

FINE GEDDIE

GOVERNMENT RELATIONS

THE FINE GEDDIE REPORT

2018 REGULAR SESSION • WEEK EIGHT • MARCH 2, 2018

The Alabama Legislature is past the halfway point of the 2018 Regular Legislative Session. There are fourteen days remaining. Both houses tackled full floor agendas on both Tuesday and Thursday with a full committee schedule for each body on Wednesday. This report includes highlights of the week.

DATA BREACH BILL UNANIMOUSLY APPROVED BY SENATE

On Thursday, SB318 by Sen. Orr (R—Decatur) was unanimously approved by the Senate in substitute form. Up until this point, the bill has been the subject of numerous discussions, but it seems to have finally reached an agreed-to point. The floor substitute was an updated version of the bill to reflect agreements reached between various sectors of the business community and the Attorney General's office since the bill was approved by the Senate committee last week. Generally, the bill reflects consideration of important business interests including a provision exempting federally-regulated entities and a heightened culpability trigger coupled with a \$500,000 cap on damages under the Deceptive Trade Practices Act (DTPA). The bill also limits private causes of action under the DTPA. Finally, while the bill distinguishes between a covered entity and third-party agent, placing the notification burden with covered entity, the bill allows for covered entities and third-party agents to contract as to notification responsibility.

The floor substitute incorporates a provision exempting industries that are regulated by state agencies when those regulations are more stringent than the law that would be enacted under the bill. Additionally, the floor substitute amended the trigger for substitute notice, which is permitted in situations where a covered entity would bear extensive costs by adhering to individual notification requirements. The floor substitute maintains the excessive cost threshold for substitute notice and states that \$500,000 is considered excessive.

ATTORNEY GENERAL AND LAWMAKERS ANNOUNCE ETHICS TASK FORCE; SWEEPING REFORM BILL WILL NOT BE DEBATED THIS SESSION

On Thursday, Attorney General Steve Marshall and Senator Marsh (R—Anniston) held a joint press conference to announce that they will pursue a task force to discuss ethics reform. Last week, Sen. Marsh filed SB383, a 119-page bill that proposed sweeping changes to the Ethics Law. That bill will not progress this session.

***BILL TO REPEAL REGIONAL CARE ORGANIZATION STRUCTURE
FOR MEDICAID***

Legislation to repeal the law that authorized the establishment of **regional care organizations** for providing Medicaid services throughout the state has been introduced. Sen. Paul Sanford (R—Huntsville) is the sponsor of SB362 and Rep. Arnold Mooney (R—Birmingham) is the sponsor of HB475. In 2013, a system for the provision of Medicaid services on a managed care basis throughout the state was established that authorized the creation of regional care organizations. The Alabama Medicaid Agency has not implemented the regional care organization program as a means of providing Medicaid services and publicly announced a decision to pursue alternatives to the regional care structure in July 2017. That decision was supported by the Governor.

***LEGISLATION TO AUTHORIZE STATEWIDE EXPANSION OF
TRANSPORTATION NETWORK COMPANIES ENACTED***

With enactment of the legislation for statewide regulation of **transportation-network companies**, Act No. 2018-127, set to become effective July 1, the Public Service Commission is beginning work drafting rules to implement the new law. The PSC is expected to issue an order on March 6 establishing the rule-making schedule with an accelerated time table that concludes with a final rule on June 7. They are expected to issue draft rules with the order.

The PSC will likely set April 13 as the deadline for interested parties to submit comments and May 4 as the deadline for replies to be submitted to comments. There will be opportunities for informal comments through workshops.

OTHER ACTION THIS WEEK

Legislation, promoted by independent pharmacies, to revise the procedures governing how **pharmacy benefit managers** audit pharmacies has been introduced. The legislation (HB457 and SB348), by Rep. Elaine Beech (D—Chatom) and Sen. Billy Beasley (D—Clayton), is a product of negotiations between PBMs and independent pharmacies and is an attempt to satisfy the concerns of pharmacists over certain audit procedures. The bills are assigned to the Health Committees in their respective chambers.

This week, the Senate confirmed the appointment of Connie Sheppard-Harris to the **Alabama State Board of Public Accountancy**. Additionally, the Legislature has confirmed its appointment of Rachel Riddle to be the **Chief Examiner of Public Accounts**.

On Thursday, the Chairman of the Contract Review Committee, Rep. Jack Williams (R—Birmingham) placed a temporary hold on the **Department of Corrections contract** for the provision of health care and mental healthcare to inmates to allow the Department time to answer questions. The Department of Corrections is moving forward and has begun the transition to the new healthcare vendor. Gov. Ivey has indicated that approval of the contract is critical so that

the Department will comply with a federal court order which stemmed from inadequate provision of healthcare in correctional facilities.

This week, the Senate approved Governor Ivey's proposed **\$30 million supplemental appropriation for the Department of Corrections**. The appropriation would allow the Department to begin addressing the staffing and healthcare needs in the current year.

The Senate Finance and Taxation Committee on the Education Trust Fund decided to indefinitely-postpone SB210 by Sen. Stutts (R—Russellville). The bill would establish a **Physician's Initiative** that would provide 100 scholarships for medical students who commit to practice family medicine in underserved areas of the state.

HB417 by Rep. Blackshear (R—Phenix City), the **Examination of Bank Service Providers Act**, was carried over by the House Financial Services Committee this week for a second time. The bill would authorize the Superintendent of Banks to examine banking service providers, including data service providers. It is the subject of concern for the technology industry because of the potential regulatory access that would be granted to the State Banking Department under the bill.

HB40 by Rep. South (R—Fayette), which would increase weight allowances to accommodate conversion equipment for **motor vehicles** operating on natural gas, received final passage by the Senate this week. The bill is pending the Governor's signature.

This week, both the House Ways and Means Committee on the Education Trust Fund and the Senate Finance and Taxation Committee on the Education Trust Fund approved legislation to resolve the long-running legal dispute between the Department of Revenue and pass-through entities regarding **calculation of income tax credits for taxes paid in other states**. SB342 by Sen. Smitherman (D—Birmingham) and HB384 by Rep. Scott (D—Birmingham) are pending consideration on the floor in their respective houses of origin.

Both houses voted to concur with Governor Ivey's executive amendment to SB77 by Sen. Waggoner (R—Birmingham). The bill, as approved by the Legislature, provides that the **Alabama Securities Commission** shall fix the director's salary with approval of the State Personnel Board. The Governor's executive amendment requires the salary to be approved by the Governor, as well, to conform with the salary-approval process for other department heads.

The House County and Municipal Government Committee approved SB182 by Sen. Williams (R—Gadsden) related to **dark store property valuation** legislation. The legislation would require property owners, in disputes of commercial property valuations, to disclose whether the comparable property is occupied or unoccupied and any restrictions on the use of the comparable property so that the court can determine if the subject and comparable property are similarly situated.

HB278 by Rep. Mooney (R—Birmingham), which would authorize the PSC to regulate **private sewer systems**, is scheduled for a public hearing by the

House State Government Committee next Wednesday.

SB222 by Sen. Pittman (R—Montrose) to add a member to the three-member **State Bar Pilotage Commission** was approved by the House Boards and Commissions Committee in substitute form. The substitute legislation adds a fifth member to the Commission to serve in an advisory, non-voting capacity. That member would be appointed by the Chair of the Alabama State Port Authority.

***SIMPLIFIED SELLERS USE TAX REMITTANCE PROGRAM
UPDATE: THIRD REFORM MEASURE INTRODUCED***

This week, legislation to revise the voluntary **Simplified Sellers Use Tax Remittance Program** has been introduced by Rep. Rod Scott (D—Birmingham) and assigned to the House Committee on Ways and Means General Fund. This bill is the third reform proposal introduced this session. The bill would update the conditions of remote entity nexus to allow an out-of-state vendor with physical presence established only through acquisition of an in-state company the ability to participate in the Simplified Sellers Use Tax Program. It would establish a marketplace facilitator filing and remitting program and proposes an additional one percent (1%) simplified sellers use tax and provides for the distribution to cities. SB307 by Sen. Pittman (R—Montrose) is awaiting consideration by the full Senate with a substitute pending.

***JEFFERSON COUNTY DELEGATION DIVIDED OVER REVENUE
MEASURES TO FUND NEW STADIUM***

The Jefferson County Delegation is divided. SB 311, by Sen. Waggoner (R—Birmingham), would amend a 2001 three-percent auto rental tax in Jefferson County to allow for its collection. Many local lawmakers want that revenue stream to provide partial financing for a stadium in downtown Birmingham. The local bill is scheduled to be considered by the House Jefferson County Local Legislation Committee next Wednesday.

However, as lawmakers seek to make progress on collecting revenue for the stadium, Rep. Rogers (D—Birmingham) filed legislation this week that would redistribute that three-percent auto rental tax to pay for the county sewer system. HB480 has been assigned to the House Committee on Jefferson County Local Legislation but has yet to be scheduled for a hearing.

The House and Senate will reconvene on Tuesday, March 6. There are 14 meeting days remaining in the 2018 Regular Session.