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Legislative update

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South Carolina House of Representatives

Legislative Update

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Robert J. Sheheen, Speaker of the House

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STATE DOCUMENTS

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House Week in Review

Facing the April 15 deadline for the introduction of House bills, House members introduced 57 bills last week. The House also considered a number of crime-related bills last week, in addition to holding judicial elections on Wednesday.

House members had until Thursday of last week to introduce bills by the April 15 deadline. House rules state that no statewide bill or resolution can be considered by the membership unless the bill is introduced prior to April 15. This rule does not apply to the Appropriations Bill, a deficiency budget bill or a joint resolution approving or disapproving state agency regulations. The rule also does not prohibit House members from introducing bills during the last six weeks of the session. Rather, bills introduced after the April 15 deadline will need a two-thirds vote of the House to be considered.

Crime-related Legislation

A number of drug-related bills were approved by the House last week and sent to the Senate for its consideration. Among these were H.4574, which would make it illegal to buy drugs from a juvenile and would prohibit the employing of a juvenile in drug trafficking. Also given final approval were H.4571, the drug money laundering bill, and H.4575, which would make intimidation of a witness a felony. These bills were among Attorney General Medlock's legislative recommendations.

Third reading approval was also given H.4922, a House Medical, Military, Public and Municipal Affairs Committee bill, which would regulate the above ground storage of petroleum.

Joint Assemblies

House and Senate members gathered last Wednesday to recognize the 1990 winners of the Folk Heritage Awards. As was the case last session, the award winners displayed their talents to the General Assembly.

Following the awards ceremony, the General Assembly elected by acclamation several candidates to the bench. These included Associate Justice Ernest A. Finney Jr., reelected to another term on the S.C. Supreme Court; State Rep. Tee Ferguson, elected as circuit court judge of the 7th Judicial Circuit, and two Family Court judges -- James A. Spruill III of Cheraw to the 4th Judicial Circuit, Seat 3, and Thomas B. Barrineau of Winnsboro to Seat 2 in the 6th Judicial Circuit.

Bills Introduced

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

Agriculture and Natural Resources Committee

Hazardous Chemicals Right to Know Act (H.5002, Rep. T. Rogers). This legislation would address an employee's and the community's right to know what hazardous chemicals are being used, stored or manufactured in their place of employment or community. The bill would require all employers who manufacture, process, use, store or produce hazardous chemicals to keep an up-to-date list of what hazardous chemicals they have on the premises. The list would include the identity, quantity and location of the hazardous chemicals involved. Chemical manufacturers would be required to provide material data safety information, and labels must be on all hazardous chemical containers. Fire inspection provisions are included in the legislation.

The bill has provisions on chemicals that are regarded as trade secrets, and how information about them is to be handled under normal circumstances and in cases of emergency.

Under this legislation, a citizen may request in writing a list of the chemicals used or stored at a facility. The request must include the name and address of the person making the request and the reason for the request. The facility employer must furnish at a minimum all the chemicals included on the hazardous chemicals list. If a chemical is withheld, the employer must note this, and provide the material data safety information on the chemical if it is requested. The bill includes what action will be taken by the Commissioner of Labor if the employer fails to provide the information.

Reductions of Toxins (H.5007, Rep. Waites). The lengthy bill would encourage the reduction of toxic waste generated in the state and prohibit state agencies from adopting any plan or policy that would be less protective of the environment than is required under any federal law, plan or policy.

Much of the bill is devoted to the Toxics Use Reduction Act. These provisions outline how this statewide policy would be implemented, and how they would reach the goal of reducing the toxic waste generated in the state by 50 percent by the year 1998.

Established under this act would be the Administrative Council on Toxics Use Reduction, consisting of nine members including the governor; a 15-member Advisory Board, which would include the State Attorney General, the Toxics Use Reduction Institute at USC, a 19-member Science Advisory Board, and an Office of Toxics Use Reduction Assistance and Technology within DHEC. The bill outlines how information would be gathered on toxic and hazardous substances within the state, and the policies formulated to meet the reduction requirements. The bill also provides for the public's right to know what plans are being put into effect to reduce the production of toxic substances. The bill sets forth penalties for failing to meet the reduction policies.

Judiciary Committee

Resisting Arrest (H.4985, Rep. Wilkins). This bill would add language to the current resisting arrest law. Under this proposal, the law would prohibit anyone from resisting the arrest of a law officer or "one whom the person knows or reasonably should know is a law enforcement officer."

Annexing Without Permission (H.4999, Rep. Koon). This legislation would void any property annexation in another county done by a municipality after January 1, 1990, if the municipality did not obtain the consent of the county governing body in which the annexed area is located.

Taxation of Annexed Property in Another County (H.5000, Rep. Koon). If this legislation is enacted, municipalities could not levy taxes in areas they annexed in another county if they did not first obtain the consent of the county governing body to annex the area. The bill states this would apply to municipal annexations that occurred after January 1990. The taxing prohibition would go into effect if the annexation is ultimately found to be lawful by the courts after all appeals have been exhausted.

Municipal taxes prohibited by the bill include municipal ad valorem taxes, business license fees or other municipal taxes or fees. The bill allows the county to continue collecting ad valorem taxes and business license fees in the area "as though the annexation did not occur." Fees for utilities provided by the municipalities would continue at the rate charged for municipal non-residents. The bill also would require the municipality to provide police and fire protection.

Supreme Court Decisions (H.5001, Rep. Bruce). This legislation would require the State Supreme Court to hand down its decision on murder death penalty cases within 90 days of receiving the record and transcript of the case. This same 90 day deadline would apply to other appellate matters concerning murder death penalty cases.

Gifts to Public Officials or Employees (H.5006, Rep. Waites). This legislation would stipulate what a public official or employee can receive in connection with his or her employment or position. The bill would prohibit these officials or employees from seeking, accepting or soliciting anything of value, including the promise of a job, from anyone who is seeking a contract or does business with the employee's or official's agency, or is involved in a business regulated by the employee's agency, or has interests that would be affected by the performance or nonperformance of the public employee or official. Punishment would extend equally to the employee or official who accepted something of value and the person who offered it.

The legislation specifically states that a public official or employee may not receive a gift, money, compensation or anything of value from a lobbyist. The exception is food and beverage consumed at the time of presentation, a memento of the occasion, or an award in the form of a plaque, certificate or other award having value only to the recipient.

Richland County Government Consolidation (H.5028, Rep. Waites). This joint resolution would authorize the consolidation of any and all units of government within Richland County, with the exception of the two school districts. The resolution outlines how this consolidation would take place. This joint resolution must be approved by voters in a statewide referendum before it would take effect.

Status Offenders and Jails (S.962, Sen. Rose). This legislation would prohibit the courts from ordering any juvenile to a jail, detention facility or a secure correctional institution operated by the Department of Youth Services for a status offense. However, the court could temporarily commit a status offender to the custody of DYS. Under this bill, the definition of jail would include a law enforcement lock up or holding cell.

Education and Public Works Committee

Parental Responsibility Act (H.5008, Rep. Haskins). Excessive school absences could lead to educational neglect charges for the parents if this legislation is enacted. This legislation would require the public schools to follow a very specific notification schedule in connection with student absences. Three unexcused absences would bring a telephone call notifying the parents or guardian of the absences or a certified letter if the parent cannot be reached by telephone. After three consecutive unexcused absences or five cumulative unexcused absences a conference would be held. The conference would be to plan how to ensure the student's future attendance.

If the parents do not attend the conference, the district can apply to the Family Court or magistrate for a summons ordering the parents to appear at the conference. After six consecutive unexcused absences or eight accumulated unexcused absences, the district would file a copy of the attendance plan worked out for the student with DYS, DSS, the Family Court and the parents. After receiving the report, the court may order the parents and the student to appear and take the action necessary to improve the student's attendance. The court may order the parents to require the child to attend school or be punished by a contempt citation. The contempt citation could not carry a fine of more than \$50 a day or a maximum of \$500 or 30 days in jail. Each day's absence would constitute a separate offense under this bill. The court also may order the child to attend school or face being found as a truant and handed over to DYS. The parents would be absolved of any punishment if the court finds they have tried to make the child attend school.

The bill outlines what action the court may take if it finds the child to be a chronic truant. If court finds the parent has not made a diligent effort to keep the student in school, the parent could be ordered to attend a parental responsibility course. Failure to complete the course would be treated as contempt of court, and the parent could be turned over to the Department of Probation, Parole and Community Service for up to one year.

One final provision: The employment plans of all custodial AFDC parents under the age of 20 must include courses on parenting skills.

Auxiliary School Services (H.5020, Rep. Manly). This legislation would allow school districts to contract with a private entity or individual for auxiliary school services for either the district or for any school within the district. Auxiliary services could include food service, transportation or required maintenance, landscaping, or janitorial services.

Medical, Military, Public and Municipal Affairs

"Home Detention Act" (H.4979, Rep. Wofford). This legislation would authorize the use of electronic and non-electronic home detention programs as an alternative to incarceration for low risk, nonviolent, adult and juvenile offenders as selected by the court. Applications to the court may be made by offenders for home detention as an alternative to pretrial detention, probation (intensive supervision), community corrections, parole (early release), work release, institutional furlough, jail diversion or shock incarceration.

Under this legislation, an approved electronic monitoring device means a device which is primarily intended to record and transmit information as to the defendant's presence or absence from home. The device could record or transmit oral sounds, visual images or information about the offender's activities while inside the home. It could be used to record a conversation between the participant and the monitoring device or the person and the supervisor, solely for the purpose of identification.

Under this bill, the Corrections Department would develop regulations for a home detention program. The program would require that the participant remain within the property boundaries of his home at all time except for work, to find work, to go to the doctor, school, church, to participate in a community work release program or "any other compelling reason consistent with the public interest." Other requirements, such as having a telephone, would be required for participation in the program.

Building Code Enforcement Officers (H.4981, Rep. Davenport). This legislation would provide for the certification of building code and fire code enforcement officers. Under this bill, the state Building Code Council and the State Fire Marshal would be responsible for the registration of their respective enforcement officers. No person could act as a building code or fire code enforcement officer without being registered as provided by this bill.

Fire and building code enforcement officers employed when this bill is enacted would be certified without taking an examination. This registration would be valid for two years before renewal.

For those seeking registration, applicants would have to furnish proof of registration by a recognized code organization or testing agency. Local jurisdictions could impose additional qualifications for enforcement officers under their jurisdiction. The certificate of registration would be renewal every two years.

The legislation would require all municipalities and counties to appoint a building code and fire code enforcement officer. The bill sets out when the local government must appoint their officers and have fire and building code enforcement programs in place. Local governments would be required to adopt only the latest editions of nationally recognized codes published by the Southern Building Code Congress and the National Fire Protection Association. Building codes would not apply to farm structures, under this legislation

Home Association Deputies (H.4987, Rep. Corning). This legislation would authorize a sheriff to hire a deputy and pay his salary from funds collected from a residential homeowner's association and assign that deputy to patrol the association's neighborhood.

Public Employees and Drug Charges (H.5013, Rep. Wilkins). Under this legislation, any public employee charged with a controlled substance violation would be immediately suspended with pay. The suspension would continue until his conviction or acquittal. The public employee convicted of a controlled substance violation immediately would be terminated from employment. A public employee, as defined by this bill, would be a person employed by any state, county, municipal, school district, public college or university or political subdivision.

Work Release and Violent Crimes (H.5025, Rep. T. Rogers). This bill would prohibit any person convicted of a violent crime from participating in prison work release, training program, leave or extended work release.

Mental Health Care (H.5035, Rep. Fair). Law enforcement officers would be able to detain a person believed to be mentally ill and in need of care, under this legislation. This detainment may continue until the person in question is examined by a license doctor. The person being detained has the right to legal counsel under the bill. If after 24 hours the person has not been examined or has been examined and not committed, the person must be released.

Home Detention (S.974, Sen. Rose). This is the Senate's version of the Home Detention Act, which parallels the House bill.

Labor, Commerce and Industry Committee

Consumer Reports (H.4983, Rep. Harwell). This legislation would make it an unfair trade practice for a consumer reporting agency to disclose in a consumer report record previous inquiries made to it about the consumer.

Abbeville Employment Security Building (H.4984, Rep. R. Brown). Under this bill, the state Employment Security Commission could spend up to \$475,000 of federal funds to buy land and build a commission office in Abbeville.

Election of Chief Insurance Commissioner (H.5003, Rep. Farr). Under this legislation, the General Assembly would elect the Chief Insurance Commissioner to a four year term. Currently, the State Insurance Commission selects the Chief Insurance Commissioner.

Aluminum and Plastic Container Disposal (H.5015, Rep. Simpson). This legislation would require any store that sells products packaged in aluminum cans or plastic bottles to have containers on its premises to collect used or empty containers of these materials.

Ways and Means Committee

Educational Facilities Authority Act (H.4967, Rep. McCain). This extensive legislation would establish an Educational Facilities Authority to assist the state's public school districts in meeting their building construction, renovation and equipment needs. Under this legislation, the State Budget and Control Board would act as the Educational Facilities Authority.

The bill would authorize the authority to enter into agreements with participating school districts to provide a state grant to finance a portion of the cost of a building project. The grant could not exceed 50 percent of the total estimated cost of the project. In order to make the state grants, the authority would issue state school building bonds. The bill limits the aggregate annual debt service for the school building bonds-- those outstanding and those proposed -- to \$50 million.

The legislation specifies the regulations the authority must follow when issuing the bonds. The bonds would be tax free.

Further, the authority would have the power to enter into loan agreements with participating school districts in order to finance or refinance all or a portion of the district's local contribution. In order to qualify for the loan, the district would have to demonstrate that traditional financing sources are not available for all or part of the local contribution.

The legislation would require each district receiving a state loan from the authority to levy sufficient taxes to pay its loan obligation. Failure to make a timely payment by the district could result in the authority directing the State Treasurer to withhold other appropriated funding to that district. In order to make the loans, the legislation gives the authority the power to issue revenue bonds.

Magistrate Retirement (H.4988, Rep. Waites). Any current member of the state retirement system, who previously was employed as a magistrate or an employee of a magistrate, can elect to receive retirement credit for that employment. The employee would have to provide documentation of magistrate service. To receive the credit the employee would have to pay the actuarial cost as determined by the board.

Bonds for School Districts (H.4998, Rep. Gentry). This legislation would authorize the State Budget and Control Board to issue general obligations to raise funds to assist the state's public school districts in constructing and equipping school facilities. These bonds would be tax-exempt.

Without Reference

Fair Housing Act (S.1475, Senate Labor, Commerce and Industry Committee). This legislation makes a number of technical amendments to the Fair Housing Act, passed last session.

Bill Summary: Public Accommodations

Last week, the Public Accommodations bill was enrolled for ratification. This legislation was introduced in the aftermath of several racial discrimination occurrences last summer. Here is a summary of this important bill.

S.1157

Public Accommodations and Discrimination

The first article of this bill, sponsored by the Senate Judiciary Committee, provides for equal enjoyment and privileges to public accommodations without discrimination or segregation on the basis of race, color, religion or national origin.

Establishments defined in the bill are those places of public accommodation where the discrimination or segregation would be "supported by state action." "Supported by state action" would be considered the licensing or permitting of any establishment or agent of the establishment by a state or local government. Establishments falling under this bill include any inn, hotel, motel or other establishment that provides lodging to transient guests. Excluded is any establishment which has five rooms or less for rent, which also is occupied by the owner as his residence.

Also included is any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility engaged in selling food for consumption on the premises, hospital clinics or other overnight medical facility, any wholesale or retail establishment, any movie house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium or other places of amusement.

The bill specifically excludes from these provisions "private clubs or other establishments not in fact open to the general public." Excluded from the definition of "private club" is any club or facility which offers memberships for less than 30 days.

The bill prohibits anyone from denying the rights of public accommodation, intimidating or threatening anyone in an attempt to interfere with the use of accommodations, or punishing anyone for using this right.

Remedies Available

Under Article 3 of this bill, the Attorney General would notify SLED to investigate any pattern or practice of discrimination prohibited by this legislation when a complaint is received. The results of the investigation would be reported to the State Human Affairs Commission. The commission would establish a three-member panel of commissioners to determine whether there is reasonable cause to believe there has been a violation of this article. The Attorney General then must file an action with the Human Affairs Commission. The panel established by the commission to hear the action must not be the same panel that received the results of the SLED investigation.

The five-member panel, which would have the power to issue subpoenas, will conduct a hearing within 60 days. If it is determined that the rights and privileges established by these provisions have been violated, the panel will grant relief in the form of immediate license revocation.

Any person or group charged in the complaint would have a right to an attorney and to produce evidence. All testimony would be given under oath. Any vote of the panel on the complaint would be made in executive session.

Permits and licenses could not be taken away from an owner due to the actions of an employee unless the discriminatory practice was known, open and notorious. In addition, the panel could not revoke a permit or license, even if discrimination is found, if:

- The panel concludes the establishment is one of public necessity and revoking its permit would be severely detrimental to the community;
- The panel concludes that the discrimination is limited to one segment of the establishment's operation. The permits or licenses for that segment only would be revoked;
- The panel concludes the discriminatory conduct is limited to one person or group of people whose permits and licenses could be revoked.

The final decision of the panel would be in writing and must list the licenses or permits to be revoked. The determination of the panel could not be appealed to the full Human Affairs Commission and is the final administrative review.

Upon the panel's findings, the Attorney General must notify the appropriate state agencies to revoke the license or permits. If the license or permit is revoked, the owner may not apply for another for three years.

Criminal and Civil Penalties

In addition, violations of Article 1 would be a misdemeanor punishable by a fine of not more than \$2,000 and/or imprisonment for less than a year. In addition, the aggrieved party may take action of his or her own in the circuit courts to recover damages due to violation of Article 1 of this bill. The amount of damages would be a minimum of \$5,000. Anyone suffering discrimination must bring a complaint before the State Human Affairs Commission prior to bringing an action in circuit court.

Summary: Obscene Bumper Sticker Bill

Last session, hardly any bill invoked more discussion than the legislation outlawing obscene bumper stickers. H.3053, the House's version of the obscene bumper sticker bill, was recently enrolled for ratification. Here is a brief summary of that bill.

H.3053

Obscene Bumper Stickers

This act would prohibit any person from operating a motor vehicle in South Carolina which has visibly attached to it a sticker, decal, emblem or other device containing obscene or indecent words, photographs or depictions.

The definition of indecent in connection with this legislation includes:

- "Taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body, and
- "Taken as a whole, it lacks serious literary, artistic, political or scientific value."

The legislation refers to the definition of obscene as it appears in the State Code in Section 16-15-305 (B) (C) (D) (E). These sections spell out the state's provisions on obscenity.

Penalty for this misdemeanor is a fine of not more than \$200.