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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

## Second Reading, Contested Calendar

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Continuing our report on bills listed on the Contested Calendar section of the House *Calendar*, the following bills have not been covered by the *Legislative Update*:

Funeral Vaults (H.2367). This bill, as originally introduced, dealt with Act 373 of 1984. That Act required that funeral vaults must be at least ten inches below the earth's surface. H.2367 sought to require the Department of Health and Environmental Control to enforce those requirements.

However, the bill was amended in committee and now will repeal Act 373 of 1984.

Statute of Limitations for Architects (H.2586). This bill would set a ten year limit on the time actions could be brought to recover damages arising from the defective or unsafe conditions supposedly caused by an improvement to real property. The bill further deletes the section of the Code (15-3-650) that says such actions must be brought within two years or not at all.

The legislation specifically states that this limitation does not cover actions which are "hidden" in that they could not be discovered using "reasonable diligence." The bill also places outside its protection those actions causing damage which arise from exposure to toxic or harmful substances, including radiation.

Landlord-Tenant Bill (H.2119). This bill would regulate the renting and leasing of residential dwelling units in South Carolina by setting forth the respective rights and responsibilities of both landlords and tenants. The stated underlying purpose of the bill is "to simplify, clarify, modernize and revise" laws governing that relationship, and "to encourage landlords and tenants to maintain and improve the quality of housing."

The legislation would cover security deposits, including the landlords right to use them to repair damage by the tenant; in turn, the tenant would have the right to be given written notice of such actions.

*Legislative Update, May 21, 1985*

A landlord would be required to: comply with building and housing codes; make all repairs and renovations needed to keep the premises in a fit and habitable condition; keep common areas in a safe condition; maintain in working order all systems such as electrical, plumbing, sanitary, heating and air-conditioning; provide running water and "reasonable amounts of hot water;" and reasonable heat.

A tenant would have to: obey all obligations imposed on tenants by building and housing codes; keep the dwelling unit clean; dispose of garbage and other waste in a clean and safe manner; use all electrical, plumbing, sanitary, heating and other systems in a proper manner; keep the premises in good repair; conduct himself so he does not disturb other tenants.

Disqualification from Unemployment Benefits Repealed (S.260). This bill proposes repeal of Section 41-35-120, which states which workers are ineligible for benefits under Employment Security. These are: those who leave work voluntarily; those who are discharged for misconduct; those who fail to accept work, with some exceptions, such as whether the work is suitable according to a persons health, training and experience, etc.; those persons who are out of work because of participation in a labor dispute; those who are receiving benefits from other sources; and those who have voluntarily retired from their most recent work.

Regional Transportation Authorities (S. 246). This bill would exempt regional transportation authorities (RTAs) from regulation by the Public Service Commission, and would provide RTAs with new forms of organization and power--including the possibility of drawing funds from their service areas.

In order for an RTA to be created a plan would first have to be drafted showing the proposed service area (population of at least 50,000); the service method; capital and operating costs for the first five years and how any local money will be raised; and where money for the first year capital costs and operations will come from.

The general governments in the transportation area would have to agree to create an RTA and to approve the plan. Finally, the plan would have to be submitted to a public vote. The proposed local financing method would have to be voted on during this election.

The Governing Board of an RTA would be appointed by the governing bodies of the counties and municipalities included in the area served. Each member government would be guaranteed at least one member on the Board; other seats would be determined by population. Up to three members could be appointed by the Legislative Delegations from the counties involved. Terms would be for three years, and would be staggered so one-third of the Board was changed every three years.

The purpose of an RTA is, basically, providing public transportation. To fulfill this purpose the RTA would have a wide range of authority, including property lease and ownership, establishing rates and fares, borrowing money through negotiable bonds, notes and other methods, accept federal and other funds and--if approved by the voters--raise money locally.

Two methods are possible. A vehicle registration fee could be imposed on motor vehicles by counties and municipalities; the amount of this fee would have to be spelled out in the plan proposed to create the RTA. The second method is a public transportation tax millage could be levied by the cities and counties and rebated to the RTA. Once again this would have to be explicitly outlined in the original proposal, and voted on by the public.

Education Requirements for Insurance Agents (H.2384). This bill would require insurance agents to complete 40 classroom hours, or the equivalent, in insurance courses approved by the Insurance Commissioner; and to have one year of insurance underwriting or marketing experience as an employee of an agent or insurance company.

The bill was amended in committee so that it does not apply to persons who have been licensed for a period of five years or more. It also does not apply to persons selling the following types of insurance: credit life, credit accident and health, credit property, crop hail, automobile physical damage, mortgage guaranty, title, and travel accident and baggage.

Statute of Limitations, Law Enforcement Officers (H.2225). This proposal would set a two year limit on bringing a civil action against law enforcement officers for liabilities possibly incurred during their official capacity. The term 'law enforcement officer' means someone on the regular payroll of the State or any of its political subdivisions, who has the authority to enforce laws and make arrests. The bill was reported out of the House Judiciary Committee with the majority favorable, minority unfavorable.

Master Haircare Specialist Requirements (S.346). The much-debated "barber" bill, which would require persons who use chemicals to wave, straighten, bleach and otherwise condition hair to have a "master haircare specialist" certificate, and take six hours continuing education each year in the subject to keep that certificate. Barbers who already use chemicals before July 1, 1985, and who have 60 hours of on-the-job training with chemical applications on the hair, would be able to receive the certificate without additional training.

No Rent Control (H.2545). This legislation would forbid counties and municipalities from passing rent control laws for residential property. The only exception would be property owned by the government in question.

Liability for Injuries (H.2365). This bill would make the owner or occupier of commercial property liable for personal damages to persons under two conditions. First, the persons must have come onto the property "for any lawful purpose"—basically, to make use of its commercial nature; and second, the owner or occupier must have failed to keep the premises and approaches safe.

Open Containers in Buses and Limousines (S.197). Last session the General Assembly passed a bill which prohibited open containers of beer or wine in motor vehicles. This bill would exempt two classes of vehicles from that ban: buses capable of carrying ten or more persons, and limousines that have a partition between the driver and passengers.

Social Worker Board (H.2807). Another much-debated item, this bill would increase the requirements and standards for social workers in the state. Social work practice would include such activities as counseling, providing psychological explanations and assistance to individuals and groups, and other applications of similar knowledge and skills.

Persons could apply before July 1, 1986, for certification and licensure if they could establish they meet the standards and requirements set in this bill. Certain persons, such as physicians, teachers, attorneys and clergy, are exempted from meeting these standards, so long as they do not "hold themselves out to the public" as being social workers as the bill knows them.

Kirby Higbe, 1915-1985

Walter Kirby Higbe, National League pitcher who played in the 1941 World Series, has died in Columbia. A hard-throwing right hander, Higbe compiled a record of 118 wins and 101 losses in his thirteen years in the major leagues, pitching for five teams: Chicago, Philadelphia, Brooklyn, Pittsburg and New York.

Higbe began his baseball career in South Carolina playing with American Legion teams. In 1931 he led the Richland Post 6 American Legion team to a second place finish in the national tournament.

Higbe's major league debut was in 1937 with Chicago. He was traded to Philadelphia in 1939, but it was with the Brooklyn Dodgers that he was at his best.

In 1941 he led the team and the league in wins, with a record of 22-9. That year the Dodgers captured the NL crown and went to the Series--only to meet a powerful Yankee team that included such legends as Phil Rizzuto, Bill Dickey, and Frenchy Bordegaray. New York also had a player who had managed that season to hit safely in 56 consecutive games--Joe DiMaggio.

The Dodger team had its stars: Dolph Camilli, Billy Herman, Pee-Wee Reese, Cookie Lavagetto and Paul Waner, among others, and Leo Durocher as player-manager. But in the end Yankee power and Dodger errors lead to a 4-1 defeat for the Brooklynites. Higbe pitched 3.2 innings, giving up 6 hits, two walks, and striking out one batter. His ERA for the Series was 7.50.

Higbe's career was interrupted in 1944 for military service, but when he returned to Brooklyn in 1946 he went 17-8, leading the team in victories and posting a 3.03 ERA. Traded in 1947 to Pittsburg, Higbe led the league in walks with 122, but his ERA remained a respectable 3.72. He went to the New York Giants in 1949, and ended his career with them in 1950.

Higbe played with some of the greats of the diamond, such as Billy Herman, Jackie Robinson, Hank Greenberg, Ralph Kiner, and Bobby Thomson. As a pitcher he shared the rotation with such legends as Dizzy Dean, Boom-Boom Beck, Jennings Poindexter, BoBo Newsome, Schoolboy Rowe, Preacher Roe, and Sal Maglie.

*Kirby Higbe - Career Statistics*

Teams (All NL): Chicago 1937-39; Philadelphia 1939-40, Brooklyn 1941-43, 1946-47, Pittsburg 1947-49, New York 1949-50

| W   | L   | PCT  | SV | G   | GS  | CG | IP   | H    | BB  | SO  | ShO | ERA  |
|-----|-----|------|----|-----|-----|----|------|------|-----|-----|-----|------|
| 118 | 101 | .539 | 24 | 418 | 238 | 98 | 1954 | 1763 | 979 | 971 | 11  | 3.68 |

## Taxing Insurance Companies-- Effect of Supreme Court Ruling

### Summary

On March 26, 1985, the United States Supreme Court made a ruling in *Metropolitan Life Ins. Co. v. Ward* that could have profound effect on states and their tax systems. In that case the Court declared that it is unconstitutional for a state, in this case Alabama, to have varying rates of taxation, one for domestic insurance companies, and a second, higher rate for "foreign" companies.

The Senate has passed a bill on to the House (S.591) to set up a committee to make a comprehensive study of the insurance tax laws in South Carolina. The committee would have eleven members: three from the Senate; three from the House; three appointed by the Governor; and the Chief Insurance Commissioner and the Chairman of the Advisory Committee to the S.C. Insurance Commission. The committee is scheduled to make its recommendations on changing the laws by January 12, 1986.

What are these varying tax rates all about? Why do states have them? And why did the high court decide they are unconstitutional? This report seeks to answer those questions.

### Domestic Preference Taxes

Some states, including Alabama and South Carolina, tax out-of-state insurance companies at a higher rate than they do companies incorporated within their state borders. Both Alabama and South Carolina allow these "foreign" insurance companies to lower their rates by investing part of their reserve within the state; in both cases, however, domestic companies still retain an advantage regarding taxes.

At least 28 of 50 states use a combination of investment incentives and varying premium taxes favoring domestic insurers to encourage local investment and to shelter smaller, domestic, companies from unfair competition with large multistate companies.

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The Alabama Situation

Alabama has a law to encourage investments within the state by out-of-state insurance companies; it levies a tax of three percent on foreign life insurance premiums, and four percent on property and casualty insurance premiums. Domestic companies are taxed at one percent on all premiums. According to *The United States Law Week*, "The statute allows out-of-state companies to reduce their tax liability by investing in assets in Alabama, but never to a point of parity with domestic companies."

Supreme Court Strikes Down Preference Tax

In its recent ruling the United States Supreme Court found that the Alabama law that taxes foreign insurance companies at a higher rate than internal companies was invalid; the vote was close at 5-4.

The Court's opinion first examined some past cases dealing with such varying tax rates, and noted that such uneven burdens could be imposed only if "the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose."

Justice Powell, delivering the opinion of the majority, held that "Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose ... constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent."

The court held that the purpose of the Alabama statute was to encourage investment within the state and growth of Alabama insurance companies. But, "We do not agree that this is a legitimate purpose when furthered by discrimination."

Justice O'Connor Dissents

Justice Sandra Day O'Connor, joined by Justices Brennan, Marshall and Rehnquist, penned a lengthy dissenting opinion. The basis of the dissent was that first, States did have the right to discriminate if there was a rational reason; and second, the Interstate Commerce Clause of the Constitution and the McCarran-Ferguson Act specifically allow this type of activity.

"This case presents a simple question: Is it legitimate for a state to use its taxing power to promote a domestic insurance industry and to encourage capital investment within its borders? In a holding that can only be characterized as astonishing, the Court determines that these purposes are illegitimate," Justice O'Connor wrote.

She further maintained that precedents required the court to "defer to a legislature's judgment if the classification is rationally related to a legitimate state purpose." In this case, she maintained, that principle had been abandoned.

In reality, the dissenting justices said, Alabama did meet the test of legitimate purposes and rational actions. The majority erred when it held that the means used to achieve this end made it illegitimate, and therefore a violation of the Equal Protection Clause of the Constitution.

Justice O'Connor cited the McCarran-Ferguson Act which "expressly sanctioned such economic parochialism in the context of state regulation and taxation of insurance."

#### The South Carolina Situation

Is South Carolina affected by the recent Supreme Court ruling? According to press reports, Chief Insurance Commissioner John Richards thinks so. Richardson is quoted as saying "We have a parallel system, not identical, but similar." He is further quoted as saying, "It sounds like we will have to equalize our system."

If the system is equalized there are two options: the rates of foreign companies could be lowered, or the rates of domestic companies could be raised. Either option presents difficulties and problems. Domestic companies would object to having their rates raised to "foreign" levels; reducing out-of-state rates would decrease state revenues.

#### Two License Fees Currently Set By Law

The relevant section of the South Carolina Code is Title 38, Chapter 5, Article 3, dealing with license fees.

Basically, foreign life insurance companies have a tax placed on them in addition to any others they have to pay. Those companies not incorporated in South Carolina must pay a 2% premium insurance tax—that is, they must pay a sum equal to 2% of "total premium income or total premium receipts from the state." (38-5-320).

All other insurance companies also have this 2% tax placed on them by section 38-5-340.

Half of the fees collected go to counties in proportion according to the latest census; the rest goes to the State.

The amount of these taxes paid can be reduced if the insurance companies invest some or all of their reserves in South Carolina.

If the companies invest at least one-fourth of their reserve from all South Carolina policies in South Carolina, their additional tax falls to 1 3/4%. If the companies invest half of their reserve, the tax falls to 1 1/2%. Should they invest three-quarters of their reserve, the tax is lowered to 1 1/4 %. Finally, if the company invests all of its premium reserve from South Carolina back in South Carolina, its additional tax falls to 1%.

Some estimate revenue estimates for 1985-86 for the 2% premium tax at \$29 million for 1985-86; the 1% additional premium tax could bring in \$22 million more--or a total of \$51 million.

#### What Investments Are Permitted?

What sort of investments are required? According to 38-5-330: notes or bonds for South Carolina, its agencies, counties or municipalities; notes or bonds secured by first mortgages on South Carolina real estate; bonds of South Carolina corporations; bonds for companies who use all the bond proceeds for industrial facilities in South Carolina; maintaining an average daily balance for one year in a S.C. financial institution equal to a portion of the reserve as described above; property in South Carolina "returned for taxes therein, at the value at which it is assessed for taxation."

These provisions apply to both foreign life insurance companies (38-5-330) and other foreign insurance companies such as fire, accident and health, casualty, etc. (38-5-350).

An additional 1% tax is imposed by 38-5-380; this tax cannot be reduced by investing within the State. This money goes to the State Treasury "for use for State purposes."

By contrast, domestic insurance companies have a premium tax placed on them at 2%, which "shall not exceed five per cent of the net income of the company." (38-5-410)

How much is the investment of reserves on policies written in S.C.? Some observers say the sum is about \$2 billion.

#### What Financial Impact Could This Have?

If the state decided to set foreign premium taxes at domestic levels, an estimated \$20 million to \$40 million in revenue could be lost. Some observers say this translates into a loss of \$14.5 million for aid to subdivisions.

On the other hand, the General Assembly might raise the domestic companies to the foreign level. This would increase revenues by around \$15 million, with an extra \$3 million going to aid to subdivisions.

And Now What?

As a "Case Note" section in the *Code* says, regarding the varying insurance taxes: "The obvious purpose of this section is to encourage foreign insurers to invest their reserves and premiums in S.C. securities or property." In light of the recent Supreme Court ruling the question is now this: do these taxes "bear a rational relation to a legitimate state purpose"? It would appear that they do not--and what to do about it is just one of the questions which a study committee would have to face.

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## Around the House

### Congress Receives S.C. House Resolutions

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The U.S. Congress has sent notice that it has received memorial resolutions from the S.C. House of Representatives dealing with: textile import quotas (H.2620); federal library services for the visually handicapped (H.2592); request that federal revenue sharing not be cut for rural areas (H.2711); support of "peace through strength" (H.2471); denouncing "federal blackmail" (H.2372); asking that the Federal Supplemental compensation unemployment insurance program be extended for at least one more year (H.2530); and asking the federal government to help farmers (H.2636).

Senators Hollings and Thurmond entered the texts of the resolutions into the April 20 issue of the *Congressional Record*. Meanwhile the Chief of Staff of the House Committee on Agriculture sent the following letter to Clerk Lois Shealy:

"The copies of South Carolina House Concurrent Resolutions 2636 and 2711 you transmitted to Speaker O'Neill were referred to the Committee on Agriculture as Memorial numbers 107 and 108, respectively.

"On behalf of Chairman de la Garza, I am writing to acknowledge and thank you for the resolutions relative to the economic conditions of the Nation's farmers and in opposition to cutbacks in Federal revenue sharing and in shared revenues from U.S. Forest Service timber cutting. I assure you the resolutions will be brought to the attention of the members of the Committee, and they will be made a part of our permanent records."