

FINE GEDDIE

GOVERNMENT RELATIONS

THE FINE GEDDIE REPORT

2018 REGULAR SESSION • WEEK NINE • MARCH 9, 2018

There are twelve meeting days remaining in the 2018 Regular Session of the Alabama Legislature. The General Fund Budget, and all related measures including the \$30 million supplemental appropriation for the Department of Corrections, will be considered by the House on Tuesday. A substitute version of the Education Trust Fund Budget will be considered by the Senate Finance and Taxation Committee on Education on Tuesday and is expected to be brought to the Senate floor on Thursday.

Rumors of an earlier-than-normal *sine die* persist; rightfully so, given that the Legislature is expected to give final passage to both the General Fund Budget and Education Trust Fund Budget next week. The fact that the Legislature has yet to schedule its traditional spring break is further indication of its desire to finish up as soon as possible. Still, key legislative items remain pending and, to adjourn immediately upon approval of the budgets (which could be as soon as next Thursday), would leave many bills hanging in the balance including the authorization of funding measures critical to Medicaid ([HB321](#) and [HB322](#)) and the Alabama Jobs Enhancement Act (see more discussion on [HB317](#) below), among others. Below is an overview of this week's activity.

MUCH ADO OVER ECONOMIC DEVELOPMENT

The House passed important economic development legislation on Tuesday and a constitutional amendment believed to hinder economic development was defeated in a Senate committee on Wednesday.

The **Alabama Jobs Enhancement Act**, HB317 by Rep. Johnson (R—Moulton), passed the House on Tuesday by a vote of 79-7, but after nearly three hours of debate. The bill streamlines requirements underlying various incentive programs. The lengthy debate centered around language in the bill clarifying that certain economic development activity does not constitute lobbying.

On Wednesday, the Senate Fiscal Responsibility and Economic Development Committee held a public hearing and vote on [SB187](#) by Sen. Hightower (R—Mobile), a **constitutional amendment that would automatically sunset any tax credit**, exemption, deduction, or preferential tax rate approved after 2019. The bill was voted down by a vote of 4-5, effectively killing it for the session. Although the bill sponsor proposed a substitute version that would have exempted the renewal of programs such as the Alabama Jobs Act, it was insufficient to address the concerns of Manufacture Alabama and others in the business community.

***ALABAMA DATA BREACH NOTIFICATION ACT APPROVED BY
HOUSE COMMITTEE THIS WEEK; POSITIONED FOR FINAL
PASSAGE***

This week, **SB318** by Sen. Orr (R—Decatur) was approved by the House Technology and Research Committee. It is pending final consideration by the House. An amendment was added to the bill by the House Technology Committee to clarify the bill's application to government entities. It was proposed by the Association of County Commissions.

As we have reported in recent weeks, the bill is the product of numerous discussions between the business community and the Attorney General's office. As such, it 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.

***HOUSE SET TO CONSIDER THIRD PROPOSAL TO REVISE
SIMPLIFIED SELLERS USE TAX REMITTANCE PROGRAM***

A third proposal of the session to revise the voluntary Simplified Sellers Use Tax Remittance Program, **HB470** by Rep. Rod Scott (D—Birmingham), received a favorable report by the House Ways and Means Committee on the General Fund this week. It is expected to be debated by the full House next week.

House Bill 470 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 create a marketplace facilitator filing and remitting program and proposes an additional one percent (1%) simplified sellers use tax and provides for the distribution of that tax to cities. As amended, it would provide that no class action may be brought against a marketplace facilitator in any court of this state on behalf of customers for an overpayment of simplified sellers use tax collected and remitted on sales facilitated by the marketplace facilitator.

Senate Bill 307, by Sen. Pittman (R—Montrose) is awaiting consideration by the full Senate with a substitute pending.

Negotiations are ongoing over the amount of the retailer discount, the amount of the tax (eight or nine percent) and other issues related to mandating marketplace collections and reporting. We expect a new substitute to be produced by the Department of Revenue.

***UPDATE ON BILLS TO GIVE PUBLIC SERVICE COMMISSION
AUTHORITY OVER PRIVATE SEWER COMPANIES***

A series of legislation has been introduced this session that would give the Public Service Commission jurisdiction over private sewer companies that operate on public rights-of-way of public roads. Both **HB467** by Rep. Mooney (R—

Birmingham), which would apply to private sewer companies operating in Shelby County and **HB428** by Rep. Wingo (R—Tuscaloosa), which would apply to private sewer companies operating in Tuscaloosa County, will both be considered by the House Transportation, Utilities, and Infrastructure Committee next Tuesday and treated as general bills due to their environmental impact. **HB278** by Rep. Mooney would apply to all private sewer companies operating in the state and it was removed from the agenda of the House State Government Committee.

In related news, legislation that would authorize the Public Service Commission to regulate certain water authorities was introduced this week. **HB505** by Rep. J. Williams (R—Birmingham) has been assigned to the House Transportation, Utilities and Infrastructure Committee and **SB378** by Sen. Whatley (R—Auburn) has been assigned to the Senate Transportation and Energy Committee.

OTHER ACTION THIS WEEK

HB384 by Rep. Scott (D—Birmingham), 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**, was approved by the Senate Finance and Taxation Committee on the Education Trust Fund this week.

Legislation, promoted by independent pharmacies, to revise the procedures governing how **pharmacy benefit managers** audit pharmacies was approved in committee this week. **HB457** by Rep. Elaine Beech (D—Chatom) was approved in substitute form by the House Health Committee and is on the House Special Order for next week. **SB348** by Sen. Billy Beasley (D—Clayton) was likewise approved by the Senate Health Committee in substitute form. The bill 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 substitute versions of the legislation reflect technical changes and language to exempt Medicaid.

Legislation, **HB446** by Rep. Randall Shedd (R—Cullman) to establish the **Alabama Rural Hospital Resource Center at the University of Alabama at Birmingham** was approved by the House Urban and Rural Development Committee this week. It was amended to condition the center's establishment on approval by UAB. It is on the House Special Order for next week.

A substitute version of **HB417** by Rep. Blackshear (R—Phenix City), the **Examination of Bank Service Providers Act**, was approved by the House Financial Services Committee this week. The bill is being promoted by the State Banking Department and would authorize the Superintendent of Banks to examine banking service providers.

Legislation by Sen. Williams (R—Gadsden) related to **dark store property valuation** received final passage by the Legislature this week and has been sent to the Governor. **SB182** 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.

The Senate gave final passage to the **Alabama Assistance and Service Animal Integrity in Housing Act, HB198** by Rep. Fridy (R—Birmingham). 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.

The House Agriculture Committee passed **HB422** by Rep. Sessions (R—Mobile), which would establish certain requirements for the **dredging of sand in coastal areas** and provide for certain exemptions related to the Alabama State Port Authority.

Legislation to **prohibit smoking in a vehicle when a minor is present** has been recommitted to the Senate County and Municipal Government Committee this week after initially being assigned to the Senate Health Committee. **HB26** is sponsored by Rep. Hollis (D—Birmingham).

SB125 by Sen. Whatley (R—Auburn), which would allow **truck platooning**, received final passage by the Legislature this week and has been sent to the Governor. An executive amendment is expected, however, to resolve an uncontroversial technical issue in the bill.

CORRECTIONAL HEALTHCARE CONTRACT RELEASED BY CONTRACT REVIEW COMMITTEE

The Contract Review Committee has released the Department of Corrections’ contract for the provision of healthcare to inmates and has submitted it to the Governor for her signature. Last week, Chairman of the Contract Review Committee, Rep. Jack Williams (R—Birmingham) placed a temporary hold on the contract to allow the Department time to answer certain questions. 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.

MEASURE TO HELP FUND BIRMINGHAM STADIUM POSITIONED FOR FINAL PASSAGE AFTER HEATED LOCAL COMMITTEE MEETING

Senate Bill 311 by Sen. Waggoner (R—Birmingham), to allow for the collection of a three-percent auto rental tax in Jefferson County passed in 2001, was approved by the House Jefferson County Local Legislation Committee amid protests by some citizens and several legislators. It was approved on a vote of 9-2, with 4 abstentions. Many local lawmakers support dedicating that revenue stream to provide partial financing for a stadium in downtown Birmingham. Although enacted in 2001, the tax has never been collected.

The so-called “trigger” bill is set to be considered on the House floor Tuesday, March 13. Local legislation goes to the top of the agenda each legislative day and is governed by the principle of local courtesy, whereby legislators outside

of the affected local area are expected to defer to the local delegation.

The House and Senate will reconvene on Tuesday, March 13. There are 12 meeting days remaining in the 2018 Regular Session.