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South Carolina House of Representatives

Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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STATE DOCUMENTS

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House Week in Review

The first bill of the 108th General Assembly was enrolled for ratification last week, and the State Senate joined House members on Wednesday to hear the annual State of the State address.

First Bill Ratified

The first bill to be ratified this session S.2, which gives the go ahead for construction of the new Lee County correctional facility, was enrolled for ratification last Thursday. S.2 is the companion bill to H.3110, passed by the House the first week of the session.

The joint resolution directs the State Budget and Control Board and the Corrections Department to begin the design and construction of the new 1,200 bed prison in Lee County. This new prison will replace the Central Correctional Institute in Columbia.

The resolution authorizes the cost of the new \$50 million state prison to be financed through \$24 million in state capital improvement bonds with the balance coming from other sources, such as the Capital Reserve Fund, surplus funds and the sale of the CCI property.

Constitutional Convention Call

After a brief debate, the House adopted a concurrent resolution rescinding the May 1978 vote calling for a national constitutional convention to adopt a federal balanced budget amendment.

Throughout the country, state Legislatures are considering their positions on the call for a national constitutional convention. This week's *Legislative Update* has a background report on this issue.

State of the State

The House spent most of its second week in committee meetings and filing bills. Wednesday night, however, House members gathered to hear Gov. Campbell's 45 minute State of the State address, in which the governor outlined his priorities for the 1989 session.

Bills Introduced

Here is a sampling of the bills introduced in the House last week. Not all of the bills introduced are featured here. The bills are organized by the standing committees to which they were referred.

Agriculture and Natural Resources Committee

Freshwater Wetlands Protection Act (H.3220, Rep. Snow). This lengthy legislation would regulate the use of the state's freshwater wetlands. Permits, issued by the state Water Resources Commission, would be required for any activity in a wetlands protected area except for exemptions outlined in the bill. These exemptions include, in part, normal farming activities, normal silviculture (forestry) activities, routine maintenance of state-owned roads, duck blinds, any emergency activity, and installation of utility lines, among others. The bill outlines the procedures the Water Resources Commission must follow when approving or denying permitting applications. Those violating this proposed statute would face up to six months of imprisonment and/or a \$5,000 fine for the first offense. Each subsequent offense would carry up to a year in jail and/or a \$10,000 fine. An inventory of the state's freshwater wetlands is directed by the bill. This law would take effect 90 days after signature by the governor, if enacted.

South Carolina Hazardous Waste Disposal Authority (H.3234, Rep. McLeod). This bill would create the seven-member state Hazardous Waste Disposal Authority, which would oversee the operation of hazardous waste facilities in South Carolina. The seven members would be appointed by the governor, with advice and consent from the Senate, from each congressional district and the state at large. A citizen advisory panel also would be created to assist the board.

This authority would oversee the operation of any landfill disposal of hazardous waste in South Carolina. The legislation specifically states that no land can be used for a commercial hazardous waste landfill facility until the fee simple title to the land has been conveyed to the authority.

Further, the bill states that the authority would guarantee that a disposal facility for South Carolina-generated hazardous waste would be available. It also states that the "authority may determine that it is appropriate for it to displace any existing or potential competing system of hazardous waste management and disposal within the state."

For facilities in operation on the effective date of this bill, the current operator could lease back his facility from the authority for \$50 a year. However, as terms of the lease, the current operator must run the landfill under those provisions established by the authority. This bill would go into effect upon the signature of the governor.

Beachfront Management Exemption (H.3245, Rep. Barber). This bill seeks to exempt from the Beachfront Protection Act provisions an area "which is at least six miles in length and one-half mile in width and contains six miles of ocean shoreline, 710 acres of high land and 690 acres of marsh." This area is believed to be Folly Beach.

Education and Public Works Committee

Highway Commissioners and Out-of-State Conferences (H.3201, Rep. Mappus). Under this bill, State Highway Commissioners would not be allowed to attend more than two out-of-state conferences at state expense unless the full commission certified to the Legislature that attendance at the meeting was necessary.

Early Retirement for Teachers (H.3205, Rep. D. Williams). This bill would amend the State Code to allow school districts to offer an early retirement program to teachers with 25 years of service. The bill stipulates that all costs associated with the early retirement program must be picked up by the state.

Vehicle Inspection Fees (H.3206, Rep. Simpson). This bill would raise the fees service stations could charge for motor vehicle inspections. Under this bill, service stations could charge \$6 for the inspection and \$1 for the sticker. Currently, stations charge \$2.50 for the inspection and 50 cents for the sticker. The bill also raises the cost of the inspection stickers from the Highway Department to the service stations from 50 cents to \$1.

Vehicle Inspections Repealed (H. 3210, Rep. Bruce). This bill would repeal that section of the code requiring motor vehicles to be inspected.

School Architectural Plans (H.3228, Rep. Davenport). The General Services Division's architectural staff would develop three complete sets of plans and specifications for a high school, middle school and elementary school, under this bill. These plans must be used by all public school districts for new construction. The plans could be modified by the architectural staff to accommodate different student enrollment requirements.

Teacher Reprimand (H.3235, Rep. Faber). Under this bill, any teacher who recommends suspension or expulsion of a student without first holding a conference with the student and his parents must be reprimanded. A copy of the reprimand would go into the teacher's personnel file. A second violation of this proposed statute would result in the indefinite suspension of the teacher or the revocation of the teacher's certification. Written notice and a hearing would be available to the teacher involved.

The bill further states that a teacher, student and the student's parents must make "every reasonable effort" to develop a joint plan to assist the student." However any of the following actions would result in the student's immediate suspension or expulsion: making, selling or distributing illegal drugs; physical violence against a teacher; carrying an illegal firearm, or having a long history of disrupting classroom or school programs.

Labor Day School Term (H.3255, Rep. Barber). The public school term would not begin before Labor Day if this bill is enacted.

South Carolina Partnership for Children Act (H.3271, Rep. Waites). The main purpose of this bill is to promote better child care for working parents in South Carolina. The bill would allow an employer to take a state income tax credit for operating a child care program for his employees, or for payments made to a child care program on behalf of his employees. The bill also increases the state income tax credit taxpayers may claim for dependent care expenses from 7 to 10 percent.

Further, the bill creates the South Carolina Public/Private Child Care Council. This council would, among other duties, promote employer support of child care facilities, study the feasibility of using the state's school buildings for after school care, study the need for child care for Capital Complex employees, review the affordability of liability insurance for child care providers, and study the development of private resource and referral services. The council would report its findings to the General Assembly by December 31, 1990 before its responsibilities would end.

In addition, the bill requires the Health and Human Services Finance Commission to establish child development services in Allendale, Bamberg, Barnwell, Calhoun, Cherokee, Chester, Chesterfield, Fairfield, Jasper, Lexington, Newberry and Orangeburg counties. The HHSFC would expand child development services in Beaufort, Charleston, Florence, Greenville, Hampton and Richland counties.

Judiciary Committee

Presidential Straight Ticket Voting (H. 3198., Rep. M.D. Burriss). This legislation would seek to correct the problem experienced by some voters during the last presidential election who voted a straight party ticket only to find out later it did not include the presidential candidates. This bill would require the straight party vote to include the offices of president and vice-president. Voters would still be able to vote individually for each office if they wished.

Board Terms (H.3200, Rep. Mappus). State board and commission members would be limited to two consecutive terms or eight straight years of service under this bill. The bill allows current board members to complete their terms and thereafter be subject to the restriction.

Lawyer/Legislators (H.3242, Rep. Limehouse). This bill would prohibit any member of the General Assembly from representing a client before the Workers Compensation Commission.

Spousal Sexual Battery (H.3243, Rep. Whipper). This legislation would establish the crime of spousal sexual battery defined as sexual battery accomplished through aggravated force by one spouse against the other when they are living together. A spouse could be charged with criminal sexual conduct if the spouse's conduct

constitutes first or second degree criminal sexual conduct and the two spouses are living apart. No court order requiring the separation would be needed to bring this charge. The bill further states that the conduct must be reported to police within 45 days and a charge made in order for the spouse to be prosecuted.

Run-off Elections (H.3269, Rep. Fant). This bill seeks to eliminate the mandate requiring a majority vote to win a primary by repealing that section of the code relating to runoff primary elections.

Labor, Commerce and Industry Committee

Punitive Damages Eliminated (H.3202, Rep. Mappus). This legislation would provide that no automobile insurance policy could provide coverage for liability for punitive damages after December 31, 1990. Policies would only cover actual damages if this bill is enacted.

Workers Compensation for Disfigurement (H.3212, Rep. Hearn). In order to receive workers compensation benefits for permanent disfigurement of the face, neck, head or other areas normally exposed during employment, the disfigurement must be visible from a distance of six feet, under this bill.

South Carolina Health Insurance Pool (H.3216, Rep. Boan). This legislation would create a nonprofit entity known as the South Carolina Health Insurance Pool, offering major medical coverage for those eligible state residents. All insurers who issue health insurance in South Carolina would be members of this pool.

Any person who has been a resident of the state for six months and his newborn child is eligible for pool coverage if he can provide evidence that: He has been refused health insurance for health reasons; had his health insurance involuntarily terminated for any reason other than non-payment of premium; had a reduction or exclusion of coverage for a preexisting health condition, or whose insurance is not issued with rates comparable to those offered by the pool. Groups not eligible for pool coverage would be inmates, people eligible for a public health program, such as Medicaid, and people diagnosed with AIDS.

The pool's insurer, who will serve three years, will be selected by the board through a competitive bidding process.

The bill also amends the current law relating to employees whose group coverage is terminated.

New Insurance Study Committee (H.3218, Rep. Boan). This bill would create a permanent joint legislative committee to conduct continuous study of insurance law. The scope of this committee would not be limited to just automobile insurance as is the current practice. This bill would increase the membership of the joint committee to 16, adding the chief insurance commissioner as an ex officio member.

Reduction of benefits deleted (H.3230, Rep. J. Rogers). This legislation seeks to eliminate a provision in South Carolina's automobile insurance laws which requires that benefits recovered in a lawsuit must be reduced by benefits already received under other code sections requiring medical, hospital and disability benefits.

Election of the Chief Insurance Commissioner (H.3254, Rep. Baker). Starting with the 1990 election, the chief insurance commissioner would be elected statewide, under this bill. The position would be for a four year term, and no chief commissioner could serve more than two consecutive terms.

The chief insurance commissioner would serve as an ex officio member of the Insurance Commission. The bill also changes the terms of the members of the commission from six to three years after July 1, 1989.

Insurance Rate Freeze (S.3, Sen. Saleeby). This joint resolution would prohibit insurance companies from filing for an automobile insurance rate increase until after July 1, 1989. It does not prohibit a decrease in rates, however.

Medical, Military, Public and Municipal Affairs Committee

Sheriff Vacancy (H.3263, Rep. Wilkins). This bill would provide that the chief deputy or second in command in the sheriff's department would act as sheriff in the event of a vacancy in the position. The second in command would continue until the vacancy is filled. This bill also repeals those sections of the code that stipulate that the county coroner or clerk would fill in as sheriff if a vacancy occurs in that office.

Anabolic Steroids (H.3286, Rep. Hodges). This bill defines the term "anabolic steroids." It describes what constitutes unprofessional conduct by a practitioner in the prescribing of this medication and what constitutes illegal use and possession.

Under this bill, it would be illegal to prescribe, deliver or possess anabolic steroids for any purpose other than a valid medical purpose. The bill specifically states that it is unprofessional conduct for a doctor to prescribe steroids for "the purpose of hormonal manipulation that is intended to increase muscle mass, strength or weight without a medical necessity to do so, or for the intended purpose of improving performance in any form of exercise, sport or game."

In addition to spelling out illegal use or possession of the drugs, the bill also sets out the penalties for violation of this law, if enacted. Violation of these provisions would be classified as a felony.

Ways and Means Committee

School Volunteer Income Tax Credit (H.3194, Rep. M.D. Burriss). South Carolinians who volunteer their services to the public schools would be allowed a state income tax credit under this bill. The credit would be figured as an amount equal to the number of volunteer hours times the federal minimum wage. If enacted, this bill would go into effect for taxable years after 1989.

Worker's Compensation Insurers Tax (H. 3195, Rep. Hearn). This legislation would reduce the amount of tax insurers are paying on the premiums they receive for insuring employers for worker compensation claims. Currently, the tax on these premiums is 4.5 percent. Under this bill, this tax would be reduced to 3.5 percent of the premiums collected during the 1989-90 fiscal year; to 2.5 percent during the 1990-91 fiscal year, and to 2 percent during 1991-92 and thereafter.

Further, during the 1989-90 budget year, 80 percent of this revenue would be designated for the Workers Compensation Commission to cover operating costs with the other 20 percent going to the General Fund. In 1990-91, the Commission would receive 90 percent of the tax with 10 percent going to the General Fund, and in 1991-92, 100 percent of the premium tax collected would go to the commission. If after the 1991-92 budget year, the revenues from this tax exceeded the operating needs of the commission, the balance must be returned to the General Fund.

Girl Scout Cookies (H.3208, Rep. Wells). The sale of Girl Scout cookies would be exempt from the state sales tax under this legislation.

Capital Gains Tax (H.3221, Rep. McCain). This bill would allow a state income tax deduction for long term capital gains for individuals, partnerships, estates and trusts. The bill would allow 60 percent of the long term capital gains to be deducted in the 1989 tax year; 80 percent in the 1990 tax year, and 100 percent in the 1990 tax year and thereafter.

Deduction for Home Schooling Materials (H.3227, Rep. Davenport). This bill would allow parents who teach their children at home to deduct the expenses for home schooling books and supplies from their state income taxes. If enacted, this deduction could be taken for the 1989 tax year.

South Carolina Education Trust Act (H.3256, Rep. Barber). This bill would set up the South Carolina Education Trust, overseen by the Education Trust Commission, to contract for the sale of advanced tuition payment contracts to the state's colleges or universities. The purchase of the advance tuition payment would not constitute admission to the institution named in the contract. Once the advanced tuition contract is made, the student, if admitted, would not have to pay additional tuition for the time purchased in the contract.

For further information about advance tuition payments, please see the April 5, 1988 *Legislative Update*.

Individual Housing Accounts (H.3279, Rep. Wells). Individuals seeking to buy their first homes could set up an Individual Housing Account, with contributions being tax deductible. An individual would be allowed to deduct up to \$5,000 from his state income tax for deposits made into such an account; couples could deduct up to \$10,000 for deposits made. Money invested in the account must be used exclusively for the purchase of a home for a first time homeowner.

Call for a Constitutional Convention

Last week, The House passed H.3157, a concurrent resolution that rescinds an 11-year-old resolution calling for a constitutional convention to enact a federal balanced budget amendment. Since its inception, the movement for a constitutional convention has prompted debate from many quarters. Here is a background report on this issue.

On May 16, 1978, the General Assembly approved a concurrent resolution, originating in the Senate, which called for a national constitutional convention. With this vote, South Carolina joined 17 other states calling for the convening of a constitutional convention for the purpose of drafting a balanced budget amendment. This resolution, S.1024, sponsored by Sen. Rembert Dennis and the late Sen. Marion Gressette, would eventually place South Carolina among the ranks of 32 states adopting similar resolutions by the early 1980's.

Last week, the House voted to rescind this action. By a voice vote, the House passed H.3157, a concurrent resolution sponsored by the House Ways and Means Committee, which has now gone to the Senate for consideration. While H.3157 rescinds the call for a constitutional convention, it expresses grave concern over the federal budget deficit.

If H.3157 is passed by the Senate, South Carolina will join Alabama and Florida in rescinding calls for a constitutional convention.

Amendment Procedures

Under Article V of the United States Constitution, there are two procedures to amend the Constitution. The method traditionally used empowers Congress to submit an amendment to the states for ratification. The second method requires two-thirds of the states to petition Congress for a constitutional convention.

This article was researched by USC legislative intern Kristi McLean. Kristi is a Phi Beta Kappa graduate of USC who is now doing graduate work in public administration. She is from Clemson and formally worked as a page for the Ways and Means Committee.

During the country's 200-year history, the state convention approach has never been used. But often just the threat of a state convention has pressured Congress into approving proposed Constitutional amendments.

Move for a Balanced Budget Amendment

Despite repeated efforts over recent years, efforts to win congressional approval for a federal balanced budget amendment have failed. In the wake of rising federal debt and spurred on by the desire for a balanced budget, 32 state legislatures petitioned Congress to call a constitutional convention for the purpose of adopting such an amendment.

The movement for a balanced budget amendment began in the early 1970's, largely through the lobbying efforts of two groups, which came to see the constitutional convention route as a way to force Congress's hand.

In 1975, Lewis Uhler, a Yale-educated California lawyer who had served then-Gov. Ronald Reagan as chairman of the Governor's Tax Reduction Task Force, created the National Tax-Limitation Committee. The purpose of the committee was to lobby for the enactment of constitutional spending limitation amendments at both the state and federal levels.

During the same year, five state legislatures spontaneously passed resolutions calling for a limited Article V convention to draft a federal balanced budget amendment. North Dakota's legislature was the first to pass such a resolution, followed by Delaware, Maryland, Mississippi, and Louisiana -- each approving similar resolutions, independent of each other.

A second national lobbying group, the National Taxpayers Union (NTU) in Washington, became involved after receiving a call from the president of the Maryland State Senate. Soon a nationwide campaign launched.

In addition to the National Tax-Limitation Committee and the National Taxpayers Union, a number of other groups have thrown their support behind the movement. These include the National Conservative Public Action Committee and the National Right to Work Committee. The amendment was a plank of the 1984 Republican Party Platform and is supported by individuals such as U.S. Sen. Strom Thurmond and former President Reagan.

By 1983, 32 states had passed some form of resolution calling for a constitutional convention to draw a budget limitation amendment -- two short of the 34 needed to force Congress to convene a constitutional convention. The last state to join was Missouri.

Concerns about a convention

But since that time, concerns have been raised in various quarters. The concerns focused less on the ramifications of a federal balanced budget amendment (although that is a concern of some groups) than on the uncharted course of a constitutional convention -- the first in the nation's history since the Constitution was drafted.

Opponents of the state-level approach argue that a constitutional convention might become a political Pandora's Box. They contend the convention could not be restricted to a balanced budget amendment and could conceivably open broad areas of the Constitution, including the Bill of Rights, to change.

In addition, some legal scholars have questioned the validity of the state petitions themselves. Because the petitions call for the convention to adopt a specific amendment, constitutional scholars say the petitions violate the very constitutional provision allowing a convention to be called by two-thirds of the states.

Duke University Law Professor Walter Dellinger has written, "The Constitution thus provides an alternative: 'on application of the Legislatures of two-thirds of several states' Congress 'shall call a Convention for proposing Amendments.' The very essence of this convention is that it is free of the control of *both* Congress and the state legislatures" -- an opinion echoed by other constitutional scholars such as Gerald Gunther of Stanford University Law School and Lawrence Tribe of Harvard Law School.

There also is some question of whether the petitions are timely. Many petitions were not immediately forwarded to Congress as required by the Constitution. Further, Congress traditionally allows the states seven years to ratify proposed constitutional amendments. Most of the state resolutions calling for a constitutional convention are now older than that limit.

Those opposed to the constitutional convention include groups representing a widely diverse political spectrum. They include such organizations from both the political "left" and "right" as Common Cause, American Association of University Women, Norman Lear's People for the American Way, the Daughters of the American Revolution, Business Roundtable, and far right groups such as Phyllis Schlafly's Eagle Forum and the John Birch Society.

Representing many of these groups as a major lobbying force is an umbrella organization known as Citizens to Protect the Constitution. The organization does not oppose a balanced budget amendment, rather it opposes the method of adopting one through a constitutional convention.

Its board of advisers includes former President Jimmy Carter, former U.S. Supreme Court Justice Arthur J. Goldberg, former Congresswomen Barbara Jordan, Lawrence Tribe, former chairman of the Republican National Committee Mary Louise Smith, Los Angeles Mayor Tom Bradley, and the former president of Notre Dame the Right Rev. Theodore Hesberg, among others.

In defense of the convention, NTU contends that Congress can pass legislation setting limits and rules for a convention. (Such a bill has been introduced, although opponents say it will not accomplish what its proponents say.) And, they argue, that the U.S. Constitution contains the ultimate protection -- that no proposal emerging from the convention could become a part of the Constitution until approved by three-fourths of the states. It is also part of NTU's argument that it never actually expects a convention to be called. Rather, it is a strategy to force congressional action on the balanced budget amendment.

Rescission Movement

Last year, two state legislatures voted to rescind their resolutions for a constitutional convention based on the concerns raised by Citizens to Protect the Constitution. In April, Alabama became the first state to withdraw its resolution, followed by Florida in May. The Alabama legislature overrode Gov. Guy Hunt after he vetoed the measure at the urging of the White House. This leaves 30 states with constitutional convention resolutions.

The rescission movement began in 1987 when five states -- Idaho, Nevada, Texas, Maryland and Florida -- attempted to rescind their resolutions. According to the NTU, the movement grew to 14 states in 1988, including South Carolina. Last year, the Virginia House approved a rescission resolution. The Virginia Senate Rules Committee called for a study of the issue, with hearings expected this month.

States Calling for a Constitutional Convention

Alabama**	8/18/76	North Dakota	2/24/75
Alaska	6/21/81	Oklahoma	4/8/76
Arizona	3/9/79	Oregon	6/16/77
Arkansas	2/1/79	Pennsylvania	11/9/76
Colorado	3/20/78	SOUTH CAROLINA	5/16/78
Delaware	6/11/75	South Dakota	1/29/79
Florida**	5/6/76	Tennessee	3/24/77
Georgia	1/16/76	Texas	5/30/77
Idaho	2/13/79	Utah	2/1/79
Indiana	4/4/79	Virginia	3/3/77
Iowa	2/22/79	Wyoming	2/14/77
Kansas	4/26/78		
Louisiana	5/21/79		
Maryland	4/3/75		
Mississippi	3/20/75		
Missouri	5/26/83		
Nebraska	2/23/76		
Nevada	3/7/79		
New Hampshire	4/26/79		
New Mexico	2/16/76		
North Carolina	1/25/79		

**Rescinded resolution

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Receptionist	Paulette Young	4th Fl., Blatt	734-3070

WORD PROCESSING

Supervisor	Ruby Leverette	305 Blatt	734-2938
Asst. Supervisor	Mildred (Mibbie) Rogers	305 Blatt	734-2938
Word Processing Clerk	Frances Furtick	305 Blatt	734-2938
Word Processing Clerk	Anna E. Boggs	305 Blatt	734-2938
Word Processing Clerk	Colette R. Murray	305 Blatt	734-2938
Word Processing Clerk	Rebecca W. Rush	305 Blatt	734-2938
Dictation Dial-In			734-3250