

# SCSL Digital Collections

## Legislative update

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South Carolina House of Representatives

# Legislative Update

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

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## MAJOR ISSUES FROM THE 2007 LEGISLATIVE SESSION

This report highlights activity of the first regular session of the 117<sup>th</sup> South Carolina General Assembly, which has adjourned under the provisions of H.4279, the *Sine Die* Resolution, as of Friday, June 29, 2007. This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage.

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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# **2007 LEGISLATIVE OVERVIEW**

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The General Assembly agreed on a plan to reform the **South Carolina Department of Transportation (DOT)** in order to enhance accountability at the agency responsible for the State's roads. A report released by the Legislative Audit Council in November of 2006 suggested that a climate of favoritism may exist at the DOT and that taxpayers may incur unnecessary costs because of the way DOT handles contracts. In response to these concerns and others expressed by citizens in public hearings, the General Assembly agreed on a plan to reform DOT. Reforms include: qualifications and screening for DOT Commissioners, a Secretary of Transportation appointed by the Governor, mandatory ethics training for employees, a chief internal auditor reporting directly to the Commission, compliance and performance audits by outside entities, and the prioritization of projects using objective criteria.

In response to escalating costs borne by South Carolina's businesses, the General Assembly approved legislation revising the state's **workers' compensation** system, which pays disability benefits and necessary medical expenses for workers who sustain injuries in the course of their employment. The legislation establishes new requirements for proving medically complex workers' compensation claims with expert medical testimony. New standards are established for proving repetitive trauma injuries, occupational diseases, and debilitating back injuries. The legislation enhances penalties for making fraudulent claims and provides for new means of discouraging and investigating fraud. The legislation also limits and ultimately eliminates the state's Second Injury Fund, an insurance program established to reduce risks employers may bear for future claims from previously injured workers.

Legislators provided for **income tax relief** by reducing the tax rate imposed on the lowest bracket of South Carolina taxable income from 2.5 percent to zero percent. This elimination of the lowest bracket is imposed for taxable years beginning after 2006. The General Assembly approved legislation **exempting groceries from the sales tax** as of November 1, 2007. The exemption applies to state sales and use tax collected on unprepared food items eligible for purchase with United States Department of Agriculture food coupons.

Lawmakers approved a **state government budget** for fiscal year 2007-2008 that includes: \$221 million in tax relief; a 3% pay raise for state employees and a cost of living adjustment for retirees using \$62.7 million; \$38.5 million to cover the increased cost of health insurance for state employees; an increase of \$94 million to fully fund the Education Finance Act base student cost of \$2,476; \$21 million for Education and Economic Development Act initiatives; \$28 million to provide for a nurse in every elementary school in the state; \$30.5 million for school buses and \$29.5 million for bus fuel and parts; an additional \$20 million in recurring and \$10 million in non-recurring funds for Medicaid; \$22 million in recurring funds to expand coverage of the Children's Health Insurance Program (CHIPs) for children of low-income families so that it includes 200% of poverty level; \$5.2 million in recurring funds to provide for 100 new highway patrol troopers; \$167 million in non-recurring funds for the port access road; \$30 million for advertising South Carolina as a tourist destination.

Education remained a priority this year as the General Assembly enacted the **South Carolina Virtual School Program** to make use of computer technology in order to expand the educational opportunities that are available to public, private and homeschool students. The program is designed to offer instruction through the Internet in order to: resolve scheduling conflicts; offer a more flexible, individualized pace of

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instruction; provide effective alternatives for meeting graduation requirements or credit recovery; and allow students to take courses that may not be offered at their schools due to insufficient demand or a lack of certified personnel.

This year the General Assembly enacted legislation enhancing the safety of students on **school buses**. Among other things, the bill implements a 15 year replacement cycle for school buses, sets a maximum ride time of 90 minutes, and provides for additional transportation services for certain unescorted students and for those students that face hazardous traffic conditions. The legislation also implements the cost saving measure of requiring the State Department of Education to utilize biodiesel fuel whenever feasible.

The General Assembly approved legislation providing **scholarship enhancements for students majoring in science or mathematics**. Under the legislation, a student receiving a Palmetto Fellows Scholarship or LIFE Scholarship can receive an additional stipend by making acceptable progress towards receiving an undergraduate degree in a science or mathematics discipline, computer science or informational technology, engineering, science education, math education, or health care and related disciplines including medicine and dentistry.

The **South Carolina Broadband Technology and Communications Study Committee** was created to examine opportunities for providing all South Carolinians with affordable high-speed Internet access and other broadband products and services critical for economic development and educational advancement. The committee must submit its findings and recommendations to the Governor and the General Assembly by the end of the year.

Legislators approved a joint resolution to expedite the creation of a **Jasper County Port Facility**. A Savannah River Maritime Commission is established to negotiate with the State of Georgia, the U.S. Army Corps of Engineers, and others regarding the use of the Savannah River as a waterway for ocean-going container or commerce vessels.

The General Assembly approved the “**South Carolina Hydrogen Infrastructure Development Act**,” which creates a program to award grants for the purpose of promoting the development and deployment of hydrogen production, storage, distribution, and dispensing infrastructure and related products and services that enable the growth of hydrogen and fuel cell technologies in the State. The legislation also provides a state sales tax exemption for equipment or machinery used for hydrogen fuel cell research and development or distribution. Under the act, state agencies are required to consider purchasing equipment and machinery operated by hydrogen fuel cells.

In the “**Energy Freedom and Rural Development Act**,” legislators established tax credits, rebates, and incentive programs to encourage biomass fuel development and utilization.

The General Assembly approved legislation to promote the development of **renewable energy infrastructure** within the state through programs that award grants and provide low interest loans to individuals or organizations that plan to build a qualified renewable energy production facility that produces energy or transportation fuels from biomass, solar, or wind resources.

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The “**Energy Independence and Sustainable Construction Act of 2007**,” establishes new “green building” energy efficiency and environmental standards for major new state construction and renovation projects.

Lawmakers approved a joint resolution creating a **committee to study the feasibility of offshore natural gas exploration** that is required to render its report and recommendations to the General Assembly before February 1, 2008.

The General Assembly approved the “**Omnibus Coastal Property Insurance Reform Act of 2007**,” to address the recent scarcity of affordable property insurance for homes located along the South Carolina coast that has been prompted by losses experienced by insurance companies during severe hurricane seasons in Florida and the Gulf Coast. The legislation provides for tax credits, grants, and insurance premium discounts to encourage homeowners to install storm shutters, reinforce structures, and make other improvements that allow homes to be more resistant to hurricane damage. The legislation establishes a state individual income tax credit to help defray the cost of insuring a residence and authorizes tax exempt Catastrophe Savings Accounts that consumers can use to purchase property insurance or pay for repairs to storm-damaged homes. Insurance companies are required to provide more advance notification of policy cancellations, especially during hurricane season. The Department of Insurance is given new authority to issue emergency regulations and expand the territory of the South Carolina Wind and Hail Underwriting Association within the coastal area.

There have been increases in crimes in areas of the State that show signs of gang involvement. This session the General Assembly enacted the “**Criminal Gang Prevention Act**” to deal with the growing problem of gangs. The stated intent of this comprehensive legislation is to eradicate the terror created by gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal gang activity, including gang recruitment.

The General Assembly passed legislation focusing on the problem of underage drinking and access to alcohol. Among other things, the “**Prevention of Underage Drinking and Access to Alcohol Act of 2007**” requires the registration of kegs; equalizes the penalties for the purchase or possession of beer, wine and alcoholic liquors by minors; and allows law enforcement to utilize minors to test compliance with various laws. Alcohol and drug related traffic collisions are responsible for a large portion of reported traffic collisions each year. This year the General Assembly enacted legislation that requires certain **repeat driving under the influence offenders** to pay for and have ignition interlock devices installed on any vehicle the repeat offender operates.

In May of 2005 Congress enacted the “**REAL ID Act of 2005**.” This federal law requires states to issue driver’s licenses in a uniform manner as prescribed by the United States Department of Homeland Security. There are many concerns regarding the implementation of this federal law, including privacy issues and the actual cost of implementation that must be borne by the State. This session the General Assembly passed legislation stating that South Carolina shall not participate in the implementation of this federal law. The General Assembly also adopted a concurrent resolution memorializing Congress to repeal or decline implementation of this law and to oppose the creation of a federal national identification card.

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South Carolina is facing a nursing shortage, and the General Assembly enacted legislation to address the need for more nurses. Created under the Commission on Higher Education, the “**South Carolina Critical Need Nursing Initiative Act**” provides incentives to retain nurse faculty scholars, attract new nurse faculty, provides loans, grants, and scholarships to in-state resident nursing students, establishes a research office to predict health care workforce needs, and provides technology to increase accessibility to clinical education needs.

The General Assembly approved legislation **requiring health insurers to provide coverage for treatment of autism** and other pervasive developmental disorders.

The **Volunteer Strategic Assistance And Fire Equipment (V-Safe) Pilot Program** was established to offer grants to eligible volunteer and combination fire departments to purchase protective gear, fire suppression equipment, special operations vehicles, and other materials needed for the purpose of protecting local communities from incidents of fire, hazardous materials, and terrorism and to provide for the safety of volunteer firefighters.



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# **MAJOR LEGISLATION ENACTED IN 2007**

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*Legislation is arranged in alphabetical order and is divided into subject areas.*

# APPROPRIATIONS

The General Assembly approved H.3620, the fiscal year 2007-2008 general appropriations act, and H.3621, a joint resolution providing for Capital Reserve Fund appropriations. Highlights of the State government budget for the upcoming fiscal year include:

- \$221 million in tax relief comprised of \$135 million to exempt groceries from the sales tax and \$86 million for the elimination of the lowest state income tax bracket.
- A 3% pay raise for state employees and a cost of living adjustment for retirees using \$62.7 million.
- \$38.5 million to cover the increased cost of health insurance for state employees.
- An increase of \$94 million to fully fund the Education Finance Act base student cost of \$2,476.
- \$21 million for Education and Economic Development Act initiatives.
- \$28 million to provide for a nurse in every elementary school in the state.
- \$30.5 million for school buses and \$29.5 million for bus fuel and parts.
- An additional \$20 million in recurring and \$10 million in non-recurring funds for Medicaid.
- \$22 million in recurring funds to expand coverage of the Children's Health Insurance Program (CHIPs) for children of low-income families so that it includes 200% of poverty level.
- \$4 million for the AIDS Drug Assistance Program
- \$7.5 million for treatment of autism and other Pervasive Development Disorders.
- In response to new federal requirements of the Governmental Accounting Standards Board for post-employment benefits \$47.4 million in recurring funds and \$66 million in non-recurring funds are placed in the OPEB Trust Fund.
- The Capital Reserve Fund is fully funded with an additional \$12.7 million in recurring revenue.
- A \$30.8 million increase for the Local Government Fund.
- \$5.2 million in recurring funds to provide for 100 new highway patrol troopers.
- \$167 million for the port access road.
- \$30 million for advertising South Carolina as a tourist destination.
- \$7 million for the Closing Fund that the Department of Commerce utilizes for economic development opportunities.
- \$2.6 million for additional full time employees in food service inspections and dairy product testing at the Department of Health and Environmental Control.

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- \$4.5 million for access to LightRail, a broadband, high-speed optical research network that will link all major research universities with their hospital partners.

*STATUS: The General Assembly passed, **H.3620** (R.175), the fiscal year 2007-2008 general appropriations act, and **H.3621** (R.176), a joint resolution providing for Capital Reserve Fund appropriations, and portions of the legislation were vetoed by the Governor on June 27, 2007. The House of Representatives and the Senate subsequently sustained some of the vetoes, but overrode other vetoes to allow those provisions to become law along with items that were not vetoed.*

## **BUSINESS/ ECONOMIC DEVELOPMENT**

### **BROADBAND TECHNOLOGY AND COMMUNICATIONS STUDY COMMITTEE**

The General Assembly approved and the Governor signed into law **H.3569**, a joint resolution that creates the South Carolina Broadband Technology and Communications Study Committee to examine opportunities for providing all South Carolinians with affordable high-speed Internet access and other broadband products and services critical for economic development and educational advancement. The committee is responsible for assessing opportunities made possible by changes involving the band of spectrum licensed by the Federal Communications Commission for Educational Broadband Service and Broadband Radio Service that will enable EBS and BRS providers to use that spectrum in a more technologically and economically efficient manner and allow licensees to lease excess spectrum capacity to commercial entities. The committee is charged with evaluating the state's broadband communications infrastructure, assessing the need for broadband services in unserved and underserved areas, making recommendations to the General Assembly regarding the best method of leasing the excess capacity of EBS licensees, and recommending to the General Assembly any other legislative and policy proposals for advancing the goal of providing all South Carolinians with affordable access to broadband products and services.

The South Carolina Broadband Technology and Communications Study Committee is composed of the following seventeen members, of whom fourteen are voting members and three are nonvoting members: (1) two members of the South Carolina Senate appointed by the President Pro Tempore of the Senate; (2) two members of the House of Representatives appointed by the Speaker of the House of Representatives; (3) two members of the private sector appointed by the President Pro Tempore of the Senate, each having a background of substantial duration and expertise in telecommunications or broadband issues; (4) two members of the private sector appointed by the Speaker of the House of Representatives, each having a background of substantial duration and expertise in telecommunications or broadband issues; (5) one member from the private sector who has a background of substantial duration and expertise in telecommunications or broadband issues appointed by the Governor; (6) one member to represent the Municipal Association of South Carolina appointed by the Governor; (7)

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one member to represent the South Carolina Association of Counties appointed by the Governor; (8) the President of Trident Technical College or his designee; (9) the Secretary of Commerce or his designee; (10) the President of South Carolina Educational Television or his designee; (11) the State Chief Information Officer (CIO), or his designee, shall serve ex officio in a nonvoting and advisory capacity; (12) the Executive Director of the Office of Regulatory Staff, or his designee, shall serve ex officio in a nonvoting and advisory capacity; and, (13) the Director of the State Library, or his designee, who shall serve ex officio in a nonvoting and advisory capacity.

The committee must submit a report containing its findings and recommendations to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 31, 2007.

*STATUS: Having been approved by the General Assembly, **H.3569** (R.136) was signed into law by the Governor on June 14, 2007.*

## **COASTAL PROPERTY INSURANCE**

The General Assembly approved and the Governor signed into law **H.3820**, the “Omnibus Coastal Property Insurance Reform Act of 2007.” The legislation addresses the recent scarcity of affordable property insurance for homes located along the South Carolina coast that has been prompted by losses experienced by insurance companies during severe hurricane seasons in Florida and the Gulf Coast.

### **Catastrophe Savings Accounts**

The legislation provides for the creation of a Catastrophe Savings Account which is a regular savings account or money market account established to cover a deductible under an insurance policy for legal residence property that covers hurricane, rising floodwaters, or other catastrophic windstorm event damage or to cover self-insured losses sustained by legal residence property during such events. A taxpayer is allowed a state individual income tax deduction for a contribution to a Catastrophe Savings Account and all interest income earned by such an account is exempt from the state income tax. The total amount that may be contributed to a Catastrophe Savings Account may not exceed: (a) in the case of an individual whose qualified deductible is not more than one thousand dollars, two thousand dollars; (b) in the case of an individual whose qualified deductible is more than one thousand dollars, the amount equal to the lesser of fifteen thousand dollars or twice the amount of the taxpayer’s qualified deductible; or (c) in the case of a ‘self-insured’ individual who chooses not to obtain insurance on his legal residence, two hundred fifty thousand dollars, but shall not exceed the value of the individual taxpayer’s legal residence. Distributions from the account that are used for qualified catastrophe expenses are not subject to the state individual income tax.

### **Tax credit for insurance premiums**

The legislation establishes a state individual income tax credit for insurance premium costs paid on the taxpayer’s legal residence in excess of 5% of the taxpayer’s adjusted

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gross income. The tax credit may not exceed \$1,250, and any unused credit may be carried forward for five succeeding taxable years.

**Tax credits for retrofitting residences to make them more storm resistant**

The legislation establishes a state income tax credit for costs incurred by an individual to retrofit his legal residence in order to make it more resistant to loss due to hurricane, rising water, or other catastrophic wind event. The credit for any taxable year may not exceed 25% of the cost incurred or \$1,000, whichever is less. The Department of Insurance defines, through regulation, which fortification measures qualify for this credit. The legislation provides for a state individual income tax credit for state sales or use taxes paid on purchases of property used to retrofit an individual's legal residence. The maximum credit allowed is \$1,500.

**Insurance premium discounts**

The legislation requires rating plans for essential property insurance in the coastal area to include premium discounts or credits for such retrofitting measures as the use of storm shutters and roof tie downs and for other specified factors relating to the reduction of storm damage risk.

**Required disclosure of the availability of discounts and credits**

The legislation requires insurance companies to disclose to insureds upon issuance or renewal of a policy the availability of premium discounts or credits allowed for retrofitting and techniques for reducing windstorm losses. The notice must describe generally what measures the policyholders may take to reduce their windstorm premium.

**Insurance policies and rates**

The legislation replaces the current 30-day notification period required for cancellation or non-renewal of insurance policies so as to provide instead a required notification period of at least 60 days for any nonrenewal that would be effective outside of hurricane season (between November first and May thirty-first) and at least 90 days for any nonrenewal that would be effective during hurricane season (between June first and October thirty-first).

The legislation revises the approval process for insurance rate changes so as to clarify that the prohibition against a rate being excessive, inadequate or unfairly discriminatory applies even to rates falling within the plus-or-minus 7% flex-rating band. The legislation also clarifies that the Department of Insurance may consider the impact of a rate on individual territories and insureds when determining whether a rate is excessive, inadequate or unfairly discriminatory.

**Filing fee for hurricane loss projection models**

To recover the costs associated with the review and evaluation of catastrophe models, the legislation authorizes the Director of the Department of Insurance to impose a filing fee on: (a) all insurers who use catastrophe or other computer simulated models; and (b) modelers or modeling organizations that submit a model to the department for its review,

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evaluation, or approval. This fee must be retained by the department to defray the costs of retaining actuaries and other experts to evaluate such models.

**Premium tax credit for insurers**

The legislation provides that an insurer providing full property and casualty coverage, to specifically include wind and hail coverage, to property owners within the coastal area may claim as a nonrefundable credit against the premium tax an amount equal to 25% of the tax that otherwise is due on the premium written for the property owners for the taxable year. The tax credit applies to new policies with an effective date of January 1, 2008, or after.

**Emergency powers of the Director of the Department of Insurance**

The Director of the Department of Insurance is authorized to issue one or more emergency regulations upon the declaration of a State of Emergency by the Governor. An emergency regulation is effective for up to 120 days, but may be extended by the Director for additional 120-day periods if the Director determines that emergency conditions still exist. The General Assembly may terminate the Director's emergency regulation by a concurrent resolution. The emergency regulation must be published in the State Register along with an explanation of how it facilitates recovery. The legislation provides for the conditions under which the Director may adopt, by emergency regulation, any procedure that facilitates recovery from the emergency and is fair under the circumstances. The Department of Insurance may promulgate by emergency regulation standardized requirements applicable to insurers as a consequence of a hurricane or other natural disaster. Such emergency regulations must address: (1) claims reporting requirements; (2) grace periods for payment of premiums and performance of other duties by insureds; (3) temporary postponement of cancellations and nonrenewals; and (4) any other rule the Director considers necessary.

**Revisions to the South Carolina Wind and Hail Underwriting Association**

The legislation specifies that the South Carolina Wind and Hail Underwriting Association shall function as a residual market mechanism to provide wind and hail insurance for residential and commercial property to applicants who are unable to procure this insurance in the coastal area. The legislation further specifies that, as a residual market mechanism, the association is not intended to offer rates competitive with the admitted market. Rates for policies issued by the association must be adequate and established at a level that permits the association to operate as a self-sustaining mechanism. The association and the Director are to monitor the rate adequacy of the association on a semi-annual basis. The Director is authorized to take corrective action on rates by order subject to review by the Administrative Law Court.

The legislation authorizes the Director to expand the area in which the Wind and Hail Underwriting Association provides essential property insurance for a period of up to 24 months and one renewal period of up to 24 months. In determining whether an expansion is warranted, the Director must consider the following criteria: changes in the number of insurers writing essential property insurance in the seacoast area and their capacity; changes in the extent to which surplus lines insurers are providing such coverage; changes in reinsurance activity impacting insurers writing essential property insurance; changes in demand for property insurance in the seacoast area; and any

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other information considered relevant. The Director must declare conditions that threaten to destabilize the property insurance market and the continued consistent availability of essential property insurance. The Director may not expand the association's territory beyond the seacoast area. All expansions must be reported to the General Assembly. The General Assembly may approve, revise, or vacate any expansion order by passage of a joint resolution.

The legislation expands the powers of the association so as to allow it to: (1) receive, hold and transfer personal and real property; (2) contract for goods and services; (3) solicit and accept goods, loans, grants, etc.; (4) borrow funds; (5) issue bonds, surplus notes, or other debentures. The legislation provides that four members of the association's board of directors must be consumers who are representative of business policyholders, residential single family dwelling policyholders, and apartment, condominium, or multiple-family dwelling policyholders, and who are selected from recommendations from the members of the legislative delegations from the seacoast area

The legislation revises the definition of "insurable property" to include a structure built in compliance with the most recent building code adopted by the Building Codes Council or the building code in existence at the time of construction or the standards promulgated under the National Manufactured Housing Construction Standards and Safety Act.

The legislation provides for a specific expansion to the defined "coastal area" in Georgetown County.

**South Carolina Hurricane Loss Mitigation Grant Program**

The legislation creates the South Carolina Hurricane Loss Mitigation Grant Program within the Department of Insurance and provides for an advisory council to the Director to administer the program along with a program administrator. The program administrator shall apply for financial grants to be used to assist single-family, site-built or manufactured or modular homes, owner occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. In order to be eligible for a grant, the property must have been granted a homestead exemption, have an insured value of \$300,000 or less, and have undergone an acceptable wind certification and hurricane mitigation inspection. Grants must be matched by the property owner on a dollar-for-dollar basis up to a total of \$10,000 with the State's contribution not to exceed \$5,000. Low income property owners (i.e. those whose adjusted gross income does not exceed 80% of the median annual adjusted gross income for households within the county where the person or family resides) are eligible to receive a grant of up to \$5,000 with no required match so long as the home's value does not exceed \$150,000. The legislation specifies improvement projects for which grants may be approved including roof deck attachment, secondary water barrier improvements, installation or repair of tie downs, and reinforcement of roof-to-wall connections.

Funding for the program is subject to annual legislative appropriations. Matching fund grants are also to be made available to local governments and nonprofit entities for projects that reduce hurricane damage to single-family, site-built or manufactured or modular homes, owner-occupied, residential property. The Department is also directed to make efforts to obtain federal government funding for the program. Additionally, this program must be implemented by the department through the use of the premium taxes

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due to this State by the South Carolina Wind and Hail Underwriting Association, and 1% of the premium taxes collected annually and remitted to the Department of Insurance.

**Rating system for coastal home wind resistance**

The Department of Insurance, in consultation with the Department of Consumer Affairs, the Department of Commerce, the Federal Alliance for Safe Homes, the Manufactured Housing Institute of South Carolina, South Carolina Building Codes Council, the Home Builders Association of South Carolina, the Civil Engineering Department of Clemson University, and the Institute for Business and Homes Safety shall study and prepare a proposal to develop an objective rating system that will allow homeowners to evaluate the relative ability of South Carolina's coastal properties to withstand the wind load from a hurricane. The department must provide a report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives by March 5, 2008, regarding the proposed rating scale and any recommendations for additional legislation.

**South Carolina Coastal Captive Insurance Company Act**

The legislation authorizes the formation of a South Carolina coastal captive insurance company to provide wind and storm surge property insurance coverage in this State. A captive insurance company is a limited purpose insurance company that is established to insure only the risks of a parent company or other specified group. The legislation establishes conditions for the formation of a coastal captive



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insurance company, including requirements for assets that are used to secure risks, and establishes conditions for its operation.

*STATUS: Having been approved by the General Assembly, **H.3820** (R.142) was signed into law by the Governor on June 11, 2007 (Act No. 78).*

## **JASPER COUNTY PORT FACILITY**

The General Assembly has approved and the Governor signed into law **H.3505**, legislation relating to a Jasper County port facility. This joint resolution directs the State Ports Authority to continue and bring to its earliest conclusion the condemnation action it has begun involving approximately one thousand eight hundred acres in Jasper County needed for new terminal facilities. The joint resolution establishes a timeline for completion of site acquisition, engineering studies, market analysis, submission of environmental impact statements, application for necessary permits, site preparation, and design and construction of the Jasper County Port facilities and its supporting infrastructure.

The joint resolution establishes the Savannah River Maritime Commission to negotiate with the State of Georgia, the U.S. Army Corps of Engineers, and others regarding the use of the Savannah River as a waterway for ocean-going container or commerce vessels. The twelve-member commission is composed of: (1) the Governor or his designee (who serves as chairman); (2) the Speaker of the House of Representatives or his designee; (3) the President Pro Tempore of the Senate or his designee; (4) the Attorney General of South Carolina or his designee; (5) the Chairman of the Board of Health and Environmental Control to serve ex officio or his designee; (6) the Chairman of the Board of Natural Resources to serve ex officio or his designee; (7) the Chairman of the State Ports Authority to serve ex officio or his designee; (8) the Chairman of the Senate Finance Committee or his designee; (9) the Chairman of the Senate Transportation Committee or his designee; (10) the Chairman of the House Ways and Means Committee or his designee; (11) the Chairman of the House Education and Public Works Committee or his designee; and (12) one resident of Jasper County appointed by the Jasper County Council to serve at the pleasure of the council.

The joint resolution also creates the Jasper County Port Facility Infrastructure Fund. The fund shall be used for expenses and administrative fees incurred by the county for infrastructure and service provision requirements related to the Jasper County Port Facility.

*STATUS: Having passed the General Assembly, **H.3505** (R.35) was signed into law by the Governor on May 1, 2007 (Act No. 56).*

## “SOUTH CAROLINA CRITICAL NEEDS NURSING INITIATIVE ACT”

*See Summary under Family/Health*

# CONSERVATION/ENERGY

## BASE LOAD REVIEW OF NEW ELECTRICAL GENERATING FACILITIES

The General Assembly approved **S.431**, a bill pertaining to electric utilities. The legislation enacts the “Base Load Review Act” which establishes a procedure allowing an investor-owned electric utility to recover from ratepayers some of the costs associated with constructing a new large generating facility prior to the completion of the project. A base load plant covered by the legislation is a new coal or nuclear fueled electrical generating facility that is designed to be operated, at a capacity factor exceeding seventy percent annually, has a gross initial generation capacity of at least three hundred fifty megawatts, and is intended in whole or in part to serve retail customers of a utility in South Carolina. The legislation requires applications for the recovery of capital costs to be reviewed by the Public Service Commission. Following a satisfactory review, the commission is authorized to issue an order establishing that, if a plant is constructed in accordance with an approved construction schedule and approved capital costs estimates, the capital costs for construction of the plant are prudent utility costs and are properly recovered by the utility through revised rates. The legislation provides for review by the Public Service Commission Office of Regulatory Staff representing the public interest.

**S.431** revises service rights of electric suppliers. The legislation establishes provisions for ‘corridor rights’ and other provisions to enhance predictability in the determination of which electric supplier has the right to provide service in a given area or location. The legislation establishes provisions specifying situations in which electric suppliers must obtain Public Service Commission approval for construction of facilities

**S.431** also expands what is considered a fuel cost that a utility is authorized to recover from its ratepayers. The expanded definition of fuel costs includes the cost of fuel transportation and costs associated with compliance with federal environmental requirements for reducing or treating emissions.

*STATUS: Having been approved by the General Assembly, **S.431** (R.28) became law without the Governor’s signature on May 3, 2007 (Act No. 16).*

## “ENERGY FREEDOM AND RURAL DEVELOPMENT ACT”

The General Assembly approved as part of **S.243** the “Energy Freedom and Rural Development Act,” which establishes various tax credits, rebates, and incentive programs to encourage biomass fuel development and utilization.

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The legislation provides for a sales tax rebate of three hundred dollars for an in-state purchase or lease of a Flex-Fuel Vehicle, hydrogen-fueled vehicle, advanced lean-burn vehicle, hybrid vehicle, electric vehicle, plug-in hybrid vehicle, or high fuel-economy vehicle with a city fuel-economy rating by the United States Environmental Protection Agency (EPA) of thirty miles a gallon or higher. The legislation provides for a sales tax rebate of not more than five hundred dollars for the purchase of equipment for conversion of a conventional hybrid electric vehicle to a plug-in hybrid electric vehicle or for the in-state purchase of EPA-certified equipment for conversion of conventional vehicles to operate on propane, compressed natural gas, liquefied natural gas, hydrogen, or E85 (eighty-five percent ethanol and fifteen percent gasoline). These rebates are allowed beginning after June 30, 2008, and ending before July 1, 2013.

For taxable years beginning after 2007 and before 2011, the legislation allows a two thousand dollar state income tax credit for the in-state purchase or lease of a plug-in hybrid vehicle.

For taxable years beginning after 2007 and before 2012, the legislation provides an income tax credit equal to twenty-five percent of qualified expenditures for research and development of feedstocks and processes for cellulosic ethanol (from such materials as wood chips, corn stover, and switchgrass) and for algae-derived biodiesel.

For taxable years beginning after 2006, and before 2014, the legislation establishes a new income tax credit equal to thirty cents for each gallon of noncorn ethanol or nonsoy oil biodiesel produced at a qualifying facility.

The legislation revises the existing provisions for income tax credits allowed for the utilization of solar energy systems.

The legislation provides for incentive payments for the sale of each gallon of specified ethanol-based and biodiesel alternative fuels. This incentive payment program begins after June 30, 2009, and ends before July 1, 2012, and shall be provided from the General Fund, excluding revenue derived from the sales and use tax.

The legislation provides for incentive payments for production at qualifying facilities of electricity or methane gas fuel from biomass resources such as wood, wood waste, agricultural waste, animal waste, sewage, landfill gas, and other organic materials. This incentive payment program begins after June 30, 2008, and ends before July 1, 2018, and shall be provided from the General Fund, excluding revenue derived from the sales and use tax.

The legislation requires all state-owned diesel fueling facilities to provide fuel containing at least five percent biodiesel fuel in all diesel pumps by January 1, 2008.

*STATUS: Having passed the General Assembly, **S.243** (R.111) was vetoed by the Governor on June 14, 2007. On June 19, the Senate and the House of Representatives overrode the veto to allow the bill to become law (Act No. 83).*

**“ENERGY INDEPENDENCE AND SUSTAINABLE  
CONSTRUCTION ACT OF 2007”**

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The General Assembly approved **H.3034**, the “Energy Independence and Sustainable Construction Act of 2007,” which establishes new “green building” energy efficiency and environmental standards for major new state construction and renovation projects. Major facility projects that are subject to the legislation’s green building standards include: (1) a state-funded new construction building project larger than ten thousand gross square feet; (2) a state-funded renovation project involving more than fifty percent of the replacement value of the facility or a change in occupancy; and (3) a state-funded commercial interior tenant fit-out project that is larger than seven thousand five hundred square feet of leasable area. The legislation’s green building requirements do not apply to: (1) a building, regardless of size, that does not have conditioned space as defined by the American Society of Heating, Refrigerating and Air-Conditioning Engineers; (2) a public kindergarten, elementary school, middle school, secondary school, junior high school, or high school; (3) a correctional facility constructed for the Department of Corrections, Department of Mental Health, or Department of Juvenile Justice; (4) a building project funded by the State Ports Authority, the Coordinating Council for Economic Development, or the State Infrastructure Bank; or (5) a building project funded by the Department of Health and Environmental Control in which the primary purpose is for the storage of archived documents.

A major facility project that has attained green building certification under the legislation is subject to follow up inspections to determine whether the building continues to operate at the standard to which it was originally designed and certified. The legislation requires the State Budget and Control Board to develop and implement a process for monitoring and evaluating the energy savings and environmental benefits associated with each major facility project designed, constructed, or renovated according to the green building standards and to submit an annual report to the General Assembly.

*STATUS: Having passed the General Assembly, **H.3034** (R.123) was vetoed by the Governor on June 14, 2007. The House of Representatives and the Senate subsequently overrode the veto to allow the bill to become law (Act No. 88).*

## **HYDROGEN INFRASTRUCTURE DEVELOPMENT ACT**

The General Assembly approved the “South Carolina Hydrogen Infrastructure Development Act” (**S.243**). The legislation establishes within the State Treasurer’s Office the South Carolina Hydrogen Infrastructure Development Fund from which revenues must be distributed in the form of grants to the South Carolina Research Authority and used for the purpose of promoting the development and deployment of hydrogen production, storage, distribution, and dispensing infrastructure and related products and services that enable the growth of hydrogen and fuel cell technologies in the State. The Authority shall administer the fund and provide grants for any purpose that furthers the creation of a sustainable foundation upon which a hydrogen economy may develop across the State. The Authority is required to submit an annual report to the Governor and General Assembly concerning the Fund.

The South Carolina Hydrogen Infrastructure Development Fund is authorized to receive donations, grants and any other funding as provided by law. A taxpayer may receive a state income tax credit equal to twenty-five percent of a qualified contribution to the

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Fund. The Fund may receive appropriations from the State's general fund as follows: seven million dollars for fiscal year 2007-2008; five million dollars for fiscal year 2008-2009; and, three million dollars for fiscal year 2009-2010. These appropriations made to the Fund may be distributed as grants only to the extent that there is a dollar-for-dollar match, in cash or in kind, from a source other than the State. However, the executive committee of the authority, based on the merits of a grant proposal and its projected economic benefit, may reduce or eliminate the matching requirement on a case-by-case basis. The General Assembly must not appropriate more than a total of fifteen million dollars in grants. Grants may not be made after June 30, 2012. Revenues remaining in the fund after that date, regardless of source, lapse to the general fund of the State.

The legislation provides that two percent of the gross profits derived from the sale of hydrogen and fuel cell products or services developed by a grant recipient that is organized and operating as a for-profit business must be annually remitted to the Fund through June 30, 2012, until the full amount of the original grant has been repaid. Thereafter, if the full amount has not been repaid, these annual remissions go to the general fund until a level of full repayment is reached.

The legislation provides for a state sales tax exemption for equipment or machinery operated by or used to distribute hydrogen fuel cells and for equipment and machinery used predominately for hydrogen fuel cell research and development. A state sales tax exemption is also provided for any building materials used to construct a new or renovated building or any machinery or equipment located in a research district so long as the amount of the sales tax that would be assessed without the exemption is invested in hydrogen or fuel cell machinery or equipment located in the same research district within twenty-four months.

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The legislation also requires state agencies to consider purchasing equipment and machinery operated by hydrogen fuel cells.

*STATUS: Having passed the General Assembly, **S.243** (R.111) was vetoed by the Governor on June 14, 2007. On June 19, the Senate and the House of Representatives overrode the veto to allow the bill to become law (Act No. 83).*

## **OFFSHORE NATURAL GAS EXPLORATION FEASIBILITY STUDY**

The General Assembly approved **H.3828**, a joint resolution creating a State Government Study Committee to examine and report to the General Assembly on the feasibility of natural gas exploration in the Atlantic coastal waters of the State of South Carolina. The study committee is comprised of twenty members to include: (1) six at-large members to be selected by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of Commerce, including one member designated by the: (a) Speaker of the House of Representatives representing the state's agricultural industry; (b) President Pro Tempore of the Senate representing the state's environmental interests; (c) Secretary of Commerce representing the state's manufacturing industry; (d) Speaker of the House of Representatives representing the state's coastal tourism interests; (e) President Pro Tempore of the Senate representing the state's natural gas distributors; and (f) Secretary of Commerce representing the state's economic development interests; (2) one member from each of the state's six United States Congressional Districts who must be selected by the members of the General Assembly representing each United States Congressional District; (3) one member from the House of Representatives Minority Party selected by the House Minority Leader; (4) one member from the Senate Minority Party selected by the Senate Minority Leader; (5) one member from the House of Representatives Majority Party selected by the House Majority Leader; (6) one member from the Senate Majority Party selected by the Senate Majority Leader; and (7) the Chairman of the House of Representatives Labor, Commerce and Industry Committee, or his designee, and the Chairman of the Senate Judiciary Committee, or his designee, shall serve as co-chairmen of the committee; (8) one at-large member selected by the Chairman of the House Labor, Commerce and Industry Committee; and (9) one at-large member selected by the Chairman of the Senate Agriculture and Natural Resources Committee. The committee shall use clerical and professional staff from the Department of Commerce and also may request the support of the professional and clerical staff of the standing committees of the House of Representatives and the Senate. In conducting its study, the committee shall consider comprehensive implications relating to energy, economic development, tourism, commercial and recreational fishing, the environment, agriculture, manufacturing, public safety, national security, employment, and possible impacts on state and local economies. The committee shall render its report and recommendations to the General Assembly before February 1, 2008, at which time it is dissolved.

*STATUS: Having passed the General Assembly, **H.3828** (R.143) became law without the Governor's signature on June 15, 2007.*

## **"PUBLIC WATERS NUISANCE ABATEMENT ACT" (RIVER SHACKS)**

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The stated intent of this bill is to protect the waters of the State by authorizing the removal of nuisance structures from the public waters of the State in accordance with specified procedures and timetables. The bill allows the owners of structures to apply for a permit from the Department of Natural Resources (DNR) authorizing the owner to maintain his structure in its permitted location for five years. There is a fifty-dollar fee for the permit; permits are not allowed if the structure presents a hazard to navigation or encroaches upon private property. The permit may be revoked by DNR under certain circumstances. An unpermitted structure is declared to be a public nuisance. Reports of unpermitted structures must be made to the Attorney General, and the Attorney General is authorized to maintain an action for removal of the structure. The bill provides that magistrate's court shall have jurisdiction over these actions. The bill provides that it is unlawful for a person to operate or float a houseboat on the waters of this State unless it has a marine toilet that discharges only into a holding tank. The bill also includes criminal penalties for violations.

*STATUS: Having passed the General Assembly, **H.3466** (R.56) became law without the Governor's signature on May 24, 2007 (Act No. 33).*

## **RENEWABLE ENERGY INFRASTRUCTURE DEVELOPMENT**

The General Assembly approved as part of **H.3749** provisions relating to the development of a renewable energy infrastructure within the State. The legislation establishes in the State Treasury the South Carolina Renewable Energy Infrastructure Development Fund, which must be used to make disbursements to the South Carolina Renewable Energy Revolving Loan Program and the South Carolina Renewable Energy Grant Program. Disbursement of these funds by the loan and grant programs must be approved by the South Carolina Renewable Energy Oversight Committee. The committee shall consist of seven members, one appointed by each of the following persons: the Governor, the Commissioner of Agriculture, the Secretary of Commerce, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee.

The legislation establishes the South Carolina Renewable Energy Revolving Loan Program to provide low interest loans to individuals or organizations that plan to build a qualified renewable energy production facility that produces energy or transportation fuels from biomass, solar, or wind resources. A loan from the program may provide up to fifty percent of the total cost of a project, but must not exceed two hundred fifty thousand dollars for each project. The Department of Agriculture shall administer the South Carolina Renewable Energy Revolving Loan Program, in cooperation with the South Carolina Institute of Energy Studies.

The Legislation establishes the South Carolina Renewable Energy Grant Program to provide grants to private and public entities located in South Carolina for the purpose of assisting them to be more competitive in obtaining federal and other available grants that may generate renewable energy-related research and projects to directly benefit the State. The Department of Agriculture shall administer the South Carolina Renewable Energy Grant Program, in cooperation with the South Carolina Institute of Energy Studies and the South Carolina Research Authority. Grants are available in the

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following three categories: (a) planning grants up to ten thousand dollars are available to a research institution or private organization to develop proposals to obtain federal grants and other funding sources for biomass, solar, and wind energy projects in South Carolina; (b) matching grants up to two hundred thousand dollars are available for research and development projects that relate to development of South Carolina biomass, solar, and wind energy resources, provided that the grant does not exceed fifty percent of the total cost of the project; and (c) matching grants up to two hundred thousand dollars are available for demonstration projects that validate the effectiveness of new and future biomass technologies and products, provided that the grant does not exceed fifty percent of the total cost of the demonstration project.

Unexpended funds received by the Department of Revenue from proviso 73.17 of the Fiscal Year 2006-07 Appropriation Act and carried forward must be disbursed to these entities to meet the requirements of this provision: the Department of Revenue for the purpose of alternative fuel purchases incentive payments and the South Carolina Renewable Energy Infrastructure Development Fund established in this legislation.

*STATUS: Having passed the General Assembly, **H.3749** (R.177) was vetoed by the Governor on June 27, 2007. On June 28, the House of Representatives and the Senate overrode the veto to allow the bill to become law.*

## **CRIMINAL JUSTICE/THE COURTS**

### **"ALCOHOL EDUCATION PROGRAM ACT"**

This program may be a part of each circuit solicitor's Pretrial Intervention Program; it is a matter of prosecutorial discretion whether or not to establish such a program. The South Carolina Commission on Prosecution Coordination shall oversee administrative procedures for the alcohol education programs in consultation with the Department of Alcohol and Other Drug Abuse Services. Alcohol education programs must include an educational and community service component. A violator of specified alcohol-related offenses (not including driving under the influence or driving with an unlawful alcohol concentration offenses) is eligible for this program if the offender is at least 17 but less than 21 with no prior alcohol-related offenses or significant history of prior delinquency or criminal activity. A person may only participate in the program once. There is a \$250 dollar fee for enrollment in the program, but the fee may be waived upon a finding of an inability to pay. If a person violates conditions of participation, the person may be terminated from the program and the alcohol-related offense reinstated. When a person successfully completes an alcohol education program, the circuit solicitor shall effect a noncriminal disposition, and there must be no record maintained of the alcohol-related offense except by the Commission on Prosecution Coordination in order to ensure that a person does not benefit from an alcohol education program more than once.

*STATUS: Having been passed the General Assembly, **H.3490** (R.72) was vetoed by the Governor on June 4, 2007. The General Assembly has overridden the veto (Act No. 35).*



## **“ATM SAFETY ACT”**

The bill provides that it is unlawful for a person to steal money, securities for money, or property, either by force, intimidation, or threats, from a person who is using or who has just finished using a bank night depository, an automated teller machine (ATM), or another automated banking device, or in the vicinity of a bank depository, an ATM, or another automated banking device. A violator is guilty of a felony and, upon conviction, must be fined not more than \$10,000 dollars and imprisoned not more than 20 years, or both.

The legislation also provides that it is unlawful for a person to beg, panhandle, or solicit money from a person using or who has just finished using a bank night depository, an ATM, or another automated banking device; or in the vicinity of a bank night depository, an ATM, or another automated banking device. A violator is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 dollars or imprisoned not more than 30 days, or both.

The legislation provides that separate location code, premise code, or designation for a bank night depository, an ATM, or other automated banking device offense must be added to the South Carolina Incident Based Reporting System and used by law enforcement personnel when completing incident reports for criminal activity encompassed by this legislation.

*STATUS: Having passed the General Assembly, **H.3199** (R.125) was signed by the Governor on June 13, 2007 (Act No. 72).*

## **"CRIMINAL GANG PREVENTION ACT"**

This comprehensive legislation addresses the problem of gangs. The stated intent of the bill is to eradicate the terror created by criminal gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal gang activity, including criminal gang recruitment. Highlights of the legislation include the following.

The bill adds criminal gang activities under the jurisdiction of the State Grand Jury.

The bill provides that it is unlawful for a criminal gang member to use or threaten to use physical violence against another person with the intent to coerce, induce, or solicit that person or another person to actively participate in criminal gang activity, or to prevent another criminal gang member from withdrawing from or leaving a criminal gang. Criminal penalties are outlined, and second or subsequent offenses carry stiffer penalties. Penalties are increased if the coercion involves the use of a firearm or other deadly weapon. Additional penalties may be imposed if the person solicited, recruited, coerced, or threatened is under the age of 18. Also, a person who has been coerced, intimidated, threatened, or injured has a civil cause of action against a criminal gang or criminal gang member.

This bill provides that it is unlawful for a criminal gang member by threat or force to: (1) prevent a witness or victim from attending or giving testimony at a trial, proceeding, or

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inquiry authorized by law that concerns or relates to any criminal activity; or (2) attempt to prevent a witness or victim from attending or giving testimony at a trial, proceeding, or inquiry authorized by law that concerns or relates to any criminal activity. Criminal penalties are outlined. Also, a person who has been coerced, intimidated, threatened, or injured in has a civil cause of action against a criminal gang or criminal gang member.

The bill includes provisions for the seizure and forfeiture of firearms, weapons, and other valuables or assets when the law enforcement officer or agency reasonably believes that the items have been used in a pattern of criminal gang activity or have been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

The bill provides that a civil cause of action is created in favor of the State of South Carolina, a county, municipality, or another political subdivision, or an agency or instrumentality of them, that sustains any damage, impairment, or injury proximately caused by a pattern of criminal gang activity or the commission of a criminal act for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. The cause of action may be brought against a criminal gang, a criminal gang member, or any other person who intentionally directs, participates, conducts, furthers, or assists in the commission of a pattern of criminal gang activity, or any other person who commits a criminal act or delinquency for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

The State Law Enforcement Division must include the Violent Gang and Terrorist Organization File of the Federal Bureau of Investigation's National Crime Information Center among those National Crime Information Center data available for direct access by authorized criminal justice agencies. State, county, and municipal law enforcement agencies must maintain a record of all persons who are found to be criminal gang members in the Violent Gang and Terrorist Organization File in accordance with the National Crime Information Center entry criteria.

The legislation creates a Gang Prevention Study Committee. Among other things, this committee shall study and keep abreast of issues and problems in South Carolina concerning criminal gang activity.

Within the State Budget and Control Board, the legislation establishes a Community Safety Anti-gang Matching Grants program to provide funding for local programs to prevent youth idleness and intervene with at-risk youth.

The bill creates the offense of "illegal graffiti vandalism" and outlines various criminal penalties.

*STATUS: Having passed the General Assembly, **S.141** (R.109) was signed by the Governor on June 12, 2007 (Act No. 82).*

## **IGNITION INTERLOCK DEVICES FOR REPEAT DRIVING UNDER THE INFLUENCE (DUI) OFFENDERS**

The General Assembly enacted legislation that requires certain repeat driving under the influence (DUI) offenders to pay for and have installed on any vehicle the person

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operates an ignition interlock device designed to prevent the operation of the motor vehicle if the person has consumed alcoholic beverages. The legislation outlines various procedures and penalties associated with the ignition interlock devices. The Department of Probation, Parole and Pardon Services has responsibility for overseeing these provisions.

*STATUS: Having passed the General Assembly, **S.213** (R.156) was signed by the Governor on June 15, 2007 (Act No. 103).*

## **“INDIGENT DEFENSE ACT”**

This legislation makes revisions pertaining to the State’s indigent defense system. Currently, the system consists of nonprofit corporations that oversee public defender services.

### **Circuit Public Defender Selection Panels**

The bill creates a Circuit Public Defender Selection Panel (Panel) in each of the 16 judicial circuits. Judicial circuits with three or less counties must have a Panel consisting of five members. Judicial circuits with four counties must have a Panel consisting of seven members. Judicial circuits with five counties must have a Panel consisting of nine members. This Panel chooses the circuit’s public defender. The Panel must include at least one attorney from each county in the circuit, and the remaining members of the Panel are chosen by a formula set forth in the bill. Solicitors, employees of solicitors, or employees of the Prosecution Coordination Commission are not eligible to serve on the Panel.

### **Circuit Public Defenders**

Each of the 16 judicial circuits shall have a circuit public defender. A circuit public defender must be at least 25-years old, must have been admitted and licensed to practice law in all courts of the State for five years, must be a member in good standing of the South Carolina Bar, must be competent to counsel and defend a person charged with a capital felony, and must be certified at all times to defend capital cases. The bill outlines other responsibilities of circuit public defenders, including the hiring of additional public defenders, investigators and other staff as necessary. The bill specifically provides that a public defender employed fulltime by the circuit public defender shall not engage in the private practice of law for profit. Public defenders serve as the pleasure of the circuit public defender. Among other things, the bill increases the application fee for public defender services from \$25 dollars to \$40 dollars. The bill also provides that circuit public defenders are included in the State Retirement System for Judges and Solicitors.

### **Commission on Indigent Defense**

The bill rewrites the current statute that provides for the creation of the Commission on Indigent Defense (Commission). Under this legislation, the Commission consists of thirteen members. The Governor appoints nine members. The Chief Justice of the Supreme Court appoints two members. The chairmen of the Senate and House

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Judiciary Committee, or their legislative designees, also serve on the Commission. The bill provides a list of activities and responsibilities that the Commission shall perform. The Commission must meet at least quarterly. The Commission is funded by appropriations from the General Appropriations Act.

The Office of Indigent Defense is the entity that distributes the funds for the defense of the indigent to the public defender offices around the State. Among other things, the bill provides that an Executive Director shall head the Office of Indigent Defense.

The bill also creates the Division of Appellate Defense within the Office of Indigent Defense. The Chief Attorney must administer the Division of Appellate Defense, and no attorney in this office may be involved in private practice.

*STATUS: Having passed the General Assembly, **S.446** (R.154) was vetoed by the Governor on June 18, 2007. The General Assembly has overridden the veto (Act No. 108).*

## **“JESSICA HORTON ACT”**

This legislation provides that campus police officers shall notify and work with the State Law Enforcement Division on the investigation of a death or an alleged act of criminal sexual conduct resulting from an incident occurring on the campus of an institution of higher learning.

*STATUS: Having passed the General Assembly, **S.459** (R91) was signed by the Governor on June 6, 2007 (Act No. 53).*

## **"PREVENTION OF UNDERAGE DRINKING AND ACCESS TO ALCOHOL ACT OF 2007"**

The General Assembly recognizes that alcohol is, by law, an age-restricted product that is regulated differently than other products. This comprehensive legislation addresses the problem of underage drinking and access to alcohol. Among other things, the legislation provides for the following:

- Requires the registration of kegs. A retail licensee shall not sell a keg of beer without recording certain information. The bill includes penalties for retail licensees that violate these provisions. The bill also prohibits a person from knowingly possessing a keg that does not have the proper label; the legislation also prohibits a person from purposefully removing, altering or allowing to be removed or altered a keg label. Penalties are provided for violations.
- Creates the offense of illegal purchase of alcoholic liquors for another's consumption on premises. Penalties are provided for violations.
- Requires that criminal charges be brought against both the seller and purchaser regarding the illegal sale of alcoholic liquors and beverages to minors.
- Allows law enforcement to utilize minors to test compliance with various laws. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person's parental consent.
- Provides that it is illegal for a person under the age of twenty-one to purchase, attempt to purchase, consume, or knowingly possess various alcoholic beverages. If law enforcement has probable cause to believe that a person under the legal age has consumed alcohol, then the law enforcement or the person may request that the person submit to any available alcohol screening test approved by the State Law Enforcement Division.
- Equalizes the penalties for the purchase or possession of beer, wine and alcoholic liquors by minors.
- Requires completion of certain alcohol prevention education or intervention programs under certain circumstances.

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- Increases penalties for various violations, including increases the length of time for driver's license suspensions.
- Includes provisions relating to the eligibility for certain scholarships.

*STATUS: Having passed the General Assembly, **S.213** (R.156) was signed by the Governor on June 15, 2007 (Act No. 103).*

## **EDUCATION**

### **"AMERICAN BOARD FOR THE CERTIFICATION OF TEACHER EXCELLENCE ACT"**

**H.3476** creates an alternative method for individuals to become certified to teach in South Carolina. The bill allows school districts to hire individuals that have received a Passport certificate issued by the American Board for the Certification of Teacher Excellence (ABCTE) in the content areas of biology, chemistry, English, math, physics or science. The State Department of Education (SDE) may approve additional areas. To obtain an alternative route certificate a person must have a Passport certificate issued by ABCTE and a bachelor's degree. An alternative route certificate is valid for one year and may be renewed for two additional years upon successful completion of teaching and of the hiring district's induction program. As a condition of professional certification, an individual with an alternate route certificate must successfully complete the South Carolina adopted pedagogy examination. A person who has received a Passport certificate and is hired by a school district has the same responsibilities and rights as other teachers. Also, these individuals are required to submit to Federal Bureau of Investigation and State Law Enforcement Division criminal background checks. The bill requires the SDE to report to the State Board of Education and the General Assembly certain data and information regarding individuals employed in South Carolina with a Passport certificate issued by ABCTE.

*STATUS: Having passed the General Assembly, **H.3476** (R.132) was signed by the Governor on June 13, 2007 (Act No. 75).*

## **ELECTIVE COURSES IN HISTORY AND LITERATURE OF THE OLD AND NEW TESTAMENT ERAS**

This legislation authorizes local school district boards to allow high schools to teach separate elective courses on the history and literature of the Old and New Testament eras. Each course must be taught with no attempt to influence students, and the teachers must be certified by the State. A local district school board may recommend a version of the Old or New Testament to be used, but teachers and students may use any version. The local school district board must maintain supervision and control of the course. The State Board of Education must develop and adopt standards and instructional materials to ensure that courses do not disparage or encourage any set of religious beliefs.

*STATUS: Having passed the General Assembly, **S.726** (R.155) was signed by the Governor on June 18, 2007 (Act No. 102).*

### **“JESSICA HORTON ACT”**

*See summary under Criminal Justice/The Courts*

## **ORIENTATION CLASSES FOR SCHOOLS THAT HAVE RECEIVED AN UNSATISFACTORY ABSOLUTE ACADEMIC PERFORMANCE RATING**

Any year a school receives an unsatisfactory absolute academic performance rating, this bill provides that the school shall offer an orientation class for parents, focusing on: the value of education; academic assistance programs that are available at the school and in the community; student discipline; school policies; an explanation of information that will be presented on the school's report card issued in November; and other pertinent issues. Schools shall provide parents with written notification of the date and time of the meeting. Schools are encouraged to avoid transportation or scheduling difficulties for parents by offering the class at a convenient time and location. A parent or guardian of each student registered to attend the school shall attend the orientation class each year it is offered.

*STATUS: Having passed the General Assembly, **H.3254** (R.158) was vetoed by the Governor on June 18, 2007. The General Assembly has overridden the veto (Act No. 105).*

## **SCHOLARSHIP ENHANCEMENTS FOR STUDENTS MAJORING IN SCIENCE OR MATHEMATICS**

The General Assembly approved, by incorporating **H.3170** into **S.656**, legislation providing scholarship enhancements for students majoring in science or mathematics. The legislation provides that a resident student who is at least a sophomore attending a public or private institution in this state, majoring in science or mathematics, and receiving a Palmetto Fellows Scholarship or LIFE Scholarship shall receive an additional

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scholarship stipend for the remainder of his undergraduate term if he continues to be eligible for the scholarship and demonstrates acceptable progress towards receiving an undergraduate degree in science or mathematics. The total increase each year is not to exceed \$3,300 for Palmetto Fellows and \$2,500 for LIFE. The legislation provides that the amount of the Palmetto Fellows Scholarship for recipients who do not receive this enhanced stipend beginning with the 2007 academic year shall be increased to an amount equal to that received by a LIFE scholarship recipient also receiving the enhanced stipend. The legislation establishes minimum course requirements that must be met during the freshman year in order for a student to be eligible for these enhancements. Credits earned through applicable high school advanced placement courses may count towards satisfying these freshman year requirements. The Commission on Higher Education shall define by regulation what constitutes a science or mathematics major but the category at minimum shall include majors in science or mathematics disciplines, computer science or informational technology, engineering, science education, math education, and health care and related disciplines including medicine and dentistry.

The legislation also increases from \$150 to \$300 the book allowance for HOPE Scholarship recipients.

*STATUS: Having passed the General Assembly, **S.656** (R.172) was ratified on June 21, 2007, and portions of the bill regarding hydrogen grants and enhancements to the LIFE and Palmetto Fellows scholarships were subsequently vetoed by the Governor. On June 29, the Senate and the House of Representatives voted to override both vetoes to allow provisions of the bill, including the legislation's scholarship enhancement provisions, to become law (Act No. 115).*

## **SCHOOL BUS BILL**

**H.3161** is a bill revising provisions for school buses. Highlights of the legislation, include the following:

- With certain exceptions, this bill provides that a student may not ride continuously on a school bus for more than 90 minutes.
- The State Department of Education (SDE) is required to annually review bus routes to ensure efficiency and that buses are only operated on safe roads.
- Only a person who has been certified by the SDE may drive a public school bus. The bill provides for two types of School Bus Driver Certificates.
- The bill also requires drivers of vehicles using certain traffic control devices to receive training.
- The bill provides for parental responsibility at bus stops.
- With regard to seating spaces on buses, this bill provides that the number of students assigned to a school bus must not be greater than the manufacturer certified seating capacity; the bill does provide for limited exceptions.



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- All publicly owned school buses must be inspected annually in compliance with the SDE annual school bus program. Certain privately owned buses must be inspected annually in compliance with applicable federal inspection requirements. The owner or leasee of a school bus shall be solely responsible for the implementation and accountability of school bus inspections.
- All school buses are subject to inspection by the State Transport Police. A school bus may not continue to operate if the annual inspection is more than twelve months old. School buses may not operate until any unsafe conditions disclosed by the inspection are corrected.
- The State may assume the obligation of providing transportation services extending within three-tenths of a mile walking distance of the residence of any student where hazardous traffic conditions are involved provided funds are appropriated annually by the General Assembly for this purpose. In these cases, the local school district must apply in writing to SDE for the State to assume the financial responsibility for this transportation from funds appropriated annually by the General Assembly for this purpose. If funds are not appropriated annually by the General Assembly, then neither the State nor a local school district is required to assume this obligation. The bill lists some factors considered pertinent to determining hazardous traffic conditions.
- The bill references and defines the term unescorted student. School transportation for eligible unescorted students in Child Development through second grade provided funds are appropriated annually by the General Assembly for this purpose. Services will be provided as closely and safely as practicable to the residence. Eligible unescorted students in the third through fifth grades will be provided school transportation services to and from school to within two tenths of a mile provided funds are appropriated by the General Assembly for this purpose. If funds are not appropriated by the General Assembly, then neither the State nor a local school district is required to assume this obligation.
- The SDE is required to implement a school bus replacement cycle to replace approximately one-fifteenth of the fleet each year.
- A grant program is established to fund transportation of students to alternate public schools (magnet schools, Montessori schools, etc.). School districts having alternative public schools may apply for grant funds to pay for the additional cost of transporting students to these schools. Accomplished with funds appropriated by the General Assembly.
- SDE, when feasible, shall utilize biodiesel fuel.
- The legislation also provides state-owned school buses must be parked overnight and during the school day in a location that is central to the area in which the school buses are operated. The SDE may grant waivers.

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*STATUS: Having passed the General Assembly, H.3161 (R.95) was ratified on May 31, 2007. The Governor vetoed the legislation on June 6, 2007, and the General Assembly has overridden the veto (Act No. 79).*

*On May 31, 2007, H.4204 was introduced and adopted. H.4204 is a House Resolution requesting the State Budget and Control Board to submit a report to the House of Representatives regarding specifications to be used in school buses and to provide the board should not enter into contracts to purchase new school buses until the report is submitted to the House of Representatives.*

## **“SOUTH CAROLINA NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM ACT”**

See summary under Military

## **SOUTH CAROLINA VIRTUAL SCHOOL PROGRAM**

H.3097 establishes the South Carolina Virtual School Program to make use of computer technology in order to expand the educational opportunities that are available to students. The program is designed to offer instruction through the Internet in order to: resolve scheduling conflicts; offer a more flexible, individualized pace of instruction; provide effective alternatives for meeting graduation requirements or credit recovery; and allow students to take courses that may not be offered at their schools due to insufficient demand or a lack of certified personnel.

The State Board of Education is authorized to establish the South Carolina Virtual School Program to provide South Carolina students access to distance, online, or virtual learning courses offered for an initial unit of credit. Additionally, the South Carolina Virtual School Program shall offer access to credit recovery programs for students who have been identified by a school district as not having received credit for a course previously taken or for students who have been identified by a school district as not likely to receive credit for a course in which the student is currently enrolled.

Students may enroll in courses for credit recovery based on policies established by the State Board of Education. A public, private, or homeschool student residing in South Carolina who is twenty-one years of age or younger shall be eligible to enroll in the South Carolina Virtual School Program. A private school or home school student enrolled in the program must not be entitled to any rights, privileges, courses, activities, or services available to a public school student other than receiving an appropriate unit of credit for a completed course. Students may be awarded a maximum of three online initial credits in a school year, and no more than twelve online initial credits throughout high school. However, the State Board of Education shall establish an appeals process whereby the governing body of the student’s school district may grant a waiver to exceed the established limit.

H.3097 provides that the South Carolina Virtual School Program shall be housed in and managed by the State Department of Education. All distance, online, or virtual learning courses offered for a unit of credit must be aligned with the state adopted academic standards, include appropriate course materials, and be approved by the Department.

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Instructors must hold a valid teaching certificate in each content area being taught or receive approval from the State Department of Education to teach the course. All virtual schoolteachers must receive appropriate preservice and in-service training pertaining to the organization, classroom management, technical aspects, monitoring of student assessment, and other pertinent training from the Department.

The State Board of Education shall develop guidelines and promulgate regulations on such matters as: (1) procedures and criteria for the selection of online courses; (2) qualifications and registration requirements of students who may enroll in online courses to include provisions outlining the enrollment of students that have been expelled from school; (3) procedures for private and homeschool students to enroll in courses; (4) teacher qualifications and the student-to-teacher ratio for online courses; (5) appropriateness and provisions for charging tuition and fees; (6) procedures for establishing uniform evaluation of student progress and awarding of final grades; (7) process for maintaining student records and reporting and recording grades on the student's transcript; (8) procedures and requirements for employment, supervision, and evaluation of teachers; (9) procedures and requirements for supervision, monitoring, assessment, and evaluation of enrolled students; and (10) student expectations.

The State Board of Education is required to provide the General Assembly with an annual report on the program. Through the use of an online pilot program, the State Department of Education shall examine the feasibility of providing services of the South Carolina Virtual School Program to students enrolled in adult education programs and shall make recommendations to the General Assembly no later than January 1, 2008.

**H.3097** establishes requirements for charter schools that choose to offer a program of online or computer instruction. The legislation provides that a charter school shall provide no more than seventy-five percent of a student's core academic instruction in kindergarten through twelfth grade via an online or computer instruction program. The twenty-five percent of the student's core academic instruction may be met through regular instructional opportunities in real time that are directly related to the school's curricular objectives, such as meetings with teachers and educational field trips and outings. Private or homeschool students choosing to take courses from a virtual charter school may not be provided instructional materials, or any other materials associated with receiving instruction through a program of online or computer instruction at the state's expense. Only students enrolled in the charter school as a full-time student shall be reported in the charter school's average daily membership to the State Department of Education for the purposes of receiving state or federal funds. Private and homeschool students may not be included in the student weighted pupil units or average daily membership reported to the State Department of Education for the purposes of receiving state or federal funds.

*STATUS: Having passed the General Assembly, **H.3097** (R.48) was signed by the Governor on May 15, 2007 (Act No. 26).*

## **FAMILY/HEALTH**

## **AGE OF CONSENT AMENDMENT PROPOSED FOR THE STATE CONSTITUTION**

The General Assembly approved **S.389**, a joint resolution proposing to amend the South Carolina Constitution by eliminating the provision that no unmarried woman shall legally consent to sexual intercourse who has not have attained the age of fourteen years. The proposed amendment is to be placed on the ballot and submitted to the voters at the next general election.

*STATUS: Having passed the General Assembly, **S.389** (R.60) was ratified on May 29, 2007.*

## **AUTISM SPECTRUM DISORDER HEALTH INSURANCE COVERAGE REQUIREMENTS**

The General Assembly approved **S.20**, a bill requiring health insurers to provide coverage for treatment of Autism spectrum disorder, which includes Autistic Disorder, Asperger's Syndrome, and other Pervasive Developmental Disorders. The legislation requires health insurers to provide coverage for the treatment of autism spectrum disorder that is limited to treatment prescribed by the insured's treating medical doctor in accordance with a treatment plan. To be eligible for benefits and coverage required by the legislation, an individual must be diagnosed with autistic spectrum disorder at age eight or younger. Benefits and coverage must be provided to any eligible person under sixteen years of age. Coverage for behavioral therapy is limited to a fifty thousand dollar maximum benefit per year. This limit is adjusted annually to reflect changes in the Consumer Price Index. Except for this limitation and other general exclusions and limitations of the health insurance plan, required coverage for treatment of Autism spectrum disorder must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the terms that apply to physical illness generally under the health insurance plan. An insurer may not deny coverage, refuse to renew coverage, or otherwise terminate or restrict coverage on an individual solely because the individual is diagnosed with autism spectrum disorder. The legislation provides an exemption from these autism spectrum disorder coverage requirements for any health insurance plan that is individually underwritten, offered in the individual market, or provided to a small business with no more than fifty employees.

*STATUS: Having passed the General Assembly, **S.20** (R.85) was vetoed by the Governor on June 6, 2007. On June 7, the Senate and the House of Representatives overrode the veto to allow the bill to become law (Act No. 65).*

## **DANGERS ASSOCIATED WITH SHAKING INFANTS AND YOUNG CHILDREN**

This bill requires the Department of Health and Environmental Control (DHEC) to approve and make available a video on the dangers associated with shaking infants and young children. DHEC must make the video available at cost to every hospital, licensed childcare facility, and the Department of Social Services must make the video available

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to all parents that adopt a child through agency. DHEC must establish a protocol for health care providers to educate parents and primary caregivers about the dangers of shaking infants and young children. DHEC is instructed to request family practice and pediatric health care providers to review these dangers with parents and primary caregivers of children up to age one at each well-child visit. Every hospital must make an approved video available and request both parents of every newborn baby to view it. Following the hospital's request, the parents are to sign a document stating they have been offered an opportunity to watch the video. Also, the video presentation must be part of the initial and ongoing training of licensed childcare providers. The bill provides that there will be no civil, criminal or administrative cause of action or other liability against a health care facility or health care provider for any acts or omissions relating to compliance with the provisions of the act.

*STATUS: Having passed the General Assembly, **S.518** (R.93) was ratified on May 31, 2007. The legislation became law without the Governor's signature on June 7, 2007 (Act No. 55).*

## **ORGAN AND TISSUE DONOR REGISTRY**

This legislation establishes the South Carolina Organ and Tissue Donor Registry that must be exclusively administered by Donate Life South Carolina. The registry shall include individuals that have indicated a willingness to be an organ and tissue donor by a designation on a driver's license, state identification card, donor card, online or any other donor registry form or any other document of gift. Donate Life South Carolina must develop procedures for the administration of this database, and the legislation outlines certain information which must be included in the registry on each registrant. All information contained in the registry is confidential and only be accessed by certain entities.

*STATUS: Having passed the General Assembly, **H.3317** (R.129) was signed by the Governor on June 14, 2007 (Act No. 92).*

## **ORGAN AND TISSUE DONOR PROGRAM ESTABLISHED IN THE DEPARTMENT OF CORRECTIONS**

This legislation establishes an organ and tissue donor program within the Department of Corrections. The purpose of the program is to educate prisoners about the need for organ and tissue donors, the procedures required to become a registered organ donor, and, in the case of bone marrow donors, the procedures for determining the person's tissue type and the medical procedures a donor must undergo to donate bone marrow. The Medical University of South Carolina and the University of South Carolina, School of Medicine, in conjunction with the Department of Corrections, must make available to prisoners educational pamphlets and brochures concerning bone marrow donation and the bone marrow donation programs operating in this State. However, if the department determines that a prisoner's participation in the program would constitute a threat to security, then the department may prohibit the prisoner from participating. All organ or tissue donations, including bone marrow donations, must be made on a voluntary basis.

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*STATUS: Having passed the General Assembly, **S.481** (R.61) was signed by the Governor on June 4, 2007 (Act No. 41).*

## **“SOUTH CAROLINA CRITICAL NEEDS NURSING INITIATIVE ACT”**

Created under the Commission on Higher Education (CHE), **S.657** provides incentives to retain nurse faculty scholars, attract new nurse faculty; provides loans, grants, and scholarships to in-state resident nursing students; establishes a research office to predict health care workforce needs; and provides technology to increase accessibility to clinical education needs.

The legislation establishes a Critical Needs Nursing Initiative Fund and sets a recommended priority order for the use of funds: (1) faculty salary enhancements; (2) new faculty; (3) student scholarship, loan, and grant programs; (4) establishment of the Office for Health Care Workforce Research; and (5) use of simulation technology and equipment.

The legislation caps the faculty salary enhancements at six million dollars. Faculty salary enhancements are intended to bring salaries for nursing faculty within the average for the geographic area in which the State of South Carolina competes for nursing faculty. The CHE upon consultation an advisory committee determines and distributes funds.

The Critical Needs Nursing Initiative Scholarship, Loan, and Grant Program is established to provide incentives and stipends to enable candidates seeking a higher degree to become qualified to teach full-time at an accredited nursing program at the public institutions of higher learning. The General Assembly sets a recommended priority order of varying amounts and numbers of scholarships, loans and grants: for students enrolled in Masters in Nursing graduate programs, doctoral education students enrolled in nursing or a related field that would prepare the person to teach in a nursing program; and, students pursuing a Bachelor of Science in Nursing from an accredited nursing program, including those students who have graduated from an associate degree program.

The legislation establishes the Office for Health Care Workforce Research within the South Carolina Area Health Education Consortium (SCAHEC). The purpose of the Office for Health Care Workforce Research is to analyze workforce supply and demand data and predict the need for registered nurses. The Office for Health Care Workforce Research shall collaborate with the Office of Research and Statistics of the Budget and Control Board, the South Carolina Center for Nursing Leadership, health professional education programs, professional associations representing the various health profession disciplines, and the health care delivery system to monitor the need for and educational capacity for nurses in South Carolina. The bill also encourages the utilization of simulation technology for new education models at all public institutions of higher learning.

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*STATUS: Having passed the General Assembly, **S.657** (R.64) was ratified on May 29, 2007. The Governor vetoed the legislation on June 4, 2007, and the General Assembly overrode the veto (Act No. 49).*

# GOVERNMENT

## FEDERAL REAL ID ACT

### Background

In May 2005, the United States Congress enacted the "REAL ID Act of 2005" (REAL ID Act) as part of Public Law 109-13, a federal supplemental appropriations measure. The REAL ID Act requires states to: (a) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the United States Department of Homeland Security; (b) electronically verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a United States citizen or a lawful alien, a lawful refugee, or a person holding a valid visa; (c) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card; and (d) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards.

### Memorializing Congress

**H.3989** is a concurrent resolution to memorialize Congress to repeal or decline implementation of the "REAL ID Act of 2005" and to oppose the creation of a federal national identification card.

*STATUS: **H.3989** was adopted by the House of Representatives and sent to the Senate on May 9, 2007. On May 31, 2007, the Senate adopted the concurrent resolution and returned it to the House of Representatives with concurrence.*

### Implementation of the Federal REAL ID Act

**S.449** provides that South Carolina shall not participate in the implementation of the REAL ID Act.

*STATUS: Having passed the General Assembly, **S.449** (R.114) was signed by the Governor on June 13, 2007 (Act No. 70).*

## ORGAN AND TISSUE DONOR PROGRAM ESTABLISHED IN THE DEPARTMENT OF CORRECTIONS

*See summary under Family/Health*



## PRESIDENTIAL PREFERENCE PRIMARIES

This bill provides that in 2008, if the state committee of a certified political party which received at least five percent of the popular vote in South Carolina for the party's candidate for President of the United States decides to hold a presidential preference primary election, the State Election Commission must conduct the presidential preference primary in accordance with party rules and the provisions of the federal Help America Vote Act (HAVA). The bill also provides that the State Election Commission and the authorities responsible for conducting the elections in each county shall provide for cost-effective measures in conducting the presidential preference primaries, while ensuring that voters have adequate notice and access to the polling places.

The state committee of the party shall set the date and the filing requirements, including a certification fee. Political parties must verify the qualifications of candidates prior to certifying to the State Election Commission the names of candidates to be placed on primary ballots. The written certification required must contain a statement that each certified candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications in the United States Constitution, statutory law, and party rules to participate in the presidential preference primary for which he has filed. Political parties must not certify any candidate who does not or will not by the time of the general election meet the qualifications in the United States Constitution, statutory law, and party rules for the presidential preference primary for which candidate desires to file, and such candidate's name must not be placed on a primary ballot. Political parties may charge a certification fee to persons seeking to be candidates in the presidential preference primary for the political party. A filing fee not to exceed \$20,000 dollars, as determined by the State Election Commission, for each candidate certified by a political party must be transmitted by the respective political party to the State Election Commission and must be used for conducting the presidential preference primaries. The political party shall give written notice to the State Election Commission of the date set for the party's presidential primary no later than 90 days before the date of the primary.

A political party may conduct an advisory primary for the 2008 election cycle according to its own rules and at the party's expense.

A political party or the State Election Commission may conduct a primary or election, without charge, in any facility that receives state funds for support or operation. The use of the facility is subject to the availability of the facility as determined by the facility's governing entity.

The bill also provides that unless otherwise specifically provided for by statute or ordinance, the following primaries must be conducted by the State Election Commission and the county election commissions on the second Tuesday in June of each general election year: (1) primaries for national offices, excluding the presidential preference primaries for the Office of President of the United States; and (2) primaries for: (a) state offices; (b) offices including more than one county; (c) countywide and less than countywide offices, specifically including, but not limited to, all school boards and school trustees; and (d) special purpose district offices, which include, but are not limited to, water, sewer, fire, soil conservation, and other similar district offices.

*STATUS: Having passed the General Assembly, **S.99** (R.108) was vetoed by the Governor on June 14, 2007; the General Assembly has overridden the veto (Act No. 81).*

## **"PUBLIC WATERS NUISANCE ABATEMENT ACT" (RIVER SHACKS)**

*See summary under Conservation/Energy*

## **"SOUTH CAROLINA PRIORITY INVESTMENT ACT"**

Current law provides that a local comprehensive plan of local planning commissions must include certain elements. The bill provides definitions for several terms related to these comprehensive plans.

This bill amends the housing element requirement so as to require an analysis to ascertain unnecessary nonessential housing regulatory requirements that add to the cost of developing affordable housing but are not necessary to protect the public. The bill further provides that the housing element must include an analysis of market-based incentives that may be made available to encourage development of affordable housing.

The bill requires these comprehensive plans to include a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element.

The bill also requires these comprehensive plans to include a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads and schools. The recommendation of those projects for public expenditure must be done through cooperation with adjacent and relevant jurisdictions and agencies.

*STATUS: Having passed the General Assembly, **S.266** (R.52) was signed by the Governor on May 23, 2007 (Act No. 31).*

## **VOLUNTEER STRATEGIC ASSISTANCE AND FIRE EQUIPMENT (V-SAFE) PROGRAM**

The General Assembly approved **H.3045**, a bill creating the Volunteer Strategic Assistance and Fire Equipment (V-SAFE) Pilot Program to offer grants of not more than \$30,000 to eligible volunteer and combination fire departments for the purpose of protecting local communities and regional response areas from incidents of fire, hazardous materials, and terrorism, and to provide for the safety of volunteer firefighters. The legislation specifies the purposes for which grant money must be used, including fire

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suppression equipment, self-contained breathing apparatus, training, protective clothing, decontamination equipment, and special operations vehicles. The legislation provides that the grants must be administered by the State Fire Marshall in conjunction with a peer review panel created under the legislation. The State Fire Marshall is required to submit an annual report to the chairmen of the House Ways and Means and Senate Finance Committees and the Governor detailing the grant awards and corresponding fire department purchases. Two percent of these funds may be awarded to the South Carolina State Firefighters' Association annually for the express purpose of establishing and maintaining a recruitment and retention program for volunteer firefighters. The association must apply for the grant to the peer review panel. The pilot program expires on June 30, 2008.

*STATUS: Having passed the General Assembly, **H.3045** (R.124) was vetoed by the Governor on June 14, 2007. The House of Representatives and the Senate subsequently overrode the veto to allow the bill to become law (Act No. 89).*

## **“WILLIAM C. MESCHER LOCAL HOUSING TRUST FUND ENABLING ACT”**

The stated purpose of this legislation is to authorize a local government to individually or jointly create and operate a local housing trust fund (LHTF) or regional housing trust fund (RHTF) to promote the development of affordable housing. A local government that creates an LHTF or RHTF may finance the LHTF or RHTF with money available to the local government through its budgeting authority unless expressly prohibited by the law of this State. Sources of these funds include, but are not limited to, one or more of the following: donations; bond proceeds; and grants and loans from a state, federal, or private source. The local government may alter a source of funding for the LHTF or RHTF by amending the ordinance that establishes financing for the LHTF or RHTF, but only if sufficient funds exist to cover the projected debts or expenditures authorized by the LHTF or RHTF in its budget. This legislation does not create, grant, or confer a new or additional tax or revenue authority to a local government or political subdivision of the State unless otherwise provided by the law of this State. An LHTF or RHTF established, utilized, or funded by this legislation must provide an annual report to the local government that created the fund. The local government shall require the LHTF or RHTF to provide an accounting of its funds each year. This report must be made available to the public by posting on the appropriate website of the local government.

*STATUS: Having passed the General Assembly, **H.3509** (R.36) was vetoed by the Governor on May 2, 2007. The General Assembly overrode the veto (Act No. 19).*

# **MILITARY**

## **“SOUTH CAROLINA NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM ACT”**

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The General Assembly approved and the Governor signed into law **S.322**, a bill that revises provisions for the South Carolina National Guard Tuition Assistance Act, so as to enact instead the “South Carolina National Guard College Assistance Program Act” which provides for college assistance program grants administered by the Commission on Higher Education. Qualifying members of the South Carolina Army or Air National Guard may receive college assistance program grants up to an amount equal to one hundred percent of college tuition and fees. The total of all grants received may not, however, exceed eighteen thousand dollars. A member may not qualify for college assistance program grants for more than one hundred thirty semester hours or related quarter hours, and grants are not to be awarded for graduate degree courses. The legislation provides for eligibility requirements. The legislation discontinues the loan repayment program for members of the National Guard serving in areas of critical need and eliminates provisions for one-half tuition for members of the South Carolina National Guard.

*STATUS: Having passed the General Assembly, **S.322** (R.59) was signed into law by the Governor on June 4, 2007 (Act No. 40).*

## **UNEMPLOYMENT COMPENSATION FOR SPOUSES OF TRANSFERRED MILITARY PERSONNEL**

The General Assembly approved **S.334** which allows the spouses of military personnel to receive unemployment compensation when a transfer to a new military assignment prompts them to leave work and relocate with their spouses. The legislation provides that an individual is eligible for waiting week credit and for unemployment compensation if the Employment Security Commission finds that the individual has left work voluntarily to relocate because of the transfer of a spouse who has been reassigned from one military assignment to another, provided that the separation from employment occurs within fifteen days of the scheduled relocation

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date. Benefits paid to an individual under the provisions of this legislation must not be charged to the account of a contributing employer.

*STATUS: Having passed the General Assembly, **S.334** (R.88) was vetoed by the Governor on June 6, 2007. On June 7, the Senate and the House of Representatives overrode the veto to allow the bill to become law (Act No. 67).*

## **TAX RELIEF**

### **INCOME TAX RELIEF**

The General Assembly approved a state income tax relief provision in **S.656** which reduces the tax rate imposed on the lowest bracket of South Carolina taxable income from 2.5 percent to zero percent. This elimination of the lowest bracket is imposed for taxable years beginning after 2006.

*STATUS: Having passed the Senate and the House of Representatives, **S.656** (R.172) was ratified on June 21, 2007, and these tax provisions were not among the portions of the bill subsequently vetoed by the Governor (Act No. 115).*

### **SALES TAX EXEMPTION FOR GROCERIES**

The General Assembly approved as part of **S.656** a provision exempting groceries from the sales tax as of November 1, 2007. The exemption applies to state sales and use tax collected on unprepared food items eligible for purchase with United States Department of Agriculture food coupons. The legislation provides for a transfer of funds during fiscal year 2006-2007 to the Education Improvement Act Fund in an amount sufficient to offset the estimated loss of revenue resulting from the new sales tax exemption.

*STATUS: Having passed the Senate and the House of Representatives, **S.656** (R.172) was ratified on June 21, 2007, and these tax provisions were not among the portions of the bill subsequently vetoed by the Governor (Act No. 115).*

# TRANSPORTATION

The General Assembly agreed on a plan to reform the South Carolina Department of Transportation (DOT) in order to enhance accountability at the agency responsible for the State's roads.

## **Secretary of Transportation**

The legislation establishes the position of Secretary of Transportation to be appointed by the Governor, with the advice and consent of the Senate. The Secretary serves at the Governor's pleasure. The Secretary replaces the department's existing chief administrative officer, the Director who is appointed by the Department of Transportation Commission under current law.

Among other things, the Secretary is charged with the affirmative duty to carry out the policies of the DOT Commission, to administer the day-to-day affairs of the department, to direct the implementation of the Statewide Transportation Improvement Plan and the statewide mass transit plan, to ensure the timely completion of projects undertaken by the department, to ensure the timely completion of routine operation and maintenance requests and emergency repairs, to prepare an annual budget for the department that must be approved by the DOT Commission before it becomes effective, and to provide the DOT Commission with detailed written reports of certain activities.

## **Department of Transportation Commission**

The legislation makes various revisions pertaining to DOT Commission. The legislation keeps the current provisions under which one commissioner is elected from each of the State's six congressional districts by the district's legislative delegation in the General Assembly. A seventh at-large commissioner is selected by the Governor and serves at the pleasure of the Governor. The at-large appointee may be appointed from any county in the State unless another commission member is serving from that county. However, the Governor's appointee will no longer serve as Chairman of the Commission; instead, the Commission shall elect a chairman. DOT Commissioners may be removed by the Governor for cause. All commissioners are eligible to vote on all matters that come before the commission.

The legislation provides new qualifications criteria for members of the Commission. A commissioner must have at least a baccalaureate degree or a background of at least five years in a combination of the following: (a) transportation; (b) construction; (c) finance; (d) law; (e) environmental issues; (f) management; or (g) engineering. Members of the General Assembly and their immediate family members are not eligible for election as commissioner until a member has been out of office for at least four years.

A Transportation Review Committee is established to screen candidates for appointment to the commission. The review committee is composed of ten members; the appointment of members is outlined in the legislation. The legislation outlines procedures for announcing a vacancy on the commission as well as outlines guidelines for screening potential commissioners.

### **Project Prioritization Using Objective Criteria**

The legislation requires the commission to develop a Statewide Transportation Improvement Program that provides for the development and implementation of the multimodal transportation system for the State. To the extent permitted by federal laws or regulation, the commission shall establish a priority list of projects to be undertaken. When compiling this list of projects, the department shall take into consideration the following criteria: (1) financial viability including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project; (2) public safety; (3) potential for economic development; (4) traffic volume and congestion; (5) truck traffic; (6) the pavement quality index; (7) environmental impact; (8) alternative transportation solutions, and (9) consistency with local land use plans. The department shall promulgate regulations not inconsistent with federal laws for applying these criteria.

### **Public Hearings on Projects**

The department shall conduct a public hearing in each county in which a public hearing is required by federal regulations to allow the department to share information regarding the project with the local community and to allow the local community to address its concerns with department officials. The hearing must include the opportunity for members of the public to address a hearing officer in a format in which comments can be heard by the general public.

### **Audits**

The legislation provides that the DOT Commission must appoint a chief internal auditor and other professional, administrative, technical, and clerical personnel as the commission determines to be necessary. The chief internal auditor serves a term for four years and may be removed only for cause. The chief internal auditor must be a Certified Public Accountant. The DOT Commission is vested with the exclusive management and control of the chief internal auditor.

The legislation requires the Materials Management Office of the Budget and Control Board to annually audit the department's internal procurement operation to ensure that the department has acted properly with regard to the department's procurement code exemptions.

The Legislative Audit Council is required to contract for an independent performance and compliance audit of the department's finance and administration division, mass transit division, and construction engineering and planning division. This audit should be completed by January 15, 2010. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the initial findings. The costs of these audits are an operating expense of the department.

Copies of these audits must be made available to the DOT Commission, the chief internal auditor, the Governor, the Chairman of the Senate Finance and Transportation Committees, and the Chairman of the House of Representatives Ways and Means and Education and Public Works Committees.

### **Ethics Provisions**

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The legislation subjects the members and employees of the Commission and employees of the department to the provisions of the State Ethics Act and the State Tort Claims Act.

The legislation requires DOT District Engineering Administrators to file a statement of economic interests.

The Secretary of Transportation must provide a workshop of at least two biennial contact hours concerning ethics and the Administrative Procedures Act for the commissioners, the Secretary, the chief internal auditor, and senior management employees of the department. All other department employees must have a biennial ethics workshop of at least two contact hours.

*STATUS: Having passed the General Assembly, **S.355** (R.171) was signed by the Governor on June 27, 2007 (Act No. 114).*

## **WORKERS' COMPENSATION**

The General Assembly approved and the Governor signed into law **S.332**, a bill revising the State's workers' compensation system, which pays disability benefits and necessary medical expenses for workers who sustain injuries in the course of their employment.

The legislation contains provisions geared towards combating workers' compensation fraud. The definition of "false statement and misrepresentation" is expanded to include such actions as a: (1) false report of business activities; (2) miscount or misclassification by an employer of its employees; (3) failure to timely reduce reserves; (4) failure to account for Second Injury Fund reimbursements or subrogation reimbursements; or (5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance. The legislation provides that an undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement. The legislation enhances the crime classification and penalties for intentionally making a false statement or misrepresentation. The Attorney General's Office is authorized to hire a forensic accountant to be assigned to the Insurance Fraud Division.

The Workers' Compensation Commission is provided new authority to enforce its awards. The legislation increases fines imposed on employers who fail to comply with workers' compensation coverage requirements.

The legislation addresses several recent South Carolina Supreme Court decisions relating to workers' compensation. The legislation permits communications between the employee's physicians/health care providers and the employer regarding medical information related to a workplace injury. The bill strengthens requirements for expert medical testimony in medically complex cases. The legislation provides more stringent standards for determining the award of future medicals. The legislation revises provisions relating to awards in instances when an employee has a pre-existing condition. The legislation adds the loss of the shoulder and the loss of the hip to a statutory schedule of injuries that specifies how the amount of disability compensation is to be calculated and provides for the duration of the compensation.



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The legislation provides that total disability is no longer automatically presumed in instances involving the loss of use of 50% or more of the back. Under the legislation, presumptions for such back injuries may be challenged.

New stringent criteria are established for repetitive trauma. Under the legislation an injury is considered a compensable repetitive trauma injury only when medical evidence establishes that there is a direct causal relationship between the injury and the repetitive activities that occurred while the employee was engaged in the regular duties of his employment.

In a claim for an occupational disease, the legislation requires an employee to establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment.

Parties in a workers' compensation case are subject to new requirements for providing more specific information when completing the forms filed with the case.

The legislation provides for appeals from the Workers' Compensation Commission to go directly to the Court of Appeals rather than the circuit court.

The legislation establishes the criteria under which a trucker is to be classified as an independent contractor that is not included under workers' compensation provisions. In order to be considered independent contractors, individual owners of tractor-trailers must have an independent contractor contract and either own, lease or have an installment purchase contract between an affiliate of the motor carrier or another lessor or seller. The lease or installment purchase must be on terms equal to terms available and customary in usual retail transactions.

The legislation restricts and ultimately eliminates the state's Second Injury Fund, an insurance program established to reduce risks employers may bear for future claims from previously injured workers. The legislation eliminates arthritis and the category of any other pre-existing conditions from the Second Injury Fund's list of covered conditions. The Fund assessment rate on self-insured employers and insurance carriers is lowered. A timeline is established for the dissolution of the Second Injury Fund by July 1, 2013.

The legislation provides that, at least 30 days prior to using new rates, every workers' compensation insurer must file with the Department of Insurance its multiplier for expenses, assessments, profit, and contingencies and any information relied upon by the insurer to support the multiplier and any modification to loss costs. A copy of the filing by the insurer must be provided to the Consumer Advocate. An actuary for the Department of Insurance must review rate filings. The Director may at any time disapprove of an insurer's most recent multiplier for expenses, assessments, profit, and contingencies if the Director determines that it does not meet requirements.

The legislation requires that a report be issued to the General Assembly by the first of January each year that evaluates the state of the workers' compensation insurance market in South Carolina. The report must contain an analysis of the availability and affordability of workers' compensation coverage and document compliance with requirements regarding both workers' compensation loss cost filings submitted by an

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advisory or rating organization and multiplier filings submitted by every insurer writing workers' compensation insurance.

*STATUS: Having been approved by the General Assembly, **S.332** (R.163) was signed into law by the Governor on June 25, 2007 (Act No. 111).*

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# MAJOR LEGISLATION NOT ENACTED IN 2007

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*Legislation is arranged by alphabetical order and is not divided into subject areas.*

## **ADDITIONAL CIRCUIT COURT AND FAMILY COURT JUDGES**

The House of Representatives approved and sent to the Senate [H.3267](#), a bill that provides for additional circuit court and family court judges. As passed by the House of Representatives, the bill increases the number of at-large circuit court judges from 13 to 16. Also, the bill provides that there must be three additional family court judges elected by the General Assembly from the State-at-large for terms of office of six years. The bill creates a Judicial Circuit Reapportionment Study Committee to review the apportionment of the State's judicial circuits and to examine and evaluate the size of the existing judicial circuits with the goals of keeping counties whole and determining the appropriateness of having the larger counties contained within their own judicial circuits. The legislation provides for the membership and administration of the committee and requires the submission of a report and recommendations to the General Assembly and Governor by January 1, 2008.

*STATUS: The House of Representatives approved [H.3267](#) on February 28, 2007. The bill is pending on the Senate calendar.*

## **"ALL-TERRAIN VEHICLE SAFETY ACT" or "CHANDLER'S LAW"**

The legislation provides that it is unlawful for a parent or legal guardian to knowingly permit his child or ward six years of age or younger to operate an all-terrain vehicle (ATV).

A person fifteen years old or younger may not operate an ATV within this State unless the person possesses a safety certificate indicating successful completion of an ATV safety course approved by the ATV Safety Institute. The legislation further provides that a person fifteen years of age or younger must wear a safety helmet and eye protection while operating an ATV.

The following restrictions apply to operation of an ATV on those lands open to the public:

- It is unlawful to operate an ATV except in compliance with the local regulations and restrictions.
- A person fifteen years of age or younger must be accompanied by an adult.
- It is unlawful to operate an ATV between one-half hour after sunset to one-half hour before sunrise unless it is equipped with operational headlights, and they are on.
- It is unlawful to cross an unbridged stream except at a designated ford or crossing. Riding in any water bodies or watercourses is unlawful.
- An ATV must have an effective muffler system in good working condition; a United States Department of Agriculture Forest Service approved spark arrester in good working condition, and a brake system in good operating condition.
- It is unlawful to operate an ATV while under the influence of alcohol or any controlled substance.
- It is unlawful to operate an ATV in a negligent or reckless manner.

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- It is unlawful to operate an ATV in a manner that damages flora or fauna, roads, trails, firebreaks, signs, gates, guardrails, bridges, fencing, or other public property.

The legislation provides that ATVs are exempt from *ad valorem* personal property taxes beginning with calendar year 2007.

Violations of this legislation, unless otherwise specified, are misdemeanors punishable by a fine of not less than \$50 dollars nor more than \$200 dollars. The legislation also provides for the titling of ATVs through the Department of Motor Vehicles.

*STATUS: **S.348** (R.41) was vetoed by the Governor on May 15, 2007. The Senate sustained the veto on May 29, 2007.*

## **CIGARETTE TAX INCREASE IN CONJUNCTION WITH A REDUCTION IN THE SALES TAX ON GROCERIES**

The House of Representatives approved and sent to the Senate **H.3567**, a bill providing for a cigarette tax increase and a reduction in the sales tax on groceries. The legislation provides for an additional 1.5-cent surtax on each cigarette, which amounts to an additional 30 cents collected on each pack of twenty cigarettes. The revenue of the new surtax must be credited to the newly-established Groceries' Sales Tax Relief Fund and used to reduce the state sales and use tax imposed on the gross proceeds of the sale or sales price of unprepared food that may be purchased lawfully with United States Department of Agriculture food coupons. The legislation reduces the state sales tax rate for groceries from 3% to 1.4%. The legislation provides for transfers from the State's general fund to the Education Improvement Act Fund in amounts sufficient to offset the estimated loss of revenue from this sales tax rate reduction. The legislation also provides that in any fiscal year that the license tax on cigarettes is greater than seven cents a pack, the General Assembly shall appropriate one million dollars in the annual general appropriations act to the Department of Agriculture for research and promotion of healthy lifestyles with food grown in this State.

*STATUS: The House of Representatives approved **H.3567** on May 1, 2007, and sent the bill to the Senate. On May 16, the Senate Finance Committee reported out the bill favorable with amendments and the legislation was set for special order on May 22.*

## **COMMON LAW MARRIAGE**

Under this bill, common law marriage in the State may not be recognized on and after January 1, 2008; an exception is provided for common law marriages existing as of December 31, 2007. The bill also repeals a code section relating to the validity of a marriage contracted without the issuance of a license.

*STATUS: **H.3427** received third reading in the House of Representatives and was sent to the Senate on March 29, 2007. The bill received a majority favorable with*

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*amendment; minority unfavorable report from the Senate Judiciary Committee. The bill is pending on the Senate calendar.*

## **DEFINITION OF THE TERM 'PERSON' FOR PURPOSES OF A CIVIL CAUSE OF ACTION**

For purposes of a civil cause of action, as passed by the House of Representatives, this bill provides that the term "person" includes an unborn child. The term "unborn child" means a child in utero with certain exceptions.

*STATUS: **H.3019** passed the House of Representatives on March 27, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 28, 2007.*

## **DNA SAMPLES FOR INCLUSION IN THE STATE DNA DATABASE**

This legislation provides that a person must provide a DNA sample, either saliva or tissue sample, following a lawful custodial arrest or a direct indictment for a felony offense or an offense that is punishable by a sentence of five years or more. The sample must be included in the State DNA Database. The legislation outlines procedures whereby law enforcement may take the sample. The State Law Enforcement Agency must coordinate with other law enforcement agencies to prevent duplications of DNA samples. If the charges pending against the person who has been arrested have been nolle prossed or dismissed, then the person may request that his DNA record be expunged from the State DNA Database. The cost of collecting and processing a DNA sample must be paid by the general fund of the State. A fee of \$250 dollars must be assessed at the time of sentencing against persons convicted or, pleading guilty or no contest to, or forfeiting bond for the crime for which they were arrested.

*STATUS: Having passed the General Assembly, **H.3304** (R.159) was vetoed by the Governor on June 18, 2007. The House of Representatives sustained the veto.*

## **DRIVING UNDER THE INFLUENCE (DUI) LAW REVISIONS**

The House of Representatives approved and sent to the sent **H.3496**, a bill that makes comprehensive changes to driving under the influence (DUI) laws. Highlights of the legislation include the following.

### **Tiered System of Punishment with Four Levels of Impairment**

The bill creates various tiered punishments (in ascending order) for each of the following designations: “driving while impaired,” “driving with an unlawful alcohol concentration,” “operating a motor vehicle with an unlawful and high concentration,” and “operating a motor vehicle with an unlawful and gross concentration.” The bill includes progressive penalties for violations. Any offense under carrying a penalty of 90 days or less may be tried in magistrate’s court.

### **Felony Driving While Impaired**

The bill makes technical changes regarding the definition of a driver and clarifies the definition of felony driving while impaired.

A person who is convicted of felony DUI involving great bodily injury is to have his license suspended for his period of incarceration plus three years. Furthermore, a person who is convicted of felony DUI involving death is to have his license suspended for his period of incarceration plus five years.

### **Testing and Video Recording Procedures**

The bill changes “probable cause” to “reasonable suspicion” to order alcohol testing on a person under 21. If a person under 21 refuses to take the breath test, his license is suspended for one year instead of the current six months; however, if a person under 21 takes the breath test and has an alcohol concentration of two one-hundredths of one percent or more his license is suspended for six months (currently three).

For others, the bill changes “reasonable grounds to believe” to “reasonable suspension” for an officer to order that a urine sample be taken. A breath sample taken for testing must be collected within two hours of the arrest. Any additional tests to collect other samples must be collected within three hours of the arrest. If a person refuses to submit to a test or give samples, his license is suspended for six months. If a person takes the test and has an as an alcohol concentration of eight one-hundredths of one percent or more, his license is suspended for two months.

The bill provides that only a Miranda warning at the time of arrest must now be video recorded. The bill eliminates the need to videotape a suspect 20 minutes prior to testing. The bill also removes certain notice requirements that currently must be given by the officer.

The bill requires that records of the Data Master malfunctions to be electronically recorded into the device and then made available on State Law Enforcement Division’s website.

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**Treatment**

The bill provides that a person convicted of a driving under the influence offense must enroll in and complete an Alcohol/Drug Safety Action Program (ADSAP) certified by the Department of Alcohol and Other Drug Abuse Services. For a first offense, the court must be notified if an offender fails to enroll in an ADSAP program within 30 days or fails to participate in the treatment program. The bill further provides that the court may hold the offender in contempt of court if the offender cannot show good cause as to why the failure to enroll or participate has occurred.

**Insurance Provisions**

An insurer may not cancel the automobile insurance policy of a person charged with a DUI violation.

A DUI offender is required to carry minimum liability insurance with limits of \$100,000/\$300,000.

**Suspension of Licenses**

The bill changes the blood alcohol limit triggering suspension of the person's license from fifteen one hundredths to eight one hundredths of one percent.

**Ignition Interlock Devices**

The bill provides that the court must order subsequent offenders' vehicles be equipped with an ignition interlock device. The cost of the device must be borne by the offender. The bill outlines various procedures and penalties associated with the ignition interlock devices. The Department of Probation, Parole and Pardon Services (DPPS) has responsibility for overseeing these provisions.

**Continuous Alcohol-Monitoring Devices**

A court may order the use of a continuous alcohol-monitoring device for a person who has been convicted of a second or subsequent offense of 56-5-2930 and for a person who has been convicted of a felony DUI or a DUI involving great bodily injury. The devices will be monitored by DPPS.

**Mopeds**

The bill includes mopeds within the definition of a motor vehicle.



## Administrative Hearings

The bill provides that the standard of proof in an administrative contested case is “preponderance of the evidence.”

The bill removes the requirement for the Administrative Law Court (ALC) to hire a law clerk or other assistant to help the judges who preside over Department of Motor Vehicle (DMV) Hearings. The bill makes it unnecessary for the DMV to provide locations within its facilities for hearings, and it removes language in the statute indicating that the chief judge of the ALC is not disqualified from adjudicating cases under this section. The bill further provides that administrative law judges (ALJs) are bound by the Code of Judicial Conduct and the SC Appellate Court Rules. The bill adds that the State Ethics Commission is responsible for the enforcing the rules. Additionally, an ALJ, hearing officer, or the spouse of the ALJ or hearing officer may accept invitations to attend judicial-related or bar-related functions.

## Repeal of Statutes

This bill repeals the following statutes:

- Section 56-5-2933 (driving with an unlawful alcohol concentration - DUAC)
- Section 56-5-2940 (penalty section for DUI and DUAC offenses)
- Section 56-5-3000 (publication of names of drivers whose licenses are suspended)

*STATUS: **H 3496** was read for the third time in the House of Representatives on May 17, 2007. On May 22, 2007, the bill was introduced in the Senate and referred to the Senate Judiciary Committee. On May 25, 2007, the bill was referred to a subcommittee.*

***Note:** Provisions regarding ignition interlock devices were enacted in **S.213** (R.156, Act 103). See the summary for Ignition Interlock Devices for Repeat Driving Under the Influence (DUI) Offenders in the Criminal Justice/The Courts section of the Major Legislation Enacted in 2007 portion of this document.*

## “ENERGY INDEPENDENCE AND SUSTAINABLE INVESTMENT ACT OF 2007”

The Senate approved and sent to the House of Representatives **S.377**, the “Energy Independence and Sustainable Investment Act of 2007,” which provides incentives for commercial construction and renovation that complies with “green building” energy efficiency and conservation standards. The legislation provides that a business that constructs a commercial facility project in this State that complies with specified green building standards is eligible to receive a state income tax credit equal to: (1) for the first ten thousand conditioned square feet, one dollar and fifty cents of tax credit per square foot; (2) for up to the next forty thousand conditioned square feet, seventy-five cents of tax credit per square foot; and (3) for the next fifty thousand conditioned square feet or greater, fifty cents of tax credit per square foot. The legislation provides for the size, scope, and amount of conditioned space that a construction or renovation project must include in order to qualify as an eligible commercial facility project.

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The legislation establishes provisions under which a business that intends to construct a commercial facility project meeting the legislation's green building standards may provide the Permitting Agency with an environmental performance bond in an amount that equals three percent of the total cost of the project, but does not exceed a maximum of three million dollars. Upon proof of posting an environmental performance bond, any additional required building permit from the same Permitting Agency shall be free of charge.

The Department of Revenue is required to submit an annual report regarding these commercial facility projects to the General Assembly that includes: (1) the number and types of buildings designed and constructed; (2) the amount of credit claimed in the previous taxable year; and (3) any conflicts or barriers that hinder the effectiveness of this legislation.

The legislation also provides that, upon recommendation of the South Carolina Chapter of the United States Green Building Council, the General Assembly shall annually honor not more than five businesses with the South Carolina Energy Independence Leadership Award.

*STATUS: The Senate approved **S.377** on May 22, 2007, and sent the bill to the House of Representatives where it has been referred to the Labor, Commerce and Industry Committee.*

## **HONORING OF VALID OUT-OF-STATE CONCEALABLE WEAPONS PERMITS**

As passed by the House of Representatives, **H.3212** requires that valid out-of-state permits to carry concealable weapons held by a resident of another state be honored by South Carolina. The legislation eliminates the current provision that South Carolina honors only out-of-state permits issued by a state with which South Carolina has reciprocity.

*STATUS: **H.3212** passed the House of Representatives on March 2, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 6, 2007. On May 9, 2007, the bill received a majority favorable, minority unfavorable recommendation from the Senate Judiciary Committee. The bill is pending on the Senate Calendar.*

## **HOUSE STUDY COMMITTEE TO STUDY THE APPROPRIATE ENFORCEMENT OF FEDERAL AND STATE LAWS RELATING TO THE PRESENCE OF ILLEGAL ALIENS IN THIS STATE**

**H.3032** creates a House Study Committee to study the appropriate enforcement of federal and state laws relating to the presence of illegal aliens in this State and to recommend legislative changes as appropriate. The bill outlines membership for the twelve-person committee. The Study Committee shall render its report and recommendations to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor no later than January 1, 2008. The Study

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Committee shall continue to meet after this date, if necessary, in order to make continuing recommendations to the General Assembly regarding the appropriate enforcement of federal and state laws related to the presence of illegal aliens in the State.

*STATUS: **H.3032** passed the House of Representatives on March 2, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 6, 2007. The bill was referred to a subcommittee on March 7, 2007, whereupon the Committee gave favorable report with amendment on May 17, 2007. The Committee amendment is largely the text of **S.392**.*

***S.392**, which enacts the "**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**," passed the Senate on April 19, 2007. The bill was introduced in the House and referred to the House Judiciary Committee on April 24, 2007. This comprehensive legislation addresses issues surrounding illegal immigration, including enforcement of federal immigration and customs laws memorandum of understanding (allows state law enforcement officers to become auxiliary immigration enforcement agents).*

## **ILLEGAL IMMIGRANTS AND PUBLIC BENEFITS/EDUCATION AND COUNSELING SERVICES FOR FOOD STAMP RECIPIENTS**

### **Illegal Immigrants and Public Benefits**

As passed by the House of Representatives, **H.3149** provides that a person may not receive food assistance payments, if the state administers the eligibility process, unless the person verifies that he is lawfully present in South Carolina. Verification includes the execution of an affidavit; false representations in the affidavit are considered perjury. This bill requires such a person to apply for these benefits through the Systematic Alien Verification of Entitlement Program or some other program operated the United States Office of Homeland Security. The provisions of this bill do not apply to an application for recipients under the age of 18. The Department of Social Services must enforce these provisions.

## Education and Counseling Services for Food Stamp Recipients

As passed by the House of Representatives, the legislation also requires education and counseling services for food stamp recipients. The Department of Social Services is required to provide education and counseling services for all persons it has determined eligible to receive United States Department of Agriculture food coupons. This education and counseling must include basic information on nutrition requirements and shopping and meal preparation advice designed to assist the recipient in making the best use of the assistance provided in meeting individual and family nutrition requirements.

*STATUS: **H.3149** passed the House of Representatives on March 9, 2007. The bill was introduced in the Senate and referred to the Senate General Committee on March 13, 2007.*

*On March 7, 2007, the Senate passed **S.531**. This is a Senate Resolution to request that the Governor of South Carolina declare by Executive Order that no illegal alien is eligible to receive any services or assistance provided by the Department of Social Services or any other State agency to the extent allowed by law.*

***S.392**, which enacts the "**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**," passed the Senate on April 19, 2007. The bill was introduced in the House and referred to the House Judiciary Committee on April 24, 2007. This comprehensive legislation addresses issues surrounding illegal immigration, including verification of lawful presence in the United States for those seeking public assistance benefits.*

## "JUDICIAL ENHANCEMENT ACT"

This legislation makes comprehensive revisions to the judicial process. Highlights of the revisions include:

- Provides each county clerk of court will report certain information to court administration regarding indictments;
- Provides a procedure for the assignment of a single circuit court judge to complex civil actions;
- Provides factors for the family court to consider when determining attorney's fees;
- Relating to the schedule of fees and costs to be collected by magistrates, increases the fee in all civil actions, for issuing a summons and copy for the defendant, and for filing judgment with or without a hearing from forty-five dollars to one hundred twenty dollars;
- Relating to post-conviction relief procedures, revises the procedure for judicial review of post-conviction relief filings to include the issuance of a certificate of probable cause;

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- Relating to the civil jurisdiction of magistrates courts, increases the civil jurisdiction from \$7,500 dollars to \$15,000 dollars;
- Relating to transfer of certain cases from general sessions court to magistrates court, deletes the existing provisions and provides that a case may be transferred to magistrates court if the penalty for the crime does not exceed one year or is a crime classified as a misdemeanor;
- Relating to sentencing, the bill allows the court to correct within seven days of sentencing, a sentence that resulted from arithmetical, technical, or other clear error. Also upon motion of the State, the bill allows for the reduction of a defendant's sentence under certain circumstances; and
- Creates a Judicial Circuit Reapportionment Study Committee.

*STATUS: **H.3934** received third reading in the House of Representatives on May 23, 2007; the bill was introduced in the Senate and referred to the Senate Judiciary Committee on May 24, 2007. On June 1, 2007, the bill was referred to a subcommittee.*

## **JUDICIAL MERIT SELECTION**

As passed by the House of Representatives, **H.3463** changes the Judicial Merit Selection Commission's process for nominating judicial candidates from the nomination of three candidates to the release of a list of all qualified and fit candidates to the General Assembly. The bill deletes the requirement that the commission consider race, gender, national origin, and other demographic factors. The bill provides that a member of a legislator's immediate family may not be elected to a judicial office while the legislator is serving in the General Assembly or for one year after the legislator leaves office. The bill defines the term "immediate family member" as an individual who is: (1) a child residing in the person's household; (2) a spouse of the person; or (3) claimed by the person or the person's spouse as a dependent for income tax purposes.

*STATUS: **H.3463** passed the House of Representatives on May 1, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on May 2, 2007. On May 7, 2007, the bill was referred to a subcommittee.*

## **PREREQUISITES FOR THE PERFORMANCE OF AN ABORTION**

As originally passed by the House of Representatives, **H.3355** requires that the physician who is to perform the abortion must verify the probable gestational age of the embryo or fetus by using an obstetric ultrasound. The images used to verify the probable gestational age must be reviewed with the woman seeking the abortion, and the woman seeking the abortion must certify in writing before the abortion is performed that she has reviewed the ultrasound images.

*STATUS: **H.3355** passed the House of Representatives on March 22, 2007. The Senate amended the bill and returned it to the House of Representatives on May 17, 2007. The Senate amendment establishes the viewing of the ultrasound image as a right that the mother has and that she must be notified of the option to view the ultrasound image.*

*The House of Representatives returned the bill to the Senate with amendments on May 24, 2007. As returned to the Senate, the bill provides that the probable gestational age of the embryo or fetus be verified by an ultrasound at least one hour before the abortion is to be performed. Further, the images used to verify the probable gestational age must be reproduced and reviewed with the mother prior to the woman giving informed consent to having an abortion procedure performed. Nothing may be construed to require the woman to view the ultrasound image against her will. Neither the physician nor the woman shall be penalized if the woman refuses to view the ultrasound image.*

***H.3355** has been approved by the House of Representatives and the Senate in different versions, and a conference committee has been appointed by the bodies to work on compromise legislation.*

## **"REGISTRATION OF IMMIGRATION ASSISTANCE ACT"**

As passed by the House of Representatives, the stated purpose of **H.3025** is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys. The bill limits what immigration assistance a nonlawyer may provide as well as restricts certain activities of these nonlawyers providing immigration assistance for compensation. Exceptions are provided for attorneys and their staff, certain not-for-profit organizations, and other organizations employing or desiring to employ an alien so long as the organization does not seek compensation for the services provided. A person performing immigration assistance services is required to obtain appropriate business licenses; the bill outlines procedures for obtaining and renewing licenses with the Secretary of State. The bill requires nonattorneys to post signs and give notice in advertisements and communications clearly indicating that they are not attorneys or authorized to give legal advice or accept fees for legal services. The

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bill provides for civil and criminal penalties; additionally, violations are subject to the provisions of the South Carolina Unfair Trade Practices Act.

*STATUS: **H.3025** passed the House of Representatives on March 7, 2007. The bill was introduced in the Senate and referred to the Senate Labor, Commerce and Industry Committee on March 7, 2007.*

**S.392**, which enacts the "**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**," passed the Senate on April 19, 2007. The bill was introduced in the House and referred to the House Judiciary Committee on April 24, 2007. This comprehensive legislation addresses issues surrounding illegal immigration including registration of immigration assistance services.

## **RURAL INFRASTRUCTURE ACT**

The House of Representatives approved and sent to the Senate **H.3666**, the "South Carolina Rural Infrastructure Act." The legislation establishes the South Carolina Rural Infrastructure Authority and provides for its governance, powers, and duties. The authority is charged with assisting municipalities, counties, special purpose and public service districts, and public works commissions in constructing and improving rural infrastructure by providing loans and other financial assistance such as grants, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, and provision of bond or other debt financing instrument security. For these purposes, the authority administers a newly created South Carolina Rural Infrastructure Fund which is authorized to receive state appropriations, federal funds, contributions, donations, loan repayments, and other available funds.

The authority may provide loans and other financial assistance to an eligible entity to pay for all or part of the eligible cost of a qualified project. Before providing a loan or other financial assistance to a qualified borrower, the authority must obtain the review and approval of the Joint Bond Review Committee. The term of the loan or other financial assistance must not exceed the useful life of the project. The authority may require the eligible entity to enter into a financing agreement in connection with its loan obligation or other financial assistance.

Following the close of each state fiscal year, the authority shall submit an annual report of its activities to the Governor and to the General Assembly. An independent certified public accountant shall perform an audit of the books and accounts of the authority at least once in each state fiscal year.

*STATUS: On May 17, 2007, the House of Representatives approved **H.3666** and sent the bill to the Senate where it has been referred to the Finance Committee.*

## “SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT”

This comprehensive legislation addresses issues surrounding illegal immigration. Areas covered by the legislation include, but are not limited to, the following:

- Illegal Aliens and Public Employment (verification program for public employers regarding service contracts);
- Enforcement of Federal Immigration and Customs Laws Memorandum of Understanding (allows state law enforcement officers to become auxiliary immigration enforcement agents);
- Verification of Lawful Presence in the United States (for those seeking public assistance benefits with numerous exceptions);
- Recording and Reporting Immigration Law Violations (business and wage restrictions for employment of unauthorized persons, penalties for the termination of US workers for the purpose of hiring illegal aliens, creates state felony for harboring illegal aliens);
- Verification of Nationality of Prisoners (identification of illegal aliens within the prison population and recoup of costs from the federal government); and
- Registration of Immigration Assistance Services.

*STATUS: **S.392** passed the Senate on April 19, 2007. The bill was introduced in the House and referred to the House Judiciary Committee on April 24, 2007.*

***H.3032** creates a **HOUSE STUDY COMMITTEE TO STUDY THE APPROPRIATE ENFORCEMENT OF FEDERAL AND STATE LAWS RELATING TO THE PRESENCE OF ILLEGAL ALIENS IN THIS STATE** and to recommend legislative changes as appropriate. **H.3032** passed the House of Representatives on March 2, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 6, 2007. The bill was referred to a subcommittee on March 7, 2007, whereupon the Committee gave favorable report with amendment on May 17, 2007. The Committee amendment is largely the text of **S.392**.*

***H.3149** pertains to **ILLEGAL IMMIGRANTS AND PUBLIC BENEFITS/ EDUCATION AND COUNSELING SERVICES FOR FOOD STAMP RECIPIENTS**. **H.3149** passed the House of Representatives on March 9, 2007. The bill was introduced in the Senate and referred to the Senate General Committee on March 13, 2007.*

***H.3025**, which enacts the “**REGISTRATION OF IMMIGRATION ASSISTANCE ACT**,” passed the House of Representatives on March 7, 2007. The bill was introduced in the Senate and referred to the Senate Labor, Commerce and Industry Committee on March 7, 2007.*



## **SOUTH CAROLINA PUBLIC SCHOOL CHOICE PROGRAM**

The stated objective of the legislation is to increase student participation in and student access to public school educational opportunities both within and outside of their resident school district, regardless of where they may live or their socioeconomic status. Highlights of the legislation include the following:

### **Requirements For School Year 2007-08**

The State Department of Education (the Department) establishes the Office of School Choice and Innovation (the Office) to provide districts with public school choice and open enrollment program information and assistance. The Office will: (1) conduct a statewide inventory on district growth projections, choice programs available, and choice options parents would like to have; (2) establish and assist district choice and open enrollment pilot programs where district participation is voluntary; and (3) provide information and recommendations to districts regarding problems experienced in pilot programs and the costs of implementation. Each district convenes a School Choice Committee to develop an action plan. The State Board develops guidelines listing factors to be used in determining school capacity. In developing the guidelines, a task force will be established with membership to include, but not be limited to, school board members, superintendents, principals, parents, and business and community leaders. The membership of the task force shall reflect urban and rural areas of the State.

### **Requirements For School Year 2008-09**

Districts begin implementing school choice plans, providing at a minimum a choice option for elementary, middle, and high school students. The School Choice Committee and district develop plans to implement an Open Enrollment Choice Program. The Department reports to the General Assembly by January 1, 2009, regarding findings from pilot programs.

### **Requirements For School Year 2009-10**

A parent may enroll his child in a public school in any district without paying tuition, and all districts must participate. Assignment of students is based on capacity of receiving school.

The receiving district shall: (1) notify resident district of receipt of application; (2) take action by the last day of February of the school year preceding enrollment to approve or deny an application; and (3) notify the parent and the resident district within five days after board action, with a written explanation if the application is denied. Students residing in a school attendance zone may not be displaced by a student outside the attendance zone. School districts are not required to: (1) accept students outside of the district in excess of 3% of district's highest average daily membership in any year over the preceding ten year period, phased in at a yearly increase of one percent of the school's previous year's average daily membership; (2) alter the structure of a requested school; (3) establish and offer in a school a program not currently offered; or (4) alter or waive established eligibility criteria for a program.

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School boards will adopt policies for capacity standards, standards of approval, and priorities of acceptance. Standards for capacity may not be set less than 50% of those established in State Board regulations. Only permanent building structures are, however, allowed in the calculation of capacity. Applications must be considered in order received, but for assignment of students priority must be: (1) students residing in district who desire to attend a school outside their attendance zone; (2) returning students; (3) students who seek to attend the designated school in the district's feeder pattern; (4) siblings of students residing in the same household already enrolled in the school; and (5) students whose parent or guardian is employed by the school. Receiving districts may deny students only if: (1) there is lack of capacity in the school or program requested; (2) the school requested cannot meet the special needs of a student; (3) student does not meet eligibility criteria for participation in a particular program; (4) denial is necessary to comply with a desegregation plan; or (5) the student was suspended for ten days or more the previous school year, is expelled, has committed offenses that would result in expulsion, or is in the process of being suspended or expelled. Sending districts may deny resident students a transfer only if the transfer would violate a desegregation plan. Denials by receiving district are subject to appeal to the State Board of Education. If a school's transfer requests exceed twenty percent of its enrollment, the State Board of Education shall appoint an external review team to study educational programs in the school, identify factors contributing to the transfer requests of students, and make recommendations to the district.

Each school board of trustees of the school district must annually submit capacity figures for each of its schools to the Department and each district must annually post school capacities and information regarding the current enrollment of the school and its percentage of capacity on the district and school websites. A student enrolled in a nonresident district may remain without reapplying until completion of the final grade within that school.

Receiving districts may terminate enrollment of nonresident students for habitual truancy, attendance requirement violation, violations of student conduct code resulting in ten or more days of suspension, or by mutual agreement between board of receiving and resident district and parents. Parents are responsible for transportation, but parents with family income of 185% or less of federal poverty guidelines are eligible for transportation services provided by the district or for transportation reimbursement paid to the parent by the district (district would be reimbursed by the Department). Should the General Assembly fail to appropriate funds for his purpose, receiving school districts would be under no obligation.

Districts receive 100% of base student cost from the State for nonresident students.

Students enrolled in a receiving district are ineligible for interscholastic athletics participation for one calendar year after enrollment or, if student makes subsequent transfers, for one calendar year from date of each transfer. This restriction does not apply to a student's initial transfer, if student's district of residence does not offer the sport in which the student wishes to participate.

Department must annually survey districts to determine the number of students participating in the program and report to the General Assembly. Each year of implementation of the program is contingent upon appropriation of adequate State

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funding as documented by a fiscal impact statement provided each year by the State Budget and Control Board.

*STATUS: Having passed the General Assembly, **H.3124** (R.173) was vetoed by the Governor on June 22, 2007. The House of Representatives sustained the veto.*

## **STATE APPROPRIATIONS LIMITS**

The House of Representatives approved and sent to the Senate **H.3295**, a bill establishing new limits on state appropriations that first apply to appropriations for fiscal year 2008-2009. The bill provides that, in addition to all other applicable constitutional and statutory limitations on general fund appropriations, total general fund appropriations for the fiscal year may not exceed the lesser of: (a) one hundred six percent of the adjusted base-year estimate made by the Board of Economic Advisors; or (b) the adjusted base-year estimate increased by a percentage equal to the state's growth in population and a percentage equal to any increase in the consumer price index. The adjusted base-year estimate is the recurring and nonrecurring general fund estimate made by the Board of Economic Advisors on February 15, 2007 for fiscal year 2007-2008. The Director of the Office of State Budget must certify compliance with these new limitations before the Governor may submit a proposed budget and before the annual general appropriations bill may be given third reading in the House of Representatives and Senate. Under the legislation, the General Assembly is authorized to declare a financial emergency and suspend these limitations on appropriations for any one fiscal year for a specific amount by a special vote (an affirmative recorded roll-call vote in each branch of the General Assembly by two-thirds of the members present and voting but not less than three-fifths of the total membership in each branch).

**H.3295** creates the Spending Limit Reserve Fund as a separate and distinct fund in the State Treasury that is to receive all general fund revenues accumulated in a fiscal year in excess of the appropriations limits provided in this legislation. Revenues credited to the Spending Limit Reserve Fund in a fiscal year may be appropriated by the General Assembly in its regular session in the year following the close of the applicable fiscal year. The Spending Limit Reserve Fund must be used to replenish the State's General Reserve Fund should that fund fall below its required minimum balance. Such amounts do not replace or supplant other required replenishments, and, to the extent that concurrent replenishments of the General Reserve Fund exceed the amount necessary for its full funding, the General Reserve Fund is deemed to require an annual minimum balance equal to this increased amount not to exceed a total balance equal to four percent of general fund revenue in the latest completed fiscal year. After this priority is met, revenues that remain in the Spending Limit Reserve Fund may be utilized only for the following purposes: (1) temporary tax reductions; (2) infrastructure improvements including fixed transportation facilities such as highway, rail, water and air, and basic facilities, services, and installations needed for the functioning of government such as water, sewer, and public sector communications; (3) school buildings; (4) school buses; and (5) expenses incurred by the State as a result of natural or other disasters declared by the President of the United States. Funding for a capital project must be appropriated from the fund in one installment and all appropriations must be made by means of a joint resolution originating in the House of Representatives.

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*STATUS: The House of Representative approved **H.3295** on February 16, 2007, and sent the bill to the Senate where it has been referred to the Finance Committee.*

## **STATE INCOME TAX CREDIT FOR HOMES CONSTRUCTED TO GREEN BUILDING STANDARDS**

When **H.3749** was under consideration in a conference committee it included a provision under which any builder or developer is eligible for an income tax credit of one thousand dollars per home on the construction of a home built to Earthcraft or Leadership in Energy and Environmental Design (LEED) standards in a county approved subdivision or planned unit development.

*STATUS: **H.3749** passed the House of Representatives and the Senate in different versions and a conference committee was appointed to address the differences of the bodies on June 7, 2007. The green building tax credit provisions were not included in the conference report adopted by the House and Senate.*

## **STATE INCOME TAX CREDIT FOR PHOTOVOLTAIC, SOLAR, AND FUEL CELL EXPENDITURES**

The House of Representatives approved and sent to the Senate **H.3390**, a bill that provides for a state income tax credit equal to twenty percent of the qualified expenditures of photovoltaic, solar, and fuel cell property credits allowed against a taxpayer's federal income tax liability.

*STATUS: On May 17, 2007, the House of Representatives approved **H.3390** and sent the bill to the Senate where it has been referred to the Finance Committee.*

## **SUNSET REVIEW OF STATE GOVERNMENT PROGRAMS**

The House of Representatives approved and sent to the Senate **H.3024**, a bill providing for sunset review of state government programs. The legislation establishes the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council, to establish procedures providing for the manner in which the programs of certain agencies and departments of State government must be evaluated to determine if they should be continued in existence, modified, or terminated. The legislation establishes the procedures by which these programs must be continued, modified, or terminated.

*STATUS: The House of Representatives approved **H.3024** on April 25, 2007, and sent the bill to the Senate where it has been referred to the Judiciary Committee.*

## **"TRAFFIC EDUCATION PROGRAM ACT"**

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As passed by the House of Representatives, H.3572 provides that each circuit solicitor has the authority to establish as part of the Pretrial Intervention Program a traffic education program for persons who commit traffic-related offenses that are punishable only by a fine and loss of four points or less. The program must include both a community service and an educational component. A person may be considered for a traffic education program only if he has no prior traffic-related offenses on his record, and a person may not participate in a traffic education program more than once. When a person successfully completes a traffic education program, the governmental agency administering the program shall effect a noncriminal disposition of the traffic-related offense, and there must be no record maintained of the traffic-related offense except by the appropriate traffic education program in order to ensure that a person does not benefit from a traffic education program more than once. If a person violates the conditions of a traffic education program or receives a subsequent traffic violation during the six months following the issuance of the ticket for which he has entered the traffic education program, he must be terminated from the program and the traffic-related offense must be reinstated.

**Administration**

Each circuit solicitor may establish an Office of Traffic Education Program Coordinator whose responsibility is to assist in the establishment and maintenance of the traffic education program. A traffic education program must be under the direct supervision and control of the circuit solicitor; however, the solicitor may contract for services with a county or municipality in the circuit. The South Carolina Commission on Prosecution Coordination shall oversee administrative procedures for the traffic education programs.

**Fees**

A person shall pay a nonrefundable \$140 fee to apply for a traffic education program that cannot be reduced or suspended. Additionally, a person shall pay a nonrefundable fee, not to exceed \$140 dollars to participate in a traffic education program. Participation in a traffic education program may not be denied due to a person's inability to pay. If a person is deemed unable to pay, both the application fee and the participation fee must be waived. The bill provides for the distribution of the fees.

**Reporting Requirements**

Each governmental agency that administers a traffic education program is required to submit a traffic education program annual report, by the first day of August, to the Commission on Prosecution Coordination providing the total number of participants by original traffic-related offenses, the total number of participants that successfully completed the traffic education program, the total amount of fees collected, and the total revenue remitted to the municipalities, counties, and State Treasurer's Office for the state's fiscal year.

Each governmental agency that administers a traffic education program is also required to submit to the Commission on Prosecution Coordination necessary identifying information on each participant for the creation and maintenance of a list for determining eligibility for a traffic education program.

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*STATUS: **H.3572** passed the House of Representatives on May 3, 2007. The Senate amended the bill and gave it second reading on June 6, 2007. The Senate version provides that a person may not participate in a traffic education program if the person's traffic related offense resulted in the death or serious bodily injury to another person, and the Senate version provides that a person may be considered for a traffic education program if he has no points on his driving record. The Senate version provides that certain fees are remitted to the South Carolina Criminal Justice Academy instead of the Department of Public Safety. The Senate version also includes a severability clause.*

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## **POTENTIAL ISSUES FOR 2008**

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Other significant issues were not enacted this year and may be considered by the General Assembly in 2008.

Legislation establishing the **South Carolina Public School Choice Program** was approved by the General Assembly this session, but the Governor's veto of the legislation was sustained. The legislation outlines a process whereby a parent may enroll a student in a public school in any district without paying tuition, and all districts must participate. The stated objective of the legislation is to increase student participation in and student access to public school educational opportunities both within and outside of their resident school district, regardless of where they may live or their socioeconomic status.

In the General Assembly there are numerous bills pending addressing different components of the **illegal immigration** issue. Among other things, the various bills address: registration of immigration assistance; illegal aliens and public benefits; and the creation of a House study committee to examine the appropriate enforcement of federal and state laws relating to the presence of illegal aliens in South Carolina.

While legislation was enacted this year requiring ignition interlock devices for certain repeat driving under the influence offenders, comprehensive legislation is still pending that would **reform South Carolina's driving under the influence laws**. The House of Representatives approved and sent to the Senate legislation that implements a tiered system of punishment with four levels of impairment: "driving while impaired," "driving with an unlawful alcohol concentration," "operating a motor vehicle with an unlawful and high concentration," and "operating a motor vehicle with an unlawful and gross alcohol concentration." This legislation also strengthens penalties and requires treatment for those convicted of a first offense.

The House of Representatives approved and sent to the Senate legislation proposing a **cigarette tax increase**. Under the proposal, revenue from the additional 1.5-cent surtax on each cigarette was to be credited to a Groceries' Sales Tax Relief Fund

The House of Representatives approved and sent to the Senate the "**South Carolina Rural Infrastructure Act**" to assist municipalities, counties, special purpose and public service districts, and public works commissions in constructing and improving rural infrastructure by providing loans and other financial assistance.

Legislation approved by the House of Representatives provides for **new limits on state appropriations** that are linked to population growth and increases in the consumer price index. The legislation places restrictions on the expenditure of revenues exceeding the limits.



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The House of Representatives passed and sent to the Senate legislation proposing periodic **sunset review** of State government agencies and departments to determine if they should be continued in existence, modified, or terminated.

The House of Representatives approved and sent to the Senate legislation revising the process for **nominating judicial candidates** for election by the General Assembly.

South Carolina's various court dockets are often backlogged. Legislation approved by the House of Representatives and sent to the Senate provides for **additional circuit court and family court judges**.

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