

Alabama Legislative Update

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The Alabama Legislature convenes each year and can meet for no more than 30 calendar day during a 105- period.

- The 2014 Session convened on Tuesday, January 14.
- They adjourned *sine die* Thursday, April 3.
- Due to the quadrennium elections, legislators wrapped up their business almost one month early.
- More than 1,100 bills introduced this session.
- 227 bills were introduced the FIRST Day in the House and 177 in the Senate.

What Passed: The Taxpayer Bill of Rights



- It will be renamed Taxpayer Fairness Act, [2014-146](#)
- It will take effect October 1.
- Business community's top priority for years.

What Passed: TBOR



- Updates the 1992 original Taxpayers' Bill of Rights by creating an Alabama Tax Tribunal that is independent of the Alabama Department of Revenue.
- The new tribunal will be created from the ALJ division and become an independent executive branch agency whose judge will be appointed by the governor.
- Will make the tax appeals process more balanced and fair for businesses and individuals
- Eliminates the conflict of interest when the judge is paid by an agency with a financial interest in the outcome.
- Until this act, appeals are heard by judges appointed by the Alabama Department of Revenue.

What Passed: Tax Collection Relief Bill



- Authorizes Alabama Department of Revenue to administratively suspend collection of a tax or fee if the cost of collecting the tax is greater than the amount to be collected.
- Some taxes and fees cost more to collect than any amount that would be collected.
- Governor signed into law April 7

What Passed: Education Trust Fund Budget (ETF) included:



- On the final day of the session, both houses adjourned as soon as the ETF was passed to avoid a show down with the Governor.
- Despite a compromise being announced between the Governor and House and Senate budget chairmen on fully funding PEEHIP, the Governor informed Legislators that unless the Education Budget included a 2% raise for education employees, he would return the budget.
- Because the Legislature adjourned, Governor Bentley could not amend the budget and send it back. His only option was to sign the budget by April 13th as presented or kill it and bring legislators back for a Special Session of the Legislature to adopt a different budget.
- He ultimately signed the passed 5.9 budget.

What Passed: Education Budget (ETF) included: *(cont.)*



- No pay increase
- Education personnel would not be forced to pay more out-of-pocket expenses for their PEEHIP health insurance
- Adds estimated 70 additional teachers in middle school grades
- 1st Class Pre-K program received an increase in funding of \$10 million
- That increase will provide for an expansion next year of 100 additional Pre-K classrooms that can educate an estimated 1,950 additional preschoolers.

What Passed: Dual-enrollment program



- Expands the existing state-supported, career-technical education and dual-enrollment program by an estimated 7,400 additional slots annually.
- High school students can earn credit toward high school graduation and college credit at the same time. The initiative will fund help high school students and enable them take technology courses simultaneously at a community college.
- Allows businesses and individuals to contribute directly to scholarships to support two-year college program.
- Creates tax credits for individuals who donate to the dual enrollment scholarship program.
- Provides up to \$10 million in scholarships to high school students enrolled in career-technical dual enrollment programs.

What Passed: Dual-enrollment program



- Businesses and individuals who donate will be eligible to receive an income tax credit equal to 50 percent of the amount donated.
- Then in turn, they can earmark up to 80 percent of their donation to help train students in a particular field that would benefit their business.
- The maximum number of tax credits each year would be \$5 million and that could provide \$10 million in scholarships for 10,000 students annually.
- The tax incentive program begins Jan.1 with the new calendar year. Details are still being finalized on how to apply and donate to the program.
- House unanimously passed the legislation with the Senate passing it 33-1.

What Passed: **Alabama Workforce Council**



- State business and industry senior managers who advise and support the Chancellor of the Alabama Community College System and the state Superintendent of Education.
- The council will help formulate policy, develop innovative educational workforce programming, and discuss issues critical to the state's workforce development needs.

What Passed: E-filing Bill



- Online electronic filing system allowing businesses to file annual business personal property tax returns at no charge to the taxpayer or to the taxing jurisdiction.
- Businesses will be given the option to use non-itemized short forms for filing a business personal property tax return if original acquisition costs of the assets were less than \$10,000 prior to Oct. 1.

What Passed: Health Provider Licensing Protection Act



- Prohibits the conditioning of licensing of certain health care providers on their participation or non-participation in health insurance plans or other activities.
- Requires professional licensing to be determined solely on *demonstrated skill and academic competence*, not on acceptance of any health insurance plan such as the Affordable Care Act, or other public or private health insurance plan, public health care system, public service initiative, or emergency room coverage.
- Will affect physicians, chiropractors, optometrists, etc.
- Takes effect July 1.

What Passed: **Neutrality in Public Works Contracts**



- Pro-Right to Work Legislature
- Requires neutrality in contracts for state and local government projects, specifically prohibiting union or non-union language.
- Governor signed into law

What Passed: Prompt Payment Bill



- Require public agencies to pay contractors working on public jobs within 35 days after the contracting agency approves payment.
- Changes deadline from 45 days.

What Passed: Prompt Payment Bill *(cont.)*



- Excludes including the Department of Transportation, the University of Alabama, Auburn University, professionals such as architects who do not provide construction-related services, and for public health and safety reasons.

What Passed: Unemployment Taxes



- Codifies language to prevent employers from attempting to avoid their unemployment taxes by shuttering one business and creating a new entity, with no experience rating concerning layoffs.
- Company that acquires 65 percent of the organization, trade, employees, or business will inherit the experience rating of the original business.

What Passed: **Small Business Relief Act**



- Raises the average monthly tax liability threshold, from \$1,000 to \$2,500, before a business is required to remit advance estimated sales taxes.
- Estimated 3,900 businesses will be relieved of making estimated payments.

What Died: Restrictive Covenants In Employment Contracts



- HB 241 passed the House 101-1
- SB 270—the companion bill--made it out of the Fiscal Responsibility and Accountability Committee but stalled in the Senate.
- Supporters and Opponents were trying to resolve issues but ran out of time.
- Would have codified case law, including:

What Died: Restrictive Covenants In Employment Contracts *(cont.)*



Restrictive Covenants Act

- Generally Alabama law disfavors non-compete agreements-- workers should be able to market their skills without restraint
- Those agreements would have been considered void unless there is an exception.
- Exceptions would have included:
 1. Where the agent, servant or employee holds a position **uniquely essential to the management, organization, or service of the business.**
 2. An agreement between two or more persons or businesses to **limit commercial dealings to each other (exclusive contract)**

What Died: Restrictive Covenants In Employment Contracts *(cont.)*



- Exceptions would have included:
 3. **One who sells the good will of a business** may agree to refrain from carrying on or engaging in a similar business and from soliciting customers of such business **within a specified geographic area so long as the buyer, or any entity deriving title to the good will from that business carries on a like business, subject to reasonable time and place restraints.** (Restrains of one year or less are presumed to be reasonable.)
 4. An agent, servant, or employee of a commercial entity may agree with such entity to refrain **from carrying on or engaging in a similar business and from soliciting current customers of such entity within a specified geographic area so long as the employer carries on a like business therein, subject to reasonable restraints of time and place.**
 5. If a company dissolves, **partners, owners and/or members may agree that none of them will carry on a similar activity in the geographic area** where the commercial activity has been transacted.

What Died: Restrictive Covenants In Employment Contracts *(cont.)*



- Courts may refuse to enforce such restraints in whole or in part if the Court finds that enforcement causes an **undue hardship**.
- Protectable interest would include:
 - Trade secrets
 - Confidential information, including pricing methodology,
 - Substantial relationships or contacts with specific prospective or existing customers, patients, vendors, or clients;
 - Customer, patient, vendor, or client good will associated with:
 - i. An ongoing business, professional practice, etc.; and
 - ii. A specific marketing or trade area
 - **Job skills without more are not protectable interests.**
 - Party seeking enforcement of a restrictive covenant must plead **every element with specificity**.
 - Party resisting enforcement of the covenant has the **burden of proving the existence of undue hardship, if raised as a defense**.

What Died: Efforts to Repeal Common Core



- SB 380 by Senator Scott Beason would have repealed the Alabama College and Career-Ready Standards. Never made it out of committee.
- SB 443 would have allowed local school boards to opt-out of Alabama College and Career-Ready Standards in math and English.
- After a 2-hour heated public hearing, Senate Education Policy Committee passed a moratorium on adoption until 2017 and allowed the opt-out provision.
- The bill never reached the Senate floor.

What Died: Effort to Determine Pharmacy Choice

REJECTED

- SB 205 by Sen. Billy Beasley would have amended the law to read: "An injured employee shall have the right to select his or her own pharmacy or pharmacist for dispensing and filling prescriptions for medicines required under this chapter."
- Would significantly drive up the costs for workers compensation funds and businesses.
- Died in committee

What Died: **Bill To Raise The Minimum Wage**

REJECTED

- HB 279 was a constitutional amendment that, if it had passed, would have asked voters to increase the state's minimum wage to \$9.80 an hour in three steps by Jan. 1, 2016.
- Currently, Alabama does not have a minimum wage law but it adheres to the federal minimum wage of \$7.25 an hour
- Died in committee

What Died: Reconstruction Surgery Mandate

REJECTED

- SB 250 would have required public and private health care insurance coverage for breast reconstructive surgery following a mastectomy.
- Died in committee

What Died: Revisions to Alabama Accountability Scholarship Contributions

REJECTED

- Would have eliminated the \$7,500 annual income tax credit limit for contributions made by individual taxpayers to approved Scholarship Granting Organizations
- Would have allowed those types of entities (S corps, Subchapter K, etc) to contribute and allowed the credit to pass through to their owners
- Retained the \$25 million cap
- Revised the definition of a failing school eligible to receive scholarships (bottom 6% for 2 out of 4 years instead of 3 out of 6)
- Passed the House and the Senate Fiscal Responsibility and Accountability Committee but the bill died in the Senate on the last day of the session

What Died: **Concealed Carry Gun Bill**



- One of the most hotly-debated issues
- Last bill sponsored by Senator Scott Beason
- Would have allowed loaded pistols to be carried in a car without a concealed carry permit
- Under current law, an unlicensed handgun must be kept unloaded and out of reach while be transported in a vehicle.
- Sheriffs and police chiefs said they were concerned that it could lead to more violence.
- Passed the Senate 20-7 but no member of the House Public Safety Committee seconded a motion to approve the bill consequently killing it for the session.

Post Primary Election Analysis

- For the first time in recent history, Republicans defended their supermajority.
- The AEA, among other interest groups, pumped a little over \$7 million into Republican primaries to target and defeat incumbents.

Post Primary Election Analysis

The Result:

- No statewide wins
- The two top targets—Speaker Mike Hubbard and President Pro Tem Marsh—had unprecedented amounts spent against them
- Both won easily by 20 points
- No Republican incumbent senator defeated
- Senators Dial and Whatley were close throughout the night but both were pushed over by Lee County

Post Primary Election Analysis

- Five (5) Republican incumbent House members lost:
 - Richard Baughn
 - Charles Newton
 - Kurt Wallace
 - Bill Roberts
 - Wayne Johnson
 - Price, open seat to replace Duwayne Bridges

Post Primary Election Analysis

- At least five Senate races are in play for November
- At least ten House seats are in play for November
- Less about Democrat and Republican; more about pro-business and AEA
- To maintain cloture-proof majorities:
 - 21 in the Senate
 - Moving number in the House. 2/3 of members present. Typically 63-66 is a good range but depends on the day and the issue.

Washington in the Post-Cantor World

- Business vs. the Tea Party: Is the GOP divided?
- Cantor was in the middle on immigration issues
- He opposed the broad immigration reform bill the Senate passed last year but championing a Republican version of the Dream Act that would enable some undocumented immigrants who entered the country as children to qualify for in-state college tuition rates.
- He lost for not being tough enough on one side; too tough on the other
- Liberal activists stormed his “victory” party demanding immigration reform
- Less about winning Hispanics. More about winning the base.

Washington in the Post-Cantor World *(cont.)*

- Chilling effect on any immigration compromise with White House going into November
- Illegals streaming over border with no enforcement
- Children are now the “face” of the problem
- **Dilemma: Chamber conservatives want the labor. Politicians want the vote. Tea Party wants them gone.**

Obamacare

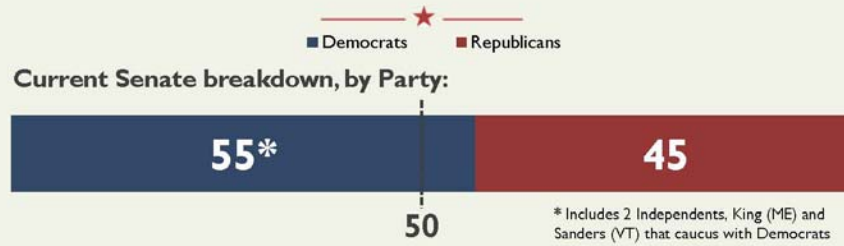
- Businesses just turning people out and getting out of the healthcare benefits business
- Obama's legacy: lame duck session will dig in
- Possible repeal or defunding if the Republicans can take the Senate AND work with the House

Can Republicans Take the Senate?

It's all about the math.....

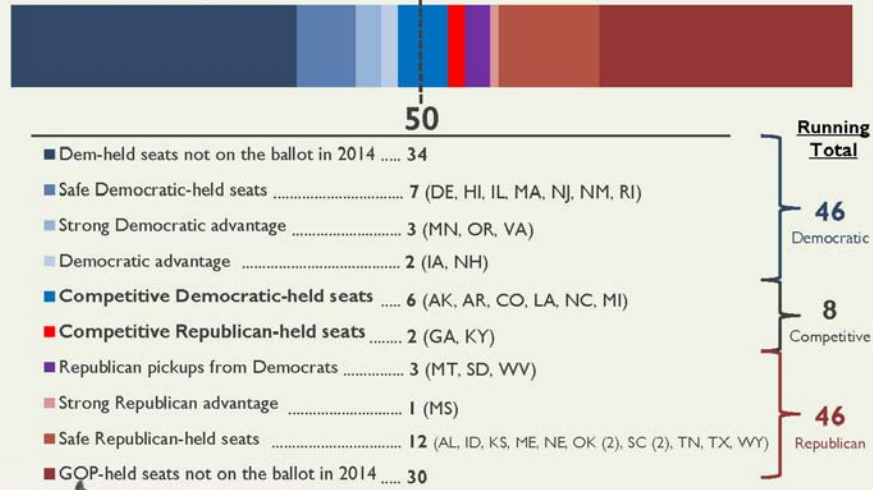
“What It Takes:” 2014 Senate Math

What would Republicans have to do to win the Senate?



Bottom Line: Republicans need a 6-seat net gain to take control of the Senate in 2014

Cook Political Report Senate Math for 2014:



Bottom Line: Democrats need to win 4 of the 8 most competitive Senate races to hold* the chamber. Republicans would need to win 5 of these 8 seats—including unseating 3 Democrats—to win a 51-seat majority in the Senate. Six of these states were won by Romney in 2012 (AK, AR, LA, NC, GA, KY), and two were won by Obama (MI, CO).



*With Vice President Joe Biden as the tiebreaking vote
Note: Candidate lists and totals displayed here reflect our current calculations. All underlying assumptions are subject to change as a result of retirements, the entry of new candidates, or other unforeseen circumstances between now and Election Day.

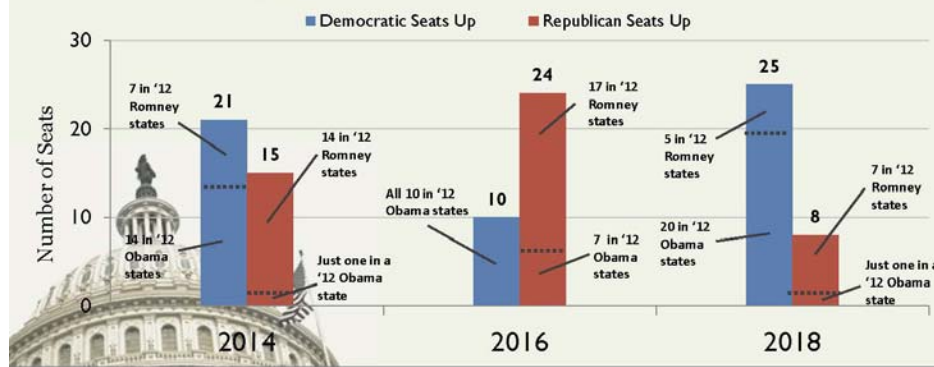
A Look Ahead: Senate Seat Exposure, 2014-2018



2014 Senate Races, by 2012 Obama vs. Romney Performance

Obama +15 or Greater	Obama +5 to +14.9	Obama +4.9 to Romney +4.9	Romney +5 to +14.9	Romney +15 or Greater
DEMOCRATS (21)				
Coons (DE) +19 Schatz (HI) +43 Durbin (IL) +17 Markey (MA) +23 Booker (NJ) +18 Reed (RI) +27	M. Udall (CO) +5 IA (Harkin) +6 MI (Levin) +10 Franken (MN) +8 Shaheen (NH) +6 T. Udall (NM) +10 Merkeley (OR) +12	Hagan (NC) R+2 Warner (VA) D+4	Begich (AK) +14 Walsh (MT) +14	Pryor (AR) +24 Landrieu (LA) +17 SD (Johnson) +18 WV (Rockefeller) +27
REPUBLICANS (15)				
Collins (ME) +15			GA (Chambliss) +8 Cochran (MS) +12 Graham (SC) +10 Scott (SC) +10	Sessions (AL) +22 Risch (ID) +32 Roberts (KS) +22 McConnell (KY) +23 NE (Johanns) +22 Inhofe (OK) +34 OK (Coburn) +34 Alexander (TN) +20 Cornyn (TX) +16 Enzi (WY) +41

Senate Races by Cycle, 2014-2018

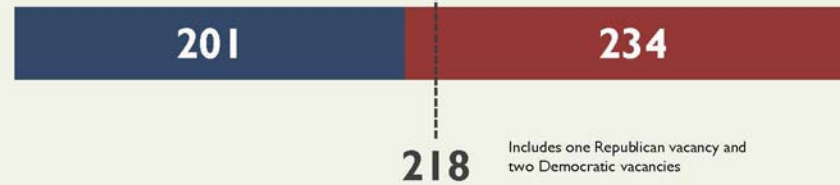


“What It Takes:” 2014 House Math

What would Democrats have to do to win the House?

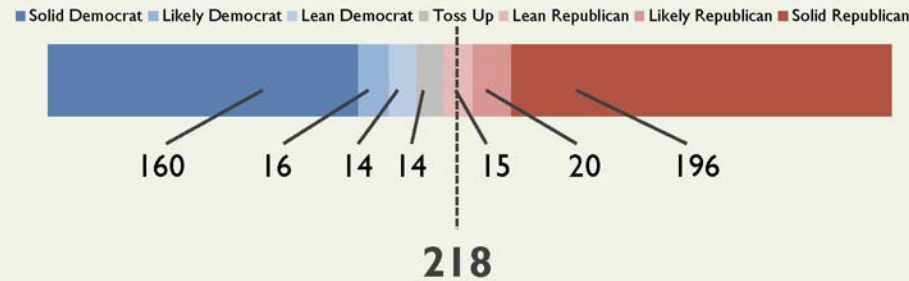


Current House Breakdown, by Party:



Bottom Line: Democrats need a 17-seat net gain to take control of the House in 2014

Cook Political Report House Math, by Race Rating:



Bottom Line: Democrats would need to win **all** Solid Democratic, Likely Democratic, Lean Democratic, Toss Up, and 14 of the 15 Lean Republican districts to take back the House.



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