

PUBLICATION

Alabama Legislative Update – Week 11: As Deadline Nears, Action Increases in Both Senate and House

April 30, 2013

Momentum is growing in the legislature as the clock ticks toward adjournment. Emotions ran high as legislators worked well into the night during a demanding three-day legislative week. While several significant pieces of legislation still await action, both chambers seemed to sense the urgency of impending sine die and moved bills through or effectively killed them for this session. Legislators return Tuesday, April 30, for the twenty-sixth legislative day.

Awaiting Governor's Signature

Legislators Passed Bill To Lower Fees For Emelle Landfill

The Alabama Legislature passed legislation to lower the fees for burying hazardous waste at the Emelle landfill. Earlier in the session, the House of Representatives approved the bill by a vote of 84-8. Last week, the Senate voted 25-4 for passage.

The bill now goes to Governor Robert Bentley, who will review the bill and decide whether to sign. The Legislative Fiscal Office estimates that the lower fees will reduce the state's income by \$625,000 and Sumter County's by \$160,000 annually. The landfill will have to take in an extra 115,000 tons annually to replace that revenue. Supporters of the bill predict new business will far exceed that amount and expect employment to rise.

Medicaid Overhaul Passed by Both Chambers

The House and Senate passed similar versions of legislation aimed at reining in growing Medicaid costs, which provides medical care to nearly one million lower-income and disabled citizens. The House passed its bill on a 79-20 vote. The Senate approved its bill 27-3.¹ The bills now move to the other chamber. As passed, they incorporate recommendations from the Alabama Medicaid Advisory Commission established by Governor Bentley.

The legislation would eliminate the current fee-for-service model of paying providers and establish locally-controlled managed care networks. Under the managed care networks, health providers would form regional care organizations that could sign contracts to provide medical care to Medicaid beneficiaries on the state's behalf in return for negotiated payments per beneficiary. The proposed structure provides incentives for regional care organizations to oversee and improve patient care in order to reduce costs. Estimates show that taxpayers stand to save \$250 to \$350 million from fiscal years 2015 to 2019 through enactment of this legislation. State Health Officer Don Williamson has said the organizations will have financial incentives to correctly manage patient care to decrease expensive emergency room visits and other costs. The organizations will be community-run but have the option of contracting with managed care companies. While Dr. Williamson said he was pleased with the progress of the legislation, he admitted there was still significant work to be done before implementation in 2016.

Approximately 940,000 Alabamians are on Medicaid – about 20 percent of the state's population. Medicaid covers 53 percent of births, 43 percent of children and almost 67 percent of people in nursing homes.

Senate

Double Dipping Ban Still In Effect

The Senate rejected legislation to exempt current legislators from an upcoming ban on lawmakers holding two state jobs. A bill that would have "grandfathered in" a number of double dippers in the Alabama Legislature failed by a vote of 11-18. After Republicans gained control of the Legislature in the 2010 election, they pushed through a law that prohibits state employees and public education employees from serving in the Legislature after the 2014 election. The ban on drawing two state paychecks, a practice known as "double dipping," came after an investigation of corruption in Alabama's two-year college system. It resulted in guilty pleas or convictions of three legislators who either worked for the colleges or had financial ties to them. The ban takes effect on November 5, 2014. At that time, legislators must choose to resign from a state job or from the Legislature. Currently, nine legislators will be affected.

Gulf State Park Legislation Passed by Senate

By a vote of 23-11, the Senate passed legislation allowing the state to partner with a private developer on a hotel and conference center on the beach at Gulf State Park. Immediately after the vote, Governor Bentley was in the Senate, thanking members for their vote and congratulating them on passage.

The bill will give a 70-year ground lease to a developer and generate money that can be used to operate Alabama's other state parks. The bill also provides that the state can use money received as a result of damages from the 2010 Gulf oil spill on the project. Hurricane Ivan destroyed the Gulf State Park Lodge and Conference Center. Governor Bentley hopes a hotel and conference center would generate more tourism dollars in Alabama from conventions and conferences currently going to Sandestin.

The House Economic Development and Tourism Committee already approved the bill. The House could grant final passage as early as next week.

Drug Testing Will Be Required for Some Welfare Recipients

In an almost empty chamber and within minutes after convening, senators quickly approved a bill that would require the drug testing of welfare recipients with a history of drug use.

President Pro Tem Del Marsh moved to approve the bill using the Senate's last roll call from the previous morning. Because no senator objected, the bill automatically passed 22-10. The bill will require the drug testing of welfare recipients with drug convictions within the past five years.

After the first positive test, a warning would be issued. After a second positive test, the individual would lose personal benefits. After a third positive test, any children's benefits would go through a third party. Children would never lose their benefits. The bill now moves to the House.

Senate Passed Legislation to Limit Purchases Made by Welfare Recipients

Senators passed a bill to tighten a loophole that allows federal and state aid recipients to use taxpayer dollars for alcohol, cigarettes and other non-essential items. Among other provisions, the bill would prohibit a recipient of public assistance from using benefits to purchase any alcoholic beverage, tobacco product or lottery ticket. It

would also prohibit a recipient of public assistance benefits from withdrawing or using public assistance benefits in a retail establishment that primarily sells alcoholic beverages, a casino, a tattoo facility, psychic parlors or strip clubs. The bill would block the use of welfare benefits for frivolous items and impose punishments like jail time and loss of benefits for recipients who try to circumvent the rules. If the bill passes, first-time offenders would have their benefits suspended for one month, while a third offense would lead to a permanent cutoff.

Under legislation signed by President Barack Obama to extend a payroll tax cut and unemployment benefits, welfare recipients are barred from using cash assistance in strip clubs, casinos and liquor stores. States must change their own laws to conform by 2014. The legislation would temporarily deny a retailer its business license for selling such items to someone using an Electronic Benefit Transfer card. A business that violates the law could be fined \$100 for the first offense. On the third offense, it could lose its license for one year. If approved, the bill would go into effect next year. The bill has been sent to the House and assigned to the committee on State Government for consideration.

House of Representatives

Representatives Passed \$1.7B General Fund Budget

By a vote of 75-27, the House approved a \$1.7 billion General Fund budget, including a \$16.7 million increase for the Department of Corrections (DOC). Most agencies received level funding while several conditional appropriations were passed, including one that would fund a five percent pay raise for state employees.

Governor Bentley originally sought a \$20.3 million increase for DOC to pay for 100 additional correctional officers and security improvements at the Julia Tutwiler Prison for Women in Wetumpka.² The Senate reduced the increase to \$17.7 million in the budget. The House Ways and Means General Committee reduced the appropriation another \$4 million and transferred those funds to the state court system, also facing reduced services due to budget constraints. After marathon work sessions between House leaders and the Governor's office, an additional \$3 million was found and brought the total increase in its budget to \$16.7 million. The \$3 million was moved from 12 other appropriations in the budget. Among those were \$250,000 each from the departments of Environmental Management, Revenue and Mental Health, and \$200,000 from Examiners of Public Accounts, as well as \$250,000 from the Historical Commission that was earmarked for some historical sites. The DOC total budget is a proposed \$389 million. House Ways and Means Co-Chairman Steve Clouse said the additional funds should be enough to pay for Tutwiler improvements.

The court system is budgeted to receive \$108 million, approximately \$5 million over its current funding. Budget constraints have been blamed for the closing of circuit court offices to the public on Wednesdays. The \$108 million is below the \$125 million courts received in fiscal year 2012.

Medicaid will receive level funding. An additional \$10 million will be directed to the State Employees' Insurance Board, which could lessen the burden of an expected increase in state employees' insurance.

House Minority Leader Craig Ford introduced a conditional appropriation that would provide for a five percent pay raise for state employees. A conditional appropriation is only allocated if the Department of Finance decides funds are available for it. State employees have not had a salary increase since 2008.

The spending plan includes approximately \$145 million transferred from the Alabama Trust Fund to the General Fund under a constitutional amendment approved by voters in September. It will be the second of three consecutive years for the transfers, which will total about \$437 million.

The House approved a measure that would transfer tobacco settlement money normally earmarked for the Children's First Trust Fund to the General Fund. The decision drew criticism from some legislators who viewed it as taking money from children to give to prisoners. While leaders of the committee did not disagree, they maintained there was little choice,

Co-Chairman Clouse said he expected a conference committee to be named to work out differences between the House and Senate versions.

House Approves \$50 Million In Bonds For School Safety

In January, Speaker of the House, Mike Hubbard convened a joint hearing on school security and student and teacher safety. Moved in the wake of the Sandy Hook tragedy, legislators and educators came together to discuss ways to improve school safety and develop a plan for implementation. Last week, without a dissenting vote and after limited debate, the House passed a \$50 million proposal to heighten school security, carrying out one of the recommendations from the Speaker's hearing. The legislation would allow the state to sell \$50 million in bonds to fund security improvements that include providing secure doors, metal detectors and surveillance cameras at Alabama schools. The Senate is expected to take up and pass the proposal.

The bill would direct \$40 million to secure school entrances. Schools unable to fund those improvements would be given priority. The remaining \$10 million would be directed to schools for other security items such as surveillance cameras and metal detectors. The money would be allocated based on the student population, with larger districts receiving more funding than smaller districts.

Medicaid-Related Legislation Passed by House

In addition to consideration of the Medicaid overhaul discussed above, the House took time to consider and approve several other bills that are related to Medicaid funding. HB 370 would cap the amount of General Fund dollars appropriated to the Medicaid Agency beginning October 1, 2016. It passed the House 71-28. The initial cap will be a negative one percent growth but would later be adjusted based on the percentage growth in the U.S. health care inflation rate, minus one percent. HB 371 would authorize the Medicaid Agency to ask for a waiver from the Centers for Medicare and Medicaid Services to increase Medicaid recipient co-payments on health care services paid for by the Agency. Increasing copayments could save Medicaid \$700,000 a year, the Legislative Fiscal Office said. It passed 83-13. HB 562 would extend the Medicaid nursing home supplemental privilege assessment and monthly surcharge for two years. It passed unanimously 98-0. HB 605 also passed unanimously, 101-0, and would extend the hospital Medicaid assessment for three fiscal years but would allow for a change after two years if Congress mandates other changes.

Committee Action

Compromise Version of Omnibus Gun Bill Passed by House Committee

After a heated public hearing on the Senate-passed omnibus gun bill, Speaker Hubbard and Representative Ed Henry, along with representatives from the National Rifle Association, the Alabama Sheriff's Association and the Alabama District Attorney's Association, announced their support for a compromise version of SB 286. Soon after the agreed upon substitute was announced, the House Commerce and Small Business Committee approved the measure with a 6-2 vote.

Provisions of the substitute bill include:

- Individuals without a concealed carry permit would be allowed to carry a pistol in their car if it is unloaded, locked away and out of reach of the driver or passenger.
- Changes Alabama from a 'May Issue' to a 'Shall Issue' state. Sheriffs will be required to provide documented reasoning for denying permits. Individuals may appeal the issuing decision.
- Requires employees to have either a valid concealed carry permit or a hunting license to carry a firearm onto a work site. Additionally, the employee cannot have been convicted of a violent crime, have been involuntarily committed or have past incidents of domestic violence.
- Prohibits business owners from prohibiting employees from bringing guns into workplace parking lots but provides legal immunity for any incident involving a firearm that may occur.
- Expands the definition of "crimes of violence" to include all Class A felonies and Class B felonies that involve serious physical injury, distribution and manufacture of a controlled substance and crimes of a sexual nature involving children under 12. Individuals convicted of a "crime of violence" cannot own a firearm in Alabama.

The bill will now move to the House floor for a vote.

While some opponents of the original legislation have expressed support, business interests still have concerns with the revised proposal but will not work to kill it. Business interests contend that it allows employees to store a firearm in their vehicle regardless of the business's policy and contrary to the business's property rights. Speaker Hubbard said the bill will be expedited and put on a special order calendar and could be considered as early as May 2. Earlier in the session, the Senate passed a different version of the bill. The two chambers will have to agree to any changes made by the other.

Education Budget Passed by Committee with Cut in Teacher Pay Raise

The Senate Finance and Taxation-Education Committee approved the \$5.77 billion education budget and cut K-12 employees to an absolute raise of one percent. The committee allowed the possibility of a one percent bonus if extra state tax revenue becomes available. Governor Bentley proposed a two and a half percent raise when the legislative session convened. The House reduced it to two percent. The Senate committee reduced it even further.

Committee Chairman Trip Pittman recommended the reduced raise, maintaining he supports a sustainable raise that is feasible given budget constraints. Each percent costs about \$30 million. K-12 employees got their last cost-of-living raise of seven percent in October 2007. While the budget does not provide for or mandate a pay raise for employees of four-year and two-year colleges, the budget would provide colleges with a small budget increase and allow their boards the discretion to implement raises.

Governor Bentley also proposed a \$12.5 million increase in funding for Alabama's voluntary pre-kindergarten program to add about 2,000 students. The House approved that amount. The Senate committee, however, cut the increase in half. Pittman said the money was needed to maintain existing programs, such as bus transportation.

Senate leaders canceled plans on Thursday to bring up the budget. Several senators asked for more time to study the budget and some still hoped for changes in the pay raise portion. The budget will likely be on the Senate floor for consideration this week.

Changes In Alabama Accountability Act Cleared Committee

The Senate Education Policy Committee voted 6-3 to approve changes to the Alabama Accountability Act. The substitute clarifies that:

1. no public or nonpublic school is required to enroll any student;
2. parents of a student who is either enrolled or assigned to attend a failing school will qualify for the tax credit;
3. a "failing school" is defined as one that has rated in the bottom ten percent on the state standardized assessment in reading and math for three or more times in the last six years;
4. the student seeking a transfer from a failing school shall first attempt to enroll in a non-failing public school within the same school system; and
5. scholarship-granting organizations may award scholarships to students in failing schools whose family income is not more than three times the federal poverty level. The bill also specifies that the tax credit to scholarship donors shall equal 100 percent of the contributions (originally 50 percent) made to a scholarship granting organization, with the aggregate cap of the scholarship tax credit not to exceed \$25 million.

The House Ways & Means – Education Committee gave a favorable report to a similar piece of legislation but without the newly-passed Senate committee changes. The House committee approved the bill its original form, only clarifying that no public or nonpublic school is required to enroll any student attempting to transfer from a failing school. Both pieces of legislation have been placed on the regular calendars of their respective chambers for consideration.

When the Senate adjourned late in the evening on Thursday, there was still no consensus among lawmakers over eligibility for the tax credit and the possibility of a "means" test. The Alabama Accountability Act has already been enacted into law and will remain in effect if senators do not reach an agreement. The Republican super-majorities in both houses have the numbers to pass a bill at will, provided they agree. Despite the differences of opinion, Senator Marsh believes they are in "good shape on that legislation" and expects a vote as early as this week.

Common Core Revived in Committee then Died Again

After two previous bills stalled in the House and Senate committees, the Senate Education Committee used a sharply divided voice vote to approve a bill repealing the Common Core standards in education adopted by the State Board of Education on April 17. The victory, however, was short-lived. Barely a week later, Senator Marsh announced that the effort to repeal the Common Core curriculum standards is "off the table" for this legislative session but is likely to come back next year. Senator Marsh, who voted twice in committee to repeal Common Core, said there are many conflicting views and not enough time to study them in the remaining days of the session. Senator Scott Beason, who sponsored the legislation, had expected the full Senate to consider his bill after it passed committee. After a pro-Common Core rally, which drew 300 educators and business leaders on the Capitol steps, Senate leaders did not put it on the agenda.

The Common Core standards were developed by the National Governors Association and the Council of State School Officers to improve public schools through more rigorous requirements for math and English that would be followed across state lines. Proponents said they would help students in an increasingly mobile society, particularly military students moving from state to state.

Business interests, including leaders of the Birmingham Business Alliance, the Chambers of Commerce in Huntsville, Montgomery and Mobile and the Business Council of Alabama, support Common Core. Conservative opponents disagree with the requirement that states seeking federal Race to the Top grants would be scored in part on whether they adopted the Common Core standards. They also fear the nationalization of public education and a loss of local control as well as the possibility that those standards will lead to personal information about Alabama students and their families being shared with the federal government. The issue will likely be revisited in the 2014 Regular Session as well as the 2014 elections.

Payday Loan Legislation Disappoints Both Sides

A Senate committee passed payday loan legislation that would reduce the rates payday loan firms can charge and limit the number of loans customers can take out per year. The bill originally capped the interest rates payday lenders can charge from 456 percent APR to 326 percent APR and limited the number of loans an individual can take out to six per year. Changes to the legislation increased the maximum interest rate to a maximum of 391 percent APR and the number of loans an individual can take to eight. It also created a central database to keep track of consumer loans. The bill now goes to the Senate.

Workers' Compensation Reform Legislation Carried Over While Talks Continue

The Senate Business and Labor Committee carried over a bill that provides for workers' compensation reform. The legislation is a comprehensive package that lessens the cost burden to businesses, including the cost of medical and prescription drugs. The bill increases the permanent partial disability cap for injured workers and sets forth clear obligations of the Department of Labor to implement and administer the workers' compensation law. Estimated savings to businesses across Alabama is in the millions of dollars. As talks between interested groups continue, legislators hope to see compromise in the legislation.

Bill To Broaden Nurse Practitioners' Prescription-Writing Ability Moving Forward

The House Health Committee approved a bill allowing certified registered nurse practitioners and certified nurse midwives to prescribe certain controlled substances. The state Board of Medical Examiners would issue the certificates allowing the nurse practitioners and midwives to prescribe Levels 3, 4 and 5 controlled substances. Collaborative practice agreements with physicians would be required. The bill already passed the Senate. It now moves to the House, where it is expected to receive final passage.

House Subcommittee Passed Provider "Conscientious Objector" Legislation

On a voice vote, the House Healthcare Costs Subcommittee passed a bill that would allow health care employees to opt out of working on medical procedures for moral reasons, such as abortions. The bill would protect an employee, who exercises his or her conscience, from retribution or discrimination by his or her employer. The employee must provide written advance notice of his or her objection. The vote of the subcommittee moves the bill to the House Health Committee. The Senate version of the bill is currently in the Senate Health Committee.

Birmingham Water Works Bill Advances

While the House Committee on County and Municipal Government conducted a public hearing, the Senate Commerce, Transportation and Utilities Committee approved the Birmingham Water Board bill. This legislation would apply to municipal water works boards that serve water customers in two or more counties other than the one where the authorizing municipality is principally located. The legislation would:

6. provide for the appointment to the board of an additional member by the county commission of each county where water customers are served, other than the county where the authorizing municipality is principally located;
7. limit the term of all board members to two six-year terms;
8. limit the compensation and expense allowance of the board members;
9. specify that the board members be covered by the State Ethics Law; and
10. provide for notice and a public hearing prior to the board adopting any rate increase.

The Senate version now moves to the full chamber for consideration. The House version awaits action in Committee.

In Other News...

Ex-State Senator Lowell Barron Arrested

Former state Senator Lowell Barron was arrested for allegedly illegally transferring campaign funds for a former campaign staffer's personal use. The former staffer, Rhonda Jill Johnson, was also arrested. The indictment accuses Barron and Johnson of violating the State Ethics Law by converting checks of \$50,000 and \$2,000 that were written on the Barron for Senate campaign account to Johnson for personal use. Barron and Johnson both face a maximum penalty of 20 years in prison and fines of up to \$30,000 for each of the six counts charged. Barron says he reported all the transactions on his campaign finance reports and said they were legitimate transactions to compensate Johnson for her work.

Supreme Court Judge Mike Bolin Returns to Jefferson County as Lead Attorney

Alabama Supreme Court Justice Mike Bolin has been selected to replace Jefferson County's lead attorney Jeff Sewell, who retired "involuntarily" this month after a majority of commissioners voted to terminate his employment. Bolin, a former county probate court judge, was elected to the state's high court in 2004 and re-elected in 2010. His current six-year term expires in 2016.

The Alabama State Public Policy Team will continue to monitor all proposed and pending legislation and maintain a presence in the State House throughout the legislative session.

¹ The Senate version excluded dentists from regional care organizations.

² In January of 2013, a report detailed allegations of sexual abuse of prisoners by correctional officers. The U.S. Justice Department has opened an investigation of the facility.