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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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No. 22

## MAJOR ISSUES FROM THE 2002 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. Major legislation is summarized here in a format that 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 31, 2002*, is a guide to, not a substitute for, the full text of the legislation summarized.

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# APPROPRIATIONS

## THE 2002-03 GENERAL APPROPRIATIONS BILL (H.4878)

Facing another difficult budget year, the General Assembly adopted a 2002-2003 spending plan under which agency reductions were decided on an individual agency basis and were in general kept to under ten percent. The General Assembly agreed on sources of additional revenue which prevented imposing deeper cuts on agencies' budgets. These sources of revenue include interest from numerous restricted funds; the Barnwell atomic waste fund; insurance reserve fund premium redirection; unrestricted taxable proceeds of the Tobacco Settlement Healthcare Trust Fund; and funds anticipated from a tax amnesty program and greater enforcement from additional revenue agents. The annualization problem has now been reduced from \$584 million (where it was when the House began working on the budget for Fiscal Year 2001-02) to \$269 million for the 2003-04 Fiscal Year.

Public education received a \$61 million increase. There was no change in the minimum salary schedule for teachers. A temporary proviso requires the State Board of Education to establish a task force to study a suggested uniform beginning date for the annual school term. The task force is to report to the State Board by January 1, 2003. (Also see "School Start Date" under the Budget Codification Bill, H.4879, summarized in the final category of this document.) New provisos exempt LIFE Scholarships, Need-based grants, Palmetto Fellows Scholarships, and Tuition Grants from any mid-year budget reductions for 2002-03.

Medicaid is funded at a level where Medicaid programs will not be reduced. \$23.2 million is appropriated for SilverCard Plus, the senior prescription drug program. A temporary proviso directs the Commission for the Blind and the Vocational Rehabilitation Department to identify opportunities to better coordinate and refer eligible clients for services available from either agency. The two agencies are to report to the Chairs of the House Ways and Means Committee and the Senate Finance Committee by December 2002 on their progress towards improving client access to all services for which they are eligible. State employees received no pay increase.

*STATUS: H.4878 was approved by the General Assembly, ratified (R.373), and sent to the Governor. On May 29, the Governor returned his vetoes on the bill. These vetoes include, but are not limited to: Provisos which establish the Joint Committee on Medicaid; \$2,556,675 funding for House Operating Expenses (vetoed because it included \$150,000 in funding for the Joint Committee on Medicaid); \$1,920,848 funding for Senate Operating Expenses (vetoed because it included \$150,000 in funding for the Joint Committee on Medicaid); Proviso authorizing the legislature to carry-forward unexpended funds; Proviso exempting the General Assembly from any provision which requires the approval of the Budget and Control Board or any other executive branch agency for the expenditure, management, or transfer of any authorized appropriations.*

## **STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT (S.1200)**

This bill increases from five percent to five and one-half percent of the general revenues of the State for the fiscal year next preceding (with specified exclusions), the limitation on general obligation debt imposed by the State Constitution. The additional debt service capacity available at any time as a consequence of the increase is available only for the repayment of general obligation bonds issued to provide infrastructure for economic development within the State.

*STATUS: S.1200 has been approved by the House and Senate and has been signed by the Governor.*

## **PORT EXPANSION (S.926)**

This joint resolution, approved by both the House and the Senate, requires the State Ports Authority to begin environmental impact studies and other required actions in regard to the permitting process to locate new terminal facilities on the west bank of the Cooper River at locations it determines appropriate and with a capacity in conformance with available land at the proposed location or locations. The resolution provides that if the locations identified are on real property not owned by the State Ports Authority (the Authority), the Authority is authorized to begin the process of acquiring such property. The resolution requires that upon completion of the permitting process, the Authority shall report to the General Assembly concerning the new terminal facilities, including a request for any state funding necessary to complete the projects and the form such funding is requested to take. The resolution requires that the Authority provide the General Assembly with a summary of criteria developed for use in delineating the needs, requirements, and specifications of port expansion. The resolution provides that the permit application may not exclude or prejudice unreasonably the acceptance of any site. The resolution directs appropriate state agencies to explore opportunities for federal funding of the infrastructure enhancements for port expansion on the western side of the Cooper River. The resolution also provides that the State Budget and Control Board shall take appropriate steps to provide indemnification from personal liability to the Authority board members related to their service in regard to funding provided to the South Carolina Transportation Infrastructure Bank for the Cooper River Bridge.

*STATUS: S.926 was approved by both the House and the Senate and has been signed by the Governor.*

## **RESEARCH CENTERS OF ECONOMIC EXCELLENCE (H.4879)** *(See summary of H.4879 under final section of this document)*

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**Penalty Enhancements:** Both the House and Senate versions eliminate the \$500 cap on civil penalties for failure to file disclosure reports. Currently, a person who violates this provision must pay a mandatory \$100 penalty if the report is not filed within 5 days of due date plus \$10 per day after notice is sent to the delinquent filer but only up to a \$500 cap. Both the House and Senate versions create a new penalty for campaign practice violations and certain reporting violations. The legislation adds a fine of up to 500% of the amount of contributions and anything of value that should have been reported to the current law which provides for a penalty of not less than \$5,000, or imprisonment for not more than 1 year, or both.

**State Ethics Commission Requests:** Both House and Senate versions provide for several technical changes to the Ethics Act, most of which have been requested by the State Ethics Commission. The Senate version adds provisions relative to the State Ethics Commission and the House and Senate Ethics Committees relating to the moratorium on filing a complaint during the fifty-day period before an election. The amendment allows a person to petition the court of common pleas during this period alleging the violations complained of and praying for appropriate relief by way of a mandamus or injunction. Sanctions are provided for those who file frivolous lawsuits.

**Contribution Limits:** Current law provides contribution limits of \$3,500 for statewide office and \$1,000 for any other office. The Senate version provides that within an election cycle, a statewide candidate or committee may not accept contributions over five thousand dollars and non-statewide candidates may not accept contributions of two thousand five hundred dollars (\$2,500). Current law provides a candidate may not accept contributions from political parties in excess of \$50,000 for statewide office and \$5,000 for any other office. The Senate version provides that a candidate may not accept contributions from political parties in excess of \$100,000 for statewide office or \$50,000 for non-statewide office. The House version does not revise either contribution limit.

**Reporting Campaign Contributions:** Current law requires candidates or committees to maintain a list during the period before an election commencing at the beginning of the calendar quarter of the election of all contributions of more than \$100. The Senate version revises this requirement to provide the list must include all contributions and expenditures, including those less than \$100. The House version does revise the requirement.

**Multi-candidate Expenditures:** Current law provides party expenditures for multi-candidate promotions for four or more candidates where each candidate receives substantially equal treatment are not included in the contribution limits section of the Ethics Act. These expenditures are limited to the operation of phone banks, preparation, mailing and distribution of campaign materials, and voter registration or ballot information. The Senate version eliminates this exemption entirely, thus making multi-candidate expenditures subject to contribution limitations. The House version does not revise the current provisions.

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unlawful acts and other activities; (2) provide conditions under which an out-of-court statement made by a child victim to a third party is admissible in a general sessions court proceeding or a delinquency proceeding in a family court; and (3) enact the revisions to the investigation and record-keeping of child abuse and neglect allegations that the Senate has passed in S.1208, Stephanie's Law (see the summary below).

*STATUS: H.5048 passed the House on May 1, 2002. On May 28, the Senate returned the bill to the House where it has been sent to the Judiciary Committee.*

### **CHILD ABUSE AND NEGLECT REPORTS, STEPHANIE'S LAW (S.1208)**

On May 31, the House returned S.1208, Stephanie's Law, to the Senate with amendments. This bill establishes more rigorous reporting and record keeping guidelines for child abuse and neglect cases in South Carolina. This bill provides that when the Department of Social Services receives a report of suspected child abuse or neglect, DSS must determine whether previous reports have been made regarding the same child or the same subject of the report. The bill further provides that if DSS does not conduct an investigation as a result of information received, DSS must make a record of the report and allow that information to be used by it and law enforcement for purposes of assessing risk and safety if additional contacts are made concerning the child, the family, or the subject of the report.

This bill also requires that DSS retain records of all reports and place each report in a specified category (suspected, indicated, or unfounded) based on the department investigation. The bill provides that reports that are classified as unfounded must be retained by DSS for up to five years. Once these records are classified, the bill limits access to them and specifically removes them from Freedom of Information Act inquiry. The bill also ends the practice of purging certain records from the central registry, allowing Department access to all reports at all times.

The bill precludes the registry from containing any report that the Department classifies as unfounded.

*STATUS: S.1208 passed the Senate on April 18, 2002. On May 31, the House returned the bill to the Senate with amendment.*

### **DOMESTIC VIOLENCE PREVENTION ACT (H.3056)**

The House approved H.3056, the Domestic Violence Prevention Act, and sent the bill to the Senate where it has been reported out of the Judiciary Committee, favorable with amendment. The legislation provides for various penalty enhancements and revisions for domestic violence offenses.

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When a person reports a criminal domestic violence violation at a later time and law enforcement was not notified at the time the alleged violation occurred, law enforcement must complete an investigation of the allegations. A charge may be brought only by presenting the results of the investigation conducted by law enforcement and any other evidence for review by a judge who may issue an arrest warrant upon a showing of probable cause.

A person may not be considered for pre-trial intervention if he is charged with a criminal domestic violence offense if the offender has been previously convicted of a criminal domestic violence violation or a similar offense in another jurisdiction.

The Committee amended the definition of "household member" under criminal domestic violence and protection from domestic abuse provisions so as to eliminate from the definition persons related by consanguinity or affinity within the second degree.

The bill provides that following a first offense conviction as a youthful offender the defendant may apply to have his record expunged after 15 years.

The bill also includes the provisions of H.4989 which provides for procedures for South Carolina Court Administration to receive notice of a solicitor's intent to seek the death penalty and procedures for maintaining records and statistics regarding death penalty cases.

*STATUS: H.3056 passed the House on May 2, 2002, and was sent to the Senate where it was reported out of the Judiciary Committee, favorable with amendment, on May 22.*

## **CONSERVATION/ HISTORIC PRESERVATION**

### **Conservation Bank Act (S.297)**

The General Assembly passed S.297, the South Carolina Conservation Bank Act, and the Governor signed the bill into law on April 10. The legislation establishes the South Carolina Conservation Bank as an ongoing funding source governed by a twelve-member board and created to acquire interests in real property from willing sellers in order to protect wildlife habitats, forestlands, farmlands, open space, parks, historical sites, and healthy streams, rivers, bays, and estuaries. Areas are to be conserved for recreational purposes, scientific study, aesthetic appreciation, the protection of critical water resources, the maintenance of the State's position as an attractive location for visitors and new industry, and the preservation of the

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apply for and receive additional funding for the trust fund from federal, private, and other sources, to be used as provided; (4) receive charitable contributions and donations to the trust fund, to be used as provided; and (5) receive contributions to the trust fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation, whether such obligation arises out of law, equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided; (6) exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next. Funds within the trust fund shall be invested or deposited into interest-bearing instruments or accounts, with the interest accruing and credited to the fund.

An eligible trust fund recipient may apply for a grant or loan from the trust fund to acquire a specific interest in land identified in its application. An application must not be submitted to the board without the written consent of the owner of the interest in land identified in the application. Contiguous landowners and other interested parties may submit in writing to the board their views in support of or in opposition to the application. The board must hold a public hearing on the application at which the eligible trust fund recipient, contiguous landowners, and other interested parties shall be heard. Interested parties include representatives of the municipality, county, and public or private utilities in the area wherein the property is located. The board shall conduct a public hearing on an application before awarding a grant or loan pursuant to the application.

Before applying for trust funds for the purchase of an interest in land, the eligible trust fund recipient receiving the funds must notify the owner of the land that is the subject of the trust fund grant or loan of the following in writing: (1) that interests in land purchased with trust funds result in a permanent conveyance of such interests in land from the landowner to the eligible trust fund recipient or its assigns; and (2) that it may be in the landowner's interest to retain independent legal counsel, appraisals, and other professional advice.

The board shall evaluate each proposal according to conservation criteria listed in the bill, financial criteria listed in the bill, and the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities and other forms of public access. The board shall award grants or loans on the basis of how well proposals meet these three criteria.

The bill specifies the information that must be supplied by applicant for a grant or loan. Under the bill, an applicant is required to demonstrate that it is able to complete the project, indicate the total number of acres and describe the lands it has preserved in the State.

The board only may authorize grants or loans to purchase interests in lands at fair market value. In no cases may funds from the trust fund be used to acquire interests in lands at a price that exceeds the fair market value of the interest being acquired. However, trust funds may be used to acquire interests in land at below

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operate as if it were not repealed until the South Carolina Conservation Bank Trust Fund is exhausted or July 1, 2016, whichever first occurs. Any balance in that trust fund on July 1, 2016, reverts to the general fund of the State.

*STATUS: S.297 passed the General Assembly and was signed into law by the Governor on April 10, 2002 (Act 200).*

## **HISTORIC REHABILITATION INCENTIVES ACT (H.3163)**

The General Assembly passed H.3163, the South Carolina Historic Rehabilitation Incentives Act, and the legislation was signed into law by the Governor on May 1. The legislation provides state income tax credits for certain expenditures incurred in the rehabilitation of certified historic structures located in this State. The legislation provides a state income tax credit equal to ten percent of rehabilitation expenses incurred for a taxpayer who is eligible for the federal income tax credit allowed for the rehabilitation of historic structures for profit-making ventures. For taxpayers who do not qualify for the federal income tax credit and who are rehabilitating a certified historic residential structure, the legislation provides a state income tax credit equal to twenty-five percent of rehabilitation expenses incurred.

*STATUS: The General Assembly passed H.3163 and the bill was signed into law by the Governor on May 1, 2002 (Act 229).*

# **THE COURTS**

## **LEGAL NAME CHANGES (H.3906)**

This bill sets out new procedures for obtaining a legal name change in the family court. The purpose of this bill is to ensure that the court is aware of the criminal history of a petitioner before a name change is granted; and that if a petition for a name change is granted and the petitioner does have a criminal background, that the proper agencies are notified of the name change. This bill does exempt from the legal name change requirements persons who are seeking to change their name as a result of the person's marriage or divorce, or when a parent is seeking a name change for a minor child.

This bill includes the following new requirements for petitioners and the clerks of court for obtaining a legal name change: (1) requires that a petitioner include the results of a fingerprint check in addition to a criminal background check; (2) requires the petitioner to provide an affidavit to the court to affirm whether he/she is under a court order to pay child support or alimony; (3) adds that the petitioner must provide with his/her petition for a name change a screening statement from SLED indicating whether he/she was on the sex offender registry. If the petitioner

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listed crimes cannot serve as a guardian ad litem. A guardian ad litem must show compliance with requirements by submission of an affidavit.

The legislation establishes the responsibilities and duties of the guardian ad litem. These responsibilities include, but are not limited to, representing the best interests of the child and conducting an investigation to determine the relevant facts of the case. The GAL is required to meet with and observe the child on at least one occasion, visit the home settings if deemed appropriate, interview the parents, caregivers, and others with knowledge relevant to the case, obtain the criminal history of each party if necessary, and consider the wishes of the child if appropriate. The GAL is responsible for advocating for the child's best interests, attending all court hearings unless excused by the court, maintaining a complete file, and presenting to the court and all parties clear and comprehensive written reports including a final written report regarding the child's best interest. Further, the GAL has access to the child's school records and medical records and the GAL may petition the family court for the medical records of the parties. The final written report of the GAL must be submitted to the court no later than twenty days prior to the merits hearing unless modified by the court. A GAL must not be compensated for reviewing documents or attending court hearings not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian ad litem may submit briefs, memoranda, affidavits or other documents on behalf of the child and may submit affidavits at the temporary hearing. The GAL must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, this does not prohibit a GAL from participating in a mediation or a settlement conference with the consent of the parties.

The legislation provides that the family court judge will set the method and rate of compensation for the guardian ad litem including an initial authorization of a fee. If the GAL determines it is necessary to exceed the fee initially authorized, the guardian must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more. In determining the reasonableness of fees and costs, the court must take into account the complexity of the issues, the contentiousness of the litigation, the time expended, the expenses reasonably incurred, the financial ability of the parties to pay fees and costs, and any other factors the court considers necessary. This section also requires the guardian ad litem to submit itemized bills, as fees and costs accrue, to the parties and their attorneys pursuant to a schedule as directed by the court. A party may petition to have the Court review all fees at any time during the action.

The legislation provides that a guardian ad litem must provide written disclosure to each party of the following: (1) the nature, duration and extent of any relationship the GAL or any member of the GAL's immediate family residing in the guardian's household has with any party; (2) any interest adverse to any party or attorney

## TRUTH IN SENTENCING (H.3141)

In 1996, Truth in Sentencing for those convicted of offenses with maximum penalties of 20 years or more went into effect. This legislation eliminated parole for these offenders and required them to serve at least 85% of their sentences.

Most of these offenses are classified as violent crimes. However, some crimes classified as violent do not fall under Truth in Sentencing. They include Second Degree Burglary; First Offense Trafficking in Marijuana, 10-100 lbs; First Offense Trafficking in Cocaine, 10-28 grams; First Offense Trafficking in Methaqualone, 15-150 grams; First Offense Trafficking in LSD, 100-499 dose units; First Offense Trafficking in Fluinrazepam (Date Rape Drug), 1-100 grams; and First Offense Trafficking in Ice, Crank, or Crack Cocaine. Other serious offenses that do not fall under Truth in Sentencing include Lewd Act upon a Minor, which is a Class D, 15-year Felony and Embezzlement of Public Funds over \$5,000, which is a Class E, 10-year Felony.

The House version of this bill extends Truth in Sentencing provisions to all crimes in South Carolina. All offenders would be required to serve at least 85% of their sentences and would serve 100% if they do not earn work, education, or good time credits. Parole would be abolished for all offenders who commit crimes after the effective date of the act. The Senate version of this bill would apply the provisions of Truth in Sentencing to one more class of felonies to include Class D felonies and those offenses exempt from classification with maximum penalties of fifteen years or more. The Senate version would also apply the provisions of Truth in Sentencing to the offenses of Assault and Battery of a High and Aggravated Nature, Criminal Domestic Violence of a High and Aggravated Nature, and Criminal Sexual Conduct in the third degree.

Both versions of this bill amend current law to correct an unusual provision relating to the operation of the Community Supervision Program. Under current law, when an offender who is subject to Truth in Sentencing is sentenced and eventually released from prison, the offender is released under the Community Supervision Program. If the offender violates one of the program's conditions and is sent back to prison, he can be sent to prison on the violation for up to one year. The current law then provides that the offender will be re-released back into the Community Supervision Program and if he violates again he can be returned back to prison for up to another year. The offender can cycle through this process for up to twice his original sentence. This bill was modified to provide that the court may *not* impose a period of incarceration for a violation of the Community Supervision Program that exceeds the length of time remaining on the original sentence.

The Senate version of the bill added a provision regarding racial profiling which would expire July 1, 2006. Additionally, the Senate version of the bill would

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possess a baccalaureate or graduate degree in the subject he or she is hired to teach.

The legislation also provides that a charter school may hire in its discretion administrative staff to oversee daily operation of the school, and at least one of the administrative staff must be certified in the field of school administration.

▪ **Racial Composition**

The legislation includes a requirement that the racial composition of the charter school enrollment reflect that of the school district or that of the targeted student population which the charter school proposes to serve, as differing by no more than twenty percent.

▪ **Percent Preference for Charter Committee Children**

The legislation provides that children of the charter committee may be given enrollment priority so long as their enrollment does not constitute more than twenty percent of the enrollment of the charter school.

▪ **Interscholastic Participation**

The legislation adds a provision to the law that the charter contract may include participation in agreed upon interscholastic activities at a designated school within the sponsor district. The legislation further provides that students participating under this agreement shall be considered eligible to participate in league events if all other eligibility requirements are met.

▪ **Enrollment Assurance**

The legislation revises the current requirement that the charter school application must include a description of how the charter school plans to ensure that the enrollment of the school is similar to the racial composition of the school district, by providing that the charter school application must include a description of how the school plans to ensure that the enrollment is similar to the racial composition of the school district or the targeted student population the charter school proposes to serve and provide assurance that the school does not conflict with any school district desegregation plan or order in effect.

▪ **Consideration of Applicant's or School's Efforts to Obtain Racial Composition Percentage**

The legislation provides that in the event that the racial composition of an applicant's or charter school's enrollment differs from the enrollment of the local school district or the targeted student population by more than

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legislation further provides that if the twenty percent out-of-district enrollment is from one school district, then the sending district must concur with any additional students transferring from that district to attend the charter school. The charter school to which the child is transferring shall be eligible for state and federal funding.

▪ **Surplus Buildings**

The legislation includes a provision 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.

**AMENDMENTS APPROVED BY THE HOUSE TO DATE:**

- Delete the current statutory provision that charter school enrollment may not differ from the racial composition of the school district by more than ten percent;
- Clarify that the charter school applicant is not required to provide a list of prospective or tentatively enrolled students or prospective employees with the application;
- Establish a **Charter School Advisory Committee** to review charter applications for compliance with established standards that reflect the requirements and intent of the chapter;
- Advisory committee made up of eleven members:
  - 2 from SC Association of Public Charter Schools
  - 1 from SC Association of School Administrators
  - 2 from SC Chamber of Commerce
  - 1 from SC Education Oversight Committee
  - 1 from SC Commission on Higher Education
  - 1 from SC School Boards Association
  - 1 from SC Alliance of Black Educators
  - 1 teacher appointed by State Superintendent of Education
  - 1 parent appointed by State Superintendent of Education
- Advisory committee will have two *ex-officio* nonvoting members to represent the local school board of trustees and the charter committee of the affected school district.
- Advisory committee will:
  - give consideration to the appointment of minorities and women as representatives on the committee,
  - convene on or before July 1, 2002, at the call of the State Superintendent of Education,

# HEALTH

## CRIMINAL RECORD CHECKS OF DIRECT CARE STAFF (H.3145)

The General Assembly approved H.3145, which prohibits "direct care entities" (defined as nursing homes, home health agencies, adult daycare facilities, and community residential facilities) from employing or contracting with a direct caregiver until after the direct caregiver has undergone a criminal record check as provided in the bill. A "direct caregiver" is defined as a registered nurse, licensed practical nurse, or certified nurse assistant; any other licensed professional employed by or contracting with a direct care entity who provides direct care of services to patients or clients-including but not limited to, a physical, speech, occupational, or respiratory care therapist; a person who is not licensed but provides physical assistance or care to persons served by a direct care entity; a person employed by or under contract with a direct care entity who works within any building housing patients or clients; a person employed by or under contract with a direct care entity whose duties include the possibility of patient or client contact; or a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.

Pending the results of the record check, a person temporarily may be employed or may contract as a direct caregiver with a direct care entity. Also, the bill allows a direct care entity to consider information revealed by a criminal record check as a factor in evaluating a direct caregiver's application to be employed by or contract with the entity.

The bill requires a direct caregiver applicant to provide verification of residency for the twelve months preceding the date of the employment application and the bill includes provisions for record checks on applicants who verify South Carolina residency during that period, and for applicants who are unable to verify South Carolina residency during that period. The bill specifies who may conduct these criminal record checks and provides for an applicant's fingerprints to be submitted with the application.

The bill provides that the criminal record check is not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity. However, if a person is not employed by or is not under contract for one year or longer with a direct care entity, the record check must be repeated before employment or a contract is renewed with a direct care entity. Any FBI fees for the fingerprint review must be paid by the individual direct caregiver or the direct care entity. The bill provides for a direct care entity furnishing copies of personnel records of direct caregivers to another direct care entity and provides immunity from liability for release of this information. A direct care entity receiving such records is required to conduct its own criminal record check.

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The bill provides that a person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction: (1) in cases resulting in the death of another person, must be punished by death or by imprisonment for life; or (2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty-five years nor more than life.

The bill updates existing law on computer crimes and gives the State Grand Jury jurisdiction over computer crimes and terrorist acts.

The legislation affords the Governor the authority to declare a state of emergency for a public health emergency.

The legislation establishes the Emergency Health Powers Act which extends broad authority to the Department of Health and Human Services in the event of a public health emergency to respond to such emergency through procedures for vaccinations and quarantines of those people who refuse vaccination.

The legislation establishes provisions for the reporting of unusual illnesses by coroners, health care providers, and pharmacists. Similar provisions are applied to veterinarians and farmers to track any effects of biological terrorism on animal populations or crops.

In instances of looting during a state of emergency declared by the Governor, the legislation requires restitution for victims.

The legislation establishes penalties for charging unconscionable prices (price-gouging) during a declared state of emergency or disaster. Penalties are established for knowingly and wilfully using a misleading practice or device to solicit the contribution or sale of goods or services for charitable purposes in connection with a declared state of emergency or disaster.

The legislation exempts security plans from Freedom of Information Act requirements although the costs expended to implement those plans would be subject to the provisions of FOIA. An FOIA exemption is provided for information relating to structural bridge plans.

The legislation creates the First Responders Advisory Committee. The authority and responsibilities of the committee are to research, study, analyze, determine, and report to the General Assembly by January 1, 2003, and thereafter to the President Pro Tempore of the Senate and the Speaker of the House concerning the needs of the first responders, including personnel involved with fire, law enforcement, emergency medical, emergency planning and coordinating, and 911 and other emergency communications. The issues to be studied with regard to first responders include, but are not limited to: (1) performance of their duties, rendering of their services to the public in general, and to the individuals involved in an emergency, including the other first responders involved; (2) preparing for the

## RESTRICTED FERTILIZERS (H.4944)

The General Assembly approved H.4944. This bill codifies a definition for "restricted fertilizer," which is a commercial fertilizer having a potential explosive capacity that is determined to present an unreasonable threat to public safety. The stated intent of the bill is to provide and allow for monitoring of the distribution of restricted fertilizers in this State and to encourage distributors to sell restricted fertilizers only to persons known to use such fertilizer for farm or garden purposes. The bill provides for fertilizer distribution permits, distinguishing between general and restricted fertilizer permits. A general permit authorizes the permit holder to engage in the distribution of commercial fertilizers except those determined to be restricted fertilizers. A restricted fertilizer permit authorizes the permit holder to engage in the distribution of all commercial fertilizers, including those that are designated as restricted fertilizers. The bill also provides that:

- A restricted fertilizer permit holder may refuse to sell to persons attempting to purchase restricted fertilizers out of season, in unusual quantities, or under suspect purchase patterns;
- A restricted fertilizer permit holder must record specified identification information on purchasers and maintain same for at least two years;
- Annual restricted fertilizer permit fee is \$250; no fee is charged for general fertilizer permit;
- For homeland security purposes, identifying information relating to the holder of a general or restricted fertilizer permit is exempt from disclosure under the Freedom of Information Act; Violation of these provisions is a misdemeanor and the bill provides penalties for conviction.
- No established agricultural facility or operation is or may become a private or public nuisance by any changed conditions in or about the locality of the facility or operation unless the nuisance results from the negligent, improper, or illegal operation of an agricultural facility or operation;
- Clemson University, in conjunction with the Department of Health and Environmental Control, shall create a training and certification program for owners or operators of certain animal facilities (as defined in a specified Regulation) which must include, but is not limited to, understanding relevant regulations, issues, standards, principles, and practices regarding siting and management of an animal facility and land application of animal waste; controlling vectors, testing for toxic metals, organic materials, and other elements; and implementing emergency procedures and spill prevention protocols;
- An operator of an animal facility and waste utilization area must be trained and certified according to DHEC Regulations on the operation of animal waste management under the above-described program;

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legislation provides that the Department of Public Safety shall convene a working group with a membership as specified in the bill for the purpose of facilitating the implementation of the program, assisting in development of regulations, and coordinating a testing phase, and necessary changes identified in this testing phase, as prescribed by the working group. The Motor Vehicles Division in the Department of Public Safety shall develop, in a manner prescribed by the department, a system to allow the transmission of data from insurance companies to the division. The department, with input from the Department of Insurance, shall promulgate regulations for administering and enforcing this provision. The regulations shall specify the requirements that are necessary and appropriate for commercial lines of insurance which shall be developed with input by the Department of Insurance. The division, for a fee prescribed and promulgated by regulation, shall make available to insurers by subscription a monthly electronic list of newly-licensed drivers. This list must not be used for marketing, solicitation, or another purpose not specifically enumerated. It may only be used to provide an additional method to reduce the uninsured motorist population. This monthly list of newly-licensed drivers must show the: name and gender of the driver, address, date of birth, South Carolina driver's license number, and, if available, insurance information provided in the liability certification portion of the application for a driver's license. This information may be used for: (1) determining if a newly-licensed driver is insured; (2) assigning a newly-licensed driver to the proper automobile insurance policy for rating purposes; and (3) ordering a motor vehicle report on a newly-licensed driver.

If the database indicates that a motor vehicle is not insured or if the division receives notification as prescribed by regulation that a vehicle may not be insured, the division shall notify the owner of the motor vehicle that he has forty-five days to provide the division with one of the following, or the owner's license plates will be subject to suspension: (1) proof of complying coverage or of self-insurance; or (2) proof of exemption from the financial security requirements. The bill authorizes disclosure, for a fee, of an individual's reported database information upon request by specified individuals and agencies, only. Funds collected from fees shall be placed by the Comptroller General into a special restricted account to be used by the department to defray expenses of the division.

*STATUS: Having passed both the House and Senate, the bill has been ratified (R415).*

## **LOTTERY/GAMBLING**

**APPROPRIATION OF EDUCATION LOTTERY REVENUE (H.4879)**  
*(See H.4879 under final section of this document.)*

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person's control or influence, upon an agreement or understanding that he or another person will receive something of value in the event of a certain outcome. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The bill provides that it is unlawful for a person in this State or at any location within the jurisdiction of this State knowingly to own, keep, operate, manage, or maintain a device or location of any kind that is used for gambling. The legislation provides an exemption for cruises where any gambling that occurs aboard the vessel occurs only outside the jurisdictional waters of this State and the vessel makes an intervening stop. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than one year. The legislation does not apply to State Lottery activities.

*STATUS: H.4476 passed the House on February 28, 2002, and was sent to the Senate where it was referred to the Judiciary Committee.*

## MOTOR VEHICLES

### DRIVER'S LICENSE AND CHILD TRANSPORTATION REVISIONS (H.3933)

The General Assembly approved H.3933, a bill revising beginner's permits, provisional licenses, special restricted driver's licenses, and driver's training and restricting the transportation of children in the open bed or open cargo area of a pickup truck or trailer.

The bill provides revisions for the beginner's permit that may be issued to individuals at least fifteen years of age. The legislation provides that a beginner's permit is valid in the operation of vehicles between six a.m. and midnight, rather than "during the daylight hours," as is currently provided. A permittee may not drive between midnight and six o'clock a.m. unless accompanied by the permittee's licensed parent or guardian. The bill provides that a beginner's permit is valid in the operation of certain scooters and cycles between six a.m. and six p.m., except that beginning on the day that daylight savings time goes into effect through the day that daylight saving time ends, the permittee may operate these certain scooters and cycles between six a.m. and eight p.m. The bill provides that a permittee may not operate a motorcycle, motor scooter, or light motor-driven cycle at any other time unless supervised by the permittee's motorcycle licensed parent or guardian. The bill also increases from ninety days to one hundred eighty days the period which a person must hold a beginner's permit before being eligible for full licensure.

The legislation provides for revisions to the conditional (currently known as "provisional") driver's license issued to eligible individuals that are at least fifteen

## SPECIAL LICENSE PLATES

This year, the General Assembly approved various bills creating special license plates. Of special note are H.4652, which creates and provides for "In God We Trust" and "United We Stand" special plates; and H.4432, which creates and provides for "God Bless America" special plates.

H.4652 provides that the fee for the "In God We Trust" plate will be the regular motor vehicle license fee. Before the Department of Public Safety produces and distributes this plate, the bill requires that the Department receive at least four hundred prepaid applications for the plate, or a deposit from an individual or organization of four thousand dollars. This deposit is refundable once an equivalent number of license plate fees is collected for that organization's plate. The bill also requires that before production and distribution of the plate, the Department must receive and approve a plan for marketing the plate. Also, the bill provides that if the Department receives less than three hundred biennial applications and renewals for a particular special license plate, it may not produce additional special license plates in that series. The bill provides that the fee for the special "United We Stand" plate will be \$25 every two years in addition to the regular motor vehicle license fee. Funds from the fee for this plate will be distributed to the national "Rewards for Justice" fund which was created to establish rewards for the capture of terrorists. The bill also includes the same requirements for prepaid applications or deposit and for refund of deposit as are provided for the "In God We Trust" plate.

The General Assembly also approved H.4432, which creates and provides for "God Bless America" special license plates. These plates may be produced and distributed after the Department of Public Safety receives at least four hundred prepaid applications for the plate, or a deposit of four thousand dollars from the individual or organization seeking issuance of the plate. The deposit would be refundable once an equivalent amount of license plate fees is collected for that special plate, or would be retained by the Department if the equivalent amount is not collected within four years. The bill requires that the Department must approve a plan to market the plates, and if the Department receives less than three hundred biennial applications and renewals for this special plate, it shall not produce additional special license plates in that series. The fee for this special plate is the regular motor vehicle license fee and a special license fee of sixteen dollars. These funds would be distributed to the Department to defray the DMV's expenses of producing and administering the plates, and remaining funds must be designated for use by the South Carolina National Guard for homeland security.

*STATUS: H.4652 (Act 236) and H.4432 (Act 218) were both approved by the House and the Senate and both bills have been signed by the Governor.*

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signature, biometric identifiers, and any credit record(s) or report(s). 'Personal information' does not mean information about boating accidents vehicular accidents, driving violations, boating violations, or driver status. In collecting personal information as authorized, a government entity must advise citizens that the information is subject to public scrutiny or release.

The legislation provides that a person or private entity shall not knowingly obtain or use any personal information obtained from a public body for commercial solicitation directed to any person in this State. A person knowingly violating this provision is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both. Every public body shall notify all requestors of records of the prohibition on the use of personal information obtained from public records for commercial solicitation. All state agencies shall take reasonable measures to ensure that personal information obtained from a public record is not used for commercial solicitation.

S.204 also revises the procedure for blood samples taken from the state's infants for Department of Health and Environmental Control neonatal testing to detect inborn metabolic errors and hemoglobinopathies. The legislation allows parents objecting to the tests to opt out using forms promulgated by DHEC. The bill provides that such a blood sample is confidential and may be released only as the parent or legal guardian of the child from whom a blood sample was obtained, or the child when eighteen years of age or older, directs the department at the time of testing or at any time after that on a form promulgated in regulation by the department. The legislation provides for the conditions under which the blood samples are to be stored and maintained. At the time of testing or at any time after that, on a form promulgated in regulation by the department, the parent or legal guardian of the child from whom a blood sample was obtained, or the child when eighteen years of age or older, may direct the department to: (a) return a blood sample in its entirety and any test results not less than two years after the date of testing; (b) destroy a blood sample in a scientifically acceptable manner not less than two years after the date of the testing; or (c) store a blood sample at minus 20° centigrade but not release the blood sample for confidential, anonymous scientific study. A blood sample released for confidential, anonymous study must not contain information that may be used to determine the identity of the donor. A blood sample released may contain demographic or other statistical information. If scientific study identifies genetic information that may benefit the child, the department may notify confidentially the parent or legal guardian, or the child if eighteen years of age or older, of this information. Blood samples taken prior to the effective date of the act that have not been stored under the conditions prescribed in the legislation must be properly destroyed. The legislation revises penalties for violations, specifying that fines may not exceed fifty thousand dollars and imprisonment not more than three years.

*STATUS: S.204 passed the General Assembly and was signed into law by the Governor on May 1, 2002 (Act 225).*

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The Senate Judiciary Committee has reported out a version of the legislation that does not include the restrictions imposed in the bill as passed by the House. Instead, the version approved by the Senate Judiciary Committee creates a thirteen-member study committee to determine the manner in which the State of South Carolina should regulate government-owned telecommunications service providers offering telecommunication services to the public. The legislation provides for the composition of the study committee and requires the committee to issue its report to the Governor and the General Assembly no later than March 1, 2003. This version of the legislation also provides that, beginning on the effective date of the legislation and continuing until December 31, 2003, a moratorium is imposed on government-owned telecommunication service providers providing telecommunication services to the public for hire. This moratorium also prohibits any government-owned telecommunication service provider from entering into contracts for the provisions of telecommunication services to the public for hire beyond December 31, 2003.

*STATUS: H.4956 passed the House on April 25, 2002, and was sent to the Senate where it was reported out of the Judiciary Committee favorable with amendment on May 15. Additionally, on May 30, the House returned S.290 to the Senate amended to contain House provisions regarding government-owned telecommunications service providers.*

## **PUBLIC SERVICE COMMISSION REVISIONS**

On May 29 of this year, the Senate returned H.3144, the campaign finance bill, to the House amended to include revisions to the Public Service Commission, the body elected by the General Assembly and charged with regulating the State's public utilities. The legislation establishes new qualifications for Public Service Commission candidates. For any election for a term beginning after June 30, 2004, the members must have a four-year baccalaureate degree and must have a background of substantial duration and an expertise in at least one of the following: (1) energy issues; (2) telecommunications issues; (3) consumer protection and advocacy issues; (4) water and wastewater issues; (5) finance, economics, and statistics; (6) accounting; (7) engineering; and (8) law. The legislation provides that a member of the General Assembly or member of his immediate family could not be elected to the PSC during the member's term or for four years after the term ends. An immediate family is considered to be an individual who is: (a) a child residing in the legislator's household; (b) a spouse of the legislator; or (c) an individual claimed by the legislator or the legislator's spouse as a dependent for income tax purposes.

The legislation prohibits *ex parte* communications by Public Service Commissioners and other PSC officials. A commissioner, hearing officer, or commission employee may not communicate, directly or indirectly, regarding any issue in any proceeding with any party or with any person without notice and opportunity for all parties to participate in the communication. Prior to the filing with the commission of any pleadings, applications, or other documents that could initiate a proceeding, a

Highlights of this comprehensive bill are as follows:

**THE LOTTERY REVENUE DISTRIBUTION PLAN:**

- Total lottery revenue for Fiscal Years 2001-2002 and 2002-2003 is \$179 million recurring funds and \$80 million non-recurring funds;
- Tuition assistance at technical schools and two year institutions is funded at \$34 million;
- LIFE Scholarships are funded with an additional \$40 million;
- HOPE Scholarships are funded at \$5.8 million;
- Need-Based Scholarships are funded at \$3 million (non-recurring funds);
- Palmetto Fellows Scholarships are funded at \$5 million;
- National Guard Scholarships are funded at \$1.5 million;
- Tuition Grants are funded at \$3 million (non-recurring funds);
- Teacher Grants are funded at \$2 million (non-recurring funds);
- Endowed Chairs at Research Universities are funded at \$30 million;
- Technology improvements at public four-year and two-year colleges and state tech schools are funded at \$21.7 million (includes \$10.6 million non-recurring funds);
- Repair and maintenance at historically Black colleges funded at \$3 million;
- Research and technology at S.C. State University funded at \$3 million (includes \$1 million non-recurring funds);
- K-12 Education Accountability Act programs funded at \$23.9 million;
- School buses are funded at \$29 million (includes \$15 million non-recurring funds);
- K-5 Reading, Math, Science, and Social Studies programs are funded at \$32.9 million;
- ETV digitalization is funded at \$18.5 million (non-recurring funds);
- State Aid to County Libraries is funded at \$1.5 million;
- Department of Alcohol and Other Drug Abuse Services is funded at \$1 million;

**FIRST STEPS TO SCHOOL READINESS PROGRAM**

- For Fiscal Year 2002-2003 only, from non-recurring revenue identified in the General Appropriations Act (H.4878), \$7 million is appropriated to the First Steps for School Readiness Program.

**SOUTH CAROLINA RESEARCH CENTERS OF ECONOMIC EXCELLENCE**

- Creates a nine member Research Centers of Excellence Review Board and creates the Centers of Excellence Matching Endowment; staff support will be provided by the Commission on Higher Education;
- The Endowment will be funded annually by appropriations from the South Carolina Education Lottery Account (in an aggregate amount not to exceed \$200 million by 2010) and managed by the State Treasurer, subject to awards from the Endowment;