

# Upstate Update

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*Upstate Forever's Monthly Bulletin on  
Important Issues and Events in the Upstate*

## I. South Carolina Legislative Update.

Several important bills relating to land use and conservation are now pending in the South Carolina General Assembly. Here's a brief description of some of them.

### A. *The South Carolina Neighborhood and Community Schools Act, H. 3608.*

The very first paragraph of this bill recites the serious problems caused by the continued construction of huge schools in South Carolina:

- 1 "South Carolina's schools are too large.
- 2 Our current policies encourage the construction of massive, isolated schools that are inaccessible to the communities they serve.
- 3 These remotely sited mega schools deprive students of a quality education and accelerate developmental sprawl into our rural areas.
- 4 Rather than walking or biking to a neighborhood school, many students spend more time on a bus than they do with their families.
- 5 One of the keys to improving education is a sense of community where teacher, student, and parent feel a sense of ownership in their school.
- 6 Neighborhood schools are smaller schools that provide benefits of reduced discipline problems and crime, reduced truancy and gang participation, reduced dropout rates, improved teacher and student attitudes, improved student self-perception, student academic achievement equal to or superior to that of students at larger schools, and increased parental involvement.
- 7 Neighborhood schools can provide these benefits while not increasing administrative and construction costs."

Many of these problems are caused by current state regulations, most notably, the rule that requires schools to occupy sites with certain minimum acreages. For example, an elementary school with 1,000 students (Greenville County's new proto-

*Promoting sensible growth and protecting special places in the Upstate*

type) must have at least 20 acres, while a high school with 1,500 students (e.g., Spartanburg High, Anderson's T.L. Hanna High) must have at least 45 acres. (A variance can be sought, but it is hard to obtain).

It is often difficult, if not impossible, for a school district to find enough undeveloped land in existing communities to meet these standards. Even where sufficient land is available, it can be prohibitively expensive. Thus, school districts are frequently forced to build schools on large tracts of "cheap land" in the countryside.

The bill addresses this problem in a very simple and effective way—it removes all minimum acreage requirements. The bill also caps student population sizes for elementary schools at 500 students, middle schools at 700, and high schools at 900. (Although the bill does not allow any waiver of this requirement, we believe that a limited variance should be available for extraordinary situations). Limiting student body size and removing minimum acreage requirements will pave the way for school districts to build the neighborhood schools that are preferred by parents and educators and that have been shown in studies to perform better than larger, less personal schools.

Opponents of the legislation argue that neighborhood schools are more costly. But their argument collapses when a fair and accurate benefit-cost analysis is conducted. Numerous studies have shown that dropout rates at smaller schools are much lower than at larger schools. Dropouts impose enormous costs on society—four out of five adult prisoners in the United States are dropouts, as are half of heads-of-households who receive welfare.

There are other significant costs associated with large schools. Since walking or bicycling to these schools is almost impossible, school districts have to pay for the buses, drivers and fuel needed to transport many of the students to and from the school, often over long distances. Taxpayers are further burdened when large schools attract sprawling development, which requires governmental services such as new or widened roads, water, sewer, and police and fire protection. The bottom line is that neighborhood schools are a win-win: a win for the taxpayers and a win for students and parents! The legislation was introduced by Upstate representative Bob Leach and is co-sponsored by several other Upstate legislators. We commend Representative Leach and the other co-sponsors for their support of this important legislation.

✓ **Upstate Forever's position on the bill: Support.**

You can read the entire bill at: [http://www.lpittr.state.sc.us/sess115\\_2003-2004/bills/3608.htm](http://www.lpittr.state.sc.us/sess115_2003-2004/bills/3608.htm)

## **B. South Carolina Land Use Dispute Resolution Act, S. 204.**

Both the United States Constitution and the South Carolina Constitution provide that the government cannot take private property without just compensation. There is a considerable body of federal and state case law interpreting the meaning of this provision, popularly known as the “takings clause.” For several years, the South Carolina General Assembly has considered so-called “private property rights legislation” that, if enacted, would change the constitutional definition of a “taking” in the state. The legislation has been highly controversial, attracting strong support from private property rights organizations and strong opposition from state agencies, local governments, and conservation groups.

Such legislation, if enacted, would dramatically change the nature and scope of takings litigation in South Carolina. All agree that the proposed law would make it considerably easier for property owners to prevail in actions based on traditional zoning and land development ordinances. For example, a property owner in an area zoned residential could argue that he is entitled to compensation because he cannot build an industrial or commercial facility on the site. Multiply that claim by thousands of similar ones in a community, and you can understand why state agencies and local governments are so deeply troubled, if not terrified, by the legislation. They would face enormous contingent liabilities under such a law and would be discouraged, to say the least, from pursuing planning and zoning efforts in their communities.

But for the first time during the entire controversy, a compromise now appears to be a real possibility. The Senate recently passed a bill called the South Carolina Land Use Dispute Resolution Act, S. 204, which does not change the definition of a “taking” but improves and expedites the process for adjudicating landowner claims. Local governments and conservation organizations do not oppose the Senate bill, and “private property rights” groups hopefully will decide to disarm and accept the Senate bill as the best they can do.

✓ **Upstate Forever’s position on the bill: Support.**

You can read the entire bill at: [http://www.lpittr.state.sc.us/sess115\\_2003-2004/bills/204.htm](http://www.lpittr.state.sc.us/sess115_2003-2004/bills/204.htm)

## **C. Local Authority To Regulate Hog And Chicken Farms, H. 3555.**

This bill, which has passed the South Carolina House of Representatives, would usurp most local authority over chicken and hog farms in South Carolina. The bill would prohibit local governments from enacting ordinances (other than zoning) that are more stringent than state regulations established by the South Carolina Department of Health and Environmental Control (DHEC). Thus, for example, a county could not require a setback between a hog or chicken farm and certain land uses (such as residences, schools, etc). That is greater than that specified in the DHEC rules. The county, however, could continue to determine through zoning where hog and chicken farms can be located.

The inability to establish more stringent setback requirements is of particular concern to local governments and conservation groups. The DHEC regulation requires a 400 to 1,750-foot setback (depending on the size of the facility) from the adjoining property—a distance that may be adequate to protect against water quality impacts but is not always adequate to protect against odors. Local governments should be able to decide if they want a more stringent setback in their communities. Isn't that what Home Rule is all about?

**X** *Upstate Forever's position on the bill: **Oppose.***

You can read the entire bill at:

[http://www.lpittr.state.sc.us/sess115\\_2003-2004/bills/3555.htm](http://www.lpittr.state.sc.us/sess115_2003-2004/bills/3555.htm)

## **D. Postponing Funding Of The Conservation Bank Act, H. 3143.**

The South Carolina Conservation Bank Act, passed last year by the General Assembly, will provide, for the first time in the history of our state, a regular and significant source of funding to acquire either title to, or conservation easements on, important natural and historic resources. The funding will come from a portion of the state's deed recording fees, which are collected when real estate is sold in the state. No tax increase is involved.

The Act currently provides that funding of the Conservation Bank will begin next year. H. 3143, however, would delay funding until 2005. Fortunately, the bill remains in committee, and it does not appear to have widespread support. Governor Sanford himself declared his strong support for the Conservation Bank Act during his "State of the State" speech in February. Nonetheless, because there is never a "sure

thing” in the legislature, we need to remain vigilant and strongly oppose all efforts to delay funding the program. Having to wait two years is bad enough!

**X** *Upstate Forever’s position on the bill: **Oppose**.*

You can read the entire bill at:

[http://www.lpittr.state.sc.us/sess115\\_2003-2004/bills/3143.htm](http://www.lpittr.state.sc.us/sess115_2003-2004/bills/3143.htm)

**E. *Changing The Way State Regulations Are Promulgated, H. 3082 and S. 328.***

Under the South Carolina Administrative Procedures Act, the vast majority of state regulations (environmental and others) cannot take effect unless they are approved by the General Assembly. This approval currently takes place in one of two ways—either expressly through passage of a joint resolution or implicitly by taking no action for a period of 120 days after the regulation is submitted. The latter method, popularly known as “clocking out,” is the method by which almost all regulations receive approval.

H. 3082 and S. 328 would abolish the “120 day clock” and require all regulations to receive affirmative approval by the General Assembly. This legislation is of grave concern to state regulatory agencies and conservation organizations because it would make it much more difficult to establish new, or to amend existing, regulations. The General Assembly is a busy place during the five months it meets each year. It deals with the budget and all kinds of controversial issues. It simply does not have the time or the energy to take up and consider each one of the hundreds of regulations submitted by the state’s various agencies.

The “120 day clock” has worked well for many years. “It ain’t broke and doesn’t need fixing!” It is a reasonable approach that allows state agencies to do their job, while giving the General Assembly an opportunity to review particular regulations of concern.

**X** *Upstate Forever’s position on the bill: **Oppose**.*

You can read the entire bill at:

[http://www.lpittr.state.sc.us/sess115\\_2003-2004/bills/3082.htm](http://www.lpittr.state.sc.us/sess115_2003-2004/bills/3082.htm)

**Contact Your Representatives:** Please let your representatives in the General Assembly know your position on these important bills. You can find the contact information at: <http://capwiz.com/restaurant2/sc/officials/state/?state=SC>

## 2. United States Senate Passes Major New Tax Incentives For Land Conservation!

On April 9, the United States Senate passed major new tax incentives for conservation easements and land protection. The incentives are included as part of the 2003 "CARE" Act (the Charities Aid, Recovery, and Empowerment Act).

Conservation easements are voluntary agreements between a landowner and a land trust, such as *Upstate Forever*, or a government agency in which uses and activities on the property are restricted in order to protect the land's conservation or historic values. For more information on how easements work, please visit our web site, <http://www.upstateforever.org>.

Land trusts have long solicited donations of conservation easements by landowners, but the existing incentives have been undermined by the increase in land values over time. Current law allows the landowner to deduct the value of a qualifying easement (the amount by which the easement reduces the fair market value of the land) only up to 30 per cent of his or her adjusted gross income, and unused deductions can be carried forward for only five additional years. Consequently, "land rich, cash poor" owners often can deduct only a small fraction of the value of the donation.

The bill approved by the Senate allows deductions of up to 50 per cent of adjusted gross income and a carry forward of 16 years. An example will illustrate the significance of this change for the "average landowner." Assume Larry Land earns \$50,000 per year and donates an easement worth \$1 million. Under current law, Mr. Land can only deduct \$15,000 in any one year, for a maximum of \$90,000 over the six-year period. Under the incentives in the Senate bill, Mr. Land would be allowed to deduct \$25,000 per year for a maximum of 16 years, for a total of \$400,000. That's \$310,000 more in deductions under the Senate bill. (In fact, under certain circumstances, taxpayers whose income is derived primarily from farming and ranching can deduct 100 per cent of their adjusted gross income with an unlimited carry forward).

The bill contains two more important new incentives: (1) an exclusion from taxation of 25 per cent of the gain on the sale of land to a conservation organization or a government conservation agency (President Bush supports an exclusion of 50 per cent); and (2) the establishment of a pilot program under which up to \$2 billion in tax-exempt bonds can be issued by non-profit organizations to purchase land for conservation, with the bonds repaid from the proceeds of renewable resource uses on the land (e.g., forest management).

Now that the legislation has passed the Senate, the focus turns to the House of Representatives. The House is coming back into session at the end of this month and will be ready to consider its own version of the 2003 CARE Act.

*You can help* by contacting Upstate Representatives Jim DeMint, 504 Cannon House Building, Washington, D.C. 20515 (202-225-6030) and Gresham Barrett, 1523 Longworth House Office, Washington, D.C. 20515 (202-225-5301) and ask them (1) to support the Senate bill's version of the income tax deductions and (2) to increase the capital gains tax exclusion from 25 per cent to 50 per cent, as President Bush has proposed.

For more information, see the Land Trust Alliance's website, <http://www.lta.org>.

### 3. The Federal Farmland Protection Program Is Now Underway!

The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) is requesting proposals from states, local governments, nonprofit organizations and Indian tribes to implement the Farmland Protection Program (FPP) that was established in the 2002 Farm Bill.

"Our productive soil is a national treasure—and keeping South Carolina's farm lands productive is a high priority now and for the future," NRCS State Conservationist Walter W. Douglas said. "Land use devoted to agriculture also provides important contributions to environmental quality, historical and archaeological resources, our rural heritage and scenic beauty." The program is especially needed in South Carolina, which is losing 47 acres of prime farmland each day. See Lots of Links below (first item).

Land eligible for the FPP includes farm and ranch land that has prime, unique or other productive soil or that contains historical or archaeological resources. These lands also must be subject to a pending offer from eligible entities for the purpose of protecting topsoil by limiting conversion of that land to nonagricultural uses.

The request for proposals was published in the Federal Register on April 3, 2003. Proposals must be received in the appropriate NRCS state office by May 19, 2003.

Proposals must (1) describe the eligible entity's farmland protection program and record of acquiring and holding permanent agricultural land protection easements or other interests and (2) describe the lands to be acquired or protected with assistance from the FPP. Details are in the Federal Register notice.

The request for proposals and more information on the FPP can be found at <http://www.nrcs.usda.gov/programs/farmbill/2002>. Information on the 2002 Farm Bill is at <http://www.usda.gov/farmbill>. On May 17, 2003, the NRCS will host an outreach meeting on the Farm Bill at the State Museum in Columbia.

For more information, contact Ron Hilliard, NRCS Assistant State Conservationist for Programs, at (803) 765-5681.

## 4. Chauga River Watershed Project.

*Upstate Forever* has teamed up with the Chattooga Land Trust to conduct an assessment of privately owned lands in the Chauga River watershed in Oconee County. The project is funded by a grant from the Land Trust Alliance, with matching grants from Naturaland Trust and the Page and George Bradham Family Foundation.

The Chauga River is one of the most biologically diverse, geologically fascinating and spectacularly beautiful areas in the Southeast. About half of the land in the watershed is part of the Sumter National Forest and is managed by the U.S. Forest Service. The remaining, privately owned lands are at serious risk because of rapid population growth in the region and the lack of any meaningful local land use controls. The main objective of the project is to identify the privately owned lands in the watershed, to determine which of these tracts are most important, and then to work closely with the landowners in voluntarily protecting as many of these tracts as possible, primarily through conservation easements.

The Chauga is the only South Carolina river that traverses the Brevard fault zone, the site of a massive fault through which deeply buried metamorphic rocks, richly laden with carbonate and graphite, were tectonically thrust onto the Blue Ridge rocks eons ago. This geology has created a rich assemblage of plants, including even some coastal species. In fact, the diversity of plant life is so unusual that it has been designated as “Chauga flora” in a study by two Clemson University botanists.

The Chauga gorge—a 17 mile stretch through the heart of the Blue Ridge Escarpment—is a place of extraordinary beauty. It is an “experts only” whitewater run, even more challenging than the internationally famous Section 4 on the nearby Chattooga River. The Chauga has been designated by South Carolina as an “Outstanding Resource Water,” the highest classification in the state. The river is the principal water supply for the City of Westminster.

The Chattooga Land Trust is a local land trust focused exclusively on the protection of lands in and adjoining the Chattooga River watershed in Oconee County, South Carolina and Rabon County, Georgia. It is well known in the area and has an outstanding relationship with the U.S. Forest Service.

## **5. The Upstate Remains One Of South Carolina's Fastest Growing Regions.**

The Upstate region of South Carolina, comprised of only six of South Carolina's 46 counties, continues to attract a disproportionate share of the state's new residents, according to the latest report by the U. S. Bureau of Census. During 2002, nearly one-fourth of the state's total population growth occurred in the six Upstate counties (Anderson, Greenville, Laurens, Oconee, Pickens, Spartanburg), and all but Laurens County ranked among the state's top twenty in terms of population increase and *rate* of growth among South Carolina counties.

UPSTATE SOUTH CAROLINA POPULATION GROWTH 2001-2002								
County	July 1, 2002 Population	July 1, 2002 Population State Rank	July 1, 2001 Population	July 1, 2001 Population State Rank	Numerical Population Change	Numerical Population Change State Rank	Percent Population Change	Percent Population Change State Rank
Anderson	170,578	8	168,893	8	1,685	10	1.0%	17
Greenville	391,334	1	386,581	1	4,753	1	1.2%	11
Laurens	70,508	17	70,248	17	260	26	0.4%	31
Oconee	67,918	19	67,056	19	862	17	1.3%	9
Pickens	113,097	13	112,038	13	1,059	14	0.9%	19
Spartanbur	259,322	4	257,002	4	2,320	9	0.9%	20
Upstate	1,072,757		1,061,818		10,939		1.0%	
South Caro	4,107,183		4,062,125		45,058		1.1%	

Source: U. S. Bureau of Census, 2002 County Population Estimates

## 6. Colonial Pipeline Agrees To Pay Largest Civil Penalty In EPA's History.

On June 1, 1996, almost one million gallons of oil poured into the Reedy River in southern Greenville County when Colonial Pipeline Company's major line ruptured. The impact on the river was brutal. Water quality was severely degraded, oil saturated the river's sediments, and over 35,000 fish were killed.

In February, 1998, South Carolina's claims against Colonial were settled for \$6.65 million. These funds are now being used to protect lands and improve water quality in the area below the spill site.

The following year, Colonial pled guilty to federal criminal charges in connection with the Reedy spill and was ordered to pay a \$7 million fine and serve a five-year term of probation.

But there was one last chapter in the Colonial saga—the resolution of the federal civil claims. That chapter was written on April 1, when the U. S. Department of Justice and the U. S. Environmental Protection Agency (EPA) announced that Colonial had agreed to pay a civil penalty of \$34 million, the largest penalty in EPA's history, and to spend approximately \$30 million to upgrade environmental protective measures along its entire 5,500 mile pipeline that stretches from Texas to New Jersey.

The \$34 million civil penalty will be deposited in the United States Oil Spill Liability Trust Fund, which underwrites oil spill cleanup activities throughout the country. Regrettably, none of the funds can be used to benefit the Reedy. The civil

penalty also settled the government's claims for spills in Georgia, Tennessee, Louisiana, and North Carolina, which occurred after the Reedy spill.

For more information about the settlement, see: [http://www.epa.gov/newsroom/headline2\\_040103.htm](http://www.epa.gov/newsroom/headline2_040103.htm)

## 7. Upcoming Events.

### *Upstate Forever Field Trips*

- April 26—Kayak clinic and tour of Lake Jocassee. Suitable for beginners. Cost \$75.00 per person.
- May 10—Photography outing to DuPont State Forest with award winning photographer Bill Robertson. Cost \$20.00 per person.

Field trips are open to all *Upstate Forever* members. Space is limited. Call our office at 864-250-0500 for more information or to make a reservation.

***Walk21-IV: Health, Equity & Environment, The 4th International Conference on Walking in the 21st Century*** - May 1-3, Portland, OR.  
<http://americawalks.org/walk21/>

***South Carolina Native Plant Society 6<sup>th</sup> Annual Symposium: Rare Plants of the Carolinas*** - May 16-18, Winthrop College, Rock Hill, SC.  
<http://www.clemson.edu/scnativeplants/upcoming%20events.htm>

***Designing Better Communities Workshop*** - May 20-22, North Carolina State University, Raleigh, N.C. Sponsored by N. C. Planning Association.  
<http://www.nc-apa.org/events.htm>

## 8. Lots o' Links.

***South Carolina Losing 47 Acres of Prime Farmland to Development Every Day.*** Every single minute of every day, America loses two acres of farmland. From 1992-1997, we converted more than 6 million acres of agricultural land to development—an area the size of Maryland. This report from American Farmland Trust contains information about each state's farmland conversion rates. South Carolina is losing approximately 47 acres of prime farmland every day.  
<http://www.farmland.org/farmingontheedge/downloads.htm>

***Is That a Daisy Growing on your Roof?*** Many people are finding that “ecoroofs” help both their property, and the environment, blossom. <http://www.csmonitor.com/2003/0409/p19s01-liga.html>

***Smart Growth Saves Money.*** Bad times unfortunately are here, yet they’re actually the best time to strike at the environmental and fiscal inefficiency of sprawl. <http://www.brookings.edu/views/op-ed/katz/20030413.htm>

***Earth 911.*** This website contains an abundance of useful information and tips about recycling centers, composting, energy and water conservation, air pollution prevention, and more. Enter your zip code for information specific to your location. <http://www.earth911.org/master.asp>

***Trees: A Green Solution to Improve Cities.*** Over the past 15 years, the number of trees in many US cities has declined by about 30 percent, while the space covered by concrete and other solid surfaces has risen by 20 percent. In some cities, such as Atlanta and Detroit, volunteer groups are stepping in to help by planting and caring for trees on public land and educating the public about why they matter. <http://www.csmonitor.com/2003/0416/p13s02-lihc.html>

***The Cost of Car Ownership.*** The high cost of owning a car in Southern California may preclude homeownership. <http://www.livableplaces.org/policy/carownership.html>

## 9. Quote of the Month.

“I hope that by the time I’m finished this afternoon, you’ll agree that sprawl is something that conservatives should be concerned about. I want to make sure that from now on, whenever you hear somebody talk about this country’s urgent need to rein in sprawl, never again will you think that person is some kind of ‘wild-eyed liberal environmental wacko.’ I want to help you see that people who consider themselves conservatives should fight sprawl whenever and wherever it raises its ugly head...because sprawl is harming our country.”

Martha Marks  
President, Republicans for Environmental Protection  
Keynote Speech at Sustainable Dallas Conference  
May 11, 2002  
<http://www.rep.org/opinions/speeches/16.htm>