

PUBLICATION

Alabama Legislative Update – Week 10: Slow and Steady Movement by Senate and House

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As the Alabama Legislature moves closer to adjournment, legislation is making slow but steady progress. Tuesday and Thursday marked the 21st and 22nd days of the 2013 Regular Session. With only eight legislative days left and significant legislation still awaiting passage -- and with the revival of some bills that were thought to be dead -- lawmakers intend to increase the pace. Somewhat prophetically, the Legislature took a shorter day on Thursday to honor a slain Mobile police officer and other law enforcement officers for their work, mere hours before the hunt for the Boston marathon bombers commenced. Both chambers will convene for the 23rd legislative day on Tuesday at 1:00 p.m.

Senate Action

Legislators Make Changes to Alabama Accountability Act

Senate President Pro Tem Del Marsh and other state officials are considering proposed changes to the education reform legislation, better known as the Alabama Accountability Act. The changes announced during a public hearing on Tuesday, April 16 would alter the standards that provide tax credits to families who move students from failing schools to non-failing public or private schools, including narrowing the definition of a failing school.

The question of whether families of students zoned for failing schools but currently enrolled in private schools would be able to claim the estimated \$4,200 income tax credit is still a point of contention and confusion among legislators and education officials. Marsh, who championed the legislation and is widely regarded as the man who devised the plan by which it passed, said it was his understanding the Alabama State Department of Education (ALSDE) and the Department of Revenue had determined those students would not be eligible. The Alabama Department of Revenue issued a statement that the matter was under review and "no final determinations" had been made. The ALSDE is reviewing the substitute.

The amended version of the bill clarifies some parts of the new law that raised questions. The bill makes clear that a failing school is listed in the lowest ten percent of public schools on the state standardized assessment in reading and math for three consecutive years or has earned an "F" or three consecutive "Ds" on a school grading system that is being developed. It also provides that if a student transfers from a failing school to a private school, the failing school will not lose all the state funding that it had previously received for that student. Instead, it will get to keep about one-fifth. Another provision requires that a student in a failing school who wants to transfer to a non-failing public school must first attempt to enroll in a non-failing school in his local school system before attempting to enroll in a school outside his own system. The bill also provides that no public or private school shall be forced to enroll a student merely because the student's parent receives an income tax credit under the new law. The bill also stipulates that the new tax credit law cannot override school desegregation orders. Senator Dick Brewbaker also made clear he would introduce an amendment clarifying that private school students zoned for failing schools could receive the credits. The committee did not vote on the changes Tuesday.

Payday Loan Legislation Introduced

Last week, the House Financial Services Committee effectively killed two bills that would have capped payday and title loan interest rates at 36 percent by referring the legislation to a subcommittee, a place where bills go to die. Marsh, however, was not ready to let the issue go. He introduced a new bill that would cut the interest rates charged by payday loan companies, limit the number of payday loans individuals could take out and create a central database to track individuals' loans. The bill would prohibit borrowers from taking out more than six loans per year and would reduce fees from \$17.50 per \$100 borrowed to \$12.50 per \$100 borrowed. Payday loan companies would also be forbidden from extending loans to individuals who have already taken out \$500 in loans. Stephen Stetson, an analyst with Alabama Arise, which supports payday and title loan reform legislation, said that would cut the maximum APR on payday loans from 456 percent to 326 percent. Title loan operators, however, could still charge up to 300 percent APR on the loans they offer as Marsh's proposed legislation only addresses payday lending. Licensees would also be forbidden from threatening customers, from making collection attempts at unreasonable hours of the night or from denying the customer use of personal property not secured in the loan. The bill is a result of collaboration with State Banking Superintendent John Harrison. With only eight days left in the Regular Session, Marsh has deemed this bill "a priority piece of legislation".

Nurse Practitioners Allowed Prescription Power

By a vote of 27-1, senators passed legislation that would allow certified registered nurse practitioners to prescribe certain drugs. The bill would allow the practitioners, operating under the supervision of a collaborating physician, to prescribe certain painkillers, antibiotics and other medicines that they currently cannot. Certified registered nurse practitioners are registered nurses who get a graduate degree in a nurse practitioner program and national certification. Proponents of the bill maintain that patients in rural areas often depend on nurse practitioners as a first option for health care because they have to drive some distance to see a physician. Although practitioners can prescribe certain medicines now, there are limitations on prescription writing. It would allow practitioners and midwives to be certified to prescribe Level 3, 4 and 5 drugs. The bill would also apply to nurse midwives. The bill now moves to the House of Representatives, which has already passed a similar measure.

Repeal of Common Core Standards Revived

The repeal of Common Core Standards, widely regarded as virtually dead this session, has seen new life and scored its first win in the legislative process. The Senate Education Committee, in a sharply divided voice vote, approved a bill to repeal the standards adopted by the State Board of Education. Earlier in the session, two similar bills were effectively killed in the House and Senate Education Committees. Before the voice vote was taken, Senator Bill Holtzclaw offered an amendment that would have kept the standards in place but would have prevented the State Board of Education from ceding control over Alabama standards to anyone outside of Alabama. The Holtzclaw amendment failed on a 5-4 vote with one abstention.

The Common Core standards were an initiative of the National Governors Association and the Council of Chief State School Officers. The standards set more rigorous goals for reading and math across the United States. Alabama's Board of Education adopted them in late 2010 and made them part of Alabama's College and Career Ready Standards for K-12 schools. Supporters of Common Core maintain that it standardizes the basics for all students to learn and is essential as families move from state to state, especially military families. Opponents, including Governor Bentley, fear federal intrusion into state-run education and reject the notion that the availability of federal funds to states is tied to the adoption of the national common core standards. The bill now heads to the Senate, where Marsh has predicted it will likely reach the floor and has a "very good" chance of passing.

Grandfather Provision to Double Dipping Law Approved

In 2010, the new Republican majority banned double dipping, effective November 5, 2014. Currently, several lawmakers continue to work as state employees and educators and would be affected by the change next year. Marsh has introduced legislation that would "grandfather in" those legislators who are already serving in both positions and allow them to continue to serve after the 2014 election, when the prohibition on holding both positions begins. On a non-roll call vote, the Senate Education Committee approved the bill, which would allow legislators who worked for public schools, colleges or state agencies on December 1, 2010, to continue to hold those jobs beyond the 2014 deadline. House Speaker Mike Hubbard has stated that his position has not changed since they passed legislation in 2010 to end the practice of double dipping.

Grocery Tax Bill Advances

A Senate committee approved a bill that would eliminate the state sales tax on food. The proposal would lower the four-cent state sales tax from food purchases by one cent per year. It would replace the lost revenue, more or less, with quarter-cent increases, yearly for the next four years, on sales tax on all other items. City and county taxes on groceries would remain in place. While other states impose sales tax on food, Alabama and Mississippi are the only states that tax food at the full rate. Critics say it imposes an undue burden on people in poverty, who spend a higher percentage of their income on food. Some committee members were troubled about the effect a general sales tax increase would have on non-grocery stores. After members expressed concern that cities and counties would simply make up the difference by passing their own taxes on food, bringing the cumulative grocery tax back up to its current level, they suggested a provision be included to place a cap on local sales taxes on food. The sponsor, Senator Gerald Dial, would not do so. The bill now moves to the Senate for consideration.

Independent Tax Appeals Commission Goes to Senate

The Senate Fiscal Responsibility & Accountability Committee gave a favorable report to a bill that will create an independent tax appeals tribunal, separate and apart from the Department of Revenue, and updates the Alabama Taxpayers' Bill of Rights to conform to provisions of federal law and to promote tax fairness and compliance. The bill further provides that the governor will select successive tax appeals judges from a list of five qualified candidates recommended and vetted by a select nominating committee.

Home Brewing Bill Moves Forward

By a vote of 3-2, the Senate Job Creation and Economic Development Committee gave a favorable report to a bill to legalize home brewing. The bill passed the House earlier and now goes to the Senate for a final vote.

Workers' Compensation Changes Introduced

Marsh introduced an 85-page bill that would make substantial changes to the Worker's Compensation law and will likely put some business interests at odds with health care providers. One of the provisions would cap workers' compensation for medical payments. Due to its introduction late in the session, most observers believe the bill will not proceed far this session but will likely be introduced and fully debated in the 2014 Regular Session.

House of Representatives Action

Proposed General Fund Passes House Committee

The House Ways and Means General Fund Committee approved a proposed \$1.7 billion budget. The budget provides an additional \$10 million for the State Employees' Insurance Board, in anticipation of an expected

insurance rate hike for state employees this year. Governor Bentley had sought an extra \$20 million for Department of Corrections (DOC), which was reduced to \$17 million in the Senate. The House committee cut it to a little over \$13 million. DOC must cover mandatory increases for retiree costs and health insurance for prisoners. Accordingly, plans to hire additional correctional officers and make security improvements to Julia Tutwiler Prison for Women will not proceed. The committee approved a \$108.3 million budget for state courts, about \$5 million more than what the system was set to receive but far below the \$125 million court budget from 2012. Last month, Alabama Chief Justice Roy Moore, blaming budget constraints, closed circuit clerks' offices to the public on Wednesdays. Alabama Department of Environmental Management (ADEM) Director Lance LeFleur has stated that, if additional funds are not included in the budget for ADEM, he will seek a permit fee increase to fill any gaps.

House Leaders Unveil School Safety Plan

After the school shooting in Newtown, Hubbard called for a joint hearing of the House and Senate Education Policy Committees, where members of the law enforcement and education communities shared their perspectives with lawmakers. Based on those insights, House leaders unveiled plans to move forward with proposals that would sell and issue up to \$50 million in bonds for equipment to secure schools; require schools to have active shooter and intruder drills; create a crime for trespassing on a school bus; and allow school districts to hire certified, trained officers as resource officers. Hubbard feels confident the proposals will pass. The recommendations include:

- up to \$50 million in bonds for schools to buy necessary equipment and make renovations so they can secure all entrances;
- replacing existing "fire drills" with "emergency drills" that would take into account other situations besides just fires, having at least one per semester designated as a "code red" drill to prepare schools for a threat of violence that would cause a lockdown;
- creating a new crime for trespassing on school buses, a measure inspired by the Dale County crisis, when a man entered a school bus, killed the driver and held one student hostage;
- requiring schools to offer all employees the opportunity to take an active shooter preparation course so teachers and staffers know what to do in the event of a shooting; and
- increasing funding for Virtual Alabama, a program that lets emergency responders see maps of schools, hospitals and other public locations when responding to an emergency.

Placement of Armed Guards in Schools Considered

A bill has been introduced that would not mandate placement of security guards in schools but would give education officials the discretion to do so. The legislation would require said guards to be certified by the Alabama Peace Officers' Standards and Training Commission and undergo special active-shooter training. Governor Bentley vetoed a bill that would have allowed armed volunteers in rural Franklin County -- reversing a previous statement -- on the grounds the bill did not provide specifics for required training guards would undergo.

Medicaid Reform

Alabama Medicaid Overhaul Moves to House and Senate Chambers

On dual voice votes within hours of each other, the House and Senate Health Committees approved legislation to transform the state's Medicaid program. The committee chairmen, Representative Jim McClendon and Senator Greg Reed, sponsored the Medicaid-revision bills. Their bills allow the Medicaid Agency to authorize regional care organizations to manage the health care of approximately 940,000 Medicaid recipients and avoid

costly emergency room visits for routine care. The substitutes removed the original concept of allowing up to eight regional care organizations.

The legislation would revamp the way the state delivers services in the health care program for the poor, changing from a fee-for-service model in favor of a network of locally run managed care organizations. Supporters believe the proposal will "move the risk" to the regional care organizations. "We will send them X amount of dollars per patient. It will be up to them then to put the provider networks together and pay the providers," McClendon said. State Health Officer Don Williamson said the organizations would have a financial incentive to manage patient care to decrease expensive emergency room visits and other costs. Federal rules covering mandated services would still apply. While the number of regional care organizations has yet to be determined, regions must be drawn by this fall and governing boards appointed within a year.

The House Ways and Means General Fund Committee also approved, by voice vote, two Medicaid-related bills. The first would extend the Medicaid nursing home supplemental privilege assessment and monthly surcharge for two years. The second would extend the hospital Medicaid assessment for three fiscal years but would allow alteration after two years if Congress mandates other changes. The Senate Finance and Taxation General Fund Committee also passed a House-approved bill making Medicaid fraud a Class C felony. The bill would appropriate \$250,000 each of the next three fiscal years to the Attorney General's Medicaid Fraud Control Unit and appropriate \$1 million next fiscal year to the Alabama Medicaid Agency. The \$1 million will pay for an upgraded Medicaid information system that will screen each Medicaid application for fraud or errors, according to the bill's synopsis.

Innovator Liability Reform Proposed

Legislation aimed at preventing brand-name manufacturers from being sued by consumers who use a generic version of their product made by a different company has been introduced in the House. The bill's sponsor, Representative Jack Williams, Chairman of the House Commerce and Small Business Committee, plans to get the bill through his committee and on a fast-track for approval. Williams said he is sponsoring the bill to address a January decision by the Alabama Supreme Court that a brand name manufacturer -- or innovator -- can be held liable for injuries suffered by someone who used a generic equivalent of the product made by a different company.

Bill Limiting Legal Fees Passes House

By a vote of 69-26, the House passed the Transparency In Private Attorney Contracting (TIPAC) bill. The legislation promotes a uniform set of standards and requires that government attorneys control state litigation, rather than private attorneys who have a financial interest at stake. It also requires a state agency to explain why it would be in the state's best interest to hire outside counsel on a contingency fee basis. It sets a tiered fee structure to ensure it is for the public good and not private profit. The bill requires annual reports on contingency fee counsel so lawmakers and the public can review the practice. The bill does not include attorneys hired on an hourly basis by the state. Hourly agreements with private attorneys are already transparent and readily available for public review. An amendment was proposed and accepted to allow the attorney general to seek a waiver to the contingency fee limits in the event of extraordinary circumstances by certifying, in writing, to the governor why a waiver is necessary. The governor could either reject the waiver or certify it in an Executive Order. The bill now moves to the Senate for consideration.

Capital Credit Legislation Reducing Standard from 100:100 to 50:50 Receives Favorable Report

The House Economic Development and Tourism Committee passed legislation lowering the eligibility standards for capital credit. The current requirements for a new or expanding industrial project to qualify for

capital credit are a minimum of \$100 million invested and a minimum of 100 new jobs created. The proposed legislation will lower those levels to a standard of at least \$50 million invested and at least 50 new jobs created. It is expected that the lower eligibility thresholds will encourage a number of companies to give the "go ahead" to mid-size projects in the planning stage. The bill also amends a provision that would extend the carry forward of the capital credit from the current four years to a total of five years.

In Other News...

Democrat Party Chairman Resigns

Democrat Party Chairman Mark Kennedy announced his resignation. Kennedy has been in a heated fight with Vice Chairman Joe Reed, a long-time party fixture and the head of the Alabama Democratic Conference, which is the state's largest African American political organization. No successor has been named.

Brunson White Tapped to Be First IT Secretary

Governor Bentley appointed retired Energen Senior Vice President Brunson White as his Information Technology Secretary, a cabinet position created by the Legislature earlier in the session.

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.