



Daily Legislative Update

91st General Assembly

Tuesday, January 24, 2017 – Day 16

TODAY AT THE CAPITOL

The Senate will convene at 1 p.m. and the House will convene at 1:30 p.m.

To view schedules for all of today's activities, committee agendas, bills and other information related to the Session, visit www.arkleg.state.ar.us.

IMPORTANT BILLS

TAX CUTS AND TAX INCREASES

A 21-page amendment has been filed to **HB 1162** by Rep. Charlene Fite, R-Van Buren. Presumably, this amendment addresses issues that were first brought forth in **SB 140** by Rep. Dan Douglas, R-Bentonville, and Sen. Jake Files, R-Fort Smith.

HB 1162 is another piece of Governor Hutchinson's tax cut plan to remove income taxes from all retirement pay of veterans and their surviving spouses. This would cost the state \$13 million. To pay for the tax cut to military veterans, the Governor's proposal originally would remove the exclusion from income on unemployment benefits, which he said would create \$3.1 million in additional generation revenue. The plan also called for applying the sales tax on the full cost of manufactured housing and candy and soft drinks, which would raise an extra \$2.4 million and \$13.8 million, respectively.

The amendment to **HB 1162** removes the increased tax on mobile homes and replaces it with language similar to what originally appeared in **SB 140**, which would impose sales and use tax on: "(A) Digital audio works; (B) Digital audio-visual works; and (C) Digital books. Our tax attorney says, "no other content transferred in digital medium is taxable under existing law."

SB 120 by Sen. Jane English, R-North Little Rock, and Rep. Charlene Fite, is similar to **HB 1162**, but still has the tax increase on mobile homes and not the tax increase on digital items. Sen. English told *Talk Business & Politics* last week that once changes are made to her bill, she plans to run it this Wednesday. We suspect that **SB 120** will eventually be amended to match **HB 1162**. We have additional word today that the House and Senate plan to consider these bills tomorrow and Thursday in their respective Tax Committees.

We have been contacted by multiple companies that purchase large amounts of digital items, such as software, who see the impact of **Amendment 1 to HB 1162** as potentially a dramatic tax increase. DFA leaders told us that **SB140** only intended to tax items that were eligible for taxation, but for their sale by out-of-state sellers.

But our tax attorney's analysis mentioned above is that items not currently subject to tax will become taxable by **Amendment 1 to HB 1162**. There is much confusion about the intent and potential impact of this bill. We will be asking the sponsors today to hold these bills until a consensus analysis is determined.

Other concerns by our tax attorney include:

- Does this create a tax on artistic works protected speech in violation of Amendment 1 to the U.S. Constitution?
- **Amendment 1 to HB 1162** does not end a sales-tax exemption; it extends the tax to three specific classes of digital products within the broad class of digital products that have not been subject to tax until now.
- Does this provision violate the federal Equal Protection Clause, if there is no legitimate state purpose in singling out digital audio works, i.e. digital audio-visual works and digital books for tax, to the exclusion of all other digital products?
- It is possible that the only sellers this bill will impact will be those with nexus in Arkansas, which means the Amazons and on-line sellers of these digital products will still not be subject to tax, any more than they are when selling books, videos, etc. in tangible medium into the state. The result being that the imposition of new tax liability will be limited to vendors doing business in Arkansas.

*** * * NOTE * * ***

WE ENCOURAGE ALL BUSINESSES THAT MAKE DIGITAL PURCHASES TO REVIEW THIS BILL AND ITS AMENDMENT AND LET US KNOW THE IMPACT TO YOUR BUSINESS. THEN INFORM THE BILL SPONSORS AND THE GOVERNOR'S OFFICE.

To view a link to HB 1162 as originally filed, click [here](#).

To view a link to Amendment 1, click [here](#).

RESTRICTING THE USE OF FOOD STAMPS TO HEALTHY FOODS

HB 1035 by Rep. Mary Bentley, R-Perryville, and Sen. Cecile Bledsoe, R-Rogers, was amended twice after receiving a Do Pass recommendation from the House Public Health, Welfare & Labor Committee.

The amendments have not changed many of our members' opposition to this bill. Some of their concerns include:

- Because this is part of a national program, manufacturers would have to meet multiple state standards
- The grocery industry is the private partner with the federal and state governments in administering Supplemental Nutrition Assistance Program (SNAP)

- Proposals that restrict choice in SNAP would lead to a government-created list of “good food” or “bad food” for more than 300,000 food and beverage products currently on the market and 15,000 introduced every year
- Deciding which foods would be SNAP eligible would not be as easy as some would suggest. Based solely on caloric information, a bottle of diet soda would be eligible while a half gallon of orange juice might be ineligible. A similar situation is likely where certain varieties of instant oatmeal would be ineligible while other varieties would not, which would require the local grocer to implement and communicate this information to their customers
- Costs to administer these ongoing changes will especially be burdensome on grocers

*** * * NOTE * * ***

WE JOIN MULTIPLE MEMBERS WHO ARE STRONGLY OPPOSED TO THIS BILL.

YESTERDAY AT THE CAPITOL

GOVERNOR’S INCOME TAX CUT FOR LOWEST WAGE EARNERS

Governor Hutchinson’s income tax cut plan was approved by both Chambers yesterday. The Senate approved **SB 115** by a vote of 33 to 0 and the House approved **HB 1159** by a vote of 90 to 2.

These bills, sponsored by **Rep. Matt Pitsch, R-Fort Smith, and Sen. Jim Hendren, R-Gravette**, would reduce the income taxes paid by those making less than \$21,000 per year. The bill also forms a Blue Ribbon task force to review and recommend further tax cuts prior to the 2019 Legislative Session. The Senate will now consider **HB 1159** and the House will consider **SB 115**.

MARIJUANA

A bill we’ve had prepared is in the hands of the Bureau of Legislative Research (BLR) for drafting into the Legislative bill format. It will be filed, after we review the BLR version, by Sen. Missy Irvin, R-Mountain View, Rep. Carlton Wing, R-North Little Rock, Sen. Greg Standridge, R-Russellville, and Rep. Doug House, R-North Little Rock. Our bill, which will be known as the “Employee Protection Act,” will define “current use of marijuana,” “employee,” “employer” and “under the influence” among other things.

Sen. Irvin will be visiting with **Sen. Gary Stubblefield, R-Branch**, about his **SB 130** that would set a maximum allowable blood level of THC and other cannabinoids as 5 nanograms for purposes of the Omnibus DWI or BWI Act. We want to make sure that the two bills are consistent. **SB 130** was not considered in the Senate Judiciary Committee yesterday afternoon.

GUNS IN BUSINESS PARKING LOTS

Neither **SB 37** by **Sen. Alan Clark, R-Lonsdale**, or **SB 33** by **Sen. Jimmy Hickey, R- Texarkana**, were considered yesterday. We are in discussions with both Senators and appreciate their cooperation.

STATE CHAMBER/AIA BILL TRACKING

NEW BILLS

SB 109 by **Sen. Jeremy Hutchinson, R-Little Rock**, which addresses athletic trainers but might have an impact on manufacturers, was added to our tracking today in addition to new bills filed yesterday.

HB 1253 by Rep. Jeff Wardlaw, R-Warren, seeks to repeal the requirement that retailers with average net monthly sales of more than \$200,000 prepay a portion of their sales tax twice monthly. Many retailers will be opposed to this bill.

TRACKED BILLS

The House has filed 257 bills and the Senate has filed 173 bills. We are now tracking 100 bills.

To view a list of all bills added to our tracking today, click [here](#).

Our entire list of tracked bills are posted on our website by category, which you can access by clicking [here](#).

LEGISLATIVE SESSION INFORMATION AND MESSAGE CENTER

To view schedules, calendars, bill information and legislator information, visit www.arkleg.state.ar.us.

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