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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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## WEEK IN REVIEW

### HOUSE

The House amended and sent to the Senate H.3591, The South Carolina Private Property Rights Protection Act, which addresses situations where regulations and other governmental actions restrict the use of private property to such an extent that the value of the real property is significantly diminished, but the property owner is not compensated for his loss. As amended, the bill establishes a new, separate cause of action for property owners who are "inordinately burdened" by governmental actions. This cause of action is independent of the Constitutional doctrine of "takings." Under the act, a real property owner is entitled to relief, which may include compensation for the actual loss to the fair market value of the property, for specific action of a governmental entity which has inordinately burdened an existing use of real property or a vested right to a specific use of real property. In order to seek relief under the act, a property owner must act within one year of the governmental action which he claims is an inordinate burden on his property. A specified procedure must be followed including a written claim filed by the property owner, a written settlement offer from the governmental entity. The property owner may accept the offer and, should the offer contravene the application of a statute as it would otherwise apply to the subject property, the property owner and the governmental entity would jointly file an action in circuit court for settlement approval. If the settlement offer is not accepted by the property owner, the governmental entity must issue a "ripeness decision" identifying the permissible uses for the property. Should neither the settlement offer nor the ripeness decision satisfy the property owner, the owner may file a claim in circuit court. The circuit court shall determine, considering the settlement offer and ripeness decision, whether the governmental entity inordinately burdened the property. If the court finds inordinate burden, a jury is impaneled to determine the amount of compensation. The formula for compensation is the fair market value of the property at the time of the governmental action minus the fair market value of the property, as inordinately burdened. The House reconsidered and tabled an amendment which had been adopted during the previous week and which would have exempted from the bill's provisions any action of a governmental entity affecting the location of or approval of any extension of any type of radioactive waste facility. The House amended the bill so as to clarify that the bill's provisions are not to prevent a governmental entity from exercising its authority to adopt or modify zoning ordinances or comprehensive land use plans.

The House amended and sent to the Senate H.3424 which provides that, in order to participate in interscholastic activities, a student in grades nine through twelve must achieve an overall 75 or above average in the preceding semester and must meet other criteria established by the South Carolina High School League and approved by the State Department of Education. The bill was amended so as to apply the act beginning with the ninth grade class of the school year 1998-99. Current law provides that these students must have an overall passing average and must either pass at least four academic courses (including each unit the student takes that

is required for graduation) or pass a total of five academic courses during a specified semester (depending on when the scholastic activity occurs).

The House amended Senate amendments to H.3945 which provides for a worker's compensation insurance credit for businesses which conduct programs to reduce drug and alcohol abuse. The House also amended Senate amendments to H.3461 which allows specified individuals who are not students to ride on school buses.

The House *returned several bills to the Senate:*

S.315, as amended, revises provisions authorizing witnesses to be present at executions. The bill provides that the Director of the Department of Corrections may approve the presence of three individuals representing the family of the victim for whom the death penalty was imposed (If there are two victims, the Director may allow for one representative per family. If there are more than two victims, the Director may restrict total representation in accordance with space limitations.) The bill also provides that the solicitor or assistant solicitor from the county where the offense occurred to be present. The Director is authorized to exclude any authorized witness for security purposes. Representation for the media is reduced from five to three individuals. The chief law enforcement officer with original jurisdiction or his designee is authorized as a witness.

S.510, as amended, allows the transfer of license plates from one motor vehicle to another motor vehicle of the same vehicle owner or lessee, only if the applicant has assigned to another the title to or the lease on the motor vehicle from which the plate is to be transferred. The bill also provides for collection of property taxes from motor carriers who have failed to pay, and provides for fees in lieu of property taxes for semitrailers and trailers of motor carriers. The bill also provides that certain motor vehicles which are acquired after March 31, 1997, are subject to fiscal year 1998 property taxes. Amendments to the bill include: striking language which disallows a license plate transfer unless the applicant has assigned to another the title to or the lease on the motor vehicle from which the plate is to be transferred, and striking language which provides that the department shall require that proof of the assignment it determines appropriate before it shall process a transfer application; a provision amending a section relating to assessment of property taxes for motor carriers, by providing that the county must distribute revenue from the payment-in-lieu-of-taxes received pursuant to this section "within thirty days of its receipt" to every governmental entity levying a property tax in the manner set forth in the section; an amendment providing that certain motor carrier vehicles which are acquired after March 31, 1997, are not subject to fiscal year 1998 property taxes. The Senate version of the bill provides that these vehicles are subject to 1998 taxes.

S.641, as amended, revises the state's Probate Code.

S.200, the "Patient Access to Optometric Primary Eye Care Act," as amended, prohibits health insurers who provide vision care benefits (with certain exceptions) from discriminating against either optometrists or ophthalmologists, as a class, with respect to the terms, conditions, privileges and opportunity for participation, or compensation for the same eye care services. Such insurers may not prohibit a participating optometrist from performing those medical services within his legal scope of practice which are in accord with the benefit plan. The bill establishes a procedure for those aggrieved by violations. The bill takes effect

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180 days after the signature by the Governor, provided, however, that existing contracts must comply with the bill's requirements at their next renewal date.

S.271, as amended, recodifies the enabling statute of the South Carolina Board of Architectural Examiners so as to bring it into conformity with the uniform organizational and administrative framework for professional and occupational licensing boards established for the Department of Labor, Licensing, and Regulation in 1996.

S.29, as amended, designates the taking of a hostage by an inmate as a violent crime, a most serious offense, and Class A, rather than a Class C, Felony. An individual convicted of assault upon a state or local corrections facility employee performing job-related duties must serve a mandatory minimum sentence of not less than six months nor more than five years (must be served consecutively to any other sentence). The bill provides that it is a felony for an inmate to throw bodily fluids at state or local corrections personnel, punishable with up to fifteen years imprisonment (to be served consecutively). Penalties are revised for inmate escapes, or attempted escapes, providing a one year minimum for the prescribed prison sentence. The bill provides that it is unlawful for the employee of a state or local corrections facility to have sexual intercourse with an inmate of that facility.

S.542 - This bill establishes a procedure for the State Board of Education (SBE) to add textbooks to the list of textbooks approved for use in SC public schools, upon written request of the boards of trustees of five or more school districts during any 365 day period. The Senate version of the bill prohibits the SBE from approving the adoption of a textbook or other instructional material which contains any clear, substantive, factual, or grammatical error, and provides that contracts between the SBE and a publisher or vendor of textbooks or other instructional material require that the material is free of any such errors. The bill provides for the purchase by a school district of SBE-approved school textbooks directly from a publisher under contract with the state board when needed for instruction by the school district if the textbooks are not available from the State Department of Education. Also, the bill prohibits a public school from beginning a course if state-approved textbook(s) or other course material is not available on the first day of class or if the delivery date is after the first two weeks of classes unless the board of trustees determines that the class should be offered. The bill establishes membership requirements for evaluation and rating committees for textbooks and for instructional materials and delineates certain considerations which must be including in rating and evaluating criteria. The bill also provides that before final adoption, the state board shall make all textbooks and instructional material available for public inspection for at least thirty days, at display centers geographically dispersed throughout the state. House amendments include: a provision that textbooks may also be added to the approved list by written request of boards of trustees of two or more school districts with a combined population of 25,000 or more students, and local school districts shall establish procedures under which principals and teachers of the district may transmit textbook requests; a provision adding publishers and vendors of instructional materials to the list of people with whom the SBE may negotiate and execute contracts pursuant to this section; changing the language which stated that each evaluating and rating committee charged with assessing textbooks or instructional materials for the development of higher order thinking skills and problem solving "must" have at least one lay person on the committee, and a majority of the membership "must" have expertise in the areas under consideration, to read that each committee "may" have "up to 25% lay membership," and that a majority of those appointed to the committee "must be

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full-time classroom teachers"; a provision strengthening the requirements in the bill for public review of materials recommended by the review panels.

The House amended and voted to continue until July 1, H.3874 which addresses situations where it is necessary for a property owner to enter another's land in order to improve, repair or maintenance on his own property. The House also refused to wave House Rule 5.12 so as to allow consideration for H.4115 which prohibits the state from using race, sex, color, ethnicity, and natural origin as criteria in public employment, education, or contracting. The House recommitted to the Judiciary Committee S.281 which provides that a two-thirds affirmative vote is required from each branch of the General Assembly for the removal or renaming of a monument or memorial located on state property honoring the Confederacy or the Civil Rights Movement to take place. If the monument targeted for removal or renaming is located on the property of a political subdivision, a two-thirds affirmative vote is required of the local governing body.

## SENATE

The Senate amended, gave third reading, and sent to the House H.3665, the House's infrastructure bill. Differences between the House and Senate versions of the bill are considerable. The essence of the Senate bill is the creation of an infrastructure bank, which would operate within the State Department of Transportation. The more comprehensive House bill also creates an infrastructure bank, but additionally establishes a new division within the State Budget and Control Board that will be responsible for developing an infrastructure planning process to coordinate planning for transportation, water and sewer, and communication systems at the local, regional and state levels. The House plan provides the bank as a mechanism for funding the priority projects established through this process. The Senate bill does not address the infrastructure planning process. Other differences between the House and Senate bill include, but are not limited to, sources identified for funding; allowing a pledge of the full faith and credit of the state for the payment of bonds (Senate plan allows, House plan does not allow); and differences in criteria used for selection of projects for funding.

The Senate also amended, gave third reading and sent to the House H.3461. This bill authorizes parents and other adult school volunteers or employees to ride route school buses under certain conditions, on a space available basis. Senate amendments to the bill included removing the House's provision limiting the number of adults who may ride to four per bus. The House agreed to this amendment, but then added an amendment to the Senate-passed bill clarifying language concerning the State's denial of responsibility for costs associated with parents and other adults riding school buses in conjunction with special programs. The bill was returned to the Senate for consideration of the House amendment.

## BUDGET CONFERENCE COMMITTEE

The Conference Committee on the 1997-98 General Appropriation Bill agreed on Thursday evening of last week to Senate proposals which provide an income tax exemption for the elderly (over age 65) and a phased-in property tax exemption for certain motor vehicles. As adopted by the Senate, the income tax deduction for the elderly would increase to \$11,500 for taxable year 1997, with complete elimination of the tax for taxable years after 1997. The Senate's proposed motor vehicle property tax exemption would be phased in over an eight year period. The conferees continued to meet Monday evening, June 2, to debate these and other issues.

## ENROLLED FOR RATIFICATION

**H.3557** - eliminates the Accommodations Tax Oversight Committee and devolves its oversight function on the SC Department of Revenue; provides that the SC Department of Parks Recreation, and Tourism shall publish an annual report on the information submitted from local governments and regional tourism agencies.

**S.559** - also known as **ADEPT** (Assisting, Developing, and Evaluating Professional Teaching), this bill revises evaluation and qualifications of teachers. The Conference Report reflects the bill as passed by the House, with the exception of adding back in a provision allowing a student a fourth attempt to pass the Education Entrance Exam. This provision had been removed in the House-passed bill.

**S.207** - provides that regulation of video games pursuant to the Video Games Machine Act is not prohibited, including the prohibition on payoffs and location of these machines in counties where such payouts and machines are prohibited under the local options provisions of that Act. Provides civil penalties for machines located in counties where payouts are prohibited. The House agreed to the Senate amendment making the act effective November 1, 1997, and the bill was enrolled for ratification.

**H.3240**- School Safety Act of 1997. Creates the misdemeanor "assault and battery on school personnel" to apply to any student who commits an unaggravated assault or battery against a teacher, administrator or anyone affiliated with a school while on school property or at a school-sponsored event. The offense is punishable with up to twelve months imprisonment and/or a fine of up to one thousand dollars. If a student is convicted or adjudicated delinquent of the offense, it must be noted in his permanent record, and his principal and teachers must be notified. A juvenile who commits such an offense may be held in secure detention. A magistrate may not downgrade punishments for an assault and battery on school personnel which is not of a high and aggravated nature. Magistrates may punish an

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assault and battery which is not of a high and aggravated nature with a fine not to exceed five hundred (rather than the current two hundred) dollars and/or imprisonment for not more than thirty days.

**S.483-** both houses adopted the free conference report on the bill. The bill establishes the misdemeanor of assault and battery upon an emergency medical service provider, firefighter, or home healthcare worker, punishable with a fine of not more than one thousand dollars and/or imprisonment for not less than two months nor more than three years. The bill also establishes certain criteria (use of a deadly weapon, indecent liberties with a female, great disparity in size or age, etc.) for punishing assaults on an emergency medical service provider, firefighter, or home healthcare worker as felonies. Such a felony assault is punishable with a fine of not less than one thousand dollars nor more than ten thousand dollars and/or imprisonment for not less than one year nor more than ten years.

**S.251-** provides that the state executive committee hear protests and contests of State Senate and State House elections. The State Election Commission must pay for the cost of the court reporter and transcript for state executive committee hearings of protested and contested elections.

**S.594-** provides that an authorized police patrol bicycle used as a part of a police bicycle patrol may exercise the privileges of an emergency vehicle as provided in the *Uniform Act Regulating Traffic on Highways* (Section 56-5-760, SC Code of Laws). The bill also provides that such a bicycle may be equipped with a siren or the officer may use a whistle, and that an authorized police patrol bicycle acting as an emergency vehicle is entitled to the exemptions of an authorized emergency vehicle if it meets certain requirements.

**S.340-** increases the fine for filing a false tax returns for the purpose of delay, and requires award of damages by the administrative law judge rather than the circuit court for frivolous or dilatory proceedings. The bill revises penalties for supplying false withholding information to an employer and for filing of a false exemption certificate.

**H.3548** - relates to the requirement under current law that a non-resident withholding agent, and a resident withholding agent who is not required to deposit and pay federal withholding to the Internal Revenue Service under the provisions of the Internal Revenue Code, must remit certain SC taxes withheld. Deletes the requirement that these agents "make a return" when they remit SC taxes withheld under this chapter. Amended to provide that where essentially the same information required to be submitted by Section 12-8-1540 is required to be submitted to the IRS on magnetic media, the same method must be used for purposes of this section.

**H.3462-** provides optional methods for determining charges and commissions for handling and selling leaf tobacco.

## COMMITTEE ACTION

### JUDICIARY

The Judiciary Committee reported favorably on H.4115 which prohibits the state from using race, sex, color, ethnicity, and natural origin as criteria in public employment, education, or contracting. The Committee reported favorably on S.233 which provides that multiple capital projects may be funded through the local option sales and use tax to fund multiple approved by voters in a referendum. The bill also revises scheduling for the imposition of taxes so approved. The Committee gave a favorable report to S.75 which ratifies amendments to the South Carolina Constitution, approved by voters at the last general election, relating to denial of bail for violent offenders and establishing a "Victim's Bill of Rights."

The Committee gave a report of favorable with amendment to S.616 which puts into effect the crime victim services which voters approved as the "Victim's Bill of Rights" amendment to the South Carolina Constitution. The bill raises various court surcharges so as to provide funding for these services.

The Committee gave a report of favorable with amendment to S.83 which requires a court awarding custody of a minor a child to give weight to evidence of domestic violence including, but not limited to, evidence of physical or sexual abuse, and evidence, if appropriate, of which party was the primary aggressor. The bill establishes several special provisions which a court may utilize in awarding visitation privileges to an individual who has committed domestic violence or who has been identified as the primary aggressor in a situation of domestic violence. These provisions include the exchange of a child in a protected setting or visitation in a supervised setting (the aggressor may be required to defray costs for these special conditions or for treatment or counseling necessitated by the abuse). The court may also award visitation that is conditional upon successful completion of a counseling program or abstention from consumption of alcohol or controlled substances during the twenty-four hours preceding visitation. The court may also prohibit overnight visitation, require a bond of an individual who has threatened to unlawfully retain the child, or impose any other conditions considered necessary for the safety of the child, the victim of domestic abuse, or any other household member. The bill also provides for case review every year, rather than every two years, for an individual who committed an offense against his/her spouse and has become eligible for parole after serving one-fourth of his/her prison term by providing credible evidence that he/she was a victim of spousal abuse. The Committee amendment establishes procedures for finding fault or identifying the primary aggressor in situations of spousal abuse. If a law enforcement officer cannot identify a primary aggressor in the abusive situation, the officer must sign an affidavit declaring his inability to make such a finding.

The Committee gave a report of favorable with amendment to H.3974 which pertains to foster care for minors who have been adjudicated, convicted of, or pled *nolo contendere* to a sex offense. The Committee amendment allows such minors to be placed only in therapeutic foster homes.



## LABOR, COMMERCE AND INDUSTRY

The Labor, Commerce and Industry Committee recalled two bills, S.200 and S.271, proposed amendments which would substitute the house-passed versions for both bills, and gave favorable reports to the bills with amendments. The full House amended the bills and returned them to the Senate.

The Committee tabled S.203 which provides that passenger vans owned or operated by local chapters of the National Federation of the Blind of S.C. must be insured for certain minimum automobile insurance coverage.

## BILLS INTRODUCED

### EDUCATION AND PUBLIC WORKS

**H.4240 *RESPONSIBILITIES OF SCHOOL BOARDS OF TRUSTEES* Rep. F. Smith**

This bill provides that a school board of trustees may not devolve its disciplinary responsibilities imposed on it by law upon a school principal, assistant principal, or other staff person at a local school.

**H.4241 *SCHOLASTIC APTITUDE TEST (SAT)* Rep. F. Smith**

This bill provides that a preparatory course for the SAT must be provided and included in the curriculum in each South Carolina public school, and the required contents of the course shall be established by the State Board of Education.

### JUDICIARY

**H.4235 *AT-LARGE ELECTIONS FOR SPECIAL PURPOSE DISTRICT COMMISSIONERS***

**Rep. Miller**

This bill provides that electors of a special purpose district may petition for a referendum on the question of whether the district's board of commissioners should be elected. In districts which approve such elections, commissioners are to be elected in an at-large, nonpartisan fashion at the time of the general election.

**H.4249 PROPOSED CONSTITUTIONAL AMENDMENT: POPULAR ELECTION OF CIRCUIT COURT JUDGES Rep. F. Smith**

This joint resolution proposes amending the South Carolina Constitution such that each judicial circuit shall elect judges for that circuit in a manner that the General Assembly shall provide. Sitting judges serving at the time of the adoption of the amendment shall serve out the terms for which they were elected.

**H.4250 CONTRIBUTORY NEGLIGENCE IN MOTOR VEHICLE ACCIDENTS Rep. F. Smith**

This bill provides for situations in which contributory negligence shall not bar recovery in an action to recover damages resulting from a motor vehicle accident. The bill provides for adjustment of such recovered damages in proportion to amount of negligence.

**H.4251 FRIVOLOUS ETHICS ACT CLAIMS Rep. F. Smith**

This bill establishes civil and criminal penalties for the filing of a frivolous Ethics Act claim against an official.

**H.4255 DRAFTING OF LEGISLATION Rep. Martin**

This bill provides that all legislation considered by the General Assembly must be drafted so that a person with a high school education can clearly understand it.

## **LABOR, COMMERCE AND INDUSTRY**

**H.4242 COMMERCIAL MOBILE RADIO SERVICE BOARD Rep. Vaughn**

This bill creates the Commercial Mobile Radio Service Board and provides for its members, powers, and duties in regulating commercial mobile radio 911 services.

## **MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

**S.583 DEFINITIONS RELEVANT TO RESPIRATORY CARE Sen. Giese**

This bill revises the definitions of the "Practice of Respiratory Care" and includes an exemption from respiratory care regulation for employees of durable medical equipment companies under certain conditions. The bill also requires licensure rather than certification for respiratory care therapists.

## **WAYS AND MEANS**

**H.4220 RESERVE POLICE OFFICERS Rep. Neilson**

This bill reduces from 20 hours to 10 hours per month, and reduces from sixty hours to thirty hours per quarter, the minimum service that a reserve police officer must maintain in order to maintain reserve officer status.

**S.410 CORONERS' SALARIES Sen. Hayes**

This bill adds coroners to the list of county officers who receive state salary supplements appropriated by the General Assembly. The supplement is set at \$1,575 per coroner or 10% of the respective coroner's salary, whichever is less, effective July 1, 1998.

**H.4239 MEDICAL STUDENTS - STATE/FEDERAL GRANTS Rep. F. Smith**

This bill requires that any medical student graduating from the University of South Carolina Medical School or the Medical University of South Carolina, after completing his internship and residency training, must practice for two years in a rural South Carolina community having a population of less than 25,000 people if the medical student received state or federal grants of \$25,000 or more toward his medical education. The bill makes provisions for medical students who have specialties which require them to be based in a hospital, and also makes provisions for cases where no suitable practice opportunities can be found for a particular doctor. The provisions of the bill do not apply to students who, because they have received federal funds from one of the uniformed services, are obligated to perform active duty military service after graduation.

**H.4248 BUSINESS INCOME TAX CREDITS/PROPERTY TAX EXEMPTIONS Rep. Bowers**

This bill authorizes an income tax credit for the first five years of its operation, in an amount equal to the Social Security taxes paid on employees' wages, to a business which initiates operation in South Carolina after July 1, 1997, or a business which had been in operation less than twelve months before that date and which has not or does not qualify for economic assistance, tax credits, or other incentives available pursuant to economic development acts provided in South Carolina.

The bill also grants a property tax exemption for personal property otherwise taxable except that it is owned by a business which initiates operation in South Carolina after July 1, 1997, or had been in operation less than twelve months before that date, and has not or does not qualify for economic assistance, tax credits, or other incentives available pursuant to any other economic development act provided in this state. This exemption is effective for the first five years of the business's operation.

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