



Daily Legislative Update

91st General Assembly

Thursday, March 9, 2017 – Day 60

CAPITOL SCHEDULE

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

By law, Arkansas legislative sessions are 60 days, but they can be extended by a super majority vote. A few weeks ago, the General Assembly passed resolutions extending the session to April 7. Nothing in that resolution prevents them from adjourning before April 7. There appears to be an effort to conclude by the end of March.

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.

STATE CHAMBER/AIA PRIORITY BILLS – WITH ACTION TODAY HIGHWAY FUNDING

HB 1726 and HB 1727, by Rep. Dan Douglas, R-Bentonville, are on this morning's House Transportation Committee agenda for consideration.

Please ask your Representative to support these bills. Here are some key points:

1. In a recent statewide survey, more than 56 percent of Arkansans said they were "unhappy with the quality of roads where they live." And 51 percent of voters would favor increasing taxes if the revenue were dedicated to improving highways, with 81 percent saying they would support their legislator giving them the right to vote on how to fund those improvements. *But where will the money come from?*
2. Currently, the wholesale price of gasoline and diesel is not subject to the state sales tax. A fair way to raise highway money is to collect the existing 6.5 percent sales tax on gas and diesel, based on the lesser wholesale price (not the price at the pump), which will not add a tax on top of the existing per-gallon tax at the pump. This plan will not raise the retail per-gallon tax.
3. Money spent on highway maintenance and construction creates private-sector jobs, not government jobs. The plan will not grow the government sector, it will grow the private sector.
4. Highway revenue maintenance projects from the wholesale motor fuel sales tax will

create 2,300 private-sector jobs the first year of the program. These jobs, and the subsequent 8,000 jobs over the next 10 years, will increase economic activity throughout the state as the AHTD pursues overlay, sealing and bridge projects in all 75 counties. Plus, having adequate funds to match federal funds for further improvements (\$1 of state funds gets \$4 of federal funds).

5. Your vote FOR HB 1726 and HB 1727 will not raise taxes. It will, however, give Arkansas voters the opportunity to decide if they want to vote to apply the existing sales tax to the wholesale price of gas and diesel, and dedicate that road-user revenue to the repayment of bonds that will fund statewide rural and urban highway improvements.

HB 1726 would authorize the State Highway Commission to issue bonds if such authority is approved by voters in a one-time statewide election. It would: a) require the issued bonds to finance the maintenance or construction of state highways, b) authorize the election to be in conjunction with a general election or to be a special election and c) establish rules governing the specific nature of bonds issued by the Commission.

HB 1727 would apply the existing state sales tax to the wholesale price of motor fuel and wholesale distillate special motor fuel. It would make the levy of such taxes dependent on the results of an election to approve the issuance of highway maintenance and construction improvement bonds. It would also require the tax, if levied as a result of the election, to be an amount equal to the annually adjusted 6.5 percent of the average monthly wholesale price over the previous year.

Please ask your Representative to vote FOR HB 1726 and 1727

PROPERTY TAXPAYER PROTECTIONS

HB 1772 by Rep. Joe Jett, R-Success and Sen. Jake Files, R-Fort Smith, had an amendment adopted yesterday that added eight additional House sponsors and two additional Senate sponsors, bringing the total lead and co-sponsors to 29 in the House and three in the Senate. It is back on the House Calendar for consideration this afternoon.

This bill was developed by the State Chamber/AIA Tax Committee. It seeks to amend various aspects of property tax administration and the adjustment and appeal of assessments through county equalization boards.

- Allows for the deadline for filing a petition for review of a property tax assessment to be extended by 15 days by order of the appropriate commission for good cause shown.
- Requires a county assessor to present to the county equalization board any evidence that the county assessor's office or a contracted appraisal company considered when determining the valuation of the property that is the subject of the hearing.
- Requires the Director of the Assessment Coordination Department to approve curricula and provide materials for use in training and educating members of county equalization boards, and supervise a comprehensive course for training and educating members of county equalization boards and issue certificates indicating course completion among other duties.

Please ask your Representative to vote FOR HB 1772

ECONOMIC DEVELOPMENT – AMENDMENT 97 IMPLIMENTATION BILLS

SB 581 by Sen. Jim Hendren, R-Gravette, Sen. Missy Irvin, R-Mountain View, Rep. Justin Boyd, R-Fort Smith, and Rep. Bob Johnson, D-Jacksonville, is expected to be considered in the Senate City, County and Local Committee this morning.

This bill seeks to:

- Implement legislation to reflect the voters' support of Issue 3 in the past general election – 65 percent voted for passage.
- Remove the 5 percent cap on Amendment 82 bonds – what the voters approved.
- Provide a framework for municipalities/counties to appropriate money for economic development projects and economic development services while also maintaining safeguards for judicious use of municipal/county resources.
 - Cost Benefit Analysis required for expenditures above \$100,000.
 - Recapture provisions and reporting are included.
 - Five percent cap on expenditures of the municipality's/county's general revenue and reserves of the previous fiscal year, but does allow for exceeding the five percent upon issuance of a financial forecast of the governing body by an independent CPA. Revenue that is specifically dedicated by law or public vote for economic development purposes is excluded from these limitations/restrictions.
- Does not prohibit or restrict funding economic development projects through revenue bonds.
- Bill was reviewed and drafted in cooperation with the Arkansas Economic Development Commission, the Arkansas Municipal League, the Arkansas State Chamber/AIA, and the Arkansas Economic Developers and Chamber Executives.

HB 1732 by Rep. Matthew Shepherd, R-El Dorado, and Sen. Lance Eads, R-Springdale, is also on this morning's agenda in the Senate City, County and Local Committee.

This bill seeks to amend the Local Government Bond Act of 1985, approved by Amendment 62, to reflect language in Amendment 97 that authorizes local governments to fund economic development projects, land and infrastructure for industries.

Please ask your Senator to support SB 581 and HB 1732

PROTECTION FROM MASS PICKETING

SB 550 by Sen. Trent Garner, R-El Dorado, received a Do Pass recommendation yesterday in the Senate Judiciary Committee and is on today's Senate Calendar.

It seeks to create a Class A misdemeanor for unlawful mass picketing, defined as engaging in demonstrations that hinder or prevent the pursuit of lawful work or employment, obstruct entrance to a place of employment or interfere with the use of roads. This is a bill we had developed, filed and **support**.

DOUBLE DAMAGES

HB 1737 by Rep. Charlie Collins, R-Fayetteville, was amended yesterday and is on today's agenda in the House Judiciary Committee.

It seeks to prohibit damages awarded in discrimination and retaliation cases under the Arkansas Civil Rights Act of 1993, from duplicating or increasing any award for damages over those allowed for by any other state or federal law as the federal law existed on January 1, 2017. It would also establish that individual employees, agents of employers or employees of an employer's agent are not liable for violation found to have been committed by employers. It may be considered this week in the House Judiciary Committee.

Please ask your Representative to SUPPORT this bill!

DECEPTIVE TRADE

HB 1742 by Rep. Laurie Rushing, R-Hot Springs, and Sen. Bart Hester, R-Cave Springs, received a Do Pass recommendation yesterday by the House Insurance & Commerce Committee and is on today's House Calendar for adoption of an amendment.

This bill would require a claimant in civil cases, related to deceptive trade practices, to demonstrate actual financial loss in order to prevail. It also defines actual financial loss to mean: an ascertainable amount of money that is equal to the difference between the amount paid by a person for goods or services and the actual market value of the good or services provided. **Please ask your Representative to support HB 1742**

DONNING & DOFFING

HB 1846 by Rep. Charlie Collins, R-Fayetteville, and Sen. Bart Hester, R-Cave Springs, is on this morning's agenda in the House Public Health, Welfare and Labor Committee.

It seeks to establish that an employer is not subject to liability on account of the failure of the employer to pay an employee minimum wage or to pay an employee overtime compensation for or on account of certain activities that are not principal to the employee's job. This is an important bill that we had developed and **support**.

This bill does not cut into employee protections, but instead puts employers and employees back where they were before a court case was decided. A dissent in the court case cautioned against opening the floodgates of litigation at the expense of businesses in Arkansas, warned that the opinion "undermines the collective-bargaining process and destroys any confidence employers and employees have in the enforceability of their agreements," and that the FLSA does not consider such activities "work" under state or federal law.

STATE CHAMBER/AIA PRIORITY BILLS – WITH ACTION YESTERDAY **UNEMPLOYMENT INSURANCE**

HB 1405 by Rep. Robin Lundstrum, R-Elm Springs, and Sen. Jim Hendren, R-Gravette, received a DO PASS recommendation in the Senate Public Health, Welfare and Labor Committee yesterday morning. But it was later discovered that an incorrect amendment had been adopted. So, it will go back to Committee to expunge the vote and adopt the correct amendment.

This bill seeks to lower employers' unemployment insurance taxes by reducing the wage base from \$12,000 to \$10,000. This change will save the business community approximately \$50 million annually. The bill also seeks to reduce the weeks of UI benefits from five months to four months.

Please ask your Senator to VOTE FOR HB 1405!

STATE CHAMBER/AIA PRIORITY BILLS – ACTION PENDING
EMPLOYER CLARITY REGARDING MARIJUANA

HB 1460 by Rep. Carlton Wing, R-North Little Rock, and Sen. Missy Irvin, R-Mountain View, was not considered in the Senate Public Health, Welfare and Labor Committee yesterday, but is expected to be considered in the Committee tomorrow morning.

This bill requires a two-thirds (67) majority vote. This is an important bill that we had developed and support to protect and maintain the safety of the workplace.

This bill seeks to create new definitions or modify existing definitions for employers in matters related to the use of marijuana. These definitions include:

- Employer
- Under the Influence
- Current use of marijuana
- Good faith belief
- Safety-sensitive position
- Clarify that a “written certification” for marijuana is not a medical prescription

Please ask your Senator to vote FOR HB 1460.

WORKERS COMPENSATION

HB 1586 by Rep. John Payton, R-Wilburn, and Sen. Jason Rapert, R-Conway, will likely be considered in the Senate Health, Welfare and Labor Committee next week.

This bill will establish a cap on employers’ indemnity costs at 450 weeks for death and permanent total disability injuries occurring on or after July 1, 2017. A cap on employers’ exposure is needed to replace a cap lost by closing the Death and Permanent Total Disability Trust Fund (Fund). Medical benefits are NOT capped by this bill.

The Fund paid the entire amount of the claim after employers paid a designated initial portion of the claim, which currently is \$215,000. Without the Fund, employers’ responsibility is limitless on these claims. Total claim costs can be \$500,000 to \$1 million. For insured employers, loss of the Fund will cause a premium increase. For self-insured employers, loss of the Fund means their cost would increase from \$215,000 to unlimited.

Please ask your senator to VOTE FOR HB 1586

SB 682 and SB 760 by Sen. David Sanders, R-Little Rock, are shell bills we had filed to provide some flexibility if needed.

PROPERTY PROTECTION ACT

HB 1665, by Rep. DeAnn Vaught, R-Horatio, 23 additional Representatives and Sen. Gary Stubblefield, R-Branch, remains on the Senate Judiciary Committee. An amendment is being developed to address some concerns.

This bill seeks to strengthen employers' defenses against common forms of corporate espionage by prohibiting any person from placing a camera or electronic surveillance device on the employer's premises without permission. The bill also prohibits employees from capturing or removing the employer's data, papers or records, or from recording sounds or images. This bill is being strongly opposed by animal rights groups.

This bill is **supported by** the State Chamber/AIA, Arkansas Farm Bureau, Agricultural Council of Arkansas, Farm Credit Services of Arkansas and the U.S. Chamber of Commerce. **Ask your Senator to SUPPORT HB 1665.**

SCHOOL BOARD ELECTION DATES

HB 1621 by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, will be considered next Tuesday in the House Education Committee.

This is an issue we have worked on for many years. This bill that seeks to set annual school elections in each school district of the state on: (A) the date of the preferential primary election in even-numbered years and the date that would be designated as the preferential primary election in odd-numbered years if a general election was held in the odd-numbered year; or (B) the first Tuesday following the first Monday in November of each year.

This bill was developed to:

- Substantially increase voter turnout by holding elections when most voters vote
- Save taxpayer dollars in even-numbered years by combining school elections with general or preferential primary elections
- Allow local districts to continue to choose dates for millage elections
- Allow local districts to choose between preferential primary and general elections for school board elections
- Allow local districts to continue holding isolated, stand-alone elections in odd-numbered years
- Alternate candidates running in preferential primary/general elections and isolated, stand-alone elections

Please ask your Representative to support HB 1621

SB 504 by Sen. Jane English, R-North Little Rock, would set the school board elections at the General Election date in November.

NET OPERATING LOSS CARRY FORWARD

HB 1788 by Rep. Jim Dotson, R-Bentonville, is on this morning's agenda in the House Revenue and Taxation Committee.

It seeks to gradually extend the duration over which net operating losses can be carried forward to the following tax year for income tax purposes, beginning with six years on January 1, 2017, and building to 10 years on January 1, 2021. This is an issue we've been working on for about eight years. We **support** this bill.

INCOME TAX THROWBACK RULE

HB 1790 by Rep. Jim Dotson, R-Bentonville, is on this morning's agenda in the House Revenue and Taxation Committee.

It seeks to repeal the provision that business income is taxable in another state based on having out-of-state activities that exceed those protected by 15 U.S.C. 381-385. It seeks to repeal the throwback rule for sales to states where the taxpayer is not taxable. This is an issue our Tax Committee would like to see addressed by the legislature. We support this bill.

FRANCHISE RELATIONS

SB 695 by Sen. Linda Collins-Smith, R-Pocahontas, awaits consideration in the Senate Public Health, Welfare and Labor Committee. It's a bill to clarify the relationship between a Franchisor and Franchisee in regard to employees. We support this bill.

BILLS WE SUPPORT

WORKERS COMPENSATION

HB 1951, HB 1952 and HB 1953, by Rep. Charlie Collins, R-Fayetteville and Sen. Jim Hendren, R-Gravette, are expected to be considered in the House Public Health, Welfare and Labor Committee next week.

These workers' compensation bills were filed by the Arkansas Self Insured Association and address issues that we support. In fact, **HB 1952** and **HB 1953** address issues we have been working on for more than 10 years.

HB 1951 seeks to clarify effectiveness of settlements made in Workers' Compensation that involve federal benefits. This should not be controversial.

HB 1952 provides that an employer is required to provide medical treatment to an employee only if a compensable injury is the major cause of the need for medical treatment.

HB 1953 seeks to: a) reverse case law that required former employees who are properly terminated for misconduct are not entitled to temporary total or temporary partial disability benefits, b) require that for muscle spasms to constitute an objective finding of injury, a specific diagnosis of palpable muscle spasms is necessary and the presence of muscle spasms may not be inferred from diagnosis or treatment that involves a prescription for a type of muscle relaxant in the absence of objective findings, and c) address the issue of subrogation in workers' compensation cases.

HB 1813 by Rep. David Hillman, R-Almyra, was approved in the House yesterday by a vote of 87 to 1.

This bill address the rabies issue that is in our workers' comp bill, **HB 1586**. We advised Rep. Hillman to file this bill because it was clear our bill was not going to pass before the bill filing deadline.

SB 652 by Sen. David Sanders, R-Little Rock, is a shell bill filed by trucking interests to address medical providers. This is a bill we will support.

ABOVE GROUND STORAGE TANKS

HB 1721 by Rep. Andy Davis, R-Little Rock and Sen. John Cooper, R-Jonesboro, is on tomorrow's agenda in the Senate Public Health, Welfare and Labor Committee.

This is a bill submitted by the Arkansas Environmental Federation, our partner in all things environmental. This bill would authorize reimbursement for corrective actions paid by the owner of an unregistered above ground petroleum storage tank if the owner voluntarily registers the tank. We **support** this bill.

ARKANSAS WORKFORCE CHALLENGE SCHOLARSHIP PROGRAM

SB 528 by Sen. Jimmy Hickey, Jr., R-Texarkana, received a Do Pass recommendation in the Senate Education Committee yesterday and is on this afternoon's Senate Calendar.

This bill would create the Arkansas Workforce Challenge Scholarship Program to award scholarships from excess lottery funds for students seeking associate degrees or certificates in industry, healthcare or information technology. It also seeks to reduce total annual Lottery Scholarship awards to nontraditional students from \$16,000,000 to \$12,000,000 and would redirect certain excess funding that is returned to the lottery, and remaining net proceeds of the lottery, to the Workforce Challenge Scholarship Program fund account.

SOCIAL MEDIA

HB 2216 by Rep. Austin McCollum, R-Bentonville, Rep. Grant Hodges, R-Rogers, Rep. Clarke Tucker, D-Little Rock and Rep. Greg Leding, D-Fayetteville, awaits consideration in the House Public Health, Welfare and Labor Committee.

This bill was developed by the Arkansas Society of Human Resource Professionals and seeks to make restrictions on employers regarding their employees' social media account apply only to requirements to add the employer to a social media contact list and not to requests, suggestions or otherwise.

COLLECTING SALES TAXES FROM REMOTE SELLERS

HB 1388 by Rep. Dan Douglas, R-Bentonville, and Sen. Jake Files, R-Fort Smith, awaits consideration in the Senate. It would require out-of-state sellers to provide notice to Arkansas purchasers that taxes are owed, provide information regarding purchases, and apply fines for failure to implement the requirements of this bill.

SB 140 by Sen. Jake Files, R-Fort Smith, and Rep. Dan Douglas, R-Bentonville, awaits reconsideration in the House Revenue and Taxation Committee. It would require certain high-volume merchants that sell products in Arkansas, but do not have a physical presence in Arkansas, to remit sales taxes to Arkansas. It remains on the House Revenue and Taxation Committee agenda.

We **support** these bills that would equalize the sales tax playing field between in-state brick and mortar sellers and out-of-state sellers.

BILLS WE OPPOSE

LICENSING

HB 2176 by Rep. Austin McCollum, R-Bentonville, which is identical to **HB 1551**, is on the agenda in the House Public Health, Welfare and Labor Committee.

We've added a third legal opinion about HB 2176 that set forth our reasons for opposing:

You can read the McMillan, McCorkle & Curry letter [here](#).

You can read the Wright Lindsey Jennings letter [here](#).

You can read the Cross Gunter Witherspoon and Galchus letter [here](#).

We join many business types and groups that **oppose this bill**.

Please ask your Representative to OPPOSE HB 2176.

GENDER EQUITY

HB 1021, by Rep. Fred Love, D-Little Rock, is set as a Special Order of Business in the House Public Health, Welfare and Labor Committee on March 14.

This bill would authorize an employee to file a gender discrimination complaint with the Labor Department, without retaliation by the employer. It would require the Labor Department to investigate and supervise the payment of unpaid salaries or prosecute a civil action.

We visited with Rep. Love about this bill right after it was filed early in the Session. We also had the bill reviewed by an employment attorney. We could not find a way to amend the bill in a way in which employers would be comfortable. Consequently, we **oppose** this bill.

EMPLOYER PAYMENTS

HB 1624 by Rep. Greg Leding, D-Fayetteville, is on the agenda in the House Public Health, Welfare and Labor Committee.

It would require an employer to pay, without conditions, all wages or parts of wages that the employer concedes to be due the employee in a dispute over the amount of wages due to the employee. It also seeks to require an employee to return any property belonging to an employer after a discharge in order to receive wages due.

HB 1625 by Rep. Greg Leding, D-Fayetteville, is on the agenda in the House Public Health, Welfare and Labor Committee.

This bill would require an employer of four or more employees to provide to each current employee at least one time each month a pay stub that lists, for hourly employees, the total hours worked and the gross and net wages or for non-hourly employees, the gross and net wages. It would also require the pay stub to include the rate of pay for the pay period, overtime hours and compensation work during the pay period, the pay period for which the payment is being made, itemization of deductions describing at a minimum the name, title, or other identifying words or numbers for each deduction, and the employer's name, address, and telephone number. Finally, it would permit a pay stub under this section to be provided in either a paper or electronic format.

We **oppose** these bills based upon information obtained from employment attorneys.

BILLS OF INTEREST

WORKERS' COMPENSATION

There are five Workers' Compensation shell bills:

SB 675 and **SB 717**, by Sen. Missy Irvin, R-Mountain View
SB 747 by Sen. Bart Hester, R-Cave Springs
SB 653 by Sen. David Sanders, R-Little Rock
HB 2108 by Rep. Bob Johnson, D-Jacksonville.

We are keeping an eye out for amendments.

GUNS IN EMPLOYER PARKING LOTS

SB 37 by Sen. Alan Clark, R-Lonsdale, was amended yesterday and will be considered again in the Senate Judiciary Committee. This bill addresses the rights of employees to keep a firearm in their vehicle on business property. We have been working with Sen. Clark and Sen. Hickey, who has a similar bill, **SB 33**.

STATE BOARDS, COMMISSIONS AND COMMITTEES

SB 341, by Sen. Lance Eads, R-Springdale, nine additional senators and 14 representatives, is on today's House Calendar.

It seeks to make various revisions to the composition and membership of numerous state boards, committees, commissions, and other administrative bodies, including:

- Repealing the Commission for Coordination of Educational Efforts
- Repealing the Distance Learning Coordinating Council
- Amending the membership of the Apprenticeship Coordinating Steering Committee
- Amending the membership of the Coalition for Juvenile Justice Board
- Repealing the Museum of Natural Resources Advisory Committee
- Repealing the Commission on Information Age Communities Act
- Repealing the Scenic Resources Preservation Coordinating Committee
- Making members of the Board of Examiners in Counseling subject to Senate confirmation
- Repealing the Board of Health Education
- Various other changes

STATE CHAMBER/AIA BILL TRACKING TRACKED BILLS

There were 2,065 bills filed this session, 785 in the Senate and 1,280 in the House.

We continue to review summaries of the 541 bills filed on Monday's filing deadline. Our tracking list currently has 638 bills.

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.

House of Representatives: 501-682-6211

Senate: 501-682-2902

State Chamber/AIA Governmental Affairs Team:

Randy Zook, President/CEO:

rzook@arkansasstatechamber.com

Kenny Hall, Executive Vice President:

khall@arkansasstatechamber.com

Andrew Parker, Director of Governmental Affairs:

aparker@arkansasstatechamber.com

Holly Wilson, Director of Governmental Affairs:

hwilson@arkansasstatechamber.com

Toni Bahn, Director of Governmental Affairs:

tbahn@arkansasstatechamber.com

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

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

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The Daily Legislative Update is written by Kenny Hall and 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
