



# Daily Legislative Update

Tuesday, March 3, 2015

51<sup>st</sup> Day of 90<sup>th</sup> General Assembly

\* \* \* CALL TO ACTION \* \* \*

STATE CHAMBER/AIA PRIORITY BILLS

## BILLS IN COMMITTEES THIS WEEK

### TAXES

#### TAXPAYER FAIRNESS

**SB 490** by Sen. Bill Sample and Rep. Ken Bragg will be presented in the Senate Revenue and Taxation Committee tomorrow!

Please ask your Senator to support SB 490

SB 490 seeks to eliminate requiring taxpayers to pay taxes before they can challenge a tax ruling, lessen the burden of proof for taxpayers, make more fair the application of the statute of limitations, create transparency in Department of Finance and Administration (DFA) rulings, move the corporate income tax filing date back one month after IRS filings are due and other provisions.

The primary reason for this bill is to get Arkansas out of the Council of State Taxation's list of the five worst states for business taxes.

We believe we have resolved all of DFA's concerns. Cities and counties are considering today an option we discussed yesterday. They are concerned about a provision that would extend a six-month sales tax rebate period.

This tax rebate was created in 2007 when Arkansas agreed to participate in the national Streamlined Sales Tax Program (SSTP). SSTP would not allow states to have sales tax caps, so Arkansas ended its sales tax caps to join SSTP. The rebate was designed to avoid a large tax increase on businesses and be in compliance with SSTP. Other tax rebate provisions allow

three years for rebates. The Council on State Taxation's business-friendly rankings grade Arkansas down for the inconsistent rebate periods and other provisions addressed in SB 490.

**MANUFACTURING REPAIR AND REPLACEMENT PARTS SALES TAX EXEMPTION SB 332** by Sen. Jake Files and Rep. Joe Jett is in the Senate Revenue and Taxation Committee and testimony will be taken tomorrow.

Please ask your Senator to support SB 332

This bill is an effort to make Arkansas more competitive with our surrounding states where we are badly out of step. But its revenue impact is a challenge. The Department of Finance and Administration is concerned about removing the requirement of having a Direct Pay Permit to take advantage of the tax reductions, But for many, if not most, businesses this is an unnecessary inconvenience. We are looking at options with DFA, but this is a requirement we definitely want to see removed.

The bill seeks a further, then complete, reduction in the sales taxes paid by manufacturers on their repair and replacement parts. It would eliminate all but the constitutional sales taxes from 4.875 percent to 2.5 percent on July 1, 2015 and to zero on July 1, 2016.

## **UNEMPLOYMENT INSURANCE**

**HB 1489** by Rep. Lane Jean and Senators Jim Hendren and Bart Hester will be presented to the House Revenue and Taxation Committee on Thursday, March 5. Please ask your Representative to support HB 1489

HB 1489:

- 1) *Changes the calculation of an individual's unemployment insurance benefit*
  - a. Uses the average of an employee's last four quarters of earnings instead of only the highest quarter of earnings
- 2) *Reduces the weeks of unemployment insurance benefits in Arkansas from 25 to 20 weeks*

### **Arkansas Unemployment Insurance Trust Fund Not Currently Solvent**

- Current U.S. Department of Labor (USDOL) solvency calculations indicate the Arkansas UI Trust Fund should have \$642 million
  - Highest Arkansas UI Trust Fund balance \$265 million in 2000
  - Lowest Arkansas UI Trust Fund balance (\$362) million in 2010
  - Arkansas Department of Workforce Services (ADWS) Third Quarter 2014 Projections for Trust Fund Balance
    - \$232.7 million at year-end 2014
    - \$325 million at year-end 2015
    - \$360.7 million at year-end 2016

### **Benefits of Solvent Trust Fund**

- Protects Arkansas employers from UI tax increases
  - 2010 Debt increased Arkansas UI taxes annually—up to about \$180 more per employee!

○ Reduces risk of USDOL taking punitive action against Arkansas employers  
**HB 1489 Reduces Claim Expenses of the Trust Fund by \$46 to \$56 million annually**

- Combined impact of benefit calculation change and reduction in maximum weeks of coverage
  - Average Arkansas UI claim lasts 14.5 weeks (duration) –well below new 20-week maximum
    - Duration in states with lowered maximum weeks is significantly lower than maximum
    - States that cut maximum number of weeks have seen solvency improvements
      - NC, SC, GA, FL, MI, KS, MO all have less than 25 weeks
      - Many workers find work at the end of maximum weeks
    - Federal law does NOT require a specific number of weeks in state UI laws
      - Norm at program's beginning in 1930s was in the 10-16 week range
      - 26 weeks came about when state trust funds were much more solvent and taxes started to come down after initial program start-up
    - Unemployment insurance is no longer the single government safety net like 1930s
  - Expense reduction helps Arkansas Unemployment Insurance Trust Fund achieve solvency faster

**HB 1489 Also Makes Arkansas More Competitive with Contiguous States**

- Average weekly UI benefit in Arkansas is \$289.36
  - Act 861 of 2011 froze minimum & maximum benefit amounts at \$81–\$451
  - Among states contiguous to Arkansas
    - Mississippi has lowest benefit at \$197.64
    - Texas has highest benefit at \$350.31
    - Median benefit is \$237.90
      - Arkansas ranks 46<sup>th</sup> in U.S. for per capita income but pays UI above Median!
- Arkansas UI benefit amount as a percentage of weekly wage is 38.9 percent
  - Arkansas is highest among our contiguous states
  - Mississippi is the lowest at 24.7 percent
  - Median is 29.5 percent
    - Employer-financed UI program is no longer primary safety net as in 1935. UI system is a relatively small part of the much larger safety net

**PENDING STATE CHAMBER/AIA PRIORITY BILLS**

**PROHIBIT CONTINGENT FEE AUDITS**

**SB 470** by Sen. Ronald Caldwell would prohibit state agencies and political subdivisions from engaging auditors or appraisers on a contingency fee basis. We are investigating concerns

raised by State Auditor staff. It is being held in the Senate State Agencies and Governmental Affairs Committee. We are working with the Auditor's office and a variety of interests to resolve concerns.

## **WORKERS' COMPENSATION**

Our bill on Workers' Compensation is being finalized this week with lead sponsor Rep. Matthew Shepherd. It will be co-sponsored by Sen. John Cooper. The bill seeks to solve the unfunded liability of the Workers' Compensation Commission's Death and Permanent Disability Trust Fund by stopping new claims from going into the Fund. It would also restore subrogation to workers' compensation cases.

## **WORKFORCE DEVELOPMENT**

The State Chamber/AIA's worker force development bill package is still being worked on. Our bills include:

**SB 368** by Sen. Jane English, Rep. Charlotte Douglass and others

**SB 369** by Sen. English

**SB 370** by Sen. English

**SB 371** by Senators Jane English and Bobby Pierce

**SB 372** by Sen. English and Rep. Bill Gossage and other

## **TODAY AT THE CAPITOL**

House convenes 1:30 p.m.

Senate convenes 1:30 p.m.

At this time of the session, committee schedules start to change rapidly, with meetings called upon adjournment and at other times. We don't want to mislead anyone with an out-of-date meeting agenda. So for the rest of the session, instead of pasting the day's schedule into this report, we will provide a link to the Arkansas General Assembly's website. You can view the day and week's schedule by clicking [HERE](#).

## **BILLS OF INTEREST**

### **FIREFIGHTER DEATH BENEFIT**

**HB 1274** was amended and received a Do Pass recommendation from the House State Agencies and Governmental Affairs Committee last week. The bill passed the House yesterday by a vote of 96-0. The bill would provide a \$150,000 award for certain public employees killed in

the line of duty and for firefighters with specific guidelines for eligibility. As originally filed, the bill created a presumption that certain cancers were work-related. The amendment modifies the language of the presumption and sets forth a review panel. This bill would seem to create a large cost exposure for the state and still has the danger of creating momentum for a presumption that all cancers sustained by firefighters are work-related.

The State Chamber/AIA Committee on Unemployment Insurance and Human Resources discussed this bill yesterday and determined this bill is dangerous in that it could set a trend for finding a presumption of coverage that is likely to spill over into Workers' Compensation.

## **OCCUPATIONAL AND PROFESSIONAL LICENSING**

**HB 1158** by Rep. Richard Womack would “allow a person to engage in a lawful occupation free from unnecessary regulation.” The bill received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee on February 12 and was passed over on the House Calendar February 17. It is not currently on the House Calendar.

Yesterday, Rep. Womack and Dan Greenberg met with a large group of people from the coalition listed below. Both sides do agree that unnecessary and unwarranted regulations should be identified and eliminated. However, the coalition remains firm that this bill's approach is too broad. Rep. Womack is likely to consider alternatives. We very much appreciate Rep. Womack's willingness to meet and discuss this bill.

The Batesville Chamber of Commerce has now joined the Arkansas State Chamber of Commerce, Associated Industries of Arkansas, Inc., Associated General Contractors of America, Associated Builders & Contractors, American Council of Engineering Companies of Arkansas, Arkansas Education Association, Arkansas Home Builders Association, Arkansas HVACR Association, Arkansas Society of Professional Surveyors, Arkansas Society of CPAs, Arkansas Society of Professional Engineers, Arkansas Speech-Language-Hearing Association, Brown Engineers, LLC, Cross, Gunter, Witherspoon and Galchus, P.C., Garver USA, McMillan, McCorkle, Curry & Bennington, LLP, Snyder Environmental, Wholesale Beer Distributors Association, Arkansas Optometric Association, Arkansas Fire Sprinkler Association, Arkansas State Dental Association, American Institute of Architects-Arkansas Chapter, Nabholz Construction, Arkansas Bar Association, AFCO Steel, Pack Engineering, Inc., Arkansas Realtors Association, Little Rock REALTORS® Association, McGoodwin, Williams and Yates, Inc., Arkansas Environmental Federation, Arkansas Pest Management Association, Arkansas Chapter of Appraisal Institute, Greater Hot Springs Chamber of Commerce, Little Rock Regional Chamber of Commerce, Fayetteville Chamber of Commerce, Rogers-Lowell Area Chamber of Commerce, Southland Racing and Gaming, Arkansas Automobile Dealerships Association, Middleton Heat & Air, Arkansas Construction Education Foundation, Covenant Medical Benefits, Arkansas Asphalt Pavement Association and Arkansas Association of Real Estate Inspectors in this coalition.

If your business or organization would like to join this coalition, please email Kenny Hall at [khall@arkansasstatechamber.com](mailto:khall@arkansasstatechamber.com)

## HUMAN RESOURCES ISSUES

Rep. Greg Leding's three bills, detailed below, continue to be of concern to the business community. They are all on Tuesday's committee agenda in the House Public Health Welfare and Labor Committee. However, Rep. Leding is continuing to review and discuss options for these bills with us and other human resource interests.

**HB 1275** provides tax credits of up to \$4,000 per employee per year for employers who provide family and medical leave to employees, providing that under the \$4,000 limit, the credit shall be equal to 25 percent of the wages paid to the employee while on leave. This bill appears to create a revenue issue for the state, as well as a potential for expansion and/or modification of employers' leave provisions.

**HB1276** requires employers with more than four employees to provide a detailed pay stub to each of their employees on at least a monthly basis. We have concerns about what many of the terms in this bill mean and how employers might satisfy the requirements.

**HB 1277** requires employers, in a dispute with an employee, to pay all wages that the employer concedes are due to the employee without condition. The sponsor plans to amend this bill to remove a requirement that an employer pay employees on their last day of work to requiring employers pay the former employee on the next scheduled pay date. However, such an amendment does not alleviate the primary concerns of businesses. Creating a mandatory artificial due date for paying *any* employee outside the normal process is a problematic issue. Also, there is already a law that sets a timeline by which non-exempt employees must be paid (every two weeks). This bill's change to payroll processing is inconsistent with that provision. HB 1277 is also on the House Public Health, Welfare and Labor Committee agenda.

## GUNS ON EMPLOYERS' PROPERTY

**SB 492** by Sen. Jimmy Hickey and Rep. DeAnn Vaught was defeated in the Senate Judiciary Committee last week, but Sen. Hickey has the option to bring the measure before the committee for another vote. The bill would authorize employees with concealed carry permits (CHCL) to keep a handgun locked and stored out of site in a vehicle on the employer's property, but not in company cars.

**SB 573** by Sen. Alan Clark would prohibit a private employer from prohibiting or attempting to prevent an employee who is a concealed carry licensee from having a handgun in his or her private vehicle on the employer's parking lot. The bill is on the Senate Judiciary Committee agenda.

Passage of a "parking lot" bill is a high priority for the National Rifle Association (NRA). The State Chamber/AIA opposes both of these bills because we believe the business owner's private property rights should supersede the individual's lawful right to possess a firearm.

## NET OPERATING LOSS CARRY FORWARD

**HB 1431** by Rep. Micah Neal seeks to extend the state's income tax's net operating loss (NOL) carry-forward provisions. The federal government allows businesses 20 years to offset future gains against past losses. Arkansas is in the bottom 10 in the country on the length of time allowed for NOL offset. This bill seeks to add one year annually to a maximum of 10 years by 2020. Ten years would still leave Arkansas in the bottom 10 nationally, but would certainly be an improvement. The State Chamber/AIA supports this bill. We planned to file a bill that sought an extension to 15 years with a one-year look back, but the estimated cost was more than the legislature could afford in light of the current budget status. Rep. Neal came forward with this option and we agreed to join. HB 1431 is on the House Revenue and Taxation Committee agenda.

## PROJECT LABOR AGREEMENTS

**SB 426** by Sen. Jon Woods and Rep. Bruce Cozart would prohibit public agency construction contracts from containing terms or bid specifications that encourage or discourage potential contractors from entering into collective bargaining agreements. It was approved by the Senate last week 33-0. It has been moved from the House Public Health, Welfare and Labor Committee to the House Committee on State Agencies. The State Chamber/AIA supports this bill.

Project Labor Agreements (PLA) give favor to contractors that agree to use organized labor. If a PLA is required on government-funded or assisted projects in Arkansas, it would be nearly impossible for the 97.4 percent of the construction workforce in the state to compete on an equal basis for construction projects. This commonly reduces competition from qualified merit shop contractors and increases construction costs. As a result, PLAs are known to increase costs by as much as 20 percent.

In 2005, Governor Mike Huckabee issued an executive order banning PLA mandates on state and state-funded construction projects. This made Arkansas one of the first states to take action on this issue. This order is still in place today. It protects taxpayers and the construction industry. SB 426 seeks to codify into statute the executive order to ensure that fair and open competition for taxpayer-funded construction remains the law of the land in Arkansas. Since 2010, 17 states have banned PLA mandates through either executive order or enacting statutes making the total number of states that ban PLAs 21.

## HIGHWAY BILL

**HB 1346** by Rep. Dan Douglas remains on the House calendar, but Rep. Douglas met with interested parties and discussions regarding the bill yesterday. The bill would allocate monthly any sales and use tax revenue from various sources above \$2.2 billion to various entities for highway and road improvements.

## EMISSIONS PLAN FOR POWER PLANTS

**SB 183** Sen. Eddie Joe Williams, which has been amended four times, is on today's Senate calendar.

## EMINENT DOMAIN

**HB 1490** by Rep. Bob Ballinger would strike procedure for using eminent domain by various entities, making all subject to a procedure prescribed in a new code section created by this bill. A circuit court jury would decide compensation of land owners.

## STATE CHAMBER/AIA BILL TRACKING

To date, the House has filed 581 bills and the Senate has filed 741 bills.

The State Chamber/AIA is tracking 284 bills and resolutions.

New bills added to State Chamber/AIA tracking today:

- |                         |  |   |
|-------------------------|--|---|
| <a href="#">HB 1524</a> | <a href="#">Sullivan, Dan (R)</a>  | Makes a technical change in reference to federal code, with regard to income tax depreciation.  |
| <a href="#">HB 1528</a> | <a href="#">Sullivan, Dan (R)</a>  | Repeals the prohibition against carrying a weapon into a retail liquor store, school, college, polling place, church, a building on the capitol grounds, etc. for persons with concealed handgun permits.                   |
| <a href="#">HB 1529</a> | <a href="#">Beck, Rick (R)</a>   | Declares asbestos-related claims to be void against successor companies that have more total asbestos-related liabilities than the fair market value of the violator company's assets, as determined at the time of merger. |
| <a href="#">HB 1535</a> | <a href="#">Douglas, Dan (R)</a>   | Creates the Legislative Task Force on Economic Development.   |
| <a href="#">HB 1536</a> | <a href="#">Eaves, Les (R)</a><br><a href="#">Pierce, Bobby (D)</a>      | Allows the Department of Environmental Quality to transfer eligibility for payment for corrective action on a qualified petroleum storage tank to a subsequent owner or operator.   |
| <a href="#">HB 1537</a> | <a href="#">Baltz, Scott (D)</a>   | Increases from \$400 to \$1,000 the total of annual fees paid by facilities with toxic chemical release report forms.   |
| <a href="#">HB 1540</a> | <a href="#">Lundstrum, Robin (R)</a><br><a href="#">Hester, Bart (R)</a> | Changes the definition of employment for the Workforce Services Law.  |
| <a href="#">HB 1553</a> | <a href="#">Ratliff, James (D)</a><br><a href="#">Johnson, Blake (D)</a> | Creates regulations for transactions between agricultural lenders and producers of grain,   |

soybeans and peanuts.

- [HB 1564](#) [Fite, Charlene \(R\)](#) Creates penalties for violation of a rule or regulation related to illegal dumping, including fine, imprisonment and restitution.
- [HB 1581](#) [Gillam, Jeremy \(R\)](#) [Clark, Alan \(R\)](#) Legislative Affairs (Task Force on the Realignment of Higher Education; Created)
- [SB 667](#) [Sanders, David \(R\)](#) Provides that the Public Service Commission's power to regulate the debt of public utilities is void when a public utility is a regional transmission organization with debt authorized by the Federal Energy Regulatory Commission.
- [SB 680](#) [Clark, Alan \(R\)](#) Expands the list of materials that when purchased by a contractor are not considered part of a subcontractor's project to include installation of playground equipment.
- [SB 683](#) [Files, Jake \(R\)](#) Creates the Arkansas Broadband Infrastructure Incentive Act. (Shell bill)
- [SB 688](#) [Caldwell, Ronald \(R\)](#) [Gray, Michelle \(R\)](#) Requires pharmacy benefits managers to update their maximum cost list within 7 days from an increase of 10 percent or more in acquisition costs; enhances appeal procedure; enhances disciplinary authority off the Board of Pharmacy.
- [SB 696](#) [Rice, Terry \(R\)](#) Increases the amount of rehabilitation expenses that may be qualified for historic rehabilitation tax credit; Increases to \$6,000,000 the total amount of credits that may be issued annually by the Arkansas Heritage Department.
- [SB 715](#) [Maloch, Bruce \(D\)](#) Modifies the funding formula model for universities. (Shell bill)
- [SB 725](#) [Files, Jake \(R\)](#) Changes the calculation of the tax on soft drinks from \$2 per gallon of soft drink syrup to \$0.21 per gallon of soft drink that may be produced from each package of syrup.
- [SB 726](#) [Files, Jake \(R\)](#) Revises the unenforceability provision of construction contracts that include a hold-harmless provision.

<a href="#">SB 727</a>	<a href="#">Rice, Terry (R)</a> <a href="#">Baine, John (R)</a>	Authorizes public utilities to recover through an interim surcharge the construction and equipment funds spent for required compliance with legislation or administrative rules. Provides for waiver of major utility facility construction hearings.
<a href="#">SB 737</a>	<a href="#">King, Bryan (R)</a>	Requires public utilities filing for a certificate of environmental compatibility and public need to send a written notice to all property owners in the proposed route of the construction at least 30 days prior to the filing date.

For the complete, searchable list of bills being tracked, please visit our [tracking site](#). The full text of each bill is available at the site.

### ***LEGISLATIVE SESSION CONTACT INFORMATION***

State Senators: 501-682-2902

State Representatives: 501-682-6211

To view schedules, calendars, bill information and legislator information, visit:  
[www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

To view live stream video and audio from the Arkansas House of Representatives, visit [www.arkansashouse.org](http://www.arkansashouse.org).

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