South Carolina House of Representatives

Legislative Update

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

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MAJOR ISSUES FROM THE 2006 LEGISLATIVE SESSION

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 document will be revised and expanded weekly as the status of major bills changes. This report highlights legislative activity through *Thursday, May 18, 2006*. It 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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APPROPRIATIONS

2006-07 STATE SPENDING PLANS

The House and the Senate have approved differing versions of a State spending plan for Fiscal Year 2006-2007. The House approved its spending plan in the form of **H.4810**, the General Appropriations Bill; **H.4811**, a joint resolution appropriating surplus General Fund revenue; and **H.4812**, a joint resolution appropriating monies from the Capital Reserve Fund.

Highlights of the **House-recommended plan** include:

STATEWIDE ISSUES:

- Fully funds the General Reserve Fund at $167.7 million;
- Fully funds the Capital Reserve Fund at $111.8 million;
- Restores all true trust funds with $98.5 million;
- Allocates $116.8 million for property tax relief (based on House Bill 4449); the Senate did not include such additional funds in their budget plan.
- Provides $420 million for continued property tax relief;
- Adopts a 4.8% General Fund **spending limit** (see summary below under Spending Limitation); this limit excludes the EFA, Medicaid and appropriations in the supplemental spending bill;
- Provides a 3% pay raise to state employees at a cost of $51.7 million;
- Funds the state employee and retiree health insurance program with $30.5 million, resulting in no increased premiums to subscribers and no changes in benefits to the plan;
- Provides alternative fuels and fuel efficiency incentives (see summary of Alternative Fuels and Fuel Efficiency under Conservation/Energy;

K-12 EDUCATION:

- The Education Finance Act (EFA) is fully funded with $69.5 million in new money to achieve a Base Student Cost (BSC) of $2,367;
- Initiates a 15-year or 250,000-mile replacement cycle for school buses by appropriating $26 million for bus purchases and $26.8 million for fuel. (**S.1026** [R240] provides $13 million in funding in the current year to address school bus fuel and replacement parts);
- A career path for mechanics is established at $1.3 million in an effort to reduce the attrition rate at the state's bus shops;
- Includes a proviso in Part 1B which establishes and provides for the "Child Development Education 2-Year Pilot Program" for at-risk four-year old children. **For a summary of this proviso, see H.4932 under Education**.
- Fully funds the growth in the National Board Certification program with $6.1 million;
- Funds two bills passed last year: the Education and Economic Development Act ($14.8 million) and the Student Health and Fitness Act ($4.1 million). The Education and Economic Development Act focuses high school curriculum into

sixteen career clusters that are complemented by programs at the state's colleges and universities and the Employment Security Commission. The Student Health and Fitness Act increases access to physical education, provides increased instruction in health, safety, and nutrition, and provides for an individual fitness assessment for each student.

- The High Schools that Work program receives an additional $1.1 million, increasing the number of sites from 100 to 140. The goal of the High Schools That Work program is to increase the number of students who meet reading, math, science, and performance goals and who complete an upgraded academic core with a career focus. The program complements the career clusters of the Education and Economic Development Act.
- Supplies an additional $5 million for instructional materials;
- The Education Accountability Act assessment program receives an additional $2.88 million to assist with ongoing assessment needs.
- A proviso revises the way in which Education Accountability Act funds are distributed. Rather than requiring all districts to use the model emphasizing teacher specialists, principal specialists, and homework centers, schools will receive grants that they may use to tailor the assistance programs to their specific needs. Schools must develop a plan for these funds to be approved by the State Department of Education.

HIGHER EDUCATION:

- $10 million is appropriated to provide funding parity at higher education institutions with Coastal Carolina receiving $3.7 million;
- The two research Universities each received $6 million to keep South Carolina on the path of developing an educated workforce capable of meeting the demands of industry in the 21st century.
- The Medical University received $4 million for the College of Dental Medicine and another $500,000 to fund the Hollings Cancer Center.

HEALTH:

- Medicaid growth is fully funded with $109 million in new money;
- The appropriation for Trauma Centers is increased by $2 million;
- Breast Cancer Screening and Treatment is funded with a $1 million appropriation;
- The Colleton Veterans nursing home received the $6 million necessary for it to operate during the coming year;
- $9.2 million is provided to reduce the waiting list at the Department of Disabilities and Special Needs to provide care for the disabled adult children of aging parents who are no longer able to care for their children;

ECONOMIC DEVELOPMENT:

- The Department of Parks Recreation and Tourism received $4.1 million to promote South Carolina nationally and internationally;

- The Department of Commerce received over $17 million in new funding for a variety of programs intended to bring new industries into the State and to help foster our competitiveness in the global marketplace;
- Related projects for economic development under the Department of Transportation provide $3.5 million for a port access road for the new terminal in Charleston, and $1.5 million for roads at the Clemson automotive research center.

LAW ENFORCEMENT AND CRIMINAL JUSTICE:

- The Department of Corrections; the Department of Juvenile Justice; and Probation, Pardon, and Parole received a combined total of $22 million. This includes funds to operate the Turbeville institution and employ modern technology for the efficient monitoring and supervision of individuals on probation or parole. $5.8 million of these funds will be used to provide a pay incentive for officers who work at the institutions that house the most violent offenders.
- A new class of highway patrol troopers is funded at a cost of $8.9 million. The State Law Enforcement Division (SLED) received $4 million for additional agents and to provide support to the local law enforcement community.
- Law enforcement officers are also funded in the Department of Natural Resources budget at a cost of $1.7 million.

TRANSPORTATION AND REGULATORY:

- The Department of Transportation received $1.3 million for Mass Transit. These funds will allow providers to match approximately $14 million in federal funds and defray operating expenses resulting from recent spikes in fuel prices.
- The Department of Transportation received $1.5 million for road and Infrastructure improvements for Greenville.
- The Department of Transportation also received a total of $3.5 million for a port access road in Charleston.

LEGISLATIVE AND EXECUTIVE:

- $2.9 million in non-recurring funds is appropriated to the Lieutenant Governor's Office on Aging to provide Community Based Support Services such as Meals on Wheels.

Highlights of the Senate-approved budget appropriations include $174 million to repay Trust Funds; full funding of the Education Finance Act ($69.6 million); $23.6 million for statewide 4-year old Kindergarten; $14 million to fund scholarships and tuition growth assistance programs; $76 million to the state's higher education system, including recurring dollars for research initiatives at Clemson University and the University of South Carolina; $141 million to provide Medicaid services; and $15 million to strengthen the Department of Commerce's efforts in job retention and recruitment.

*STATUS: The House and Senate have approved differing spending plans for 2006-07. On May 12, conference committees were appointed to represent the respective bodies in negotiating these differences. Conferees for **H.4810** and **H.4812** are Representatives Cooper, Young, and Kirsh, and Senators Land, Leatherman, and Thomas. **H.4811***

*(Surplus bill) remains in the Senate Finance Committee. However, the House added the provisions of **H.4811** to its amended version of **H.4810**.*

COMMITTEE TO STUDY EARMARKED/RESTRICTED ACCOUNTS

The House approved **H.4661**. This joint resolution creates a committee to study and make recommendations to the General Assembly regarding the state's earmarked and restricted agency accounts. The Speaker of the House, the President *Pro Tempore* of the Senate, the Chair of the House Ways and Means Committee, and the Chair of the Senate Finance Committee would each appoint three members, who may be from either the public or private sector. Members of the General Assembly would be allowed to serve. The committee is charged to study the restricted and earmarked accounts of state agencies and issue a report and recommendations to the General Assembly by January 9, 2007. The committee terminates on January 9, 2007, or the date it forwards its report, whichever is earlier.

Pending the filing of the report and recommendations, certain specified Statewide Accounting and Reporting System (STARS) subfunds are exempt from the provisions of Section 7, Act 156 of 2005, which requires that the first ten percent of any surplus General Fund Revenues must be applied to fully restore all funds previously transferred and appropriated from any earmarked or restricted accounts in the Statewide Accounting and Reporting System (STARS), effective July 1, 2006.

*STATUS: **H.4661** was approved by the House and is pending in the Senate Finance Committee.*

SPENDING LIMIT

The House included in its property tax reform bill (see summary of **H.4449** under Tax Relief) provisions imposing spending limits on state appropriations and on local governing bodies.

Also, the House and Senate included in their respective 2006-2007 budget plans, differing versions of a proviso (73.15) creating certain special reserve funds.
HOUSE: The House budget proviso creates a separate and distinct *Spending Limit Reserve Fund* and requires that all general fund revenues in a fiscal year in excess of the limit on appropriations provided in Section 11-11-410 be credited to this fund. These funds may be appropriated for specified purposes by the General Assembly in the year following the close of the applicable fiscal year.

If the General Reserve Fund balance is less than the required balance, funds in the Spending Limit Reserve Fund must be used to replenish the General Reserve Fund to its required balance. This amount does not replace or supplant the minimum replenishment amount required by law. To the extent these concurrent General Reserve Fund replenishments exceed the amount necessary for full funding, that fund is deemed to require an annual minimum balance equal to this increased amount, not to exceed a total from all sources of a balance equal to 4% of general fund revenue in the latest

completed fiscal year. The proviso also directs that the additional balance in the General Reserve Fund is for all purposes and uses a part of the general reserve fund.

After appropriating the amounts required to replenish the General Reserve Fund, any remaining balance may be appropriated for or used to offset revenue reductions for infrastructure improvements, temporary tax reductions, school buildings, school buses, roads and bridges, and expenses incurred by the State resulting from a natural or other disaster declared by the President of the United States. No funds may be appropriated pursuant to this item unless the individual appropriation receives a special vote in each branch of the General Assembly (an affirmative recorded roll-call vote in each branch by 2/3 of the members present and voting but not less than 3/5 of the total membership in each branch). The special vote does not apply to any appropriation or transfer used to offset revenue reductions resulting from temporary tax reductions. The proviso also directs that the total state share of funding for a capital project, which is derived in whole or in part from the Spending Limit Reserve Fund, must be appropriated from the fund in one installment. Also, Spending Limit Reserve Fund appropriations must be made by a joint resolution originating in the House of Representatives.

SENATE: The Senate budget proviso creates a separate and distinct *Contingency Reserve Fund* and requires that all general fund revenues accumulated in a fiscal year in excess of general appropriations and supplemental appropriations be credited to this fund. These funds may be appropriated by the General Assembly in the year following the close of the applicable fiscal year and revenues may only be appropriated for certain purposes.

If the General Reserve Fund balance is less than the required balance, funds in the Contingency Reserve Fund must be used to replenish the General Reserve Fund to its required balance. This amount does not replace or supplant the minimum replenishment amount required by law. After appropriating the amounts required to replenish the General Reserve Fund, any remaining balance may be appropriated for or used to offset revenue reductions for school buses and expenses incurred by the State resulting from a natural or other disaster declared by the President of the United States. If the General Assembly is not in session during a declared disaster, the Budget and Control Board, by unanimous approval, may use the Contingency Reserve Fund to underwrite state government costs directly associated with the disaster. Eligible costs include those associated with public safety personnel and equipment as well as funding a required FEMA match.

*STATUS: The above-described plans are included as provisos in the House and Senate's respective budget proposals, which are currently being considered in Conference Committee. Differences in the House and Senate property tax plans (**H.4449**) are also currently being considered by a House-Senate Conference Committee (see summary of **H.4449** under Tax Relief).*

BUSINESS/ECONOMIC DEVELOPMENT

BILLBOARD REGULATION

The General Assembly enacted **H.3381**, the "South Carolina Landowner and Advertising Protection and Property Valuation Act" over the veto of the Governor. The legislation provides for the conditions under which a local governing body may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and otherwise regulate the use of billboards within its jurisdiction. Under the legislation, a local governing body may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign only if the ordinance requires the payment of just compensation to the sign owners, except as otherwise provided in the bill. The payment of just compensation is not required if:

(1) The local governing body and the owner of the nonconforming off-premises outdoor advertising sign enter into an agreement to relocate and reconstruct the sign. The agreement must include provisions for: (a) relocation of the sign to a site reasonably comparable to or better than the existing location, and (b) payment by the local governing body of the reasonable costs of relocating and reconstructing the sign.
(2) The local governing body and sign owner enter into a voluntary agreement allowing for the removal of the sign after a set period of time instead of just compensation.
(3) The off-premises outdoor advertising sign is adjudicated to be a public nuisance or detrimental to the health or safety of the populace; or
(4) The removal is required for opening, widening, extending or improving streets or sidewalks, or for establishing, extending, enlarging, or improving a public enterprise, and the local governing body allows the off-premises outdoor advertising sign to be relocated to a comparable or better location and the local governing body pays the costs of the relocation.

For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign under an agreement with the sign's owner, a local governing body, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it considers appropriate as long as it does not affect the federal provisions for the relocation of outdoor advertising signs affected by state highway projects.

If a local governing body has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign, and within one hundred twenty days after the initial notice by the local governing body, the parties have not been able to agree that the site or sites offered by the local governing body for relocation of the sign are reasonably comparable to or better than the existing site, the parties, by mutual agreement, may enter into binding arbitration to determine the comparability of the site offered for relocation. If this arbitration proceeding results in a determination that the

proposed relocation site(s) are not comparable to or better than the existing site, and the local governing body elects to proceed with the removal of the sign, the parties shall determine just compensation to be paid to the sign owner. If the parties are unable to reach an agreement regarding just compensation within thirty days of the receipt of the arbitrators' determination regarding relocation, and the local governing body elects to proceed with the removal of the sign, the parties, by mutual agreement, may enter into binding arbitration to determine the amount of just compensation to be paid. If the parties choose not to enter into binding arbitration for the purposes of either relocation or just compensation and the local governing body elects to proceed with the removal of the sign, the local governing body shall bring an action in circuit court for a determination of the just compensation to be paid by the local governing body to the sign owner for the removal of the sign.

A local governing body shall not prevent the repositioning of a nonconforming sign on the same parcel of land to facilitate the development of the parcel so long as the repositioning of the sign does not increase the degree of the sign's nonconformity.

The requirement by a local governing body that the issuance or continued effectiveness of a zoning ordinance or issuance of a license or permit is conditional upon the removal or alteration of a lawfully erected sign constitutes a compelled removal that is prohibited without prior payment of just compensation.

An off-premises outdoor advertising sign may not be removed until the owner of the property on which it is located has been compensated fully by the local governing body requiring the sign's removal for a loss which may be suffered as a result of the removal of the sign through the termination of a lease or other financial arrangement with the sign owner. The compensation must include damage to the landowner's property occasioned by removal of the sign.

The provisions of this legislation may not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity under the Highway Advertising Control Act or the manner in which outdoor advertising is valued by the South Carolina Department of Transportation.

H.3381 also prohibits a billboard for an adult or sexually-oriented business from being located within one mile of a public highway. An owner of an adult or sexually-oriented business who violates these provisions is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year. Each week a violation continues constitutes a separate offense.

*STATUS: The General Assembly ratified **H.3381** on February 15, 2006, and the Governor vetoed the legislation on February 21. On February 22, the House of Representatives and the Senate voted to override the Governor's veto (Act 235).*

COMPETITIVE CABLE SERVICES ACT

The General Assembly passed **H.4428**, the "South Carolina Competitive Cable Services Act." The legislation establishes a uniform statewide framework under which cable television, satellite, telecommunications companies, and other providers may compete

with one another in offering cable television services. The legislation provides for cable services to be offered under state-issued certificates of franchise authority. The Secretary of State is authorized to issue these certificates to applicants and collect a fee that is not to exceed one hundred ten dollars. Provisions governing state-issued certificates of franchise authority occupy the entire field of franchising or otherwise regulating cable service and pre-empt any ordinance, resolution, or similar matter adopted by a municipality or county that purports to address franchising. An existing cable service provider operating under a franchise previously granted by the governing body of a municipality or county is not subject to these state-issued certificate of franchise authority provisions until the franchise expires. If, however, another provider enters its service area, a cable service provider has the option of terminating existing franchises previously issued by municipalities and counties and instead offering cable service in those areas under a state-issued certificate of franchise authority. The holder of a state-issued certificate of franchise authority may be required, under an ordinance or resolution duly adopted by a municipality or county, to pay a state-issued certificate holder's franchise fee with a rate that must not exceed the lesser of: (1) the incumbent cable service provider's franchise fee rate imposed by the municipality or county, if any; or (2) five percent of the holder's gross revenues. The holder of a state-issued certificate of franchise authority may designate that portion of a subscriber's bill attributable to a franchise fee and may recover such amount from the subscriber as a separate item on the bill. This franchise fee is in lieu of a permit fee, encroachment fee, degradation fee, or other fee assessed on a holder of a state-issued certificate of franchise authority for its occupation of or work within the public rights-of-way. The legislation provides that no municipality or county shall levy a tax, license, fee, or other assessment on a cable service provider other than the franchise fee authorized by this legislation or a cable franchise fee imposed upon a cable service provider before January 1, 2006. The legislation shall not, however, restrict the right of a municipality or county to impose ad valorem taxes, service fees, sales taxes, or other taxes and fees lawfully imposed on other businesses within the municipality or county. The legislation establishes requirements for providing public, educational, and governmental (PEG) access channels.

STATUS: Having passed the House of Representatives and the Senate, ***H.4428*** *was ratified on May 18, 2006 (R 314).*

ILLEGAL ALIENS AND PUBLIC EMPLOYMENT ACT

See summary under State/Local Government

METHAMPHETAMINE

See summary under Criminal Justice/The Courts

MOTION PICTURE TAX REBATES

The House approved **H.4966**, a bill which amends the "South Carolina Motion Picture Incentive Act." The bill increases from 15% to 30% the amount that may be rebated to a motion picture production company in South Carolina if the company has a minimum in-state expenditure in the aggregate of at least one million dollars.

STATUS: ***H.4966*** *was approved by the House and is pending in the Senate Finance Committee.*

"PROTECTION OF PERSONS AND PROPERTY ACT"

See summary under Criminal Justice/The Courts

PUBLIC HEALTH EMERGENCIES

See summary under Emergency Preparedness

RIGHT TO FARM BILL (NUISANCE SUITS RELATED TO AGRICULTURAL OPERATIONS)

Relating to agricultural facilities and operations, this legislation provides that state law and Department of Health and Environmental Control (DHEC) regulations pre-empt the entire field and constitute a complete regulatory plan, thereby precluding a county from enacting an ordinance that is not identical to state provisions.

There are exceptions to the legislation, including new swine operations and new slaughterhouse operations. The provisions do not apply to operations located within municipal limits. Nothing prohibits a county from determining whether agricultural operations are permitted under the county's land use and zoning authority; provided, if the operation is an allowed use and otherwise is permitted, then to the extent an ordinance attempts to regulate the operation in a manner not identical to state law, the ordinance is null and void.

DHEC has the authority to require, on a case-by-case basis, increased setback distances for new confined animal operations. Setbacks may be waived or reduced by written consent of the adjoining property owners, or without their consent provided the operation uses certain innovative and alternative technologies. Facilities affected by these setback provisions must have a vegetative buffer between the facility and an affected residence unless otherwise agreed to in writing by adjoining landowners.

The provisions of this legislation do not apply to any license or permit application for which a DHEC decision is made prior to the effective date.

STATUS: ***S.1205*** *received third reading in the House and was enrolled for ratification on May 18, 2006.*

SELLING TICKETS TO AN ATHLETIC CONTEST, SPORTING, ENTERTAINMENT, OR AMUSEMENT EVENT FOR MORE THAN THE PRESCRIBED AMOUNT

See summary under Consumer Protection

"SOUTH CAROLINA ECONOMIC DEVELOPMENT INCENTIVE ACT"

The House approved **H.4874**, the "South Carolina Economic Development Incentive Act." This bill authorizes and provides for a manufacturing facility to claim a twenty-five percent tax credit for costs it incurs in complying with whole effluent toxicity testing.

The bill provides that purchases of natural gas made by a manufacturing property are exempt from sales tax if natural gas prices equal or exceed $6.50 for each decatherm.

Relating to the apportionment of income for certain businesses, the bill provides for the calculation of apportioned income using sales figures. The bill includes a bank as a taxpayer who may qualify for the jobs tax credit.

Relating to a tax credit against income tax for companies using the state's port facilities, the bill provides for the allocation of the total amount of the credits annually.

The bill provides that a taxpayer engaged in manufacturing, warehousing, or distribution which uses port facilities in this State and which increases its port cargo volume at these facilities by at least five percent in a single calendar year over its base year port cargo volume is eligible to claim a tax credit in the amount determined by the Coordinating Council for Economic Development. The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this provision may not exceed eight million dollars per calendar year, and a taxpayer may not receive more than one million dollars for each calendar year unless the eight million dollar amount of full credit is not fully allocated.

Regarding the income tax credit for corporate headquarters, the bill includes a bank's headquarters and provides that a "company business unit" is an organizational unit of a corporation or bank and is defined by the particular product or category of products it sells. The bill allows for a reduction against the job development tax credit for taxes due and includes certain employee relocation expenses as qualifying expenses. The bill exempts from the state sales tax construction materials used in the construction of a single manufacturing and distribution facility with a capital investment of at least one hundred million in real and personal property in the State over an eighteen month period. Relating to qualification of an inducement lease agreement for the fee in lieu of property taxes, the bill reduces from five million to two and one-half million dollars, the minimum investment requirement, and deletes certain investments from a four percent minimum investment ratio. Relating to qualifying for the fee in lieu of property taxes for industrial development projects, the bill deletes certain investments from a four percent minimum assessment ratio; reduces the minimum investment requirement; and reduces the minimum number of new full-time jobs which must be created at a project. Relating to the jobs tax credit, the bill adds a provision that in a county that is at least one thousand miles in size and that has had an unemployment rate greater than the state average for the past ten years and an average *per capita* income lower than the average *per capita* income for the past ten years, and that is not included in any county classifications specified in the bill, the credit allowed is two tiers higher than the credit for which the county otherwise would qualify. Relating to the jobs tax credit, the bill also provides that "new job" includes an apprenticeship created by a taxpayer when the taxpayer employs an apprentice as defined in the bill.

*STATUS: **H.4874** was approved by the House. On May 17, the bill was reported favorable with amendment from the Senate Finance Committee and the bill is now pending second reading on the Senate calendar, with one Senator listed as "desiring to be present."*

"SOUTH CAROLINA RETAIL FACILITIES REVITALIZATION ACT"

The House and the Senate approved **H.3841**, the "South Carolina Retail Facilities Revitalization Act," a bill which creates and provides for tax incentives for the renovation, improvements, and redevelopment of abandoned retail facility sites in South Carolina. Eligible sites include abandoned (for at least one year) shopping centers, malls, or free standing sites whose primary use was as a retail sales facility with at least one tenant or occupant located in a forty thousand square foot or larger building or structure.

A taxpayer who improves, renovates, or redevelops an eligible site is eligible for a local or state tax credit equal to a percentage of the rehabilitation expenses, as provided in the bill. Any proposed project beginning after July 1, 2006, must be approved by a majority vote of the local governing body.

*STATUS: **H.3841** was approved by the General Assembly and ratified on May 18, 2006 (R.310).*

TARGETED JOBS TAX CREDIT

The House approved **H.4800**. This bill allows banks that establish headquarters with forty or more employees to be eligible for the new corporate headquarters income tax credit and a jobs tax credit.

*STATUS: **H.4800** was approved by the House, amended on second reading by the Senate, and is pending third reading on the Senate calendar with one Senator listed as "desiring to be present."*

TRAFFICKING IN PERSONS FOR FORCED LABOR OR SERVICES

See summary under Criminal Justice/The Courts

"YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006"

See summary under Criminal Justice/The Courts

CONSERVATION/ENERGY

ALTERNATIVE FUELS AND FUEL EFFICIENCY INCENTIVES

The House included as a Part 1B proviso in **H.4810**, its 2006-2007 spending plan, certain incentives for use of alternative fuels and fuel efficiency. Highlights of the House-approved plan include:

- A $300 sales tax rebate for purchase of vehicles that can operate on fuel that is 85 percent ethanol;
- A $300 sales tax rebate for purchase of hydrogen fuel cell vehicles;
- A 5 a cents per gallon tax incentive for drivers to purchase E85 fuel (85 percent ethanol) at the pump;
- A 5 cents per gallon tax incentive for drivers to purchase B20 fuel (20 percent biodiesel) at the pump;
- A 5 cents per gallon tax incentive for farmers to use B20 fuel in their tractors and other heavy equipment;
- A 20 cents per gallon tax incentive for businesses to produce biodiesel fuel in South Carolina, using soybean oil;
- A 30 cents per gallon tax incentive for businesses to produce biodiesel fuel in South Carolina, using waste cooking oil and oil from farm products other than soybeans;
- Provides for administrative roles of Department of Revenue and Department of Agriculture.
- Creates a commission to evaluate these incentives and provide recommendations for a pro-South Carolina energy strategy.

*STATUS: These provisions are included in Part 1B of **H.4810**, the House-passed budget plan for 2006-2007, which is currently being considered in Conference Committee.*

GREEN BUILDING STANDARDS FOR STATE CONSTRUCTION PROJECTS

The House of Representatives approved and sent to the Senate **H.4317**, a bill providing for environmental requirements on the design and construction of state buildings. This bill revises the South Carolina Energy Efficiency Act so as to provide that the design and construction of a new building constructed on state property with a construction budget of more than fifteen million dollars must meet specified "green building" standards relating to energy efficiency and ecological sustainability. These requirements do not apply to state-funded design and construction of: parking garages or outdoor sports facilities; South Carolina State Ports Authority, South Carolina Public Service Authority, South Carolina Research Authority, and a public entity exempted by the Budget and Control Board; projects exempted by the Budget and Control Board as the result of evidence that compliance is clearly not in the best interest of the project; or projects in design or being constructed on the effective date of this legislation.

*STATUS: On April 6, 2006, the House of Representatives passed **H.4317** and sent the bill to the Senate where it has been referred to the Agriculture and Natural Resources Committee.*

NATURAL GAS EXPLORATION STUDY COMMITTEE

The House of Representatives approved and sent to the Senate **H.4977**, 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 eighteen 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. The committee shall use clerical and professional staff from the Department of Commerce for its staff and also may request the support of the professional and clerical staff of the standing committees of the House of Representatives and the Senate as the committee determines appropriate.

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 seek expertise in order to consider these comprehensive affects. Such input shall be sought from interested and knowledgeable persons and public, private and non-profit organizations, including, but not limited to the following state agencies: (i) Department of Commerce; (ii) Department of Health and Environmental Control; (iii) Department of Natural Resources; (iv) Department of Parks, Recreation and Tourism; and (v) State Energy Office of the Budget and Control Board. The committee shall render its report and recommendations to the General Assembly before January 13, 2007, at which time it is dissolved.

*STATUS: The House of Representatives approved **H.4977** and sent the joint resolution to the Senate on May 19, 2006.*

TAX CREDIT FOR HYBRID VEHICLES

The House approved **H.4312**, a bill providing tax credits on hybrid and alternative fuel vehicles. This bill provides that a taxpayer who is eligible for and claims the new federal qualified fuel cell motor vehicle credit, the new federal advanced lean burn technology motor vehicle credit, the new federal qualified hybrid motor vehicle credit, and the new federal qualified alternative fuel motor vehicle credit is allowed a state income tax credit equal to twenty percent of that federal income tax credit.

*STATUS: **H.4312** was approved by the House and was amended and read the second time by the Senate on May 18, 2006. The bill is currently pending third reading on the Senate calendar.*

CONSUMER PROTECTION

"DISCOUNT MEDICAL PLAN ORGANIZATION REGISTRATION ACT"

See summary under Health

PRICE GOUGING

The House of Representatives approved and sent to the Senate **H.4316**. This bill expands the state's prohibition on price gouging during natural disasters and other emergencies so as to make these provisions apply when emergencies declared out of state affect South Carolina. If the President of the United States declares a state of emergency or disaster for an area outside of South Carolina, this legislation authorizes the state Attorney General to issue an official notice when the emergency or disaster declared out-of-state creates an abnormal market disruption within South Carolina. When the Attorney General has given notice of a market disruption, it is unlawful within the affected area to charge unconscionable prices for lodgings and essential commodities such as food, water, ice, lumber, and petroleum products. When notice of

an abnormal disruption of the market is given, these prohibitions are in effect for fifteen days. The Attorney General may retract a notice or renew it for an unlimited number of successive fifteen-day periods.

*STATUS: On February 17, 2006, the House of Representatives passed **H.4316** and sent the bill to the Senate. On May 18, the Senate adopted the amendment proposed by the Judiciary Committee and gave the bill second reading approval.*

SAFETY NET PROGRAMS FOR VULNERABLE ELECTRIC AND NATURAL GAS CUSTOMERS

The House of Representatives amended, approved, and sent to the Senate **H.4404**, a bill establishing safety net programs for electric and natural gas customers with special needs to ensure that their utility services are protected from termination during extreme weather conditions.

The legislation provides that during the heating season (December through March) and cooling season (June through August), a public utility may not disconnect residential service on a day when the National Weather Service predicts that the local forecasted average temperature will exceed specified extremes.

A public utility is required to establish and maintain a program that allows a customer to register as a special needs customer if the individual is: (a) sixty-five years of age or older and unable to pay the amount of the charges due for services; or (b) disabled, chronically ill, seriously ill, or on life support. Each public utility shall establish a written procedure for disconnection of service for a special needs customer and during extreme weather conditions. If a public utility has scheduled a disconnection of service of a registered special needs customer not less than ten days before a scheduled disconnection, the public utility shall mail a written disconnection notice. If the registered special needs customer has not paid or arranged for payment, the public utility shall mail a written notice of scheduled disconnection three days before the scheduled disconnection of service. Before the service is disconnected from a registered special needs customer, the public utility's disconnection crew shall make a good faith effort to make personal contact with either the registered special needs customer, the account holder, or a responsible person of suitable age and discretion at the premises before disconnecting the service. If the disconnection crew makes such contact and is advised that the registered special needs customer has serious health concerns, disconnection must be suspended. The crew shall notify the public utility that the disconnection has been suspended and the public utility shall either follow its internal special needs customer review process or, if the account holder or the registered special needs customer requests a payment extension from the disconnection crew, the scheduled disconnection must be suspended for one full business day beyond the scheduled date for disconnection.

A public utility is required to establish and maintain a Winter Protection Program that automatically includes all registered special needs customers. Other customers may register for the Winter Protection Program with a medical certificate signed by a licensed health care provider attesting that termination of electric or natural gas service would be dangerous to the customer's health due to the customer's medical conditions. The

medical certificate submitted with the application for the Winter Protection Program may indicate that the customer's medical condition is permanent or that the certificate is effective only for thirty, sixty, ninety, or one hundred twenty-day periods. After this effective period, the customer is required to submit a renewed medical certificate in order to continue to be registered as a Winter Protection Program customer. A customer with a permanent medical condition must submit a renewed medical certificate annually in order to continue to be registered in the program. During the heating season of December through March, a public utility may not disconnect residential service when an account holder can provide to the public utility the application for the Winter Protection Program no less than three days before proposed disconnection of service or to the disconnection crew at time of disconnection.

A public utility is also required to establish and maintain a third-party notification program under which any residential customer may designate a third party to receive all appropriate notifications regarding disconnection of services.
The legislation requires public utilities to issue certain notifications and public announcements so that customers are informed of the availability of these programs.

On May 18, the Senate amended the legislation so as to require each utility, municipality, special purpose district, public service district, or electric cooperative providing electrical and/or natural gas service and the Public Service Authority to establish its own written procedures for termination of service due to nonpayment for a special needs account customer at any time and for all residential customers during weather conditions marked by extremely cold or hot temperatures. These procedures must be submitted to the Office of Regulatory Staff by November 1, 2006. The Senate version also provides that each of these service providers must consider establishing and maintaining a third-party notification program to allow a residential customer to designate a third party to be notified if the electric or natural gas service is scheduled for termination.

*STATUS: On January 26, 2006, the House of Representatives passed **H.4404** and sent the bill to the Senate. On May 18, the Senate amended the bill and gave it second reading approval.*

SELLING TICKETS TO AN ATHLETIC CONTEST, SPORTING, ENTERTAINMENT, OR AMUSEMENT EVENT FOR MORE THAN THE PRESCRIBED AMOUNT

Current law prohibits selling tickets to an athletic contest, sporting, entertainment, or amusement event in excess of one dollar more than the price charged by the original seller. This bill provides an exception for the sale or offer for sale of a ticket when authorized by the operator of the venue where the event is to be held, and the operator states its resale policy in writing. If the operator of the venue authorizes the resale of tickets, the operator may impose a service charge of no more than twenty percent of the resale price plus reimbursement for taxes remitted in connection with the resale. The operator also may charge a delivery fee, if delivery services are provided. A ten thousand dollar civil fine is applicable for each violation. The entity is also subject to the payment of treble damages, attorneys' fees, and costs associated with an action by a person who purchases a fraudulent ticket.

STATUS: ***H.4847*** *passed the House on April 26 and has been referred to the Senate Judiciary Committee.*

CRIMINAL JUSTICE/THE COURTS

BREASTFEEDING

See summary under Family

CHILD RESTRAINT LAWS

See summary under Family

COMPUTER-ASSISTED REMOTE HUNTING

This legislation provides that it is unlawful to engage in computer-assisted remote hunting, which is the use of a computer or any other device, equipment, or software, to remotely control the aiming and discharge of a firearm at an animal. This prohibition applies if either the animal hunted, or any device, equipment, or software to remotely control the firearm is located in this State. These provisions do not apply to a disabled hunter using medical equipment or devices designed to assist with his disability while engaged in the act of hunting. The legislation also provides that it is unlawful to establish or operate computer-assisted remote hunting facilities in this State.

A violator is guilty of a misdemeanor and, upon conviction for a first offense must be fined not less than five thousand dollars and/or imprisoned for not more than one year, and for a subsequent offense must be fined not less than ten thousand dollars and/or imprisoned for not more than five years. Upon conviction for a first offense, a person must forfeit any South Carolina hunting or fishing license for ten years. Upon conviction for a second offense, a person must permanently forfeit any South Carolina hunting or fishing license and is permanently ineligible to obtain a South Carolina hunting or fishing license.

STATUS: Having been approved by the General Assembly, ***H.3879*** *(Act 258) became law without the Governor's signature on April 13, 2006.*

DISRUPTING FUNERAL SERVICES

See summary under Military

FAMILY COURT MAY ORDER THAT CUSTODY OF A MINOR CHILD BE AWARDED TO THE CHILD'S DE FACTO CUSTODIAN UNDER CERTAIN CIRCUMSTANCES

This bill provides that a family court may order that custody of a minor child be awarded to the child's de facto custodian under certain circumstances. 'De facto custodian' means, unless the context requires otherwise, a person who has been shown by clear and convincing evidence to have been the primary caregiver for and financial supporter of a child who: (1) has resided with the person for a period of six months or more if the child is under three years of age, or (2) has resided with the person for a period of one year or more if the child is three years of age or older.

Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period. No proceeding to establish whether a person is a de facto custodian may be brought concerning a child in the custody of the Department of Social Services.

The legislation provides that a person is not a de facto custodian of a child until the court determines by clear and convincing evidence the person meets the definition of de facto custodian with respect to that child. If the court determines a person is a de facto custodian of a child, that person has standing to seek visitation or custody of that child. The family court may grant visitation or custody of a child to the de facto custodian if it finds by clear and convincing evidence that the child's natural parents are unfit or that other compelling circumstances exist. If the court

has determined by clear and convincing evidence that a person is a de facto custodian, the court must join that person in the action as a party needed for just adjudication under the South Carolina Rules of Civil Procedure.

STATUS: Having been approved by the General Assembly, ***S.137*** *(Act 249) was signed by the Governor on March 24.*

FIREARMS AND CONCEALED WEAPON PERMITS

Any county, municipality, or political subdivision has the authority to regulate the careless or negligent discharge or public brandishment of firearms. The bill denies any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest or a courtesy summons to appear.

This bill also provides that the State Law Enforcement Division may release a list of concealed weapon permit holders or verify an individual's permit status only if the request is to aid in an official law enforcement investigation.

STATUS: ***H.4681*** *passed the House on April 26 and has been referred to the Senate Judiciary Committee.*

HOG-DOG FIGHTING AND COCKFIGHTING

As passed by the Senate, **S.229** provides that a person who violates a provision of the Animal Fighting and Baiting Act is subject to forfeiture of property, monies, and certain other things of value. There are provisions for the seizure of items with or without a warrant. The bill also outlines provisions to protect the interests of innocent owners.

Under the bill, the provisions of the Animal Fighting and Baiting Act apply to events more commonly known as 'hog-dog fights', 'hog-dog rodeos', or 'hog-dogging' in which bets are placed, or cash, points, titles, trophies, or other awards are given based primarily on the ability of a dog to catch a hog using physical contact in the controlled environment of an enclosure.

This bill provides that for purposes of a hearing to determine whether an owner is able to provide adequately for the animal and is fit to have custody of the animal, any animal found to be owned, trained, possessed, purchased, sold, transported, or bred in violation of the Animal Fighting and Baiting Act must be considered cruelly treated and the owner must be deemed unfit.

*STATUS: **S.229** received third reading in the Senate on March 21.*

The bill received a favorable with amendment report from the House Judiciary Committee on May 17. The House Judiciary Committee Amendment includes, among other things, provisions pertaining to cockfighting. The committee amendment provides that a person who engages in or is present at cockfighting or game fowl fighting or testing is guilty of a misdemeanor for the first offense. A first offense is punishable by a fine or not more than $1,000 or imprisonment for not more than one year. A second offense is a misdemeanor punishable by a fine of not more than $3,000 or imprisonment for not more than three years. A third or subsequent offense is a felony punishable by a fine of not more than $5,000 or imprisonment not more than five years. A person with a third or subsequent offense for cockfighting is subject to the forfeiture of monies, negotiable instruments and securities specifically gained or used to engage in or further a violation of these provisions.

The House Judiciary Committee amendment also provides that the provisions of the Animal Fighting and Baiting Act do not apply to dogs used for the purpose of hunting.

LAW ENFORCEMENT TRAINING COUNCIL

The House approved **H.3977**, a bill which establishes an eleven-member Law Enforcement Training Council. The bill transfers to this council all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety. It is the stated intent of the bill to maximize training opportunities for law enforcement officers and criminal justice personnel, to coordinate training, and to set standards for the law enforcement and criminal justice service.

*STATUS: **H.3977** was approved by the House and Senate and has been ratified (**R.311**).*

METHAMPHETAMINE

Provisions Pertaining to Ephedrine or Pseudoephedrine

Currently, over the counter nasal decongestants featuring pseudoephedrine, which can be used in the illegal manufacture of methamphetamine, are readily obtainable from self-service shelves in retail stores.

Under this legislation, products whose sole active ingredient is ephedrine or pseudoephedrine may not be offered for retail sale by self-service, but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by a retail store employee or agent. Such products may be offered for retail sale only if sold in blister packaging. No person may deliver in any single over the counter sale more than three packages of any product containing ephedrine or pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any number of packages that contain a combined total of more than nine grams of ephedrine or pseudoephedrine base. Violations are misdemeanors and, upon conviction for a first offense an offender must be fined not more than five hundred dollars, and, upon conviction for a second or subsequent offense an offender must be imprisoned not more than six months and/or fined not more than one thousand dollars.

Persons delivering or selling products containing ephedrine or pseudoephedrine shall require the purchaser to produce a government issued photo identification showing the date of birth of the person and require the purchaser to sign a written or electronic log showing the date of the transaction, name of the person, the person's address, and the amount of the compound, mixture, or preparation. Retailers must retain the information for at least two years and make the log available for inspection within twenty-four hours of a request made by a local, state, or federal law enforcement officer. A retailer convicted of a violation of these log-keeping requirements is guilty of a misdemeanor and must be fined not more than one thousand dollars and not less than five hundred dollars. Upon conviction for a second offense, a retailer must be fined not more than five thousand dollars and not less than one thousand dollars. Upon conviction for a third or subsequent offense, a retailer must be fined not more than ten thousand dollars and not less than five thousand dollars.

The legislation provides that it is unlawful for a retailer to purchase any product containing ephedrine or pseudoephedrine from any person or entity other than a manufacturer or a wholesale distributor registered by the United States Drug Enforcement Administration. A person convicted of a first offense violation is guilty of a misdemeanor and must be imprisoned not more than one year and/or fined not more than one thousand dollars. A second or subsequent offense is a misdemeanor subject to not more than three years' imprisonment and/or a fine of not more than five thousand dollars.

The legislation provides that it is unlawful for any unauthorized person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute, any substance containing any amount of ephedrine, pseudoephedrine, or any of its salts, optical isomers, or salts of optical isomers which have been altered from their original condition so as to be powdered, liquefied, dissolved, solvated, or crushed. A person convicted of a violation is guilty of a

felony and, upon conviction for a first offense must be imprisoned not more than five years and fined not more than five thousand dollars. The court, upon approval from the solicitor, may request as part of the sentence, that the offender enter and successfully complete a drug treatment program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not less than ten thousand dollars.

These restrictions do not apply to: (1) pediatric products labeled under federal regulation as primarily intended for administration to children under twelve years of age according to label instructions; and (2) products that the Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its variants.

Provisions Pertaining to Minors

The legislation establishes criminal penalties that respond to the particular dangers the illicit methamphetamine trade poses for children. The legislation provides that it is unlawful for an adult to illegally manufacture amphetamine, methamphetamine, or its variants in the presence of a minor child, or to knowingly permit a minor child to be in an environment where these substances are sold or where the paraphernalia and volatile, toxic chemicals used in their manufacture are stored. Upon conviction for a first offense, a violator must be imprisoned not more than five years and/or fined not more than five thousand dollars. Conviction for a second or subsequent offense carries a penalty of imprisonment for not more than ten years and/or a fine of not more than ten thousand dollars.

Disposal of Waste from the Production of Methamphetamine

The legislation also provides that it is a felony offense for an unauthorized individual to dispose of waste from the production of methamphetamine. Upon conviction for a first offense, a violator must be imprisoned not more than five years and/or fined not more than five thousand dollars. A second or subsequent offense carries a penalty of imprisonment for not more than ten years and/or a fine of not more than ten thousand dollars. In addition, a violator is required to pay restitution for any emergency response or environmental cleanup costs.

Study Committee

Five years after enactment, the legislation establishes a study committee to review the implementation and application of the legislation and issue a report, including recommendations for legislative changes.

*STATUS: Having been approved by the General Assembly, **H.3591** (R286) became law without the Governor's signature on May 4; the effective date of the legislation is November 14, 2006.*

"PROTECTION OF PERSONS AND PROPERTY ACT"

The stated intent of the legislation is to codify the common law castle doctrine, which recognizes that a person's home is his castle, and to extend the doctrine to include an occupied vehicle and the person's place of business. Under certain circumstances, this bill authorizes the lawful use of deadly force against an intruder or attacker in a person's dwelling, residence, or occupied vehicle. The bill provides that there is no duty to retreat if the person is in a place where he has a right to be, including the person's place of business, and the use of deadly force is necessary to prevent death, great bodily injury, or the commission of a violent crime. A person who lawfully uses deadly force is immune from criminal prosecution and civil action
and may not be arrested unless probable cause exists that the deadly force used was unlawful.

STATUS: ***H.4301*** *received third reading in the House on February 9. The bill has been referred to the Senate Judiciary Committee.*

PUBLIC HEALTH EMERGENCIES

See summary under Emergency Preparedness

SAFE HAVENS FOR ABANDONED INFANTS OR "DANIEL'S LAW"

Current law provides that a person who abandons a newborn cannot be prosecuted for abandonment if he takes the unharmed baby to an employee at a hospital or hospital outpatient facility. The law applies to infants up to thirty days old. This bill provides that an infant may be left at a hospital or hospital outpatient facility, a law enforcement agency, a fire station, an emergency medical services station, or
any staffed house of worship. The bill requires these other designated safe havens to transport the infant to a hospital.

STATUS: ***H.4678*** *received third reading in the House on March 17. The bill has been referred to the Senate Judiciary Committee.*

"SEX OFFENDER ACCOUNTABILITY AND PROTECTION OF MINORS ACT OF 2006"

This bill makes comprehensive revisions relating to sex offenders.

Relating to punishment for murder, this bill adds to the list of aggravating circumstances that murder was committed by a person deemed a sexually violent predator.

With regards to criminal sexual conduct with a minor in the first degree when the actor engages in sexual battery with a victim who is less than eleven years of age, the bill provides for a mandatory minimum sentence of twenty-five years, no part of which may be suspended or probation granted, or imprisonment for life. Imprisonment for life means imprisonment until death.

The bill allows prosecutors to seek the death penalty in cases where a person has a prior conviction for criminal sexual conduct with a minor in the first degree or for a similar federal or out-of-state offense. The bill outlines statutory aggravating circumstances and mitigating circumstances for the imposition of the death penalty under this section.

With regards to criminal sexual conduct with a minor in the second degree, the bill provides that, upon conviction, a person must be imprisoned for not more than twenty years according to the discretion of the court.

The bill requires sex offenders to register bi-annually for life.

Current law requires the State Law Enforcement Division to develop and maintain a protocol manual used in the administration of the sex-offender registry. This bill outlines certain factors that must be included in the manual.

The bill requires active electronic monitoring of certain sex offenders. The bill also outlines provisions whereby certain offenders, after ten years, may petition to be removed from electronic monitoring.

The bill creates a felony offense of assisting or harboring an unregistered sex offender.

The bill provides for the admission of out-of-court statements made to a third party by a child victim or child witness in general sessions court.

STATUS: ***S.1138*** *received third reading in the Senate on March 29, 2006. The bill has been referred to the House Judiciary Committee.*

"SOUTH CAROLINA CRIMESTOPPERS ACT"

The bill establishes the South Carolina Crimestoppers Council as a nonprofit organization and outlines the duties of the council, which among other things, includes encouraging, advising and assisting in the creation of crimestopper organizations.

A court may order a defendant to repay to a crimestoppers organization or to the crimestoppers council a reward issued by either entity. The bill outlines certain factors to be considered when determining whether the defendant must repay the award or part of the reward. The bill provides for the reimbursement of monies paid by a crimestoppers organization or the crimestoppers council for information that results in the arrest of an individual where monies are confiscated and forfeited pursuant to an arrest. The bill also provides for the maintenance and disbursement of funds reimbursed.

The bill includes provisions for the admissibility of certain evidence, protected information, and protected identities in a court proceeding.

The bill provides immunity from civil liability for certain persons who communicate with, act on privileged communication, or are officers or employees of a crimestoppers organization or the crimestoppers council.

A public body may not disclose a privileged communication, protected information, or a protected identity except under certain conditions.

It is a misdemeanor for a person who is a member or employee of the council, a crimestoppers organization or a law enforcement agency to divulge certain privileged communications. However, if the offense is committed with the intent to obtain monetary gain or some other benefit, then the offense is a felony punishable by not more than five years.

STATUS: ***H.4456*** *passed the House on April 26 and has been referred to the Senate Judiciary Committee.*

TRAFFICKING IN PERSONS FOR FORCED LABOR OR SERVICES

The legislation provides that a person who knowingly subjects another person to forced labor or services, or recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services, or aids, abets, attempts, or conspires to do any of the above acts is guilty of a felony known as trafficking in persons for forced labor or services and, upon conviction, must be imprisoned for not more than fifteen years. The term 'forced labor or services' means any type of labor or services performed or provided by a person rendered through another person's exertion of physical, financial, or other means of control over the person providing the labor or services. These provisions do not apply to labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.

STATUS: Having been approved by the General Assembly, ***H.3060*** *(Act 266) was signed by the Governor on May 2.*

"UNBORN VICTIMS OF VIOLENCE ACT OF 2006"

This bill provides that a person who commits a violent crime that causes the death of, or injury to, an unborn child is guilty of a separate offense and that the person must be punished as if the death or injury occurred to the unborn child's mother. The term 'unborn child' means a child in utero, and the term 'child in utero' or 'child who is in utero' means a member of the species homo sapiens, at any state of development, who is carried in the womb. Prosecution of an offense under this section does not require proof that: (1) the person committing the violent offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or (2) the defendant intended to cause the death of, or bodily injury to, the unborn child. The bill further provides that the person must be punished for murder or attempted murder if the person intentionally killed or attempted to kill the unborn child. The bill prohibits imposing the death penalty for an offense prosecuted pursuant to this section. The bill also prohibits the prosecution of a person for conduct related to an abortion if proper consent was obtained and to medical treatment of a pregnant woman and of a woman with respect to her unborn child.

STATUS: ***S.1084*** *passed the Senate on March 2. The bill received a favorable report from the House Judiciary Committee on May 16, 2006.*

VULNERABLE ADULTS

This bill establishes a Vulnerable Adults Investigation Unit (VAIU) within the State Law Enforcement Division (SLED), which must receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in Department of Mental Health or Disabilities and Department of Disabilities and Special Needs facilities.

VAIU must refer non-criminal reports of abuse and neglect occurring in facilities to the Long Term Care Ombudsman Program (LTCOP), which is administered by the Lieutenant Governor's Office, and of abuse and neglect in all settings other than those covered by LTCOP to the Adult Protective Services Program within the Department of Social Services. Neither SLED nor LTCOP may delegate their investigative responsibility to the facilities or to the entities charged with operating the facilities.

The bill requires medical, educational, or law enforcement officials to report if they have reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited. Any person may report if they have reason to believe a vulnerable adult has been or is likely to be abused, neglected, or exploited. Persons required to report must do so within twenty-four hours or on the next working day. The report must be made to the VAIU for Department of Mental Health or Department of Disabilities and Special Needs facilities; the LTCOP for other facilities; and the Adult Protective Services Program within the Department of Social Services for incidents in other settings.

If a person is required to report and they have reasonable suspicion that a vulnerable adult died as a result of abuse or neglect must report the death to the coroner or medical examiner, who in turn must report their findings to the VAIU for investigation. However, all vulnerable adult deaths in Department of Mental Health or Department of Disabilities and Special Needs facilities must be referred to the VAIU. Once a report is received by an entity, it must review the report within two days and report cases indicating reasonable suspicion of criminal conduct to the VAIU within one day of completing the review.

Notice of the duty to report and contact information must be displayed in health care facilities or facilities operated by the Department of Mental Health or Department of Disabilities and Special Needs.

The Attorney General may bring an action against entities with a pattern or practice of failing to exercise care in hiring, training, or supervising facility personnel or in staffing or operating a facility and the failure results in abuse, neglect, death, or any other crime against a vulnerable adult.

The VAIU must investigate vulnerable adult deaths. Medical care providers and other agencies must provide the VAIU with information necessary to its mission, and it has subpoena power through the clerks of court.

The bill also creates the Vulnerable Adults Fatalities Review Committee which consists of certain agency heads plus various other persons appointed by the Governor. The purpose of the review committee is to develop understanding of vulnerable adult deaths and make plans for changes to prevent future deaths. Meetings of the review committee are open under the Freedom of Information Act if the entity is not discussing individual cases or particularized information. Additionally, information obtained by the review committee is confidential under the Freedom of Information Act except for statistical compilations and non-identifying reports.

A coroner or medical examiner must notify the VAIU within twenty-four hours of the death of a vulnerable adult as a result of violence when unattended by a physician and in any suspicious or unusual manner or when the death is unexpected or unexplained. The bill also permits the coroner or medical examiner to obtain an inspection warrant from a magistrate if there is probable cause to believe that events in the home or premises may have contributed to the death of the vulnerable adult.

*STATUS: Having been approved by the General Assembly, **S.1116** (R301) was ratified on May 18, 2006.*

"YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006"

Provisions Pertaining to Retailers and Adults

The legislation requires a retail establishment that distributes tobacco products to train all retail sales employees regarding the unlawful distribution of tobacco products to minors.

The bill provides that it is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age.
The bill provides that it is unlawful to sell a tobacco product through a vending machine unless the vending machine is located in an establishment: (1) which is open only to individuals who are eighteen years of age or older; or (2) where the vending machine is under continuous control by the owner, licensee, or employee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

The bill expands the current prohibition on furnishing tobacco products to underage individuals so as to provide that it is also unlawful to purchase a tobacco product for a minor under the age of eighteen or distribute a tobacco product to such a minor.

An individual who violates these provisions is guilty of a misdemeanor and, upon conviction, must be fined: (1) for a first offense, not less than one hundred dollars nor more than two hundred dollars; (2) for a second offense, which occurs within three years of the first offense, not less than two hundred dollars nor more than three hundred dollars; (3) for a third or subsequent offense, which occurs within three years of the first offense, not less than three hundred dollars nor more than four hundred dollars. In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.

Provisions Pertaining to Minors

The legislation further provides that a minor under the age of eighteen years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing a tobacco product.
A minor who knowingly violates this provision commits a non-criminal offense and is subject to a civil fine of twenty-five dollars. In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution. If a minor fails to pay the civil fine, successfully complete a required program, or perform the required hours of community service, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days. If the minor does not have a driver's license or permit, the court may delay the issuance of the minor's driver's license or permit for a period of ninety days.

A law enforcement officer may use a uniform traffic ticket for a violation of this provision. The law enforcement officer must immediately seize the tobacco product and notify a minor's parent, guardian, or custodian of the minor's offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

This provision does not apply to the possession of a tobacco product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.
Jurisdiction to hear a violation of these provisions is vested exclusively in the municipal court and the magistrate's court.

*STATUS: Having been approved by the General Assembly, **S.384** (Act 231) was signed by the Governor on February 21.*

EDUCATION

CHARTER SCHOOLS

The House of Representatives and the Senate approved **H.3010**, legislation establishing a Statewide Charter School District. The legislation revises oversight for South Carolina's charter schools, which are freed from certain statewide regulations to provide specialized or innovative educational approaches. Under current law, charter schools are sponsored by local school districts. This legislation allows the option of statewide, rather than local, sponsorship by creating the South Carolina Public Charter School District, which is authorized to sponsor and oversee a charter school. This newly created statewide public body, the South Carolina Public Charter School District, must be considered a local education agency and is eligible to receive state and federal funds and grants available for public charter and other schools to the same degree as other local education agencies. The South Carolina Public Charter School District may not have a local tax base and may not receive local property taxes. The South Carolina

Public Charter School District shall distribute state funds to the charter schools it sponsors under a formula provided in the legislation. The office of the new district is to be housed at the State Department of Education. The legislation provides for the membership and terms of an eleven-member board of trustees to govern the South Carolina Public Charter School District. Under the legislation, a charter school may terminate its contract with a sponsor before the five-year term of contract if all parties under contract with the charter school agree to the dissolution. A charter school that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor without review from the Charter School Advisory Committee. The legislation specifies that charter schools are eligible covered employers in the South Carolina Retirement Systems. The legislation provides that within one year of taking office, all persons elected or appointed as members of a charter school board of trustees after July 1, 2006, shall complete successfully an orientation program in the powers, duties, and responsibilities of a board member that includes such topics as policy development, personnel, instructional programs, school finance, school law, ethics, and community relations. The legislation also provides that within ninety days of employment, an administrator employed by a charter school, who is not certified, shall complete successfully an orientation program in the powers, duties, and responsibilities of a school administrator that includes such topics as personnel, instructional programs, school finance, school law, ethics, and community relations. These orientation programs must be provided at no charge by the State Department of Education or an association approved by the department.

STATUS: ***H.3010*** *was approved by the General Assembly and has been signed by the Governor.*

KINDERGARTEN PROGRAM FOR AT-RISK FOUR-YEAR OLDS

On May 10, 2006, the House amended **H.4932** and sent the bill to the Senate, where the bill is currently pending in the Senate Education Committee. As amended by the House, this bill creates the South Carolina Child Development Education Two-Year Pilot Program (the Program), available for the 2006-2007 and 2007-2008 school year on a voluntary basis. With funds appropriated by the General Assembly, the Program is to first be made available to eligible children from eight of the trial districts in Abbeville County School District et al. vs. South Carolina (Allendale, Dillon 2, Florence 4, Hampton 2, Jasper, Lee, Marion 7, and Orangeburg 3). With remaining funds available, the pilot will be expanded to the remaining Plaintiff school districts with priority given to districts having proportionally the largest population of underserved at-risk four-year-old children. The bill requires and provides for the Education Oversight Committee (EOC) to evaluate the pilot program and report to the General Assembly by January 1, 2008.

Unexpended funds from the prior year for the Program would be carried forward and used by the First Steps to Readiness Board to provide services to children zero to three years of age in the eight trial districts.

Each child residing in pilot districts who will have attained the age of four years on or before September first of the school year, and whose family income makes them eligible for the free or reduced-price lunch program or Medicaid, is eligible for enrollment in the

Program for one year. Parents of eligible children may enroll the child in programs delivered by approved public or private providers. The bill provides attendance requirements and daily and yearly instruction time requirements.

No parent is required to pay tuition or fees except for childcare that may be provided outside the times of the instructional day.

The bill includes requires public and private school providers to comply with state and federal laws relating to health and safety, discrimination, and criminal background checks, and requires these providers to maintain certain records for each child. Also, all providers must be approved, registered, or licensed by the Department of Social Services.

The bill includes requirements for the State Department of Education (SDE) and the Office of First Steps to School Readiness (First Steps), in consultation with the Education Oversight Committee. These requirements include developing the provider and child enrollment application forms; developing a list of approved curricula; developing a list of approved readiness assessments; establishing criteria for classroom equipping grants; establishing criteria for parenting education; and establishing a list of early childhood-related fields that may be used in meeting the lead teacher qualifications.

The bill includes requirements for program providers with respect to the educational program/curriculum they must offer, including educational requirements for teachers; teacher-student ratio requirements; requirements for instructional hours per day and instructional days per year; curriculum requirement; parental involvement requirements; and professional development requirements.

The bill requires that every classroom must have a lead teacher with at least a two-year degree in early childhood education or related field and who is enrolled toward the completion of a teacher education program within four years, and at least one education assistant per classroom who has completed the Early Childhood Development Credential and who has a high school diploma or equivalent and at least two years experience working with children under age five. The bill requires personnel to participate annually in professional development, as provided in the bill.

Public and private providers would be eligible for transportation funds at a reimbursement rate established in the bill. The bill requires the General Assembly to provide funds for the 2006-2007 school year of three thousand seventy-seven dollars per child, in addition to the reimbursement for transportation. The cost per child would be increased by the same rate of inflation as that determined for the Education Finance Act. The bill also provides that with funds appropriated by the General Assembly, the South Carolina Department of Education will approve grants for public providers and the Office of First Steps will approve grants for private providers, of up to ten thousand dollars per class for the equipping of new classrooms.

The bill requires DSS to aid the SDE and First Steps in verifying student eligibility and to maintain a list of public and private providers.

The bill requires the Education Oversight Committee to evaluate the pilot program and report to the General Assembly, as provided in the bill, by January 1, 2008.

*STATUS: **H.4932** was approved by the House, sent to the Senate, and referred to the Senate Education Committee, where it is currently pending.*

Also, on May 10, 2006, the House amended the Senate-passed 2006-2007 Appropriations Bill (H.4810) by adding to that bill this same language establishing a two-year pilot kindergarten program for at-risk four-year old children. H.4810 is currently being considered by a House-Senate Conference Committee.

SCHOOL TERMS

The House and Senate approved **H.4429**, regarding the school term. This bill repeals current sections of law regarding school terms, makeup days, and minimum hours and use of school days. The bill provides each local school district board the authority to establish an annual school calendar for teachers, staff, and students. The bill provides that the statutory school term is 190 days annually and shall consist of a minimum of 180 days of instruction covering at least nine calendar months.

Beginning with the 2007-2008 school year, the bill provides that the opening date for students must not be before the third Monday in August, except for schools operating on a year-round modified school calendar. The bill allows for three days for professional development; two days for preparation of opening of schools; and five days for teacher planning, academic plans, and parent conferences. The bill does not require uniformity of instructional hours in an instructional day among the schools in a district.

The bill requires that all school days missed because of snow, extreme weather conditions, or other disruptions must be made up, and provides for school districts to designate three days to be used in such instances as make-up days. If those designated days are no longer available, the local school board may lengthen the hours of school operation or operate schools on Saturday, as provided in the bill.
The bill allows the General Assembly by law to waive the requirements of making up missed days or, by law, to authorize the school board to forgive up to three days missed because of these weather conditions or other disruptions.

The bill requires that the instructional day for secondary students must be at least six hours a day, or its equivalent weekly, excluding lunch, and the school day for elementary students must be at least six hours a day or its equivalent weekly, including lunch. The bill allows elementary and secondary schools to reduce the length of the instructional day to not less than three hours on not more than three days each school year for staff development, teacher conferences, or the administering of certain examinations.

The bill requires that priority during the instructional day be given to teaching and learning tasks.
The bill authorizes and provides for the State Board of Education to waive the school opening date requirement on a showing of “good cause” or for an “educational purpose” as those terms are defined in the bill.

*STATUS: **H.4429** was approved by the House and the Senate and has been signed by the Governor (Act 260).*

STATEWIDE EDUCATION ASSESSMENT PROGRAM

The House and Senate approved **H.4328**, regarding the Statewide Education Assessment Program. Highlights of the bill are as follows:

- Requires the Budget and Control Board to request proposals for the purpose of conducting a study on the feasibility and cost of converting the state assessment program to a computer-based or computer-adaptive format with the report issued no later than December 15, 2006. The bill lists specifications of the study.
- Changes the definition of 'objective and reliable statewide assessment' to allow for a portion of which to contain only multiple choice questions designed to reflect a range of cognitive abilities beyond the knowledge level.
- Includes a definition of 'formative assessment.'
- Further defines that the state assessment program be designed to promote student learning and provide professional development to educators.
- Clarifies that the exit examination is to be given first in a student's second year of high school enrollment.
- Specifies that the science and social studies portion of the exit exam shall be met by passage of a high school credit course in science and a course in United States history in which end-of-course examinations are administered beginning in 2010.
- Requires the State Board of Education to create by March 31, 2007, a statewide adoption list of formative assessments aligned with the state content standards and satisfying professional measurement standards in accordance with criteria jointly determined by the Education Oversight Committee and the State Department of Education; provides that for use beginning with the 2007-2008 school year, with funds appropriated by the General Assembly, local districts must be allocated resources to select and administer formative assessments;
- Requires the adoption of a developmentally appropriate formative reading assessment for use in the first and second grades.
- Requires on-going professional development in the creation and use of classroom assessments, the use of formative assessments and the use of the end-of-year state assessments.
- Requires field test items to be embedded with the annual assessments.
- Allows for the development of a sampling plan to administer science and social studies assessments for elementary and middle school students so that students would not be required to take both tests except in census grade testing as required by federal No Child Left Behind provisions.
- To ensure that school districts maintain the high standard of accountability established in the Education Accountability Act, performance level results reported on school and district report cards must meet percentage weightings established by the Education Oversight Committee in all four core content areas, beginning with the 2007 report card.
- Calls for the establishment of a task force to recommend alternative evidence and procedures that may be used to meet graduation requirements to be used in the rare instances where there is compelling evidence that a student

is well-qualified for graduation, but extreme circumstances have interfered with passage of the exit examination.

- Requires the annual convening of curriculum experts to analyze the results of the assessments, including item by item performance and a plan for disseminating additional information about the assessment results to districts.

STATUS: ***H.4328*** *(Act 254) was approved by the General Assembly and has been signed by the Governor.*

ELECTIONS

ABSENTEE VOTING BY ARMED SERVICES PERSONNEL AND OVERSEAS CITIZENS

The bill directs the State Election Commission to take all steps necessary including, but not limited to, electronic transmissions, to ensure that all South Carolina residents eligible to vote as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act have the opportunity to receive and cast any ballot they would have been eligible to cast if they resided in and had remained in South Carolina.

STATUS: Having been approved by the General Assembly, ***H.3720*** *(Act 253) was signed by the Governor on March 24.*

ALTERNATIVE POLLING PLACES IN CASE OF AN EMERGENCY

As passed by the House, **H.3831** in an emergency situation allows an elector to vote in a location or at a polling place not within the precinct where the elector is registered to vote. However, the authority charged by law with conducting the election should designate an alternative polling place outside of the precinct only if no other location within the precinct is available for use as a polling place. The alternative polling place must be selected with consideration of the distance the electors would have to travel to vote. Every attempt must be made to notify electors of the alternative polling place before the election and on the day of the election through the media and by posted notice at the designated polling place. If an alternative polling place outside of the precinct is selected, the authority charged by law with conducting the election shall certify in writing to the State Election Commission that no other location within the precinct is available for use as a polling place and that the selection of a polling place was made with consideration of the distance electors would have to travel to vote.

STATUS: The House and the Senate have passed differing versions of ***H.3831****, and a conference committee was appointed on May 4. Among other differences, the Senate's version of the bill includes provisions relating to election protests and civil immunity for poll workers.*

ELECTIONS

H.4579 requires county election commissions to conduct a referendum at the next scheduled general election on the question of implementing the local option sales and use tax within the county area. Likewise, a referendum to rescind the local option sales and use tax must be conducted at a scheduled general election.

The bill requires that general elections for federal, state, county and municipal officers in this State must be held on the first Tuesday following the first Monday in November in each even-numbered year.

The bill enacts the Uniform Election Procedure Act, which provides that beginning at the time of the general election of 2008 and each year after that as appropriate, members of a governing body must be elected in elections conducted at the time of the general election. The term 'governing body' means the governing body of a municipality, school board or school district.

*STATUS: **H.4579** received third reading in the House and was sent to the Senate on April 26. On May 18, the bill was recalled from the Senate Education Committee and recommitted to the Senate Judiciary Committee.*

EMERGENCY PREPAREDNESS

ALTERNATIVE POLLING PLACES IN CASE OF AN EMERGENCY

See summary under Elections

FIREARMS AND CONCEALED WEAPON PERMITS

See summary under Criminal Justice/The Courts

FIREFIGHTER GRANT PROGRAM

The House approved **H.4366**, the Volunteer Strategic Assistance and Fire Equipment Act of 2006. This bill requires the General Assembly to appropriate up to three million dollars a year to offer grants of not more than thirty thousand dollars to eligible volunteer and combination fire departments. Volunteer fire departments and combination fire departments with a staffing level that is at least eighty-five percent volunteer are eligible to receive these grants. The funds would be used, as provided in the bill, to protect local communities and regional areas from fire, hazardous materials, and terrorism, and to provide for the safety of the volunteer firefighters. The bill requires and provides for the South Carolina State Firefighters' Association to administer the grants in conjunction with a peer review panel.

*STATUS: **H.4366** was approved by the House and is pending in the Senate Finance Committee*.

PRICE GOUGING

See summary under Consumer Protection

PUBLIC HEALTH EMERGENCIES

H.4808 revises definitions used in the Emergency Health Powers Act. The bill amends the definition of "qualifying health condition" to include an illness or health condition caused by a natural disaster. The bill amends the definition of the term "trial court" to provide if that court is unable to function because of the isolation, quarantine, or public health emergency, the trial court is a circuit court designated by the Chief Justice upon petition and proper showing by the Department of Health and Environmental Control (DHEC).

Relating to isolation and quarantine of individuals and penalties for noncompliance, **H.4808** establishes a maximum penalty of a fine of one thousand dollars or thirty days in prison, or both. An employer may not fire, demote or otherwise discriminate against an employee subject to isolation or quarantine orders; however, an employer may require an employee subject to isolation or quarantine to use annual or sick leave to comply with such an order.

Relating to isolation and quarantine procedures, **H.4808** provides that before the declaration of a public health emergency isolation and quarantine orders issued must be undertaken in accordance with the Emergency Health Powers Act.

Relating to appointment and use of in-state and out-of-state health personnel in a state of public health emergency, **H.4808** provides that any in-state or out-of-state health care provider appointed by DHEC is immune from civil liability for damages resulting from medical care or treatment so long as the actions taken in rendering the care or treatment meet applicable standards of care and do not constitute gross negligence, recklessness, willfulness or wantonness. This provision applies whether or not the health care provider receives financial gain from the State for its volunteer services, and even if the health care provider receives compensation benefits from the health care provider's employer. Immunity from civil liability is also provides for any emergency medical examiner or coroner so long as their actions taken in rendering services meet applicable standards of care and do not constitute gross negligence, recklessness, willfulness or wantonness.

*STATUS: **H.4808** passed the House on April 26, 2006. On May 18, the bill received a favorable with amendment report from the Senate Committee on Medical Affairs. The Senate Committee amendment makes some technical changes as well as provides civil immunity for health care providers unless damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient. The Senate Committee amendment provides civil immunity for medical examiners and coroners unless damages result from providing, or failing to provide, services under circumstances demonstrating reckless conduct.*

FAMILY

BREASTFEEDING

This legislation provides that a woman may breastfeed her child in any location where the mother and her child are authorized to be. Breastfeeding a child in a location where the mother and her child are authorized to be is not considered indecent exposure.

STATUS: Having been approved by the General Assembly, ***H.4347*** *(Act 269) was signed by the Governor on May 2.*

CHILD RESTRAINT LAWS

This legislation increases penalties for a violation of child restraint laws. Current law provides that a person may not be taken into custodial arrest for violation of provisions that require a child to be secured in a motor vehicle passenger restraint system; this bill deletes the prohibition on custodial arrest for a violation. This bill increases the maximum fine from $25 dollars to $150 dollars for a violation. The bill further provides that the court shall waive the fine against a person who, before, or upon the appearance date on the summons, supplies the court with evidence of acquisition, purchase, or rental of an appropriate child restraint system.

STATUS: Having been approved by the General Assembly, the Governor vetoed ***S.800****. The General Assembly has overridden the Governor's veto of this legislation.*

COMMON LAW MARRIAGE

As passed by the House, **H.3588** repeals current law relating to the validity of a marriage contracted without the issuance of a license; the bill provides that a common law marriage in this State may not be recognized on and after January 1, 2006. Exceptions are provided for common law marriages existing as of December 31, 2005.

STATUS: ***H.3588*** *passed the House and was referred to the Senate Judiciary Committee on May 3, 2005. Senate debate of this bill was interrupted on May 17, 2006.*

FAMILY COURT MAY ORDER THAT CUSTODY OF A MINOR CHILD BE AWARDED TO THE CHILD'S DE FACTO CUSTODIAN UNDER CERTAIN CIRCUMSTANCES

See summary under Criminal Justice/The Courts

SAFE HAVENS FOR ABANDONED INFANTS OR "DANIEL'S LAW"

See summary under Criminal Justice/The Courts

"UNBORN VICTIMS OF VIOLENCE ACT OF 2006"

See summary under Criminal Justice/The Courts

HEALTH

AUTISM EARLY INTERVENTION ADVISORY COMMITTEE

The House of Representatives approved and sent to the Senate **H.4351**, a bill creating the Autism Early Intervention Advisory Committee within the Department of Disabilities and Special Needs. The legislation provides that the committee is to be composed of: the Director of the Department of Disabilities and Special Needs or his designee (who shall serve as chairman), the Director of the Department of Health and Human Services or his designee, the Superintendent of Education or his designee, the Chairman of the House Education and Public Works Committee or his designee, the Chairman of the House Ways and Means Committee or his designee, the Chairman of the Senate Education Committee or his designee, the Chairman of the Senate Finance Committee or his designee, four parents of children diagnosed with a pervasive developmental disorder appointed by the Governor, one of whom must be from a family with a household income less than two hundred and fifty percent of the federal poverty level, and an administrator of a school for special needs children. The committee is required to make recommendations to the department on the administration of the Autism Early Intervention Fund. In developing its recommendations the advisory committee shall consider among other things, ages of children to receive developmental training focusing on the youngest ages feasible for treatment effectiveness, types of training or treatment options, types of conditions, proof of gains, and qualifications of providers. The department is authorized to serve persons with autistic disorder, but may, from monies in the Autism Early Intervention Fund, award grants or negotiate and contract with public or private entities to implement intervention programs for children who have been diagnosed with a pervasive developmental disorder, including autism and Asperger's syndrome. The Autism Early Intervention Advisory Committee shall report to the General Assembly and the Governor before the end of each year on the number of children participating in programs awarded grants, the methodology of the treatment options, and the number of children that were mainstreamed into public or private school as a result of the therapies provided by these programs.

*STATUS: On April 7, 2006, the House of Representatives passed **H.4351** and sent the bill to the Senate where it has been referred to the Banking and Insurance Committee.*

"DISCOUNT MEDICAL PLAN ORGANIZATION REGISTRATION ACT"

This legislation that it is unlawful for a person to sell, market, promote, advertise, or distribute a discount medical plan or other purchasing mechanism or device that is not insurance which purports to offer discounts or access to discounts from discount medical plans unless: (1) the person is organized according to the laws of this State or

authorized to transact business in this State; (2) the person is registered with the Department of Consumer Affairs for this express purpose; (3) the plan or other purchasing mechanism or device expressly states in bold and prominent type, prominently placed, that the discounts are not insurance; (4) documentation is provided to the Department of Consumer Affairs that the discounts are specifically authorized and the person has a separate contract with each health care service provider, pharmacy, or pharmacy chain listed; and (5) the discounts are not misleading, deceptive, or fraudulent. The legislation requires an
agent to be registered with the Secretary of State. The legislation provides for discount medical plan organizations to be registered with and regulated by the Department of Consumer Affairs. Penalties are provided for violations.

STATUS: ***H.3711*** *received third reading in the House on April 26 and was sent to the Senate. The bill received a favorable report from the Senate Committee on Banking and Finance on May 18, 2006.*

DONATION AND PROCUREMENT OF ORGANS AND TISSUES

This bill updates statutes that pertain to donation and procurement of organs and tissues. Among other things, the legislation revises the priority list of persons who may give consent for organ or tissue donation after death. This revision is consistent with the priority order of persons who may make health care decisions under the Adult Health Care Consent Act.

The bill deletes references to the Donor Referral Network. This network is defined as including the S.C. Organ Procurement Organization (SCOPA), the American Red Cross Southeastern Tissue Services, and the S.C. Lions Eye Bank. Current law designates SCOPA as the exclusive organ procurement agency, the Red Cross as the exclusive tissue procurement agency, and the Lions Eye Bank as the exclusive eye procurement agency in South Carolina. Almost two years ago SCOPA and the Lions Eye Bank merged to form LifePoint, an organ and eye procurement agency. The Red Cross has stopped procuring tissues. At this time, LifePoint procures almost all organs and tissues (including eyes) in this state. The proposed changes reflect these organizational changes.

The federal government designates one organ procurement agency for each geographical territory in the country. LifePoint is the federally designated organ procurement agency in S.C. This bill defines "Organ and Tissue Procurement Organization" to be the organ procurement organization designated to perform organ recovery services in S.C. by the federal government which also has the capability to procure tissues. This change will designate LifePoint to be the exclusive agency to receive potential organ and tissue referrals and donations in this state.

The bill revises the board of directors membership categories for the Gift of Life Trust Fund to reflect the organizational changes discussed above. The Gift of Life Trust Fund is a non-profit organization dedicated to promoting and encouraging organ and tissue donation. The bill deletes the Red Cross representative from the Gift of Life Board. It deletes the Lions Eye Bank representative and adds a representative of a civic organization that promotes organ or tissue donation or

both. It increases from three to four the number of at-large members who have demonstrated an interest in organ, tissue and eye donation and education. The bill also eliminates the term limit for the forensic pathologist member of the board.

STATUS: ***H.4348*** *passed the House on February 22, 2006. On May 18, the bill received a favorable with amendment report from the Senate Committee on Medical Affairs. The Senate Committee amendment amends provisions relating to the Uniform Anatomical Gift Act. The Senate Committee amendment provides that a gift of all or part of a body, regardless of the document making such a gift or donation, that is not revoked by the donor before death, is irrevocable and does not require the consent or concurrence of any person after the donor's death to render the gift of the donor valid and effective.*

METHAMPHETAMINE

See summary under Criminal Justice/The Courts

PUBLIC HEALTH EMERGENCIES

See summary under Emergency Preparedness

SAFE HAVENS FOR ABANDONED INFANTS OR "DANIEL'S LAW"

See summary under Criminal Justice/The Courts

VULNERABLE ADULTS

See summary under Criminal Justice/The Courts

"YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006"

See summary under Criminal Justice/The Courts

MILITARY

ABSENTEE VOTING BY ARMED SERVICES PERSONNEL AND OVERSEAS CITIZENS

See summary under Elections

DISRUPTING FUNERAL SERVICES

As passed by the House, **H.4965** provides that it is unlawful for a person to wilfully or maliciously disturb or interrupt a funeral service. A violator is guilty of a misdemeanor and upon conviction must be fined not more than one hundred dollars or imprisoned not more than thirty days. The bill also provides that it is unlawful for a person to undertake

an activity at a public or privately owned cemetery, other than the decorous participation in a funeral service or visitation of a burial space, without the prior written approval of the public or private owner. A violator is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

*STATUS: **H.4965** received third reading in the House on April 26. The bill received third reading in the Senate and was returned to the House with amendments on May 17, 2006. The Senate version also prohibits disruption of a funeral service within a time period of one-half hour before the funeral service until one-half hour after the funeral service.*

***S.1295** is a similar bill that received third reading in the Senate on May 2; the bill has been referred to the House Judiciary Committee.*

TAX DEDUCTION FOR QUALIFYING MEMBERS OF STATE GUARD

The House and Senate approved **H.3580**, a bill which allows an annual deduction of up to three thousand dollars from taxable income of members of the State Guard who meet minimum training or drilling requirements.

*STATUS: **H.3580** (Act 242) was approved by the General Assembly and signed by the Governor.*

VIETNAM VETERANS SURVIVORS' AND REMEMBRANCE DAY

The bill declares the first Friday of May each year to be 'Vietnam Veterans Survivors' and Remembrance Day' in South Carolina.

*STATUS: Having been approved by the General Assembly, **H.4313** (Act 268) was signed by the Governor on May 2.*

STATE/LOCAL GOVERNMENT

BILLBOARD REGULATION

See summary under Business/Economic Development

COMMITTEE TO STUDY EARMARKED/RESTRICTED ACCOUNTS

See summary under Appropriations

EMINENT DOMAIN

State Constitutional Amendment on the Exercise of Eminent Domain

The legislation proposes to amend the South Carolina Constitution so as to expressly prohibit a public body from exercising its powers of eminent domain to condemn a private property and thereafter transfer it to another private party unless the owner of the property consents. However, condemned property could be transferred to a private party in the following situations:

- Condemning property that constitutes a danger to the safety and health of the community because of dilapidation, deleterious land use, or lack of ventilation, light and sanitary facilities. This exception would allow for the condemnation of slum areas and blighted property as permitted by statutes.

- Granting non-possessory interests for financing purposes, such as financing interests or deeds in trust.

- Condemning property necessary for transportation or utility facilities or transmission systems.

- Conveying less than fee simple interests--i.e. leasehold interests--to a privately owned business for purposes of providing retail services in a public building, such as the canteens operated in state office buildings.

The proposed amendment also eliminates certain provisions regarding blight from the Constitution. If approved by the General Assembly, the proposed constitutional amendment would be put before voters at the next general election.

*STATUS: **H.4502** received third reading in the House on March 16. The joint resolution is pending in the Senate Judiciary Committee.*

*On February 9, the Senate passed **S.1031**. As passed by the Senate, the joint resolution proposes to amend the State Constitution to provide that private property shall not be condemned by eminent domain for any purpose or benefit, including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use. **S.1031** received a favorable with amendment report from the House Judiciary Committee on May 17, 2006. The House Judiciary Committee Amendment is a strike-all amendment; the House Judiciary Committee Amendment amends the bill to the same wording as the House passed version of **H.4502**.*

Exercise of Eminent Domain or Condemnation

H.4503 places new requirements on a public body's acquisition of private property through the exercise of eminent domain or condemnation. The legislation provides that a public body has the burden of proving in any proceeding related to a condemnation, by clear and convincing evidence, that: (1) a proposed condemnation is for a public use; (2) the public entity will own, operate, and retain control over the condemned property (except as permitted by the South Carolina Constitution); and (3) the property that is the subject of the condemnation provides a necessary and direct benefit to the public at large. A benefit to the public that is merely incidental, indirect, pretextual, or speculative

is not a public use. A mere public purpose or public benefit, including economic development, does not constitute the requisite public use for property to be condemned by eminent domain.

The legislation provides that all statutes relating to or involving eminent domain or condemnation must be strictly construed against the condemnor. These restrictions do not apply to public utilities and electric cooperatives granted condemnation powers.

Under the legislation a county council must provide written authorization before the county or any of its agents or subdivisions may exercise the authority of eminent domain. A town or city council must provide such authorization in the case of municipalities. The legislation provides that, with the exception of counties and municipalities, the only public entities that may exercise directly the right of eminent domain are: (1) the South Carolina Department of Transportation; (2) the South Carolina Public Service Authority; and (3) the Department of Commerce. All other public entities must obtain approval from the State Budget and Control Board to exercise the right of eminent domain.

The legislation provides that if real property is not used for the public purpose or use for which it was condemned within ten years, the former owner may repurchase the property for its appraised value or the original condemnation award, whichever is smaller. This provision does not apply to property acquired to protect a future transportation corridor from development. The legislation also allows the former owner a right of first refusal if the condemnor wishes to transfer the property to another person or entity. The right of first refusal of the landowner for less than current appraised value does not apply if doing so would violate federal law or result in a loss of federal funding or if the sale is between two entities with the power of eminent domain.

The legislation establishes strict and specific criteria for what may be considered blighted property for purposes of condemnation. The legislation requires counties and municipalities condemning properties for purposes of redeveloping slum and blighted areas to undertake a cost-benefit analysis of the condemnation and determine whether the value of taking the property exceeds the just compensation due to the owner. Alternatives must be identified for redeveloping the areas other than taking the property. Local government officials must meet with the property owners to discuss the taking and the cost-benefit analysis. A written report must be issued on the analysis used to determine whether to take the property.

The legislation revises Tax Increment Financing Act provisions to incorporate new definitions for blighted areas and agricultural real property.

*STATUS: **H.4503** received third reading in the House on March 16. The bill was recalled from the Senate Judiciary Committee on May 18 and is pending on the Senate calendar.*

*On February 21, the Senate gave third reading to **S.1029**. The joint resolution received a favorable report from the House Judiciary Committee on May 17, 2006. This joint resolution creates an Eminent Domain Study Committee (1) to review the condemnation authority of all entities that possess the power of eminent domain in South Carolina, and (2) to recommend legislative changes, if appropriate.*

FIREARMS AND CONCEALED WEAPON PERMITS

See summary under Criminal Justice/The Courts

FLAGS FLOWN AT HALF-STAFF ON THE STATE CAPITOL BUILDING

This bill provides that the flags atop the State Capitol Building must be flown at half-staff for a period of thirty days from the date of death of the President or a former President; for a period of ten days from the date of death of the vice president, the Chief Justice, or a retired Chief Justice of the United States Supreme Court, or the Speaker of the United States House of Representatives; and from the date of death through the date of internment of an associate justice of the United States Supreme Court, or a secretary of a federal executive or military department, or a former vice president. Upon the occurrence of an extraordinary event resulting in death or upon the death of a person of extraordinary stature, the bill provides that the Governor may order that the flags atop the State Capitol Building be lowered to half-staff at a designated time or for a designated period of time. The bill authorizes the Governor to order the flags atop the State Capitol Building to be lowered to half-staff for the same designated time when an act of the United States Congress or a presidential order is issued to lower flags to half-staff over federal buildings. The bill further provides that flags atop the State Capitol Building, when flown at half-staff must first be hoisted to the peak for an instant and then lowered to the half-staff position. The flags must be again raised to the peak before they are lowered for the day.

STATUS: Having been approved by the General Assembly, ***H.4319*** *(Act 262) was signed by the Governor on March 29.*

GAME ZONE CONSOLIDATION

Currently, South Carolina is divided into eleven game zones. This legislation reduces the number of game zones from eleven to six. Along with the revised boundaries of the game zones, the legislation amends various game hunting seasons and requirements.

STATUS: Having been approved by the General Assembly, ***H.4572*** *(R315) has been ratified.*

GREEN BUILDING STANDARDS FOR STATE CONSTRUCTION PROJECTS

See summary under Conservation/Energy

ILLEGAL ALIENS AND PUBLIC EMPLOYMENT ACT

The House of Representatives approved and sent to the Senate **H.5057**, the "Illegal Aliens and Public Employment Act." This legislation requires all public employers

(departments, agencies, or instrumentalities of the State and its political subdivisions) to register and participate in the federal work authorization program which is operated by the United States Department of Homeland Security to verify information of newly hired employees pursuant to the Immigration Reform and Control Act of 1986. The legislation provides that a public employer may not enter into a contract for the physical performance of services within this State unless the contractor registers and participates in the federal work authorization program to verify information of all new employees. The legislation provides that a contractor or subcontractor may not enter into a contract or subcontract with a public employer in connection with the physical performance of services within this State unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.

*STATUS: On May 5, 2006, the House of Representatives passed **H.5057** and sent the bill to the Senate where it has been referred to the Judiciary Committee.*

"JUST COMPENSATION FOR LAND USE RESTRICTIONS ACT"

The legislation provides that if a public entity enacts or enforces a land use regulation that restricts the use of private real property and has the effect of reducing the fair market value of the property, the owner of the property must be paid just compensation.

This requirement for just compensation does not apply to a land use regulation: (1) restricting or prohibiting an activity recognized as a public nuisance by law; (2) restricting or prohibiting an activity for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations; (3) to the extent the land use regulation is required to comply with federal law; (4) restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; (5) enacted before the date of acquisition of the property by the owner; (6) regulating hunting, fishing, trapping, releasing of animals, and protecting fish and wildlife and their habitats; (7) governing the establishment and maintenance of private driveways; (8) that are adopted as part of an unincorporated area's initial adoption of land use regulations; (9) enacted for the operation or protection of a military institution or facility; (10) restricting or prohibiting an activity for the protection of a church or other religious institution; or (11) restricting or prohibiting an activity for the protection of a property that is listed in the National Register of Historic Places.

Before commencing an action for just compensation, a property owner must submit a notice of claim and demand for pre-litigation mediation. If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner must commence an action for compensation in the circuit court within thirty days. Instead of payment of just compensation, the public entity responsible for enacting the land use regulation may modify, remove, create a variance, or not apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property. If a claim is not paid within two years, the owner must be allowed to use the property as permitted at the time the owner acquired the property.

*STATUS: **H.4503** received third reading in the House on March 16. The bill was recalled from the Senate Judiciary Committee on May 18 and is pending on the Senate calendar.*

LAW ENFORCEMENT TRAINING COUNCIL

See summary under Criminal Justice/The Courts

PROPERTY TAX REFORM/SPENDING LIMIT

See summary under Tax Relief

RIGHT TO FARM BILL (NUISANCE SUITS RELATED TO AGRICULTURAL OPERATIONS)

See summary under Business/Economic Development

SPENDING LIMIT

See summary under Appropriations

TAX RELIEF

ALTERNATIVE FUELS AND FUEL EFFICIENCY INCENTIVES

See summary under Conservation/Energy

MOTION PICTURE TAX REBATES

See summary under Economic Development

PRIVATE PASSENGER MOTOR VEHICLE DEFINITION (ADDITION OF MOTORCYCLES)

The House approved and sent to the Senate **H.4307**. This bill incorporates by reference for property tax purposes the definition of "private passenger motor vehicle" used in the motor vehicle registration and licensing law. The bill increases the weight limit for pickup trucks for purposes of this definition, and also provides that the definition is deemed to include motorcycles.

*STATUS: **H.4307** was approved by the House and received a favorable report from the Senate Finance Committee on May 17. The bill is on the Senate calendar, pending second reading.*

PROPERTY TAX REFORM/SPENDING LIMIT

The House approved comprehensive property tax reform legislation in the form of **H.4449** (enabling legislation) and **H.4450** (proposed constitutional amendment).

As last approved by the House, **H.4449**:

- Eliminates the municipal, county and school operating property tax on owner-occupied homes, leaving the portion of property tax attributable to bonded indebtedness in place;

- Imposes an additional 2.1 cents sales tax, broken down as follows: School Operating: 0.8 cent sales tax increase; County Operating: 0.5 cent sales tax increase; City Operating: 0.2 cent sales tax increase; Remove original five cents sales tax on food: 0.6 cent sales tax increase.

- Reduces the sales tax on unprepared food to one percent;

- Changes the reassessment method so that property is only reassessed when ownership is transferred or undergoes substantial improvement; spouse-to-spouse transfers and other types of court-ordered transfers are exempt;

- Gives local governments the option to initiate pro-rata taxing on property transfers and improvements beginning the month after completion (issuance of certificate of occupancy);

- For the year 2007, cities and counties must be reimbursed dollar for dollar for the property taxes collected by them from owner-occupied residential property for the year 2006, plus any additional amounts reimbursable for the property tax that would be payable otherwise to that taxing entity with respect to owner-occupied residential property located in a redevelopment project area pursuant to the tax increment financing (TIF) law for cities, counties, or redevelopment authorities. This reimbursement is for county operating purposes, but does not include payment of general obligation debt. For 2007, school districts must be reimbursed dollar for dollar for the property taxes collected by them from owner-occupied residential property for the year 2006 for school operating purposes, but not including payment of general obligation debt.

  Local Governments:
  In subsequent years, their state support will grow by the CPI plus population growth in the county.
  School Districts:
  In subsequent years, the total amount of state support will grow by the CPI plus population growth for the state. The growth will be distributed to the school districts per weighted pupil unit each year. For the purposes of growth in the property tax replacement funding an add-on weighting of .2 will be used for students in poverty.

- Beginning in 2007, property taxing entities are allowed to increase their millage for general operating purposes, by an inflation factor equal to the Consumer Price Index

(CPI) increase, plus population growth. Exceeding this cap requires a 75% vote of the governing body. If an entity does not use all of its allowed increase in one year, the unused portion may be carried forward for two years.

- A property taxing entity shall be reimbursed for local option sales and use tax revenues collected by the entity which were authorized before January 1, 2007, and used to provide tax credits for owner-occupied residential property against property taxes imposed in that jurisdiction.

- A spending limit is imposed on state appropriations. Appropriations are limited to the greater of the prior year's appropriation increased by personal income growth for the most recently completed calendar year or the prior year's appropriation increased by population growth in the state plus increase in the consumer price index. This spending limit may be overridden by a 2/3 recorded roll-call vote of the membership in each branch of the General Assembly.

- A spending limit is also imposed on local governing bodies, except that population growth is defined as population growth within that jurisdiction. Appropriations are limited to the greater of the prior year's appropriation increased by personal income growth for the most recently completed calendar year or the prior year's appropriation increased by population growth in the state plus the Consumer Price Index. For a school district, the population increase is calculated by the increase in student enrollment for the most recently completed school year. For all other entities, population growth is defined as population growth within its jurisdiction.

- These spending limits work in conjunction with the millage limitations so that if more revenue comes in than expected, the amount of the excess revenue the local government can retain is limited.

- Beginning in 2007, the State Board of Education, in determining the minimum education program designed to meet students' needs, may only consider factors required by law or which directly affect classroom effort, and the local maintenance of effort must be based on these determinations.

- The minimum state funds a district shall receive in any year is forty percent of the applicable year's base student cost.

- All sales tax exemptions will be studied every 10 years starting in 2010. The Joint Sales Tax Exemption Review committee is established for this purpose and is required to report its findings to the General Assembly, recommend changes, and publish a comparison to other states.

As last approved by the House, **H.4450** (proposed Constitutional amendment) defines "fair market value" as the fair market value when ownership of the property last was transferred, increased by the fair market value of improvements to the property since ownership of the property last was transferred. The House-passed version of **H.4450** also proposes to amend the Constitution so as to provide that the General Assembly is allowed to define by statute an ownership transfer and an improvement to real property, and to provide a base year for determining initial fair market value. The House-approved version of **H.4450** also proposes to amend the Constitution so as to provide for an

additional homestead exemption, over and above the current exemption, equal to 100% of the fair market value of an owner-occupied home. This exemption does not apply to property taxes levied to repay general obligation debt.

The Senate amended **H.4449** so as to provide a plan which allows counties to vote by referendum to increase the sales and use tax in order to fund property tax relief on all classes of property, including second homes, rental property, commercial and industrial, and other personal property such as boats and motorcycles. Both the county operation and school operation portions of property tax bills would be reduced under the Senate-approved plan. The Senate amended **H.4450** so as to propose amending the South Carolina Constitution to allow counties to impose a sales and use tax as provided in the Senate version of **H.4449**. The Senate version of **H.4450** also proposes to amend the South Carolina Constitution so as to impose a 15% limit on the taxable value of real property over a five year period. This limit would apply to both industrial and commercial property. The proposed amendment also gives counties the ability to determine whether or not to maintain current reassessment methods.

*STATUS: **H.4449** and **H.4450** were approved by the House and Senate as summarized above. Both bills are currently being considered by a House-Senate conference committee.*

"SOUTH CAROLINA ECONOMIC DEVELOPMENT INCENTIVE ACT"

See summary under Business/Economic Development

"SOUTH CAROLINA RETAIL FACILITIES REVITALIZATION ACT"

See summary under Business/Economic Development

TARGETED JOBS TAX CREDIT

See summary under Business/Economic Development

TAX CREDIT FOR HYBRID VEHICLES

See summary under Tax Relief

WORKERS' COMPENSATION

The House of Representatives approved and sent to the Senate **H.4427**, a bill revising the workers' compensation system, which provides disability payments for workers who sustain injuries in the course of their employment. The legislation provides that the burden of proof in a workers' compensation claim is on the employee. Causation must be proven with expert medical evidence stated to a reasonable degree of medical certainty in all claims except those pertaining to an occupational disease or a change of condition. In claims for an occupational disease, the employee must establish that the occupational disease arose directly and naturally from hazards peculiar to the particular

employment by clear and convincing medical evidence. In claims for a change of condition, the employee must establish by clear and convincing evidence that there has been a physical change of condition caused by the original injury subsequent to the last payment of compensation. The legislation establishes a definition for an expert witness.

The burden of proving an injury or personal injury is the greater weight or preponderance of the evidence and is upon the employee. Causation of a medically complex condition must be supported by qualified expert testimony. The Workers' Compensation Commission is specifically not precluded from considering lay testimony or other evidence in conjunction with expert testimony in determining the cause of an injury. Any stress, mental injury, heart attack, stroke, embolism, or aneurism arising out of employment that is unaccompanied by other physical injury is not considered a personal injury unless it is established by clear and convincing medical evidence that the stressful employment conditions were extraordinary and unusual in comparison to the normal conditions of the particular employment. Also, no recovery is authorized for such conditions if they are the result of events incidental to the employment like disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews or termination except if these actions are taken in an unusual manner. The legislation provides that an "injury by accident" means an injury which is not expected or intended by the worker whether or not the time or place of the occurrence is identifiable or whether or not the symptoms of the injury arose suddenly or gradually over time.

An award by the Workers' Compensation Commission granted for a set list of injuries (including disfigurement and the loss of limb, organ, or hearing) shall set forth in writing the commission's finding as to the medical impairment rating of the injured employee. Medical impairment determinations shall be based upon the most current editions of the Guides to Evaluation of Permanent Impairment published by the American Medical Association.

The legislation contains provisions geared towards combating workers' compensation fraud. The definition of "false statement and misrepresentation" is expanded to include intentional false report of business activities or miscount or misclassification by an employer of its employees to obtain a favorable insurance premium, payment schedule or other economic benefit. 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 legislation provides that a physician, surgeon or other healthcare provider may discuss and otherwise communicate an employee's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions and impairments with representatives of the insurance carrier, the employer, the employee, their respective attorney, rehabilitation professional or the Workers' Compensation Commission with the permission of the employee. The legislation defines "medical and vocational information" and provides that a health care facility shall provide such information to insurance carriers, employers, employees, their attorneys or rehabilitation professionals within 14 days of receipt of written request.

H.4427 revises the state's Second Injury Fund, an insurance program that reduces risks employers may bear for future claims from previously injured workers. The legislation eliminates most of the items in the list of covered preexisting conditions of the Second

Injury Fund so as to limit it to: (1) amputated foot, leg, arm or hand; (2) loss of sight of one or both eyes or uncorrected vision of more than 75% bilateral; or (3) ruptured intervertebral disc. The legislation also provides that the Second Injury Fund will be dissolved if the Budget and Control Board determines that paid claims of the fund are $8 million or more during the 2011-2012 fiscal year.

The legislation provides that workers' compensation provisions do not apply to a professional sports team player unless the employer voluntarily elects to be bound by them. The legislation provides that workers' compensation provisions do not apply to employees covered by the Federal Employers' Liability Act, the Longshore and Harbor Workers' Compensation Act, or any of its extensions, or the Jones Act.
Under the legislation, Workers' Compensation Commissioners are to be elected by members of the Senate and House of Representatives in joint assembly.

H.4427 requires the Department of Insurance to employ an outside actuary to perform a study determining the cost savings realized from the provisions of this act for the period January 1, 2007, to December 31, 2012, and report to the General Assembly and the Governor not later than December 31, 2006, the findings and recommendations on how to further reduce the state's workers' compensation costs.

*STATUS: On April 6, 2006, the House of Representatives approved **H.4427** and sent the bill to the Senate where it has been referred to the Judiciary Committee.*

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