

FINE GEDDIE

GOVERNMENT RELATIONS

THE FINE GEDDIE REPORT

2023 REGULAR SESSION · WEEK TEN

MAY 19, 2023

ESG LEGISLATION PASSES SENATE DESPITE FILIBUSTER; TORT REFORM & MENTAL HEALTH MEASURES MOVE AHEAD

The Alabama Senate debated and approved legislation aimed at companies with activist environmental, social or governance (ESG) agendas. SB261 by Sen. Dan Roberts (R—Birmingham) **would prohibit governmental entities from contracting with companies that engage in the economic boycott of businesses** in certain sectors and industries that fail to commit to certain environmental standards; that fail to commit to certain corporate governance criteria; or that fail to facilitate certain activities. Democrats criticized the bill on constitutional grounds during a lengthy filibuster, but the GOP supermajority passed the committee substitute with a floor amendment on a 27-8 party line vote.

A major tort reform measure **protecting road and bridge contractors** moved again this week. The current draft reflects an agreement between cities, counties, private contractors and plaintiffs' attorneys that more clearly and narrowly defines the scope of road and bridge contractors' potential liabilities as related to workmanship. The bill also heightens the burden of proof for plaintiffs who are intoxicated or distracted when injured in an accident. SB159 by Sen. Clay Scofield (R—Guntersville) won approval from the House Transportation, Utilities and Infrastructure Committee this week, and it is the second bill on the House's working agenda for Tuesday. The same committee also acted on the House companion, HB249 by Rep. David Faulkner (R—Birmingham), reporting it out as substituted without a recommendation.

Legislation supporting **Alabama's mental health crisis services — including the 988 emergency number** for mental health crises — was introduced in the Senate this week. SB328 by Sen. Garlan Gudger (R—Cullman) proposes a \$0.98 assessment per month on telephones and cell phones to support mental health crisis services, the comprehensive and foundational structure of which has been established through legislative measures passed in previous sessions. The Senate Fiscal Responsibility and Economic Development Committee conducted a public hearing on the bill Wednesday and had not planned to vote. However, after the sixth person testified in favor of the proposal, a committee member made a motion and the bill was approved unanimously with one abstention. Gudger's bill is a companion to HB389 by Rep. Rex Reynolds (R—Huntsville), which was scheduled to be considered this week by the House Ways and Means Committee on the General Fund but no action was taken. The Senate version, however, reflects several concessions to the telecommunications industry.

Filibusters were characteristic of floor action this week, whether the slowdown was tied to a specific piece of legislation or more broadly to money issues. As lawmakers enter the regular session's home stretch, public progress could not be seen this week on the state's operating budgets for next year or the \$3 billion in supplemental appropriations for the current year. The **\$3.0 billion FY2024 General Fund budget** and **\$202 million supplemental appropriation** are pending with the Senate Finance and Taxation Committee on the General Fund since passing the House on April 25. The Senate's versions of the **\$8.8 billion FY2024 Education Trust Fund budget** and a **\$2.8 billion supplemental appropriation** are pending with the House Ways and Means Committee on Education where they have been since May 4.

OVERVIEW OF THE WEEK

GENERAL BUSINESS

- A bill to prohibit **Chinese citizens, entities and the Chinese government** from owning property in Alabama was heavily revised this week. HB379 is by Rep. Scott Stadthagen (R—Hartselle). It was substituted in the Senate Agriculture, Conservation and Forestry Committee on Wednesday to apply to individuals or government entities from countries on a federal sanctions list who could not own certain types of land. The bill was further amended on the Senate floor so that it does not apply to individuals who own property. House concurrence with Senate changes is pending.
- The **Alabama Nonprofit Corporation Law** would be updated to align with new national standards under SB245 by Sen. Sam Givhan (R—Gurley), which was approved this week by the Senate Judiciary Committee with an amendment. The House was scheduled to consider the companion on the floor Wednesday, but the body adjourned before considering it. HB267 by Rep. Tim Wadsworth (R—Arley) has been amended in committee.

TAX REFORM

- A **tax break for retirees** passed the House on Thursday. HB117 by Rep. Danny Garrett (R—Trussville) would exempt the first \$10,000 of taxable retirement income from defined contribution sources, up from the current exemption of \$6,000. Sen. Arthur Orr (R—Decatur) is sponsoring the companion.
- Businesses must make **monthly estimated sales tax payments** to the state if their average monthly sales tax liability reaches \$5,000. HB77 by Rep. Danny Garrett (R—Trussville) proposes to increase the threshold to \$20,000 per month. The bill, projected to benefit 3,100 small businesses, was approved this week by the Senate Finance and Taxation Committee on Education.

ECONOMIC DEVELOPMENT & PORT-RELATED ISSUES

- Alabama's **incentives for the entertainment industry** would be updated and expanded pursuant to HB429 by Rep. Jamie Kiel (R—Russellville), which had been revised last week by the House Ways and Means Committee on Education. This week, the bill was considered by a second committee, the House Economic

Development and Tourism Committee, where it was amended again. The bill was scheduled for consideration on the House floor Thursday but no action was taken. It is now listed on the House's working agenda for Tuesday.

- HB293 by Rep. Chip Brown (R—Mobile) would expand an **income tax credit for certain port activities**, and it passed the House Wednesday in its committee-approved form with a floor amendment.
- Alabama's voluntary **cleanup program for brownfield sites** would be bolstered by HB378 by Rep. Chip Brown (R—Mobile), which would extend liability protections to more parties that choose to participate in the program and create brownfield redevelopment districts, among other changes. It was approved Wednesday by the Senate Fiscal Responsibility and Economic Development Committee, and the committee also approved the companion, SB314 by Sen. Rodger Smitherman (D—Birmingham).
- Under HB439 by Rep. David Faulkner (R—Birmingham), a **Growing Alabama Credit** from a parent or holding company could be claimed by a subsidiary in certain circumstances, and the change would apply retroactively. The House approved the committee-passed version of the bill Tuesday.
- A bill to set new **sunset provisions and reporting guidelines** for economic tax incentives was expanded this week to also revise the **coal production tax credit**. SB299 by Sen. Arthur Orr (R—Decatur) passed the Senate Thursday as substituted.

ENERGY & TRANSPORTATION

- Senate Joint Resolution 6, in support of **offshore oil and natural gas leasing and development**, by Sen. Gerald Allen (R—Cottontdale) and Rep. Chris Pringle (R—Mobile) received the governor's signature this week, making it Act 2023-192.
- The proceeds from new **fuel taxes levied by counties and municipalities** could only be used for roads and bridges with limited exception under HB254 by Rep. Steve Clouse (R—Ozark). It passed the Senate Thursday with a floor substitute and a floor amendment making mass transit an allowable expenditure. House concurrence is pending, and the Senate companion is by Sen. Shay Shelnett (R—Trussville).
- According to HB404 by Rep. Thomas Jackson (D—Thomasville), the Alabama State Law Enforcement Agency would be required to issue a **hazardous material endorsement to commercial drivers** who hold valid transportation worker identification credentials from the U.S. Transportation Security Administration. The bill passed the House on Tuesday.
- For environmental covenant purposes, SB268 by Sen. Steve Livingston (R—Scottsboro) would clarify that work regarding aboveground storage tanks registered for eligibility under the **Alabama Underground and Aboveground Storage Tank Trust Fund** does not constitute an environmental response project. It passed the Senate on Tuesday. Similarly, the House on Tuesday passed the companion bill, HB390 by Rep. Kyle South (R—Fayette).
- A bill to exclude certain **industrial access roads** from the public highway and street

system of the state was approved this week by the House Transportation, Utilities and Infrastructure Committee. SB192 is by Sen. Greg Albritton (R—Atmore). The House version is by Rep. Donna Givens (R—Loxley).

HEALTHCARE

- The Alabama Medicaid Agency would be authorized to revise the **ceiling or maximum reimbursement rate for nursing facilities** more frequently under SB189 by Sen. Greg Albritton (R—Atmore), which is on the House’s working agenda for Tuesday. The companion is by Rep. Kyle South (R—Fayette). The bill resulted from a collaboration of the nursing home industry and the Medicaid commissioner to make a technical fix to the commissioner’s authority regarding reimbursement in the event of budgetary stress.
- A 2019 state law requires the Alabama Board of Medical Examiners to adopt rules governing the prescribing and usage of medications containing **buprenorphine to treat opioid addiction**, but recent changes at the federal level conflict with provisions of this Alabama law. SB239 by Sen. Larry Stutts (R—Tuscumbia) and Rep. Frances Holk-Jones (R—Foley) passed the House Thursday. It is now pending with the governor.
- The **scope of practice for optometrists** would expand under HB349 by Rep. Danny Garrett (R—Trussville). It was scheduled for consideration Wednesday by the Senate Healthcare Committee but failed on a recorded vote 6-7.
- The **Physician Workforce Act seeks to address workforce shortages** by providing certain contingency licenses for physicians who under current law may not otherwise be given a path to board certification. SB155 by Sen. April Weaver (R—Alabaster) and Rep. Paul Lee (R—Dothan) passed the Legislature last week. The bill is pending with the governor.
- People with **disabilities could not be discriminated against in organ transplants**, according to HB122 by Rep. Debbie Wood (R—Valley). The Senate Healthcare Committee conducted a public hearing and then approved the bill with an amendment. The companion is SB208 by Sen. Randy Price (R—Opelika).
- HB314 by Rep. Phillip Rigsby (R—Huntsville) proposes adjustments to **one-time emergency refills** dispensed by pharmacists, and it passed the Legislature last week. The bill is pending with the governor.
- The **Alabama Loan Repayment Program for Nursing Education** would be created with passage of SB57 by Sen. April Weaver (R—Alabaster). It was on the House’s working agenda for Wednesday, but the body adjourned before considering it.
- **Licensed paramedics would not be required to have a college degree** according to HB417 by Rep. Phillip Pettus (R—Killen), which passed the House Tuesday in its committee-approved form.
- The government would have to **identify each individual as male or female at birth** under HB405 by Rep. Susan DuBose (R—Birmingham), which was the subject of a public hearing in the House Health Committee this week.
- **Minors could not receive vaccines** without consent from a parent or guardian under

a bill approved by the House Health Committee this week. HB187 by Rep. Chip Brown (R—Mobile) was on the House’s working agenda for Wednesday, but the body adjourned before considering it.

STATE RETIREMENT

- In its committee-passed form, HB41 by Rep. Rex Reynolds (R—Huntsville) would lift the earnings cap for **state retirees who return to work as school resource officers or correctional officers**, and the bill passed the Senate Thursday. House concurrence with changes is pending, and Sen. Sam Givhan (R—Gurley) is sponsoring the Senate companion. The House’s working agenda for Tuesday includes a related bill, SB174 by Sen. Arthur Orr (R—Decatur). As substituted and amended, the bill would **exempt school resource officer earnings from afterschool events** from the earnings cap.
- Certain restrictions on **compensation for state retirees serving in public office** would be removed under SB307 by Sen. Chris Elliott (R—Josephine), which was approved Tuesday by the Senate County and Municipal Government Committee.

EDUCATION

- Public schools and their athletic programs would have revised responsibilities aimed at **preventing sudden cardiac arrest** under HB45 by Rep. Jeremy Gray (D—Opelika), which passed the Legislature last week. It is pending with the governor.
- The state’s **ban on transgender athletes** in K-12 schools would extend to higher education under HB261 by Rep. Susan DuBose (R—Birmingham), which passed the Senate as amended week before last. House concurrence with the Senate’s change is pending. Sen. April Weaver (R—Alabaster) is sponsoring the companion.
- Students will be required to complete a **financial literacy course** to graduate from high school with HB164 by Rep. Andy Whitt (R—Ardmore). It received the governor’s signature this week, becoming Act 2023-179.
- With SB176 by Sen. Arthur Orr (R—Decatur), students would have new data about the **employment opportunities and earnings potential of the most popular college degrees** to inform their decision-making. The bill passed the Senate Tuesday as substituted.

WORKFORCE

- The **Lieutenant Governor’s Commission on 21st Century Workforce** would be extended for another year under SJR 78 by Sen. Clay Scofield (R—Guntersville), which passed the Senate Thursday. The commission would be charged with studying the state’s current workforce development system and funding sources, as well as developing a state workforce plan.
- On Tuesday, the Senate’s working agenda is expected to include HB109 by Rep. Terri Collins (R—Decatur), a **comprehensive workforce development** measure that has been a long-time priority for the sponsor. The bill, which has a committee amendment, would create a 24-member Alabama Workforce Council Committee on Credential Quality and Transparency to advise the Alabama Committee on Credentialing and Career Pathways and make credential and competency data

publicly available.

INSURANCE

- In post-adjudication situations, rules for **driver license suspension** for failure to appear in court or a missed payment would become more lenient under SB154 by Sen. Will Barfoot (R—Pike Road). Barfoot’s bill passed the House with its committee amendment and a floor amendment on Tuesday, and the Senate has agreed to those changes. Rep. Tim Wadsworth (R—Arley) has the companion.
- **Health insurers** will be able to conduct all communication with enrollees electronically per SB167 by Sen. Josh Carnley (R—Ino) and Rep. Brock Colvin (R—Guntersville). It received the governor’s signature Tuesday, making it Act 2023-196
- **Public notice requirements for the Alabama Department of Insurance** will be revised pursuant to HB161 by Rep. David Faulkner (R—Birmingham) and Sen. Shay Shelnett (R—Trussville). It became Act 2023-202 on Tuesday with the governor’s signature.
- The **Mandatory Liability Insurance Act** would be revised under SB312 by Sen. Clyde Chambliss (R—Prattville) with changes regarding exceptions for inoperable or stored vehicles and to prohibit the continued operation of a vehicle in violation of this law. It was approved this week by the Senate County and Municipal Government Committee.

GOVERNMENT PROCUREMENT

- The **competitive bid threshold for public works projects** would increase from \$50,000 to \$100,000 according to HB168 by Rep. Kerry Underwood (R—Tuscumbia). The bill, which has been substituted and amended in committee, is on the House’s working agenda for Tuesday. Meanwhile, the Senate passed a revised bill on the same subject Thursday. SB290 by Sen. Sam Givhan (R—Gurley) was substituted and amended.
- **State contracts for certain professional services** would be subject to a qualification-based selection process and other requirements under SB309 by Sen. Clyde Chambliss (R—Prattville), which passed the Senate Thursday with two amendments (1, 2).
- The state’s **Office of the Chief Procurement Officer** would become the Division of Procurement under SB100 by Sen. Arthur Orr (R—Decatur), which goes on to make further adjustments to procurement in the state and to the role of the Contract Review Legislative Oversight Committee. The bill was approved Wednesday by the House State Government Committee.

MILITARY AFFAIRS

- HB44 by Rep. Chris Blackshear (R—Smiths Station) and Sen. Billy Beasley (D—Clayton) to expand the **Alabama Job Creation and Military Stability Commission** passed the Legislature last week and is pending with the governor.
- Updates to the **Military Family Jobs Opportunity Act** contained in SB37 by Sen. Sam Givhan (R—Gurley) and Rep. Phillip Rigsby (R—Huntsville) have become

law with the governor's signature. Act 2023-200 extends professional license reciprocity to spouses of U.S. Department of Defense civil servants.

BANKING

- A bill to prohibit consideration of **environmental, social and governance (ESG) criteria** when awarding a public contract and to require a responsible bidder to certify that its employees will not be subject to a personal ESG rating as a basis of hiring, firing, or evaluation was on the House's working agenda for Wednesday. The body adjourned before considering HB188 by Rep. Chip Brown (R—Mobile).
- **Financing arrangements for the sale or lease of motor vehicles** would be adjusted under SB15 by Sen. Shay Shelnett (R—Trussville). The bill, which affects insurance of motor vehicle value protection agreements, was on the House's working agenda for Wednesday, but the body adjourned before considering it.
- SB11 by Sen. Will Barfoot (R—Pike Road) and Rep. Cynthia Lee Almond (R—Tuscaloosa) would revise the **Alabama Uniform Trust Code** to increase the threshold at which a noneconomic trust can be terminated. It passed the Legislature last week and is pending with the governor.

STATE GOVERNMENT

- Most state agencies would be required to **take certain measures to prevent fraud** before paying benefits to recipients according to SB197 by Sen. Arthur Orr (R—Decatur), which was approved this week by the House Ways and Means Committee on the General Fund.

EMPLOYMENT LAW

- When determining if a **driver is an employee or an independent contractor**, a motor carrier's implementation of safety requirements for drivers could not be considered under SB183 by Sen. Garlan Gudger (R—Cullman) and Rep. Rhett Marques (R—Enterprise). It was signed into law as Act 2023-191 this week.
- It would be **illegal for employers to require employees to be microchipped** under HB4 by Rep. Prince Chestnut (D—Selma). The bill passed the Senate Tuesday as it had been substituted in committee. House concurrence with Senate changes is pending.

MANUFACTURING

- Public works projects utilizing iron would be required to use **iron produced in the United States** according to HB157 by Rep. David Faulkner (R—Birmingham), which has received the governor's signature, becoming Act 2023-180.

RECREATION

- **Amusement rides and water slides** would be subject to new safety requirements pursuant to HB352 by Rep. Alan Baker (R—Brewton) and Sen. Greg Albritton (R—Atmore), which passed the Senate Tuesday and is now pending with the governor.
- **Wakeboarding and wakesurfing on Smith Lake** would be regulated according to

HB422 by Rep. Tim Wadsworth (R—Arley), which passed the House Thursday with a floor amendment. The companion by Sen. Garlan Gudger (R—Cullman) was once again scheduled for consideration in the Senate County and Municipal Government Committee this week but did not advance.

RETAIL

- The **crime of shoplifting** would be established separately from theft pursuant to SB206 by Sen. Clyde Chambliss (R—Prattville), which was approved this week by the House Judiciary Committee with an amendment. The bill, to be known as the Retail Theft Crime Prevention Act, is a top priority of Lt. Gov. Will Ainsworth and district attorneys, and the companion is by Rep. Allen Treadaway (R—Morris).

LOCAL GOVERNMENT

- The cost of some **municipal business licenses** is based on gross receipts, and SB169 by Sen. Gerald Allen (R—Cottondale) would exclude from the gross receipts calculation any excise taxes paid to federal, state or local governments, and it was approved Wednesday by the House County and Municipal Government Committee with one amendment. The companion is by Rep. Chris Blackshear (R—Smiths Station).

JUDICIARY

- Multiple attempts have been made to **add trial judges in growing areas** of the state, and SB39 by Sen. Sam Givhan (R—Gurley) would create — in specific areas of the state — four circuit judgeships and three district judgeships in 2024 followed by four circuit judgeships and two district judgeships in 2026. It was approved this week by the House Judiciary Committee.

REAL ESTATE

- **Condemnations and other judgments involving boundaries or titles** would have to be recorded in the probate court of the county where the land is located per HB328 by Rep. Ben Robbins (R—Sylacauga). The amended bill was on the House’s working agenda for Wednesday, but the body adjourned before considering it. Robbins’ bill is now scheduled for House floor consideration Tuesday.
- In residential real estate, **buyers will be required to disclose intent to engage aspects of a wholesale transaction** under one provision of SB228 by Sen. Dan Roberts (R—Birmingham), and it will also deem unenforceable certain unfair service agreements purporting to establish a long-term right to list. The governor signed the bill, now known as Act 2023-201, on Tuesday.
- At present, there is an exception to the **Administrative Procedure Act** regarding communication about the process used by tax officials to value real property for ad valorem purposes. HB399 by Rep. Chris Sells (R—Greenville), which would remove this exception, was approved this week in substitute form by the House State Government Committee.

TECHNOLOGY

- **Manufacturers of some internet-enabled devices** would be required to automatically activate filters to block access to pornography if HB298 by Rep. Chris Sells (R—Greenville) becomes law. It passed the House Tuesday with a floor amendment.
- **Pornography could not be distributed to anyone less than 18 years old**, and pornography distributors would have to take certain measures to ensure their material is not distributed to anyone underage, with penalties for violations pursuant to HB441 by Rep. Ben Robbins (R—Sylacauga). The bill, which would also require distributors to pay a licensing fee to operate in this state, was approved in substitute form by the House Judiciary Committee this week.

ELECTIONS

- The **2024 Primary Election Runoff** would be rescheduled under HB339 by Rep. Chris Pringle (R—Mobile). Following the standard election calendar, the 2024 runoff would be the Tuesday after Easter Sunday, and this bill as substituted would set the runoff six weeks after the primary (instead of four weeks) for all future elections. It passed the House Thursday.
- **Political action committees** would be allowed to contribute to political parties in certain situations according to SB289 by Sen. Sam Givhan (R—Gurley), which passed the Senate Tuesday.

TOBACCO

- HB319 by Rep. Barbara Drummond (D—Mobile) would **enhance enforcement of tobacco and vape laws** administered by the Alabama Alcoholic Beverage Control Board and increase penalties for violations. It would also set standards for manufacturers of e-liquids and alternative nicotine products overseen by the Alabama Department of Revenue. The House passed the committee substitute to HB319 on Tuesday with a floor amendment. SB271 is a similar proposal by Sen. Garlan Gudger (R—Cullman).
- The ban on **possession of an electronic nicotine delivery system** by anyone under the age of 21 would be strengthened by SB316 by Sen. Vivian Davis Figures (D—Mobile). It was approved by the Senate Judiciary Committee this week with an amendment.

CONFIRMATIONS

- The Senate confirmed the following appointments this week: John McCartney, Ron Houston, Britton Lightsey and John Mitchell to the **Alabama Community College System Board of Trustees**; and William Aycock to the Advisory Board of the **Manufactured Housing Commission**.

WATER & SEWER

- SB258 by Sen. Andrew Jones (R—Centre) would clarify existing law about **nonprofit corporations providing water service** and audits by the Department of Examiners of Public Accounts and allow for an additional audit if fraud or mismanagement are suspected. It passed the House State Government Committee this week as substituted.

DISTRACTED DRIVING

- It would be **illegal to hold a cell phone while driving** for the purpose of talking according to SB301 by Sen. Jabo Waggoner (R—Vestavia Hills), which was approved Wednesday by the Senate Judiciary Committee with three amendments (1, 2, 3). There is no companion bill, but a similar measure by Rep. Randy Wood (R—Anniston) has been carried over to the call of the chair in the House for several weeks. HB8 has been substituted and twice amended (1, 2).

MOTOR VEHICLES

- SB232 by Sen. Chris Elliott (R—Josephine) would provide for **peer-to-peer car sharing programs** and exclude lessors of these vehicles from liability for certain taxes on the proceeds of vehicle rental and leasing. It was scheduled for consideration by the Senate Finance and Taxation Committee on the General Fund this week, but no action was taken. The companion is by Rep. Neil Rafferty (D—Birmingham).
- **Self-driving vehicles** would be authorized on Alabama roadways under SB311 by Sen. Gerald Allen (R—Cottondale), which was scheduled for consideration by the Senate Transportation and Energy Committee this week but the meeting was cancelled.

*The Alabama Legislature will reconvene on Tuesday, May 23,
for the 24th of 30 possible working days in the regular session.*