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92nd General Assembly March 7, 2019 – Session Day 53

TODAY AT THE CAPITOL

The Senate will convene 1 p.m. and House at 1:30 p.m. this afternoon.
Legislative Calendar: www.arkleg.state.ar.us

HIGHWAY FUNDING – STATE CHAMBER/AIA PRIORITY

HJR 1018 received a Do Pass yesterday afternoon from the Senate State Agencies Committee and is on today's Senate Calendar. This ballot referral resolution seeks to amend the constitution to continue the one-half percent sales tax that provides additional funding for four-lane highways, county roads and city streets. The State Chamber/AIA fully supports HJR 1018 as one of the ballot referral measures.

The extension of the half-cent sales tax will combine with **SB 336**, which awaits the Governor's signature, to provide about \$300 million annually to AR-DOT for road maintenance.

SB 336 and HB 1495 by Sen. Terry Rice and Rep. Mike Holcomb and **SJR 14 and HJR 1018** by Sen. Lance Eads and Rep. Jeff Wardlaw are Governor Hutchinson's highway funding plan.

PUBLIC BANK

SB 390 by Sen. Hammer *is likely to be considered this morning in the Senate State Agencies Committee*. An amendment has been filed. This bill seeks to require state agencies to deposit all cash funds into the State Treasury Money Management Trust to be invested. It also seeks to: exempt higher education institutions and payments by the Department of Education from the Public School Fund to districts, require charges and fees be deposited into the Long Term Reserve Fund that were previously deposited into the State Treasury in a fund to benefit the Treasurer of State, and designates interest earned on the Long Term Reserve Fund as special revenue.

We join our banking members, the Arkansas Bankers Association and others in opposing this bill's creation of a public bank because:

The Current Marketplace is Meeting Financial Needs

- The regulated Arkansas banking system has a long track record of meeting deposit needs and there is no evidence to the contrary.

A Public Bank is Risky Business

- The state has enough to worry about without adding banking to its responsibilities.
- Decisions can become driven by politics and capital reserves can be diverted for other political priorities.
- Funds will not be insured with the FDIC like banks. For deposits over the FDIC insurance levels, banks must pledge securities to insure them.

Schools Benefit Most with the Current System

- Will the state pay over market rate on deposits? Banks do.
- Banks directly support school infrastructure. They build gyms, football fields and

contribute funds to many school infrastructure needs.

For some hometown banks, these deposits are their biggest form of liquidity. These deposits allow banks to, in turn, make home loans, farm loans, small business loans and more, which, in turn, allows banks to invest funds into schools and the community.

WORKERS' COMPENSATION

HB 1650 by Rep. Jack Ladyman and Sen. Dave Wallace *is on this morning's agenda in the House Public Health, Welfare and Labor Committee*. This bill is sponsored by the Arkansas Self Insured Association. The bill creates a priority lien when a workers' compensation claim has been created by the fault of a third party. It also addresses dismissal of stale cases. We support this bill.

CONCURRENT CHALLENGE SCHOLARSHIP

SB 343 by Sen. James Sturch *is on this morning's agenda in the House Education Committee*. It would create the Arkansas Concurrent Challenge Scholarship, establishing requirements, funding and award amounts. It would require that the student be a resident, or at least one parent be a resident, in order to be eligible for the scholarship. It would fund the scholarship with excess funding returned to the Office of the Arkansas Lottery from the previous academic year. Also, it would provide that \$20 million is needed to maintain the Scholarship Shortfall Reserve Account; if less than \$250,000 is available, a scholarship will not be awarded. Finally, it would provide that a student may be awarded \$125 for up to two endorsed concurrent enrollment credit courses. We support this bill.

YESTERDAY AT THE CAPITOL

UNEMPLOYMENT INSURANCE – STATE CHAMBER/AIA PRIORITY BILL

SB 298 by Sen. Kim Hammer and Rep. Robin Lundstrum *was approved by the House yesterday 84 to 9*. It will go back to the Senate for concurrence in a House amendment that added more than 20 House sponsors and some Senate sponsors too.

A bill we had filed in 2017 reduced the wage base from \$12,000 to \$10,000. DWS reports that change produced \$43 million in annual savings to employers. Sen. Kim Hammer told the Senate the estimated savings to the business community from SB 298 is \$55 to \$65 million. That's \$100 million in annual savings to employers!

SB 298 adjusts the amount of wages paid by employers that is subject to the unemployment insurance tax, by calculating adjusted amounts according to unemployment statistics and the fund balance of the unemployment insurance trust fund. If it was in effect today, the wage base would drop from \$10,000 to \$8,000. It is possible, that by the time the law goes into effect, the wage base could be reduced to \$7,000, which is the federally enforced minimum.

BILLS WE SUPPORT

BALLOT INITIATIVE REFORM – STATE CHAMBER/AIA PRIORITY BILL

The passage of **SB 346** by Sen. Mathew Pitsch and Rep. DeAnn Vaught accomplishes half of our plan to reform the ballot initiative process in Arkansas. We worked with multiple parties to develop this package. The companion bill, **HB 1489**, *is on today's State Agencies Committee agenda.*

SJR 10 and HJR 1008 seek to amend the constitution to revise the process for ballot petitions. It repeals the 30-day signature cure period, moves the filing deadline for initiatives and signatures to January 15 and sets a deadline to file legal challenges on April 15, both dates in the General Election year. It also increases the vote majority required by the Legislature to make amendment referrals from a simple majority to a three-fifths (60%) majority and increases the number of counties from which a set number of signatures are required from 15 counties to three-fifths of the counties (45).

SJR 10 and HJR 1008 *await consideration in their respective State Agencies Committees.*

LOW READING ASSESSMENT LEVELS

SB 349 by Sen. Alan Clark *awaits consideration on the Senate floor*. It seeks to create personnel reporting requirements for schools based on low reading assessment levels, revising achievement gap categorical funding and making the school ineligible in year three for funding if no improvements are made. We support this bill.

TRANSPORTATION

HB 1561 by Rep. Austin McCollum and Sen. Mat Pitsch *awaits consideration in the Senate Transportation Committee*. This bill would authorize a firm or individual to operate up to three fully autonomous vehicles on streets and highways when participating in a pilot program approved by the State Highway Commission. It also seeks to provide that the autonomous vehicle pilot program will automatically be approved 60 days after it is submitted to the Highway Commission. We support this bill.

LICENSING AND REGULATION

HB 1060 by Rep. Roger Lynch *is on this morning's agenda in the House Public Health, Welfare and Labor Committee*. It would implement requirements for continuing education for heating, ventilation, air conditioning and refrigeration licensees, providing that all applications after July 1, 2020 must be accompanied by proof of completion of mandated courses. It would charge the HVACR Licensing Board with establishing the continuing education program and promulgating rules and guidelines for its administration by Dec. 31, 2019. This is an industry-supported bill.

CONSTITUTIONAL AMENDMENT REFERRALS

STATE CHAMBER/AIA SUPPORTS HJR1018 AND SJR10/HJR1008

As discussed above, we support the highway plan (**HJR 1018**) and ballot initiative reform (**SJR 10/HJR1008**) as two of the potential three referrals the General Assembly can make to the 2020 General Election Ballot.

Our ballot initiative reform (**SJR 10/HJR1008**) may be lining up to be a second referral. Currently, the discussion about a third referral centers around term limits and tort reform. We believe term limits and tort reform are important issues, along with sovereign immunity.

Talk Business & Politics posted a story this morning, by Steve Brawner, about the joint resolutions getting most attention. Regarding referrals other than the highway plan, the story says: "Senate President Pro Tempore Jim Hendren, R-Sulphur Springs, said the leading contenders among other proposed amendments are Senate Joint Resolution 10 by Sen. Mat Pitsch, R-Fort Smith, which would change the state's process for amending the Constitution; and Senate Joint Resolution 15 by Sen. Alan Clark, R-Lonsdale, which would change the state's term limits law. Hendren said legislators are concerned that out-of-state groups and special interests are using their resources to enact ballot initiatives." You can read the full story by clicking this link: <https://talkbusiness.net/2019/03/highway-tax-amendment-advances-hendren-says-two-others-in-line-to-be-referred/>

TERM LIMITS

SJR 15 and HJR 1020 are identical joint resolutions by Sen. Alan Clark and Rep. Jim Dotson that seek to cap legislators' service at 12 consecutive years, but they could return after a four-year waiting period. If they so choose, sitting members would be allowed to finish their 16 years available under the current term limits laws. These resolutions originally applied to the judiciary, but that has been amended out. Although we like this proposal, it also contains language that would limit future term limits changes to the General Assembly. We are not comfortable with the future limitation changes.

TORT REFORM

SJR 8, if referred and adopted, will authorize the General Assembly to adopt caps on punitive and noneconomic damages. That means, during the 2021 session, the legislature will have the ability to file bills and debate various options, ranging from caps on both punitive and noneconomic, only one of them, or none at all. The State Chamber/AIA was involved in the drafting of **SJR 8** and supports it.

SOVEREIGN IMMUNITY

SJR 2 by Sen. Dave Wallace seeks to amend the Arkansas Constitution to provide that the State of Arkansas shall never be made a defendant in any state court unless otherwise provided by law. This is a response to a court case that changed the historic status of sovereign immunity. This is an important issue that we believe would be a good alternative if a consensus cannot be reached on term limits or tort reform.

BILLS WE OPPOSE

PROPERTY TAX ASSESSMENT CHALLENGES

HB 1562 by Rep. Stephen Meeks and Sen. Missy Irvin *is expected to be considered next Tuesday in the House Revenue and Taxation Committee*. This bill goes too far in its attempt to address an issue. Our amendment proposal, to limit the bill's impact to only address the issue, was summarily rejected.

The bill seeks to change the process regarding payment of property taxes when there is an assessment dispute. Currently, personal property taxpayers who challenge their assessment pay any undisputed amount and the balance is paid into escrow with the Circuit Court until the case is decided. Real property taxpayers, including mineral rights owners who challenge their assessment, are not required to pay any of their tax until the case is decided. The reason for this historic handling of these cases is the fact that personal property is mobile while real property cannot move.

As filed, **HB 1562** seeks to treat real property taxpayers who challenge their assessment the same as personal property challenges, which requires payment at the beginning of the challenge. Historically, mineral interests have been treated as real property. The value of mineral interests is subject to volatile and wide changes in value, driven by oil/gas prices that lead to assessment challenges. We believe **HB 1562** goes too far by treating all real property the same way as personal property when there is an assessment challenge. Our suggested amendment would have limited the change to mineral interests, which would protect all real property owners while providing a solution to the problem. We oppose this bill.

SPECIAL ELECTIONS

HB 1402 by Rep. Justin Gonzales and Sen. David Wallace *awaits consideration in the House State Agencies Committee*. It would require any special elections in years with a preferential primary election or general election to be held on those election dates. It would also require special elections in off-cycle years to be held on the Tuesday next after the first Monday in May or the Tuesday after the first Monday in November. Additional provisions include: requiring special elections be announced 75 days prior to election; providing exemptions for special elections to fill vacancies, special runoff elections, or emergency special elections; providing local boards that vote for a tax levy must be approved by voters in the next available election, and makes its effective date contingent upon sufficient funding. We are one of multiple interests opposed to this bill.

DECEPTIVE TRADE PRACTICES

HB 1462 by Rep. Jimmy Gazaway *awaits consideration in the House Insurance & Commerce Committee*. It provides that a person has a cause of action for actual damages or injury resulting from deceptive trade practices and may recover those damages and attorney's fees. It also removes the definition of actual financial loss as used for deceptive trade practices. This bill seeks to repeal a bill we filed in 2017. We oppose this bill.

INVASION OF PRIVACY

SB 230 by Sen. Kim Hammer *awaits consideration in the Senate Judiciary Committee*. It seeks to create a statutory civil action for invasion of privacy, authorizing a person to bring suit for damages and injunctive relief against a person who improperly intrudes into his or her private affairs or publicizes the person in a false light. We oppose this bill.

NIGHT SKY PROTECTION

HB 1309 by Rep. Stephen Meeks *awaits consideration in the House Public Health, Welfare & Labor Committee*. As filed, this bill seeks to create the Nighttime Environment Protection Act to regulate outdoor night lighting fixtures. It would also establish cost and other considerations for a state agency, public corporation, county, or municipality to use

public funds to operate, maintain, install, or cause to be installed, shielded outdoor lighting in new or replacement outdoor lighting fixtures. The bill has been amended four times.

We join multiple members opposed to this bill.

NEW BILLS

PASS THROUGH ENTITY TAX

HB 1714 by Rep. Joe Jett and Sen. Dismang creates the elective pass-through entity tax act. Here are comments by our tax counsel, Matt Boch, from the Dover Dixon Horne Tax Blog:

Another Tax Reform and Relief Legislative Task Force recommendation has been introduced into the General Assembly: an elective passthrough entity tax. [HB 1714](#) could potentially provide federal income tax relief to business owners who can no longer deduct state income taxes at the individual level, at least for tax years beginning on or after January 1, 2020.

The Arkansas Pass-Through Entity Tax would be a tax imposed on "the aggregate net taxable income of each of the members of an affected business entity," and that "affected business entity" would be liable for the tax. Partnerships, limited liability companies and S corporations could elect to be subject to the tax. The tax would be a flat tax using the top individual rate. The intent is that members of an electing pass-through entity would exclude their share of the pass-through entity income that was subject to the entity-level tax. (Some wording adjustments may be added by amendment to clarify this.) The election would be made by members comprising more than 50 percent of the voting rights in the pass-through entity.

Arkansas is following in the footsteps of Connecticut and Wisconsin, which have enacted pass-through entity taxes. In general, Arkansas **HB 1714** hews closer to the Wisconsin model with the entity-level tax being elective and then providing an exclusion at the individual taxpayer level.

The sponsors of **HB 1714** are Representative Jett and Senator Dismang, the respective Chairs of the House and Senate Revenue and Tax Committees. The bill may move quickly.

If **HB 1714** is enacted, Arkansas pass-through business will need to consult with their tax advisers about the appropriate course of action. The validity of elective pass-through entity taxes as a way to preserve the benefit of the federal SALT deduction has not been clearly established, and taxpayers would need to weigh their federal benefits and risks in addition to their state income tax analysis. At least with the delayed effective date until tax years beginning on or after January 1, 2020, there will be plenty of time to do so. We support this bill.

CONSUMER PROTECTION

HB 1704 Rep. Jimmy Gazaway seeks to prohibit unconscionable terms in standard-form contracts, requiring the court to limit the application of terms it finds unconscionable and refuse to enforce the contract in whole or part. The bill also would designate unconscionable terms: that resolution of legal claims take place in an inconvenient venue, a waiver of an individual's right to asset claims or seek remedies provided by a federal statute, a waiver of an individual's right to seek punitive damages as provided by law, a provision that limits the time in which an action by be brought under the standard-form contract or that waives the statute of limitations, or a requirement that an individual pay fees and costs to bring a legal claim subsequently in excess of required fees and costs to bring a claim in state or federal court. Finally, it would exempt contracts to which one party is regulated by a regulatory body or officer under statutory state or federal authority, and a financial institution as defined under 23-45-102. We have concerns about this bill and are looking into it.

STATE CHAMBER/AIA TRACKED BILLS

New House bills filed yesterday: 26 | Total House bills filed: 735

New Senate bills filed yesterday: 13 | Total Senate bills filed: 512

New bills added to our tracking: 10 | Total tracked bills and resolutions: 414

New bills added to our tracking: <https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/EZEIpyjtJnFFjyEfd-c4EcYBAV0PfhkQ6rdmWKGwKFK07w?e=unXkjj>

All bills we are tracking are posted on our website, by category, and can be reviewed by clicking this link: <https://www.arkansasstatechamber.com/governmental-affairs/legislative-tracking/>

LEGISLATIVE SESSION INFORMATION

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

Legislative Message Center

House of Representatives: 501-682-6211

Senate: 501-682-2902

State Chamber/AIA 2019 Legislative Agenda

To review our 2019 Legislative Agenda, click this link:

<https://www.arkansasstatechamber.com/wp-content/uploads/2019/01/AR-StateChamberAIA-2019-Legislative-Agenda.pdf>

Live Streaming from the Capitol

The House and Senate have links to live streaming of their committee meetings and floor session online.

- House: <https://www.arkansashouse.org/>
- Senate: <http://www.arkansas.gov/senate/>

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