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CRR EXTRAS

Friday, April 25, 2008

Lawmakers Want YOU to Pay at Least \$82 Million More to Fund Continued Overspending; Only YOU Can Stop This Tax Increase

P ro-business forces held off a vote on an almost \$100 million tax increase on business for two full legislative days this week, but come 1 p.m. Tuesday, representatives WILL vote on that increase or an \$82 million so-called "compromise." **Only your phone call to your representative can stop this unconstitutional, retroactive tax increase.**

Don't be fooled by the rhetoric that business is holding up the **\$6.3 billion** (yes, that's billion with a "b") education budget. Between 2003 and 2007, the Education Trust Fund grew by \$2.5 billion. Education spending in 2007 reached a record total of \$6.7 billion, an amount that lawmakers knew could not be maintained. **Now that the state has hit a tough economic patch, rather than exercising responsible budgeting practices, the teacher union and certain lawmakers want the businesses of Alabama to pay for their reckless overspending.**



Enough lawmakers apparently have bought into the teacher union's pity party to take up **HB 350** by Rep. Richard Lindsey, D-Centre, before the state's budgets.

Right before the House adjourned for the week Thursday, representatives decided by a voice vote to reconsider the budget isolation resolution on Lindsey's bill. Tuesday, the budget isolation resolution failed to get the three-fifths vote of those present that it needed to pass, **thanks to 39 courageous representatives who voted against it.**

>> [Read the complete BIR vote](#)

However, according to debate during the daylong filibuster Thursday, enough of those representatives have been

BILLS

- [HB 40](#)
- [HB 144](#)
- [HB 274](#)
- [HB 350](#)
- [HB 375](#)
- [HB 427](#)
- [HB 428](#)
- [HB 472](#)
- [HB 576](#)
- [HB 664](#)
- [HB 816](#)
- [SB 341](#)
- [SB 375](#)
- [SB 399](#)
- [SB 446](#)
- [SB 447](#)
- [SB 544](#)
- [USHR 2831](#)
- [USS 2886](#)

IN THE NEWS

- [Ed budget to follow corporate tax debate](#)
- [Senate committee OKs ending food tax/federal income tax paid deduction](#)
- ['English only' bills effectively killed](#)
- [Alabama active on immigrant legislation](#)
- [Alabama woman focus of U.S. Senate bill](#)
- [Democrats push food safety bill despite concerns](#)

For more stories concerning legislative action and news of interest to retailers, go to [In the News](#)

persuaded to support a reworked version of the bill that **the next BIR vote will most likely succeed** , *unless you persuade them otherwise.*

The Business Associations' Tax Coalition , a 30-member business group that includes Alabama Retail Association, **had no part in negotiations for what lawmakers are terming a compromise, and, in fact, was locked out of the negotiations** . BATC, nor more than a handful of the House leadership, have even seen this "*compromise.*" When BATC would not agree to retroactivity in the bill, proponents cut a deal in hopes of affecting the outcome of an Alabama Supreme Court case concerning the 2001 add-back statute. Effectively, **at least \$82 million and possibly an almost \$100 million tax increase is being shoved on retailers and business without your input.**

According to floor debate, the reworked bill drops a requirement that management and administrative fees paid to related entities be "*added back*" as corporate income, while continuing to disallow the dividend-received deduction for corporations for dividends received from a captive real estate investment trust as well as disallowing the dividends-paid deduction to the REIT. The captive REIT provision, according to the debate and the bill's fiscal note, would add \$15 million to the \$67 million tax increase originally proposed by HB 350 before the management and administrative fees were added. If so, **the so-called compromise would mean \$82 million in new taxes for business as opposed to the almost \$100 million version currently on the table** . Alabama businesses paid \$6.2 billion in state and local taxes in 2007, and now they want you to pay more? We don't think so, especially in light of proposals that are not fair or equitable, and include no new measures for accountability.

The bill to be considered Tuesday links HB 350 to a now significantly watered-down version of much-needed small business and employee tax credits for health insurance coverage.

Thursday, the House Education Appropriations Committee approved a substitute version of **HB 144** by Rep. Jay Love, R-Montgomery, which as originally proposed and fully implemented would have allowed businesses with fewer than 25 employees to deduct TWICE, or **200 PERCENT** of, the amount they pay for employees' health insurance from their state income tax, while employees making up to \$50,000 annually could deduct **200 PERCENT** of the amount they paid toward their insurance from their individual income tax.

The AEA-crafted bill expected to be offered Tuesday reduces

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LEGISLATIVE CONTACTS

To contact members of the Alabama Legislature:

WRITE:

Alabama State House
11 South Union Street
Montgomery, AL 36130

CALL:

HOUSE: (334) 242-7600
SENATE: (334) 242-7800

E-MAIL:

Most representatives can be reached through the House e-mail system by using the following format:
[firstname.lastname@alhouse.org](#).

Those without e-mail addresses can be reached through the general e-mail address:

house3@alhouse.org

There is no general e-mail address for senators. [Click here](#) for a roster of the state senators with their complete contact information.

LINKS GO TO CONTACT INFO:

The link to each lawmaker mentioned in this publication goes to their individual websites, which have contact information. You can also find out whose legislative district you live or

those deductions initially to **120 percent** , or **60 percent of Love's original proposal** . According to the filibuster debate, the reworked version would increase the deduction in two, 15 percent increments to **150 percent by the year 2014** , if the education budget has grown by 6 percent at certain checkpoints. So, six years from now, the deductions might reach **75 percent of the original proposal** . That kind of "what-if," six-years-down-the-road "tax relief" will do little to help small businesses and their employees afford healthcare coverage.

The main objections to HB 350 remain:

- **It is RETROACTIVE tax policy** . In all versions, HB 350 applies to "open tax years," meaning the Alabama Department of Revenue can audit up to six taxable years of any corporate taxpayer that makes royalty or interest payments to a related company. *IF WE DON'T DO EVERYTHING WE CAN TO STOP THIS LEGISLATION, EVERY TIME THE BUDGETS GET TIGHT DUE TO AN ECONOMIC SLOWDOWN, THE LEGISLATURE WILL MAKE ANOTHER TAX RETROACTIVE AND SEND SOMEONE A PAST DUE TAX BILL.*
- **It is UNCONSTITUTIONAL and will lead to further litigation** . The best course of action is to let the current litigation to proceed. The Alabama Supreme Court has this particular tax issue before it and that case should be allowed to come to its conclusion. If this measure passes, all the state will gain is more litigation and no more money for the budgets.
- **It will HARM ECONOMIC DEVELOPMENT** . Alabama has led the nation for the past two years in job recruitment and the Southeast for the past four. No company will come here if they perceive the state will change the taxing rules after the fact whenever budgets are tight.

BATC agrees reasonable prospective changes to Alabama's add-back statute have merit. But the retroactive changes to tax law included in this legislation are patently unfair and will tarnish Alabama's business friendly image.

ARA would like to thank Rep. Cam Ward , R-Alabaster, vice chairman of the House Republican Caucus, **for sticking with business** throughout the two-day ordeal at the Alabama State House this week. He remained in constant contact with business and went to bat for us repeatedly.

ARA also would like to thank the 39 representatives who voted for business by voting against Tuesday's budget resolution, **especially the Republican Caucus members led**

work in under [Find Your Lawmaker](#) in the [Political Affairs](#) section of alabamaretail.org.



For committee assignments and clerk contacts for the Alabama Legislature, see [ARA's 2011 Legislative Roster](#).

BENEFIT FROM THE VALUE

Now, Even More Benefits from ARA



Your Business Can Save Thousands

ARA constantly strives to increase the Value its members received from membership. Many members have been using our low-cost workers' comp program for years, but were asking for more. In January, we announced more savings. ARA members now have access to:

Cost-Saving Credit Card Processing:

Through a partnership with Huntsville-based **CHECKredi**, ARA members

by **Chairman Mike Hubbard of Auburn**, who kept their pledge to oppose the BIR: Gerald Allen, Tuscaloosa; Alan Baker, Brewton; Mike Ball, Huntsville; Jim Barton, Mobile; Warren Beck, Geneva; DuWayne Bridges, Valley; Greg Canfield, Vestavia Hills; Steve Clouse, Ozark; Spencer Collier, Irvington; Randy Davis, Daphne; Paul DeMarco, Homewood; Owen Drake, Leeds; Joe Faust, Fairhope; Chad Fincher, Semmes; Victor Gaston, Mobile; Mac Gipson, Prattville; David Grimes, Montgomery; Mickey Hammon, Decatur; Mike Hill, Columbiana; Jamie Ison, Mobile; Benjamin Lewis, Dothan; Jay Love, Montgomery; Barry Mask, Wetumpka; Dr. Jim McClendon, Springville; Mary Sue McClurkin, Indian Springs; Mac McCutcheon, Capshaw; Steve McMillan, Bay Minette; Pat Moore, Pleasant Grove; Howard Sanderford, Huntsville; Harry Shiver, Bay Minette; Allen Treadway, Morris; Cam Ward, Alabaster; Jack Williams, Birmingham; Randy Wood, Anniston; and Greg Wren, Montgomery. Thanks also to the three brave Democrats – Jimmy Martin of Clanton, William Thigpen of Fayette and Lesley Vance of Phenix City – who voted with business as well.

A number of these lawmakers went to the mike to assist the filibuster and have pledged to help again next week. We truly appreciate all they are doing to resist this unfair tax increase.

Also helping our cause by not voting were Reps. Craig Ford, D-Gadsden; Jeremy Oden, R-Vinemont; Arthur Payne, R-Trussville; John Rogers, D-Birmingham; and Yusaf Salaam, D-Selma.

If you get the opportunity, please thank all of these legislators and ask them to stick with us next week.

Five Republicans let us down and voted for the BIR: Dr. Robert Bentley, Tuscaloosa; Blaine Galliher, Gadsden; Todd Greeson, Idler; Ron Johnson, Sylacauga; and Erwin Thomas, Oneonta.

>> Other News

MORE TAX NEWS

Senate Next Up for Food Sales Tax Ban Debate

A 7-0 vote Tuesday by the Senate Finance and Taxation Committee means the full Alabama Senate is next in line to debate the merits of dropping Alabama's sales tax on food. At least 21 of the 35 state senators must vote for the plan and voters statewide must agree in the Nov. 4 General Election before the legislation becomes law.

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IMPORTANT EVENT THIS WEEK

WHAT: **Birmingham Business Leadership Exchange**

WHEN: **6 p.m. Wednesday, April 6**

WHERE: Regions Center Upper Lobby Auditorium, 1900 5th Avenue North

Complimentary parking available at Regions Center deck via 19th St. North

The Speaker's Commission on Job Creation is partnering with the Birmingham Business Alliance to invite business owners of companies across the industrial spectrum to attend a "Business Leadership Exchange," and share their ideas about how to improve the business climate in the state. If you have any questions, please **contact the office of House Speaker Mike Hubbard at 334-242-7668**. If you are unable to come to the Birmingham exchange but would like to submit ideas and recommendations, you may [email them to Alabama Jobs Commission](#)

[HB 274](#) by Rep. John Knight, D-Montgomery, drops the state sales tax on food items as defined by the federal food stamp program and ends the deduction Alabama taxpayers' take for the federal income tax they pay. The proposed constitutional amendment also raises the threshold at which individuals start paying state income taxes by raising the standard deduction and personal and dependent exemptions.

or join the conversation
on Facebook at

[facebook.com/
speakersjobscommission](https://facebook.com/speakersjobscommission)

The Legislative Fiscal Office (LFO) estimates the state would lose \$320 million annually by dropping the sales tax on food, but would gain \$345 million annually through the other provisions of the proposed constitutional amendment.

UNNECESSARY MANDATES

House & Senate Panels OK Catfish Country of Origin Labeling

This week, House and Senate committees approved legislation that requires all food service establishments to tell customers where the catfish they serve or sell was produced.

Tuesday, the House Agriculture and Forestry Committee approved [HB 576](#) by Rep. A.J. McCampbell, D-Linden. Thursday, the Senate Agriculture, Conservation and Forestry Committee approved the Senate companion [SB 399](#) by Sen. Bobby Singleton, D-Greensboro. Now, both of these bills are ready to be considered by their respective chambers.

The version of the bill approved by the committees was agreed upon by the Alabama Restaurant Association and the Alabama Catfish Producers. The Alabama Retail Association did not participate in the agreement made on this country-of-origin legislation.

If you cannot operate under this substitute, please contact [ARA](#) and your representative NOW.

The substitute specifies sizes for the menu, product and placard labels and outlines a five-tiered enforcement that ranges from a written warning to a \$1,000 fine and revocation of the restaurant or other food service business' food safety permit.

This legislation requires catfish sold in Alabama restaurants, cafeterias, grocery delis and other food service establishments be labeled according to the country of origin. It specifically requires all food service establishments to inform consumers whether catfish is: Farm-Raised Catfish; River or Lake Catfish; **as well as tell customers** the state or country of origin.

The legislation further mandates: "Farm-Raised Catfish, A Product of Alabama" be placed on a placard, menu OR other written material available to the customer if that



is the type of catfish you serve to your customer. The placard must identify both the type of catfish and what state or country it originated; the same identifying information for any advertisements; and all distributors, processors or wholesalers of catfish products to provide information on the origin of the catfish to each person, firm or corporation to whom they distribute or sell catfish products for resale.

This new version of the legislation requires that menu labeling be done with the catfish offering in the same font size. It sets the minimum size for any signage at 250 square inches with at least 1-inch tall type, and it specifies that tabletop displays be at least 30 square inches and be placed on each table. Only one method of labeling would be required under this bill. The business can choose whether to include the country of origin on the menu, a sign or a tabletop display. The Alabama Catfish Producers has agreed to print and provide posters and tabletop displays.

If the Alabama Commissioner of Agriculture and Industries finds a food service business has mislabeled or failed to comply, it will receive a written warning on first offense, a \$100 fine on second offense, \$250 on the third offense, \$500 on the fourth offense, culminating with a \$1,000 fine on the fifth offense within a two-year period and the possible revocation of its food safety permit.

Federal law already requires the labeling of catfish and other seafood in grocery stores and fish markets, although the labels are different than those required under this proposed law. This legislation adds restaurants to the labeling requirement, but just for catfish.

It is an effort by Alabama catfish producers to save their industry from competition from cheaper imports and distinguish their product from imported goods that have received adverse publicity for containing antibiotics and chemicals.

PRIVACY

[Computerized Data Breach Dodges Committee Vote this](#)

Week

The Senate Governmental Affairs Committee failed to get a quorum Tuesday, but met Thursday without considering a bill that would require those with computerized data containing personal information about Alabama residents to inform them of any breach of security. Although the bill was on the committee's agenda Tuesday, it did not appear on the agenda when the committee met Thursday. When and if the bill will resurface is unclear.

Besides requiring notification of data breaches, [SB 544](#) by Sen. Roger Bedford, D-Russellville, **also would create a new, private cause of action by a financial institution against retailers responsible for a security breach.**

This legislation would **HOLD A RETAILER LIABLE** to a financial institution for that institution's reasonable costs to protect the personal information and account information of the customer or to continue to provide financial services to the customer, including, but not limited to, any cost incurred as a result of a potential or actual breach of data security in connection.

Under this legislation being pushed by the state credit unions, businesses would have to notify Alabama residents of any breach of security as soon as reasonably possible by mail or e-mail. If notification involved more than 200,000 people or a cost of \$500,000 or more, the owner of the compromised computerized data would have to notify the injured parties by e-mail, post the notice conspicuously on their Web site and notify the major statewide media, instead of providing written notice.

This bill attempts to legislate in Alabama an issue of national importance and application, which is better left to federal control and brings retailers into disputes that really are between the financial institutions and the credit card companies.

The House companion, [HB 816](#) by Rep. Tammy Irons, D-Florence, also has not received a committee vote.

UNEMPLOYMENT COMPENSATION

Unemployment Compensation Bills Moving

In the midst of its filibuster on HB 350, the Alabama House approved a \$30 increase to the maximum weekly unemployment benefit spread over the next two years as well as a bill that includes a one-week waiting period without unemployment benefits. Now, all the bills labor and business agreed on await Senate action.

Under [HB 427](#) by Rep. Jack Page, D-Gadsden, after July 6, the maximum weekly unemployment benefit would increase from \$235 to \$255. That maximum would increase to \$265 after July 5, 2009. This will mean an additional \$28.3 million cost to employers.

HB 427 also allows the Alabama Department of Industrial Relations to access up to \$7.9 million in federal funds to be used for administration. This is tax money Alabama employers already have paid for the explicit purpose of running the Alabama unemployment programs.

The House also approved [HB 428](#) by Rep. Frank McDaniel, D-Albertville, which provides a small part of the unemployment compensation tax paid by businesses will continue to be set aside to help the unemployed find jobs through the state's career centers. It also includes the one-week waiting period without unemployment benefits. For benefit years after July 6, HB 428 inserts one week without benefits after the 13th week of paid benefits. This will help relieve some costs to employers with employees on long-term unemployment. That week also does not count as a week of unemployment. The majority of those on unemployment have stopped receiving unemployment benefits by the 12th week. Alabama is among only 14 states that do not have a one-week waiting period within the unemployment benefit payment schedule.

ARA now urges the stalemated Alabama Senate to take up these bills as well as [HB 40](#), also by McDaniel, to make a required correction to the 2005 State Unemployment Tax Act. HB 40 is the most important component to this negotiated package of bills, as **failure to approve it would mean \$700 million in additional taxes to business.**

IMMIGRATION

House to Take Up Immigration Bills Next Week; English-Only Bills Most Likely Dead

House Majority Leader Ken Guin, D-Carbon Hill, told business leaders Tuesday that he expects immigration bills to be debated next week by the Alabama House of Representatives, including [HB 664](#) by Rep. Randy Hinshaw, D-Huntsville, which would revoke a company's business license if it were found to have knowingly hired an illegal immigrant.

Thursday, the Senate Governmental Affairs Committee carried over two bills seeking English-only provisions for Alabama after conducting public hearings on the bills over the past

three weeks. The committee could technically take up the bills when it meets next week, but with only six meeting days remaining in the legislative session, the bills would need near unanimous support to make it through the Legislature.

[**SB 446**](#) by Sen. Scott Beason, R-Gardendale, would have prohibited state employees and officials from communicating in any language other than English, and created a fluency test for anyone wishing to participate in state programs, benefits and opportunities; and

[**SB 447**](#), also by Beason, would have required that Alabama driver license testing be offered only in English. Currently, the Alabama Department of Public Safety offers the written test in 14 languages. The English-only bills would have set "a *terrible precedent*" that would do nothing to advance Alabama's goal to compete in the global economy, Guin said.

HEALTH INSURANCE

Prosthetics and Chiropractic Bills Ready for Senate Consideration

Two House bills that would require health plans to offer certain coverage are in line for consideration by the full Senate. Both were amended in the Senate committee last week, which means if the Senate approves them, they still have to return to the House for final approval.

[**HB 375**](#) by Rep. Lesley Vance, D-Phenix City, requires health plans to offer coverage for prosthetics, and [**HB 472**](#), sponsored by Rep. James Gordon, D-Mobile, requires health plans to offer coverage for chiropractic services. The bills were amended to exempt self-insured plans from the requirement. The Senate companions - [**SB 341**](#) by Sen. Parker Griffith, D-Huntsville, and [**SB 375**](#) by Sen. Pat Lindsey, D-Butler - also await Senate action.

These bills stop short of mandating coverage. **ARA opposes mandatory health-care benefits as they increase the cost of health care and will continue to monitor these bills.**

NEXT LEGISLATIVE DAY

2009 Session Begins in February

Another Summer Special Session Possible

Lawmakers will return for the **first legislative meeting day of the 2009 regular session at noon Tuesday, Feb. 3, 2009**.

However, the governor could call lawmakers back for another

special session later this summer.

FEDERAL

U.S. Senate Refuses to Vote on Discrimination Statute Bill

Wednesday, the U.S. Senate refused to take up [H.R. 2831](#), the Lilly Ledbetter Fair Pay Act, which would have eliminated the statute of limitations in pay discrimination cases. The bill is named for an Alabama Goodyear Tire and Rubber Co. employee who filed a lawsuit years after she was allegedly sexually discriminated against, claiming each subsequent paycheck represented a new act of discrimination because she was paid less than if the initial action had not occurred.

Ledbetter of Jacksonville watched from the Senate gallery Wednesday as the Senate failed to get the 60 votes needed to bring the Lilly Ledbetter Fair Pay Act to a vote. Alabama's Republican Sens. Richard Shelby and Jeff Sessions voted against bringing the bill to a vote.

The U.S. House passed the bill 225-199 last July in response to a May 2007 U.S. Supreme Court ruling in Ledbetter's case that upheld the federal statute of limitations on cases alleging pay discrimination. The only Alabama congressman who voted for the House bill was U.S. Rep. Artur Davis, D-Birmingham. Under the Civil Rights Act, a claim must be filed with the Equal Opportunity Employment Commission within either 180 days or 300 days of an incident, depending on the state.

While the court upheld the statute of limitations and ruled against Ledbetter, the legislation would establish a "*paycheck rule*" allowing each paycheck to be considered a discriminatory act if the check is less than it would have been if the original discrimination had not occurred. The measure goes far beyond the Ledbetter case and gender discrimination, applying to religion, race, age, disabilities, national origin and other discrimination whether intentional or unintentional. It also applies to compensation such as pension payments and vacation pay.

Democrats Propose Country-of-Origin Rule for Food, Drugs

The U.S. House Energy and Commerce Committee held a hearing Thursday on the Food and Drug Administration Globalization Act of 2008, which proposes all produce labels be required to show the country of origin. The proposal also calls for food manufacturers of all kinds to identify on their

corporate Web site where each ingredient in a particular food product originated. Drug labels also would have to identify the source of a medicine's active ingredient and its place of manufacture. Labels for all medical devices would have to show country of origin, as well. The legislation also calls for as much as \$600 million more annually for the Food and Drug Administration through new fees paid by industry. All food manufacturers serving the U.S. market, whether they are inside or outside the United States, would have to pay \$2,000 for each of the manufacturing, distribution and storage facilities they have in operation.

Senators Introduce Alternate Minimum Tax Bill Legislation Includes 15-Year Depreciation Period

Last week, a measure was introduced in the U.S. Senate that would extend Alternative Minimum Tax relief through 2008 and renew nearly 50 other personal and business tax provisions through the end of 2009. Those provisions either expired at the end of 2007 or are set to expire at the end of this year. [S. 2886](#) is by Senate Finance Committee Chairman Max Baucus, D-Mont., and Ranking Member Charles Grassley, R-Iowa.

The bill would spare an estimated 20 million taxpayers from being hit by AMT when filing their 2008 tax returns next year and generate more consumer spending. The exemption would rise to \$46,200 for individuals and \$69,950 for married couples filing jointly, up from \$44,350 and \$66,250 for 2007. AMT is a mechanism instituted in 1969 to keep the wealthy from avoiding taxes altogether, but has begun to hit more middle-income families in recent years as average incomes have risen into the range considered wealthy a generation ago.

S. 2886 also would extend the 15-year depreciation period for improvements to leased stores and all restaurants, which expired at the end of 2007, through the end of 2009. The option for individuals to deduct state and local sales tax on their federal tax returns in lieu of deducting state income taxes also would be renewed through the end of 2009. Other provisions would renew tax credits for buying energy efficient appliances and range from letting teachers deduct the cost of school supplies to the research and development tax credit for manufacturers. All would be retroactive to Dec. 31, 2007.

