

UPTOWN

Hometown Legislative Action Day is just around the corner

“It is imperative that we pack every inch of the galleries and lobby at the Statehouse with municipal officials.”
— MASC President Lillian Flemming

On February 18, South Carolina municipal officials have the unique opportunity to make a significant statement to members of the General Assembly. A key event of MASC’s Hometown Legislative Action Day is a visit to the Statehouse.

“It is imperative that we pack every inch of the galleries and lobby at the Statehouse with municipal officials,” said MASC President Lillian Flemming. “Working together, we can show the collective strength of South Carolina municipalities.”

All municipal officials need to be in Columbia on February 18 to learn, share and be heard.

To prepare for **Hometown Legislative Action Day:**

- Contact your senators and representatives and tell them about Hometown Legislative Action Day on February 18.
- Read the special *Legislative Alert* you will receive just prior to the meeting and become familiar with MASC’s legislative priorities.
- Find more detailed information about the legislative priorities to be discussed at Hometown Legislative Action Day by contacting MASC or visiting MASC’s Web site.
- Think about how these issues affect **your** municipality. Be prepared to talk about specific hometown examples with your legislators.
- Invite your legislators to the Legislative Reception on February 18 at the Columbia Adam’s Mark Hotel from 5:30 p.m. to 7:00 p.m. **Let them know you will have the opportunity to have your picture taken together for your local newspaper.**

HOMETOWN LEGISLATIVE ACTION DAY
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Key legislative initiatives

As the General Assembly reconvened in January, municipal officials focused on three major legislative initiatives: telecommunications, better annexation laws and responsible tax reform. Officials will gather in Columbia for Hometown Legislative Action Day on February 18 to advocate for these issues.

“To get ready for the meeting, think about how these issues affect **your** municipality,” said Gary Cannon, MASC director of intergovernmental relations. “Be prepared to talk about specific hometown examples with your legislators.”

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Telecommunications: Pass H3530

The issue:

The Telecommunications Act of 1999 has restricted municipal authority to control public rights of way and to charge a franchise fee to telecommunication companies. H3530 corrects the revenue shortfall caused by the act. The act calls for a 0.75 percent business license tax on the telecommunications industry that went into effect January 1, 2004. This decrease from the traditional 3 percent franchise fee will cause a \$20 million shortfall for South Carolina municipalities, according to a recent study conducted by the University of South Carolina.

What we are requesting:

Last year, the Senate passed a bill, H3530, that corrects the revenue shortfall caused by the Telecommunications Act of 1999. H3530 calls for a more reasonable tax of 1.25 percent. The House of Representatives must concur with the Senate's legislation early in the 2004 session.

Our talking points:

- Legislators have the opportunity to fulfill promises made in 1999. The legislators promised municipalities they would not lose revenues because of the act.

- The act's intent was to level the playing field for telecommunication companies, not to provide unfair tax protection for telecommunication companies.
- The \$20 million shortfall has caught many cities in a catch-22 situation. They are being forced to either cut essential services or increase property taxes. Twenty million fewer dollars means 500 fewer police officers on the streets or 500 fewer firefighters protecting South Carolina citizens.
- H3530 is a reasonable telecommunications tax decrease that will prevent a property tax increase.

Better annexation laws

The issue:

South Carolina annexation laws are out of date and out of touch. With annexation laws on the books for more than 50 years, South Carolina has some of the most restrictive annexation laws in the country. The General Assembly has not updated the laws to keep up with the changes and needs of the state.

What we are requesting:

MASC will ask for passage of enclave annexation legislation and to lower the threshold for the petition-ordinance annexation method. Enclaves are unincorporated areas of a county that are completely surrounded by a municipality.

Our talking points:

- South Carolina's annexation laws are out of date and out of touch with the needs of our state.
- Municipalities are the economic engines for their region. Restrictive annexation laws hurt our cities and our state by increasing costs to businesses and residents within the municipality, adding unnecessary

layers of government to provide essential services and negatively affecting the economic health of the entire region.

- Enclaves are unfair to municipal residents and unworkable for providing efficient services.
- Annexing enclaves will increase safety and will protect property values.

Responsible tax reform

The issue:

Several bills have been introduced in the General Assembly that would radically change the taxation system used to fund schools, the state and local governments. Any changes in the tax system have the potential to disrupt stable sources of revenue required to provide governmental services.

What we are requesting:

The legislature must carefully study the consequences of any proposed changes in the taxation system. No changes should be adopted that would either decrease the revenue available to municipal governments or take away local control over the funding source.

Our talking points:

- The General Assembly should concentrate on revenue sources used to meet statewide responsibilities.
- The property tax provides a stable revenue foundation for municipal government.
- Citizens support local funding decisions being made at the local level.
- Major changes in the tax system should not be made with so many major variables unknown at this time; i.e., the pending court case concerning adequate school funding and the potential decrease in sales tax revenue due to Internet sales.

News Briefs



■ The S.C. Department of Health and Environmental Control recently launched a Web site, www.desc.info/SCPrepares, that contains information about training resources for public health, terrorism and disaster preparedness.

Hometown Legislative Action Day

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- Plan in advance to take your legislators to dinner after the reception.
- Attend the meeting ready to learn, practice and put what you learn into action.

Municipal Elected Officials Institute of Government

On February 17, attend Session A or Session B of the Municipal Elected Officials Institute of Government (MEOIG) to learn more about your responsibilities as an elected official. Session A must be completed prior to Session B. The deadline for pre-registration has passed; however, you may register at the Institute before 9:00 a.m.

Session A topics

- Conducting Public Meetings
- The City as an Employer
- An Overview of Local Government Planning and Zoning
- Team Building/Goal Setting

Session B topics

- Municipal Annexation, Mergers and Consolidation
- Business License Tax Administration
- Liability of Municipal Elected Officials
- Municipal Finance
- Ethics and Municipal Governance

Sales tax on water pumps

For several years, a number of municipalities have contested the S.C. Department of Revenue's refusal to grant a sales tax exemption for electricity used by pumps to produce water. The municipalities have argued the pumps used throughout the process, from the extraction of ground/river water to the distribution system, are machines used in the production process and should be exempt from sales tax. The Department of Revenue took a more narrow view of which pumps were eligible for the exemption.

On January 8, 2003, the South Carolina Court of Appeals issued an unpublished opinion in the case of *S.C. DOR v. Springs Industries Inc.* (Unpublished Opinion No. 2003 — UP — 029). The Court of Appeals ruled against the Department of Revenue. The ruling supports the municipalities' more inclusive interpretation of which pumps should be eligible for the sales tax exemption.

The S.C. Supreme Court recently refused to accept an appeal of the Appeals Court decision. Therefore, all municipal water systems should audit their electrical bills for any pumps used in the water treatment process. This would include pumps used to extract the water from the river or ground through the pumps used to empty the clear well and force the treated water into the distribution system. If your municipal utility has been charged with a sales tax on any of these pumps, file a Claim for Refund (ST-14) with the Department of Revenue. You may claim a refund for the previous three years.

The sales tax on these large pumps can amount to thousands of dollars. It is worth the effort to see if your water system is due a refund.

Codification of ordinances: Not whether, but when

Are your adopted ordinances piling up? Is it hard to tell the repealed from the current? Are your amendments adrift? Is your municipal code out of date?

State law (SC Code Section 5-7-290) requires each municipality to "provide by ordinance for the codification and indexing of all ordinances" and to maintain ordinances "in a current form reflecting all amendments and repeals."

Finding a current copy of local law should not be a game of hide-and-seek. Municipalities should establish and follow a schedule for periodic codification of newly enacted ordinances.

The growing Hispanic population in South Carolina

by Dr. Elaine Lacy, Associate Professor at the University of South Carolina and Coordinator of USC's South Carolina Latino Immigration Project

During a recent visit to the state of Veracruz, Mexico, with seven South Carolina state and local policy makers, a Beaufort County educator asked a large gathering of middle school and high school students from remote mountain communities how many of them had friends or relatives living in South Carolina. To our surprise, several hands shot up. This event was only one of many indications that South Carolina is changing, and changing rapidly.

Recent census estimates include South Carolina among four states (three of them in the Southeast) with the fastest growth rate (15 percent) of Hispanic/Latino residents between 2000 and 2002. The population estimates, which place the South Carolina figure at more than 109,000 in a state with a population of just over 4 million, are universally considered to be far off the mark. Thousands of undocumented residents are not included, and many legal Hispanic/Latino residents are not counted because they mistrust the government and fear they could be deported. It is difficult to arrive at the actual count of South Carolina's Latino population, but one federal government agency *unofficially* multiplies census figures for this group by three or four, meaning that between 300,000 and 400,000 Hispanics reside in South Carolina. Until the last decade, the majority of Hispanics/Latinos in South Carolina were temporary workers, passing through the state as part of a migratory agricultural stream. Today, however, most reside in the state year-round. The majority work in agriculture, food processing, landscaping, construction and manufacturing.

Latinos comprise an official minority in South Carolina, and policy makers and service providers are struggling to accommodate this new population group.

Census 2000 data indicates that the counties with the largest Latino populations include Greenville (42,000 to 56,000), Richland (27,000 to 36,000), Beaufort (24,000 to 32,000), Charleston (22,500 to 30,000) and Spartanburg (21,000 to 28,000). While the Latino population increased dramatically across the state between 1990 and 2000, it grew more rapidly in the counties of Jasper (by 1,625 percent), Saluda (1,530 percent), Newberry (943 percent), Hampton (670 percent) and Greenwood (658 percent). For a variety of reasons, including migration patterns and birth rates, Latinos are expected to become the majority population in the United States in this century. States like South Carolina, with its favorable climate, generally sound economy and newly established Latino communities, will no doubt continue to see rapid growth in this population group.

The impact of these changes is evident. The Latino contribution to the state economy is widely recognized, and Hispanic buying power in South Carolina, estimated at \$2 billion in 2003, is expected to reach \$4 billion in five years. At the same time, new challenges have resulted for state educators, health care providers, law enforcement and the legal system. High school dropout rates among Hispanic youth are higher nationwide than among other groups, a pattern that is sure to be exacerbated in South Carolina by a failure to accommodate Spanish-speaking students of

all ages. Illiteracy in both Spanish and English among Latino adults is also a growing concern in the state. The lack of translators in health care facilities and in our legal system puts many of these new residents at risk, especially in many smaller communities.

The majority of the state's Hispanics face many challenges and have needs that must be addressed for their own and for the state's future well-being. A University of South Carolina-funded study of the state's Mexican population reveals that many face discrimination on a daily basis from those in law enforcement, health care, in the workplace and in housing.

In response to the growing Latino presence in South Carolina, state, county and local government agencies have taken only preliminary steps. Former Governor Jim Hodges appointed a Hispanic Task Force that produced a report outlining the characteristics and needs of the Hispanic population. Several towns and cities around the state have created a Hispanic community liaison position; however, several of these posts remain unfilled. Law enforcement officers in a number of towns and cities are learning rudimentary Spanish and are involved in cultural awareness training.

Most of the assistance for South Carolina's Latino population comes from the private sector or as a result of federal grants. For example, federal funds help some communities offer summer school and preschool programs for Latino children. Projects at the University of South Carolina not only gather data on the Latino population, but also offer translation services, GED

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Bluffton and Hardeeville complete franchise renewal negotiations

Citizens of Hardeeville and Bluffton will be well-informed if an emergency occurs within their communities. Their municipalities have the ability to broadcast messages over *all* cable channels in case such an event arises.

"This is just one important benefit we were able to negotiate during the franchise renewal process," explained Greg Fender, primary consultant for MASC's Cable Franchise Advisory Program. "In fact, we were able to leverage many provisions for these municipalities because of their participation in the program."

Just more than a year after joining the program in October 2002, the Town of Bluffton and the City of Hardeeville completed cable television franchise renewal negotiations with Hargray CATV.

"This is a worthwhile program," said Hardeeville Mayor Rodney Cannon. "We are very pleased with the innovative traffic monitoring system."

The traffic monitoring system allows the police department to monitor a highway intersection utilizing the cable television system. Hargray CATV is providing a remote-controllable television camera with panning, tilt and zoom features at

a highway intersection. A transmission link furnishes two-way capability from the intersection to the police department. This enables police officers to monitor every detail at the intersection from a television in the police station.

To negotiate the best services for the municipality, the renewal process can "take up to a year or more," said Fender. "Just reviewing the franchise payments for the towns can be time-consuming. But we want to ensure that cable companies are paying South Carolina municipalities correctly."

Other benefits negotiated for Hardeeville and Bluffton include:

- Increased franchise fee revenue
- Governmental and educational access channels
- Capital equipment grants to purchase equipment needed to operate educational and governmental access channels
- Free cable and cable modem service for all municipal buildings and libraries
- Franchise documents with provisions that establish customer service standards and regulations for use of public rights of way, in addition to a letter of credit to assist the municipalities in enforcing the provisions of the agreements if needed

An important piece of the negotiation process was ensuring Bluffton and Hardeeville were reimbursed for the cost of participating in the program.

"Participating in the program really didn't cost us a dime," said Bluffton Mayor Henry Johnston. "We have been really pleased with this program and look forward to working with Hargray in the future now that we have a solid and accurate franchise agreement."

For more information about MASC's Cable Franchise Advisory Program, call Michelle James, director of education and training, at 803.933.1228.

Current Cable Franchise Advisory Program participants

Anderson	Little Mountain
Arcadia Lakes	Lockhart
Brunson	Newberry
Chesterfield	Pageland
Clover	Rock Hill
Edgefield	Santee
Edisto Beach	St. George
Goose Creek	Summerville
Hampton	Timmonsville
Hilton Head Island	Union
Latta	Varnville
Liberty	Walterboro

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equivalency classes for Hispanics and legal pro bono aid, among other services. Churches are engaged in outreach efforts, including English language classes, legal and social services and educational efforts. South Carolina boasts a number of Latino outreach organizations that provide a wide range

of services, but these and all other private efforts are dependent upon the availability of volunteers and funding.

South Carolina is changing rapidly, and we must be prepared for these changes in order to do what is best for *all* state residents. By finding ways to educate all South Carolina children in

the most efficient and effective manner and by providing optimal health care, justice and adequate social services, we provide an opportunity to strengthen our residents and our state.

For more information, contact Dr. Lacy at 803.641.3551 or at ElaineL@usca.edu.

The Station fire: A lesson for municipalities

Could a South Carolina town be held liable for allegedly not enforcing building and fire codes? Lawsuits brought against the Rhode Island town of West Warwick, where a nightclub fire broke out, prove municipalities can be prosecuted for negligence in enforcing building codes.

On February 20, 2003, a fast-moving fire destroyed The Station nightclub in West Warwick, Rhode Island. Pyrotechnics by Great White, a rock 'n' roll band, ignited the highly flammable packing foam that surrounded the stage and caused a fire that engulfed the building in five minutes. There were 427 people in the club when the fire broke out. One hundred people died, and 190 people were injured.

The estimated total damages for all victims, their families and estates could ultimately exceed \$500 million. According to James Green, general counsel and claims manager for the Rhode Island Interlocal Risk Management Trust, the estimated exposure to the Town of West Warwick is \$40 million. The trust provides \$4 million in coverage. Both the owners of The Station and members of Great White are bankrupt and have only \$1 million each available to pay claims.

Under the doctrine of joint and several liability, plaintiffs may recover 100 percent of their damages from a joint tort-feasor, a separate entity that may have also contributed to the injury. West Warwick has an exposure to the remainder of an estimated verdict, or \$498 million, should the other tort-feasors become unable to pay.

What makes the Town of West Warwick a target? The town fire marshal and building inspector both inspected The Station prior to the fire, and the town had two uniformed police officers at the nightclub on the night of the fire. A complaint filed in United States District Court in Connecticut lists some causes of action against West Warwick. They include:

1. Failure to enforce building code and fire safety laws
2. Failure to adequately inspect The Station
3. Failure to discover and remove highly flammable and toxic materials by reasonable inspection
4. Failure to train personnel in safety regulations
5. Failure to require sprinkler systems or fire prevention devices at The Station
6. Failure to enforce a Rhode Island law requiring performances with more than 75 people in attendance to be free of combustible devices
7. Failure to limit the number of patrons at The Station to a safe number of people

The trust is raising several defenses to these allegations:

1. The Rhode Island Fire Marshal Immunity statute states that the municipal fire marshal is an arm of the State Fire Marshal's Office.

Negligence by the fire marshal should be indemnified by the state.

2. The Public Duty Doctrine shields the state and its political subdivisions from tort liability arising from discretionary governmental actions not ordinarily performed by the private sector.
3. Rhode Island, like South Carolina, has a tort cap that limits damages.

Since the fire, the list of possible defendants has grown. Attorneys and fire investigators representing many of the plaintiffs have inspected debris from the site and have tagged about 300 pieces of evidence. It now appears manufacturers of the ceiling tile, carpeting, furniture, wiring, plywood, fiberglass insulation, in addition to the packing foam used for sound insulation, will be brought into the litigation.

After September 11, 2001, a federal law was enacted to move jurisdiction from state to federal court, when there are more than 75 cases of accidental deaths. Because many of the deceased were from the surrounding states of Massachusetts and Connecticut as well as from Rhode Island, some plaintiffs have filed suit in these states. The trust will use this law and seek to move all state claims to federal court.

Although this incident happened in another state, the lawsuits' outcomes can greatly affect South Carolina municipalities. South Carolina towns and cities have some of the same unexpected exposures within their municipal operations. The best defense is to be pro-active and to make sure all policies and procedures are followed when inspecting buildings and enforcing building codes.



Classifieds

■ The Town of Eastover is accepting applications for a police officer. Send resumé and references to the Eastover Police Department, Attn: Kenneth McCaster, PO Box 527, Eastover, SC 29044. For more information, call 803.353.2291.

2003 Achievement Award Winner

Public Service Category: Cities of Cayce and West Columbia

By collaborating, the cities of Cayce and West Columbia take advantage of the river running through them

Since the 1960s, leaders of the neighboring cities of Cayce and West Columbia have dreamed of providing a public space with recreational facilities along the Congaree River. In 1997, the River Alliance, a nonprofit organization, developed the concept of a nature-based urban park and passive recreation area along the Broad, Lower Saluda and Congaree rivers.

The Riverwalk Park offers more than two miles of lighted, paved pathways with fishing areas, canoe access, picnic areas, parking and scenic overlooks. The Cayce Women's Club donated park benches. These amenities provide opportunities for bird watching, walking, biking, picnicking, fishing, canoeing, rafting and kayaking. The amphitheater next to the Gervais Street Bridge provides a site for cultural, educational and entertainment activities. Comfort stations and storage buildings in the park are modeled after 18th century-style buildings, and local elementary students painted the tiles that adorn the walls inside the comfort stations. The entire park conforms to Americans with Disabilities Act standards to serve disabled visitors.

The Riverwalk Park is a truly collaborative effort between the two municipalities. To finance land acquisition and improvements, Cayce adopted a funding strategy based upon tax increment financing and an ISTEA grant. West Columbia received an ISTEA grant and provided matching funds to purchase property and to construct its portion of the park.

Cayce and West Columbia officials worked with the South Carolina State Museum to produce 21 interpretive educational panels that are placed along the pathways and that depict different historical and ecological aspects of the park, river and region.



The South Carolina State Museum produced 21 educational panels to place along the pathway.

Even the park's operation and upkeep is a joint effort, as is ensuring safety in the park. Officers from both police departments provide 24-hour security, patrolling on bicycles, four-wheelers and foot, while emergency call boxes are located throughout the park.

By working together, these neighboring cities have created the Riverwalk Park, which brings an economic boost to the area, provides recreation to citizens and visitors alike, and will be a legacy for generations to come.

For more information about this project, contact John Sharpe at 803.796.9020 or Jennifer Cunningham at 803.791.1880.

MASC recognizes and encourages innovations and excellence in local government through its Achievement Awards. Started in 1987, the program provides local government officials and employees the opportunity to receive deserved recognition for superior and innovative efforts in local government. The program also provides a forum for sharing the best public service ideas in South Carolina. For more information, visit MASC's Web site www.masc.sc or call Christie Zeller at 803.933.1215.

Get ready for the 2004 Achievement Awards

Do you have a unique or innovative program to share with other S.C. municipalities? If so, this is your opportunity to shine! Plan to enter the 2004 Achievement Awards program and let others know about the exciting things happening in your municipality. MASC will recognize the winners at the 2004 Annual Meeting in July.

Winning entries are featured in a video shown at the Annual Meeting, in the Achievement Awards brochure, in *Uptown*, during Hometown Network broadcasts and on the MASC Web site.

MASC will mail entry information in March, and the information will also be available on MASC's Web site at www.masc.sc under the "Featured Links" section of the home page. Proposals must be submitted by April 9. Judging will take place on May 3.



Educational Opportunities

Municipal Elected Officials Institute of Government

■ **February 17**, will hold Sessions A and B at the Adam's Mark Hotel in Columbia. Session A is open to any S.C. municipal elected official. Only elected officials who have attended Session A can register for Session B.

MASC

■ **February 18**, will hold Hometown Legislative Action Day at the Adam's Mark Hotel in Columbia. See story on page 1.

Hometown Network

■ **March 4**, the Municipal Elected Officials Institute of Government will present "Basic Budgeting." This session will be broadcast via satellite to the 10 regional councils of government.

S.C. Association of Stormwater Managers

■ **March 5**, will hold its Quarterly Meeting at the State Museum in Columbia.

S.C. Utility Billing Association

■ **March 10-12**, will hold its Annual Meeting at the Embassy Suites Hotel in North Charleston.

Hometown Connection

■ **March 30**, municipal officials from Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, Orangeburg and Richland counties visit with their state legislators. Officials should meet at MASC's office at 1411 Gervais Street in Columbia at 10:30 a.m.

S.C. Association of Municipal Power Systems

■ **April 14**, will hold its Legislative Event at Seawell's in Columbia.

Hometown Connection

■ **April 27**, municipal officials from Abbeville, Chesterfield, Clarendon, Darlington, Edgefield, Greenwood, Kershaw, Laurens, Lee, Marlboro, McCormick, Newberry, Saluda, Sumter and Union counties visit with their state legislators. Officials should meet at MASC's office at 1411 Gervais Street in Columbia at 10:30 a.m.

For more information about these meetings or other MASC meetings not listed, please call 803.799.9574, or visit our Web site at www.masc.sc.



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