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South Carolina House of Representatives

Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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STATE DOCUMENTS

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House Week in Review

The South Carolina House dealt with two important pieces of legislation last week -- the Comprehensive Health Education bill and revisions in the Governmental Tort Claims Act.

The House also welcomed two student groups. The student writers and editors of the award winning "Signature Magazine" of Sumter High School were honored by the House for their achievements. And students from the South Carolina School for the Deaf and Blind were enthusiastically saluted by House members after leading the House in the Pledge of Allegiance and performing a number of songs.

Conference Committee for S.732

S.732, which makes revisions in the 1986 Governmental Tort Claims Act, was given a third reading approval last week and sent back to the Senate. The Senate responded quickly. The chamber refused to go along with the House amendments to the bill, paving the way for a conference committee.

House Speaker Robert Sheheen appointed Reps. Wilkins, Gentry and Baxley to the conference committee on S.732. Senators appointed to the conference committee include Sens. McConnell, Bryan and Tom Smith.

Comprehensive Health Education

Most of the legislative week was taken up with debate over S.546, Comprehensive Health Education. Set for special order consideration on Wednesday, the House spent most of Wednesday's session and all of the Thursday session debating this important legislation. On Thursday, by a vote of 91-16, the House gave the bill second reading approval.

Under the House approved version of the bill, health education for grades K through 5 would begin in 1989-90 school year.

Reproductive health education would be included as part of comprehensive health education classes for grades 6 through 8 beginning in the fall 1988. At the discretion of the local school

board, instruction in family life education and/or pregnancy prevention may be included for these grades. However, the proposed law states that instruction in these subjects may not include an explanation of the methods of contraception before the sixth grade.

Beginning with the freshmen class this fall, students in grades 9 through 12 would receive instruction in comprehensive health education, including reproductive health education, family life education and, at the discretion of the local board, pregnancy prevention.

As amended by the House, S.546, in part, would:

- stress the importance of abstaining from sexual activity until marriage. Contraceptive information must be given in the context of future family planning.
- give local school boards and advisory groups the authority to approve instruction in family life education and pregnancy prevention. Local boards also may develop or select their own instructional materials addressing the subjects of reproductive education, family life education and pregnancy prevention.
- provide for the appointment of a 13-member local advisory committee to assist the local school board with curriculum selection. This board would be made up of two parents, three clergy, two health professionals, two teachers, two students, one being the president of a high school student body, and two other persons not employed by the local school board.
- allow parents to withdraw their children from any class found objectionable.
- separate classes by gender for the discussion of pregnancy prevention.
- prohibit the distribution of birth control devices on public elementary or secondary school grounds.
- prohibit the teaching of abortion as an alternative means of contraception. In grades 9 through 12, adoption would be promoted as a positive alternative to a crisis or unwanted pregnancy.
- prohibit the discussion of homosexuality in grades K through 7. Any discussion of homosexuality in the upper grades must be in the context of it being "unnatural, unhealthy and illegal."

State Budget Priorities Around the Nation

As the House Ways and Means Committee continues its work this week setting fiscal priorities for the 1988-89 Appropriations Bill, other state legislatures around the nation also are scrutinizing their budgets. In fact, 40 other states legislatures are currently in session, all faced with crafting a state budget bill.

To target the top fiscal issues for the 1988 legislative session, the National Conference of State Legislatures surveyed state legislative fiscal officers in all 50 states. The survey was conducted from December 1987-January 1988.

Top Fiscal Issues Found by the NCSL Survey

The NCSL found that "education finance, budget problems and tax policy will top fiscal agendas in 1988." Education continues to be the single largest budget category in most states, the NCSL found. Several states also reported the need for budget cutbacks or tax increases to avoid deficits.

Here are the findings of the NCSL's survey of fiscal issues as listed by the other 49 states:

- Alabama:* Improving the quality of elementary-secondary education without new revenue sources.
- Alaska:* Balancing the oil revenue-dependent budget while addressing needs to improve the state's depressed economy and associated problems of local governments and individuals.
- Arizona:* Balancing the budget in view of a prospective deficit of \$77 million in FY 1988 and \$250 million in 1989; K-12 finance; capital budget.

Source: Corina Eckl, Staff Associate, "State Fiscal Issues in 1988," *State Legislative Report*, State Issues Series, Vol.13, No.1, January 1988.

- *Arkansas:* A proposed highway bond issue; K-12 teacher salary increases; increased funding for higher education; a general tax increase.
- California:* Cutbacks in existing programs due to inadequate revenues; K-12 school funding.
- Colorado:* Balancing the budget in an atmosphere of uncertainty due to changes in the federal and state individual income tax laws.
- Connecticut:* Balancing the budget without tax increases or major spending reductions (a few months earlier the leading fiscal issue was anticipated to be potential tax reductions).
- Delaware:* Funding mental health programs; the future of the economy.
- Florida:* Funding for school capital outlays.
- Georgia:* Funding the new K-12 education program; how to limit the amount of new general obligation debt; how to adequately control the continuation of costs of new government.
- Hawaii:* Funding economic development; funding human service programs.
- Idaho:* Funding for education; budget; highway funding.
- Illinois:* A general tax increase.
- Indiana:* Highway finance; education finance; limits on supplemental budgets; property tax reassessments.
- Iowa:* Balancing the budget with the present level of revenues. The projected shortfall is \$150 million.
- Kansas:* Whether to retain or return the increased revenue resulting from federal tax reform.
- Kentucky:* Balancing the budget. An estimated deficit of \$400 million is predicted for the 1988-90 biennium, which is based solely on the continuation of existing programs.

- Louisiana:* Balancing the budget in view of prior and present year deficits; solving cash-flow problems; tax reform; funding state government.
- Maine:* How to return additional revenues resulting from federal tax reform.
- Maryland:* Funding and governing higher education.
- Massachusetts:* Balancing the budget while operating under the tax cap that was passed in November 1987.
- Michigan:* Erosion of urban tax base.
- Minnesota:* Highway funding; education funding; renter's credit; property tax relief.
- Mississippi:* Funding increases in teachers' salaries.
- Missouri:* Lack of revenues to fund anything beyond absolutely mandatory items.
- *Montana:* Examining the state's tax system.
- Nebraska:* Determining spending levels and priorities in view of improved fiscal conditions.
- *Nevada:* Examining the state's fiscal system (level of expenditures and tax structure).
- New Hampshire:* Funding programs for displaced children and youth; affordable housing; prison construction; replacing revenues due to changes in the business profits tax.
- New Jersey:* Providing local property tax relief.
- New Mexico:* Balancing the budget.
- New York:* The future of the economy; financing solid waste removal; financing more highway and bridge renewal.
- North Carolina:* Continued funding of the long range education program and the career ladder program.
- *North Dakota:* Limited increases in tax revenues; depressed energy and farm economy; funding K-12 and higher education; state employee salaries.

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Ohio: Costs related to long-term care issues.

Oklahoma: Funding salary increases for teachers and state employees; retirement funding; education funding.

**Oregon:* Education finance.

Pennsylvania: Local tax reform.

Rhode Island: Funding the state share of K-12 education and new programs; affordable housing; adjustments to personal income and corporate taxes; extending day care programs.

South Dakota: Budgeting higher education in a single line item; teachers' salaries.

Tennessee: Increasing K-12 teachers' salaries.

**Texas:* Tax reform; the price of oil and its impact on state revenue.

Utah: Balancing the budget.

Vermont: The general economy; K-12 education finance; solid waste; shifting federal aid and programs.

Virginia: Allocation of appropriations for educational standards of quality to the localities.

Washington: Funding increased costs in employee health insurance; fuel tax increase; AIDS; foster care.

West Virginia: Balancing the budget.

Wisconsin: Providing state resources to offset local property taxes.

Wyoming: Revising property tax assessments; determining budget priorities.

* No regular legislative session in 1988.

Bills Introduced

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

Education and Public Works Committee

Twin-Trailers and Hazardous Weather (H.3791, Rep. Lanford). This bill would require the drivers of twin-trailers to park their vehicles or take alternate routes during snowy or icy conditions if the vehicles are not equipped with chains or snow tires.

Judiciary Committee

Alimony (H.3793, Rep. Koon). Under this bill, no spouse who sues for separation or divorce may be awarded alimony or separate maintenance during the suit or at any time after it, unless the other spouse is "strictly proven" to be guilty of adultery, desertion, physical cruelty or alcohol or drug abuse. These same provisions would also apply to anyone seeking increases in alimony or separate maintenance payments which were awarded before the effective date of this bill.

Medical, Military, Public and Municipal Affairs Committee

Litter Detail (H.3790, Rep. Lanford). This bill would change the provisions governing the reduction of sentence for county prisoners who pick up litter. Currently, the law allows county prisoners, serving sentences of 90 days or less, to have one day taken off their sentences for each two days they pick up trash. Under this day, one day on the litter detail would result in one less day of jail time.

Ways and Means Committee

Increase Homestead Exemption (H.3773, Rep. Humphries). Under this bill, the homestead exemption for home owners 65 or older would be increased from the first \$20,000 of the fair market of their homes to the first \$30,000.

Literacy Training (H.3784, Rep. Sheheen). Permanent businesses, whose employees receive literacy training, would be entitled to an additional deduction off their state income tax under this bill. The deduction would be an amount equal to the wages and employer contribution paid to or on behalf of an employee while he receives literacy training. This would apply to in-house literacy instruction or instruction provided by a teacher from outside the business. This deduction would be in addition to the deduction allowed for the wages and employer contribution themselves. In enacted, this deduction would be effective for the 1988 tax year.

Nursing Home Administrators (S.659, Sen. Giese). This legislation would revamp the laws concerning disciplinary action that may be taken against nursing home administrators. In part, this bill would increase the maximum penalties for serving as a nursing home administrator without a license. It also would amend provisions dealing with revocation or suspension of licenses and other disciplinary actions. The procedures for hearing charges against a nursing home operator are set out in this bill, as well as any disciplinary measures or fines.

Law Officer Retirement (S.1178, Senate Finance Committee). If enacted, this bill would reduce the number of years of service required of law enforcement officers before retirement from 30 to 25 years. It also would increase to 2 percent the fraction used to calculate retirement allowances. The effective date of these changes would be June 30, 1988.

Without Reference

Separate Trustee Boards (H.3771, House Education and Public Works Committee). Under this bill, three state institutions -- the College of Charleston, Lander College and Francis Marion College -- would have separate boards of trustees instead of all falling under the governance of the State College Board of Trustees. Each of these separate trustee boards would have three ex-officio members made up

of the governor, the House Education and Public Works Committee chairman and the Senate Education Committee chairman, or their designees. Fourteen trustees would be elected by the General Assembly, two from each congressional district and two at-large. These elections would take place during the current legislative session.

Members of the current State College Board of Trustees would be given the option of serving on the trustee boards of one of these three colleges. Any trustee position created by this provision would be for a term lasting until June 30, 1990. If a member of the State College Board of Trustees wishes to exercise this option, he would have to notify the Secretary of State before July 1.

Research Report: Pros and Cons of Fuzzbuster Legislation

Introduction

On Jan. 12, two bills pertaining to the regulation of radar detectors were introduced in the House.

H.3302, introduced by Rep. Waldrop, would make the use of a radar detector a misdemeanor offense punishable by a fine of not more than \$500 or by imprisonment of not more than 100 days. The bill also provides that the radar detector will be seized by the arresting officer, and if the motorist is found guilty of speed violation, the device will be destroyed by the state. This bill was referred to the House Education and Public Works Committee.

H.3284, introduced by Rep. Hayes, would make use or possession of a radar detector a misdemeanor offense, except in the case where the radar detector had no power source or could not be used by anyone in the vehicle. This misdemeanor would be punishable by a fine of not more than \$100. At the time of arrest, the officer could seize the detector to use it for evidence, but after any trial, the radar detector must be returned to its owner. The bill also makes illegal the sale of radar detectors in the state. H.3284 is pending before the House Judiciary Committee.

The following is a description of the issues that surround radar detector legislation -- the positions of both the supporters and the opponents -- and the experience other states have had with this kind of legislation.

A Brief History of Radar Detectors

Police have used radar devices to detect speed ever since the 1940's, but only in 1968 did a device to counter police radar become available to motorists. That device, first marketed under the name "Fuzzbuster," has caused great controversy between those who view radar detectors as tools used expressly for law breaking, and those who view detectors as legitimate instruments, having a more beneficial than detrimental impact on highway safety.

This report was researched and written by USC Legislative Intern Larry Slovensky.

Radar detectors work by sensing the presence of the two kinds of microwaves used by law enforcement officials to detect speed. A police radar gun sends out a microwave of a known frequency towards a moving vehicle. Since the vehicle is moving, the frequency of the wave is changed when it bounces off the vehicle. The police radar then senses the reflected wave, and uses the change in frequency to calculate the speed of the vehicle.

The two frequencies of police radar, called X-band and K-band, are able to determine accurately the speed of an automobile from 1500 ft away and the speed of a large truck from 2500 ft away.

Tests by Popular Mechanics magazine show that even the least sensitive radar detector can sense police microwaves within two miles on a straight, flat road, and that the best detector can sense a police radar over four miles away. Therefore, in general, a radar detector will be able to sense the presence of police radar before an accurate reading of speed can be made.

The average price of radar detectors has dropped from \$200 five years ago to \$130 today. The radar detector manufacturing industry has doubled in size over the past five years, and there are now at least 25 manufacturers of these devices.

Fox Marketing, Inc. recently began to market a new downsized radar detector that is mounted behind the grille of an automobile and attached to a beeper on the motorist's shirt. Such developments in reducing the size and conspicuousness of radar detectors are at least in part due to the laws enacted in some states making possession of the devices in an automobile illegal.

GEICO Policy Changes

The Government Employees Insurance Company (GEICO), an automobile insurance company for federal government employees, made headlines when it announced its decision not to insure vehicles that are equipped with radar detectors.

Under the new policy, the company relies on a motorist's honest response on an insurance application form which asks if the motorist uses a radar detection device. Those answering yes are denied automobile coverage by GEICO, the 11th largest automobile insurer in the nation with over 1.5 million policyholders.

In refusing to insure radar detector users, GEICO officials assert that radar detectors are used expressly for speeding, and that any motorist who goes to the expense of buying a detector cannot be considered a careful driver. The company argues that a

speeder who uses a radar detector to avoid getting caught by authorities presents a possible loss to the company. Since he is never caught speeding, the company cannot compensate for the greater risk of insuring him by increasing his premiums or cancelling his coverage, whereas a speeder who is caught allows the company to take measures to compensate, they contend.

A motorist insured by GEICO, who has claimed he does not use a radar detector but who later has an accident where a radar detector was used, will have the accident claim paid, company officials have said. However, the policy will be cancelled, GEICO said.

In December, a hearing was held in Baltimore to decide whether the company has a right to deny coverage in Maryland since radar detectors are legal there. A decision is expected soon.

The Pros and the Cons

The debate over whether to outlaw radar detectors has attracted supporters on both sides of the issue. Those who support a ban on use or possession of radar detectors argue the devices are made and used solely to break the law and that banning them would make the job of enforcing speed laws much easier.

Opponents of the ban contend that the motorist has a right to know if he is being monitored by the state, and that bans would not result in the desired goals.

Supporters of Radar Detector Bans

Law enforcement officials and insurance groups generally have come out in favor of radar detector regulation. The Insurance Institute for Highway Safety, a lobbying group pushing for curbs on radar detector use, advances a number of arguments for banning radar detectors. They include:

1. A radar detector is similar to burglar's tools or drug paraphernalia in that its only use is to break the law. Since states can regulate the use of these law breaking tools, they should be able to regulate the use of radar detectors.
2. Detectors are marketed in advertisements in such a way as to promote the idea that use of a detector will allow the motorist to travel at whatever speed he wishes. This proves that detectors are bought by those who wish to speed without detection, the Institute for Highway Safety contends.

3. There is nothing in the constitution that prohibits legislation banning the use of radar detectors. The First Amendment guarantees the right of communication, not interception of communication. The Fourth Amendment covers only private possessions. A radar detector that is in public view is not covered under the guarantee of privacy, the institute says.
4. Tests have repeatedly shown that police use of radar is accurate and reliable if the operators are properly trained on how to use the device. Therefore, any argument that detectors are needed to protect citizens against unreliable readings is not applicable.

Insurance Institute Study

The Insurance Institute for Highway Safety sponsored a study in conjunction with Maryland State Police, the Maryland Department of Transportation, the Virginia Department of State Police and the Virginia Department of Highways and Transportation. They studied the speeds of automobiles on seven rural highways in Maryland and Virginia.

The study used a hidden police radar gun to activate any radar detectors in approaching vehicles. Also used was a separate, non-detectable method to measure the speed of the vehicles. This second device analyzed the speed of the automobiles before and after the police radar gun was activated. Vehicles that slowed suddenly after the radar was activated were considered to be using radar detectors.

The study found that of cars that were going between 62 and 65 miles per hour, six percent reacted to the police radar gun as though they were using radar detectors. Of those going between 66 and 70 mph, 19 percent reacted as if they were using radar detectors. While of the cars going over 70 mph, 29 percent reacted as if they were using radar detectors.

Since the faster a vehicle was traveling, the more likely it was to slow down, the institute concluded that radar detectors are used for the purpose of speeding.

Opponents of Radar Detector Bans

Opponents of radar detector bans have included groups representing the radar detector manufacturing industry and citizens who make use of radar detectors. The Radio Association Defending

Airwave Rights (RADAR) is a major lobbying group in opposition to radar detector bans. RADAR lists a number of arguments against banning the use of radar detectors. These include:

1. The federal government traditionally has recognized the right of the public to receive all airwave communications unless they have been scrambled.

The Communications Act of 1934 recognized the unfettered right of the public to use radio receivers, and stated that regulation of radio transmission is strictly limited to the federal government. The FCC issued a public notice in 1985 stating an official opinion that use of radar detectors is not illegal. Although the Electronic Communication Act of 1986 prohibited the interception of some radio signals, it specifically made an exception to radar detectors.

RADAR argues that failure by the federal government to outlaw radar detector use preempts state governments from such regulations since the federal regulation of communication is so widespread. Under the constitutional theory of preemption, states are prohibited from acting in an area where such actions might interfere with the federal occupation of the field. Therefore, RADAR contends, since the FCC and Congress have refused to prohibit radar detectors, the states likewise should not act to prohibit radar detector use.

2. A radar detector makes the presence of a patrol car extend beyond visual range to include the range in which a radar detector can pick up the police radar microwave. The biggest deterrent to speeding is the presence of a highway patrol officer, and the radar detector can effectively give a patrol car a wider area of presence than it would have without detectors.
3. A radar detector can help a citizen from being wrongfully penalized for a speeding violation from a faulty or improperly used radar gun. Although law enforcement officials say police radar is accurate, the possibility that the radar is improperly used by untrained policemen still exists, RADAR contends. When a radar detector senses that the speed of a vehicle is being monitored, the motorist becomes aware and will take note of his current speed. If he is charged with a speeding violation he did not commit, he will be able to use the fact that he knew what his speed was at the time he was stopped, if he disputes the charge.

4. Finally, the American citizen traditionally has had a right to know when his actions are being monitored by the government. The use of a radar detector does not necessarily imply that the citizen will speed, so the government has no right to make possession of detectors an offense.

RADAR also relies on a 1987 study done by the polling research company Yankelovich Clancy Schulman on the driving habits of radar detector users. The pollsters conducted a random telephone survey and found that the average radar detector user traveled 233,933 miles before becoming involved in an accident, while the average non-radar detector user travels only 174,554 miles before an accident. RADAR uses this conclusion to claim that radar detector users, on the average, are actually safer drivers than non-users.

The Experiences of Other States

Over the past 10 years, more than 130 bills prohibiting the use of radar detectors have appeared in the legislatures of many states. However, only Connecticut, the District of Columbia, and Virginia presently have restrictions on detector use. The following is a summary of each state's experience with radar detector regulation.

Connecticut

Connecticut was the first state in the nation to ban the use of radar detectors. The Connecticut legislature has given the office of the Commissioner of Motor Vehicles broad powers to enact regulation on the use of any devices associated with highway safety.

In 1962, a regulation prohibiting the use or installation of radar detectors was enacted. This regulation does not prohibit sales or possession of the devices, and there is no provision for seizure of radar detectors. However, the Attorney General's Office of Connecticut says that in general, the existence of a detector in a car is considered to be "use" regardless of whether the detector is actually operative.

There was a major challenge to the Connecticut regulation in the case State v Anonymous heard before the Connecticut Supreme Court in 1980. This suit attacked the regulation on the grounds that federal law preempts state regulation of detectors, that the regulation was too vague to notify the public what was being prohibited, and that it imposed an undue burden on interstate commerce.

The court rejected these arguments and upheld the constitutionality of the regulation. The Court also ruled, however, that confiscation of radar detectors is not constitutional in Connecticut. In 1986, the Connecticut legislature narrowly defeated a proposal to abolish the radar detector ban.

There has been no official study in Connecticut to show the effectiveness of the regulation in decreasing the number of speeders or the number of highway accidents. However, opponents of detector bans point to the fact that a 1985 Department of Transportation study showed that 41.4% of motorists in Connecticut exceed the 55mph speed limit, which is higher than the percentage in 18 other states.

District of Columbia

The District of Columbia enacted a regulation in 1981 which prohibits the possession, use or sale of radar detectors. This regulation differs from Connecticut's in that mere possession of a detector in DC is considered illegal and will result in a citation. At the time of the citation by a police officer, the detector is seized. The motorist can then apply to have the detector returned.

The DC Court of Appeals heard a case disputing the constitutionality of this regulation. In the 1981 case of Smith v District of Columbia, the Court held that the regulation does not interfere with federal regulations, does not place undue burden on interstate commerce, and is sufficiently specific to give notice to citizens of what is prohibited. This decision also affirmed that mere possession of a radar detector, whether operative or not, does constitute a violation.

Virginia

Virginia enacted a statute in 1962 prohibiting the possession, use or sale of radar detectors. The statute in its original form did not require the state to prove that the detector was operative or capable of being used, but stated that mere possession constituted prima facie evidence of a violation of the law.

The 1978 case Crenshaw v Commonwealth challenged the law on the grounds that the provision stating that possession of a detector is prima facie evidence of violation, along with the provision that the state does not have to prove that the detector was in use or was operable placed too much burden on a defendant and thus violated due process.

The Court ruled that the statute banning radar detectors was not in itself unconstitutional, but due process was violated by the provision, which stated the state need not prove that the detector was operative.

Currently, the Virginia law states that possession of a non-operating radar detector in a vehicle will be considered a violation of the law only if it is readily accessible to the driver or any other passenger in the vehicle.

The original Virginia law also allowed for the confiscation of radar detectors at the time of citation. However, the Virginia legislature amended the statute in 1981 to prohibit confiscation of radar detectors. Legislators said they were concerned about the statute withstanding a legal challenge on grounds that it interferes with interstate commerce. Now, in Virginia, a radar detector can be seized by an arresting officer if needed for evidence, but the device will be returned after the trial.

Concluding Remarks

The experience of these three states shows that provisions for the confiscation and destruction of radar detectors have spawned a number of legal questions as well as larger policy issues. While a few state courts have provided answers for some of these questions, others remain.

For example, does the use of radar detectors cause motorists to drive faster, or do detectors serve a beneficial purpose by making police radar more effective? Does the right of the law enforcement officials to use legal methods to protect public safety outweigh the right of the motorist to know when he is being monitored? Will prohibition of radar detectors have a noticeable effect on the number of speeders or the frequency of highway accidents?

Currently, a study is being done by the Texas Transportation Institute of Texas A&M University for the National Highway Traffic Safety Administration to try and answer some of these fundamental questions.