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## 92nd General Assembly March 11, 2019 – Session Day 57

### TODAY AT THE CAPITOL

The Senate will convene at 1 p.m. and the House at 1:30 p.m. this afternoon.  
Legislative Calendar: [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us)

### \*\*\* CALL TO ACTION \*\*\*

#### BALLOT INITIATIVE REFORM – STATE CHAMBER/AIA PRIORITY LEGISLATION

**SJR 10 and HJR 1008** by Sen. Mat Pitsch and Rep. DeAnn Vaught *are being amended today to improve some language. **SJR 10** will be considered tomorrow afternoon in the Senate State Agencies Committee and **HJR 1008** will be considered this afternoon in the House State Agencies Committee.* These identical resolutions seek to amend the constitution to revise the process for ballot petitions. They would repeal the 30-day signature cure period, move the filing deadline for initiatives and signatures to January 15 and set a deadline to file legal challenges on April 15, both dates in the General Election year. They also would increase the vote majority required by the Legislature to make amendment referrals from a simple majority to a three-fifths (60%) majority and increase the number of counties from which a set number of signatures are required from 15 counties to three-fifths of the counties (45).

**SB 346** by Sen. Mathew Pitsch and Rep. DeAnn Vaught is now Act 376 of 2019. **HB 1489**, which is identical, *is on tomorrow's State Agencies Committee agenda.* They are the other half of our package that changed signature gathering laws and removed the Attorney General from the ballot title approval process.

#### MINIMUM WAGE – STATE CHAMBER/AIA PRIORITY LEGISLATION

**HB 1751, 1752 and 1753** by Rep. Robin Lundstrum and Sen. Mat Pitsch *are expected to be presented to the House Public Health, Welfare and Labor Committee tomorrow morning.* These bills are intended to mitigate the impact of minimum wage increases. Each addresses a different sector of the economy—young workers in their first job, small not-for-profits and small businesses. We collaborated with employment law attorneys, legislators and business owners in the development of these bills.

**HB 1751** seeks to amend the Minimum Wage Act relating to wage and payment requirements, including requiring the employer to pay a discharged employee within seven days of the next regular payday or pay double the wages due. Other provisions include: establishes a two-year statute of limitation, and provides that if an employer is providing wages earned via a preloaded debit card, the employee is entitled to at least one free withdrawal for each deposit of wages loaded onto the card.

**HB 1752** would increase the size of business that qualifies for Minimum Wage Act exemption, from those with four employees to those with up to 25. It also seeks to exempt nonprofit entities with operating budgets of less than \$1 million and nonprofit developmental service providers.

**HB 1753** would exempt full-time high school and college students from the Minimum Wage Act and repeal the partial exemption that previously required those students to earn 85 percent of minimum wage.

## TODAY AT THE CAPITOL

### CONCURRENT CHALLENGE SCHOLARSHIP

**SB 343** by Sen. James Sturch *is on this afternoon's House Calendar for final passage*. 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.

### TRANSPORTATION

**HB 1561** by Rep. Austin McCollum and Sen. Mat Pitsch *is on this afternoon's agenda 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.

## BILLS WE SUPPORT

### WEIGHTED CREDIT COURSES – STATE CHAMBER/AIA PRIORITY LEGISLATION

**SB 478** by Sen. Jane English and Rep. Jana Della Rosa *awaits consideration in the Senate Education Committee*. It would apply new standards for the Department of Education in approving courses for weighted credit. It would also allow teachers in advanced placement programs to satisfy requirements by attending a College Board-endorsed training or other similarly rigorous training approved by the department. Finally, it would allow the Department of Education to approve a course weighted for credit if the course exceeds the curriculum standards for non-weighted credit class or meets or exceeds the standards of a comparable advanced placement class.

### PASS-THROUGH ENTITY TAX

**HB 1714** by Rep. Joe Jett and Sen. Dismang *is on tomorrow's agenda in the House Revenue and Taxation Committee*. It 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 pass-through 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.

### **WORKERS' COMPENSATION**

**HB 1650** by Rep. Jack Ladyman and Sen. Dave Wallace *is on tomorrow'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.

### **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.

### **CONSTITUTIONAL AMENDMENT REFERRALS**

#### **STATE CHAMBER/AIA SUPPORTS SJR 10/HJR 1008**

The House State Agencies Committee will meet after adjournment today and the Senate State Agencies Committee will meet after adjournment tomorrow. They will work to determine a second and probable third referral to the 2020 General Election Ballot. As discussed above, we support ballot initiative reform (SJR 10/HJR1008) as the second referral.

After highways and ballot initiative reform, we believe term limits, tort reform and sovereign immunity are important issues to consider.

#### **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, in 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

### PUBLIC BANK

**SB 390** by Sen. Hammer *is being amended and is on tomorrow's agenda in the Senate State Agencies Committee*. 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.

The amendment does not change our position. 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.

### PROPERTY TAX ASSESSMENT CHALLENGES

**HB 1562** by Rep. Stephen Meeks and Sen. Missy Irvin *may be considered tomorrow in the House Revenue and Taxation Committee*. This bill goes too far in its attempt to address an issue.

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. We oppose this bill.

### SPECIAL ELECTIONS

**HB 1402** by Rep. Justin Gonzales and Sen. David Wallace *is on this afternoon's agenda 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.

## **CONSUMER PROTECTION**

**HB 1704** Rep. Jimmy Gazaway *awaits consideration in the House Insurance and Commerce Committee*. It 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 oppose this bill because:

- HB1704 is an effort to invalidate arbitration clauses contained in contracts; these clauses provide that a dispute is taken to arbitration, as opposed to court
- HB1704 not only seeks to invalidate those provisions, but would authorize the Attorney General to file suit against a party for simply placing an arbitration provision in a contract and obtain civil penalties that could run into the hundreds of thousands of dollars
- Arkansas adopted an arbitration act authorizing such agreements many years ago (ACA 16-108-101) and has proven to be a useful form of alternative dispute resolution
- To not only prohibit those provisions, but to go so far as to punish someone for including an arbitration provision is not conservative; it is the exact opposite and is detrimental to those who create jobs and support our economy
- HB1704 is legislation based on the Model State Consumer and Employee Justice Enforcement Act” developed several years ago by the National Consumer Law Center based in Boston; that organization shouldn’t be setting policy in Arkansas
- Finally, the U.S. Supreme Court has ruled that state laws that discriminate against, or disfavor, arbitration provisions are preempted; as a result, HB1704 not only seeks to adopt bad policy, it seeks to adopt policy that the State cannot enforce

## **SNAP BENEFITS**

**HB 1743** by Rep. Mary Bentley and Sen. Scott Flippo would prohibit the use of Supplemental Nutrition Assistance Program (SNAP) benefits for purchases of candy, soft drinks, energy drinks and dietary supplements. We oppose 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.

## **FIRE DEPARTMENT DUES**

**SB 461** by Sen. Kim Hammer seeks to require a quorum court to call the required election to determine whether to levy fire department dues within 60 days of the request, and if passed to list the fire department dues beginning with the next property tax statement. It would also require a county to list volunteer fire department dues as an involuntary collection on the next ad valorem real property tax statement, which is required to be paid prior to the payment of property taxes and authorize a quorum court to use the 60 days to address any questions they have to the petitioners.

**SB 462** by Sen. Kim Hammer would require a person or other entity providing closing and settlement services for a real estate transaction to receive confirmation that the subject property has fire protection coverage in force before conducting the closing.

We oppose SB 461 and 462.

## 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

### PHARMACY BENEFIT MANAGEMENT

**SB 520** by Sen. Kim Hammer is the 2019 version of a pharmacy benefit managers (PBM) bill. It seeks to make various changes to the regulation and licensure of PBMs, including redefining the maximum allowable cost list and adding a defined professional dispensing fee to the list. It also would require a PBM to report the following to the Insurance Commissioner on a quarterly basis: amount of rebates received, amount of rebates distributed to healthcare insurers, amount paid by the healthcare insurer for pharmacist services itemized by pharmacy, product, and goods and services, and the amount a pharmacy benefits manager is paid for pharmacist services itemized by pharmacy, product, and goods and services. This report is exempt from the FOIA.

### FREEDOM OF INFORMATION ACT

**SB 521** by Sen. Kim Hammer seeks to amend the Freedom of Information Act and the definition of public records contained therein to exclude identifying information of donors, potential donors, non-donors or individual donor amounts to a private foundation that receives public funds.

### GOVERNMENT TRANSFORMATION

**HB 1763** by Rep. Andy Davis and Sen. Bart Hester is the Governor's Transformation and Efficiencies Act of 2019. This bill is the compilation of 15 bills that were previously filed and reviewed in the State Agencies Committees. The bill is 2,049 pages.

## STATE CHAMBER/AIA TRACKED BILLS

New House bills filed Friday: 5 | Total House bills filed: 764

New Senate bills filed yesterday: 3 | Total Senate bills filed: 521

New bills added to our tracking: 5 | Total tracked bills and resolutions: 427

New bills added to our tracking: <https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/EZbb2he8JY5Ng7fDhOC1UUcBCwtBYW2-2qGflhoVj9QLyQ?e=h9cZbm>

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](http://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/>

### State Chamber/AIA Governmental Affairs Team

- Randy Zook, President/CEO  
[rzook@arkansasstatechamber.com](mailto:rzook@arkansasstatechamber.com)
- Kenny Hall, Executive Vice President  
[khall@arkansasstatechamber.com](mailto:khall@arkansasstatechamber.com)
- Andrew Parker, Director of Governmental Affairs  
[aparker@arkansasstatechamber.com](mailto:aparker@arkansasstatechamber.com)
- Toni Lindsey, Director of Governmental Affairs  
[tlindsey@arkansasstatechamber.com](mailto:tlindsey@arkansasstatechamber.com)

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

State Chamber/AIA web site: [www.arkansasstatechamber.com](http://www.arkansasstatechamber.com)

*The Daily Legislative Update is written by Kenny Hall, reviewed by Randy Zook, then edited and distributed by Jeff Thatcher.*



1200 W. Capitol Ave., P.O. Box 3645  
Little Rock, AR 72203-3645

501-372-2222  
FAX 372-2722

STAY CONNECTED



Arkansas State Chamber of Commerce/Associated Industries of Arkansas  
1200 W. Capitol Ave., Little Rock, AR 72201  
P.O. Box 3645, Little Rock, AR 72203  
501-372-2222 | [arkansasstatechamber.com](http://arkansasstatechamber.com)