



Daily Legislative Update

Monday, March 30, 2015

78th Day of 90th General Assembly

TODAY AT THE CAPITOL

Senate convenes at 1:00 p.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

The House announced Friday that their Education, Judiciary and Revenue & Tax Committees would meet at 10 a.m. and their Agriculture & Economic Development and City County & Local committees will meet at 11 a.m. this morning. Education appears to be the only Senate committee meeting this morning.

A joint meeting of the State Agencies Committees is scheduled for 12:30 p.m. This is where the constitutional amendment proposals are discussed.

The Revenue Stabilization plan was provided to legislators Friday and the Joint Budget Committee met at 9 a.m. this morning to discuss. This is typically the final major action of a legislative session.

Adjournment by Thursday is clearly the goal of the legislature.

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

Ask you legislators to support SJR 16

ECONOMIC DEVELOPMENT

SJR 16 by Sen. Jon Woods and Rep. Lance Eads is an effort to improve economic development in Arkansas. It was one of 40 joint resolutions filed seeking to be referred by the legislature to the 2016 General Election Ballot.

The House referred four of 24 joint resolution proposals to the Joint State Agencies Committee for further consideration. The Senate sent all 16 of their joint resolution proposals to the Joint Committee. Issues developed causing the Joint Committee's meeting planned for last Monday to be cancelled. All last week it appeared the 90th General Assembly would make no constitutional amendment referrals to the 2016 General Election Ballot.

As last week went on, Governor Hutchinson stepped up and began pushing for the legislature to refer SJR 16, which is backed by local chambers of commerce, local economic developers and the State Chamber/AIA. Gov. Hutchinson would also like the legislature to refer SJR 3 by Sen. Eddie Joe Williams.

SJR 3 would remove the historic provision that strips the Governor of his powers and duties while absent from the state.

With a meeting of the Joint State Agencies Committees scheduled for 12:30 today, there is a chance to get these important proposals referred but your help is needed.

The purposes of SJR16

1. SJR16 gives a common definition of Economic Development, Economic Development Infrastructure and Economic Development Services across all three of these areas addressed in Article 12 Section 5, Amendment 82, and Amendment 62 of the Arkansas Constitution. Having this common definition takes away the different uses of these amendments and allows for any of the three to be used, together or independently.
2. This amendment will allow for cities and municipalities to "participate" in Economic Development Infrastructure. Article 12 Section 5 has prohibited this type of activity.
3. This amendment will also remove the 5 percent cap (to the state budget) on Super Project General Obligation Bonds issued under Amendment 82. This will basically remove the total cap of about \$250-plus million dollars on these projects and allow the legislature to determine whether the incentive should be offered based on the impact of the project. There is currently only about \$30-\$40 million dollars left available with the 5 percent limit (if projects in the pipeline come to fruition). Some recent tweaking of enabling legislation has provided for another \$60-\$65 million dollars, giving the State about \$100 million dollars for super projects over the next 18 months (until this amendment is passed in the November 2016 General Election).
4. This amendment will allow cities and municipalities to use the bonding capacity of Amendment 62 for economic development projects, as defined by the amendment. In other words, with voter approval cities can sell bonds to offer infrastructure and incentives to companies.
5. Finally, and most importantly, this will give a clear, legal way for 20 cities and five counties across Arkansas to spend funds already collected by existing economic

development sales taxes. Currently, most of the expenditures from these funds for projects or services are constitutionally suspect.

Please email, text or call your legislators immediately and ask them to support SJR 16. Email addresses can be found at www.arkleg.state.ar.us or you can leave a message for your Senator by calling 501-682-2902 and your Representative by calling 501-682-6211.

PRIORITY BILLS

CAPITAL GAINS INCOME TAX EXEMPTION

HB 1402 by Rep. Matthew Shepherd and Sen. Jake Files seeks to restore the capital gains tax reduction adopted in the 2013 session that was reduced at the beginning of the 2015 session. The bill is on the Senate Revenue and Taxation Committee agenda. The State Chamber/AIA supports this bill.

MANUFACTURING REPAIR AND REPLACEMENT PARTS SALES TAX EXEMPTION

SB 332 by Sen. Jake Files and Rep. Joe Jett has been amended to delete the further and complete reduction in the sales taxes paid by manufacturers on their repair and replacement parts. The bill's revenue put it in a position making it impossible to achieve any additional tax cut in the coming biennium. However, we were able to successfully work with the Department of Finance and Administration and work out the opportunity for employers to use a Limited Direct Pay Sales Tax Permit to claim the previously adopted tax reduction. When the original tax reduction was passed in 2013, it was limited to companies that use a Direct Pay Sales Tax Permit. The "Limited" permit will make it comfortable for more companies to participate in the tax reduction.

The bill was not considered by the House on Friday and remains on today's calendar. The State Chamber/AIA supports this bill, which was adopted as a State Chamber/AIA priority issue prior to the session.

BILLS TO BE CONSIDERED TODAY

EMINENT DOMAIN

HB 1908 by Rep. Rick Beck passed the Senate Friday by a vote of 34-0. It is on the House Judiciary Committee agenda to concur in a Senate amendment. As originally filed, the bill would establish the rights of property owners in dealings with entities authorized by law to exercise the power of eminent domain. An amendment requires the circuit court to impanel a 12-person jury to determine compensation, makes the state liable to the owner for court/attorney costs when

the final compensation is 20 percent or more above the entity's initial assessment, changes property owner's right to "market value compensation" to "just compensation" and requires the assessment of the just compensation to be provided to the property owner or filed with the complaint for condemnation when the owner can't be located. Yesterday's amendment adds Sen. Hutchinson and Rep. Drown as co-sponsors; provides that awards of costs, expenses or attorney's fees under this bill in a condemnation act brought by a county or municipality are governed by the laws that authorize the condemnation action. The State Chamber/AIA has concerns about this bill.

HOLD HARMLESS CLAUSES UNENFORCEABLE

SB 726 by Sen. Jake Files and Rep. Reginald Murdock was not considered in the Senate on Friday. It remains on today's Senate calendar for final concurrence of a House amendment. This bill is similar to legislation 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 indemnitors, their agents, representatives, subcontractors or suppliers. The Senate Insurance and Commerce Committee voted to concur in the House amendment yesterday. The State Chamber/AIA Executive Committee voted 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.

CONSOLIDATING STATE AGENCIES

SB 382 by Sen. Eddie Joe Williams and Rep. Nate Bell addresses the issue of consolidating state agencies into 10 or more principal departments. An amendment adopted last week expands the study beyond the original 10 principal departments, removes deadlines and reorganizes uncodified language that defines the scope of the study. The bill received a Do Pass recommendation from the House State Agencies and Governmental Affairs Committee on Friday. It is on today's House calendar for final consideration.

BOARDS AND COMMISSIONS

HB 1851 by Rep. Micah Neal amends the membership composition of various state boards, commissions and other administrative bodies. It also requires that the Governor consult with the representatives of the relevant industries before making appointments to those entities. The bill has been amended to delete proposed changes to Research and Promotion boards and make various other revisions including specifying that the Governor's many appointments are

subject to confirmation by the Senate. As reported, the amendment deleted all the agriculture boards from the bill. If your organization was listed in the original draft, please review the amendment. The bill is on the Senate State Agencies and Governmental Affairs Committee agenda.

LICENSING AND PUBLIC REGULATION REVIEW

HB 1730 by Rep. Nate Bell would create a systematic review of old rules, prevent rules from becoming antiquated and require approval of old rules by the legislative council. It is on the Senate State Agencies and Governmental Affairs Committee agenda.

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 passed the Senate on Friday by a vote of 31-3. The bill is on the House Revenue and Taxation Committee to concur in a Senate amendment that deletes the reference to tax records of industries.

LOSER PAYS

SB 761 by Sen. Jim Hendren and Rep. Dan Douglass seeks to discourage frivolous claims in Arkansas Courts. This rule essentially requires that litigation costs be assessed in favor of a party that successfully seeks dismissal of a claim which does not have a basis in fact or law. These recoverable costs include reasonable and necessary attorney fees and are capped at \$10,000.

Generally, this law only applies to [Rule 12 \(b\)\(6\)](#) motions to dismiss for “failure to state a claim” upon which relief may be granted under Arkansas Rules of Civil Procedure. Even when a Rule 12 (b)(6) motion to dismiss is granted, there are exceptions to this requirement.

Subsection (c)(1) provides that the award of attorney’s fees and costs can only be made after the appeal process is exhausted and the dismissal is final (c)(2). Additionally, subsection (d)(1) provides there is a maximum potential award for attorney’s fees and costs of \$10,000 under this statute for any single lawsuit. Even if multiple parties are dismissed under a Rule 12 (b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the \$10,000 maximum is still in place and must be apportioned between the dismissed parties.

An award of attorney’s fees and costs under this statute cannot be made in the following seven circumstances: (1) Actions against governmental entities or public officials, (2) Any motion to dismiss filed 60 days after the latest complaint, counter-complaint or cross-complaint (3) Any

claim that is withdrawn or amended in good faith in order to state a claim upon which relief can be granted. However, this must be done at least three days prior to the hearing date for the motion to dismiss for this exception to apply, (4) Actions by pro se litigants unless they “acted unreasonably in bringing, or refusing to voluntarily withdraw, the dismissed claim,” (5) Any claim that is a “good faith, non-frivolous claim filed for the express purpose of extending, modifying or reversing existing precedent, law or regulation...” This subsection also prevents an award of “loser pays” damages for constitutionality issues of first impression that have not been addressed in a published opinion. Interestingly, the exception in this subsection does not apply unless the party who made the claim specifically pleads in the latest complaint that the dismissed claim is made for one of the expressed purposes found in this subsection, (6) Any time the law changes between the time the complaint is filed and the time the motion to dismiss is granted or (7) An action against multiple defendants in which a claim against a defendant is dismissed after the formal discovery process begins.

SCHOOL FACILITIES

SB 847 by Sen. Alan Clark would require the Public School Academic Facilities and Transportation Division to identify underutilized public school academic facilities and consider petitions from open enrollment charter schools for use of the facilities. The bill is on the House Education Committee agenda.

PHARMACY BENEFIT MANAGEMENT (PBM)

The State Chamber/AIA has historically opposed legislation that seeks to reduce the impact of PBMs. Our opposition arises from employers’ concerns about elimination or reduction in pharmacy cost savings that PBMs provide to employer health plans. The State Chamber/AIA joined a long list of companies that were concerned about their pharmacy costs going up and opposed this session’s PBM bills. SB 688 is on the Governor’s desk for signature. The State Chamber/AIA Executive Committee voted this morning that the State Chamber/AIA should join a group of businesses in asking the Governor Hutchinson to veto SB 688.

LAST WEEK AT THE CAPITOL

EMINENT DOMAIN

SB 757 by Sen. Jim Hendren establishes procedures for compensating owners whose private property is devalued as a result of state and local regulatory programs and use of eminent domain. The Senate voted on Friday to concur in a House amendment, and the bill has been delivered to the Governor for his signature.

LICENSING AND PUBLIC REGULATION REVIEW

HB 1823 by Rep. Jim Dotson and Sen. Bart Hester passed the Senate Friday by a vote of 34-0. It will now be sent to the Governor for his signature. As originally filed, the bill 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. The bill has been amended to delete the provision that requires applicants seeking expedited reinstatement of licenses be residents of the state or prove they will be residents of the state when they practice the profession they are seeking licensure for. The amendment also requires applicants to have been previously licensed in Arkansas rather than in any state.

EDUCATIONAL DATA SYSTEM

HB 1748 by Rep. Clarke Tucker and Sen. David Johnson provides for establishment of the Arkansas P20W Education Data Initiative System, a statewide longitudinal data system maintained by the Arkansas Research Center to support evaluation of public education policies and programs. It was withdrawn by Rep. Tucker and recommended for interim study.

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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