

A4R
8.L33
V14/18
Copy 3



South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

Vol. 14

May 20, 1997

No. 18

S. C. STATE LIBRARY

MAY 23 1997

CONTENTS

STATE DOCUMENTS

Week In Review	2
Committee Action	6
Bills Introduced	9

OFFICE OF RESEARCH

Room 309, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803)734-3230

WEEK IN REVIEW

HOUSE

The House of Representatives amended and gave third reading to H.3526 which requires inmates to engage in work programs unless they pose a security risk or are physically or mentally incompetent. The bill revises the manner in which wages paid to inmates participating in prison industries or other work programs are divided among programs for victim restitution and assistance, child support obligations, payment of room and board, deposit into an escrow account for the benefit of the prisoner, etc. State and local correctional facilities are authorized to make use of chain gangs composed of inmates who have been convicted of nonviolent offenses or who are eligible for minimum security detention. The bill establishes a procedure which the Attorney General may use to secure reimbursement for inmate care from inmates who have the means to pay. The bill also provides that cable television must not be provided to inmates in state and local corrections facilities. Inmates are encouraged to view educational programming, and programs of a violent nature are disallowed. The Director of the Department of Corrections is charged with performing a study, which must be presented to the General Assembly by January 1, 1998, on the potential cost savings and efficacy of feeding inmates "meals ready to eat" (MRE's).

The House amended and gave third reading to S.559 , ADEPT (Assisting, Developing, and Evaluating Professional Teaching) which revises evaluation and qualifications of teachers. The bill removes specific reference to National Teachers' Exam (NTE) and replaces it with "examinations approved by the State Board for Certification, " and eliminates the requirement to use the rating "instrument," the Assessments of Performance in Teaching (APT) for evaluating practice teachers and provisional teachers. The bill requires state standards for teaching effectiveness to serve as a foundation for assisting, developing, and evaluating professional teaching at all levels; ADEPT has ten performance dimensions with competent performance descriptions to serve as the basis for standards; the plan maintains flexibility for colleges and universities and for school districts in the processes of evaluation and assistance, while for the first time, providing a statewide basis for the evaluation of annual and continuing contract teachers; establishes induction programs for all new teachers during induction contract status; delineates employment in the first year at the induction contract status with a district retaining the option for a second year prior to moving a teacher to annual contract status by placing her or him in the provisional contract status; does not change the rate of movement toward a continuing contract (currently a district has the option of two years at provisional status and two years at annual status); does not change the grievance status at the various contract levels; allows the evaluation of a continuing contract teacher who has consistently good performance to be an informal (rather than formal) evaluation; requires all provisional, annual, and continuing contract teachers who are formally evaluated (on the 10 performance dimensions) to also develop an individualized professional growth plan supportive of school and district strategic plans; provides that the new program begins in colleges and universities in

1997-98 school year and in school districts in 1998-99 school year; requires the SC Department of Education to approve the processes adopted or adapted by higher education institutions and school districts, conduct periodic evaluations of implementation, and provide technical assistance. In Amendments, the House also removed provision allowing a student a fourth attempt to pass the Education Entrance Examination; revised a provision of the bill concerning testing to measure teaching competency, by providing that the State Board of Education shall adopt nationally recognized teaching exams for this purpose.

The House tabled H.3995 which allows a county to qualify for exemption from the Sunday closing laws (Blue Laws) upon reaching a threshold of \$450,000, rather than \$900,000, in accommodations tax revenues. The House also tabled H.3785 which shortens the length of time, from fifteen days to seven days, during which a homeowner is required to install, repair or replace a smoke detector after a first violation of the current law which requires all one and two family dwellings, including manufactured housing, be equipped with approved and functioning smoke detectors.

The House amended Senate amendments to H.3400, the general appropriation bill, so as to strike Parts I and II and insert Parts I and II, as passed by the House and inserting House-passed supplemental appropriations as Part III. The House also amended the bill so as to charge the Treasurer and Joint Bond Review Committee with making recommendations on savings that could be realized by using surplus funds to accelerate repayment of outstanding capital improvement bonds or paying cash for projects for which bonds have been authorized, but not issued. The House amended Senate amendments to H.3402, the capital reserve bill, so as to replace the bill with its House-passed version.

The House refused to concur in Senate amendments to H.3101 which pertains to transporting a child as a means of thwarting custody proceedings or orders. A conference committee was appointed to reconcile the differences of the houses. A conference committee was also appointed to resolve differences in H.3065 which pertains to the killing or molesting of bald eagles.

The House returned S.267 to the Senate with amendment. The bill raises the civil penalty (from twenty dollars to one hundred dollars) which the court must impose upon an individual who is duly drawn and summoned to attend as a juror, but who, without sufficient excuse, fails to attend. The civil penalty for unexcused nonattendance for jury duty in a magistrate's court is raised from ten dollars to one hundred dollars. Additionally, the bill enhances a magistrate's ability to punish contempt in his courtroom, authorizing him to impose fines up to five hundred dollars and imprisonment up to thirty days (currently, a maximum of twenty dollars/ twelve hours). The Senate concurred in House amendments and enrolled the bill for ratification.

The House returned other measures to the Senate with amendments:

S.637, as amended, authorizes the Department of Natural Resources to issue permits for marine life holding and propagation facilities if the marine life does not include marine mammals and is used for experimental, scientific, educational exploratory, or commercial display purposes.

S.133, as amended, adds a solicitor or assistant solicitor to the list of individuals authorized to initiate involuntary admission of a person with mental retardation or a related disability to the Department of Disabilities and Special Needs. The Senate concurred in House amendments and enrolled the bill for ratification.

The House gave *third reading* to several measures:

H.4042 increases penalties for pointing a loaded or unloaded firearm at an individual when that individual is a law enforcement officer acting in the line of duty. Rather than the fine and/or maximum five year imprisonment provided for other commissions of the felony, violators who threaten a law enforcement officer must be imprisoned for not less than ten years nor more than thirty years. No suspension or probation may be granted for any portion of the sentence, and an offender is not eligible for parole until he has served at least seven years of his sentence.

H.3774, as amended, converts the existing maximum time limits for imprisonment for violations of resisting a law enforcement officer into mandatory minimum sentences. The bill provides that an individual who resists or assaults a law enforcement officer while using a weapon is guilty of a felony and must, upon conviction, be imprisoned not less than five years, no portion of which may be suspended, and not more than twenty years.

H.3094, as amended, makes it a felony to assault an emergency medical service provider, firefighter, or home health care provider. An offense is punishable with a prison term of up to ten years and/or a fine of not less than one thousand dollars and not more than ten thousand dollars.

H.3713 provides that alimony is terminated upon the continued cohabitation of the supported spouse.

H.4060, as amended, amends the SC Income Tax Act by requiring that the Department of Revenue provide for and offer, at the election of the taxpayer, a process for direct deposit to the account of the taxpayer of an income tax refund due to the taxpayer because of income tax overpayment. The department must absorb the costs of implementation so that there will be no fiscal impact.

H.3715, The Shooting Range Protection Act, provides restrictions on when owners of property located near a shooting range may bring nuisance actions for noise for pre-existing, newly-constructed, and restarted shooting ranges. County and municipal noise control ordinances may not restrict shooting activities on a range which was established before enactment of the ordinance or in compliance with a previous noise control ordinance.

H.3916 prohibits the purchase, barter, or trade of unlawfully taken marine products. Penalties are provided.

H.3789, as amended, provides that it is unlawful to take, catch, possess, land or sell spotted sea trout of less than thirteen inches in total length. The catch limit on spotted sea trout is ten fish.

H.3891 provides when a deed recording fee is owed by the grantees and clarifies certain exemptions from the recording fee.

H.3847, as amended, provides for certain exceptions to the minimum acreage requirements established for cemeteries.

SENATE

Bond Bill

The Senate gave third reading and sent to the House **H.3694**, the Bond Bill. Items included in the Senate-passed bill which are different from the House-passed bill include: \$1,500,000 for SC State University deferred maintenance (\$875,000 in House bill); \$2,500,000 for York Technical College (not included in House bill); \$200,000 for renovations at Williamsburg County Technical College (not included in House bill); \$51,375,000 for Department of Corrections construction (\$54,700,000 in House bill); \$3,000,000 for Department of Commerce airport improvements (\$5,000,000 in House bill); and \$200,000 for the Anderson County Career Center (not included in the House bill).

"Driving" Bill

The Senate continued to add significant amendments to, and then carried over third reading of **S.174**, originally known as the "zero tolerance" bill. The original version of this bill provides for a six months suspension of the driver's license of a person under age 21 who, with a blood alcohol content in excess of .02%, operates a motor vehicle. The Senate amended the bill by attaching numerous provisions creating tougher driving requirements, especially for younger, inexperienced drivers. Some of the provisions added are similar to provisions in **H.3710**, the House-passed comprehensive driving bill, which is now in the Senate Judiciary Committee.

Local Government Taxation

The Senate gave third reading and sent to the House **S.409**, which concerns local government taxation. This bill allows counties to ask voters to approve local sales taxes for certain authorized projects (most of which are for infrastructure). The bill also includes a provision prohibiting a local governing body from imposing a new tax unless specifically authorized by the General Assembly; and an authorization for a local governing body to impose, by ordinance, a local accommodations tax not to exceed three percent, and a local hospitality tax not to exceed two percent of the charges for food and beverages. Ordinances imposing these taxes must be adopted by a positive majority of council (actual majority of a council, rather than a majority of those present). Section 4-9-55 of the *SC Code of Laws* currently provides that the General Assembly may not pass a bill requiring a county or municipality to spend funds without the State funding the expense, unless approved by 2/3 vote of each house. **S.409** deletes the current exemptions allowing unfunded mandates in the general

appropriation bill and special appropriations bills. The bill also prohibits a local government from imposing real estate transfer fees or taxes unless the General Assembly expressly authorizes by general law the imposition of the fee or tax.

"C" Funds

The Senate also gave third reading to H.3450. This bill provides that all interest earnings on the County Transportation Fund must be credited to counties in the ratio that the county's annual distribution is of the total of such distributions statewide, and these distributions shall not include counties that administer their own "C" funds. Current law provides that these interest earnings are credited to the State Highway Fund.

COMMITTEE ACTION

EDUCATION AND PUBLIC WORKS

The Education and Public Works Committee reported favorable with amendment on H.3424. This bill provides that students in grades nine through twelve must have an overall "C" average in the preceding semester and must have passed at least four academic courses, including each unit the student takes that is required for graduation, in order to participate in interscholastic activities. The bill also adds a provision that each school district shall provide academic assistance for students who wish to participate in interscholastic activities, but who have not maintained a "C" average in the preceding semester. The committee amended the bill to provide that students must have a "75" average rather than a "C" average. Current law provides that these students must have an overall passing average and must either pass at least four academic courses (including each unit the student takes that is required for graduation) or pass a total of five academic courses during a specified semester (depending on when the scholastic activity occurs).

JUDICIARY

The Judiciary Committee gave a majority favorable, minority unfavorable, report to S.251 which provides that the state executive committee hear protests and contests of State Senate and State House elections. The State Election Commission must pay for the cost of the court reporter and transcript for state executive committee hearings of protested and contested elections.

The committee gave a report of favorable with amendment to S.456 which pertains to the domestication of a foreign adoption of a foreign child. Under the committee amendment, the court may, in all cases where documentation is found to be satisfactory, transmit the certificate of adoption to the state registrar along with an order that a hearing will not be

necessary. Court Administration is required, in consultation with the Department of Health and Environmental Control, to prepare and make available adoption forms and guidelines for obtaining the domestication of a foreign adoption.

The committee reported favorably on H.3857 which removes from the Ombudsman in the office of the Governor and assigns to the Department of Social Services the authority to investigate allegations of abuse and neglect occurring in health facilities licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health. DSS is granted powers provided for the investigation of abuse and exploitation of vulnerable adults.

The committee gave a report of favorable with amendment to H.3874 which addresses situations where it is necessary for a property owner to enter another's land in order to improve, repair or maintenance on his own property. As introduced, the bill provides for exemptions from trespass for such situations. The committee amendment, however, completely rewrites the bill, providing that in such situations where permission for necessary entry into adjoining land has been denied, the property owner wishing to make improvements/repairs/maintenance may petition the circuit court for a temporary, limited license to enter the adjoining property. Such a petition may not be filed before a good faith effort has been made to obtain permission to enter the adjoining property.

The committee gave a report of favorable with amendment to H.3971 which overhauls the state's probate code.

The committee reported favorably on S.40 which provides that records, reports, applications, and files kept on clients and potential clients of the Continuum of Care for Emotionally Disturbed Children are confidential. Such information may only be disclosed under court order, upon consent of client or guardian, or under other specified conditions. An individual who improperly discloses such information is guilty of a misdemeanor and subject to a fine of not more than five hundred dollars and/or imprisonment for not more than one year.

The committee gave a favorable report to S.397 which provides that the consent of a municipality must be obtained prior to the creation of a multi-county industrial park if the proposed park encompasses all or a portion of the municipality.

The committee tabled two bills. H.3865, the "South Carolina Garnishment Act of 1997," provides the right to a writ of garnishment for a person who has recovered judgment in court against another person. H.3994 provides that breast feeding may not be considered indecent exposure.

LABOR, COMMERCE AND INDUSTRY

The House Labor, Commerce and Industry Committee gave a report of favorable with amendment to H.3792 which provides that all workers' compensation insurers who write coverage in the state's voluntary market must participate in the residual market mechanism

(assigned risk pool) and pay their assessments, if any. An amendment establishes a procedure by which the Insurance Director may defer assessments in cases where their payment would render an insurer insolvent or at risk of insolvency. A procedure is established by an insurer repays deferred assessments.

The committee gave a report of favorable with amendment to S.458 which, in response to market pressures imposed by the Federal Health Insurance Portability and Accountability Act of 1996, provides certain additional flexibility in the rates which may be charged in the small group health insurance market. The committee amendment authorizes a deduction from state taxable income for amounts paid for health insurance premiums by self-employed individuals which were not deducted on the taxpayer's federal income tax return.

The committee gave a report of favorable with amendment to S.452 which eliminates requirements that the state's property and casualty insurers submit to the Department of Insurance loss and expense experience reports. The information submitted in the reports is available to the Department of Insurance via the database maintained by the National Association of Insurance Commissioners. Instead of the routine reporting currently required, the legislation provides that the Department of Insurance may require reports of loss and expense experience at the discretion of the director.

The committee reported favorably on S.451 . Under current law an individual or group health insurance policy or health maintenance organization (HMO) is prohibited from: (1) preventing or limiting an insured individual from selecting a pharmacy or pharmacist of his choice when the pharmacist or pharmacy has agreed to participate in the insurance plan according to the terms offered by the insurer; (2) denying a pharmacy or pharmacist the ability to participate as a provider of pharmaceutical services under the plan, if the pharmacy or pharmacist meets the terms and requirements of the policy and agrees to the terms of reimbursement set forth by the insurer. The bill repeals the "sunset" provision under which these prohibitions expire May 18, 1997.

The committee gave a report of favorable with amendment to H.4082 which provides that it is unlawful for an entity to change a customer's utility provider without the customer's authorization. A violator is subject to a fine of not less than one hundred dollars and not more than one thousand dollars for each violation. A violator is liable to the customer for all charges incurred by the customer, in excess of those normally incurred through his designated provider, during the period of the unauthorized change.

The committee gave a favorable report to H.3966 which revises the Underground Utility Damage Prevention Act by, among other things, reducing from three to two the number full working days required for serving notice of impending excavation or demolition. The bill also provides that an individual who damages an underground utility belonging to a utility who is not a member of an association for mutual receipt of notice is not liable for civil penalties or personal property damage if the person who damaged the utility gave proper notice to the association for mutual receipt of notice.

The committee reported favorably on S.303 which provides that in situations where a contractor or subcontractor falsely represents himself as having worker's compensation insurance when engaging in work for a higher tier subcontractor, contractor, or project owner

or when a contractor or subcontractor fails to notify that employer within five days of a lapse in his coverage, these actions of the contractor or subcontractor constitute fraud. In such situations, the higher tier subcontractor, contractor, or project owner is relieved of liability.

The committee also authorized up to six public hearings to be held during the interim for the purpose of discussing H.3414, the South Carolina Competitive Power Act.

BILLS INTRODUCED

EDUCATION AND PUBLIC WORKS

H.4160 DEPARTMENT OF TRANSPORTATION COMMISSIONERS Rep. Fleming

This bill provides that all counties within a Department of Transportation district must have a resident commission member before any other county in that district may have a resident commission member for a second or subsequent time without each county in the district first having a resident commission member in the interval.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.4149 HEARING AID SPECIALISTS Rep. Lanford

This bill states that the powers, duties, functions, and responsibilities of the Department of Health and Environmental Control in regard to the "Practice of Specializing in Hearing Aids Act" are devolved upon the Department of Labor, Licensing and Regulation.

WAYS AND MEANS

S.531 CHILD SUPPORT, FAMILY INDEPENDENCE PROVISIONS, ETC. Sen. Martin

S.531, the companion bill to H.3650, amends numerous sections of current law concerning child support and public aid and assistance, and adds, deletes, and repeals other provisions to conform to the Family Independence Act of 1995. Current provisions which are revised in the bill include, but are not limited to procedures for collection of child support; procedures to assure that payment of aid to dependent children is used in the best interests of the child; procedures relating to job training for, and the employment of, welfare recipients; and asset limits for recipients of public assistance.

FOOTNOTE

The Legislative Update is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (www.lptr.state.sc.us) and click on the "Quick Find Guide." On the next screen, click on "Legislative Update." This will list all of the Legislative Updates by date. Click on the date you need.