

FINE GEDDIE

GOVERNMENT RELATIONS

THE FINE GEDDIE REPORT 2019 REGULAR SESSION · WEEK TWELVE JUNE 3, 2019

LANDMARK EDUCATION REFEREDUM APPROVED BY THE LEGISLATURE

The 2019 Regular Legislative Session adjourned *sine die* last Friday evening. The session was one of the most productive and substantive in recent memory, ending with the Legislature's landmark approval of a constitutional amendment to fundamentally change the way public K-12 education is governed. Billed as a repeal of common core standards (accurate because it will change the approval process of standards), under the amendment the State Board of Education would be appointed, and the State Department of Education would undergo significant structural changes. SB397 by Senate President Pro Tempore Marsh (R—Anniston) will be on the ballot in March 2020.

GOVERNOR SIGNS MEASURES TO BOOST ALABAMA'S ECONOMY IN THE DIGITAL ERA

While lawmakers were still in session, Gov. Kay Ivey conducted a ceremonial bill signing in the Alabama Capitol to mark the success of two measures to expand **broadband internet** service in the state. HB400 by Rep. Randall Shedd (R—Cullman), which is now Act 2019-326, allows **electric utilities to use their easements to offer broadband service**. Additionally, the state's **broadband accessibility grants** have been retooled to incentivize development of higher-speed internet by Act 2019-327 (SB90 by Sen. Clay Scofield (R—Guntersville)).

The high-profile **Alabama Incentives Modernization Act**, HB540 by Rep. Bill Poole (R—Tuscaloosa), received its third reading in the Senate on Wednesday with three amendments. The House concurred with Senate changes Thursday, and the bill is pending with Gov. Ivey. The multi-pronged legislation is intended to boost the economy in rural and urban areas by enhancing existing economic development incentives, encouraging investments in opportunity zones and offering a capital gains tax cut for tech companies moving to Alabama.

WAGE DISCRIMINATION

Legislation creating a state cause of action related to **wage discrimination based on race or gender** is likely to become law soon. It was an eventful week for HB225 by Rep. Adline Clarke (D—Mobile), which was called up out of order on the Senate floor on Tuesday before being called over to the call of the chair. When the Senate convened on Wednesday, Sen. Figures requested the bill be

brought up for third reading and threatened a filibuster if it was not permitted. The bill passed the Senate unanimously as amended. On Thursday, the House concurred with the Senate changes and sent it to the Governor, who offered an executive amendment to limit damages to wages and interest. The bill is pending Gov. Ivey's signature.

In its final form, the bill includes a heightened pleading standard requiring a plaintiff to demonstrate the existence of a wage discrepancy and to demonstrate that the employer would not be subject to any of the exceptions, listed as defenses in the bill (a seniority system, merit system, any determinant other than race or gender). It is believed that requiring this on the front end will substantially limit claims based on mere speculation and limit sweeping discovery to substantiate the assertion of defenses. The legislation also prohibits an employer from requiring a job applicant to disclose their previous wage history. The statute of limitations for the claim is two years.

BUDGET RECAP

The \$2.2 billion **General Fund budget** for 2019-2020 is highlighted by a two-percent raise for state employees, increased funding for corrections and restoration of monies to the Department of Transportation. As an outgrowth of the Rebuild Alabama Act that passed in March, House members insisted that dollars – roughly equivalent to a penny of fuel tax – diverted to the state court system be restored for road and bridge construction. That \$35 million transfer was returned to the Public Road and Bridge Fund. Additionally, by amending the Alabama Incentives Modernization Act, \$31 million in insurance premium tax receipts was transferred to the General Fund from the Education Trust Fund to help fund the Children's Health Insurance Program (CHIP). The move is a permanent shift of reliable revenues from one budget to another.

Alabama's 2019-2020 **Education Trust Fund budget** totals \$7.1 billion, making it the largest ever, but when adjusted for inflation, spending still falls short of pre-recession levels. The budget for next year does include a 4 percent pay raise for education employees, increases for many education programs, the two-year college system and higher education institutions. The larger of the state's two operating budgets, the Education Trust Fund budget had originated in the Senate this year. At the beginning of the session's final week, a substitute from the House Ways and Means Committee on Education was pending third reading in the House. It passed the House last Tuesday, and the Senate voted to send the budget to conference committee on Wednesday. A conference committee report, which was released Friday morning, won support in both chambers and is pending with Gov. Ivey.

TASK FORCE ON FEDERAL TAX REFORM

Alabama will establish a Joint Legislative Task Force on the Tax Cuts and Jobs Act to study the impact of federal tax reforms on the state's tax laws. SJR87 by Sen. Dan Roberts (R—Birmingham), which proposed the task force,

passed the House last Tuesday and received the governor's signature on Thursday, making it Act [2019-339](#).

PISTOL PERMIT APPEALS

Existing law sets no timeframe for a sheriff to issue or reinstate an individual's **pistol permit** after a successful appeal. [HB17](#) by Rep. Connie Rowe (R—Jasper) would require a sheriff to issue or reinstate a pistol permit within five business days of receiving the district court order. The bill received its third reading in the Senate last Tuesday and is pending with Gov. Ivey.

MARKETPLACE REFORM FOR ALCOHOLIC BEVERAGES

[SB404](#) by Sen. Smitherman (D—Birmingham) would allow a **small beer manufacturer** to have a financial interest in a brewpub. The bill, which was not altered last week, received its third reading in the House last Tuesday and Senate concurrence the next day. It is pending with Gov. Ivey.

Retail licensees would be authorized to make and serve infusions using distilled spirits with [HB46](#) by Rep. Chris England, which received its third reading in the Senate last week and is pending with Gov. Ivey.

Statutory authorization for the direct shipment of wine was not granted by the Legislature this year. [HB350](#) by Rep. Terri Collins (R—Decatur) got as far as passing the House. Legislation on the subject is anticipated again next year, especially with the task force to study the direct shipment of wine created by [SJR64](#) by Sen. Jabo Waggoner (R—Vestavia Hills), which is now [Act 2019-197](#).

[HB519](#) by Rep. Gil Isbell (R—Gadsden) would have allowed licensed retailers to **deliver alcoholic beverages** to consumers, but it did not pass this year.

HEALTHCARE UPDATE

Pharmacy benefit managers would be required to register with the Alabama Department of Insurance pursuant to [SB73](#) by Sen. Orr (R—Decatur), which received its third reading in the House last Wednesday. The bill is pending with Gov. Ivey.

[SB245](#) by Sen. Tom Butler (R—Madison) would permit pharmacists to substitute **interchangeable biological products**, and last Tuesday the Senate concurred with a House **amendment**. The bill is pending with Gov. Ivey.

A clarification to **hospital lien laws** ([HB11](#)) by Rep. Rowe (R—Jasper) received the governor's signature last week. It is [Act 2019-273](#).

[HB69](#) by Rep. Arnold Mooney (R—Birmingham), which would require **electronically transmitted prescriptions** to indicate if generic drugs may be dispensed, received its third reading in the Senate last Tuesday. The bill is pending with Gov. Ivey.

Lawmakers did pass legislation on **medical marijuana** this year, but it was a significantly more modest change than the Senate had approved earlier in the session. In its final form, [SB236](#) by Sen. Tim Melson (R—Florence) would establish a **study commission on medical marijuana** and extend for one year a

CBD oil program at the University of Alabama at Birmingham. Sen. Melson, a physician, introduced the bill as a comprehensive authorization of medical marijuana with a new commission to regulate, administer and enforce the program. But the comprehensive bill, pending in the House Health Committee, had not moved for nearly three weeks. Last Wednesday the committee gave a favorable report to the much more limited substitute, and on Friday the House gave it a third reading on a vote of 80-19. The Senate concurred, and the bill is pending with Gov. Ivey.

HB381 would expand the list of medical providers who can make decisions about necessary care when **patients are unable to provide consent**. The bill, sponsored by Rep. Wes Allen (R—Troy), is still pending with Gov. Ivey.

TRANSPORTATION UPDATE

Called the Anti-Road Rage Act, HB 212 by Rep. Phillip Pettus (R—Killen) would require drivers to use an interstate highway's left lane only for passing with a few limited exceptions. The bill by Rep. Pettus, a retired state trooper, received its third reading in the Senate last Tuesday and is currently pending with Gov. Ivey.

An update to the **one-call notification system** for underground utilities – SB315 by Sen. Roberts (R—Birmingham) – is still pending with Gov. Ivey.

The **Railroad Modernization Act** would establish a state tax incentive for qualified expenditures, and it received its third reading in the Senate last Tuesday with two amendments. The House concurred Wednesday, and HB457 by Rep. Scott (D—Fairfield) is pending with Gov. Ivey.

Backseat passengers would be required to use safety belts pursuant to SB254 by Sen. David Burkette (D—Montgomery), which received its third reading in the House on Thursday. It is pending with Gov. Ivey.

SB47 by Sen. Gerald Allen (R—Tuscaloosa), which would authorize some **autonomous commercial vehicles** is pending with Gov. Ivey.

EDUCATION UPDATE

In addition to sponsoring the most significant education reform proposal of the session, Sen. Marsh (R—Anniston) also sponsored a related bill to require the governor to **consult with minority caucuses** on these appointments, and SB398 was revised Friday so that the governor would choose from nominees submitted by the legislative minority caucuses. On the last day, the Legislature gave final approval of the bill and it is pending with Gov. Ivey.

Alabama could join the 13 states that already require **third graders to meet reading benchmarks** before advancing to the fourth grade. The **Alabama Literacy Act** – HB388 by Rep. Collins (R—Decatur) – received its third reading as amended from the Senate on Thursday, and the House concurred with the Senate change. The bill would put extra focus on reading in the early grades, provide targeted funding and resources to improve reading instruction, and offer additional support for students with dyslexia and other specific needs. It is

pending with Gov. Ivey.

HB216 by Rep. David Faulkner (R—Birmingham), which would make **computer science** part of the mandatory school curriculum, received its third reading in the Senate last Tuesday. The House concurred with Senate changes on Wednesday and sent the bill to the governor for consideration.

Colleges and universities would be required to adopt a **free-speech policy** under HB498 by Rep. Matt Fridy (R—Montevallo). In the session's final week, the bill was amended in the Senate to delay its effective date until July 1, 2020. The House concurred, and the bill is pending with Gov. Ivey.

RECAP ON OTHER NOTABLE ACTION

- The **Financial Institution Excise Tax Reform Act of 2019** received Gov. Ivey's signature last Tuesday, making it Act 2019-284. It moved through the Legislature as HB419 by Rep. South (R—Fayette).
- The Department of Revenue is required to develop a **financial institution data match program** to help facilitate collection of unpaid taxes pursuant to Act 2019-285 signed last week. It was HB420 by Rep. South (R—Fayette).
- HB600 by Rep. Clouse (R—Ozark) would add the state's veterans affairs commissioner to the **Alabama Job Creation and Military Stability Commission**. After receiving its third reading in the Senate last week, the bill is pending with Gov. Ivey.
- The **Alabama Innovation Act** relating to economic incentives for research received its third reading in the House on Friday with a floor substitute. The Senate concurred with the House changes and sent the bill to Gov. Ivey for consideration. It is SB78 by Sen. Orr (R—Decatur).
- The state could recapture benefits extended to call centers that move their operations out of Alabama under SB110 by Sen. Cam Ward (R—Alabaster). Last Tuesday, the Senate concurred with House changes, and the bill is pending with Gov. Ivey.
- Gov. Ivey has now signed SB69 by Sen. Albritton (R—Atmore), making it Act 2019-340. The act abolishes the requirement for probate judges to issue **marriage licenses**, thereby resolving a lingering issue with **same-sex marriage** in some jurisdictions.
- SB191 by Sen. Orr (R—Decatur), known as the **Alabama Forfeiture Information Reporting Act**, would require law enforcement agencies to report any property seized in connection with a criminal event and establish new accounting requirements for funds or monies derived from **civil asset forfeiture**. Last week the bill received a favorable report from the House Judiciary Committee and then third reading in the House. It is presently pending with Gov. Ivey.
- **Online notary services** will not be authorized by SB359 by Sen. Scofield (R—Guntersville). The bill, filed relatively late in the session, did not advance this year, but it is expected to be reintroduced in 2020.
- In a change to **appellate procedures**, HB353 by Rep. Rowe (R—Jasper)

would allow certain legislative leaders and/or the Legislative Council to file **amicus briefs with the state's appellate courts** without leave of the court. It received its third reading in the House last Tuesday, then received Senate concurrence with House changes and is now pending with Gov. Ivey.

- **SB198** by Sen. Orr (R—Decatur) establishes a nominating process for the **director of the Administrative Office of Courts**, and last week the House and Senate adopted a conference committee report, sending the bill to Gov. Ivey for her signature. SB198 would only be effective if Alabama voters ratify the constitutional amendment proposed by Act 2019-187 to revise the judicial article of the Alabama Constitution.
- **SB297** by Sen. Givhan (R—Huntsville) would increase the amount-in-controversy threshold for **circuit court jurisdiction** from \$10,000 to \$20,000. In the session's last week, the bill received a favorable report from the House Judiciary Committee with three amendments, then third reading in the House and finally Senate concurrence. The Legislature later approved an executive amendment to remove language that would have only allowed plaintiffs to retain the right to proceed without a jury if removal is invoked. The bill is pending Gov. Ivey's signature.
- **Minimum qualifications for circuit and district judges** would increase with **HB529** by Rep. Faulkner (R—Birmingham). Last week, the bill received its third reading as substituted and amended in the Senate, and then the House voted to concur. The bill is pending with Gov. Ivey.
- **Daily fantasy sports contests** are legalized under HB361 by Rep. South (R—Fayette), which received a floor amendment and third reading in the Senate last Tuesday. The floor amendment raised the tax rate from 8 percent to 10.5 percent, and the House concurred with this change Wednesday. With Gov. Ivey's signature, the bill became law as Act 2019-343.
- **SB313** by Sen. Marsh (R—Anniston) passed its third reading in the House on Thursday. It sets a statewide referendum to clarify the state constitution to provide that **only U.S. citizens have the right to vote**. Because the legislation proposes a constitutional amendment, it is enacted without consideration by the governor as Act 2019-330.
- Extended negotiations had produced a compromise on the **Protect Alabama Small Businesses Act**, limiting its application to **franchisors and franchisees** in the non-alcoholic beverage sector. In the end, the compromise was never considered by the House Commerce and Small Business Committee, and SB129 by Sen. Chris Elliott (R—Fairhope) did not pass.