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Legislative Update

Robert W. Harrell, Jr., Speaker of the House

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MAJOR ISSUES FROM THE 2011 LEGISLATIVE SESSION

This report highlights activity of the first regular session of the 119th South Carolina General Assembly. This document summarizes many of the key issues that have been enacted or can be enacted by the General Assembly this year. Since this document focuses on key issues, not all provisions of legislation are included in the summaries.

This report is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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2011 LEGISLATIVE OVERVIEW

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In its first regular session, the 119th General Assembly approved the “**South Carolina Fairness in Civil Justice Act of 2011**”. This legislation provides **tort reform**, revising the way in which the judicial system handles these private or civil wrongs for which the court provides a remedy, usually in the form of damages. Among other things, the legislation establishes caps for punitive damages awarded in civil lawsuits and establishes a cap on the bond a business must post to file an appeal in a civil lawsuit. It provides that building code violations do not constitute fraud, gross negligence or recklessness in and of themselves, but they may be introduced as evidence. The legislation includes requirements for a solicitor to obtain written approval of the Attorney General prior to retaining counsel to or filing a civil cause of action.

Lawmakers approved the “**Spending Accountability Act of 2011**” which establishes new requirements for the General Assembly to take roll call votes in the consideration of legislation that record the names and stances of legislators in the journals of the Senate and the House of Representatives. The legislation provides for the Annual General Appropriations Bill to be considered section-by-section with a recorded roll call vote required for the adoption of each section by a legislative body.

The General Assembly approved new **higher education financial transparency** measures that require each public institution of higher learning to maintain a transaction register featuring a complete record of all funds expended, from whatever source for whatever purpose. The register must be prominently posted on the institution’s Internet website and made available for public viewing and downloading.

The General Assembly approved a \$6 billion **state government budget for Fiscal Year 2011-2012** that includes cuts for state government agencies in light of the declines in state revenue experienced in recent years and the absence of federal stimulus funds that have been used to help offset shortfalls. Tentative evidence of economic recovery can be found in the availability this year of around \$500 million above the level of last year’s general fund appropriations. \$146 million is devoted towards paying off the Unemployment Insurance Loan that the state had to obtain from the federal government when South Carolina’s jobless benefit fund became insolvent. The funding is sufficient to avoid federal penalties that would otherwise be assessed on the state’s employers, thereby allowing the total liability of businesses to be reduced by an estimated 24%. \$105 million in recurring funds and \$56 million in non-recurring funds for Education Finance Act items allows for the base student cost to be increased to an estimated \$1,880 per pupil. \$25 million is included for the virtual and brick and mortar charter schools of the South Carolina Public Charter School District. \$12.4 million in unclaimed Education Lottery prize money is included for the purchase of new school buses. The state’s institutions of higher education received cuts ranging from 5 to 8 percent, with budget reductions distributed to universities and colleges using a formula that takes into account the percentage that state general funds represent within an institution’s budget and favors institutions with successful graduation rates and higher in-state enrollment. The state’s scholarship programs are fully funded. The Department of Health and Human Services receives an additional \$435 million mostly to offset the agency’s \$350 million deficit. The budget plan eliminates the proviso that has prohibited alterations in the rates paid to doctors and other service providers in the state’s Medicaid Program. Instead, the Director of the Department of Health and Human Services is authorized to reduce provider rates as a cost-saving measure. The budget also allows access to \$157.3 million in Medicaid Reserve Fund revenue collected from the fifty-cent cigarette surcharge for maintenance of effort in the Medicaid Program. \$5 million is included for

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the Department of Public Safety to increase trooper presence and \$1.3 million is allocated for the department's new Illegal Immigration Enforcement Unit. The state's reserve funds are replenished. The budget includes a \$20 million reduction in state aid to local governments, representing a decline of almost 10% in state funding for political subdivisions. All general funds are eliminated for South Carolina Educational Television, but SCETV is allowed to retain revenue derived from the use of its broadcast towers, signal spectrum, and contracts for other facilities and services in order to fund its operations. The budget includes \$5 million in capital reserve funds for the Deal Closing Fund that the Department of Commerce uses to recruit new business to South Carolina. \$5 million in capital reserve funds is also allocated to the department for regional economic development organizations. \$13 million in capital reserve funds is included for new job training at the state's technical colleges. The Department of Parks, Recreation and Tourism receives \$5.4 million in capital reserve funds for marketing destination specific tourism and \$100 thousand in capital reserve funds for regional tourism promotion.

The General Assembly approved legislation establishing a **photograph identification requirement for voting**. The legislation requires a person to verify his identity when he presents himself to vote by producing photograph identification in the form of a valid and current: South Carolina driver's license, other form of identification containing a photograph issued by the Department of Motor Vehicles, passport, military photo identification issued by the federal government, or South Carolina voter registration card containing a photograph. The legislation allows provisional ballots to be cast in limited circumstances including when an elector cannot produce identification or when an elector's identity is disputed by a poll manager. Also, the State Election Commission must establish a voter education program about these new provisions.

Lawmakers approved revisions to South Carolina's **illegal immigration** laws. Under certain circumstances, this legislation authorizes law enforcement to determine the immigration status of persons detained, investigated or arrested, and it requires a person eighteen or older to carry any alien registration documentation he is issued pursuant to federal law while the person is in this State. The legislation expands offenses relating to false identifications and harboring and transporting illegal aliens. The legislation establishes an Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety. In addition to criminal law revisions, this legislation makes changes pertaining to employment. Notably, it requires public and private employers to utilize the federal work authorization program, E-Verify, to verify the employment authorization of all new employees. The legislation deletes current provisions which allow the use of alternative forms of identification other than E-Verify. In compliance with the recent United States Supreme Court decision, this legislation deletes provisions allowing civil penalties against private employers for immigration violations.

The General Assembly approved a bill revising employers' required contributions to the **Unemployment Insurance Trust Fund** that is used to provide the state's jobless benefits. The legislation makes adjustments to bring relief to businesses that have seen required contributions increase significantly following recently enacted legislation designed to restore the fund to solvency. The legislation revises employer classifications in order to shield businesses with positive fund balances that have not contributed to the fund's shortfall from paying the highest rates. The legislation reduces the maximum potential benefits of any insured worker from a total of twenty-six weeks to twenty weeks. New unemployment insurance claims provisions are established for

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seasonal employment that allow for the collection of unemployment compensation for lay-offs that occur during the work season, but not outside of the season. The legislation includes provisions to prevent unemployment that results from declared natural disasters from being attributed to individual employers. The Department of Employment and Workforce is directed to recalculate premium rates in light of the legislation's changes.

The General Assembly approved legislation relating to the order fulfillment center proposed for Lexington County by online retailer Amazon that establishes a **temporary exemption from collecting and remitting state sales and use taxes for a distribution facility** meeting criteria that include minimum job creation and capital investment requirements. The exemption extends until January 1, 2016, unless the distribution facility fails to meet conditions such as maintaining the required number of full-time jobs with comprehensive health plan benefits or unless Congress enacts new federal legislation regarding the collection of state sales taxes. The legislation includes requirements for notifying purchasers of South Carolina use taxes that they may owe on items bought online.

Lawmakers passed a bill revising the provision of the South Carolina Real Property Valuation Reform Act of 2006 that requires the assessed value of real property to be determined for tax purposes at the time the property is sold or undergoes another assessable transfer of interest. The legislation **revises point-of-sale reassessment for commercial property**, second homes, and all other parcels subject to the six percent property tax assessment ratio by providing for a new tax exemption to offset dramatic fluctuations in tax liability.

In response to the ongoing problem of **copper theft**, the General Assembly approved legislation providing for enhanced enforcement provisions. In addition to providing increased penalties for unlawfully obtaining copper and other nonferrous metals, the legislation makes revisions relating to the purchase, sale and transportation of copper and other nonferrous metals. Among other things, the legislation provides new requirements for those who sell, purchase and transport copper to obtain permits from the sheriff. It prohibits cash transactions for the sale of copper, catalytic converters and beer kegs by requiring recyclers to pay for such purchases by check alone. Additionally, the legislation restricts the transportation or possession of large amounts of copper and other nonferrous metals on our State's highways.

The General Assembly approved the "**All-Terrain Vehicle Safety Act**", also known as "**Chandler's Law**", which places new restrictions on the operation of all-terrain vehicles. The legislation makes it unlawful for parents and other legal guardians to allow someone under the age of six to operate an ATV or to allow someone under the age of sixteen, who lacks a driver's license, to carry a passenger while operating an ATV. New ATV training and safety helmet requirements are established for those fifteen years of age or younger. The All-Terrain Vehicle Safety Act does not apply to the operation of an ATV for farming, wildlife habitat management, ranching, hunting or trapping. An exemption is also provided to cover minors aged six to sixteen operating all-terrain vehicles under the direct visual supervision of parents or others with legal custody on private property.

Lawmakers established the **South Carolina Traffic Camera Enforcement Commission** to conduct a comprehensive study concerning the use of traffic camera systems and develop criteria for assessing the use of traffic enforcement cameras. The legislation also includes provisions to tighten prohibitions on the usage of traffic cameras

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for a violation of a local ordinance or traffic laws relating to speeding or disregarding a traffic control device.

The General Assembly approved legislation authorizing South Carolina to enter into an **Interstate Wildlife Violator Compact**, which allows member states to provide reciprocal recognition of wildlife violations and suspensions of hunting and fishing license privileges.

As a result of the recommendations of the Stroke System of Care Study Committee established in 2009, the General Assembly passed the “**Stroke Prevention Act of 2011**”. This legislation requires the Department of Health and Environmental Control to identify hospitals as primary stroke centers and stroke enabled centers through telemedicine. The legislation also establishes a Stroke System of Care Advisory Council to be appointed by the director of the South Carolina Department of Health and Environmental Control to advise DHEC on the development and implementation of a statewide system of stroke care.

This session the General Assembly addressed **redistricting**, the process of reconfiguring election districts that is required every ten years in order to reflect population changes reported in the latest U.S. Census. Legislators are charged with approving plans for redrawing the election districts of the General Assembly and the state’s congressional districts that take into account the population shifts recorded in the 2010 census and address such concerns as compliance with federal Voting Rights Act requirements for minority representation. The state’s population growth warranted an additional seat for South Carolina in the U.S. House of Representatives.

APPROPRIATIONS

The General Assembly approved a state government budget for Fiscal Year 2011-2012 by adopting **H.3700**, this year’s General Appropriations Bill, and **H.3701**, the joint resolution making appropriations from the Capital Reserve Fund. The \$6 billion budget includes cuts for state government agencies in light of the declines in state revenue experienced in recent years and the absence of federal stimulus funds that have been used to help offset shortfalls. Tentative evidence of economic recovery can be found in the availability this year of around \$500 million above the level of last year’s general fund appropriations.

The budget includes funds that have only recently become available for appropriation because state revenue estimates were revised by the Board of Economic Advisors. \$146 million of these funds is devoted towards paying off the Unemployment Insurance Loan that the state had to obtain from the federal government when South Carolina’s jobless benefit fund became insolvent. The funding is sufficient to avoid federal penalties that would otherwise be assessed on the state’s employers, thereby allowing the total liability of businesses to be reduced by an estimated 24%. \$56 million of these funds recently available for appropriation is devoted to K-12 education, distributed to the public schools under the Education Finance Act funding mechanism. The Department of Revenue is directed to pursue its enhanced tax collection enforcement initiative for foreign taxpayers only, using no additional funding, in order to yield an estimated \$53.8 million. The budget plan uses \$107 million in Capital Reserve Fund allocations.

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\$105 million in recurring funds and \$56 million in non-recurring funds for Education Finance Act items allows for the base student cost to be increased to an estimated \$1,880 per pupil. \$25 million is included for the virtual and brick and mortar charter schools of the South Carolina Public Charter School District. Funds are provided to the state's special schools to allow them to operate near full capacity. \$20 million in enhanced tax collection enforcement funds is utilized to offset losses experienced by school districts when the Index of Taxpaying Ability is updated. \$12.4 million in unclaimed Education Lottery prize money is included for the purchase of new school buses.

The state's institutions of higher education receive cuts ranging from 5 to 8 percent, with budget reductions distributed to universities and colleges using a formula that takes into account the percentage that state general funds represent within an institution's budget and favors institutions with successful graduation rates and higher in-state enrollment. Several appropriations are made from the Capital Reserve Fund to allow higher education institutions to undertake deferred maintenance projects. The state's scholarship programs are fully funded.

The Department of Health and Human Services receives an additional \$435 million mostly to offset the agency's \$350 million deficit. The budget plan eliminates the proviso that has prohibited alterations in the rates paid to doctors and other service providers in the state's Medicaid Program. Instead, the Director of the Department of Health and Human Services is authorized to reduce provider rates as a cost-saving measure. The budget also allows access to \$157.3 million in Medicaid Reserve Fund revenue collected from the fifty-cent cigarette surcharge for maintenance of effort in the Medicaid Program. Residual funds from the cigarette surcharge are to remain in the Medicaid Reserve Fund and may be used by the DHHS director to ensure access to care. \$28 million in enhanced tax collection enforcement funds is devoted to Medicaid maintenance of effort.

The Judicial System is spared funding reductions and receives \$5 million in capital reserve funds for statewide implementation of its electronic court filing initiative.

\$3.4 million in recurring funds is allocated to the Department of Corrections for a Youthful Offender Intensive Supervision Program that moves younger inmates into intensive community supervision with the goal of avoiding the need for long term incarceration. The department is fully funded according to the agency's budget request with recurring general funds.

\$5 million is included for the Department of Public Safety to increase trooper presence. \$1.3 million is allocated for the department's new Illegal Immigration Enforcement Unit.

The Department of Disabilities and Special Needs receives an additional \$35 million in recurring general fund appropriations to maintain agency operations. The Department of Social Services is fully funded according to its budget request.

The Department of Health and Environmental Control is allocated \$3 million for the AIDS Drug Assistance Program (ADAP) and \$2.5 million for vaccines for underinsured children.

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Existing benefits are maintained under the state employee health insurance plan and the additional cost for maintaining the program is divided equally between state employees and their state agency employers.

The state's reserve funds are replenished.

The budget includes a \$20 million reduction in state aid to local governments, representing a decline of almost 10% in state funding for political subdivisions.

Budget cuts are directed to state agencies and institutions to eliminate taxpayer funded lobbying. All state agencies and institutions are prohibited from using general fund appropriations to compensate employees who engage in lobbying activities.

The budget includes \$5 million in capital reserve funds for the Deal Closing Fund that the Department of Commerce uses to recruit new business to South Carolina. \$5 million in capital reserve funds is also allocated to the department for regional economic development organizations.

\$13 million in capital reserve funds is included for new job training at the state's technical colleges.

The Department of Parks, Recreation and Tourism receives \$5.4 million in capital reserve funds for marketing destination specific tourism and one hundred thousand dollars in capital reserve funds for regional tourism promotion.

All general funds are eliminated for South Carolina Educational Television, but SCETV is allowed to retain revenue derived from the use of its broadcast towers, signal spectrum, and contracts for other facilities and services in order to fund its operations.

The Arts Commission is required to expend seventy percent of appropriated state funds on grants to support the statewide improvement of learning and enrichment opportunities for children and communities through educational and cultural programs.

The Election Commission is authorized to use carry-forward funds for South Carolina's upcoming presidential preference primary.

The Forestry Commission is shielded from general fund reductions and receives \$3 million in capital reserve funds to replace equipment used for such activities as firefighting.

*STATUS: Having passed the General Assembly, **H.3700** (R.106), the General Appropriations Act, and **H.3701** (R.107), the joint resolution making appropriations from the Capital Reserve Fund, were ratified on June 22, 2011. On June 28, the Governor vetoed **H.3701** in its entirety and vetoed certain provisions of **H.3700**. On June 29, legislators overrode the veto on **H.3701** to allow the legislation to become law, sustained some of the vetoes on **H.3700**, and overrode other vetoes on **H.3700** to allow those provisions, along with provisions not vetoed by the Governor, to become law.*

BUSINESS, EMPLOYMENT & ECONOMIC DEVELOPMENT

DISTRIBUTION FACILITY SALES TAX COLLECTION EXEMPTION

The General Assembly approved **S.36**, which includes a provision relating to the order fulfillment center proposed for Lexington County by online retailer Amazon that establishes a temporary exemption from collecting and remitting state sales and use taxes for a distribution facility meeting criteria that include minimum job creation and capital investment requirements. Under the legislation, a qualifying distribution center is not to be considered a physical presence in South Carolina sufficient to establish a nexus with the state for sales and use tax purposes until January 1, 2016. In order to qualify for the exemption, retail sales must not occur at the distribution facility, an initial capital investment of at least \$125 million must be made, and at least 2,000 full-time jobs with comprehensive health plan benefits must be created. The exemption expires earlier than January 1, 2016 if the distribution facility does not maintain at least 1,500 full-time jobs with comprehensive health plan benefits or fails to meet its other requirements or if the United States Congress enacts new federal legislation allowing a state to require that its sales tax be collected and remitted even if the taxpayer does not have a substantial nexus with that state. The legislation includes requirements for notifying purchasers of South Carolina use taxes that they may owe on items bought online.

This legislation also revises the schedule for phasing in the sales tax exemption for durable medical equipment contingent upon sufficient state revenue growth. The legislation further provides for those instances where sales and use tax applies in connection with warranties and service maintenance contracts sold in connection with tangible personal property.

*STATUS: Having passed the General Assembly, **S.36** was ratified on June 1, 2011, (R.56) and became law without the Governor's signature on June 8 (Act No. 32)*

“I-95 CORRIDOR AUTHORITY ACT”

The General Assembly approved **S.211**, the “I-95 Corridor Authority Act”. The Governor subsequently vetoed the legislation and returned the bill to the legislature for the veto to be sustained or overridden. The legislation establishes the I-95 Corridor Authority to carry out economic development and educational enhancement activities to improve the economic conditions in its member counties located along Interstate 95. The legislation provides for the composition of the authority. In addition to any available state funding, the authority is authorized to solicit and accept private and public donations, grants, gifts, and federal funds which must be held in a distinct I-95 Corridor Authority Fund and distributed as grants. The authority, in consultation with the South Carolina Research Authority, shall develop a process by which the I-95 Corridor Authority may execute recommendations of the I-95 Corridor Human Needs Assessment regarding technology-based economic development.

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*STATUS: Having passed the General Assembly, **S.211** was ratified on June 1, 2011 (R.57). On June 7, the Governor vetoed the bill. On June 15, the Senate overrode the Governor's veto and sent the matter to the House of Representatives. On June 22, the House adjourned debate on the consideration of the Governor's veto.*

POINT-OF-SALE REASSESSMENT REVISED FOR COMMERCIAL PROPERTY

The General Assembly approved and the Governor signed into law **H.3713**, a bill revising provisions of the South Carolina Real Property Valuation Reform Act of 2006 that require the assessed value of real property to be determined for tax purposes at the time the property is sold or undergoes another assessable transfer of interest. The legislation revises point-of-sale reassessment of commercial property, second homes, and all other parcels subject to the six percent property tax assessment ratio by providing for a tax exemption to offset dramatic fluctuations in tax liability. The legislation provides that whenever such property is sold or undergoes another assessable transfer of interest after 2010, there is allowed an exemption from property tax of an amount equal to twenty-five percent of the ATI fair market value of the parcel, which is the fair market value of a parcel of real property and any improvements as determined by appraisal at the time the parcel last underwent an assessable transfer of interest. However, the exemption value may not be less than current fair market value of the parcel. If the ATI fair market value of the parcel is less than the current fair market value, the exemption does not apply and the ATI fair market value applies. The legislation revises limitations on property tax millage increases to provide that there may be added to the operating millage increase any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.

The legislation also allows for a blended property tax millage in instances where a municipality extends into multiple counties that conduct countywide appraisal and equalization programs at different times.

*STATUS: Having passed the General Assembly, **H.3713** was ratified on June 8, 2011, (R.91) and signed into law by the Governor on June 14 (Act No. 57).*

RIGHT TO A SECRET BALLOT IN UNIONIZATION VOTES

The General Assembly approved **S.277**, a bill ratifying the amendment to the South Carolina Constitution that voters approved at the last general election to provide that the right to a secret ballot includes votes over unionization and other decisions regarding employee representation by labor organizations.

*STATUS: Having passed the General Assembly, **S.277** was ratified on April 6, 2011, (R.14) with no signature of the Governor required for bills ratifying state constitutional amendments approved by the voters (Act No. 4).*

STATE SMALL BUSINESS CREDIT INITIATIVE

The General Assembly approved and the Governor signed into law **S.824**, a joint resolution designating the South Carolina Jobs-Economic Development Authority as the authorized agency to implement the State Small Business Credit Initiative within and on behalf of the state of South Carolina. The legislation coordinates with the federal Small Business Jobs Act of 2010, through which the United States Congress created the State Small Business Credit Initiative and appropriated \$1.5 billion to be allocated by the United States Department of the Treasury to provide direct support to states for use in programs designed to increase access to credit for small businesses. The U.S. Treasury has allocated the amount of \$17 million for the South Carolina Small Business Credit Initiative to be made available to the state, upon compliance with federal Small Business Jobs Act requirements, for small business capital access and credit support programs which may include such initiatives as collateral support and loan guarantees.

*STATUS: Having passed the General Assembly, **S.824** was ratified on May 17, 2011, (R.53) and signed into law by the Governor on May 23 (Act No. 30).*

“UNDERGROUND FACILITY DAMAGE PREVENTION ACT”

The General Assembly approved and the Governor signed into law **S.705**, the “Underground Facility Damage Prevention Act”. The legislation imposes notification requirements and other regulations upon excavation and demolition activities to protect the integrity of underground lines, systems, and infrastructure used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewerage. The legislation requires public utilities and other operators of underground facilities to form an association that will maintain a notification center for the receipt of notice of proposed excavation or demolition activities. The legislation establishes requirements for the association, including the manner of representation on its governing board of directors. The legislation includes requirements for providing notice to the notification center before commencing excavation or demolition activities and establishes a protocol for conducting these activities in a manner that does not damage underground facilities. Underground facility system operators are required to provide information about the location and description of all of their facilities in an area of the proposed excavation or demolition, identifying them with stakes, paint, flags, or other approved markers. The legislation establishes exemptions and provides civil penalties for violations.

*STATUS: Having passed the General Assembly, **S.705** was ratified on June 1, 2011, (R.66) and signed into law by the Governor on June 7 (Act No. 48).*

UNEMPLOYMENT INSURANCE TRUST FUND CONTRIBUTIONS

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The General Assembly approved and the Governor signed into law **H.3762**, a bill revising employers' required contributions to the Unemployment Insurance Trust Fund that is used to provide the state's jobless benefits. The legislation adjusts Unemployment Insurance Trust Fund provisions to bring relief to businesses that have seen required contributions increase dramatically following recently enacted legislation designed to restore the fund to solvency. Employer classifications are revised in order to shield businesses with positive fund balances that have not contributed to the fund's shortfall from paying the highest rates. The legislation reduces the maximum potential benefits of any insured worker from a total of twenty-six weeks to twenty weeks. New unemployment insurance claims provisions are established for seasonal employment that allow for the collection of unemployment compensation for lay-offs that occur during the work season, but not outside of the season. The legislation includes provisions to prevent unemployment that results from declared natural disasters from being attributed to individual employers. The Department of Employment and Workforce is directed to recalculate premium rates in light of the legislation's changes.

*STATUS: Having passed the General Assembly, **H.3762** was ratified on June 8, 2011, (R.93) and signed into law by the Governor on June 14 (Act No. 63).*

WHISTLEBLOWER LEGAL REMEDIES

The General Assembly approved and the Governor signed into law **S.694**, a bill pertaining to legal remedies for employees claiming wrongful reprisals from their employers following complaints they have made regarding occupational safety and health violations. The legislation revises legal remedies for enforcing the state law prohibiting the discharge of or discrimination against any employee for filing complaints, initiating proceedings, or providing testimony regarding violations of occupational safety and health statutes, rules or regulations. The legislation provides that when a private sector employee makes these allegations to the Director of the Department of Labor, Licensing and Regulation, the director shall forward the complaint within fifteen days to the United States Department of Labor whistleblower program. Any public sector employee believing that he has been discharged or otherwise discriminated against in violation of the state law may proceed with a civil action under the state statutes in Chapter 27 of Title 8 which address employment protection for reports of violations of state or federal law or regulation.

*STATUS: Having passed the General Assembly, **S.694** was ratified on June 8, 2011, (R.83) and signed into law by the Governor on June 14 (Act No. 50).*

CRIMINAL JUSTICE

ARREST WARRANTS AND COURTESY SUMMONS

The General Assembly approved and the Governor signed into law, **S.30** relating to arrest warrants and courtesy summons. This legislation revises the powers and duties

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of magistrates to provide that an arrest warrant may not be issued unless sought by a law enforcement officer acting in his official capacity. If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons. If a defendant named in a courtesy summons fails to appear before the court pursuant to the summons, the court must issue an arrest warrant for the underlying offense based upon the original sworn statement of the affiant who sought the courtesy summons, provided the sworn statement establishes probable cause that the underlying offense was committed.

*STATUS: Having been approved by the General Assembly, **S.30** was ratified on June 22, 2011 (R. 104) and signed into law by the Governor on June 28 (Act No. 70).*

ENHANCED ENFORCEMENT PROVISIONS FOR THEFT OF COPPER AND OTHER NONFERROUS METALS

The General Assembly approved and the Governor signed into law **H.3660**, a bill providing enhanced enforcement provisions for theft of copper and other nonferrous metals. Highlights of the legislation include the following.

Obtaining Nonferrous Metals Unlawfully

The legislation increases the penalties for unlawfully obtaining nonferrous metals, which are metals not containing significant quantities of iron or steel, including copper, aluminum, catalytic converters, and stainless steel beer kegs or containers. The legislation adds a misdemeanor offense for violations that result in the disruption of communication or electrical service to critical infrastructure or more than ten customers of the communication or electrical service.

Purchase, Sale and Transportation of Nonferrous Metals

The legislation requires secondary metals recyclers to obtain a purchase permit provided by the sheriff of the county in which each of the secondary metals recycler's fixed sites are located. The purchase permit is valid for twenty-four months. Each purchase permit costs \$200 paid to and retained by the sheriff's department providing the permit. The legislation prohibits certain cash transactions by requiring a secondary metals recycler to purchase copper, catalytic converters, and beer kegs by check alone. The legislation requires a secondary metals recycler to display certain signs in his place of business and to keep a photocopy of the seller's permit to transport and sell nonferrous metals, if applicable.

Under this legislation, a person or entity other than a holder of a retail license, an authorized wholesaler, a licensed contractor, or a gas, electric, communications, water, plumbing, electrical, or climate conditioning service provider, may not sell or transport nonferrous metal to another person or entity without first receiving a permit issued by a sheriff. The sheriff may not charge a fee for the permit, but the sheriff must keep certain records pertaining to the permits. The permit is valid for twelve months. If a person or entity only wants to sell or transport nonferrous metals a maximum of two times in a twelve month period, there are provisions for receiving a forty-eight hour permit.

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The legislation revises the penalties for purchasing nonferrous metals unlawfully. Among other things, the legislation provides that it is felony for a person to obtain a permit to transport and sell nonferrous metals for the purpose of transporting or selling stolen nonferrous metals. A person who purchases nonferrous metals from a seller that does not have a permit in order to resell the nonferrous metals under his own permit is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

With certain exceptions, the bill provides that it is unlawful for a person to transport or have in the person's possession on the highways of this State nonferrous metals of an aggregate of more than ten pounds in a vehicle other than a vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals.

*STATUS: Having passed the General Assembly, **H.3660** was ratified on June 16, 2011 (R.102) and signed into law by the Governor on June 17 (Act No. 68).*

EDUCATION

“SOUTH CAROLINA HIGHER EDUCATION EFFICIENCY AND ADMINISTRATIVE POLICIES ACT OF 2011”

The General Assembly approved **S.172**, which enacts the “South Carolina Higher Education Efficiency and Administrative Policies Act of 2011”. This legislation grants administrative relief to public institutions of higher learning from certain legislatively required procedures. Administrative areas addressed in the legislation include facilities and capital expenditures, real property transactions, financing/administration and procurement. Among other things, the legislation provides that the State Office of Human Resources and representatives of higher learning are to recommend to the Budget and Control Board by July 1, 2012, a separate comprehensive human resources system for higher education. Also, the legislation allows the State Board for Technical and Comprehensive Education to establish a tiered system for categorizing technical colleges with regard to its administrative authority.

*STATUS: Having been approved by the General Assembly, **S.172** was enrolled for ratification on June 29, 2011.*

TEACHER EMPLOYMENT AND SALARY PROVISIONS

The General Assembly approved and the Governor signed into law **H.3642**, a joint resolution authorizing the suspension of automatic step increases in teacher salaries by providing that a local school district may, for Fiscal Year 2011-2012, pay teachers based on the years of experience the teachers possessed in fiscal year 2010-2011 without negative impact to their experience credit. The legislation provides voting and notice requirements for this decision. The legislation requires that payment under the suspension must be applied uniformly. If a local school district uses this authority to suspend step increases, the school district may not pay district or school administrators more than they received in fiscal year 2010-2011. A local school district board of

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trustees may, however, return the salary of a district or school administrator to the previous year's base salary if he was subject to a furlough or increase the salary of a district or school administrator if he changed his position within the district in the prior academic year. The legislation requires a local school district to continue to pay teachers and administrators for changes in their education levels.

The General Assembly approved and the Governor signed into law **S.629**. This joint resolution establishes a time line for local school districts to make teacher employment decisions and notify teachers of their employment for the 2011-2012 school year. The legislation allows districts to uniformly negotiate salaries below their salary schedule for the 2011-2012 school year for retired teachers.

*STATUS: Having passed the General Assembly, **H.3642** was ratified on May 17, 2011, (R.55) and signed into law by the Governor on May 23. Having passed the General Assembly, **S.629** was ratified on April 6, 2011, (R.18) and signed into law by the Governor on April 12.*

TEMPORARY COST SAVING MEASURES IN K-12 EDUCATION

The General Assembly approved and the Governor signed into law **H.3663**, a joint resolution authorizing certain temporary cost saving measures in K-12 education. The joint resolution provides for the State Department of Education to suspend the printing of district and school report cards and allow that material to be disseminated primarily online. The legislation relieves a public school or district board from its requirement to inform the community of the school's and district's 2011 report card by advertising the results in at least one South Carolina daily newspaper of general circulation in the area. However, the results must be provided to the editor of a newspaper of general circulation in the school's or district's area. For the 2011-2012 school year, the State Department of Education shall suspend the writing assessments in grades three, four, six, and seven. Writing assessments may be administered only to students in grades five and eight. The writing assessments may not be used in Education Accountability Act growth calculations. The legislation authorizes high schools to offer state-funded WorkKeys to tenth grade students using funds appropriated for the assessment of PSAT or PLAN. The legislation includes provisions for a one-year grace period that allows an individual who received a South Carolina Teacher Loan to defer making loan repayments. The State Department of Education is directed to allocate the savings it generates from the enactment of the legislation to school districts based on the weighted pupil units.

*STATUS: Having passed the General Assembly, **H.3663** was ratified on June 1, 2011, (R.76) and signed into law by the Governor on June 7.*

TUITION AND FEE CHANGES AT PUBLIC INSTITUTIONS OF HIGHER LEARNING

The General Assembly approved **S.172**, which includes provisions relating to tuition and fee changes at public institutions of higher learning. The legislation provides that when the governing board of a public institution of higher learning, excluding technical colleges, adopts a change to the tuition or fees imposed on students, the change may be

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implemented by the institution only after a public vote with the number of trustees voting for and against the change being counted. A majority vote is required to implement any change to the tuition or fees. For technical colleges, when the local area commission of a technical college adopts a change to the tuition or fees imposed on students, the change may be implemented by the technical college only after a public vote with the number of local area commissioners voting for and against the change being counted. A majority vote is required to implement any change to the tuition or fees. A change to tuition or fees adopted by the local area commission must be reported to the State Board for Technical and Comprehensive Education within five business days.

*STATUS: Having been approved by the General Assembly, **S.172** was enrolled for ratification on June 29, 2011.*

ELECTIONS

PHOTOGRAPH IDENTIFICATION REQUIREMENT FOR VOTING

The General Assembly approved and the Governor signed into law **H.3003**, a bill establishing a photograph identification requirement for voting. This legislation requires the State Elections Commission to implement a system for issuing voter registration cards with a photograph of the elector to be used for voting purposes only. Under the legislation, when a person presents himself to vote he is required to produce photograph identification in the form of a valid and current: South Carolina driver's license, other form of identification containing a photograph issued by the Department of Motor Vehicles (DMV), passport, military photo identification issued by the federal government, or South Carolina voter registration card containing a photograph. The legislation requires one of the poll managers to compare the photograph contained on the required identification with the person presenting himself to vote and verify that the photograph is that of the person seeking to vote. If the elector cannot produce the required identification, he may cast a provisional ballot that is counted only if the elector brings a valid photo identification to the county board of voter registration and elections before certification of the election by the county board of canvassers. If the manager disputes that the photograph contained on the required identification is the person presenting himself to vote, the legislation establishes a process allowing the elector to cast a provisional ballot. The legislation provides an alternate process of affirming identity through completing an affidavit under penalty of perjury at the polling place and casting a provisional ballot in situations where an elector has a religious objection to being photographed or suffers from a reasonable impediment that prevents the elector from obtaining photograph identification. The legislation requires the DMV to issue a special identification card to a person who is at least seventeen years old at no charge; currently, there is a fee for the issuance of this special identification card. A special identification card may be issued for individuals between the ages of five and sixteen for a five dollar fee. The State Election Commission is required to establish a voter education program concerning the new provisions, train poll workers on the changes, and provide notification to registered electors who have not been issued a driver's license or identification card.

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*STATUS: Having been approved by the General Assembly, **H.3003** was ratified on May 17, 2011 (R.54) and signed into law by the Governor on May 18 (Act No. 27).*

REDISTRICTING

Redistricting is the process of reconfiguring election districts that is required every ten years in order to reflect population changes reported in the latest U.S. Census. Legislators are charged with approving plans for redrawing the election districts of the General Assembly and the state's congressional districts that take into account the population shifts recorded in the 2010 census and address such concerns as compliance with federal Voting Rights Act requirements for minority representation.

The state's population growth having warranted an additional seat for South Carolina in the U.S. House of Representatives, the redistricting plan approved by the House of Representatives creates a seventh congressional district that is centered in Horry County and runs along the North Carolina border. The Senate has approved a different plan with a seventh congressional district that is centered in Beaufort County, running from Williamsburg to Jasper Counties. Under this plan, Charleston and Horry Counties remain in the first congressional district.

*CONGRESSIONAL REDISTRICTING PLAN STATUS: On June 29, 2011 **H.3992** received third reading in the Senate and was returned to the House of Representatives with amendments.*

*SOUTH CAROLINA HOUSE REDISTRICTING PLAN STATUS: Having been approved by the General Assembly **H.3991** was ratified on June 22, 2011 (R.108) and signed into law by the Governor on June 28 (Act No. 72).*

*SOUTH CAROLINA SENATE REDISTRICTING PLAN STATUS: Having been approved by the General Assembly **S.815** was ratified on June 22, 2011 (R. 105) and signed into law by the Governor on June 28 (Act No. 71).*

"SOUTH CAROLINA UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTERS ACT"

The General Assembly approved and the Governor signed into law **S.404**, the "South Carolina Uniformed and Overseas Citizens Absentee Voters Act". This legislation provides that a qualified elector who is eligible to vote as provided by the federal Uniformed and Overseas Citizens Absentee Voter Act may apply not earlier than 90 days before an election for a special write-in absentee ballot. This legislation allows a qualified absentee elector to alternatively submit a federal write-in absentee ballot for any federal, state, local office or state or local ballot measure. If a qualified elector requests a ballot within the 45 day period before an election, an absentee ballot must be sent to the elector no later than the close of the next business day following receipt of the request. Relating to absentee ballots as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act, the legislation makes the provisions applicable to federal, state, and local offices. Pertaining to oaths necessary to receive an absentee

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ballot, this legislation provides an exemption from witness requirements for qualified voters under the federal Uniformed and Overseas Citizens Absentee Voters Act. This legislation also makes revisions to section 7-15-320, relating to persons qualified to vote by absentee ballot.

*STATUS: Having been approved by the General Assembly, **S.404** was ratified on June 1, 2011 (R.58) and signed into law by the Governor on June 7 (Act No. 43).*

FAMILY & HEALTH

GEROPSYCHIATRIC DISTRICT PART UNIT PILOT PROJECT

The General Assembly approved and the Governor signed into law **S.590**, a bill creating the Geropsychiatric District Part Unit Pilot Project. This project will assess the provision of care for a defined population of patients at least sixty-five years old and in need of psychiatric crisis stabilization services. The pilot project shall be conducted at two Critical Access Hospitals (CAHs) in the State and must be coordinated between the South Carolina Department of Health and Environmental Control (DHEC) and the South Carolina Department of Mental Health. To the extent practicable, the CAHs must be located in different regions of the State with differing racial and socioeconomic demographics. A CAH desiring to participate in this pilot project shall apply to DHEC by July 1, 2012.

*STATUS: Having passed the General Assembly, **S.590** was ratified on May 17, 2011 (R.51) and signed by the Governor on May 23.*

“LICENSURE OF IN-HOME CARE PROVIDER ACT”

The General Assembly approved and the Governor signed into law **H.3012**, a bill requiring the Department of Health and Environmental Control (DHEC) to establish a licensure program for in-home care providers. “In-home care” means assistance with activities of daily living and personal care. An in-home care provider is defined as a person or business that directly provides in-home care services through its own employees or through contractual arrangements. DHEC must include standards for liability insurance in in-home care regulations. The legislation requires drug testing for licensed in-home care providers and for their employees and makes them subject to random drug testing. In-home care provider does not include a licensed home health agency or hospice; an individual who cleans houses; a residential program and its employees which is operated or contracted for operation by the Department of Mental Health (DMH) or the Department of Disabilities and Special Needs (DDSN); DDSN Family Support Program services including, but not limited to, family support services

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coordination, information, referral, advocacy, educational materials, emergency and outreach services, and other individual and family centered assistance services ; an in-home care services obtained through churches and other religious institutions as long as the care is provided without compensation or for a nominal fee to cover incidental expenses; or individuals hired directly by the person receiving care or by his family.

*STATUS: Having passed the General Assembly, **H.3012** was ratified on May 5, 2011 (R.38) and signed into law by the Governor on May 11 (Act No.18).*

NARCOTIC TREATMENT PROGRAMS

The General Assembly approved **S.232**, a bill which adds narcotic treatment programs in the definition of health care facility, requiring these programs to obtain a certificate of need approval. The legislation restores DHEC's regulatory oversight of narcotic treatment programs, such as methadone clinics, under the provisions of the State Certification of Need and Health Facility Licensure Act.

*STATUS: Having passed the General Assembly, **S.232** was ratified on May 17, 2011 (R.47) and vetoed by the Governor on May 23. The veto was overridden by the Senate on June 2 and by the House on June 15 (Act No. 61).*

REPLACING THE TERM "MENTAL RETARDATION" WITH "INTELLECTUAL DISABILITY"

The General Assembly passed and the Governor signed into law **S.687**, legislation that replaces the term "mental retardation" with "intellectual disability" and the term "mentally retarded" with "persons with intellectual disability" throughout the "State Certification of Need and Health Facility Licensure Act" and other state statutes.

*STATUS: Having passed the General Assembly, **S.687** was ratified on June 1, 2011 (R.51) and signed by the Governor on June 7 (Act No. 47).*

SOUTH CAROLINA DYSLEXIA TASK FORCE

The General Assembly approved and the Governor signed into law **S.241**, legislation establishing the South Carolina Dyslexia Task Force. The task force must study and evaluate practices for diagnosing, treating, and educating children with dyslexia and to examine how current statutes and regulations affect these students. The task force will consist of 13 members composed of the following: the Superintendent of the South Carolina Department of Education; one person upon recommendation of the South Carolina Chapter of the Learning Disabilities Association of America; one person upon recommendation of the South Carolina Branch of the International Dyslexia Association; one person upon recommendation of the South Carolina Speech-Language-Hearing Association; one person upon the recommendation of the South Carolina Education Association; one person upon the recommendation of the Palmetto State Teachers'

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Association, and one member of the public at large; three members shall be appointed by the President Pro Tempore of the Senate and three members shall be appointed by the Speaker of the House of Representatives. The findings and recommendations of the task force shall be reported to the Governor and the General Assembly no later than twelve months after the initial meeting. The report shall include any proposed legislation that the task force recommends for adoption by the General Assembly. The task force shall dissolve immediately after submitting its report to the Governor and the General Assembly.

*STATUS: Having passed the General Assembly, **S.241** was ratified on June 8, 2011 (R.80) and signed by the Governor on June 14.*

“STROKE PREVENTION ACT OF 2011”

The General Assembly approved **S.588**, legislation requiring the Department of Health and Environmental Control to identify hospitals as primary stroke centers and stroke enabled centers through telemedicine. The legislation establishes a Stroke System of Care Advisory Council to be appointed by the director of the South Carolina Department of Health and Environmental Control to advise DHEC on the development and implementation of a statewide system of stroke care. The legislation establishes a Stroke Registry Task Force, as a subcommittee of the Stroke System of Care Advisory Council, to maintain a statewide stroke registry database that compiles information and statistics on stroke care.

*STATUS: Having passed the General Assembly, **S.588** was ratified on June 8 (R.81). The Governor vetoed the legislation on June 14. On June 21, the House of Representatives and Senate overrode the veto to allow the legislation to become law (Act No. 62).*

GOVERNMENT AND FINANCE

FEDERAL AND OTHER FUNDS OVERSIGHT ACT REVISIONS

The General Assembly approved and the Governor signed into law **S.312**, a bill making revisions to the South Carolina Federal and Other Funds Oversight Act. The legislation expands the act’s definition of “matching funds” so that it includes not only general fund monies but also other fund monies that are used to meet federal match requirements. The legislation requires agencies to provide their required budget submissions, including detailed statements of the sources of all federal and other funds contained in their budgets, to the Governor, rather than the Budget and Control Board. Submission requirements are revised to provide that all state agencies shall submit to the Governor programmatic and financial information for all federal funds the agencies seek to expend in the fiscal year. The legislation requires these submissions to provide a separate listing of all conditions imposed on this state if the funds are accepted and expended, including: matching requirements; maintenance of effort requirements; limits on program changes, such as eligibility requirements, either by agency action or legislative enactment; and any other requirements that limit the authority of this state, by legislative

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enactment or administrative process to revise, extend, or eliminate the activity in aid of which the federal funds are to be expended. The submission must also include information on all federal funds available to the agency or for which the agency is eligible to request or draw upon that have not been requested or drawn upon due to insufficient matching funds being available or any other reason and also must include the potential costs, conditions, and restrictions of the federal program providing or offering the funds. A favorable recommendation of federal funds proposed for inclusion in the agency's budget request must include the Governor's specific request for the inclusion of the federal funds and the details of the conditions imposed by the inclusion and appropriation of the federal funds. The legislation also revises provisions governing the expenditure by a state agency of unanticipated federal funds and private grant funds not appropriated in appropriations acts, so as to require the agency's submission of an expenditure proposal for the anticipated funds to the State Budget and Control Board to include the conditions imposed on the state's receipt and expenditure of the federal funds and, in authorizing the receipt and expenditure, the board's acceptance of the conditions.

*STATUS: Having passed the General Assembly, **S.312** was ratified on May 17, 2011, (R.48) and signed into law by the Governor on May 23 (Act No. 28).*

HIGHER EDUCATION FINANCIAL TRANSPARENCY

The General Assembly approved **S.172**, which includes new requirements for each public institution of higher learning to maintain a transaction register featuring a complete record of all funds expended, from whatever source for whatever purpose. The register must be prominently posted on the institution's Internet website and made available for public viewing and downloading. The legislation also requires each agency, department, and institution of state government to be responsible for providing on its Internet website a link to a website posting of its monthly state procurement card statements.

*STATUS: Having passed the General Assembly, **S.172** was enrolled for ratification on June 29, 2011.*

LOBBYING AND ETHICS

The General Assembly approved and the Governor signed into law **H.3183**, legislation relating to lobbying and ethics. Relating to the registration and re-registration of lobbyists and lobbyist principals, this legislation requires the payment of all outstanding penalties before a lobbyist or lobbyist principal may resume lobbying activities. The legislation amends the definition of the term "family member" for the purposes of the Ethics, Government Accountability, and Campaign Reform Act, so as to include brothers-in-law and sisters-in-law. Relating to the use of one's official position for official gain, this legislation replaces certain references to "immediate family" with the broader term "family member". Relating to the authority of the State Ethics Commission to enforce filing requirements and assess penalties for failure to file, the legislation caps certain fines at \$5,000 and outlines penalties for first, second, and third and subsequent offenses. Relating to penalties for either late filing of or failure to file a report or

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statement this legislation caps certain fines at \$5,000, and outlines penalties for first, second and third and subsequent offenses.

*STATUS: Having been approved by the General Assembly, **H.3183** was ratified on June 1, 2011 (R.74) and signed into law by the Governor on June 7 (Act No. 40).*

PROHIBITION ON SERVING AS BOTH A MEMBER OF AND AN EMPLOYEE OF A STATE OR LOCAL GOVERNMENT BOARD OR COMMISSION

The General Assembly approved and the Governor signed into law **H.3625**, legislation prohibiting someone from serving as both a member of and an employee of a state or local government board or commission. The legislation expands the current statutory prohibition on such employment arrangements to provide that no person shall serve at the same time on the governing body of a state, county, municipal, or political subdivision board or commission and as an employee of the same board or commission or in a position that is subject to the control of that board or commission or affects its decision-making. The prohibition also applies to a non-appointed member of the governing body of the board or commission for a water or sewer district or a nonprofit water or sewer corporation or company organized under state law. Anyone served by the board, commission, corporation, or company has standing to bring a lawsuit in the circuit court to uphold the prohibition. A violator may be assessed a civil penalty of fifty dollars per day to be remitted to the general fund of the board, commission, corporation, or company. In a lawsuit brought to force someone to vacate an unlawfully held position, the violator must pay the civil penalty plus court costs, attorney's fees, and any damages required by the court.

*STATUS: Having been approved by the General Assembly, **H.3625** was ratified on April 6, 2011 (R. 29) and signed into law by the Governor on April 7 (Act No. 11).*

“SPENDING ACCOUNTABILITY ACT OF 2011”

The General Assembly approved and the Governor signed into law **H.3004**, the “Spending Accountability Act of 2011”. The legislation establishes new requirements for the General Assembly to take roll call votes in the consideration of legislation that record the names and stances of legislators in the journals of the Senate and the House of Representatives. The legislation provides that the Annual General Appropriations Bill must be considered section-by-section on second reading, and must receive a recorded roll call vote by the House of Representatives and the Senate for the adoption of each section. The legislation provides that a bill or joint resolution must receive a recorded roll call vote by the House of Representatives and the Senate when: (1) the pending question is adoption of a Conference or Free Conference Report; (2) the pending question is the passage of a bill or joint resolution on second reading; (3) either the House of Representatives or the Senate agrees to the other body's amendment; or (4) a bill or joint resolution is amended and the pending question is the passage of a bill on third reading.

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*STATUS: Having passed the General Assembly, **H.3004** was ratified on April 6, 2011, (R.21) and was signed into law by the Governor on April 12 (Act No. 6).*

STATE FIRE MARSHAL APPEALS PROCESS

The General Assembly approved and the Governor signed into law **S.693**, a bill revising the appeals process for fire marshal decisions. The legislation increases from twenty-four hours to thirty days the amount of time that an occupant or owner may appeal the decision of a deputy or resident fire marshal to the State Fire Marshall. The appeal period shall not be allowed if the State Fire Marshall considers the building or structure to be an imminent danger subject to his emergency powers. The legislation provides that an order or affirmed order of the State Fire Marshal may be appealed to an administrative law judge within thirty days rather than the current five days.

*STATUS: Having passed the General Assembly, **S.693** was ratified on June 1, 2011, (R.65) and signed into law by the Governor on June 7 (Act No. 37).*

IMMIGRATION

The General Assembly approved and the Governor has signed into law **S.20**, legislation revising the State's illegal immigration provisions. Highlights of the legislation include the following.

Failure to Carry a Certificate of Alien Registration

This legislation requires a person eighteen or older to carry any alien registration documentation he is issued pursuant to federal law while the person is in this State. A violation is a misdemeanor.

Law Enforcement Authorization to Determine Immigration Status

This legislation allows a law enforcement officer who lawfully stops, detains, investigates, or arrests a person for a criminal offense to make a reasonable effort to determine whether that person is lawfully present in the United States, if during that time the officer has reasonable suspicion to believe that the person is unlawfully present. The officer shall make these efforts during the stop or arrest, unless doing so would hinder the investigation. The legislation provides an exception to these provisions for school resource officers.

If the person presents a driver's license or picture identification issued by the South Carolina Department of Motor Vehicles or another state; a picture identification issued by the United States; or a tribal picture identification, or if the officer is able to verify that the person has been issued one of these documents, he is presumed to be lawfully present in the country. If the person meets the presumption, the officer may not further stop, detain, investigate, or arrest the person based solely on the person's lawful presence in the United States.

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If this presumption is not met, the officer shall make a reasonable effort to verify the person's presence in the country by one of the following methods: contacting the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety; submitting an Immigration Alien Query through the International Justice and Public Safety Network; contacting the United States Immigration and Customs Enforcement's Law Enforcement Support Network; or contacting the United States Immigration and Customs Enforcement's local field office.

The officer shall stop, detain, or investigate the person only for a reasonable amount of time as allowed by law. If the officer cannot verify the person's lawful presence in the United States by one of the methods described above, the officer may not further stop, detain, investigate, or arrest the person based solely on his lawful presence in the United States. If the officer determines that the person is unlawfully present in the United States, he shall determine in cooperation with the appropriate entity whether he shall retain custody of the person for the underlying criminal offense, or whether the Illegal Immigration Enforcement Unit within the Department of Public Safety or the United States Immigration and Customs Enforcement shall assume custody.

A law enforcement officer may not attempt to make an independent judgment of a person's lawful presence in the United States.

Any time a motor vehicle is stopped by a law enforcement officer without a citation being issued or an arrest being made and the officer contacts the Illegal Immigration Unit within the Department of Public Safety, the officer who initiated the stop must complete a data collection form. This form must include information regarding the age, gender, and race or ethnicity of the driver of the vehicle.

False Identifications

The legislation provides that it is unlawful for a person to display, cause or permit to be displayed, or have in the person's possession a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person's lawful presence in the United States. A first offense is a misdemeanor; a second or subsequent offense is a felony.

This legislation provides that it is a felony for a person to make, issue, or sell, or offer to make, issue, or sell, a false, fictitious, fraudulent, or counterfeit picture identification that is for use by an alien who is unlawfully present in the United States.

Harboring and Transporting Illegal Aliens

This legislation expands the current offenses relating to harboring and transporting an illegal alien with intent to further that person's illegal entry into the United States or avoiding apprehension or detection of that person's illegal status by authorities. This legislation provides it is a felony for an illegal alien to allow himself to be transported within the State or to solicit or conspire to be transported within the State. The legislation further provides that it is a felony for an illegal alien to conceal himself from detection or to solicit or conspire to conceal himself from detection.

Illegal Immigration Enforcement Unit

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The legislation establishes the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety. The enforcement of immigration laws is the only responsibility of the unit. The unit is under the administrative direction of the department's director, and the director is required to negotiate a memorandum of agreement with the United States Immigration and Customs Enforcement. The department shall develop an illegal immigration enforcement training program to assist local law enforcement agencies. The unit must be funded annually by a specific appropriation to the unit in the State's general appropriations act, separate and distinct from the department's other appropriations. The legislation provides that the unit is established upon receiving funding and authorization to enforce federal immigration law.

This legislation repeals a statute relating to the State Law Enforcement Division negotiating a memorandum of understanding with federal authorities regarding the enforcement of immigration laws.

Transport of Prisoners to Federal Facility or Custody

This legislation allows a jail keeper to securely transport a prisoner who is an illegal alien to a federal facility in this State or to any other point of transfer into federal custody that is outside the jail keeper's jurisdiction. Judicial authorization must be obtained before transporting a prisoner to a point of transfer that is outside of this State.

If a prisoner who is an illegal alien completes the prisoner's sentence of incarceration, the jail keeper shall notify the United States Department of Homeland Security and shall securely transport the prisoner to a federal facility in this State or to any other point of transfer into federal custody. Judicial authorization must be obtained before transporting a prisoner to a point of transfer that is outside of this State.

Civil Actions to Enforce Laws Relating to Immigration

This legislation allows a resident of a political subdivision to bring a civil action to enjoin any action taken intentionally by the political subdivision in violation of immigration laws.

Employment

This legislation requires public and private employers to utilize the federal work authorization program, E-Verify, to verify the employment authorization of all new employees. The legislation deletes current provisions which allow the use of alternative forms of identification other than E-Verify.

For private employers, the legislation reduces the time frame to obtain verification of the work authorization of a new employee from five days to three days. A private employer who does not comply with these requirements violates the private employer's licenses.

If a private employer is a contractor, this legislation requires the private employer to maintain the phone numbers of all subcontractors and sub-subcontractors performing services for the private employer. This information must be provided to the director of the South Carolina Department of Labor, Licensing and Regulation (LLR) pursuant to an audit or investigation within seventy-two hours of the director's request.

This legislation provides that a private employer who knowingly or intentionally employs an unauthorized alien violates the private employer's licenses.

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In compliance with the recent United States Supreme Court decision, this legislation deletes provisions allowing civil penalties against private employers for immigration violations.

The legislation revises penalties for violations of the statute requiring registration and participation in E-Verify. The legislation provides for staggered penalties. Among other things, administrative penalties for violations include probation, termination of an employee whose work authorization was not verified, and suspension of the private employer's licenses for varying periods of time. Also, the legislation requires the director of LLR to notify federal, state, and local law enforcement officials of any suspected unauthorized aliens employed by the private employer. Additionally, in certain circumstances this legislation allows a private employer with one violation of this statute to have his name removed from the LLR website six months after publication.

The legislation revises penalties for violations of the statute which prohibits the intentional employment of unauthorized aliens. Among other things, the legislation provides that during periods of suspension, the private employer may not engage in business, open to the public, employ an employee, or otherwise operate.

In taking any disciplinary action for a violation of the statute requiring registration and participation in E-Verify or the statute which prohibits the intentional employment of unauthorized aliens, the legislations adds to the list of factors to be considered, the degree of the violation and the good faith of the private employer.

If a private employer continues to engage in business after the private employer's licenses have been revoked, this legislation requires LLR to seek an injunction from the Administrative Law Court to enjoin the private employer from continuing to operate.

This legislation requires LLR to notify the applicable licensing agency or political subdivision if LLR determines that a private employer's license must be suspended or revoked. The applicable agency or political subdivision must immediately suspend or revoke the private employer's license.

This legislation provides that a license suspension or revocation does not constitute a dissolution, liquidation, or a winding down process, or a transfer or other taxable event for tax purposes, and does not affect protections against personal liability provided in Title 33.

*STATUS: Having been approved by the General Assembly, **S.20** was ratified on June 22, 2011 (R. 103) and signed into law by the Governor on June 27 (Act No. 69).*

INSURANCE

AUTOMOBILE INSURANCE COVERAGE FOR OUT-OF-STATE DRIVERS

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The General Assembly approved and the Governor signed into law **H.3373**, a bill that expands the authority for an automobile insurer to write coverage for out-of-state drivers, accommodating the needs of out-of-state residents who spend only a portion of the year in South Carolina because of business or tourism. The legislation eliminates existing requirements for an out-of-state driver to designate a principal operator of a vehicle who has a South Carolina driver's license in order to obtain automobile insurance coverage on a vehicle that is garaged and operated in this state.

*STATUS: Having passed the General Assembly, **H.3373** was ratified on April 6, 2011 (R.24) and signed into law by the Governor on April 12 (Act No. 8).*

COMMERCIAL GENERAL LIABILITY INSURANCE

The General Assembly approved and the Governor signed into law **S.431**. In response to a recent South Carolina Supreme Court ruling that affects coverage of commercial general liability insurance policies, the legislation establishes parameters of coverage for such contracts of insurance which address occurrences of damages or injury during the policy period and insure a construction professional for liability arising from construction related work. The legislation provides that commercial general liability insurance policies shall contain or be deemed to contain a definition of "occurrence" that includes: (1) an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and (2) property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship itself. The legislation applies to any pending or future dispute over coverage that would otherwise be affected by this provision as to commercial general liability insurance policies issued in the past, currently in existence, or issued in the future.

*STATUS: Having passed the General Assembly, **S.431** was ratified on May 17, 2011, (R.49) and signed into law by the Governor on May 17 (Act No. 26).*

DRIVER TRAINING COURSE INSURANCE PREMIUM CREDITS

The General Assembly approved and the Governor signed into law **H.3332**, a bill revising provisions for driver training course insurance premium credits that allow for a reduction in premium charges for automobile insurance liability and collision coverage for adult drivers who successfully complete approved driver training courses and refresher courses. The legislation lowers from eight hours to six hours the minimum course requirement that allows an adult driver to be eligible to receive the driver training course credit from his insurer. Driver training course credit provisions are expanded so that they encompass not simply older drivers, but all adult drivers.

*STATUS: Having passed the General Assembly, **H.3332** was ratified on April 6, 2011, (R.23) and signed into law by the Governor on April 12 (Act No. 7).*

NATURAL RESOURCES AND AGRICULTURE

ABANDONED WATERCRAFT

The General Assembly approved and the Governor signed into law **H.3287**, legislation regarding abandoned watercraft. The legislation establishes requirements for investigation and notification by the Department of Natural Resources in order to determine the status of the watercraft as abandoned. Any watercraft identified by the department as abandoned for at least ninety days may be claimed by any person or entity as abandoned property. The legislation provides that an abandoned watercraft identified by the department may be removed and disposed of by a governmental entity that has jurisdiction over the area where the abandoned watercraft is located.

*STATUS: Having passed the General Assembly, **H.3287** was ratified on May 5, 2011 (R.41) and signed into law by the Governor on May 9 (Act No. 21).*

COLLARD GREENS - OFFICIAL STATE VEGETABLE

The General Assembly passed and the Governor signed into law **S.823**, legislation designating collard greens as the official state vegetable.

*STATUS: Having passed the General Assembly, **S.823** was ratified on June 1, 2011 (R.69) and signed by the Governor on June 2 (Act No. 38).*

HUNTING AND FISHING RIGHTS

The General Assembly passed **H.3276**, legislation ratifying the Hunting and Fishing Rights Amendment to the South Carolina Constitution that was approved by the voters at the last general election.

*STATUS: Having passed the General Assembly, **H.3276** was ratified on May 5, 2011 (R.40) with no signature of the Governor required for bills ratifying state constitutional amendments approved by the voters (Act No. 20).*

INTERSTATE WILDLIFE VIOLATOR COMPACT

The General Assembly approved and the Governor signed into law **H.3374**, legislation authorizing South Carolina to enter into an Interstate Wildlife Violator Compact that allows member states to coordinate the enforcement of their statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources. The compact allows member states to provide reciprocal recognition of wildlife violations and suspensions of hunting and fishing license privileges. A violator is allowed to accept

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certain wildlife citations and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is a party to the compact.

The Department of Natural Resources Director will appoint South Carolina's Compact Administrator who will serve as the state's representative on the Board of Compact Administrators interstate governing body.

*STATUS: Having passed the General Assembly, **H.3374** was ratified on April 6, 2011 (R.25) and signed into law by the Governor on May 12 (Act No. 12).*

STATE PECAN FESTIVAL

The General Assembly approved **H.3397**, legislation designating the South Carolina Pecan Festival in Florence County as the official State Pecan Festival.

*STATUS: Having been approved by the General Assembly, **H.3397** was ratified on April 6, 2011 (R.26) and signed into law by the Governor on April 12 (Act No. 9).*

TORT REFORM

"SOUTH CAROLINA FAIRNESS IN CIVIL JUSTICE ACT OF 2011"

The General Assembly approved and the Governor signed into law **H.3375**, the "South Carolina Fairness in Civil Justice Act of 2011," which establishes tort reform provisions. Highlights of the legislation include the following.

Caps for Punitive Damages

This legislation establishes caps for punitive damages awarded in civil lawsuits. The legislation provides that an award of punitive damages may not exceed the greater of \$500,000 or three times the amount of compensatory damages, which address actual costs sustained by the plaintiff such as lost wages and medical expenses. In instances where the wrongful conduct is motivated primarily by unreasonable financial gain or could subject the defendant to a felony conviction, punitive damages are capped at \$2 million or four times the amount of compensatory damages, whichever is greater. No cap is placed on punitive damages in situations involving intentional harm, intoxication, or conviction of a felony criminal charge in the course of conduct that gives rise to the damages.

The legislation provides that a claim for punitive damages must be specifically requested when they are sought. The plaintiff may only plead that punitive damages are sought and may not plead a specific amount of punitive damages. The legislation provides for a bifurcated trial format for actions tried before a jury involving punitive damages. In the first stage of a bifurcated trial, the jury shall determine liability for compensatory

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damages and the amount of compensatory or nominal damages. If compensatory or nominal damages have been awarded in the first stage of the trial and if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant's willful, wanton, or reckless conduct, then the same jury shall determine, in the second stage of the bifurcated trial, if a defendant is liable for punitive damages and the amount of those damages. The legislation establishes a list of factors the jury may consider in determining the amount of punitive damages, including the severity of the harm and the defendant's degree of culpability, past conduct, and ability to pay. If punitive damages are awarded, the trial court shall review the jury's decision to ensure that the award is not excessive or the result of passion or prejudice.

Cap on the Bond a Business Must Post to File an Appeal in Civil Lawsuit

This legislation establishes a cap on the bond a business must post to file an appeal in a civil lawsuit. The legislation limits the amount of an appeal bond that a court can order posted to the amount of the judgment or \$25 million dollars for a large business or \$1 million for all others, whichever is less. Large businesses are defined based on gross receipts and number of employees.

Limitations on Actions Based on Unsafe or Defective Improvements to Real Property - Evidence of Fraud, Gross Negligence, or Recklessness

The legislation provides that building code violations do not constitute per se fraud, gross negligence or recklessness, but such violations may be admissible as evidence of fraud, gross negligence, or recklessness.

Automobile Insurance - Release of Coverage Information

This legislation establishes insurer disclosure requirements on nonfleet private passenger automobile insurance coverage.

Retention of Outside Counsel by Solicitors

A solicitor may employ outside counsel, in his discretion, without approval of the Attorney General, for civil forfeiture proceedings arising from criminal activity or from estreatment of bail bonds. In any other matter, the solicitor must obtain written approval of the Attorney General prior to retaining counsel to or filing a civil cause of action.

*STATUS: Having passed the General Assembly, **H.3375** was ratified on June 8, 2011 (R.86) and signed into law by the Governor on June 14 (Act No. 52).*

TRANSPORTATION AND TRAFFIC SAFETY

“ALL-TERRAIN VEHICLE SAFETY ACT” - ALSO KNOWN AS “CHANDLER’S LAW”

The General Assembly approved and the Governor signed into law [H.3562](#), legislation enacting “Chandler’s Law” which deals with all-terrain vehicles (ATVs). The legislation outlines that it is unlawful for the parents or legal guardian of a person less than six years old to knowingly permit that person to operate an all-terrain vehicle (ATV). The legislation further provides that it is unlawful for a parent or legal guardian of a person without a driver’s license and less than sixteen years old to knowingly allow that person to carry a passenger while operating an ATV. Under the bill, it is unlawful to remove from an ATV the required manufacturer Age Restriction Warning Label. A person fifteen years of age or younger may not operate, ride, or otherwise be propelled on an all-terrain vehicle within the state unless the person wears a safety helmet. Effective July 1, 2011, every person fifteen years old and younger who operates an all-terrain vehicle must possess a safety certificate indicating successful completion of ‘hands-on’ all-terrain vehicle safety course approved by the All-Terrain Vehicle Safety Institute. The legislation establishes additional restrictions for the operation of ATVs on lands open to the public. The legislation provides that all-terrain vehicles are exempt from ad valorem personal property taxes beginning with calendar year 2011. A violation of the All-Terrain Vehicle Safety Act is a misdemeanor subject to a fine of not less than fifty nor more than two hundred dollars. The All-Terrain Vehicle Safety Act does not apply to: an owner, operator, lessor, or renter of a farm or ranch, or that person’s employees, immediate family, or household members, when operating an all-terrain vehicle while engaged in farming, wildlife habitat management, or ranching operations; a person using an all-terrain vehicle for lawful hunting or trapping purposes if the person otherwise is lawfully engaged in those activities; or a minor younger than sixteen years of age, but not younger than six years of age who is operating an all-terrain vehicle under the direct visual supervision of his parent or an individual with legal custody of the minor on private property. The legislation also establishes procedures for the titling of ATVs.

STATUS: Having passed the General Assembly, [H.3562](#) was ratified on May 5, 2011 (R.44) and signed into law by the Governor on May 11 (Act No. 24).

“JOHN’S LAW” - PERTAINING TO PUBLIC RAILROAD CROSSINGS

The General Assembly approved and the Governor signed into law [H.3431](#), which enacts “John’s Law” pertaining to public railroad crossings. This legislation requires the Department of Transportation to publish on its website (1) a list of all public railroad crossings, and (2) the list of railroad crossings programmed for upgrades and designate it on its website ‘John’s Law.’ Contingent upon the receipt of additional funds for the installation of public railroad signals and gates, the department is directed to increase

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the number of installations of railroad signals, crossing arms, or both utilizing all funds available for this type of work at dangerous railroad crossings throughout the State.

*STATUS: Having been approved by the General Assembly, **H.3431** was ratified on June 8, 2011 (R.88) and signed into law by the Governor on June 20 (Act No. 54)*

UNIFORM TRAFFIC TICKETS AND TRAFFIC CAMERAS / SOUTH CAROLINA TRAFFIC CAMERA ENFORCEMENT COMMISSION

Uniform Traffic Tickets and Traffic Cameras

The General Assembly approved and the Governor signed into law **S.336** pertaining to uniform traffic tickets and traffic cameras. This legislation provides that a law enforcement officer who issues a uniform traffic ticket for a violation of a local ordinance or traffic laws relating to speeding or disregarding a traffic control device must do so incident to and contemporaneous with a traffic stop. A copy of the citation must be given directly to the offender by the law enforcement officer issuing the citation at the time of the traffic stop for the offense. The legislation prohibits a law enforcement agency from mailing, electronically transferring, or utilizing any other means of sending the operator or owner of a motor vehicle or motorcycle a uniform traffic citation alleging a violation of a local ordinance of the traffic laws relating to speeding or disregarding a traffic control device. This does not prohibit the law enforcement agency from responding to a request from an owner or operator for an additional copy of the citation. This legislation provides that a uniform traffic citation alleging the violation of a local ordinance or the traffic laws relating to speeding or disregarding a traffic control device may not be issued based in whole or in part upon photographic evidence, whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence. This does not prohibit the use of photographic or video evidence at any hearing related to the offense to corroborate the testimony of a law enforcement officer who personally observed the offense. There is an exception for toll collection. In a declared emergency, a person who receives a citation for violating traffic laws relating to speeding or disregarding traffic control devices based in whole or in part on photographic evidence must be served in person with notice of the violation within one hour of the occurrence unless a collision occurred and fault cannot be determined immediately or the party who caused the collision is not immediately accessible due to medical treatment.

South Carolina Traffic Camera Enforcement Commission

This legislation also establishes the South Carolina Traffic Camera Enforcement Commission to conduct a comprehensive study concerning the use of traffic enforcement camera systems and develop criteria for assessing the use of traffic enforcement cameras. The legislation outlines the powers and duties of the commission and provides for its membership. The committee must conclude its business and report its findings to the General Assembly on or before November 1, 2011. The legislation

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includes issues that the report must consider and address. The members of the commission shall serve without compensation.

*STATUS: Having been approved by the General Assembly, **S.336** was ratified on June 16, 2011 (R.97) and signed into law by the Governor on June 17 (Act No. 65).*

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