



## Daily Legislative Update

91st General Assembly

Wednesday, March 29, 2017 – Day 80

### CAPITOL SCHEDULE

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

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](http://www.arkleg.state.ar.us).

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

#### STATE CHAMBER/AIA PRIORITY BILLS – ACTION TODAY

##### SCHOOL BOARD ELECTION DATES

**HB 1621** by Rep. Mark Lowery, R-Maumelle, and Sen. Jane English, R-North Little Rock, failed on the Senate floor yesterday, but the vote was expunged and the bill is on this afternoon's Senate Calendar.

The local school boards of Arkansas's 236 school districts govern the largest local government entities in Arkansas, spending more than \$5 billion annually in local (two-thirds to four-fifths of real, personal property taxes), state (46 percent of General Revenue), and federal funds for K-12 education. And yet, board member elections have, by far, the lowest voter participation of any elective offices in the state.

Prior to 1989, school districts held their board elections in March. Since then, they have been held the third Tuesday in September, just seven weeks before the general election.

In the 90<sup>th</sup> General Assembly, Act 1281 empowered districts to choose to hold their school board elections either on the current third Tuesday of September or the general election. As a result, two districts – Pulaski County Special School District (which touches four counties and Little Rock, North Little Rock, Sherwood, Maumelle, Scott, Wrightsville, College Station and Shannon Hills) and Helena-West Helena School Districts – were returned to far greater local control than when they were taken over by the state.

- 2016 Pulaski County Special School District Election – 50,027 Voted (+2,113 percent)
- 2010 Pulaski County Special School District Election – 2,368 Voted

- 2016 Helena-West Helena School District Election – 4,172 Voted
- 2014 Little Rock School District Election – 1,441 Voted

According to the National School Boards Association, the parent organization of the Arkansas School Boards Association:

- 53 percent of superintendents reported that their districts' school board elections were always held on the same date as state and national elections
- More than 27 states hold all or most of their school board elections on the first Tuesday after the first Monday in November
- Only two states – Arkansas and Iowa – hold school board elections in September

This bill, which incorporates improvements suggested by the Arkansas School Boards Association, Office of the Secretary of State, and Association of Arkansas Counties, will:

- Exponentially 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 election 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

As a result, the Association of Arkansas Counties voted to be neutral on this bill.

**Please ask your Senator to vote FOR HB 1621**

### **DECEPTIVE TRADE**

**HB 1742** by Rep. Laurie Rushing, R-Hot Springs, and Sen. Bart Hester, R-Cave Springs, received a Do Pass from the Senate Insurance and Commerce Committee yesterday morning and could be considered this afternoon on the Senate floor.

As it currently exists, Arkansas's consumer protection law exposes the state's businesses to frivolous lawsuits from individuals who have suffered no real harm. **HB 1742** would amend the Arkansas Deceptive Trade Practices Act to ensure fairness for all litigants in consumer protection actions.

### **The Problem:**

- Arkansas ranks 44th in the nation in its treatment of class action lawsuits and mass consolidation suits. The current Arkansas Deceptive Trade Practices Act (ADTPA) is one of the elements of such class action lawsuits, and an element that invites abuse.
- Under the current ADTPA, plaintiffs' lawyers have become the primary beneficiaries of our state consumer protection laws.
- Under the current ADTPA, lawyers bring massive class actions on behalf of individuals who experienced no financial loss.
- Arkansas courts take an extremely liberal approach when certifying class action lawsuits, making Arkansas a hotbed for class action lawsuits by out-of-state lawyers in addition to our own.

- Arkansas is already 44th in the nation for class action lawsuits, our citizens do not need those cases from around the country coming to our already busy courts.

### **HB1742 Solutions:**

Clarifies the measure of damages and thereby discourages baseless claims and provides greater guidance to the courts.

- Clarifies that to prevail in a claim, an individual must be able to show that they suffered an actual financial loss that was a direct result of their reliance on the alleged activity.
- Narrows the discretion currently practiced by the courts in the class certification process, which will help protect businesses from having a class certified against an otherwise meritless lawsuit.
- Codifies that parties to ADTPA litigation have the right to a trial by jury.

### **HB1742 Facts:**

- This bill in no way changes other uses of class action lawsuits. Federal civil rights and Americans with Disability Act laws can all be pursued in federal courts. This bill fixes a loophole in Arkansas Deceptive Trade Practices Act that allows for class action litigation.
- The Arkansas Attorney General retains the right to bring Arkansas DTPA lawsuits as needed against bad actors. Therefore, Arkansas consumers can continue to be protected from outrageous corporate claims.

**Please ask your Senator to vote FOR HB1742**

### **PROTECTION FROM MASS PICKETING**

**SB 550** by Sen. Trent Garner, R-El Dorado, received a Do Pass yesterday morning from this House Judiciary Committee and is on this afternoon's House 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.

**Please ask your Representative to vote FOR SB 550**

### **DONNING & DOFFING**

**HB 1846** by Rep. Charlie Collins, R-Fayetteville, and Sen. Bart Hester, R-Cave Springs, received a Do Pass recommendation yesterday afternoon from the Senate Public Health, Welfare and Labor Committee and could be considered this afternoon on the Senate floor.

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.

### **REPEAL OF PREVAILING WAGE LAW**

**SB 601** by Sen. Bart Hester, R-Cave Springs and Rep. Jim Dotson, R-Bentonville, received a Do Pass yesterday morning from the House Public Health, Welfare and Labor Committee and awaits consideration on the House floor.

This bill seeks to repeal the entirety of the Prevailing Wage Law that governs required payments by contractors. We support this bill.

- Prevailing Wage is an arcane law and its ineffective processes do not reflect the current construction market.
- Countless studies have examined the harm these laws can do around the country by artificially increasing costs.
- Examples can be found in a number of studies on publicly funded construction projects. The Mackinac Center issued a report that found in Michigan, prevailing wage needlessly inflated the cost of public construction by 10-15 percent.
- The nonpartisan Anderson Economic Group found that from 2002 through 2011 in Illinois local and state governments could have saved an estimated \$1.6 billion on school construction costs if they did not have prevailing wage.
- Eliminating this law in Arkansas will lower state and local government costs of doing business, creating opportunities for more schools, roads, bridges, low-income housing, and hospitals, as well as, in turn, create more jobs in construction.

### **FRANCHISE RELATIONS**

**SB 695** by Sen. Linda Collins-Smith, R-Pocahontas, received a Do Pass yesterday morning from the House Public Health, Welfare and Labor Committee and is on this afternoon’s House Calendar.

This bill seeks to clarify the relationship between a Franchisor and Franchisee in regard to employees. We support this bill.

**Please ask your Representative to vote FOR SB 695**

### **3<sup>RD</sup> GRADE READING**

**SB 587** by Sen. Alan Clark, R-Lonsdale, is on tomorrow’s agenda in the House Education Committee.

We support this bill that seeks to require all public school districts have a reading intervention program in reading for grades K-3 and make promotion to the next grade dependent on demonstration of appropriate reading skills at grade 3.

### **BILLS WE OPPOSE**

#### **BIDDING REQUIREMENTS**

**SB 521** by Sen. Jimmy Hickey, R-Texarkana, is on this morning’s House State Agencies Committee agenda.

We stand with our member engineers that are ***opposed*** to this bill. The American Council of Engineering Companies of Arkansas (ACECA) and the Arkansas Society of Professional Engineers (ASPE) remain opposed to SB521 despite amendments added last week. Their position is:

- While we fully support, and will participate in, a thoughtful and detailed review of the RFQ process for professional services, we believe that the two-year sunset on the current RFQ process for professional services is bad policy and unnecessary.
- The existing RFQ process for professional services is fair, efficient and beneficial to governmental entities - ensuring that they receive the highest quality work at a negotiated price which they control.
- ACECA and ASPE do not oppose changes to procurement law where problems have arisen, however there have not been any identified problems with the current RFQ process involving engineers and architects.
- Current Arkansas law is consistent with federal requirements for engineering and architectural services when Federal funds are used for state and local projects.
- Amendment throws an industry in to uncertainty.
  - The AE industry is founded on providing the brightest and best staff to address the needs of, and best value to, the client, the project and the state.
  - To throw that practice into uncertainty with a two-year implementation period will impact the growth of the industry.
    - Do we hire the best and brightest, knowing in 2 years we will have to redirect business practices to provide the minimum level of service required to satisfy a preliminarily developed scope and the lowest bid?
    - STEM opportunities, especially for young engineering graduates, will be curtailed until the industry can adapt to low bid contract work.
    - Keeping the best and brightest graduates in the state will be much more difficult when competing with all other states that recognize Qualifications Based Selection.
- We would support an amendment that would leave the law where the current procurement law is, that excludes Engineers and Architects from low bid selection, now - as is the law both at the state and national level. And, we would support and participate in a study to revisit the reasons and impacts to the state, in a more thorough discussion, in preparation of the 2019 legislative session where a bill could be presented if lawmakers decide engineers and architects do not build their case adequately.
- The Federal Act that requires architects and engineers to be only selected by qualifications was developed for specific reasons that allowed the industry to best serve the public. Construction Managers were added in Arkansas a few years ago, in response to specific industry needs. The CM industry acceptance of the current proposed amendment does not change the need of the AE industry to maintain quality based selection.

#### **REQUIREMENT TO USE RESIDENT BUSINESSES IN INCENTIVIZED PROJECTS**

**HB 1876 by Rep. Michael John Gray, D-Augusta**, failed on the House floor yesterday by a vote of 41 yes, 22 no, 28 not voting and 9 present.

**Please thank any House members you asked to vote against this bill**, which would have caused harm to economic development projects.

### **PAY STUB REQUIREMENTS**

**HB 1625** by Rep. Greg Leding, D-Fayetteville, received a Do Pass recommendation yesterday afternoon from the Senate Public Health, Welfare and Labor Committee and awaits consideration on the Senate floor.

This bill would apply to employers with five or more employees and for employees that have worked at least 60 hours. In those cases, the employer would be required to provide 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 fear that some small companies may need to update their payroll records to comply. The information it requires to be disclosed must already be provided to employees (by the FLSA, NLRA, or Equal Pay Act); just not on a pay stub.

However, it will require changes to nearly every “pay stub” including those from third-party payroll companies. For example, it will require employers to include a non-exempt employees number of hours worked and hourly pay rate on pay stubs (or through one month-end report). This info is not usually included on a pay stub but rather the time cards.

This bill will add more administrative requirements on businesses. Smaller businesses without a designated payroll department (or third party contractor) will be most commonly hit with the penalties for non-compliance.

**We oppose this bill.**

### **SPECIAL COUNSEL FOR STATE AGENCIES**

**HB 1832** by Rep. Doug House, R-North Little Rock, is on this morning's agenda in the House State Agencies Committee.

This bill seeks to allow the employment of special counsel by a state official or entity in certain circumstances and to require special counsel to obtain approval by the attorney general before entering into a settlement agreement.

We **oppose** this bill.

### **BILLS OF INTEREST**

#### **GUNS IN EMPLOYER PARKING LOTS**

**SB 37** by Sen. Alan Clark, R-Lonsdale, will be considered tomorrow as a Special Order of Business at 10 a.m. in the House Judiciary Committee. This bill seeks to require

employers to allow employees to keep guns in their vehicles on private employer property.

### **LANDLORDS**

**HB 2135** by Rep. Warwick Sabin, D-Little Rock, is on today's House Insurance and Commerce Committee agenda.

This bill seeks to clarify the obligations of residential landlords and residential tenants and to require minimum habitability standards for tenants of resident real estate.

If you are a landlord, you should look at this bill.

### **CONSTITUTIONAL AMENDMENT – BALLOT PROPOSALS**

**HJR 1003** by Rep. Jeremy Gillam, R-Judsonia, received a Do Pass recommendation from the Senate State Agencies Committee yesterday morning and is on this afternoon's Senate Calendar.

This Joint Resolution seeks to become the Legislature's third ballot referral to the 2018 General Election Ballot. If referred and approved by voters, it would require three-fifths vote at the polls to adopt a proposed constitutional amendment that has been submitted by petition, increase petition signature requirements and prohibit an amendment that bestows powers to an individual or business by name.

### **BACKGROUND CHECKS**

**HB 2000** by Rep. Greg Leding, D-Fayetteville, received a Do Pass recommendation yesterday afternoon from the Senate State Agencies Committee and awaits consideration on the Senate floor.

This bill seeks to require employers who get background checks on applicants or employees to provide a copy of the background check information to the applicant or employer upon request.

We had this bill in the oppose category, but have not heard from anyone. If you have opinions, concerns, support for this bill, please let us know.

### **HIGHWAY FUNDING**

**HB 2085** by Rep. Johnny Rye, R-Trumann, is on this morning's agenda in the Senate Revenue and Taxation Committee.

This bill seeks to distribute a portion of the sales and use tax collected from sellers that do not have a physical presence in the state to the state highway and transportation department fund.

### **STATE CHAMBER/AIA BILL TRACKING**

#### **TRACKED BILLS**

House bills filed 1,280

Senate bills filed 789

State Chamber/AIA tracking 656

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

## BILL FILING STATISTICS

By AR Legislative Digest

Bill Type	2017	2015	2013	2011	+/-
House Bills	1,280	1,007	1,300	1,231	+273
Senate Bills	789	1,055	1,192	1,005	-266
House Joint Resolutions	22	27	19	13	-5
Senate Joint Resolutions	14	16	19	12	-2
Totals	2,105	2,105	2,530	2,261	0

## LEGISLATIVE SESSION INFORMATION AND MESSAGE CENTER

To view schedules, calendars, bill information and legislator information, visit [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

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