South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

Vol. 2 May 21, 1985 No. 20

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Legislative Update

Proposed For Special Order

The House Rules Committee has reported out three resolutions to set bills for special order consideration. Debate was adjourned on all three resolutions on May 16. The bills which would be set for special order are the following.

Landlord/Tenant (H.2119). This bill would regulate the renting and leasing of residential dwelling units in South Carolina by setting forth the respective rights and responsibilities of both landlords and tenants. The stated underlying purpose of the bill is "to simplify, clarify, modernize and revise" laws governing that relationship, and "to encourage landlords and tenants to maintain and improve the quality of housing."

The legislation would cover security deposits, including the landlords right to use them to repair damage by the tenant; in turn, the tenant would have the right to be given written notice of such actions.

A landlord would be required to comply with housing codes; keep the premises in a fit and habitable condition, including maintenance of electrical, plumbing, sanitary, heating and air-conditioning systems; and provide running water.

A tenant would have to obey all obligations imposed on tenants by building and housing codes; keep the dwelling unit clean; dispose of garbage and other waste in a clean and safe manner; use all systems in a proper manner; and not disturb other tenants.

Regional Transportation Authorities (RTAs) (S.246). This bill would govern the creation and operation of regional transportation authorities (RTAs).

In order for an RTA to be created a plan would first have to be drafted showing the proposed service area (population of at least 50,000); the service method; capital and operating costs for the first five years and how any local money will be raised; and where money for the first year capital costs and operations will come from.

The general governments in the transportation area would have to agree to create an RTA and to approve the plan. Finally, the plan would have to be submitted to a public vote. The proposed local financing method would have to be voted on during this election.

The Governing Board of an RTA would be appointed by the governing bodies of the counties and municipalities in the service area. Each government would be guaranteed at least one member on the Board; other seats would be determined by population. Up to three members could be appointed by the Legislative Delegations from the counties involved. Terms would be for three years, and would be staggered so one-third of the Board was changed every three years.

Two funding methods are possible. A vehicle registration fee could be imposed on motor vehicles by counties and municipalities; the amount of this fee would have to be spelled out in the plan proposed to create the RTA. The second method is a public transportation tax millage which could be levied by the cities and counties and rebated to the RTA. Once again this would have to be explicitly outlined in the original proposal, and voted on by the public.

Education Requirements for Insurance Agents (H.2384). This bill would require insurance agents to complete 40 classroom hours, or the equivalent, in insurance courses approved by the Insurance Commissioner; and to have one year of insurance underwriting or marketing experience as an employee of an agent or insurance company. As amended the bill would not apply to agents licensed for five years or more, or those selling such kinds of insurance as credit life, automobile physical damage, or mortgage guaranty.

Set For Special Order

Already on special order are House bills H.2561 (income withholding for child or spouse support); and H.2266, dealing with tort claims against the state and its subdivisions.

Income Withholding (H.2561). Legislation passed by Congress last year requires states to enact comprehensive child support enforcement laws which must go into effect by October 1, 1985.

As originally proposed, this bill would authorize the Clerk of Court to send a notice to the delinquent obligor (the person paying support), telling what monthly obligations have been set by the court; the amount of payments in arrears; and the amount of income to be withheld. The notice also states that the obligor's employer will be contacted to withhold payment. The court has thirty days to hear this petition and 45 days to decide on it.

The Clerk sends a message to the person's employer, ordering him to withhold one month's support obligation (which may be spread over several pay periods); and withhold an additional amount to begin paying the arrears owed. Employers would be allowed to deduct a handling fee. Withholding can be terminated after three years, if there are no arrears, and the obligor demonstrates an ability to continue support payments. A notice to the employer to withhold wages stays in effect until further notice from the Clerk.

Tort Claims/Sovereign Immunity (H.2266). A recent state Supreme Court ruling struck down the principle of "sovereign immunity"--that is, that the state cannot be sued for injuries due to the negligence of its agents. This bill seeks to put some order into the processing of tort claims against the state.

When Would Governments NOT Be Liable?

The legislation specifically exempts the state and its political subdivisions from liability for losses caused by action or inaction in a number of particular situations. These are all connected with the operation of government as government. Examples are:

Normal government operations: Legislative or judicial activities, or administrative activities relating to them; the exercise of discretion or judgment by government employees; events that take place during regular government operations, such as the assessment or collection of taxes; licensing and regulatory procedures; and the conduct of elections;

Special government operations: Extraordinary conditions over which governments have little or no control; for example, the failure to provide adequate police or fire protection during times of civil disobedience; or snow or ice conditions, except where they are caused by employee negligence; absence, poor condition or malfunction of traffic and road signs, unless the problem is not corrected within a reasonable time; (However, nothing in the bill implies that the government can be held responsible for failing to put the signs up in the first place!)

Situations covered by other statutes: Any claims covered by Workers' Compensation Act; decisions to release prisoners; activities of public hospitals; accidents involving public school buses.

The bill also specifically notes that there is no implied consent for the state to be sued in any state court outside South Carolina.

What WOULD Government Be Liable For?

Aside from these particulars, the bill states that the state, its agencies and political subdivisions are "liable for its torts in the same manner and to the same extent as a private individual under like circumstances..."

Claims, Liability and Insurance

Cases may be filed against the Budget and Control Board, or with a particular agency, or against a political subdivisions--depending on which body was supposedly responsible for the alleged harm. When there is doubt, the claim can be filed with the Attorney General. Any action for damages in a court of law must be filed within two years of the loss or action is "forever barred." The proper jurisdiction is the circuit court in the county where the act or omission took place. The government's defense is to be conducted through the Attorney General's Office. The limit for losses arising from a single occurrence is $500,000. No punitive damages are allowed. Governments could buy liability insurance.

Interstate Banking Case Reaches U.S. Supreme Court

As reported in issue No. 12 of the *Legislative Update,* (March 26, 1985) the United States Supreme Court agreed to hear arguments in the case of *Northeast Bancorp, Inc. v. Federal Reserve Board.* The suit claims that the Federal Reserve was wrong to permit a merger between a Massachusetts and Connecticut bank under a regional compact, because banks whose "home bank" was not in a participating New England state would not be allowed to enter the territory. A New York bank, for example, could not enter the New England market. At issue was whether such a regional interstate banking compact is lawful under federal law and the Constitution.

The ruling could have a major impact on such interstate compacts. There are currently 26 states which provide for some form of interstate banking, and 10 states which limit interstate banking on the basis of reciprocal, regional pacts. Those states: Massachusetts, Connecticut, Florida, Kentucky, Maryland, New York, Rhode Island, South Carolina, Utah, and Virginia.

Key to the Issue: The Douglas Amendment

A section of the Bank Holding Company Act, known as the Douglas Amendment, says that the Federal Reserve Board may not approve a bank's application to acquire a bank in another state, unless that state has passed a law "specifically authorizing" such acquisitions. The Amendment is silent as to whether states can impose restrictions--for instance, that the acquiring bank must have its home base in a state with a reciprocal interstate banking agreement.

Compacts Impediment to Trade?

Stephen Shapiro, attorney for Northeast Bancorp, pointed out that the regional compact favored banks from participating New England states, but excluded New York banks. This impeded interstate trade--a violation of the Commerce Clause of the U.S. Constitution. Such interstate agreements were violations of the Compact Clause of the Constitution because they favored certain states to the detriment of others, and had not been specifically approved by Congress.

Shapiro argued that states were authorized by the Douglas Amendment to remove bans on interstate banking, but they had to do so on a uniform basis; they could not "pick and choose" which states to include, which to exclude. He maintained that the language of the Douglas Amendment was too vague to be interpreted as granting the "pick and choose" power to states. It should be presumed that states would retain their equal status.

Control Given to States?

Solicitor General Lee argued in opposition to Shapiro that by passing the Douglas Amendment Congress had turned over control of interstate banking to the states. The issue was not one of constitutionality, but flexibility: just how much control had Congress given to the states? According to Lee, Shapiro's argument would allow states only two options: no interstate banking at all, or wide-open interstate banking. Could this really have been the intent of the legislation? Were the states not allowed to seek a middle ground more advantageous to themselves? "We argue that states are allowed to do what is best for the state," Lee affirmed.

Harvard Law Professor Lawrence Tribe supported this line of reasoning. He said that Congress could have put any number of limitations in the Douglas Amendment; but it chose not to. Instead it had only one restriction: states had to specifically authorize interstate banking.

And Now the Wait

The eventual fate of regional interstate banking compacts will hinge upon two factors: any upcoming Supreme Court ruling, and possible Congressional action. If the Court fails to provide clear guidance in this area, it may be necessary for Congress to redraft the Douglas Amendment in more specific and definite language.

Information gathered from the U.S. Law Week, May 7, 1985; State Government News, May, 1985; and Research Office files.

Infrastructure:
Real Problems, Possible Solutions

Background

According to a number of observers, America's infrastructure--the vast network of roads, bridges, sewers, rails and mass-transit systems--is heading toward collapse. The decay of major elements of the U.S. infrastructure has become a major problem at all levels of government. Despite the increase in the federal gasoline tax in 1983, funding for public works is insufficient and most legislators seem unwilling to submit tax increases to the public.

The decay has affected all areas of public works, including interstate and urban roads, bridges, sewage systems, mass transit, and dams.

What Happened?

According to an article in *The Futurist*, there are several factors which have contributed to the erosion of the infrastructure in the U.S.:

* Aging and overload or the physical structures themselves.
* General resistance of Americans to more taxes.
* High costs of money and worsening of economy especially during the late 70s through the mid 80s.
* The changing role and emphasis of the federal government in financing projects.
* The complex and often lengthy process for assessing needs and allocating funds for public works.

Another major factor in the decay of the American infrastructure is simply the fact that much of it was installed a long time ago--close to 100 years in some cases. Some communities still use bridges constructed before the turn of the century, and others get their water from wooden conduits installed decades earlier. In 1982 an 80-year-old earthen dam burst in Colorado, sending a wall of water through the town of Estes Park; four people were killed, and property damage from the flood ran to $21 million. In New York City, streets that engineers claim have about a 20-year life are being replaced at the rate of once every 700 years. The Interstate Highway System that was constructed primarily in the 1950s was designed to have a life span of 25 years.

Many of the bridges, roads, and sewage systems were built to carry far lesser loads then they are made to carry now. For example, the Southeast Expressway to Boston, constructed in 1959, was designed to handle 75,000 cars daily, but in 1984 it was carrying 150,000 per day.

The authority for repair and maintenance of public facilities around the U.S. resides with over 100 federal agencies, the 50 states, more than 3,000 counties, and thousands of local agencies.

This divided authority is one primary reason why the nation does not have a comprehensive inventory of its public facilities and has no real assessment of their condition.

How Bad is the Problem?

According to *The Futurist*, approximately one-forth of the U.S. interstate highway system is worn out and needs resurfacing. Twenty percent of bridges around the nation are in such a bad state that they are either restricted or totally closed. About half of the rails and roadbeds of the Conrail system are seriously decayed. Almost one-half of all the communities in the U.S. cannot expand because water and sewage systems are at, or near capacity.

In 1983 more than 40% of the federal Interstate Highway System had already exceeded its planned 25-year safe life. By 1990, three-fourths of the system will have passed that age. Ten percent was considered to be in need of immediate resurfacing. An additional 30% (12,000-plus miles) was rated in only fair condition, meaning that it is "barely adequate" to handle traffic at the 55-m.p.h. maximum speed.

The Cost of Repairs

In 1984 a report prepared for Congress' Joint Economic Committee showed that nearly $1.2 trillion is needed over the next 16 years to repair or replace the nation's roads, subways, and sewer systems. The study found that local, state and federal governments expect to have only $714 billion available for such projects--$443 billion short of what is needed. Roads and bridges are the worst problems, requiring $720 billion in repairs.

In Tennessee alone, 14,817 miles of pavement is "badly cracked, rutted or broken in most places." Maryland needs to spend $6.9 billion to fix defects in 2,152 miles of roads. Almost half of the 121,500 miles of state highways and roads in Oregon are rated poor or very poor. Florida must replace 278 bridges. Missouri has 5,447 "functionally obsolete" spans, and half of Massachusett's 5,000 bridges require substantial repairs or rebuilding. New York must replace 4,500 of its 6,500 subway cars by the year 2,000. In New Jersey, water-supply and waste-treatment systems date from the Civil War. The cost of modernizing them: $7 billion.

The Condition in South Carolina

A *Needs vs. Funds* report from the Department of Highways & Public Transportation shows that 5,425 miles of state primary and urban roads are in need of resurfacing and betterment. Two thousand ten miles of that is considered to be in "priority" need of fixing. Another 15,594 miles of state secondary roads are also in need of resurfacing and betterment. The estimated cost of these repairs is approximately $1.4 billion. Add to these figures the cost of adding lanes to other roads and bridge replacements which have also been determined to be priority needs, and the total dollars needed escalates to $4.3 billion. A highway needs study, provided by the Department of Highways & Public Transportation, recently completed for the Joint Highway Intra-budgetary Transfer Committee, indicated there is a shortfall between priority needs and funds available of approximately $1 billion.

One problem in funding for South Carolina appears to be connected with fuel consumption. About 80% of the State Highway Fund is derived from motor fuel taxes. Although annual vehicle miles of travel in the U.S. have increased, fuel consumption--because of the increase in miles per gallon--has declined since 1978. While this decline in fuel consumption is highly desirable from an energy conservation viewpoint, it has been a major cause of the relatively low rate of growth of the Highway Fund, despite the motor fuel tax increases since 1970.

What is the Effect on the Public?

Federal officials estimate that spending an added $4.3 billion on the roads and bridges most in need of repair could save 17,200 lives and prevent 480,000 personal injuries over the next 15 years. A highway rated "poor" represents more than a safety hazard. It slows traffic and beats up the vehicles that use it. The Highway Administration has found that operating costs for an average car climb 35% when it uses routes rated "poor" rather than "good". A Louisiana study found the roads so rough that the average driver wasted $97 a year in unnecessary gasoline costs. Illinois drivers pay an average of $50 a year for new shock absorbers and front-end alignments necessitated by bumpy roads.

In South Carolina, the threat of a dam bursting is quite real. According to a January *Time Magazine* article, the Army Corps of Engineers classifies 8,794 of the nation's 65,500 non-federal dams as unsafe. In 1983, they found more than half of the 809 privately owned dams in Alabama, Georgia, Florida, North Carolina, and South Carolina to be unsafe. The corps was also in the process of investigating six badly deteriorated dams near Columbia. If just one of them should fail, engineers say, hundreds of people could drown.

Problems with the infrastructure can adversely affect the economy because of the dependence of American business on public works such as roads and sewage. A survey by the Census Bureau showed that a large number of businesses view the availability of public works to be a highly important factor when deciding on plant siting and investments. Public facilities influence decisions about business locations more than local tax incentives, according to a survey by the Census Bureau.

One example of the infrastructure adversely effecting a company is the Thompson Run Bridge in Pittsburgh, Pennsylvania. When the load capacity of the bridge was reduced to five tons in 1978 the United States Steel Corp. had to detour its trucks for 26 miles, adding $1.2 million a year to its operating costs.

Funding Possibilities

The major source of funding for reconstruction work will be the money raised by the higher gas tax. However, as Washington Highway Lobbyist Donald Knoght said in a 1983 *Time Magazine* article, this money is only "a spit in the ocean." The money raised by the nickel gas tax is distributed by a complex formula that tries to assess each state's need, population, land area and readiness to use the funds.

Many communities have approached the problem of funding in different ways. For instance, some towns require private developers to pay for infrastructure costs associated with their projects. Another approach is to turn over control of public facilities to independent operating authorities such as the Port of Authority of New York and New Jersey, which could then set prices and float bonds. "Planned shrinkage" is yet another strategy for areas with declining population; localities are raising money by selling off public buildings or equipment and then leasing it back.

The major problem in funding is the American public's growing disaffection with tax increases. The public has approved tax relief referenda even though it may lead to reduced services, dilapidated bridges, and holes in the streets. During the fiscal crises of the 1970s, community budgets were often balanced by canceling or indefinitely delaying needed maintenance and repairs.

In South Carolina there is currently a proposal by the Senate Finance Committee to raise the gasoline tax by 2¢ per gallon; one argument advanced in favor of this increase is the need to maintain the state's highway and road system.

S.C. Infrastructure Fund Proposed

One possible method of funding both repair work and maintenance work on the state infrastructure is the South Carolina Infrastructure Fund, proposed in H.2737.

This fund would be used to assist local governments, special purpose districts and other eligible sponsors in financing projects that are necessary for public safety or use, economic growth, or environmental protection. Typical projects might include sewage systems, sewage treatment facilities, and water supply and storage systems.

The Budget and Control Board would be in overall charge of the fund, and would develop an annual assessment of the public needs for infrastructure projects. The priority of needs would be set after recommendations from the ten regional planning councils, the Department of Health and Environmental Control, and the Water Resources Commission.

Municipalities, counties, special purpose districts and other possible sponsors would submit applications to the Board, which would decide what projects to fund, and in what order of priority. The Board would also monitor loan repayments from the project sponsors.

Where would the money come from? The Board would be authorized to issue bonds in its own name up to $100 million. It would also be authorized to issue limited obligation bonds, whose principal and interest would be payable solely out of revenues derived by the Board under the Infrastructure Act. According to plan, the Infrastructure Authority should be self supporting after it receives the authorization to issue bonds.

Conclusion

Whatever the solution is to the troubles facing the nation's infrastructure, many believe that the problem can only get worse. It would appear that we have no choice but to reorder our priorities and search for long term funding. As Sociologist Etzioni has declared: "America had a big party that lasted 30 years. We overconsumed and underinvested, and now we have to pay the piper."

In South Carolina the situation has not reached the crisis level it has in the northeast or the upper midwest. Those areas have been urbanized far longer, and far more extensively; therefore, their infrastructure is both older, and more worn by use. As the Southeast and South Carolina continue to grow, however, the long-range care of our highways, bridges, sewers and other facilities assume prime importance.

House Research Office, 5/85/5669
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