

# FINE GEDDIE

GOVERNMENT RELATIONS

## THE FINE GEDDIE REPORT

2018 REGULAR SESSION · WEEK TWELVE · APRIL 2, 2018

The 2018 Regular Session of the Alabama Legislature adjourned *sine die* on Thursday, March 29 after an eventful three-day week. The adjournment is four legislative days earlier than normal, and approximately three weeks ahead of schedule, as the legislature did not observe a spring break.

On Tuesday, a **conference committee resolved differences between the House and Senate versions of the \$6.6 billion Education Trust Fund Budget**. House conferees included ETF Budget Chairman Bill Poole (R—Tuscaloosa), Rep. Mark Tuggle (R—Alex City) and Rep. Rod Scott (D—Birmingham). Senate conferees include Chairman Arthur Orr (R—Decatur), Sen. Larry Stutts (R—Tuscumbia), and Sen. Bobby Singleton (D—Greensboro). The House approved the budget on Tuesday, while the Senate held out until Thursday morning to give its final approval and submit it to the Governor, to be sure that the House acted on certain items before session adjournment. Sen. Orr (R—Decatur), for example, wanted the House to consider his proposal to lower the time period during which an employee may be eligible for **worker's compensation benefits**. Although SB92 was on the House Special Order, it was not considered.

In our last report, we discussed three bills, each of which had to pass to avoid an immediate need for a special session. All three – the **reauthorization of the State Pilotage Commission** (Bar Pilots) and two **Medicaid funding measures** (HB321 and HB322 by Rep. Steve Clouse (R—Ozark)) – were passed. Recall that Sen. Trip Pittman (R—Fairhope), Chairman of the Senate Finance and Taxation Committee on the General Fund, held the two Medicaid measures as leverage to push for his proposal to **alter the makeup of the State Pilotage Commission**. Pursuant to Act No. 2018-397, the Commission, currently comprised of three voting members, will also include a nonvoting, advisory member appointed by the Governor from a list of nominees submitted by the Chairman of the Alabama State Port Authority. Sen. Pittman's proposed measure and the sunset legislation (SB74 by Sen. Bussman (R—Cullman)) were introduced as separate bills but combined into one legislative instrument.

Also in our last report, we noted the potential for tensions to flare with regard to a measure to collect data to track and deter **racial profiling**, which had failed to overcome procedural vote in order to be formally considered by the House a week ago last Thursday. SB84 by Sen. Rodger Smitherman (D—Birmingham) was again slated for the House Special Order last Tuesday and Wednesday, but an agreement was never reached to bring the bill up for debate. Tensions sparked on Thursday morning when Sen. Smitherman, on a point of personal privilege in the Senate chamber, expressed disappointment that Speaker McCutcheon had not informed him personally that the House would not consider the bill again.

Smitherman had learned the bill was dead while listening to a radio show interview with Speaker McCutcheon that morning.

### ***GOVERNOR IVEY SIGNS KEY LEGISLATIVE ITEMS***

- Governor Ivey has signed Act. No. 2018-0457, promoted by independent pharmacies, to **revise audit procedures for pharmacy benefit managers**. The legislation is a result of negotiations between PBMs and independent pharmacies and is an attempt to satisfy the concerns of pharmacists over certain audit procedures.
- The **Alabama Data Breach Notification Act** by Sen. Arthur Orr (R—Decatur) is Act No. 2018-396. The legislation 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.
- The **Rural Broadband Act**, Act No. 2108-0395 by Sen. Scofield (R—Guntersville) and Rep. Chesteen (R—Geneva), creates the Alabama Broadband Accessibility Fund and authorizes the Department of Economic and Community Affairs to administer a grant program. Grants are limited to twenty percent of the project costs or \$750,000 for projects that will result in transmitting broadband signals at speeds of at least 10 megabits per second of download speed and one megabit per second of upload speed; or \$1,400,000 for projects that will result in transmitting broadband signals at speeds of at least 25 megabits per second of download speed and three megabits per second of upload speed.
- Governor Ivey has signed Act No. 2018-0394 by Sen. Reed (R—Jasper), to establish the **Alabama Rural Hospital Resource Center** at the University of Alabama at Birmingham.
- The Governor signed Act No. 2018-0465 by Rep. Scott (D—Birmingham), which resolves 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**.
- The **New Assistive Devices Warranty Act** has been enacted as Act No. 2018-0448.
- Legislation to require one member of the **Environmental Management Commission** to be a licensed geologist, by Rep. South (R—Fayette), has been enacted as Act No. 2018-0454.

### ***SURPRISE PRO-PLAINTIFF LANGUAGE IN FENTANYL LEGISLATION REMOVED IN CONFERENCE COMMITTEE***

The legislation to designate fentanyl as a Schedule I controlled substance and to institute criminal penalties for related instances of drug trafficking, SB39

by Sen. Cam Ward (R—Alabaster), received final passage by the Alabama Legislature and has been sent to Governor Ivey for her signature, but not without controversy. Controversial civil liability inserted in a substitute bill on the House floor was removed by a conference committee in the final days of the session.

Throughout the session numerous discussions between parties with interest in the criminal justice system were held regarding the legislation. On the 24<sup>th</sup> Legislative Day, House bill sponsor Rep. April Weaver (R—Alabaster) introduced a substitute bill that purportedly reflected agreements made by interested parties. However, the substitute included new language that would have established a state public nuisance claim based on violations of federal controlled substance law and allowed plaintiffs suffering from opioid-related injuries to assert claims based on a market share liability theory. The language went so far as to expressly provide that the unlawful usage or manufacture of opioids (tied directly to the injury) or that fulfillment of a duty of care to the plaintiff could not be used as a defense to opioid manufacturers. Pharmaceutical manufacturers and the business community became aware of the language the night it passed and worked quickly to have it removed. The Association for Justice (the state’s primary trial lawyer advocacy group) has denied responsibility for the language.

### ***EDUCATION TRUST FUND BUDGET INCLUDES LANGUAGE TO PROMOTE ACCOUNTABILITY IN AT-RISK GRANT PROGRAM***

The \$9.2 million appropriated expressly for the At-Risk Grant Program in the Education Trust Fund budget will be subject to new parameters in fiscal year 2019. Traditionally, 60 percent of those funds were set aside for the grant program, administered by the State Department of Education, and 40 percent went to the department to be distributed to local school systems at the discretion of the department.

In FY2019, the split will be 50/50. Additionally, grants will be awarded to local school systems for the implementation of evidence-based and research-based programs for at-risk students. Funds will be awarded pursuant to a per-pupil formula, with at-risk students being specifically defined as ones who do not meet proficiency standards in addition to other characteristics. Also under the new parameters, an applicant school system’s plans for use of the grant awards and the results of implementing such programs must be reported to the chairmen of the House and Senate budget committees on the ETF.

### ***SIMPLIFIED SELLERS USE TAX PROPOSAL SENT TO GOVERNOR***

The Senate gave final passage to **legislation to revise the Simplified Sellers Use Tax Remittance Program**. HB470 by Rep. Rod Scott (D—Birmingham), 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 program for its online sales. It would create a marketplace facilitator filing and remitting program and provides for an

adjustment of the distribution of revenues to the cities and counties. Further, the bill would prevent class actions in state court against a marketplace facilitator on behalf of customers for an overpayment of simplified sellers use tax collected and remitted on sales facilitated by the marketplace facilitator. The bill is pending Governor Ivey's signature.

### ***KEY ECONOMIC DEVELOPMENT MEASURE SENT TO GOVERNOR IVEY FOLLOWING HEATED DEBATE***

Legislation to exempt certain economic development professionals from registering as lobbyists has been sent to the Governor.

The **Alabama Jobs Enhancement Act**, HB317 by Rep. Johnson (R—Moulton) is an attempt to clear up one of the many vagaries of the state ethics statute. In response to an inquiry, the Ethics Commission staff signaled that professional site selection firms for economic development projects might have to register as lobbyists under a particular interpretation of the Ethics Act. That has not been the practice.

Selection of sites for major economic development projects is generally highly secretive with companies generally preferring to keep the sites and states under consideration confidential. If a professional site selector looking at an industrial site in Alabama has to register as a lobbyist for a particular client, then that could signal to others that Alabama is under consideration by an entity.

The bill would clarify that certain economic developers such as full-time site selectors, industrial developers, and chamber of commerce officials are not classified as lobbyists.

### ***OTHER HIGHLIGHTS***

HB417 by Rep. Blackshear (R—Phenix City), the **Examination of Bank Service Providers Act**, received final legislative approval and has been sent to the governor for her signature. The bill is being promoted by the State Banking Department and would authorize the Superintendent of Banks to examine banking service providers. The substitute exempts legal services and interactive computer services from the scope of covered services.

HB467 by Rep. Wingo (R—Tuscaloosa) and HB428 by Rep. Mooney (R—Birmingham), bills of local application that would put **regulation of private sewer systems under the jurisdiction of the Public Service Commission**, failed pending treatment as general bills and pending consideration by the Senate County and Municipal Government Committee.

The Public Service Commission has begun the rulemaking process for regulation of **transportation network companies** pursuant to Act No. 2018-0127. It has released draft rules and held a workshop on March 22 during which interested parties discussed those proposed rules. Comments are due by April 13 and reply comments are due by May 4. The legislation goes into effect on July 1.

## ***LEGISLATIVE SCHEDULE***

The Legislature is scheduled to convene next in Organizational Session January 8-17, 2019, after the 2018 elections, to elect leadership and adopt operating rules. The next Regular Session of the Legislature is scheduled for March 5, 2019.