South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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House Week in Review

Two important bills were set for special order last week by the House of Representatives. These are S.1524, the Lobbying Regulations bill, and S.1182, the Solid Waste Management and Recycling bill.

By House resolution, the members voted to set the two bills for special order beginning with the Lobbying legislation. The House moved quickly on the Lobbying bill, amending the Senate legislation back to the version originally passed by the House in H.4613, with a few changes.

The House gave S.1524 second reading on Tuesday and on Wednesday, by a vote of 111-0, gave the legislation a third reading. A summary of the revised Lobbying legislation appears at the end of this section.

Solid Waste Bill

Before the House could take up the committee amendment on S.1182, a point of order was raised that the Solid Waste bill was out of order because it is a revenue raising measure initiated in the Senate -- an action prohibited by the State Constitution. The Speaker overruled the point of order on the basis of timeliness -- that the point of order questioning the constitutional prohibition should have been raised at the time of first reading.

Following the parliamentary discussion, the House voted 61-38 to defeat a motion to continue the bill, which would have killed the legislation for this session.

The House only considered a few amendments to the bill before the members voted to adjourn for the legislative week. S.1182 continues in special order status.

Other House Action

S.1403, which would make revisions to the state probate code, was given third reading by the House last week. Objections placed S.974, the Electronic Home Detection bill, on the contested calendar.

The House also gave third reading to H.4572, the Drug Lord bill. Before giving the legislation final approval and sending it to the Senate, the House amended the bill to add "leading a narcotics trafficking network" to the aggravating circumstances required to seek the death penalty in a murder case.

Elections

Reps. Lucille Whipper and Herb Kirsh were elected by the House membership to the Legislative Audit Council Nominating Committee. The House also voted to set May 30 for the election of a new at-large circuit court judge to replace Judge James M. Morris who has retired.

Summary of Lobbying Bill

Here is a summary of S.1524 as amended by the House:

Lobbying Revisions (S.1524, Senate Judiciary Committee). As amended by the House, this bill would tighten up the reporting requirements of lobbyists for private businesses and lobbyists for state agencies, departments, and commissions. It includes lobbying to influence gubernatorial and executive department action, as well as legislative action. Among provisions as amended by the House:

-- The bill requires registration of lobbyists with the State Ethics Commission and annual reports filed with the commission. The bill contains civil and criminal penalties for noncompliance that are higher than the current law, which has just criminal penalties and a bar on lobbying.

Under the current law, the lobbyist files with the Secretary of State an annual statement of "all contributions and expenditures made, paid, incurred or promised in connection with promoting or opposing in any manner any legislation...A legislative agent with other duties is required to report only that income or expense directly related to lobbying." Violations of these provisions is a misdemeanor punishable by $200-$500, or 60 days, as well as a two year ban on lobbying.

Under S.1524, the penalties are increased to $1,000 and 90 days, plus a three year ban on lobbying. For failure to file timely reports, the civil penalty is $100 if filed up to five days late; $10 per day for each additional day to up a maximum of $500.

-- The bill requires a lobbyist to register with the State Ethics Commission within 15 days of employment. (Under the Senate version, the lobbyist would continue to register with the Secretary of State.) The fee would be $200. If the lobbyist receives no money to lobby and expends no more than $1,000, the fee would be $10. (This is the current law and reflects the Senate's version.) The registration form would include full identification of the lobbyist, the businesses to be lobbied for, and identification, so far as possible, of each person, including state agency, board, commission or committee, with whom contact will be made while lobbying.

-- The lobbyist would maintain records for five years on his total income received attributable to lobbying, identification of each person from whom money is received, and the amount received, and the total expenditures of the lobbyist. (Under the Senate version, records would be maintained for three years.) If money is received from a voluntary membership organization, then just those who contribute over $500 would be listed.

The annual report would be submitted within 30 days of the sine die adjournment. It would contain:

-- Full identification of the reporting lobbyist;
-- Each person the lobbyist has lobbied;
-- Each person who has worked for the lobbyist as a lobbyist;
-- Each legislative, executive or state agency action which the lobbyist sought to influence by subject matter;
-- Identification of each person from whom money was received as well as the amount received with the exception listed above;
-- Totals of all expenditures made or incurred for the benefit of the public official or employee by the lobbyist while lobbying. These totals must be listed by category. Also the lobbyist would list the total number of public officials or employees on whose behalf these expenditures were made and list the names of public employees or officials on whom more than $100 was spent in any calendar day;
-- In the case of special events for public employees, such as dinners or athletic events, the date, location, name of the public body invited and total expense must be listed;
-- Statement of any money promised or loaned to a legislator, public official, employee or the governor;

-- Statement of direct business association with a legislator, the governor, public official or employee.

(The Senate version does not include provisions on special events, nor does it include the provision of listing all public officials on whom more than $100 a day was spent.)

-- This legislation places the same reporting requirements on the lobbying activities of state agencies, departments and commissions as is required of other lobbyists.

-- Under this legislation, the power of the Ethics Commission regarding lobbying requirements are outlined, including the power to investigate and subpoena, the promulgation of regulations, and requests of the Attorney General to take civil or criminal action. It also directs the commission to maintain files, issue identification cards to lobbyists, receive complaints, etc. Civil penalties also are proposed against a lobbyist who never files or files late. (Civil penalties are not included in the Senate version.)

(Note: Last Thursday, the Senate voted to amend this bill back to the Senate version and return the bill to the House, thereby setting the stage for the legislation to move toward a House-Senate conference committee.)

Legislation Passed This Session

With only three weeks left in the 1990 session, here is a compilation of legislation that has been signed into law this session. Not all the acts that have been ratified or signed into law appear here. Only the most significant bills, or bills receiving public or media attention, have been listed.

Local Option Sales Tax (H.3739, Rep. Sheheen). After three years of debate, the General Assembly passed a local option sales tax. Legislation authorizing the local option sales tax, H.3739, passed both houses of the General Assembly during the 1989 Session, but differences between the versions of the bill passed by the House and Senate were not resolved until January 11 of the 1990 session. This section summarizes H.3739 and provides examples of the potential impact of the legislation.

Implementation and Rescission of the Tax

The bill authorizes counties to levy a sales tax of 1%, if a majority of the qualified electors approve the levy in a referendum. The referendum to impose the local option sales tax must be conducted on the second Tuesday in November to assure maximum voter participation. While the referendum is binding, county councils may call for another referendum on the local option sales tax if the tax is not approved at the initial referendum. Another referendum may not, however, be held more often than once in 12 months and, like the initial referendum, must be held on the second Tuesday in November.

The bill also provides for a referendum to rescind the local option sales tax after it is imposed. A rescission referendum must be held if the governing body of the county is presented with a petition containing the signatures of 15% of the qualified electors of the county. However, a rescission referendum may not be held until the local option sales tax has been levied for at least two years in the county. After the rescission referendum, another referendum to rescind or reimpose the local option sales tax may not be held for two years. Like referendums to impose the tax, rescission referendums must be held on the second Tuesday in November.

If a county approves the local option sales tax, the tax is levied throughout the county. Even though the tax is approved in November, it may not be imposed prior to July 1st following the referendum. With the passage of the bill during the 1990 session, the earliest imposition of the the tax in a county would be July 1, 1991. Implementation of the tax statewide would generate around $300 million.

Distribution of Revenue to County Areas

The Tax Commission administers and collects the local option sales tax and remits the taxes to the State Treasurer, who credits the revenues to a "Local Sales and Use Tax Fund." Only county areas which have implemented the local option sales tax will receive revenue from the fund. Each county area's distribution from the fund depends upon the amount of revenue generated from the local option sales tax within the county area.

For county areas generating $2.0 million or more but less than $5.0 million, the distribution equals the revenue generated within the county area. For county areas with collections of less than $2.0 million, the distribution includes the revenue generated by the county area plus a supplement. County areas with collections of $5.0 million or more receive the revenue collected within the county area minus funds withheld to provide the supplement for county areas with less than $2.0 million in collections.

The size of the supplement and the amount of funds withheld from county areas is determined by the percentage of local option sales tax revenue generated statewide by county areas collecting $5.0 million or more from the 1% sales tax.

When county areas collecting $5.0 million or more from the 1% sales tax generate 50% or less of the total statewide collections, the State Treasurer is directed to withhold 5% of their revenue. The funds withheld are then distributed to county areas with less than $2.0 million in collections on a population basis. Each county area to be supplemented receives an amount equal to the percentage which its population bears to the total population of all county areas generating less than $2.0 million from the tax multiplied by the amount of funds withheld.

If county areas collecting $5.0 million or more generate more than 50% of the total statewide collections of the tax, the State Treasurer establishes the percentage at a level to provide each county area with collections below $2.0 million with a supplement to bring the county area up to $2.0 million. In no event may the percentage set by the State Treasurer exceed 5%.

In the discussion above, the county areas which will receive a supplement have been identified as those with collections of less than $2.0 million. The $2.0 million figure, however, applies only to the first distribution of revenue from the "Local Sales and Use Tax Fund." After the first distribution, the $2.0 million figure will be increased by the same percentage as the Education Improvement Act Fund increases.

The distributions to all county areas are reduced to cover not more than $750,000 in administrative costs of the Tax Commission.

County/Municipal Revenue Fund and Property Tax Credit Fund

The "Local Sales and Use Tax Fund" is divided into two funds: One is a "County/Municipal Revenue Fund" while the second fund is a "Property Tax Credit Fund."

Revenue from the local option sales tax is to be allocated between these two funds as follows:

(1) during first year after effective date of act:
    (a) 63% to Property Tax Credit Fund
    (b) 37% to County/Municipal Revenue Fund
(2) during second year after effective date of act:
    (a) 65% to Property Tax Credit Fund
    (b) 35% to County/Municipal Revenue Fund
(3) during third year after effective date of act:
    (a) 67% to Property Tax Credit Fund
    (b) 33% to County/Municipal Revenue Fund
(4) during fourth year after effective date of act:
    (a) 69% to Property Tax Credit Fund
    (b) 31% to County/Municipal Revenue Fund
(5) during fifth year after effective date of act and thereafter:
    (a) 71% to Property Tax Credit Fund
    (b) 29% to County/Municipal Revenue Fund

Funds in the "County/Municipal Revenue Fund" may be used by counties and municipalities in the same manner as revenue generated from property taxes (e.g., to pay the operating costs of providing services such as law enforcement, fire protection, solid waste collection and disposal, and libraries). Fifty percent (50%) of the "County/Municipal Revenue Fund" is distributed among the county and the municipalities within the county on the basis of the location of the sale generating the tax and 50% on the basis of population.

Funds allocated to the "Property Tax Credit Fund" are to be used to alleviate the burden of property taxes within the county area. The bill accomplishes property tax relief by giving each taxpayer a credit against the appraised or fair market value of his property. The credit is actually a percentage of the property's fair market value. The percentage used to calculate the credit is the same percentage that revenue received by the county or municipality from the "Property Tax Credit Fund" is of the total fair market value of all taxable property in the county or municipality.

The credit reduces the fair market value of property before assessment ratios are applied. As a result, property with lower assessment ratios, such as residential and agricultural property, receive more tax relief, while property with higher assessment ratios, such as manufacturing concerns, receive less benefit. In other words, a residence with a fair market value of $100,000 receives a greater reduction in property taxes than does a manufacturing concern with the same fair market value.

The bill distributes 67% of the "Property Tax Credit Fund" to the county and 33% to the municipalities within the county. The 33% distributed to the municipalities is then divided among the municipalities on the basis of the municipalities' population.

Signed into law February 2, 1990.

Parental Consent for Abortion (H.3122, Rep. Hayes). This bill defines the requirements that must be followed before an abortion could be performed on a minor.

Under this legislation, no abortion could be performed on a girl under the age of 17 unless one of the following three criteria is met:

1. The attending or referring physician has received the informed, written, signed and witnessed consent of the minor and
   - -- one of the minor's parents, or
   - -- a legal guardian of the minor, or
   - -- a grandparent of the minor,or
   - -- any person who has been standing *in loco parentis* (in the place of the parent) to the minor for at least 60 days. Under this law, *in loco parentis* means any person over 18-years-old who has placed his or herself in the position of the legal parent by assuming obligations which are incidental to the parental relationship.

Any person who consents to an abortion under the in loco parentis provision, must sign an affidavit indicating the nature and length of his or her relationship with the minor. To knowingly falsify this statement would be a misdemeanor carrying a fine of not more than $3,000 or not more than a year in jail. The new law will require the affidavit to state the penalties for false information.

2. The attending physician receives the informed, written, signed consent of a minor who is emancipated. Under this act, an emancipated minor is one who has been married or has by court order been freed from the care, custody and control of her parents.

3. The attending physician has obtained the informed, written and signed consent of a minor and has received a court order obtained by the minor allowing the abortion.

Under this new law, if a minor has a baby after a parent or legal guardian refuses to give the informed written consent for the minor's abortion, and there has been a judicial finding of the refusal of consent, then the minor, the natural father and the refusing parent or legal guardian are legally responsible for the support of the baby until the minor reaches 18-years-old or is emancipated.

Judicial By-Pass

The act gives every minor girl the right to petition the court for an order granting her the right to consent to abortion on her own behalf without meeting one of the three criteria listed above. This is known as judicial by-pass.

In order to obtain this court order, the girl would file a "Jane Doe" petition with either the Circuit or Family Court. The Adoption and Birth Parents Services division of the state Department of Social Services must provide assistance in preparing and filing the petition, if requested. The act requires the division to file the petition on behalf of the minor within 48 hours of the request.

Once the petition is filed, the court will appoint a guardian ad litem for the girl. The minor petitioning the court will be advised she may participate in the court proceedings on her own behalf; however, she also will be advised she has the right to legal representation and that a lawyer will be appointed to represent her, if she requests it.

Within 72 hours of the petition being filed, the court will hold a hearing on the matter. This time could be extended if requested by the petitioning minor. In evaluating whether the minor should be granted the right to consent to an abortion on her own behalf, the court would evaluate the girl's emotional development, maturity, intellect and understanding; the nature and possible consequences of the abortion and the alternatives available, and whether the abortion is in the best interest of the minor.

In issuing the order, the court could:

-- Grant the minor the right to consent on her own behalf to an abortion if the court finds she is mature and well-informed enough to make the abortion decision on her own;
-- Grant the consent for abortion if the court finds that the performance of an abortion is in the girl's best interest;
-- Deny the petition if the court finds that the minor is immature and that performance of the abortion is not in the girl's best interest. If the father of the unborn child is identified during the court proceeding, then he will share in the expense of delivering and rearing the child as determined by the court. The court also will specify that the girl will have the right to counseling, prenatal care, delivery, neo-natal and post-partum care, the cost of which may be paid by the state.

The minor has the right to appeal the court decision to the state Supreme Court. The notice of intent to appeal must be filed within 72 orders of the lower court issuing its decision. The appeal would be anonymous and take precedence over other matters before the Supreme Court. The minor will not have to pay the cost of this appeal if she declares she cannot afford it.

Penalties

Any person performing an abortion on a minor, knowing that the procedure would violate provisions of this act or would recklessly disregard these provisions, would be guilty of a misdemeanor, carrying a fine of $2,000 to $10,000 and/or not more than three years in jail. The act stipulates no part of the minimum fine can be suspended. For a third or subsequent offense, the sentence would be jail time for not less than 60 days nor more than three years, none of which can be suspended.

Information Distribution

Any doctor counseling a minor on the question of abortion must inform her of the procedures she must follow to obtain an abortion without the consent required by this act.

The Adoption and Birth Parent Services division will develop and distribute a brochure to health and education professionals for use in counseling pregnant girls. The brochure will outline how to get in touch with her local health department for prenatal care; how to get in touch with the Adoption and Birth Parent division or any private, non-profit adoption service; the parental consent requirements of the new law; the judicial by-pass procedure, and how to get in touch with her local mental health clinic for counseling.

When any abortion is performed, the doctor must file a report with the state Department of Health and Environmental Control within seven days. The name of the patient must not be reported. However, the report must state who gave permission for the abortion or the circumstances for waiving the consent requirements.

Emergency Situations

State law requires that a pregnant woman must given consent before any abortion is performed and that special consent provisions be followed in the case of girls under the age of 17. If the woman is not mentally competent, consent may be given by her spouse or legal guardian if married, or a parent or legal guardian if not married.

Consent must be waived, however, if a doctor determines that a medical emergency exists involving the life of, or grave physical injury to, the pregnant woman, or if the pregnancy is a result of incest. In cases of incest, the doctor performing the abortion must report the alleged incest to the local county Department of Social Services or to a local law enforcement agency. Failure to make the report is a violation punishable under the state's child abuse laws. However, none of these provisions permits a doctor to perform an abortion without first obtaining the permission of the pregnant woman if she is capable of giving consent.

Signed into law February 28, 1990.

Hugo Make-Up School Days (H.4190, Rep. Foster). Under this legislation, schools that missed 10 or more days as a result of the hurricane will have five days waived by the district school board.

For schools that missed less than 10 days as a result of the hurricane, the district school board may waive up to half of the days missed. Under this provision, the board may not waive more than five days for any school.

For those missed days that the school board is not authorized to waive under this joint resolution, the board may request the State Board of Education to waive additional days "upon good cause showing that the particular school cannot make the days up without undue hardship."

Staff development and teacher work days could be waived by the district trustee board to provide make up days, under this resolution.

Signed into law February 21, 1990.

Patriot's Point Assistance (S.699, Sen. Waddell). The purpose of this bill is to get the financially beleaguered Patriot's Point Development Authority back on its financial feet. Highlights of the legislation include:

-- The current 9-member board would be abolished and replaced by a 5-member board. Three of the new board members would be appointed by the governor; two others would be gubernatorial appointees recommended by the House Speaker and Ways and Means Committee chairman for one, and the Senate President Pro Tempore and the Senate Finance Committee chairman for the other. Of the current authority board, six are appointed by their resident congressman, two by the state's U.S. Senators and one by the governor.

-- The board's power to issue bonds would be eliminated. However, with the approval of the State Budget and Control Board, the board could borrow money and make and issue negotiable notes.

-- $6 million would be transferred by the Budget and Control Board to the Patriot's Point Authority from an economic development fund of the S.C. Coordinating Council for Economic Development. The transfer would be a three-year interest free loan. The $6 million loan, together with $4 million in authority assets frozen by the federal Bankruptcy Court, would allow the authority to participate in any court-approved settlement in connection with the collapsed development of a hotel and marina complex. The loan also could be used to assist the authority with operating expenses.

-- By Jan. 1, 1994, the authority must report back to the General Assembly and the governor a detailed status report of development activities at the attraction, the financial condition of the authority, and recommendations for legislation to assure the permanent status of the Patriot's Point Naval and Maritime Museum.

-- None of these provisions will take effect until all claims and litigation brought against the Patriot's Point Development Authority, in connection with the hotel and marina development, have been settled or disposed of to the satisfaction of the governor and the Budget and Control Board, as evidenced by written resolution by the board. At that time, the terms of the current authority members will expire, and the new members will take office.

Signed into law March 19, 1990.

Public Accommodations and Discrimination (S.1157, Senate Judiciary Committee). The first article of this bill provides for equal enjoyment and privileges to public accommodations without discrimination or segregation on the basis of race, color, religion or national origin.

Establishments defined in the bill are those places of public accommodation that the discrimination or segregation action would be "supported by state action." "Supported by state action" would be considered the licensing or permitting of any establishment or agent of the establishment by a state or local government. Establishments falling under this bill include any inn, hotel, motel or other establishment that provides lodging to transient guests. This excludes any establishment which has five rooms or less for rent, which also is occupied by the owner as his residence.

Also included is any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility engaged in selling food for consumption on the premises; hospital clinics or other overnight medical facility, any wholesale or retail establishment, any movie house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium or other places of amusement.

The bill specifically excludes from these provisions "private clubs or other establishments not in fact open to the general public." The legislation excludes from the definition of private any club or facility which offers memberships for less than 30 days. The bill prohibits anyone from denying the rights of public accommodation; intimidating or threatening anyone in an attempt to interfere with the use of accommodations, or punishing anyone for using this right.

Under Article 3 of this bill, the Attorney General would notify SLED to investigate any pattern or practice of discrimination prohibited by this legislation when a complaint is received. The results of the investigation would be reported to the State Human Affairs Commission. The commission would establish a three-member panel of commissioners to determine whether there is reasonable cause to believe there is sufficient facts to state a violation of this article. The Attorney General then must file an action with the Human Affairs Commission. The panel established by the commission to hear the action must not be the same panel that received the results of the SLED investigation.

The five-member panel, which would have the power to issue subpoena, will conduct a hearing within 60 days. If it is determined that the rights and privileges established by these provisions have been violated, the panel will grant relief in the form of immediate license revocation.

Any person or group charged in the complaint would have a right to an attorney and to produce evidence. All testimony would be given under oath. Any vote of the panel on the complaint would be made in executive session.

Permits and licenses could not be taken away from an owner due to the actions of an employee unless the discriminatory practice was known, open and notorious. In addition, the panel could not revoke a permit or license, even if discrimination is found, if:

-- the panel concludes the establishment is one of public necessity and revoking its permit would be severely detrimental to the community;
-- the panel concludes that the discrimination is limited to one segment of the establishment's operation. The permits or licenses for that segment only would be revoked;
-- the panel concludes the discriminatory conduct is limited to one person or group of people whose permits and licenses could be revoked.

The final decision of the panel would be in writing and must list the licenses or permits to be revoked. The determination of the panel could not be appealed to the full commission and is the final administrative review. Upon the panel's findings, the Attorney General must notify the appropriate state agencies to revoke the license or permits. If the license or permit is revoked, the owner may not apply for another for three years.

In addition, violations of Article 1 would be a misdemeanor punishable by a fine of not more than $2,000 and/or imprisonment for less than a year. In addition, the aggrieved party may take action of his or her own in the circuit courts to recover damages due to violation of Article 1 of this bill. The amount of damages would be a minimum of $5,000. Anyone suffering discrimination must bring a complaint before the State Human Affairs Commission prior to bringing an action in circuit court.

Signed into law April 25, 1990.

Civil Remedy for Bad Checks (H.3844, Rep. Mattos). Under this legislation, merchants would have a civil remedy at their disposal, as well as the current criminal penalties available, for the writing of bad checks. Those who pass bad checks and do not make them good within 30 days would be liable to the merchant for the value of the bad check plus damages of $500 or three times the amount of the check, whichever is the lesser amount. In a legal action under this provision, the jury or court may waive the treble damages if it finds that the person failed to make good on the check because he recently lost a job, had a personal or family illness, or a personal or family catastrophic loss. The merchant must make a written demand for payment of the check, threatening to sue for treble damages if the check is not made good, and send the notice by certified mail. A defense against this complaint is that the defendant paid the amount of the check before the action began; the bank made an error; or the merchant knew the check was not good when he accepted it.

Signed into law February 20, 1990.

Fingerprinting Educators (S.1198, Sen. Setzler). With this bill enacted into law, all persons applying for initial certification with the State Department of Education will undergo a state fingerprint review conducted by SLED and the FBI. The FBI fee will be paid by the applicant. The cost to SLED, the State Department of Education or any other state agency involved would be paid by the state. The first year cost to the state is estimated at $101,175; for subsequent years, $96,175.

Signed into law April 3, 1990.

Maximum Compensation for State-paid Doctors (S.668, Sen. Rose). This legislation would address the compensation paid to doctors or other employees at the state's two medical schools. The legislation would require that the maximum compensation of any medical school doctor or staff person be approved in advance annually by the president of the medical school or the board of trustees. The bill specifically states that a doctor or medical school employee may not approved his own compensation. The compensation approved for the doctor or staff must include all compensation, including that received through a professional service organization, if the remuneration is obtained through the use of state-owned facilities or equipment.

Signed into law February 21, 1990.

Early Intervention for Handicapped Preschoolers (S.567, Sen. Giese). This legislation follows up on last year's proviso in the 1989-90 Appropriation Act directing the State Department of Education to provide for early intervention for preschool-age handicapped children. The bill directs other state agencies to provide the Education Department with any information available to to help estimate needs and costs of the early intervention program, although the legislation does not commit any additional funding than what is already available.

Signed into law February 20, 1990.

Obscene Bumper Stickers (H.3053, Rep. Kirsh). This act would prohibit any person from operating a motor vehicle in South Carolina which has visibly attached to it a sticker, decal, emblem or other device containing obscene or indecent words, photographs or depictions.

The definition of indecent in connection with this legislation includes:

-- "Taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body, and
-- "Taken as a whole, it lacks serious literary, artistic, political or scientific value."

The legislation refers to the definition of obscene as it appears in the State Code in Section 16-15-305 (B) (C) (D) (E). These sections spell out the state's provisions on obscenity.

Penalty for this misdemeanor is a fine of not more than $200.

Signed into law April 24, 1990.

Health Insurance Fiscal Impact Statement (S.1331, Senate Banking and Insurance Committee). Under this legislation, any bill or resolution coming before the General Assembly mandating or offering a health coverage by an insurance company, health service contractor or HMO, must have a fiscal impact statement attached to it. This impact statement would be developed by the Division of Research and Statistical Services and signed by the Chief Insurance Commissioner or his designee.

The impact statement would address:

-- To what extent the coverage would increase or decrease the cost of treatment or services;
-- To what extent it would increase or decrease the use of treatment or services;
-- To what extent would the mandated treatment or service substitute for more expensive treatment or service;
-- To what extent the coverage would increase or decrease the administrative expenses of the insurance companies and the premium and administrative expenses of policyholders; and
-- To what would the impact of the coverage be on the total cost of health care.

Signed into law April 24, 1990.

DYS and Contraband (S.1112, Sen. Rose). This legislation would prohibit juveniles in the custody of the Department of Youth Services from possessing certain contraband items defined in the legislation. The bill further would prohibit any person from furnishing or attempting to furnish the contraband articles.

In this legislation, contraband would be defined as any device that could be used as a weapon; drugs of any type for which the juvenile does not possess a legal prescription; poisons or other dangerous chemicals; any flammable liquid; any type of alcohol; keys, locks or any type of tool not officially issued by DYS; and any additional items defined as contraband by the DYS commissioner.

A list of contraband articles would be posted in a conspicuous place on the DYS grounds, under provisions of the bill.

Any adult violating these provisions would be guilty of a felony punishable by a fine between $1,000 and $10,000 and/or jailed from one to ten years.

Signed into law April 25, 1990

SUPERB Fund (H.4807, House Ways and Means Committee). Of great interest to a number of small businessmen around the state who own underground gas tanks, this bill makes changes to the State Underground Petroleum Environmental Response Bank (SUPERB) bill.

Provisions of the bill include:

-- An initial registration fee of $100 per tank and an annual renewal fee of $100 per tank until December 31, 1998 when the fee would be reduced to $25 per tank.

-- An additional one-half cent a gallon environmental impact fee with the proceeds going to the SUPERB account. In addition, a one-fourth cent a gallon inspection fee would be established. The environmental impact fee would be collected by the State Department of Agriculture but transferred to DHEC. The amount used for administration of the program may not be more than $450,000 a year.

-- The one-half cent environmental impact fee would be suspended any time the SUPERB account exceeds $15 million. The fee suspension would continue until the account drops below $5 million.

-- The bill would substantially decrease the amount of financial responsibility tank owners must carry. The bill states the owners must maintain financial liability in the lesser amount required by the federal government or in the amount of $25,000 for corrective action or clean up of spills, $25,000 for third party property damage, and $25,000 for third party bodily injury per occurrence with an annual aggregate of $25,000. Current financial responsibility requires the owner to carry coverage of $100,000 for clean up or corrective action, $300,000 for third party property damage an occurrence with a $300,000 annual aggregate.

-- The financial responsibility required by the bill, along with the SUPERB account, may be used by tank owners to demonstrate their compliance with federal financial responsibility requirements.

-- The bill spells out what the SUPERB account is to be used for, including to pay the costs of site rehabilitation by owners or operators who qualify for reimbursement or direct billing. DHEC also may use the fund to clean up a site which does not qualify for reimbursement, direct billing or any site which does not qualify but the owner is unwilling or unable to undertake the rehabilitation. The bill directs DHEC to "diligently pursue" recovery of any sum from the owner or operator or the federal government, unless the amount is too small or the likelihood of success too uncertain.

-- The provisions of this section would not apply to any site where the owner of the underground gas tank has not paid the required registration fee.

-- The bill also notes that if liability insurance or another financial responsibility mechanism providing coverage for sudden or nonsudden leaks has been executed for a underground tank site, then this coverage must be exhausted before funds from the SUPERB Account may be used.

Signed into law May 9, 1990.

Clean Indoor Air and Promotion of Public Health Act (S.138, Sen. Wilson). The purpose of this bill is to allow non-smokers to be free from exposure to tobacco smoke while in public indoor places.

Under this legislation, it would be unlawful to smoke or possess lighted smoking material in any form in

-- Public schools, preschools and day care centers;
-- Health care facilities, including acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, tuberculosis hospitals, kidney disease treatment centers, ambulatory surgical facilities, rehabilitation facilities, and residential treatment facilities for children and teenagers;
-- Government buildings;
-- Elevators;
-- Public transportation vehicles; and
-- Arenas and auditoriums of public theaters and art centers.

However, there are a number of exceptions. These include:

-- Smoking would be permitted in enclosed teacher lounges and private officers in public schools, preschools and day care centers.

-- In government buildings, smoking would be allowed in enclosed private offices and designated employee break areas. Smoking policies for the Statehouse and legislative office buildings would be determined by the office or body which has authority over that area of the building.
-- Smoking would be permitted in taxicabs.
-- In art centers or public theaters, smoking areas could be designated in foyers, lobbies or common areas. However, where smoking is permitted, managers would post signs designating smoking and non-smoking areas. In addition, the management would "make every effort" to keep the smoking area from impinging on the smoke-free areas.

Violation of these provisions would be a misdemeanor carrying a fine between $10 and $25. The bill specifically states that no authorization is given to require any person to submit to tests to determine whether nicotine or other tobacco residue is present.

Status: Enrolled for ratification.