



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 made the most progress towards passage.

This report highlights legislative activity through June 13, 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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**MAJOR LEGISLATION
PASSED BY THE
GENERAL ASSEMBLY
(AS OF JUNE 13, 2006)**

APPROPRIATIONS

2006-2007 GENERAL APPROPRIATION BILL

Highlights of the House-Senate agreement on appropriations for 2006-2007 include:

STATEWIDE ISSUES

- Restored trust funds with \$174.3 million in funding;
- Required unspent revenue be deposited into a Contingency Reserve Fund currently projected at \$56.1 million;
- Utilized \$129.5 million in revenue tax relief (see **H.4449** and **H.4450**):
 - Reduced the Sales Tax on Food from 5% to 3% \$96.5 million
 - Two-Day Sales Tax Holiday after Thanksgiving \$18 million
 - Additional Property Tax Relief to Counties \$15 million
- Fully funded the General Reserve Fund at \$167.7 million (\$14.2 million increase);
- Fully funded the Capital Reserve Fund at \$111.8 million;
- Provided a 3% pay raise to state employees at a cost of \$52.2 million;
- Funded the state employee and retiree health insurance program with \$30.5 million (no increased premiums to subscribers and no changes in benefits);
- Appropriated \$760,000 to increase the Privately Operated Vehicle (POV) mileage reimbursement rate to the IRS level of 44.5¢ per mile.
- Included a proviso providing incentives for use of alternative fuels and fuel efficiency

PUBLIC EDUCATION AND SPECIAL SCHOOLS

K-12 Education

- The Education Finance Act is fully funded (\$69.5 million in new funds) to achieve a Base Student Cost of \$2,367;
- Initiated 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 (also note that **S.1026** provides \$13 million in funding in the current year to address bus fuel and replacement parts);
- \$25.6 million is appropriated for early childhood programs, of which \$23.6 million will be directed to at-risk four year olds. The proviso directing these funds (see full summary under Education) provides that full-day four-year-old kindergarten will be made available to all at-risk students in specified Plaintiff districts in the Abbeville County School District et al. vs. South Carolina lawsuit, from a combination of public and private providers. The program will be funded by the state at a cost of \$3,077 per child. A transportation allowance and start-up grants for new classrooms are also provided. If available funds allow, the program may be expanded to the other Plaintiff districts in the lawsuit. The remaining \$2 million is appropriated to expand the 0-4 year old program used by the Georgetown County First Steps program to other areas of the state.
- Fully funded the growth in the National Board Certification program (\$6.1 million);
- The assessment program received an additional \$2.9 million;

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- An additional \$5 million is appropriated for instructional materials;
- The Education and Economic Development Act (EEDA), which passed the General Assembly last year, is fully funded at \$14.9 million. The EEDA focuses the high school curriculum into sixteen different career clusters. Interest assessments, academic assessments and career development counselors will be made available to assist students in choosing a cluster, and these career clusters will be complemented by programs at the state's colleges and universities, as well as at the Employment Security Commission.
- The Student Health and Fitness Act, passed by the General Assembly last year, is funded at \$4.1 million. This Act increases access to physical education classes; provides increased instruction in health, safety and nutrition; and provides for an individual physical fitness assessment for each student.
- The High Schools that Work program received an additional \$1.1 million to increase the number of sites from 100 to 140. The goal of this program is to increase the number of students who meet reading, math, and science performance goals and who complete an upgraded academic core with a career focus.
- Adult Education received an additional \$1.6 million.
- High School Reading received an additional \$500,000. This is an expansion of programs which target the lower grades to ensure that the focus on reading skills is maintained throughout the high school grades after PACT testing.
- The Governor's School for Science and Mathematics and the Governor's School for Arts and Humanities each received \$2.5 million in non-recurring funds for capital projects.
- The Educational Television Commission received \$1.4 million in non-recurring funds for Education Satellite Services.

HIGHER EDUCATION, TECHNICAL AND CULTURAL AGENCIES

Higher Education

- LIFE, HOPE, and Palmetto Fellows Scholarships are fully funded; provided total funding of \$45 million for the Lottery Tuition Assistance Program; Tuition Grants Commission received \$7.7 million and any excess revenue after the first \$11.5 million of unclaimed lottery prizes.

Commission on Higher Education:

- \$1.4 million to support requirements of the Education and Economic Development Act of 2005;
- \$600,000 to fund expansion of the Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP) to serve students in schools along the I-95 corridor;
- \$2 million for the Statewide Electronic Library, a collaborative effort among public and private higher education institutions which allows S.C.'s public and private higher education libraries to share academic collections statewide.

Institutions:

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A number of Higher Education institutions received a total of approximately \$11.6 million to address parity and mission resource requirement needs. Some additional projects funded include:

University of South Carolina -

- \$2 million for development of research projects;
- \$4 million to fund the Faculty Excellence Initiative, an institutional effort to recruit new tenure-track faculty across a wide spectrum of academic disciplines.

Clemson -

- \$2 million for the International Center for Auto Research (ICAR), a research and educational center involving a partnership between Clemson, the State of South Carolina, and the automotive industry.
- \$4 million to fund the Academic Road Map Project, an institutional effort to replace faculty entering retirement and attract additional faculty over the course of several year, allowing for student-faculty research opportunities.
- \$1.3 million to fund the Call Me Mister program, a program to recruit, train, certify, and secure employment for African-American males as elementary teachers in State public schools.

MUSC

- \$500,000 to purchase a new mobile health unit for breast cancer screening services.
- \$7 million toward construction of a new building for the College of Dental Medicine.

Citadel - \$1.5 million for repairs for the infirmary.

University of Charleston- \$2.2 million to continue expansion of academic programs and \$4 million for renovations.

Francis Marion- \$685,000 to continue expansion of academic programs and \$7 million for the Center for Performing Arts.

SC State- \$2.5 million for deferred maintenance projects; \$748,365 to continue programs with the Transportation Center; and \$300,000 to fund the Obesity Program.
Winthrop- \$6.7 million for repairs to Tillman Hall;

Board for Technical and Comprehensive Education -\$4.2 million to fund the Center for Accelerated Technology Training, a collaborative effort with the Department of Commerce and the 16 Technical Colleges, to develop customized training programs, bring jobs to the state, and upgrade the existing workforce;

Cultural Agencies

Department of Archives and History: \$103,417 for rent and operating expenses; \$134,000 for operation of the electronic records and reference room.

State Library: \$250,000 for DISCUS enhancements, \$100,000 for State Aid to County Libraries, and \$110,000 for statewide Public Library Construction Grants;

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State Museum: \$5 million to fund the state match for construction of an astronomical Observatory, multimedia Planetarium and 4-D Interactive Theater;

Arts Commission- \$1.2 million to fund capital improvements and enhancements for arts facilities statewide; \$585,000 to fund the grants program;

Provisos:

Provisos were adopted to allow fee waivers up to four percent of the student body for law schools and to allow out-of-state high school students who are South Carolina residents to be eligible for scholarships based on in-state criteria.

HEALTH, HUMAN SERVICES AND MEDICAID

Department of Health and Human Services:

- \$109 million for the Medicaid program, includes: \$66 million for Medicaid growth; restoration of \$12 million in lost federal funds; \$9 million for Medicare premium increase;
- \$18.2 million for Targeted Case Management;
- \$2 million for Prevention Partnership grants with \$1 million for HIV prevention;
- \$1 million for Breast Cancer Screening and Treatment;
- \$5 million for Optional State Supplement-Long Term Care;
- \$1.9 million to increase the Personal Care Rate by \$2 per hour, which increases the reimbursement to personal care aides for the elderly;
- \$1.2 million to increase Community Long Term Care by 500 Slots;
- \$9 million for nursing home bed rate increases;
- \$6.5 million for rural hospital grants;
- \$3 million for physician reimbursements;
- \$180,900 for a \$1 nurse rate increase;
- \$1 million for Federally Qualified Community Health Centers;

Department of Health and Environmental Control

- \$2 million for Trauma Centers;
- \$5 million for Beach Renourishment;
- \$2.8 million for Competitive Grants;
- \$3.9 million for Critical Public Health Staffing;
- \$358,097 is provided for Rape Violence Prevention;
- \$852,411 for SC Birth Defects Program;
- \$2.4 million for vaccine purchases to allow two vaccines recently approved by the Center for Disease Control to be provided for underinsured children and adolescents;
- \$750,000 for the Hemophilia Assistance Program;
- \$2 million for Smoking Cessation and Prevention;
- \$1.1 million for the BabyNet program (early intervention for infants with developmental delays);

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- Proviso 9.51 (Hazardous Waste Contingency Fund) allows the agency to retain \$400,000 to help with the clean up of hazardous waste in South Carolina.

Department of Mental Health

- Additional funding of \$6.5 million for 99 Critical Hospital Beds;
- \$1.5 million for 100 beds for the expansion of Toward Local Care (TLC). This will keep patients in local community centers as opposed to placing them in institutions.
- Additional \$6 million for the Veterans Nursing Homes in Colleton County;
- Capital Requests:
\$9.7 million allocated; which is comprised of Patient Care Buildings Safety Renovations - \$4.4 million, Crafts Farrow Renovation for Forensic Capacity - \$2.6 million, Bryan Renovation for Crisis Capacity - \$1.3 million, and Charleston Center Administration Addition - \$1.5 million;
- \$595,000 to the Alzheimer's Association for Care Giver vouchers when dealing with Alzheimer patients;

Department of Disabilities and Special Needs

- \$1.9 million for BabyNet Early Intervention Services;
- \$9.2 million for the residential waiting list to serve 500 mentally challenged individuals around South Carolina;
- \$2.4 million to increase Local Board Payment Rates in order to provide sufficient funding to the providers of services, so that the actual cost of care can be covered;
- \$6.2 million for Crisis Prevention to support services for individuals that remain at home as opposed to more costly out of home placements.
- \$3 million for the Pervasive Developmental Disorder Pilot Project, aimed to address developmental needs of autistic children in South Carolina;

Vocational Rehabilitation

- \$659,629 State/Federal Fund Match - Direct Client Services; Vocational Rehabilitation receives a 4:1 federal match on these dollars;
- \$575,000 for roof repairs;

Department of Alcohol & Other Drug Abuse Services

- \$1.6 million for Aid to Other State Agencies (Medicaid Match) to fund local providers;
- \$500,000 for Community Based Treatment Services for the care of people dealing with addiction;
- \$6.2 million to fund the Phoenix Center (located in the upstate to serve those with addiction issues);

Department of Social Services

- \$16.5 million for the Child Support Enforcement Computer System, a federal mandate that allows the agency to comply with national standards;
- \$14.3 million for Child Welfare Services Program Improvements;

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- \$1 million for the Boys & Girls Clubs of South Carolina;

Commission for the Blind

- \$200,000 for Children's Services;
- \$500,000 for Vocational Rehabilitation to expand training opportunities for severely visually impaired individuals;

ECONOMIC DEVELOPMENT, NATURAL RESOURCES AND TOURISM

- The Forestry Commission received \$2 million for "mission critical functions;"
- The Department of Agriculture received \$600,000 for marketing South Carolina's agriculture products; \$750,000 for the Pee Dee Market expansion; and \$200,000 for the Jasper County Farmers Market. A new proviso allows the department to use \$850,000 for the construction of a new marketing services building at the new State Farmers Market, and to use \$875,000 for the construction of a replacement Metrology Lab building at the new State Farmers Market.
- Clemson PSA received \$1.3 million to support assistance to farmers for row crops, forestry, and animal research to grow agricultural production in South Carolina. This funding also supports animal health programs- monitoring, detection and study of animal disease outbreaks.
- \$600,000 is provided for the agency's Biotechnology Research Initiative, and \$400,000 is provided for Genetics and Human Nutrition. \$1 million is appropriated for the Edisto Research and Education Center.
- South Carolina State University PSA received \$457,000 to maintain the Federal matching funds of \$3 million;
- Parks, Recreation and Tourism and related programs received \$20 million in new funding. The agency received \$7.1 million for advertising and an additional \$500,000 for international advertising;
- \$3 million is provided in the agency's budget for the competitive grants program;
- Charlestown Landing received one-time funds of \$7 million for a historic village, visitor community building and other improvements.

Department of Commerce received a total of \$16.1 million.

- \$700,000 for agency operations to replace carry forward funds; \$256,000 for additional personnel for Business Development;
- CDC Initiative- \$1 million for community based non-profits that are focused on improving quality of life and creating economic opportunities in low income communities.
- Governor's Closing Fund for Competitive Recruitment- \$7 million to be used for attracting business to the state (funds can be used for relocation costs, land acquisition, on-site improvements, and fees).
- Competitive Enhancements- \$2.3 million to strengthen recruiting and retaining industries and jobs;
- \$448,870 to assist with start-up of a statewide Hydrogen Fuel Cell Coalition that will develop a cluster and niche market for hydrogen fuel cells in South Carolina (coalition includes USC, Clemson, SC State, Savannah River National Lab, and the Center for Hydrogen Research);

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- Capital Access Program (CAP) received \$3 million to provide financial institutions a flexible tool to make business loans that are riskier than conventional loans. The Competitiveness Council received \$400,000.

State Ports Authority: \$2.4 million is appropriated for harbor dredging. \$5 million is provided in the Department of Transportation section for the new port access road to I-26.

LAW ENFORCEMENT AND CRIMINAL JUSTICE

Judicial: \$100,000 in additional funding to allow the court to hire more interpreters. A \$1 million increase in the travel budget is appropriated for Family and Circuit court judges, who travel around the state. An additional \$1.2 million is appropriated for technology upgrades. \$500,000 is appropriated for the Centers for Fathers and Families to help non-violent offenders who are unemployed or underemployed fathers find employment to fulfill court mandated responsibilities.

Administrative Law Judges: \$151,628 increase in personal service;

SLED: \$1.1 million is provided for ten new vice officers, due to the increase in manufacturing and distribution of methamphetamine in South Carolina. \$1.3 million is appropriated to provide for criminal abuse investigators for the elderly at residential care facilities;

\$1.9 million is provided for new datamaster equipment to assist in DUI investigations. \$250,000 is provided for user fees for the 800 MHz radios used by law enforcement statewide.

Attorney General: \$472,000 is provided to purchase a new computerized filing system. \$137,800 is provided to hire two new attorneys - a Gambling Prosecutor and an Opinions Attorney.

Prosecution Coordination Commission: \$2.2 million is provided to appoint a solicitor to handle Criminal Domestic Violence cases in each county. An additional \$1.8 million is provided for Victim and Witness assistance programs.

Indigent Defense: \$500,000 is provided for information technology upgrades; \$700,000 is provided for new attorneys and operational increases; \$500,000 is provided for the conflict fund (pays private attorneys assigned to cases by the court); \$460,000 for defense of criminal domestic violence cases; and \$1.5 million for the civil appointment fund (deals with paying court appointed attorneys in DSS cases dealing with abuse and neglect, as well as guardian ad litem cases).

Department of Corrections:

- \$1.7 million is provided to open a new 192 bed unit at Turbeville.
- \$5.5 million to provide a salary adjustment for certain employees who have direct daily contact with inmates;
- Funding for facility maintenance is provided at \$2.5 million.
- \$1.8 million is provided to continue funding substance abuse programs.

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- \$600,000 is provided to assist in the construction of multi-purpose buildings where church services and other activities will be held. Private contributions have also been secured for the construction of these buildings.
- \$500,000 is appropriated for a jobs program (in conjunction with Greenville Technical College) to better prepare inmates to re-enter society.

Probation Parole and Pardon: \$2.7 million is provided to hire new FTE's for tracking sex offenders. \$200,00 is provided for sex offender monitoring equipment, and a proviso is added to allow the agency to charge offenders a maintenance polygraph fee. The agency estimates this will bring in \$25,000 in other funds.

Department of Juvenile Justice:

- \$1.6 million is provided to hire officers to supervise serious and chronic offenders and high-risk probation children.
- \$1.7 million is provided to fund the Targeted Case Management needs of the Department.
- \$1.3 million is provided to re-open one dorm for sex offenders, and \$3.2 million is provided to build a new dorm at either Willow Lane or JG Richards; \$493,000 will be used to staff a girl's transition home to help those inmates get ready for life outside of DJJ.
- \$581,160 is provided for alternative placement of youths, which will allow children that can no longer remain at home but are not appropriate to be placed at a DJJ facility, to be placed in the community. Also, \$225,000 is provided for the Juvenile Arbitration program, a community-based diversion program for first-time, non-violent juvenile offenders.
- \$160,500 is provided for the sex offender treatment program;
- The share counties have to pay the agency to house inmates has increased to \$50 but is still below what it actually costs to house an inmate each day. The \$912,500 this will generate in other funds will be retained by the agency and will be offset by a \$912,500 reduction in general funds.

Department of Public Safety:

- \$8.9 million to fund two new trooper classes;
- \$1.3 million for the advancement of troopers, to put them on the same pay level with troopers who received the pay raise last year;
- \$671,448 for Criminal Justice Academy Certification/Registrar for compliance with laws regarding law enforcement training;
- \$1 million for repairs at the Criminal Justice Academy;
- Approximately \$4 million to purchase approximately 166 new cars. An additional \$4 million will be provided to DPS;
- \$1.5 million to cover all 800 MHz user fees by the department.

Department of Natural Resources

- \$1.7 million to fund 25 new officers; an increase from \$9,000 to \$12,000 per district for aid to conservation districts;
- \$1.5 million to purchase equipment for officers. \$1.5 million for technology upgrades.
- \$600,000 to restore four historically important sites and structures.

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TRANSPORTATION AND REGULATORY

- The Workers Compensation Commission received \$1.1 million for its computer system;
- The Department of Insurance received \$1 million for an Electronic Document Image Management and Workflow system, and received \$800,000 for operations;
- The Department of Motor Vehicles is made self-supporting by a requirement that they fund their operations from fees and fine revenue (\$11,149,579). Also, DMV transferred \$4 million to DPS to replace of high mileage Patrol vehicles.
- The Employment Security Commission received \$933,189 for South Carolina Enterprise Information System implementation;
- The Department of Transportation (DOT) received \$1.3 million for Mass Transit; \$5 million for a Port Access Road for the new terminal in Charleston; \$1.5 million for road and infrastructure Improvements for Greenville, which will be earmarked for ICAR; and \$1 million for construction of the Shop Road Farmers Market Bypass.

LEGISLATIVE, EXECUTIVE, TOURISM AND LOCAL GOVERNMENT

Adjutant General:

- \$776,724 recurring and \$203,088 non-recurring funding to the State Regional District Operations Program for disaster preparation; \$100,974 to the agency's base budget for the Statewide Emergency Communications System; \$4.2 million (non-recurring) for the Statewide Emergency Communications System, Hurricane Shelter Generator Connections, Emergency Management Division- Hurricane Emergency Preparation, Planning & Response, and EMD - Dedicated Plans & Response; \$30,000 in the base for the Civil Air Patrol to fund costs of the volunteer patrol to use the 800 MHz radio system.
- Election Commission: \$3.1 million for the 2006 General Elections;
- Budget & Control Board: SCEIS statewide computer system-\$8.5 million; Office of State Budget-\$200,000 for agency accountability analysis and performance assessment; \$176,000 for Emergency Management Support; Local Government Grants Program-\$2.6 million; \$6 million non-recurring for Statehouse Complex maintenance and improvements. Funding and a proviso were also provided to reopen the National Guard Retirement System, which has been closed to new members since 1993.

*STATUS: The 2006-2007 budget was approved by the General Assembly as highlighted above, and has been ratified. The Governor vetoed **H.4810** in its entirety on June 13, 2006.*

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

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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

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The General Assembly passed and the Governor signed into law **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) and signed into law by the Governor on May 23 (Act 288).*

METHAMPHETAMINE

See summary under Criminal Justice/The Courts

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

Relating to agricultural facilities and operations, this legislation provides that State law and Department of Health and Environmental Control (DHEC) regulations pre-empt the

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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: Having been approved by the General Assembly, **S.1205** (Act 290) became law without the Governor's signature on May 30, 2006.*

“PROTECTION OF PERSONS AND PROPERTY ACT”

See summary under Criminal Justice/The Courts

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

See summary under Consumer Protection

“SOUTH CAROLINA ECONOMIC DEVELOPMENT INCENTIVE ACT”

The General Assembly approved H.**4874**, the “South Carolina Economic Development Incentive Act.” **Highlights** of this bill are as follows:

- Provides a tax credit for 25% of the costs incurred to comply with whole effluent toxicity (WET) testing;
- Single Sales Factor Ratio - Allows a taxpayer to use a single sales tax factor to determine the amount of income apportioned to South Carolina for corporate income tax purposes (current law has a double-weighted sales tax factor that requires property, payroll, and sales (doubled) to be used in determining the amount of income to South Carolina. The reduction is phased in at 20% per year over five years, beginning with tax years after January 1, 2007.

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- Allows for licensed general contractors to be included in the definition of “corporate office” for purposes of qualifying for the annual job tax credit. Credits will be calculated for tax years after January 1, 2007.
- Allows banks to receive annual job tax credits, effective upon approval by the Governor.
- Authorizes and provides for a taxpayer engaged in manufacturing, warehousing, or distribution which uses port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume, to claim a tax credit in an amount determined by the Coordinating Council for Economic Development. This credit will be provided on a “first come, first served” basis, and will allow all taxpayers who qualify to participate based on their percentage of investment to the total investment allowed. The total credit allowed to all qualified taxpayers is eight million dollars per year.
- Revises the definition of “corporate headquarters” to include regional and business unit headquarters;
- Expands job development credits to include relocation expenses associated with an expanded research and development facility to include personnel and lab/research and development equipment;
- Provides a sales tax exemption (effective July 1, 2011) for construction materials used in the construction of a single manufacturing and distribution facility with a capital investment of at least \$100 million in real and personal property in the State over an 18 month period; Provides that the sales tax rate is four percent for State Fiscal Year 2007-2008; three percent for Fiscal Year 2008-2009, two percent for Fiscal Year 2009-2010, and one percent for such sales for Fiscal Year 2010-2011.
- Reduces from \$5 million to \$2.5 million the minimum investment required to qualify for the Fee-in-Lieu-of-Taxes;
- Relaxes the minimum requirement to qualify for superfees by reducing the minimum investment required from \$400 million to \$150 million, and reducing the required jobs created from 200 to 125;
- Provides for a county as described in the bill (would relate to Orangeburg) allowing companies who have previously applied for jobs tax credits to retroactively receive those credits for this Fiscal Year and the previous Fiscal Year;
- Provides that property in an industrial development park that is titled in the name of a county is considered privately owned for purposes of exemption from regulations for certain utility services;
- Revises the definition of “qualifying service-related facility” with respect to compensation requirement for purposes of the targeted jobs tax credit;
- Adds operators of “extraordinary retail establishments” (establishments which meet certain criteria as delineated in the bill) to the list of those taxpayers who may qualify for the jobs tax credit;
- For purposes of the Tourism Infrastructure Admissions Tax, adds an aquarium or natural history exhibit, or museum located within or contiguous to an extraordinary retail establishment, to the definition of “tourism or recreational facility;”
- Authorizes the Department of Parks, Recreation, and Tourism to designate up to four extraordinary retail establishments, and provides that for purposes of this section, sales tax must be substituted for admissions tax wherever admissions

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tax appears in this Tourism Infrastructure Admissions Tax Act; Provides that for purposes of this section, additional infrastructure improvements include any aquarium or natural history exhibits or museum located within or directly contiguous to the extraordinary retail establishment which are dedicated to public use and enjoyment under terms and conditions which may be required by the municipality or county in which they are located.

*STATUS: **H.4874** was approved by the General Assembly and has been ratified. The Governor vetoed this legislation on June 13, 2006.*

“SOUTH CAROLINA RETAIL FACILITIES REVITALIZATION ACT”

The House and the Senate approved **H.3841**, the “South Carolina Retail Facilities Revitalization Act.” This bill 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 has been signed by the Governor.*

TARGETED JOBS/CORPORATE HEADQUARTERS TAX CREDIT

The House and Senate approved **H.4800**. This bill allows certain 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 and Senate and has been signed by the Governor.*

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 General Assembly included as a Part 1B proviso in **H.4810**, the 2006-2007 spending plan, incentives for use of alternative fuels and fuel efficiency. Highlights of the 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**, which was approved by the General Assembly and which has been ratified.*

TAX CREDIT FOR HYBRID VEHICLES

The House and the Senate approved **H.4312**, a bill providing tax credits on hybrid and alternative fuel vehicles. This bill provides that a resident taxpayer who is eligible for and claims the new qualified fuel cell motor vehicle credit, the new advanced lean burn technology motor vehicle credit, the new qualified hybrid motor vehicle credit based on the combined city/highway metric or standard set by federal Internal Revenue Code Section 30B, and the new qualified alternative fuel motor vehicle credit allowed pursuant to Internal Revenue Code Section 30B is allowed an income tax credit of twenty percent of that federal income tax credit.

STATUS: **H.4312** was approved by the General Assembly and has been signed by the Governor.

CONSUMER PROTECTION

"ALL-TERRAIN VEHICLE SAFETY ACT" ("CHANDLER'S LAW")

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

A person at least nine years of age but not over sixteen years of age may not operate an ATV within this State unless the person: (1) has successfully completed an ATV safety education course provided by or approved by the Department of Natural Resources and has been issued a safety certificate; or (2) is operating the ATV as part of a prescribed ATV safety education, training, and skills program and is under the direct supervision of a certified ATV safety instructor. The legislation further provides that a person sixteen years of age or younger must wear a safety helmet and eye protection while operating an ATV.

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

- It is unlawful to operate an ATV except in compliance with the local regulations and restrictions.
- A person 16 years of age or younger must be accompanied by an adult.
- It is unlawful to operate an ATV between one-half hour after sunset to one-half hour before sunrise unless it is equipped with operational headlights, and they are on.
- It is unlawful to cross an unbridged stream except at a designated ford or crossing.
- Riding in any water bodies or watercourses is unlawful.
- An ATV must have an effective muffler system in good working condition; a United States Department of Agriculture Forest Service approved spark arrester in good working condition, and a brake system in good operating condition.
- It is unlawful to operate an ATV while under the influence of alcohol or any controlled substance.
- It is unlawful to operate an ATV in a negligent or reckless manner.
- It is unlawful to operate an ATV in a manner that damages flora or fauna, roads, trails, firebreaks, signs, gates, guardrails, bridges, fencing, or other public property.

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

Violations of this legislation, unless otherwise specified, are misdemeanors punishable by a fine of not less than \$50 dollars nor more than \$200 dollars.

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The legislation also provides for the titling of ATVs through the Department of Motor Vehicles.

*STATUS: Having been approved by the General Assembly, **H.3726** (R404) was ratified on June 7, 2006. The Governor vetoed this bill on June 13, 2006.*

**“DISCOUNT MEDICAL PLAN ORGANIZATION
REGISTRATION ACT”**

See summary under Health

“HOSPITAL INFECTIONS DISCLOSURE ACT”

See summary under Health

**MOTOR FUEL DISPENSED AT UNATTENDED SERVICE
STATIONS**

This legislation provides that motor fuel may be dispensed at an unattended service station, if the dispensing device has an automatic shut-off valve that is activated when the sale of the motor fuel reaches thirty gallons. Unattended service stations dispensing motor fuel must be equipped with emergency controls pursuant to the International Fire Code. Additionally, the service station must be equipped with a fire extinguisher within seventy-five feet of the pump as required by the International Fire Code.

*STATUS: Having been approved by the General Assembly, **S.680** (R441) was signed by the Governor on June 9, 2006.*

PRICE GOUGING

The General Assembly approved **H.4316**, a bill expanding 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: The General Assembly approved **H.4316** on May 25, 2006, (R.372). On June 6, the Governor vetoed the legislation.*

SAFETY NET PROGRAMS FOR ELECTRIC AND NATURAL GAS CUSTOMERS

The General Assembly approved and the Governor signed into law H.4404, a bill concerning safety net precautions for electric and natural gas customers. The legislation requires 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 all residential customers during weather conditions marked by extremely cold or hot temperatures. The legislation also requires these service providers to establish their own written procedures for termination of service due to nonpayment for a special needs account customer at any time of the year. Under the legislation an individual qualifies as a special needs account customer by furnishing to the provider a certificate signed by a licensed health care provider that states that termination of electric or gas service would be dangerous to the health of the customer or a member of his household.

Each service provider must submit its procedures to the Public Service Commission Office of Regulatory Staff by November 1, 2006. Any subsequent revisions must be submitted semiannually by March first or September first. The procedures for termination must include the following: (1) notification procedures so that the customer is made aware of an impending termination and the time within which he must make arrangements for payment prior to termination; (2) provisions for a payment arrangement plan to enable a residential customer, that has a satisfactory payment history to pay by installments where the customer is unable to pay the full amount due; (3) a procedure to advise customers who are unable to pay the full amount due or who are not approved for a payment arrangement plan that they may contact local social service agencies to determine the availability of public or private assistance with the payment of bills; (4) a schedule of termination that takes into account the availability of the acceptance of payment and the reconnection of service; and (5) the standards for determining weather conditions marked by extremely cold or hot temperatures.

The legislation 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: The General Assembly passed H.4404 on May 30, 2006, (R.374) and the Governor signed the bill into law on June 1 (Act 313).

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

This legislation prohibits reselling tickets for admission to an event for more than one dollar above the price charged by the original ticket seller. Violations are subject to the provisions, penalties and damages of the South Carolina Unfair Trade Practices Act.

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The legislation provides an exception for an open market event ticket offered for resale through an internet website that guarantees to the ticket purchaser a full refund of the amount paid for the ticket under certain circumstances. In addition to sanctions under the South Carolina Unfair Trade Practices Act, a person who violates these provisions is guilty of misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The resale or offer for resale of each ticket constitutes a separate offense.

*STATUS: Having been approved by the General Assembly **H.4847** (R435) was signed by the Governor on June 9, 2006.*

CRIMINAL JUSTICE/THE COURTS

ANIMAL FIGHTING

Hog-Dog Fighting

Pursuant to this legislation, 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. The legislation specifically provides that the provisions of the Animal Fighting and Baiting Act do not apply to dogs used for the purpose of hunting.

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. The bill outlines provisions to protect the interests of innocent owners.

This legislation 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.

Cockfighting

Pursuant to this legislation, a person who engages in or is present at cockfighting or game fowl fighting or testing is guilty of a misdemeanor. A first offense is punishable by a fine or not more than \$1,000 or imprisonment for not more than one year. A first offense must be tried exclusively in magistrate court. A second offense or subsequent offense is a misdemeanor punishable by a fine of not more than \$3,000 or imprisonment for not more than three years. A person with a second 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.

Avian Influenza Preparedness and Testing

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All game fowl breeders and game fowl breeder testing facilities must comply with the Department of Health and Environmental Control (DHEC) and the State Veterinarian's regulations, policies, and procedures regarding avian influenza preparedness and testing. In the event of an avian influenza outbreak in South Carolina, all game fowl breeders and game fowl breeder testing facilities must allow the DHEC and the State Veterinarian to conduct avian influenza testing of all game fowl.

*STATUS: Having been approved by the General Assembly, **S.229** (R384) was signed by the Governor on June 12, 2006.*

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 legislation 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.

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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, 2006.*

FIREARMS

This legislation denies any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest. Additionally, this legislation makes changes with regards to the issuance of concealed weapon permits to qualified non-residents.

*STATUS: Having been approved by the General Assembly, **S.1261** (R390) was signed by the Governor on June 9, 2006.*

HEIRS' PROPERTY

Land that passes by intestate succession is legally owned by all the descendents in common. Any heir, regardless of his interest, can request that the land be partitioned. This request typically results in the land being sold at auction with the proceeds divided up among the living heirs.

Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common (which includes heirs or devisees), this legislation provides that the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property whether default has been entered against them or not.

The legislation has provisions in the event that the parties cannot reach an agreement as to the terms of the sale. In the event that the nonpetitioning joint tenants or tenants in common fail to pay the purchase price within the specified

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timeframes, the court shall proceed according to its traditional practices in partition sales.

*STATUS: Having been approved by the General Assembly **S.925** (Act 302) was signed into law by the Governor on May 31, 2006.*

LAW ENFORCEMENT TRAINING COUNCIL

The House and the Senate 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. The bill was vetoed by the Governor on May 24, but that veto was overridden by the General Assembly.*

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

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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

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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** (Act 275) became law without the Governor's signature on May 4, 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. This bill authorizes the lawful use of deadly force under certain circumstances 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 (1) the person is in a place where he has a right to be, including the person's place of business, (2) the person is not engaged in an unlawful activity, and (3) 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, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known the person is a law enforcement officer.

*STATUS: Having been approved by the General Assembly, **H.4301** (R412) was signed by the Governor on June 9, 2006.*

SAFE HAVENS FOR ABANDONED INFANTS ("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 legislation 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 during the hours when the facility is staffed. The legislation requires these other designated safe havens to transport the infant to a hospital.

*STATUS: Having been approved by the General Assembly, **H.4678** (R424) was signed by the Governor on June 12, 2006.*

"SEX OFFENDER ACCOUNTABILITY AND PROTECTION OF MINORS ACT OF 2006" ("JESSICA LUNSFORD'S LAW")

This legislation makes comprehensive revisions pertaining to the prosecution, conviction, sentencing and supervision of sex offenders.

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

Relating to punishment for murder, this legislation 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 legislation 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 without the possibility of parole. The legislation also 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 legislation outlines procedures that must be followed in a death penalty case under this section.

With regards to criminal sexual conduct with a minor in the second degree, the legislation includes "Romeo" language that prohibits a person eighteen years of age or less from being convicted of criminal sexual conduct with a minor in the second degree if he engages in illicit but consensual sexual conduct with another person who is at least fourteen years of age. Mistake of age may be used a defense.

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 legislation outlines certain factors that must be included in the manual.

The legislation requires active electronic monitoring of certain sex offenders and provides that sex offenders must pay for the monitoring. The legislation also outlines provisions whereby certain offenders, after ten years, may petition to be removed from electronic monitoring.

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

The legislation 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 or a delinquency proceeding in family court.

*STATUS: Having been approved by the General Assembly, **S.1267** (R447) was signed by the Governor on June 8. **S.1138** (R388) was signed by the Governor on June 9, 2006. In some instances, these two bills amend the same code sections; it is the stated intent of the General Assembly that the provisions of **S.1138** (R388) control in their entirety as to those code sections.*

"SOUTH CAROLINA CRIMESTOPPERS ACT"

This legislation establishes the South Carolina Crimestoppers Council as a nonprofit organization. The legislation outlines the duties of the council, which among other things, includes encouraging, advising and assisting in the creation of local crimestopper organizations, and certifying crimestopper organizations to receive reimbursed funds.

A court may order a defendant to repay to a crimestoppers organization or to the crimestoppers council a reward issued by either entity. The legislation outlines certain factors to be considered when determining whether the defendant must repay the award or part of the reward. Additionally, the legislation 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 legislation also provides for the maintenance and disbursement of funds reimbursed.

The legislation includes provisions for the admissibility of certain evidence, protected information, and protected identities in both criminal and civil court proceedings.

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.

The legislation 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. There are limits to the immunity, and only crimestopper organizations that are members of and in good standing with the council are the beneficiaries of the immunities outlined in the legislation.

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

*STATUS: Having been approved by the General Assembly, **H.4456** (R419) was ratified on June 7, 2006.*

"SOUTH CAROLINA UNANTICIPATED MEDICAL OUTCOME RECONCILIATION ACT" (I'M SORRY LEGISLATION)

This legislation provides that in any claim or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities, or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which are made by a health care provider, an employee or agent of a health care provider, or by a health care institution to the patient, a relative of the patient, or a representative of the patient and which are made during a designated meeting to discuss the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest. The term

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'unanticipated outcome' means the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an expected or intended result of such medical treatment or procedure. The defendant in a medical malpractice action may waive the inadmissibility of the statements.

*STATUS: Having been approved by the General Assembly, **S.1059** (R445) was signed by the Governor on June 9, 2006.*

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

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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, 2006.*

"UNBORN VICTIMS OF VIOLENCE ACT OF 2006"

This legislation 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 legislation 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 legislation prohibits imposing the death penalty for an offense prosecuted pursuant to this section. The legislation also prohibits the prosecution of a person for conduct related (1) to an abortion if proper consent was obtained, (2) to medical treatment of a pregnant woman, and (3) of a woman with respect to her unborn child.

*STATUS: Having been approved by the General Assembly, **S.1084** (R358) was signed into law by the Governor on June 2, 2006.*

VULNERABLE ADULTS

Vulnerable Adults Investigation Unit

This legislation 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.

Reporting Requirements

The legislation 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

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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.

Vulnerable Adult Deaths

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 legislation also creates the Vulnerable Adults Fatalities Review Committee. 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 legislation 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.

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Attorney General

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.

*STATUS: Having been approved by the General Assembly, **S.1116** (Act 301) was signed by the Governor on May 23, 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 legislation provides that it is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age.

The legislation 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 legislation 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 into law by the Governor on February 21, 2006.*

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

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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.*

CHILD DEVELOPMENT EDUCATION PILOT PROGRAM

The General Assembly approved the "South Carolina Child Development Education Pilot Program" as a Part 1B (temporary) proviso in **H.4810**, the 2006-2007 Budget Bill. Focused on the developmental and learning support that children must have to be ready for school, the program is to be made available on a voluntary basis, with funds appropriated from the General Assembly, for the 2006-2007 and 2007-2008 school year. Highlights of the Program include:

- The Program will be made first available, as provided in the proviso, to eligible children from the following eight trial districts in Abbeville County School District et.al. vs. South Carolina (the lawsuit): Allendale, Dillon 2, Florence 4, Hampton 2, Jasper, Lee, Marion 7, and Orangeburg 3. With any remaining funds the pilot will be expanded to the remaining Plaintiff school districts in the lawsuit.
- The Education Oversight Committee is directed to evaluate the pilot program and report to the General Assembly, as provided in the proviso, by January 1, 2008.
- Each child residing in the pilot districts, who will have attained the age of four years on or before September 1 of the school year, and who meets the at-risk criteria, is eligible to enroll in an approved publicly- or privately-delivered program for one year. No tuition or fees imposed solely for the purpose of enrolling in or attending the program are required to be paid.

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- Public school program providers must apply to participate through the Department of Education; private providers must submit an application to the Office of First Steps.
- All providers must comply with criteria established in the bill, including but not limited to health and safety laws and codes; federal, state, and constitutional discrimination provisions; laws requiring criminal background checks; maintaining certain student records regarding health, assessment, etc.; be approved, registered, or licensed by the Department of Social Services.
- If enrollment exceed available space, providers must give priority to children with the lowest scores on readiness assessments.
- The proviso delineates requirements for the Department of Education and the Office of First Steps regarding, among other items, approved curricula, readiness assessments, classroom equipping grants, provision of parenting education programs, lead teacher qualifications.
- Providers are required to offer a complete education program, as described in the proviso, focusing on the developmental and learning support children must have in order to be ready for school. Providers must also offer parenting education. Program requirements include, but are not limited to: employment of a lead teacher and an education assistant, as described in the proviso; maintain classrooms with 10 to 20 four-year-old children with an adult to child ratio of 1:10; offer 6.5 hours of daily instruction for 180 school days; provide an approved curriculum as described in the proviso; engage parents' participation as described in the proviso.
- Personnel of providers are required to complete a minimum amount of professional development instruction relating to teaching children from poverty.
- The General Assembly will provide funding for the Program for 2006-07 at a cost per child of \$3,077, plus a reimbursement of \$185 per child if the provider transports the children; for 2007-08 the cost per child will be increased by the same rate of inflation as is the Education Finance Act.
- The Department of Education will approve grants up to \$10,000 per class for equipping classrooms.

*STATUS: The above provisions are included as a Part 1B (temporary) proviso in **H.4810**, the Appropriations Bill for 2006-2007. **H.4810** was approved by the General Assembly and has been ratified.*

“SAFE SCHOOL CLIMATE ACT”

The House and Senate approved **H.3573**, the “Safe School Climate Act.” This bill provides that a person may not engage in harassment, intimidation, or bullying or reprisal, retaliation, or false accusation against a victim, witness, or one with reliable information about an act of harassment, intimidation, or bullying. The bill defines “harassment, intimidation, or bullying” to include acts which are written (including electronic communication), verbal, physical, or sexual and which are reasonably perceived to be motivated by any actual or perceived characteristic that a reasonable person should know has the effect of harming a student or damaging a student’s property, or placing a student in reasonable fear of person harm or property damage; or has the effect of insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the

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school. The bill provides that school employees, students, or volunteers who witness or have reliable information that a student has been subject to such acts, shall report the incident to the appropriate school official.

The bill requires local school districts to adopt and to include in certain of its publications and in its employee and volunteer training programs, a policy prohibiting harassment, intimidation, or bullying at school. The content of the policy, although determined locally, must include certain components delineated in the bill. To assist the local districts, the bill requires the State Department of Education to develop model policies applicable to grades kindergarten through twelve. The bill also requires schools to include on the report cards information related to bullying prevention programs, including a report on the number of bullying incidents.

The bill provides that a school employee or volunteer who promptly reports such incidents in compliance with the district's policy is immune from a cause of action for damages arising from failure to remedy the reported incident.

*STATUS: **H.3573** was approved by the House and the Senate and has been signed by the Governor.*

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

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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.

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- 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 legislation 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 into law by the Governor on March 24, 2006.*

ALTERNATIVE POLLING PLACES IN CASE OF AN EMERGENCY

If a designated polling place in a precinct is unavailable for use during an election as a result of an emergency situation, this legislation provides that the authority charged by law with conducting the election shall designate an alternative polling place to be used for the electors in that precinct for any election occurring during the emergency situation. An alternative polling place for an emergency situation must be approved by the majority of the legislative delegation, if the designation occurs more than seven days prior to the election. If an alternative polling place for an emergency situation is designated seven days or less prior to the election, the authority charged by law with conducting the

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election must notify the members of the legislative delegation of the alternative polling place.

The alternative polling place is not required to be within the precinct of the elector's residence; however, the authority charged by law with conducting the election may designate an alternative polling place outside the precinct only if no other location within the precinct is available for use as a polling place. If an alternative polling place is outside the precinct, it must be located in an adjoining precinct. The alternative polling place must be selected with consideration of the distance the electors would be required to travel in order 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.

*STATUS: Having been approved by the General Assembly, **H.3831** (R407) was signed into law by the Governor on June 8, 2006.*

ETHICS ACT AMENDMENTS

Relating to the penalty for late filing of or failure to file a report or statement required by the Ethics Act, this legislation caps the fine at five thousand dollars. Presently, there is no cap on fines.

Relating to the representation of another by a public official, member, or employee before a governmental entity, this legislation provides that no public official, public member, or public employee shall be required to resign or otherwise vacate his seat or position due to a conflict of interest that arises under this section as long as notice of the possible conflict is given and the public official, public member, or public employee recuses himself from the vote on the matter that is the subject of the conflict of interest.

*STATUS: Having been approved by the General Assembly, **H.4410** (R414) was ratified on June 7, 2006. The Governor vetoed this legislation on June 8, 2006.*

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, 2006.*

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** (Act 273). The General Assembly has overridden the Governor's veto of this legislation.*

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

See summary under Criminal Justice/The Courts

HEIRS' PROPERTY

See summary under Criminal Justice/The Courts

SAFE HAVENS FOR ABANDONED INFANTS ("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

"DISCOUNT MEDICAL PLAN ORGANIZATION REGISTRATION ACT"

This legislation provides that it is unlawful for a discount medical plan organization (DMPO) 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 DMPO is organized according to the laws of this State or authorized to transact business in this State; (2) the DMPO 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 DMPOs to be registered with and regulated by the Department of Consumer Affairs. Additionally, the DMPO must provide a list of marketers and representatives selling the plan or card; no representative or marketer can offer the plan, unless the DMPO is registered with the Department of Consumer Affairs. The legislation includes various consumer protections, including a thirty-day right to cancel after a customer purchases or signs up for the discount plan or card. The legislation outlines certain disclosures that must be provided to prospective customers. Penalties are provided for violations.

*STATUS: Having been approved by the General Assembly, **H.3711** (R403) was ratified on June 7, 2006.*

DONATION AND PROCUREMENT OF ORGANS AND TISSUES

This legislation 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.

The legislation also 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.

This legislation updates statutes that pertain to donation and procurement of organs and tissues. The legislation deletes references to the Donor Referral Network. This network is defined as including the South Carolina Organ Procurement Organization (SCOPA), the American Red Cross Southeastern Tissue Services, and the South Carolina 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 legislative 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 South Carolina. This legislation defines "Organ and Tissue Procurement Organization" to be the organ procurement organization designated to perform organ recovery services in South Carolina by the federal government which also has the capability to procure tissues. This change designates LifePoint as the exclusive agency to receive potential organ and tissue referrals and donations in this state.

The legislation 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 legislation 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 legislation also eliminates the term limit for the forensic pathologist member of the board.

*STATUS: Having been approved by the General Assembly **H.4348** (R373) was signed into law by the Governor on June 2, 2006.*

"HOSPITAL INFECTIONS DISCLOSURE ACT"

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The legislation requires hospitals to collect and submit data to the Department of Health and Environmental Control (DHEC) concerning infections acquired by patients who are being treated at those facilities. Reports must be made at least every six months and made available to the public at each hospital and through DHEC. The first report must be submitted prior to February 1, 2008.

The legislation provides for an advisory committee to assist DHEC with the development of methodology for data collection, analysis and disclosure. The advisory committee is appointed by the DHEC Commissioner and must include representatives from interested parties including: hospitals, consumers, businesses, purchasers of health care services, physicians and other professionals involved in researching and controlling infections.

DHEC must annually report to the General Assembly and on its website a summary of the hospital reports. The annual report must be in plain language and compare the risk adjusted hospital acquired infection rates for each individual hospital in the State. No hospital report or department disclosure may contain information identifying a patient, employee, or licensed health care professional in connection with a specific infection incident.

*STATUS: Having been approved by the General Assembly, **S.1318** (Act 293) was signed by the Governor on May 31, 2006.*

METHAMPHETAMINE

See summary under Criminal Justice/The Courts

SAFE HAVENS FOR ABANDONED INFANTS ("DANIEL'S LAW")

See summary under Criminal Justice/The Courts

"SOUTH CAROLINA UNANTICIPATED MEDICAL OUTCOME RECONCILIATION ACT" (I'M SORRY LEGISLATION)

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

This legislation provides that it is unlawful for a person to wilfully or maliciously disturb or interrupt a funeral service. This applies to a willful, knowing, or malicious disturbance or interruption within: (1) one thousand feet of the funeral service; and (2) a time period of one-half hour before the funeral service until one-half hour after the 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 legislation 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: Having been approved by the General Assembly, **H.4965** (R346) was ratified on May 25. The Governor vetoed the legislation on May 31, 2006. The House overrode the veto on June 1, 2006. As of June 13, 2006, the Senate has not addressed the veto.*

TAX EXEMPTION 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, 2006.*

STATE/LOCAL GOVERNMENT

BILLBOARD REGULATION

See summary under Business/Economic Development

ETHICS ACT AMENDMENTS

See summary under Elections

FIREARMS

See summary under Criminal Justice/The Courts

FLAGS FLOWN AT HALF-STAFF ON THE STATE CAPITOL BUILDING

This legislation 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 legislation 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 legislation 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 legislation 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, 2006.*

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** (Act 289) was signed by the Governor on May 23, 2006.*

LAW ENFORCEMENT TRAINING COUNCIL

See H.3977 under *Criminal Justice/The Courts*

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

See summary under *Business/Economic Development*

PROPERTY TAX REFORM

See summary under *Tax Relief*

TAX RELIEF

ADDITIONS TO DEFINITION OF "PRIVATE PASSENGER MOTOR VEHICLE"/EXEMPTION FOR CERTAIN ANTIQUE MOTOR VEHICLES

The General Assembly approved H.4307, a bill which adds motorcycles to the definition of "passenger motor vehicles" for property tax purposes. The bill also increases the weight limit for pickup trucks for purposes of this definition. This effectively changes the assessment ratio on these vehicles from 10.5% to 6%. The bill also includes a provision providing a property tax exemption for certain motor vehicles licensed and registered as antique motor vehicles, beginning after June 30, 2006.

STATUS: H.4307 was approved by the General Assembly and has been signed by the Governor.

"ALL-TERRAIN VEHICLE SAFETY ACT" ("CHANDLER'S LAW")

See summary under *Consumer Protection*

ALTERNATIVE FUELS AND FUEL EFFICIENCY INCENTIVES

See summary under *Conservation/Energy*

PROPERTY TAX REFORM

The General Assembly approved H.4450, a proposed Constitutional amendment regarding countywide reassessment for purposes of property taxation, and H.4449, the enabling legislation for property tax reform. Highlights of these two bills are as follows:

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H.4450 - Proposed Constitutional Amendment

There will be a cap on the increase in value due to countywide reassessment of 15% over any five-year period.

The enabling language for **H.4450** is contained in **H.4449**:

The base year for appraised values is property tax year 2007. Certain types of transfers of ownership are exempt from triggering a full reassessment. When property is sold, transferred, or improved otherwise it is assessed at full market value. The time limit for appeals of valuation is also extended.

H.4449 - Property Tax Reform

Sales Tax Swap

Eliminates all school operating taxes on owner occupied homes, with a two-thirds vote required in the House and the Senate to change this provision. The sales tax will be increased by one cent, excluding food and accommodations, effective June 1, 2007. Taxpayers will receive relief from the school operating exemption on their tax bills due in January 2008. Revenues from the additional one cent tax will be placed into a trust fund. The trust fund will be used to (in priority order):

1. Replace the eliminated school operating taxes on owner occupied homes with revenues from the 1¢ general sales tax imposed (these replacement funds will be included in the local maintenance of effort); then
2. Provide \$2.5 million total in minimum replacement funding for each county to be distributed among the school districts (these funds, over the replacement amount due to the formula, are not a part of the local maintenance of effort); then if funds are available
3. Roll back county operations taxes on owner occupied homes as far as possible, as remaining funds are available from the new 1¢ general sales tax imposed.

If the revenues in the trust fund are ever insufficient to remove all school operating property taxes on owner occupied homes based on the growth factors outlined in the bill, the difference must be made up from the General Fund. Only the school operating replacement funds and the funds for the \$2.5 million floor become an obligation of the General Fund if growth is ever not sufficient to cover the obligations of the fund.

Within a county, the \$2.5 million in replacement funds will be distributed proportionately to each school district based on the district's 135 day average daily membership (ADM).

Beginning with taxes due in January 2008, disbursements will be made as follows:

School district reimbursements dollar for dollar in FY 2007-08 for tax year 2007.

Beginning 1/1/2008 or after, distributions will be dollar for dollar based on property taxes that would have been collected had the old system remained in effect.

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School district reimbursements in FY 2008-09 for tax year 2008.

The aggregate amount of money available for disbursement will be increased by a percentage equal to the consumer price index plus population growth for the state. No district will ever receive less than they received in the first year. The incremental increase will be reimbursed on Weighted Pupil Units (WPU's) with an add-on weight of .20 for eligible students in poverty.

The distribution for the additional property tax credit for non-school county operating will be implemented like the distribution for the \$100,000 school operating exemption. The relief will be in the form of a credit, not an exemption. The dollar amount of the credit will change each year.

Local Option Sales Tax Swap

Allows individual county referendums to impose additional Local Option Sales Tax (LOST) up to one cent (1¢), in increments of one-tenth, to reduce property taxes; but will be revised such that this is to be layered on top or after the one-cent general sales tax increase/swap being imposed.

The referendum could be voted on as early as November, 2006 for imposition of a sales tax effective July 1, 2007. A rescission referendum may be considered after two years, and every two years thereafter. Food, accommodations, and items subject to a maximum tax are exempt from this additional tax.

Distributions will be made quarterly, with formulas laid out for multi-county school districts.

Any new LOST approved by voters would apply to county and/or school operations and would apply to all classes of property. The referendum will be in 0.1-cent increments up to one cent.

School operating revenue from the swap, as certified by the Office of Research and Statistics, will be considered part of the local maintenance of effort.

Other Local Property Tax Changes

Property taxing entities are prohibited from raising the millage by more than population growth plus the increase in the Consumer Price Index. This cap may not be overridden except in the case of an emergency situation, as listed below. This increase requires a 2/3 vote of the local governing body. The additional tax must be listed separately on the tax statement, and may only be put into effect for the amount of time necessary to remedy the emergency.

Allowable emergency situations are:

- Previous year's deficit;
- Catastrophic event;
- Court order or decree;

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- Loss of a taxpaying entity that made up more than 10% of the county's property tax revenue; or
- Federal or State requirement enacted after date of ratification.

Pro-rata taxing is initiated, bringing new construction onto the tax roll within one month of the issuance of a certificate of occupancy. Property that is improved whose improvements are completed prior to 7/1 will have the improved value applied to the current year, and improved property completed after 7/1 will have improvements applied in the next year.

A voluntary installment payment plan for property taxes is initiated. Counties may choose whether or not to allow the plan in their county. The plan is optional for taxpayers. It will consist of six payments paid in advance.

Any non-property tax or state revenues are exempt from the millage limitation calculation. (i.e., grants, federal funds, etc.)

Additional Tax Relief

Beginning October 1, 2006 the existing sales tax on groceries (non-prepared food) is permanently reduced from 5 cents to 3 cents on the dollar.

For 2006 only, the two days after Thanksgiving (Friday and Saturday) will be a total sales tax holiday (includes everything but accommodations and items subject to a maximum tax, not just the current sales tax holiday list).

The EIA will be held harmless in FY 2006-2007 from the negative effect of removing 2 cents on food, the difference being made up from the General Fund.

A Sales Tax Exemption Study Committee will be appointed to issue a report no later than 2010, but the report may be completed earlier at the Committee's discretion.

Effective July 1, 2006, a county governing body may place a question on the ballot as to the removal of a currently imposed local option sales tax, without a petition from the citizens. If the local option sales tax remains in effect, it must go to relieve property tax on the remaining classes.

Other Provisions

Changes are made to discontinue future alternate financing programs after December 31, 2006. From August 31 to December 31, districts may still participate, but they may not pledge the full faith and credit of the district. After December 31, 2006 such contracts must be counted under the constitutional 8% debt limit.

As stated above, all sales tax exemptions will be studied starting no later than 2010. The Joint Sales Tax Exemption Review committee is established and is required to report findings to the General Assembly, recommend changes, and publish a comparison to other states.

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STATUS: H.4449 and H.4450 were approved by the General Assembly as summarized above. H.4449 has been signed by the Governor and H.4450 has been ratified (Governor's signature not required).

**“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/CORPORATE HEADQUARTERS TAX CREDIT

See summary under Business/Economic Development

TAX CREDIT FOR HYBRID VEHICLES

See summary under Conservation/Energy

**TAX EXEMPTION FOR QUALIFYING MEMBERS OF
STATE GUARD**

See summary under Military

**MAJOR LEGISLATION
THAT HAS NOT PASSED
THE GENERAL
ASSEMBLY
(AS OF JUNE 13, 2006)**

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 was referred to the Banking and Insurance Committee.*

COMMITTEE TO STUDY EARMARKED/RESTRICTED ACCOUNTS

The House approved **H.4661**, a joint resolution which 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

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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 upon sine die adjournment of the General Assembly, the bill was pending consideration in the Senate Finance Committee*

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 on April 28. Debate on the bill in the Senate was interrupted on May 17, and the bill was recommitted to the Senate Judiciary Committee on May 25, 2006.*

ELECTIONS

As passed by the House, **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

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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.*

EMINENT DOMAIN

State Constitutional Amendment on the Exercise of Eminent Domain As passed by the House:

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.*

*The House and Senate have passed differing versions of **S.1031**, and both bodies have appointed a conference committee. 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. The House version of **S.1031** is the same as the House passed version of **H.4502**, which is summarized above.*

Exercise of Eminent Domain or Condemnation As Passed by the House:

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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.

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STATUS: The House and Senate have passed differing versions of H.4503, and both bodies have appointed a conference committee.

*The Senate version of H.4503 enacts the “**South Carolina Private Property Rights Protection Act.**” (Note the “South Carolina Private Property Rights Protection Act” was also passed by the Senate in S.1030, which was referred to the House Judiciary Committee.) The Senate version of the bill outlines procedures that must be followed in order for a condemnor to acquire property. Among other things, the Senate version of the bill provides that except as provided in the State Constitution, private property shall not be taken for private use without the consent of the owner, or for public use without just compensation being first made for the property. 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. The Senate version includes provisions whereby a condemnee may choose to exercise or decline a right of first refusal to repurchase the condemned property, if the condemned property is sold less than twenty years after the condemnation date. This Senate version also creates a “South Carolina Eminent Domain Study Committee.”*

"JUST COMPENSATION FOR LAND USE RESTRICTIONS ACT"
As Passed by the House:

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

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two years, the owner must be allowed to use the property as permitted at the time the owner acquired the property.

*STATUS: The “Just Compensation for Land Use Restrictions Act” is contained in **H.4503**. The Senate version of **H.4503** does not contain this language. The House and Senate have passed differing versions of **H.4503**, and both bodies have appointed a conference committee.*

Eminent Domain Study Committee
As Passed by the House:

This legislation establishes a South Carolina Eminent Domain Study Committee to:

- review the condemnation authority exercised by any state agency, local government, joint agency, regional authority, political subdivision, or other entity that possesses the power of eminent domain in this State; and
- study regulatory takings and other devaluation of private property through the exercise of a power by a public authority.

The study committee shall evaluate if each entity's exercise of its condemnation authority or the exercise of a power by a public authority meets or exceeds the constitutional, statutory, and case law requirements concerning eminent domain, regulatory takings, or other property devaluation in this State and make a report of its findings to the General Assembly.

The report may include recommendations, if appropriate, for legislative changes to conform or restrict the condemnation authority the entities exercise or the power a public authority exercises affecting private property. In preparing its report, the study committee must request, receive, and consider (1) testimony and written materials submitted by the entities that possess the power of eminent domain or by a public authority that exercises power affecting private property, and (2)

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information solicited from or provided by experts and interested persons in the fields of eminent domain and private property rights.

*STATUS: The House and the Senate have passed differing versions of **S.1029**, and both bodies have appointed a conference committee. As passed by the Senate, 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. The Senate version of the joint resolution does not include a study of regulatory takings.*

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. Upon sine die adjournment of the General Assembly, the bill was pending in the Senate Finance 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

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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 was referred to the Agriculture and Natural Resources Committee.*

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.

On May 24, the Senate Judiciary Committee reported the bill out favorable with amendment. The proposed Judiciary Committee amendment adds several other provisions regarding illegal aliens. The legislation would require the verification of the lawful presence in the United States of any natural person eighteen years of age or older who has applied for public benefits administered by an agency or a political subdivision of this State. The legislation would provide that no wages or remuneration for labor services to an individual of six hundred dollars or more per year may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer for an employee who is an illegal alien. The proposed amendment includes provisions targeting the offense of trafficking a person for labor servitude. The legislation would require verification of the nationality of prisoners. The proposed amendment also includes the “Registration of Immigration Assistance Service Act.”

*STATUS: On May 5, 2006, the House of Representatives passed **H.5057** and sent the bill to the Senate. On May 24, the Senate Judiciary Committee reported the bill out favorable with amendment.*

MOTION PICTURE TAX REBATES

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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 was recalled from the Senate Finance Committee on May 30, 2006. When the General Assembly adjourned on June 1, the bill remained on the Senate calendar with two members listed as desiring to be present.*

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

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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. On May 25, the bill was recalled from the Senate Labor, Commerce and Industry Committee.*

PUBLIC HEALTH EMERGENCIES

As passed by the House, **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 provided 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: The House and the Senate have passed differing versions of **H.4808**, and both bodies have appointed a conference committee. The Senate version of the bill 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 version provides civil immunity for medical examiners and coroners unless damages result from providing, or failing to provide, services under circumstances demonstrating reckless conduct.*

SPENDING LIMIT

The House included in its original version of the property tax reform bill (**H.4449**) provisions imposing spending limits on State appropriations and on local governing bodies. Under these provisions, State appropriations would have been 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. Under the House-approved provisions, this spending limit could be overridden by a 2/3 recorded roll-call vote of the membership in each branch of the General Assembly.

The original House-passed version of **H.4449** also imposed a spending limit on local governing bodies, except that population growth was defined as population growth within that jurisdiction. Appropriations would have been 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 would have been calculated by the increase in student enrollment for the most recently completed school year. For all other entities, population growth would be defined as population growth within its jurisdiction.

These spending limits would have worked in conjunction with the millage limitations, so that if more revenue came in than expected, the amount of the excess revenue the local government could retain would have been limited.

Also, the House included in its version of the 2006-2007 budget plan (**H.4810**), a proviso creating a separate and distinct *Spending Limit Reserve Fund*, requiring that all general fund revenues in a fiscal year in excess of the limit on appropriations provided in South Carolina Code of Laws, Section 11-11-410, be credited to this fund. These funds could be appropriated for specified purposes by the General Assembly in the year following the close of the applicable fiscal year. The proviso also stated that 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 would not have replaced or supplanted 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 would have been 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 directed that the additional balance in the General Reserve Fund is for all purposes and uses a part of the general reserve fund.

The proviso also stated that after appropriating the amounts required to replenish the General Reserve Fund, any remaining balance could 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 could be appropriated pursuant to this item unless the individual appropriation

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received 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 would not have applied to any appropriation or transfer used to offset revenue reductions resulting from temporary tax reductions. The proviso also directed 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.

STATUS: As described above, these spending limit plans were approved by the House, but were not included in the final versions of these bills.

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

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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 was referred to the Judiciary Committee.*

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