

PUBLICATION

Alabama Legislative Update – Week 5: "Right to Work" Amendment Passed

March 12, 2013

In the wake of the controversy surrounding the passage of the Alabama Accountability Act, the legislative process slowed considerably in the State House. However, there was some movement on a few significant pieces of legislation.

Passed Senate

"Right to Work" Constitutional Amendment Passes Senate

By a vote of 21-10, the Alabama Senate approved legislation that would add the state's right-to-work law to the Alabama Constitution. The proposed constitutional amendment provides that "an employer may not require a person, as a condition of employment or continuation of employment, to pay dues, fees or other charges of any kind to any labor union or labor organization." The proposal follows voter approval of a similar amendment in 2012 that prohibits the organization of a union in Alabama by having a majority of employees sign a card. Instead of a card check process, a vote by secret ballot is the only method available. The bill now goes to the House. If passed there, Alabama voters will vote on the amendment in the 2014 general election.

Committee Action

Senate Judiciary Passes Omnibus Gun Bill

Despite concerns voiced by the business community and law enforcement, the Senate Judiciary Committee swiftly passed an omnibus gun bill. If approved in its current form, the legislation would provide, among other things, that no employer may prohibit the otherwise lawful possession, transportation or storage of firearms or ammunition that is kept out of sight within a locked or attended private vehicle of an invitee who is otherwise permitted to operate or park that vehicle on the property. This would allow employees to carry a firearm during their commute to and from work. The bill now goes to the Senate for consideration. Legislative leaders, however, have indicated that the bill will not move forward until the concerns of the business community are addressed.

General Fund To Include \$48 Million From Trust Fund and Possible Tobacco Monies

The Senate Finance and Taxation General Fund Committee passed a budget bill appropriating less from the General Fund for fiscal 2014 than is expected to be spent this year. The budget does not include pay raises for state employees. The budget includes \$48 million from a tobacco company arbitration settlement that would be split among agencies. The Alabama Medicaid Agency would get the largest share, approximately \$17.4 million, and be level-funded. The Department of Corrections would get the next largest share, approximately \$11.1 million. State agencies reportedly have seen costs increase by about \$71 million due to rising employee health insurance and about \$27 million in rising costs for the employee retirement system. The budget also includes \$146 million that will be transferred from the Alabama Trust Fund under a constitutional amendment approved by voters in September. Lawmakers included \$5 million as the first installment to repay the trust fund under a plan approved by lawmakers. The plan calls for the money to be repaid by 2026.

The Senate budget substitutes Governor Bentley's proposed budget. It now moves to the Senate for consideration.

General Fund appropriations for fiscal year 2014 include:

- Medicaid Agency: \$615.1 million, same as fiscal 2013
- Department of Corrections: \$392.1 million, up from \$372.8 million
- Department of Mental Health: \$104.7 million, same as fiscal 2013
- Judicial system: \$102.3 million, down from \$102.8 million
- Department of Public Safety: \$53.8 million, down from \$54 million
- Legislative agencies: \$33.2 million in fiscal 2014, down from \$37.1 million

Senate Committee Passes Bill To Allow Private Development Of Gulf State Park

The Senate Tourism and Marketing Committee passed a bill that would pave the way for the construction of a major hotel and conference center at Gulf State Park in Gulf Shores. The legislation would provide for the use of proceeds from the proposed lodge and convention center to fund state park projects through the State Conservation Department. The committee passed several amendments to the legislation, including one that would require a 12-member joint oversight committee to meet and discuss any business proposals before they are acted upon. The committee also unanimously added an amendment to prohibit gambling of any kind on the property. By a vote of 5-2, the bill advances to the full Senate.

Senate Committee Postpones Vote On Common Core Standards Until Next Week

The Senate Education Committee delayed voting on a bill to overturn the State School Board's adoption of Common Core curriculum standards. House Bill 190 would also require legislative approval for all future statewide standards passed by the board and limit the sharing of student and teacher data with entities outside the state. Forty-five states, the District of Columbia, four U.S. territories and the Department of Defense Education Activity have adopted the standards. In 2010, Alabama adopted the standards for math and English.

House Committee Delayed Action On Medicaid Reform

The House Ways and Means General Fund Committee carried over three Medicaid bills drafted to reform Medicaid into a more efficient and affordable health care network. HB 370 would cap General Fund appropriations for Medicaid contingent on passage of legislation establishing proposed Patient Care Case Management Networks across the state. HB 371 would require Medicaid to seek a waiver from the Centers for Medicare and Medicaid Services to increase Medicaid recipient co-payments for health care services. HB 372 would abolish the legislature's Medicaid Joint Interim Committee and the Permanent Joint Legislative Committees on Medicaid Policy and would create the Permanent Joint Medicaid Committee. Governor Bentley created the Medicaid Advisory Commission to reform Medicaid by improving financial stability and patient care. The commission, chaired by State Health Officer Dr. Don Williamson, recommended regional, community-based managed care for Medicaid recipients. Dr. Williamson has stated the current system encourages expensive hospital emergency room utilization and does not encourage physician and patient interaction to improve health.

Irrigation Tax Credit Bill Clears House Committee

The House Ways and Means-Education Committee passed legislation revising a similar irrigation tax credit bill passed in the 2012 Regular Session. This bill will encourage more withdrawals from major rivers for the purposes of irrigation. The current legislation would:

- Reduce the size of a water body that qualifies for a tax credit without building an off-stream reservoir from 10,000 to 8,000 cubic feet per second (cfs).
- Allow tax credit to be spread over five years.
- Add language to describe how the tax credit is distributed among members of a partnership that owns a farm.

Related Judicial Actions

Alabama Accountability Act Lands In Court

The Alabama Education Association (AEA) filed a lawsuit in Montgomery County Circuit Court over the Alabama Accountability Act, arguing that the legislature violated Alabama's open meetings law and its own legislative rules when it passed the bill to provide tax credits to parents who take their children out of failing public schools and send them to non-failing schools or private ones. At the plaintiff's request, Judge Charles Price issued a temporary restraining order ruling that prevented the transmission of the legislation to Governor Robert Bentley. Within hours of Judge Price's decision, lawmakers filed an appeal to the Alabama Supreme Court, asking the high court to determine whether Price erred in blocking transmission of the bill from the legislature to the governor. Barring action by the Alabama Supreme Court, the temporary restraining order will be in effect until March 15, when Judge Price plans to rule on the AEA's request for a permanent injunction.

Legislative leaders introduced in a conference committee a revised version of the Local Control School Flexibility Act that included tax credits for families and deductions for individuals and companies contributing to scholarships to private schools. Judge Price agreed with the AEA that the tax credits constituted a new appropriation of money, in violation of Rule 21 of the Joint Rules of the Alabama Legislature. Attorneys representing President Pro Tem Del Marsh and Senator Gerald Dial, a member of the conference committee, argued that the judge could not rule on an Open Meetings Act violation because "the interpretation, application, and enforcement of the Legislature's self-created and self-imposed internal rules are solely within the province of the Legislature, unless there is a clear conflict with some specific constitutional provision." Attorneys for named legislators maintain no private meeting took place.

The legislators' appeal asks the Alabama Supreme Court to consider whether the Montgomery Circuit Court has the power to block the signing of the bill, but does not ask it to decide whether Rule 21 or the Alabama Constitution was violated. It further asks that the appeal be moved directly to the Alabama Supreme Court, beyond the Court of Civil Appeals, because of the "enormous public importance" of the measure.

The bill defines a "failing school" as one designated as such by the state superintendent; as receiving an 'F' or three straight 'Ds' under a system still being developed by the Alabama Department of Education; or for finishing in the bottom 10 percent of standardized testing scores, effectively creating a permanent class of failing schools. The bill caps deductions from contributions made to scholarship organizations at \$25 million but does not cap tax credits claimed by families of students in failing schools.

Supreme Court Action

Chief Justice Orders Circuit Clerk Offices Closed on Wednesdays

Beginning March 20, circuit clerk offices in Alabama will be closed to the public on Wednesdays. Alabama Chief Justice Roy Moore issued an order stating that staff work hours should not be altered, even though the offices -- both circuit and district clerks' -- will be closed to the public. The order also calls for a drop-box the public can use to accommodate time-sensitive filings. Chief Justice Moore cites the \$25 million cut in state funding for courts for fiscal year 2013 as the rationale for the change. He also states that an expected offset appears to be about \$13 million short for the current year and beyond in addition to a \$16.5 million shortfall in fiscal year 2014. According to a pending version of the General Fund budget making its way through the Senate, the court system will receive the largest increase of any appropriation.

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.