South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

Vol. 22 May 24, 2005 No. 20

## MAJOR ISSUES FROM THE 2005 LEGISLATIVE SESSION

**This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage. Some major bills which have been introduced this year are not included in this document because, at this point in the 2005 legislative year, their progress towards passage makes it more likely that they will be considered next year.**

**<u>This document will be revised and expanded weekly as the status of major bills changes</u>. This report highlights legislative activity through *Thursday, May 19, 2005*. It is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.**

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# APPROPRIATIONS

## 2005-06 APPROPRIATION BILL AND CAPITAL RESERVE FUND

The House and the Senate both approved conference reports on the 2005-06 Appropriation Bill (**H.3716**) and the Capital Reserve Fund bill (**H.3717**). Significant highlights of the final adopted plans include:

- The General Reserve Fund is fully restored ($78 million);
- A proviso is included which provides that any surplus funds will be used first to fund any negative GAAP fund balance which might occur;
- Forty trust funds that were borrowed from during the recent fiscal crisis are fully restored, and two trust funds are partially restored;
- An increase of $315 million fully funds the Education Finance Act at a base student cost of $2,290;
- Teachers' salaries are funded at $300 above the Southeastern Average;
- $22 million in new funding is provided for school buses, fuel, and repairs;
- $14 million is appropriated to hold Beaufort and Charleston School Districts harmless from changes in the Education Finance Act formula;
- Medicaid growth receives $67,562,394;
- $5 million is appropriated to fund beach renourishment;
- $11.5 million is appropriated to the Department of Social Services for the Child Support Enforcement Computer System;
- Law enforcement officers receive a pay increase of 10%;
- State employees receive a pay increase of 4%;
- The health insurance plan for State employees and retirees is fully funded so that there will be no premium increases or benefit reductions to plan participants.

*STATUS: The House and the Senate approved **H.3716** (the 2005-06 Appropriation Bill) and **H.3717** (the Capital Reserve Fund bill) and both bills were ratified and sent to the Governor on May 11. On May 17, the Governor returned 149 vetoes on **H.3716** and 14 vetoes on **H.3717**. The House adjourned debate on consideration of these vetoes until Tuesday, May 24.*

## STATE FUNDS

The House approved and sent to the Senate **H.3847**, a bill which requires that, upon the ratification of a specified corresponding amendment to the South Carolina Constitution the first ten percent of any surplus general fund revenues for any fiscal year must be placed in the General Reserve Fund for use in offsetting operating deficits. The bill provides that no restoration within three fiscal years is required for General Reserve Funds used to cover an operating deficit which were derived from the requirement that the first ten percent of any surplus general fund revenue for any fiscal year be placed in the General Fund. The bill further provides that, upon ratification of a specified corresponding amendment to the State Constitution appropriations from the Capital Reserve Fund take effect on September first of the following fiscal year. The bill provides that unobligated surplus General Fund revenues are also available for

expenditure after September first of the next fiscal year and after the state's financial books for the previous year have been closed. The bill provides that if the Comptroller General determines upon the closing of the state's financial books for a fiscal year that the State has a negative Generally Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations contained in a general or supplemental appropriations act which expends surplus general fund revenues or in a Capital Reserve Fund appropriations act to be effective during the next fiscal year are suspended and must be used to the extent necessary to offset the GAAP Fund deficit in the manner the General Assembly shall provide. The bill requires that each state entity receiving three percent or more of the State's General Fund appropriations for any fiscal year must provide an estimate of its planned General Fund expenditures for the next three fiscal years. The bill requires the Office of State Budget to use this estimate and the Board of Economic Advisors' long-term revenue estimate to compile a three-year financial plan which shall be updated annually and distributed as provided in the bill.

*STATUS:* ***H.3847*** *was approved by the House and is pending consideration in the Senate Finance Committee.*

# BUSINESS/ECONOMIC DEVELOPMENT

## AIR CARRIER HUB TERMINAL FACILITIES

Currently, the State may issue General Obligation Bonds for air carrier hub terminal facilities meeting certain criteria. These funds may be used for acquiring land, constructing, improving, and equipping facilities, and for purchasing equipment and machinery related to the facility. **H.3234** expands the definition of "air carrier hub terminal facility" to also include (irrespective of the number of flights) facilities that will use two or more specially equipped planes that are used for the transportation of specialized cargo and subject to *ad valorem* property taxation or a fee in lieu of taxes in South Carolina. The bill also amends the statutory definition of an "air carrier" to mean a corporation licensed by the Federal Aviation Administration with a certificate of public convenience and necessity or an operating certificate under other applicable federal law or pertinent regulations which operates aircraft to or from an air carrier hub terminal facility. The term "air carrier hub terminal facility" includes an economic development project, as defined in the State General Obligation Economic Development Bond Act, that is functionally related to a facility satisfying one of the criteria included in the definition of an air carrier hub terminal facility. The bill provides that a request for the issuance of bonds must be accompanied by a binding contract with either an air carrier or the principal user of the air carrier hub terminal, to be financed with the issuance of the obligation. Currently, the contract may only be with an air carrier. If the Secretary of Commerce recommends that the Budget and Control Board consider approving the issuance of bonds, he shall forward his written approval and request to both the Joint Bond Review Committee (JBRC) and the Board, rather than only to the Board. The bill also requires that the Secretary's approval and request must be accompanied by a certificate establishing the maximum principal amount of the bonds requested to be

authorized; a description of the infrastructure for which the bonds are to be issued; and a tentative time schedule for the time during which the sum requested is to be expended. The bill provides that following the receipt of the approval and request from the Secretary, and after approval by the JBRC, the Board may approve the issuance of the bonds.

*STATUS:* ***H.3234*** *was approved by the General Assembly and has been signed by the Governor (Act 33).*

## ALCOHOL BY THE DRINK

The General Assembly ratified (Joint Resolution **S.19**) the amendment to the South Carolina Constitution, approved by voters last year, deleting the provision requiring the sale of alcoholic liquors for consumption on the premises only in sealed containers of two ounces or less, and authorizing the General Assembly to determine the size of containers in which alcoholic liquors or beverages are sold.

The Senate and the House have approved differing versions of **S.165**, a bill which provides, among other things, for the taxation and delivery of alcoholic beverages.

Both the House and Senate versions of the bill impose a five percent excise tax on the gross proceeds of the sale of alcoholic liquor by the drink for on-premises consumption.

The House bill includes a provision that alcoholic liquor for sale by the drink may be purchased in any size bottle except 1.75 liter size bottles for sale and use for on-premises consumption from a wholesale distributor and a licensed retail dealer with a wholesaler's basic permit.

The House-approved bill allows both wholesale distributors and licensed retail dealers with a wholesaler's basic permit to deliver alcoholic liquor for sale by the drink for on-premises consumption. The Senate-approved bill allows such delivery only by a licensed retail dealer with a wholesaler's basic permit.

The House bill provides that entities which are by law allocated minibottle revenues in Fiscal Year 2004-05 for education, prevention, and other purposes, shall receive at least the same amount of revenues from the new excise tax revenues beginning with the first full fiscal year after sales of liquor by the drink are authorized. If they do not receive the same amount, the difference must be made up from the general fund. The Senate bill includes this same provision, except the Senate bill refers to minibottle revenues allocated in fiscal year 2003-04.

Both versions of the bill allow retail dealers to sell alcoholic liquors without regard to the size of the container. The Senate-passed bill revises the hours which a retailer may sell alcohol from the current 7 p.m. until 9 a.m. to 7 p.m. to 7 a.m.

Both the House and the Senate versions of the bill provide that it is unlawful for a person selling alcohol by the drink to knowingly and willfully refill, partially refill, or reuse a bottle of lawfully purchased alcoholic liquor, or otherwise tamper with the contents of the bottle.

Both the House and the Senate bill provide that violation of this provision is a misdemeanor and provide punishment for first and second and subsequent offenses.

*STATUS: The House and the Senate have approved differing versions of **S.165**. Those differences are currently being negotiated in a House-Senate conference committee. (NOTE: The House also approved **H.3638**, which includes the House-passed provisions enumerated above, and that bill is pending consideration in the Senate Judiciary Committee.)*

## BILLBOARD REGULATION: LANDOWNER AND ADVERTISING PROTECTION AND PROPERTY VALUATION ACT

The House of Representatives approved and sent to the Senate **H.3381**, the "South Carolina Landowner and Advertising Protection and Property Valuation Act". The legislation provides for the conditions under which a local governing body may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and otherwise regulate the use of billboards within its jurisdiction. Under the legislation, a local governing body may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign only if the ordinance requires the payment of just compensation to the sign owners, except as otherwise provided in the bill. The payment of just compensation is not required if:

(1) The local governing body and the owner of the nonconforming off-premises outdoor advertising sign enter into an agreement to relocate and reconstruct the sign. The agreement must include provisions for: (a) relocation of the sign to a site reasonably comparable to or better than the existing location, and (b) payment by the local governing body of the reasonable costs of relocating and reconstructing the sign.
(2) The local governing body and sign owner enter into a voluntary agreement allowing for the removal of the sign after a set period of time instead of just compensation.
(3) The off-premises outdoor advertising sign is adjudicated to be a public nuisance or detrimental to the health or safety of the populace; or
(4) The removal is required for opening, widening, extending or improving streets or sidewalks, or for establishing, extending, enlarging, or improving a public enterprise, and the local governing body allows the off-premises outdoor advertising sign to be relocated to a comparable or better location and the local governing body pays the costs of the relocation.

For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign under an agreement with the sign's owner, a local governing body, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it considers appropriate as long as it does not affect the federal provisions for the relocation of outdoor advertising signs affected by state highway projects.

If a local governing body has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign, and within one hundred twenty days after the initial notice by the local governing body, the parties have not been able to agree that the site or sites offered by the local governing body for relocation of the sign are reasonably comparable to or better than the existing site, the parties, by mutual agreement, may enter into binding arbitration to determine the comparability of the site offered for relocation. If this arbitration proceeding results in a determination that the proposed relocation site(s) are not comparable to or better than the existing site, and the local governing body elects to proceed with the removal of the sign, the parties shall determine just compensation to be paid to the sign owner. If the parties are unable to reach an agreement regarding just compensation within thirty days of the receipt of the arbitrators' determination regarding relocation, and the local governing body elects to proceed with the removal of the sign, the parties, by mutual agreement, may enter into binding arbitration to determine the amount of just compensation to be paid. If the parties choose not to enter into binding arbitration for the purposes of either relocation or just compensation and the local governing body elects to proceed with the removal of the sign, the local governing body shall bring an action in circuit court for a determination of the just compensation to be paid by the local governing body to the sign owner for the removal of the sign.

A local governing body shall not prevent the repositioning of a nonconforming sign on the same parcel of land to facilitate the development of the parcel so long as the repositioning of the sign does not increase the degree of the sign's nonconformity.

The requirement by a local governing body that the issuance or continued effectiveness of a zoning ordinance or issuance of a license or permit is conditional upon the removal or alteration of a lawfully erected sign constitutes a compelled removal that is prohibited without prior payment of just compensation.

An off-premises outdoor advertising sign may not be removed until the owner of the property on which it is located has been compensated fully by the local governing body requiring the sign's removal for a loss which may be suffered as a result of the removal of the sign through the termination of a lease or other financial arrangement with the sign owner. The compensation must include damage to the landowner's property occasioned by removal of the sign.

The provisions of this legislation may not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity under the Highway Advertising Control Act or the manner in which outdoor advertising is valued by the South Carolina Department of Transportation.

**H.3381** takes effect upon approval by the Governor. Nothing in this legislation preempts or otherwise alters or modifies an ordinance or regulation enacted by a local governing body before the effective date of this legislation.

*STATUS: **H.3381** passed the House of Representatives on March 3, 2005, and was sent to the Senate where it was referred to the Judiciary Committee. On May 4, the Senate Judiciary Committee reported out the bill majority favorable with amendment, minority unfavorable.*

## BLUE LAWS

The House approved and sent to the Senate **H.3647**. This bill eliminates throughout the state Blue Law provisions that restrict the sale of certain items and prohibit certain work and other activities on Sundays. The legislation provides that an employee of a business that operates on Sunday has the option of refusing to work until 1:30 p.m. on Sunday, if the employee is conscientiously opposed to Sunday work. This conscientious objector provision does not apply to employees, including support, maintenance, repair, and other service personnel, of a manufacturing establishment or a research and development operation that by its nature or for economic reasons involves processes requiring continuous and uninterrupted operation. The legislation makes no changes to provisions that prohibit or otherwise regulate the sale of alcoholic liquors, beer, or wine on Sunday.

*STATUS: **H.3647** passed the House and was referred to the Senate Judiciary Committee on April 27, 2005. On May 18, 2005, the bill received a favorable with amendment report from the Senate Judiciary Committee.*

## BOILER SAFETY ACT

The General Assembly passed **S.581**, the "Boiler Safety Act" which charges the Department of Labor, Licensing and Regulation with promulgating regulations for the safe installation and inspection of boilers in this state. A boiler is a closed vessel in which water or other liquid is heated, steam or vapor is generated, or steam is superheated, under pressure or vacuum, for external use by the direct application of energy. All new installations shall conform to generally accepted nationwide engineering standards (conformity with the most recent edition of the Boiler and Pressure Vessel Code or the ASME Code shall be accepted as conformity). The department shall promulgate regulations for installation and inspection of boilers that were in use in this State prior to the implementation of the statewide building code. The regulations must be based upon, and at all times follow, generally accepted nationwide engineering standards and practices and may adopt applicable sections of the Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors. Certain boilers are exempted from regulation under this legislation. Under the legislation, the Director of the Department of Labor, Licensing and Regulation shall appoint a chief boiler administrator. The legislation establishes certification requirements for boiler inspectors. The bill provides for boiler inspection timeframes, criteria, and reporting requirements. A fee not to exceed fifty dollars per facility or per certificate filed with the department may be assessed, collected, and adjusted by the Department of Labor, Licensing and Regulation. A violator of the legislation may be assessed a civil penalty of not more than five thousand dollars for each violation. Failure to comply in a timely manner after written notice by the department of a violation subjects the violator to a penalty of up to one hundred dollars per day.

*STATUS: Having passed the General Assembly, **S.581** became law without the Governor's signature on May 18, 2005.*

## FIRE PROTECTION SPRINKLER SYSTEMS ACT

The House of Representatives approved and sent to the Senate **H.3383**, the "Fire Protection Sprinkler Systems Act." Under the legislation, the South Carolina Contractors' Licensing Board is charged with administering the Fire Protection Sprinkler Systems Act to protect the health, safety, and welfare of the public through regulation of the fire sprinkler industry. The legislation establishes procedures for the licensure of fire sprinkler contractors by the Department of Labor, Licensing and Regulation to engage in the planning, sale, installation, repair, alteration, addition, maintenance, or inspection of fire sprinkler systems. The procedures include requirements for initial licensure, license renewal, fees, and grounds and sanctions for misconduct. A fire sprinkler contractor may not engage in fire sprinkler system work unless it has in its employment a primary qualifying party who has been designated by the licensee as the principle individual responsible for directing or reviewing fire sprinkler contractor work. A primary qualifying party is a full-time employee of a fire sprinkler contractor who holds a valid National Institute for Certification in Engineering Technologies (NICET) Level III or IV Technician Certificate in 'Fire Protection Engineering Technology Automatic Sprinkler System Layout' and who has been issued a qualifying party certificate by the board to qualify an entity as a fire sprinkler contractor. A qualifying party is an individual who has received a NICET Level III or IV Technician Certification in "Fire Protection Engineering Technology Automatic Sprinkler System Layout" and who is an employee of a fire sprinkler contractor who has been issued a qualifying party certificate. The legislation establishes provisions for grandfathering in certain individuals as primary qualifying parties for fire sprinkler contractors. Licensees may be held accountable by the board for improper work. The legislation provides for disciplinary actions for misconduct as well as a civil penalty of up to five thousand dollars for each violation.

*STATUS: The House of Representatives sent **H.3383** to the Senate on April 28, 2005, where it was referred to the Labor, Commerce, and Industry Committee. On May 19, the committee reported out the bill favorable with amendments.*

## HAIR BRAIDING

**S.509** requires a person to be a licensed barber or cosmetologist or a registered hair braider to perform hair braiding. The bill defines "hair braiding" as the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use or hair extensions or wefts. In order to become a hair braider registered by the Barber Board an applicant must complete a one day, six hour board-approved hair braiding course, pass an examination, and pay a $25 registration fee. Registration is valid for two years and can be renewed by paying the renewal fee. Anyone practicing hair braiding on the legislation's effective date has one year to complete the education, examination, and registration requirements. The bill establishes the content of the hair braiding course and requires all combs and implements used to braid hair to be disposable or to be sanitized in an approved disinfectant.

*STATUS: Having passed the General Assembly, **S.509** became law without the Governor's signature on May 5, 2005 (R49).*

# JOBS CREATION ACT

The House approved and sent to the Senate **H.3006**, the 2005 Jobs Creation Act. As approved by the House, this bill establishes and provides for an income tax credit of up to 25% of an equity investment made in a qualifying business, not to exceed $100,000 per investor. The bill allows a five-year carry-forward for the credit, and provides that the total credit statewide may not exceed ten million dollars. The bill defines the three types of business which are eligible for equity funding under the bill as: 1) eligible small businesses with gross receipts of $2 million or less (businesses engaged in retail, professional services, banking, financial, and real estate services are not eligible); 2) a business which has received funding pursuant to the federal Small Business Innovation Research Program; and 3) a business with gross receipts of $2 million or less that is commercializing technology for one of the state's three research universities. The bill requires businesses to register with the Secretary of State in order for investors to receive the credit, and requires that businesses must renew their registration annually to remain qualified. The bill includes reinstatement provisions for businesses that fail to renew. The bill also provides that investors will forfeit the credit if: 1) within three years after the investment is made, the investor or other related person participates in the operation of a qualified business; 2) the registration of the qualified business is revoked because of false information on the application; 3) within one year after the investment is made, the taxpayer transfers any of the equity, near-equity, or seed capital received in the investment that qualified for the tax to another person or entity (except under certain circumstances). The bill provides that the Coordinating Council for Economic Development will allocate the credit, and it may annually reserve up to $2 million of the $10 million credit for investments in qualifying businesses which are engaged in hydrogen fuel cell research and development; Clemson University International Center for Automotive Research; technology incubators for the Medical University of South Carolina; and nanotechnology.

The bill also creates a Capital Access Program (CAP), to be established by the Business Development Corporation of South Carolina (BDC) with an initial appropriation of $2.5 million, to assist participating financial institutions making loans to small businesses located in the state that otherwise find it difficult to obtain regular bank financing. Under this program, a qualifying small business is defined as one with retail sales or annual revenue not to exceed $2 million; or wholesale sales less than $5 million; or a manufacturing business with no more than 50 employees. Under the program, the BDC will establish terms and conditions under which financial institutions will participate. The bill provides terms and conditions under which financial institutions may originate loans under the program. The bill provides that each tax incentive enacted in the bill shall be repealed for tax years beginning after five years from the date of enactment, unless a different time frame is provided in the bill. The bill provides that for purposes of income and license tax and sales and use tax, nexus will be determined without regard for whether the taxpayer owns or utilizes a distribution facility in South Carolina.

The bill also amends the Motion Picture Incentive Act (The Act) including numerous technical changes as well as the following changes:

- The Act broadened an existing state sales tax exemption for machinery and supplies used in filming. This bill extends that same exemption to local sales tax.

- The Act created a 5% wage rebate based upon the wages paid to employees of motion picture production companies. This bill clarifies that employees of loan-out or personal service corporations qualify for the rebate.
- The bill provides additional detail and guidance on how a motion picture production company obtains the 5% wage rebate.

*STATUS:* ***H.3006*** *was approved by the House, as summarized above, on January 19. The bill was amended by the Senate and was returned to the House on May 20. (NOTE: The House also approved* ***H.3157****, a bill which creates a* ***Capital Access Program****.* ***H.3157*** *is pending consideration in the Senate Judiciary Committee.)*

## MOTION PICTURE INCENTIVE ACT AMENDMENTS

The House and Senate approved, and the Governor signed, **H.3152**, a bill which revises the Motion Picture Incentive Act. Revisions include: extending the exemption from sales and use tax to include an exemption from local, as well as state sales and use taxes; allowing up to seven percent of the general fund portion of admissions tax collected and funded to the State Film Commission to be used by the Department of Commerce exclusively for marketing and special events; and deleting a rebate to a motion picture company for sales tax paid on accommodations. The legislation authorizes the South Carolina Film Commission to rebate to a motion picture production company not more than fifteen percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings employed in connection with the production when total production costs in South Carolina are at least one million dollars during the taxable year. The rebates in total may not annually exceed ten million dollars and shall come from the state's general fund. This rebate does not apply to the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture. The bill also authorizes the Department of Commerce to carry-forward their portion of the admissions tax for rebates and grants.

*STATUS:* ***H.3152*** *was approved by both the House and the Senate and has been signed by the Governor.*

## NATURAL GAS RATE STABILIZATION ACT

The General Assembly passed and the Governor signed into law **S.18**, the "Natural Gas Rate Stabilization Act". The legislation proposes to bring greater stability and predictability to rates charged by natural gas distribution utilities by establishing a procedure for the adjustment of rates and charges that routinely takes into account such factors as changes in a utility's expenses, revenues, investments, and depreciation. The legislation establishes a procedure under which natural gas distribution utilities under the regulatory authority of the Public Service Commission are authorized to apply for rate adjustments on an annual basis that fall within a band of 0.50 percentage points above and below the rates that have been set in order to reflect current changes in investments, revenues, and expenses.

*STATUS: Having passed the General Assembly, **S.18** was signed into law by the Governor on February 16, 2005 (Act 16).*

## PHYSICAL THERAPY

*See summary under Health*

## RIDER SAFETY ACT

The General Assembly passed and the Governor signed into law **H.3130**, the "South Carolina Rider Safety Act". The legislation requires riders of amusement and carnival devices to: (1) comply with posted rules, warnings, and instructions; and (2) refrain from acting in any manner that may cause or contribute to injuries, such as tampering with ride controls, disengaging safety devices, throwing objects off of rides, exiting the ride at undesignated areas, etc. The legislation requires timely reporting of any injuries sustained on rides. Under the legislation the owners of amusement devices are required to post signs relating to rider safety and requirements for reporting injuries. The legislation establishes a misdemeanor for violations punishable with a fine of not more than five hundred dollars and/or imprisonment for not more than two months.

*STATUS: Having passed the General Assembly, **H.3130** was signed into law by the Governor on March 23, 2005 (Act 30).*

## SMALL BUSINESS INCOME TAX REDUCTION

**H.3007**, which was approved by both the House and the Senate, provides a State income tax reduction for "pass-through" businesses, defined in the bill as sole proprietorships, partnerships, and 'S' corporations, including limited liability companies taxed as sole proprietorships, partnerships, or 'S' corporations. The bill reduces the state income tax rate for these businesses by 0.5 percent a year over the course of four years beginning in 2006 so that, after 2008, such businesses are to be taxed at a rate of 5 percent.

*STATUS: **H.3007** was approved by the General Assembly and has been signed by the Governor (Act 41).*

## "S.C. DAIRY STABILIZATION ACT"

The House approved and sent to the Senate **H.3355**. This bill creates a 13 member South Carolina Milk Board (the Board), whose duties, among other things, are to ensure that dairy producers receive fair market breakeven prices, to monitor the consumption and distribution of South Carolina produced milk, and to mediate differences between milk producers and buyers. The bill provides for the membership of the Board. The bill provides for the Board to appoint an executive director who shall serve *ex-officio* as a non-voting Board member. Principal offices of the Board will be within the South

Carolina Department of Agriculture building. Under the bill, the Board is an instrumentality of the State and is authorized to make, adopt, and enforce regulations and issue and enforce orders necessary to carry out the purposes of the bill.

The bill requires and provides for buyer fees to be collected on all fluid milk produced in this State, and the bill requires that funds from these fees must be deposited into a special fund (the Dairy Producers Settlement Fund) and disbursed, as provided in the bill, to all producers in the State who sold or shipped milk in the month when prices fell below the fair market breakeven amount as determined by the Board.

**H.3355** prohibits a milk buyer from engaging in the purchase of South Carolina milk until having obtained a license from the Board. The Board is authorized, among other actions, to invoke a monetary penalty for buyers who violate the provisions of the bill. Funds from such penalties would be deposited into the Dairy Producers Settlement Fund.

The bill requires and provides for the Board to develop an accounting system designed to show for each buyer of fluid milk under the Board's supervision, the total purchases of South Carolina milk by the buyer and the sales of milk sold in this State. The bill further requires that buyers under the supervision of the Board use this system of accounting.

**H.3355** provides that violations of the provisions of the bill are a misdemeanor punishable by fine or imprisonment, and multiple violations may result in license or permit revocation.

The bill requires the Board to prepare an annual budget and requires the Board to collect funds required for operation of the bill's provisions from the State's dairy producers. Expenses of the Board must be met by an assessment of up to one cent per gallon of milk produced in this State.

The provisions of **H.3355** are repealed on July 1, 2012.

*STATUS: **H.3355** passed the House and was referred to the Senate Committee on Agriculture and Natural Resources on March 1, 2005.*

## S.C. EDUCATION AND ECONOMIC DEVELOPMENT ACT

*See summary under Education*

## TORT REFORM

*See summary under The Courts*

## UNEMPLOYMENT COMPENSATION DENIED FOR VIOLATORS OF ILLEGAL DRUG POLICIES

The General Assembly passed and the Governor signed into law **H.3682**, a bill that revises Employment Security Law provisions so as to provide that the termination of an employee for violating an employer's drug policy is to be considered a discharge for

cause, which makes the employee ineligible to receive unemployment compensation. Violating an employer's drug policy includes refusing to submit to a required drug test, providing an adulterated sample, or testing positive for illegal drugs. An exception to the ineligibility is provided for a worker's voluntary admission of illegal drug use in instances where the employer has a policy that protects an employee from immediate termination when making such voluntary admissions.

*STATUS: Having passed the General Assembly, **H.3682** was signed into law by the Governor on May 3, 2005 (Act 50).*

## UNEMPLOYMENT COMPENSATION FOR JOB LOSS CAUSED BY DOMESTIC VIOLENCE

The General Assembly passed and the Governor signed into law **H.3682**, a bill that revises Employment Security Law provisions so as to authorize unemployment compensation benefits for individuals who have lost employment as a result of domestic violence. The legislation provides that an employee who has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse is eligible for unemployment compensation. Such an employee must: (1) reasonably fear future domestic abuse at or en route to the workplace; (2) need to relocate to avoid future domestic abuse; or (3) reasonably believe that leaving work is necessary for personal safety or safety of the family. To be eligible, the employee must provide documentation of domestic abuse from the police, court records, a shelter worker, attorney, member of the clergy, or medical or other professional. All such documentation or evidence must be kept confidential unless written consent for disclosure is given.

*STATUS: Having passed the General Assembly, **H.3682** was signed into law by the Governor on May 3, 2005 (Act 50).*

# THE COURTS

## CRIMINAL DOMESTIC VIOLENCE

*See summary under Criminal Justice*

## DISARMING A LAW ENFORCEMENT OR CORRECTIONS OFFICER

*See summary under Criminal Justice*

## GRAND JURY/EXPANSION OF JURISDICTION TO INCLUDE ENVIRONMENTAL AFFAIRS

*See summary under Environment*

## JUDICIAL ELECTIONS

The House approved and sent to the Senate **H.3079**. This bill revises the process for nominating judicial candidates for election by the General Assembly. Under this legislation, the Judicial Merit Selection Commission would release to the General Assembly the full list of individuals found qualified and fit for judicial office. Under current law, the Judicial Merit Selection Commission submits to the General Assembly a list of the three individuals found most qualified.

The bill eliminates the one-year waiting period for a former member of the General Assembly to be elected to a judicial office. The bill provides, instead, that a member of the General Assembly may not file for a judicial office while the member is serving in the General Assembly.

The bill also provides that no member of a legislator's immediate family may be elected to a judicial office while that legislator is serving in the General Assembly. As used in this bill, the term 'immediate family member' means an individual who is: (1) a child residing in the person's household; (2) a spouse of the person; or (3) claimed by the person or the person's spouse as a dependent for income tax purposes.

*STATUS: **H.3079** passed the House and was referred to the Senate Judiciary Committee on March 15, 2005.*

## "RIGHT TO LIFE ACT"

*See summary under Marriage/Family*

## TORT REFORM

**H.3008**, the **"SOUTH CAROLINA ECONOMIC DEVELOPMENT, CITIZENS, AND SMALL BUSINESS PROTECTION ACT OF 2005,"** provides for comprehensive tort reform. This legislation addresses the way in which the State's judicial system handles torts. Torts are private or civil wrongs for which the court provides a remedy, usually in the form of damages.

**Civil Procedure; Civil Liability**

Current law provides liability among joint tortfeasors (wrongdoers) is both joint and several meaning that any tortfeasor may be responsible for the entire amount of the judgment.
Under this legislation, in an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than 50% of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault ('comparative negligence') if any, of

plaintiff. A defendant whose conduct is determined to be less than 50% of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact. The legislation has provisions pertaining to apportionment of percentages of fault among defendants.

Under the legislation, the defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

The bill provides that setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability.

The provisions of this bill do not apply to a defendant whose conduct is determined to be willful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or drugs.

**Statue of Repose and Improvements to Real Property**

This bill revises the statute of limitations for filing an action for a construction defect. Current law provides that no actions to recover damages in these situations may be brought more than 13 years after substantial completion of the improvement. The legislation lowers the statute of repose to eight years.

The bill further provides that for any improvement to real property, a certificate of occupancy issued by a county or municipality, in the case of new construction or completion of a final inspection by the responsible building official in the case of improvements to existing improvements shall constitute proof of substantial completion of the improvement under the provisions of S.C. Code Ann. §15-3-630, unless the contractor and owner, by written agreement, establish a different date of substantial completion.

**Civil Procedure; Venue**

The legislation establishes new provisions for venue; the term 'venue' generally refers to the place where a jury is drawn and in which the trial is held. With regards to corporations, the legislation establishes criteria for determining a principal place of business; in considering the proper place for venue, the bill provides that owning property and transacting business in a county is insufficient in and of itself to establish the principal place of business for a corporation.

With regards to venue, the legislation provides as follows:

- Civil actions against a resident individual defendant must be tried in the county where the most substantial part of the alleged act or omission giving rise to the cause of action occurred, or where the defendant resides at the time the cause of action arose.

- Civil actions against a nonresident individual defendant must be tried where the most substantial part of the alleged act or omission giving rise to the cause of action arose, or where the individual plaintiff resides at the time the cause of action arose, or where the corporate plaintiff (including also: domestic

corporation, domestic limited partnership, domestic limited liability company, domestic limited liability partnership, foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership) has its principal place of business at the time the cause of action arose.

- Civil actions against a domestic corporation (including also: domestic limited partnership, domestic limited liability company or domestic limited liability partnership) must be tried in the county of the corporation's principle place of business at the time the cause of action arose, or where the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

- Civil actions against a foreign corporation required to possess a certificate of authority pursuant to the provisions of S.C. Code Ann. §33-15-101 et seq. (including also: foreign limited partnership, foreign limited liability company, foreign limited liability partnership) must be tried in the county where the corporation has its principle place of business at the time the cause of action arose, or where the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

- Civil actions against a foreign corporation not required to possess a certificate of authority pursuant to the provisions of S.C. Code Ann. §33-15-101 et seq., (including also: foreign limited partnership, foreign limited liability company, foreign limited liability partnership) must be tried where the plaintiff resides or has its principal place of business at the time of the cause of action arose, or most substantial part of the alleged act or omission giving rise to the cause of action occurred, or where the foreign corporation (including also: foreign limited partnership, foreign limited liability company, or foreign limited liability partnership) has its principal place of business.

**Civil Procedure; Frivolous Lawsuits**

The legislation establishes new provisions regarding frivolous lawsuits. The legislation provides that a pleading must be signed by at least one attorney of record, or, if the party is not represented by an attorney (a pro se party), the pro se party must sign the pleading and must include the address and telephone number of the pro se party. The signature certifies to the court that the person has read the document and believes, in good faith, the pleading is not frivolous.
If a document is signed in violation of these provisions, the court may impose any sanction that the court considers just, equitable, and proper under the circumstances. Factors to be considered by the court include: the number of parties, the complexity of the claims and defenses, the length of time available to investigate conduct for alleged violations, information disclosed or undisclosed through discovery and adequate investigation, previous violations, any responses to the allegations, and any other factors the court considers just, equitable or appropriate under the circumstances.

A person is entitled to notice and an opportunity to respond before the imposition of sanctions; upon notification, a person has 30 days to respond to the allegations as the person considers appropriate, including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation. If a court imposes a sanction on an attorney, the court shall report its findings to the

South Carolina Commission of Lawyer Conduct. All violations shall be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor and the General Assembly.

The provisions relating to frivolous lawsuits are in addition to all other remedies available at law or in equity.

**Legal Rate of Interest**

A money decree or judgment of a court enrolled or entered must draw interest according to the law. This legislation provides that the legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published each calendar year for which the damages are awarded, plus four percentages points, compounded annually. The South Carolina Supreme Court shall issue an order each year confirming the annual prime rate. This applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

**Attorney Advertising**

Under this bill, it is an unlawful trade practice for an attorney to advertise his or her services in this State in a false, deceptive, or misleading manner including, but not limited to, the use of a nickname that creates an unreasonable expectation of results.

**Department of Insurance and General Assembly Review of Insurer's Reduction of Premiums to Reflect Savings**

The Department of Insurance shall review data reported on annual statements by liability insurers, including, but not limited to, paid claims, reserves, loss adjustment expenses, and such additional data as the department may require by promulgation of bulletin, to determine savings related to a decrease in litigation and claims paid pursuant to litigation after the effective date of this legislation. The department shall compile a report of savings realized and submit it for General Assembly review upon request.

**South Carolina Tort Claims Act and South Carolina Solicitation of Charitable Funds Act**

The provisions of this legislation do not affect any right, privilege, or provision of the South Carolina Tort Claims Act or the South Carolina Solicitation of Charitable Funds Act.

*STATUS*: ***H.3008*** *passed the General Assembly and was signed into law by the Governor on March 21, 2005 (Act 27).*

**S.83** enacts the **"SOUTH CAROLINA NONECONOMIC DAMAGE AWARDS ACT OF 2005."** The term 'noneconomic damages' means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to

reputation, humiliation, other nonpecuniary damages, and other theory of damages including but not limited to, fear of loss, illness, or injury.

The legislation places caps on the amount of noneconomic damages that may be awarded in an action on a medical malpractice claim. The caps are as follows:

- In an action on a medical malpractice claim when final judgment is rendered against a **single health care provider** the limit of civil liability for noneconomic damages of the health provider is limited to an amount not to exceed $350,000 for each claimant, regardless of the number of separate causes of action on which the claim is based.

- In an action on a medical malpractice claim when final judgment is rendered against a **single health care institution**, the limit of civil liability for noneconomic damages is limited to an amount not to exceed $350,000 for each claimant, regardless of the number of separate causes of action on which the claim is based.

- In an action on a medical malpractice claim when final judgment is rendered against **more than one health care institution, or more than one health care provider, or any combination thereof**, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed $350,000 for each claimant and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant.

- The bill provides for **increases and decreases of the caps** as determined by the State Budget and Control Board and Board of Economic Advisors in the ratio of the Consumer Price Index to the index as of December 31 of the previous year.

The **caps do not apply if:**

- the jury or court determines that a defendant was grossly negligent, willful, wanton, or reckless and such conduct was the proximate cause of the claimant's noneconomic damages, or

- if the defendant has engaged in fraud or misrepresentation related to the claim, or

- if the defendant altered, destroyed, concealed, or fabricated medical records with the purpose of avoiding a claim or liability to the claimant.

The **provisions of this bill do not limit the amount of compensation for economic damages** suffered by each claimant in a medical malpractice claim. The term 'economic damages' means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for

loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.

The **provisions of this bill do not limit the amount of punitive damages** in cases where the plaintiff is able to prove an entitlement to an award of punitive damages as required by law.

In an action involving a medical malpractice claim arising out of **care rendered in a genuine emergency situation** involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, this bill provides that no physician may be held liable unless it is proven that the physician was grossly negligent. This exception does not apply when a patient is medically stable, is not in immediate threat of death or serious bodily injury or has been discharged from the hospital.

In an action involving a medical malpractice claim arising out of **care rendered by an obstetrician on an emergency basis** when there is no previous doctor/patient relationship between the obstetrician or a member of his/her practice with a patient or the patient has not received prenatal care, an obstetrician is not liable unless it is proven the obstetrician is grossly negligent.

The legislation adds certain procedural provisions with regards to an **offer of judgment and the consequences of non-acceptance**. Except in domestic relations actions, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, at any time more than 20 days before the actual trial date, file with the clerk of the court a written offer of judgment signed by the offeror or his/her attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer. There are provisions detailing how notice of the offer should be made and when the offer is deemed rejected. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer. The bill further provides that this section does not abrogate the contractual rights of any party concerning the recovery of attorneys' fees or other monies in accordance with the provisions of any written contract between the parties to the action.

The legislation has provisions relating to **expert witnesses**. When an expert witness is qualified as to the acceptable conduct of the professional whose conduct is at issue, the expert must be licensed and either board certified or have actual professional knowledge and experience in the area of practice in which the opinion is to be given. In an action alleging professional malpractice, the plaintiff must file with the complaint, an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim. The legislation does provide for an exception to the contemporaneous filing requirement in cases where the statute of limitations will expire

within 10 days of the date of filing. A plaintiff's claim is subject to dismissal if the plaintiff fails to file the required affidavit. The legislation applies to numerous professions.

If a judge finds that **an expert health care provider or health care institution in a medical malpractice action** has offered testimony or evidence in bad faith or without a reasonable basis in fact or otherwise acted unethically in conjunction with testifying as an expert, the judge must report the expert to the state entity that licenses and regulates the profession of the expert or the type of health care entity represented by the expert.

In medical malpractice actions, the legislation requires the parties to participate in **mediation** governed by procedures established in the South Carolina Circuit Court Alternative Dispute Resolution Rules. The bill allows the parties to agree to participate in binding arbitration.

The bill requires prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, **the plaintiff shall file a Notice of Intent to File Suit** in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his/her attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

**After the Notice of Intent to File Suit is filed and served**, all named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

**Within 90 days and no later than 120 days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than 60 days is granted by the court based upon a finding of good cause.** Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State shall govern the mediation process, including compensation of the mediator and payment of the fees and expenses of the mediation conference. The parties otherwise are responsible for their own expenses related to mediation pursuant to this section. The circuit court has jurisdiction to enforce the provisions of this section.

**If the matter cannot be resolved through mediation**, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed: (1) within 60 days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or (2) prior to expiration of the statute of limitations, whichever is later. Participation in the prelitigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated.

Under the bill, a person who serves on the **Board of the Joint Underwriting Association or the Board of Governors of the Patients' Compensation Fund** is prohibited from being employed in any manner or compensated by the Joint Underwriting Association or the Patients' Compensation Fund, and this prohibition continues for one year after the person ceases to be a member of the board.

All **medical malpractice insurance carriers issuing policies of insurance within South Carolina for licensed health care providers** shall provide and maintain coverage to all applicants who timely remit payments for the coverage period. Such policies shall be written on either a 'claims-made' or 'occurrence' basis in compliance with the standard set by the board of directors of the Joint Underwriters Association. These provisions apply only to policies written on or after January 1, 2006.

This bill provides that members of certain **professional committees** are exempt from tort liability for any act or proceeding undertaken or performed within the scope of the function of the committee and if the committee member acts without malice.

Current law provides for the **confidentiality of the proceedings and records and other information related to the actions of certain professional committees**. When there is a dispute as to the confidentiality over documents, this bill allows for judicial review by a circuit court judge. If the court determines that any of the documents are not subject to confidentiality, and are otherwise discoverable, the court shall provide the documents to the requesting party and shall assess attorneys' fees against the party unsuccessfully asserting the claim of privilege for any fees incurred by the requesting part in obtaining the documents.

With regards to the **Patients' Compensation Fund for Benefit of Licensed Health Care Providers**, the bill provides that the fund and any income from it must be managed by the board according to its plan of operation. The bill further provides that monies may be withdrawn from the fund only upon the signature of the chairman of the Board of Governors or his/her designee.

The **Medical Disciplinary Commission of the State Board of Medical Examiners** investigates formal complaints filed against physicians. Currently, the Commission is composed of 36 members, all of whom are physicians. This bill increases the size of the Commission to 48 members by adding 12 lay members. The lay commissioners must have at a minimum, a baccalaureate degree or the equivalent and have no ascertainable ties to the health care industry. Each disciplinary panel is required to have at least one lay member. Both lay and physician commissioners are limited to three consecutive terms on the Board.

The bill has provisions for the **Department of Insurance to review data and report to the General Assembly and the Governor** whether this and other related enactments have resulted in reductions in premiums in the health care community and as to any other trends of significance which might impact premium cost.

*STATUS: **S.83** passed the General Assembly and was signed into law by the Governor on April 4, 2005 (Act 32).*

## UNIFORM TRUST CODE

**S.422** pertains to trust administration. The bill enacts the Uniform Trust Code by providing a comprehensive codification or recodification of much of existing trust

law and supplementing existing common law, unless the code specifically contradicts it.

*STATUS: **S.422**(R80) was ratified on May 18, 2005.*

# CRIMINAL JUSTICE

## ANIMAL FIGHTING

The House approved and sent to the Senate **H.3344**. This bill allows for and outlines procedures for the forfeiture of property, monies, negotiable instruments, securities and other things of value when a person violates a provision of the Animal Fighting and Baiting Act. The bill does create an exception for the innocent owner of property subject to forfeiture.

The bill further provides that a person who engages in or is present at cockfighting or game fowl testing is guilty of a misdemeanor for the first offense. A first offense is punishable by a fine or not more than $1,000 or imprisonment for not more than one year. A second offense is a misdemeanor punishable by a fine of not more than $5,000 or imprisonment for not more than three years. A third or subsequent offense is a felony punishable by a fine of not more than $5,000 or imprisonment not more than five years. A person with a third or subsequent offense is subject to the forfeiture of monies, negotiable instruments and securities specifically gained or used to engage in or further a violation of these provisions.

*STATUS: **H.3344** passed the House and was referred to the Senate Judiciary Committee on May 12, 2005.*

## "AUTUMN'S LAW" (CRIMINAL SEXUAL CONDUCT/TERMINATION OF PARENTAL RIGHTS)

*See summary under Marriage/Family*

## CRIMINAL DOMESTIC VIOLENCE

The House approved and sent to the Senate **H.3984**. This bill provides comprehensive revisions regarding the handling of domestic violence offenses by the judicial system and law enforcement.

The bill requires magistrates, family court judges, and circuit court judges to receive continuing education on issues concerning domestic violence.

Under the bill, a person seeking an order of protection from domestic violence is not required to pay a filing fee. If a petition for an order of protection is filed and a divorce or separate support and maintenance action is pending or subsequently filed, the bill provides that the court shall proceed with the petition for relief separate from and independent of the action for divorce or separate support and maintenance.

The bill requires a law enforcement officer who is convicted of or pleads guilty or no contest to a criminal domestic violence offense to be terminated from employment.

The bill increases penalties for criminal domestic violence offenses.

- Under the bill, a conviction for a misdemeanor criminal domestic violence first offense is punishable by a fine of not less than $1,000 dollars nor more than $2,500 dollars or imprisonment not more than 30 days.

- Under the bill, a conviction for a misdemeanor criminal domestic violence second offense (within a period of 10 years) is punishable by a fine of not less than $2,500 dollars nor more than $5,000 dollars and imprisonment not less than a mandatory minimum of 30 days nor more than one year. The court may not suspend the mandatory 30 days imprisonment.

- Under the bill, a conviction for a third or subsequent criminal domestic violence offense (within a period of 10 years) is a felony offense punishable by imprisonment for not less than a mandatory minimum of one year but not more than five years. The court may not suspend the mandatory one-year imprisonment.

- The bill expands the definition of criminal domestic violence of a high and aggravated nature to include the situation when the person intentionally commits an assault and battery in the physical presence of a minor child.

- Under the bill, a conviction for criminal domestic violence of a high and aggravated nature is punishable by imprisonment for not less than a mandatory minimum of one year nor more than 10 years. The court may not suspend the mandatory one-year imprisonment.

In order to participate in a pretrial intervention program, if the offense is first offense criminal domestic violence, the person must agree in writing to successful completion of a batter's treatment program approved by the Department of Social Services.

The bill requires that an individualized hearing must be held for criminal domestic violence offenses triable in magistrates or municipal court and that the victim of the offense must receive notice of the hearing.

Under the bill, a first offense criminal domestic violence charge may be expunged five years from the date of the offense.
Under this bill, an officer who effects an arrest for criminal domestic violence, by use of a uniform traffic ticket shall complete and file an incident report immediately following the issuance of the uniform traffic ticket.

This bill includes as a separate aggravating circumstance which may be considered in the determination of whether the death penalty may be imposed, the following: a murder of a person's spouse while the person is subject to a valid order of protection, the person is violating a condition of bond, or the person is violating a restraining order. The bill also includes as a separate aggravating circumstance that may be considered in the determination of whether the death penalty may be imposed, the murder of a person's spouse, if the person has a prior conviction for criminal domestic violence involving the same victim.

The bill requires the Department of Social Services through its currently funded existing shelter network to provide all law enforcement agencies all domestic violence resources available to a victim. The bill further requires all law enforcement agencies to provide all victims of criminal domestic violence the domestic violence resources.

The bill establishes a committee to study the criminal domestic laws of the State and recommend appropriate changes to the Speaker and members of the House of Representatives by January 1, 2006.

*STATUS: **H.3984** passed the House and was referred to the Senate Judiciary Committee on May 9, 2005; the bill received a favorable with amendment report from the Senate Judiciary Committee on May 18, 2005.*

## DISARMING A LAW ENFORCEMENT OR CORRECTIONS OFFICER

The Senate approved and sent to the House **S.560**. This bill creates the offense of taking a weapon or firearm from the possession of a law enforcement or corrections officer. Taking a weapon other than a firearm from a law enforcement or corrections officer is a felony punishable by imprisonment for not more than five years, or a fine of not more than $1,000, or both. Taking a firearm from a law enforcement or corrections officer is a felony punishable by imprisonment for not more than 10 years, or a fine of not more than $5,000, or both.

*STATUS: **S.560** passed the Senate and was referred to the House Judiciary Committee on April 6, 2005.*

## LAW ENFORCEMENT OFFICERS AND PARDONS

The Senate approved and sent to the House **S.78**. This bill relates to the issuance of certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained by the Department of Public Safety's (DPS) Division of Training and Continuing Education. The bill revises the type of evidence relating to criminal convictions and character that an employer of a law enforcement officer must provide to DPS regarding an officer who is a candidate for certification. The bill provides that a pardon does not allow a person to become a certified law enforcement officer, unless the pardon is based on a finding of innocence.

The bill further provides that some pardoned crimes and convictions may be used to enhance certain subsequent offenses.

*STATUS:* ***S.78*** *passed the Senate and was referred to the House Judiciary Committee on March 10, 2005.*

## "MARY LYNN'S LAW" (VICTIM NOTIFICATION/STALKING AND HARASSMENT)

The House approved and sent to the Senate **H.3543**. Among other things, **H.3543** limits defendant participation in diversionary programs such as mental health court and drug court. The bill provides that (1) a person with a current charge or a prior conviction for a violent offense or a harassment or stalking offense, or (2) a person subject to a restraining order or valid order of protection, or (3) a person currently on parole or probation for any offense, or (5) if the consent of the victim has not been obtained, then that person may not be considered for a diversion program such as drug court or mental health court. These provisions do not apply to a program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor.

The bill makes numerous revisions with regards to victim notification. **H.3543** requires diversionary programs, except a diversionary program administered by the South Carolina Prosecution Coordination Commission or a circuit solicitor, to make reasonable attempts to notify the victim of a crime prior to the defendant's release from the program, unless the defendant is released to a law enforcement agency. Likewise, in every case where there is a court-ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation must make reasonable attempts to notify the victim of the crime prior to the defendant's release from the facility, unless the defendant is released to a law enforcement agency. Notification of a victim may not be only by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach a victim by electronic or automated communication or recording, the appropriate agency or division shall attempt to make personal contact with the victim. **H.3543** requires a department or agency having custody of a person accused, convicted, or adjudicated guilty of committing a crime involving a victim, to inform each victim, upon request, before any transfer of the person to a less secure facility or to a diversionary program. These provisions do not apply to transfers to other law enforcement agencies and transfers to other non-law enforcement locations if the person remains under security supervision. All victims, upon request, must be notified of interdepartmental transfers after the transfer occurs. Notification to a victim may not be only by electronic or other automated communication or recording, except in the case of interdepartmental transfers. **H.3543** requires that the written victim impact statement to be transmitted by the prosecuting agency or summary court to the Department of Corrections or Department of Probation, Parole and Pardon Services, as appropriate, no later than 10 days after sentencing. **H.3543** provides that a law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving a victim, must also provide to a mental health facility the appropriate contact information for each victim.

The bill makes substantive changes with regards to the criminal offenses of stalking and harassment. **H.3543** creates the offenses of harassment in the first degree, harassment

in the second degree, as well as redefines the offense of stalking. Penalties are outlined for violations. There are exceptions for licensed private investigators and electronic mail service providers. The bill authorizes a law enforcement officer or another person with knowledge of the circumstances to sign a warrant in place of the victim for a person alleged to have committed a harassment or stalking offense. Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. The evaluation may not take place until the facility conducting the evaluation has received all of the necessary documentation. If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person's release. All reasonable efforts must be made to notify the victim personally.

**H.3543** authorizes magistrate's court to assess a filing fee against the nonprevailing party in an action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee. A restraining order remains in effect for a fixed period of time for not less than one year, as determined by the court on a case-by-case basis. A restraining order issued by a court must not contain the social security number of a party to the order and must contain as little identifying information as necessary of the party it seeks to protect. Current law provides that temporary restraining orders must be for a fixed period not to exceed six months; this bill increases that time frame to one year.

Prior to setting bail, a magistrate or municipal judge may order a defendant charged with harassment in the first or second degree or stalking to undergo a mental health evaluation. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within 10 days of the order's issuance. Once the evaluation is complete, the examiner must, within 48 hours, issue a report to the local solicitor's office, summary court judge, or other law enforcement agency. Upon receipt of the report, a bond hearing must be arranged before a circuit court judge or the summary court judge. **H.3543** requires at a bond hearing that the court shall have, if

available, all incident reports generated as a result of the offense charged and a copy of the defendant's criminal record. **H.3543** creates a task force to examine and design statewide standards for the operation of mental health courts.

*STATUS: **H.3543** passed the House and was referred to the Senate Judiciary Committee on April 18, 2005; the Senate amended and gave the bill second reading on May 19, 2005.*

## SEX OFFENDER REGISTRY

The House approved and sent to the Senate **H.3328**. This bill makes various revisions with regards to the sex offender registry. Under this bill, the State Law Enforcement Division (SLED) must cross-reference alias names in the registry.

This bill expands the list of convictions that render a person a "sex offender."

- Under this bill, any person, regardless of age, residing in South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or no contest to certain offenses, or who has been convicted, adjudicated delinquent, pled guilty or no contest, or found not guilty by reason of insanity in any comparable court in the United States, or a foreign country, or who has been convicted, adjudicated delinquent, pled guilty or no contest, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or no contest, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register.

- Under this bill, people convicted of administering, distributing, dispensing, delivering, or aiding, or abetting, or conspiring to administer, distribute, dispense or deliver a controlled substance or gamma hydroxyl butyrate or derivatives thereof to a person with the intent to commit crimes must register.

- The bill provides that a sex offender whose name is contained on the sex offender registry, and who has been granted a pardon, must remain on the registry and must continue to register annually.

Current law provides that a sex offender must register with the sheriff of the county in which the offender intends to reside within 24 hours of release; this bill changes the requirement to one business day. The bill also provides that an offender's photograph must be provided to SLED before the offender is released from prison.
Current law provides that an offender who is sentenced to probation must register within 10 days of sentencing; this bill changes the requirement to one business day.

Current law requires a convicted sex offender to only register in the county where the offender resides. The bill requires that the offender must also register with the sheriff of the county or counties where the offender owns real property, attends any public or private school, including but not limited to, a secondary school, technical college, or higher education institution. The bill also provides that a registered sex offender who acquires real property or attends any public or private school within this State must provide notice of the address to the sheriff in the county where the real property or school is located. The bill further provides that a person who is required to register as a sex offender who moves to this State, acquires real property in this State, or is attending, or being employed by or carrying on a vocation at any public or private school and is not under the jurisdiction of certain correctional agencies, must register within 10 days.

If a previously registered offender fails to notify the sheriff upon moving within the same county or to another county, then the offender will not be considered registered and shall be prosecuted for failing to register.

This bill provides that if, in connection with the sale, exchange, purchase or rental or real property, a real estate licensee receives a request from a person to whom the licensee is providing brokerage services in connection with the sale, exchange, purchase or rental for information related to whether a particular person is required to register as a sex offender or any other information about the sex offender registry, the licensee has a duty to disclose such information, if the licensee has actual knowledge of the information.

The bill does provide immunity from liability for any act or omission related to disclosure if the certain information is disclosed in writing to the buyer. The notice may be included as part of a listing agreement, buyer representation agreement, or sales agreement.

*STATUS: **H.3328** passed the House and was referred to the Senate Judiciary Committee on May 3, 2005; the Senate amended and gave the bill second reading on May 19, 2005.*

## "S.C. TEACHER PROTECTION ACT OF 2005"

*See summary under Education*

# EDUCATION

## CHARTER SCHOOL ACT OF 2005

The House approved and sent to the Senate **H.3010**, a bill that establishes and provides for the Carolina Public Charter School District (the District), a public body with geographical boundaries the same as the boundaries of the State of South Carolina. As approved by the House, the bill provides that the District must be governed by a board of trustees, whose office must be housed in and staffed by the Office of the Governor until the 2010-2011 school year, at which time it shall be transferred to the State Department of Education. District trustees would be appointed by the Governor (3); the Speaker of the House (3); the President *Pro Tempore* of the Senate (3); and the State Superintendent of Education (2).

Under the provisions of the bill, District trustees have the same powers, rights, and responsibilities with respect to charter schools as other school district boards of trustees of this State including but not limited to: exercising general supervision over public charter schools, granting charter status to qualifying applicants, and determining district policy. The bill requires applicants who wish to form a charter school to form a charter committee and to submit an application to the Charter School Advisory Committee and the school board of trustees from which the charter committee is seeking sponsorship. The Advisory Committee must determine within sixty days whether the application is in compliance, and an application that is in compliance must be forwarded to the school district from which the application is seeking sponsorship with a letter stating that the application is in compliance. The bill requires that this letter shall also include a recommendation from the Charter School Advisory Committee to approve or deny the charter. The letter must specify the reasons for this recommendation, and the recommendation is nonbinding on the school board of trustees. The bill includes provisions and procedures for local school boards of trustees which have information that an approved application by the Carolina Public Charter School District adversely affects the other students in its district, or that the approval of an application fails to meet the spirit and intent of the Charter Schools Act. In such instances, the local school board may appeal the granting of the charter to the State Board of Education. The bill provides that the State Board must, within forty-five days, affirm or reverse the application for action by the Carolina Public Charter School District. The bill provides that schools

currently established as a private school which desire to convert to a charter school must dissolve and shall not be allowed to open as a charter school for a period of twelve months.

*STATUS:* ***H.3010*** *was approved by the House on January 27, and on May 19 was reported majority favorable with amendment, minority unfavorable, from the Senate Education Committee. The bill is on the Senate calendar pending second reading.*

## FINANCIAL LITERACY

The General Assembly passed and the Governor signed into law **H.3020**, the Financial Literacy Act Of 2005. This legislation requires the State Board of Education to develop or adopt curricula, materials, and guidelines for local school boards to use in implementing a program of instruction on financial literacy within courses currently offered in South Carolina high schools. A financial literacy program includes instruction in basic personal finance skills such as balancing a checkbook, opening a deposit account, managing a savings account, understanding credit card debt, computing interest rates, filling out a loan application, and understanding simple contracts and taxes. The legislation also authorizes the establishment of a special fund to receive public and private contributions to provide financial incentive grants to local school boards for: defraying the costs of financial literacy training for teachers; rewarding schools, teachers, and students who meet certain levels of success in a financial literacy competition; and funding activities related to financial literacy education. The Board is required to incorporate the elements of the financial literacy program into the State Academic Standards of Instruction for kindergarten through twelfth grade.

*STATUS: Having passed the General Assembly,* ***H.3020*** *was signed into law by the Governor on April 15, 2005 (Act 38).*

## PUT PARENTS IN CHARGE

**H.3652**, introduced as a statewide program, was amended by the House Ways and Means Committee as a pilot program to be implemented in only two districts - one district from the top 25% in *per capita* income and one from the bottom 25% in *per capita* income.

The bill provided tax credits for tuition paid by the family of a qualifying student to attend an independent school, a public school outside the student's assigned district, or expenses related to home schooling, so long as the parent or guardian's taxable income did not exceed $75,000 (increased by $5,000 for each exemption over two claimed by a family). The credit would have been the lesser of 80% of the actual tuition paid or 51% of the average state per pupil expenditure for most students.

The bill also provided a tax credit for a limited amount of contributions to a scholarship granting organization, used to pay for a qualifying student to attend an independent school, a public school outside of the student's assigned district, or for expenses related to home schooling. The amount of the scholarship would have been the lesser of 80% of

the actual tuition paid or 51% of the average state per pupil expenditure for most students.

The bill required the State Budget and Control Board to report annually on the impact of these tax credits and scholarships on public school enrollment and state and local funding for school districts, and required the Board to provide a long-term evaluation over a minimum twelve-year period regarding parent and student satisfaction, and academic performance for participants in the program and public school students. The Board would have also been required to track and assess the impact of the bill on school capacity, availability, and quality.

*STATUS:* ***H.3652*** *was tabled by the House on May 4, 2005.*

## S.M.A.R.T. FUNDING

The House approved and sent to the Senate **H.3086**, the S.M.A.R.T. (Streamlined Management and Accounting Resources for Teaching) Funding In Education Act. As approved by the House, the bill establishes a fund management and accounting program that consolidates all program funding to the state's school districts and special schools for enhanced flexibility in their operations of grades K-12. The bill outlines six general categories in which funds may be spent: (1) quality teaching; (2) instruction; (3) technical assistance; (4) operations, infrastructure, and safety; (5) workforce education; and (6) special needs. The bill allows for transfer of funds among programs within these categories, and provides for some flexibility in distribution of funding across the six general categories. The funding categories and subcategories established in the legislation are to be utilized beginning January 1, 2006. The legislation also creates a S.M.A.R.T. Funding Study Committee (whose nine members are appointed: three each by the Governor, the Speaker of the House, and the President Pro Tempore of the Senate) to work in conjunction with the Education Oversight Committee and the State Department of Education to study the effectiveness and appropriateness of the allocation of, and flexibility in, funding in the S.M.A.R.T. Funding Act. The report must be made by July 1, 2007, at which time the committee shall dissolve.

*STATUS:* ***H.3086*** *was approved by the House and is pending in the Senate Finance Committee.*

## S.C. EDUCATION AND ECONOMIC DEVELOPMENT ACT

On May 19, the House and Senate approved the conference committee report on **H.3155**, the South Carolina Education and Economic Development Act, and the bill was ordered enrolled for ratification. Highlights of the bill as approved by the House and Senate:

- Requires the State Department of Education (the Department) to develop a curriculum, organized around a career cluster system, which provides students with strong academics and real-world problem solving skills through individualized educational, academic, and career-oriented choices and greater exposure to career information and opportunities;

- Requires school districts to lay the foundation for the clusters of study system:
    - In elementary school through career awareness activities;
    - In middle grades through programs which allow students to identify career interests and abilities and align them with clusters of study for development of individual graduation plans;
    - In high school through guidance and curricula which enable students to complete these graduation plans for a seamless transition to employment, further training, or postsecondary study;
- Requires full implementation of the provisions of the bill by July 1, 2011, at which time the Council (see below) shall cease to exist;
- Requires that during the 2005-06 school year, the Department's guidance and counseling model must provide standards and strategies for school districts to use in developing and implementing a guidance and counseling program in their districts; this model must assist school districts and communities with planning, development, implementation, and assessment of a school guidance and counseling program to support the personal, educational, and career development of pre-kindergarten through twelfth grade students;
- Requires that before July 1, 2006, the Department shall develop state models and prototypes for individual graduation plans and the curriculum framework for career clusters of study, as provided in the bill; parents would be involved in the development of these plans;
- Requires the State Board of Education to develop a state model for addressing at-risk students;
- Requires that before July 1, 2007, school districts shall: organize high school curricula around a minimum of three clusters of study and cluster majors, designed to provide a well-rounded education; provide access for all schools to the South Carolina Occupational Information System, or another information system approved by the Department;
- Requires that during the 2006-07 school year:
    - The Department shall begin implementing a career development plan for education professionals in career guidance;
    - The Department's guidance and counseling program model and career awareness activities must be integrated into the curricula for grades one through five;
    - Counseling and career awareness programs on clusters of study must be provided for grades six through eight;
    - Middle schools - and by 2007-08 high schools - must provide students with the services of a career specialist who is trained and education as provided in the bill;
- Requires that by the 2007-08 school year, all middle and high schools shall have a 300-1 student-to-guidance-personnel ratio;
- Requires that a career services provider shall work to ensure the coordination, accountability, and delivery of career awareness, development, and exploration to students in kindergarten through twelfth grade, through services and responsibilities outlined in the bill;
- Requires that during the 2007-08 school year, all public high schools shall implement a career guidance program model or prototype as developed or approved by the Department, and certified school guidance counselors and career specialists shall counsel ninth and tenth grade students so that before the

end of the second semester of the tenth grade, tenth grade students will have declared an area of academic focus within a cluster of study;

- Allows a student to transfer to a high school offering that student's career cluster if not offered by the high school in his attendance zone;
- Prohibits school guidance counselors and career specialists from performing administrative tasks;
- Requires that by the 2009-10 school year, all high schools shall implement the "High Schools That Work" organizational model, or another cluster or model approved by the Department;
- Outlines criteria which must be included in an individual graduation plan;
- Requires the State Board of Education, through regulations, to outline specific objective criteria for districts to use in the identification of students at risk for being poorly prepared for the next level of study or for dropping out of school;
- Requires the establishment of model programs for at-risk students to ensure that these students receive the opportunity to complete the necessary requirements to graduate with a state high school diploma and build skills to prepare them to enter the job market successfully;
- Requires schools to schedule parental conferences, as described in the bill, for students in grades six through twelve;
- Creates and provides for the Education and Economic Development Coordinating Council to advise the Department on the implementation of the provisions of the bill, to review accountability and performance measures, to designate and oversee the regional centers established in the bill (see below), to report annually on the progress of implementing the bill, to make recommendations to the department for a marketing plan to promote awareness of the provisions of the bill, and to provide input regarding promulgation of regulations to carry out the provisions of the bill;
- Requires and provides for regional education centers (before July 1, 2006) to coordinate and facilitate the delivery of information, resources, and services to students, educators, employers, and the community;
- Requires the South Carolina Employment Security Commission to collaborate with the State Technical Education Board and the Commission on Higher Education to assist the Department in planning and promoting career information and employment options and preparation programs provided in the bill, and in the establishment of the regional education centers;
- Requires that beginning with the 2006-07 academic year, colleges of education must include in their training of teachers, guidance counselors, and administrators, specified components relevant to the provisions of the bill;
    - Requires the Department to develop performance-based standards in these areas and include them as criteria for teacher program approval;
    - Requires that by the 2009-10 school year, the teacher's and principal's evaluation systems must include a review of performance in career exploration and guidance;
- Requires the Commission on Higher Education to:
    - Review, revise, and recommend secondary to postsecondary articulation agreements and to promote the development of measures to certify equivalency in content and rigor for all courses included in articulation agreements;
    - Examine dual credit courses to insure they are equivalent in content and rigor to the equivalent college courses;

  - Study the content and rigor of high school courses in order to provide a seamless pathway to postsecondary education;
  - Report annually to the Education and Economic Development Coordinating Council.
- Repeals the 1994 School-to-Work Transition Act.
- Amends current provisions regarding character education by adding respect for authority, good work ethics, and sound educational habits as character traits which should be incorporated into character education programs;
- Requires that school report cards (required under the Education Accountability Act) include dropout reduction data.

*STATUS: **H.3155** was approved by the General Assembly on May 19 and on that date the Senate ordered the bill enrolled for ratification.*

## "S.C. TEACHER PROTECTION ACT OF 2005"

The Senate approved and sent to the House **S.13**. This bill provides that a teacher may bring a civil action against a student who commits a criminal offense against the teacher, if the offense occurs on school grounds or at a school-related event, or if the offense is directly related to the teacher's professional responsibilities. The bill does not limit the civil remedies available to another party as a result of the same criminal act.

In addition to the protections granted under the South Carolina Tort Claims Act, no teacher has civil liability to a student or to a party acting in interest of a student for an act or omission by the teacher that occurs while the teacher is acting on behalf of the school if the: (1) teacher was acting within the scope of the teacher's employment, (2) actions of the teacher did not violate the law, including regulations set by the individual district or school, (3) acts or omissions were not the result of wilful or intentional conduct or gross negligence, (4) acts or omissions were not the result of the teacher operating a motor vehicle or watercraft, and (5) actions of the teacher do not constitute a violation of the student's civil rights.

Any student that commits simple assault and battery against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor. The penalty is a fine of not more than $500 or 30 days imprisonment, or both.

Any student enrolled in a school that commits assault and battery (other than one that is aggravated) against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor. The penalty is a fine of not more than $5,000, or not more than one-year imprisonment, or both.

Any student enrolled in a school that commits assault and battery of a high and aggravated nature against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a

misdemeanor is guilty of a felony. The penalty is a fine of not more than $5,000, or not more than 10 years imprisonment, or both.

Among other things, this bill provides that at each proceeding the judge must inquire if the victim has been notified of the proceeding. If the victim is present at the proceeding, the judge must inquire if the victim desires to be heard at the proceeding.

*STATUS: **S.13** passed the Senate and was referred to the House Judiciary Committee on April 14, 2005.*

## STUDENTS' HEALTH AND FITNESS ACT OF 2005

The House and the Senate have approved differing versions of **H.3499**, the Students' Health and Fitness Act of 2005. As approved by the House, this bill:

- Decreases the current 800:1 student-teacher ratio in physical education to 500:1, phased in over three years;
- States that the goal of the Act is to provide students with the equivalent of thirty minutes of physical education instruction daily, and provides that the weekly minutes of instruction must be distributed in a developmentally appropriate manner for each grade level;
- Limits physical education classes to a student-teacher average ratio of 28:1;
- Requires and provides for public school physical education program assessments, requires the State Department of Education (SDE) to develop a method of calculating a district and school physical education program effectiveness score, and requires that this score be reported through the district and school report card;
- Requires that assessment of students in grades two, five, eight, and high school be used to assess the effectiveness of the school's physical education program and its adherence to the standards;
- Requires elementary schools to designate a physical education teacher to serve as its Physical Education Activity Director responsible for coordinating additional physical activity for students and teachers before, during, and after school;
- Requires the General Assembly, beginning with school year 2006-07, to appropriate funds to be used for providing grants for licensed nurses in elementary public schools;
- To promote optimal healthy eating patterns, requires SDE to place recommendations of the SDE Task Force on Student Nutrition and Physical Activity Report in policy to be implemented in elementary schools;
- Requires SDE to make available coordinated school health model designed to address health issues of children, and outlines eight components which the program must provide;
- Requires and provides for school districts to establish and maintain a Coordinated School Health Advisory Council (CSHAC) to assess, plan, implement, and monitor district and school health policies and programs, including development of a district wellness policy;
- Requires districts to work with the CSHAC to develop school health plans which will be a part of the district's currently-required strategic plan;

- Provides for annual professional development in health, safety, and nutrition education to K-12 teachers;
- Prohibits elementary schools from providing to students foods of minimal nutritional value but does not restrict foods which parents may provide for the child to consume at school;
- Restricts what foods may be offered in public-area vending machines in elementary schools, and requires the CSHAC to determine which snacks may be sold in these machines;
- Requires that elementary school students must have at least twenty minutes to eat lunch once they have received their food;
- Requires that students in grades K-5 receive nutrition education weekly;
- Stipulates that implementation of these provisions is contingent upon funding from the General Assembly.
- May not be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers, or groups when the items are intended for sale off the school campus.

*STATUS: Differing versions of **H.3499** have been approved by the House and the Senate. Those differences are currently being negotiated in a House-Senate conference committee.*

# ENVIRONMENT

## AMENDMENTS TO THE AQUATIC LIFE PROTECTION ACT

The Aquatic Life Protection Act was enacted in 2004; since the enactment of this legislation, the Environmental Protection Agency (EPA) has taken over the NPDES (Natural Pollutant Discharge Elimination System) permit process. This bill allows any permit applicant or existing permittee to notify the South Carolina Department of Health and Environmental Control (DHEC) in writing that it is opting out of the Aquatic Life Protection Act. **S.326** also makes substantive but technical changes to the Aquatic Life Protection Act to make the act compliant with EPA requirements so that DHEC may administer its own program.

*STATUS: Having passed the General Assembly, **S.326** was signed into law by the Governor on March 22, 2005 (Act 25).*

## BROWNFIELDS

The House approved and sent to the Senate **H.3650**. This bill relates to the Brownfields Voluntary Cleanup Program and contract requirements entered into by or on behalf of a nonresponsible party. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The bill provides that a nonresponsible party is not liable to any third-party for contribution, equitable relief, or claims for damages arising from a release of contaminants which is the subject of a response

action included in the nonresponsible party voluntary cleanup contract. This limitation of liability commences on the date of execution of the nonresponsible party voluntary cleanup contract by the Department of Health and Environmental Control; however, this limitation must be withdrawn automatically if the nonresponsible party voluntary cleanup contract is lawfully terminated by any party. This limitation applies only to: (1) the parties to the nonresponsible party voluntary cleanup contract and to the nonresponsible party's lenders, signatories, parents, subsidiaries, and successors; and (2) 'existing contamination', as defined in the nonresponsible party voluntary cleanup contract. This limitation of liability does not apply to any release caused by or attributable to the nonresponsible party or its lenders, signatories, parents, subsidiaries, or successors.

*STATUS:* ***H.3650*** *passed the House and was referred to the Senate Committee on Medical Affairs on April 28, 2005.*

## GRAND JURY/EXPANSION OF JURISDICTION TO INCLUDE ENVIRONMENTAL OFFENSES

**S.22** extends the subject matter jurisdiction of the state grand jury to include wilful criminal violations that result in actual and substantial harm to the water, ambient air, soil or land, or both soil and land. Violations include, but are not limited to, violations of: the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Pollution Control Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or any crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the environment if the anticipated damages, including, but not limited to the cost of remediation, are two million dollars or more as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control (DHEC). If the knowing and willful crime is a violation of federal law, then a conviction or an acquittal under federal law for the same act is a bar to the impaneling of a state grand jury.

The bill requires that in investigations of crime, except in matters where DHEC or its officers or employees are subjects of investigation, the Commissioner of DHEC must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division (SLED). The Attorney General and the Chief of SLED must consider the impaneling of a state grand jury necessary before the Attorney General presents a petition, which includes the Commissioner's written recommendation, to the Chief Administrative Judge.

In the case of evidence brought to the attention of law enforcement by an employee or former employee of the alleged violating entity, the bill provides that there must also be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee. Where an individual employee performs a wilful criminal violation of the environmental laws, only the individual employee is subject to investigation unless or until there is separate, credible evidence that the individual's employer knew of, concealed, directed, or condoned the employee's actions.

*STATUS:* ***S.22*** *(R76) was ratified on May 18, 2005.*

# GAMBLING

## CASINO BOATS

As passed by the House, **H.3694** delegates to counties and municipalities the authority to prohibit or regulate the operation of gambling vessels that are in engaged in so-called "cruises to nowhere." The General Assembly specifically retains and does not delegate to local jurisdictions the authority to regulate or prohibit gambling on passenger cruise liners.

When a local jurisdiction chooses to prohibit "cruises to nowhere," the legislation allows a county or municipality to assess a civil penalty of not more than $100 dollars per passenger for each violation, with an aggregate total in penalties not to exceed $50,000 dollars per vessel for a 24-hour period. The bill authorizes local jurisdictions to seek injunctive relief against a person for violation of an ordinance regulating or prohibiting gambling vessels.

If a local jurisdiction adopts an ordinance allowing a gambling vessel to operate, the legislation authorizes the local jurisdiction to assess a surcharge of up to 10 percent of each ticket sold per gambling cruise, and a surcharge or up to five percent of the gross proceeds of each gambling vessel. The bill also outlines reporting requirement that the gambling cruises must make to the Department of Revenue.

Under the bill, the Attorney General is charged with the affirmative duty to defend the State and assist local jurisdictions from constitutional challenges to this legislation.

*STATUS:* ***H.3694****, the "Gambling Cruise Act" passed the House and was referred to the Senate Judiciary Committee on May 12, 2005; the bill was read for the third time by the Senate and returned to the House with amendments on May 19, 2005. The Senate version of the bill provides for a limited grandfather clause for boats currently operating; also, the Senate version of the bill does not include the language that places an affirmative duty on the Attorney General to defend the State and assist local jurisdictions from constitutional challenges. NOTE:* ***S.615****, the "Gambling Cruise Act," passed the Senate and was referred to the House Judiciary Committee on May 19, 2005.*

## CHARITABLE RAFFLES

The House approved and sent to the Senate **H.3621**. This joint resolution proposes to submit to the electors at the next general election whether or not a raffle conducted by certain charitable organizations is a lottery prohibited by the State Constitution. All raffle proceeds, except for the costs of the prizes and the costs of printing tickets, would have to be used exclusively for the organization's tax-exempt purposes. A charitable organization would be limited to holding a raffle not more than four times in a calendar

year. For purposes of this provision, all raffles occurring on one date are defined as one raffle.

*STATUS: **H.3621** passed the House and was referred to the Senate Judiciary Committee on April 28, 2005.*

# HEALTH

## HEALTH CARE POWERS OF ATTORNEY

The House approved and sent to the Senate **H.3224**. Under this bill, any document or writing containing the following provisions is deemed to comply with the requirements for a health care power of attorney**:** (1) the name and address of the person who is authorized to make health-care related decisions if the principal becomes mentally incompetent; (2) the types of health-care related decisions that the health care agent is authorized to make; (3) the signature of the principal; (4) the signature of at least two persons who witnessed the principal's signature; and, (5) the attestation of a notary public. Additionally, any document that meets the requirements listed above and also provides expressions of the principal's intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions: (1) organ donations; (2) life-sustaining treatment; (3) tube feeding; (4) other kinds of medical treatment that the principal wishes to have or not to have; (5) comfort and treatment issues; (6) provisions for interment or disposal of the body after death; and, (7) any statements that the principal may wish to have communicated on his behalf.

*STATUS: **H.3224** passed the House and was referred to Senate Judiciary Committee. On May 11, 2005, the Senate amended and carried over the bill.*

## "LEWIS BLACKMAN HOSPITAL PATIENT SAFETY ACT"

The House approved and sent to the Senate **H.3832**. This bill requires each hospital staff member whose duties include the personal care or medical treatment of patients to wear badges clearly stating their name, their department and their job or trainee title. All clinical trainees, medical students, interns, and resident physicians must be explicitly identified on their badges. The identifying information must be clearly visible and must be stated in terms or abbreviations reasonably understandable to the average person.

Except in emergency admissions, a hospital is required to provide each patient with written information about the role of clinical trainees, medical students, interns, and resident physicians in patient care. The patient must be notified that the attending physician is the person responsible for the patient's care in the hospital. The notification must state generally whether medical students, interns, or resident physicians may be participating in a patient's care, making treatment decisions, or performing surgery.

If at any time a patient or the patient's representative requests that a nurse call his or her attending physician, the nurse is required to place a call to inform the attending physician of the patient's concerns. If the patient or his/her designee wants to speak to the attending physician, the nurse must provide the telephone number and assist in

making the call. Each hospital must provide a mechanism that the patient can use to get prompt assistance for urgent patient care concerns. A description of this mechanism must be included in the patient notification.

This legislation does not create a civil cause of action. However, the legislation must not be construed to preclude a claim that may have otherwise been asserted under common law or any other provision of law. Also, the provisions of this legislation do not apply to hospitals owned or operated by the Department of Mental Health.

*STATUS: **H.3832** passed the House and was referred to the Senate Committee on Medical Affairs on April 28, 2005.*

## MENTAL HEALTH INSURANCE PARITY

The General Assembly passed **S.49**, a bill that requires health insurers to provide coverage for treatment of certain mental health conditions. The legislation's coverage requirements pertain to treatment of the following mental conditions: (1) Bipolar Disorder, (2) Major Depressive Disorder, (3) Obsessive Compulsive Disorder, (4) Paranoid and Other Psychotic Disorder, (5) Schizoaffective Disorder, (6) Schizophrenia, (7) Anxiety Disorder, (8) Post-traumatic Stress Disorder, and (9) Depression in childhood and adolescence. The legislation requires a health insurance plan to provide the insured at least one choice for treatment of mental health conditions within the plan that has rates, terms, and conditions that place no greater financial burden on the insured than for access to treatment of physical conditions in similar settings and for similar types of treatment. Any required deductible or out-of-pocket limits must be comprehensive for coverage of both mental health and physical health conditions. The legislation establishes provisions under which a health insurer may provide coverage for treatment of mental health conditions through a managed care organization even if the insurer does not otherwise provide for management of care. The legislation does not apply to a health insurance plan that is individually underwritten or provided to a small employer. The legislation provides that the State Employee Insurance Program shall continue to provide mental health parity in the same manner and with the same management practices as included in the plan beginning in 2002, and is not under the jurisdiction of the Department of Insurance. Before July 1, 2008, The Department of Insurance is required to report to the General Assembly an estimate of the impact of this legislation on health insurance costs.

*STATUS: The Senate and House of Representatives having adopted the conference report on **S.49**, the bill was ratified on May 18, 2005 (R 77).*

## NURSE LICENSURE COMPACT

**H.3142** authorizes South Carolina to join the Nurse Licensure Compact to:

- facilitate the responsibility to protect the public's health and safety;
- ensure and encourage the cooperation between states with regard to nurse licensure and regulation;

- facilitate the exchange of information regarding nurse regulation, investigation, and adverse licensure actions;
- promote compliance of laws governing the practice of nursing in each jurisdiction;
- grant participating states authority to hold nurses accountable for meeting all of state practice laws in the states where their patients are located at the time care is rendered.

For purposes of this bill, the following definitions apply:

- party state - any state that has adopted this compact;
- home state - the party state that is the nurse's primary state of residence;
- remote state - a party state, other than the home state, where the patient is locate at the time nursing care is provided or in cases not involving a patient where the recipient of nursing practice is located.

The compact maintains a coordinated licensure information system to collect and share information on nurse licensure and enforcement actions. When a nursing license application is received in a party state, the licensing board must check through the coordinated licensure information system to verify whether the applicant holds or has ever held a license issued by any other state, whether there are any restrictions on the applicant's multi-state privilege, and whether any other adverse licensure action by any state has been taken against the applicant's license.

The bill specifies the conditions under which a nurse may be issued a license to practice in participating and non-participating states. Under the compact, a license to practice nursing issued by a home state to a resident in that state must be recognized by each party state as authorizing a multi-state licensure privilege to practice in each party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure, license renewal, and all other applicable home state laws. A party state may, in accordance with that state's due process laws, revoke, suspend, or limit the multi-state licensure privilege of any licensee to practice in its state and may take any other actions under its applicable state laws that are necessary to protect the health and safety of its citizens. The practice of nursing in a party state subjects a nurse to the jurisdiction of the nurse licensing board and the laws and the courts in that party state.

If a party state takes an action against a nurse, it must notify the administrator of the coordinated licensure information system. The administrator must notify the home state of any actions taken by other states in the compact. The compact provides due process procedures for a nurse against whom an adverse licensure action is ordered.

The bill also requires, beginning January 1, 2007, a foreign-educated applicant for licensure as a registered nurse in South Carolina to pass the National Council Licensure Examination and an English language proficiency test.

*STATUS: Having been approved by the General Assembly, **H.3142** was enrolled for ratification on May 19, 2005.*

## PHYSICAL THERAPY

The House approved and sent to the Senate **H.3604**. The bill allows a physical therapist or a physical therapist assistant to be employed by a health care provider, if the provider already employed a physical therapist or physical therapist assistant as of April 7, 2004. The bill further provides that a health care provider, who is not a physical therapist, may not employ a greater number of physical therapists or physical therapist assistants than the provider employed on April 7, 2004, or expand physical therapy services in any manner.

The bill requires a health care provider to furnish a patient with a written disclosure form before a referral is made for physical therapy services in which the provider has a financial interest. A physical therapist may not accept a referral from an

employer provider unless the disclosure is made. The bill requires the provider to give the patient a written disclosure form informing the patient of:

- the existence of the investment interest;
- the name and address of each applicable entity to which a referral is made in which the referring health care provider is an investor;
- the patient's right to obtain physical therapy services at the location or from the provider or supplier of the patient's choice, including the entity in which the referring provider is an investor;
- the names and addresses of at least two alternative sources of these services available to the patient;
- a schedule of typical fees for items or services usually provided by the entity or, if impracticable because of the nature of the treatment, a written estimate specific to the patient.

The referring provider must obtain the patient's signature that the information in the disclosure form has been provided to the patient.

*STATUS: **H.3604** passed the House and was referred to the Senate Committee on Medical Affairs on May 10, 2005.*

## "RIGHT TO LIFE ACT"

*See summary under Marriage/Family*

## STUDENTS' HEALTH AND FITNESS ACT OF 2005

*See summary under Education*

## TORT REFORM

*See summary under The Courts*

## "YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2005"

The House approved and sent to the Senate **H.3243**. Under this bill, it is unlawful for a person to sell, furnish, give, distribute, purchase for, or provide a minor under the age of 18 a tobacco product.

The bill also provides that it is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is not required from an individual who the person reasonably believes to be over 27 years of age. The bill further provides that a retail distributor of tobacco products must provide training to its employees about selling tobacco related products. Any retail establishment that does not provide training is subject to a fine of not more than $1,000 dollars.
The bill makes it unlawful for a person under 18 to possess a tobacco product. Exceptions are made for people under 18 who make certain deliveries.

Violations are misdemeanors triable exclusively in either municipal or magistrate court. For a first offense, the penalty is a fine of not less than $100 dollars. For a second offense, which occurs within three years of the first offense, the penalty is a fine of not less than $200 dollars. For third and subsequent offenses, which occur within three years of the first offense, the penalty is a fine of not less than $300 dollars. In lieu of these penalties, the court may require an individual who is less than 18 who illegally purchases or possesses a tobacco product to perform not less than 24 hours of community service for the first offense and not less than 40 hours of community service for a second or subsequent offense. A person who is less than 18 may have his or her record expunged upon becoming 18 if the person has paid the fine imposed and successfully completed any court-ordered community service. A violation of the provisions of this bill does not violate an establishment's beer and wine permit and is not a ground for revocation or suspension of a beer and wine permit. Also, a conviction does not affect a person's eligibility for a LIFE Scholarship or any other state sponsored scholarship program.

*STATUS: **H.3243** passed the House and was referred to the Senate Judiciary Committee on April 20, 2005. NOTE: Similar legislation, **S.384** passed the Senate and was referred to the House Judiciary Committee on April 19, 2005. **S.384** was recalled from the House Judiciary Committee on May 19, 2005; the bill is pending on the House Calendar.*

# MARRIAGE/FAMILY

## "AUTUMN'S LAW" (CRIMINAL SEXUAL CONDUCT/ TERMINATION OF PARENTAL RIGHTS)

The House approved and sent to the Senate **H.3222**. This bill pertains to the adoption and termination of parental rights when the child is conceived as a result of criminal sexual conduct or incest. Under the bill, consent or relinquishment for adoption is not required when the biological parent of a child conceived as a result of that parent's criminal sexual conduct or incest as found by a court of competent jurisdiction unless,

with respect to a conviction for criminal sexual conduct, the sentencing court made a specific finding on the record that the conviction resulted from consensual sexual conduct where the victim was younger than the actor. If a person is convicted or pleads guilty or no contest to a criminal sexual conduct with a minor offense or a similar offense under laws of another jurisdiction, that person's parental rights to any child conceived as a result of the conduct underlying the conviction or pleas are automatically terminated upon conviction or entry of a plea unless the sentencing court made a specific finding on the record that the conviction resulted from consensual sexual conduct where the victim was younger than the actor. If the biological parent's conviction is reversed on appeal, the bill outlines a procedure for the biological parent to petition the court to restore his or her parental rights.

*STATUS: **H.3222** passed the House and was referred to the Senate Judiciary Committee on April 28, 2005. NOTE: Similar legislation, **S.227** passed the Senate and was referred to the House Judiciary Committee on April 6, 2005. **S.227** received a favorable with amendment report from the House Judiciary Committee on May 18, 2005.*

## COMMON LAW MARRIAGE

The House approved and sent to the Senate **H.3588**. The bill repeals current law relating to the validity of a marriage contracted without the issuance of a license; the bill provides that a common law marriage in this State may not be recognized on and after January 1, 2006. Exceptions are provided for common law marriages existing as of December 31, 2005.

*STATUS: **H.3588** passed the House and was referred to the Senate Judiciary Committee on May 3, 2005.*

## CRIMINAL DOMESTIC VIOLENCE

*See summary under Criminal Justice*

## "RIGHT TO LIFE ACT"

The House approved and sent to the Senate **H.3213**. This bill provides that the right to due process and the right to equal protection vest at fertilization. The legislation does not prohibit the prescription of a morning after pill to a rape victim.

*STATUS: **H.3213** passed the House and was referred to the Senate Judiciary Committee on April 18, 2005.*

## SAME SEX MARRIAGE

This joint resolution proposes to submit to the electors at the next general election whether or not the State Constitution should be amended to provide that marriage is exclusively defined as the union between one man and one woman and that all other attempted unions, including those recognized by other jurisdictions, are void.

*STATUS: Having passed the General Assembly,* ***H.3133*** *(Act 45) became effective April 28, 2005.*

## UNEMPLOYMENT COMPENSATION FOR JOB LOSS CAUSED BY DOMESTIC VIOLENCE

*See summary under Business/Economic Development*

# STATE/LOCAL GOVERNMENT

## ADMINISTRATIVE RESTRUCTURING

The Senate approved **S.80**, a comprehensive bill which makes numerous revisions to the structure of State government including, but not limited to:

**1. New or Revised Cabinet Agencies:**

Department of Administration, effective July 1, 2006
This new department would consist of the following:

(a) the Division of General Services of the Budget and Control Board, except for the real property programs; and
(b) the Office of Energy of the Budget and Control Board; and
(c) a new Office of State Inspector General. The Office of State Inspector General would:
  (1) be appointed by the Governor with the advice and consent of the Senate for a term to be coterminous with that of the Governor;
  (2) be required to have an accounting or business degree and a level of auditing experience;
  (3) initiate, supervise, and coordinate investigations, recommend polices, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, misconduct, and abuse in the programs, operations, and contracting of all executive agencies.

Department of Behavioral Health Services, effective July 1, 2006
This new department would consist of the following existing departments or agencies:

(a) Department of Alcohol and Other Drug Abuse Services;
(b) the Continuum of Care (Governor's Office); and
(c) Department of Mental Health.

Department of Health and Human Services, effective January 1, 2006

(a) DHHS would be renamed the Department of Health Oversight and Finance.

(b) The department would administer the Web-Based Client Management System, developed by the Office of Research and Statistics in conjunction with DHHS.

**2. Changes in existing agencies:**

Babynet, effective July 1, 2006

(a) This program to benefit infant and toddlers is currently at DHEC.

(b) This program would be transferred to the Department of Disabilities and Special Needs.

Budget and Control Board, effective July 1, 2006

The Board would have the following new components:

(a) the Chief Information Officer would be:

(1) appointed by the Governor with the advice and consent of the Senate;

(2) removable by a majority vote of the Budget and Control Board;

(3) responsible for developing policies and standards for the management of information technology in state government and providing management and technical assistance to certain state agencies; and

(4) available to assist agencies not under the CIO's authority if requested by the agency. Two groups of agencies would not be under the CIO's authority for obtaining information technology and telecommunications:

(i) agencies not subject to the procurement code: the General Assembly, the State Senate, the State House of Representatives, the Judicial Branch, the Legislative Council, the Office of Legislative Printing, Information and Technology Systems, the South Carolina Public Service Authority, and the South Carolina State Ports Authority.

(ii) agencies subject to the procurement code: Department of Transportation, the Medical University of South Carolina, Clemson University, the University of South Carolina and its regional campuses, the state's four-year public colleges and universities, the state's technical schools and colleges, the South Carolina Education Lottery Commission, and an identifiable division of a state agency that has a fiduciary responsibility to use its assets in a manner consistent with constitutionally protected trust funds.

(b) an organizational entity, the Coordinating Council for Cultural and Information Services that would:

(1) not affect the agencies' existing governing bodies;

(2) meet at least quarterly and make a report about consolidating certain services in an effort to avoid duplication and increase efficiency and effectiveness;

(3) involve the following:

(i) Executive Director of the South Carolina Arts Commission;
(ii) Director of the South Carolina Department of Archives and History;
(iii) Director of the Confederate Relic Room and Museum;
(iv) President of South Carolina Educational Television;
(v) Director of the South Carolina State Library;
(vi) Director of the South Carolina State Museum;
(vii) State Archaeologist of the South Carolina Institute of Archaeology and Anthropology, and
(viii) Chairman of the Old Exchange Commission.

(c) a State House, Legislative, and Judicial Facilities Operations Division; and
(d) a Grants Review Committee for awarding grants to counties and municipalities.

Department of Motor Vehicles, effective July 1, 2005

(a) all hearing officers of the Department of Motor Vehicles would be transferred to the Administrative Law Court.
(b) hearing officers would continue to exercise their present responsibilities and other functions and duties provided by the Chief Judge of the Administrative Law Court.

3. No changes in the elected status of constitutional officers.

*STATUS: **S.80** was approved by the Senate and is pending consideration in the House Ways and Means Committee.*

## CONSTITUTIONAL RESTRUCTURING

The House approved and sent to the Senate **H.3011**. Currently, the South Carolina Constitution provides for the statewide election of the Secretary of State and Superintendent of Education. **H.3011**, a joint resolution, proposes to submit to the voters at the next general election whether these two offices should be removed from the Constitution's list of elected positions and should instead be appointed by the Governor upon advice and consent of the General Assembly. The joint resolution further provides to submit to the voters whether or not the State Board

of Education should be abolished effective upon the State Superintendent of Education being appointed by the Governor.

*STATUS: **H.3011** passed the House and was referred to the Senate Judiciary Committee on February 2, 2005.*

## DISPLAYING THE TEN COMMANDMENTS ON REAL PROPERTY OWNED BY THE STATE

The House approved and sent to the Senate **H.3817**. This bill provides that an object containing the words of the Ten Commandments may be displayed on real property owned by the State along with other documents of historical significance that have formed and influenced the United States legal or governmental system. The bill further provides that the display of an object containing the words of the Ten Commandments must be in the same manner and appearance generally as other documents and objects displayed and must not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects.

*STATUS: **H.3817** passed the House and was referred to the Senate Judiciary Committee on April 12, 2005.*

## MUNICIPAL WATER AND SEWER SERVICE EXTENSION

The House approved and sent to the Senate **H.3525**, a bill that establishes conditions under which municipalities are to extend sewer and water services. The bill provides that, upon the written request of a property owner requesting the municipality to extend water or sewer service, the municipality shall provide the service and levy an assessment against the property of the owner requesting the service for the costs of the service. The property owner shall agree to pay the costs either by (1) paying the costs before the municipality begins construction or (2) insuring the costs in the form of a performance bond before the municipality begins construction. This legislation applies only to property located within the corporate limits of a municipality.

*STATUS: The House of Representatives sent **H.3525** to the Senate on May 3, 2005, where the bill was referred to the Judiciary Committee.*

## NATIONAL GUARD RETIREMENT SYSTEM

The House approved **H.3813**, a bill which transfers the administration of the National Guard Pension Fund from the Adjutant General's Office to the Retirement Division of the State Budget and Control Board, effective January 1, 2006. The bill establishes and provides for the pension fund, to be known as the National Guard Retirement System, and authorizes the State Budget and Control Board to invest and reinvest its funds in the same manner as funds of the South Carolina Retirement System are invested and reinvested.

The General Assembly also approved **Proviso 63.46** (Part I) of the 2005-06 budget (**H.3716**), which transfers the administration of the National Guard Pension Fund to the South Carolina Retirement Systems under the Budget and Control Board, effective January 1, 2006.

*STATUS: **H.3813** was approved by the House as summarized above. On May 18, the bill was reported favorable with amendment from the Senate Finance Committee and the bill is pending second reading on the Senate calendar.*

## PUBLIC SERVICE AUTHORITY

The General Assembly passed **S.573**, legislation that revises provisions for the oversight of the South Carolina Public Service Authority. This bill adds the Directors of The South Carolina Public Service Authority to the list of officers who may be removed by the Governor for cause. The legislation also allows a director to be removed for breach of duties. The legislation provides that a director shall discharge his duties: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the Public Service Authority. Acting in the best interests of the Public Service Authority includes balancing of the following: (a) preservation of the financial integrity of the Public Service Authority and its ongoing operation of generating, transmitting, and distributing electricity to wholesale and retail customers on a reliable, adequate, efficient, and safe basis, at just and reasonable rates, regardless of the class of customer; (b) economic development and job attraction and retention within the Public Service Authority's present service area or areas within the State authorized to be served by an electric cooperative, or municipally owned electric utility that is a direct or indirect wholesale customer of the authority; and (c) exercise of the powers of the authority in accordance with good business practices and the requirements of applicable licenses, laws, and regulations. The bill provides that the Public Utilities Review Committee has the duty to screen candidates for the Board of Directors of the Public Service Authority and establishes qualifications for members of the Board of Directors. Two of the eleven directors shall have substantial experience serving on an electric cooperative board or substantial experience on an electric cooperative board, but must not serve as an employee or board member of an electric cooperative during their term as director.

Governmental immunity provisions are revised so as to provide that the Public Service Authority is not liable for certain losses resulting from conduct of a director of the authority. The bill specifies conduct for which a director of the Public Service Authority is not immune from liability and prohibits the Insurance Reserve Fund from providing insurance coverage for that individual liability.

The bill prohibits the Public Service Authority from disposing of certain property without prior approval of the General Assembly or from inquiring into the feasibility of disposing of its property. The bill establishes standards of conduct for directors of the Public Service Authority and defines a conflict of interest transaction. The bill permits customers of the Public Service Authority to sue directors of the authority for breach of duty and provides for damages. The bill provides that only the net earnings not necessary for the operation of and in the best interest of the Public Service Authority shall be paid to the State Treasurer and used to reduce the tax burdens on the people of the State.

*STATUS: Having passed the Senate and the House of Representatives, **S.573** was ratified on May 18, 2005 (R 82).*

## SHORTENING THE LEGISLATIVE SESSION

The House approved and sent to the Senate **H.3380**, a **PROPOSED CONSTITUTIONAL AMENDMENT TO SHORTEN THE LEGISLATIVE SESSION BY REVISING ANNUAL COMMENCEMENT**. This joint resolution proposes an amendment to the Constitution of South Carolina, relating to sessions of the General Assembly, so as to provide for annual sessions of the General Assembly commencing at varying times in even-numbered years and odd-numbered years. The proposed amendment provides that the annual session of the General Assembly shall convene at the State Capitol in the City of Columbia on the second Tuesday of January in even-numbered years and on the second Tuesday in February in odd-numbered years. The proposed amendment provides for an organizational session for the Senate in certain years. The proposed amendment provides for other revisions regarding the elimination of certain obsolete language, provisions for the election of officers of the General Assembly, provisions for certain meetings for the introduction and referral to committee of legislation, and provisions for certain committee meetings.

*STATUS: **H.3380** passed the House and was referred to the Senate Judiciary Committee on March 1, 2005.*

The House approved and sent to the Senate **H.3378**, a bill which **SHORTENS THE LEGISLATIVE SESSION BY REVISING THE TIME OF ANNUAL ADJOURNMENT.** The bill changes the date for the mandatory adjournment of the General Assembly from the first Thursday in June to the second Thursday in May. The bill also provides that in any year that the House of Representatives fails to give third reading to the appropriations bill by March 15th, rather than March 31st, the date of adjournment is extended by one statewide day for each statewide day after March 15th, rather than March 31st, that the House fails to give the bill third reading.

*STATUS: **H.3378** passed the House and was referred to the Senate Judiciary Committee on March 1, 2005.*

## SOUTH CAROLINA SUNSET COMMISSION

The House approved, and sent to the Senate **H.3150**, a bill that establishes and provides for the South Carolina Sunset Commission (the Commission) and for a separate Sunset Review Division of the Legislative Audit Council (the Division). The Division is created to conduct sunset reviews of certain state agency and department programs, and to report its findings based on the review criteria delineated in the bill. The Division is to conduct these reviews to determine whether the programs have outlived their usefulness or must be changed to address the needs and priorities of South Carolinians and the General Assembly. After the report is published, the bill requires the Commission to conduct a public hearing on the agency and its programs. The report must be filed with the House and Senate by January 15 of each year, and reauthorization of an agency or program must be accomplished in a special provision in the annual general appropriations act. The existence of any state agency or program may be reauthorized by the General Assembly for periods not to exceed twelve years. Any agency or program not reauthorized is terminated. The bill authorizes the General Assembly, if it determines the circumstances warrant it and by concurrent resolution, to advance the termination date and sunset review scheduled for an agency.

*STATUS:* ***H.3150*** *was approved by the House and is pending consideration in the Senate Judiciary Committee.*

## STATE RETIREMENT SYSTEM REFORM

The Senate and the House have approved differing versions of **S.618**, a comprehensive bill which makes significant revisions to the South Carolina Retirement System (the System), including the Teacher and Employee Retention Incentive (TERI) program. Significant highlights of the Senate version of the bill include:

- A provision that retired members of the System must pay the employee contribution to the System if employed by an employer participating in the System, and a TERI program participant does not accrue additional service credit in the System;
- A provision that TERI participants may not receive payment for unused annual leave until they terminate from state employment and end their participation in the TERI program;
- A provision that after June 30, 2005, a payment for unused annual leave is not included in calculating a member's deferred TERI program benefit during the program period;
- A provision that upon termination of employment of members who began participation in the TERI program after June 30, 2005, the System shall recalculate the average final compensation of the member to determine the benefit the member receives after participation in the program. The average final compensation calculated at the commencement of the TERI program must be increased by an amount up to and including 45 days termination pay for unused annual leave received by the member at termination of employment, divided by three.
- The member's benefit after participation in the TERI program must be calculated using the recalculated average final compensation and the member's service credit, including sick leave, as of the date the member began participation in the program, plus any cost of living increases declared during the TERI program period with respect to the amount of the member's deferred program benefit;
- For members who began participation in the TERI program before July 1, 2005, and after June 30, 2005, the bill includes separate provisions regarding determination of the survivor benefit;
- A provision requiring that a TERI participant must terminate employment no later than the fifth annual anniversary of the date the member commenced participation in the program;
- A provision that TERI participants who began participation in the program after June 30, 2005, are ineligible to be employed by a covered employer except for certain provisions for teachers returning to employment;
- A provision removing the earnings cap for retired members who are returning to employment covered by the System;
- Definitions for "SCRS28 Participant," which is a member of the System who began membership before January 1, 2006, and had contributions on account with the System as of December 31, 2005; and "SCRS30

Participant," which is a member of the System who began membership after December 31, 2005, and rates of retirement deductions from compensation for each of these two categories;
- Provisions creating and providing for two classes of service credit that may be earned by SCRS30 participants;
- Provisions for early retirement election and for calculation of benefits for SCRS28 and SCRS30 participants who have met certain criteria;
- Provisions revising the investment of funds of the System, including establishing and providing for the six-member Retirement System Investment Commission (RSIC) to serve as the trustee of the retirement system and to invest the funds of the retirement system.

The House amended the bill and returned it to the Senate on May 19. Significant highlights of the House's bill include, but are not limited to:

- Effective July 1, 2005, TERI participants or rehired retirees would be limited to 15 sick days per year and 15 annual leave days per year, with no payout for carryover on either;
- Effective July 1, 2005, the first annual leave payout for TERI participants would be eliminated; leave payment at termination would be included in the calculation of retirement benefit;
- Effective July 1, 2005, any TERI employee or retired member of the system who is hired by a covered employer would be required to serve in an at-will/no grievance status;
- Employee contribution would be increased by .25% beginning July 1, 2006, and by an additional .25% effective July 1, 2007, for a total employee increase of .5%;
- Employer contribution would be increased by 1%, phased in over two years with the first .5% effective July 1, 2006;
- "Break in service" time would be decreased from 60 days to 15 consecutive calendar days, and the $50,000 earnings cap would be removed for retirees returning to covered employment; also, retirees returning to retirement system-eligible jobs would be required to pay the employee portion into the system and these employees would not accrue any additional service credit;
- If in any year, the Consumer Price Index (CPI) increases by no more than one percent, the Cost of Living Adjustment (COLA) for retirees that year would be equal to the increase in the index; if the CPI increases by more than one percent, the retirement allowance would be increased by one percent, and could be further increased beyond one percent up to the lesser of the total percentage increase in the CPI or four percent, as long as the additional liabilities would not extend the unfunded liability of the South Carolina Retirement System beyond thirty years;
- A retired member of the System and an active member of the System would be selected to provide advice to the Investment Panel, but they would not be allowed to vote;
- The target allocation to either equity or fixed-income investments would not be allowed to exceed sixty percent of system assets.

*STATUS: The House and the Senate have approved differing versions of* ***S.618****. The Senate amended the House amendments and returned the bill to the House on May 19.*

# TAXATION

## ALCOHOL BY THE DRINK

*See summary under Business/Economic Development*

## SMALL BUSINESS INCOME TAX REDUCTION

*See summary under Business/Economic Development*

## PROPERTY TAX FREEZE

The House approved **H.3264**, a bill which exempts from property tax an amount of fair market value of real property located in the county, sufficient to eliminate any increase in fair market value attributable to a countywide appraisal and equalization program.

The bill provides that once the fair market value of the property is first reduced, that reduced value remains the fair market value subject to property tax, regardless of further increases in fair market value of that real property as determined in subsequent countywide appraisal and equalization programs. The bill provides that when real property is transferred so that the property is no longer eligible for the exemption, the property is subject to being taxed in the tax year following the transfer at its value, at current fair market value as determined by the County Assessor. The bill includes relevant notice requirements for closing attorneys in a real estate transfer and includes provisions and procedures required to qualify for the exemption.

The bill repeals a section of law which authorizes the governing body of a county by ordinance to exempt an amount of fair market value of real property located in the county sufficient to limit to fifteen percent any valuation increase attributable to a countywide appraisal and equalization program.

The bill also allows the governing body of a county which implemented in property tax year 2004 the values for real property determined in a countywide reassessment and equalization plan, by ordinance and for property tax year 2005 only, to revert to the values of real property used in the calculation of 2003 property taxes.

*STATUS: **H.3264** was approved by the House and is pending consideration in the Senate Finance Committee*.

## PUT PARENTS IN CHARGE

*See summary under Education*

# TRANSPORTATION

## AIR CARRIER HUB TERMINAL FACILITIES

*See summary under Business/Economic Development*

## "ALL-TERRAIN VEHICLE SAFETY ACT" ("CHANDLER'S LAW")

The House approved and sent to the Senate **H.3726**. Among other things, this bill provides that a person 16 years of age or younger may not operate an all-terrain vehicle (ATV) within this State unless the person: (1) has successfully completed an ATV safety education course provided by or approved by the Department of Natural Resources, and has been issued a safety certificate; or (2) is operating the ATV as part of a prescribed ATV safety education, training, and skills program and is under the direct supervision of a certified ATV safety instructor.

The bill further provides that a person 16 years of age or younger may not operate, ride, or otherwise be propelled on an ATV within this State unless the person wears a safety helmet and eye protection meeting United States Department of Transportation standards for motorcycles.

Under the bill, ATVs are exempt from *ad valorem* personal property taxes beginning January 1, 2005.

The restrictions in this legislation apply to operation of an ATV's on those lands open to the public.

Under the bill, it is unlawful to operate an ATV except in compliance with the local regulations and restrictions for an ATV operation. The bill requires a person 16 years of age or younger must be accompanied by an adult.

The bill further provides that it is unlawful to operate an ATV between one-half hour after sunset to one-half hour before sunrise unless it is equipped with operational headlights, and they are on.

Under the bill, it is unlawful to cross an unbridged stream except at a designated ford or crossing. Riding in any water bodies or watercourses is unlawful.

The bill requires that an ATV have an effective muffler system in good working condition; a United States Department of Agriculture Forest Service approved spark arrester in good working condition, and a brake system in good operating condition.

Under this bill, it is unlawful to operate an ATV while under the influence of alcohol or any controlled substance. The bill provides that it is unlawful to operate an ATV in a

negligent or reckless manner. Also, it is unlawful to operate an ATV in a manner that damages flora or fauna, roads, trails, firebreaks, signs, gates, guardrails, bridges, fencing, or other public property.

The bill provides that no governmental entity and no property owner is liable for injuries or damage resulting from an ATV operation on lands open to the public for an ATV operation. Under this legislation, the State is immune from liability for any injury or damage as a result of operating an ATV on any lands at any time.

Violations of this legislation, unless otherwise specified, are misdemeanors punishable by a fine of not less than $50 dollars nor more than $200 dollars.

*STATUS:* ***H.3726*** *passed the House and was referred to the Senate Committee on Fish, Game and Forestry on May 3, 2005.*

## PRIMARY ENFORCEMENT OF SEAT BELTS

The Senate and the House have approved differing versions of **S.1**, a bill which deletes the current provision which prohibits a law enforcement officer from stopping a driver for a violation of safety belt requirements in the absence of another violation of the motor vehicle laws. As passed by the Senate, the bill authorizes such a stop when the officer has probable cause that a violation has occurred based on his clear and unobstructed view of a driver or an occupant of the vehicle who is not wearing a safety belt (or is not secured in a child restraint system). The bill prohibits searching the driver or his passengers if the vehicle is stopped solely for a violation of safety belt provisions unless the search is for a separate and distinct offense based upon probable cause. The bill revises the fine for violation of safety belt provisions to a maximum of twelve dollars, no part of which may be suspended. The bill prohibits reporting violation of safety belt requirements to the offender's motor vehicle insurer.

The bill also prohibits custodial arrest for violation of child passenger restraint system provisions, revises the fine for violation of these provisions, and makes the full amount of this fine mandatory. The bill removes the exemption from seat belt requirements for occupants of the back seat of certain vehicles.

The House amended the bill on May 19 and returned it to the Senate. Highlights of the House's amendments to the bill include a requirement that the Department of Public Safety (DPS) develop a form to be used by all state and local law enforcement officers who do not issue a traffic citation or make an arrest after having stopped a motorist. The form would note the age, gender, and race or ethnicity of the motorist. DPS would be required to maintain a database for this information as well as the same information collected on all traffic citations and arrest reports. DPS would be required to report this information annually to the General Assembly, and the General Assembly would be

authorized to withhold funds from agencies who fail to comply with this provision. The House also added

a requirement that DPS develop and implement education programs to create awareness of the safety belt laws and to increase safety belt use in rural and ethnically diverse areas of the State.

*STATUS: Differing versions of **S.1** have been approved by the House and the Senate. On May 19, the House returned its amended version of the bill to the Senate.*

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