

A4R
8. L33
V12/5
Copy 3



South Carolina House of Representatives

Legislative Update

S. C. STATE LIBRARY
FEB 24 1995
STATE DOCUMENTS

David H. Wilkins, Speaker of the House

Vol. 12

February 14, 1995

No. 5

CONTENTS

House Week in Review.....	2
Bills Introduced.....	4

OFFICE OF RESEARCH

Room 309, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803)734-3230

Legislative Update, February 14, 1995

House Week in Review

The issue of term limits, mostly dormant the preceding week, came back into focus the legislative week of February 7-9. H. 3281, a proposed constitutional amendment to limit terms of legislators and statewide-elected officials to 12 years' service, had received third reading on January 25, but had failed to achieve the two-thirds majority necessary to send the measure over to the Senate. The House later voted to recommit the measure to the Judiciary Committee, which in turn proposed making the limits retroactive to January 1995 for service by House members and statewide-elected officials and beginning in January 1997 for service by Senators. By voice vote, the House adopted the Judiciary Committee amendment. Following adoption of the amendment came numerous speeches and arguments for and against the proposal, with those in favor citing overwhelming public support for term limits while those opposed to the measure claiming that term limits were unnecessary (because of recent turnover in the General Assembly) and that if they were to be adopted, then the limits should include all prior service of legislators. After these spirited speeches, the House voted 86 to 22 to approve H. 3281---3 votes more than the 83 required for its passage. The measure now goes to the Senate for consideration. (If the General Assembly approves this term limits proposal, it would be submitted to the voters as a proposed constitutional amendment at the November 1996 general election.)

Following passage of H. 3281 Wednesday, the House took up H. 3158, a bill to exempt employees of the Lieutenant Governor's Office and certain employees of the statewide-elected constitutional offices from the State's Grievance Procedure. Supporters of the measure claimed that constitutional officers should have the right to bring in their staff and run their offices the way they see fit, while others expressed concern that the bill would expand political patronage and reduce the number of professional employees. After considerable debate, the House vote 68-36 in favor of this measure. The House then resumed debate on H. 3083, a proposed constitutional amendment to permanently bar persons convicted of felonies from being eligible for popular election to any state or local office. Supporters of the legislation claimed that public officials must be held to the highest of ethical standards because of the office they hold. Opponents, however, argued the measure was too harsh, with some urging that the prohibition against felons holding office apply to a more limited time period and others noting that while many persons have made errors and mistakes, many also have overcome these difficulties to become productive, law-abiding citizens. Amendments offered to allow felons to offer again for office after a

Legislative Update, February 14, 1995

specified time period or following a state or federal pardon were rejected, however, and late Wednesday afternoon the House voted 84-19 in favor of this proposed constitutional amendment.

While the three measures listed above took up the bulk of the House's time this past week, the House also passed several other measures. On voice vote, the House adopted H. 3505, which abolishes the state's vehicle safety inspection requirement. (A bill abolishing mandatory vehicle inspections also was approved by the House during the 1993-1994 session, but died in the Senate.) Among other measures adopted were H. 3033, which lowers from 72 to 65 the age by which one may vote by absentee ballot; H. 3060, which revises conditions for adoption by out-of-state residents; H. 3268, which includes murder of a witness or potential witness in a criminal trial as an aggravating circumstance when considering imposition of the death penalty; and H. 3271, which increases penalties for persons convicted of intimidating court officials, jurors or witnesses.

The House concluded the week by taking up H. 3338, a bill prohibiting election officials (such as members or employees of party executive committees, local or state election commissions, etc.) from receiving anything of value from candidates, political parties and others for purposes of seeking to affect an election outcome, requiring documentation of certain campaign expenses, and placing limits on reimbursement of persons who transport voters to the polls. Further consideration of this bill was interrupted by adjournment last Thursday.

Legislative Update, February 14, 1995

Bills Introduced

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

AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

Bird Sanctuaries (H. 3526, Rep. Jaskwhich). This bill declares the Rolling Green Retirement Community in Greenville County as a bird sanctuary.

Revised Shad Limits Season (H. 3527, Rep. Jennings). This bill moves back the beginning of the date of the general closed shad season from April 30 to May 31. The bill also revises the boundaries of the closed shad season on the Edisto River, such that this closed season runs April 15 to January 15 of the following year between the U.S. Highway 15 bridge at Canadys to the river's headwaters and from April 1 to the following January 15 from the Highway 15 bridge seaward.

Forms of Financial Assurance Required To Ensure Availability of Funds for Hazardous Waste Clean-Up Costs (H. 3549, Rep. Sharpe). This bill lists the forms of financial assurance a owner or operator of a hazardous waste facility can provide for purposes of required clean-up and restoration of environmental impairment arising from the facility. Under these provisions, the owner or operator may use (either alone or in combination) a standby trust fund; a surety bond guaranteeing payment into a clean-up trust fund and/or environmental impairment restoration trust fund; a surety bond guaranteeing performance of cleanup and/or environmental impairment restoration; clean-up and/or environmental impairment restoration letter of credit; clean-up and/or environmental impairment restoration insurance; or financial test and corporate guarantee of the owner, operator or corporate affiliate for clean-up and/or environmental impairment restoration.

Transportation of Spent Nuclear Fuel or High-Level Radioactive Waste on Roads and Railroads Prohibited Unless Environmental Impact Statement Has Been Prepared (H. 3553, Rep. Keyserling). This bill prohibits the transport

Legislative Update, February 14, 1995

of spent nuclear fuel and high-level radioactive waste on the roads or railroads of South Carolina unless the following conditions are met:

(1) An environmental impact statement has been prepared in accordance with the National Environmental Policy Act; and

(2) the Department of Health and Environmental Control has certified that the transport and storage of spent nuclear fuel and high-level radioactive waste in this State poses no significant risk to the health and safety of residents of South Carolina.

EDUCATION AND PUBLIC WORKS

Repeal of Mandatory Vehicle Safety Inspections (H. 3505, Education and Public Works Committee). This is a bill identical to H. 3213, introduced the first week of this session, which repeals the state's vehicle safety inspection requirement. (NOTE: H. 3505, as noted under this Update's "House Week in Review", was approved by the House this past week.)

High Schools Must Offer First and Second Year Spanish (H. 3530, Rep. Kennedy). This bill requires each public high school to offer first-year and second-year Spanish on campus as units which may be taken for purposes of meeting the State's 20-unit requirement for high school graduation.

Special Education Students Must Be Provided Individual Transition Plan (H. 3531, Rep. J. Brown). Under these provisions, beginning no later than age 16, special education students graduating from high school or otherwise exiting the public school system after entering high school must be provided an individual transition plan. This plan must outline "transition services" (i.e., coordinated set of activities promoting movement from school to post-school activities) so that students have adequate information, access to adult service agencies and a statement of interagency responsibilities or linkages which can provide assistive technology devices and services to them after exiting the public school system.

The bill also requires a community transition planning cooperative to be developed in each county or in a portion thereof which provides equitable coverage of the county's population. This cooperative must consist of the special education or transition teacher or the transition coordinator for the district, or both, along with the student, his parent or guardian, representatives from services agencies and businesses, and all other interested parties to ensure adequate transition services. The individual transition plan must be developed by the special education or transition teacher and discussed in coordination with this cooperative.

The bill defines "assistive technology devices" as items, equipment, etc. (such as wheelchairs, home and workplace modifications, etc.) used to increase, maintain or improve the functional capacities of individuals with disabilities.

Legislative Update, February 14, 1995

Additional Math and Science Units Required for Graduation (H. 3544, Rep. McTeer). Under current law, 20 units are required to obtain a state high school diploma, with a minimum of 3 units required in math and a minimum of 2 units required in science. If this bill is adopted, however, a minimum of 4 units in math and a minimum of 3 units in science would be required for graduation, beginning with the 1998-1999 school year. Additionally, beginning with that school year, students earning 2 units in science and a minimum of 6 units in a specific occupational service area would meet the science requirements for the high school diploma.

Enrollment in Kindergarten and First Grade (H. 3547, Rep. Meacham). This bill allows a parent or guardian whose child or ward will reach age 4, 5 or 6 before the end of December of a particular school year to enroll that child in 4 or 5-year-old kindergarten or first grade, as applicable, if, in the parent's or guardian's opinion, the child is physically and mentally able to enroll at that particular level. The decision of the parent or guardian in these circumstances cannot be overturned by a local school board of trustees, but the parent or guardian must sign a document with the governing body of the school district where the child will attend school. Once the document is signed by the parent or guardian, the child may attend the grade level as noted in the document.

Schoolhouse Safety Alliance Act of 1995 (H. 3550, Rep. Phillips). In 1994, the General Assembly approved a bill, H. 4414, designed to address the escalating problem of school safety. Known as the "Schoolhouse Safety Alliance Act," this bill was vetoed by then-Governor Campbell, who claimed the bill created too many bureaucracies and lacked the necessary funding for implementation. The General Assembly sustained his veto on January 17, 1995.

This legislation, although in a somewhat different form, has been reintroduced under H. 3550. A section by section summary of features of this bill is as follows:

(I) Collaboration to Prevent School Violence

---Establishes a Schoolhouse Safety Resource Center at the State Department of Education, for purposes of providing information and training to schools on the best methods of addressing school crime, strategies for collaboration with appropriate agencies, crisis management planning, and preparation for using the judicial system.

---Requires the Department of Education, through the Center, to collect data before implementation of model projects for prevention of school violence and implementation of case management teams. By December 1, 1997, the Department must complete an external evaluation identifying the best practices for addressing problems associated with school violence (along with documented evidence of best approaches); the best practices for addressing student violence in traditional school programs; and effective

Legislative Update, February 14, 1995

initiatives in prevention and intervention (including truancy prevention and review of the Education Improvement Act attendance requirements.

---Requires the State Department of Education, through the Center, to provide statewide school administrator training in best practices for addressing student violence and develop professional programs for faculty and designated staff of schools for school violence prevention.

---Requires the State Department of Education, in conjunction with boards of trustees of applicable school districts, to pilot different approaches for avoiding school violence by identifying cluster schools (both in urban and rural areas) in high crime areas to serve as model projects for prevention of school violence. Each cluster school is to implement a specialized method of intervention or prevention in this 3-year project. Provides for evaluation of the process after 3 years and also requires the State Law Enforcement Division to convene a School Violence Prevention Advisory Committee comprised of representatives of health and human agencies, family court and local law enforcement officials. This committee must select cluster schools to serve as pilot sites, provide training and technical assistance to these schools and monitor their progress.

---Requires each school district to institute at its schools case management teams consisting of teachers, parents, representatives of health and human service agencies and others to work as units on behalf of students with recurrent aggressive and violent behavior.

---Requires a cooperating team of representatives of local health and human service agencies in a county, including representatives of school districts within the county, to be convened by the sheriff's office in each county to coordinate services designed to prevent school violence.

---Directs the Department of Education, in conjunction with the Departments of Corrections and Juvenile Justice, to develop conflict resolution strategies to be taught to juveniles in confinement facilities.

(II) Parental Responsibility to Prevent School Violence

---Requires parents to participate in the case management of their children. A parent or guardian failing to comply with the request may be summoned to Family Court to explain the lack of participation, with failure to appear before that court punishable by contempt.

---Requires nonviolent living skills to be taught in parenting, family literacy and parental involvement programs mandated by the Early Childhood Development and Academic Assistance Act.

(III) Judicial Responses to School Violence

---Requires development and offering of continuing legal education seminars to attorneys in issues of youth violence.

Legislative Update, February 14, 1995

---Requires school officials to report serious offenses committed at school to law enforcement agencies.

---Establishes a "boot camp" approach for confined juveniles who are nonviolent offenders. The Family Court may order an otherwise eligible child who has been adjudicated for a nonviolent crime into this Special Alternative Confinement Unit for 120 days, with completion of the program a condition of probation, although the child may be released after 90 days for excellent behavior. Among other things, this program is designed to redirect juveniles into becoming law-abiding citizens, provide cost effectiveness through use of juvenile offender facilities that are less costly than traditional confinement facilities and by serving more offenders each year, and provide restitution to citizens by means of community service work performed by juveniles.

Minimum of 1 Credit Hour in Assistive Technology Training Required for Certain Recertification Requirements (H. 3551, Rep. J. Brown). This bill requires a minimum of 1 credit hour in assistive technology training to be included in recertification requirements for special education teachers and administrators. For purposes of these provisions, "assistive technology" means a device or service used to increase, maintain or improve the functional capacities of individuals with disabilities.

Special License Plates for Special Purpose District Commissioners (H. 3569, Rep. Rice). This bill authorizes the issuance of special license plates for private passenger vehicles of special purpose district commissioners. Only 1 plate may be issued to a commissioner, with the cost of the special license plate being \$30 biennially (in addition to the regular license plate fee).

Deletion of Draft Restrictions for Apprentice Branch Licenses (S. 313, Sen. McConnell). Current law sets draft restrictions for apprentice branch licenses in Charleston (with different licenses issued for drafts of 25, 30 and 35 feet). This bill deletes the draft restrictions for these licenses and directs the Commissioners on Pilotage to establish by regulation the tonnages and draft restrictions for each of the 4 short branch licenses.

JUDICIARY

Vehicle Forfeiture for Driving with Suspended License (H. 3500, Rep. Limehouse). This bill requires forfeiture of a motor vehicle upon a person's second or subsequent, as currently opposed to a fourth or subsequent, conviction within the last five years of operating a vehicle while having a canceled, suspended or revoked license. The bill also deletes a provision stating that forfeiture of a vehicle under these provisions is subordinate in priority to all valid liens. (A bill introduced earlier this session, H. 3306, also provides for vehicle forfeiture upon a second or subsequent

Legislative Update, February 14, 1995

conviction for driving a vehicle with a canceled, revoked or suspended license, but unlike H. 3500, H. 3306 also provides for vehicle forfeiture upon a second and subsequent conviction---as currently opposed to a fourth or subsequent conviction---for operating a motor vehicle within the last 10 years while under the influence of drugs or alcohol. H. 3306 also is currently pending before the House Judiciary Committee.)

Jury Lists To Be Prepared by State Election Commission from Names of Registered Voters (H. 3502, Rep. Jaskwich). Under current South Carolina law, jury lists for each county are prepared by merging a list of persons 18 and older with South Carolina driver's licenses or identification cards with a list of persons registered to vote in the county. If this bill is adopted, however, jury lists would be composed solely of the registered voters in each county. The jury list for a county would continue to be derived from these two lists (i.e., driver's licenses/identification and registered voters) until December of this year, at which time the jury list must be derived solely from the county's registered voters. (This is identical to H. 3057, introduced earlier in the session and currently pending in the House Judiciary Committee, except that under H. 3057 provisions requiring jury list preparation solely from lists of registered voters would be effective immediately upon approval by the governor, in contrast to the December deadline under H. 3502.)

Lower Percentage of Registered Voters Required to Petition for Repeal of Certain County Ordinances (H. 3503, Rep. Sharpe). Current law allows for filing of a petition seeking repeal of an ordinance enacted by county council which authorizes issuance of debt, if repayment of such debt requires a pledge of the full faith and credit of the county or the approval of issuance of bonds by a public service district within the county. This bill lowers from 15 percent to 7 percent the minimum percentage of registered voters of the county (or, as pertains to issuance of bonds by the district, of the public service district) required to sign the petition for purposes of filing a petition seeking repeal and extends from the current 60 days to 120 days the time period following enactment of the ordinance during which a petition seeking repeal of the ordinance may be filed with the clerk of county council.

Indigent Defense in Child Delinquency Hearings (H. 3504, Rep. Delleney). This bill provides that in determining indigence for the purpose of appointing legal counsel for a child in a delinquency proceeding, the court must determine the financial ability of the child's parents to retain counsel for that child. If the court determines the parents are able to retain counsel for the child, but the parents refuse to retain counsel and the court appoints counsel, then the parents must reimburse the Indigent Defense Fund. The amount of this reimbursement is to be determined by the court.

Procedures for Casting Write-in Votes for President and Vice President (H. 3513, Rep. Wilder). This bill deletes the prohibition against allowing write-in votes for president and vice president and lists a procedure for

Legislative Update, February 14, 1995

casting such votes. Under these provisions, anyone wishing to run for president and vice president at the general election as write-in candidates must file a declaration of intent to be a write-in candidate, along with a list of presidential electors pledged to those candidates. The declaration and list must be filed with the State Election Commission at least 30 days before the general election for those offices. Any write-in votes cast for president and vice president for persons who have not complied with this filing requirement cannot be tallied and are invalid votes. The bill also requires county election commissions to provide to precinct election officers certified lists of persons who have filed declarations of intent.

Filing and Recording of Plats Referenced in Instruments Conveying and Interest or Creating a Lien on Real Property (H. 3514, Rep. Wilder). This bill requires all plats referenced in a deed, mortgage or other instrument conveying an interest in or creating a lien on real property to be filed and recorded in the office of the register of mesne conveyances of the county in which all or a portion of the property is located. If a county does not have a register of mesne conveyances, then the plat must be filed and recorded in the office of the county clerk of court.

Distribution of Advance Sheets of Statutes and Code of Laws to Additional Persons (H. 3515, Rep. Harrison). This bill expands the list of persons and entities to whom advance sheets of statutes must be distributed so as to include the judges and clerk of the Administrative Law Judge Division, the Chief Insurance Commissioner, and Director of the Department of Public Safety. The bill also expands the list of persons and entities to whom must be given sets of the State's Code of Laws, so as to include a set for each of the 5 judges of the Court of Appeals, 9 sets for the Administrative Law Judge Division, and 1 set for Coastal Carolina University.

Member of General Assembly Offering for Position Filled by Election of the General Assembly Must Resign Seat or Withdraw Application for Post Within 24 Hours of Screening Report (H. 3516, Rep. Harrison). This bill requires any legislator seeking an office filled by election of the General Assembly to either resign his legislative seat or withdraw his application for the office he is seeking within 24 hours of publication of the screening committee report in the House Journal or Senate Journal (whichever is earlier). A legislator failing to resign within that 24-hour period is considered to have withdrawn his application for the position he seeks. A legislator also is prohibited from soliciting the vote of another member for the office being sought during the period between notification to the candidate of the screening committee report and his decision either to seek the office or remain in the General Assembly. The bill also repeals provisions which prohibit legislators from being elected to the Administrative Law Judge Division or the Public Service Commission while serving as legislators and for 4 years after ceasing to be legislators.

Candidates Must Verify Residency (H. 3529, Rep. Byrd). This bill requires a political party nominating a candidate or a petition candidate

Legislative Update, February 14, 1995

to verify, under oath to a notary, the residency of the candidate. Verification must be to the entity who by law is required to accept the petition or with whom the political party candidate must file.

Roller Skating Liability Immunity (H. 3532, Rep. Wright). This bill establishes for the operator of a roller skating rink immunity from liability for injuries or death to a person engaged in roller skating and provides the manner in which this is to be observed.

The bill lists responsibilities for operators, roller skaters and spectators in providing safety at these rinks. The operator is required to maintain the facility in a safe condition (as examples, maintenance, cleaning and inspection of the skating surface, inspection of rental roller skates regularly, compliance with fire codes); post the duties of roller skaters and spectators and the operator's duties, liabilities and obligations; and provide at least 1 floor supervisor on duty for approximately every 200 skaters when the rink is open for sessions. Skaters must also abide by a number of safety requirements (such as reasonably controlling their speed, knowing their range of ability, and looking out for other persons and objects), as must spectators. The operator is not liable for any injury to or death of a roller skater or spectator resulting from the inherent risk of roller skating, unless the operator failed to observe the safety/maintenance requirements of these provisions, committed an act or omission of wanton disregard for the safety of the skater or spectator and which caused the injury or death, or intentionally injured the skater or spectator.

The operator must post and maintain signs within the rink which inform skaters and spectators of the operator's immunity for an injury or death sustained by a skater or spectator. Failure to post these warnings prevents an operator from invoking immunity. However, an operator's failure to abide by the safety/maintenance requirements imposed under these provisions does not constitute negligence.

For purposes of this bill, "inherent risk of roller skating" consists of those dangers or risks which are an integral part of roller skating (such as injuries from falls caused by loss of balance or contact with other skaters or spectators). If adopted, these provisions would apply only to causes of actions arising on or after the effective date of these provisions.

Transfer of Juvenile Jurisdiction (H. 3535, Rep. Delleney). This bill requires the Family Court to transfer jurisdiction of a child age 14 or older to a court which would have trial jurisdiction of the offense if committed by an adult if the child:

(1) is charged with an offense which, if committed by an adult, provides for imprisonment of at least 10 years, and

(2) has previously been adjudicated delinquent in Family Court or convicted in Circuit Court for 2 prior offenses which, if committed by an adult, carry that same sentence (i.e., 10 years or more).

Legislative Update, February 14, 1995

Abolishment of Office of Secretary of State (H. 3546, Rep. McTeer).

This is a proposed constitutional amendment to abolish the Office of Secretary of State, with the office abolished as of the end of the term of the incumbent holding this position on the date this constitutional amendment is ratified. The functions and duties of this office would be devolved upon remaining state constitutional offices in the manner the General Assembly directs by law. If this joint resolution is approved by the General Assembly (requires 83 votes in the House and 31 votes in the Senate), then it would be submitted to the voters as a proposed constitutional amendment at the November 1996 general election.

Use of Acknowledgments for Recording of Deeds (H. 3548, Rep. McElveen). For purposes of meeting prerequisites for recording of deeds or other instruments in writing, this bill provides that a statutory short form of acknowledgement also may be used where the instrument is acknowledged by the grantor or maker.

Motor Vehicle Damage Disclosure Act (H. 3552, Rep. Jennings). This bill requires motor vehicle manufacturers and dealers to make disclosures pertaining to damages of new motor vehicles.

Under these provisions, a motor vehicle manufacturer must disclose in writing to a motor vehicle dealer at the time of delivery of a new motor vehicle any damages or repairs to the new vehicle which occurred while the vehicle was in possession or under control of the manufacturer. This information is only required, however, if the damage exceeds 3 percent of the manufacturer's suggested retail price, as calculated at the rate of the dealer's authorized warranty rate for labor and parts; furthermore, the manufacturer need not disclose to a dealer that the glass, tires, bumper or in-dash equipment of or in a motor vehicle was damaged if the damaged item has been replaced with original or comparable new equipment. The motor vehicle dealer also must disclose this information in writing to a purchaser of a new motor vehicle before entering into a sales contract, under these same conditions (i.e., only if damage exceeds 3 percent of the manufacturer's retail price and certain equipment has been replaced with comparable or original parts). If disclosure is not required under these provisions, then a purchaser cannot revoke or rescind a sales contract or bring a civil action based solely on the fact that the new vehicle was damaged and repaired before completion of the sale.

Under these provisions, "manufacturer's suggested retail price" is the retail price of the new motor vehicle suggested by the manufacturer, including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new vehicle at time of delivery to the dealer.

Number of Family Court Judges in 14th Judicial Circuit (H. 3558, Rep. White). Current law prohibits any county in the 6th Judicial Circuit (Chester, Fairfield and Lancaster Counties) from having more than 1 resident Family Court judge. This bill would prohibit any county in the 14th Judicial

Legislative Update, February 14, 1995

Circuit (Allendale, Beaufort, Colleton, Hampton and Jasper Counties) also from having more than 1 resident Family Court judge, but these provisions do not preclude the re-election of any incumbent Family Court judge if such re-election would result in more than 1 resident Family Court judge from a particular county in either the 6th or 14th Circuits.

Compliance with 1993 National Voter Registration Act (H. 3559, Rep. Rogers). At the end of the 1994 legislative session, the General Assembly passed a bill, H. 3385, to bring South Carolina into compliance with the 1993 National Voter Registration Act (more commonly known as the federal "motor voter" act). This national act was enacted to make it easier for persons to register to vote by expanding the number of places at which voter registration activities are to be conducted. Under H. 3385, a number of state agencies were designated as locations where voter registration was to take place. However, then-Governor Campbell vetoed the measure. He cited the national act as an unconstitutional exercise of federal power and was critical of the lack of federal funding to impose the provisions of this act in South Carolina. The governor also expressed concern that passage of H. 3385 could increase chances of election fraud in this state, as registration activities at these numerous additional locations would be virtually impossible to police. On Tuesday, January 17, the House sustained the veto, with 44 voting to override the veto and 67 voting to sustain the veto.

Legislation to bring South Carolina into compliance with the federal "motor voter" act has been introduced again this session, under H. 3559. This bill contains many identical provisions listed in H. 3385 of the previous session. Like H. 3385, H. 3559 allows persons to register to vote when they apply for various services provided by the State. The bill designates the following agencies as voter registration agencies, which must perform registration services in addition to their regular duties: (1) Department of Social Services; (2) Department of Health and Environmental Control---WIC program; (3) Department of Disabilities and Special Needs; (4) Commission for the Blind; (5) Department of Vocational Rehabilitation; (6) South Carolina Protection and Advocacy System for the Handicapped; and (7) Armed Forces recruiting offices. The agencies must make available the following services---(1) offering voter registration application forms to their clients; (2) assistance to applicants in completing these forms (unless the applicant refuses such assistance); and (3) acceptance of completed applications. If an agency provides home services to a person with a disability, then the same registration services must be made available at the person's home. An employee at a state agency who provides these services (1) may not seek to influence an applicant's political preference; (2) display a political preference or party allegiance; (3) discourage the applicant from registering to vote; or (4) give the impression that a decision to register will have any bearing on any available services or benefits. No information relating to refusal to register to vote at these offices can be used for any other purpose other than voter registration.

A completed registration application accepted at a voter registration agency must be transmitted to the county board of voter registration no

Legislative Update, February 14, 1995

later than 10 days after acceptance. Each state motor vehicle driver's license application, including renewal applications, submitted to the Department of Revenue and Taxation, Division of Motor Vehicles, serves as an application for voter registration unless the applicant fails to sign the voter registration application.

The bill also prohibits the State Election Commission from removing the name of a registered voter from the official list of registered voters except (1) at the request of the voter; (2) as adjudicated by a court of competent jurisdiction; or (3) death or change of residence of the voter. Additionally, the Commission may remove the voter's name after (in a 2-step process) the voter fails to respond to a notice (prepaid, preaddressed card asking for a current address) and then fails to vote in the 2 following general elections. A qualified voter who fails to notify his county board of voter registration when moving to an address in the same precinct nonetheless can still vote upon oral or written affirmation before an election official at the polling place. If a voter moves from one precinct to another but still resides in the same county, and did not notify the voter registration board prior to the election, then he may vote by challenged ballot at his former polling place with a written or oral affirmation of this new address. In the alternative, he may vote at a central location of the county board of voter registration.

The bill designates the executive director of the State Election Commission as the chief state election official responsible for implementing and coordinating the state's responsibilities under the federal "motor voter" act and allows a candidate to protest an election in which he is a candidate when the protest is based in whole or in part on evidence discovered after the election.

Juvenile Justice Code (H. 3566, Rep. Harrison). This bill enacts the "Juvenile Justice Code" through consolidation into 1 article of all provisions of law relating to the Department of Justice and delinquency proceedings and procedures as currently appear in the State's Code of Laws (Title 20, Chapter 7).

LABOR, COMMERCE AND INDUSTRY

Changes to South Carolina Property and Casualty Association Act (H. 3518, Rep. Richardson). This bill revises the definition of "covered claim" pursuant to the South Carolina Property and Casualty Association Act so as to include a claim for first-party benefits for damage to property permanently located in South Carolina. The bill also requires claimants, whether persons or entities, pursuant to that Act to first exhaust its remedies against the association of the place of residence of the insured. Any recovery under the Act must be reduced by the statutory cap applicable to the other insurance guaranty association or its equivalent (as opposed

Legislative Update, February 14, 1995

to the current requirement that recovery be reduced by the amount of recovery obtained from that association or its equivalent).

Coverage of Motor Vehicle Services under Workers' Compensation Law (H. 3536, Rep. Cato). Under these provisions, any individual owning a motor vehicle or holding a vehicle under lease and who, under written contract or lease, provides that vehicle and services of a driver to a motor carrier, must be considered an independent contractor and not an employee of the motor carrier for purposes of the State's Worker's Compensation Law. Additionally, no persons or entity engaged by that individual may recover from the motor carrier pursuant to the workers' compensation law. The individual, as an independent contractor, can choose to participate in South Carolina's Workers Compensation Law, or as an alternative, the individual and motor carrier to whom the individual leases the motor vehicle may mutually agree that the individual and anyone engaged by him will be covered under the motor carrier's worker's compensation policy or authorized self insurance. If this mutual agreement is reached, the individual must agree to pay the contract amounts requested by the motor carrier, with the individual and person engaged by him under such agreement to be considered employees of the motor carrier only for purposes of the State's Workers' Compensation Law and not for any other purposes.

Notice of Renewal of Accident and Health Insurance Policies (H. 3537, Rep. Harvin). This bill is identical to H. 3440, introduced the preceding week and referred also to the House Labor, Commerce and Industry Committee, which requires notice for renewal of individual and group accident and health insurance policies to be given to the policyholder at least 60 days before the policy's anniversary date. Also, like H. 3440, H. 3537 increases from 31 to 60 days the minimum written notice an insurer must give to an insured when intending not to renew the insured's accident and health insurance policies.

Refunds for Overcharges Resulting from Use of Optical Scanner (H. 3554, Rep. Klauber). This bill provides that if an optical scanner used by a retail vendor overcharges for an item purchased, then the purchaser is entitled to a refund equal to the lesser of three times the purchase price of the item or five dollars (\$5.00). Any retail dealer who refuses to pay this refund upon demand by the purchaser is subject to a civil penalty of \$100 for each violation, which may be imposed by and must be paid to the Department of Consumer Affairs.

Civic Organizations Which Are Tax Exempt Under Federal Internal Revenue Code Not Required To File Registration Statements with the Secretary of State (H. 3557, Rep. Kirsh). This bill exempts any civic organization which is tax-exempt under Section 501(c)(4) of the federal Internal Revenue Code from being required to file a registration statement with the Secretary of State pursuant to the State's Solicitation of Charitable Funds Act.

Repeal of Provisions Requiring Banking Institutions To Publish Certain Reports (H. 3560, Rep. Cato). This bill deletes provisions which require

Legislative Update, February 14, 1995

banks and other institutions which lend money and receive deposits under authority of the State to publish reports of condition or statements of assets and liabilities in newspapers where the institution was established and to forward copies of these statements to the State Board of Financial Institutions.

Temporary Disability Payments (H. 3561, Rep. Cato). Under these provisions, when an employee has been out of work for 8 days because of a reported work-related injury or occupational disease, the employer may begin temporary total disability payments immediately. These payments may continue for up to 120 days without waiver of any grounds for denial of a claim as may appear following a good faith investigation.

The bill also provides conditions for immediate termination or suspension of payment of temporary disability benefits. Under these provisions, those payments may be terminated or suspended immediately if the employee has returned to work or agrees he is able to return to work and executes a form indicating such ability to return to work. Additionally, payments can be terminated or suspended during the 120-day period if a good faith investigation reveals grounds for denial of the claim.

The bill further provides for termination or suspension of these benefits if:

(1) the employee has been released by the treating physician to work, and the employer provides work consistent with the terms upon which the employee has been released, but the employee refuses to return to work;

(2) the employee has been released by the treating physician to limited duty work, and the employer provides limited duty work consistent with terms upon which the employee has been released, but the employee refuses to accept this limited duty work or to return to work.

Additionally, an employee who refuses medical treatment or an examination or evaluation is not entitled to compensation benefits during the period of such refusal. However, an employee may request a hearing for reinstatement of temporary compensation after termination.

The bill also changes provisions pertaining to penalties for carriers or employers who violate these requirements, such that violation may result in a penalty not exceeding 25 percent of benefits withheld (as currently opposed to a mandatory 25 percent penalty).

Presumption of Disability for Loss of Use of Back in Workers' Compensation Cases (H. 3562, Rep. Cato). This bill provides that when a person has 50 percent or more loss of use of his back, then he is presumed, as currently opposed to "deemed", to have suffered total and permanent disability, thus eligible for workers compensation benefits. The bill also specifies that a presumption of total and permanent disability because of 50 percent or more loss of use of the back may be rebutted by a preponderance of the evidence.

Legislative Update, February 14, 1995

Definition of "Accidental Injury" Includes Mental Illness only in Specified Circumstances (H. 3563, Rep. Cato). Under these provisions, mental illness resulting from work-related stress is considered an accidental injury arising out of and in the course of employment only if there is clear and convincing evidence of all 3 of the following factors:

(1) the stressful employment conditions causing the mental injury were extraordinary and unusual in comparison to pressures and tensions experienced by individuals performing similar work;

(2) the stressful employment conditions were the predominant cause of the mental injury; and

(3) the mental injury was caused by stressful employment conditions which exist in a real and objective sense.

A determination of mental injury, its cause and resulting disability or need for medical treatment must be supported by clear and convincing psychiatric evidence.

The bill further provides that a mental injury is not considered compensable if it results from a verbal disagreement with an employer or a coemployee, or if it results from an employer's personnel decision (such as termination of employment or salary review).

Workers Compensation Reforms (H. 3564, Rep. Cato). This bill includes a number of provisions for reforming aspects of the State's Workers Compensation System, with portions of this legislation introduced also as separate legislation under H. 3561, 3562, 3563 and 3565, as follows:

---States that a person with 50 percent or more loss of back is presumed to have suffered total and permanent disability, with this presumption rebuttable by preponderance of the evidence (same provisions as in H. 3562).

---Lists conditions under which mental illness resulting from work-related stress is compensable under the Worker's Compensation System (same as in H. 3563).

---Lists conditions under which temporary total disability payments may be begun immediately and provides that these payments may be terminated or suspended immediately if the employee has returned to work or is able to return to work (including limited duty work) but refuses to do so (same as in H. 3561).

---Provides means for calculating "average weekly wage" for purposes of Workers' Compensation payments; prohibits authorized health care providers from actively pursuing collection procedures against worker's compensation claimants under certain conditions (for example, if pursued prior to final adjudication of the claimant's claim); and revises procedures under which workplace injuries must be reported to the Worker's Compensation Commission (same as in H. 3565).

Legislative Update, February 14, 1995

Reforms to Workers Compensation Law (H. 3565, Rep. Cato). This bill makes several changes to the State's Worker's Compensation Law, as follows:

---Provides that "average weekly wage" for purposes of this law must be calculated by taking total wages paid for the last 4 quarters immediately preceding the quarter when the injury occurred, as reported on the Employment Security Commission's Employer Contribution Reports, divided by 52 or the actual number of weeks for which wages were paid, whichever is less. Deletes provisions pertaining to calculations of earnings of injured employees losing more than a certain number of days during a period.

---Makes it unlawful for an authorized health care provider to actively pursue collection procedures against a worker's compensation claimant:

- (1) prior to final adjudication of the claimant's claim; or
- (2) for charges in excess of the fee or charge provided by the Workers Compensation Commission's applicable fee or charge schedule, or to charge any fee or charge in excess of any fee or charge provided by such schedule.

Violation of either (1) or (2) results in a penalty of \$500 payable to the workers' compensation claimant.

---Requires payment to an authorized health care provider for services to be made no later than 30 days from the date the provider tenders request for payment to the employer's representative, unless the Commission has received a request to review the medical bill.

---Revises reporting of workplace injuries to the Commission. If an injury requires minimal medical attention at a cost not to exceed an amount specified by regulation of the Commission and does not cause more than 1 lost workday or permanency, then the employer is not required to file a report with the Commission or their insurance carrier. However, an injury for which there is no compensable lost time or permanency and the medical treatment does not exceed that specified by Commission regulation must be reported annually to the Commission, while injuries involving lost time, medical attention in excess of limit prescribed by Commission regulation or the possibility of permanency must be reported within 10 business days after the occurrence of the injury.

Issuance of Alcoholic Beverage Permits and Licenses to Persons within 3rd Degree of Kinship (H. 3567, Rep. Quinn). This bill deletes the prohibition against issuance of a beer, wine or alcoholic beverage permit or license to a person within the 3rd degree of kinship to a person whose license or permit for the premises was suspended.

Alcoholic Beverage Permits (H. 3570, Rep. Knotts). This bill makes an alcoholic beverage retail dealer's license transferable by sale, will or operation of law. The retail license may be moved to a new location provided the location does not violate current prohibition against being within a certain distance of a church, school or playground, has the approval of the Department of Revenue and Taxation, and if the new location in a

Legislative Update, February 14, 1995

municipality is not within a radius of 1,500 yards of an existing location or within 2,000 yards of an existing location in an unincorporated area. Removal to a new location is subject to public notice requirement.

The bill also increases the cost of a biennial retail dealer's license from \$1,200 to \$2,400 and prohibits more than 1 retail dealer's license from being issued for each 5,000 or major fraction of 5,000 of a county's population; however, a decline in county population does not reduce the number of retail licenses allowed under these provisions. If a municipality in the county does not have a location with a retail license within its municipal boundaries, then 1 retail license is allowed for that municipality, regardless of the county limitation listed here. Any retail dealer's license in effect on July 1, 1995 may be renewed also without regard to this limitation. If the number of applicants for a retail license exceeds the number of licenses available, then the Department must choose licensees by lot.

Definition of "Trademark" Includes Symbol of International Olympic Committee and Emblem of U.S. Olympic Committee (S. 312, Sen. Alexander). This bill expands the state's statutory definition of "trademark" to include the symbol, emblem, sign, insignia or any combination of these of the U.S. Olympic Committee or the International Olympic Committee.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Referral of Children to Agencies for Assistive Technology Evaluation (H. 3501, Rep. J. Brown). This bill allows the Department of Health and Environmental Control (DHEC) or any person conducting an early periodic screening, diagnosis and treatment screening or another physical examination of a child to refer the child to an appropriate agency for an assistive technology examination if it is determined that the child could benefit from use of assistive technology. The bill defines "assistive technology" as a device or service used to increase, maintain or improve the functional capacities of an individual with a disability.

Certain Entities To Conduct Public Hearings Before Adopting Annual Budget (H. 3556, Rep. Fair). This bill requires the governing body of a county, municipality, special purpose or public service district, or autonomous school district to conduct a public hearing before adoption of its annual budget. This hearing must be advertised in a newspaper of general circulation in the county where the public entity is located.

Verification of Eligibility for Public Housing Programs (H. 3573, Rep. Klauber). This bill allows a public housing authority to obtain information from the Department of Revenue and Taxation and the Employment Security Commission for purposes of verifying a person's eligibility for a public housing program. Additionally, when the Employment Security Commission

Legislative Update, February 14, 1995

receives this request from a public housing authority, the Commission must provide a listing of the current employer and previous employers for the previous 8 calendar quarters.

WAYS AND MEANS

Conditions Under Which Owner-Occupied Property Qualifies for 4 Percent Assessment Ratio (H. 3533, Rep. Rogers). This bill provides that owner-occupied residential property qualifies for the special 4 percent assessment ratio if the owner occupied the property for some period during the tax year prior to the date of application and remains an owner-occupant at the time of application. However, if new or renovated residential property has been certified for occupancy after the beginning of a tax year, then the property must be assessed at the 6 percent ratio (i.e., taxed on assessment equal to 6 percent of the property's fair market value).

Enterprise Zone Act of 1995 (H. 3534, Rep. Wilkins). This bill provides for the establishment of "enterprise zones" in South Carolina, with the goal of creating jobs in distressed areas which otherwise would not be created and bolstering state and local tax revenues.

On an annual basis, by December 31, the Coordinating Council for Economic Development (hereafter called "Council") must designate enterprise zones. The bill lists criteria for designation as such a zone; as examples, a zone may consist of a census tract in which the median household income is 80 percent or less of the state average or at least 20 percent of the households are below the poverty level, or may be located in a federal military installation closed or designated for closure in 1991 or later. In order for a business located within an enterprise zone to qualify for zone incentives, the business must be engaged in a business of the type qualifying for the jobs tax credit (such as tourism, manufacturing, distribution facilities, etc.), must provide a benefits package to full-time employees which includes health care and must enter into a revitalization agreement approved by the Council. The Council must certify that available incentives are appropriate for the specific project and must certify to the Department of Revenue and Taxation that total benefits of the project exceed the costs to the public and that the business otherwise fulfills the requirements of this act. The council also must enter into a revitalization agreement with each qualifying business with respect to the project, with the agreement setting a date by which the qualifying business must have completed the project.

Any qualifying business locating in an enterprise zone is eligible to enter into a fee-in-lieu of taxes agreement and may use special source revenue bonds. Additionally, the business is entitled, upon meeting certain conditions, to the maximum jobs tax credit (currently \$1,000 annually for each full-time employee) and an additional \$500 a year tax credit in certain

Legislative Update, February 14, 1995

years of employment of an AFDC recipient with the business. A qualifying business may require, as condition of employment, that each person whose job was created or retained because of the project agree to deduct and withhold in an escrow account a job development fee. The deduction may not exceed 5 percent of gross wages paid to the employee by the business, with the deduction being on a sliding scale; as examples, not more than 2 percent may be withheld if the employee's gross wages are between \$6.00 and \$7.99 an hour, while not more than 5 percent can be withheld if the gross wages are \$15 or more an hour. These hourly gross wage figures must be adjusted annually for inflation. Each qualifying business collecting a job development fee is entitled a credit against state withholding tax liability. Qualifying businesses can collect these assessments for up to 15 years and may expend these funds for such purposes as utility improvements and training costs and facilities. Any existing business within an enterprise zone may negotiate with the Council for withholding of job development fees of up to \$500 an employee a year for retraining production employees. Each employee under these provisions assessed a job development fee is allowed a state income tax credit and credit against his withholding tax liability equal to 100 percent of the job development fee withheld from his wages during the calendar year.

The bill provides that if a qualifying business fails to achieve the level of capital investment or employment anticipated at the time the council agreed to finance the project, then the Department of Revenue and Taxation may cancel the revitalization agreement and reduce or suspend all or part of the incentives until the time the anticipated capital investment and employment levels are met.

The Council must promulgate criteria for determination and selection of qualifying businesses and the approval or projects proposed by the companies. The council must require as a condition for designation as a qualifying business that the average hourly wage for full-time hourly wage-paid employees at the project be at least \$8.00/hourly or that average total compensation (including benefits) for the project's full-time employees be at least \$10/hourly.

Appropriation of Surplus FY 1993-1994 Revenues for Rehabilitation Facility for Alcohol and Drug Abuse (H. 3543, Rep. Littlejohn). This joint resolution appropriates \$350,000 of Fiscal Year 1993-1994 surplus revenues for the construction of a rehabilitation facility for alcohol and drug abuse treatment in Spartanburg County.

Charges for 911 Emergency Service (H. 3545, Rep. Mcteer). Current law provides for maximum charges that can be charged to subscribers when a county imposes a 911 emergency telephone system, with start-up costs including up to a maximum of 50 local exchange lines an account. This bill allows a county governing body to impose on subscribers with 10 or fewer local exchange lines a charge which is less than that imposed on other subscribers.

Legislative Update, February 14, 1995

Portion of Gasoline Tax To Be Dedicated Exclusively to Transportation Purposes (H. 3555, Rep. Keegan). Under current law, 10.34 cents of the 16 cent per gallon state gasoline tax is distributed as follows: 9.34 cents to the Department of Transportation (for the department's purposes) and 1 cent to the credit of the state's general fund. If this bill is adopted, however, the 1 cent per gallon allotted to the state's general fund would be deleted, so that all 10.34 cents is turned over to the Department of Transportation, for transportation purposes.

Judicial Department Must Satisfy Outstanding Awards of Attorney Fees or Expenses in Death Penalty Cases (H. 3568, Rep. Hutson). This bill requires the State's Judicial Department to assume responsibility for covering an indigent's defense cost in a death penalty case upon exhaustion of the funds of the Office of Indigent Defense. The bill also increases from \$2,500 to \$20,000 the maximum funding to be provided by that office for investigative or other services necessary for defense of an indigent in a death penalty case, with costs running above the maximum amount to be assumed by the State's Judicial Department. Funding for the Judicial Department's assumption of these financial responsibilities is from amounts provided to the Department in the annual general appropriations act. Finally, on a biennial basis, the Judicial Department must develop and make available to the public a list of standard fees and expenses associated with defense of an indigent in a death penalty case.

Reduced Interest Rates for Overpayment or Underpayment of Property Taxes (H. 3571, Rep. Littlejohn). This bill reduces from 1 percent monthly to 0.67 percent monthly the interest rate imposed on underpayments and overpayments of property taxes pursuant to appeals of property valuations and provides that a taxpayer due a refund because of overvaluation of his property may waive his right to receive interest on the overpayment. This interest rate reduction applies to property tax appeals first filed after June of 1995, although the provision allowing the taxpayer to waive receipt of interest on the overpayment takes effect upon approval by the governor.

Increase in Homestead Exemption from \$20,000 to \$40,000 (H. 3572, Rep. Littlejohn). This bill would increase the homestead exemption from \$20,000 to \$40,000, with the exemption phased in over 4 years as follows: \$25,000 for property tax year 1995; \$30,000 for property tax year 1996; \$35,000 for property tax year 1997; and \$40,000 for property tax year 1998 and years thereafter.

WITHOUT REFERENCE

Distribution of Court Fines (H. 3517, Rep. Hodges). Last year, the General Assembly approved a permanent proviso (Part 2, Section 36) in the Fiscal Year 1994-1995 General Appropriations Act which provided for distribution of fees, fines and penalties generated by the Circuit Courts

Legislative Update, February 14, 1995

and Family Courts and imposed assessments on persons pleading guilty to or convicted of offenses before these courts. This bill makes several changes pertaining to these fines and other matters, as follows:

---Deletes provisions pertaining to imposition of assessments on persons convicted for offenses tried in Family Court.

---Provides that one-third of the fine collected from a person convicted of operating a lottery must be paid to the person (if any) who informed law enforcement officials or other appropriate authorities about the violation which led to the conviction.

---Specifies that the 25 percent of funds collected from disposition of revenue from bond forfeitures which are deposited in the State's General Fund must be transmitted to the State Treasurer on forms and in a manner he proscribes.

---Deletes provisions under which fines collected for firearms violations are delivered to the municipality (if the violation occurred there) or to the county treasurer (if the violation occurred outside the municipality).

---Deletes a provision under which no court costs can be assessed against a person convicted of violating the mandatory seat belt law.

---Repeals provisions pertaining to payment and distribution of assessments and restitution charges pursuant to the State's Community Corrections Plan and provisions pertaining to disposition of fines for cruelty to animals.

Expansion of Spartanburg County Commission for Higher Education (H. 3528, Rep. Wells). This bill would expand the size of the 15-member Spartanburg County Commission for Higher Education to include an additional member from Greenville County and an additional member from Cherokee County, with these two additional members appointed by the governor upon recommendation of a majority of the resident members of the Spartanburg County legislative delegation.

Berkeley County Power Service Area (S. 442, Sen. Rose). This is the companion bill to H. 3449, passed by the House last week, revising the number of the Public Service Authority map of Berkeley County required to be filed with that county and Secretary of State (this map delineates the areas of Berkeley County not within the service area of the Public Service Authority).

Total copies 570
Total cost \$ 319.20
Cost per copy \$.56
Date 2-14-95
S. C. Legislative Council