Daily Legislative Update
91st General Assembly
Tuesday, March 14, 2017 – Day 65

CAPITOL SCHEDULE
The House and Senate will both convene at 1:30 p.m. this afternoon.

It was announced from the Speaker’s office that the deadline to amend House shell bills was extended from yesterday until today.

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 – ACTION TODAY
HIGHWAY FUNDING
HB 1726 and HB 1727, by Rep. Dan Douglas, R-Bentonville, are on this afternoon’s House Calendar.

Here are some key points about the plan:

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. **A 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 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.

More detailed information on these bills can be viewed [here](#).

**Please ask your Representative to vote FOR HB 1726 and 1727**

**STATE CHAMBER/AIA PRIORITY BILLS – ACTION YESTERDAY**

**ECONOMIC DEVELOPMENT – AMENDMENT 97 IMPLEMENTATION BILLS**


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 more than $100,000
  - Recapture provisions and reporting are included.
  - 5 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 5 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 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*, was approved by the Senate yesterday by a vote of 32-0.

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 thank any Senator you asked to support and ask your Representative to support **SB 581** and **HB 1732**

**DOUBLE DAMAGES**

**HB 1737** by *Rep. Charlie Collins, R-Fayetteville*, was approved yesterday in the House by a vote of 82-0.

This bill 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 employer or employees of an employer’s agent are not liable for violation found to have been committed by employers. Please ask your Representative to Vote FOR **HB 1737**.

**PROTECTION FROM MASS PICKETING**

**SB 550** by *Sen. Trent Garner, R-El Dorado*, was approved yesterday in the Senate by a vote of 22-6.

This bill 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, obstructing entrances to a place of employment or interfering with the use of roads. This is a bill we had developed, filed and support. Please thank any Senator you asked to support this bill and ask your Representative to vote FOR **SB 550**

**PROPERTY PROTECTION ACT**

**HB 1665**, by *Rep. DeAnn Vaught, R-Horatio, 23 additional Representatives and Sen. Gary Stubblefield, R-Branch*, received a Do Pass as amended recommendation yesterday morning by the Senate Judiciary Committee and is on today’s Senate Calendar to formally adopt the amendment.

The amendment added language that exempts healthcare and medical service providers from the bill. It also modifies the third-party liability section to apply only to third parties that direct or assist in a violation of the act.
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.

DECEPTIVE TRADE


EMPLOYER CLARITY REGARDING MARIJUANA


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

This bill requires a two-thirds (67) majority vote.

Please ask your Senator to vote FOR HB 1460.

STATE CHAMBER/AIA PRIORITY BILLS – ACTION PENDING

WORKERS COMPENSATION


If your Senator is on this committee, please contact them. The yes votes will appreciate the backing and maybe we can gain the one additional vote needed. The members of the committee are: Chair Sen. Cecile Bledsoe, R-Rogers, Co-chair Sen. Eddie Cheatham, D-Crossett, Sen. Scott Flippo, R-Bull Shoals, Sen. Stephanie Flowers, D-Pine Bluff, Sen. John Cooper, R-Jonesboro, Sen. Missy Irvin, R-Mountain View, and Sen. David Sanders, R-Little Rock.
This very important bill is designed to replace a cap on employers’ indemnity exposure that will go away when the Workers’ Compensation Death and Permanent Total Disability Trust Fund (Trust Fund) stops taking new claims of this type after June 30, 2019.

With the Trust Fund in place, employers pay the first part of these claims (currently $215,000) and the Trust Fund pays the rest. Without the Trust Fund, employers’ liability for indemnity payments becomes unlimited.

The Trust Fund was established in 1973 and replaced a 450-week cap on the death and permanent total disability claims. Medical benefits were not capped by the Trust Fund and are NOT capped by this bill.

Thus, this bill seeks to establish a cap on employers’ indemnity costs by returning to the 450-week cap on death and permanent total disability injuries that occur on or after July 1, 2017. Total claim costs can be $500,000 to $1 million.

An injured worker entitled to these benefits should qualify for Social Security Disability (SSD) if they met the work credit threshold. An injured worker’s SSD benefits may be offset by the amount of workers’ compensation benefits they receive if SSD and workers’ compensation benefits exceed 80 percent of the pre-disability monthly income. The SSD is reduced until the total combined benefits reaches the 80 percent. Once the 450 weeks of workers’ compensation benefits is paid, the SSD is then increased up to the 80 percent pre-disability monthly income.

For insured employers, loss of the Fund will cause a modest premium increase, but adoption of the 450-week cap will offset the premium increase. But, for self-insured employers, loss of the Fund means their indemnity costs would increase from $215,000 to unlimited on each claim of this type.

Please ask your Senator to VOTE FOR HB 1586

PROPERTY TAXPAYER PROTECTIONS


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 member 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 Senator to vote FOR HB 1772
SCHOOL BOARD ELECTION DATES

This is an issue we’ve 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.

DONNING & DOFFING

This bill 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, and 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.

UNEMPLOYMENT INSURANCE
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!

NET OPERATING LOSS CARRY FORWARD
HB 1788 by Rep. Jim Dotson, R-Bentonville, was not considered yesterday morning in the House Revenue and Taxation Committee but remains in on the Committee's agenda.

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 6 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 8 years. We support this bill.

INCOME TAX THROWBACK RULE
HB 1790 by Rep. Jim Dotson, R-Bentonville, was not considered yesterday morning in the House Revenue and Taxation Committee but remains in on the Committee’s agenda.

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 regards to employees. We support this bill.

BILL NEEDING YOUR INPUT
INCOME TAX APPORTIONMENT AMENDMENTS
HB 2100 by Rep. Joe Jett, R-Success, makes numerous changes to the laws governing apportionment of income for multistate businesses. These amendments are based on the Multistate Tax Commission (MTC) model language. The bill would:
- Broaden the kinds of income subject to apportionment.
- Require market-based sourcing for services, intangibles, etc., instead of the current origin-based place of performance approach.
- Establish a throw-out rule for such sales, excluding from the sales factor calculation any sales to destination states where the business is not taxable.
- Expand the impact of the existing throwback rule on sales of tangible personal property (using new language that goes beyond the MTC model).
- Provide a more detailed framework for alternative apportionment determinations.

HB2100 is moving quickly, has been recommended by the House Revenue & Taxation Committee, and is expected to go to the House floor this week. The State Chamber/AIA has not yet taken a formal position on this complex bill. Please contact us asap with any comments about this bill.
Here is a letter from the Council of State Chambers (COST) regarding this bill.

**BILLS WE SUPPORT**
**WORKERS COMPENSATION**

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.

The issues addressed include: seek clarification of the effectiveness of settlements made in Workers’ Compensation that involve federal benefits, provide 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, reverse case law that required former employees who are properly terminated for misconduct are not entitled to temporary total or partial disability benefits, 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 address the issue of subrogation in workers’ compensation cases.


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**

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, is scheduled for consideration in the House Education Committee on March 14.

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 the
total annual Lottery Scholarship award to nontraditional students from $16 million to $12 million 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**


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.

**LICENSING**

**HB 2265 by Rep. Bruce Cozart, R-Hot Springs,** was filed on the filing deadline and seeks to establish a Task Force to study licensing in Arkansas. This appears to be a good approach and so far, the feedback we’ve received on this approach is positive.

**BILLS WE OPPOSE**

**LICENSING**

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

We are collecting names of entities that are opposed to HB 2176 and HB 1551. If you would like to join this list, please email Kenny Hall at khall@arkansasstatechamber.com.

A list of organizations that oppose can be seen here.

Below are three legal opinions we’ve received explaining the reasons we oppose these bills:

McCorkle & Curry letter here.
Wright Lindsey Jennings letter [here](#).

Cross Gunter Witherspoon and Galchus letter [here](#)

We join many business types and groups that **oppose these bills.**

**Please ask your Representative to OPPOSE HB 2176.**

Our closer look at the bill deadline filings uncovered two shell bills related to licensing. These bills are **HB 2159 and HB 2275, both by Rep. Richard Womack, R-Arkadelphia.**

**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. An amendment was added, but it did not remove our concerns.

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**


This bill 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.


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 the analysis of employment attorneys.

**CREDIT CHECKS**
HB 2000 by Rep. Greg Leding, D-Fayetteville, seeks to prohibit employers from requiring an employee or job applicant to consent to a credit report check. It also seeks to require employers that obtain a background check on an employee or a job applicant to provide a copy to the employee or applicant upon request.

Many businesses, especially financial institutions, must rely on credit checks for hiring employees whom they trust to help customers with their finances. Also, a number of state and federal statutes require credit checks of employees hired by a state agency or for a state agency to license an applicant.

We oppose this bill.

SNAP BENEFIT LIMITATIONS

HB 1035 by Rep. Mary Bentley, R-Perryville, was amended last week and presented to the Senate Health, Welfare and Labor Committee, but did NOT receive a recommendation. This is the bill that sought to limit the types of foods and drinks that could be purchased with Supplemental Nutrition Assistance Program (SNAP) benefits.

Three bills were filed later that address SNAP benefits, either by seeking to limit purchase options or require indemnifications to make the purchases. These bills are: HB 1904 by Rep. Mary Bentley, R-Perryville, and HB 2148 and HB 2149 by Rep. Clint Penzo, R-Springdale.

We continue to join the opposition to these bills.

BILL OF INTEREST

WORKERS’ COMPENSATION

SB 747 by Sen. Bart Hester, R-Cave Springs, and HB 2108 by Rep. Bob Johnson, D-Jacksonville, address the same issue. SB 747 received a Do Pass recommendation from the Senate Public Health, Welfare and Labor Committee last week and was approved in the Senate yesterday by a vote of 32-0.

This is the full text of SB 747:

SECTION 1. Arkansas Code § 17-25-514(a) and (b), concerning workers’ compensation, is amended to read as follows:

(a) A contractor required to be licensed by the Residential Contractors Committee [as a residential building contractor] shall secure and maintain [the payment of workers’ compensation] workers’ compensation coverage as required under § 11-9-401 et seq.

(b) The committee shall require proof of current workers’ compensation coverage before issuing or renewing a license [as a residential building contractor to a contractor] to a contractor who is required to have workers’ compensation coverage under § 11-9-401 et seq.

[Italicized and underlined language in brackets is deleted from the law] and language in bold is being added to the law.

Workers’ Compensation shell bills:
SB 675 and SB 717, by Sen. Missy Irvin, R-Mountain View
SB 653 by Sen. David Sanders, R-Little Rock

We are keeping an eye out for amendments.

GUNS IN EMPLOYER PARKING LOTS
SB 37 by Sen. Alan Clark, R-Lonsdale, received a Do Pass as amended recommendation yesterday by the Senate Judiciary Committee and is on this afternoon’s Senate Calendar. 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 again on this afternoon’s House Calendar.

This bill seeks to make various revisions to the composition and membership of numerous stage 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 2,069 bills filed this session, 789 in the Senate and 1,280 in the House.

We have now reviewed all of the new bill summaries and added another 11 bills to our tracking, which makes our tracking list 656 bills.

You can view the most recent additions here.

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

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