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South Carolina House of Representatives

# Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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OFFICE OF RESEARCH

Room 324, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803)734-3230

## House Week in Review

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Last week, House members spent time electing circuit court judges and college trustees, as well as ratifying a number of important bills as the House continued making headway on its calendar.

### Ratified Acts

A number of significant bills were ratified and sent to the governor for his signature last week. Among these were S.415, the South Carolina Business Corporation Act; S.546, Comprehensive Health Education; H.3573, Long Term Care Insurance Act and H.2807, legislation to deal with AIDS. Long Term Care Insurance and Comprehensive Health Education have been signed by Gov. Campbell.

All of these bills have been featured in the *Legislative Update* this session. For background information about the new acts, see the Update's Jan. 16 issue for the Business Corporation Act; the March 1 *Update* for Comprehensive Health Education; the Feb.2 issue for the Long Term Care Insurance bill; and the Jan. 19 *Update* for the report of the Ad Hoc Committee on AIDS.

### Third Reading Approval

The House also gave third reading approval to a number of important bills. These include S.236, revisions in the state's Uniform Commercial Code and S.1001, the Compliance Review Act. This Senate bill is the companion legislation to H.3497, approved by the House earlier this session. Also given final House approval were H.3175, setting qualifications for sheriffs, and S.457, the Home Instruction bill.

### Trustee and Judgeship Elections

The House and Senate met in joint session Wednesday to elect a number of circuit court judges, as well as members of college trustee boards.

Ten incumbent Circuit Court judges, unopposed for re-election, were elected by acclamation. These include 3rd Circuit Judge David F. McInnis of Sumter, 4th Circuit Judge Edward B. Cottingham of Bennettsville, 7th Circuit Judge E.C. Burnett III of Pauline, 8th Circuit Judge James E. Moore of Greenwood, 10th Circuit Judge William H. Ballenger of Walhalla, 11th Circuit Judges Julius H. Baggett and Hubert E. Long, both of Leesville, 12th Circuit Judge John H. Waller Jr. of Mullins, 13th Circuit C. Victor Pyle Jr. of Greenville, and 14th Circuit Judge Luke N. Brown Jr. of Ridgeland.

Trustee elections also were held. Elected to the Citadel board were James E. Jones and William E. Prioleau Jr. Elected to the Clemson University trustee board were Dr. Fletcher C. Derrick Jr., John J. Britton, Louis B. Lynn and Allen P. Wood. Elected to the Medical University of South Carolina board were Dr. Charles Hanna, Dr. C.P. Fishburne Jr., Dr. E. Conyers O'Bryan, Melvyn Berlinsky, Allen E. Stalvey and Dr. William Bruce Ezell Jr.

Dr. Carolyn R. McIver was elected to the South Carolina State governing board. All the incumbent USC trustees were re-elected for another term. These include: Charles E. Simons III, Robert M. Bennett, James Bradley, Herbert Adams, Lily Roland Hall, William L. Bethea Jr., Eugene Cater Floyd and Samuel R. Foster II. Three trustees were elected to the Winthrop College board. They are Mary Anne D. Douglas, Susan H. McMillan and Andrew M. Crane.

Elections for the board of the Wil Lou Gray Opportunity School were also held. Trustees elected were Dr. Marvin Efron, Wilhelmina McBride and Olive F. Wilson.

#### More Judgeship Elections

Last week, the Judicial Screening Committee issued its report on the candidates seeking election to the Family Court and to the opening on the 5th Circuit bench. Following screening hearings, the committee found the following candidates to be qualified to seek election to the bench.

To the 5th Judicial Circuit bench: James C. Harrison Jr. and J. Ernest Kinard Jr.

To the Family Court bench:

In the 1st Circuit, Seat 2: Incumbent Judge Alvin C. Biggs.

In the 2nd Circuit, Seat 1: Incumbent Judge Peter R. Nuessle

In the 3rd Circuit, Seat 1: Frances C. Matthew and Incumbent Judge B.J. Warshauer.

In the 4th Circuit, Seat 1: Incumbent Judge Jamie F. Lee.

In the 5th Circuit, Seat 1: Incumbent Judge Robert H. Burnside.

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In the 5th Circuit, Seat 2: Melvin D. Bannister, Richard Giles Whiting and Joseph A. Wilson II.

In the 5th Circuit, Seat 4: Incumbent Judge William M. Campbell.

In the 7th Circuit, Seat 3: Incumbent Judge Stuart H. Hall.

In the 8th Circuit, Seat 2: W. Frank Partridge Jr., Gary Tusten Pope and John M. Rucker.

In the 9th Circuit, Seat 1: Incumbent Judge L. Mendel Rivers.

In the 9th Circuit, Seat 3: Incumbent Judge Judy Cone Bridges.

In the 9th Circuit, Seat 4: Waynes M. Creech and David A. Soderlund.

In the 10th Circuit, Seat 2: Incumbent Judge Robert H. Cureton.

In the 11th Circuit, Seat 1: Incumbent Judge W. Frank Rogers Jr.

In the 12th Circuit, Seat 3: Incumbent Judge Wylie H. Caldwell Jr.

In the 13th Circuit, Seat 3: Incumbent Judge Willie T. Smith Jr.

In the 13th Circuit, Seat 4: Incumbent Judge Judge Joseph W. Board.

In the 14th Circuit, Seat 2: Incumbent Judge Albert L. Kleckley.

In the 15th Circuit, Seat 2: Incumbent Judge Kaye G. Hearn.

In the 16th Circuit, Seat 1: Incumbent Judge David N. Wilbur Jr.

Bills Introduced

Here is a sampling of the bills introduced in the House last week. Not all of the bills introduced are featured here. The bills are organized by the standing committees to which they were referred.

*Agriculture and Natural Resources Committee*

Powers of the Wildlife and Marine Resources Department (H.4177, Rep. Pearce). This bill defines the powers and duties of the South Carolina Wildlife and Marine Resources Department. These powers and duties include the regulation of boating activities, the protection of endangered or threatened wildlife or marine species, and the regulation of hunting seasons and bag limits.

*Education and Public Works Committee*

Denied Applications to Operate Motor Vehicle Common Carriers (H.4135, Rep. Edwards). Under this bill, a person who is denied a certificate to operate a motor vehicle common carrier would not be allowed to apply again until six months have passed.

Funds for Remedial Education (S.1381, Senate Education Committee). This bill pertains to the provisions of the Education Finance Act concerning appropriations to the school districts for remedial education. Under this bill, no student who scores at or above the Basic Skills Assessment Program standard would be eligible for either compensatory or remedial funding.

Committee on Handicapped Children's Needs (H.4165, Rep. Aydlette). This bill provides for the creation of a committee to study the special needs of handicapped and learning disabled children. Members would be appointed by the chairman of the House Education and Public Works Committee, the chairman of the Senate Education committee, the Speaker of the House, the Lieutenant Governor, and the Governor. The committee would be expected to give an annual report with recommendations on this issue to the General Assembly.

Judiciary Committee

Product Liability Standards for Firearms and Ammunition (H.4136, Rep. Bradley). This bill would outline the liability standards to be considered in product liability lawsuits concerning firearms or ammunition. According to the bill, the plaintiff in such a case has a burden to prove that the firearm or ammunition contained a defect, that the injury or damage involved was directly caused by the product, and that there was an alternative design that was technologically and economically feasible at the time of the manufacture of the product in question, the use of which would have reduced or eliminated the risk of the product. The bill further describes under which conditions manufacturers of firearms or ammunition can be considered liable for damages or injury.

Fines for Fake ID's (S.1013, Sen. Bryan). The penalties for the use of a cancelled, suspended, revoked or fraudulently altered driver's license or personal identification card would be increased to a \$200 fine for first offenders and a \$500 fine or not more than six months in prison for second offenders under this Senate bill.

No Alcohol Sales Near Public Parks (H.4137, Rep. Hearn). Currently, the law states that no alcoholic beverage licenses shall be granted to a place of business within 300 feet of a church, school or playground. Under this bill, licenses could not be granted to places of business within 300 feet of a public park as well.

Jury Composition for Black and White Defendants (H.4157, Rep. Ferguson). This bill concerns the composition of juries in criminal cases. Under the bill, a jury for a criminal trial of a black defendant would automatically have to have the same percentage of blacks as the county in which the trial is being held. A white defendant in a criminal trial could request that the jury have the same percentage of whites as the county where the trial is taking place.

Drivers Licenses for Drug Offenders Under 18 (H.4174, Rep. Pettigrew). This bill states that if a person under the age of 18 is convicted of a narcotics or controlled substance offense, his drivers license will be suspended until his eighteenth birthday. If the convicted teenager does not yet have a drivers license, he would be unable to apply for one until his eighteenth birthday.

Liability for Landowners (H.4164, Rep. Foxworth). Currently, a landowner who allows his land to be used for recreational purposes without charge has only limited liability for accidents or injuries that occur there. Landowners are not assumed to assure that their land is completely safe, nor are they responsible for any injuries that are caused by the person using the land. Under this bill, these limits on liability would be extended to a landowner even if he charge for the use of the land.

*Labor, Commerce and Industry Committee*

Hazardous Toy Warnings (H.4146, Rep. Bradley). This bill would require manufacturers of toys designed for children under the age of six to place warning labels on any toys which represent a potential choking or aspiration hazard due to the nature of the product. Such hazards could include small parts of a toy which could be ingested by a child. The bill sets up penalties for the violation of the law.

HMOs and the SC Insurance Guaranty Association (H.4170, Rep J. Bradley). Under this bill, health maintenance organizations (HMOs) in the state would be required to become members of the South Carolina Life and Accident and Health Insurance Guaranty Association meeting the terms and conditions of the association's membership.

Non-Resident Real Estate Salesmen (H.4189, Rep. Sheheen). Non-resident real estate brokers, real estate salesmen and property managers would be allowed to obtain real estate licenses under this bill. The bill sets up the system through which non-residents would be licensed and regulated in the state.

*Medical, Military, Public and Municipal Affairs*

Dental Technicians and Laboratories Advisory Board (H.4148, Rep. Waldrop) This bill establishes a Department of Health and Environmental Control Dental Technicians and Laboratories Advisory Board. This advisory board would assume the powers of the State Board of Dentistry with regard to the registration of dental and orthodontic technicians. The board would also register commercial dental laboratories and would provide continuing education requirements for dental technicians.

Ways and Means Committee

Tax Incentives for Business Development and Expansion (S.1240, Sen. Waddell) Under this bill, corporations that establish new corporate headquarters, corporate office facilities, or distribution centers or expand existing corporate or distribution facilities would be eligible for a five year county property tax abatement. Certain qualifications would apply: the cost of the new facility or expansion must be \$50,000 or more and create at least 75 new jobs. The bill also would establish a fund within the Governor's Office to provide incentive payments to corporations to offset costs of establishing headquarters or administrative operations within the state. Corporations qualifying for payments from the fund could also receive corporate income tax credits.

Girl Scout Cookies Tax Exemption (H.4138, Rep. Wells) The gross proceeds from the sale of girl scout cookies would be exempt from sales tax under this bill.

Omnibus Proviso Bill (H.4181, Rep. Kirsh) This bill concerns the numerous funding provisos which appear year after year in the state budget. The bill would place into law provisos for permanent programs so that the provisos would no longer have to be included in and voted on during the annual budget deliberations.

Payment of Motor Vehicle Taxes (H.4179, Rep. Kirsh) This bill would allow the county treasurer to provide proof to the Highway Department that a person has paid his taxes on an automobile. Currently, the motorist is required to present a receipt from the county treasurer to the Highway Department in order to get his motor vehicle license.

*Without Reference*

Infectious Waste Management (H.4139, House Agriculture and Natural Resources Committee) This bill would create the Hazardous Infectious Waste Management Act. This proposed act addresses the issue of infectious waste, which includes blood, bodily fluids, infected animal carcasses, old syringes, and many other discarded materials which have the potential to cause disease or infection. The bill defines what shall be considered infectious waste, and grants powers to DHEC to regulate the treatment, storage and disposal of these materials.

## State by State Spending on Criminal Justice

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South Carolinians traditionally have placed great emphasis on law and order issues. The following charts describe how South Carolina stands, compared to other states, in expenditures on state and local justice systems. State and local justice systems include police, the court system, corrections, expenditures associated with prosecution and legal services, and the cost of public defenders. The first chart ranks all fifty states in terms of per capita spending on their respective state and local justice systems. The second chart shows what 13 southern states are spending on police, court system and correctional facilities.

Information for both charts was taken from the 1986 edition of the Sourcebook of Criminal Justice Statistics and represents the most up to date material in this form.

### Per Capita Expenditures on State and Local Justice Systems for the Fiscal Year 1985

<u>State</u>	<u>Expenditures per capita</u>
District of Columbia	612.87
Alaska	592.04
New York	293.19
Nevada	244.01
California	224.78
New Jersey	207.67
Arizona	205.93
Wyoming	199.43
Hawaii	191.66
Maryland	191.17
Delaware	186.28
New Mexico	184.63
Florida	175.38
Michigan	173.28

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<u>State</u>	<u>Expenditures per capita</u>
Massachusetts	\$172.61
Colorado	172.03
Illinois	170.93
Connecticut	164.79
Washington	160.14
Oregon	154.94
Louisiana	153.59
Rhode Island	152.10
Wisconsin	151.13
Virginia	149.90
Minnesota	140.86
Pennsylvania	137.30
Texas	136.41
Utah	135.01
Georgia	131.42
North Carolina	129.29
Montana	128.78
New Hampshire	126.42
Vermont	126.09
Kansas	125.66
Missouri	124.41
Ohio	121.15
Oklahoma	118.36
SOUTH CAROLINA	\$116.86
Nebraska	115.40
Alabama	113.41
Tennessee	113.41
Iowa	105.91
Kentucky	104.86
Idaho	104.80
Indiana	101.40
South Dakota	100.84
Maine	96.21
North Dakota	93.88
Arkansas	86.63
West Virginia	82.18
Mississippi	82.16
United States	\$167.23

Total Expenditures for State and Local Justice Systems  
by Type of Activity for Fiscal Year 1985

<i>State</i>	<i>Police Protection</i>	<i>Judicial (Courts only)</i>	<i>Corrections</i>	<i>Total Expenditures</i>
Alabama	\$ 207,062	\$ 62,627	\$155,412	\$ 456,022
Arkansas	100,380	20,970	66,406	204,362
Florida	961,012	232,913	615,679	1,993,356
Georgia	364,406	107,162	277,930	785,390
Kentucky	178,479	62,670	117,149	390,705
Louisiana	336,464	92,682	220,054	688,229
Maryland	380,325	97,696	304,825	839,604
Mississippi	112,622	26,242	65,382	214,688
North Carolina	369,398	119,318	259,173	808,685
SOUTH CAROLINA	178,325	40,823	152,100	391,134
Tennessee	262,700	73,547	172,680	540,076
Texas	1,109,398	269,614	674,652	2,233,066
Virginia	397,296	94,236	317,037	855,312

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Source: Sourcebook of Criminal Justice Statistics, 1986.

## Research Report: Sheriff Qualifications

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This year South Carolina joins a few other states in moving toward establishing minimum qualifications for sheriffs. The South Carolina Sheriffs Association, as well as many others, have argued that setting basic requirements for sheriff candidates would enhance the quality and prestige of South Carolina's sheriffs. Currently, the General Assembly has approved legislation that would change the constitution to allow the General Assembly to set minimum requirements, and separate legislation that would actually set these requirements once the constitution is amended.

Joint resolution H.2862, ratified March 8, amends the State Constitution to allow the Legislature to set the new qualifications. With legislative approval, the constitutional amendment now goes to the voters for approval during the November general election. The bill that actually sets the qualifications -- H.3175-- has been given third reading by the House and is now before the Senate Judiciary Committee.

### Current Laws Concerning Sheriff Qualifications

Currently, South Carolina does not have any significant minimum requirements for sheriff candidates. Article V, Section 24 of the South Carolina State Constitution concerns the office of sheriff. In this section, the General Assembly is given authority to "provide by law for their duties and compensation," but is not specifically authorized to set minimum qualifications for those running for sheriff.

Title 11, Section 23 of the South Carolina Code of 1976 describes when elections for the office will take place, how sheriffs will be bonded, and how vacancies for the office will be filled, but contains no qualifications or even age requirements for candidates for the office.

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This research report was researched and written by USC Legislative Intern Larry Slovensky.

The conflict of opinion over this issue is between those who feel that sheriff candidates should have some basic requirements such as a high school diploma and absence of a criminal record -- the same as other law enforcement officers -- and those who feel that as constitutionally created officers, sheriffs should not be held to additional statutory qualifications.

### The Role of the Sheriff in South Carolina

In general, the sheriff is the chief law enforcement officer for his county, and is charged with several duties outlined in the state Code. According to Chapter 15 of Title 23 of the SC Code of 1976, the sheriff is authorized to keep track of all civil process service within his county, to execute orders of the court, and to arrest and take bail for citizens. Sheriffs also have the power to enter houses with court approval, to call out a posse, to transport mental patients, and to execute orders of the county governing bodies. Around half of the sheriffs in South Carolina also serve as administrators of their county jail.

The impetus for establishing minimum qualifications has come from several fronts. As all segments of law enforcement establish better training requirements, many in the law enforcement community -- including many sheriffs -- feel that these requirements should be extended to the important and visible position of sheriff.

Law enforcement officials also point out that sheriff deputies are now held to a higher standard of training than the sheriffs over them. And the S.C. Sheriff's Association testified before the Medical, Military, Public and Municipal Affairs Committee that H.3175 would "upgrade and insure the integrity and professional quality of the office of sheriff."

In addition, there have been a number of examples over the years of candidates for sheriff whose backgrounds would not allow them to be members of the regular force. The most recent example in McCormick County, once again, pointed out the lack of qualifications required of sheriff's candidates.

### Current Proposals To Set Sheriff Qualifications

H.3175, the bill that would actually set qualifications, proposes that each sheriff in the state must be a U.S. citizen, a resident of the county in which they want to become sheriff for at least one year prior to election, a registered voter, and at least twenty one years old. An additional requirement is that all sheriffs

must have obtained a high school diploma or its equivalent, or have at least five years of criminal justice experience. Sheriffs must also have not been convicted of any crime with the exception of minor traffic violations.

All newly elected sheriffs are required by the bill to attend a training session authorized by the South Carolina Criminal Justice Training Council. Moreover, in order to remain qualified, all sheriffs must complete at least twenty hours of training approved by the South Carolina Sheriff's Association each year. The Sheriff's Association can waive this requirement in extenuating circumstances.

Those sheriffs who are currently in office would be required to have the twenty hours of training through the South Carolina Sheriff's Association, but are not held to the other requirements for election. The act is to take effect when the constitution is amended to allow for the provisions of the act.

#### Pros and Cons of Mandating Sheriff Qualifications

Minimum sheriff qualifications are popular with most law enforcement officials because they feel basic standards would help improve the prestige and respect of the office of sheriff. It is argued that the chief of police in any city, who is in charge of law enforcement for a metropolitan area, is required to have at least the basic qualifications that all other law enforcement officers must have.

By contrast, a county sheriff, whose jurisdiction will include more land and more population than any metropolitan area, is not required to have any law enforcement experience or training to be sheriff. Proponents of setting minimum standards point out that the sheriff's office should remain an elected position, but that the people must be given good alternatives from which to choose the head of all law enforcement of the county.

Opponents of sheriff qualifications usually oppose the law for philosophical reasons. The offices of sheriff, county coroner and county prosecutor are elected offices created specifically by the State constitution, and the constitution has not placed any minimum qualifications on any of these offices. Opponents argue that since these offices were created without basic requirements, they should remain free of requirements. Opponents also fear that minimum requirements will lead to a shortage of candidates for sheriff.

## Sheriff Qualifications in Other States

### Georgia

Three other state legislatures have set qualifications for sheriffs. In Georgia, sheriffs initiated an effort to have state-mandated minimum requirements for all candidates to the office since the Georgia State Constitution outlined only very basic qualifications. In 1977, the Legislature passed a law, stipulating a number of educational and training qualifications for sheriff candidates.

Georgia now requires its candidates for sheriff to be county residents for at least two years prior to running for the office. Candidates must be at least 25 years old, be a registered voter, and have obtained a high school diploma or its recognized equivalent. Also, candidates must not have been convicted of a felony offense or a moral turpitude offense, must be fingerprinted and subjected to a criminal background check, and must give a complete history of places of residence and employment for the prior six years.

The Georgia law also requires newly elected sheriffs to undergo a six week training program with the Georgia Peace Officer Standards and Training Council. Georgia sheriffs must complete a minimum of 20 hours annually of law enforcement training selected by the Georgia State Sheriff's Association.

### Ohio

Recently, the Ohio Legislature also enacted basic requirements for their sheriffs. In Ohio, candidates running for sheriff must have been a resident of their county for one year, have a high school diploma or its equivalent, and have not been convicted of or pled guilty to any felony or moral offense. Also candidates must submit a complete employment record for the previous six years, and must be fingerprinted and subjected to a criminal background check.

Finally, candidates are required to have held a law enforcement certificate of training for at least three years prior to running, and must have at least five years of experience in law enforcement or at least two years of post high school education.

### Oregon

Oregon is the only other state to have enacted basic qualifications for its sheriff candidates. Oregon instituted minimum requirements for its sheriffs 16 years ago, and the Oregon Legislature has changed and improved these standards over the years.

As the law currently stands in Oregon, candidates for the office of sheriff must have four years of formal education, such as high school, plus two years of actual law enforcement experience. The educational requirement can be waived if a candidate has six years experience in law enforcement. Also, a candidate must have no prior criminal record. Either a felony or misdemeanor conviction will disqualify a potential sheriff candidate in Oregon.

### Conclusion

The conflict over the question of sheriff qualifications is not easy to resolve. The argument that the people should have the right to decide who will be their sheriff without additional qualifications is reasonable, as is the argument that the office of sheriff is too important to allow unqualified candidates to hold it. However, if the constitutional amendment is enacted, it will be the voters of the state who will decide whether the General Assembly should have the power to regulate the qualifications of sheriff candidates.