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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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House Week in Review

On Wednesday, the House debated H. 3059, which would shorten the length of the legislative session by changing the final adjournment date of the General Assembly from the first Thursday in June to the second Thursday in May. Supporters of the bill, led by Speaker Pro Tem Wilkins, noted that South Carolina has longer sessions than about three-quarters of all states and stated that with the earlier adjournment date the General Assembly would still have sufficient time to complete its business. Opponents of the bill, led by Representative Rudnick, stated that the earlier adjournment date would leave insufficient time to consider bills, might result in additional special sessions, and that the current session length has worked well enough in recent years. Amendments pertaining to pre-filing of bills and which would require a majority, instead of a 2/3 vote, to extend the final adjournment date were rejected, and the House voted 78-37 to approve the bill.

Also on Wednesday, H. 3436, requiring immunizations of children before enrollment in a public or private day care facility, was ordered enrolled for ratification. Among other acts ordered enrolled for ratification were S. 3, pertaining to the number of petit jurors which must be drawn and summoned, and S. 438, which requires screening of persons before they may serve as a Family Court judge.

The House gave 3rd reading to a number of bills last week, including H. 3385, which provides for a separate filing period for candidates seeking nomination by petition in partisan elections; H. 3493, which lists conditions under which a person may be removed from youthful driver classification for auto insurance purposes; and H. 3553, which requires certification of magistrates.

The General Assembly convened in joint session early Wednesday afternoon to fill vacancies in the Board of Trustees of four state institutions. In a historic vote, the General Assembly elected Mrs. Patricia McAbee of the town of McCormick to the Board of Trustees of Clemson University. Ms. McAbee is the first woman ever elected to Clemson's Board of Trustees. The General Assembly also elected the following persons to the Board of Trustees of state institutions as listed below: (1) William G. Stevens (Lander University); (2) Robert L. Thompson, Jr. (Winthrop University); and (3) James R. Courie (Francis Marion University).

Legislative Update, April 13, 1993

Bills Introduced

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

Agriculture, Natural Resources and Environmental Affairs

Permits for Use of State Intertidal or Subtidal Bottoms (S. 513, Sen. G. Smith). This bill lists conditions under which the Department of Wildlife and Marine Resources may grant permits to an applicant to use more than 500 acres, but not more than 1,000 acres, of intertidal or subtidal lands owned or controlled by the state for shellfish mariculture for commercial purposes. Under current law, the permit may not allow more than an aggregate of 500 acres of use of these lands by an applicant.

Education and Public Works

Penalties for Alteration of License Plate (H. 3855, Rep. Davenport). This bill prohibits anyone from tinting or changing the color of a motor vehicle license plate or revalidation sticker displayed on a vehicle. A person violating these provisions is guilty of a misdemeanor and upon conviction must be fined up to \$200 or jailed up to 30 days.

Lower Tuition for In-State Students (H. 3864, Rep. Meacham). This joint resolution requires state colleges, universities and technical colleges to increase tuition and fees for out-of-state undergraduate students so as to eliminate 80 percent of the undergraduate state general fund subsidies for these students. The hike in tuition and fees begins in the Fall of 1993 and continues over a period of 5 years. Of the revenue obtained from these increases, 80 percent must be used to lower the cost of tuition and fees for in-state undergraduate students and 20 percent must be appropriated for the Higher Education Tuition Grants Program.

Safety Equipment Required on Vehicles Which Sell Food (H. 3880, Rep. Lanford). This bill lists safety features which must be attached to any vehicle from which food is sold for consumption by the general public.

Judiciary

Collection of Licensee Information by Department of Social Services to Enforce Child Support Guidelines (H. 3852, Rep. Davenport). This bill allows the Department of Social Services (DSS) to request and collect information from any state agency, board or commission or any office or agency of a county or municipality which issues licenses or other certificates of authority permitting a person to engage in or conduct a profession, trade or business. This information must be collected for the purposes of establishing and enforcing child support obligations on behalf of recipients of Aid to Families with Dependent Children (AFDC) or recipients of Federal Title 4 child support services. The bill lists procedures for reporting this information. If DSS determines that a licensee or holder of a certificate of authority permitting a person to engage in or conduct a profession, trade or business is delinquent in making child support payments in an amount equal to at least 2 months' support obligation, DSS then must notify the person and the licensing authority or entity issuing the certificate of authority of this arrearage and DSS's request that the person's license or certificate of authority be revoked. If the licensing authority or entity issuing the certificate of authority determines that the person is delinquent in making child support payments equal to at least 2 months' support obligation, the person's license or certificate of authority must be revoked or suspended. The license or certificate of authority may not be reissued until the delinquency in payments is paid and no current delinquencies exist.

Property for Low-Income Housing (H. 3853, Rep. Cobb-Hunter). This bill requires a state or local governmental agency and any political subdivision having title to and disposing of real property used or suitable for residential purposes to set aside at least 20 percent of the property for purchase by a nonprofit corporation, so long as the corporation provides housing to households with income levels between very low and lower income.

Powers of Attorney (H. 3862, Rep. Simrill). Under this bill, any conveyance, transfer or gift in the name of the principal by the attorney in fact for the exclusive benefit of the attorney in fact or his immediate family members is a prima facie violation of the fiduciary duty owed by the attorney in fact to the principal. The burden of proof must be on the attorney in fact to prove that the principal's intent and desire was in conformity with the conveyance, transfer or gift, so as to overcome the presumption of prima facie violation of the fiduciary duty. The bill prohibits an

attorney in fact from conducting a transaction for his exclusive benefit or his heirs at law on behalf of an incapacitated principal.

Immunity From Liability for Injuries or Death of a Person Resulting from Equine Activity (H. 3867, Rep. McLeod). Under this bill, an equine activity sponsor, professional or other person (including a corporation or partnership) is not liable for the injury or death of a person resulting from inherent risk of equine activity. The bill defines "inherent risk of equine activity" and lists exceptions to immunity from liability. Equine professionals and equine activity sponsors are required to post warnings to inform participants of this exemption from liability for death or injuries, and this warning also must be contained in any written contract entered into by an equine professional or equine activity sponsor to provide services to a participant. Failure to post these warnings prevents an equine activity sponsor or equine professional from invoking these immunity privileges.

Constitutional Amendment to Allow Initiative Petition (H. 3874, Rep. Clyborne). This joint resolution seeks to amend the Constitution so as to allow voters to enact laws and constitutional amendments through initiative petition. The petition must contain a full and correct copy of the text and a number of signatures equal to at least 8 percent of all votes cast for governor at the last gubernatorial election. If a majority of voters cast ballots in favor of the proposed law or constitutional amendment, the measure becomes a law of the State or a part of the Constitution. The General Assembly by law is permitted to provide additional requirements for the petition, so long as the requirements conform with this constitutional amendment.

If the General Assembly approves this joint resolution, it would be submitted as a constitutional amendment to the voters for approval in the November 1994 general election.

Statutory Requirements for Initiative Petition (H. 3875, Rep. Clyborne). This bill lists statutory requirements for circulating and approving initiative petitions. These requirements are effective upon approval by the state's voters of a constitutional amendment calling for initiative petition.

The bill lists measures which may not be adopted through initiative petition. As examples, no measures regulating religious institutions or calling for removal or recall of judges could be proposed by initiative petition. No measure relating to more than 1 subject may be proposed by an initiative petition. Before any initiative petition can be circulated, an application to circulate a petition must be filed with the State Election Commission. The bill lists information required on the application. If the application is approved, the petition may be circulated for signatures. The bill lists requirements which must be met before a person may sign a petition. Once the Commission has approved the application and furnished to the sponsor(s) certified copy(ies) of

the petition, sponsor(s) are allowed 12 months to obtain sufficient signatures for the petition. The number of signatures on the petition must be equal to at least 8 percent of the total vote cast for governor in the preceding gubernatorial election preceding the filing of the petition with the Commission. The initiative petition must be delivered to the Commission at least 180 days before a general election so that the Commission can verify if the petition conforms to these provisions.

If the Commission determines the petition meets the requirements of these provisions, then the proposed law or constitutional amendment is submitted to the voters at the next general election. If the proposed law or constitutional amendment is approved by a majority of those voting in the general election, then the measure becomes a statutory law of the State or a part of the Constitution. No statutory law or constitutional amendment ratified by the General Assembly under these provisions is subject to veto by the governor, but a statutory law or amendment enacted through submission to the voters may later be amended or repealed by the General Assembly. A defeated initiative may not be resubmitted to the voters until at least 4 years following the general election in which the initiative was defeated.

The bill provides penalties for anyone convicted of violating these provisions and also prohibits a person, corporation or association of persons from paying to or receiving from another person, corporation or association of persons anything of value in consideration of or as inducement to the circulation of a petition. The payment of reasonable and necessary travel expenses or for food and beverages consumed by sponsors or volunteers while circulating the petition is not prohibited, however.

No person or association of persons, corporation or public body may use or authorize the use of public funds, property or time to influence the outcome of an initiative petition. If the sponsors of a petition receive contributions or make expenditures in excess of \$500 in the aggregate during an election cycle, the sponsors must file a statement or organization and certified campaign reports pursuant to the State's 1991 Ethics, Government, Accountability and Campaign Reform Act.

Shoplifting Penalties (H. 3876, Rep. Gonzales). This bill increases from less than \$50 to less than \$200 the value of shoplifted merchandise for which a first conviction results in a maximum fine of \$200 or imprisonment up to 30 days. Currently anyone convicted the first time of shoplifting merchandise worth \$50 or more is subject to a maximum fine of \$600, imprisonment up to 6 months, or both.

Exemption From Liability For Services At Construction Project (H. 3881, Rep. T.C. Alexander). This bill lists certain services (as examples, architectural or engineering services) which when retained to perform professional services on a construction project are not liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which

workers' compensation benefits may be recovered. An exception to this is provided, in that the employer is liable only if responsibility for safety practices is assumed by contract. Immunity under these provisions does not apply to the negligent preparation of design plans or specifications.

Substitution of Candidates Where Nominee is Selected Through a Primary (H. 3887, Rep. Harrelson). This bill allows a party to substitute a candidate for office in the general election if the party's nominee dies and it is impossible to conduct a special election to choose a replacement and certify the results at least 2 weeks prior to the general election. The bill also deletes provisions requiring a special election to be held for an office after the general election if a nomination is certified less than 2 weeks before the general election.

List of Crimes Involving Moral Turpitude (H. 3891, Rep. Tucker). This bill defines "moral turpitude" and provides a list of crimes involving moral turpitude which may be used to impeach a witness.

Public Disclosure of Information About Parents or Guardians of Children Under Jurisdiction of Family Court (H. 3892, Rep. Baxley). This bill allows the name of the name of the custodial parent or legal guardian of a child under the jurisdiction of the Family Court to be made public if the child has committed an offense which would be a misdemeanor or felony if committed by an adult.

Public Disclosure of Information About Children Under Jurisdiction of Family Court (H. 3893, Rep. Baxley). Under this bill, the prohibition against public release of information concerning a child under the jurisdiction of the Family Court applies only if the child has committed a status offense or first offense involving commission of a crime which would be a misdemeanor or felony if committed by an adult.

Prohibition Against Holding Office By Anyone Convicted of State or Federal Felony (H. 3894, Rep. Cromer). This joint resolution seeks to amend the Constitution so as to prohibit anyone who has been convicted of a felony under state or federal law from seeking election to any state office or office of a political subdivision of the state. This prohibition also applies if the person pleads guilty or nolo contendere to these offenses. If approved by the General Assembly, this measure will be submitted to the voters as a constitutional amendment in the November 1994 general election.

General Assembly Members Under Jurisdiction of State Ethics Committee (H. 3897, Rep. Waites). This bill expands the jurisdiction of the State Ethics Committee so as to include jurisdiction over members of and candidates for the General Assembly.

Jurisdiction of State Ethics Committee to Include House Members (H. 3898, Rep. Waites). This bill expands the jurisdiction of the State Ethics Committee so as to include candidates for and members of the House and deletes references to the House Ethics Committee.

Information Exempt From Disclosure Under Freedom of Information Act (S. 443, Sen. Richter). Under this bill, information of a personal nature, as pertains to information which may not be disclosed under the Freedom of Information Act, must include (but not be limited to) information pertaining to public records which include the name, address and phone number of individuals who are handicapped or disabled. This information cannot be released if it is to be used for commercial solicitation. Additionally, the bill prohibits the disclosure, with limited exceptions, of the name, address and phone number of a person in whose name a motor vehicle license plate is registered.

Labor, Commerce and Industry

Cancellation of Insurance (H. 3888, Rep. R. Smith). Under this bill, if an auto insurer, agent or premium service company has notified a person by first-class, certified mail of the inability to collect a premium or payment, notice of cancellation notifies a person that the policy and coverage are canceled at the date and time the premium or payment was due. The bill also provides for refund of excess premiums to an insured through an agent, agency or broker placing the insurance for the account of the insured. The bill allows advancement of a premium to a premium service company and requires an agent or agency to have a lien equal to the amount of the unpaid balance and service charges upon any surplus over the amount due from an insured held by a premium service company. The bill also provides for payment by a premium service company of an excess of return premium.

Hospitality Cabinets (H. 3889, Rep. McAbee). This bill allows inns, motels, and hotels licensed to sell alcoholic beverages on premises also to sell these beverages in sealed containers in individual portions to registered guests 21 and over, by means of a hospitality cabinet located in the rooms of guests. This also is permitted in condominiums owned or managed by an inn, hotel or motel. The type of alcoholic beverages contained in a hospitality cabinet (hereafter called "cabinet") is limited to those beverages licensed for sale on premises, and no cabinet may contain more than 30 individual portions of alcoholic beverages at one time. The bill lists other requirements pertaining to installation of and access to a cabinet, along with restocking of the cabinet. County and municipal governing bodies may, by ordinance, prohibit use of cabinets within their respective jurisdictions.

Lawful Use of Lodging Establishments (H. 3890, Rep. McAbee). This bill lists provisions pertaining to safe and lawful use of lodging establishments. The bill lists conditions under which an innkeeper may refuse or deny accommodations, facilities or privileges of a lodging establishment to a person. As examples, the innkeeper can deny accommodations to a person who is disorderly or intoxicated or who is in excess of the number of persons a lodging establishment allows to occupy a particular guest room in the lodging establishment. An innkeeper denying accommodations to a person under these provisions is exempt from liability in any civil or criminal action or for any fine or penalty based on denial of accommodations, but the innkeeper may not deny accommodations to a person because of his race, creed, color, national origin, sex, disability or marital status.

Anyone who, while on the premises or property of a lodging establishment, uses or possesses a controlled substance, consumes or possesses alcoholic beverages and is under age 21, or who violates these provisions, resulting in damage to a lodging establishment room or its furnishings, is guilty of a misdemeanor. Upon conviction, the person must be fined not more than \$200 or jailed not more than 30 days. A person who rents or leases a room in a lodging establishment for the purpose of allowing the room to be used by another to commit an act as listed above also is guilty of a misdemeanor and upon conviction also must be fined up to \$200 or jailed up to 30 days. Anyone causing damages to the room or its furnishings also may be ordered by court to provide restitution to the establishment for the damages and to anyone injured because of the damages. These penalties are in addition to penalties which may be imposed for the underlying violation which occurred on premises.

The bill lists conditions under which an innkeeper may eject a person from a lodging establishment and requires the innkeeper to keep a register of guests staying at the establishment.

Limitation on Issuance of Certain Alcoholic Liquor Licenses (H. 3895, Rep. Kelley). This bill allows the Alcoholic Beverage Control Commission to issue an alcoholic liquor private organization or club sale and consumption license only to nonprofit private nationally or internationally affiliated business organizations or clubs with limited memberships. These organizations or clubs must not be open to the general public and must be established for social, benevolent, patriotic, recreational or fraternal purposes. This private license cannot be issued to freestanding, individual nonprofit organizations or clubs. The bill lists hours during which minibottles may be consumed at clubs and organizations licensed under these provisions.

Transfer of License to Sell Alcohol (H. 3896, Rep. Cromer). This bill allows a person who has been issued a biennial license or permit to sell beer, wine or alcoholic beverages and who changes the location of his business to transfer the license or permit to the new location. Before the license or permit can be transferred, however, the location must meet all state requirements and all

other requirements for licenses or permits. Also under this bill, if a person with the license or permit dies, he or his estate must be refunded the amount of the license or permit fee attributable to the balance of time remaining on the license or permit.

Preservation of Evidence of Industrial Accident or Catastrophic Release (S. 355, Sen. Martin). Under this bill, when an industrial accident or catastrophic release occurs which must be reported to the Labor Commissioner, the employer must make reasonable efforts to prevent destruction, alteration or removal of items, documents or equipment from the worksite. The bill lists exceptions and also permits issuance of a citation up to a year following occurrence of a violation which is discovered during the investigation of an industrial accident or catastrophic release which must be reported to the Labor Commissioner.

Residential Home Builders (S. 610, Labor, Commerce and Industry Committee). This bill deletes the authority of the Residential Builders Commission to certify residential specialty contractors and provides a temporary fee schedule for licensing and examination of these contractors until the Commission by regulation sets these fees. The bill also authorizes a residential builder's license to be granted without an examination to builders licensed in good standing in other states which are deemed by the Commission to have comparable exams. The bill also requires a residential specialty contractor to obtain an executed bond with a surety in an amount approved by the Commission when the cost of an undertaking the contractor is to perform for an individual property owner exceeds \$5,000.

Presentation of False Claim for Health Care Payment (S. 614, Banking and Insurance Committee). This bill prohibits anyone from presenting or assisting or conspiring with another person to present a false claim for payment to an HMO (health maintenance organization) transacting business in South Carolina or to a person providing benefits for health care in the state. This prohibition applies whether the benefits are administered directly or through a 3rd person. Anyone violating these provisions is guilty of a felony and upon conviction must be imprisoned up to 5 years, fined up to \$5,000, or both.

Medical, Military, Public and Municipal Affairs

Emergency Fire Assistance (H. 3857, Rep. Harvin). This bill allows a fire service entity to provide mutual aid assistance to an emergency service delivery system upon the request of the latter. This assistance can be provided upon occurrence of a significant incident (as examples, hazardous material events or hurricanes). Any emergency service entity requesting mutual aid assistance from another emergency service delivery system in this state must utilize an Incident Command System at all emergency incidents. No

emergency service entity or any of its agents, members or employees providing mutual aid assistance can be held liable for damage or injury resulting from participation in mutual aid assistance.

Medical Radiation Health and Safety (H. 3858, Rep. Harvin). This bill is designed to protect people from excessive and improper exposure to ionizing radiation and to provide for examination and licensure of persons operating medical and dental equipment which emits ionizing radiation. The bill requires licensure, with limited exceptions, of anyone using ionizing radiation or equipment which emits or detects this radiation on humans. A South Carolina Radiologic Technologists Board of Examiners is created, consisting of 7 members appointed by the governor. The bill lists qualification requirements for members of the board, lists provisions governing length of terms and payment of board members and allows the Board to employ staff to perform its duties. The bill lists the duties of the Board, among which are administration and enforcement of these provisions and promulgation of regulations to carry out these provisions. Revenues or income derived from any Board source or activity must be remitted to the state treasurer for deposit in the state's general fund.

The bill lists conditions under which applicants requesting an exam for licensure purposes must be admitted and lists requirements governing licensure examinations and conditions under which a licensure exam may be waived. Licenses issued by the Board are effective for 2 years and can be renewed. The Board is required to conduct proficiency tests for anyone practicing radiologic technology for 1 of the 3 pst years immediately before these provisions are effective. Conditions are listed under which the Board is allowed to investigate an applicant or person licensed under these provisions and take disciplinary action against the person. In conducting investigations and taking action, the Board or its designee is allowed to administer oaths and affirmations, subpoena witnesses, take testimony and require production of documents and records. Before the Board takes disciplinary action against a person, the Board must provide a hearing in accordance with the State Administrative Procedures Act. A person aggrieved by a final decision of the Board and who has exhausted all other remedies may seek review of the decision under the Administrative Procedures Act.

Anyone violating these provisions or regulations promulgated to carry out these provisions is guilty of a misdemeanor and upon conviction must be fined up to \$300, jailed up to 6 months, or both. Additionally, the Board may issue a cease and desist order to the person for violation of the provisions.

The bill sets the prices for licenses and other services provided by the Board, with the prices being effective until the Board by regulation promulgates the prices. Programs, functions and regulations of the Board terminate on June 30, 1999 unless reauthorized by law.

Fingerprint Reviews for Firemen (H. 3882, Rep. Clyborne). This bill requires all firemen, whether paid or volunteer, of an organized fire department to undergo 2 fingerprint reviews to determine criminal history. 1 review must be conducted by the State Law Enforcement Division and 1 must be conducted by the FBI. Results of reviews must be furnished to the State Fire Marshal before the fireman begins work with the Department. Firefighters working on the effective date of this measure may continue to work while undergoing reviews.

Ways and Means

Ad-Valorem Exemption for Property Qualifying for Federal HUD Subsidies (H. 3854, Rep. Cobb-Hunter). This bill exempts from ad valorem taxes any improvements on real property providing housing which qualifies for federal Housing and Urban Development subsidies. The exemption must be based on the proportion of the number of subsidized units to total units on the property.

Lease-back and Lease Purchase Agreements (H. 3856, Rep. Houck). Under this bill, a lease-back or lease purchase agreement involving real property entered into by the State or its political subdivisions with a public or private entity constitutes general obligation debt for the lease period. This applies if the State or its political subdivision(s) is the lessee. General obligation debt incurred by this lease-leaseback or lease-purchase agreement may not violate debt limitations applicable to the State or its political subdivisions under Article 10 of the State Constitution.

School Property Tax Relief (H. 3872, Rep. Stuart). This bill allows a county to enact by ordinance a 1 percent sales and use tax on the gross proceeds of sales within the county, so as to provide relief from payment of property taxes for schools. This tax can be rescinded through referendum, which must be held if the county governing body by ordinance requests a referendum or upon filing with the county election commission a petition signed by at least 15 percent of the registered voters of the county at the last general election. The bill lists requirements for issuing notice about a referendum, certification of results, and the timetable for implementing the tax and holding another recision election if recision is not approved in the previous referendum.

Revenue remaining from the tax after deducting the amount of refunds and the cost to the Tax Commission of administering the tax must be credited to a separate fund in the State Treasury for that county. Revenue in the fund must be distributed quarterly to each school district in the county. The bill provides a formula for distributing the revenue. Additionally, the bill provides the formula by which a tax credit is granted against the school tax liability of every ad valorem taxpayer in a county which imposes this tax and lists the timetable under which this credit is applied to motor vehicles subject to payment of property taxes.

Payment of Health and Dental Coverage for Early Retirees (S. 177, Sen. Land). Current law requires a member of the State Retirement System who retires after 25 years and purchases additional service credit to also pay the employer and employee cost for health and dental insurance equal to the period of service credit purchased. This bill allows a member retiring under these circumstances to become eligible for employer-paid health and dental insurance upon reaching age 60.

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