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## **93rd General Assembly Wednesday, March 10, 2021 – Session Day 59**

### **TODAY AT THE CAPITOL**

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

#### **Committee Meetings**

9:30 a.m. – House Agriculture and Insurance/Commerce | Senate Judiciary and Tax

Noon – House Rules

2:00 p.m. – House City/County/Local and State Agencies | Senate Education and Health

### **TODAY'S BILLS**

#### **FEDERAL INCOME TAX SAVINGS FOR PASSTHROUGH ENTITIES | State Chamber/AIA Priority Agenda Bill**

**This bill passed the House yesterday 98 to 0 and is on today's Senate Revenue & Taxation Committee Agenda. Please ask your State Senator to support HB 1209. This bill needs a 75 percent majority vote to pass.**

**HB 1209** by Rep. Joe Jett will help about 40,000 Arkansas businesses reduce their federal taxes by an estimated \$50 million or more while generating \$4 million in state revenue. The businesses impacted are those set up as passthrough entities—the owners pay tax at the individual level on their business income. Most businesses are set up this way. Under federal law, businesses can deduct state and local taxes (“SALT”) they have paid without a cap, but the individual SALT deduction is limited to \$10,000 for individuals.

**HB 1209** would let passthrough businesses choose (elect) to instead pay Arkansas tax at the entity level, as a flat tax at the top rate of 5.9%, which would allow the Arkansas taxes paid to be 100% deductible for federal purposes. The IRS recently blessed the validity of this approach in Notice 2020-75. Several states have already adopted such options, including Oklahoma and Louisiana, and more are expected to adopt them in the coming year.

If you asked your State Representative to vote for HB 1209, please be sure to thank them.

#### **WORKERS COMPENSATION | State Chamber/AIA Priority Agenda Bill**

**HB 1488** by Rep. Justin Gonzales and Sen. Ben Gilmore is designed to allow an employee to make a claim under workers' compensation for COVID-19 if the employee proves it is a workplace exposure. This provides protection for employers against workers' compensation claims becoming tort claims simply because the employer knows exposure to COVID-19 is possible, likely, or certain. Workers' Compensation is the exclusive remedy for workers injured on the job in Arkansas, which means that they cannot sue their employers in court for on-the-job injuries. The Arkansas Supreme Court has ruled that intentional acts by the employer are exempt from the exclusive remedy doctrine, allowing employees to sue employers in court for intentional acts.

*This bill is on today's Senate Public Health, Welfare and Labor Committee agenda.  
The State Chamber/AIA supports HB 1488.*

### **UTILITY RATE REVIEW**

**HB 1662** by Rep. John Maddox and Sen. Breanne Davis seeks to make various changes to the Formula Rate Review Act, adding regulatory parameters to the Public Service Commission's electric utility rate review process. Specific provisions include:

a) Prohibits the Arkansas Public Service Commission from adjusting rates for an electric utility under 23-4-422 (e) or (f) if the utility's class of customers with the highest level of consumption per customer has rates that include a demand component of 7,000,000 Mwh; adds other requirements for the PSC in ensuring that the revenue received for the historical year will be composed of prior formula rate review test period changes in revenue.

b) Requires an extension of the five-year term of a formula rate review for utilities meeting the above usage level to include an adjustment in cost allocation.

c) Prohibits the Arkansas Public Service Commission from approving any adjustments to the formula rate review filings that are inconsistent with the findings in the commission's order on the public utility's application from general change in rates or charges.

d) Provides that for a public utility's nonresidential classes of customers that have rates with a demand component other than the class of customers with the highest level of consumption, the public utility will establish a maximum level of consumption or demand to be eligible for service as part of those classes that is lower than the minimum level of consumption than customers with the highest level.

e) Requires the Arkansas Public Service Commission to adjust the rate design to the class of customers with the highest level of consumption per customer, which has rates with a demand component in an equal annual adjustment over the first three years of the five-year term of an extension; requires the public utility to file resulting rate schedules annually as part of any formula rate review compliance filing until the adjustment is fully implemented.

f) Requires the debt-to-equity ratio, for the purpose of setting rates, to be fixed at the public utility's actual debt-to-equity ratio reflected in the commission order issued on December 11, 2020.

g) Requires public utilities to support the purpose for and level of its projected year investments with projections based on historical averages instead of basing projections on the utility's corporate budget.

h) Authorizes public utilities to file an application for a change in rates at any time during a five-year extension of the term of a formula rate review mechanics.

i) Applies to any formula rate review approved and in effect on or before March 15, 2021.

*This bill will be considered this morning in the House Insurance & Commerce Committee.*

The State Chamber/AIA supports this bill.

### **COVID LIABILITY PROTECTION FOR HEALTHCARE WORKERS**

**HB 1521** by Rep. Austin McCollum and Sen. Ben Gilmore will provide some level of protection against COVID-19 personal injury claims against healthcare workers for any damages, injuries, or death caused by or resulting from COVID-19.

*This bill is on today's agenda in the Senate Public Health, Welfare and Labor Committee.*

The State Chamber/AIA supports HB 1521.

### **UNEMPLOYMENT INSURANCE**

**HB 1407 AND HB 1409** by Rep. Robin Lundstrum and Sen. Ricky Hill seek to cap the unemployment insurance stabilization tax for 2022 (**HB1407**) and cap the wage base (amount of each employee's wages subject to UI tax) at \$10,000 for 2022 (**HB1409**).

*These bills are on today's agenda in the Senate Public Health, Welfare and Labor Committee.*

The State Chamber/AIA supports HB 1407 and 1409.

### **PARTISAN LOCAL ELECTIONS**

**HB 1655** by Rep. Clint Penzo and Sen. Bart Hester seeks to require an organized political party to conduct a party primary for a political subdivision of the state upon request of the subdivision.

*This bill is on today's agenda in the House State Agencies Committee.*

### **CLOSING OF AEDC CHINA OFFICE**

**SB 252** by Sen. Trent Garner would prohibit the Arkansas Economic Development

Commission from establishing or maintaining an office in China and close any existing offices in China as of the effective date of the act.

*This bill received a Do Pass recommendation yesterday from the Senate State Agencies Committee and is on today's Senate Calendar.*

The State Chamber/AIA opposes this bill.

### **CIVIL EVICTION PROCESS**

**HB 1563** by Rep. Jimmy Gazaway would establish a civil eviction process, including provisions on notice, complaint requirements, jurisdiction, civil pleadings, etc. and prohibits certain terms and conditions in rental agreements and also create a duty that the landlord maintain habitable premises.

*This bill was amended March 9 and is on today's House Insurance and Committee agenda.*

The State Chamber/AIA is concerned about this bill.

### **SCHOOL READING PROGRAMS OF INSTRUCTION**

**SB 349** by Sen. Alan Clark and Rep. Keith Brooks would prohibit public schools from using reading programs of instruction that are not aligned with the science of reading and withhold up to 10 percent of monthly state foundation funding aid to districts and charter schools that are out of compliance. It would require the state board to notify public school districts or open-enrollment public charter schools of violations; provides that if the violation is not rectified within 60 days of the notification, the board will direct the division to withhold a maximum of 10 percent of the monthly distribution of state foundation funding aid; once the schools have complied, the funding will be returned.

*This bill is on this morning's agenda in the Senate Education Committee.*

The State Chamber/AIA supports the science of reading.

### **STATE CHAMBER/AIA PRIORITY AGENDA BILLS**

**TO VIEW A BILL SUMMARY AND LAST THREE ACTIONS ON 19 BILLS THAT ARE PART OF THE STATE CHAMBER/AIA PRIORITY AGENDA, [CLICK HERE.](#)**

### **BILLS WE OPPOSE**

#### **OCCUPATIONAL LICENSING**

**HB 1667** by Rep. Tony Furman would require all occupational licensing entities to recognize licenses from other states and grant licenses based on work experience in other states if that state does not require a license.

Among multiple contacts we had with major concerns about this bill, a lawyer who represents business interests wrote this about the bill:

*To the extent the Bill is intended to include the practice of law, the Supreme Court would certainly find it unconstitutional based on the Supreme Court's exclusive prerogative under the Arkansas Constitution to govern the practice of law. I am concerned about professions that do not have this level of constitutional protection, e.g. medicine, nursing, public accounting, education, etc.*

*The scope of the bill is breathtaking. It would start a race to the bottom with Arkansas obliged to accept the licensing of states with least restrictive requirements. If a person cannot qualify for a professional or occupational license in Arkansas, all that is required is to obtain a license in another state with less rigorous standards, hold that license for a year, and then apply for a license in Arkansas. At that point, the Arkansas licensing authority **shall** grant a license. Arkansas licensing authorities would be required to accept the licenses from any state irrespective of the qualifications for the license in that state.*

*More shocking to me, § 17-4-105 would require Arkansas to grant a license to someone who has worked for three years in an occupation in another state that does not have a licensing requirement. Without a thorough study of the laws in other states for "on-the-job training" in various occupations, we cannot know which occupations Arkansas would be throwing open to the untrained. There is no definition for what is required to satisfy the requirement for having "worked" in the profession or occupation. A plumber's helper could argue that he has "worked" in the plumbing occupation.*

*The premise of bills like this is that the market will ensure that unqualified persons do not engage in occupations - at least not for long. For example, if an unqualified person starts doing electrical work and burns down a few houses, the word will get around that s/he is unqualified and will be driven out of business. Of course, that is no help for the people whose houses burned down.*

*In my opinion, this is a very dangerous bill.*

[We added the underlining]

*This bill has been assigned to the House Public Health, Welfare and Labor Committee. The State Chamber/AIA opposes this bill.*

## **NEW BILLS**

### **WORKERS' COMPENSATION**

**SB 507** by Sen. Trent Garner Requires workers' compensation rules to reimburse at the lesser of the billed charges or 100 percent of Medicare allowable amount for durable medical equipment and supplies when they are not included in the fee schedule.

*This bill has been assigned to the Senate Public Health Committee.*

### **UNEMPLOYMENT INSURANCE**

**HB 1676** by Rep. Austin McCollum and Sen. Bart Hester would scale back the duration of unemployment compensation benefits in increments as indexed to the current unemployment rate. It would set the lower cap at 12 times the weekly benefit amount at or below 5.5 percent unemployment and set the upper cap at 16 times the weekly benefit at more than 7 percent unemployment.

The effective date would be January 1, 2022, and applies to claims filed on or after January 1, 2021.

*This bill has been assigned to the House Public Health, Welfare and Labor Committee.*

**TO VIEW A LIST OF 9 NEW BILLS ADDED TO OUR TRACKING, [CLICK HERE.](#)**

## **TOMORROW'S BILLS**

### **SCHOOL START DATE**

**HB 1237** by Rep. Mark Lowery would set the school start day no earlier than the Monday before Labor Day. It addresses school calendars and other issues affected by the later school start date.

*This bill is on the March 11 agenda in the House Education Committee.*

### **RAILROAD MAXIMUM LENGTH REQUIREMENT**

**HB 1631** by Rep. Vivian Flowers seeks to set the maximum length of a railroad train operating on a main line or branch line at 8,500 feet subject to administrative penalties imposed by the Department of Transportation. It would set the penalty as \$500-\$1,000 per foot over the maximum length authorized and not more than \$250,000 if the violation causes death or injury. It authorizes the penalty amount to be negotiated between the company and the Department and provides considerations for the Director of State Highways and Transportation in determining the amount. It provides that the imposition of penalties will be conducted under the Arkansas Administrative Procedure Act and that penalties collected will be used by the Department for highway and infrastructure projects and a penalty not promptly paid will be referred to the Attorney General for collection in district court.

*This bill is on the March 11 agenda in the House Transportation Committee.*

### **UTILITY RATE REVIEW**

**SB 489** by Sen. Breanne Davis and Rep. John Maddox is identical to HB 1662 described above.

*This bill is on the March 11 agenda in the Senate Insurance and Commerce Committee. The State Chamber/AIA supports this bill.*

## YESTERDAY AT THE CAPITOL

### PROTECTING CRITICAL INFRASTRUCTURE | State Chamber/AIA Priority Agenda Bill

**HB 1321** by Rep. Jimmy Gazaway lists types of enclosed areas that are considered critical infrastructure and adds those areas to criminal mischief and trespass offenses.

*This bill passed the House March 9 by a vote of 93 to 0 and has been assigned to the Senate Judiciary Committee.*

HB 1321 is a State Chamber/AIA Priority bill we support.

### ARHOME – NEW MEDICAID EXPANSION PROGRAM

**SB 410** by Sen. Missy Irvin and Rep. Michelle Gray seeks to create the Arkansas Health and Opportunity for Me Act of 2021 (ARHOME), replacing the Arkansas Works Program for expanded Medicaid coverage. It creates incentives for individuals to gain qualified health insurance premium assistance.

*This bill passed the Senate Calendar 26 to 3 on March 9. It has been assigned to the House Public Health, Welfare and Labor Committee.*

The State Chamber/AIA supports SB 410.

### RAILROAD MINIMUM CREW REQUIREMENT

**HB 1524** by Rep. Josh Miller would require a minimum of two crew members for operation of a freight, passenger, or commuter Class I railroad train. It also would require the State Highway Commission to impose administrative penalties between \$5,00 and \$10,000 for noncompliance, and of \$500,000 for grossly negligent violations. Exemptions include excursion trains, trains performing a helper service, hostler service, or mine load out and remote control railroad train operators. It would authorize the Highway Director to exempt trains operating at 15 mph or less on tracks with low grade.

*This bill failed in the House Transportation Committee on March 9.*

The State Chamber/AIA opposes this bill.

### STATE CHAMBER/AIA BILL TRACKING

Total Bills Filed: 1196 | New Bills Filed: Senate 7 | House 15

Bills and resolutions added to State Chamber/AIA Tracking: 9 | Total Tracked: 437

To see all tracked bills saved by category, click [here](#).

### LEGISLATIVE SESSION INFORMATION

To view schedules, calendars, bill information and legislator information, click [here](#).

To view the statement regarding Capitol access and committee attendance, click [here](#).

### Legislative Message Center

House of Representatives: 501-682-6211

Senate: 501-682-2902

### STATE CHAMBER/AIA INFORMATION

#### 2021 LEGISLATIVE AGENDA

To view the State Chamber/AIA's legislative agenda, click [here](#).

#### BILL SCORING

Floor votes on bills that address issues in our Legislative Agenda and/or are discussed in a Daily Legislative Update are subject to being scored.

#### State Chamber/AIA Governmental Affairs Team

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

[tlindsey@arkansasstatechamber.com](mailto:tlindsey@arkansasstatechamber.com)

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

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

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



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

501-372-2222  
FAX 372-2722

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STAY CONNECTED



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