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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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A successor was elected in the controversial 9th Judicial Circuit race, the House set the Bond bill for special order, and an important, long time member of the House staff announced her resignation.

### Last Judgeship Election

The House met in joint session with the Senate last Wednesday to elect a successor to retiring 9th Circuit Judge Lawrence Richter. Charleston attorney William L. Howard was elected to the bench with 105 votes. Charleston attorney Lee McArden Robinson received 42 votes, and Family Court Judge L. Mendel Rivers Jr., who was nominated from the floor, received 17 votes. This is the last judgeship election for this session.

However, this is not the last legislative election for the session. The General Assembly will meet in joint session June 1 to elect trustees to the three new college boards for the College of Charleston, Francis Marion College and Lander College.

### Special Order Bills

The House finished work on special order bill H.2710 last week, giving the bill second reading approval by a 105-0 vote. Third reading was given last Thursday. The bill, which requires minors to have permission of a parent or guardian before having an abortion, would amend the law by giving minors the alternative of petitioning the court if permission is not obtained.

The House also agreed to set H.4025, the \$243.8 million bond bill, for special order consideration today (May 24) at 12:30 p.m.

### Conference Committees

Among the conference committees reporting last week, the House adopted the free conference report on H.457, the Home Instruction bill. House members rejected a later move to recall the report from the Senate.

The House also adopted the conference committee report on S.1295, the praying mantis bill. The state reptile bill was sent to a conference committee.

With the Senate finishing work on the state Appropriations bill last week, H.3880 heads for the budget conference committee. Also headed for conference committee is H.3713, the Beachfront Management bill.

#### Veto Overridden

House members took issue Thursday with Gov. Campbell's veto of H.2024, a bill which will increase minimum automobile insurance coverage levels from \$5,000 to \$10,000. By a vote of 78-26, the House overrode the governor's veto of the bill.

#### A Sad Note

Last week ended on a sad note as House Clerk Lois Shealy announced her resignation effective June 29. Mrs. Shealy has had a distinguished career with the South Carolina House, having served in various capacities since 1953 when she served as Journal Clerk. Mrs. Shealy also served as General Desk Clerk, secretary to the Clerk of the House and from 1967 to 1978 as Assistant Clerk. She was elected to her current post on Jan. 12, 1978.

## Bills Introduced

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

### *Education and Public Works Committee*

Midlands Technical College Commission (S.1513, Sen. Shealy). This bill is the Senate's version of the House bill dealing with Midlands TEC introduced earlier in the House. Like H.3677, the Senate bill points out that the make up of the Richland-Lexington Counties Commission for Technical Education was no longer valid due to population changes in the two counties since the commission was established in 1969. The Senate bill would repeal authorization for the Richland-Lexington Technical Education Commission and replace it with the Midland TEC Commission.

The 12-member commission would be made up of eight members from Richland County and four from Lexington County. The additional member from Lexington County would be appointed when the next Richland County seat became vacant. Funding from the two counties would be appropriated on a proportional basis equal to the population of the participating counties.

H.3677 called for a 13-member commission with an additional member being appointed from Lexington County. The next Richland County vacancy on the commission would also go to Lexington County.

### *Labor, Commerce and Industry Committee*

Architectural Services (H.4278, Rep. Koon). Under this bill, all public agencies negotiating contracts for architect services, subject to the state Procurement Code, would have to consider the cost of the services as one of the criteria in selecting a firm.

## Ratified Legislation

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*With only two legislative weeks left in the 1988 session and with the primary election ahead, it's time to look at what legislation has been passed this session.*

*For the final two issues, the Legislative Update will feature legislation that has been ratified as acts by the General Assembly. Obviously, it would be impossible to list all the bills signed into law this session. Instead, only the most significant bills, or bills receiving public and media attention, will be listed here.*

*The new acts are presented under generic headings and are referred to by their original bill numbers. The date the bill was signed into law or ratified is also included. This list should provide a handy guide for speech writing or answering constituent questions.*

### Economic Development

#### South Carolina Business Corporation Act

*S.415, signed 4/22/88.*

The 901-page Business Corporation Act of 1988 will substantially revise state laws regarding business and professional corporations. The act incorporates provisions of the 1984 Model Business Corporation Act, with amendments, into state laws. Because the state's Business Corporation Act, last amended in 1981, includes much of the original Model Business Corporation Act, the additional changes made this session do not make major changes in substantive law. Rather it will modernize, clarify and simplify South Carolina law in this area.

According to the report of the Corporation Code Revision Study Committee, the revisions enacted into law this session will give South Carolina "a statute that will place its corporate law in the mainstream of American corporate law." This will benefit new and existing industry here, create an attractive legal climate to attract new business and simplify the task of corporate and legal advisors.

Payment in Lieu of Taxes

*H.3706, signed into law 5/2/88.*

This law will allow industrial development projects, valued at \$85 million or more which are financed by industrial revenue bonds, to make payments in lieu of taxes. The effect of the new law was seen immediately when Union Camp announced it was considering a major expansion of its Eastover facility in light of the new law.

Under the law, businesses would be allowed to pay a predetermined annual payment for not more than 20 years for an amount not less than the property taxes due but using an assessment ratio of not less than 6 percent. The millage would be set at the rate at the time of the agreement, and the fair market value estimate using the original cost of the property less allowable depreciation.

An alternate payment for 20 years may be used as long as it does not yield a fee any less than that calculated by the method above.

This law prohibits the gross school district revenues from being reduced by the payment in lieu of fees. The law states that as the result of the negotiations the gross revenues of a school district in which the project is located may not be less than the gross revenues of the district received prior to the first year the payment is made.

In order to change any of the formulas in this law, a "super vote" of the General Assembly would be necessary.

Corporate Tax Credit for Infrastructure Improvements

*H.3405, signed into law 5/2/88.*

Under this new law, businesses could claim a state corporate income tax credit for half the expense of infrastructure improvements that benefit the public. Infrastructure here means any water lines, sewer lines or roads dedicated to public use. Taxpayers who do the same could also claim the tax credit.

Uniform Commercial Code Revision

*S.236, signed into law 5/9/88.*

This new act amends Article 9 of the state's Uniform Commercial Code. This article of the UCC is designed to secure financing so that a creditor has rights in goods if a buyer misses a payment. Goods referred to here include consumer goods (autos, furniture, etc.), equipment and all other types of property except real property.

The new act primarily is based on the 1972 official amendments to the UCC, already adopted by over 40 states. Specifically, the new acts consists of clarifying amendments -- some designed to shed light on areas of litigation, some technical in nature.

## Education

### Comprehensive Health Education

*S.546, signed into law 4/18/88.*

Here are highlights of this important education bill:

#### Instruction for Grades K-5:

Beginning with the 1988-89 school year, comprehensive health education must be taught in kindergarten through the 5th grade. Comprehensive health education include course work to promote wellness, health maintenance and disease prevention.

The law specifies that sexually transmitted diseases must be excluded from instruction on the prevention and control of disease in these grades. The bill does give the local school boards the authority to include age-appropriate reproductive health instruction. However, the law specifies that contraceptive methods may not be taught before the 6th grade.

#### Instruction for Grades 6-8.

Beginning next fall, students in grades 6-8 would receive instruction in comprehensive health education and reproductive health education. Reproductive health education includes instruction in human physiology, conception, prenatal care and development, child birth and postnatal care.

The law specifies that in addition to reproductive health education, information on sexually transmitted diseases are to be included as part of instruction on the prevention and control of disease and disorders.

Local school boards are given the discretion to decide whether instruction in family life education and/or pregnancy prevention would be included for these grades. If

the school board approved instruction in pregnancy prevention for these grades, the instruction must be taught to separate classes of male and female students.

#### Instruction for High School Level Students

Beginning with the 1989-90 school year, students in grades 9-12 would receive at least 750 minutes of instruction in comprehensive health, including reproductive health education and pregnancy prevention. Pregnancy prevention instruction includes the methods of contraception and the risks and benefits associated with each method. The law states specifically that abortion cannot be included as a contraceptive method, and that contraception must be taught in the context of future family planning.

Instruction in pregnancy prevention must be taught to separate classes of male and female students.

#### Specific Areas of Instruction

##### Contraception:

- Contraceptive information must be given in the context of future family planning.
- No instruction in the methods of contraception may be made in grades K-5.
- No contraceptive device or contraceptive medication may be distributed in or on the school grounds of any public elementary or secondary school.
- No school district may contract with any contraceptive provider for distribution of contraceptives in or on school grounds.
- Instruction in pregnancy prevention must be presented separately to male and female students.

##### Abortion:

- The bill specifically states that abortion may not be included as a method of birth control.
- School districts may not offer programs, instruction or activities including abortion counseling, information about abortion services, or assist in obtaining an abortion. The bill also prohibits material containing this information from being distributed in the schools. The exception is instruction relating to complications which may develop from all types of abortions.
- In grades 9-12, instruction must be given that adoption is a positive alternative to a crisis or unwanted pregnancy.

**Homosexuality:**

- Any discussion of homosexuality may only be made in the context of instruction dealing with sexually transmitted diseases. This stipulation also applies to any other sexual lifestyle alternative to heterosexual relationships.

**Sexually Transmitted Diseases:**

- Any course or instruction in sexually transmitted diseases must be taught within the reproductive health, family life or pregnancy prevention instruction, or it must be presented as a separate component.
- In grades K-5, sexually transmitted disease must be excluded from instruction in the prevention and control of disease and disorders.
- In grades 6-8, sexually transmitted diseases are to be included in instruction.

**Local School Districts**

Local school districts may use the materials developed by the department, or they may develop their own materials. Local school boards can appoint a 13-member local advisory committee to assist in the selection of curriculum and materials.

**Parental Notification**

Under the bill, all public school principals are required to notify parents of the content of the instructional materials used in teaching reproductive health, family life, pregnancy prevention and sexually transmitted diseases and that the parents have the option to exempt their child from this instruction. The notice must be given far enough in advance to allow the parents or guardians to preview the materials before the child is enrolled in the class.

A student may be exempted from any portion, or all, of the instruction if the school principal receives a signed statement from the student's parent or guardian stating that the program conflicts with the family's beliefs. Students may not be penalized or embarrassed as a result of their exemption.

### Separate College Boards

*H.3771, signed into law 5/5/88.*

Under this new law, three state institutions -- the College of Charleston, Lander College and Francis Marion College -- will have separate boards of trustees instead of all falling under the governance of the State College Board of Trustees. Each of these separate trustee boards three ex-officio members made up of the governor, the House Education and Public Works Committee chairman and the Senate Education Committee chairman, or their designees. In addition to the three ex-officio members, the board would have 16 trustees -- 15 elected by the General Assembly, one appointed at large by the governor. Of the legislatively elected trustees, two would be elected from each of the state's congressional districts and three at large. Elections are set for June 1.

### Scholastic Requirements for Interscholastic Activities

*S.1191, signed into law 5/9/88.*

This law makes changes in the scholastic requirements for participation in interscholastic activities for high school students under the Education Improvement Act. Under this act, students in grades 9 through 12 must achieve an overall passing average and either pass at least four academic courses, including any graduation requirement, or pass a total of five academic courses. The student must achieve these academic requirements in the semester prior to the academic year of participation, if the activity extends over two semesters. The law also gives local school boards the authority to require stricter standards than these for participation in interscholastic activities.

### First Grade Entry

*H.3428, signed into law 3/21/88.*

This new law allows children to enter the first grade if they are 6 one or before Nov. 1, if they have substantially initiated first grade in another state with a different age requirement, or if they have attended a public school kindergarten program for one full school year.

Law Enforcement

Law Enforcement Officers Retirement

*H.3356, signed into law 4/5/88.*

This law will allow law enforcement officers to retire at any age with full benefits after 25 years of service. This bill also makes adjustments in the calculation of retirement allowances, thereby enhancing retirement benefits for the state's lawmen and women.

Sheriff Qualifications -- Constitutional Amendment

*H.2862, signed into law 3/22/88.*

This joint resolution amends the State Constitution to allow the General Assembly to set minimum requirements for sheriff. The constitutional amendment now goes to the voters for approval during the November general election.

With the passage of H.2862, 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 the state's sheriffs.

Currently, South Carolina does not have any significant minimum requirements for sheriff candidates. In Article V, Section 24 of the South Carolina State Constitution, 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.

The impetus for establishing minimum standards has come from several fronts. Better training for all segment of law enforcement, as well as more stringent standards for sheriff's deputies, have pointed to the fact that equally high standards for training and professionalism should be required of the sheriffs themselves.

The bill that actually sets the qualifications, H.3175, has been given approved by the House and is now before the Senate Judiciary Committee. For additional information, see the *Legislative Update* No. 15, April 19, 1988.

Courts and Other Judicial Issues

Tort Reform

*H.2610, signed into law 4/5/88.*

This new law will make major revisions in the way civil suits are handled in the state courts. Key provisions include:

- Reduction in the statute of limitation for most lawsuits from 6 to 3 years. The three-year period would bring South Carolina more in line with the rest of the states.
- Actions relating to childbirth injuries in medical malpractice cases must be taken by the time the child is 13. The old law allowed action to be taken until age 21.
- A provision that a plaintiff may not get punitive damages unless first awarded actual damages.
- Elimination of the defense of contributory negligence, the current doctrine which prohibits a party from suing if he is in any way contributed to the resulting injury. Substituted is comparative negligence, under which the plaintiff's recovery is reduced proportionately by his percentage of negligence as decided by a jury. This provision brings South Carolina in line with 44 other states.
- Provisions discouraging frivolous law suits.

Revisions in Governmental Tort Claims Act

*S.732, signed into law 3/14/88.*

Generally, this act amends the Governmental Tort Claims Act passed in 1986. This 1986 law established limited liability for governmental agencies and political subdivisions for the negligence of their employees. The legislation passed this year provides a variety of revisions, including:

- Covering government-employed physicians and dentists in the act but at higher liability limits. Coverage only applies when the doctor or dentist renders services in his capacity as a government employee.
- Further limiting the government's liability for highway defects.
- Granting the S.C. State Guard the same exemption from liability as is granted to the National Guard.

### Changes in Juror Qualifications

*S.1140, ratified 5/12/88.*

This bill would amend the state Constitution to change juror qualifications. This joint resolution deletes the requirement that jurors be registered voters. Instead, the resolution provides that jurors must be state residents and meet any other qualification the Legislature may prescribe.

### Health and Public Safety

#### Highway Safety Bill

*S.704, signed into law 5/18/88.*

While the new Highway Safety law makes a number of changes affecting motorists, it is probably best known for its get-tough measures against the drunken driver. Some key provisions in the new law are:

- Increases the fines for driving without a driver's license.
- Allows the State Highway Department to revoke the license of a driver if a review of his driving record show him to be a habitual offender.
- Increases the fines for speeding.
- Increases substantially the fines and jail time for DUI offenses, beginning with the 2nd offense:  
Second offense DUI carries a fine of \$2,000 to \$5,000 and imprisonment from 48 hours to one year. In addition, a 2nd offense DUI fine could not be suspended to less than \$1,000, with \$250 of it going to the Victim's Compensation Fund.  
Third offense carries a fine of \$3,500 to \$6,000. Jail time is set at least 60 days but no more than 3 years.  
For 4th offense DUI and all subsequent offenses, the law allows jail time only: imprisonment of 1 to 5 years.
- Those convicted of 5th offense DUI will be barred forever from getting a driver's license in South Carolina.
- For 4th offense DUI or DUS conviction during a 10 year period, the new law requires forfeiture of the vehicle driven during the offense, if the driver is the owner of the vehicle or a resident of his household.
- Requires motorist to turn on their headlights during bad weather any time when windshield wipers are in use.

- Prohibits certain types of tinted windshields and windows in vehicles. Any tint must be non-reflective. Front windshield could be tinted only to a certain point above the steering wheel. Driver windows tint cannot inhibit light transmission of more than 35 percent; Rear windows, more than 20 percent.
- Raises the age of children required to use safety belts or safety seats. Children up to age 6 must be in a seat belt in the front seat, or be in a safety seat or seat belt while riding in the back.

### AIDS Legislation

*H.2807, signed into law 5/2/88.*

This legislation made changes in the current laws governing venereal disease to include references to AIDS. Among the changes are:

- Anyone knowingly infecting another with the HIV virus, which causes AIDS, without first informing the other person of the risk can be charged with a felony carrying a 10 year prison sentence.
- This same penalty can be brought if an HIV infected person sells or donate blood products or bodily fluids.
- If a health care worker is possibly exposed to HIV while working with a patient's blood, the physician can require the patient to be tested.
- Provides that if a child infected with AIDS or HIV attends school, the district superintendent and the school nurse must be notified.
- States that if a school prohibits or limits attendance due to any contagious or infectious disease, such a decision must be made on sound medical evidence. Also, if the school board acts in good faith, it cannot be held liable for damages resulting from its decision.
- Outlines the process which DHEC must follow to isolate persons with sexually transmitted diseases. DHEC must file a petition with the Probate Court, which can order isolation up to 90 days.
- Adds the recommendation of the Legislative Committee on AIDS that persons convicted of rape, prostitution, buggery or committing a lewd act on a child under 14-years-old must be tested for HIV upon conviction.

Government Operations and Fiscal Issues

Compliance Review Act

*S.1001, signed into law 4/22/88*

The purpose of this law is to create a formal, structured process to determine whether a state agency is complying with the findings and recommendations of reports prepared by the Legislative Audit Council. This process, entitled the Compliance Review Act of 1988, would be the responsibility of the State Reorganization Commission, which would be charged with studying and reporting back to the General Assembly on agency compliance with LAC recommendations.

General Reserve and Capital Reserve Funds

*H.3822, signed into law 3/10/88*

The first of two bills dealing with the General Reserve and Capital Reserve funds, this legislation:

- Changes the name of the General Fund Reserve to the "General Reserve Fund."
- Reduces the accumulated total in the General Reserve Fund from 4 to 3 percent of the general fund revenue of the latest completed fiscal year.
- Requires that the General Reserve Fund be used to cover year-end operating deficits.
- Requires that funds from the General Reserve Fund are used, they must be restored within three fiscal years until the 3 percent General Reserve Fund is again fully funded. A minimum of one percent must be restored to the fund each year during the first three years following the deficit.
- Changes the name of the Capital Expenditure fund to the "Capital Reserve Fund."
- Caps the appropriation to the Capital Reserve Fund at 2 percent of the general fund revenue of the latest completed fiscal year.
- Provides that revenues in the Capital Reserve Fund only may be used for mid-year budget reductions. This would be determined prior to March 1. After March 1, the Capital Reserve Fund may be used to finance in cash previously authorized capital improvement bonds, retire the interest or principal on bonds already issued, or pay for capital improvements or other non-recurring purposes. This use must be approved in separate legislation.

These projects must be ranked in priority order and not funded until 30 days after the end of the fiscal year. No project on the priority list may be partially funded. If there are insufficient monies to fully fund a project on the priority list, the funds for the project will be returned to the Capital Reserve Fund.

### Constitutional Provisions for the General Reserve and Capital Reserve Funds

*H.3823, ratified 3/9/88.*

This joint resolution amends Section 36 of the State Constitution relating to the General Fund Reserve. It also adds Section 38, including the Capital Reserve Fund in the Constitution. Key provisions include:

- Changes the name of the General Fund Reserve to the "General Reserve Fund."
- Reduces the General Fund Reserve from 4 to 3 percent.
- Deletes the provision allowing the special vote (so-called "super vote") to adjust the amount going into the General Reserve Fund, thereby capping the fund at 3 percent.
- Deletes the provision requiring the General Assembly to review the General Fund Reserve every five years.
- Provides a mechanism to restore the General Reserve Fund if used for year-end deficits.
- Requires the maintenance of a 2 percent Capital Reserve Fund.
- Provides that before March 1, the fund must be used to offset mid-year budget reductions.
- Allow that after March 1, the Capital Reserve Fund could be used for the purposes outlined above.

This constitutional amendment must be approved by the voters during the November general election.

## Insurance

### Long Term Care Insurance

*H.3573, signed into law 4/22/88.*

Long term care insurance is an emerging private financing mechanism for the type of medical services required due to a chronic illness or conditions lasting over a long period of time.



Legislative Update, May 24, 1988

This new law defines long term care insurance and the minimum insurance that must be provided. It includes provisions that will protect people seeking this kind of insurance from unfair or deceptive practices in sales or enrollment. With enactment of this law, South Carolina becomes one of the first states to enact long term care insurance legislation, a law that will benefit and protect the state's senior citizens.

### House Passed Bills Pending Before the Senate

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*While a good number of bills have been ratified, there still remains a number of significant House passed bills still pending before the Senate.*

*Here is a list of those bills and their status:*

H.3880	Appropriations Bill -- Conference committee.
H.3881	Supplemental Appropriations Bill -- Incorporated at Part III of the State Budget Bill by the Senate.
H.3882	Capital Reserve Fund Appropriations Bill -- Up for 3rd reading in the Senate.
H.3983	"Cutting Edge" legislation -- Given 3rd reading by the Senate last week.
H.3713	Beachfront Management bill -- Conference committee.
H.3675	Revision of the Legislative Article of the Constitution -- Pending before Senate Judiciary Committee.
H.2368	Local Government Finance Act -- Up for 2nd reading.
H.3175	Statutory Sheriff Qualifications -- Pending before Senate Judiciary Committee.
H.2549	Changes in the Budget Process -- Pending before the Senate Finance Committee.
H.4181	Omnibus Proviso Bill -- Pending before the Senate Finance Committee.
S.457	Home Instruction -- Conference committee report adopted last week.