~~Indicates Matter Stricken~~

Indicates New Matter

The House assembled at 9:30 a.m.

Deliberations were opened with prayer by Rev. Charles E. Seastrunk, Jr., as follows:

Our thought for today is from Psalm 86:11: “Teach me your ways, O Lord, that I may walk in your truth.”

Let us pray. Almighty and eternal God, so draw our hearts to You, so guide our minds, so fill our imaginations, so control our wills that we may be wholly dedicated to the work You have called us to do. Be present now as these Representatives make the decisions so vital to the welfare of the people of this State. Bless our Nation and State and all leaders that Your will be done. Protect our defenders of freedom at home and abroad as they protect us. In the Name of our Lord. Amen.

Pursuant to Rule 6.3, the House of Representatives was led in the Pledge of Allegiance to the Flag of the United States of America by the SPEAKER.

After corrections to the Journal of the proceedings of yesterday, the SPEAKER ordered it confirmed.

**MOTION ADOPTED**

Rep. SCOTT moved that when the House adjourns, it adjourn in memory of Elliott E. Franks III of Columbia, which was agreed to.

**CONCURRENT RESOLUTION**

The following was introduced:

H. 5301 -- Reps. Cato, Agnew, Alexander, Allen, Anderson, Anthony, Bales, Ballentine, Bannister, Barfield, Battle, Bedingfield, Bingham, Bowen, Bowers, Brady, Branham, Brantley, Breeland, G. Brown, R. Brown, Chalk, Clemmons, Clyburn, Cobb-Hunter, Coleman, Cooper, Cotty, Crawford, Daning, Dantzler, Davenport, Delleney, Duncan, Edge, Erickson, Frye, Funderburk, Gambrell, Govan, Gullick, Hagood, Haley, Hamilton, Hardwick, Harrell, Harrison, Hart, Harvin, Haskins, Hayes, Herbkersman, Hiott, Hodges, Hosey, Howard, Huggins, Hutson, Jefferson, Jennings, Kelly, Kennedy, Kirsh, Knight, Leach, Limehouse, Littlejohn, Loftis, Lowe, Lucas, Mack, Mahaffey, McLeod, Merrill, Miller, Mitchell, Moody-Lawrence, Moss, Mulvaney, J. H. Neal, J. M. Neal, Neilson, Ott, Owens, Parks, Perry, Phillips, Pinson, E. H. Pitts, M. A. Pitts, Rice, Rutherford, Sandifer, Scarborough, Scott, Sellers, Shoopman, Simrill, Skelton, D. C. Smith, F. N. Smith, G. M. Smith, G. R. Smith, J. E. Smith, J. R. Smith, W. D. Smith, Spires, Stavrinakis, Stewart, Talley, Taylor, Thompson, Toole, Umphlett, Vick, Viers, Walker, Weeks, Whipper, White, Whitmire, Williams, Witherspoon and Young: A CONCURRENT RESOLUTION TO EXPRESS SINCERE GRATITUDE AND FRIENDSHIP TO JENNIFER PARRISH ROBINSON OF THE HOUSE OF REPRESENTATIVES, MOST RECENTLY SERVING AS CHIEF COUNSEL TO THE HOUSE LABOR, COMMERCE AND INDUSTRY COMMITTEE, AND TO WISH HER MUCH DESERVED SUCCESS IN HER FUTURE ENDEAVORS.

Whereas, the members of the General Assembly note that Jennifer Parrish Robinson has served on the staff of the House of Representatives from December 2004, until the present; and

Whereas, Jennifer came to her career in the House of Representatives after having been awarded a degree in Bachelor of Arts in Political Science from the University of South Carolina in 1998 and a Juris Doctor Degree from the University of South Carolina School of Law in 2003; and

Whereas, she served as a page and legislative aide in the House of Representatives 1996-1998 and held positions of legal assistant in the McNair Law Firm and project assistant at Nelson, Mullins, Riley, and Scarborough, as communications coordinator in the Office of the Lieutenant Governor, and law clerk and counsel to the Office of Senate Research 2001-2004; and

Whereas, Jennifer joined the House Labor, Commerce and Industry Committee in December 2004 as staff counsel and became chief counsel in September 2007. In addition, she served the House of Representatives as House Counsel to the State Regulation of Public Utilities Review Committee and the Judicial Merit Selection Commission; and

Whereas, she has served under the leadership of Committee Chairman Harry F. Cato and she has the distinction of the longest serving staff attorney during his fourteen years’ tenure as chairman; and

Whereas, she devoted many hours of time to major business legislative initiatives including telecommunications, energy, insurance, banking, at‑will employment, consumer affairs, real estate issues, and Public Service Commission reform; and

Whereas, Jennifer’s duties included wide‑ranging matters such as analyzing, researching, and writing about business‑related issues which have come before the General Assembly during these past few years, including staffing the screening of Employment Security Commission, Judicial and Public Service Commission candidates, and as co‑counsel on a lawsuit concerning the one subject lawsuit in the Sloan v. Wilkins case; and

Whereas, we will sorely miss her dedication, skills, and resourcefulness; and

Whereas, it is appropriate for the members of the General Assembly to pause in their deliberations to express their high regard for her service to this body as she assumes a position in the private sector. Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

That the members of the General Assembly, by this resolution, express their sincere gratitude and friendship to Jennifer Parrish Robinson for her service to the House of Representatives, most recently serving as chief counsel to the House Labor, Commerce and Industry Committee, and wish her much deserved success in her new position in the private sector.

Be it further resolved that a copy of this resolution be presented to Jennifer Parrish Robinson.

The Concurrent Resolution was agreed to and ordered sent to the Senate.

**CONCURRENT RESOLUTION**

The following was introduced:

H. 5302 -- Reps. J. E. Smith, Agnew, Alexander, Allen, Anderson, Anthony, Bales, Ballentine, Bannister, Barfield, Battle, Bedingfield, Bingham, Bowen, Bowers, Brady, Branham, Brantley, Breeland, G. Brown, R. Brown, Cato, Chalk, Clemmons, Clyburn, Cobb-Hunter, Coleman, Cooper, Cotty, Crawford, Daning, Dantzler, Davenport, Delleney, Duncan, Edge, Erickson, Frye, Funderburk, Gambrell, Govan, Gullick, Hagood, Haley, Hamilton, Hardwick, Harrell, Harrison, Hart, Harvin, Haskins, Hayes, Herbkersman, Hiott, Hodges, Hosey, Howard, Huggins, Hutson, Jefferson, Jennings, Kelly, Kennedy, Kirsh, Knight, Leach, Limehouse, Littlejohn, Loftis, Lowe, Lucas, Mack, Mahaffey, McLeod, Merrill, Miller, Mitchell, Moody-Lawrence, Moss, Mulvaney, J. H. Neal, J. M. Neal, Neilson, Ott, Owens, Parks, Perry, Phillips, Pinson, E. H. Pitts, M. A. Pitts, Rice, Rutherford, Sandifer, Scarborough, Scott, Sellers, Shoopman, Simrill, Skelton, D. C. Smith, F. N. Smith, G. M. Smith, G. R. Smith, J. R. Smith, W. D. Smith, Spires, Stavrinakis, Stewart, Talley, Taylor, Thompson, Toole, Umphlett, Vick, Viers, Walker, Weeks, Whipper, White, Whitmire, Williams, Witherspoon and Young: A CONCURRENT RESOLUTION TO EXPRESS THE DEEP SADNESS AND PROFOUND SORROW OF THE MEMBERS OF THE SOUTH CAROLINA GENERAL ASSEMBLY UPON THE DEATH OF KATHRYN ANNE BOCKMAN OF COLUMBIA ON FRIDAY, OCTOBER 17, 2008.

The Concurrent Resolution was agreed to and ordered sent to the Senate.

**ROLL CALL**

The roll call of the House of Representatives was taken resulting as follows:

|  |  |  |
| --- | --- | --- |
| Alexander | Allen | Anderson |
| Anthony | Bales | Ballentine |
| Bannister | Barfield | Battle |
| Bedingfield | Bingham | Bowen |
| Brady | Branham | Brantley |
| Breeland | G. Brown | R. Brown |
| Cato | Chalk | Clemmons |
| Clyburn | Cobb-Hunter | Coleman |
| Cooper | Cotty | Crawford |
| Daning | Dantzler | Duncan |
| Erickson | Frye | Funderburk |
| Gambrell | Gullick | Hagood |
| Haley | Hamilton | Hardwick |
| Harrell | Harrison | Hart |
| Harvin | Haskins | Hayes |
| Herbkersman | Hiott | Hodges |
| Hosey | Howard | Huggins |
| Hutson | Jefferson | Jennings |
| Kelly | Kennedy | Kirsh |
| Knight | Leach | Littlejohn |
| Loftis | Lucas | Mack |
| Mahaffey | McLeod | Merrill |
| Miller | Moss | Mulvaney |
| J. M. Neal | Neilson | Ott |
| Owens | Parks | Perry |
| Phillips | Pinson | E. H. Pitts |
| M. A. Pitts | Rice | Sandifer |
| Scarborough | Scott | Shoopman |
| Simrill | Skelton | D. C. Smith |
| F. N. Smith | G. M. Smith | G. R. Smith |
| J. E. Smith | J. R. Smith | W. D. Smith |
| Spires | Stavrinakis | Stewart |
| Talley | Taylor | Thompson |
| Toole | Umphlett | Vick |
| Walker | Weeks | White |
| Whitmire | Williams | Witherspoon |
| Young |  |  |

**STATEMENT OF ATTENDANCE**

I came in after the roll call and was present for the Session on Tuesday, October 21.

|  |  |
| --- | --- |
| Jackson "Seth" Whipper | Bakari Sellers |
| Todd Rutherford | Jerry Govan |
| Joseph Neal | H. B. "Chip" Limehouse |
| Thad Viers | Greg Delleney |
| Harold Mitchell | Paul Agnew |
| William Bowers |  |

**Total Present--120**

**H. 5300--AMENDED AND ORDERED TO THIRD READING**

The following Bill was taken up:

H. 5300 -- Ways and Means Committee: A BILL TO AMEND ACT 310 OF 2008, THE GENERAL APPROPRIATIONS ACT FOR FISCAL YEAR 2008-2009, SO AS TO ENACT TARGETED REDUCTIONS IN GENERAL FUND APPROPRIATIONS AND TO MAKE NECESSARY CONFORMING PROVISO AMENDMENTS AND PROVIDE FOR OTHER RELATED MATTERS.

Rep. J. E. SMITH proposed the following Amendment No. 4 (Doc Name COUNCIL\GJK\20774SD08), which was tabled:

Amend the bill, as and if amended, in SECTION 2, page 58, by adding a new paragraph to Part IB, Section 89, General Provisions of Act 310 of 2008 immediately after paragraph 89.126 to read:

/ 89.127. (GP: Revenue Forecast) General fund revenue collections and remaining estimates of general fund revenue collections for fiscal year 2008‑2009 shall be used as the basis for making general fund appropriations for fiscal year 2009 unless the revenue estimates by the Board of Economic Advisors for fiscal year 2009 are lower. The state budget office must certify that the appropriations bill is in compliance with the requirements of this section before it may be given third reading in each house or ratified by the General Assembly./

Renumber sections to conform.

Amend title to conform.

Rep. J. E. SMITH explained the amendment.

Rep. COOPER moved to table the amendment.

Rep. J. E. SMITH demanded the yeas and nays which were taken, resulting as follows:

Yeas 59; Nays 49

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Bannister | Barfield | Battle |
| Bingham | Bowen | Brady |
| Brantley | Cato | Chalk |
| Clemmons | Cooper | Cotty |
| Daning | Dantzler | Duncan |
| Frye | Gambrell | Gullick |
| Hamilton | Hardwick | Harrell |
| Harrison | Hayes | Herbkersman |
| Hiott | Hutson | Kelly |
| Kirsh | Leach | Littlejohn |
| Loftis | Lucas | Mahaffey |
| Merrill | Moss | Owens |
| Perry | Phillips | Pinson |
| Sandifer | Scarborough | Simrill |
| Skelton | D. C. Smith | F. N. Smith |
| G. M. Smith | G. R. Smith | J. R. Smith |
| W. D. Smith | Spires | Stewart |
| Taylor | Toole | Umphlett |
| Walker | White | Whitmire |
| Witherspoon | Young |  |

**Total--59**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Alexander | Allen |
| Anderson | Anthony | Bales |
| Ballentine | Bedingfield | Branham |
| Breeland | G. Brown | R. Brown |
| Cobb-Hunter | Coleman | Crawford |
| Erickson | Funderburk | Govan |
| Hagood | Haley | Hart |
| Harvin | Haskins | Hodges |
| Hosey | Howard | Huggins |
| Jefferson | Jennings | Kennedy |
| Knight | Mack | Miller |
| Mulvaney | J. M. Neal | Neilson |
| Ott | Parks | E. H. Pitts |
| Scott | Shoopman | J. E. Smith |
| Stavrinakis | Talley | Thompson |
| Vick | Weeks | Whipper |
| Williams |  |  |

**Total--49**

So, the amendment was tabled.

Rep. J. E. SMITH proposed the following Amendment No. 8 (Doc Name COUNCIL\MS\7710AHB08), which was tabled:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_\_. A. Section 12‑21‑735 of the 1976 Code is amended to read:

“Section 12‑21‑735. ~~Each person or distributor of cigarettes taxable under this article, first receiving untaxed cigarettes for sale or distribution in this State, is subject to the tax imposed in Section 12‑21‑620. Each distributor required to pay the tax shall make a report to the department, in the form the department prescribes, of all cigarettes sold or disposed of in this State, and pay taxes due thereon not later than the twentieth day of the month next succeeding the month of the sale or disposition. However, any person or distributor making shipments of cigarettes to retail locations in and out of this State shall apply to the department for a license which enables them to purchase cigarettes free of tax, and report and pay tax as provided in this section on sales of cigarettes sold to locations in this State.~~

~~The department shall require bonds or statements of financial stability satisfactory to the department to cover possible losses resulting from failure to remit taxes due. When the return required by this section is timely filed and the taxes shown to be due are paid by the date specified in this section, the person or distributor may deduct three and one‑half percent of the tax due.~~ (A) The taxes imposed on cigarettes pursuant to this chapter must be paid by affixing stamps in the manner and at the time provided in this section. A wholesaler that receives cigarettes intended for sale or distribution within this State which are exempt from the taxes imposed pursuant to this chapter shall affix stamps that indicate the package of cigarettes is exempt from tax.

(B) The department shall cause to be prepared and distributed exclusively to manufacturers and wholesalers licensed pursuant to Section 12‑21‑660, tax stamps of such denominations and quantities as the department considers necessary for the payment of cigarette taxes imposed pursuant to this chapter. The department also shall cause to be prepared and distributed to licensed manufacturers and wholesalers stamps that indicate that a package of cigarettes is exempt from the taxes imposed pursuant to this chapter. A stamp on a package of cigarettes must note whether the taxes prescribed in this chapter were paid or whether the package of cigarettes was exempt from the taxes.

(C) Each roll or sheet of cigarette stamps must have a separate and unique serial number that is clearly visible at the point of sale. The department shall keep records of which licensed manufacturers or wholesalers purchased each roll or sheet of cigarette stamps identified by serial number. If the department permits licensed manufacturers or wholesalers to purchase partial rolls or sheets of cigarette stamps, cigarette stamps bearing the same serial number must not be sold to more than one person.

(D) Each licensed manufacturer or wholesaler authorized by the department in accordance with Section 12‑21‑50 to make a meter impression on a package of cigarettes instead of using a tax stamp must be assigned a unique meter impression number that may not be used by any other manufacturer or wholesaler and must be visible and easily identifiable at the point of sale. The department shall keep records of which licensed manufacturer and wholesaler is assigned each meter impression number.

(E)(1) Stamps must be affixed to each individual package of cigarettes by wholesalers before being sold, distributed, or shipped to another person. A wholesaler may apply stamps only to packages of cigarettes manufactured, imported, purchased, or obtained directly from a licensed manufacturer. Only licensed wholesalers may receive unstamped packages of cigarettes. Only licensed wholesalers may affix stamps to packages of cigarettes. If cigarettes are manufactured within the State and sold directly to consumers, they must be stamped by the manufacturer when and as sold.

(2) Stamps must be affixed by licensed manufacturers or wholesalers:

(a) in a denomination that equals at least the tax due on cigarettes in the package, if the cigarettes are subject to tax pursuant to this chapter;

(b) on the smallest package of cigarettes to be handled, sold, used, consumed, or distributed in this State; and

(c) to the bottom of each individual package of cigarettes in a manner prohibiting the removal of the stamp from the package without it being mutilated or destroyed.

(F) A jobber or retailer may obtain cigarettes only from a licensed wholesaler. A jobber or retailer may sell cigarettes only if they are stamped in accordance with the provisions in this chapter and obtained from a licensed wholesaler.

(G) Only a licensed manufacturer or wholesaler may ship or otherwise cause to be delivered unstamped packages of cigarettes in, into, or from this State. A person that ships or otherwise causes to be delivered unstamped packages of cigarettes into, within, or from this State shall ensure that the invoice of equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the cosigner or seller, the true name and address of the cosignee or purchaser, and the quantity by brand style of the cigarettes so transported. This section does not impose requirements or liability upon a common or contract carrier.

(H) In addition to another penalty provided by law, upon determination that a cigarette manufacturer, wholesaler, jobber, or retailer has unlawfully sold or possessed unstamped or untaxed packages of cigarettes, the department shall revoke the license of the cigarette manufacturer, wholesaler, or jobber in the manner provided by Section 12‑60‑1310 through Section 12‑60‑1350 and impose fines on the retailers as appropriate.

(I) A retailer may not knowingly sell or distribute more than ten cartons of cigarettes to a person in a single transaction or in a series of transactions within a twenty‑four hour period; except that a retailer that is also licensed as a wholesaler may make sales permitted to be made by a wholesaler pursuant to this chapter when acting in that capacity.

(J) Notwithstanding the provisions of Section 12‑21‑780, the department may require returns and payments of this tax for other than monthly periods.”

B. Taxes prescribed pursuant to the provisions of this amendment and fines collected shall be distributed to the General Fund or as otherwise provided by law. /

Renumber sections to conform.

Amend title to conform.

Rep. J. E. SMITH explained the amendment.

**POINT OF ORDER**

Rep. G. R. SMITH raised the Point of Order that Amendment No. 8 was out of order in that it was not germane to the Bill.

SPEAKER HARRELL stated that the Amendment was germane to the Bill and he overruled the Point.

Rep. J. E. SMITH continued speaking.

Rep. COOPER moved to table the amendment.

Rep. J. E. SMITH demanded the yeas and nays which were taken, resulting as follows:

Yeas 68; Nays 39

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Ballentine | Bannister | Barfield |
| Battle | Bedingfield | Bingham |
| Bowen | Brady | G. Brown |
| Cato | Chalk | Clemmons |
| Cooper | Cotty | Crawford |
| Duncan | Erickson | Frye |
| Gambrell | Hagood | Haley |
| Hamilton | Hardwick | Harrell |
| Harrison | Haskins | Hayes |
| Herbkersman | Hiott | Huggins |
| Kelly | Kirsh | Leach |
| Loftis | Lucas | Mahaffey |
| Merrill | Moss | Mulvaney |
| Neilson | Owens | Perry |
| Phillips | Pinson | E. H. Pitts |
| M. A. Pitts | Sandifer | Scarborough |
| Shoopman | Simrill | Skelton |
| D. C. Smith | G. M. Smith | G. R. Smith |
| J. R. Smith | W. D. Smith | Spires |
| Stewart | Talley | Taylor |
| Toole | Umphlett | Vick |
| Walker | White | Whitmire |
| Witherspoon | Young |  |

**Total--68**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Allen | Anderson |
| Anthony | Bales | Brantley |
| Breeland | R. Brown | Clyburn |
| Cobb-Hunter | Coleman | Daning |
| Dantzler | Funderburk | Govan |
| Hart | Harvin | Hodges |
| Hosey | Howard | Hutson |
| Jefferson | Jennings | Kennedy |
| Knight | Mack | McLeod |
| Miller | J. M. Neal | Parks |
| Rice | Scott | F. N. Smith |
| J. E. Smith | Stavrinakis | Thompson |
| Weeks | Whipper | Williams |

**Total--39**

So, the amendment was tabled.

Rep. J. E. SMITH proposed the following Amendment No. 9 (Doc Name COUNCIL\BBM\9028HTC08), which was tabled:

Amend the bill, as and if amended, by adding a penultimate SECTION appropriately numbered to read:

/ SECTION \_\_.A. Article 5, Chapter 21, Title 12 of the 1976 Code is amended by adding:

“Section 12‑21‑625. (A) Effective January 1, 2009, there is imposed a surtax on cigarettes subject to the tax imposed pursuant to Section 12‑21‑620(1) in an amount equal to two and one‑half cents on each cigarette.

(B) Notwithstanding another provision of law providing for the crediting of the revenues of license or other taxes, the revenue of the surtax imposed pursuant to this section must be credited as follows:

(1) each fiscal year, five million dollars to the Smoking Prevention and Cessation Trust Fund created pursuant to Section 11‑11‑230(A) and one million dollars to the Department of Agriculture to cause the marking or branding of South Carolina agricultural crops or produce as being grown in South Carolina when offered for sale in retail establishments; and

(2) of the remaining annual revenue, one‑half to the Medicaid Trust Fund created pursuant to Section 11‑11‑230(B) and one‑half to the Health Care Trust Fund created pursuant to Section 11‑11‑230(C).

(C) For all purposes of reporting, payment, collection, and enforcement, the surtax imposed by this section is deemed to be imposed pursuant to Section 12‑21‑620.

(D) For purposes of this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1).”

B. Section 12‑21‑620 of the 1976 Code is amended to read:

“Section 12‑21‑620. (A) There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in this section the following amounts:

(1) upon all cigarettes made of tobacco or any substitute for tobacco, three and one‑half mills on each cigarette;

(2) upon all tobacco products, as defined in Section 12‑21‑800, five percent of the manufacturer’s price.

Manufacturer’s price as used in this section is the established price at which a manufacturer sells to a wholesaler.

(B) As used in this section, ‘cigarette’ has the meaning provided in Section 12‑21‑625(D).”

C. Article 1, Chapter 11, Title 11 of the 1976 Code is amended by adding:

“Section 11‑11‑230. (A) There is created in the State Treasury the Smoking Prevention and Cessation Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings and interest on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. The trust fund must transfer five million dollars annually to the Department of Health and Environmental Control to administer a statewide smoking prevention and cessation program.

(B) There is created in the State Treasury the Medicaid Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings and interest on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. Except as otherwise provided in this section, the State Treasurer shall transfer the funds to the Department of Health and Human Services quarterly to provide Medicaid services. The funds are supplementary and may not be used to replace general funds appropriated by the General Assembly or other funds used to support Medicaid.

(C) There is created in the State Treasury the Health Care Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings and interest on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. The trust fund must transfer the appropriate amount of money annually to the Department of Insurance to fund the Palmetto Health Care Premium Assistance Program.

(D) There is created in the State Treasury the Palmetto Health Care Safety Net Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. Beginning July 1, 2011, and every July first thereafter, the State Treasurer shall make a transfer from the Health Care Trust Fund to the Palmetto Health Care Safety Net Trust Fund in an amount determined by the Board of Economic Advisors. The Board of Economic Advisors shall determine the amount to be transferred by calculating the difference between ninety percent of the balance of the fund on July first, excluding any unexpended funds pursuant to Section 38‑62‑50(B), less the amount of projected premium assistance payments in the following twelve months.”

D. (A) Beginning no later than October 1, 2009, and with appropriate federal approvals, the Department of Health and Human Services shall use the transfers from the Medicaid Trust Fund to provide Medicaid services to low income families with incomes above fifty percent but no more than one hundred percent of the prevailing federal poverty level. If a balance of funds remains in the Medicaid Trust Fund once the Department of Health and Human Services has offered Medicaid services to low income families up to one hundred percent of the prevailing federal poverty level, then the balance of funds may be used to set the State Children’s Health Insurance Program at two hundred fifty percent of the federal poverty level or set the Aged, Blind, and Disabled Program at one hundred thirty‑five percent of the federal poverty level. The Department of Health and Human Services may charge the Medicaid Trust Fund a quarterly administrative fee equal to an amount not to exceed one percent of the amount credited to the Medicaid Trust Fund in the previous quarter.

(B) The Department of Health and Human Services must provide an annual report on the Medicaid Trust Fund to the chairman of the Senate Finance Committee, the chairman of the House Ways and Means Committee, and the Study Committee on Health Care Access and Affordability. The report shall provide, at a minimum, a general description of the services provided and populations served, the number of people served, the average cost per person, the additional administrative costs of the programs funded by Medicaid Trust Fund, and a three‑year forecast of the utilization of the fund.

E. Title 38 of the 1976 Code is amended by adding:

“Chapter 62

Palmetto Health Care Premium Assistance Program

Section 38‑62‑10. This chapter may be cited as the ‘Palmetto Health Care Premium Assistance Program’.

Section 38‑62‑20. For the purposes of this section:

(A) ‘Department’ means the South Carolina Department of Insurance.

(B) ‘Federal poverty level’ means the federal poverty level guidelines published annually by the United States Department of Health and Human Services.

(C) ‘Health insurer’ means an insurance company, a health maintenance organization, a community health plan approved by the Department of Health and Human Services, and any other entity providing health insurance coverage, as defined in Section 38‑71‑670(6), which is licensed to engage in the business of insurance in this State and which is subject to state insurance regulation; and Medicaid managed care organizations qualified to offer services through the Department of Health and Human Service’s Healthy Connections Program.

(D) ‘Health Care Trust Fund’ means the Health Care Trust Fund created pursuant to Section 11‑11‑230(C).

(E) ‘Participant’ means an individual who has been issued a certificate of eligibility by the Department of Insurance and has purchased a qualifying health insurance plan within ninety days of the date of issue of the certificate.

(F) ‘Program’ means the Palmetto Health Care Premium Assistance Program.

(G) ‘Qualifying health plan’ means any health insurance policy or health benefit plan offered as part of a health insurance policy or plan offered by a health insurer that provides health insurance coverage, as defined in Section 38‑71‑670(6), the South Carolina HealthNet Program, or a community health plan approved by the Department of Health and Human Services, and has a minimum actuarial value of three thousand dollars adjusted for age and gender.

(H) ‘Small employer’ means, in connection with a health insurance plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or employer, as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974, that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar year, employed no more than twenty‑five eligible employees or employed an average of not more than twenty‑five employees on business days during the preceding calendar year, and who employs at least two employees on the first day of the plan year.

Section 38‑62‑30. Beginning on July 1, 2010, individuals meeting the eligibility requirements of this chapter may receive an average of two thousand dollars of premium assistance actuarially adjusted for age and gender for the purchase of a qualifying health insurance plan. In no case, shall the premium assistance exceed the actual cost of the individual’s qualifying health plan.

Section 38‑62‑40. In order to be entitled to the premium assistance, an individual must receive a certificate of eligibility from the Department of Insurance. The department shall develop the form and manner for a person to apply to the department for a certificate and shall make the form readily available to health insurance agents and other persons authorized to sell health insurance in this State. For purposes of determining the taxpayer’s federal poverty level, the department, minimally, shall require a copy of the applicant’s state income tax return for the prior year and the applicant’s W‑2 form. The department shall also require the applicant to sign a verification under oath, subject to penalties of perjury, that the applicant meets the eligibility criteria for the program pursuant to Section 38‑62‑50. The department shall implement appropriate safeguards and use available existing resources to verify an applicant’s uninsured status. The department shall pursue the recoupment of any premium assistance provided to an individual filing a false application.

Section 38‑62‑50. (A) The department shall issue an applicant a certificate, if the department determines that:

(1) the person earns at or less than two hundred percent of the federal poverty level;

(2) the person is a citizen of the United States and has been a resident of this State for the twelve‑month period immediately preceding the application;

(3) the person has not been covered under a health insurance policy for at least twelve consecutive months before the application;

(4) the person is not eligible for or enrolled in Medicare, Medicaid, or any other state or federal government health insurance program;

(5) the person has not been awarded premium assistance pursuant to this chapter more than twice; and

(6) the person is between the ages of nineteen and sixty‑four.

(B) The department shall issue eligible individuals certificates in the order in which the application is received. The maximum number of eligible individuals receiving premium assistance is reached when the anticipated amount of claims for premium assistance payments reaches ninety percent of the amount of money allocated for premium assistance payments. The director of the department shall establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because the maximum number of individuals is reached. The director shall notify all persons who applied for a certificate and who were not issued a certificate the reason that they did not receive a certificate and whether they were placed on the waiting list.

Section 38‑62‑60. The certificate is valid for the twelve months following the purchase of a qualifying health plan, if the plan is purchased within ninety days of the date the certificate was issued.

Section 38‑62‑70. (A) The department shall develop the form and manner for a person to apply for a renewal certificate and shall make the form readily available to health insurance agents and other persons authorized to sell health insurance in this State. Participants shall be responsible for obtaining and completing the form and forwarding it and any documentation required by the department. The department will process renewal applications along with new applications in accordance with Section 38‑62‑50. Priority shall be given to renewal applications.

(B) In the case of individually sponsored insurance, sixty days before the expiration of the policy term, the insurer must send the insured a certificate renewal application promulgated by the department. The insured shall be responsible for completing the form and forwarding it and any documentation required by the department.

(C) In the case of employer‑sponsored insurance, sixty days before the expiration of the policy term, the employer must send the insured a certificate renewal application promulgated by the department. The insured shall be responsible for completing the form and forwarding it and any documentation required by the department.

(D) The department may only issue a renewal certificate if the applicant remains eligible.

Section 38‑62‑80. (A) In the case of individually sponsored insurance, the department shall provide the premium assistance directly to the individual’s choice of participating qualifying insurers. To obtain the premium assistance, an insurer must present a valid certificate to the department. The release of the premium assistance to the insurer is contingent upon the insurer submitting proof of the individual satisfying his share of the premium liability. In no case, shall the amount paid in premium assistance exceed the total cost of coverage for the individual. The department shall make quarterly premium assistance payments to insurers.

(B)(1) In the case of employer‑sponsored insurance, the department shall provide the premium assistance directly to the individual’s participating employer. To obtain the premium assistance, an employer must present a valid certificate to the department. A participating small employer must share the premium assistance with the employee in proportion to the percentage of the cost of coverage paid by the employer and the employee. The amount paid in premium assistance to a small employer cannot exceed the total cost of coverage for the employee. The release of the premium assistance to the employer is contingent upon the employer submitting proof of the individual and the small employer satisfying his respective share of the premium liability. The department shall make quarterly premium assistance payments to small employers.

(2) If the covered individual ceases to be employed, the employer must return the certificate to the individual and notify the department that the employer no longer covers the individual under a qualifying health plan. Any remaining value of the certificate may be used to obtain a qualifying health plan.

Section 38‑62‑90. This chapter is not intended, nor shall it operate to guarantee health insurance coverage to any individual.

Section 38‑62‑100. The department may charge the Health Care Trust Fund a quarterly administrative fee of up to one percent of the amount credited to the Health Care Trust Fund in the preceding quarter.

Section 38‑62‑110. The department must provide an annual report on the Health Care Trust Fund to the chairman of the Senate Finance Committee, the chairman of the House Ways and Means Committee, the chairman of the Senate Banking and Insurance Committee, the chairman of the House Labor, Commerce and Industry Committee, the Board of Economic Advisors, and the Study Committee on Health Care Access and Affordability. The report shall provide, at a minimum, a general description of the services provided and populations served, the number of people served, the average cost per person, the additional administration costs of the programs funded by the Health Care Trust Fund, and a three‑year forecast of the utilization of the fund.

Section 38‑62‑120. The Department of Insurance shall develop and implement a public awareness program for the Palmetto Health Care Premium Assistance Program.”

F. Chapter 74, Title 38 of the 1976 Code is amended by adding:

“Section 38‑74‑75. (A) There is created the Palmetto Health Care Safety Net Program of the pool. The program must be funded by the Palmetto Health Care Safety Net Trust Fund created in Section 11‑11‑230(D), and must be self‑sustaining and financially independent from the remainder of the pool.

(B) Any person eligible for pool coverage may opt to participate in the Palmetto Health Care Safety Net Program of the pool, provided the person also:

(1) is at least nineteen years of age;

(2) provides evidence of United States citizenship and of South Carolina residency for the sixty months immediately preceding the application for coverage;

(3) provides their prior year’s state income tax return and corresponding W‑2 forms evidencing total household gross income that did not exceed seventy‑five thousand dollars in the previous taxable year; and

(4) agrees to participate in the Palmetto Health Care Safety Net Program and to comply with all care coordination plans, case management procedures, and managed care criteria of the program developed by the Department of Insurance.

(C) The Department of Insurance shall oversee the Palmetto Health Care Safety Net Program. The department shall:

(1) select a qualified entity, in accordance with the procedures contained in Section 38‑74‑40, to administer the program including:

(a) establishing accounting policies for the Palmetto Health Care Safety Net Trust Fund;

(b) establishing premium billing and collection policies including policies regarding nonpayment of premiums;

(c) hiring independent actuarial support from a qualified Member of the Academy of Actuaries to develop and publish actuarially determined annual premium rates that are self‑sustaining and actuarially sound. Rates may be adjusted by age and gender and any other appropriate characteristics determined by the contracted actuary;

(d) developing an application for participation and establish policies and procedures for initially determining eligibility, the periodic redetermination of eligibility, monitoring of compliance with program rules and managed care provisions and termination of participation, and the premium assistance for noncompliance;

(e) establishing a schedule of medical benefits, exclusions, and limitations for the program;

(f) developing stringent care coordination plans, case management procedures, and other managed care criteria that will serve as a requirement for eligible persons to participate in this program; and

(g) developing and implementing a public awareness program of the plan; and

(2) promulgate regulations necessary to implement the provisions of this section.

(D) Participation in the Palmetto Health Care Safety Net Program is limited to the funds available in the Palmetto Health Care Safety Net Trust Fund in order to prevent any loss in program operations. The Department of Insurance or its contracted entity shall accept and process applications, and award the premium assistance provided for in this section, in the order in which the applications are received. The department is further authorized to establish a waiting list in the event there are insufficient funds available to allow all applicants to participate. The department also may implement a maximum limit on individual coverage to prevent an operating loss. The program may not be funded in any part by the funding mechanisms of the existing pool. The Department of Insurance may charge the Palmetto Health Care Safety Net Trust Fund a quarterly administrative fee of up to one percent of the amount credited to the Palmetto Health Care Safety Net Trust Fund in the preceding year.

(E) Beginning on July 1, 2011, and then only to the extent sufficient funds exist in the Palmetto Health Care Safety Net Trust Fund, participants in the Palmetto Health Care Safety Net Program are entitled to a premium assistance equal to the difference between the self‑supporting actuarial premium for this pool and the amount that the individual would have been required to pay for an equivalent product under Section 38‑62‑30.

(F) The Department of Insurance is authorized to initiate periodic transfers in the amount of the approved premium assistance from the Palmetto Health Care Safety Net Trust Fund to the administering entity of the Palmetto Health Care Safety Net Program to be credited against the premiums owed by the program and any additional funds to maintain the solvency of the program.

(G) Neither the establishment of rates, forms, or procedures nor any other joint or collective action required by this section may be the basis of any legal action, criminal or civil liability, or penalty against the program. No cause of action may arise against the program’s agents, employees, or representatives, for any good faith act or omission in the performance of their powers and duties pursuant to this section.

(H) The department shall provide an annual report on the Palmetto Health Care Safety Net Program of the pool to the chairman of the Senate Finance Committee, the chairman of the House Ways and Means Committee, the chairman of the Senate Banking and Insurance Committee, the chairman of the House Labor, Commerce and Industry Committee, the Board of Economic Advisors, and the Study Committee on Health Care Access and Affordability. The report shall provide, at a minimum, a general description of the services provided and populations served, the number of people served, the average cost per person, the additional administration costs of the programs funded by the Health Care Trust Fund, and a three‑year forecast of the utilization of the fund.”

G. In November and December 2008, neither a wholesaler, distributor, or a retailer of cigarettes may purchase more cigarettes in any one month in an amount that exceeds one hundred ten percent of the average monthly amount of cigarettes purchased in the same two months of the previous calendar year. In examining aggregate business license tax revenue data, if the Department of Revenue determines that the revenue collected in November and December 2008 exceeds one hundred ten percent of the amount collected during the same two months of the previous calendar year, the business license tax audit division of the department shall conduct an audit of random wholesalers, distributors, and retailers to ensure compliance with the requirements of this section. A violation of this section results in the imposition of a civil penalty equal to five times the amount of tax owed on the purchased cigarettes that caused the wholesaler, distributor, or retailer to exceed one hundred ten percent of the amount purchased in the same two months of the previous calendar year.

H. (A) There is created the Study Committee on Health Care Access and Affordability. The committee shall review and make recommendations regarding the state’s overall health status, the price of health care, the use of Medicare and Medicaid, the promotion of public and private health care partnerships, preventative care, the establishment of a high risk health care pool, the necessity of a reinsurance program, how to maximize coverage while controlling costs and providing quality care, and how to improve the state’s overall health and health care affordability.

(B) The study committee is composed of nine members. The President *Pro Tempore* of the Senate, the Speaker of the House of Representatives, and the Governor shall each appoint three members. The Governor must appoint one member based upon the recommendation of the Health Sciences South Carolina collaborative. Each member must have a background of substantial duration or expertise in at least one of the following:

(1) health care issues;

(2) business issues;

(3) economic issues;

(4) consumer issues;

(5) insurance issues;

(6) academic issues; or

(7) governmental issues.

(C) The study committee shall make a report of its findings and recommendations to the General Assembly no later than January 1, 2011, at which time the study committee must be dissolved.

J. Notwithstanding the general effective date provided in this act and except where otherwise stated, this section takes effect January 1, 2009. /

Renumber sections to conform.

Amend title to conform.

Rep. J. E. SMITH explained the amendment.

Rep. MERRILL moved to table the amendment, which was agreed to.

Reps. SCOTT and HART proposed the following Amendment No. 10 (Doc Name COUNCIL\SWB\5612CM08), which was tabled:

Amend the bill, as and if amended, by adding the following appropriately numbered SECTION:

/ SECTION \_\_. A state department or agency that lays off personnel to comply with the general fund appropriations reductions contained in this act must rehire personnel that have been laid off if the General Assembly restores those funds to the department or agency’s budget. /

Renumber sections to conform.

Amend title to conform.

Rep. SCOTT explained the amendment.

Rep. SCOTT moved to table the amendment, which was agreed to.

Reps. HARRISON and J. E. SMITH proposed the following Amendment No. 11 (Doc Name H-WM\PROTECTION & ADVOCACY), which was tabled:

Amend the bill, as and if amended, SECTION 2, PART IB, page 53, by inserting after line 15:

/SECTION 72 - D12 - GOVERNOR’S OFFICE

72.12. (GOV: OEPP - Foster Care~~‑Reduction in Funds Separation~~) ~~In recognition of the fact that the funds appropriated for the Division of Foster Care contain both funds appropriated for use by the Division Review System and “pass through” funds designated for use by the South Carolina Protection and Advocacy for the Handicapped, any reduction in funds appropriated for either shall be calculated based upon the separate funds for the respective entities rather than based upon the combined budget of the two organizations.~~ *For the current fiscal year, the Governor’s Office of Executive Policy and Programs shall transfer to Protection and Advocacy for People with Disabilities, Inc., formerly known as Protection and Advocacy for the Handicapped, Inc., the sum of $249,240.* /

Renumber sections to conform.

Amend title to conform.

Rep. HARRISON explained the amendment.

Rep. MERRILL spoke against the amendment.

Rep. J. E. SMITH spoke in favor of the amendment.

Rep. COOPER moved to table the amendment.

Rep. J. E. SMITH demanded the yeas and nays which were taken, resulting as follows:

Yeas 66; Nays 50

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Ballentine | Bannister | Barfield |
| Battle | Bedingfield | Bingham |
| Bowen | Brady | Brantley |
| Cato | Chalk | Clemmons |
| Cooper | Cotty | Crawford |
| Daning | Dantzler | Duncan |
| Erickson | Frye | Gambrell |
| Gullick | Hagood | Hamilton |
| Hardwick | Harrell | Herbkersman |
| Hiott | Kelly | Kirsh |
| Knight | Leach | Limehouse |
| Littlejohn | Loftis | Lucas |
| Merrill | Moss | Mulvaney |
| Owens | Perry | Phillips |
| Pinson | E. H. Pitts | M. A. Pitts |
| Rice | Sandifer | Scarborough |
| Shoopman | Skelton | D. C. Smith |
| G. M. Smith | G. R. Smith | J. R. Smith |
| W. D. Smith | Spires | Stewart |
| Taylor | Thompson | Toole |
| Umphlett | Viers | White |
| Whitmire | Witherspoon | Young |

**Total--66**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Alexander | Allen |
| Anderson | Anthony | Bales |
| Branham | Breeland | G. Brown |
| R. Brown | Clyburn | Cobb-Hunter |
| Coleman | Funderburk | Govan |
| Haley | Harrison | Hart |
| Harvin | Hayes | Hodges |
| Hosey | Howard | Huggins |
| Hutson | Jefferson | Jennings |
| Kennedy | Mack | Mahaffey |
| McLeod | Miller | J. H. Neal |
| J. M. Neal | Neilson | Ott |
| Parks | Rutherford | Scott |
| Sellers | Simrill | F. N. Smith |
| J. E. Smith | Stavrinakis | Talley |
| Vick | Walker | Weeks |
| Whipper | Williams |  |

**Total--50**

So, the amendment was tabled.

Rep. J. E. SMITH proposed the following Amendment No. 13 (Doc Name COUNCIL\MS\7715ZW08), which was tabled:

Amend the bill, as and if amended, in SECTION 1, page 4, SECTION 1, Department of Education, Governor’s School for Arts and Humanities, line 4, by striking / 444,983 / and inserting / 167,567 / and by striking lines 5 and 6.

Renumber sections to conform.

Amend title to conform.

Rep. J. E. SMITH explained the amendment.

Rep. F. N. SMITH spoke in favor of the amendment.

Rep. COOPER moved to table the amendment.

Rep. J. E. SMITH demanded the yeas and nays which were taken, resulting as follows:

Yeas 80; Nays 31

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Ballentine | Bannister |
| Barfield | Battle | Bedingfield |
| Bingham | Bowen | Brady |
| Brantley | R. Brown | Cato |
| Chalk | Clemmons | Coleman |
| Cooper | Cotty | Crawford |
| Daning | Dantzler | Duncan |
| Erickson | Frye | Gambrell |
| Gullick | Hagood | Haley |
| Hamilton | Hardwick | Harrell |
| Harrison | Hayes | Herbkersman |
| Hiott | Huggins | Hutson |
| Jefferson | Kelly | Kirsh |
| Knight | Leach | Limehouse |
| Littlejohn | Loftis | Lucas |
| Mahaffey | Merrill | Moss |
| Mulvaney | J. M. Neal | Ott |
| Owens | Perry | Phillips |
| Pinson | E. H. Pitts | M. A. Pitts |
| Rice | Sandifer | Scarborough |
| Shoopman | Simrill | Skelton |
| D. C. Smith | G. M. Smith | G. R. Smith |
| J. R. Smith | Spires | Stavrinakis |
| Stewart | Taylor | Thompson |
| Toole | Umphlett | Vick |
| Walker | White | Whitmire |
| Witherspoon | Young |  |

**Total--80**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Alexander | Allen | Anderson |
| Anthony | Bales | Branham |
| Breeland | G. Brown | Clyburn |
| Cobb-Hunter | Funderburk | Govan |
| Hart | Harvin | Hodges |
| Hosey | Howard | Jennings |
| Kennedy | Mack | J. H. Neal |
| Neilson | Parks | Rutherford |
| Scott | Sellers | F. N. Smith |
| J. E. Smith | Weeks | Whipper |
| Williams |  |  |

**Total--31**

So, the amendment was tabled.

Reps. J. H. NEAL and SELLERS proposed the following Amendment No. 16 (Doc Name LEGWORK\HOUSE \PREVENTION PARTNERSHIPSKRL), which was tabled:

Amend the bill, as and if amended, in SECTION 1, PART IA, page 16, SECTION 21, Department of Health and Human Services, lines 4-5 opposite / H. Prevention Partnership Grants / by striking / 2,000,000 / and inserting / 1,000,000 /.

Renumber sections to conform.

Amend title to conform.

Rep. J. H. NEAL explained the amendment.

Rep. J. H. NEAL moved to table the amendment, which was agreed to.

Reps. J. H. NEAL and SELLERS proposed the following Amendment No. 17 (Doc Name LEGWORK\HOUSE\HIV), which was tabled:

Amend the bill, as and if amended, SECTION 2, PART IB, page 51, SECTION 21, Department of Health and Human Services, by adding an appropriately numbered paragraph after line 15 to read:

/ *21.\_\_. (DHHS: HIV Prevention) Of the funds appropriated and/or authorized to the department, $1,000,000 shall be transferred to the Department of Health and Environmental Control for HIV Prevention.*/

Renumber sections to conform.

Amend title to conform.

Rep. J. H. NEAL explained the amendment.

Rep. F. N. SMITH spoke in favor of the amendment.

Rep. J. H. NEAL moved to table the amendment, which was agreed to.

Reps. HARRISON and J. E. SMITH proposed the following Amendment No. 18 (Doc Name COUNCIL\AGM\19287MM08), which was tabled:

Amend the bill, as and if amended, SECTION 2, PART 1B, page 54, by inserting before line 1:

/ SECTION 80A ‑ F03 ‑ Budget and Control Board

80A.63 (BCB.CarryForward) For the current fiscal year, the State Budget and Control Board shall transfer out its carryforward funds to Protection and Advocacy for People with Disabilities, Inc., formerly known as Protection and Advocacy for the Handicapped, Inc., the sum of $249,240. /

Renumber sections to conform.

Amend title to conform.

Rep. HARRISON explained the amendment.

Rep. YOUNG moved to table the amendment.

Rep. J. E. SMITH demanded the yeas and nays which were taken, resulting as follows:

Yeas 62; Nays 50

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Bannister | Barfield | Battle |
| Bedingfield | Bingham | Bowen |
| Brady | Brantley | Cato |
| Chalk | Clemmons | Cooper |
| Cotty | Crawford | Daning |
| Dantzler | Duncan | Frye |
| Gambrell | Gullick | Hagood |
| Hamilton | Hardwick | Harrell |
| Herbkersman | Hiott | Hodges |
| Kelly | Kirsh | Leach |
| Limehouse | Littlejohn | Lucas |
| Merrill | Moss | Mulvaney |
| Owens | Perry | Phillips |
| Pinson | E. H. Pitts | M. A. Pitts |
| Rice | Sandifer | Scarborough |
| Shoopman | Skelton | D. C. Smith |
| G. M. Smith | G. R. Smith | J. R. Smith |
| Spires | Stewart | Taylor |
| Thompson | Umphlett | Vick |
| Viers | White | Whitmire |
| Witherspoon | Young |  |

**Total--62**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Alexander | Allen |
| Anderson | Anthony | Bales |
| Ballentine | Branham | Breeland |
| G. Brown | R. Brown | Clyburn |
| Cobb-Hunter | Coleman | Erickson |
| Funderburk | Govan | Haley |
| Harrison | Hart | Harvin |
| Haskins | Hosey | Howard |
| Huggins | Hutson | Jefferson |
| Kennedy | Knight | Loftis |
| Mack | Mahaffey | McLeod |
| Miller | J. H. Neal | J. M. Neal |
| Neilson | Parks | Rutherford |
| Scott | Sellers | Simrill |
| F. N. Smith | J. E. Smith | Stavrinakis |
| Talley | Walker | Weeks |
| Whipper | Williams |  |

**Total--50**

So, the amendment was tabled.

Reps. J. E. SMITH and HOWARD proposed the following Amendment No. 19 (Doc Name COUNCIL\MS\7708ZW08), which was tabled:

Amend the bill, as and if amended, SECTION 1, page 20, SECTION 24, by adding an appropriately designated paragraph at the end of SECTION 24 to read:

/ ( ) Notwithstanding the provisions of this SECTION making specified reductions, the Department of Disabilities and Special Needs (J16) is hereby appropriated from the General Fund of the State for Fiscal Year 2008 - 2009 the amount of $75,000 to be expended for the Special Olympics. /

Renumber sections to conform.

Amend title to conform.

Rep. HOWARD explained the amendment.

Rep. COOPER moved to table the amendment.

Rep. HOWARD demanded the yeas and nays which were taken, resulting as follows:

Yeas 77; Nays 33

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Ballentine | Bannister |
| Barfield | Battle | Bedingfield |
| Bingham | Bowen | Brady |
| Cato | Chalk | Clemmons |
| Cooper | Cotty | Crawford |
| Daning | Dantzler | Duncan |
| Erickson | Frye | Funderburk |
| Gambrell | Gullick | Hagood |
| Haley | Hamilton | Hardwick |
| Harrell | Harrison | Harvin |
| Haskins | Herbkersman | Hiott |
| Huggins | Hutson | Kelly |
| Kirsh | Knight | Leach |
| Littlejohn | Loftis | Lucas |
| Mahaffey | Merrill | Miller |
| Moss | Mulvaney | Neilson |
| Owens | Perry | Phillips |
| Pinson | E. H. Pitts | M. A. Pitts |
| Rice | Sandifer | Shoopman |
| Simrill | Skelton | G. M. Smith |
| G. R. Smith | J. R. Smith | W. D. Smith |
| Spires | Stavrinakis | Stewart |
| Taylor | Thompson | Toole |
| Umphlett | Vick | Viers |
| Walker | White | Whitmire |
| Witherspoon | Young |  |

**Total--77**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Alexander | Allen | Anderson |
| Anthony | Bales | Branham |
| Brantley | Breeland | G. Brown |
| R. Brown | Clyburn | Coleman |
| Govan | Hart | Hayes |
| Hodges | Hosey | Howard |
| Jefferson | Kennedy | Mack |
| McLeod | J. H. Neal | J. M. Neal |
| Ott | Parks | Rutherford |
| Scott | Sellers | J. E. Smith |
| Weeks | Whipper | Williams |

**Total--33**

So, the amendment was tabled.

Rep. KENNEDY proposed the following Amendment No. 2 (Doc Name COUNCIL\NBD\11015AC08), which was ruled out of order:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/A. Section 12‑37‑220(B)(47) of the 1976 Code is amended to read:

“~~(47)(a)~~ ~~Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12‑37‑250, one hundred percent of the fair market value of owner‑occupied residential property eligible for and receiving the special assessment ratio allowed owner‑occupied residential property pursuant to Section 12‑43‑220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.~~

~~(b)~~ ~~Notwithstanding any other provision of law, property exempted from property tax in the manner provided in this item is considered taxable property for purposes of bonded indebtedness pursuant to Section 15 of Article X of the Constitution of this State.~~

~~(c)~~ ~~The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two‑thirds majority of the membership of each house of the General Assembly.~~”

B. Sections 11‑11‑155, 11‑11‑156, and 12‑36‑1120 of the 1976 Code are repealed.

C. This section takes effect July 1, 2009 and applies for property tax year beginning after 2008./

Renumber sections to conform.

Amend title to conform.

Rep. KENNEDY explained the amendment.

**POINT OF ORDER**

Rep. SIMRILL raised the Point of Order that Amendment No. 2 was out of order in that it was not germane to the Bill.

SPEAKER HARRELL stated that the Amendment took effect July 1, 2009, which did not apply to the current Appropriation Bill up for consideration. He, therefore, sustained the Point of Order and ruled the Amendment out of order.

Rep. J. E. SMITH proposed the following Amendment No. 3 (Doc Name COUNCIL\GJK\20772SD08), which was tabled:

Amend the bill, as and if amended, by adding a new SECTION appropriately numbered to read:

/SECTION \_\_\_\_. (A) Section 2‑1‑180 of the 1976 Code is amended to read:

“Section 2-1-180. The regular annual session of the General Assembly shall adjourn sine die each year not later than 5:00 p.m. on the first Thursday in ~~June~~ May. In any year that the House of Representatives fails to give third reading to the annual General Appropriation Bill by March ~~thirty‑first~~ first, the date of sine die adjournment is extended by one statewide day for each statewide day after March ~~thirty‑first~~ first that the House of Representatives fails to give the bill third reading. The session may also be extended by concurrent resolution adopted by a two‑thirds vote of both the Senate and House of Representatives. During the time between 5:00 p.m. on the first Thursday in ~~June~~ May and the extended sine die adjournment date, as set forth herein, no legislation or other business may be considered except the General Appropriation Bill and any matters approved for consideration by a concurrent resolution adopted by two‑thirds vote in both houses.”

(B) The general fund appropriations in the category of “other operating expenses” to the House of Representatives and the Senate for members’ mileage, subsistence, and per diem in Act 310 of 2008 for fiscal year 2008-2009 are reduced by twenty percent and returned to the unobligated revenues of the state general fund. /

Renumber sections to conform.

Amend title to conform.

Rep. J. E. SMITH explained the amendment.

Rep. MERRILL spoke against the amendment.

Rep. J. E. SMITH spoke in favor of the amendment.

Rep. COOPER moved to table the amendment.

Rep. J. E. SMITH demanded the yeas and nays which were taken, resulting as follows:

Yeas 61; Nays 52

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Bannister | Barfield | Battle |
| Bedingfield | Bingham | Bowen |
| Brady | Brantley | Cato |
| Chalk | Clemmons | Cooper |
| Cotty | Crawford | Daning |
| Dantzler | Duncan | Erickson |
| Frye | Gambrell | Gullick |
| Hagood | Hamilton | Hardwick |
| Harrell | Harrison | Haskins |
| Herbkersman | Hiott | Hutson |
| Jefferson | Kelly | Kirsh |
| Leach | Limehouse | Littlejohn |
| Loftis | Lucas | Merrill |
| Moss | Owens | Perry |
| Phillips | Pinson | M. A. Pitts |
| Sandifer | Shoopman | Skelton |
| D. C. Smith | G. R. Smith | J. R. Smith |
| Spires | Stewart | Taylor |
| Toole | Umphlett | Viers |
| White | Whitmire | Witherspoon |
| Young |  |  |

**Total--61**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Alexander | Allen |
| Anderson | Bales | Ballentine |
| Branham | Breeland | G. Brown |
| R. Brown | Clyburn | Delleney |
| Funderburk | Govan | Haley |
| Hart | Harvin | Hayes |
| Hodges | Hosey | Howard |
| Huggins | Jennings | Kennedy |
| Knight | Mack | Mahaffey |
| McLeod | Miller | Mulvaney |
| J. H. Neal | J. M. Neal | Neilson |
| Ott | Parks | E. H. Pitts |
| Rutherford | Scarborough | Scott |
| Sellers | Simrill | F. N. Smith |
| G. M. Smith | J. E. Smith | Stavrinakis |
| Talley | Thompson | Vick |
| Walker | Weeks | Whipper |
| Williams |  |  |

**Total--52**

So, the amendment was tabled.

Rep. KENNEDY proposed the following Amendment No. 20 (Doc Name COUNCIL\AGM\19288AC08), which was tabled:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/A. Section 12‑37‑220(B)(47) of the 1976 Code is amended to read:

“~~(47)(a)~~ ~~Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12‑37‑250, one hundred percent of the fair market value of owner‑occupied residential property eligible for and receiving the special assessment ratio allowed owner‑occupied residential property pursuant to Section 12‑43‑220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.~~

~~(b)~~ ~~Notwithstanding any other provision of law, property exempted from property tax in the manner provided in this item is considered taxable property for purposes of bonded indebtedness pursuant to Section 15 of Article X of the Constitution of this State.~~

~~(c)~~ ~~The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two‑thirds majority of the membership of each house of the General Assembly.~~”

B. Sections 11‑11‑155, 11‑11‑156, and 12‑36‑1120 of the 1976 Code are repealed.

C. This section takes effect June 30, 2009 and applies for property tax years beginning after 2008./

Renumber sections to conform.

Amend title to conform.

Rep. KENNEDY explained the amendment.

Rep. KENNEDY spoke in favor of the amendment.

Rep. COBB-HUNTER spoke upon the amendment.

Rep. COBB-HUNTER spoke upon the amendment.

Rep. YOUNG moved to table the amendment.

Rep. KENNEDY demanded the yeas and nays which were taken, resulting as follows:

Yeas 98; Nays 17

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Alexander | Anthony |
| Bales | Ballentine | Bannister |
| Barfield | Battle | Bedingfield |
| Bingham | Bowen | Bowers |
| Brady | Branham | Cato |
| Chalk | Clemmons | Cobb-Hunter |
| Coleman | Cooper | Cotty |
| Crawford | Daning | Dantzler |
| Delleney | Duncan | Erickson |
| Frye | Funderburk | Gambrell |
| Govan | Hagood | Haley |
| Hamilton | Hardwick | Harrell |
| Harrison | Haskins | Hayes |
| Herbkersman | Hiott | Huggins |
| Hutson | Jennings | Kelly |
| Kirsh | Knight | Leach |
| Limehouse | Littlejohn | Loftis |
| Lucas | Mahaffey | McLeod |
| Merrill | Miller | Mitchell |
| Moss | Mulvaney | J. H. Neal |
| J. M. Neal | Neilson | Ott |
| Owens | Parks | Perry |
| Phillips | Pinson | E. H. Pitts |
| M. A. Pitts | Rice | Sandifer |
| Scarborough | Scott | Shoopman |
| Simrill | Skelton | D. C. Smith |
| G. M. Smith | G. R. Smith | J. E. Smith |
| J. R. Smith | W. D. Smith | Spires |
| Stavrinakis | Stewart | Talley |
| Taylor | Thompson | Toole |
| Umphlett | Vick | Viers |
| Walker | White | Whitmire |
| Witherspoon | Young |  |

**Total--98**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Allen | Anderson | Breeland |
| G. Brown | R. Brown | Clyburn |
| Hart | Harvin | Hodges |
| Hosey | Howard | Jefferson |
| Kennedy | Mack | Weeks |
| Whipper | Williams |  |

**Total--17**

So, the amendment was tabled.

RECORDS FOR VOTING

We voted against Amendment No. 20 to H. 5300, in favor of a more comprehensive approach to tax reform. We look forward to working with the other Members of the House in the upcoming session to reform taxes in a way that would result in a more equitable system of taxation that would balance revenue streams to better weather economic downturns.

Rep. J. E. Smith

Rep. Doug Jennings

Rep. COOPER proposed the following Amendment No. 12 (Doc Name H-WM\RESCISSION ADJUSTMENTS), which was adopted:

Amend the bill, as and if amended, in SECTION 1, PART IA, page 3, SECTION 1, Department of Education, line 11, opposite /other operating expenses/ by striking /222,310/ and inserting /327,691/.

Amend the bill further, as and if amended, in SECTION 1, PART IA, page 3, SECTION 1, Department of Education, line 33, opposite /ymca-youth in government/ by striking /17,892/ and inserting /18,445/.

Amend the bill further, as and if amended, in SECTION 1, PART IA, page 4, SECTION 1, Department of Education, line 4, opposite /classified positions/ by striking /444,983/ and inserting /339,049/.

Amend the bill further, as and if amended, in SECTION 2, PART IB, page 47, SECTION 1, Department of Education, paragraph 1.82 (Statewide Assessment), lines 24-32, by striking the paragraph in it’s entirety.

Amend the bill, as and if amended, SECTION 2, PART IB, page 50 by inserting after line 15, Section 6 and an appropriately numbered paragraph to read:

/ SECTION 6 - H03 - Commission on Higher Education

*6.\_. (CHE: Mandatory Furlough) In a fiscal year in which the general funds appropriated for an institution of higher learning are less than the general funds appropriated for that institution in the prior fiscal year, or whenever the General Assembly or the Budget and Control Board implements a midyear across-the-board budget reduction, agency heads for institutions of higher learning and the State Board for Technical and Comprehensive Education through policy and procedure for the Technical College System may institute employee furlough programs of not more than twenty working days in the fiscal year in which the deficit is projected to occur. The furlough must be inclusive of all employees regardless of source of funds, place of work, or tenure status, and must include employees in classified positions and unclassified positions as well as agency heads. Scheduling of furlough days, or portions of days, shall be at the discretion of the agency or individual institution. During this furlough, affected employees shall be entitled to participate in the same state benefits as otherwise available to them except for receiving their salaries. As to those benefits which require employer and employee contributions, including but not limited to contributions to the South Carolina Retirement System or the optional retirement program, institutions will be responsible for making both employer and employee contributions during the time of the furlough if coverage would otherwise be interrupted; and as to those benefits which require only employee contributions, the employee remains solely responsible for making those contributions. Placement of an employee on furlough under this provision does not constitute a grievance or appeal under the State Employee Grievance Act. In the event an institution's reduction is due solely to the General Assembly transferring or deleting a program, this provision does not apply. The implementation of a furlough program authorized by this provision shall be on an institution by institution basis.* /

Amend the bill further, as and if amended, in SECTION 2, PART IB, page 53, SECTION 75, Comptroller General’s Office, paragraph 75.7 (Purchasing Card Rebate Program), line 39, by striking / *7G7* / and inserting / *37G7* /.

Amend the bill further, as and if amended, in SECTION 2, PART IB, page 55, SECTION 89, General Provisions, paragraph 89.112 (Flexibility), lines 13 & 14, by striking / *general fund* / and line 14, after /*programs*/ by inserting /*contained in this act*/

Amend the bill further, as and if amended, in SECTION 2, PART IB, page 58, SECTION 89, General Provisions, paragraph 89.123 (Suspend FTE Deletion Process & Travel Report), line 2, by striking / *80.17* / and inserting / *89.17* /.

Amend the bill further, as and if amended, in SECTION 2, PART IB, page 58, SECTION 89, General Provisions, paragraph 89.125 (Offset Corrections Budget Reduction), lines 19 & 20, by striking / *the State Law Enforcement Division and* / .

Amend the bill further, as and if amended, SECTION 2, PART IB, page 58, SECTION 89, General Provisions, by adding an appropriately numbered paragraph after line 36 to read:

/ *89.\_. (GP: Implementation of Access to Justice Post-Conviction DNA Testing Act) The provisions of the “Access to Justice Post-Conviction DNA Testing Act” (R.429 of 2008) are not required to be implemented until such time as general funds are appropriated or federal or other funds are received to begin implementation of the act.* /

Amend the bill further, as and if amended, in SECTION 2, PART IB, page 58, SECTION 90, Statewide Revenue, paragraph 90.16 (Transfer of Deed), line 41, after /*transfer*/ by inserting

/ *$7,000,000 of the* /.

Renumber sections to conform.

Amend title to conform.

Rep. COOPER explained the amendment.

The amendment was then adopted.

RECORD FOR VOTING

I abstained from voting on Amendment No. 12 due to my employment with Lander University.

Rep. J. Adam Taylor

Rep. WALKER proposed the following Amendment No. 21 (Doc Name COUNCIL\NBD\11016AC08), which was tabled:

Amend the bill, as and if amended, in SECTION 2, Part IB, page 47, Section H63, Department of Education, after line 32 by adding an appropriately numbered paragraph to read:

*(SDE: Statewide Assessment) The department is directed to utilize the funds provided for the statewide assessment program to ensure the continuation of federal funds. Assessments administered during the 2008‑2009 school year shall not be used to generate school and district report card ratings. Nothing in this provision shall require a suspension of any provision that will result in the loss of federal funds.*/

Renumber sections to conform.

Amend title to conform.

Rep. WALKER explained the amendment.

Rep. J. R. SMITH moved to table the amendment.

Rep. WALKER demanded the yeas and nays which were taken, resulting as follows:

Yeas 100; Nays 7

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Allen | Anderson |
| Bales | Ballentine | Bannister |
| Barfield | Battle | Bedingfield |
| Bingham | Bowen | Bowers |
| Brady | Brantley | Breeland |
| G. Brown | R. Brown | Cato |
| Chalk | Clemmons | Clyburn |
| Cooper | Cotty | Crawford |
| Daning | Dantzler | Delleney |
| Duncan | Erickson | Frye |
| Funderburk | Gambrell | Hagood |
| Haley | Hamilton | Hardwick |
| Harrell | Harrison | Hart |
| Harvin | Haskins | Hayes |
| Herbkersman | Hiott | Hodges |
| Hosey | Huggins | Hutson |
| Jefferson | Jennings | Kennedy |
| Kirsh | Knight | Leach |
| Limehouse | Loftis | Lucas |
| Mack | McLeod | Miller |
| Mitchell | Moss | Mulvaney |
| J. H. Neal | Neilson | Ott |
| Owens | Parks | Perry |
| Pinson | E. H. Pitts | M. A. Pitts |
| Rice | Sandifer | Scarborough |
| Scott | Shoopman | Simrill |
| Skelton | D. C. Smith | G. M. Smith |
| G. R. Smith | J. E. Smith | J. R. Smith |
| Spires | Stavrinakis | Stewart |
| Taylor | Thompson | Toole |
| Umphlett | Vick | Viers |
| Weeks | Whipper | White |
| Whitmire | Williams | Witherspoon |
| Young |  |  |

**Total--100**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Anthony | Branham | Gullick |
| Kelly | Littlejohn | Mahaffey |
| Walker |  |  |

**Total--7**

So, the amendment was tabled.

The question then recurred to the passage of the Bill, as amended, on second reading.

Rep. COOPER demanded the yeas and nays which were taken, resulting as follows:

Yeas 109; Nays 3

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Alexander | Allen |
| Anderson | Anthony | Bales |
| Ballentine | Bannister | Barfield |
| Battle | Bedingfield | Bingham |
| Bowen | Bowers | Brady |
| Branham | Brantley | Breeland |
| G. Brown | R. Brown | Cato |
| Chalk | Clemmons | Clyburn |
| Cobb-Hunter | Cooper | Cotty |
| Crawford | Daning | Dantzler |
| Delleney | Duncan | Erickson |
| Frye | Funderburk | Gambrell |
| Govan | Gullick | Hagood |
| Haley | Hamilton | Hardwick |
| Harrell | Harrison | Hart |
| Harvin | Haskins | Hayes |
| Herbkersman | Hiott | Hodges |
| Hosey | Howard | Huggins |
| Hutson | Jefferson | Jennings |
| Kelly | Kirsh | Knight |
| Leach | Limehouse | Littlejohn |
| Loftis | Lucas | Mack |
| Mahaffey | McLeod | Merrill |
| Miller | Mitchell | Moss |
| Mulvaney | J. H. Neal | J. M. Neal |
| Neilson | Ott | Owens |
| Parks | Perry | Pinson |
| E. H. Pitts | Rice | Sandifer |
| Scarborough | Scott | Shoopman |
| Simrill | Skelton | D. C. Smith |
| G. M. Smith | G. R. Smith | J. R. Smith |
| Stavrinakis | Stewart | Taylor |
| Thompson | Toole | Umphlett |
| Vick | Viers | Walker |
| Weeks | Whipper | White |
| Whitmire | Williams | Witherspoon |
| Young |  |  |

**Total--109**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Kennedy | M. A. Pitts | J. E. Smith |

**Total--3**

So, the Bill, as amended, was read the second time and ordered to third reading.

**H. 5300 - The Rescission Bill**

**STATEMENTS FOR HOUSE JOURNAL**

**ABSTENTION FROM VOTING**

**BASED ON POTENTIAL CONFLICT OF INTEREST**

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 53, 54, 58, 59, 60, 61, 64, 65, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Karl B. Allen

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 21, 22, 47, 49, 52, 54, 56, 58, 59, 60, 61, 62, 64, 66, 65, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

A potential conflict may exist under **S.C. Code §8-13-745(C)** because a contract for goods or services may be entered into within the next year with an agency, commission, board, department, or other entity funded through the general appropriation bill by myself, an individual with whom I am associated in partnership with or a business or partnership in which I have a greater than 5% interest.

Rep. Bruce Bannister

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 54, 56, 58, 59, 60, 61, 62, 65, 67, 68A, 71, and 81**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Harry F. Cato

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Alan Clemmons

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Creighton Coleman

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Bill Cotty

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or

commission by me or an individual or business with whom I am associated within the past year.

Rep. F. Greg Delleney

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 71, 45, 22, 54, 65, 37, 69, 68, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

A potential conflict may exist under **S.C. Code §8-13-745(C)** because a contract for goods or services may be entered into within the next year with an agency, commission, board, department, or other entity funded through the general appropriation bill by myself, an individual with whom I am associated in partnership with or a business or partnership in which I have a greater than 5% interest.

Rep. Ben Hagood

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict of interest may exist in that an economic interest of myself, an immediate family member, or an individual or business with which I am associated may be affected in violation of **S.C. Code §8-13-700(B).**

Rep. Christopher R. Hart

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Douglas Jennings, Jr.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict of interest may exist in that an economic interest of myself, an immediate family member, or an individual or business with which I am associated may be affected in violation of **S.C. Code §8-13-700(B).**

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. R. Keith Kelly

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Jay Lucas

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. F. N. Smith

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 21.3, 22, 26, 44, 47, 52, 53, 54, 56, 58, 60, 61, 62, 65, 66, 67, 68, 71, 80, 81, and 83**

The reason for abstaining on the above referenced legislation is:

A potential conflict of interest may exist in that an economic interest of myself, an immediate family member, or an individual or business with which I am associated may be affected in violation of **S.C. Code §8-13-700(B).**

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

A potential conflict may exist under **S.C. Code §8-13-745(C)** because a contract for goods or services may be entered into within the next year with an agency, commission, board, department, or other entity funded through the general appropriation bill by myself, an individual with whom I am associated in partnership with or a business or partnership in which I have a greater than 5% interest.

Rep. G. Murrell Smith, Jr.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. J. E. Smith

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. W. Doug Smith

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 45, 65, 37, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 69, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

A potential conflict may exist under **S.C. Code §8-13-745(C)** because a contract for goods or services may be entered into within the next year with an agency, commission, board, department, or other entity funded through the general appropriation bill by myself, an individual with whom I am associated in partnership with or a business or partnership in which I have a greater than 5% interest.

Rep. Leon Stavrinakis

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 47, 49, 52, 54, 58, 59, 60, 61, 64, 66, 67, 68A, 71, 80, 81, and 82**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. Scott Talley

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In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA, Part IB, and Part II, Sections 22, 71, 45, 65, and 54**

The reason for abstaining on the above referenced legislation is:

A potential conflict of interest may exist in that an economic interest of myself, an immediate family member, or an individual or business with which I am associated may be affected in violation of **S.C. Code §8-13-700(B).**

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

A potential conflict may exist under **S.C. Code §8-13-745(C)** because a contract for goods or services may be entered into within the next year with an agency, commission, board, department, or other entity funded through the general appropriation bill by myself, an individual with whom I am associated in partnership with or a business or partnership in which I have a greater than 5% interest.

Rep. J. David Weeks

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In accordance with **§8-13-700(B) of the S.C. Code**, I abstained from voting on the below referenced Part, Section and/or amendment because of a potential conflict of interest and wish to have my recusal noted for the record in the House Journal of this date:

**Part IA and Part IB, Section 58**

The reason for abstaining on the above referenced legislation is:

A potential conflict may exist under **S.C. Code §8-13-740(C)** because of representation of a client before a particular agency or commission by me or an individual or business with whom I am associated within the past year.

Rep. J. Seth Whipper

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**H. 5300--ORDERED TO BE READ THIRD TIME TOMORROW**

On motion of Rep. COOPER, with unanimous consent, it was ordered that H. 5300 be read the third time tomorrow.

**HOUSE TO MEET AT 9:00 A.M. TOMORROW**

Rep. COOPER moved that when the House adjourns it adjourn to meet at 9:00 a.m. tomorrow, which was agreed to.

**S. 1470--ADOPTED AND SENT TO SENATE**

The following Concurrent Resolution was introduced and taken up for immediate consideration:

S. 1470 -- Senator McConnell: A CONCURRENT RESOLUTION TO PROVIDE THAT PURSUANT TO ARTICLE III, SECTION 21 OF THE CONSTITUTION OF THIS STATE, SECTION 2-1-180 OF THE 1976 CODE, AND THE PROVISIONS OF S. 1469, WHEN THE RESPECTIVE HOUSES OF THE GENERAL ASSEMBLY ADJOURN ON FRIDAY, OCTOBER 31, 2008, NOT LATER THAN 5:00 P.M. OR ANYTIME PRIOR, EACH HOUSE SHALL STAND ADJOURNED TO MEET AT A TIME MUTUALLY AGREED UPON BY THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES ONLY FOR THE CONSIDERATION OF GUBERNATORIAL VETOES OF ANY ACTS RATIFIED BY THE GENERAL ASSEMBLY BEFORE OCTOBER 31, 2008, AND FOR THE CONFIRMATION OF MAGISTERIAL APPOINTMENTS BY THE SENATE IF THE GENERAL ASSEMBLY IS CALLED BACK INTO SESSION TO CONSIDER GUBERNATORIAL VETOES; AND THAT THE GENERAL ASSEMBLY SHALL STAND ADJOURNED SINE DIE NO LATER THAN 5:00 P.M. ON SUNDAY, NOVEMBER 9, 2008.

Be it resolved by the Senate, the House of Representatives concurring:

(A) Pursuant to the provisions of Article III, Section 21 of the Constitution of this State, Section 2‑1‑180 of the 1976 Code, and the provisions of S. 1469, the Sine Die adjournment date for the General Assembly for the 2008 session is recognized and extended to permit the General Assembly to continue in session after Friday October 31, 2008, under the terms and conditions stipulated in this resolution and for this purpose each house agrees that when the Senate and the House of Representatives adjourn on Friday, October 31, 2008, not later than 5:00 p.m. or at anytime prior, each house shall stand adjourned to meet in statewide session at a date and time mutually agreed upon by the President *Pro Tempore* of the Senate and the Speaker of the House of Representatives, if any acts ratified by the General Assembly before Friday, October 31, 2008, are vetoed by the Governor and returned to the House originating the enactment. Each house agrees to limit itself only to the receipt and consideration of gubernatorial vetoes of these acts if called back into session as provided in this resolution, and in addition the Senate is permitted to consider confirmation of magisterial appointments during this period if the General Assembly is called back into session to consider gubernatorial vetoes.

(B) Unless adjourned earlier, the General Assembly shall stand adjourned Sine Die no later than 5:00 p.m. on Sunday, November 9, 2008.

The Concurrent Resolution was adopted and sent to the Senate by a division vote of 103 to 0.

**MESSAGE FROM THE SENATE**

The following was received:

Columbia, S.C., October 20, 2008

Mr. Speaker and Members of the House:

The Senate respectfully informs your Honorable Body that it has overridden the Veto by the Governor on R. 429, S. 429 by a vote of 44 to 0:

(R429, S429) -- Senators Malloy and Jackson: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 1, CHAPTER 28 TO TITLE 17 SO AS TO ENACT THE “ACCESS TO JUSTICE POST‑CONVICTION DNA TESTING ACT”, TO DEFINE NECESSARY TERMS, PROVIDE PROCEDURES FOR POST‑CONVICTION DNA TESTING, PROVIDE A MANNER FOR THE PRESERVATION OF PHYSICAL AND BIOLOGICAL EVIDENCE, PROVIDE THE METHOD OF DISCLOSING THE RESULTS OF DNA TESTING, PROVIDE IMMUNITY FROM CIVIL LIABILITY UNLESS THERE IS AN ACT OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, AND PROVIDE LIMITS ON EXPENDITURES IN ONE YEAR TO ADMINISTER THE ACT; BY ADDING ARTICLE 3, CHAPTER 28 TO TITLE 17 SO AS TO ENACT THE “PRESERVATION OF EVIDENCE ACT”, TO DEFINE NECESSARY TERMS, PROVIDE PROCEDURES FOR PRESERVATION OF EVIDENCE, DELINEATE THE OFFENSES FOR WHICH PHYSICAL EVIDENCE AND BIOLOGICAL MATERIAL MUST BE PRESERVED, CREATE THE OFFENSE OF DESTROYING OR TAMPERING WITH PHYSICAL EVIDENCE OR BIOLOGICAL MATERIAL AND TO PROVIDE A PENALTY, AND PROVIDE IMMUNITY FROM CIVIL LIABILITY UNLESS THERE IS AN ACT OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; TO ENACT THE “UNIDENTIFIED HUMAN REMAINS DNA DATABASE ACT” BY ADDING SECTION 23‑3‑625 SO AS TO PROVIDE THAT FAMILY MEMBERS OF A MISSING PERSON MAY SUBMIT DNA SAMPLES TO THE STATE LAW ENFORCEMENT DIVISION (SLED), TO REQUIRE SLED TO CONDUCT DNA IDENTIFICATION, TYPING, AND TESTING ON THE DNA SAMPLE PROVIDED BY FAMILY MEMBERS IF THE PERSON HAS BEEN MISSING THIRTY DAYS, TO PROVIDE A PROCEDURE FOR ENTERING THE DNA SAMPLES OF FAMILY MEMBERS INTO THE COMBINED DNA INDEXING SYSTEM (CODIS); BY ADDING SECTION 23‑3‑635 SO AS TO PROVIDE PROCEDURES FOR DNA TESTING OF THE BODIES OF UNIDENTIFIED PERSONS BY SLED WHEN NOTIFIED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC) OR ANOTHER FACILITY THAT THE BODY REMAINS UNIDENTIFIED AFTER THIRTY DAYS; BY ADDING SECTION 17‑7‑25 SO AS TO PROVIDE THAT A CORONER PERFORMING AN AUTOPSY ON AN UNIDENTIFIED BODY MUST OBTAIN TISSUE AND FLUID SAMPLES FROM THE BODY SUITABLE FOR DNA IDENTIFICATION, TYPING, AND TESTING AND TO PROVIDE THAT THE CORONER MUST SEND THE SAMPLES TO SLED; TO AMEND SECTION 17‑5‑570, RELATING TO THE RELEASE AND BURIAL OF DEAD BODIES AND THE PRESERVATION AND DISPOSITION OF UNIDENTIFIED DEAD BODIES, SO AS TO PROVIDE THAT MUSC OR ANOTHER FACILITY PRESERVING AN UNIDENTIFIED DEAD BODY MUST NOTIFY SLED IF THE BODY REMAINS UNIDENTIFIED AFTER THIRTY DAYS, AND TO PROVIDE THAT THERE MAY BE NO DISPOSITION OF THE BODY UNTIL AT LEAST THIRTY DAYS AFTER THE BODY’S DNA PROFILE HAS BEEN ENTERED INTO CODIS; TO ENACT THE “SOUTH CAROLINA PROTECTION FROM VIOLENCE AGAINST WOMEN AND CHILDREN ACT” BY ADDING SECTION 23‑3‑615 TO DEFINE NECESSARY TERMS; TO AMEND SECTION 23‑3‑620, RELATING TO OFFENDERS REQUIRED TO SUBMIT SAMPLES FOR INCLUSION IN THE STATE DNA DATABASE, SO AS TO REQUIRE SAMPLES UPON LAWFUL CUSTODIAL ARREST, SERVICE OF A COURTESY SUMMONS, OR A DIRECT INDICTMENT FOR A FELONY OFFENSE, AN OFFENSE THAT CARRIES A SENTENCE OF FIVE YEARS OR MORE, OR AN ARREST FOR EAVESDROPPING, PEEPING, OR STALKING, TO PROVIDE THAT THESE PROVISIONS APPLY TO JUVENILES UNDER CERTAIN CIRCUMSTANCES, AND TO REQUIRE SAMPLES TO BE PROVIDED BEFORE A PERSON IS RELEASED ON PAROLE, RELEASED FROM CONFINEMENT, OR RELEASED FROM AN APPROPRIATE AGENCY’S JURISDICTION; TO AMEND SECTION 23‑3‑630, RELATING TO PERSONS AUTHORIZED TO TAKE DNA SAMPLES AND THEIR IMMUNITY FROM LIABILITY, SO AS TO DELETE REQUIREMENTS THAT THE PERSONS AUTHORIZED MUST BE CERTAIN TYPES OF HEALTH PROFESSIONALS AND TO PROVIDE THAT THEY MUST BE APPROPRIATELY TRAINED; TO AMEND SECTION 23‑3‑650, RELATING TO THE CONFIDENTIALITY OF DNA PROFILES, SO AS TO PROVIDE FOR COORDINATION BETWEEN SLED AND LOCAL LAW ENFORCEMENT AGENCIES TO PREVENT COLLECTION AND PROCESSING OF DUPLICATE DNA SAMPLES AND TO INCREASE THE PENALTY FOR THE OFFENSE OF WILFULLY DISCLOSING OR OBTAINING CONFIDENTIAL DNA INFORMATION; TO AMEND SECTIONS 23‑3‑660 AND 23‑3‑670, RELATING TO EXPUNGEMENTS AND FEES FOR DNA SAMPLES, RESPECTIVELY, SO AS TO PROVIDE FOR EXPUNGEMENT AT NO COST TO THE ACCUSED WHEN CHARGES ARE DISMISSED, NOLLE PROSSED, OR REDUCED BELOW THE REQUIREMENT FOR THE TAKING OF THE DNA SAMPLE, TO PROVIDE THAT THE STATE WILL PAY FOR THE COSTS OF COLLECTING AND PROCESSING A DNA SAMPLE INITIALLY AND THE PERSON TESTED MUST PAY A PROCESSING FEE UPON CONVICTION, PLEA OF NOLO CONTENDERE, OR FORFEITURE OF BOND; AND TO AMEND SECTION 23‑3‑120, RELATING TO THE TAKING OF FINGERPRINTS, SO AS TO PROVIDE FOR THE PLACE AND TIMING FOR THE FINGERPRINTING OF A PERSON PLACED UNDER CUSTODIAL ARREST.

Very respectfully,

President

**R. 429, S. 429--ORDERED PRINTED IN THE JOURNAL**

The SPEAKER ordered the following Veto printed in the Journal:

**State of South Carolina  
Office of the Governor**

July 2, 2008

The Honorable André Bauer  
President of the Senate  
State House, First Floor, East Wing  
Columbia, South Carolina 29201

Dear Mr. President and Members of the Senate:

I am hereby vetoing and returning without my approval S. 429, R. 429.

This Bill mainly does two things: (1) provides individuals convicted of certain crimes with procedures to preserve DNA evidence and to challenge their conviction through the use of DNA evidence and (2) requires all individuals who are arrested for a felony and certain other crimes to submit DNA samples and have their DNA profiles stored on a national database. We applaud the first part of the Bill because it provides those who may have been wrongly accused a chance to clear their names, and we fully support the notion of due process in all cases. If this were the only provision of law, we would have signed this legislation into law. I am compelled to veto this legislation because of the further encroachment on our civil liberties and privacy rights.

Let me begin by expressing sincere admiration and appreciation for the law enforcement officials who fight crime on a daily basis. We have consistently advocated for giving them all the resources possible to maintain safe communities. However, we have also consistently tried to strike a balance between those tools and maintaining our civil liberties and privacy in the way that our Founders intended. I vetoed similar legislation on those same grounds just last year.

Allow me to explain. To date, we have put safeguards on government's access to this type of personal information. Law enforcement currently has the authority to collect a DNA sample from an accused for comparison purposes - but ***only after*** a court order has been sought and granted.

The Fourth Amendment to the Constitution guarantees that all people shall be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fourth Amendment is intended to establish a perimeter of personal integrity into which the government cannot intrude without compelling reason. Currently, the State allows collection of a DNA sample from arrestees after a search warrant is granted by a judge based on probable cause. See *State v. Adolphe*, 314 S.C. 89, 92, 441 S.E.2d 832 (S.C.App. 1994). This practice is consistent with the Fourth Amendment because it ensures that an arrestee is afforded due process as would be expected under the Constitution. This Bill abolishes that right and requires collection of DNA automatically upon arrest without any showing that the DNA is needed as evidence of the crime for which the individual was arrested. Accordingly, we believe that this Bill circumvents the probable cause requirement for a search warrant and is, therefore, unconstitutional. See *In re Welfare of C.T.L.*, 722 N.W.2d 484 (Minn.App. 2006) (holding that obtaining DNA specimens upon arrest of certain crimes was unconstitutional under the Fourth Amendment).

Lowering the threshold for obtaining DNA samples to felony arrest instead of conviction is particularly troubling when you consider that not even half of all felony arrests lead to felony convictions. For instance, in 2006, approximately 150,000 arrests were made, yet less than 40% of these arrests resulted in convictions. This means that this Bill would require the State to take DNA samples of thousands of people who will never be convicted of the charges for which they are arrested. While the Bill requires the destruction of the DNA sample in cases where someone is arrested and later exonerated, it does not address the uses of that evidence before guilt or innocence is determined. It is for this reason that the legislation appears to be about something much larger than simply criminal investigations.

Though American society values personal liberties, we are the first to recognize that persons ***convicted*** of a crime must give up some of those liberties, including the protection against search and seizure. By limiting DNA collection to those who have been convicted of a crime, we ensure that no DNA is collected unless that person has been granted due process of rights and has experienced a full vetting by the judicial system. In fact, we would become just the 14th state to enact some sort of upon arrest DNA collection. Even then, there have already been efforts to go beyond even this step.

Our fear that permitting the expansion of the DNA database under this Bill will ultimately lead to further expansions in the future is justified in consideration of the DNA database's history. The DNA database was created in 1994 under the State DNA Identification Database Act, which required only individuals who had been convicted of sex-related crimes or individuals who had been convicted of violent crimes that had been ordered by the court to provide DNA samples for the database. Since its creation in 1994, the DNA Identification Database Act has been amended three times in a mere fourteen years by expanding the database to include samples from all individuals convicted of a felony, eavesdropping, peeping, and a misdemeanor punishable up to five years of imprisonment. Given the ever-expanding scope of the DNA database, we believe that it is finally time to draw a line in the sand and say that the DNA database will not be expanded to individuals who have not been convicted of a crime. We think the clear divide created with conviction has served us well because one of the central tenets of American law is that one is presumed innocent until proven guilty.

We are aware that some have justified the expansion of the DNA database by analogizing DNA sampling to fingerprinting. We reject this analogy because it fails to take into account the many varied and different uses that the DNA profiles can be used for. For example, California recently announced that it would begin using its DNA database to investigate biological relationships between individuals by comparing DNA evidence left at a crime-scene to near-matches in the DNA database. This means that law enforcement will investigate an unmistakably innocent person in the hope of obtaining clues to the identity of the actual culprit. Thus, unlike fingerprinting, DNA sampling is not limited to identifying the actual culprit of the crime because it provides for the investigation of demonstrably innocent people. Therefore, we cannot accept expanding the DNA database on the premise that it is like fingerprinting.

Thomas Jefferson is quoted as saying, "The natural progression of things is for liberty to yield and government to gain ground." What he recognized well over 200 years ago is just as true today, that liberty is not simply an idea that remains consistent. Instead, it is under constant attack from even seemingly well-intended people. We see this legislation as a reach past that very foundation upon which this country was founded.

For these reasons, I am vetoing S. 429, R. 429.

Sincerely,

Mark Sanford

Governor

**R. 429, S. 429--GOVERNOR'S VETO OVERRIDDEN**

The Veto on the following Act was taken up:

(R429) S. 429 -- Senators Malloy and Jackson: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 1, CHAPTER 28 TO TITLE 17 SO AS TO ENACT THE "ACCESS TO JUSTICE POST-CONVICTION DNA TESTING ACT", TO DEFINE NECESSARY TERMS, PROVIDE PROCEDURES FOR POST-CONVICTION DNA TESTING, PROVIDE A MANNER FOR THE PRESERVATION OF PHYSICAL AND BIOLOGICAL EVIDENCE, PROVIDE THE METHOD OF DISCLOSING THE RESULTS OF DNA TESTING, PROVIDE IMMUNITY FROM CIVIL LIABILITY UNLESS THERE IS AN ACT OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, AND PROVIDE LIMITS ON EXPENDITURES IN ONE YEAR TO ADMINISTER THE ACT; BY ADDING ARTICLE 3, CHAPTER 28 TO TITLE 17 SO AS TO ENACT THE "PRESERVATION OF EVIDENCE ACT", TO DEFINE NECESSARY TERMS, PROVIDE PROCEDURES FOR PRESERVATION OF EVIDENCE, DELINEATE THE OFFENSES FOR WHICH PHYSICAL EVIDENCE AND BIOLOGICAL MATERIAL MUST BE PRESERVED, CREATE THE OFFENSE OF DESTROYING OR TAMPERING WITH PHYSICAL EVIDENCE OR BIOLOGICAL MATERIAL AND TO PROVIDE A PENALTY, AND PROVIDE IMMUNITY FROM CIVIL LIABILITY UNLESS THERE IS AN ACT OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; TO ENACT THE "UNIDENTIFIED HUMAN REMAINS DNA DATABASE ACT" BY ADDING SECTION 23-3-625 SO AS TO PROVIDE THAT FAMILY MEMBERS OF A MISSING PERSON MAY SUBMIT DNA SAMPLES TO THE STATE LAW ENFORCEMENT DIVISION (SLED), TO REQUIRE SLED TO CONDUCT DNA IDENTIFICATION, TYPING, AND TESTING ON THE DNA SAMPLE PROVIDED BY FAMILY MEMBERS IF THE PERSON HAS BEEN MISSING THIRTY DAYS, TO PROVIDE A PROCEDURE FOR ENTERING THE DNA SAMPLES OF FAMILY MEMBERS INTO THE COMBINED DNA INDEXING SYSTEM (CODIS); BY ADDING SECTION 23-3-635 SO AS TO PROVIDE PROCEDURES FOR DNA TESTING OF THE BODIES OF UNIDENTIFIED PERSONS BY SLED WHEN NOTIFIED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA (MUSC) OR ANOTHER FACILITY THAT THE BODY REMAINS UNIDENTIFIED AFTER THIRTY DAYS; BY ADDING SECTION 17-7-25 SO AS TO PROVIDE THAT A CORONER PERFORMING AN AUTOPSY ON AN UNIDENTIFIED BODY MUST OBTAIN TISSUE AND FLUID SAMPLES FROM THE BODY SUITABLE FOR DNA IDENTIFICATION, TYPING, AND TESTING AND TO PROVIDE THAT THE CORONER MUST SEND THE SAMPLES TO SLED; TO AMEND SECTION 17-5-570, RELATING TO THE RELEASE AND BURIAL OF DEAD BODIES AND THE PRESERVATION AND DISPOSITION OF UNIDENTIFIED DEAD BODIES, SO AS TO PROVIDE THAT MUSC OR ANOTHER FACILITY PRESERVING AN UNIDENTIFIED DEAD BODY MUST NOTIFY SLED IF THE BODY REMAINS UNIDENTIFIED AFTER THIRTY DAYS, AND TO PROVIDE THAT THERE MAY BE NO DISPOSITION OF THE BODY UNTIL AT LEAST THIRTY DAYS AFTER THE BODY'S DNA PROFILE HAS BEEN ENTERED INTO CODIS; TO ENACT THE "SOUTH CAROLINA PROTECTION FROM VIOLENCE AGAINST WOMEN AND CHILDREN ACT" BY ADDING SECTION 23-3-615 TO DEFINE NECESSARY TERMS; TO AMEND SECTION 23-3-620, RELATING TO OFFENDERS REQUIRED TO SUBMIT SAMPLES FOR INCLUSION IN THE STATE DNA DATABASE, SO AS TO REQUIRE SAMPLES UPON LAWFUL CUSTODIAL ARREST, SERVICE OF A COURTESY SUMMONS, OR A DIRECT INDICTMENT FOR A FELONY OFFENSE, AN OFFENSE THAT CARRIES A SENTENCE OF FIVE YEARS OR MORE, OR AN ARREST FOR EAVESDROPPING, PEEPING, OR STALKING, TO PROVIDE THAT THESE PROVISIONS APPLY TO JUVENILES UNDER CERTAIN CIRCUMSTANCES, AND TO REQUIRE SAMPLES TO BE PROVIDED BEFORE A PERSON IS RELEASED ON PAROLE, RELEASED FROM CONFINEMENT, OR RELEASED FROM AN APPROPRIATE AGENCY'S JURISDICTION; TO AMEND SECTION 23-3-630, RELATING TO PERSONS AUTHORIZED TO TAKE DNA SAMPLES AND THEIR IMMUNITY FROM LIABILITY, SO AS TO DELETE REQUIREMENTS THAT THE PERSONS AUTHORIZED MUST BE CERTAIN TYPES OF HEALTH PROFESSIONALS AND TO PROVIDE THAT THEY MUST BE APPROPRIATELY TRAINED; TO AMEND SECTION 23-3-650, RELATING TO THE CONFIDENTIALITY OF DNA PROFILES, SO AS TO PROVIDE FOR COORDINATION BETWEEN SLED AND LOCAL LAW ENFORCEMENT AGENCIES TO PREVENT COLLECTION AND PROCESSING OF DUPLICATE DNA SAMPLES AND TO INCREASE THE PENALTY FOR THE OFFENSE OF WILFULLY DISCLOSING OR OBTAINING CONFIDENTIAL DNA INFORMATION; TO AMEND SECTIONS 23-3-660 AND 23-3-670, RELATING TO EXPUNGEMENTS AND FEES FOR DNA SAMPLES, RESPECTIVELY, SO AS TO PROVIDE FOR EXPUNGEMENT AT NO COST TO THE ACCUSED WHEN CHARGES ARE DISMISSED, NOLLE PROSSED, OR REDUCED BELOW THE REQUIREMENT FOR THE TAKING OF THE DNA SAMPLE, TO PROVIDE THAT THE STATE WILL PAY FOR THE COSTS OF COLLECTING AND PROCESSING A DNA SAMPLE INITIALLY AND THE PERSON TESTED MUST PAY A PROCESSING FEE UPON CONVICTION, PLEA OF NOLO CONTENDERE, OR FORFEITURE OF BOND; AND TO AMEND SECTION 23-3-120, RELATING TO THE TAKING OF FINGERPRINTS, SO AS TO PROVIDE FOR THE PLACE AND TIMING FOR THE FINGERPRINTING OF A PERSON PLACED UNDER CUSTODIAL ARREST.

Rep. HART spoke in favor of the Veto.

The question was put, shall the Act become a part of the law, the Veto of his Excellency, the Governor to the contrary notwithstanding, the yeas and nays were taken resulting as follows:

Yeas 86; Nays 25

Those who voted in the affirmative are:

|  |  |  |
| --- | --- | --- |
| Alexander | Allen | Anthony |
| Bales | Ballentine | Bannister |
| Barfield | Battle | Bedingfield |
| Bingham | Bowen | Brady |
| Cato | Chalk | Clemmons |
| Cooper | Cotty | Crawford |
| Daning | Dantzler | Delleney |
| Duncan | Erickson | Frye |
| Funderburk | Gambrell | Govan |
| Gullick | Hagood | Hardwick |
| Harrell | Harrison | Haskins |
| Hayes | Herbkersman | Hiott |
| Hodges | Howard | Huggins |
| Hutson | Jennings | Knight |
| Leach | Limehouse | Littlejohn |
| Lucas | Mack | Mahaffey |
| McLeod | Merrill | Miller |
| Mitchell | Moss | Neilson |
| Ott | Owens | Parks |
| Perry | Pinson | E. H. Pitts |
| M. A. Pitts | Rice | Sandifer |
| Scarborough | Sellers | Simrill |
| Skelton | D. C. Smith | G. M. Smith |
| J. E. Smith | J. R. Smith | Spires |
| Stavrinakis | Taylor | Thompson |
| Toole | Umphlett | Vick |
| Viers | Walker | Whipper |
| White | Whitmire | Williams |
| Witherspoon | Young |  |

**Total--86**

Those who voted in the negative are:

|  |  |  |
| --- | --- | --- |
| Agnew | Anderson | Bowers |
| Branham | Breeland | R. Brown |
| Clyburn | Cobb-Hunter | Haley |
| Hamilton | Hart | Harvin |
| Hosey | Jefferson | Kelly |
| Kennedy | Kirsh | Loftis |
| Mulvaney | J. H. Neal | J. M. Neal |
| Rutherford | Shoopman | G. R. Smith |
| Weeks |  |  |

**Total--25**

So, the Veto of the Governor was overridden and a message was ordered sent to the Senate accordingly.

RECORD FOR VOTING

I was temporarily out of the Chamber due to an emergency, and was not present for the vote on the Governor’s Veto of S. 429. If I had been present, I would have voted ‘nay’ on the Veto.

Rep. John Scott

Rep. STAVRINAKIS moved that the House do now adjourn, which was agreed to.

**ADJOURNMENT**

At 1:28 p.m. the House, in accordance with the motion of Rep. SCOTT, adjourned in accordance with S. 1470, the *Sine Die* Resolution, in memory of Elliott E. Franks III, to meet at 9:00 a.m. tomorrow.

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