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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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House Week in Review

The House of Representatives approved two major Labor, Commerce and Industry bills last week and by a voice vote agreed with the recommendation of the House Judiciary Committee to uphold the elections of two House members from Spartanburg County.

On Tuesday, the House gave third reading approval to H.3508, the National Association of Insurance Commissioners (NAIC) accreditation legislation. In the Senate, H.3508 has been placed on the calendar without reference. A special summary of this LCI committee bill appears in this week's Legislative Update, as does a summary of H.3511, another LCI committee bill which would raise the penalties for Occupational Safety and Health Act (OSHA) violations. H.3511 passed the House last Wednesday and was sent to the Senate, where it has been referred to the Senate Labor, Commerce and Industry Committee.

On Thursday, the House took up two House resolutions dealing with elections of representatives from Districts 37 and 38 in Spartanburg County. In both districts, the State Election Commission had ordered new elections following challenges by the defeated candidates, Judy Bradley and former State Rep. Ralph Davenport. As allowed by law, the orders for new elections were appealed to the House of Representatives by the seated legislators, Reps. Kathleen Kempe and Danny Bruce. After conducting hearings and debating the issue, the House Judiciary Committee recommended to the full House that the orders of the Election Commission be reversed and the elections of Reps. Kempe and Bruce be declared valid. The House resolutions (H.3580 and H.3581) were approved by voice vote of the House. Not since 1987 had the House heard such an appeal in connection with a House election.

Also on Thursday, the House debated H.3117, a bill which would change the state constitution to make the State Superintendent of Education a gubernatorial appointment instead of a statewide elective position. After considering a number of amendments and debating the issue, the House voted 48-50 to reject the bill, which was up for second reading.

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Wednesday, S.187 was enrolled for ratification. This legislation will prohibit an architect or engineer, who has designed a project, from performing other work on it as a contractor or subcontractor either directly or through a business. Also on that day, the House gave a third reading to H.3350, a bill that would make changes in the state kidnapping laws. This bill now goes to the Senate for consideration.

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Significant Labor, Commerce and Industry Legislation

Two significant LCI committee bills were passed by the House last week -- one dealing with National Association of Insurance Commissioners accreditation and the other with OSHA penalties. The first bill, H.3508, was placed on the Senate calendar without reference, and H.3511 was referred to the Senate Labor, Commerce and Industry Committee. Thanks to LCI Research Director Julie Huffstetler for the following summaries.

H.3508 -- NAIC Accreditation Legislation

With insurer solvency becoming an issue of concern across the nation, the National Association of Insurance Commissioners (NAIC) has developed minimum standards for effective solvency regulation by the states.

To ensure that all states have the essential statutes, regulations and regulatory resources necessary to regulate the insurance industry, the NAIC instituted a certification program in 1990 whereby over the next three years each state's compliance with these minimum standards will be evaluated by an independent review team.

South Carolina's initial evaluation revealed several areas that need to be addressed legislatively in order to bring South Carolina's insurance solvency regulatory system up to the NAIC standards. The Insurance Department drafted a legislative package to put into place the changes necessary for the Department to receive NAIC accreditation. This legislation is strongly supported by South Carolina's domestic insurance industry.

H.3508, sponsored by the House LCI Committee, incorporates the necessary changes for NAIC accreditation into one omnibus bill. The House gave this legislation third reading on Tuesday, February 19.

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Adoption of these standards is important for several reasons. First, it will strengthen existing state statutes to ensure effective solvency regulation of insurance companies in South Carolina. While insurer insolvencies is not a problem in this state, these measures may prevent it from ever becoming an issue in South Carolina. Secondly, at a time when there is increasing discussion about regulation of insurance companies by the federal government, action by states now to address the insolvency issue may discourage federal action and help retain regulation of the insurance industry on a state level.

Finally, domestic companies of states that are not accredited within the three-year period will suffer. A company headquartered in a state that is not accredited may be unable to become licensed to do business in state that is accredited. Likewise, a company headquartered in a state that is not accredited that is already doing business in states that do become accredited will probably be restricted as to its activities in those accredited state.

South Carolina's NAIC audit is scheduled for this summer, and with this legislative package in place, South Carolina can become one of the first small states to be accredited.

H.3511 -- OSHA Penalties

The 1991 Federal Budget increased seven-fold the maximum allowable penalties for violations of the Occupational Safety and Health Act. The increased fines were viewed primarily as a means of generating new revenue.

However, in order for South Carolina to continue to administer its OSHA program on a state level through the state Department of Labor, the state's program must be substantially equivalent to the federal program. Therefore, either the state statutes must be changed to reflect these increased penalties or the South Carolina OSHA program will be administered on a federal level.

H.3511, sponsored by the House LCI Committee and which passed the House on Wednesday, increases the *maximum* penalty for willful or repeated violation of OSHA law from \$10,000 to \$70,000 and increases from \$1,000 to \$7,000 the *maximum* penalty for serious and other than serious violations; for failing to correct a violation within the time allowed for correction; and for violating posting requirements.

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Because these are increases in the *maximum* penalties assessable, the state Department of Labor will still retain its current flexibility to levy fines much smaller than the statutory maximums as it administers the OSHA program here in South Carolina.

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Bills Introduced

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

Education and Public Works

Blind Persons' Literacy Rights and Education Act (H.3559, Rep. Wilder). This legislation has two purposes: to require future teachers of special education to demonstrate competence in braille consistent with standards adopted by the National Library Service for the Blind and Physically Handicapped, and to enact the Blind Persons' Literacy Rights and Education. Under the Literacy Rights and Education Act, each blind student would be given an individualized written education program, including an assessment which must include a braille skills inventory. Among the provisions specified by the written assessment would be how braille instruction would be implemented, when it would start, and the level of competency to be achieved. Student instruction in braille reading and writing would have to be sufficient to enable the student to communicate as effectively as peers with comparable ability and grade level, under this legislation. If braille instruction is not initiated, the assessment must indicate that this decision will not impair the student's ability to read and write effectively.

Driver Education (H.3564, Rep. Thomas Alexander). Under this legislation, driver's education would be required for graduation from high school in South Carolina. Additionally, the legislation would change the current content of driver's education courses, substituting six hours of instruction on the alcohol and drug impaired driving for the current six hours of actual behind the wheel driving.

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School Employee Offenses Against a Child (H.3575, Rep. Manly). This legislation would establish the procedure to be followed and reports to be filed when a school district employee is alleged to have committed a criminal offense against a child on school property or during a school activity. This bill would require local law enforcement authorities to promptly investigate the allegations. If the investigation substantiates the report, then the case must be promptly referred to the solicitor's office. If a school employee has knowledge or reasonable suspicions of a crime having been committed, he or she must report this to local law enforcement. Failure to do so or interfering with another employee's report would be a misdemeanor punishable by a fine of up to \$500 and/or not more than six months in jail. A person who reports in good faith would be immune from civil and criminal liability.

If a school employee is convicted under the provisions of this legislation, he or she could not be employed by a school district unless the local school board determined that the person was rehabilitated and would not pose a threat to the children of the district.

Judiciary

Testing Following A Fatal Accident (H.3546, Rep. Hayes). This legislation would require that in any fatal accident, even if it results in the death of the driver, tests for the presence of drugs or alcohol must be performed. The test would be mandatory and could not be refused by the driver or his personal representative.

Handicapped Parking Penalties (H.3550, Rep. Cromer). This legislation would substantially increase the fines for violation of the handicapped parking laws. The first offense penalty would be raised from a \$25 to \$100 fine or 30 days in jail to a \$250 to \$500 fine or 60 days in jail. Second offense would be raised from \$50 to \$100 or 30 days in jail to \$500 to \$1,000 in fines or 90 days in jail. Third or subsequent offenses could result in a minimum \$1,000 fine or 120 days in jail. In addition, in a third or subsequent offense, the driver's license would be suspended for 90 days.

Pistol Laws (H.3567, Rep. Rudnick). This legislation would raise the penalties for violation of the pistol laws from a \$2,000 fine and two years in jail to a \$10,000 fine and ten years in jail. The legislation would also require a seven day waiting period between the time the pistol purchase is made and when it can be delivered to the new owner.

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SLED would be required to report back to gun dealers within the seven days if the person is ineligible to purchase the gun. If the dealer is notified of the ineligibility, then it would be illegal for him to sell or deliver the gun to the purchaser.

Changing Party Affiliation (H.3570, Rep. Rudnick). Under this legislation, any candidate who wins public office after signing the required candidacy pledge must resign that office if he changes his political party affiliation. This legislation would not prevent the office holder from offering for his former elective position as a candidate of his new political party.

Initiative Petition (H.3576, Rep. Rudnick). Under this joint resolution, the state constitution would be amended to allow the enactment of a law on constitutional amendment by petition. This petition must be signed by not less than 8 percent of the voters registered at the last general election. It must be then approved by a majority vote in a statewide referendum during the next general election.

Recalling Public Officials (H.3577, Rep. Rudnick). This joint resolution would change the state constitution to allow public officials to be recalled from office on the petition of 25 percent of the voters in their districts, whether statewide or local. After the petition is received, a special election would be held to determine whether a majority of the voters in the district desire for the official to be recalled and removed from office. If a majority votes for removal, then the office holder must step down on July 1 after the special election is held. Once a recall election is held in connection with an elected official, another one could not be held for four years, under this bill. This joint resolution would not pertain to executive and judicial office holders, which have separate impeachment provisions in the constitution.

Labor, Commerce and Industry

Brewpubs (H.3536, Rep. Corning). This legislation would authorize the establishment, operation and licensing of brewpubs. A brewpub is an establishment which produces on its premises a maximum of 2,000 barrels of beer a year for sale on or off the premises. The legislation would specifically prohibit the brewpub from selling or shipping its beer for sale at another location.

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Printing of the Recoupment Fees Repealed (H.3552, Rep. Jimmy Bailey). This legislation would repeal provisions in the automobile insurance laws that require the Reinsurance Facility recoupment charge to be printed in bold type on each premium notice and bill for private passenger insurance.

Recoupment of Hurricane Hugo Losses (H.3553, Rep. Jimmy Bailey) Under this legislation, the State Reinsurance Facility could recoup its operation losses for a 12 month period due to Hurricane Hugo if this action is recommended by the Reinsurance Facility governing board and approved by the chief insurance commissioner. The recoupment would be for a 36-month period following the approval.

Elective Worker's Compensation Members (H.3568, Rep. Rudnick). Under this legislation, the seven members of the Worker's Compensation Commission would be elected would be elected by the General Assembly instead of appointed by the governor. The governor could still designate one of the commissioners as chairman.

Rate Increases Under Bond (H.3569, Rep. Rudnick). This legislation would eliminate the current policy of allowing utilities to place rate increases into effect under bond while the utility appeals a decision on the increase made by the state Public Service Commission. Under this bill, the rate change could not go into effect until there is a final disposition in the case, including all court appeals. In eliminating the rate increase under bond policy, this legislation also would strike provisions that require a refund plus interest if the utility appeal is denied.

Prices on Supermarket Purchases (H.3573, Rep. Rudnick). This bill would require that all items for sale in a grocery or supermarket would have to have price stickers in arabic numbers on them that are visible to the consumer.

Elective Chief Insurance Commissioner (H.3574, Rep. Rudnick). Under this legislation, the chief insurance commissioner would be elected to a four year term by the General Assembly, not selected and hired by the Insurance Commission as current law allows.

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Medical, Military, Public and Municipal Affairs

Retired Law Officers as Constables (H.3532, Rep. Clyborne). This legislation would exempt retired law enforcement officers, who apply for a constable's commission, from the training and demonstration of knowledge requirements now mandatory of those seeking these commissions. Further, the commission must be granted to any applying retired law enforcement officer, who retired in good standing.

Ways and Means

Retirement Installment Plan (H.3537, Rep. Kirsh). Under this legislation, installment plan-type payments to establish additional credit in the State Retirement System would be extended to those with military service "or other service for which establishing credit requires only a contribution by the member." These installment payments may be made by payroll deduction and would include both the State Retirement System and the Police Officers Retirement System. Currently, only those employees who have out-of-state service or federal service could establish additional credit with the State Retirement System by means of a payroll installment plan. Other employees could buy additional years of credit through a lump sum payment only.

More Prison Beds/More Bond Money (H.3558, Rep. Carnell). This legislation would change the authorization for capital improvement bonds to allow the Corrections Department to build two 1,130-bed medium security prisons, instead of the two 808-bed medium/maximum security prisons currently approved. In order to increase the size of the two prisons, an additional \$19.4 million in capital improvement bonds would be need. The legislation directs the Corrections Department to proceed with the building of the two larger prisons and states the intent of the General Assembly to authorized the increase in bonds this session.

Homestead Property Tax Deferral for the Elderly Act (S.451, Sen. Waddell). Under this legislation, any person eligible to claim a homestead exemption may chose instead to defer payment of all or part of the property taxes on his residence by filing an annual application with the county tax collector. If the homestead has an assessed value of \$2,000 or more, the deferral would be applied only to the taxes on the portion of the assessed value which is \$2,000 or less.

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Another alternative authorized by this legislation would be to allow the homeowner (who is eligible to claim the homestead exemption) to defer all or any part of the property taxes levied on his home, which exceeds 4 percent of the person's gross household income of the preceding calendar year. An application for this deferral would have to be filed annually with the county tax collector. No tax deferral could be granted if the total amount of deferred taxes and interest, plus the total amount of all other unsatisfied liens, exceeds 85 percent of the fair market value of the home; or if the homeowner's gross household income for the preceding calendar year exceeds \$15,000; or if the home is subject to any liens for which a tax deferral is prohibited; or if the taxes to be deferred were levied to retire bonded indebtedness or were for a special assessment..

Under this legislation, the amount of taxes deferred would accrue interest at a rate of 8 percent until they are paid. If the status of the tax deferred property changes or if the homeowner allows the required fire and extended insurance coverage to lapse, the total amount of deferred taxes and interest are due. All or any part of the deferred taxes could be paid at any time. The bill outlines penalties to be brought against a person who wilfully files incorrect information in connection with these provisions.