



DAILY LEGISLATIVE UPDATE

Daily Legislative Update

Thursday, March 12, 2015

60th Day of 90th General Assembly

TODAY AT THE CAPITOL

Senate convenes at 11:00 a.m.

House convenes at 1:30 p.m.

To view the most current and complete Legislative meeting schedule, go to:

www.arkleg.state.ar.us

STATE CHAMBER/AIA PRIORITY BILLS

CALL TO ACTION

UNEMPLOYMENT INSURANCE

HB 1489 received a Do Pass recommendation yesterday morning from the Senate Public, Health Welfare and Labor Committee. It is on this morning's Senate Calendar and Sen. Bart Hester plans to bring it up for a vote.

Please ask your Senator to support HB 1489.

This bill changes the calculation of an individual's unemployment insurance benefit from the highest quarter of earnings to the average of an employee's last four quarters of earnings. It also reduces the weeks of unemployment insurance benefits in Arkansas from 25 to 20.

The purpose of this bill is to help the Arkansas UI Trust Fund improve its balance in an effort to meet the U.S. Department of Labor's (USDOL) solvency requirement, which is currently calculated at \$642 million. The USDOL's plan is for all states to meet their solvency calculated balance by 2019. The Fund has approximately \$230 million now. The Fund is solely funded by employers who paid up to an additional \$195 per employee to retire debt that arose in 2009 from the Great Recession. Our desire is to prevent this from ever occurring again.

TAXPAYER FAIRNESS

SB 490 by Sen. Bill Sample and Rep. Ken Bragg awaits consideration in the House Tax Committee.

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

DFA's concerns have been satisfied and the Cities and Counties agreed to an increase of the tax rebate period from six months to one year. They now have "no position" on the bill. The primary purpose of this bill is to get Arkansas out of the bottom five on the Council of State Taxation's business tax environment list.

Please ask your Representative to support SB 490.

WORKERS' COMPENSATION

HB 1768 Rep. Matthew Shepherd, Sen. John Cooper, Sen. David Sanders, Senate President Jonathan Dismang and House Speaker Jeremy Gillam seeks to solve the unfunded liability of the Workers' Compensation Commission's Death and Permanent Disability Trust Fund (D&PD) by stopping new claims from going into the Fund on or after July 1, 2015. It would also restore subrogation to workers' compensation cases.

We have met with the Arkansas Trial Lawyers Association (ATLA) and will continue to visit with them, but our different objectives will make it difficult to find common ground. When we conclude that a resolution cannot be reached, we will ask the sponsor to run the bill. Labor unions are preparing a significant campaign against this bill. If we cannot resolve difference with ATLA, they will most certainly join the opposition.

It would be good to start asking your legislators to support HB 1768.

HB 1761 by Rep. Micah Neal is a shell bill we asked Rep. Neal to file as a placeholder for potential additional legislation we might choose to pursue. Our Committee decided today to prepare and file an amendment to set forth the bill's proposals. However, the plan is to hold the bill until our primary bill starts moving.

TIPAC

SB 204 by Senator Jane English and Rep. Karilyn Brown is set to be heard as a Special Order of Business in the House Judiciary Committee on March 19.

Please ask your Representative to support SB 204.

The Transparency in Private Attorney Contracting Act (TIPAC) ensures that 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: a) Determine, in writing, that a contingency fee arrangement will be both cost-effective and in the best interests of the state; b) Request proposals on a state website before entering into a contingency fee contract; c) Publish executed contingency fee contracts on a state website; and d) 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: a) Establishing reasonable, tiered limits on contingency fees as a percent of a state's recovery, b) 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 c) Requiring government attorneys to participate in all settlement negotiations and retain ultimate control of the litigation.

PENDING STATE CHAMBER/AIA PRIORITY BILLS

TAXES

MANUFACTURING REPAIR AND REPLACEMENT PARTS SALES TAX EXEMPTION SB

332 by Sen. Jake Files and Rep. Joe Jett awaits consideration in the Senate Revenue and Taxation Committee. This bill's revenue impact is keeping it and about a half billion dollars of tax cut proposals on hold.

This 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. As filed, it would have eliminated the Direct Pay Permit requirement to take advantage of the tax reductions. We are working with DFA to create a Limited Direct Pay Permit that will satisfy concerns of DFA and the State Chamber/AIA.

This bill is an effort to make Arkansas more competitive with our surrounding states where we are badly out of step. We are working to position this bill to gain priority for revenue that may become available to use for tax cuts.

Your contacts can help gain the needed priority. Please ask your Legislators to support SB 332

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 while we work with the Auditor's office and a variety of interests to resolve concerns.

WORKFORCE DEVELOPMENT

Progress has been made on the State Chamber/AIA's workforce development package and the proposed legislation is beginning to move through the system. Our bills include:

SB 368 by Sen. Jane English, Rep. Charlotte Douglass and others, which received a Do Pass as amended recommendation from the Senate Education Committee yesterday. It is on today's Senate calendar to formally adopt the amendment.

SB 369 by Sen. English

SB 370 by Sen. English

SB 371 by Sens. Jane English and Bobby Pierce also received a So Pass as amended recommendation by the Senate Education Committee yesterday and is on today's Senate calendar for adoption of the amendment.

SB 372 by Sen. English, Rep. Bill Gossage and others

BILLS WE OPPOSE

ADEQ PERMITTING

HB 1701 by Rep. Warwick Sabin will complicate businesses seeking environmental permits at the Arkansas Department of Environmental Quality (ADEQ) and will reduce Arkansas's competitiveness with other states in industrial recruitment.

The State Chamber/AIA joins the Arkansas Environmental Federation and the Arkansas Farm Bureau in opposing this bill.

This bill will add regulatory burdens to: hazardous waste treatment facilities; Title V Facilities – these are major facilities that are permitted under the U.S. Clean Air Act; NPDES Facilities – these are facilities that are permitted by the authority of the National Pollution Discharge Elimination System; permits for confined animal feeding operations issued under Arkansas law; solid waste transfers, processing or disposal facilities; and surface mines.

The bill also requires these facilities to post a two-foot by three-foot sign on the road nearest the entrance to the site. HB 1701 is on the House Agriculture, Forestry and Economic Development Committee Agenda.

EXTENDING INTENTIONAL TORT STATUE OF LIMITATIONS

HB 1448 by Rep. Mary Broadaway removes actions for assault and battery, false imprisonment and intentional slander from the one-year statute of limitations and places them into the three-year statute of limitations. The bill has passed the House and has been referred to the Senate Judiciary Committee.

Under Arkansas law, negligence no matter how gross, cannot serve as the basis for punitive damages. Intentional torts, such as assault, battery, slander and libel have a much stronger basis for submitting the issue of punitive damages to a jury. The statute of limitations for negligence is three years. In certain cases, this would give plaintiffs a much easier path to having a jury consider punitive damages.

Under the Arkansas Civil Rights Act, claims of sexual harassment must be brought within a year of the conduct. Often these lawsuits include a claim of assault or battery. This bill would mean a common law claim will be viable for three years, not one year.

This would also likely extend the time for filing claims of intentional infliction of emotional distress, commonly referred to as the tort of outrage, another claim usually included in discrimination claims. The State Chamber/AIA is opposed to this bill.

GUNS ON EMPLOYERS' PROPERTY

SB 492 by Sen. Jimmy Hickey and Rep. DeAnn Vaught remains on the agenda in the Senate Judiciary Committee. 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. It also remains on the Senate Judiciary Committee agenda.

An amendment to SB 573 has been filed that would require the firearm to be in a locked and stored container if the employee's duties include transport of children or adults, or if the employing facility serves children or disabled adults.

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.

HOLD HARMLESS CLAUSES UNENFORCEABLE

SB 726 by Sen. Jake Files is similar to a bill filed two years ago that had the construction community split and the Associated Industries of Arkansas opposed. This bill rewrites the provisions that declare a construction contract with a hold-harmless clause to be unenforceable. The bill seeks to clarify that covenants and clauses are unenforceable when they are written into construction agreements that require any dispute resolution to take place in another state. The bill also provides that indemnification clauses shall not exceed any amounts that are greater than the degree of negligence or fault attributable to the indemnitor, its agents, representatives, subcontractors or suppliers. SB 726 received a Do Pass as amended recommendation from the Senate Insurance and Commerce Committee on Tuesday and is on today's Senate calendar for final consideration.

The State Chamber/AIA Executive Committee has decided to maintain the position established in 2013 that the Associated Industries of Arkansas is opposed to this bill, while the State Chamber of Commerce is neutral.

EMINENT DOMAIN

HB 1490 by Rep. Bob Ballinger would strike procedures 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 Committee agenda. The State Chamber/AIA opposes this bill.

HB 1870 by Rep. Warwick Sabin and **HB 1908** by Rep. Charlotte Douglas were both amended yesterday.

HUMAN RESOURCES ISSUES

HB 1277 by Rep. Greg Leding would require employers, in a dispute with an employee, to pay all wages that the employer concedes are due to the employee without condition. We had multiple conversations with Rep. Leding and appreciate his efforts to satisfy our concerns, but we could not reach an agreement. It is on this morning's agenda in the House Public Health, Welfare and Labor Committee.

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. It is on the House Revenue and Taxation Committee agenda.

EMPLOYMENT APPLICATIONS

HB 1618 by Rep. Donnie Copeland would prohibit employers from reviewing an applicant's criminal record until the employer has extended a conditional offer of employment to the applicant. It also sets bounds on the effect of the criminal record on employment. We believe this bill eliminates the "check box" on employee applications. It has been referred to the House Public Health, Welfare and Labor Committee.

PHARMACY BENEFIT MANAGEMENT (PBM)

We have now heard from employers that are concerned about the PBM bills. They believe that PBMs in Arkansas are expected to create savings of \$19.1 billion over the 10-year period 2012-2021, by using tools to manage the costs of pharmacy benefits.

They further believe that the ability of PBMs to negotiate discounts with manufacturers and pharmacists enables consumers to receive lower prices for their prescription medications. And finally, through clinically based services, PBMs are able to reduce medication errors, increase compliance with drug therapies and improve health outcomes.

The bills causing concern are:

SB 688 by Sen. Ron Caldwell and Rep. Michelle Gray as filed would require PBMs to update their maximum allowable cost lists no less than seven days from an increase of 10 percent or more in the pharmacy acquisition cost; specifying the content of pharmacy acquisition cost; specifying the content of reasonable administrative appeal procedures; allowing the State Board of Pharmacy to fine and discipline PBMs; and allowing pharmacists to decline to provide services to a PBM if a drug is purchased below the pharmacy acquisition cost as a result of maximum allowable cost list. The bill has been amended.

SB 542 by Sen. Jason Rapert and Rep. Dan Douglas changes the name of the Fair Disclosure of State funded "Payments for Pharmacists' Service Act" to the "Fair Disclosure and Patient Rights Regarding Payment for Pharmacists' Service Act." It creates definitions for copayment and provider choice. It requires PBMs to provide quarterly written or electronic explanations of benefits itemized by individual claim to covered individuals; requires PBMs to obtain an individual's consent before altering provider choice; and prohibits PBMs from charging a copayment to an individual that is greater than what the benefits the PBM paid to a pharmacy service provider for the services originally.

SB 487 by Sen. Jason Rapert and Rep. Dan Douglas as filed would add PBMs to the definition of third-party administrators for self-insured plans, multiple employer trusts or multiple employer welfare arrangements. The bill received a Do Pass as amended recommendation from the House Insurance and Commerce Committee yesterday. It is on today's House calendar to formally adopt the amendment, which adds a section providing that this subchapter does not authorize the Insurance Commissioner to revoke or suspend a third-party administrator's certificate registration for actions related to a self-insured plan or trust. This bill has been amended.

BILLS WE SUPPORT

TRANSPORTATION

SB 871 by Sen. Jimmy Hickey and Rep. Prissy Hickerson authorizes special permits for containerized cargo units for up to one year on specified routes if they meet specific regulations and are inspected monthly.

ECONOMIC DEVELOPMENT

SJR 16 by Sen. Jon Woods would allow public entities to finance economic development activities with financial incentives.

SB 994 by Sen. Ron Caldwell is a shell bill that will promote economic development through natural gas infrastructure expansion.

ACHIEVEMENT SCHOOL DISTRICTS

HB 1733 by Rep. Bruce Cozart would authorize the Education Commissioner to place a school district in academic distress into an Achievement School District. It also would authorize the Board of Education to issue binding recommendations regarding academic practices and staffing to schools in academic distress. Further, it would establish achievement school districts under the Department of Education to provide operational oversight to school districts in academic distress. It would exempt teachers working in achievement school districts from certain provisions regarding the incorporation of personnel policies into teachers' contracts. Finally it would authorize the Education Commissioner to remove a granted charter for a public charter school that is designed an achievement school district. The State Chamber/AIA supports this bill.

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 is on the House Public Health, Welfare and Labor Committee agenda. The State Chamber/AIA supports this bill.

CONTINUING BILLS

LICENSING AND PUBLIC REGULATION REVIEW

HB 2001 by Rep. Womack was filed after a coalition we hosted met with Rep. Womack. This bill has a reduced impact compared to HB 1158. But the coalition disagrees with allowing legal challenges by individuals to existing licensing requirements. The coalition would prefer an interim legislative review to determine which, if any, of Arkansas's current licensing requirements need adjusting or eliminating.

Other bills addressing the licensing issue include:

HB 1729 Rep. Donnie Copeland creates the Arkansas Sunset Act of 2015. It provides for a systematic review of agencies with the intent to identify state agencies that do not effectively serve a public peace, health or safety function and either restructure or eliminate them.

HB 1730 by Rep. Nate Bell would create a systematic review of old rules, to prevent rules from becoming antiquated and to require approval of old rules by the legislative council.

HB 1582 by Rep. Bill Gossage and Rep. Jim Dotson takes a different overbroad approach by requiring state boards, commissions, departments, officers, or other authorities of state government to host a public meeting in each calendar quarter in each Congressional district annually.

HB 1823 by Rep. Jim Dotson was filed as a shell bill, but has been amended to add text and Sen. Bart Hester as a cosponsor. It seeks to amend the state's licensing laws by requiring licensing entities to adopt reduced requirements for reinstatement of a license, registration or certification for people that can demonstrate a set of standards, achievements, etc.

FORMER EMPLOYEE REFERENCE FORMAT

HB 1637 by Rep. Camille Bennett allows employer references requested from previous employers to be delivered in the media and a format convenient to the former employer. It is on the House Public Health, Welfare and Labor Committee agenda.

UNEMPLOYMENT INSURANCE FEDERAL COMPLIANCE

SB 790 by Sen. Jeremy Hutchinson is the Department of Workforce Services cleanup bill to conform Arkansas law to federal law. The bill clarifies termination of unemployment benefits to persons terminated for testing positive for an illegal drug. It also makes a determination of liability for unemployment tax binding unless the employer timely requests an administrative determination. It received a Do Pass recommendation from the Senate Public Health Welfare and Labor Committee yesterday and is on today's Senate calendar.

LEGISLATIVE SUPOENA AUTHORITY

HB 1643 by Rep. Richard Womack and Sen. Bart Hester specifies that the authority to administer oaths, take depositions and issue subpoenas extends to the chair or a member acting as chair of all committees of the General Assembly. It has been referred to the Committee on House Rules.

STATE CHAMBER/AIA BILL TRACKING

Monday was the last day for bills to be filed, with legislators filing 462 measures. We have finished sorting through the filings, but will likely continue to alter our tracking list as shell bills are amended.

This session, the House filed 1007 bills and the Senate filed 1055.

The State Chamber/AIA is tracking 527 bills and resolutions.

New bills added to State Chamber/AIA tracking today:

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|--------------------------------|--|---|
| <u>HB 1793</u> | <u>Gossage, Bill (R)</u> | Legislative Affairs (Legislator Compensation; Shell Bill) |
| | <u>Chesterfield, Linda (D)</u> | |
| | | |
| <u>HB 1801</u> | <u>Fielding, David (D)</u> | Motor Vehicle Dealers (Handling and Service Fees Repealed; Shell Bill) |
| <u>HB 1830</u> | <u>Tucker, Clarke (D)</u> | Computer Hardware (Manufacturer Recovery and Recycling Program; Shell Bill) |
| <u>HB 1844</u> | <u>Gillam, Jeremy (R)</u> | Secretary of State (State Business Portal; Shell Bill) |
| <u>HB 1847</u> | <u>Ferguson, Deborah (D)</u> | Insurance (Coverage Required Regardless of Alcohol, Drug Impairment) (Shell bill) |
| <u>HB 1851</u> | <u>Neal, Micah (R)</u> | State Boards & Commissions (Appointments; Shell Bill) |
| <u>HB 1859</u> | <u>Murdock, Reginald (D)</u> | Schools (Adequacy Evaluation Repeal; Shell Bill) |
| <u>HB 1860</u> | <u>Murdock, Reginald (D)</u> | Schools (Adequacy; Shell Bill) |
| <u>HB 1862</u> | <u>Murdock, Reginald (D)</u> | School Funding (Isolated Funding as Part of Adequacy; Shell Bill) |
| <u>HB 1875</u> | <u>Johnson, Bob (D)</u> | Municipalities (Cable, Internet, Telephone Providers; Shell Bill) |
| <u>HB 1880</u> | <u>Hammer, Kim (R)</u> | Improvement Districts (Shell Bill) |
| | <u>Hutchinson, Jeremy (R)</u> | |

- HB 1881 [Hammer, Kim \(R\)](#) Improvement Districts (Shell Bill)
- HB 1884 [Hammer, Kim \(R\)](#) Concealed Carry (Shell Bill)
- HB 1898 [Shepherd, Matthew \(R\)](#) Drilling Unit Lease (Less than One Mineral Acre; Shell Bill)
- HB 1917 [Bragg, Ken \(R\)](#) Health Insurance (Adverse Determinations for Chronic Illness Regulated; Shell Bill)
- HB 1930 [Leding, Greg \(D\)](#) Makes dues and membership fees to golf facilities, tennis clubs and racquet clubs subject to the 3 percent excise tax levied on health spas, health clubs and fitness clubs.
- HB 1940 [Gates, Mickey \(R\)](#) Exempts from sales and use tax goods withdrawn from stock for use as a charitable gift to public schools, nonprofit churches or private individuals that have suffered loss as the result of a natural disaster.
- HB 1941 [Neal, Micah \(R\)](#) Exempts from disclosure under the Freedom of Information Act information related to taxes collected by certain entities or industries under the Advertising and Promotion Commission Act, although the total of taxes collected may be released.
- HB 1950 [Leding, Greg \(D\)](#) Adds to the non-discrimination provisions of the Arkansas Civil Rights Act the right of otherwise qualified persons to be free from discrimination because of sexual orientation or gender identity.
- HB 1954 [Walker, John \(D\)](#) [Elliott, Joyce \(D\)](#) Creates the Workforce Retention Task Force and prescribes membership. Requires the State Employees Association to staff the task force which will study ways to retain state employees.
- HB 1957 [Hodges, Grant \(R\)](#) [Hester, Bart \(R\)](#) Prohibits a labor organization or an employer school district to restrict the time period in which a public school employee may join or terminate membership in a labor union or professional employee association.
- HB 1962 [Ballinger, Bob \(R\)](#) Gives the Department of Environmental Quality sole authority to enforce a state implementation plan created under provisions of the federal Clean Air Act and denies any private right of action with respect to

enforcement of the plan.

- HB 1966 [Copeland, Donnie \(R\)](#) Amends provisions concerning the direct payment of sales tax when a used motor vehicle, trailer or semi-trailer is sold rather than traded in to include sales to insurance companies as part of an insurance settlement agreement.
- HB 1969 [Hodges, Grant \(R\)](#) Insurance (Retention of Records; Shell Bill)
- HB 1974 [Hammer, Kim \(R\)](#) Elections (Time Extension; Shell Bill)
- HB 1986 [Bennett, Camille \(D\)](#) Authorizes cities that have not created an advertising and promotion commission to levy and collect an A&P tax.
- HB 1990 [Wright, Marshall \(D\)](#) Traffic Offenses (Commercial Drivers; Shell Bill)
- HB 1992 [Douglas, Charlotte \(R\)](#) Elections (School Elections; Shell Bill)
- HB 2000 [Gates, Mickey \(R\)](#) Revises the penalty assessed for paying for taxes, licenses or fees from an account with insufficient funds from \$20 to the greater of \$20 or 10 percent of the face amount of the payment up to \$50.
- HB 2001 [Womack, Richard \(R\)](#) Requires a new occupational regulation to explicitly state that it supersedes a person's right to a lawful occupation that is established by this Act.
[Hester, Bart \(R\)](#)
- HB 2006 [Hammer, Kim \(R\)](#) Schools (Assessments; Shell Bill)
- HB 2007 [Scott, Sue \(R\)](#) Higher Education (Community Colleges; Shell Bill)

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.

To view live stream video and audio from the Arkansas House of Representatives,

visit www.arkansashouse.org.

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