



**SPEAK OUT!**  
Legislative Issues Affecting  
Oak Ridge and our  
Business Community



***April 5, 2010***

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## Tennessee Chamber Action Alert:

### Bills Targeting Waste Industry Delayed in House: Senate Schedules Full Vote Wednesday

This week a house subcommittee delayed hearings on three waste bills until Tuesday, April 6th -- [SB 2801](#) by Senator Marrero ([HB 2911](#) by Rep. Gilmore) and [SB 2735](#) by Senator Berke ([HB 2826](#) by Rep. Cobb) and [SB 3221](#) by Senator Herron ([HB 3402](#) by Rep. Mike Turner) – are all designed to ban Tennessee companies from using scientifically approved and safe processing or disposal of waste containing low levels of radioactivity. Not only will it impact the companies that do the processing and disposal, it will impact manufacturers, medical facilities, power companies, water companies that rely on the services provided for the low-level wastes. **The Tennessee Chamber OPPOSES these bills as it will prevent Tennessee industries from using a process which is permitted by the federal Nuclear Regulatory Commission (NRC) and duly licensed by the state Division of Radiological Health. Such a prohibition should not be enacted into law.**

Tennessee is fortunate to have experienced and licensed industries which properly process and handle wastes containing safe low levels of radioactivity. All companies in Tennessee are processing, packaging, and treating in compliance with state laws. These wastes are then disposed in properly designed and permitted landfills in the state or shipped out-of-state for approved disposal. The state of Tennessee is responsible for monitoring and enforcing the laws to assure compliance for safety and protection of our citizens and our environment. The Tennessee Solid Waste Advisory Committee and the Solid Waste Disposal Control Board have reviewed extensively the types of wastes which can be properly and safely disposed in Tennessee landfills. Legislation prohibiting these safe practices is unnecessary and harmful to the Tennessee's economy.

#### **The prohibition**

Tennessee's processing industries provide very vital, technical, and highly scientific services for our power and water utilities and medical facilities in the state as well as

across the nation. These processing industries have demonstrated their expertise and commitment to comply with the law and their respective licenses as the state Division of Radiological Health and the federal NRC provide responsible oversight and enforcement.

For the above facts, we **urge a vote of “NO”** on each of these bills as they are presented before committees this week or in the balance of the session.

## **Action Alert: State Senate Actions Threaten Industry Appointments to Regulatory Boards:**

Negotiations continued this week on legislation that would remove trade associations' ability to make recommendations to the Governor for a number of boards including environmental regulatory boards (Solid Waste Disposal Control Board, Underground Storage Tank Board, Water Pollution Control Board, Ground Water Management Board, and Air Pollution Control Board). This is a very important issue since these boards dictate fees and technical regulations that permit holders must adhere to. SB 2949 by Senator Watson is to be heard again before the Senate Government Operations Committee during the week of April 12<sup>th</sup> (likely Wednesday, April 14<sup>th</sup>), at which time it will be subjected to this “template” amendment to eliminate organizations from providing lists of qualified persons from which the governor shall appoint.

Despite extensive communication from numerous groups representing business and industry, environmental groups and even governmental representative groups the State Senate seems poised to make a substantial change that has existed in state regulator board operation for over 30 years. This proposal is lead by Senators Bo Watson (R-Hixson) Sen. Dwayne Bunch (R-Cleveland) Sen. Brian Kelsey (R-Germantown) and Sen. Jack Johnson (R-Franklin).

**LAW FIRMS** – Senators this week went even further by proposing amendments that would prohibit law firms and other businesses that employ lobbyists from serving on regulatory boards.

Business would face very difficult circumstances with board appointees who did not have knowledge and experience of complex regulatory areas allowing regulators more opportunity to adopt harmful regulations. Business representatives have for over 30 years served without compensation on these boards and the process has worked with little to no problems. Senate leadership has noted they are taking into considerations arguments being made by many business, local government and environmental representatives and trade associations.

## Gubernatorial Election Update: Gibbons, McMillan Out: McWherter Commits Personal Funds; Haslam, Ramsey, Wamp Continue to Battle

Major changes occurred this week on the race to be the next Governor of Tennessee. Democrat Kim McMillan announced she is dropping out of the race for governor, effectively handing the Democratic gubernatorial nomination to Jackson businessman Mike McWherter. McMillan, the former state House Majority Leader will instead run for mayor of Clarksville. McWherter this week loaned his campaign \$1 million in personal money. On the Republican side, Bill Gibbons ended his campaign, citing monetary reasons for leaving the race. The Republican battle is now focused on the three remaining candidates Bill Haslam, Ron Ramsey and Zach Wamp. All three Republican candidates are battling it out across the state competing in fundraising, media ads, and appearances

## Workers' Compensation Impacts of New HealthCare Legislation

This week Doug Holmes, President of UWC Strategic Services on Unemployment & Workers' Compensation gave an update on the possible workers' compensation effects of the Patient Protection and Affordable Care Act ([HR 3590](#)) and the companion reconciliation bill (HR 4872) that have now both been signed into law. What are the impacts for workers' compensation?

On the plus side one could say that the language could have been much worse in that a number of proposals that would have directly impacted workers' compensation were rejected during committee deliberations. The amendment proposed by Senator Rockefeller (D –WV) to include “24 Hour Coverage” in the bill was not considered by the Senate Finance Committee and the amendment from Representative Doggett (D-TX) that would have created a new private cause of action for attorneys to enforce conditional payment recovery was withdrawn during deliberations in the House Ways and Means Committee.

Items that remained in the final bill as it became law included:

### **HR 3590**

**Section 1556** on page 142, which amends Sections 411(c)(4) and 422(1) of the Black Lung Benefits Act will 1) provide for a survivor benefit to be paid upon the death of a miner with an awarded federal black lung claim without the requirement to prove that the miner's death was due to coal workers pneumoconiosis, and 2) reinstates the rebuttable presumption that a miner is totally disabled due to pneumoconiosis, that his death was

due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis, if he had 15 or more years of underground mine employment, he was totally disabled by a respiratory condition and the x ray interpreted as negative for complicated pneumoconiosis.

The effect of this language will be to impose costs retroactively and prospectively on self-insured employers as well as insurers.

**Section 2401** on page 182 specifies that if a state elects to expand Medicaid services to provide home and community based attendant services and supports under the Community First Choice Option, such supports and services must be provided in accordance with FLSA and in accordance with the provisions of state unemployment and workers compensation insurance.

Although it is somewhat unclear what is intended by the phrase “in accordance with” it appears to lean in favor of supports and services that are to be provided by “employees” rather than independent contractors. This could affect whether service providers must be reported as being in employment and whether new workers compensation policies will be needed to adjust for these changes.

Since this new option is available to states beginning October 1, 2010 we expect that further clarification may be coming later this year.

**Section 10109** on page 797 provides for the development of standards by the Secretary of HHS to enable the exchange of financial and administrative transactions with the goal of improving the operation of the health care system and reducing administrative costs.

As part of the new law, the Secretary shall, not later than January 1, 2012, seek input on activities and items relating to a number of areas including **whether standards and operating rules described in section 1173 of the Social Security Act (the Health Information System) should apply to health care transactions of automobile insurance, workers compensation, and other programs or persons.**

The law requires that the Secretary solicit input on this question from “standard setting organizations and stakeholders, as determined appropriate by the Secretary”.

Another new set of national reporting standards may or may not be similar to Section 111 reporting requirements and existing systems being used by self-insured employers and insurers. This also suggests that reporting requirements may be extended beyond individuals who are Medicare entitled to the much larger data base of all individuals who are served as part of the broadly defined national health care system.

## Legislative Activity for Week of April 5, 2010

### SENATE ACTIVITY

## EDUCATION COMMITTEE

MONDAY, APRIL 5, 2010 – LP 12 – 3:30 PM

WEDNESDAY, APRIL 7, 2010 – LP 12 – 3:00 PM

**SB 2185 by \*Ramsey (\*HB 2130 by \*Mumpower, Ford ) - [Status](#)**

As introduced, establishes additional grant of \$500 to entering freshman receiving HOPE scholarship or access grant for completion of Tennessee scholars program. HB 2130 is scheduled in the House Education Committee on Wednesday, April 7<sup>th</sup>. The Chamber **SUPPORTS** this bill.

## FINANCE, WAYS & MEANS COMMITTEE

TUESDAY, APRIL 6, 2010 – LP 12 – 8:30 AM

**\*SJR 0784 by \*Burchett - [Status](#)**

Requests reports from the department of environment and conservation relative to TVA Emergency Preparedness and transition to Dry Coal Ash Storage.

**SB 3678 by \*Burchett (\*HB 3509 by \*Niceley) - [Status](#)**

As introduced, provides for Tennessee opting out of federal aid highway program and electing instead to retain state's contributions to federal highway trust fund each fiscal year, if and when Congress enacts legislation to permit such action.

## TAX SUBCOMMITTEE OF FINANCE, WAYS & MEANS

TUESDAY, APRIL 6, 2010 – LP 12 – 1:00 PM

**\*SB 3901 by \*Kyle (HB 3787 by \*Turner M) - [Status](#)**

As introduced, modifies various tax provisions concerning video programming services, telecommunications services, sales of property for use in business of selling, and determination of net earnings for real estate investment trusts. This is one of the Administration's Technical Corrections' bills. No amendment language has been available at this time.

**\*SB 3911 by \*Kyle (HB 3781 by \*Turner M) - [Status](#)**

As introduced, establishes general requirement that gift tax be paid on or before April 15 of each year; requires that taxpayer be provided six-month extension to file gift tax return upon written request. This is one of the Administration's Technical Corrections' bills. No amendment language has been available at this time.

**SB 3134 by \*McNally (\*HB 3164 by \*Curtiss, Fincher) - [Status](#)**

As introduced, revises the tax on unauthorized substances based on the decision of the Tennessee Supreme Court in *Waters v. Farr* to impose the tax on the dealer of unauthorized substances.

**The following Senate Committees are not meeting week of April 5<sup>th</sup>**

COMMERCE, LABOR, AND AGRICULTURE COMMITTEE

ENVIRONMENT, CONSERVATION & TOURISM COMMITTEE

GOVERNMENT OPERATIONS COMMITTEE

TRANSPORTATION COMMITTEE

### **HOUSE ACTIVITY**

COMMERCE COMMITTEE

TUESDAY, APRIL 6, 2010 – HHR 16 – 9:15 AM

**HB3654 by \*Stewart, et al. (\*SB3120 by \*Berke, \*Ketron.) - [Status](#)**

As introduced, enacts the "Green Jobs Act." This bill has too short timeframe (September 1, 2010) for producing a very comprehensive plan for producing "green jobs." Secondly, it appears the bill has had little input from the business community and the administration to work to develop these plans. Current language in the bill only allows for certain entities such as "labor organizations" to receive funding awards for training. It appears the concept is based on bad assumptions of funding and directs who is to get grants; frankly, such a comprehensive plan should be driven by a broad-based group, such as possibly the Governor's Jobs Cabinet (proper mix of state agencies and other groups) as

opposed to just the Department of Labor and Workforce Development. The Chamber **OPPOSES** this bill in its current form and is working with sponsors and the Department of Economic and Community Development on a possible amendment.

## CONSERVATION & ENVIRONMENT COMMITTEE

TUESDAY, APRIL 6, 2010 – HHR 29 – 2:00 PM

**HB3842 by \*Maddox, \*Turner M. (\*SB3854 by \*Kyle, et al.) - [Status](#)**

As introduced, revises various present law provisions regarding petroleum underground storage tanks.

**\*HB3287 by \*Lynn. (SB3159 by \*Johnson.) - [Status](#)**

As introduced, requires legislative approval prior to adoption of regulatory programs concerning greenhouse gas or motor vehicle fuel economy. This bill is to be amended to make it an urging to Congress to not adopt a cap & trade program.

**HB2837 by \*Floyd, et al. (\*SB2717 by \*Watson.) - [Status](#)**

As introduced, includes all minerals under provision clarifying interpretation of property conveyances and requires permitting for rock harvesting. The Chamber is concerned that various objectives for this bill may cause unintended consequences as it proposes sweeping modifications for property rights and mineral rights. The Chamber believes that a legislative summer study for this bill is appropriate.

## STATE GOVERNMENT OF SL&G

TUESDAY, APRIL 6, 2010 – HHR 30 - 2:00 PM

**HB2911 by \*Gilmore. (\*SB2801 by \*Marrero B.) - [Status](#)**

As introduced, requires any permit issued by the department of environment and conservation to specify the types of waste a facility is prohibited from receiving for disposal or processing; prohibits any person from knowingly accepting for disposal or processing certain nuclear or radioactive materials in any landfill. See the earlier article. The Chamber **OPPOSES** this bill.

**HB3402 by \*Turner M. (\*SB3221 by \*Herron.) - [Status](#)**

As introduced, prohibits the acceptance, processing, or disposal of radioactive waste material in any landfill located in the state. See the earlier article. The Chamber **OPPOSES** this bill.

**HB2826 by \*Cobb T. (\*SB2735 by \*Berke, et al.) - [Status](#)**

As introduced, prohibits the acceptance and storage of radioactive waste at landfills or commercial facilities in this state. See the earlier article. The Chamber **OPPOSES** this bill. **The SB 2735 is on calendar for Senate Floor action on Wednesday, April 7<sup>th</sup>.**

#### FINANCE, WAYS & MEANS COMMITTEE

TUESDAY, APRIL 6, 2010 – HHR 16 – 2:00 PM

**HB3046 by \*Fitzhugh. (\*SB2912 by \*Gresham.) - [Status](#)**

As introduced, adds carbon dioxide as a pipeline product that is regulated by the Tennessee regulatory authority. The SB 2912, with amendment, was passed by the Senate on April 1<sup>st</sup>. The Chamber **SUPPORTS** this bill.

**HB3218 by \*Hawk. (\*SB2403 by \*Southerland, et al.) - [Status](#)**

As introduced, requires generators of mercury-added consumer products to remove such products from the stream of solid waste disposal. The Chamber **SUPPORTS** this bill as it is amended.

#### JUDICIARY COMMITTEE

TUESDAY, APRIL 6, 2010 – HHR 31- 3:30 PM

**\*HB2951 by \*Brooks H, \*Fincher. (SB2917 by \*Burchett.) - [Status](#)**

As introduced, clarifies that refusing to accept a legal writ or other process attempting to be served by a public employee or private process server constitutes obstruction of the service of process.

#### CONSUMER & EMPLOYEES AFFAIRS COMMITTEE

WEDNESDAY, APRIL 7, 2010 – HHR 29 – 8:30 AM

**\*HB2774 by \*Hardaway. (SB3378 by \*Marrero B.) - [Status](#)**

As introduced, requires child protective restraints in shopping carts.

**\*HB3162 by \*Curtiss, \*Pitts. (SB3603 by \*Ketron.) - [Status](#)**

As introduced, lengthens suspension of requirement that sole proprietors and partners maintain workers compensation insurance on themselves from March 28, 2011, until June 30, 2011.

**\*HB3163 by \*Curtiss, \*Pitts. (SB3591 by \*Ketron.) - [Status](#)**

As introduced, creates a procedure for sole proprietors, partners, officers of corporations, and members of limited liability companies engaged in the construction industry to file for an exemption from obtaining workers compensation insurance to cover themselves.

**\*HB3525 by \*Maddox. (SB3336 by \*Herron.) - [Status](#)**

As introduced, makes permanent the temporary suspension imposed by HB7/SB1 of the 2010 Extraordinary Session of the requirement that independent contractors in the construction industry obtain workers compensation insurance.

**\*HB3557 by \*Rowland. (SB3750 by \*Bunch.) - [Status](#)**

As introduced, establishes certain presumptions and conclusive determinations regarding the determination of whether a person is an "employee" or an "independent contractor" for purposes of the workers compensation law.

## LOCAL GOVERNMENT OF S&LG

WEDNESDAY, APRIL 7, 2010 – HHR 31 – 8:30 AM

**\*HB3160 by \*Curtiss, \*McCormick. (SB3606 by \*Ketron.) - [Status](#)**

As introduced, clarifies that the only bid preferences that are permissible in public construction projects of local governments are those created by the general assembly by general law; prohibits local authorization for bid preferences for contracts unless general assembly specifically authorizes such actions to occur.

**\*HB2828 by \*Swafford. (SB2799 by \*Burks, \*Burchett.) - [Status](#)**

As introduced, adds various requirements for issuance of permit to dispose of coal combustion waste in landfills. The Chamber **OPPOSES** this bill.

**HB2829 by \*Swafford. (\*SB2550 by \*Burks, \*Marrero B.) - [Status](#)**

As introduced, requires 60 days advance written notice to members of general assembly before a coal ash disposal permit is issued for a facility in their district. The Chamber **OPPOSES** this bill.

## INDUSTRIAL IMPACT OF COMMERCE

WEDNESDAY, APRIL 7, 2010 – HHR 31 - 10:00 AM

**\*HB0128 by \*Hardaway. (SB0247 by \*Marrero B.) - [Status](#)**

As introduced, requires a seller of real property to provide an energy audit of the property to potential buyers prior to the sale and include such audit in the deed of conveyance.

**\*HB2875 by \*Curtiss. (SB3586 by \*Ketron.) - [Status](#)**

As introduced, authorizes use of red flags made from plastic materials instead of cloth to mark a projecting load on a motor vehicle, subject to commissioner's approval.

**\*HB3167 by \*Curtiss, \*Moore. (SB3608 by \*Ketron.) - [Status](#)**

As introduced, requires blasters to file a notice with commerce and insurance prior to the blast occurring.

## EDUCATION COMMITTEE

WEDNESDAY, APRIL 7, 2010 – HHR 16 – 11:00 AM

**\*HB2130 by \*Mumpower, \*Ford . (SB2185 by \*Ramsey.) - [Status](#)**

As introduced, establishes additional grant of \$500 to entering freshman receiving HOPE scholarship or access grant for completion of Tennessee scholars program. SB 2185 is scheduled in the Senate Education Committee on Monday, April 5<sup>th</sup>. The Chamber **SUPPORTS** this bill.

## CIVIL PRACTICE AND PROCEDURE OF JUDICIARY

WEDNESDAY, APRIL 7, 2010 – HHR 29 – 12:30 PM

**\*HB3058 by \*Niceley. (SB3090 by \*Burchett.) - [Status](#)**

As introduced, requires fair market value of property to be taken by eminent domain be based on the highest and best use of such property. This bill is bad for economic development and has had an amendment proposed to it. The Chamber **OPPOSES** this bill.

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# Millennium Partners

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<i>Platinum</i>		
		
<i>Gold</i>		
 		   
<i>Copper</i>	<i>Silver</i>	
  	         	
<i>Bronze</i>		
Chuck's Car Care Center CDM Federal Programs NHC Oak Ridge Bacon Howard & Company Kramer Rayson, LLP Thermocopy	Proforma Blaine Construction Company Oak Ridge Gastroenterology Associates Endoscopy Center of Oak Ridge Coldwell Banker Wallace & Wallace Akins Crisp Public Strategies	Herron Connell Insurance CH2MHILL Advanced Management, Inc. Oak Ridge Pediatric Clinic Avisco Shaw E & I