



Daily Legislative Update

Monday, March 9, 2015

57th 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

Today is the last day to file bills.

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

STATE CHAMBER/AIA PRIORITY BILLS

CONTACT YOUR STATE REPRESENTATIVE THIS MORNING

ASK THEM TO VOTE FOR HB 1489

IT WILL BE ON THE HOUSE FLOOR THIS AFTERNOON

UNEMPLOYMENT INSURANCE

HB 1489 by Rep. Lane Jean and Senators Jim Hendren and Bart Hester:

- 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

- U.S. Department of Labor (USDOL) calculates the amount each state's Fund must have to be "solvent"
- Current Arkansas calculation is Arkansas UI Trust Fund should have \$642 million
 - Should be met by 2019
 - Current balance just over \$230 million—63 percent less than solvent amount
 - Arkansas Department of Workforce Services (ADWS) year-end 2016 projection is about \$360 million—43 percent less than the solvent amount
 - HB 1489 will save the Trust Fund between \$46 and \$56 million annually

A Solvent Trust Fund (Fund Can Meet Needs of a Worst Case Recession)

- Protects Arkansas employers from UI tax increases
 - 2009-14 debt increased Arkansas UI taxes to an annual maximum of \$195 per employee
 - Reduces risk of USDOL taking punitive action against Arkansas employers

Bill Improves Financial Security of UI Trust Fund and Competitiveness in Region

- 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
- Arkansas ranks 46th in U.S. for per capita income but pays UI above Median
 - Average weekly UI benefit in Arkansas is \$289.36
 - 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 is 22 percent higher
- Average Arkansas UI claim duration is 14.5 weeks—well below new 20-week maximum
 - Duration in states with lowered maximum weeks is significantly lower than maximum allowed weeks
 - Solvency improved in states that cut maximum number of weeks
 - 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
 - Norm at program's beginning in 1930s was in 10-16 weeks
 - 26 weeks came about when state trust funds were much more solvent and taxes started to come down after program start up
 - Employer-financed UI program is no longer primary safety net as in the 1930s; UI is a relatively small part of much larger safety net
- Employees pay nothing for unemployment insurance
- UI program is NOT part of state budget

CONTACT YOUR STATE SENATOR

ASK THEM TO VOTE FOR SB 490

IT WILL BE ON THE SENATE FLOOR THIS AFTERNOON

TAXPAYER FAIRNESS

SB 490 by Sen. Bill Sample and Rep. Ken Bragg received a DO PASS recommendation from the Senate Revenue and Taxation Committee last week. It is on today's Senate Calendar for consideration.

SB 490 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.

All of DFA's concerns have been satisfied and the Cities and Counties did not oppose an increase of the tax rebate period from six months to one year, which has been amended into the bill.

The primary purpose of this bill is to get Arkansas out of the Council of State Taxation's business tax environment list of the five worst states.

TIPAC

SB 204 by Senator Jane English and Rep. Karilyn Brown remains on the House Judiciary Committee agenda.

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

WORKERS' COMPENSATION

Our Workers' Compensation bill will be filed today by Rep. Matthew Shepherd. It is co-sponsored by Senators John Cooper, David Sanders, Senate President Jonathan Dismang and House Speaker Jeremy Gillam. 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.

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. We do believe we have support for this bill to gain priority for revenue that may become available to use for tax cuts. 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.

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.

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 Sens. Jane English and Bobby Pierce

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

NEW BILLS OF INTEREST

ADEQ PERMITTING

HB 1701 by Rep. Warwick Sabin would require the Arkansas Department of Environmental Quality to prepare a list of each permit category and require enhanced notices for certain new permits or permit renewals. This bill is being reviewed by business environmental professionals for a probable increase in the time it takes to obtain permits.

HOLD HARMLESS CLAUSES UNENFORCEABLE

SB 726 by Sen. Jake files may be similar to a bill filed two years ago that had the construction community split and the Associated Industries of Arkansas opposed. Additional information will be gathered. This bill rewrites the provisions that declare a construction contract with a hold harmless clause to be unenforceable. It also clarifies that covenants and clauses are unenforceable when they are written into construction agreements that require any dispute resolution to take place in another state. Additionally, it provides that indemnification clauses shall not exceed any amounts that are greater than the degree of negligence or fault attributable to the indemnitor, its agent, representative, subcontractors or suppliers.

PHARMACY BENEFIT MANAGEMENT

Three recently filed bills address the issue of Pharmacy Benefit Management (PBM). The following summaries were prepared by a PBM lobbyist who believes these bills would increase costs for Arkansas employers and health plan providers by mandating needless changes in prescription drug benefits.

SB 688 by Sen. Ron Caldwell and Rep. Michelle Gray would make it much more difficult for employers and health plan providers to keep prescription medication costs low. It would let commercial pharmacies purchase generic drugs at discounted rates but they could force employers and other payers to reimburse them at excessive brand prices. The bill would do this by limiting PBMs “Maximum Allowable Cost” list of generic drugs, thus significantly decreasing the number of medications that could be dispensed at discounted rates. In effect, the bill attempts to guarantee profits for pharmacies by embedding reimbursement levels in the law; it leaves employers no room to use the full range of tools to contain prescription drug costs.

SB 542 by Sen. Jason Rapert and Rep. Dan Douglass adds regulatory burden and increases costs by requiring Pharmacy Benefit Managers to disclose proprietary information in their business agreements with employers and health plans. The disclosure requirement is anticompetitive, intrusive and unnecessary. Additionally, the bill mandates that PBMs send explanations of benefits (EOBs) to patients about their pharmacy services. EOBs are a costly practice that health plans and employers already provide as required by law. Mandating duplication simply runs up costs.

SB 487 by Sen. Jason Rapert and Rep. Dan Douglass creates additional government bureaucracy and sets the stage for higher employer costs by improperly classifying PBMs as “fiduciaries.” A federal court ruled such designation unconstitutional in 2010. Other states have abandoned fiduciary regulation of PBMs because such regulation hinders cost savings and reduces competition. Today no other state in the U.S. has PBM fiduciary laws.

FORMER EMPLOYEE REFERENCE FORMAT

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

CONTINUING BILLS OF INTEREST

GUNS ON EMPLOYERS' PROPERTY

SB 492 by Sen. Jimmy Hickey and Rep. DeAnn Vaught is on Monday’s 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 is on Monday’s agenda in the Senate Judiciary Committee.

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.

HUMAN RESOURCES ISSUES

Rep. Greg Leding’s three bills continue to be of concern to the business community.

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. Compliant employers will bear the cost of this bill’s requirements through added administrative costs making sure what they are doing is compliant. True “bad actors” don’t comply with the existing laws on payment of wages. We disagree that adding a new burden to the compliant employers will make the “bad actors” decide to start complying with the law. An amendment adopted last week requires a name or title of each deduction itemized on the pay stub.

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. As Rep. Leding had indicated, an amendment has been adopted to change the payment date from the time of discharge to the next pay date after discharge.

Laws currently exist on the timing of when a non-exempt employee gets paid. Manipulating the date for discharged employees is unnecessary and duplicative. There is also a difference between a pay period and a pay day. The pay date for a pay period rarely occurs simultaneously with the end of the pay period—an employee could be discharged after the end of the pay period but before the pay date for that previous pay period.

We have heard from more than one employment attorney that this bill addresses a bad, antiquated statute. A saving grace for employers is a requirement that if the employee makes a demand within a period of time to invoke the protections of the statute. This bill may take away the demand requirement. This statute is a problem and this bill doesn’t keep bad actors from continuing to ignore this law.

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.

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.

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 has been referred to the Senate Public Health Welfare and Labor Committee.

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.

PUBLIC REGULATION REVIEW

HB 1582 by Rep. Bill Gossage 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. It requires 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. Last week’s amendment added Rep. Dotson as a co-sponsor.

UTILITIES’ COST RECOVERY

SB 727 by Sen. Terry Rice and Rep. John Baine authorizes public utilities to recover, through an interim surcharge, the construction and equipment funds spent for required compliance with legislation or administrative rules. It provides for a waiver of major utility facility construction

hearings. The bill received a Do Pass recommendation from the Senate Insurance and Commerce Committee on Thursday.

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.

STATE CHAMBER/AIA BILL TRACKING

To date the House has filed 759 bills and the Senate has filed 852 bills.

Today is the deadline for regular bill filings.

The State Chamber/AIA is tracking 403 bills and resolutions.

New bills added to State Chamber/AIA tracking today:

- | | | |
|-------------------------|--|--|
| HB 1703 | Douglas, Dan (R) | Adds natural gas, compressed natural gas and liquefied natural gas to the definition of alternative fuels and revises the per gallon equivalent excise tax on alternative fuels. |
| HB 1705 | Ballinger, Bob (R) | Amends provisions relating to the reparation of landfills. (Shell bill) |
| HB 1713 | Eubanks, Jon (R)
Lindsey, Uvalde (D) | Makes technical changes, deletes obsolete provisions and makes various changes to Title 6 relating to public education, including changes related to issuing bonds, provision for declining enrollment funding, conversion charters, more. |
| HB 1716 | Pitsch, Mat (R) | Provides for a vehicle miles traveled tax to offset declining fuel tax revenues. (Shell bill) |
| HB 1718 | Baine, John (D) | Provides income tax credits as incentive for development of entertainment districts. (Shell bill) |
| HB 1723 | Scott, Sue (R)
Hutchinson, Jeremy (R) | Allows licensing boards and commissions to accept the military training and experience of applicants for licensure returning from active military service as a satisfactory substitute for education and |

experience required for licensure.

- [HB 1725](#) [Jett, Joe \(D\)](#) Expands eligibility for water resource conservation tax credits to include the purchase and installation of equipment and systems to increase efficiency of irrigation. Increases from \$90,000 to \$250,000 the maximum credit available to an applicant.
- [HB 1726](#) [Gossage, Bill \(R\)](#) Amends provisions of Title 6 concerning assessment of property. (Shell bill)
- [HB 1729](#) [Copeland, Donnie \(R\)](#) Creates the Arkansas Sunset Act, requiring bi-annual review of state agencies by the Sunset Review Subcommittee of the Performance Review Committee which will report specific findings and recommendations to the legislature.
- [HB 1730](#) [Bell, Nate \(R\)](#) Requires state agencies to file a rule review report with the Legislative Council and prescribes contents. Limits lifetime of rules to 36 years without specific re-approval by the Council.
- [HB 1731](#) [Copeland, Donnie \(R\)](#) Requires testimony before legislative committees be under oath or, in lieu of oath, a signed affirmation of truthiness.
- [HB 1737](#) [Branscum, David \(R\)](#) Requires legislative review and "approval" of all rules proposed by state agencies, Game and Fish Commission, Highway Commission and Department, and institutions of higher education.
- [HB 1740](#) [Douglas, Charlotte \(R\)](#)
[Stubblefield, Gary \(R\)](#) Moves the convening of the legislature's Fiscal Session from the second Monday in February to the second Wednesday in April of even-numbered years.
- [HB 1743](#) [Sorvillo, Jim \(R\)](#) Requires school elections be on the same voting day as general elections, but authorizes a separate ballot if the county board determines separate ballots are necessary to avoid voter confusion.
- [HB 1745](#) [Sorvillo, Jim \(R\)](#) Establishes an individual income tax credit opportunity scholarship program. (Shell bill)
- [HB 1746](#) [Tucker, Clarke \(D\)](#) Provides incentives for the purchase of organic materials. (Shell bill)

<u>HB 1747</u>	<u>Sullivan, Dan (R)</u>	Requires health care professionals to have an established professional relationship before providing telemedicine service to a patient, but with that relationship may diagnose, treat, consult and prescribe by telemedicine.
<u>HB 1748</u>	<u>Tucker, Clarke (D)</u> <u>Johnson, David (D)</u>	Establishes the Arkansas P20W Educational Data System Act. (Shell bill)
<u>SB 755</u>	<u>Woods, Jon (R)</u> <u>Neal, Micah (R)</u>	Make void and unenforceable provisions in motor carrier transportation contracts that purport to indemnify, defend or hold harmless the promisee from liability for loss or damage from negligent acts and omissions. Specifies exceptions.
<u>SB 842</u>	<u>Sanders, David (R)</u>	Exempts services provided by aliens admitted to the United States under the Immigration and Nationality Act of 2011 from the definition of employment for purposes of Department of Workforce Services law.
<u>SB 843</u>	<u>Hickey, Jimmy (R)</u>	Amends tax provisions related to Big River Steel. (Shell bill)
<u>SB 844</u>	<u>Hickey, Jimmy (R)</u>	Steel manufacturers waste reduction tax credit enhanced. (Shell bill)
<u>SB 845</u>	<u>Cooper, John (R)</u>	Requires health care professionals to have an established professional relationship before providing telemedicine service to a patient, but with that relationship may diagnose, treat, consult and prescribe by telemedicine.
<u>SB 846</u>	<u>Bledsoe, Cecile (R)</u>	To encourage telemedicine. (Shell bill)
<u>SB 849</u>	<u>Caldwell, Ronald (R)</u>	Supports the continuation of gas utility projects that may not be economically feasible or that result in excess investments. (Shell bill)
<u>SB 850</u>	<u>Caldwell, Ronald (R)</u>	Allows guardians of estates that are banks or trust companies to invest estate funds in shares, securities and investment trusts and exchange-traded funds.
<u>SB 851</u>	<u>Elliott, Joyce (D)</u>	Revises and expands the authorized uses of national school lunch categorical funding and requires districts to spend 60 percent of those

funds annually, 75 percent if a district school is in academic distress or is a focus/priority school.

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.

State Chamber/AIA Staff:

Randy Zook, President/CEO: rzook@arkansasstatechamber.com

Kenny Hall, Executive Vice President: khall@arkansasstatechamber.com

Angela DeLille, Director of Governmental Affairs: adelille@arkansasstatechamber.com

Andrew Parker, Director of Governmental Affairs: aparker@arkansasstatechamber.com

State Chamber/AIA phone: (501) 372-2222

State Chamber/AIA web site: www.arkansasstatechamber.com