

PUBLICATION

Alabama Legislative Update – Week 13: Budgets Approved, Medicaid and Tax Bills Sent to Governor Bentley

May 15, 2013

With the constitutional deadline of midnight on the 30th day closing in, Alabama lawmakers worked at a feverish pace to complete work on some of the most substantial and controversial legislation in the 2013 session. Legislative days 28 and 29 brought passage of both state budgets, a possible compromise on the gun bill and clarifying measures to the landmark Alabama Accountability Act. Both chambers still have much work left undone, especially the Senate, which suffered considerable slowdown in the wake of the Alabama Accountability Act. Hundreds of House general bills and almost 100 House local bills need final passage. After convening for marathon sessions over the last several weeks, lawmakers are taking a one-week break and returning Monday, May 20 for the 30th and final legislative day.¹

Signed into Law

Home Brew Bill Enacted

When Governor Bentley signed the Home Brew Bill, Alabama ended its status as the last state in nation to ban the making of beer and wine at home. The bill allows those 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. The law allows home brewers to take their products to tastings and competitions, but they may not sell it. Although Mississippi lifted its ban in March, leaving Alabama as the only state with a ban, the Mississippi law did not take effect for 90 days. Alabama's law goes into effect immediately. Consequently, Alabama's repeal beat Mississippi's by a few weeks.

On the Way to the Governor

Legislature Approved Both Budgets

Fulfilling their duty a day earlier than the constitutional deadline, the Alabama Legislature passed the 2014 state budgets on the 29th legislative day.

ETF Budget

The Education Trust Fund (ETF) budget, totaling almost \$5.8 billion, includes a two percent pay raise for K-12 employees, the first since 2007. Higher education employees did not receive a raise, although the budget increases their allocation. It is left to the discretion of the institution's governing body to determine if raises are feasible and warranted. The budget also provides additional funds to all levels of education and apportions an extra \$9.4 million to expand Alabama's highly-acclaimed voluntary pre-kindergarten program for four-year-olds. For the first time, the ETF budget allocates \$5 million to provide liability insurance for K-12 employees. State employees have been provided with liability insurance for years. The Senate passed the ETF budget, 22-11, and the House of Representatives concurred, 70-26.

General Fund Budget

The \$1.74 billion General Fund budget, which is 0.4 percent larger than the current year's budget, provides for the state's non-education agencies. While most agencies, including Medicaid, received level funding, the General Fund increased funding to the court system by approximately \$5 million and to the Department of Corrections by nearly \$17 million. The heads of those programs, however, maintain the increases still fall short. The court system has indicated that a layoff of more than 150 employees could be imminent. The budget does not include a cost-of-living raise for state workers, who have not received a raise since 2008. It does provide an additional \$10 million for the State Employees' Insurance Board, which may mitigate, but not eliminate, an expected insurance increase for state employees due later this year. The budget also includes approximately \$22 million in tobacco settlement money, placed into the General Fund instead of the Children's First Trust Fund. Advocates of the move said most of the money would end up in agencies the Children's First Trust Fund already supports. House members accepted the General Fund conference committee report, 74-25, before Senators approved the same, 25-5.

Medicaid Overhaul and Related Bills Headed to Governor

With little debate and without a dissenting vote, the House approved Senate legislation that would eliminate Alabama's fee-for-service model and replace it with a network of locally-run managed care organizations.

If enacted, the state will be divided into up to eight regions with a regional care organization (RCO) in each one. These RCOs would contract with the Alabama Medicaid Agency to deliver services to clients. Dr. Don Williamson, State Health Officer and Medicaid Commissioner, said the RCOs would be paid a fixed amount per patient. These entities will then have a financial incentive to coordinate patient care and make sure chronic conditions are managed so patients do not get in a medical crisis. Supporters hope that more case management will be introduced into the system, reducing utilization of emergency room services, improving the overall health of Medicaid recipients and saving the program money. The proposal is predicted to save the state \$50 - 75 million each year over what Medicaid would otherwise cost. RCOs will be free to contract with a private managed care company. The Medicaid Agency will draw the regions by October 2013, with full implementation expected by 2016.

Medicaid currently makes up more than a third of the state's \$1.7 billion General Fund budget. Due to the economic downturn, eligibility for the program has increased and consequently, costs have escalated each year. Governor Bentley supports the legislation and has indicated his willingness to sign without delay.

The Senate also passed two associated Medicaid bills. One will extend the nursing home Medicaid assessment and monthly surcharge for two years. The other will extend the hospital Medicaid assessment for three fiscal years but would allow for a change after two years if Congress makes changes.

Lawmakers Approved Changes to Alabama Accountability Act

After invoking cloture to end debate, the Senate passed a House substitute to amend the Alabama Accountability Act, 21-12. The substitute bill clarified the definitions and further outlined the qualifications and procedures for facilitating the transfer of students from failing schools to non-failing schools and the implementation of related income tax credits.

The substitute provided:

- no public or nonpublic school is required to enroll any student;

- the parents of a student who is either enrolled or assigned to attend a failing school will qualify for the tax credit;
- a "failing school" is defined as one that is persistently low-performing, does not exclusively serve a special population of students and has rated in the bottom six percent on the state standardized assessment in reading and math for three or more times in the last six years;
- 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;
- when a tax credit is paid for a student transferring from a failing school, an amount equal to 20 percent of the average per student funding provided by the state would go to the failing school;
- scholarship-granting organizations must award scholarships to low-income eligible students at a percentage that is equal to the percentage of low-income eligible students in the county where the majority of their scholarships are awarded;
- the tax credit to scholarship donors shall equal 100 percent of the contributions (originally 50 percent in the Accountability Act) made to a scholarship-granting organization and donors may not specifically designate scholarship recipients;
- the aggregate cap of the income tax credit for donations made to scholarship-granting organizations shall not exceed \$25 million annually; and
- nothing in the law affects athletic eligibility rules of the Alabama High School Athletic Association.

The bill did not address one of the most controversial questions raised about the accountability act – whether students already enrolled in private schools but zoned for failing public schools would be eligible for the tax credits. The law is retroactive to March 14, 2013. The Alabama House accepted the changes made by the Senate, 61-41. Governor Bentley has indicated that he is considering offering executive amendments to the bill. If he does, the House and Senate would have to consider those changes on the final day of the session.

Legislature Passed Historic Tax Credit

By unanimous assent, the House gave final passage to a bill that will give developers a major incentive to rehabilitate historic homes and commercial buildings statewide. The Historic Tax Credit bill provides an income tax credit of up to \$5 million over four years for qualified redevelopment projects. In order to qualify for the incentive the rehabilitation expenses for a property must exceed 50 percent of its purchase price or \$25,000, whichever is greatest. Structures certified as historic by the Alabama Historical Commission or those built before 1936 and satisfy other criteria may qualify. A "sunset provision" was included and provides that the legislation will expire in three years.

Tax Exemption Bill Approved

By a vote of 96-0, the House concurred with Senate changes to legislation that would allow sales and use tax exemptions for certain purchases by contractors working on projects for most governmental entities. The Department of Revenue will have to issue certificates of tax exemption from state and local sales and use taxes on building materials, construction materials and supplies, and other tangible personal property used on government building projects. If enacted, it would take effect on January 1, 2014.

AEA Head Removed From Teacher Retirement Board

The Legislature gave final approval to a bill that would remove the executive secretary of the Alabama Education Association (AEA) from the board governing the Teachers' Retirement System in Alabama. The legislation replaces the executive secretary with two members elected by higher education employees and increases the number of members to 15. The House voted 61-42 for the bill. The Senate agreed to a House change, 17-14.

Senate Action

Lawmakers Close to Final Passage of Compromise Gun Bill

After months of discussions and passionate debate between lawmakers and powerful political interest groups, the compromise gun bill appears close to final passage. Earlier in the session, the Senate approved a comprehensive gun bill. The House later approved a different version of a similarly sweeping bill, the result of a compromise between gun rights advocates and law enforcement. Thursday evening, a conference committee of three senators and three representatives worked out the final details.

Under the compromise, language remained that mandates that employers may not have a policy prohibiting employees from keeping firearms in their vehicles located on company property. Businesses would be immune from any civil action that is a result of an employee possessing a firearm on company property. Beyond the parking lot, loaded weapons could be carried in cars by anyone with a concealed carry permit. A driver could carry an unloaded weapon, as long as it is out of reach, even without a permit.

The bill would be changed to state sheriffs "shall issue" gun permits, instead of the current language that states "may" issue. The sheriffs, however, could reject permits upon "reasonable suspicion" the weapon might be used unlawfully or based on certain factors, such as mental illness or previous falsifications on gun permit applications. Any denial could be appealed.

Citizens can carry weapons openly in public establishments unless the owners clearly post a weapons ban. State law would still include a long list of public places, including most government buildings, where citizens could not carry concealed weapons.

Almost immediately after receiving the report, the Senate moved cloture. Without delay, the Senate approved the proposed compromise legislation, 25-5. The House is expected to concur when they reconvene May 20, the 30th and final legislative day. If the House concurs, the legislation will go to Governor Bentley for approval.

TIPAC Bill Could Pass on Final Day

The Transparency in Private Attorney Contracting (TIPAC) bill is in position for final passage. The legislation was supposed to pass the Senate Thursday night but a Democratic filibuster that lasted until midnight derailed the effort. 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 one percent to 25 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 awaits action in the Senate.

House Action

House Passed Revision to Corporate Campaign Contributions

Alabama law currently limits corporate contributions to \$500 per election in a calendar year. A 1989 Attorney General's opinion interpreted that to mean companies could give each political action committee (PAC) \$500, multiplied by the number of elections held in the state in any given year. Proposed legislation, now pending in the Senate, would remove the \$500 cap and allow unlimited contributions by businesses just as individuals have been allowed. Proponents of the change consider the corporate limit a false cap and removal would foster greater transparency. The proposed legislation would also lower the spending and fundraising threshold that requires candidates to file reports of their campaign donors and expenditures and clarify who could be prosecuted for a violation of the ban on PAC-to-PAC transfers. Having passed the House with changes, 68-33, the bill now returns to the Alabama Senate, where they will concur or send the proposal to conference.

House Passed Bill to Allow Armed Security Guards in Schools

By a vote of 97-3, the House approved bill allowing school systems the option of hiring armed guards in schools. The proposal was suggested as a recommendation from the Joint Legislative Committee on School Security and Teacher Safety, led by Speaker of the House Mike Hubbard. Currently, school boards cannot use funds to pay for armed resource officers or guards, although county sheriffs and police chiefs can pay deputies and police to patrol campuses. The officer would have to have successfully completed 16 hours of firearm training approved by the Alabama Peace Officers' Standards and Training Commission and pass firearm requalification required of law enforcement officers every year. The law does not require school boards to hire armed security but allows them to do so. The House made changes to the Senate-approved bill. The legislation must now go back to the Senate for final approval.

Committee Work

\$50 Million Bond Issue for School Safety Passed Senate Committee

The Senate Finance and Taxation Education Committee approved a bill authorizing a \$50 million bond issue to improve school security. The Senate Finance and Taxation Education Committee amended the bill today to add the Alabama Institute for Deaf and Blind, the Alabama School of Fine Arts and the Alabama School of Mathematics and Science to the schools that can receive funding. The legislation is also a result of the Joint Legislative Committee on School Security and Teacher Safety.

The money would be distributed as follows:

- \$40 million allocated by the state Department of Education to renovate school entrances based on needs assessments provided by local education agencies. Local school systems would receive grants to reimburse them for renovations.
- \$10 million to local boards of education based proportionally on the number of students.

Reportedly, 96 percent of the schools in the state cannot lock all exterior doors from a central location, 71 percent cannot monitor all exterior doors from a central location and 46 percent of classrooms cannot be locked from the inside. In addition to securing school entrances, the money could be spent on other security equipment such as surveillance cameras and metal detectors. The bill has already passed the House and now goes to the Senate for consideration.

Constitutional Strict Scrutiny Test Cleared Senate Committee

The Senate Judiciary Committee approved a proposed constitutional amendment requiring any state laws that would infringe on the right to bear arms in the state constitution to be subject to "strict scrutiny" when reviewed by courts. "Strict scrutiny" is the highest of three levels of judicial review and places the burden of proof on the government to show that a law has a compelling purpose to achieve an end.

The House has already passed the bill. If it passes the Senate, it would have to be approved by voters to become law.

Senate Committee Approved Change to Voter Registration Deadline

Legislation to change the period of time required for voter registration cleared committee. Currently, the law allows registration until ten days before an election. The bill would change the deadline to 17 days. It now moves to the Senate.

House Committee Passed Alabama Space Authority Legislation

The House Technology and Research Committee approved Space Authority legislation, but only after assurances that the state would not go into debt. Under the bill, a ten-member authority would be able to borrow money by issuing bonds and would be able to buy and lease property. The authority would include the directors of the state Departments of Commerce, Economic and Community Affairs, and Transportation, as well as the Lieutenant Governor. There would also be six appointed members. The Governor and Lieutenant Governor would each appoint one member and the Speaker of the House and the President Pro Tem of the Senate would each appoint two members. The authority would operate as part of Alabama Department of Economic and Community Affairs. Representative Mac McCutcheon, who spoke in support of the bill, promised committee members that he would ask Governor Bentley to amend the bill to address any concerns about debt liability. The legislation now moves to the House for consideration.

In Other News...

Alabama Department of Environmental Management to Consider Fee Increase

Alabama Department of Environmental Management (ADEM) Director Lance LeFleur has stated that ADEM will seek a 50 percent across-the-board permit fee increase to fill the void caused by the inadequate General Fund appropriation.

Public Service Commission to Review Alabama Power Company Rates

The Public Service Commission (PSC) began informal hearings to review Alabama Power Company's rates and the fundamentals of the rate structure. The process is scheduled to end in July. At that time, the PSC will decide whether to adjust rates for customers. The PSC recently completed a review of rates for Mobile Gas, a natural gas provider that serves the southwest corner of the state. The PSC should decide that issue by September. After Alabama Power Company, the PSC will review the rates of Alabama Gas.

U.S. House Passed Bill to Provide Choices in Overtime Compensation

The Working Families Flexibility Act of 2013, sponsored by Alabama Sophomore Representative Martha Roby, would allow workers in the private sector the option of converting overtime pay into paid time off. The bill passed 223-204. If enacted, the legislation would allow private-sector employees who work more than 40

hours a week to convert the overtime to an equivalent amount of paid time off under a voluntary agreement with their employers. Employees who choose to participate could accrue as much as 160 hours of compensatory time off each year. The bill would allow workers to cash out their time whenever they choose and forbids employers from forcing them to participate. Employers would be required to pay cash for any unused time at the end of the year. The bill faces a contentious battle in the Senate. Even if passed there, President Barack Obama has threatened to veto it.

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.

¹The Alabama Legislature is limited to thirty (30) legislative days during a 105-day period in which to complete their work and pass the budgets.