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South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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OFFICE OF RESEARCH

Room 324, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 758-5096

Legislative Update

Legislation Introduced

Children

Spouse Testimony (H.3287). Currently the South Carolina Code says that no husband or wife can be required to disclose information revealed by the other during marriage. This legislation would change the law so that the prohibition does not apply in cases involving criminal sexual conduct involving a minor, or lewd acts committed or attempted upon a minor.

Child Competent Witness (H.3288). This bill would provide that a child would be considered a competent witness to testify in judicial proceedings. "Child" as defined by the Code means a person under the age of eighteen.

Payroll Withholding Child Support (H.3288). Last session the General Assembly passed a number of measures dealing with child support. One of them permitted pay withholding by employers for the purpose of child support. Employers with fewer than 25 employees were allowed the option of not participating in this withholding. This measure would eliminate that option, and require all employers to withhold income for child support if so ordered.

Repayment to DSS (H.3290). The Family Court would have the authority to order persons responsible for child support to repay the Department of Social Services for money spent by DSS on child support activities for the particular child.

Speedy Court Cases Involving Children (H.3291). In all court cases involving a child victim the court and the solicitor must do all they can to insure a speedy trial. In ruling on any motion or request for a delay, the court must consider any possible adverse effects on the child victim.

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Reports of Child Service Agencies (H.3292). All agencies which deal with children and submit an annual report to the General Assembly would have to include a statement of how their programs help implement the State's children policy.

This policy is found in 20-7-20 of the Code. The policy calls for concentration on prevention of problems and support of children and families. Community involvement in providing children's services is encouraged, and all attempts must be made to maximize resources in providing services to children in need through coordination of agency services.

State Council on Maternal, Infant and Child Health (H.3318). This legislation would establish a State Council to provide coordination in planning and service delivery to pregnant women, infants and children. The council would make an annual assessment of the status of the health of this population group, and an assessment of its health needs. The council would also examine the service delivery systems in place to meet these health needs for mothers, infants and children.

The council would develop a three-year service plan and a three-year implementation plan, with state policies and goals recommended for maternal, infant and child health.

The council would consist of agency heads directly interested in maternal, infant and child health, such as the Commissioner of DHEC, the Commissioner of DSS, and so forth. There would also be legislative members from appropriate committees, such as House Medical, Military, Public and Municipal Affairs and the Joint Legislative Committee on Children. The Governor would also appoint members from such organizations as the SC Medical Association, the Medical University, the SC March of Dimes, and so forth; and one member from each Congressional District.

The council would be housed in the Governor's Office and funded through existing resources. There would have to be a project director, administrative support specialist, and a council staff.

Children's Bureau and DSS (H.3345). This bill proposes transferring the adoption functions of the Children's Bureau to the appropriate unit within the Department of Social Services. This would be the sole state adoption agency in South Carolina. A Transition Committee would be set up to oversee the change. The Committee members would come from agencies and committees concerned with children. Staffing for the Committee would be provided by the Joint Legislative Committee on Children, the State Reorganization Commission and the Governor's Office.

All adoption applications on file with the Children's Bureau would receive priority consideration when the transition is made.

Insurance

Cancellation/Nonrenewal of Policies (H.3339). This measure is similar to an earlier bill, H.3234, reported in issue number 2 of this session's *Update*. Like the earlier bill, H.3339 would set specific reasons for cancellation of an insurance policy. These reasons would be:

- 1) Failure to pay a premium when due;
- 2) Material misrepresentation of fact which, if known before hand, would have kept the insurance company from issuing a policy;
- 3) Substantial change in the risk assumed, except when the insurer should reasonably have been able to foresee the change at the time the policy was written;
- 4) Substantial breaches of contractual duties, conditions or warranties by the insured;
- 5) Loss of the insurer's reinsurance covering all or a significant portion of the particular policy covered. The Commissioner of Insurance would also have to determine that continuation of the policy would imperil the insurer's solvency or put the insurer in violation of S.C. insurance laws. The Commissioner would have to be notified of the proposed cancellation at least sixty days ahead of time; the Commissioner would give approval or disapproval within thirty days.

Item 5 is the outstanding difference between this and the earlier bill. As was explained in the research report in last week's *Update*, insurance companies spread the risks they assume when writing policies by getting "reinsurance;" that is, they find another company to purchase policies. The difficulty in finding and maintaining this reinsurance is one reason advanced for the liability insurance "crunch." (See *Legislative Update* number 2, January 21, 1986).

Money and Finance

Bonds for Prisons (H.3279). This proposal would make provisions for capital improvement bonds to fund the prison construction required by the Nelson lawsuit settlement.

The 1986 bond bill will be over \$100 million. Normal capital improvement programs must address the needs of 6,000 existing buildings and facilities, and the present and future needs of 50 agencies, institutions, colleges and universities. The average yearly capital improvement program statewide is between \$60 to \$70 million dollars.

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The Nelson settlement will cost about \$160 million over a five year period for prison construction. This bill proposes financing the statewide capital improvement program with general obligation bonds until the capital fund is large enough to finance this entire program in cash. Estimated time for the transition is four to five years.

The Joint Bond Review Committee has recommended that annual capital fund monies be used only for prison construction until there is money in excess of the need for prisons. The committee also recommended that the gradual phase-down of the debt service limit be suspended for a time, but would be fully implemented by 1992. This would enable the Treasurer to issue bonds until the capital fund could replace them.

By 1992, the state's debt service expenditures for general obligation bonds would have to be no more than 2 1/2% of the general fund for the prior fiscal year.

The General Assembly would be instructed to appropriate money into the Capital Expenditure Fund according to the following schedule:

FY 1985-86: one-half of one percent of the general fund revenue
FY 1986-87: one and one-half percent of the general fund revenue
FY 1987-88 and thereafter: two and one-half percent of the
general fund revenue

Bingo Revenues (H.3300). This bill proposes doubling the bingo license fees and admissions taxes, with the money going to develop county facilities for parks, recreation and tourism.

The funds would be distributed in the following fashion. Half of the money collected would go into the general fund of the State. The other half would go into a separate fund for the Department of Parks, Recreation and Tourism.

Of this separate fund, an initial \$10,000 would be credited to each county. Seventy-five percent of the remaining money would be credited to the account of each county on a per capita basis. Any money that remained would be kept by the Department.

The money credited to the counties would be distributed by a system of grants to "eligible entities" for park and recreational facilities. These entities are local governments who have provided parks or recreational services for at least twelve months before the grant award.

County Fees on Hazardous Waste (H.3322). This bill would allow counties to impose "reasonable fees" on hazardous waste disposed within the county. The county could also promulgate regulations to implement the fees.

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School Districts May Borrow from Reserve Fund (H.3323). For one year (Fiscal Year 1985-86) school districts would be allowed to borrow money from the State's reserve fund to replace the funds lost because of the 2% cut mandated by the Budget and Control Board. Any money borrowed would have to be repaid in Fiscal Year 1986-87 from initial funds the districts receive from state funds.

Increase Tax Deduction (H.3324). This proposal would increase from \$3,000 to \$6,000 the tax deduction allowed persons on civil service pensions, retired military, and persons on eligible pensions or annuities.

This deduction would have to be adjusted annually by the Tax Commission to account for inflation.

Energy and Environment

State Development Board and Energy (H.3285). This measure would make the State Development Board the chief source for development of all energy resources in South Carolina, with the Board working for a "strategic balance of energy-related industries." There would be promotion of all sorts of energy development, including solar, wind-related, biomass, as well as fossil fuel. The Board would assist in coordinating activities between the private sector, state and local governments, and the federal government.

Outdoor Advertising (H.3293). This bill proposes regulation of outdoor advertising signs in unincorporated areas of a county, when the county does not have an ordinance regulating outdoor advertising. In such a case, no sign could be erected until the governing body of the county had held public hearings on it, and then given its written consent for the sign to go up.

Elections

Primary Defeat/General Election (H.3297). This legislation states that a person who is defeated in a primary election for an office could not be elected to that same office at the next special or general election that is held.

Gasoline Taxes: Higher Than We Thought

In the December issue of the *Legislative Update* there was a brief discussion of the proposed two cent increase on the gasoline tax in South Carolina. In that discussion the *Update* quoted figures from the Highway Users Federation on the gasoline tax rates across the nation. However, some states have additional taxes on gasoline, such as franchise or ad valorem taxes, which make the total tax burden on the customer higher than reported.

The *Update* listed several states as low on gasoline taxes, such as Hawaii, California, and Mississippi. True, these states have low gasoline taxes, but they have additional taxes on fuels which the *Update* did not report. The following chart corrects those omissions.

The following figures were sent to *Legislative Update* by the South Carolina Department of Highways and Public Transportation, which seems to have some interest in the gasoline tax issue. These figures have been computed on a cent-per-gallon basis.

<u>STATE</u>	<u>GAS TAX</u>	<u>SALES/FRANCHISE TAX</u>	<u>TOTAL TAX</u>
Alabama	11 ¢	--	11 ¢
Alaska	8	--	8
Arizona	16	--	16
Arkansas	13.5	--	13.5
California	9	6.6	13.5
Colorado	12	--	12
Connecticut	16	2.0	18
Delaware	11	--	11
D.C.	15.5	--	15.5
Florida	4 *	5.7	9.7
Georgia	7.5	3.1	10.6
Hawaii	11	4.1	12.6
Idaho	14.5	--	14.5
Illinois	13	5.2	17.2
Indiana	14	6.0	20.0
Iowa	16	--	16

* Florida - actual motor-fuel tax went from 3¢ to 4¢ in 1983 but 5 percent sales tax was added and dedicated resulting in a 9.7-cent-per-gallon fee.

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<u>STATE</u>	<u>GAS TAX</u>	<u>SALES/FRANCHISE TAX</u>	<u>TOTAL TAX</u>
Kansas	11	--	11
Kentucky	10	--	10
Louisiana	16	--	16
Maine	14	--	14
Maryland	13.5	--	13.5
Massachusetts	11	--	11
Michigan	15	4.1	19.1
Minnesota	17	--	17
Mississippi	9	7	16
Missouri	7	--	7
Montana	15	--	15
Nebraska	16.4	--	16.4
Nevada	13	--	13
New Hampshire	14	--	14
New Jersey	8	--	8
New Mexico	11	--	11
New York	8	4.1	12.1
North Carolina	12.25	--	12.25
North Dakota	13	--	13
Ohio	12	--	12
Oklahoma	10	--	10
Oregon	11	--	11
Pennsylvania	12	7.5	19.5
Rhode Island	13	--	13
SOUTH CAROLINA	13	--	13
South Dakota	13	--	13
Tennessee	12	--	12
Texas	10	--	10
Utah	14	--	14
Vermont	13	--	13
Virginia	11	2.5	13.5
Washington	18	--	18
West Virginia	10.5	4.85	15.35
Wisconsin	16.5	--	16.5
Wyoming	8	--	8

Omnibus Crime Bill: Where to Put Prisoners, How to Pay for Prisons?

Background

Crime, especially violent crime, has become a major concern in South Carolina. A number of pieces of legislation were introduced in 1985 to grapple with the problem. One of the more sweeping--and controversial--is the "Omnibus Crime Bill." The Governor's Office and supporters of the legislation have stated that it is designed to relieve prison overcrowding by increasing use of local facilities and community corrections.

Others who have studied the legislation, however, feel that any overcrowding relief under the measure would be secondary. Further, many county officials are concerned about taking on the possible financial burden of operating local correctional facilities.

The bill was passed by the Senate last year and is currently in the Judiciary Committee of the House. The bill has attracted a great deal of attention, and observers are expecting the Senate version to be amended in the House Judiciary Committee. In 1985 a research report in *Legislative Update* examined the measure. In view of the recent attention given to the bill, a revised and revamped version of that report is published in this edition.

Offenders at the Local Level: Where Do We Put Them?

The basic purpose of the Omnibus Criminal Justice Improvement Act of 1985--the Omnibus Crime Bill--as stated in the bill itself, is to put increased emphasis on victim restitution, public service work and community penalty programs by offenders. Over a five-year period, inmates serving less than one year would be transferred from state to local facilities.

The communities penalties program would put short-term, non-violent offenders in local programs. Local agencies would prepare plans for dealing with these prisoners, including supervision and type of punishment; these plans would be sent to the Department of Parole and Community Corrections which would distribute funds allocated by the General Assembly. According to the Governor's Office the estimated cost for FY 85-86 would be \$209,500.

Expanding local correctional facilities would require additional funding. The money for these expansions would come from bond issues recommended by the Budget and Control Board and approved by the Joint Bond Review Committee.

The amount required would be determined by state-wide needs assessments showing the present and estimated future number of prisoners in each county. The needs assessment would determine the costs, but a minimum of \$15 per inmate per day would be guaranteed to the counties. These would be inmates under local jurisdiction; for SC Department of Corrections inmates counties house, they would receive at least \$5 per day per inmate.

Offenders at the Local Level: When Do They Go There?

The bill proposes a gradual change in where inmates spend their time. Currently, the SC Department of Corrections takes inmates with sentences 90 days or more. The bill would change this to six months or more by January 1, 1989; and one year or more by January 1, 1990. After January 1, 1988, all magistrate, municipal and family court offenders will serve time locally, regardless of length of sentence.

Handicapped and chronically ill prisoners will be the concern of the Department of Corrections. The extra expenses involved in the care of such inmates has been a potential problem for local governments. In addition, if funds for inmates are not allocated, the localities do not have to accept custody.

How Much Will This Cost?

Cost--no man can tell. But the Governor's Office has estimated that the program will run \$2.2 million first year and increase each year thereafter until reaching \$8.1 million the seventh year.

Where would the money come from? Chapter 48 of the proposed legislation is entitled "Funding Mechanisms for Prisoner Incarceration," and deals at some length with the issuance of bonds for construction and program projects. The Budget and Control Board would request the issuance of such revenue bonds, but the General Assembly would have to appropriate funds to back the bonds.

As indicated above, funds would be allocated to local governing bodies operating the correctional programs based on needs assessments. A state-wide assessment would determine the fiscal impact on each local correctional facility because of such items as operating costs, additional bed space needed, and so forth.

Whatever the findings of the needs assessment, local governments will receive a minimum payment of \$15 per inmate per day. Local facilities which hold state inmates in custody will receive \$5 per day per inmate. Payment would be made on a quarterly basis by the State Treasurer.

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The question of funding has raised opposition to the measure. The South Carolina Association of Counties has expressed doubts that the funding would be secure. The bill presently calls for the General Assembly to include funding in the annual appropriation act. Should the General Assembly not include funding, the counties fear they would have to absorb the costs of operating local correctional facilities. This would put pressure on the counties to increase their property taxes. This particular topic of funding might be the point which determines if the bill passes the General Assembly.

Of course, the state is heavily committed to expenses connected with settlement of the Nelson v. Leeke lawsuit. The total amount needed for prison construction alone is estimated to be \$160 million over the next five years. To this cost must be added operating costs. This factor, along with all the other expenses of state government, could put a strain on the state's ability to help fund local correctional facilities and operations. That strain is of intense concern to local and county officials and governments.

Work, Supervision, Parole, Restitution

First, those not eligible: The bill offers a number of alternative punishment programs, but persons guilty of the following offenses are not eligible to participate: murder, kidnapping, voluntary manslaughter, assault and battery with intent to kill, criminal sexual conduct, armed robbery, arson, or serious trafficking in drugs.

Work/Punishment on the local level: Local communities would be permitted to establish voluntary work programs for inmates. Of their earnings at least \$5 must go to help pay costs of food, lodging and so forth. Other parts of the money can be sent to child or family support, or victim restitution, with the rest going into the inmate's account.

Persons who are placed on probation now pay a flat rate of \$120 a year. Under the bill, persons placed on "intensive probation" at the local level would pay \$10 per week while on the program.

Parolees could be ordered by the courts to pay restitution to their victims; garnishment of wages and liens on property can be used to enforce this provision. Five percent of all wages would go into a special account to supplement federal funds for victim assistance programs.

Parolees could perform public service work as an alternative to other forms of punishment. Criminal offenders might be required to perform such work. In addition, Section 19 would allow counties to require inmate labor on the county public works projects.

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"Good time" could be earned in some cases on the basis of one day's credit for two days served. "Work time" could be earned on a similar basis, and might include academic and vocational programs. Once again, serious offenders (see above) are not eligible.

Victim Restitution Provisions

The bill states that "a victim has the right to receive restitution for expenses or property loss incurred as the result of a crime." Prisoners who work could be ordered by the Department of Parole and Community Corrections to make payments for such restitution. The money would go to the Department, which would forward it to the victim. To enforce this provision, a court could garnish wages and place liens on property.

Murder

Murder is divided into first and second degrees. First degree murder that includes a number of aggravating circumstances is punishable by either death, or life imprisonment without parole. The circumstances include: murder committed during crimes such as rape, attempted rape, kidnapping, burglary, armed robbery, housebreaking; prior convictions for first degree murder; murder for hire; murder of law officers.

Second degree murder carries life imprisonment, with no parole eligibility for at least twenty years.

Crimes Committed with Firearms

If a person is convicted of certain crimes while in possession of a firearm, a five year sentence must be added to any other sentence. An issue that has arisen: should this five year term be reduced by "good time" credits? The crimes are: kidnapping or attempted kidnapping, armed robbery, voluntary manslaughter, assault and battery with intent to kill, criminal sexual conduct, first or second degree.

Toughen Parole Requirements and Procedures

Those convicted of first degree murder would be ineligible for parole, work release, extended work release, or earned work credits. Persons convicted of multiple violent crimes are also ineligible for parole; crimes are murder, criminal sexual assault, armed robbery, kidnapping, first degree arson, voluntary manslaughter, and first/second degree burglary.

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Parole for persons convicted of major crimes must be approved by two-thirds of the Parole Board; in addition, if the Board said no, it would be two years (not one year) before the case came up for review again.

Conclusion

It is generally accepted that something must be done about the correctional system in South Carolina. There is honest disagreement about the proposed solutions. The Omnibus Crime Bill would transfer short-time prisoners from state to local custody, while increasing penalties for serious crimes and making parole tougher. Supporters say these actions would ease prison overcrowding on the state level.

Critics of the measure are unconvinced it will have immediate impact on prison overcrowding, and are concerned that state funding will vanish, leaving local governments responsible for costs of the program. The fate of the bill hinges on a resolution of these two differing points of view.

Around the House

Legislative Interns

Once again the University of South Carolina has selected six students to serve as legislative interns during the spring semester. During their time here, the interns will learn first hand the legislative process by working with the House, Senate, and the Lt. Governor's office.

House members will be interested to learn that the coordinator for the program is Nancy Stone-Collum, who worked for a number of years with the House Ways and Means Committee and who was herself at one time a legislative intern.

Anne Campbell is mid-way through her Master of Science degree in the USC clinical nursing program. She will be with the Medical Affairs Committee in the Senate.

Elizabeth Henry is a senior majoring in political science; she plans to attend law school. She was a Senate page for three years and is now with the Senate Finance Committee.

Lynn Potts will graduate in May with a Bachelor of Arts degree in International Studies/History. She will be working with the House Research Office.

David Robey is a senior in Criminal Justice at USC. He has had an assistantship with the USC Division of Law Enforcement and Safety for the past one and one-half years. He will be in the Lt. Governor's Office.

Cynthia Shirah will graduate in May with a Bachelor of Arts degree in political science. She has been assigned to the House Education and Public Works Committee.

Darcy Wingfield is working on a Bachelor of Arts degree in Art History and will graduate in December, 1986. She is with Senate Research.

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Capitol Press Corps Holds Elections

The Capitol Press Corps, that elite group of correspondents who report the activities of the General Assembly, recently held its annual election of officers.

In these elections, David Kern was chosen President, and William Stracener was selected as Vice President. Kern is the Governmental Affairs reporter for the *State* newspaper; Stracener is a reporter with the Associated Press.

Contacted by *Legislative Update*, Kern said that his election had left him with a feeling of "a great weight of responsibility." He said that his principle duty would be to serve as a liaison between the Press Corp as a whole and the General Assembly and State officials.