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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

Vol. 8

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House Week in Review

The House of Representatives made progress on a number of significant bills last week. Among the legislation given third reading by the House were S.362, the State Run Primaries bill; H.3400, the Felony and Misdemeanor Classification bill; H.3494, legislation to establish 911 emergency communication systems across the state, and S.376, the Stormwater Management and Sediment Reduction Act.

With the House passage of S.362, this is the closest the state run primaries issue has come to enactment. For the past several sessions, the House has approved legislation to give the State Election Commission responsibility for running the primary elections instead of the political parties, but the legislation always died in the Senate. This session, the Senate moved quickly to pass S.362, approving the bill in early February.

The bill did not receive House approval without some amendments. The most significant change was proposed by Rep. Boan, who amended the bill to change the date of the state primaries from the second Tuesday in June to the second Tuesday in August. The filing times and other appropriate dates were amended to conform. On a vote of 26-76, the House refused to table the Boan amendment. The House then adopted the amendment and gave the bill second reading on Thursday. With unanimous consent, the legislation received third reading on Friday and was sent back to the Senate.

Also given second reading on Thursday was H.3494 which would help counties and municipalities set up 911 emergency communications systems in their areas. The House also gave second reading to S.376, the Stormwater Management and Sediment Control Act. This legislation, whose significance increased in the aftermath of Hurricane Hugo, is aimed at reducing the adverse effects of stormwater runoff and sediment and to better safeguard property by strengthening and making uniform the existing stormwater management and sediment control program. This is the first significant bill passed by both houses dealing with the deficiencies uncovered by the damage done by Hurricane Hugo.

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Both the 911 bill and the Stormwater Management bill were given third readings on Friday.

The Felony and Misdemeanor Classification bill was given second reading on Wednesday and final approval on Thursday. This bill -- over 200 pages long -- is the result of work by the Sentencing Guidelines Commission, established in 1989 by the General Assembly to undertake the task of prescribing advisory sentencing guidelines for the General Sessions Court for all offense for which a prison term of more than a year is allowed. In its simplest form, the legislation places approximately 700 criminal offenses with a maximum term of one year or more into different categories based on the seriousness of the offense. The bill specifies nine categories of offenses -- six felonies and three misdemeanors. Each of the categories carries a maximum term of imprisonment. This legislation would delete the current list of felony crimes and replace it with the new classes of felonies. The same would be true of misdemeanors, which would be reclassified in one of the three categories. A list of the more serious crimes are exempted either because they carry the death penalty, or they require high mandatory minimum sentences, as is the case with certain drug offenses.

In other House action, Reps. Wilkins, Hayes and Waites were appointed by the Speaker to the conference committee on H.3743, the ethics legislation. Also serving on the conference committee are State Sens. Moore, Stilwell and Washington.

The House also received back from the Senate H.3650, the State Appropriations bill. The House amended the bill back to its version of the budget before sending the money bill back to the Senate for concurrence or nonconcurrence.

On Wednesday, the House also gave second reading to H.3090, which would make changes to the Death Dignity Act. This legislation, which was on the contested calendar, received second reading approval by a vote of 83-19, but not without several days of intermittent debate by the House. The legislation seeks to include provisions dealing with ~~permanent~~ unconsciousness in the state Death with Dignity Act. Currently, the state living will laws deal only with the terminally ill. The legislation also would allow a person signing a living will to leave instructions regarding the withdrawal of food and water. Now, the law only allows a person to decline extraordinary medical treatment. The legislation now is pending on the third reading contested calendar.

By a vote of 66-8, the House also agreed to give a second reading to H.3515, which would allow drug testing of prospective state employees.

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Finally, May 8 was set as the date for election of circuit and family court judges. At noon on that date, the General Assembly will meet in joint session to elect judges to the 1st, 11th and 14th Judicial Circuits, and to elect Family Court judges to the 5th Judicial Circuit, Seat 2; 10th Circuit, Seat 3; 13th Circuit, Seat 1 and 15th Circuit, Seat 1.

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Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The following bill summaries are arranged according to the standing committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

South Carolina Environmental Awareness Award (S.636, Sen. Rose). This legislation would create the S.C. Environmental Awareness Award, to be awarded annually to recognize "persons who have shown extraordinary dedication to the conservation and preservation of the environment of this state." The recipient would be selected by a 10-member committee made up of representatives from DHEC, the Forestry Commission, the Sea Grant Consortium, the Water Resources Commission and the Wildlife and Marine Resources Commission. The recipient would have to "exemplify extraordinary dedication to preserving and protecting the environment," possess upstanding moral character and meet other reasonable criteria designated by the committee.

Judiciary

Fraudulent Sales or Offers Statute of Limitation (H.3960, Rep. Quinn). This legislation would change the statute of limitations on when suits could be brought in connection with illegal or fraudulent sales or offers under the Uniform Securities Act. Under current law the three year limitation begins with the contract of sale. This legislation would change the three year limitation starting date to the time when the cause of action is discovered.

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"No Parking" Fire Lanes (H.3964, Rep. Cromer). This bill would make it illegal to park in a clearly designated fire lane or in an area that serves as a fire lane and is clearly marked "No parking." The exception would be fire fighting or other emergency or law enforcement vehicles. The provisions would extend to public parking lots within police jurisdiction. Violations would be a misdemeanor carrying a fine of between \$100 and \$200 or not more than 30 days in jail for each offense.

Juvenile and Jails (S.194, Sen. Rose). This legislation would prohibit any judge from ordering any juvenile, with no prior or current record, to be incarcerated for a status offense or contempt of court for a status offense in any type of jail, detention facility or DYS secure correctional facility. However, a juvenile who has been held in contempt of court for commission of status offenses may be committed to the Department of Youth Services upon the department's development of a residential housing unit and program for such offenders that would segregate them from the rest of the DYS population. DYS also would have to certify that the facility for status offenders was not over capacity. These provisions would not affect the court's ability to commit a juvenile to DYS for the up to 45 days evaluation. Within six months of the effective date of this legislation, DYS would report back to the Joint Legislative Committee on Children to report on the implementation of the residential housing provisions.

Labor, Commerce and Industry

S.C. Manufactured Home Park Tenancy Act (S.703, Sen. Lourie). The purpose of this legislation is to provide for the rights and obligations of manufactured home owners and manufactured home park owners and to clarify the laws governing the renting and leasing of spaces in these parks. This legislation would not apply in situations where the mobile home and lot are both rented by the resident. Nor would it apply in recreational camping parks or in mobile home parks in which fewer than five lots are for rent.

This legislation specifies how rental agreements must be written and what information the park owner must provide to tenants regarding service and other matters. It would be up to the park owner to prove that a mobile home fails to meet the park's standards. A resident could not be forced to make improvements to his mobile home that would create undue financial hardship and would be contrary to the rental agreement. The bill also outlines the responsibility of mobile home owners when renting spaces at a park, including keeping their rent current and their lots clean. Provisions also address what action should be taken when a resident leaves or when a resident is evicted. The legislation also requires the park owner to notify residents in writing if the zoning for the park is changed or if the park is sold. H.3585 is the companion bill to this legislation.

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Medical, Military, Public and Municipal Affairs

Crime Victim's Ombudsman (H.3961, Rep. Hayes). This legislation would create the office of Crime Victim's Ombudsman. The ombudsman would be appointed by the director of the State Office of Victim Assistance with the advice of the state advisory board. The position would be answerable to the director of the State Office of Victim Assistance. It would be the duty of the ombudsmen to investigate complaints concerning possible violation of crime victim's rights, complaints about delivery of services to crime victims and other complaints of alleged mistreatment by the criminal justice or juvenile justice system. A toll free number would be established for the ombudsman's office, and all files initiated by the ombudsman would be confidential. The office would have the power to request and obtain access to information in police reports pertaining to juveniles. A copy of the ombudsman's report would be forwarded to the appropriate judicial authorities, and the office could recommend action to be taken in connection with a complaint. The office also would provide technical assistance to agencies in carrying out its recommendations.

Redistributing DSS Positions (S.40, Sen. Rose). Under this legislation, the commissioner of the state Department of Social Services would have the power to redistribute annually among the counties the full-time positions administering mandated human services. This redistribution would be to ensure that the number of employee positions are proportionate to the case load of each county. The positions would be transferred as they became vacant or as employees in these position agree to transfer. Before the transfer occurs, the DSS commissioner must report the plan to the county legislative delegation.

Probation, Pardons and Parole Commissioner (S.791, Sen. Drummond). This bill would change the designation of the executive director of the state Department of Probation, Pardons and Parole to that of a commissioner. Probation officers also would be redesignated as probation agents.

The legislation gives the new commissioner the authority to schedule board meetings, maintain the records of the board and other administrative duties. The commissioners also would be required to give a 30 day written notice of hearings on prisoners to the crime victims, the solicitor who prosecuted the case and the law enforcement agency that arrested the prisoner. Provisions of the legislation give probation agents the power to issue arrest warrants or a citation charging violation of the conditions of the probation or parole. The bill also allows the board to place a prisoner in a restitution center as a condition of parole.

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Legislative Audits of the DMVM (S.818, Sen. Byran). Under this legislation, audits by the Legislative Audit Council of the Division of Motor Vehicle Management and other agencies with this section would be made every five years instead of every three years beginning April 1, 1996, if this legislation is enacted.

Offender Management System (S.883, Sen. Verne Smith). This legislation would enact the Classification System and Adult Criminal Offender Management System. This system would be aimed at alleviating the growing problem of prison overcrowding by identifying and preparing qualified non-violent offenders to be placed and controlled in the community instead of building more prisons.

Under this bill, the adult criminal offender management system would be developed by the state Department of Correction and the Department of Probation, Parole and Pardon Services. This system would carefully screen inmates for placement in the Probation, Parole and Pardon Services' Community Control Strategies. These strategies would include offender management and supervision methods available in the community, including home detention, day reporting centers, substance abuse programs, short term incarceration and intensive supervision. In order to participate, the inmate would have to maintain a clear disciplinary record during incarceration, exhibit the desire to become a law abiding member of society and possess an acceptable risk score, among other factors required by the two departments. The acceptable risk score would take into account the nature and seriousness of the current offense, the nature and seriousness of prior offenses; the institutional record; and performance under the criminal justice system.

Once the system is established, the Probation, Parole and Pardon Service department would monthly enroll eligible inmates into the system in order to prevent the prison system from exceeding 100 percent of capacity at high count. Inmates placed in the system would be eligible for good behavior credit and earned work credits. Entry into the Offender Management System could be revoked as a prison disciplinary measure. Revocations cannot be appealed. Victims and witnesses would be notified prior to the inmate's placement in the system, and the sheriff's department would be notified in the county where the inmate will be placed.

This system would not go into place until appropriately funded by the state.

The legislation also repeals those sections of the code under the Prison Overcrowding Powers Act. This act gives the governor the power to release prisoners during an prison system overcrowding state of emergency.

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Ways and Means

Retiree Income Tax Deduction (H.3971, Rep. Keegan). This legislation would extend to any 65-year-old person or his spouse the same \$3,000 state income tax deduction now allowed federal, state, military, law enforcement retirees and those 65 or older who receive income from a qualified pension plan.

Child Care Facilities and CPR (S.741, Sen. Hayes). Under this bill, all child day care facilities would retain at least one person on the staff currently certified in child-infant CPR and basic first aid. The cost to the state is estimated at \$1,915 to mail out information to all 3,000 child care providers of this requirement, if the bill is enacted.