

# PUBLICATION

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## Alabama Legislative Update – Week 8: Burning The Midnight Oil

April 09, 2013

When lawmakers returned on April 2 for the second half of the 2013 Regular Session, the 16th legislative day resulted in one of the longest of the year, with both houses adjourning close to midnight and then putting in long hours throughout the week.

### Signed Into Law

#### *Airbus Tort Reform Bill Now Law*

The Alabama Commercial Aviation Business Improvement Act, the Airbus bill, received final passage in the Alabama Senate. Governor Robert Bentley signed the bill within hours of approval. The legislation sets a time limit on legal liability for commercial aircraft manufacturers for defects that could give rise to lawsuits, limiting the legal liability of large aircraft manufacturers locating in Alabama to 12 years after acceptance of a new airplane and imposing a two-year statute of limitations for lawsuits. The bill received bipartisan support throughout the process. Airbus is a subsidiary of EADS, a European aerospace company. Airbus last year announced plans to build a \$600 million, multiple-model aircraft assembly plant in Mobile that will employ 1,000 workers at full capacity.

The governor noted that the legislation is important in helping recruit suppliers for the new Airbus plant being built in Mobile. "This bill will make sure Alabama remains competitive with neighboring states in attracting supplier jobs," Governor Bentley said in a statement. "Already, Airbus will directly provide 1,000 jobs in Mobile, and more than 3,000 people will be employed in the construction phase of the Airbus facility. As suppliers move in, we can attract thousands of additional jobs as well. We want those jobs for the people of Alabama. This legislation will help us accomplish our goal."

Airbus broke ground for their \$600 million final assembly plant at Brookley Aeroplex on April 8. State, local and federal officials as well as aerospace leaders celebrated the 1,000 jobs expected to be created by the company's facility.

#### *Irrigation Tax Credits Now Law*

Legislation that made three revisions to a previous version passed last year has been signed by Governor Bentley. The law reduces from 10,000 to 8,000 cubic feet per second (cfs) the size of a water body that qualifies for a tax credit without building an off-stream reservoir. It allows a farmer to spread the tax credit over five years. The legislation also adds language to describe how the tax credit is distributed among members of a partnership that owns a farm.

### Senate Action

#### *Omnibus Gun Bill Passes*

After more than five hours of debate and a number of proposed amendments, the Alabama Senate passed controversial gun legislation that includes a mandate that individuals must be allowed to bring firearms onto

company or private property if certain requirements are met. The legislation has been fiercely opposed by law enforcement and the business community based on concerns that such legislation could lead to more violence and an infringement on private property rights.

Three amendments directly affecting businesses were offered and adopted during deliberation:

- An amendment to give absolute civil immunity to a business owner if a person disregards a posted notice of no guns at the business establishment. The person that disregarded the posting is solely responsible for any injury, damage or death occurring as a result of any actions regarding the presence or use of the firearm.
- An amendment removed a provision from the bill that would have entitled a terminated employee, who proved in a civil action that their termination was due to having a firearm stowed in their vehicle, to receive lost compensation from their employer.
- An amendment adopted by the Senate extends the "castle doctrine" to businesses. The language gives protection to business owners to use deadly force against an intruder at a business when the business is closed to the public and the intruder is committing or attempting to commit a burglary, theft or robbery.

In addition, the bill as written:

- Allows public or private employers to restrict or prohibit employees from carrying firearms while on the employer's property or while engaged in the duties of the person's employment, but employers may not restrict or prohibit the transportation or storage of a lawfully possessed firearm or ammunition in an employee's privately owned motor vehicle while parked or operated in a public or private parking area, if the firearm is kept in the motor vehicle away from ordinary observation and is locked within the trunk, glove box or interior of the person's privately owned motor vehicle or a container securely affixed to the motor vehicle.
- Prohibits public or private employers from inquiring or requiring an employee to disclose whether an employee is transporting a firearm or has stored a firearm in his private motor vehicle.
- Allows an employer to report to law enforcement a complaint that the employee's motor vehicle contains: a firearm prohibited by state or federal law; a stolen or illegal item other than a firearm; or a threat made by an employee to cause bodily harm to themselves or others and the gun is in his motor vehicle.
- Provides that a business entity is not legally liable for the actions of its employees when those actions are outside the line and scope of employment and the business entity has no duty to guard against the criminal acts of a third party, regardless of whether the acts involved the third party's use of a firearm.
- Prohibits a person from carrying a firearm inside any building or facility to which access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features, including, but not limited to, magnetometers, key cards, biometric screening devices or turnstiles or other physical barriers.
- Prohibits a person from carrying a firearm in places where the carrying of firearms is prohibited pursuant to federal law.
- Amends current law to state that the carrying of a visible, holstered firearm in a public place is not a violation of state law.
- Creates a free, lifetime revocable permit for carrying a firearm in a vehicle only. Under current law, a firearm in a vehicle is considered concealed and requires a concealed carry permit.
- States that a sheriff shall issue or renew a permit unless the sheriff determines, based upon competent evidence, that the applicant is likely to use a weapon unlawfully or in a manner that would

endanger the person, self or others. There is also an appeal process which gives a denied license applicant or an individual whose license was revoked an appeal to the District Court.

- Includes an "open carry" provision that does not restrict a person's right to carry a pistol unconcealed or not in a vehicle; creates a list of prohibited places where a firearm may not be possessed without expressed permission of the owner (examples include college and high school athletic events, courthouses and police and sheriff offices).

Senate Republicans shut off debate after Senate Minority Leader Vivian Davis Figures began a filibuster of the legislation. The bill will now go to the House of Representatives for consideration.

### *Red Tape Reduction Act Passes*

Without a dissenting vote, senators passed legislation that would require state agencies to provide a fiscal impact on the costs to a small business for implementation of a new state rule or regulation. The bill is patterned after the federal Regulatory Flexibility Act of 1980. An amendment was passed that requires any agency or department to fulfill requests for license or permit within 28 calendar days after receiving the application or notify applicant of the reason for not issuing the request. The bill was unanimously approved by the Senate. The Senate version will go back to the House for concurrence and, if approved, on to Governor Bentley for his signature.

### *Religious Liberty Clears Committee*

The Banking and Insurance Committee approved a bill, dubbed the Religious Liberty Act, which would provide that "religiously affiliated or motivated" employers could not be required to provide insurance coverage for contraception or for drugs and other methods to terminate pregnancies. It defines a "religiously affiliated or motivated employer" as a "church, ministry or other organization with religious tenets, objectives or motivations," or as any "entity that has ten or less shareholders, members or partners who have religious beliefs which oppose contraceptive or abortifacient drugs, devices, or methods." Committee members heard testimony from an attorney for the Banking and Insurance Committee that a similar law in Missouri had been struck down last month by a federal judge.<sup>1</sup> Members nevertheless passed the bill by unanimous voice vote.

The bill has already passed the House of Representatives and now goes to the full Senate.

### *Public Contracts Bill Dies In Committee*

The Senate Commerce, Transportation and Utilities Committee indefinitely carried over legislation that would have allowed public entities to use two new methods of letting out bidding out public contracts, effectively killing the bill. Currently, public contracts are awarded to the "lowest responsible and responsive bidder." The legislation would have allowed public entities to use two other methods, called construction manager at-risk (or CM at-risk) and design build, that would have allowed public entities to consider other factors in awarding contracts, such as experience and safety record. The legislation divided the membership of the state's two largest contractor organizations. Associated Builders and Contractors of Alabama (ABC) maintained the bill would save money and give large institutions flexibility to hire experienced contractors for complicated or time-sensitive projects. Associated General Contractors (AGC) sought a \$25 million threshold for projects that could use the different methods. The CM at-risk and design build proposals drew strong opposition from small and mid-sized contractors, who feared it would allow larger firms an unfair advantage in a weak market for construction. Opponents maintained the process could be subjective and steered to benefit one large contractor or company. The bill is unlikely to be reintroduced this year.

### *Emelle Bill Goes To Committee*

The Emelle Bill was sent to the Senate Energy and Natural Resources Committee. The bill, which has already passed the House, would reduce the state's base fee for the disposal of hazardous waste.

## **House of Representatives Action**

### *Education Budget Released*

The proposed Education Trust Fund budget will include a two percent pay raise for teachers and education personnel, about \$12.5 million more for voluntary pre-K programs and minor increases for two- and four-year colleges. The \$5.7 billion budget is about \$90 million less than Governor Bentley's proposal. The two percent pay raise is slightly less than the 2.5 percent the governor sought in his budget proposal, unveiled last February, but includes funding that would allow the state to offer teachers liability insurance. House Ways and Means Education Chairman Jay Love said the reduction included \$70.5 million to deal with the effects of sequestration and the impact of the Alabama Accountability Act, which will allow families with students in schools listed as failing to claim tax credits that could be used for private schools or to take the student to a non-failing public school. The budget preserves a \$12.5 million increase for voluntary pre-K programs, and gives four-year colleges \$1.02 billion, about \$5 million less than the governor's proposal. Two-year colleges would get \$317.9 million in the budget, about \$1.3 million less than Bentley's initial budget. There is a payback of about \$75 million in the budget to the ETF's Rainy Day Account, which must be paid back by 2015, but Chairman Love said that the ETF could have the ability to pay back up to \$100 million.

Chairman Love expects the House to vote on the budget next week. The FY 2014 budget goes into effect on October 1.

### *Historic Restoration Tax Credits Passes*

By unanimous vote, the House passed a bill that will provide a tax credit of 25 percent of the qualified rehabilitation expenditures that improve "certified historic structures" and it will provide a tax credit of ten 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 must not exceed \$30 million. The bill now moves to the Senate.

If enacted as currently drafted, Alabama would join 31 other states that have enacted tax credits for the preservation of historic structures.

### *Independent Tax Appeals Commission Bill Passes*

For the third straight year, the House passed a bill to 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 federal law and to promote tax fairness and compliance. The House voted 96-2 in favor of the bill which now goes to the Senate for further consideration. The legislation also 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.

### *Homebrewing Bill Passes*

After a lengthy and often passionate debate, the House moved to make it legal to brew beer at home in Alabama by a vote of 58-33.

The bill would allow people 21 and older to make up to 15 gallons of beer, wine, mead or cider every three months for personal use. It would not be legal in dry counties or dry cities. Alabama is the only state that doesn't allow people to brew small amounts of beer at home for personal use.

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.

<sup>1</sup> Last month, United States District Court Judge Sharon Lovelace Blackburn dismissed the lawsuit of Irondale-based EWTN Global Catholic Network challenging the federal mandate. Judge Blackburn ruled that it was too soon for courts to rule on the mandate because the federal government has not finalized the rules to implement it. Alabama Attorney General Luther Strange had sought to join EWTN as a plaintiff in that case, which was filed in February 2012.