**Tuesday, March 19, 2013**

**(Statewide Session)**

~~Indicates Matter Stricken~~

## Indicates New Matter

The Senate assembled at 12:00 Noon, the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

From Micah we are reminded:

“And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God.” (Micah 6:8)

Please bow with me:

Glorious Lord, indeed, the Bills and Resolutions and other formal edicts from this Senate are quite significant. They matter greatly to individuals and organizations across our forty-six counties. But perhaps just as important, dear God, are the messages sent forth by each of these Senators personally: how they conduct themselves, what they declare to be of great importance for them, what they value. We pray, O Lord, that the most meaningful messages are those found in how each of these leaders lives out their days. May they and their staff members be known far and wide as individuals who act justly, who love mercy, and who walk humbly with You. In Your wondrous name we pray, Lord.

Amen.

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

**RECESS**

At 12:05 P.M., on motion of Senator COURSON, the Senate receded from business not to exceed five minutes.

At 12:13 P.M., the Senate resumed.

**Expression of Personal Interest**

Senator LARRY MARTIN rose for an Expression of Personal Interest.

**REGULATION RESUBMITTED**

The following was received:

Document No. 4261

Agency: State Board of Education

Chapter: 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-29-100, and 20 U.S.C. 6301, et seq.

SUBJECT: Graduation Requirements

Received by Lieutenant Governor January 8, 2013

Referred to Education Committee

Legislative Review Expiration May 8, 2013

Withdrawn due to end of two-year session June 8, 2012

Resubmitted with no substantive changes January 8, 2013

Received by Lieutenant Governor & Speaker May 8, 2013

House Committee Requested Withdrawal March 6, 2013

120 Day Period Tolled

Withdrawn and Resubmitted March 15, 2013

**REGULATIONS WITHDRAWN AND RESUBMITTED**

The following were received:

Document No. 4285

Agency: State Board of Education

Chapter: 43

Statutory Authority: 1976 Code Sections 59-19-90, 59-63-30, 59-63-420, 59-63-470, 59-63-480, 59-63-490, 59-63-500, 59-63-510, 59-63-520, 59-63-530, 59-65-30, 59-65-90, and 20 U.S.C. 7165

SUBJECT: Transfers and Withdrawals

Received by Lieutenant Governor January 8, 2013

Referred to Education Committee

Legislative Review Expiration May 8, 2013

House Committee Requested Withdrawal March 6, 2013

120 Day Period Tolled

Withdrawn and Resubmitted March 13, 2013

Document No. 4294

Agency: State Board of Education

Chapter: 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-18-110, 59-29-10, et seq., 59-29-200, 59-33-30, 59-53-1810, 20 U.S.C. 1232(g), and 20 U.S.C. 6301, et seq.

SUBJECT: Defined Program, Grades 9-12

Received by Lieutenant Governor January 8, 2013

Referred to Education Committee

Legislative Review Expiration May 8, 2013

House Committee Requested Withdrawal March 6, 2013

120 Day Period Tolled

Withdrawn and Resubmitted March 15, 2013

Document No. 4308

Agency: State Board of Education

Chapter: 43

Statutory Authority: 1976 Code Sections 59-5-60 and 59-29-170

SUBJECT: Gifted and Talented

Received by Lieutenant Governor January 15, 2013

Referred to Education Committee

Legislative Review Expiration May 15, 2013

House Committee Requested Withdrawal March 6, 2013

120 Day Period Tolled

Withdrawn and Resubmitted March 15, 2013

Document No. 4309

Agency: State Board of Education

Chapter: 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-40-10, et seq., and Public Law 111-117, December 16, 2001, Consolidated Appropriations Act, 2010

SUBJECT: Procedures and Standards for Review of Charter School

Applications

House Committee Requested Withdrawal March 6, 2013

120 Day Period Tolled

Withdrawn and Resubmitted March 15, 2013

**Doctor of the Day**

Senator FAIR introduced Dr. John Evans of Greenville, S.C., Doctor of the Day.

**Leave of Absence**

On motion of Senator LARRY MARTIN, at 12:05 P.M., Senator HAYES was granted a leave of absence until 1:00 P.M.

**Leave of Absence**

On motion of Senator THURMOND, at 1:00 P.M., Senator SHEHEEN was granted a leave of absence for the balance of the day.

**Leave of Absence**

On motion of Senator JOHNSON, at 1:00 P.M., Senator ALLEN was granted a leave of absence for the balance of the day.

**CO-SPONSORS ADDED**

The following co-sponsors were added to the respective Bills:

S. 173 Sen. Campsen

S. 237 Sen. Alexander

S. 261 Sen. Campsen

S. 313 Sen. Malloy

S. 445 Sen. Campsen

S. 514 Sen. Ford

S. 515 Sens. Campsen, Gregory

**Privilege of the Chamber**

On motion of Senator BRYANT, with unanimous consent, the provisions of Rule 35B were waived and the Privilege of the Chamber, to that area behind the rail, was extended on behalf of Senator BENNETT to President George Benson of the College of Charleston.

**Expression of Personal Interest**

Senator RANKIN rose for an Expression of Personal Interest.

**Remarks by Senator RANKIN**

Thank you, Mr. PRESIDENT.

If I can get the Senators from Horry County to join me up here -- I see the Senator from North Myrtle Beach joining me. Senator CLEARY is outside tending to other matters. I want to come to you today on behalf of Horry County. If I could get some attention over there from the upstate Senators, please -- Senator from Greenville, I want you to hear this if you will, because you have long been a supporter of the emergency response agencies as our State and our counties and our cities have gone about their business.

I want to give you an example of how well, how dutifully, and how beautifully emergency response was put into action and on display Saturday, in the Carolina Forest community, which is between Conway and Myrtle Beach. That area is the fastest growing area in the county and has seen incredible growth.

On Saturday, a fire broke out. Twenty-six buildings in a multi-family condominium project, known as the Winter Green area, were destroyed in a matter of fifteen minutes. It is being called an accident at this point with no sense of any criminal or intentional act, but totally accidental. A fire broke out and blew through one hundred nine individually owned units in the Carolina Forest area of Horry County. I am proud to tell you that no life was lost, other than a few pets, which we regret for those who owned them, but most were able to be saved that could be.

Yesterday, we toured that area, and a number of other times over the weekend to survey the work being done. From the State Fire Marshal, from the county, from the city, and many of your areas in Columbia as well, you all pitched in to address a need -- a crucial and heart-breaking need for one hundred eighty-nine people whose homes were totally destroyed. We looked at the devastation and the quickness through which the fire ripped through a community. Were it not for the brave efforts of the firemen, it could have crossed over the road and destroyed another community, and more homes, and more trees in that neighborhood.

It is a beautiful thing to report to you that no lives were lost. It is a beautiful thing to report to you that almost like a ballet in terms of choreography, the work of our folks, again aided by yours, this State, the fire marshal, and the Forestry Commission were able to come together to address this area. The Governor came down yesterday -- and we thank her for coming -- and applauding the efforts of everyone involved and speaking to those who lost everything.

I’m sure you have seen it on the news sources, but it is a sad site. Once a beautiful row of homes, is now a vacant barren pond, only a footprint of a home that existed before. So on behalf of the Senators from Horry County -- Senator CLEARY as well -- our hearts break for those folks. We are saddened by their loss.

We are proud to report that agencies and volunteers are working as quickly as humanly possible to hopefully allow these folks to start anew. There were restoration and insurance companies on site that day, along with numerous volunteers -- the Red Cross in particular -- who gave a tremendous outpouring of support. The folks of Horry County and across this State are working to address the needs of these victims in helping them rebuild their lives and start anew. It is a beautiful testament to the fabric of our county and State, that in a time of need, we do what our fellow South Carolinians have done in this instance. So there is good to report from this tragic experience.

I want to touch on a personal tragedy, though not family and not physical. The home that my father grew up in, which was built in 1903, in the Allsbrook community, was likewise destroyed in a fire, the Saturday night after the fire in Carolina Forest. The heritage of our family place is now gone, but the memories will live on forever. Thank you to the community who responded and helped try to put out the fire. The home was built out of almost all wood, so if you struck a spark walking, it would be gone like that. It was a beautifully restored home though, and is a loss to all of us.

I personally want to thank the community, the families, and the emergency response folks for doing what they do best. We have a lot to be proud of. This fabric of loss and defeat brings forth hope as we are now in the spring and Easter season from the deep depths of defeat, and into a bright horizon of tomorrow. Horry County has a lot to be thankful for and a lot of people to be thankful for. On behalf of the South Carolina Senate, I want to urge those victims who have loss, to embrace the hope of a brighter tomorrow.

Thank you.

**Expression of Personal Interest**

Senator HEMBREE rose for an Expression of Personal Interest.

**Remarks by Senator HEMBREE**

I have just a few very brief remarks after what Senator RANKIN has already said very well.

It was a situation that could make you proud to be from Horry County and proud to be a South Carolinian. To see people who pulled together, not only in government, but in nonprofit areas -- volunteers, school districts all across the board -- that they all moved so very swiftly and dropped what they were doing to take care of their neighbors.  It really was the right thing to do.  It would make you proud to be from Horry County. South Carolinians, please keep those folks in your prayers.

Thanks.

On motion of Senator HAYES, with unanimous consent, the remarks of Senators RANKIN and HEMBREE were ordered printed in the Journal.

**INTRODUCTION OF BILLS AND RESOLUTIONS**

The following were introduced:

S. 535 -- Senators Peeler, Alexander, L. Martin, McGill, Coleman, Jackson, Campbell, Setzler, Cromer, O'Dell, Sheheen, Turner, Fair, Ford, Nicholson, McElveen and Hayes: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 119, TITLE 59, ENACTING “THE CLEMSON UNIVERSITY ENTERPRISE ACT”, SO AS TO ALLOW THE BOARD OF TRUSTEES OF CLEMSON UNIVERSITY BY RESOLUTION TO ESTABLISH AN ENTERPRISE DIVISION AS PART OF CLEMSON UNIVERSITY, TO PROVIDE THAT CERTAIN ASSETS, PROGRAMS, AND OPERATIONS OF CLEMSON UNIVERSITY MAY BE TRANSFERRED TO THE ENTERPRISE DIVISION, TO PROVIDE THAT THE ENTERPRISE DIVISION IS EXEMPT FROM VARIOUS STATE LAWS GOVERNING PROCUREMENT, HUMAN RESOURCES, PERSONNEL, AND DISPOSITION OF REAL AND PERSONAL PROPERTY WITH SOME SUCH EXEMPTIONS APPLYING AUTOMATICALLY AND OTHERS REQUIRING ADDITIONAL ACTIONS BY THE BOARD OF TRUSTEES, TO PROVIDE THAT BONDS, NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS MAY BE ISSUED FOR THE ENTERPRISE DIVISION AND PROVIDE AUDIT AND REPORTING REQUIREMENTS; AND TO AMEND SECTIONS 8-11-260, 8-17-370, AND 11-35-710, ALL AS AMENDED, AND RELATING RESPECTIVELY TO EXEMPTIONS FROM STATE PERSONNEL ADMINISTRATIONS, THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT, AND THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO ADD EXEMPTIONS CONFORMING TO THE CLEMSON UNIVERSITY ENTERPRISE ACT.

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Read the first time and referred to the Committee on Finance.

S. 536 -- Senators Gregory, Reese, McElveen, Hembree, Hutto, Lourie, Campsen, Cleary, Allen, Shealy, O'Dell, Campbell, Cromer and Hayes: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “ENERGY SYSTEM FREEDOM OF OWNERSHIP ACT” BY ADDING ARTICLE 14 TO CHAPTER 52, TITLE 48 SO AS TO PROVIDE THAT A THIRD PARTY MAY SELL ELECTRICITY PRODUCED BY A RENEWABLE ENERGY FACILITY AS DEFINED IN THIS ACT, TO DEFINE CERTAIN TERMS, TO PROVIDE THAT THE SALE OF ELECTRICITY FROM A RENEWABLE ENERGY FACILITY BY THIRD PARTIES DOES NOT SUBJECT THE SELLER TO REGULATION AS A PUBLIC UTILITY, TO PROVIDE RELATED RESPONSIBILITIES OF THE STATE ENERGY OFFICE, TO IMPOSE CERTAIN REQUIREMENTS ON FEES CHARGED BY A UTILITY TO A RENEWABLE ENERGY FACILITY; AND TO PROVIDE THAT THE STATE ENERGY OFFICE MAY PROMULGATE NECESSARY REGULATIONS; AND BY ADDING SECTION 58-27-25 SO AS TO EXEMPT RENEWABLE ENERGY FACILITIES FROM PROVISIONS GOVERNING ELECTRIC UTILITIES AND ELECTRIC COOPERATIVES.

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Read the first time and referred to the Committee on Judiciary.

S. 537 -- Senators Verdin, Sheheen, Cleary, Grooms, Matthews, McGill, Peeler, Shealy, O'Dell, Cromer, Alexander, Fair, Davis, Bright, Bryant and Corbin: A BILL TO AMEND SECTION 1-23-110(A)(3) OF THE 1976 CODE, RELATING TO PUBLIC HEARINGS CONCERNING PROPOSED REGULATIONS, TO REQUIRE PUBLIC MEETINGS PRIOR TO AN AGENCY PROMULGATING, AMENDING, OR REPEALING A REGULATION; AND TO AMEND SECTION 1-23-110(C) TO PROVIDE THAT ALL WRITTEN AND ORAL SUBMISSIONS FROM THE PUBLIC CONCERNING A REGULATION MUST BE TRANSMITTED TO THE SMALL BUSINESS REGULATORY REVIEW COMMITTEE.

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Read the first time and referred to the Committee on Judiciary.

S. 538 -- Senators Malloy, Hayes and L. Martin: A BILL TO ADD SECTION 62-7-816A, SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO THE POWERS OF A TRUSTEE, SO AS TO AUTHORIZE A TRUSTEE TO AMEND THE PROVISIONS OF AN IRREVOCABLE TRUST WHEN DOING SO IS IN THE BEST INTEREST OF THE BENEFICIARIES AND IN FURTHERANCE OF THE PURPOSE OF THE TRUST; TO AMEND SECTION 62-7-903, RELATING TO THE SOUTH CAROLINA UNIFORM PRINCIPAL AND INCOME ACT, SO AS TO CLARIFY THE TERMS OF THE PROVISION; TO AMEND SECTION 62-7-904, RELATING TO THE POWERS OF A TRUSTEE TO ADJUST, SO AS TO INCLUDE IN THESE POWERS FOR THE CONVERSION OF A TRUST TO A UNITRUST; AND TO ADD SECTIONS 62-7-904A THROUGH 62-7-904P, RELATING TO UNITRUSTS, SO AS TO PROVIDE FOR THE REQUIREMENTS TO ESTABLISH A UNITRUST AND ITS ADMINISTRATION.

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Read the first time and referred to the Committee on Judiciary.

S. 539 -- Labor, Commerce and Industry Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE OCCUPATIONAL THERAPY BOARD, RELATING TO REQUIREMENTS OF LICENSURE FOR OCCUPATIONAL THERAPISTS, DESIGNATED AS REGULATION DOCUMENT NUMBER 4328, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

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Read the first time and ordered placed on the Calendar without reference.

S. 540 -- Labor, Commerce and Industry Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE PERPETUAL CARE CEMETERY BOARD, RELATING TO PERPETUAL CARE CEMETERY BOARD, DESIGNATED AS REGULATION DOCUMENT NUMBER 4168, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

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Read the first time and ordered placed on the Calendar without reference.

S. 541 -- Labor, Commerce and Industry Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION - PANEL FOR DIETETICS, RELATING TO CODE OF ETHICS, INTERPRETATION OF STANDARDS, AND REPORTING OF DISCIPLINARY ACTIONS, DESIGNATED AS REGULATION DOCUMENT NUMBER 4327, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

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Read the first time and ordered placed on the Calendar without reference.

S. 542 -- Labor, Commerce and Industry Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION - BUILDING CODES COUNCIL, RELATING TO INTERNATIONAL BUILDING CODE, INTERNATIONAL FIRE CODE, INTERNATIONAL FUEL GAS CODE, AND NATIONAL ELECTRICAL CODE, DESIGNATED AS REGULATION DOCUMENT NUMBER 4320, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

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Read the first time and ordered placed on the Calendar without reference.

S. 543 -- Senators Courson, L. Martin, Grooms, Shealy, Hayes and Bennett: A CONCURRENT RESOLUTION TO DECLARE APRIL 2013 AS “HOMESCHOOL RECOGNITION MONTH” IN SOUTH CAROLINA, TO RECOGNIZE THE DILIGENT EFFORTS OF HOMESCHOOLING PARENTS AND THE ACADEMIC SUCCESS OF THEIR STUDENTS, AND TO EXPRESS SINCERE APPRECIATION FOR THEIR FOCUS ON THE WELL-BEING AND OVERALL ACHIEVEMENTS OF THEIR CHILDREN.

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The Concurrent Resolution was introduced and referred to the Committee on Education.

S. 544 -- Senators Hayes, Coleman, Gregory and Peeler: A CONCURRENT RESOLUTION TO REQUEST THAT THE DEPARTMENT OF TRANSPORTATION NAME THE PORTION OF SOUTH CAROLINA HIGHWAY 72 IN YORK COUNTY FROM ITS INTERSECTION WITH RAWLSVILLE ROAD TO ITS INTERSECTION WITH CRAIG ROAD “EZRA DEWITT MEMORIAL HIGHWAY” AND ERECT APPROPRIATE MARKERS OR SIGNS ALONG THIS PORTION OF HIGHWAY THAT CONTAIN THE WORDS “EZRA DEWITT MEMORIAL HIGHWAY”.

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The Concurrent Resolution was introduced and referred to the Committee on Transportation.

S. 545 -- Senator Williams: A CONCURRENT RESOLUTION TO REQUEST THAT THE DEPARTMENT OF TRANSPORTATION NAME THE INTERSECTION LOCATED AT THE JUNCTURE OF SOUTH CAROLINA HIGHWAYS 76 AND 576 AT WAHEE ROAD IN MARION COUNTY “ROBERT J. MCINTYRE, SR. INTERSECTION” AND ERECT APPROPRIATE MARKERS OR SIGNS AT THIS INTERSECTION THAT CONTAIN THE WORDS “ROBERT J. MCINTYRE, SR. INTERSECTION”.

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The Concurrent Resolution was introduced and referred to the Committee on Transportation.

S. 546 -- Senator Thurmond: A CONCURRENT RESOLUTION TO RECOGNIZE AND HONOR LAWRENCE MCGOWAN “LARRY” TODD, ASSISTANT SOLICITOR OF THE 9TH JUDICIAL CIRCUIT OF CHARLESTON COUNTY, UPON THE OCCASION OF HIS RETIREMENT AFTER EIGHTEEN YEARS OF OUTSTANDING SERVICE, AND TO WISH HIM CONTINUED SUCCESS AND HAPPINESS IN ALL HIS FUTURE ENDEAVORS.

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The Concurrent Resolution was adopted, ordered sent to the House.

S. 547 -- Senators Sheheen, Coleman and Hayes: A SENATE RESOLUTION TO RECOGNIZE AND CONGRATULATE THE REVEREND HERBERT C. CRUMP, JR., OF ROCK HILL, FOUNDER AND SENIOR PASTOR OF FREEDOM TEMPLE MINISTRIES, INC., UPON HIS ELEVATION TO BISHOP IN THE MT. CALVARY HOLY CHURCH OF AMERICA ON APRIL 6, 2013, AND TO WISH HIM GOD’S RICHEST BLESSINGS AS HE CONTINUES TO SERVE THE LORD.

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The Senate Resolution was adopted.

S. 548 -- Senators Scott, Alexander, Allen, Bennett, Bright, Bryant, Campbell, Campsen, Cleary, Coleman, Corbin, Courson, Cromer, Davis, Fair, Ford, Gregory, Grooms, Hayes, Hembree, Hutto, Jackson, Johnson, Leatherman, Lourie, Malloy, L. Martin, S. Martin, Massey, Matthews, McElveen, McGill, Nicholson, O'Dell, Peeler, Pinckney, Rankin, Reese, Setzler, Shealy, Sheheen, Thurmond, Turner, Verdin, Williams and Young: A SENATE RESOLUTION TO EXPRESS THE PROFOUND SORROW OF THE MEMBERS OF THE SOUTH CAROLINA SENATE UPON THE PASSING OF HARRY GENE BERRY OF BLYTHEWOOD AND TO EXTEND THE DEEPEST SYMPATHY TO HIS FAMILY AND MANY FRIENDS.

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The Senate Resolution was adopted.

S. 549 -- Senator Verdin: A SENATE RESOLUTION TO HONOR AND RECOGNIZE JAMES HILL UPON THE OCCASION OF HIS RETIREMENT AND TO WISH HIM WELL IN ALL HIS FUTURE ENDEAVORS.

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The Senate Resolution was adopted.

S. 550 -- Senator Verdin: A SENATE RESOLUTION TO HONOR AND RECOGNIZE MR. DICK CODA FOR HIS MANY TALES OF ADVENTURE TRAPPING IN LAURENS COUNTY AND TO WISH HIM HEALTH AND HAPPINESS IN ALL HIS FUTURE ENDEAVORS.

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The Senate Resolution was adopted.

**REPORTS OF STANDING COMMITTEES**

**Appointments Reported**

Senator ALEXANDER from the Committee on Labor, Commerce and Industry submitted a favorable report on:

**Statewide Appointment**

Initial Appointment, Jobs Economic Development Authority, with the term to commence July 27, 2012, and to expire July 12, 2015

5th Congressional District:

Gregory A. Thompson, 1820 Stadium Road, Sumter, SC 29154 *VICE* Hampton Atkins

Received as information.

Senator CAMPSEN from the Committee on Fish, Game and Forestry submitted a favorable report on:

**Statewide Appointment**

Reappointment, Governing Board of Department of Natural Resources, with the term to commence July 1, 2012, and to expire July 1, 2016

4th Congressional District:

Norman F. Pulliam, Sr., 1150 Woodburn Road, Spartanburg, SC 29302

Received as information.

**HOUSE CONCURRENCES**

S. 522 -- Senators Campbell and Grooms: A CONCURRENT RESOLUTION TO RECOGNIZE THE SIGNIFICANT CONTRIBUTIONS AND ACCOMPLISHMENTS OF THE ALCOA MT. HOLLY PLANT IN GOOSE CREEK, SOUTH CAROLINA, UPON THEIR ONE HUNDRED TWENTY-FIFTH ANNIVERSARY AND TO DECLARE MARCH 20, 2013, AS “ALCOA APPRECIATION DAY” IN SOUTH CAROLINA.

Returned with concurrence.

Received as information.

S. 480 -- Senators Alexander, Hutto and Rankin: A CONCURRENT RESOLUTION TO FIX NOON ON WEDNESDAY, MAY 1, 2013, AS THE TIME TO ELECT A SUCCESSOR TO THE MEMBER OF THE PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT FOR A TERM EXPIRING ON JUNE 30, 2016; TO ELECT A SUCCESSOR TO THE MEMBER OF THE PUBLIC SERVICE COMMISSION FOR THE THIRD DISTRICT FOR A TERM EXPIRING ON JUNE 30, 2016; TO ELECT A SUCCESSOR TO THE MEMBER OF THE PUBLIC SERVICE COMMISSION FOR THE FIFTH DISTRICT FOR A TERM EXPIRING ON JUNE 30, 2016; AND TO ELECT A PUBLIC SERVICE COMMISSIONER FOR THE SEVENTH DISTRICT, AS A SUCCESSOR TO THE PUBLIC SERVICE COMMISSIONER FOR THE AT‑LARGE SEAT, FOR A TERM EXPIRING ON JUNE 30, 2016.

Returned with concurrence.

Received as information

**THE SENATE PROCEEDED TO A CALL OF THE UNCONTESTED LOCAL AND STATEWIDE CALENDAR.**

**THIRD READING BILL**

The following Bill was read the third time and ordered sent to the House of Representatives:

S. 237 -- Senators Shealy, Setzler, Courson, Turner, Cromer, Massey, Young and Alexander: A BILL TO AMEND SECTION 10‑1‑161 OF THE 1976 CODE, RELATING TO STATE CAPITOL BUILDING FLAGS FLOWN AT HALF‑STAFF, TO PROVIDE THAT FLAGS ATOP THE STATE CAPITOL BUILDING MUST BE LOWERED TO HALF‑STAFF FOR MEMBERS OF THE UNITED STATES MILITARY SERVICES, WHO WERE RESIDENTS OF THIS STATE AND WHO LOST THEIR LIVES IN THE LINE OF DUTY, ON THE DAY WHEN THEIR NAMES ARE RELEASED TO THE GENERAL PUBLIC, AND THE FLAGS SHALL REMAIN AT HALF‑STAFF UNTIL AT LEAST DAWN THE SECOND DAY AFTER FUNERAL SERVICES ARE CONDUCTED.

**PREVIOUSLY PROPOSED AMENDMENT WITHDRAWN AMENDED, READ THE SECOND TIME**

S. 261 -- Senators Leatherman, Setzler, Ford and Campsen: A BILL TO AMEND SECTION 12‑6‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE INCOME TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO JANUARY 2, 2013, AND TO DELETE AN INAPPLICABLE SUBITEM.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the previously proposed amendment and printed in the journal of March 13, 2013.

Senator HUTTO spoke on the amendment.

Senator HUTTO asked unanimous consent to withdraw the amendment.

The amendment was withdrawn.

Senator HUTTO proposed the following amendment (261R007.CBH) , which was adopted:

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

/ SECTION \_\_\_. A. Section 12‑6‑50 of the 1976 Code, as last amended by Act 126 of 2012, is further amended by adding appropriately numbered items to read:

“( ) Section 68 relating to the reduction on itemized deductions and Section 151(d)(3) relating to the reduction on the personal exemption for:

(a) a joint return or surviving spouse with an adjusted gross income exceeding three hundred thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher;

(b) a head of household with an adjusted gross income exceeding two hundred seventy‑five thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher; and

(c) an individual who is not married and who is not a surviving spouse or head of household with an adjusted gross income exceeding two hundred fifty thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher.”

B. From existing funds, the Department of Revenue shall create and distribute the forms and worksheets necessary to aid taxpayers in utilizing the provisions of this SECTION. /

Renumber sections to conform.

Amend title to conform.

Senator HUTTO explained the amendment.

The amendment was adopted.

The question then was second reading of the Bill.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 36; Nays 0**

**AYES**

Alexander Bennett Bright

Bryant Campbell Campsen

Cleary Coleman Corbin

Courson Cromer Davis

Fair Ford Gregory

Hembree Hutto Johnson

Leatherman Malloy *Martin, Larry*

*Martin, Shane* McElveen McGill

Nicholson O'Dell Peeler

Pinckney Scott Setzler

Shealy Sheheen Thurmond

Turner Verdin Young

**Total--36**

**NAYS**

**Total--0**

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

**S. 261--Ordered to a Third Reading**

On motion of Senator LEATHERMAN, with unanimous consent, S. 261 was ordered to receive a third reading on Wednesday, March 20, 2013.

**COMMITTEE AMENDMENT AMENDED AND ADOPTED**

**READ THE SECOND TIME**

S. 143 -- Senators Malloy, Ford, Massey, S. Martin and Hayes: A BILL TO AMEND ARTICLES 1, 2, 3, AND 4 OF TITLE 62, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA PROBATE CODE, SO AS TO, AMONG OTHER THINGS, DEFINE THE JURISDICTION OF THE PROBATE CODE, TO DETERMINE INTESTATE SUCCESSION, TO PROVIDE FOR THE PROCESS OF EXECUTING A WILL, TO PROVIDE FOR THE PROCESS TO PROBATE AND ADMINISTER A WILL, AND TO PROVIDE FOR LOCAL AND FOREIGN PERSONAL REPRESENTATIVES; AND TO AMEND ARTICLES 6 AND 7 OF TITLE 62, RELATING TO THE SOUTH CAROLINA PROBATE CODE, SO AS TO PROVIDE FOR THE GOVERNANCE OF NONPROBATE TRANSFERS, AND TO AMEND THE SOUTH CAROLINA TRUST CODE.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Judiciary.

Senator MALLOY proposed the following amendment (JUD0143.007), which was adopted:

Amend the committee report, as and if amended, by striking page [143-6], lines 1-8 in their entirety and inserting the following:

// Amend the bill further, as and if amended, by striking page 411, lines 11-23, in their entirety and inserting the following:

/ (3) The terms of the second trust may not contain any provision nor reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of an original trust document if the inclusion of the provision or reduction in the original trust document would have disqualified any assets of the original trust for any federal or state income, estate, or gift tax deduction received on account of any assets of the original trust, or if the inclusion of the provision or reduction in the original trust would have reduced the amount of any federal or state income, estate, or gift tax deduction received. In addition, the terms of the second trust may not reduce any retained interest of a beneficiary of the original trust if the interest is a qualified interest under Internal Revenue Code Section 2702. /

Amend the bill further, as and if amended, page 413, lines 1-21 in their entirety and inserting the following:

/ (h) The provisions of this section shall not be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, or to create an inference of impropriety made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (a) of this section. The provisions of this section shall not be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the original trust or under any other section of this article or under another provision of law or under common law. The terms of an original trust may modify or waive the notice requirements under subsection (g), reduce or increase restrictions on altering the interests of beneficiaries under subsection (d), and may otherwise contain provisions that are inconsistent with the requirements of this section.

(i) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed exercise of the trustee’s special power to appoint to another trust pursuant to subsection (a) of this section. /

Amend the bill further, as and if amended, by striking page 326, lines 10‑14 in their entirety and inserting the following:

/ when the conditions have changed). See also *All Saints Parish, Waccamaw, a South Carolina non‑profit corporation, a/k/a The Episcopal Church of All Saints and a/k/a The Vestry and Church Wardens of the Episcopal Church of All Saints Parish*, 358 S.C. 209, 595 S.E. 2d 253 (Ct. App 2004*)*, *rev’d on other grounds*, 385 S. C. 428, 685 S.E. 2d 163 (2009). / //

Renumber sections to conform.

Amend title to conform.

Senator MALLOYexplained the perfecting amendment.

The amendment was adopted.

The Committee on Judiciary proposed the following amendment (JUD0143.006), which was adopted:

Amend the bill, as and if amended, by striking page 178, lines 11-36 in their entirety and inserting the following:

/ (7) (A) A legal proceeding pending on the date of a decedent’s death in which the decedent was a necessary party shall be suspended until a personal representative is appointed to administer the decedent’s estate, unless a court otherwise orders.

(B) Pursuant to Section 62‑3‑104, this subsection does not apply to a proceeding by a secured creditor of a decedent to enforce the secured creditor’s right to its security. It does apply to a proceeding for a deficiency judgment against a decedent or the estate of a decedent.”

REPORTER’S COMMENTS

This section establishes the mechanism for presenting claims. The claim may be delivered to the personal representative and must be filed with the court. Certain information must be included for claims not yet due, contingent, unliquidated, and secured claims. In lieu of presenting a claim, a proceeding may be commenced against a personal representative in any appropriate court, but the commencement must occur within the time for presenting claims. No claim is required in matters which were pending at the time of decedent’s death. Actions on claims must be commenced within the thirty days after the personal representative has mailed a notice of disallowance, but the personal representative or the court may consent prior to the expiration of the thirty-day period to extensions that do not run beyond the applicable statute of limitations. The 2013 amendment requires a creditor seeking appointment to attach a written statement of its claim to the application or petition for appointment. Allowing a creditor to present a claim in this manner creates an exception to the general rule of Section 62‑3‑104 and Section 62‑3‑804(6), otherwise precluding the presentation of a claim prior to the appointment of a personal representative. The 2013 amendment further clarifies that, as earlier stated in Section 62‑3‑104, an *in rem* proceeding by a secured creditor is not suspended until a personal representative is appointed, unless that proceeding includes an action for a deficiency judgment against a decedent or his estate. /

Amend the bill further, as and if amended, by striking page 300, lines 21‑43; page 301, lines 1‑43; page 302, lines 1‑43, and page 303, lines 1‑32 in their entirety and inserting the following:

/ Section 62‑7‑401. (a)(1) A trust described in Section 62‑7‑102 may be created by:

~~(1)~~(i) transfer of property to another person as trustee during the settlor’s lifetime or by will or other disposition taking effect upon the settlor’s death;

~~(2)~~(ii) written declaration signed by the owner of property that the owner holds identifiable property as trustee; or

~~(3)~~(iii) exercise of a power of appointment in favor of a trustee.

(2) To be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust. A transfer in trust of personal property does not require written evidence, but must be proven by clear and convincing evidence, pursuant to Section 62‑7‑407.

(b) ~~When any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law or be transferred or extinguished by act or operation of law, such trust or confidence shall be of like force and effect as it would have been without Section 62‑7‑401(a)~~ A trust that arises by act or operation of law does not require the existence of a writing.

(c) A revocable inter vivos trust may be created either by declaration of trust or by a transfer of property and is not rendered invalid because the settler retains substantial control over the trust including, but not limited to, (i) a right of revocation, (ii) substantial beneficial interests in the trust, or (iii) the power to control investments or reinvestments. This subsection does not prevent a finding that a revocable inter vivos trust, enforceable for other purposes, is illusory for purposes of determining a spouse’s elective share rights pursuant to Article 2, Title 62. A finding that a revocable inter vivos trust is illusory and thus invalid for purposes of determining a spouse’s elective share rights pursuant to Article 2, Title 62 does not render that revocable inter vivos trust invalid, but allows inclusion of the trust assets as part of the probate estate of the settlor only for the purpose of calculating the elective share. In that event, the trust property that passes or has passed to the surviving spouse, including a beneficial interest of the surviving spouse in that trust property, must be applied first to satisfy the elective share and to reduce contributions due from other recipient of transfers including the probate estate, and the trust assets are available for satisfaction of the elective share only to any remaining extent necessary pursuant to Section 62‑2‑207.

REPORTER’S COMMENT

This section is based on Restatement (Third) of Trusts Section 10 (Tentative Draft No. 1, approved 1996), and Restatement (Second) of Trusts Section 17 (1959). Under the methods specified for creating a trust in this section, a trust is not created until it receives property. For what constitutes an adequate property interest, see Restatement (Third) of Trusts Sections 40‑41 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 74‑86 (1959). The property interest necessary to fund and create a trust need not be substantial. A revocable designation of the trustee as beneficiary of a life insurance policy or employee benefit plan has long been understood to be a property interest sufficient to create a trust. See Section 62‑7‑103(11) (“property” defined). Furthermore, the property interest need not be transferred contemporaneously with the signing of the trust instrument. A trust instrument signed during the settlor’s lifetime is not rendered invalid simply because the trust was not created until property was transferred to the trustee at a much later date, including by contract after the settlor’s death. A pourover devise to a previously unfunded trust is also valid and may constitute the property interest creating the trust. See Unif Testamentary Additions to Trusts Act Section 1 (1991), codified at Uniform Probate Code Section 2‑511 and SCPC Section 62‑2‑510 (pourover devise to trust valid regardless of existence, size, or character of trust corpus). See also Restatement (Third) of Trusts Section 19 (Tentative Draft No. 1, approved 1996).

Section 62-7-401(a) provides different methods to create a trust, creating a distinction between third-party-trusteed trusts in subsection (a)(1)(i) and self-trusteed trusts in subsection (a)(1)(ii). Subsection (a)(1)(i) provides that, if a third party is to serve as trustee, transfer of property to that other person, whether during life or at death, is sufficient to create a trust; no writing is required.

Subsection (a)(1)(ii) requires that, if the settlor is also to be the trustee, then some written declaration signed by the settlor is required to create the trust. Such a declaration need not be a trust agreement, but can be some written evidence signed by the settlor sufficient to establish that the settlor intended to hold the property in trust.

While this section refers to transfer of property to a trustee, a trust can be created even though for a period of time no trustee is in office. See Restatement (Third) of Trusts Section 2 cmt. g (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 2 cmt. i (1959). A trust can also be created without notice to or acceptance by a trustee or beneficiary. See Restatement (Third) of Trusts Section 14 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 35‑36 (1959).

The methods set out in Section 62‑7‑401 are not the exclusive methods to create a trust as recognized by Section 62‑7‑102. A trust can also be created by a promise that creates enforceable rights in a person who immediately or later holds these rights as trustee. See Restatement (Third) of Trusts Section 10(e) (Tentative Draft No. 1, approved 1996). A trust thus created is valid notwithstanding that the trustee may resign or die before the promise is fulfilled. Unless expressly made personal, the promise can be enforced by a successor trustee. For examples of trusts created by means of promises enforceable by the trustee, see Restatement (Third) of Trusts Section 10 cmt. g (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 14 cmt. h, 26 cmt. n (1959).

Pre‑SCTC South Carolina law made a distinction between trusts for personal property and trusts in land. Trusts in personal property could be proved, as well as created, by parol declarations. See *Harris v. Bratton*, 34 S.C. 259. 13 S.E. 447 (1891). On the other hand, for a trust of any “land, tenements, or hereditaments” to be valid, former South Carolina Probate Code Section 62‑7‑101 mandated that the trust be proved by a writing signed by the party creating the trust. An exception to the requirement of a writing to establish a trust in land was found in former SCPC Section 62‑7‑103 for trusts arising by operation of law, such as resulting and constructive trusts. Because the SCTC applies only to express trusts and not to trusts implied in law (Section 62‑7‑102), Sections 62‑7‑401(a)(1)(i) and (1)(ii) codify existing law that trusts of real property must be established by a writing, transfers in trust of personal property do not have the same requirement, and trusts containing real property that arise by operation of law do not require evidence of writing to be valid.

Former SCPC Section 62‑7‑112 has been retained as SCTC Section 62‑7‑401(c). Former SCPC Section 62‑7‑112 was enacted after the *Siefert* decision, *Seifert v. Southern Nat*’*l Bank of South Carolina*, 305 S.C. 353, 409 S.E. 2d 337 (1991), to clarify that the settlor’s retention of substantial control over a trust, such as a right to revoke, does not render that trust invalid.

While a trust created by will may come into existence immediately at the testator’s death and not necessarily only upon the later transfer of title from the personal representative, Section 62‑7‑701 makes clear that the nominated trustee does not have a duty to act until there is an acceptance of the trusteeship, express or implied. To avoid an implied acceptance, a nominated testamentary trustee who is monitoring the actions of the personal representative but who has not yet made a final decision on acceptance should inform the beneficiaries that the nominated trustee has assumed only a limited role. The failure so to inform the beneficiaries could result in liability if misleading conduct by the nominated trustee causes harm to the trust beneficiaries. See Restatement (Third) of Trusts Section 35 cmt. b (Tentative Draft No 2, approved 1999).

While this section confirms the familiar principle that a trust may be created by means of the exercise of a power of appointment (paragraph ((a)(1)(iii)), this Code does not legislate comprehensively on the subject of powers of appointment but addresses only selected issues. See Section 62‑7‑302 (representation by holder of general testamentary power of appointment). For the law on powers of appointment generally, see Restatement (Second) of Property: Donative Transfers Sections 11.1‑24.4 (1986); Restatement (Third) of Property: Wills and Other Donative Transfers (in progress). /

Amend the bill further, as and if amended, by striking page 326, lines 10‑14 in their entirety and inserting the following:

/ when the conditions have changed). See also *All Saints Parish, Waccamaw, a South Carolina non‑profit corporation, a/k/a The Episcopal Church of All Saints and a/k/a The Vestry and Church Wardens of the Episcopal Church of All Saints Parish*, 358 S.C. 209, 595 S.E. 2d 253 (Ct. App 2004*)*, *rev’d on other grounds*, 385 S. C. 428, 685 S.E. 2d 163 (2009). /

Renumber sections to conform.

Amend title to conform.

Senator MALLOY explained the committee amendment.

The committee amendment was adopted.

The question then was second reading of the Bill, as amended.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 38; Nays 1**

**AYES**

Alexander Allen Bennett

Bryant Campbell Campsen

Cleary Coleman Corbin

Courson Cromer Davis

Fair Ford Gregory

Hutto Johnson Leatherman

Lourie Malloy *Martin, Larry*

*Martin, Shane* Matthews McElveen

McGill Nicholson O'Dell

Peeler Rankin Scott

Setzler Shealy Sheheen

Thurmond Turner Verdin

Williams Young

**Total--38**

**NAYS**

Bright

**Total--1**

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

**READ THE SECOND TIME**

S. 515 -- Senators Grooms, Campsen and Gregory: A JOINT RESOLUTION TO PROHIBIT TREE REMOVAL IN THE MEDIAN OF A PORTION OF INTERSTATE 26 UNTIL THE TRANSPORTATION REVIEW COMMITTEE HAS REVIEWED AND COMMENTED ON THE PROJECT.

The Senate proceeded to a consideration of the Resolution, the question being the second reading of the Joint Resolution.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 34; Nays 1**

**AYES**

Alexander Allen Bennett

Bright Campbell Campsen

Cleary Coleman Corbin

Courson Cromer Davis

Fair Ford Gregory

Hayes Hembree Hutto

Leatherman Malloy *Martin, Larry*

*Martin, Shane* Matthews Nicholson

Peeler Pinckney Rankin

Scott Setzler Shealy

Thurmond Turner Verdin

Young

**Total--34**

**NAYS**

Bryant

**Total--1**

The Resolution was read the second time and ordered placed on the Third Reading Calendar.

**ADOPTED**

H. 3786 -- Reps. Erickson, M.S. McLeod, Spires, Alexander, Allison, Anderson, Anthony, Atwater, Bales, Ballentine, Bannister, Barfield, Bedingfield, Bernstein, Bingham, Bowen, Bowers, Branham, Brannon, G.A. Brown, R.L. Brown, Chumley, Clemmons, Clyburn, Cobb‑Hunter, Cole, H.A. Crawford, K.R. Crawford, Crosby, Daning, Delleney, Dillard, Douglas, Edge, Felder, Finlay, Forrester, Funderburk, Gagnon, Gambrell, George, Gilliard, Goldfinch, Govan, Hamilton, Hardee, Hardwick, Harrell, Hart, Hayes, Henderson, Herbkersman, Hiott, Hixon, Hodges, Horne, Hosey, Howard, Huggins, Jefferson, Kennedy, King, Knight, Limehouse, Loftis, Long, Lowe, Lucas, Mack, McCoy, McEachern, W.J. McLeod, Merrill, Mitchell, D.C. Moss, V.S. Moss, Munnerlyn, Murphy, Nanney, Neal, Newton, Norman, Ott, Owens, Parks, Patrick, Pitts, Pope, Powers Norrell, Putnam, Quinn, Ridgeway, Riley, Rivers, Robinson‑Simpson, Rutherford, Ryhal, Sabb, Sandifer, Sellers, Simrill, Skelton, G.M. Smith, G.R. Smith, J.E. Smith, J.R. Smith, Sottile, Southard, Stavrinakis, Stringer, Tallon, Taylor, Thayer, Toole, Vick, Weeks, Wells, Whipper, White, Whitmire, Williams, Willis and Wood: A CONCURRENT RESOLUTION TO RECOGNIZE THAT ABUSE AND NEGLECT OF CHILDREN IS A SIGNIFICANT PROBLEM AND TO DECLARE TUESDAY, APRIL 9, 2013, AS “CHILDREN’S ADVOCACY DAY” IN SOUTH CAROLINA.

The Concurrent Resolution was adopted, ordered returned to the House.

**COMMITTEE AMENDMENT ADOPTED, CARRIED OVER**

S. 313 -- Senators Hayes, Courson, Setzler, Matthews, Lourie, Hutto, Jackson, Rankin, L. Martin and O’Dell: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 62 TO TITLE 59 SO AS TO ESTABLISH A SCHOOL DISTRICT CHOICE PROGRAM AND OPEN ENROLLMENT PROGRAM WITHIN THE PUBLIC SCHOOL SYSTEM OF THIS STATE, TO PROVIDE FOR A VOLUNTARY PILOT TESTING OF THE PROGRAM BEFORE FULL IMPLEMENTATION, TO DEFINE CERTAIN TERMS, TO PROVIDE FOR AN APPLICATION PROCESS FOR STUDENTS WISHING TO TRANSFER, TO PROVIDE RESPONSIBILITIES, STANDARDS, AND CRITERIA CONCERNING SENDING AND RECEIVING SCHOOLS AND SCHOOL DISTRICTS, TO PROVIDE STANDARDS OF APPROVAL, PRIORITIES FOR ACCEPTING STUDENTS AND CRITERIA FOR DENYING STUDENTS, TO PROVIDE THAT WITH CERTAIN EXCEPTIONS THE PARENT IS RESPONSIBLE FOR TRANSPORTING THE STUDENT TO SCHOOL, TO PROVIDE THAT DISTRICTS SHALL RECEIVE ONE HUNDRED PERCENT OF THE BASE STUDENT COST FROM THE STATE FOR NONRESIDENT STUDENTS ENROLLED PURSUANT TO THIS CHAPTER, TO PROVIDE THAT A STUDENT GENERALLY MAY NOT PARTICIPATE IN INTERSCHOLASTIC ATHLETIC CONTESTS AND COMPETITIONS FOR ONE YEAR AFTER HIS DATE OF ENROLLMENT, TO PROVIDE THAT A RECEIVING DISTRICT SHALL ACCEPT CERTAIN CREDITS TOWARD A STUDENT’S REQUIREMENTS FOR GRADUATION AND SHALL AWARD A DIPLOMA TO A NONRESIDENT STUDENT WHO MEETS ALL REQUIREMENTS FOR GRADUATION, TO PROVIDE THAT A SCHOOL DISTRICT MAY CONTRACT WITH CERTAIN ENTITIES FOR THE PROVISION OF SERVICES, TO PROVIDE THAT THE STATE DEPARTMENT OF EDUCATION ANNUALLY SHALL SURVEY SCHOOL DISTRICTS TO DETERMINE PARTICIPATION IN THE OPEN ENROLLMENT PROGRAM AND PROVIDE CERTAIN DELETED REPORTS ON THE PROGRAM TO THE GENERAL ASSEMBLY, TO PROVIDE A DISTRICT MAY RECEIVE CERTAIN WAIVERS CONCERNING THE IMPLEMENTATION OF THIS ACT, AND TO PROVIDE THAT IMPLEMENTATION OF THIS PROGRAM EACH FISCAL YEAR IS CONTINGENT UPON THE APPROPRIATION OF ADEQUATE FUNDING BY THE GENERAL ASSEMBLY.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Education.

The Committee on Education proposed the following amendment (AGM\313C003.AGM.AB13), which was adopted:

Amend the bill, as and if amended, Section 59‑62‑10(B), as contained in SECTION 1, page 2, line 25, so as to delete / make / and insert / promote student achievement by making /.

Amend the bill further, Section 59‑62‑30(E), as contained in SECTION 1, page 5, lines 3‑9, by deleting the subsection in its entirety and inserting:

/ (E) The State Board of Education shall promulgate regulations that list factors to be considered in determining school capacity. In developing these regulations, a task force must be established with membership to include, but not be limited to, school board members, superintendents, principals, parents, and business and community leaders. The membership of the task force must reflect urban and rural areas of the State. /

Amend the bill further, Section 59‑62‑70, as contained in SECTION 1, by deleting the SECTION in its entirety and inserting:

/ Section 59‑62‑70. (A) In implementing the provisions of this chapter, a student who currently resides in the attendance zone of a school or who qualifies to attend schools within the attendance zone pursuant to Section 59‑63‑30 must not be displaced by a student transferring from outside the attendance zone.

(B) A school district is not required to:

(1) accept students at a particular school residing outside the school’s attendance area in excess of three percent of the school’s highest average daily membership in any year from the preceding ten‑year period. The acceptance of students residing outside of the attendance area for a particular school must be phased in at a yearly increase of one percent of the average daily membership of the school in the immediately preceding year. Enrolled students residing outside of the school’s attendance zone must continue to be counted in the acceptance percentage of the receiving school until the student is no longer enrolled in a receiving school;

(2) make alterations in the structure of a requested school;

(3) establish and offer a particular program in a school if the program is not currently offered in the requested school; or

(4) alter or waive an established eligibility criteria for participation in a particular program, including age requirements, course prerequisites, or required levels of performance.

(C)(1) The school board of trustees shall adopt specific policies regarding capacity standards, standards of approval, and priorities of acceptance. Standards of approval may include consideration of the capacity of a program, class, or grade level. Standards must not be based on ethnicity, national origin, income level, or disabling conditions, English proficiency level, or previous disciplinary proceedings, except that an expulsion from another district, offenses committed that would result in expulsion, or suspensions from the previous school year that total ten days may be included. However, the school board may provide for provisional enrollment of students with prior behavior problems and may establish conditions under which enrollment of nonresident students would be permitted or continued. These standards may include an applicant’s gender, previous academic achievement, and athletic, artistic, or other extracurricular ability, but only if enrollment in that program or school is based upon specific levels of performance uniformly applied to all applicants seeking enrollment to that program or school.

(2)(a) In the assignment of students, priority must be given as follows unless a district has a procedure in place and that procedure was implemented in the school year prior to implementation of this chapter:

(i) first, to returning students who continue to meet the requirements of the program or school;

(ii) second, to students residing within the district including students currently enrolled in private schools and home schools, but who desire to attend a school outside their attendance zone;

(iii) third, to students who meet the requirements of the program or school and who seek to attend the designated school in the district’s feeder pattern;

(iv) fourth, to the siblings of students residing in the same household already enrolled in the school, provided that any siblings seeking priority under this section meet the requirements of the program or school; and

(v) fifth, to students whose parent or legal guardian is assigned to the school as his primary place of employment.

(b) The policies must not have the purpose or effect of causing racial segregation in a school or the school district.

(D)(1) A receiving school only may deny resident students living outside the attendance zone or nonresident students permission to enroll when:

(a) there is a lack of capacity in the school or program requested;

(b) the school requested does not offer the appropriate programs or is not structured or equipped with the necessary facilities to meet special needs of a student;

(c) the student does not meet established eligibility criteria for participation in a particular program, including age requirements, course prerequisites, or required levels of performance;

(d) a voluntary or court‑ordered desegregation plan is in effect for the school district, and the denial is necessary in order to enable compliance with the desegregation plan;

(e) the student was suspended for ten days or more the previous school year, was expelled, has committed offenses that would result in expulsion, or is in the process of being suspended or expelled; or

(f) a student who qualifies to attend a school in a school district pursuant to Section 59‑63‑30, including the requirement that the student own real estate in the district that has an assessed value of three hundred dollars or more, may attend the schools within the attendance zone where the property is located without having to apply for enrollment to schools in that attendance zone pursuant to this chapter and the receiving school may not deny the student permission to enroll at the school.

(2) A nonresident student may appeal the decision of a district to deny enrollment to the superintendent of the receiving school district or his designee, and the district or the student may appeal an adverse decision to the board of trustees of the school district. The denial by the receiving district’s board of an appeal of an enrollment request is final.

(E) A sending school district only may deny resident students a transfer to a receiving school when the transfer would violate a voluntary or court‑ordered desegregation plan in effect for that district. However, if the percentage of students seeking to transfer to receiving schools exceeds twenty percent of the sending district’s enrollment, the sending district must concur with any additional students transferring from the school to attend a receiving school. If a school within the sending district has transfer requests which exceed twenty percent of its enrollment resulting in the school being at least twenty percent below capacity, the State Board of Education shall appoint an external review team to study educational programs in the school, identify factors contributing to the transfer requests of students, and make recommendations to the district.

(F) A district may not take action to prohibit or prevent application by resident students to attend school in a nonresident school district or to attend another school within the resident district.

(G) Each school district annually shall submit capacity figures for each of its schools to the department. Each district is responsible for annually posting school capacities on the district and school websites. Additionally, information regarding the current enrollment of the school and its percentage of capacity must be included. This information must be provided to the department and posted on the district and school websites by February fifteenth of each school year as it relates to capacity capabilities for the following school year. /

Amend the bill further, Section 59‑62‑135, as contained in SECTION 1, page 13‑14, by adding an appropriately lettered subsection at the end to read:

/ ( ) The State Board of Education shall promulgate a regulation to define the term ‘good cause’ as it is to be applied in this section. /

Renumber sections to conform.

Amend title to conform.

Senator HAYES explained the committee amendment.

The committee amendment was adopted.

On motion of Senator HAYES, the Bill was carried over, as amended.

**CARRIED OVER**

S. 521 -- Senators Campsen, Sheheen and Scott: A BILL TO AMEND SECTION 59‑3‑10 OF THE 1976 CODE, RELATING TO THE ELECTION OF THE STATE SUPERINTENDENT OF EDUCATION, TO PROVIDE FOR THE APPOINTMENT OF THE SUPERINTENDENT BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE, AND TO PROVIDE FOR THE TERM, QUALIFICATIONS, AND FILLING OF A VACANCY IN THE OFFICE SUPERINTENDENT; AND TO REPEAL SECTION 59‑3‑20.

On motion of Senator PEELER, the Bill was carried over.

H. 3620 -- Reps. Sandifer and Gambrell: A BILL TO AMEND SECTION 38‑90‑160, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXEMPTION OF CAPTIVE INSURANCE COMPANIES FROM CERTAIN PROVISIONS OF TITLE 38, SO AS TO PROVIDE AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY IS SUBJECT TO CERTAIN REQUIREMENTS CONCERNING REPORTS FOR RISK‑BASED CAPITAL, ACQUISITIONS DISCLOSURE, AND ASSET DISPOSITION, AND CEDED REINSURANCE AGREEMENTS, AND TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY ELECT NOT TO TAKE REGULATORY ACTION CONCERNING RISK‑BASED CAPITAL IN SPECIFIC CIRCUMSTANCES.

On motion of Senator SCOTT, the Bill was carried over.

H. 3621 -- Reps. Sandifer and Gambrell: A BILL TO AMEND SECTION 38‑5‑120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REVOCATION OR SUSPENSION OF A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE BY AN INSURER, SO AS TO REVISE PROVISIONS CONCERNING A REVOCATION OF THE LICENSEE OF A HAZARDOUS INSURER.

On motion of Senator SCOTT, the Bill was carried over.

**THE CALL OF THE UNCONTESTED CALENDAR HAVING BEEN COMPLETED, THE SENATE PROCEEDED TO THE MOTION PERIOD.**

**MOTION ADOPTED**

On motion of Senator PEELER, the Senate agreed to dispense with the Motion Period.

**THE SENATE PROCEEDED TO THE INTERRUPTED DEBATE.**

**COMMITTEE AMENDMENT AMENDED AND ADOPTED**

**AMENDED, READ THE SECOND TIME**

**RETURNED TO THE STATUS OF SPECIAL ORDER**

S. 92 -- Senators Davis, S. Martin, Verdin, Grooms, Bryant and Bright: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “NDAA NULLIFICATION ACT OF 2013”, BY ADDING SECTION 8‑1‑15, RELATING TO PUBLIC OFFICERS, AND EMPLOYEES, TO PROHIBIT ANY OFFICER OR EMPLOYEE OF THE STATE OR ANY OFFICER OR EMPLOYEE OF A POLITICAL SUBDIVISION FROM AIDING THE DETENTION OF ANY UNITED STATES CITIZEN WITHOUT TRIAL BY THE UNITED STATES ARMED FORCES IN VIOLATION OF THE CONSTITUTION OF SOUTH CAROLINA.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Judiciary.

Senator DAVIS spoke on the Bill.

**Amendment No. P-2**

Senator HUTTO proposed the following Amendment No. P-2 (92MW2), which was adopted:

Amend the committee amendment, as and if amended, by striking SECTION 2 and inserting the following:

/ SECTION 2. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑15. No agency of the State, officer, or employee of this State, solely on official state duty, may engage in an activity that aids an agency of the armed forces of the United States in execution of 50 U.S.C. 1541, as provided by the National Defense Authorization Act for Fiscal Year 2012, or any subsequent provision of this law in the detainment of any citizen of the United States in violation of Section 3, Article I and Section 14, Article I of the South Carolina Constitution.”/

Renumber sections to conform.

Amend title to conform.

Senator HUTTO explained the amendment.

Senator DAVIS moved that the amendment be adopted.

The amendment was adopted.

**Amendment No. P5**

Senator HUTTO proposed the following Amendment No. P5 (92MW3), which was withdrawn:

Amend the committee amendment, as and if amended, by striking SECTION 2 and inserting the following:

/ SECTION 2. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑15 (a) No agency of the State, agency of a political subdivision of the State, officer, or employee of the State, officer or employee of a political subdivision of the State, acting in his official capacity, to include any member of the South Carolina Military Department solely on official state duty, or employees of any state or local detention facility solely on official state duty, may engage in an activity that aids an agency of the armed forces of the United States in execution of 50 U.S.C. 1541, as provided by the National Defense Authorization Act for Fiscal Year 2012, or any subsequent provision of this law in the detainment of any citizen of the United States in violation of Section 3, Article I and Section 14, Article I of the South Carolina Constitution.”

(b) The intent of subsection (a) is to nullify actions of the Government of the United States that conflict with the Constitution of South Carolina. /

Renumber sections to conform.

Amend title to conform.

Senator HUTTO explained the amendment.

Senator HUTTO asked unanimous consent to make a motion to withdraw the amendment.

Senator BRIGHT objected.

Senator HUTTO resumed explaining the amendment.

**Point of Order**

Senator BRIGHT raised a Point of Order that the Senator was out of order inasmuch as he was impugning the motives of two Senators.

The PRESIDENT did not sustain the Point of Order.

Senator HUTTO resumed explaining the amendment.

On motion of Senator HUTTO, with unanimous consent, Amendment No. P5 was withdrawn.

The question then was the adoption of the committee amendment.

The Committee on Judiciary proposed the following amendment (JUD0092.008), which was adopted:

Amend the bill, as and if amended, by striking all after the enacting words and inserting therein the following:

/ SECTION 1. The General Assembly declares that authority for this act is the following:

(1) The Tenth Amendment to the United States Constitution provides that the United States federal government is authorized to exercise only those powers delegated to it in the Constitution.

(2) Article VI, Clause 2 of the Constitution of the United States provides that laws of the United States are the supreme law of the land provided that they are made in pursuance of the powers delegated to the federal government in the Constitution.

(3) Article I, Section 9, Clause 2 of the Constitution provides that the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(4) The First Amendment provides that the Congress of the United States shall make no law prohibiting the right of the people to petition the government for a redress of grievances.

(5) The Fourth Amendment provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

(6) The Fifth Amendment provides that the people have a right to be free from deprivation of life, liberty, or property, without due process of law.

(7) The Sixth Amendment provides that the people have a right in criminal prosecutions to enjoy a speedy trial by an impartial jury in the state and district where the crime shall have been committed; to be informed of the nature and cause of the accusation; to confront witnesses; and to counsel.

(8) The Fourteenth Amendment provides that the people are to be free from deprivation of life, liberty, or property, without due process of law.

SECTION 2. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑15. No agency of the State, agency of a political subdivision of the State, officer or employee of the State, officer or employee of a political subdivision of the State, acting in his official capacity, to include any member of the South Carolina Military Department solely on official state duty, or employees of any state or local detention facility solely on official state duty, may engage in an activity that aids an agency of the armed forces of the United States in execution of 50 U.S.C. 1541, as provided by the National Defense Authorization Act for Fiscal Year 2012, or any subsequent provision of this law in the detainment of any citizen of the United States in violation of Section 3, Article I, and Section 14, Article I of the South Carolina Constitution.”

SECTION 3. This act takes effect upon approval by the Governor./

Renumber sections to conform.

Amend title to conform.

The committee amendment was adopted, as amended.

**Amendment No. 1**

Senator LARRY MARTIN proposed the following Amendment No. 1 (JUD0092.009), which was adopted:

Amend the bill, as and if amended, by striking the title on page 1, lines 11-20 and inserting therein the following:

/ TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8-1-15, RELATING TO AGENCIES OF THE STATE, PUBLIC OFFICERS, AND EMPLOYEES, TO PROHIBIT ANY STATE AGENCY, OFFICER, OR EMPLOYEE OR ANY OFFICER OR EMPLOYEE OF A POLITICAL SUBDIVISION FROM AIDING THE DETENTION OF ANY UNITED STATES CITIZEN WITHOUT TRIAL BY THE UNITED STATES ARMED FORCES IN VIOLATION OF THE CONSTITUTION OF SOUTH CAROLINA. /

Renumber sections to conform.

Amend title to conform.

Senator LARRY MARTIN explained the amendment.

The amendment was adopted.

**Recorded Vote**

Senators BRYANT, BRIGHT and SHANE MARTIN desired to be recorded as voting against the adoption of the amendment.

The question then was the second reading of the Bill.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 25; Nays 15**

**AYES**

Alexander Bennett Bright

Bryant Campbell Campsen

Cleary Corbin Courson

Cromer Davis Fair

Gregory Hayes Hembree

*Martin, Larry Martin, Shane* O'Dell

Peeler Rankin Shealy

Thurmond Turner Verdin

Young

**Total--25**

**NAYS**

Coleman Ford Hutto

Jackson Johnson Malloy

Matthews McElveen McGill

Nicholson Pinckney Reese

Scott Setzler Williams

**Total--15**

The Bill was read the second time, passed and ordered to a third reading.

**Statement by Senator LEATHERMAN**

I was not in the Chamber during the vote on second reading of this Bill, but had I been present I would have voted for passage. I was not present because I was with hundreds of constituents who came to Columbia to meet with me.

The Bill was returned to the status of Special Order.

**MOTION ADOPTED**

On motion of Senator CROMER, with unanimous consent, the Senate stood adjourned out of respect to the memory of Mr. Owen Junior “Mayor” Smith of Columbia, S.C. Mr. Smith was the beloved husband of Ruth B. Smith and devoted and wonderful father to Pamela S. Pierce, and doting grandfather of Drew and McKenzie. He is also survived by his sister-in-law, Jane Smith, and special niece, Sandra Moore Snead, and numerous other nieces and nephews. He was the son of the late Charles Thomas Smith and Dorothy Keys Smith.

A veteran of the U. S. Navy during the Korean Conflict, he was awarded the Korean Service Medal with 4 engagement stars, a good conduct medal and a United Nations medal. Mr. Smith had retired as an administrator after over 40 years service with the S.C. State Department of Transportation. Mr. Smith lived his life marked by unselfish and unfailing service to others and by his love for family and friends.

and

**MOTION ADOPTED**

On motion of Senator HUTTO, with unanimous consent, the Senate stood adjourned out of respect to the memory of Mr. Thomas N. Rhoad of Branchville, S.C., former colleague and friend who served in the House of Representatives from District 90 for twenty-three years.

**ADJOURNMENT**

At 2:22 P.M., on motion of Senator COURSON, the Senate adjourned to meet tomorrow at 2:00 P.M.

**Recorded Vote**

Senators BRYANT, BRIGHT and SHANE MARTIN desired to be recorded as voting against the motion to adjourn.

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