



Daily Legislative Update

Wednesday, March 18, 2015

66th Day of 90th General Assembly

TODAY AT THE CAPITOL

House convenes at 1:30 p.m.

Senate 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 * * *

WORKERS' COMPENSATION

HB 1768 by Rep, Matthew Shepherd, House Speaker Jeremy Gillam, Sen. John Cooper, Sen. David Sanders and Senate President Jonathan Dismang is running into strong opposition from trial lawyers and unions. The opposition has caused legislative leadership to advise the necessary two-thirds majority may be difficult to achieve.

[Contact your legislators and ask them to support HB 1768.](#)

HB 1768 seeks to solve the currently more than \$131 million and growing unfunded liability of the Workers' Compensation Commission's Death and Permanent Disability Trust Fund (D&PD). Our plan on behalf of business is to end new claims going into the Fund on or after July 1, 2015. Currently, employers are responsible for about the first \$200,000 of each D&PD claim and then the D&PD Fund pays the remainder.

To help offset likely premium increases from employers' assumption of the entire amount of D&PD claims, the bill also would restore subrogation to workers' compensation cases. State court decisions have blocked employers'/insurers' attempts to recover some of the amounts paid when a successful case is made against a third party that is responsible for injuries sustained by a worker. To accomplish this, the bill seeks to overturn the court cases and return subrogation to the statutory provisions that existed prior to the court cases.

If the business community cannot convince the legislature that this bill is important, then we may choose to pull it down and let the chips fall if the D&PD Fund runs out of money to pay existing claimants. The unions and trial lawyers are telling the legislature that our bill will hurt claimants.

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 tomorrow morning. 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: 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

WORKFORCE DEVELOPMENT

SB 368 by Sen. Jane English and Rep. Charlotte Douglass received a Do Pass recommendation from the House Education Committee yesterday. An amendment will be adopted today adding House co-sponsors.

The bill seeks to replace the State Board of Career Education with the Career Education and Workforce Development Board. Members are appointed by the Governor to three-year terms and each voting member will represent specific industry sectors. Non-voting members will represent Education, Higher Education, Career Education and Economic Development. The Board's duties will be to create and monitor a comprehensive, statewide career and workforce education program focused on educational and career opportunities.

The legislation also creates the Office of Skills Development to administer and award grants to public and private organizations for the development and implementation of workforce training programs for new and incumbent workers.

This bill creates the foundation for improving the workforce education system in Arkansas. We are grateful to Sen. English for taking on this significant effort.

SB 371 by Sens. Jane English and Bobby Pierce seeks to expand the opportunity for higher education institutions to provide concurrent and technical courses to students in grades 8-12. It also received a Do Pass recommendation from the House Education Committee yesterday.

TAXES

TAXPAYER FAIRNESS

SB 490 by Sen. Bill Sample and Rep. Ken Bragg awaits consideration in the House Tax Committee. The bill has been amended to push the one-time \$700,000 revenue loss, caused by moving the corporate income tax filing deadline back one month, into Fiscal Year 2018.

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.

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 has put it in an unlikely position to achieve any tax cut but creating a Limited Direct Pay Permit will ease the burden to participate in the existing tax reduction.

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 appears the problems will not be solved on this bill; however we do believe we have obtained the desired result and conversations regarding the issue will continue in the interim.

BILLS TO BE CONSIDERED TODAY

FORMER EMPLOYEE REFERENCE FORMAT

HB 1637 by Rep. Camille Bennett allows employer references requested from previous employers to be delivered in the media in a format convenient to the former employer. It

received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee yesterday and is on today's House calendar.

YESTERDAY AT THE CAPITOL

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 passed the House yesterday by a vote of 84-0 and will now go to the Governor. The State Chamber/AIA supports this bill.

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 also extends for another four years a portion of the Stabilization Tax portion of UI taxes to be used for administration and employee training. It received a Do Pass recommendation from the House Public Health, Welfare and Labor Committee yesterday.

ACHIEVEMENT SCHOOL DISTRICTS

HB 1733 by Rep. Bruce Cozart has been placed on the deferred list for the remainder of the session. The bill sponsor has worked the bill's opponents to address their concerns, but a compromise could not be reached. Rep. Cozart plans to introduce the bill again in 2017. HB 1733 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.

BILLS WE OPPOSE

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 State Chamber/AIA opposes this bill because of its use of the judicial system to address regulatory and licensing concerns.

HB 2001 has been amended to add a provision that the bill does not sanction the illegal practice of a licensed occupation, adds government employees and public school teachers to the list of persons owing a duty of good faith and trust to others when performing a lawful occupation, and adds there is no right to engage in an occupation for which the person is not certified, registered or licensed as required by law. The bill is on the House Public Health, Welfare and Labor Committee agenda and is expected to be considered on Thursday.

We believe an interim legislative review to determine which, if any, of Arkansas's current licensing requirements need adjusting or eliminating is a better approach.

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 1729 is on the House State Agencies and Government Affairs Committee agenda.

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. It is on the House State Agencies and Government Affairs Committee agenda.

HB 1582 by Reps. Bill Gossage and Jim Dotson takes a different but 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. The bill is on the House Agriculture, Forestry and Economic Development Committee agenda.

HB 1823 by Rep. Jim Dotson and Sen. Bart Hester 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 who can demonstrate a set of standards, achievements, etc. It is also on the House Agriculture, Forestry and Economic Development Committee agenda.

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, but not adopted, 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. SB726 is on the House Insurance and Commerce Committee agenda.

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.

HB 1870 by Rep. Warwick Sabin, which addresses eminent domain by private pipeline companies, is on the House Insurance and Commerce Committee agenda.

HB 1908 by Rep. Charlotte Douglas would establish the rights of property owners in dealings with entities authorized by law to exercise the power of eminent domain. It is on the House Judiciary Committee agenda.

The State Chamber/AIA has concerns about all three of these bills.

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. A second amendment has been adopted that would allow employers to pay discharge wages on the next payday according to their existing pay schedule rather than requiring they be paid within seven days of discharge.

We had multiple conversations with Rep. Leding and appreciate his efforts to satisfy our concerns, but we could not reach an agreement. HB 1277 is on the House Public Health, Welfare and Labor Committee agenda.

HB 1276 by Rep. Leding, which was defeated in committee last week, has also been amended a second time. The bill would require employers of four or more employees to provide a detailed pay stub to each employee at least once per month. The second amendment adds a provision that a pay stub may be provided in either a paper or electronic format and provides that former employees who did not receive a pay stub with a final check may request a pay stub within 30 days after termination.

HB 1275 by Rep. Greg Leding 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.

HB 1618 has been amended twice. The first amendment provides that this section does not preempt other required criminal background checks. The second amendment allows an employer to inquire into the criminal record of an applicant for employment if he or she becomes the finalist or one of the finalists for the position. It also deletes consideration of when the arrest occurred but allows the employer to consider whether the applicant's conduct underlying any

arrest found in the check makes the applicant unfit for the position and whether the arrest was for a felony or a misdemeanor.

We have shared the amended bill with several employment attorneys and corporate people and find there are still strong concerns about this bill. The bill is on the House Public Health, Welfare and Labor Committee agenda. The State Chamber/AIA opposes this bill.

POULTRY PRODUCTION CONTRACTS

HB 1963 by Rep. Jon Eubanks and Sen. Bobby Pierce would establish the Production Contract Arbitration Procedure Act to govern the arbitration process between poultry and livestock growers and contractors.

BEER AND ALCOHOL SALE

A series of shell bills were filed on the bill filing deadline that has owners of convenience stores very concerned about potential limitations on their ability to sell beer. These bills include: **HB 1795, HB 1959, SB 872, SB 1029 and SB 1030.**

HB 1965 by Rep. Donnie Copeland, which was filed as a shell bill, was amended yesterday to vest the power to create or alter types of alcoholic beverage permits with the General Assembly rather than the Alcoholic Beverage and Control Division, requiring a two-thirds vote in each house for approval of such actions. It has been referred to the Committee on House Rules.

PHARMACY BENEFIT MANAGEMENT (PBM)

Historically, the State Chamber/AIA has opposed legislation that seeks to reduce the impact of PBMs. This historic opposition arises from employers' concerns about elimination or reduction in pharmacy cost savings that PBMs provide to employer health plans.

Companies and others that we know have written Gov. Hutchinson opposing PBM bills include: Tyson Foods, The City of Fort Smith, OK Industries, Harry G Barr Company, Jimmy Hart Conway County Judge, Pleasant Valley Country Club, Petit Jean State Bank, Dollar Investments, LLC, Petit Jean Liquor, ACE Hardware Haynes Home Center, Inc., Roberson Tire Service, Inc., Anderson Minnow Farm, B & C Ink, MARVA Workshop, Inc., Mobley Contractors, Inc., Conway Country Regional Water Distribution District, Cooper Administrative Services, Open Arms Shelter, FCS, Budweiser, Koontz Electric Company, Inc., Med-Tech EMS, Inc., Housing Authority of the City of Morrilton, Cloyes Gear & Products, Inc. We know that are many other companies that are opposed, but have not yet received copies of letters or been able to identify them. We know from years past that there are many.

SB 688 by Sen. Ron Caldwell and Rep. Michelle Gray passed the Senate last week and is on the House Public Health, Welfare and Labor Committee agenda. The State Chamber/AIA remains opposed to SB 688

SB 542 by Sen. Jason Rapert and Rep. Dan Douglas is on the Senate Insurance and Commerce Committee agenda.

SB 487 by Sen. Jason Rapert and Rep. Dan Douglas passed the House yesterday by a vote of 88-0. The Senate must now concur in two House amendments.

ADEQ PERMITTING

HB 1701 by Rep. Warwick Sabin will complicate businesses seeking environmental permits at the Arkansas Department of Environmental Quality (ADEQ) and 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 burden to: hazardous waste treatment facilities; Title V Facilities (major facilities that are permitted under the U.S. Clean Air Act); NPDES Facilities (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 was amended yesterday and has been referred to the House Agriculture, Forestry and Economic Development Committee.

REFUSE DISPOSAL

HB 1872 by Rep. Bob Johnson would allow cities and counties to prescribe by ordinance reasonable rates for landfill host fees if the county or municipality has all or part of a refuse landfill located within the county or municipal limits. The host fees shall not exceed two dollars per tonnage of refuse disposed in the landfill on or after September 1, 2015. It is on today's agenda in the House City, County and Local Committee. The State Chamber/AIA joins the Arkansas Environmental Federation in opposing this bill.

BILLS WE SUPPORT

LAWSUIT LENDING

SB 882 by Sen. Jason Rapert would prohibit consumer lawsuit lending or purchasing of a contingent right to a share of a settlement. It would also make violations of this Act a deceptive and unconscionable trade practice and subject to its penalties. It has been referred to the House Insurance and Commerce Committee. The State Chamber/AIA supports this bill.

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. The bill has been referred to the House Transportation Committee. The State Chamber/AIA supports this bill.

ECONOMIC DEVELOPMENT

SJR 16 by Sen. Jon Woods would allow public entities to finance economic development activities with financial incentives. The Joint Committee on Constitutional Amendments is scheduled to meet on Monday. The State Chamber/AIA supports this bill.

SB 994 by Sen. Ron Caldwell would change the method for calculating surcharge rates for gas utilities and repeal the current cost-of-service recovery method. It is on the Senate Agriculture, Forestry and Economic Development Committee agenda. The State Chamber/AIA supports this bill.

WORKERS' COMPENSATION

HB 1761 by Rep. Micah Neal is a shell bill Rep. Neal filed for the State Chamber to hold for potential additional legislation we might choose to pursue. An amendment to set forth the bill's proposals is being prepared. However, the plan is to hold this bill until the State Chamber/AIA's primary bill starts moving.

CONTINUING BILLS

A&P TAX COLLECTION REPORTING

HB 1941 by Rep. Micah Neal would exempt 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. It is on the Senate Revenue and Taxation Committee agenda.

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.

PROPOSED CONSTITUTIONAL AMENDMENTS

A meeting of the Joint Committee on Constitutional Amendments is scheduled for Monday afternoon to sort through the Joint Resolutions that were filed seeking to refer constitutional amendments to the 2016 General Election ballot. The legislature can refer up to three proposals.

Forty proposals were filed. The House narrowed its 24 House Joint Resolutions (HJR) down to five. The Senate sent all 16 of its Senate Joint Resolutions (SJR) to the Joint Committee.

PROPOSALS THE STATE CHAMBER/AIA SUPPORTS

HJR 1012 by Rep. Nate Bell authorizes the General Assembly to enact law declaring a lone candidate for office to be elected without appearing on the election ballot.

HJR 1027 by Rep. Jack Ladyman increases term limits of circuit clerks and country judges from two to four years and authorizes the quorum courts to refer to the voters of the county the question of two or four year terms for court members.

SJR 3 by Sen. Eddie Joe Williams would remove the provision that strips the Governor of his or her powers and duties when absent from the state.

SJR 5 by Sen. Bryan King would increase from two to four years the terms of elected county officials and authorize a quorum court to refer the question of its term lengths to referendum.

SJR 9 by Sen. Keith Ingram and Rep. Deborah Ferguson would repeal the fiscal session and require a two-thirds vote of approval to extend the regular session beyond 60 calendar days.

SJR 13 by Sen. Bart Hester increases the term of sheriff from two to four years.

SJR 16 by Sen. Jon Woods would allow public entities to finance economic development activities with financial incentives. This SJR is very important to local chambers of commerce and local economic developers.

PROPOSALS THE STATE CHAMBER/AIA FAVORS

SJR 6 by Sen. Alan Clark authorizes use of lottery proceeds for scholarships to vocational-technical schools and technical institutes and colleges.

PROPOSALS THE STATE CHAMBER/AIA OPPOSES

SJR 2 by Sen. Alan Clark & Rep. Kim Hammer would limit House service to five terms and Senate service to three terms, but no more than 16 years combined service.

SJR 10 by Sen. Keith Ingram would authorize cities to increase the portion of property tax supporting retirement plans for municipal police and firefighters.

SJR 11 by Sen. Bryan King is an amendment relating to the selection of members of the Game and Fish Commission.

SJR 14 by Sen. Jeremy Hutchinson limits the amount of punitive damages that may be awarded in civil cases.

The State Chamber/AIA is interested in how SJR 1, SJR 8, SJR 12 and SJR 15 are amended. All four of these SJRs address tort reform.

The State Chamber/AIA has no position on HJR 1005, SJR 4, HJR 1006, HJR 1007 and SJR 7.

STATE CHAMBER/AIA BILL TRACKING

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

The State Chamber/AIA is tracking 535 bills and resolutions.

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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