South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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MAJOR ISSUES FROM THE 2000 LEGISLATIVE SESSION

These summaries highlight some of the major bills considered by the General Assembly this year. Please note that many issues which are included in this document are addressed in more than one bill. We have highlighted bills which have made the most progress towards passage.

This document will be revised and expanded on a weekly basis until the end of the session. Major legislation is summarized here in a format which is intended to be more accessible than a simple reading of the bills, joint resolutions, and acts. This report, which highlights legislative activity through *Friday, May 5, 2000*, is a guide to, not a substitute for, the full text of the legislation summarized.

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RIGHT TO WORK LAWS

The House of Representatives approved and sent to the Senate **H.3770**, a bill strengthening South Carolina's Right to Work laws which protect employees from practices which have the effect of making employment contingent upon membership in a labor union or organization. The bill broadens the investigatory powers of the Department of Labor, Licensing and Regulation (LLR) in disputes arising from alleged violations of the Right to Work laws. In the course of investigating claims, the Director of the Department of Labor, Licensing and Regulation is authorized to hold hearings and enter a workplace in order to evaluate compliance. The Director is authorized to assess a violator a civil penalty of not more than one hundred dollars for each offense.

The bill makes several amendments to penalty provisions and broadens the scope of persons prohibited from participating in unlawful labor agreements which violate an employee's right to work by allowing for penalties and/or causes of action against any person for violations of the chapter. Current law allows for such actions to be taken against employers, only. The legislation also creates a private cause of action under which a person who has been denied employment or deprived of continued employment through force, intimidation, obstruction, interference, or through other means in violation of the State's Right to Work provisions is entitled to recover from the employer actual damages as well as punitive damages awarded at the discretion of the court or jury.

STATUS: **H.3770** *passed the House on February 3 and was sent to the Senate where it has been referred to the Labor, Commerce and Industry Committee.*

TATTOOING

S.120 would permit tattooing of persons over the age of 21, so long as the person's age is verified through use of a picture identification card. The bill permits tattooing of individuals under 21 with parental and/or guardian consent. The

original consent may be kept on file for a period of two years from the date of the tattoo at the establishment performing the tattoo.

A person under the age of 21 who is tattooed in violation of the provisions of this bill may bring an action to recover actual damages, punitive damages, plus costs of the action, and attorney's fees. However, proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense.

Under the bill, it is illegal to tattoo any part of the head, face, or neck of another person. The bill provides for medical exceptions.

The bill requires tattoo artists to apply and obtain a permit issued by the South Carolina Department of Health and Environmental Control (DHEC). Failure to comply with procedures outlined in this bill authorizes DHEC to revoke a permit or deny an application for a new or renewed permit.

Tattoo artists must display the following: (1) a notice to patrons informing them that tattooing may disqualify them from being able to donate blood according to standards of the American Association of Blood Banks (this notice must also appear on consent forms); (2) the certificate of successful completion of a course in infection control; and (3) proper tattooing permit.

The bill outlines procedures that tattoo artists must follow in order to comply with DHEC infection control precautions. The bill outlines under what circumstances a tattoo artist may use (1) stencils or transfer designs, or (2) alum or styptic pencils considered necessary to control bleeding.

STATUS: *On February 24, 2000, after amending and debating* **S.120** *the House voted to recommit the bill to the Medical, Military, Public and Municipal Affairs Committee.*

TECHNOLOGY INTENSIVE FACILITIES INCENTIVES

Both the House and Senate approved **H.3782**, which was ordered enrolled for ratification on May 4. The legislation provides various tax incentives to encourage technologically advanced research and development facilities in the State. An annual job tax credit is provided for qualifying technology intensive facilities. A technology intensive facility, as defined in the bill, is a firm engaged in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. The bill affords a taxpayer who meets specified criteria certain corporate tax credits equal to five percent of the taxpayer's qualified expenditures for research and development made in South Carolina. Such credit taken in any one taxable year may not exceed fifty percent of the taxpayer's remaining tax liability after all other credits have been applied. The legislation revises the 1995 Enterprise Zone Act by adding technology intensive facilities to the list of facilities which the State should induce to locate or expand in South Carolina to promote the public

purpose of creating new jobs. The legislation provides an exemption from sales tax for machines used in research and development. The legislation also provides that the current *ad valorem* property tax exemption for certain additions to existing facilities of research and development applies to machinery and equipment installed in an existing manufacturing or research and development facility.

STATUS: **H.3782** *was approved by both the House and Senate and was ordered enrolled for ratification on May 4.*

THE COURTS

MAGISTRATES COURT REFORM ACT OF 2000

H.3379, the Magistrates Court Reform Act of 2000, increases various magistrate court fees. The bill increases the fee (1) for issuing a summons and a copy for the defendant, and (2) for giving judgment with or without a hearing in a civil action from $25 to $45. The bill increases the fee for proceedings by a landlord against a tenant from $10 to $20. A bad check administrative fee is increased from $20 to $41; also, bad check jurisdiction for magistrates is increased from $500 to $1,000.

On and after January 1, 2001 magistrates must participate in the South Carolina Police Officers Retirement System (PORS). **H.3379** outlines special procedures for magistrates that wish to transfer their service from the South Carolina Retirement System (SCRS) to PORS between July 1, 2000 and January 1, 2001. After July 1, 2001, magistrates may elect to transfer their service from SCRS to PORS according to the provisions of *South Carolina Code of Laws* §9-11-40(9).

As for educational requirements, on and after July 1, 2001, a person must have received a two-year associate degree for an initial appointment as a magistrate. On and after July 1, 2005, a person must have received a four-year baccalaureate degree for an initial appointment as a magistrate. Currently serving magistrates are grandfathered during their tenure in office. Magistrates must observe 10 trials prior to holding court.

H.3379 authorizes the South Carolina Court Administration to establish and determine the number of contact hours to be completed in a two-year continuing education program available to magistrates. The program would be administered through the state's technical college system. Funding for the program would come from fees and costs collected by magistrates or magistrates' courts and deposited in the general fund of the county.

H.3379 establishes an advisory council to make recommendations to the Supreme Court regarding the eligibility examination, certification examination, and continuing education requirements for magistrates. The advisory council would be composed

of 13 members, appointed by the Chief Justice upon the recommendation of trial lawyers, defense lawyers, sheriffs, victims, Criminal Justice Academy, legal services, Summary Court Judges Association, Senate and House Judiciary Committee Chairmen, and the Governor.

A magistrate's failure to retire in accordance with *South Carolina Code of Laws* §22-1-25 or a magistrate's failure to comply with educational requirements may subject him or her to suspension or removal by order of the Supreme Court.

H.3379 authorizes the South Carolina Court Administration in cooperation with the state's technical schools to select and administer an eligibility examination to test the basic skills of persons seeking an initial appointment as magistrate on or after July 1, 2001. No person is eligible to be appointed as a magistrate unless he or she receives a passing score on the eligibility examination. The results of these eligibility examinations are valid for six months before and six months after the time the appointment is to be made. Persons may be exempted from taking the examination if certain prescribed educational equivalency requirements have been met.

Under the bill, the number, location, and full-time or part-time status of magistrates in the county may be increased or decreased. In order to do so, a written agreement between the members of the Senate delegation for the county and the county governing body must be filed with Court Administration.

H.3379 makes technical changes to reference new provisions for adding additional magistrates based on accommodation tax revenues. The bill allows concurrent civil jurisdiction for magistrates on specified legal actions that do not involve over $7,500.

H.3379 establishes three base categories for salaries, depending on the population of the county where the magistrate is located. However, a magistrate may not receive 100% of the salary rate for his or her county's population category until completion of four years in office. For those counties with a population of 150,000 or above, the base salary is 55% of circuit court judge's salary for the state's previous fiscal year. For those counties with a population of at least 50,000 but not more than 149,999, the base salary is 45% of a circuit judge's salary for the previous fiscal year. For those counties with a population of less than 50,000, the base salary is 35% of a circuit court judge's salary for the state's previous fiscal year.

A county may not pay a magistrate less than the appropriate base salary, but a county is not prohibited from paying a magistrate more than the established base salary. A magistrate's compensation must not be decreased during his or her term in office. The bill provides that magistrates being paid over scale must receive the same percentage pay increases as other magistrates. Part-time magistrates must not work more than 40 hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate. Additional magistrates could be added based on accommodation tax revenues. For counties that do not have sufficient

increased fees to fund the pay increases for magistrates, a five-year reimbursement program based upon request to the State Treasurer's office is established.

The Supreme Court is requested to make a report to the respective Chairmen of the Senate and House Judiciary Committees by March 15, 2001, with recommendations for additional changes in the magistrates' court system. In addition, the Supreme Court is requested (1) to record the amount of revenue generated for each county by the fee increases and the amounts needed to fund the salaries and benefits for magistrates in each county, and (2) to report that information to the Chairmen of the Senate and House Judiciary Committees by March 15, 2005.

As for effective dates: (1) generally most provisions take effect July 1, 2000, (2) new fees would go into effect April 1, 2000, (3) new salaries go into effect July 1, 2000, (4) $7,500 jurisdictional amount goes into effect January 1, 2001, and (5) continuing education and trial observances go into effect July 1, 2001.

STATUS: The Governor signed Act No. 226 into law on February 25, 2000.

TRUTH IN SENTENCING / ADVISORY SENTENCING GUIDELINES

H.3108 extends the provisions of Truth in Sentencing to all crimes in South Carolina requiring that offenders serve a minimum of 85% of their sentence. (Act 83 of 1995 provided Truth in Sentencing for only those offenses with maximum possible penalties of 20 years or more.) This bill phases out parole, and offenders who commit their crimes after the effective date of this bill will not be eligible for parole release.

The legislation establishes Advisory Sentencing Guidelines to complement Truth in Sentencing for all offenses with maximum possible penalties of one year or more. Guidelines weigh the seriousness of the current offense with the offender's prior record to determine an appropriate sentence. Generally, the Guidelines recommend longer prison sentences for more serious and violent offenders while recommending community punishments for less serious offenders.

The legislation requires a defendant to be put under oath when testifying regarding the accuracy of his or her prior criminal record at sentencing. The State may move to reconsider a defendant's sentence within 180 days of sentencing, if it can be proven that the defendant willfully provided false information regarding his or her prior criminal record. False information provided by a defendant may be considered an aggravating circumstance which may provide cause for deviating upward from the sentence recommended under the guidelines.

The legislation establishes the South Carolina Truth in Military Confinement Act. Under this legislation, military personnel who are sentenced to a period of

confinement pursuant to a general, special, or summary court martial would serve the full term of confinement, without possibility for early release.

STATUS: *On March 28, 2000, the Senate recommitted* **H.3108** *to the Senate Judiciary Committee with the bill retaining its place on the calendar.*

CRIMINAL JUSTICE

ILLEGAL PER SE: DRIVING WITH AN UNLAWFUL ALCOHOL CONCENTRATION

Among other things, **S.544** creates the offense of driving with an unlawful alcohol concentration. The bill amends several code sections to reference this new offense. Under this bill, it is unlawful for a person to drive a motor vehicle within this State while his or her alcohol concentration is ten one-hundredths of one percent or more. A person may be charged for a violation of *South Carolina Code of Laws* §56-5-2930 (the statute which makes it unlawful to operate a motor vehicle while under the influence) but prosecuted pursuant to this new section if the original testing of the person's breath or other bodily fluids was performed within two hours of the time of arrest and probable cause existed to justify the traffic stop. This section does not apply to cases arising out of a stop at a traffic road block or driver's license checkpoint. A person cannot be prosecuted for both a violation of §56-5-2930 and a violation of this new section for the same incident.

Under this bill, *South Carolina Code of Laws* §56-5-2940 (the penalty section for violating the statute which makes it unlawful to operate a motor vehicle while under the influence) is also the penalty section for violations of the offense of driving with an unlawful alcohol concentration. Under this bill, the court may require an offender to have installed on his or her vehicle an ignition interlock device designed to prevent the operation of the motor vehicle if the operator has consumed alcoholic beverages. The bill requires the offender to pay the costs associated with installing the ignition interlock device; however, special provisions are made for indigent offenders.

A person who commits the offense of driving with an unlawful alcohol concentration is entitled to a jury trial and is afforded the right to challenge certain factors including, but not limited to, the following: (1) whether or not the person was lawfully arrested or detained, (2) whether or not probable cause existed to justify the stop, (3) the period of time between arrest and testing, (4) whether or not the individual who administered the test or took samples was qualified, and (5) whether or not the machine was working properly.

This bill provides that a person charged with a violation of *South Carolina Code of Laws* §56-5-2930 (unlawful to operate a motor vehicle while under the influence),

§56-5-2933 (driving with an unlawful alcohol concentration), or §56-5-2945 (causing great bodily injury or death by operating vehicle while under influence of drugs or alcohol) has certain rights. Under this bill any person who is being tried in any court of competent jurisdiction in this State has the right to compulsory process for obtaining witnesses in his or her favor including, but not limited to, state employees charged with the maintenance of breath testing devices and the administration of breath testing. Such process may be issued under the official signature of the magistrate, judge, clerk, or other officer of the court of competent jurisdiction.

Under this bill, a person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program ("Program") in which he or she is enrolled. After the person's driving privilege is restored, he or she must continue to participate in the Program in which he or she is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Program, the person's license will be suspended until he or she completes the Program. Additionally, under this bill an administrative hearing must be held within 30 days after the request for the hearing is received by the department. If the department does not schedule the hearing within 30 days, the department must issue a written order within 10 days stating why the hearing was not held. A new hearing must be scheduled. If the department does not issue a written order within 10 days or fails to schedule or hold a subsequent hearing, the person shall have his or her driver's license, permit, or nonresident operating privilege reinstated.

Under this bill, magistrates' courts would have exclusive jurisdiction in all cases involving driving under suspension, except those cases where the suspension resulted from a conviction for driving under the influence of alcohol or drugs.

Under this bill, the penalties for a person who drives a motor vehicle on any public highway of the State while his or her license has been suspended or revoked pursuant to *South Carolina Code* §56-5-2990 (penalties for operation of a motor vehicle while under the influence) are as follows: (1) for a first offense, imprisoned for not less than 10 nor more than 30 days, (2) for a second offense, imprisoned for not less than 60 days nor more than six months, (3) for a third and subsequent offense, not less than six months nor more than three years. No portion of the minimum sentence may be suspended.

Under this bill, a breath test must be administered by a person trained and certified using methods adopted by regulations approved by SLED pursuant to the Administrative Procedures Act. After March 1, 2001, no policy relating to training procedures or certification may be implemented unless adopted by regulation approved pursuant to the Administrative Procedures Act. This bill also provides that after March 1, 2001, no SLED policy relating to (1) the administration of breathtesting, or (2) the administration of video taping at the incidence may be used unless that policy has been adopted pursuant to the Administrative Procedures Act.

South Carolina Code of Laws §56-5-2980 relates to copies of reports as prima facie evidence of certain matters and the effect of stipulating subsequent offense. §56-5-2980 is amended to require copies of any reports to be duly certified by the director of the department or his or her designee as true copies.

This bill provides that in the event the alcohol concentration level for driving under the influence of alcohol or other intoxicating substance offenses changes from ten one-hundredths of one percent or more to eight one-hundredths of one percent or more as provided by law, then *South Carolina Code of Laws* §56-5-2933 and §56-5-2950(b)(4) do not apply to alcohol concentration levels between eight one-hundredths of one percent up to ten one-hundredths of one percent. Instead, for this range, there is an inference that the person was under the influence of alcohol or other such substances.

The provisions of this bill will not take effect until the Chief of the SLED certifies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives that all breath test sites in the State have been equipped with video cameras so that a person's conduct may be videotaped.

STATUS: **S.544** *was introduced in the House and read for the first time on March 2, 2000. The bill was referred to the House Judiciary Committee.*

TRUTH IN SENTENCING / ADVISORY SENTENCING GUIDELINES

(See **H.3108** under The Courts heading.)

EDUCATION

CHARTER SCHOOLS

The House and the Senate have passed differing versions of **H.4336**, legislation concerning charter schools. As passed by the House, the bill eliminates the current requirement that the racial composition of a charter school may not differ from the racial composition of its school district by more than ten percent. The House-passed bill also:

- Amends the definition of "certified teacher" to mean a person *currently* certified by the State to teach in a public elementary or secondary school or *who currently meets the qualification outlined in South Carolina Code of Laws Sections 59-27-10* (Interstate Agreement on Qualification of Educational Personnel*) and 59-25-115* (fingerprint review for applicants for initial certification*)*. Current law defines "certified teacher" as a person certified by the State of South Carolina to teach in a public elementary or secondary school.

The bill also revises the definition of "noncertified teacher" to require the completion of at least one year of study at an accredited college or university.

- Provides that a child who resides in a school district other than the one where a charter school is located may attend a charter school outside his district of residence, and also provides that if the student transfers to a charter school outside his district of residence, the school district where the child resides shall pay to the charter school where the child is transferring an amount equivalent to the statewide average of the local base student cost multiplied by the appropriate pupil weighting pursuant to the Education Finance Act. The charter school where the child is transferring shall count the child for all funding sources, both state and federal. The receiving school district shall, however, have the authority to grant or deny permission for the student to attend.

- Provides that if a school district declares a building surplus and chooses to sell or lease the building, a charter school's board of directors or a charter committee operating or applying within the district must be given first refusal to purchase or lease the building under no more than the same terms and conditions it would be offered to the public.

- Amends the definition of "charter committee" to mean the governing body of a charter school formed by the applicant to govern through the application process and until the election of a board of directors is held. The amendment further provides that after the election, the board of directors of the corporation must be organized as the governing body and the charter committee is dissolved. "Charter committee" is currently defined as "the governing body of a charter school and also shall be the board of directors of the corporation which must be organized."

- Provides that in either a new or converted charter school, teachers teaching in the core academic areas of English/language arts, mathematics, science, or social studies must be certified in those areas.

- Provides that a charter school must hire in its discretion administrative staff to oversee the daily operation of the school, and at least one of the administrative staff must be certified in the field of school administration.

- Provides that a charter school may give enrollment priority to children of the charter committee, provided their enrollment does not constitute more than twenty-five percent of the enrollment of the charter school.

- Provides that a charter school application must include assurance from the applicant that the school does not conflict with any school district desegregation plan or order in effect.

- Provides that in instances where the State Board of Education remands an application, both the applicant and the local school board shall have the

opportunity to communicate with the State Board of Education regarding the State Board's written instructions for reconsideration.

- Amends current law regarding the required approval of faculty, instructional staff, and parents of students enrolled at the existing school before a public school may be converted to a charter school, by providing that in addition to approval requirements of faculty and staff, two-thirds of the *voting* parents must agree to the filing of the charter school application (current law does not include the word "voting"), and by adding language providing that all parents or legal guardians of students enrolled in the school must be given the opportunity to vote on the conversion.

- Provides that all students enrolled in the school at the time of conversion must be given priority enrollment.

- Amends current law on charter schools by providing that a charter may be approved or renewed for a period not to exceed five school years. Current law allows a period not to exceed three years.

- Provides that a charter *must* be revoked or not renewed (current law provides that a charter *may* be revoked or not renewed) by the sponsor if it determines that the charter school has: violated the provisions of the charter application; failed to meet or make progress toward achievement standards identified in the charter application; failed to meet generally accepted standards of fiscal management; or violated any provision of law from which the charter school was not specifically exempted.

- Amends current law regarding distribution of funds for a charter school by providing that the amounts of certain funds must be verified by the State Department of Education before the first disbursement of funds.

- Provides that all gifts, donations, or grants must be reported to the local school district within thirty days of receipt by the charter school's governing body.

As amended and passed by the Senate, **H.4336** included the following provisions:

- Notes that diversity is an education benefit in public school education and declares that the Charter Schools Act should not encourage a return to a dual school system. (This issue is not addressed in the House version of the bill.)

- Clarifies the definition of certified teacher and requires all teachers to undergo a fingerprint check.

- Requires non-certified teachers to have at least one year of college.

- Stipulates that teachers who are teaching in the four core academic areas must be certified or have a baccalaureate or graduate degree in those areas.

- Clarifies that the charter school may hire administrative staff at its discretion and requires that at least one administrator must be certified in school administration.

- Allows the enrollment of a charter school to differ racially from that of the district or from the targeted student population by 15%. (Currently, the enrollment of a charter school may not differ racially from that of the district or from the targeted student population by 10%.)

- Gives children of the charter committee members preference in enrollment provided they do not make up more than 10% of the enrollment.

- Stipulates that a charter contract may include participation in agreed upon interscholastic activities at a designated school.

- Allows the local school district board to deny a charter school application or revoke a charter if the applicant or charter school is found to be operating in a racially discriminatory manner. (This issue was not addressed in the House version of the bill.)

- Allows the applicant and local board to communicate with the State Board regarding written instructions when a charter application is reviewed by the State Board and is remanded back to the local board.

- Stipulates that the two-thirds vote to convert an existing school to a charter is two-thirds of the voting parents and that all parents are to be given the opportunity to vote.

- Adds that students enrolled in the converting school must have priority in enrollment.

- Stipulates that the Department of Education must verify the amount of state, local, and federal funding per student to be transferred from the district to the charter school.

- Requires the charter school to report to the district all gifts/donations within 30 days.

- Requires a charter school to be given the right of first refusal to purchase or lease a building that a district has declared surplus or chooses to sell or lease.

STATUS: **H.4336** *passed the House. The bill was then amended by the Senate and returned to the House. The House amended the Senate's amendments and returned the bill to the Senate, where it is now pending.*

INTERNET PORNOGRAPHY ON LIBRARY AND SCHOOL COMPUTERS

(See **H.4426** under the State / Local Government heading.)

LIFE SCHOLARSHIPS

- The House-passed General Appropriation Bill (**H.4775**) included a permanent law (Part II) provision increasing the LIFE Scholarships to $3,000 for students attending 4-year institutions and fully covering the cost of tuition for students at 2-year institutions and technical colleges. The House budget plan also included $13.3 million to fund this increase. The Senate Finance Committee did not recommend this proviso in its budget plan.

  STATUS: **H.4775** *has passed the House and is on the Senate Calendar, where it has been ordered to third reading with Notice of General Amendments.*

- In May of 1999, the Senate passed **S.421**, which provides that the current LIFE Scholarship eligibility requirement to enroll in an eligible institution within two years of graduating from high school shall be extended by the number of years an individual honorably serves on active duty in the US Armed Forces after enlisting within three months of high school graduation, and serving for a period not to exceed four years.

  STATUS: This bill passed the Senate and is pending in the House Education and Public Works Committee.

- **H.4650** repeals the STAR Diploma Program. The bill eliminates references to the STAR Diploma Program including the current requirement that to be eligible for the LIFE Scholarship, students must have passed all courses required for a STAR diploma. The bill also eliminates the provision providing that all students who earn a LIFE Scholarship or the Palmetto Fellows Scholarship shall be recognized at graduation from high school with a certificate issued by the Department of Education. **H.4650** also provides that in order to qualify for or continue to receive a Palmetto Fellows Scholarship, a Tuition Grant or a Need-Based Grant, the student must not have been adjudicated delinquent or been convicted or pled guilty or *nolo contendere* to any felonies or any alcohol or drug related offenses. However, the bill does provide that a high school or college student otherwise qualified who has been adjudicated delinquent or has been convicted or pled guilty or *nolo contendere* to an alcohol or drug-related offense nevertheless shall be eligible or continue to be eligible for such scholarships after the expiration of one academic year from the date of the adjudication, conviction, or plea.

Also, the bill includes a provision that the term "qualifying college or institution" as defined by the *South Carolina Academic Endowment Incentive Act Of 1997*, includes a regional campus of the University of South Carolina.

STATUS: **H.4650** *has been enrolled for ratification.*

ENVIRONMENT / NATURAL RESOURCES

ATLANTIC INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT IMPLEMENTATION ACT

(See **S.1129** under the State/ Local Government heading.)

CONSERVATION INCENTIVES ACT

Both the House and Senate approved **H.3782**, which was ordered enrolled for ratification on May 4. This legislation creates the South Carolina Conservation Incentives Act which is designed to protect and preserve natural areas by providing an income tax credit incentive for landowners voluntarily to convey lands or conservation easements to qualified conservation organizations. The legislation allows an income tax credit equal to twenty-five percent of the value of a federal income tax charitable deduction for a qualified conservation contribution of a qualified real property interest located in South Carolina. A cap is provided on this credit. The legislation provides for a carry-forward of unused credit and makes the unused credit transferable upon notice to the Department of Revenue with the credit retaining all its attributes in the hands of the transferee.

The legislation also creates the Conservation Grant Fund as a separate and distinct fund within the State Treasury. The income and principal of the fund must be used only: (1) to stimulate the use of conservation easements and fee simple gifts of land for conservation to qualified conservation organizations; (2) to improve the capacity of private nonprofit land trusts successfully to accomplish conservation projects; and (3) to provide an opportunity to leverage private and public monies for conservation easements. The Conservation Grant Fund shall consist of any monies appropriated to it by the General Assembly and other monies received from public or private sources. The board of the Department of Natural Resources serves *ex officio* as the Conservation Grant Fund Board with full authority over the administration of the fund. Additionally, the legislation amends the South Carolina Probate Code so as to authorize a personal representative or trustee, as applicable, with the consent of all affected parties to make a donation of a qualified conservation easement to obtain a federal estate tax and state income tax credit benefit.

STATUS: H.3782 *was approved by both the House and Senate and was ordered enrolled for ratification on May 4.*

FARM AND FOREST LANDS PROTECTION ACT

The Senate approved and sent to the House S.12, the Farm and Forest Lands Protection Act. Under this bill, counties would be allowed to create voluntarily Priority Agricultural Land (PAL) areas and private landowners would be compensated for not developing their land. The legislation establishes the State Priority Agricultural Land Board within the Department of Natural Resources. The sixteen-member board, among other duties, shall allocate money from the Priority Agricultural Land Trust Fund (monies from this fund may only be spent on easements) to counties for the purpose of purchasing agricultural conservation easements. All county programs to purchase these easements must be approved by the State Board. The specific criteria, which the State Board employs to determine approval, are outlined within this bill. The State Board must present the General Assembly with a report that, among other details, discloses the location and acreage of PAL areas and the number and acreage of conservation easements.

When a county council receives a request for the creation of a PAL, a public hearing must be conducted to determine if there is sufficient public interest to declare a PAL. If there is, then the county council must establish a County Priority Agricultural Land Board. This nine or eleven member board (appointed by the County Council), among other duties, shall propose PALs, submit a program for purchasing easements to the county council and State Board, adopt rules of procedure for purchasing easements, and purchase easements in the name of the county. The County Board is the only entity certified to establish PALs and is responsible for holding public hearings regarding PALs and publicizing the approval of PALs. The County Board must also submit an annual report to the State Board. All proposed modifications of PAL areas will be handled by the County Board, which will submit its recommendations to the county council. If the county has a planning commission, then the County Board will work in conjunction with the planning commission and report to the county council.

A county council has the power to accept or reject any PAL proposal or modification. If the council decides to modify or reject a proposal, it must provide the County Board with a written statement of why the decision was made within ten days. After a PAL is created, the County Board must make available to the public a description and a map of the area. The county council shall take into consideration landowners' (only those who own land within the PAL) applications for the purchase of agricultural conservation easements. This bill outlines the terms and conditions of agricultural conservation easements. These easements do not prevent the landowner from granting rights-of-way for the installation of certain pipes and lines (i.e. water, sewage, telecommunications, etc.). They also do not prevent the construction of structures necessary for agricultural production, or used for the landowner's principal residence. A landowner whose land lies within a PAL

area and who wishes to site or expand a permitted animal feeding operation is required to satisfy all pertinent DHEC regulations and the stipulation of this bill.

A County Board may determine the value of the land by one of two methods. A Board may employ a numerical point system and if a seller disagrees with the value determination, they may obtain an independent state-certified general real estate appraiser. The value is then calculated as the average between the numerical point system and the landowner's appraisal. The County Board may opt to retain a county assessor to determine the value of the land. If the seller disagrees with the value in this case, he may obtain an independent state-certified general real estate appraiser. The value is then calculated according to a formula delineated in the bill. The bill also details how state funds are to be disbursed among county programs and makes current county purchase of development rights programs eligible for funding.

Local governments are forbidden from enacting local laws that may unreasonably restrict agricultural production within PAL areas. Agricultural production within PAL areas is exempt from being considered a nuisance in any local law unless there is a direct relation to public health and safety. No land may be condemned without notifying the County Board.

STATUS: **S.12** *passed the Senate on March 15 and was sent to the House where the bill was referred to the Agriculture and Natural Resources Committee.*

MARINE RESOURCES ACT

The General Assembly passed **H.3617**, the South Carolina Marine Resources Act, and the legislation was signed into law by the Governor on March 29. The legislation provides for comprehensive revision and consolidation of all saltwater commercial and recreational fishing laws. Inadequate, outdated and conflicting statutes are eliminated. The major changes are as follows:

- The Department of Natural Resources retains undedicated revenues derived from the regulation of saltwater fisheries;
- Individual vessel licenses, trawler captain licenses, and the land & sell licenses are eliminated. A new individual commercial fisherman license is allowed for the sale of catch to a licensed dealer;
- Higher non-resident fees are required;
- A clear separation between commercial and non-commercial gear and their use is provided;
- The Department of Natural Resources is authorized to issue permits to shellfish growers to use the water columns to grow oysters and clams;

- The recreational limit on oysters and clams remains at two bushels of oysters and one half bushel of clams per day, but no more than two daily limits may be harvested each week;

- The Department of Natural Resources will manage shad, herring, and sturgeon fishing through regulations in each river system based on the health of the fish stocks in each river;

- The act allows the taking of shrimp over bait from private docks.

STATUS: H.3617 *was approved by the General Assembly and signed into law by the Governor on March 29 (Act 245).*

GAMBLING

GAMBLING CRUISE PROHIBITION

H.4491 addresses so-called "cruises to nowhere" in which individuals board a vessel that sails beyond the legal jurisdiction of the state in order to conduct gambling activities and then return to the state to disembark. The bill provides that the intent of the General Assembly is to reinforce long-standing prohibitions on gambling by reiterating that the gambling offenses provided under the Constitution and laws of this State extend to any vessel in this State or to any United States or foreign documented vessel where the voyages begin and end in the waters of this State, consistent with the standards specified in 15 U.S.C. 1175(B)(2)(A), commonly referred to as the Johnson Act Amendments of 1992.

The bill prohibits gambling or the repair of gambling devices on a vessel in a voyage that begins and ends within this state. The bill prohibits the operation of a vessel that transports persons to another vessel for the purpose of gambling, if both the transporting vessel and the vessel on which a gambling device is used or repaired begins and ends its voyage in South Carolina. It is also unlawful for a person to repair or use any gambling device on a vessel in this State.

The legislation does not apply to gambling on cruises where the vessel docks at a port of call in another state or possession of the United States or foreign country and remains in that port for at least six hours so as to allow passengers the opportunity to disembark the vessel for sightseeing, shopping, or other tourism-related activities at that port.

STATUS: H.4491 *was introduced in the Senate, read for the first time, and referred to the Senate Judiciary Committee on April 6, 2000.*

HEALTH / SOCIAL SERVICES

CHILD DAY CARE CENTERS RUN BY RELIGIOUS INSTITUTIONS

S.199 addresses child day care centers run by religious institutions and makes various other revisions to state laws governing the operation of child day care facilities and group day care homes. The bill subjects religious day care facilities to registration and inspection procedures and requirements for floor space, child-staff ratio, and staff training required of other day care facilities. A statement of registration must be issued to a religious day care facility upon satisfactory completion of prescribed procedures. Religious facilities must display the statement of registration conspicuously on the premises and state the registration number in all advertisements. Inspection of religious day care facilities must be conducted before registration renewal. The Department of Social Services (DSS) may not prescribe the curriculum for religious day care staff training, other than curriculum which addresses administration, child growth and development, and health and safety. DSS may not prescribe the content of curriculum activities for children that are provided in religious day care centers.

S.199 makes various other revisions pertaining to child day care centers and group day care homes. Child day care centers and group day care homes must display their license number in all advertisements; family day care homes must state their registration number in all advertisements. The bill makes various revisions to legal definitions of child day care facilities, to include, among other things, certain day camps and summer resident camps under the term "child day care facilities." The bill revises conditions for seeking an injunction against an operator of a child day care center or group day home. The bill eliminates the power of DSS to issue a declaratory order on drawings and specifications of proposed construction. Instead, the bill authorizes DSS to offer consultation on proposed construction at the request of day care operators.

STATUS: The Governor signed Act No. 220 into law on February 25, 2000.

PRESCRIPTION DRUGS FOR SENIORS

The Senate passed **S.1208**, which creates the South Carolina Seniors' Prescription Drug Program, to begin January 1, 2001, and to be administered within the State Budget and Control Board's Office of Insurance Services (OIS). This bill:

- Requires that this program offer financial assistance in purchasing prescription drugs to SC residents over sixty-five years old who are ineligible for Medicaid prescription benefits; who do not have pharmacy benefits from any other insurance program; who have an annual income that does not exceed 200% of

the federal poverty level; and who have resided in this State for at least six consecutive months before participation.

- Provides a definition of and parameters for prescription drugs that are covered under the program.

- Requires OIS to maintain data and to report semiannually to the Governor and to the General Assembly information needed to evaluate the costs and benefits of the program.

The Senate Finance Committee also included a permanent law proviso creating the Seniors' Prescription Drug Program, in its budget recommendations for 2000-2001 (**H.4775**).

STATUS: **S.1208** *passed the Senate and is pending in the House Ways and Means Committee.* **H.4775**, *the 2000-2001 General Appropriation Bill, is now pending on the Senate Calendar, where it has been ordered to third reading with Notice of General Amendments.*

HOLIDAYS / HERITAGE

CONFEDERATE BATTLE FLAG

S.1266 authorizes only the United States Flag and the South Carolina State Flag to fly atop the dome of the State House and in the chambers of the Senate and House. The bill authorizes the South Carolina Infantry Battle Flag of the Confederate States of America to be flown on the grounds of the Capitol Complex; additionally, the bill provides that this flag must be located at a point on the south side of the Confederate Soldier Monument. The Division of General Services of the Budget and Control Board is charged with replacing the above-mentioned flags as may be necessary due to wear. Provisions regarding the placement of the United States Flag, the South Carolina State Flag, and the South Carolina Infantry Battle Flag of the Confederate States of America, may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.

Under the Judiciary Committee's proposed amendment to **S.1266**, on the effective date of the bill (July 1, 2000) the Confederate Flag must be removed from atop the State House dome and from the Chambers of the Senate and House; the South Carolina Infantry Battle Flag of the Confederate States of America would be erected simultaneously with the removal of the Confederate Flag from the atop the dome. *The Judiciary Committee's proposed amendment* provides that the South Carolina Infantry Battle Flag of the Confederate States of America must be centered on the

Confederate Solider Monument, 10 feet from the base of the monument, and at a height of 20 feet. *Under the Judiciary Committee's proposed amendment*, an appropriately decorative iron fence must be erected around the flagpole to keep the flag secure. *Additionally, under the Judiciary Committee's proposed amendment,* the term "chambers" of the House or Senate does not include individual members' offices. *Under the Judiciary Committee's proposed amendment,* nothing in this bill would prohibit a private individual from wearing as a part of his or her clothing or carrying or displaying any type of flag including a Confederate flag.

Under **S.1266**, no Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials or nameplates. Provisions regarding the markers and memorials may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.

STATUS: *On May 3, 2000 the House made the bill a Special Order for Tuesday, May 9, 2000.*

STATE HOLIDAYS

S.60 establishes Martin Luther King Jr.'s Birthday and Confederate Memorial Day as regular state holidays. Under this bill, Martin Luther King Jr.'s Birthday would be observed on the third Monday in January. The bill provides for the observance of Confederate Memorial Day on May 10. The bill provides that general election day is no longer a state holiday. Also, the bill eliminates the current provision under which state employees choose from a list of optional holidays or take a day of their own choosing.

STATUS: *Signed into law by the Governor on May 1, 2000.*

INSURANCE

CAPTIVE INSURANCE COMPANIES

The House approved and sent to the Senate **H.4467** which provides for the licensure, regulation, and operation of captive insurance companies. A captive insurance company is an insurance company which exists only to insure the risks of its parent and affiliated companies. Companies rely upon captive insurers when coverage is not readily obtainable in the traditional insurance market. The legislation is offered to encourage captive insurance companies to establish themselves in South Carolina.

STATUS: **H.4467** *passed the House on April 19 and was sent to the Senate where it was referred to the Banking and Insurance Committee. On May 4, the bill was recalled from committee and placed on the calendar.*

PROTECTED CELL INSURANCE COMPANIES

The General Assembly passed **H.4442**, the Protected Cell Insurance Company Act, which was signed into law by the Governor on March 7. This act establishes a method by which a domestic insurer can create a protected "cell." A protected cell is a pool of assets and liabilities which is segregated and insulated from a company's other assets and liabilities. The legislation attempts to correct certain conditions in the insurance market place such as those which currently leave coastal residents with little or no choice when obtaining catastrophic insurance coverage. Due to the perennial threat of hurricanes on the South Carolina coast and the rash of bankruptcies resulting from the damage of Hurricane Andrew in Florida, few insurance companies are choosing to write catastrophic coverage for coastal residents. In order to protect insurers from the threat of bankruptcy, the bill allows a property and casualty company to segregate its homeowners' business within a protected cell and securitize it. Proponents of the legislation hope that this will encourage insurers to write policies which they would not now consider, thereby providing consumers with more choices when shopping for coverage.

STATUS: **H.4467** *was passed by the General Assembly and signed into law by the Governor on March 7 (Act 238).*

STATE / LOCAL GOVERNMENT

ATLANTIC INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT IMPLEMENTATION ACT

The primary function of **S.1129** is to establish South Carolina as a member of the Atlantic Low-Level Radioactive Waste Compact. The South Carolina Budget and Control Board is charged with overseeing disposal rates and importation of nonregional waste into the State. The bill outlines the maximum volume of waste that the State may accept each year. No nonregional waste may enter the State after 2008. In all matters relating to the Act, the Budget and Control Board shall participate as the party representing the interests of the State.

The first two million dollars of revenue shall be allotted to the Barnwell County Treasurer for distribution to other parties. The State Treasurer must allocate all revenue (in excess of two million dollars) to the Nuclear Waste Disposal Receipts Distribution Fund, the Children's Education Endowment Fund, the Public School Facility Assistance Fund and higher education scholarships and grants. In addition, this bill stipulates the conditions that must be met prior to South Carolina's membership in the Atlantic Compact.

In the event that either operating parties abandon their responsibilities or a facility's license is transferred to a state agency, the South Carolina Budget and Control Board is responsible for extended custody and maintenance of radioactive materials. Money from the extended care maintenance fund will cover this cost. The Budget and Control Board is relieved of certain duties pertaining to assessments, surcharges and penalty charges on nonsite waste received at the regional disposal facility. The Governor's Nuclear Advisory Council is authorized to offer advice and recommendations on matters relating to the Atlantic Compact Commission.

STATUS: *On April 25, 2000 the House adjourned debate on* **S.1129** *until May 2, 2000. On May 2, 2000 several representatives requested debate on the bill. Subsequently, on May 3 and May 4 several representatives withdrew their request for debate.*

CONFEDERATE BATTLE FLAG

(See **S.1266** under the Heritage / Holidays heading.)

INTERNET PORNOGRAPHY ON LIBRARY AND SCHOOL COMPUTERS

H.4426 provides measures to reduce the accessibility of pornographic web sites on computers that (1) can access the Internet, (2) are available for use by the public and/or students, and (3) are located in a lending library supported by public funds, a public school library or media center, or public institutions of higher learning. The bill provides that use policies for these computers shall be determined by the institution's governing board, which must adopt and enforce policies to reduce access to web sites containing material which is in violation of current obscenity statutes. Public lending libraries or media arts centers must publicly post these provisions. All applicable federal and state laws and ordinances relating to obscenity and other similar criminal law violations apply to persons who knowingly download such material from these computers. A pilot program must be established to assess the feasibility of installing Internet filtering software in libraries and institutions specified in the bill (medical schools would be exempt). The bill includes provisions and procedures for the pilot program, and requires a report to the General Assembly of findings from the pilot program by December 1, 2001.

Another bill pertaining to Internet access, S.1031 requires computers in public libraries, public school libraries, and public institutions of higher learning libraries which (1) can access the Internet and (2) are available for use by the public or students to be equipped with screening software to eliminate or reduce the accessibility of pornographic sites.

STATUS: H.4426 *passed the House on April 28, 2000.* H.4426 *was introduced in the Senate, read for the first time, and referred to the Senate Judiciary Committee on May 2, 2000. Another bill pertaining to Internet access,* S.1031 *passed the Senate on April 27, 2000.* S.1031 *was introduced in the House, read for the first time, and referred to the House Education and Public Works Committee.*

MUNICIPAL INCORPORATION AND ANNEXATION

S.226 provides that areas proposed for incorporation as a municipality must be contiguous. Contiguous property is one that is adjacent to a municipality and shares a continuous border. For the purposes of municipal annexation contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity. Areas may still be considered contiguous even if they are divided by an intervening marshland located in the tidal flow or an intervening publicly-owned waterway, whether or not the marshland located in the tidal flow or the publicly-owned waterway has been previously incorporated or annexed by

another municipality. The incorporation of a marshland located in the tidal flow or a publicly-owned waterway does not preclude the marshland located in the tidal flow or the publicly-owned waterway from subsequently being used by any other municipality to establish contiguity for purposes of incorporation if the distance from highland to highland of the area being incorporated is not greater than three-fourths of a mile.

S.226 imposes new notification and public hearing requirements on municipalities which are preparing to act on an annexation petition. The bill provides that not less than 30 days before acting on an annexation petition, the annexing municipality must give notice of a public hearing by publication in a newspaper of general circulation in the community, by posting the notice of the public hearing on the municipal bulletin board, and by written notification to the taxpayer of record of all properties within the area proposed to be annexed, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full-time. The public hearing must include a map of the proposed annexation area, a complete legal description of the proposed annexation area, a statement as to what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services. The notice must include a projected timetable for the provision or assumption of these services.

Currently, petitions for corporation should include the proposed corporate limits, the number of inhabitants therein, and must be signed by 50 qualified electors and 15% of the freeholders who reside within the proposed municipality. Under this bill, the petition must only be signed by 15% of the qualified electors who reside within the proposed municipality.

S.226 changes references in the statutes from "city or town" to "municipality." This bill eliminates the requirement that an election must be ordered to see if a certain territory should be annexed; the bill deletes statutes and references in statutes to such elections.

STATUS: *Signed into law by the Governor on May 1, 2000.*

THE PORTS AUTHORITY GOVERNING BOARD AND LABOR UNION AFFILIATION

The House of Representatives approved and sent to the Senate **H.4541** which pertains to the South Carolina Ports Authority Board and labor union affiliation. This bill provides that a person may not be appointed to or continue to serve on the governing board of the South Carolina Ports Authority who is or becomes a member, associate, representative, or employee of a labor union, if the principal activities of the union relate to ports.

STATUS: H.4541 *passed the House on March 30 and was sent to the Senate where it has been referred to the Transportation Committee.*

RETIREMENT ISSUES

Various proposals concerning retirement issues for state workers have been introduced in the General Assembly this year. The following are highlights of some of those proposals.

28 YEAR RETIREMENT, TEACHER/EMPLOYEE RETENTION INCENTIVE PROGRAM, COST-OF-LIVING ADJUSTMENTS, ETC.

The House included as a permanent provision in **H.4775**, the 2000-2001 budget bill, a plan for 28 year retirement without penalty, and the Teacher and Employee Retention Incentive (TERI) Program. The TERI Program is an incentive for experienced employees to remain in the workforce for up to five additional years after retirement. Under this option, an employee may return to work upon retirement and his or her retirement benefit will be held in an account (which does not accrue interest) until the employee stops working. This House plan also provides for a guaranteed 1% Cost of Living Adjustment (COLA) in the South Carolina Retirement System and the South Carolina Police Officers' Retirement System; an increase in retiree group life insurance benefits for both of these systems; and a provision which eliminates the practice of pro-rating the death benefit for the month in which a retiree dies.

The Senate Finance Committee also included the 28 year retirement plan, the TERI program, increased retiree group life insurance benefits for the South Carolina Retirement System and the South Carolina Police Officers' Retirement System, and a provision which eliminates the practice of pro-rating the death benefit for the month in which a retiree dies, in its version of **H.4775**. For the COLA, the Senate Finance Committee recommended a .5% increase beginning December 31, 2000, an additional .5% increase beginning December 31, 2001, and additional .5% increases after December 31, 2002, as the retirement system will absorb, up to a maximum of 3%.

The House-passed budget bill also included a permanent provision which would allow members of the General Assembly Retirement System to receive additional credited service for service in the selected reserve of the Armed Forces in the same manner additional credited services are received for National Guard Service. The Senate Finance Committee budget plan deletes that House provision and includes instead a provision that members of the General Assembly may establish service credit in the General Assembly Retirement System for the same cost and under the same conditions as members of the South Carolina Retirement System.

The full Senate passed **S.567**, which also includes the 28 year retirement plan, the TERI plan, increased retiree group life benefits for the South Carolina Retirement System and the South Carolina Police Officers Retirement System, a provision

which eliminates the practice of pro-rating the death benefit for the month in which a retiree dies, and a phased-in COLA for the South Carolina Retirement System and the South Carolina Police Officers Retirement System.

STATUS: **H.4775**, *the 2000-2001 General Appropriation Bill, passed the House and is currently being debated by the full Senate.* **S.567** *passed the Senate and is pending in the House Ways and Means Committee.*

SERVICE PURCHASE REFORM, ETC.

Several proposals have been introduced this year which would reform the South Carolina Retirement Systems (SCRS) service purchase provisions and replace them with fewer, more comprehensive provisions. Currently, the SCRS allow certain members to purchase various types of service credit toward their retirement eligibility. This privilege is not available to all members. Also, the costs to buy service vary, periods of service eligibility differ, and what is or is not a permissible purchase of service has, according to the SCRS, often been misunderstood.

S.1204 repeals many of the current service purchase provisions and replaces them with fewer, but more comprehensive provisions. The bill revises the cost to members in the service purchase program from the current 12% of salary (generally) and special buy-out provisions with rates of 42% to 58% of salary; to 16% of salary (generally) and non-qualified time at 35% of salary for one year (5 year maximum). The bill revises the types of previous service that may be purchased, from the current municipality, nonmember, out-of-state, federal, military (pre-1976), maternity leave, sabbatical leave, educational leave, and withdrawn service; to public service, military (Guard and Reserves with no cutoff date), approved leaves of absence, primary or secondary private school teaching, non-qualified service (5 year maximum), and withdrawn service.

The bill revises the current statute regarding employer contributions for service purchases. Currently, an employer contribution is required for military and nonmember service purchases. This bill provides that employer contributions are not required unless the employer elects to contribute.

The bill also revises the current statute regarding methods of payment for service purchases. Currently-allowed methods of payment include 401(k) deferral, installment loan (not available for all service types), and lump sum payments. This bill also includes the 401(k) and lump sum methods of payment, and provides that installment loans are available for *all* service types.

The bill also revises current statutes regarding service purchase restrictions. Currently, an employer must be an active contributing member of the retirement system; duplication of benefits (excluding military service) is prohibited (e.g., a member cannot purchase service if it would cause the member to receive a

retirement benefit for the same service under more than one retirement plan); and military, out-of-state, and federal service require one year of earned service for each year of service purchased. This bill provides service purchase restrictions including a requirement that the purchaser must be an active contributing member; no duplication of benefits (excludes military and non-qualified service); and a provision that a member must have at least five years of earned Retirement Systems service to purchase non-qualified service credits.

The bill provides that after an employee has 25 years with the system and separates from service, the employee may buy out the remaining years to retire.

The bill also includes increased insurance payments on behalf of a deceased retired member under the group life insurance programs for both the SC Retirement System and the SC Police Officers Retirement System.

The bill also eliminates the current recoupment provision in the month that a retiree dies so that the family of the deceased will not have to repay the prorated amount of the deceased retiree's monthly benefit.

The bill is effective January 1, 2001.

STATUS: **S.1204** *passed the Senate and was reported favorably from the House Ways and Means Committee. The bill is currently on the House contested calendar pending second reading.*

OPTIONAL RETIREMENT PROGRAM FOR TEACHERS AND SCHOOL ADMINISTRATORS

The General Assembly passed **H.4416**, which provides that teachers and school administrators first employed after June 30, 2000, shall irrevocably elect either to join the South Carolina Retirement System or to participate in the Optional Retirement Plan (ORP) within ninety days after entry into service. In the first year of the program, the participants have until December 1, 2000, to elect. Those who make no such election are presumed to have opted for participation in the South Carolina Retirement System. However, after five years in the Optional Retirement Plan, a participant may within ninety days of the five year anniversary date, opt to leave the ORP and participate in the South Carolina Retirement System. Provisions are established for administration of the optional program and the manner in which contributions are to be made to the program.

STATUS: ***H.4416*** ***(R289)*** *was signed by the Governor on May 1, 2000.*

STATE HEALTH INSURANCE

The House-passed budget plan for 2000-2001 (**H.4775**) includes a permanent law provision (Part II, Section 21) which makes the following adjustments to the State Health Plan, effective January 1, 2001:

- All employee-paid premiums are increased by five dollars a month;
- Individual deductibles in the economy and standard plans are increased by fifty dollars and family deductibles in both plans are increased by one hundred dollars;
- The co-insurance amount in the standard plan is revised from fifteen to twenty percent and revised in the economy plan from twenty to twenty-five percent;
- All other elements of the plan including, but not limited to, the fifteen hundred dollar "cap" and the elements of the prescription drug benefit must remain unchanged from the manner in which the plans operated on January 1, 2000, except that the "cap" on the prescription drug benefit is reduced from fifteen hundred dollars to one thousand dollars. Additionally, when an adjustment requires increased employee contributions or has the effect of reducing benefits, a public hearing must be held on the adjustments and no such adjustments may be made except while the General Assembly is meeting in regular session.

The Senate Finance Committee recommended a Part 1B (temporary) proviso in **H.4775** (the General Appropriation Bill) which provides that the State Health Plan is only required to seek a twenty-two day reserve fund by the end of calendar year 2001. The proviso also states that for calendar year 2001, the "cap" on the prescription drug benefit is reduced from fifteen hundred dollars to one thousand dollars.

STATUS: **H.4775**, *the 2000-2001 General Appropriation Bill, passed the House and is on the Senate calendar for Third Reading with Notice of General Amendments.*

STATE HOLIDAYS

(See **S.60** under the Heritage / Holidays heading.)

TAXATION

CONSERVATION INCENTIVES ACT

(See **H.3782** under the Environment / Natural Resources heading.)

FOOD TAX RELIEF

The House-passed 2000-2001 General Appropriation Bill (**H.4775**) includes a permanent proviso which eliminates the sales tax on food by reducing that tax one cent each year for five years. The phase-out begins January, 2001. The House appropriated $24.6 million to fund the reduction for FY 2001. Thereafter, each penny in reduced tax will reduce revenue approximately $50 million per year. This proviso was not included in the Senate Finance Committee's budget recommendations.

STATUS: *This proviso and funding passed the House as a part of* **H.4775**, *the 2000-2001 General Appropriation Bill.* **H.4775** *is now pending on the Senate Calendar, where it has been ordered to third reading with Notice of General Amendments. Several other House bills which provide a sales tax exemption for food have passed the House and are pending in Senate Finance Committee; other House and Senate-sponsored bills which provide a sales tax exemption for food are pending in House Ways and Means or Senate Finance Committee.*

PERSONAL PROPERTY TAX RELIEF

The House of Representatives passed two bills which authorize counties to eliminate personal property tax on cars, motorcycles, and other specified vehicles, and which impose an additional sales and use tax to replace revenues lost because of the exemption.

The House passed **H.4856**, a joint resolution which proposes an amendment to the State Constitution pertaining to property tax exemptions for certain vehicles. Under the joint resolution, voters at the general election would decide whether to approve an amendment to the South Carolina Constitution allowing the governing body of a county to exempt from property taxes levied in the county private passenger motor vehicles, motorcycles, general aviation aircraft, boats and boat motors. These exemptions would be allowed in a county only if they are approved in a referendum held in the county in the manner that the General Assembly provides by law.

The House also passed **H.4854**, the Personal Property Tax Exemption Sales Tax Act. This bill authorizes a county council to impose, upon approval in a county referendum, an additional sales and use tax to replace revenue lost as a result of the personal property tax exemption on private passenger motor vehicles, motorcycles, general aviation aircraft, boats and boat motors. The bill provides that the county's voters will decide in a referendum to be held at a general election, whether to approve such a sales and use tax. The sales and use tax may be imposed in increments of one-tenth of one percent, but may not exceed a rate necessary to replace revenues lost due to the personal property tax exemptions on vehicles. In no case may the sales and use tax rate exceed two percent. The bill

provides for administration and collection of the tax and for distribution of revenue from the tax.

The bill also establishes a procedure under which a county's voters may rescind the new sales and use tax imposed and return to the practice of collecting personal property taxes on motor vehicles. The bill provides that, beginning two years after a county has imposed the sales and use tax, if at least fifteen percent of the qualified voters of the county petition that this tax be eliminated, the county shall conduct a referendum on the question of rescinding the sales and use tax and replacing the revenue by extending the property tax to the previously exempted vehicles. Once a county has conducted a referendum on whether to retain the sales and use tax, no further referendum may be held on the matter for a period of two years.

STATUS: **H.4856** *and* **H.4854** *passed the House and both are pending in the Senate Finance Committee.*

SALES TAX HOLIDAY

The House of Representatives and the Senate Finance Committee both included a permanent provision in their versions of the 2000-2001 General Appropriation Bill (**H.4775**) which exempts clothing, clothing accessories, footwear, school supplies, and computers from sales tax each year during three days beginning on the first Friday in August. Both the House and the Senate Finance Committee provisions also require the Department of Revenue before July tenth of each year to publish and make available to the public and retailers a list of the articles qualifying for this exemption.

STATUS: **H.4775** *has passed the House and is on the Senate Calendar, where it has been ordered to third reading with Notice of General Amendments.*

TECHNOLOGY INTENSIVE FACILITIES INCENTIVES

(See **H.3782** under the Business/ Economic Development heading.)

TOBACCO SETTLEMENT

- The House-passed version of the General Appropriation Bill (**H.4775**) included a permanent law (Part II, Section 23) proviso establishing the Tobacco Settlement Fund as a fund separate from the General Fund into which must be deposited all revenues payable to the State under the Tobacco Master Settlement Agreement. The proviso requires that for Fiscal Year 2000-2001, $8 million of settlement revenues must be used for tobacco growers, quota holders, and warehousemen,

and the balance must be used for health-related expenditures. For fiscal years beginning after June 30, 2001, 80% of fund revenues must be used for health-related expenditures and 20% must be used for tobacco community programs, including reimbursement of tobacco growers, quota holders, and warehousemen for actual losses due to reduced quotas. Reimbursements must continue through June 30, 2012, after which any balance in this subfund for tobacco growers, quota holders, and warehousemen must be used by the Department of Commerce for economic revitalization of tobacco communities.

The House budget proviso also establishes a Joint Committee on Tobacco Settlement Fund Health Expenditures consisting of four House and four Senate members to make recommendations to the General Assembly on tobacco revenue allocations, possible securitization and the best method of appropriating this revenue. A final report with recommendations is due not later than December 31, 2000, after which the committee is abolished. Monies deposited to the General Fund from proviso 72.73 of the 1999-2000 General Appropriation Act are deemed to have been credited to the Tobacco Settlement Fund and may not be considered in the sums from which percentage calculations and allocations are made.

The Senate Finance Committee recommended deletion of this House-passed proviso.

- The House-passed budget also included a permanent law (Part II, Section 37) proviso establishing the South Carolina Tobacco Health Care Trust Fund, separate from the General Fund. The proviso directs that beginning with Fiscal Year 2001-2002, monies received from the Tobacco Settlement Fund for health care must be deposited in the Health Care Trust Fund for health-related expenditures. In addition, the proviso directs that these funds must be expended by the General Assembly as follows: 50% of new funds and 25% of the interest on that portion shall be expended on tobacco education and tobacco health care related issues and the remainder shall remain in trust.

  The Senate Finance Committee recommended deletion of this proviso.

- The Senate Finance Committee included in its budget recommendations a permanent law (Part II, Section 69) proviso establishing the Tobacco Settlement Revenue Management Authority for the purpose of securitizing the State's expected revenues from the Tobacco Master Settlement Agreement between the State and tobacco manufacturers. The proviso provides for three separate funds. The distribution of revenues in the funds would be administered by the following formula: 70% to health-related issues; 15% to economic development; and 15% to tobacco producers and quota holders for losses due to reduced quotas.

  The House did not include this proviso in its budget plan.

- The Senate Finance Committee budget recommendation also included a permanent proviso requiring development of a youth smoking prevention and cessation plan which would award grants to programs such as media campaigns, school-based youth programs, community-based youth programs, and enforcement programs. These programs would be funded with monies from the tobacco settlement.

  The House did not include this proviso in its budget plan.

STATUS: **H.4775** *has passed the House and is on the Senate Calendar, where it has been ordered to third reading with Notice of General Amendments.* **S.894** *passed the Senate and is pending in the House Ways and Means Committee.*

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