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92nd General Assembly March 8, 2019 – Session Day 54

TODAY AT THE CAPITOL

The House and Senate are in recess until Monday afternoon.
Legislative Calendar: www.arkleg.state.ar.us

YESTERDAY AT THE CAPITOL

HIGHWAY FUNDING – STATE CHAMBER/AIA PRIORITY

HJR 1018 was adopted yesterday by the Senate 25 to 7. This completes Governor Hutchinson's highway plan.

Thank you to all the legislators who supported **HJR 1018** and **SB 336**. If you made requests of support to legislators, please be sure to say thank you.

CONCURRENT CHALLENGE SCHOLARSHIP

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

LICENSING AND REGULATION

HB 1060 by Rep. Roger Lynch failed when a *do pass* motion received only 9 votes from the House Public Health, Welfare and Labor Committee. It would have implemented requirements for continuing education for heating, ventilation, air conditioning and refrigeration licensees. All applications after July 1, 2020 would have been required to be accompanied by proof of completion of mandated courses. It also would have charged the HVACR Licensing Board with establishing the continuing education program and promulgating rules and guidelines for its administration by Dec. 31, 2019.

BILLS WE SUPPORT

BALLOT INITIATIVE REFORM – STATE CHAMBER/AIA PRIORITY BILL

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

SJR 10 and **HJR 1008** are being amended to improve some language and will be

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

HJR 1008 awaits consideration in the House State Agencies Committees, which will meet after adjournment of the House on Monday afternoon.

PASS-THROUGH ENTITY TAX

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

Another Tax Reform and Relief Legislative Task Force recommendation has been introduced into the General Assembly: an elective 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 businesses 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 *awaits consideration 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.](#)

TRANSPORTATION

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

CONSTITUTIONAL AMENDMENT REFERRALS

STATE CHAMBER/AIA SUPPORTS SJR 10/HJR 1008

With the highway plan (**HJR 1018**) now approved by the House and Senate, there will be hearings to determine a second and third referral to the 2020 General Election Ballot. The Senate State Agencies Committee will meet next Tuesday after the Senate adjourns to complete their review of ballot referral options. As discussed above, we support ballot initiative reform (**SJR 10/HJR1008**) as the second referral.

Currently, the discussion about a third referral centers around term limits and tort reform. We believe term limits and tort reform are important issues, along with sovereign immunity.

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 likely to be considered Tuesday morning 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 *is expected to be considered next Tuesday in the House Revenue and Taxation Committee*. This bill goes too far in its attempt to address an issue.

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

DECEPTIVE TRADE PRACTICES

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

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

ederal 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 may be brought under the standard-form contract or that waives the statute of limitations, or a requirement that an individual pay fees and costs to bring a legal claim subsequently in excess of required fees and costs to bring a claim in state or federal court. Finally, it would exempt contracts to which one party is regulated by a regulatory body or officer under statutory state or federal authority, and a financial institution as defined under 23-45-102. We have concerns about this bill and oppose it.

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

MINIMUM WAGE – STATE CHAMBER/AIA PRIORITY LEGISLATION

HB 1751, 1752 and 1753 by Rep. Robin Lundstrum and Sen. Mat Pitsch were filed yesterday. 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.

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, 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.

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.

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.**

STATE CHAMBER/AIA TRACKED BILLS

New House bills filed yesterday: 24 | Total House bills filed: 759
New Senate bills filed yesterday: 6 | Total Senate bills filed: 518
New bills added to our tracking: 8 | Total tracked bills and resolutions: 422

New bills added to our tracking: <https://arkansasstatechamber-my.sharepoint.com/:w:/p/khall/Eacg3tHU2X1lqVnFlNYceOsBSJe3-zUTQ0kRxvwGARC97w?e=Lg1GTr>

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

LEGISLATIVE SESSION INFORMATION

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

Legislative Message Center

House of Representatives: 501-682-6211
Senate: 501-682-2902

State Chamber/AIA 2019 Legislative Agenda

To review our 2019 Legislative Agenda, click this link:
<https://www.arkansasstatechamber.com/wp-content/uploads/2019/01/AR-StateChamberAIA-2019-Legislative-Agenda.pdf>

Live Streaming from the Capitol

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

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

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