

South Carolina House of Representatives

Legislative Update



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Robert J. Sheheen, Speaker of the House

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CONTENTS

STATE DOCUMENTS

House Week in Review.....	2
Bills Introduced.....	4
Legislation Passed by the House.....	7

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House Week in Review

With the final days of the General Assembly dwindling down to a precious few, the House took action last week on drug testing legislation. It gave third reading to H.4960, which would require drug testing of any prospective state employee. The House also amended S.981, the Drug Free Workplace bill, to include the prospective state employee drug testing provisions. This bill looked like it was on its way to a quick passage, but due to some technical questions, the House adjourned debate on S.981 until this week.

Lobbying Bill

As predicted, S.1524, revisions in the state lobbying laws, went to a House-Senate conference committee last week. Appointed by the Speaker to represent the views of the House were Reps. McEachin, Wilkins and Gregory. Senators on the conference committee are Sens. Saleeby, McConnell and Pope.

Special Order

House business continued to be controlled by the special order legislation S.1182, the Solid Waste and Recycling bill. The House debated more amendments to the bill Tuesday and Wednesday but adjourned Thursday just before the special order was to be again debated.

Ratified Legislation

A number of important bills were ratified last week. These include S.138m the Clean Indoor Air and Promotion of Public Health Act; S.966, legislation that would establish pilot dental health programs for needy children in grades K through 7, and H.3100, which would require landlord to install quick release bars in dwellings that have burglar bars.

Also enrolled for ratification was S.1403, which will revise the state's probate code.

Pending Bills

Immediately behind the Solid Waste special order legislation are a number of significant bills waiting a decision by the House regarding concurrence with Senate amendments. First up of these is H.3609, the 25 year Early Retirement bill. As amended by the Senate in a compromise worked out among the various business, education and employee groups, this bill would:

- Allow early retirement at age 55 with at least 25 years of service;
- Require a 4 percent per year penalty for each year below 30 years of service;
- Prohibit any cost-of-living increases granted until the employee, taking early retirement, reaches age 60 or would have had 30 years of service;
- Eliminate any employer-paid health insurance until the employee, taking early retirement, reaches age 60 or would have had 30 years of service. An employee who elects early retirement will be eligible for health insurance by paying the total premium cost until age 60 or 30 years of service.

Also awaiting House consideration of Senate amendments is S.1240, sunset legislation which also contains a number of provisions which spell out who may and may not have data and information regarding next year's reapportionment. The provisions also stipulate the roles different parties may play in connection with the reapportionment debate.

Bills Introduced

Here is the legislation introduced in the House during the past week. With the end of the session nearing, many bills being introduced are local in nature and/or being placed on the House calendar without reference. The following bill was introduced last week and referred to the House Judiciary Committee.

"Omnibus Drug Offenses Act of 1990" (S.1530, Senate Judiciary Committee). This comprehensive bill covers a wide variety of drug-related crimes and their penalties. It also addresses some of the issues adopted by the House in the package of drug-related bills passed earlier this session, although the provisions are not the same. The bill also calls for the creation of a Drug Cabinet.

Here is a summary of the bill's provisions:

- Adds the new drug "ice" or "crank" to the illegal drug list and provides the same penalties for it as those imposed for crack cocaine.
- Broadens the language in the current drug law to prohibit delivering, purchasing, aiding, attempting or conspiring to manufacture, distribute, dispense, deliver or purchase illegal drugs.
- Raises penalties for the "cultivation" of marijuana based on the number of plants. For example, for 100 to 1,000 marijuana plants, regardless of weight, the penalty would be a mandatory 25 year term and a \$25,000 fine; for 1,000 to 10,000 plants, a mandatory term of 25 years and a fine of \$50,000; for 10,000 or more plants, a mandatory minimum term of 25 years and a \$200,000 fine.
- Adds the felony of trafficking in ice, crank or crack cocaine and provides a penalty of a mandatory 25 year sentence and a \$50,000 fine;
- Picks up one provision from the House's Safe School Act (H.4852) -- makes it a separate criminal offense to sell, purchase, distribute or manufacture a controlled substance within a half mile of a public or private school, playground, park, vocational school, TEC center or public or private college or university. Does not include any of the other provisions of H.4852: Weapons on school campuses, providing juvenile criminal records to schools, threatening principal, teachers or their families or the development of standard school crime reporting form.

- Includes provisions against money laundering and provides penalties, paralleling H.4571, the House's drug money laundering bill.
- Provides penalties for a person who is a "leader of a narcotics trafficking network." Under the Senate bill, the convicted drug kingpin would be subject to a mandatory 45 year sentence with no probation, parole, work release, extended work release or supervised furlough. Under H.4572, the House's drug lord bill, the penalty would include the death penalty if a murder is involved. The Senate bill penalty reflects the penalties provided in the original version of H.4572 before it was amended to include the death penalty.
- Provides for forfeiture of any vehicle, trailer, aircraft or boat used in a drug operation under certain circumstances;
- Parallels the provisions in H.4574, the Juveniles and Drug Operations bill, which prohibit the employment of children under 17-years-old in an illegal drug operation.
- Would require the suspension of a person's driver's license if they were convicted of an illegal drug violation. If the conviction involved marijuana or hashish, the suspension would be for six months; other drug violations, the suspension would be for one year. However, individuals who are working could obtain a license to drive to and from work if there is no available public transportation.
- Would impose a tax on marijuana and controlled substances. The tax would increase with the amount of the drug sold. For example, for each gram of marijuana, a tax of \$3.50 would be imposed. For each gram of a controlled substance, \$200; on each 50 dosage unit of a controlled substance not sold by weight, \$2,000. Any illegal drug sold in the state must have a tax stamp affixed to it. Dealers would be allowed to purchase the stamps confidentially from the State Tax Commission. Violations would require the payment of all taxes plus a imprisonment for not more than five years or fined more than \$10,000. This offense would be a misdemeanor . The section specifically prohibits any information given by a dealer to purchase the tax stamp to be used in a criminal prosecution, unless it's for not paying the taxes. This was a Senate floor amendment.
- Would allow the state's occupational licensing board to place on probation or levy other sanctions against a person applying for a license who have been convicted of a drug violation. The provision requires the boards to begin asking for drug conviction information on applications for a license or a renewal. The applicant must also agree to inform the licensing agency within five days if the license holder is convicted of a drug offense.

Licensing boards could revoke the license of any person convicted of a drug violation whether it was before or after the July 1 effective date of this section. If the board decided instead to place the person on probation, the license holder must submit to periodic drug tests. If the license holder, while on probation, again is convicted on a drug charge the board must either suspend the license for no less than a year or revoke the license.

- Adds drug trafficking as an aggravating circumstance in a death penalty murder case. Also adds as an aggravating circumstance the murder of a family member of a law enforcement official in order to impede or retaliate against the official.
- Establishes a 12-member Drug Cabinet, chaired by the governor, to study and make recommendations concerning the state's efforts to fight drugs. Others on the cabinet are the attorney general, the chief of SLED, the state superintendent of schools, the Highway Patrol commander, executive director of the Criminal Justice Academy, the FBI special agent in charge, DEA local official, the U.S. Attorney, the commissioners of DHEC, DMH, and the Human Affairs Commission.
- Prohibits any public school student from kindergarten through the 12th grade from possessing a paging device on school grounds unless the student is a member of an EMS or volunteer fire fighting group.

Legislation Passed by the House

The following is a compilation of bills passed by the House and their status on the Senate calendar. Not all the bills passed by the House are listed here. Only significant legislation, or bills that received public or media attention, are listed here.

State-run Primaries (H.3088, Rep. Taylor). This bill would authorize the State Election Commission to conduct primary elections instead of political parties. Municipal elections would be excluded. Political parties could continue to conduct presidential preference primaries at their own expense.

Status: Passed the House 5-29-89;
Pending before Senate Judiciary

Bond Bill from Even to Odd Years (H.3792, Rep. McLellan). The State Bond Bill would be authorized in odd-numbered, instead of even-numbered, years beginning in 1991, under this bill.

Status: Passed the House 5-11-89;
Pending before Senate Finance

School Children and Real Estate Ownership (H.3419, House Education and Public Works Committee). This bill would eliminate the provision in state law that allows a student to attend school in a district where he owns real estate but does not reside. If enacted, the legislation would allow such students to complete the school year before being required to attend public school in his residence district. If the student is to graduate within two school years, he may remain in his current district until he graduates under this bill.

Status: Passed the House 4-19-89;
Pending before Senate Education.

"Zero-Based" Budget Review (H.3358, Rep. Corning). This bill would require that 24 state agencies undergo a zero-based budget analysis every eight years. This review would be conducted by the subcommittees of the House Ways and Means and Senate Finance committees. During these hearings, each of the 24 agencies would have to justify all of its recurring expenses for the current fiscal year and any additional funding requested. The subcommittees would then make recommendations on increasing or decreasing agency funding to the full House Ways and Means and Senate Finance committees.

Status: Passed the House 5-3-89;
Pending before Senate Finance.

Nuclear Waste Consultation Committee (H.3124, Rep. Keyserling). This House resolution would allow the nine-member state Nuclear Waste Consultation Committee to select its own chairman. Currently, the governor or his designee serves as committee chairman. This proposed provision would go into effect if the governor declines the chairmanship.

Status: Passed the House 2-9-89;
Favorable report from Senate General Committee 4-4-89.

Safe Schools Act of 1990 (H.4852, Rep. Wilkins). The bill would address a number of crime problems now facing South Carolina schools. The bill addresses increasing penalties for carrying weapons and trafficking drugs on school property, the criminal records of juveniles, and the circumstances under which they can be tried as adults.

Under this bill, the penalty for carrying a weapon on school property would increase from a \$100 to a \$1,000 fine. The jail time also would increase from 30 days to one year. In addition, the bill makes it a separate offense to manufacture, distribute, sell or purchase drugs within a half mile of a public or private school, playground, park, public vocational or trade school, technical education center or public or private college or university. This offense would be punishable by a fine of \$10,000 and/or jail time of up to ten years. If the violation involves crack cocaine, the fine would be no less than \$10,000 and 10 to 15 years in jail.

Further, the bill would allow a juvenile, 15 or older, to be tried as an adult for bringing a weapon on school property or for distributing drugs within a half-mile proximity of a school, playground or park following a full investigation and court hearing.

Under this legislation, the Department of Youth Services would have to provide a public or private school with the criminal record of the juvenile, who has been convicted of a violent crime. Upon the juvenile's release from the department, DYS would provide his criminal record to the principal of the school the juvenile is eligible to attend. Each school district would develop a confidentiality policy regarding the handling of the juvenile's record. The policy would determine who would have access to the information and where the record would be kept. At the minimum, the policy would require the record be kept in the juvenile's confidential disciplinary files and to be destroyed when the youth graduates or reaches 21-years-old.

The legislation also would require the State Department of Education to develop, in conjunction with SLED, a standard school crime reporting form. All incidents reported on the forms would be compiled by the Education Department and published annually as a report to the General Assembly.

Further, the legislation makes it unlawful to threaten the life or family of a teacher or a principal. Punishment for this offense is not more than five years in jail.

Status: Passed the House 4-5-90;
Second reading by the Senate 4-25-90
Referred to Senate Education retaining its place on the calendar.

Juveniles and Drug Operations (H.4574, Rep. Hayes). This legislation would make it illegal to use a person under 17-years-old in an illegal drug operation, nor would it be legal to receive a controlled substance from a juvenile. Violation of these provisions would constitute a felony carrying a sentence of 5 to 15 years.

According to the Attorney General's Office, one way many drug dealers exploit children is by using juveniles to distribute drugs. Such use of children virtually ensures that the child will become a part of the drug dealing criminal element.

Status: Passed the House 4-11-90;
Pending before Senate Judiciary

Laundering Drug Money (H.4571, Rep. Hayes). This legislation would make it a felony to knowingly participate in a financial transaction designed to disguise or conceal the proceeds gained through violation of state or federal illegal drug laws.

It also would make it a felony if the transaction was used to promote further illegal drug activities. The penalty for violation would be a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or not more than 20 years in jail.

Further, the legislation makes it a felony to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to a place outside the U.S., or to a place in South Carolina from a place out of the country, if the action is taken to promote illegal drug activities or to disguise or conceal the proceeds of illegal drug activities.

This also would be punishable by a fine of \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or by no more than 20 years in jail, or both.

In addition, anyone involved in illegal drug activities or who conceals or disguises property gained through illegal activities, or attempts to conduct a financial transaction involving property gained through illegal activities or used in illegal activities, would be guilty of a felony. The punishment would be a \$500,000 fine or twice the value of the property involved, whichever is greater, and/or a 20 year jail term.

Anyone convicted of the violations described in this legislation would also be liable to the state for a civil penalty. This civil penalty would be either the value of the property, funds, or monetary instruments used in the transaction, or \$10,000, whichever is greater.

This legislation was among those proposals recommended by the Attorney General's Office. According to the office, such a statute, if enacted, would promote the prosecution of white collar criminal who launder money for drug traffickers but who do not get involved in actual drug distribution.

Status: Passed the House 4-11-90;
Pending before Senate Judiciary

Additional Penalties for Drug Offenses and Machine Gun Use (H.4573, Rep. Hayes). This legislation would provide additional punishment for a drug related offense if the convicted was in possession of a firearm or visibly displays a firearm or knife in the commission of the crime. The additional punishment, like that for violent crimes, would be five years on top of the sentence for the original offense.

The legislation also provides that if the firearm used in the commission of a violent or drug-related crime is a machine gun or a firearm with a silencer, the additional penalty would be ten years. These additional penalties must run consecutively, not concurrently, if the conviction is drug-related. The convicted would not be eligible for parole, work release or extended work release during the service of the sentence.

Status: Passed the House 4-5-90;
Pending before Senate Judiciary

Facilitating Drug Activities (H.4436, Rep. Baker). Under this legislation, confiscation provisions would be expanded to include any conveyance, "including trailers, aircraft, motor vehicles and water going vessels" used or intended for use in connection with illegal drug trafficking. The bill lowers the amount of illegal substances that must be found in the vehicle in order for it to be forfeited to the state. Under this bill, these amounts would be lowered from one pound to a half pound of marijuana; from a pound to a half pound of hashish; from four grains to two grains of opium; from two grains to one grain of heroin; from four grains to two grains of morphine; from ten grains to five grains of cocaine; from 50 micrograms to 25 micrograms of LSD.

Status: Passed by the House 4-12-90;
Pending before Senate Judiciary.

Intimidation of Witnesses or Victims (H.4575, Rep. Hayes). This legislation would make intimidation of witnesses a crime. It would be a misdemeanor punishable by a \$5,000 fine and/or jail time of not more than five years to prevent or attempt to prevent or dissuade a victim or witness from reporting to law enforcement, from causing an indictment or warrant to be issued, or from causing the arrest of any person.

It would be a felony if a victim or witness is intimidated by a threat of violence on the victim or a third person; where the intimidation is part of a conspiracy; or where the act is committed for money, or by someone convicted of any state or federal crime. This felony is punishable by five years in jail and/or \$10,000. Further, the person convicted of the felony is not eligible for parole, work release or extended work release.

Status: Passed the House 4-11-90;
Pending before Senate Judiciary.

Forfeiture Proceeds (H.4360, Rep. Hayes). This legislation would revise the forfeiture statutes currently on the books to allow the local or state law enforcement agency, initiating the property seizure in connection with illegal drug activities, to retain the proceeds of the sale instead of being it remitted to the state treasurer.

It also allows the local or state law enforcement agency which initiated the seizure to retain 90 percent of the sale of negotiated instruments or securities seized in connection with illegal drug activities.

These forfeited proceeds must be used to further the fight against illegal drugs and could not be used for recurring operating expenses of the agency. The proceeds of the sale would be placed in a special account by the state treasurer and then remitted back to the law enforcement agency. The remaining ten percent of the proceeds of any of these transactions must be remitted to the general fund of the state.

Status: Passed by the House 3-8-90;
Second reading by the Senate 5-23-90

Infectious Waste Burning Reduction (H.4246, Rep. McTeer). A significant environmental bill passed by the House, H.4246 would limit the amount of infectious waste that may be burned by commercial waste incinerators.

Under this legislation, DHEC would annually estimate the amount of infectious waste it expects to be generated in South Carolina for the next calendar year. The first estimate would be made November 1, 1990 and then yearly thereafter. Commercial infectious waste incineration facilities would be prohibited from burning more than one-twelfth of the annual DHEC estimate during any one month. The legislation states that at no time may the amount of waste burned in a month be less than 750 tons.

This limit does not apply to infectious waste treated by hospitals or generation facilities if the waste is generated in-state and incinerated on a non-profit basis.

According to the bill, from July through December 1990, no more than 750 tons of infectious waste may be burned in any one month by a commercial incinerator.

Currently, the state has only one commercial infectious waste incinerator, Southland Exchange Joint Venture in Hampton County. Under its current permit, this incinerator can burn up to 100 tons of waste a day. If this legislation is enacted by the General Assembly, that amount would drop to 25 tons a day.

It is estimated that only about 5 percent of the waste burned at Southland is generated in South Carolina. DHEC has estimated that South Carolina generates about 18 tons of infectious waste a day.

Status: Passed by the House 3-8-90;
Senate Medical Affairs Committee report: majority favorable; minority unfavorable.

Selection of Judges (H.4168, Rep. M.O. Alexander). This legislation, passed by the House, would make some changes in the provisions governing the selection of judges. Under this legislation, the make-up of the 8-member Judicial Screening Committee would change slightly to include one member of the House and one from the Senate who are not licensed attorneys. Currently, all members of the committee are attorneys. If this legislation is enacted, this provision would not take effect until December 1, 1992.

The legislation also stipulates that if a judicial candidate withdraws or dies, or if the screening committee finds the candidate not qualified, then the election for that judgeship may not be held until additional candidates have a chance to file for the office and undergo the screening process. The bill gives the General Assembly the authority, by concurrent resolution, to reopen the filing period for a particular judgeship and reschedule the election.

The legislation further would prohibit any candidate from being nominated for a judgeship from the floor who has not been reviewed by the Judicial Screening Committee.

Status: Passed the House 3-8-90;
Pending before Senate Judiciary.

Nine New Circuit Judges (H.4423, House Judiciary Committee). This House Judiciary Committee bill would add nine additional Circuit Court judges: Four at-large judges and one additional judge from the 5th, 9th, 13th, 14th and 15th Judicial Circuits.

In addition, the legislation states that no judge retired from the State Supreme Court, Court of Appeals, Circuit Court or Family Court may preside over any official circuit or family court proceeding, except in case of an emergency as determined by the Chief Justice of the State Supreme Court. In order to be eligible to be appointed by the Chief Justice to serve in an emergency, the retired judges must be screened by the Joint Legislative Judicial Screening Committee and found by the committee to be qualified to serve in these emergency situations. Screening for a retired Supreme Court justice would be every 10 years on the anniversary of his retirement. Judges retired from the Court of Appeals, Circuit Court or Family Court would be screened every six years on the anniversary of their retirements, in order to serve under emergency circumstances. These duly screened retired judges may be appointed by the Chief Justice to perform judicial duties in the Supreme Court, Court of Appeals, Circuit or Family Courts.

The bill further states that no active Family Court judge may be assigned to preside over any official proceeding in Circuit Court.

Status: Passed the House 2-1-90;
Set for special order;
In the status of interrupted debate 5-10-90.

Processing Ethics Complaints (H.4338, Rep. Waites). This bill would revise the way ethics complaints are handled by the State Ethics Commission, allowing the executive director to make a determination from the written complaint whether there are facts sufficient to allege a violation. Under the current procedure, the work load of the commission has increased substantially from 30 complaints in 1988 to 60 in 1989. The commission estimates it now takes 6 to 8 months to process a complaint.

In addition, the legislation would allow the existence of the complaint to be made public if the respondent waives confidentiality. The final disposition of the complaint also would become public record.

Currently, the law prohibits the commission from admitting the existence of a complaint or its final disposition, even though the circumstances of the complaint are often leaked to the media.

Under this bill, complaints against candidates for public office could not be accepted within 90 days of the election, and outstanding complaints against candidates must be disposed of 30 days prior to the election.

Status: Passed by the House 3-8-90;
Second reading in the Senate 4-17-90

AIDS Public Safety and Testing Disclosure Act (H.4484, Rep. Farr). This AIDS-related legislation would allow crime victims, law enforcement officers, EMS personnel and firefighters to request in writing that a defendant or prisoner, who is charged as an adult or juvenile, be tested for AIDS. In the case of law officers, firefighters or EMS personnel, the officer must petition the court, alleging that the defendant or prisoner bit, spit or transferred blood with the officer in some manner.

Status: Passed the House 3-6-90;
Pending before Senate Medical Affairs.

Raised Reinstatement Fees for Revoked Driver's License (H.4283, Rep. Sheheen). This legislation would increase the reinstatement fee for revoked or suspended licenses from \$10 to \$30.

Status: Passed the House 3-29-90;
Senate Transportation Committee report: favorable
5-3-90.

Above Ground Petroleum Storage (H.4922, House Medical, Military, Public and Municipal Affairs Committee). This legislation details the requirements for storage of petroleum in above ground storage tanks, and deletes the requirements that the State Fire Marshal set regulations for this storage.

Status: Passed the House 4-11-90;
Placed on the Senate calendar without reference.