

FINE GEDDIE

GOVERNMENT RELATIONS

THE FINE GEDDIE REPORT

2018 REGULAR SESSION • WEEK FIVE • FEBRUARY 9, 2018

The Alabama Legislature convened for the ninth and tenth legislative days of the 2018 Regular Legislative Session this week. 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.

BUDGET CONSIDERATION BEGINS: EDUCATION BUDGET APPROVED BY HOUSE COMMITTEE

The \$6.6 billion **Education Trust Fund Budget for Fiscal Year 2019** was approved by the House Ways and Means Committee on Education this past Tuesday. The bill includes a 2.5% pay raise for education employees, a \$20 million funding increase for Pre-K initiatives, and funding for almost 200 new middle school teachers. The budget, HB175 by Rep. Bill Poole (R—Tuscaloosa), is scheduled to be considered on the House floor this coming Tuesday.

In addition to the education budget bill, HB321 and HB322 by Rep. Clouse (R—Ozark), to extend the **supplemental privilege assessment and monthly surcharge for nursing facilities and hospitals** (respectively), are slated for Tuesday's House floor calendar, as well. Both bills provide key sources of revenue for Medicaid.

ATTORNEY GENERAL'S OFFICE RELEASES UPDATED DRAFT OF DATA BREACH LEGISLATION; STILL A WORK IN PROGRESS

Although the Attorney General's office stated they would drop a bill related to data breaches this week, that bill has not yet been filed. However, an updated draft to reflect ongoing negotiations was released yesterday. A summary of those changes, described with regard to previous versions of the bill, is below:

- There has always been language requiring entities to maintain reasonable security, but stakeholders have been concerned that the term was too vague. The updated version includes guidelines (Section 3 for more clarity).

- The updated bill states that the acquisition of the info must be “reasonably likely to cause substantial harm” to trigger notice requirements and includes a test for analyzing the risk of harm. Previous versions of the bill directed covered entities to give notice after determination of a breach but offered no parameters for analyzing the risk of harm. There has never been any risk of harm analysis in previous versions of the bill.

- Third-party agents are required to assist/provide information to the covered entity, when the third-party agent experiences a breach that leads to a need to notify. Previous bills have merely required that third-party agents notify

the covered entity of the breach.

- Penalties under the Deceptive Trade Practices Act are capped at \$500,000. Additionally, the culpability threshold under the DTPA has been defined as willful or reckless disregard in failing to comply with notice requirements. The updated bill also maintains the prohibition on private causes of action.

- The civil penalties under the bill were adjusted to reflect that the policy objective is to achieve notice. The bill provides that small fees will be assessed on a per diem basis, which would be assessed if an entity refused to “take reasonable action to comply.”

However, the bill removes concessions made to the business community in past years in two ways:

- The updated draft removes the notification trigger of 1000 affected consumers because it is the AG’s position that every consumer who is at risk deserves to be notified.

- The updated bill removes whole-cloth exemptions for federally-regulated entities, which was agreed to in past years. It is the AG’s position that the bill “*merely makes clear that there is an expectation of compliance with federal guidance (which is not law and is intended to be a baseline) and that the state’s criteria for everyone else is substituted with the guidance that federally-regulated entities should already be following.*”

- The length of time for notification has been shortened from 60 to 45 days, but the new “risk of harm” analysis is intended to balance this out. The AG’s office has further agreed to clarify that the 45-day timeline does not begin to run until the covered entity has determined that a harm has occurred; that change has not been incorporated into the updated draft.

LEGISLATION TO AUTHORIZE STATEWIDE EXPANSION OF TRANSPORTATION NETWORK COMPANIES POSITIONED FOR FINAL PASSAGE

HB190 by Rep. Faulkner (R—Birmingham), to **authorize statewide expansion of transportation network companies**, was approved by the Senate Tourism Committee this week and is pending final consideration. Representatives from the Huntsville Airport Authority expressed concerns in committee about their ability to require TNCs to conform to federal regulations under the bill. However, lawmakers and TNC representatives spoke to that concern, demonstrating that the bill sufficiently provides airports with the ability to enforce compliance with federal regulation. Additionally, proponents highlighted the fact that airports would maintain their right to designate the location of rideshare pickups and drop-offs and set fees, which authority effectively gives airport officials a great deal of leverage in negotiating operating agreements with rideshare operators. Although the representatives from the

Huntsville Airport asked the committee to amend the legislation, committee members refused to do so because they believed the concerns were already addressed in the legislation. SB143 by Sen. Singleton (D—Greensboro), is also pending final consideration by the House.

OTHER ACTION THIS WEEK

SB29 by Sen. Holley (R—Elba) related to **public accountancy** received final passage this week and is pending Governor Ivey's signature. The bill would amend the makeup of the Alabama State Board of Public Accountancy; authorize the board to classify a public accountant as retired; and shorten the time period after which the board may determine a licensee to be inactive or take disciplinary action against a licensee for failure to apply for a permit.

SB77 by Sen. Waggoner (R—Birmingham), to provide that the **Alabama Securities Commission** shall fix the director's salary with approval of the State Personnel Board, received final passage by the House.

HB131 by Rep. Pringle (R—Mobile), related to operations of the **Public Examiner's office**, was approved by the Senate Government Affairs Committee in substitute form.

SB194 by Sen. Reed, a constitutional amendment related to the structure of the **University of Alabama Board of Trustees**, was approved by the House Education Policy Committee this week. The measure would clarify that the congressional districts from which trustees are appointed will continue to reflect those as constituted on January 1, 2018 and further proposes the removal of the 70-year age cap for trustees to conform with an amendment previously approved by the Legislature and ratified by voters.

SB210 by Sen. Stutts (R—Russellville) 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. This week, the Senate Finance and Taxation Committee on the Education Trust Fund voted to carry over the bill, effectively killing it. A motion to table the carry-over motion was defeated by a vote of 3-7.

SB149 by Sen. Scofield (R—Guntersville) **to establish an economic incentive program for rural broadband development**, has been assigned to the House Ways and Means Committee on the Education Trust Fund. The bill, which was approved by the Senate last week in a substitute form, provides a 10% nonrefundable credit against income tax liability for qualified new broadband investment the state with a maximum cap of \$20 million annually for 5 years, through 2023. Additionally, the bill provides a 10-year exemption of the state portion of property tax for qualifying investment and encourages accelerated private investment in broadband infrastructure using an exemption from sales and use tax for equipment and materials incorporated into or used to operate the infrastructure. The bill further establishes the seven-member **Alabama Rural Broadband Oversight Committee** to evaluate and confirm the

rural areas eligible for investment.

SB234 by Sen. Dunn (D—Bessemer), which would authorize **chiropractors** to enter into payment agreements with patients, was approved by the Senate this week. It has been assigned to the House Insurance Committee.

The **Alabama Jobs Enhancement Act**, HB317 by Rep. K. Johnson (R—Moulton), related to economic development, was on the House Special Order Calendar for this past Thursday, but the House adjourned before pursuing that agenda. The bill clarifies that site selection contractors are not required to register as lobbyists with the Alabama Ethics Commission.

A public hearing before the Senate Judiciary Committee has been requested for HB198 by Rep. Fridy (R—Birmingham), the **Alabama Assistance and Service Animal Integrity in Housing Act**, despite its smooth approval by House. The hearing, which has not been scheduled, was requested by the Alabama Disability Advocacy Program. The bill clarifies a landlord's right to request documentation to support a tenant's need for a service animal and establishes a misdemeanor for misrepresenting a need.

SB125 by Sen. Whatley (R—Auburn) and HB337 by Rep. Chesteen (R—Geneva), which would allow **truck platooning**, were approved by the House Public Safety and Homeland Security Committee this week.

HB40 by Rep. South (R—Fayette), which would extend weight allowances for certain **motor vehicles converting to natural gas** (to account for the weight of conversion equipment), passed the House this week. The Senate companion, SB268 by Sen. Allen (R—Tuscaloosa), was approved by the Senate Transportation and Energy Committee on Thursday, as well.

Matt Woods, from Jasper, was confirmed as a member of the **Alabama Community College Board of Trustees** this week.

GUN BILL OUTLOOK

The open-carry firearm legislation is scheduled for a public hearing by the Senate Judiciary Committee on Wednesday of next week. SB3 by Sen. Allen (R—Tuscaloosa) would significantly loosen restrictions on possession and carriage of firearms.

Additionally, the 21st Century Firearm Task Force – a committee comprised of law enforcement officials, NRA representatives and lawmakers – is also scheduled to meet next Wednesday afternoon. The group, organized last year by resolution, has been charged with making policy recommendations to the Legislature that balance public safety and property owner concerns with the coveted right to bear arms.

JEFFERSON COUNTY AUTOMOBILE RENTAL TAX UPDATE

The advertisement for a local bill to amend the trigger on the 3% Jefferson County Auto Rental tax (for BJCC stadium/UAB) has been completed.

The bill could be introduced next week. That tax has been on the books since it was enacted in 2001, but has yet to be collected due to a condition that it only be used to finance construction of a stadium. Due to a technical deficiency in the tax trigger, the Alabama Legislature must approve local legislation to correct the mechanism for certifying that the tax will be used for the intended purpose and allow for its collection.

Further, the advertisement for the additional 6% Jefferson County Auto Rental tax should be complete Feb 17 and so it could be introduced the following week (to go to BJCC and Legion Field). There is an additional local bill being advertised to reallocate the 3% from the BJCC stadium to the sewer system.

The House and Senate will reconvene on Tuesday, February 13. There are 20 meeting days remaining in the 2018 Regular Session.