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South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Summaries of Prefiled Bills

The following summaries (by no means complete or exhaustive) briefly examine some of the bills which have been prefiled with the Clerk of the House to date. Bills are grouped according to the same general categories that were used to organize the Preview 85. More prefiled bills will be presented in the next issue of *Legislative Update*.

Financial

Increase in tax deductions (H.2020). This bill would increase deductions allowed from \$1,200 up to \$6,000 for retirement pay from federal civil service, the armed forces, and annuity programs. This amount would annually be adjusted to take inflation into account. Additionally, survivors of retired persons could retain the same amount of deductions.

Justice

Remove the Governor's reprieve and commutation powers (H.2015). A proposed Constitutional Amendment that would delete Section 14 of Article IV which allows the governor to change a death sentence to one of life imprisonment.

Pharmacy robbery (H.2017). This would create three new separate offenses: pharmacy robbery, pharmacy larceny and armed pharmacy robbery. Pharmacy robbery and pharmacy larceny would carry penalties of not more than 20 years in prison or \$25,000 in fines or both. Armed pharmacy robbery, which occurs when a persons using a weapon and endangers the lives of others, would have a penalty of not more than 25 years in prison and/or a \$35,000 fine.

Mandatory life sentence (H.2019) When a person is convicted three times for certain crimes, the solicitor would be obligated to call for a life sentence. This removes the discretionary powers of the solicitor when invoking sentencing.

Jury source list (H.2026). The source for jurors would be a list provided by the Highway Department of those with driver's licenses or identification cards. Jurors would have to be over 18.

Juror qualifications (H.2027). This proposes a constitutional amendment to remove the requirement that jurors must be registered voters and "of good moral character."

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Transportation and Safety

Windshield wipers and lights (H.2003). This legislation would require that lights be turned on whenever a vehicle's windshield wipers were on, or during times of rain or fog.

Government Operations

Polls to open at 7:00 am (H.2001). Just what it says: during elections polls must be opened at seven in the morning, instead of the present time of eight o'clock.

Registration by mail (H.2002). Another law that means what it says: voters could sign up by mail.

Filing for elections (H.2016). This bill would require that a person could file for election to only one statewide or multicountry office at a time.

Conduct of primaries (H.2029). Would require the State Election Commission and county election commissions to conduct primary elections other than municipal primaries. The bill also provides procedures for operations.

Health

Termination of electric service (H.2036) This bill would prohibit the electric and utility companies from shutting off service to a residential customer from December 1 through March 31.

Families and Children

Unattended children in cars (H.2012). It would be a misdemeanor to leave a child unattended in a motor vehicle, with a penalty of a fine between \$100 and \$300 and a sentence between 30 and 90 days. A "child" is defined as being under the age of 13. A child is "unattended" when he or she is without the supervision of a person 16 years or older, "physically in the motor vehicle with the child."

Division of marital property (H.2008). This bill gives guidelines for courts in dividing property acquired during marriage. It requires the court to take into account such factors as: 1) duration of the marriage; 2) age, health, skills and other circumstances of each of the parties; 3) custody obligations regarding children; 4) contribution of each party to the property; 5) value of the property to be divided. Certain exempt property and other items are also addressed in the legislation.

Interstate Banking Bill Already Showing Results

Last session legislation was passed allowing South Carolina to participate in a system of regional interstate banking (H.3743, Act 395). The law would go into effect in July, 1986, and covers the southeast region of the country. Similar legislation passed in Florida, Georgia and North Carolina takes effect in 1985.

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Supporters of the measure said that it would increase the flow of capital into South Carolina and help the state's economy. Recent reports indicate that the law has already helped a segment of the state's economy: shareholders of bank stock. According to Associated Press reports the "stock prices of South Carolina's major banks have increased dramatically." The AP notes that stock values of South Carolina National, C&S, Bankers Trust and Southern Bank increased from 8% to 13% during November.

When Do Other Legislatures Convene?

Most state legislatures seem to favor the second week in January to convene their sessions, but a few wait until April before getting started. Maine got started early with a December meeting; and Kentucky isn't even having a session this time—the legislature there meets every other year. The table below gives the convening dates for the 1985 state legislatures:

<u>December 4, 1984</u> Maine	<u>January 9</u> Connecticut Illinois Maryland Michigan Missouri Nebraska New York Vermont Virginia	<u>January 15</u> New Mexico Wisconsin
<u>January 1 *</u> Pennsylvania Rhode Island		<u>January 16</u> Hawaii North Carolina
<u>January 2</u> Colorado New Hampshire Massachusetts		<u>January 21</u> Alaska Nevada
<u>January 7</u> California Idaho Indiana Montana Ohio	<u>January 14</u> Arizona Arkansas Georgia Iowa Kansas Oregon Utah Washington	<u>February 13</u> West Virginia
<u>January 8</u> Delaware Minnesota Mississippi New Jersey North Dakota Oklahoma SOUTH CAROLINA South Dakota Tennessee Texas Wyoming		<u>April 2</u> Florida
		<u>April 15</u> Louisiana
		<u>April 16</u> Alabama
		<u>No Session</u> Kentucky

* HMMMMMMMM?

Source: *State Government News*, December, 1984

The Death Penalty in South Carolina: An Overview

Editor's Note

In December, 1984, the execution date of Joseph Carl Shaw was set for January 11, 1985. Later in the month Governor Riley refused Shaw's appeal for clemency, making it almost certain that later this week Shaw will be the first person executed in South Carolina in 22 years. This *Research Report* gives a background on the recent history of the death penalty in South Carolina.

The Current Situation in South Carolina

Section 16-3-20 of the South Carolina Code of Laws establishes the death penalty for those found guilty of murder under certain circumstances. These circumstances are murders committed during the commission of the following other crimes:

Rape, attempted rape, kidnapping, burglary, armed robbery, larceny with the use of a deadly weapon, housebreaking, killing by poison, or lying in wait.

Additional circumstances include: murder committed for hire, murder of a law-enforcement or correctional officer, premeditated murder, and prior conviction of more than one previous murder.

There are presently 35 inmates on death row in South Carolina. Under the judicial process all persons sentenced to execution go through a lengthy appeals process. At this time Joseph Carl Shaw, convicted in 1977 for murder and other crimes, has apparently completed the appeals process. Once the state Supreme Court gives official notice that it recognizes the end of the appeals process, the date for execution is set by law as the fourth Friday thereafter.

The Death Penalty Is Struck Down, Then Restored

On the last day of its 1971 term the United States Supreme Court issued a ruling on the case of Furman v. Georgia. The Court struck down existing capital sentences affecting approximately 600 inmates nationally.

The majority of the Court objected to the "arbitrary and discriminatory way in which the death sentence has been imposed in the United States." (See *S.C. Law Review*, Vol. 24, page 764)

One specific problem the Court found with existing sentencing processes was the wide discretion juries and judges had in imposing the death sentence. The lack of guidelines and the flexibility of juries and judges could lead to the arbitrary and/or capricious use of the death penalty. In other words, there was no fair and uniform operation of capital punishment.

An article in the *S.C. Law Review* examining the Court decision and surveying the death penalty in South Carolina noted that executions had been declining in the state. There had also been many reversals of death sentences, many of the reversals made by the S.C. Supreme Court based on state rather than federal laws. The decline in executions, in the words of the article, "was the reflection of deeply felt doubts within the system of justice of the propriety of capital punishment itself." (Vol. 24, page 774)

The last execution in South Carolina had been on April 20, 1962, when two men were electrocuted, one for murder and one for rape. In 1971, at the time of the Supreme Court decision, there were 27 prisoners on death row.

The restoration movement started almost immediately after the Supreme Court decision. In 1972 both Florida and California enacted new laws regulating capital punishment. South Carolina also revised its laws relating to the death penalty making the sentence mandatory for certain crimes. In 1977 there was a challenge to the new procedures.

In the case of State v. Rumsey, the South Carolina Supreme Court held that the state's death penalty statute was unconstitutional in light of a 1976 ruling of the U.S. Supreme Court.

The Court found that mandatory sentencing prevented the jury from considering mitigating conditions which might exist. The Court noted that there is a fine line between total jury discretion in sentencing and complete inability of the jury to consider mitigating circumstances.

In other words, it is unconstitutional for juries to have complete choice in giving the death penalty and equally unconstitutional for them to have no choice.

The Court did not strike down the death penalty per se, but stated that it "is constitutional if the type of offenses upon which it may be imposed is limited and defined, and if the trier can consider relevant facts which have been statutorially defined." (*S.C. Law Review*, Vol. 29, page 88)

To meet these conditions the General Assembly amended the statute in 1977 to provide for a two-part, or bifurcated trial. The first part establishes the guilt or innocence of the accused; the second part establishes the sentence for those convicted.

During the sentencing portion the state must show that sufficient aggravating circumstances exist to justify the death penalty. Any evidence showing aggravating circumstances must have been made known to the defendant in writing prior to the trial. In addition, any mitigating circumstances must be considered before sentencing

Aggravating circumstances include murder committed during the commission of other crimes as listed above (rape, kidnapping, etc.). Mitigating circumstances are:

- a) Defendant has no significant history of prior violent crimes.
- b) The murder was committed under the influence of extreme mental or emotional disturbance.
- c) The victim was a participant in the defendant's conduct or consented to the act.
- d) The defendant was an accomplice in a murder committed by another and participation was relatively minor.
- e) The defendant acted under duress or domination of another person.
- f) The capacity of the defendant to understand his criminal actions was substantially impaired.
- g) The age or mentality of the defendant at the time of the crime.
- h) The defendant was provoked by the victim into committing murder.
- i) The defendant was below the age of eighteen at the time the crime was committed.
- j) Other mitigating circumstances that may exist.

Death Penalty Upheld

On May 25, 1979, the S.C. Supreme Court affirmed the death sentences of Joseph Carl Shaw and James Terry Roach. Shaw and Roach had pleaded guilty to charges of murder while in commission of rape, kidnapping, and armed robbery. Their victims were Thomas Taylor, aged 17, and Carlotta Hartness, aged 14. Sufficient aggravating circumstances existed to warrant the death penalty.

The state Supreme Court referred to the 1976 case of Gregg v. Georgia which had been argued before the U.S. Supreme Court. The high court had held that the procedures used by Georgia in setting the death penalty were constitutional; these were the procedures on which S.C. modeled its capital punishment statute.

The state Supreme Court upheld the death penalties because the standards used guided the discretion of the sentencing authority by requiring judge or jury "to contemplate the circumstances of the crime and the character of the defendant before imposing the penalty of death." (*S.C. Law Review*, Vol. 32, page 84) In other words the law provided that the judge or jury did not have total discretion in setting the death penalty, and that guidelines required that the unique qualities of the offense and the offender be considered.

There remained further legal maneuvers, including appeals to the United States Supreme Court, but in the middle of December, 1984, Shaw was sentenced to be executed on January 11, 1984.

The Death Penalty in Other States

The death penalty issue is not limited to South Carolina. In those states which have capital punishment (see Table 1) there is frequent debate on the subject. Since this *Research Report* is primarily historical these debates will not be reviewed here.

In general, the trend has been similar to that in South Carolina: a movement away from the death penalty in the early 1970s, followed by a return to capital punishment. Two recent state supreme court rulings illustrate.

In Massachusetts the 1982 death penalty law was ruled unconstitutional because it encouraged defendants in murder cases to plead guilty rather than risk facing capital punishment after a jury trial. The wording of the law prevented a death sentence for a defendant who pled guilty to first-degree murder, but allowed a defendant convicted by jury trial to be executed. The court found this situation unfair--not the idea of capital punishment. It stated "we do not consider that our invalidation of this statute is equivalent to prohibiting the imposition of the punishment of death."

The Montana Supreme Court has taken action to speed up the appeals process. Two routes of appeals were available to condemned prisoners in that state: an ordinary appeal of conviction and sentence by the inmate, and an automatic review to determine whether the sentence was properly imposed. These two routes are now to be conducted simultaneously, and, in addition, an inmate must give notice of appeal within 20 days of sentencing. (*From the State Capitals: Justice Policies*, November 19, 1984)

Conclusion

In the early 1970's it seemed as if the death penalty would soon be a thing of the past. Opponents of capital punishment have often argued that it violates Article 8 of the U.S. Constitution, which forbids "cruel and unusual punishment." However, the U.S. Supreme Court never held that the death penalty, in and of itself, was unconstitutional. The Court has insisted that the procedures safeguard the rights of a person to be sentenced in a fair and uniform manner, so that the death penalty is not imposed "in an arbitrary and capricious manner."

The relevant statutes in South Carolina meet these requirements by providing for a two-part (bifurcated) trial, the first part of which determines guilt or innocence, the second part which sets the sentence. In cases where the death penalty is imposed the rights of the convicted are further protected by a lengthy review and appeals process.

TABLE 1
STATES WITH CAPITAL PUNISHMENT STATUTES

<u>State</u>	<u>Method of Execution</u>	<u>State</u>	<u>Method of Execution</u>
Alabama	Electrocution	Nebraska	Electrocution
Arizona	Gas chamber	Nevada	Lethal injection
Arkansas	Lethal injection	New Hampshire	*
California	Gas chamber	New Jersey	Lethal injection
Colorado	Gas chamber	New Mexico	Lethal injection
Connecticut	*	New York**	Electrocution
Delaware	Lethal injection	North Carolina	Gas chamber or lethal injection
Florida	Electrocution	Ohio	Electrocution
Georgia	Electrocution	Oklahoma	Lethal injection
Idaho	Lethal injection or firing squad	Pennsylvania	Electrocution
Illinois	Lethal injection	South Carolina	Electrocution
Indiana	Electrocution	South Dakota	*
Kentucky	Electrocution	Tennessee	Electrocution
Louisiana	Electrocution	Texas	Lethal injection
Maryland	Gas chamber	Utah	Firing squad
Massachusetts	*	Vermont	*
Mississippi	Gas chamber	Virginia	Electrocution
Missouri	Gas chamber	Washington	Lethal injection
Montana	Lethal injection or hanging	Wyoming	Gas chamber

* State has capital punishment statute, but no sentences imposed

** Part of penalty invalidated by NY Court, questions on certain sections still unanswered.

Source: *The Book of the States, 1984-85*

Budget Background 85*

Summary

During the early part of the 1980's effects of the national recession caused South Carolina to implement actions such as hiring freezes, personnel service fund reductions, and use of the general reserve fund to cover year-end deficits. Economic recovery in 1984 brought additional funds into the state treasury; the General Assembly gave full funding to the major state formulas in one year. Now, however, economic growth has slowed to the point where revenues cannot cover the expenses committed during last session. A brief review of the situation follows.

Background

The 1984-85 Appropriation Act had \$228 million of new revenue above 1983-84 appropriations, \$116 million of surplus revenue, and \$192 million in extra sales tax for the Education Improvement Act. With this additional income the General Assembly took the following actions:

1. Full funding of the 5% general fund reserve;
2. Full funding of the Education Finance Formula;
3. Full funding of the Higher Education Formula;
4. Full funding of the aid to subdivisions formula;
5. Funds to cover \$65 million in tax expenditures and phase-outs;
6. Funding (surplus and bonds) the first year's compliance of the Nelson v. Leeke lawsuit;
7. State employee 6% base pay increase and 2% merit increase;
8. Health insurance increases and new dental insurance program;
9. Additional funding for other state priorities.

Generally 1985-86 revenues are projected to grow at 5.6%; this would mean \$172 million in new revenues above the 84-85 appropriations. As of December 31, 1984, the Board of Economic Advisors estimated that total revenue would be \$172,542,451. This breaks down as shown on the following page.

*Information for this special *Research Report* is provided by the staff of the House Ways and Means Committee, Scott Inkley, Director. Their assistance is greatly appreciated. Members should take note that these figures are accurate as of early January, 1985, and are subject to revision.

START WITH	\$3,822,780,277	Projected general fund revenue, 85-86
DEDUCT	(328,833,740)	Current sales tax exemptions
	(948,140,000)	Current income tax exemptions
	(36,000,000)	Food rebate (sales tax)
	<u>(7,500,000)</u>	Indexation at 50%
	\$2,502,306,537	1985-86 BEA Revenue Estimate
MINUS	<u>(2,349,764,086)</u>	1984-85 base budget
GIVES YOU	152,542,451	Available revenue for 1985-86
ADD	<u>\$ 20,000,000</u>	BEA revision on 12-31-84
TOTAL OF	172,542,451	Available as of 12-31-84

Of this sum available to the State, however, \$157,206,753 has already been either allocated through annualization factors, statutory commitments, or formula funding, or has been lost in revenue through adjustments. The breakdown is:

\$25,023,065	99% rolling reserve/capital improvement fund
4,080,000	Inventory tax phase-out reimbursement
17,938,165	Annualize 1984-85 costs for 1985-86
25,770,338	Part IV surplus funded recurring items annualized for 1985-86
23,591,484	Rate adjustment for employer contributions
11,000,000	Aid to subdivisions--100% of formula
34,349,092	Education Finance Act--100% of formula at 5.1% inflation rate
12,172,577	Higher education--100% of formula, no new components including a vacancy allowance
<u>3,282,032</u>	Technical education--100% of formula, 2-year phase in
157,206,032	Subtotal of necessary expenditures

Beyond these expenses there are requirements for state agency needs, the upcoming costs of new correctional facilities, state employee pay packages, and any additional programs which might be needed, such as indigent health care services.

Budget and Control Board Recommendations

The Board has suggested four revenue adjustments. They are: 1. Delete the food rebate; 2. put back the implementation of the 95% rolling reserve until April 1, 1986; maintain indexing at the current 25%; institute a new collection program at the Tax Commission to generate revenues. These will bring in an additional \$76 million in revenue.

There are also adjustments projected for the current 1984-85 fiscal year. First there is a projected \$10 million surplus for 1984-85. Additionally there will be a \$9 million surplus in the general fund reserve because of ratification of the constitutional spending limit which, in one of its provisions, drops the reserve fund from 5% to 4%. Finally, the December 31, 1984 BEA revenue estimates for 84-85 have been raised by \$15 million. Added together these three sources amount to \$34 million available surplus.

If indexation is maintained at 25% there will be a realization of \$11 million; putting off the 95% rolling reserve until April, 1986 makes available another \$18 million for a total of \$29 million.

The Budget and Control Board recommendation funded the formulas and other commitments, an 8% merit package for state employees, about \$35 million of the agencies' highest priority requests, and the phase-in of an indigent care program. The Board's expenditure recommendations allow the state to meet the commitments made by previous General Assemblies, but continue the practice of deferring payments, as \$50 million will need to be annualized in 1986-87.

Ways and Means Committee Plan

The Ways and Means Committee has reviewed the budget outlook and the Budget and Control Board's recommendations for 1985-86. The Committee has voted to strike the Board's recommendations and return to the current year (1984-85) as a base budget with additional funds to cover costs deferred last year. These costs include annualizing merit pay, new positions, pay periods, and recurring expenses funded by non-recurring surplus (in Part IV). The funds would also cover statewide rate increases in employer contributions.

Before amending this new base the Committee will review each agency's individual base budget as carefully as their requests for 1985-86. Hearings and reviews of the agencies' budgets will be held during January. Recognizing that formula funding measures, tax expenditure phase-ins and statutory revenue adjustments leave little or no room for budget choices now or in the near future, the Committee has voted to review them separately. Agency hearings will take place in late January and early February on the following special issues:

1. Aid to subdivisions, Inventory tax phase-out reimbursement
2. Education Finance Act, Education Improvement Act
3. Higher Education and TEC formulas
4. 95% Rolling Reserve and Surplus funds
5. Indexation and other tax expenditures
6. Indigent care, Food Credit.

The full Committee is expected to meet in mid-February to hear subcommittee recommendations on agency budgets and special issues in order to have a Ways and Means Committee Appropriation Bill introduced in early March.