Railroad Rights of Way (S. 1064, Sen. Land). Current law prohibits anyone from parking or operating a vehicle on a railroad right of way where there are existing tracks, except in certain circumstances (e.g., railroad employees performing work on the railroad, persons crossing tracks at established crossings, etc.). This bill expands the prohibition against unlawful use of these rights of way by forbidding vehicle operation on all railroad rights of way, whether or not the right of way contains existing tracks, and also by prohibiting persons from walking on a railroad track. The bill also expands the circumstances under which vehicles may be operated on railroad right-of-way or persons may walk on the tracks, so as to allow vehicle operation or access by foot by a land surveyor, an employee or other individual subject to the supervision of the land surveyor while working within the scope of employment. The bill also specifies that a person violating these provisions is guilty of a misdemeanor (current penalty is maximum fine of \$200 or maximum imprisonment not exceeding 30 days).

Judiciary

Settlements and Voluntary Agreements in Child Support and Paternity Cases (H. 4801, Rep. Shissias). This bill requires the court to approve settlements and voluntary agreements in paternity and child support cases upon a finding of fairness and requires the parties to file a summons and complaint with the settlement or voluntary agreement in order to submit themselves to the jurisdiction of the court. The bill also deletes a provision allowing an employee of the Attorney General's Office to make the required affidavit accompanying this settlement.

Paternity Acknowledgement Must be Provided to Department of Social Services When Requested (H. 4802, Rep. Shissias). Current law requires a birth certificate to be prepared for a child born out of wedlock upon receipt of a sworn acknowledgement of paternity signed by both parents. This bill requires a paternity acknowledgment to be provided to the Department of Social Services upon request at no charge for the purpose of establishing a child support obligation, and that otherwise the paternity acknowledgment is not subject to inspection except upon order of the Family Court.

Admissible Evidence at Paternity Hearing (H. 4803, Rep. Shissias). This bill creates several presumptions for paternity as pertains to evidence introduced at a hearing to determine paternity. Under these provisions, when test results showing a statistical probability of paternity are introduced, a presumption of the putative father's paternity is created if the statistical probability of paternity is 95 percent or higher. A verified and voluntary acknowledgment of paternity creates a rebuttable presumption of the putative father's paternity, while a foreign paternity determination (whether

Legislative Update, March 1, 1994

established through administrative or judicial process) creates a conclusive presumption of paternity. Evidence of a birth certificate containing the signature of the mother and the putative father creates a rebuttable presumption of paternity

Assignment of Right to Child Support Includes Health Care Expenses (H. 4805, Rep. Shissias). This bill provides that the assignment of the rights to child support to the State by the Department of Social Services includes the rights to health care expenses and that a person's reception of or application for Medicaid benefits is considered to be an assignment of the right to support.

Recall of Public Officials (H. 4808, Rep. Sharpe). This joint resolution seeks to amend the Constitution to allow voters to recall persons holding public office in the executive or legislative branches of state or local government who are elected by the voters. Under these provisions, a public official could be recalled for physical or mental lack of fitness; incompetence; violation of his oath of office; official misconduct; or conviction of a felony offense listed under South Carolina law. No person could be recalled for performing a mandatory duty of his office or for not performing an act which if performed would subject him to prosecution for official misconduct.

In order to recall a person from office, a recall petition first must be circulated. Only registered voters residing within the jurisdiction of the office sought for recall may sign a petition (e.g., only voters in a specific house district may sign a petition to recall that district's representative). The number of signatures required on a petition to hold a recall election varies according to the office sought for recall, as follows:

(a) State Officers: At least 15 percent of the number of persons registered to vote at the last state general election;

(b) State-District Officers (i.e., House or Senate members or circuit solicitors): At least 25 percent of the number of persons registered to vote in the last election in that district;

(c) County Officers: At least 25 percent of the number of persons registered to vote at the preceding county general election;

(d) Officers of Municipalities, School or Special Purpose Districts: At least 25 percent of the number of persons registered to vote at the preceding election for the respective entity.

No recall petition may name more than one officer to be recalled, nor may a petition be circulated unless the officer has held office for at least 3 months. Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed. The sheet must list the reasons containing the reason(s) for the desired recall.

Once the number of signatures required on a petition has been verified, written notice must be given to the officer named in the petition indicating that a recall petition has been filed, the reasons for recall, and that the officer has the right to have printed on the ballot at the recall election a

Legislative Update, March 1, 1994

statement giving reasons why he should not be recalled. If the officer submits his resignation, it becomes effective immediately and the vacancy must be filled as provided by law, though the officer named in the recall petition may not be appointed to fill the vacancy. A special election must be called if the officer refuses to resign. If in the recall election a majority of those voting decide to remove the official, then the office is vacant and must be filled as provided by law.

Awarding of Attorney's Fees In Contested Administrative Proceedings Under Administrative Procedures Act (H. 4815, Rep. Robinson). Current law allows the court to award attorney's fees to a prevailing party in a civil action brought by the state, its political subdivisions or the party contesting state action, provided the prevailing party is not the State or its political subdivisions. This bill also would allow administrative law judges to award attorney's fees in those circumstances and would allow the court or administrative law judge to award attorney's fees to the prevailing party (again, so long as the prevailing party is not the State or its political subdivisions) in a contested administrative proceeding under the Administrative Procedures Act which is initiated by the State or its political subdivisions.

Restructuring Technical Changes (H. 4818, Rep. Hodges). This bill makes a number of technical corrections to the Code to conform with the provisions of the 1993 Government Restructuring Act.

Rate Hearings for Utilities Regulated by Public Service Commission May Be Heard by the Full Commission or a Commission Panel (H. 4823, Rep. Hodges). Under current law, a panel of 3 members of the Public Service Commission must hear and rule on proposed changes of rates desired by corporations or persons furnishing heat, water, sewer collection, sewer disposal, street railway service or small telephone service (telephone utilities serving less than 10,000 customers). This bill, however, would allow either the 3-member panel or all commission members to hear and rule on the proposed rate changes.

Poll Managers Must Be Assigned to Precincts Where They Reside (H. 4824, Rep. Hodges). Under current law, prior to any primary except a municipal primary, each political party holding a primary may submit to the county election commission a list of prospective poll managers for each precinct, and the commission must appoint at least one poll manager for each precinct from the list of names submitted by each political party holding a primary. This bill requires, where possible, that poll managers be assigned to work in the precincts where they reside, and that one week prior to a primary, the county election commission must deliver to each political party holding a primary a list of the poll managers assigned to each precinct.

Qualifications for Election to the House and Senate (S. 691, Sen. Reese). This bill provides that a person otherwise qualified by law and the State Constitution may file as a candidate for the State House or Senate only if the person is a registered voter of the district at the time he files for at least 30 days before the last day candidates may file for that office.

Legislative Update, March 1, 1994

Conditions Under Which Bond May Be Waived for Personal Representatives or Administrators of Estates (S. 886, Sen. McConnell). This bill lists conditions under which bond required of a personal representative or administrator of an estate may be waived. Under these provisions, bond may be waived if the personal representative or administrator, by affidavit at the time of his appointment, certifies to the court that the gross value of the estate will be less than \$20,000; that the assets of the probate estate are sufficient to pay all claims against the estate; and that the personal representative or administrator agrees to be personally liable to any beneficiary or other person having an interest in the estate for any negligence or intentional misconduct in the performance of his duties as personal representative or administrator. Additionally, all known beneficiaries and other persons having an interest in the estate must execute a written agreement on the form prescribed by the court that they agree to the bond being waived. The form must be filed simultaneously with the affidavit of the personal representative or administrator.

Plea of Recrimination Shall Not Bar Divorce Based On Valid Grounds (S. 915, Sen. Courtney). This bill provides that a divorce based on statutorily valid grounds (e.g., adultery, physical cruelty, etc.) may be allowed regardless of a plea of recrimination and that in such instances, the court has the discretion to grant a divorce against the party who committed the first ground for divorce not condoned or forgiven.

Provisions Pertaining to Recordation of Railroad Deeds Deleted (S. 1044, Sen. Courson). This is the companion bill to H. 4548, which deletes a chapter in the State Code of Laws pertaining to recording of railroad deeds, mortgages and other written instruments.

Plat of Lands for Georgetown Jetties No Longer Must Be Filed with Secretary of State's Office (S. 1046, Sen. Courson). This is the companion bill to H. 4549, deleting the requirement that the plat of lands for jetties in Georgetown County be filed with the Secretary of State's office; instead, under these provisions, the plat must be filed with the register of mesne conveyances for Georgetown County

Labor, Commerce and Industry

Payments by Workers' Compensation Uninsured Employers' Fund (H. 4795, Rep. M.O. Alexander). Under current law, the South Carolina Workers' Compensation Uninsured Employers' Fund ensures payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees. This bill would require this Fund also to ensure the payment of workers' compensation benefits to the employees of companies which previously were (1) qualified as self-insurers if security posted by the individual self-insurer proves inadequate to pay existing claims, or (2) participants in group self-insurance funds if both the posted

Legislative Update, March 1, 1994

security of the group and the joint and several liability of the members of the group at the time of the loss prove inadequate to pay existing claims.

Sale of Nonalcoholic Items by Retail Alcoholic Liquor Stores (H. 4811, Rep. G. Bailey). This bill allows retail alcoholic liquor dealers to sell nonalcoholic items, instead of nonalcoholic beverages, if the items are packaged by the alcoholic liquor producer at his place of business.

County Representation on City Housing Authorities (S. 772, Sen. Russell). This bill provides that when the boundaries of a housing authority are extended by the director to incorporate territory located beyond the boundaries of a city creating this authority, then the mayor must appoint a representative from the area so incorporated to represent the county on the city housing authority commission, in the same manner as the mayor appoints the other commissioners.

Medical, Military, Public and Municipal Affairs

Massage Practice Act (H. 4793, Rep. Sharpe). This bill provides for the regulation and operation of massage practice in South Carolina.

To carry out these provisions, the bill establishes a Board of Massage within the Department of Labor, Licensing and Regulation. The governor, with the advice and consent of the Senate, would appoint the 7 board members, of whom 2 must be lay persons and 5 must be licensed massage therapists engaged in the massage practice for at least 5 consecutive years prior to appointment. The bill provides for other qualifications and terms of board members, along with the organization and meetings of the board, and allows the governor to remove board members for incompetency, neglect of duty, and for other reasons.

In order to qualify for licensure as a massage therapist, an applicant must meet the following 3 requirements: (1) minimum age of 16 or possession of a high school diploma or GED; (2) completion of a course of study at a board-approved massage school or of an apprenticeship program which meets standards approved by the board; and (3) receive a passing grade on an examination administered by the Department of Labor, Licensing and Regulation. An applicant may be issued a provisional license to practice massage without examination if he meets other conditions and requirements related to qualification and submits a fee. The bill lists conditions under which a person may practice with this provisional license and provides that this license expires upon written notification by the Department that the applicant has failed the examination or on the date of the scheduled examination, if he fails to appear. The board must promulgate regulations establishing a minimum training program for apprentices; specifying standards and procedures for issuance of a provisional license; providing for educational standards, examination and certification for the practice of colonic irrigation by massage therapists; and specifying licensing procedures for practitioners desiring licensure in this state who hold an active license

Legislative Update, March 1, 1994

and have practiced in another state which has licensing standards substantially similar or equivalent to, or more stringent than, South Carolina standards. The board must prescribe by regulation the method for renewal of biennial licensure, to include continuing education requirements not exceeding 12 classroom hours per biennium. A massage therapist license which is not renewed at the end of the biennium automatically reverts to inactive status.

The board also must specify by regulation the general areas of competency to be covered in licensure examinations and must adopt regulations providing for reexamination of applicants who fail the examination. The bill lists requirements pertaining to conduct and records of examinations and provides for the reactivation of inactive licenses.

The bill prohibits a massage establishment from operating without a license granted by the Department in accordance with regulations promulgated. The board must adopt regulations governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage and the license application and granting process. An establishment which in the Department's determination would fail to meet the standards of these regulations may not be licensed, although an applicant previously denied a license may reapply for one upon correction of deficiencies. The bill also lists the maximum fees the Board must set for applications, licenses and examinations. As examples, the massage therapist initial licensure fee may not exceed \$150, and the massage establishment licensure fee may not exceed \$150. The Department of Labor, Licensing and Regulation must impose a late fee on delinquent renewals of massage establishment licenses.

The Board of Massage may take disciplinary action (e.g., license revocation, administrative fines, etc.) against massage therapists or massage establishments on several grounds, including, among others, for gross or repeated malpractice; making deceptive, untrue or fraudulent representations in practicing massage; and failing to keep equipment and premises in a clean and sanitary condition. The board also may revoke or suspend the license of a massage establishment licensed under these provisions, or deny subsequent licensure, either upon proof that a license has been obtained by fraud or misrepresentation, or upon proof that the license holder is guilty of fraud, deceit or gross negligence, incompetency or misconduct in operating the establishment. The bill makes it a misdemeanor for a person to (1) operate a massage establishment unless licensed under these provisions; (2) allow the use of his license by an unlicensed person; or to (3) otherwise violate provisions of this act. Upon conviction, the person must be fined not more than \$1,000, or imprisoned not more than 6 months, or both. The Department of Labor, Licensing and Regulation may initiate a proceeding in its own name seeking a restraining order, injunction or writ of mandamus against a person who is or has been violating provisions of this act or the lawful regulations or orders of the Department.

Legislative Update, March 1, 1994

A county or municipality within its respective jurisdiction may regulate persons and establishments licensed under this act, but such regulation may not exceed the powers of the State under this act or be inconsistent with this act.

The provisions of this act do not apply to athletic trainers employed by or on behalf of a professional athletic team performing or training in South Carolina, nor do these provisions apply to treatments for the purpose of cleansing and beautifying skin or in conjunction with a weight loss program.

Distribution of Materials and Procedures to Hospitals for Use in Obtaining Voluntary Paternity Acknowledgments (H. 4804, Rep. Shissias). This bill requires the Department of Social Services, under its approved child support plan, to develop materials and procedures for distribution to hospitals for use in obtaining voluntary paternity acknowledgments from fathers of newborns before the child leaves the hospitals. Additionally, the Department of Health and Environmental Control may deny, suspend or revoke licenses, or assess monetary penalties, against persons or health facilities for failing to comply with procedures developed by the Department of Social Services for obtaining voluntary paternity acknowledgments on newborns.

Subsistence for Members of Governing Body of Public Service District or Special Purpose District (H. 4826, Rep. Allison). This bill authorizes a subsistence allowance limited to the lesser of actual expenses or \$100/day for a member of a governing body of a public service district or special purpose district.

Ways and Means

Retirement Benefits from Public Employee Pension Plan In a State Imposing no Income Tax May Be Deducted from South Carolina Income Tax (H. 4792, Rep. Waldrop). This bill allows a South Carolina individual income tax deduction for a person receiving retirement benefits from a state or local government public employee pension plan of a state which (1) imposed no state individual income tax when the pension was earned and (2) does not impose a state individual income tax in the taxable year for which the deduction is claimed.

Revision of W-4 Form for Purposes of Obtaining Child Support Information (H. 4807, Rep. Shissias). This joint resolution is designed to strengthen and promote the enforcement of child support and to maximize the amount of support collected. Under these provisions, the Department of Social Services, in conjunction with the Department of Revenue and Taxation, must revise the W-4 form to require an employee to state on that form whether he is under a court order to pay child support and develop procedures for obtaining these forms and retaining this information. The Department may only retain this information, however, if it is responsible for establishing, enforcing or collecting a support obligation or debt of the employee.

Legislative Update, March 1, 1994

Property Tax Exemptions for Motor Vehicles Older Than 10 Model Years (H. 4813, Rep. Cromer). This bill provides a property tax exemption for motor vehicles of age greater than 10 model years.

Filing of Refund Claims Pursuant to Settlement of Federal Retirees' Lawsuits (H. 4816, Rep. Sharpe). This joint resolution is identical to H. 4647, introduced in the House earlier in February, allowing a 30-day period for taxpayers affected by the settlement of the federal retirees' lawsuits (Bass v. State of South Carolina and Perri v. State of South Carolina) to file a refund claim with the Department of Revenue and Taxation under the same terms and conditions as persons who were members of the class represented in those lawsuits.

Under these provisions, the Department of Revenue and Taxation, within 10 days of the governor's approval of legislation implementing the settlement of the two cases listed above, must ensure the publication of a notice in newspapers of general circulation in each county informing taxpayers that retirees receiving a federal pension, including retirees of the armed forces who retired before 1989, or heirs or surviving spouses of these retirees, may be entitled to a refund of state income taxes paid from 1985 through 1988, plus interest. The notice must state that to qualify for a refund, a taxpayer must contact the Department between 11 and 40 days after the governor signs legislation implementing this settlement and must provide information to the Department, as it considers appropriate, to determining eligibility. The taxpayer is not required to make a new filing if he had previously perfected an appeal or filed a request which was accepted by the Department. The Department also must mail written notification of these filing requirements to each county veterans' affairs officer.

A taxpayer who notifies the Department within this 30-day period that he is eligible for an income tax refund, or who is a surviving spouse, heir or personal representative of a taxpayer who would be eligible for this refund, is eligible for a refund under the same terms and conditions of the settlement agreement as those taxpayers who were members or parties of the class represented in the lawsuits.

Referendum Required for Increases in Existing State Taxes or Imposition of New State Taxes (H. 4817, Rep. Sharpe). This proposed constitutional amendment is identical to H. 4563 (pending in the House Judiciary Committee) and H. 4748 (pending in the House Ways and Means Committee). All three proposed constitutional amendments would prohibit state taxes from being increased and new state taxes from being imposed unless the proposed tax increase or new tax is approved by voters in a referendum. This requirement would be cumulative to other limitations on tax increases or new taxes provided in the Constitution. Additionally, beginning in Fiscal Year 1995-1996, State spending in a fiscal year may not grow faster than the rate of inflation. This limitation applies to fee revenues if the State imposes a fee to provide substantially the same service formerly funded by the State from tax revenues, but the limitation does not apply to spending financed by

Legislative Update, March 1, 1994

bonded indebtedness and spending of revenues not derived from taxes imposed by the State.

These spending and taxing limitations may be temporarily suspended by the governor if, upon his conclusion that prevailing economic conditions and the fiscal condition of the State so necessitate, he issues an executive order declaring a fiscal emergency for a specifically-limited time period. When the fiscal emergency ends, these limitations are reinstated, except that the limitations on taxes apply to taxes and tax increases imposed at the time this emergency ends, and the spending limitation applies effective with the first fiscal year beginning after the emergency ends.

Department of Revenue and Taxation May Seek Declaratory Judgment to Determine Constitutionality of Tax (S. 672, Sen. Land). This bill is designed to provide a procedure to suspend temporarily the administration and enforcement of a statute until the courts can review the statute and determine its validity. Under these provisions, if the Department of Revenue and Taxation determines there is material doubt as to the constitutionality or legality of a tax statute or another statute which affects its ability to administer and enforce the tax laws, then the Department, after advising the Budget and Control Board, may file a declaratory judgment action with the Supreme Court. This action would petition the court to review and determine the statute's constitutionality, legality or both. Upon receipt of the petition, the court must schedule the matter for consideration at the earliest practical date. A taxpayer whose duty to pay the tax and a person whose duty to collect the tax may be affected by the declaratory judgment may intervene in this action. All statutes of limitations for assessment, collection and claims and suits for refund are suspended from the date the action is filed until 90 days after the decision in the case becomes final.

If the statute under question imposes a tax, then taxpayers must continue to file returns showing the disputed tax during the pendency of the action, although they need not pay the tax. However, if the tax is upheld, failure to pay penalties and interest are waived if the tax is paid within 90 days after the decision becomes final. Likewise, if the statute allows an exemption, exclusion, credit or deduction, a taxpayer may continue to claim the exemption, etc., but if the exemption, etc. is declared unconstitutional or illegal, then failure to pay penalties and interest is waived so long as the tax is paid within 90 days after the decision becomes final.

In addition to other remedies, a taxpayer who after filing a petition pays a tax which is declared to be unconstitutional or illegal under these provisions may file a claim for refund any time within 1 year and 90 days after the decision becomes final. If after administrative remedies are exhausted the claim for refund is denied by the Department, then the taxpayer may file a suit for refund within 30 days from the date of the Department's denial.

Purchase of Retirement Service Credit by Former Members of a Municipal Governing Body (S. 856, Sen. McGill). This bill allows a person who currently

Legislative Update, March 1, 1994

is a member of the State Retirement System to establish service credit for the period he served as a member of a municipal governing body in this State which was not a part of the system in the same manner as provided under state law for establishing credit for federal civilian service. Additionally, payment of a salary to a former member of the municipal governing body is not a requirement for eligibility under these provisions.

Without Reference

Administrative Law Judge Division (H. 4794, Rep. Hodges). This bill delays the timetable for the hearing of cases by the newly-created administrative law judge division. Under these provisions, cases initiated before May 1, 1994, as currently opposed to cases initiated between July 1, 1993 and February 28, 1994, to which an administrative law judge would be assigned must be heard and decided by a special hearing officer appointed by the governing authority of the appropriate department. Cases initiated on or after May 1, 1994, however, must be heard and decided by an administrative law judge. Additionally, the commissioners of the Department of Revenue and Taxation, in consultation with the Attorney General, must appoint attorneys qualified to act as alcoholic beverage control hearing officers for cases initiated before May 1, 1994, as currently opposed to cases initiated between July 1, 1993 and February 28, 1994. The bill also delays from March 1 to May 1 of this year repeal of provisions pertaining to alcoholic beverage control hearing officers and requires that rules governing the administration of the administrative law judge division must be adopted, as currently opposed to promulgated, by the division.

Boundaries of Valley Public Service Authority (H. 4800, Rep. R. Smith). This bill requires the Aiken County Council to determine the boundaries for the service area of the Valley Public Service Authority.

State Capital Bonds May Be Authorized to Purchase School Buses (H. 4819, House Ways and Means Committee). This joint resolution provides that for 1994 only, State Capital improvement bonds may be authorized by the General Assembly for the purchase of school buses.

Consolidation of Existing Planning Enabling Legislation (S. 687, Sen. Bryan). This is the companion bill to H. 4616, deleting several sections in the Code and consolidating planning legislation under a new South Carolina Local Government Comprehensive Planning and Enabling Act.

Description and Illustration of Emblems and Uniforms of State Highway Patrol and State Police No Longer Must Be Filed with Secretary of State (S. 1045, Sen. Courson). This is the companion bill to H. 4545, passed recently by the House, which deletes provisions requiring the Director of the Department of Public Safety to file with the Secretary of State a description and illustration of the official uniforms, emblems and motor vehicles of the State Highway Patrol and the State Police.

Total copies 550
Total cost \$ 187.⁰⁰
Cost per copy \$.34
Date 3-1-1994
S. C. Legislative Council