



# Daily Legislative Update

Wednesday, March 4, 2015

52<sup>nd</sup> Day of 90<sup>th</sup> General Assembly

## TODAY AT THE CAPITOL

All committees that normally meet at 10 a.m. will meet at 9 a.m.

House convenes 11:00 a.m.

Senate convenes 11:00 a.m.

To view the complete legislative meeting schedule, go to: [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us)

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

## STATE CHAMBER/AIA PRIORITY BILLS

## BILLS IN COMMITTEES TODAY

### TAXES

#### TAXPAYER FAIRNESS

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

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.

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 to 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 today.

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. It 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. As written, it would have eliminated the Direct Pay Permit to take advantage of the tax reductions, which was a problem for many, if not most, businesses. DFA had concerns, but has been working with us and we may very well have solved the problem.

## **BILLS IN COMMITTEES TOMORROW**

### **UNEMPLOYMENT INSURANCE**

**HB 1489** by Rep. Lane Jean and Senators Jim Hendren and Bart Hester is scheduled to be presented to the House Revenue and Taxation Committee on tomorrow.

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 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 and 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

## TIPAC

**SB 204** by Sen. Jane English and Rep. Karilyn Brown passed the Senate 34-0 on February 12. It will be presented to the House Judiciary Committee tomorrow.

Please ask your Representative to support SB 204.

The Transparency in Private Attorney Contracting Act (TIPAC) ensures contingency fee contracts in the office of the Attorney General are awarded openly and that citizens receive the maximum practicable amount of any settlement or award.

- TIPAC promotes competitive bidding and transparent contracting by requiring the Attorney General to:
  - Determine, in writing, that a contingency fee arrangement will be both cost-effective and in the best interests of the state;
  - Request proposals on a state website before entering into a contingency fee contract;
  - Publish executed contingency fee contracts on a state website; and
  - Publish information on any fees paid pursuant to contingency fee contracts.
- TIPAC ensures that government attorneys retain control of litigation and that consumers, victims and taxpayers receive their fair share of any recovery by:
  - Establishing reasonable, tiered limits on contingency fees as a percent of a state's recovery
  - Allowing private attorneys to receive, in addition to any contingent fee, only reasonable costs and expenses as determined from detailed records maintained throughout the litigation; and
  - Requiring government attorneys to participate in all settlement negotiations and retain ultimate control of the litigation.

## 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. 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 expected out of the Bureau of Legislative Research at any time. We had an excellent meeting with lead sponsor Rep. Matthew Shepherd yesterday. It will be co-sponsored by Senators John Cooper and David Sanders. 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

## **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 Monday by a vote of 96-0 and received a Do Pass yesterday from the Senate State Agencies Committee.

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.

## **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 has provided some additional information that is being reviewed by 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 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, Gov. 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 was approved by the Senate 30-0 and has been assigned to the House Agriculture, Forestry and Economic Development Committee.

## 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. It is on the House Judiciary Agenda.

## STATE CHAMBER/AIA BILL TRACKING

To date, the House has filed 609 bills and the Senate has filed 760 bills.

The State Chamber/AIA is tracking 308 bills and resolutions.

New bills added to State Chamber/AIA tracking today:

<a href="#">HB 1582</a>	<a href="#">Gossage, Bill (R)</a>	Requires state agencies to attempt to regulate industry in the least restrictive means possible, while still protecting public health and safety, avoiding burdensome laws, regulations, and licensing requirements.
<a href="#">HB 1584</a>	<a href="#">Gossage, Bill (R)</a>	Creates a "payable on death" designation for deposit accounts wherein the deposit account is payable to one or more living account holders.
<a href="#">HB 1588</a>	<a href="#">Ballinger, Bob (R)</a>	Excludes manufacturer rebates on motor vehicle purchases from state sales and use tax.
<a href="#">HB 1589</a>	<a href="#">Della Rosa, Jana (R)</a>	Exempts persons engaged in the practice of Bowen therapy or Bowen technique who are certified by a professional organization or credentialing agency from licensure requirements of the Board of Massage Therapy.
<a href="#">HB 1590</a>	<a href="#">Baine, John (D)</a>	Amends provisions of Article 19, § 31 of the Arkansas Constitution. (Shell bill)
<a href="#">HB 1592</a>	<a href="#">Beck, Rick (R)</a>	Requires the Public Service Commission find the applicant's primary operation in Arkansas is to serve as a public utility and state citizens are the primary beneficiaries of his services before issuing a certificate of public convenience and necessity.
<a href="#">HB 1593</a>	<a href="#">Ballinger, Bob (R)</a>	Amends the Public School Choice Act to add private schools as a school choice. Makes the adequate fund amount an entitlement of an



eligible student attending private school, at 65 percent the amount deemed adequate for a public school student.

<a href="#"><u>HB 1594</u></a>	<a href="#"><u>Sullivan, Dan (R)</u></a>	Revises provisions related to the offense of human trafficking. (Shell bill)
<a href="#"><u>HB 1596</u></a>	<a href="#"><u>Douglas, Charlotte (R)</u></a>	Requires school districts to provide at least five legislative days per school year to allow a licensed teacher to attend a meeting of the Education Committees and to compensate participating teachers for mileage and meals.
<a href="#"><u>HB 1600</u></a>	<a href="#"><u>Douglas, Charlotte (R)</u></a>	Allows the departments of education and career education to require reporting of data showing districts and schools are in compliance with federal and state law; gives all divisions of the departments access to all data.
<a href="#"><u>HB 1601</u></a>	<a href="#"><u>Meeks, David (R)</u></a>	Prohibits local governments and state agencies from participating in the enforcement of a federal law or rule regarding personal firearms or ammunition. Provides penalties.
<a href="#"><u>HB 1604</u></a>	<a href="#"><u>Magie, Steve (D)</u></a>	Amends provisions related to the Prescription Drug Monitoring Program. (Shell bill)
<a href="#"><u>HB 1605</u></a>	<a href="#"><u>Tucker, Clarke (D)</u></a> <a href="#"><u>Chesterfield, Linda (D)</u></a>	Requires the Commissioner of Education to provide certain information related to its decision to assume authority of a school district to the chairs of the Education Committees and to legislators representing the school district area.
<a href="#"><u>HB 1610</u></a>	<a href="#"><u>Bell, Nate (R)</u></a>	Authorizes reduced number of polling places or closure of all polling sites on election day and reliance on absentee and early voting when board candidates are unopposed and the only issue of a school election is renewal of an unchanged tax rate.
<a href="#"><u>SB 742</u></a>	<a href="#"><u>Irvin, Missy (R)</u></a>	Declares asbestos-related claims to be void against successor companies that have assumed 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="#"><u>SB 745</u></a>	<a href="#"><u>Hutchinson, Jeremy (R)</u></a>	Increases from \$12.50 to \$850.00 the maximum wholesale value of toys or novelties that may be given to coin-operated game players accumulating redeemable representations of value.
<a href="#"><u>SB 746</u></a>	<a href="#"><u>Hutchinson, Jeremy (R)</u></a>	Requires court clerks to submit to the county treasurer by the tenth day of the following month a monthly distribution report describing the direct monetary settlements made.
<a href="#"><u>SB 747</u></a>	<a href="#"><u>Maloch, Bruce (D)</u></a>	Increases from \$20,000 to \$50,000 the threshold cost of construction project that requires a contractor's license.
<a href="#"><u>SB 748</u></a>	<a href="#"><u>Pierce, Bobby (D)</u></a>	Increases the maximum width of manufactured homes that can be transported on a highway from 14' 6" to 14' 9".
<a href="#"><u>SB 752</u></a>	<a href="#"><u>King, Bryan (R)</u></a>	Revises provisions related to the collection of fines and restitution in the circuit courts. (Shell bill)
<a href="#"><u>SB 753</u></a>	<a href="#"><u>King, Bryan (R)</u></a>	Revises provisions related to eminent domain law. (Shell bill)
<a href="#"><u>SB 754</u></a>	<a href="#"><u>Hester, Bart (R)</u></a> <a href="#"><u>Dotson, Jim (R)</u></a>	Prescribes standards for training of apprentice electricians, including proximity of the supervising electrician to the apprentice on the job site and prohibiting supervision of more than three apprentices on a single electrical job.
<a href="#"><u>SB 756</u></a>	<a href="#"><u>Hester, Bart (R)</u></a> <a href="#"><u>Bragg, Ken (R)</u></a>	Provides procedure for determining market value of off-premises advertising signs for purposes of property taxes.
<a href="#"><u>SB 757</u></a>	<a href="#"><u>Hendren, Jim (R)</u></a>	Establishes procedures for compensating owners whose private property is devalued as a result of state and local regulatory programs and use of eminent domain.

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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