

PUBLICATION

Alabama Legislative Update – Week 12: Gun Bills, Budgets and Medicaid

May 06, 2013

Last week, legislators turned their attention to the weightiest and most controversial issues, including debate and passage of several gun bills. Now, with only three legislative days remaining, both budgets will take priority while the Medicaid overhaul still awaits final action. Heading into the home stretch, legislators will again work late into the night to finish before the clock runs out on the thirtieth day.

Gun Legislation

Gun legislation dominated much of the legislative activity, spurring hours of debate and producing passionate speeches on several different bills.

Senate Passed Strong States Rights Legislation

The Alabama Senate passed legislation stating, "all federal acts, laws, orders, rules or regulations regarding firearms are a violation of the Second Amendment." It also states federal laws in violation of the Second Amendment shall be considered null and void in Alabama. The vote was 24-6. The bill's sponsor said he was not trying to declare all federal gun laws void. He hoped, however, that if Congress were to pass gun controls, the legislation would permit the state attorney general to issue an opinion that the law was unconstitutional and then Alabama law enforcement officers could refrain from enforcing it. To take effect, the bill would have to pass the Alabama House of Representatives and be signed by Governor Bentley. With only three legislative days left, few expect the House to pass the legislation.

Senate Passed Bill To Allow Security Personnel In City and County Schools

The Senate also passed legislation to allow all city and county school systems to hire armed officers through their local sheriff and police departments to provide security in public schools. That bill must also pass the House and be signed Governor Bentley to become law. The legislation is a recommendation included in the House School Security and Student and Teacher Safety Report.

House Approved Strict Scrutiny Test For New Gun Laws

After being temporarily carried over earlier in the session, the House approved a proposed constitutional amendment that would require Alabama's courts to use "strict scrutiny" when reviewing any gun control law passed in the future. Such scrutiny would require proponents to show a compelling interest for the regulations and they must be narrowly tailored. The legislation also states that no international treaty could interfere with an individual's right to bear arms. The vote was 76-22. The bill must now pass the Senate. Voters must then approve the legislation in a statewide referendum. The constitutional amendment is the final bill included in the Republican House Caucus 2013 Legislative Agenda.

Comprehensive Gun Legislation Received Final Passage

After several hours of debate, the House granted final passage to comprehensive and compromised gun legislation by a vote of 74-27. The bill changes state law regarding concealed carry permits, guns in workplace parking lots and carrying guns in public. The House version:

- clarifies that Alabama is an open carry state by stating that the mere carrying of a visible, holstered pistol in public is not a crime of disorderly conduct.
- changes the law regarding carrying a pistol in a vehicle. A concealed carry permit would still be required to carry a loaded pistol in the car. A permit would not be required if the pistol is unloaded and locked in a compartment that is attached to the car and out of reach of the driver and passenger.
- allows concealed carry permits to last for five years instead of just one. Fees increase for multiple year permits.
- states that sheriffs "shall" issue a concealed carry permit unless the sheriff has a reasonable belief the person would be a danger because of past behavior. The sheriff, unless it would interfere with a current investigation, would have to give the person a written explanation of the reason. There would be an appeals process for denials.
- states that business owners are justified in the use of deadly force if someone is about to use physical force against the owner or employee while committing a robbery or other violent crime.
- provides employers may not prohibit employees from bringing guns into workplace parking lots provided the firearm is out of sight and the car is locked. A concealed carry permit would be required for pistols. A shotgun or hunting rifle could only be carried during hunting season and would require a valid hunting license. The bill gives businesses legal immunity for any gun-related incidents that might occur.

The House compromise bill is significantly different from the Senate bill passed earlier in the session. The current legislation will now return to the Senate, where lawmakers can accept the changes or send it to a conference committee.

Passed Both Houses

Gulf State Park Bill Passed Legislature; Project Set To Receive \$85 Million In Oil Spill Restoration Funds

Legislation to allow private development of the Gulf State Park received final passage in the House. A new hotel and convention center will be built on the 29 acres of state-owned beachfront property. Governor Bentley was in the House soon after the vote to congratulate members and thank them for passage.

If enacted, a projects committee will begin to decide the best way to choose who will build the resort. The governor is given wide latitude to choose the type of entity that will partner with the state to develop property. A request-for-proposal process will start after a financial analysis is completed later this year.

Earlier in the day, before the bill was passed, Governor Bentley announced that \$85 million of BP oil coastal reclamation funds would be used on the hotel development and other enhancements at Gulf State Park. Under the Natural Resources Damage Assessment restoration process resulting from the Gulf oil disaster, the money must be spent on certain types of projects in Mobile and Baldwin Counties. Those funds are not part of the proposed BP oil spill lawsuit proceeds.

Historic Tax Credit Legislation Goes To Governor

By a vote of 28-1, senators granted final passage to a bill that provides a tax credit of 25 percent of the qualified rehabilitation expenditures that improve "certified historic structures" and provides a tax credit of 10 percent of the qualified rehabilitation expenditures made to improve "qualified pre-1936 non-historic

structures." The aggregate annual cap of all credits allowed for historic structures shall not exceed \$30 million. Upon the enactment of this legislation, Alabama would join 31 other states that have established tax credits for the preservation of historic structures. The legislation now awaits the Governor's signature.

Legislature Reduces Hazardous Waste Fees

A bill cuts the fees for burying hazardous wastes at Chemical Waste Management's landfill in Emelle. After the Legislature passed the bill, Governor Bentley added an executive amendment clarifying that the lower fees start June 1. The Senate voted 26-2 and the House voted 90-5 to accept the amendment and make the final legislation official. Supporters say the landfill once employed about 500 people and had little competition. Higher fees enacted in 1990, however, caused competition in other states and reduced employment to about 60. The Legislative Fiscal Office estimates that the lower fees will reduce the state's income by \$625,000 annually 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 predict the landfill will take in more than that and total fees will surpass what is currently being collected.

Prescription Painkiller Abuse Prevention Bills Passed

The Legislature passed a three-bill package to combat the abuse of prescriptions for painkillers. One bill better the tracking of prescriptions for painkillers. Another gives new authority to the state Board of Medical Examiners to crack down on abuse. The third allows law enforcement to prosecute patients who visit several doctors to deceptively obtain multiple prescriptions for the same painkillers. The package now goes to Governor Bentley for review and signature.

Law Expands Mandatory Reporting Requirement

The Legislature added physical therapists, all public and private K-12 employees, and employees of public and private institutions of postsecondary and higher education to the list of mandatory reporters of suspected abuse. Current law requires doctors, social workers, nurses, day care workers, teachers and others to report. The bill also provides misdemeanor penalties for employers who discipline or penalize employees for reporting suspected abuse. The bill now goes to Governor Bentley.

Senate Action

\$1.75 Billion General Fund Budget Bill Headed To Conference Committee

The Senate refused to concur with the House-passed \$1.75 billion General Fund budget bill. After the Senate initially passed the General Fund earlier in the session, the House changed the budget and passed its own version. The General Fund is the main source of state dollars for Medicaid, prisons and many non-education state agencies. Both houses voted to send the budget to conference committee.

While most agencies are level funded, some of the changes the House made in General Fund appropriations include:

- \$5 million more for the state judicial system
- \$1 million less for the prison system
- \$550,000 less for the Department of Environmental Management
- \$198,000 less for the Alabama Department of Commerce

Senate Debate On Education Trust Fund Postponed

With the clock running and only a few legislative days left in the 2013 regular session, lawmakers are trying to reach an agreement on the \$5.8 billion education budget and avoid conference committee. Many fear contentious discussions in conference could burn what little time is left.

Governor Bentley proposed a two and a half percent raise for education employees. The House-passed budget included a two percent pay raise. That raise would be equivalent to \$700 a year for a teacher drawing a salary of \$35,000. The Chairman of the Senate Finance and Taxation-Education Committee, Senator Trip Pittman introduced a budget substitute that reduced that pay raise to one percent and included a conditional appropriation of a one percent "bonus" to be paid if funds are available. President Pro Tem Del Marsh believes the budget will include a two percent pay raise for teachers and education support personnel. A one percent pay raise would cost about \$33 million. The bonus, if approved, would cost about \$30 million and would not include benefit costs. Teachers have not received a raise since 2008 while insurance costs increased two and a half percent in 2011.

The House also approved a \$12.5 million increase for pre-kindergarten programs, supported by Governor Bentley, which pre-K supporters say would be enough to cover an additional 2,600 students in the program. The Senate committee budget cut that funding in half. The budget substitute also doubled a projected repayment, from \$35 million to \$70 million, to the Rainy Day Account in the Alabama Trust Fund. The fund was drained between 2010 and 2012 to avoid or lessen proration.

Committee chairmen plan to meet Monday to discuss differences. Both felt confident an agreement would be reached by this week. The Senate will likely debate the budget Tuesday.

Timely Payment Bill Passed Senate

Without a dissenting vote, the Senate approved legislation that would require public agencies to pay invoices submitted by contractors within 35 days of receiving the invoice. Alabama Department of Transportation public road and bridge projects and Alabama Building Commission contracts would be excluded from the payment time limit. The bill contains language that contracts must state whether funds to pay an invoice are available or whether funds will be available only after work is completed. Prospective bidders would be able to decide whether to waive the right to speedy payment by bidding on the project. Once the funds become available, the 35-day period would start. The bill was sent to the House and assigned to the Committee on Transportation, Utilities and Infrastructure.

Senators Passed Spaceport Bill

Senators voted 24-4 in favor of a bill to set up an organization that would work to create a spaceport in Alabama. Proponents believe the bill would give the state a head start in the race for the limited number of remaining licenses the Federal Aviation Administration is offering for private spaceports. The legislation would create a new Spaceport Authority under the Alabama Department of Economic and Community Affairs, with power to seek grants and a mandate to study spaceport sites and seek a spaceport license.

House Action

Changes To Alabama Accountability Act Passes House But Stalls In Senate

While the Senate remained divided over significant overhauls to the Alabama Accountability Act, the House voted 62-40 to alter the legislation and provide that schools would not be required to accept students from failing schools.

Senators were embroiled in disagreements over an income limit on tax credits for students in failing schools, if there should be a means test on the credit and whether those credits should be extended to students currently enrolled in private schools. The changes in the bill were supposed to be debated on Tuesday but those plans were shelved when it was clear no agreement would be forthcoming, even among the Republican majority. The lack of any consensus effectively killed any chance for modification in the Senate. Tuesday, the twenty-sixth legislative day, was the last day the Senate could transmit bills to the House without unanimous consent. It is highly unlikely unanimous consent would have been given to move the bill. The Senate will now consider the changes in the approved House version of the bill.

Bill To Lengthen Voter Registration Period Goes To Senate

By a vote 67-34, the House passed a bill extending the voter registration period from 10 days prior to an election to 17 days. The measure was pushed by voter registrars around the state who said they need the additional time to finalize voter lists, but it drew strong criticism from Democrats saying it was an attempt to block minority voting. The bill now goes to the Senate. Should the bill be signed into law, opponents have already expressed their intent to file a complaint with the Justice Department to prevent the necessary pre-clearance.

Committee Action

Medicaid Overhaul Progresses

The House Health Committee easily approved Senate-approved legislation to overhaul the delivery of Medicaid services in the state. The proposed legislation would allow the state's Medicaid Agency to divide the state into regions. The agency would contract with groups known as regional care organizations (RCOs) that would deliver health care to Medicaid recipients under a capitation (per head) model. Medicaid could also contract with the RCOs to pay a lump sum for health care services and incentivize them to deliver services more cheaply or efficiently. Nursing home residents on Medicaid would not be immediately included in the new model. Dentists who deliver Medicaid services would also be excluded. The bill now goes to the full House and is first on the proposed Special Order Calendar when the House reconvenes.¹ The Senate Finance and Taxation General Fund Committee favorably reported two Medicaid-related bills and sent them to the full Senate. The bills relate to voluntary Medicaid provider taxes or assessments. One would extend the Medicaid nursing home supplemental privilege assessment and monthly surcharge for two years. The other would extend the hospital Medicaid assessment for three fiscal years but would allow for a change after two years if Congress makes changes.

House Committee Passes Bill To Replace AEA Chief On Retirement Board With Four-Year College Representatives

The House Education Ways and Means Committee altered and passed legislation that would add two representatives of four-year colleges to the Board of Control of the Teachers' Retirement System, which oversees educators' state pensions. The changed bill also reinstated language, deleted by the Senate, to remove the AEA executive secretary and an elected support personnel representative. The bill sponsor maintains that leaving an AEA official on the board would make it too large with 15 members and K-12 education has adequate representation.

The bill now goes to the full House for consideration.

House Committee Approves Measure To Drug Test Certain Welfare Recipients And Ban Non-essential Purchases

The House State Government Committee approved a Senate-approved bill to drug test welfare recipients with a history of drug offenses. After their first positive test, the person would get a warning. After a second, the person would lose benefits for a year. After a third, benefits would be lost permanently. The recipient's children would not lose benefits but would be routed through a third party. Members also passed a bill to prohibit people from using welfare benefits to purchase alcoholic beverages, tobacco products, lottery tickets and from using those benefits in bars, casinos, tattoo facilities, psychic parlors or strip clubs. Under legislation signed by President Barack Obama, states were required to prevent benefits from being used at liquor stores, casinos and strip clubs. While the bill parallels new Congressional requirements, it goes even further. Both bills now move to the floor of the House of Representatives.

TIPAC Bill Passes Senate Committee

The Senate Governmental Affairs Committee gave a favorable report to the House-passed TIPAC bill (Transparency in Private Attorney Contracting). The legislation would require a state contracting agency to make a written determination that contingency fee counsel is cost effective and in the public interest. It would also require a contracting agency to request proposals from private counsel, with certain exceptions.

The bill sets tiers for contingency fees as a percent of recovered amounts ranging from 25 percent to one percent. To ensure that the private plaintiff's firm is acting in the best interests of the state, and not in the interest of their own profit, the legislation requires government attorneys to maintain control of cases and any settlement decisions. Transparency is achieved through the requirement that a copy of the executed fee contract be posted online. In addition, the private attorney must maintain time records and keep detailed records of expenses, disbursements, etc., for four years after the contract terminates. The bill has received its second reading in the Senate.

In Other News

Legislative Changes to Birmingham Water Works Board Unlikely This Session

With only three legislative days remaining, legislation to create a regionally controlled utility to replace the Birmingham Water Works Board faces an uphill battle. Sponsors, however, are already preparing to reintroduce in the 2014 regular session. The most contentious parts of the legislation involve expanding the board by adding a member from each county served by the utility including Shelby, St. Clair, Blount and Walker Counties. The bills include other reforms such as limiting board pay to \$500 a month. Board members are currently paid \$285 per meeting with a broad definition of what constitutes official meetings. They would also create term limits of two six-year periods. Mandatory notices and public hearings notices before rate increases would also be required. The City Council unanimously passed a resolution opposing legislative changes.

State Finance Director Takes Jefferson County Position

State Finance Director Dr. Marquita Davis is resigning to accept a position as executive director of the Jefferson County Committee for Economic Opportunity. Davis will remain until end of the legislative session.

Bolin Withdraws As Jefferson County Attorney

Alabama Supreme Court Justice Mike Bolin resigned as the Jefferson County Attorney just five days after being selected by a majority of the Jefferson County Commission. Bolin said further consideration and conversations with his wife motivated his decision. He will remain on the Alabama Supreme Court.

What's Next

The House of Representatives is expected to consider the proposed Medicaid overhaul while the Senate will likely begin debate on the Education Trust Fund budget.

Throughout this legislative session, the Alabama State Public Policy Team has monitored all proposed and pending legislation and maintained a presence in the State House. As legislators conclude their 2013 work and begin to lay the foundation for the 2014 regular session, we will continue working to protect and promote our clients' interests.

¹ The House version of the Medicaid overhaul passed the House on April 23 and is awaiting Senate action.