

Recommendations to the Governors Special
Task Force on the reopening of Alabama in
the wake of the Coronavirus

HEALTHY CITIZENRY
HEALTHY ECONOMY
HEALTHY SOCIETY

**Restoration of normalcy in the
social, economic and academic
fabric of Alabama**



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Dear Members of the Executive Committee of the Governors Special Task Force,

Thank you for the opportunity to provide input to this most important work. As you know the Alabama Policy Institute has been advising both public and private figures in Alabama for some three decades on matters of public policy. API has maintained its stance as a proponent of free markets, limited government and strong families throughout its existence. In doing so it has been our honor to be of service to countless members of the State Legislature, various State departments, members of Alabama's US delegation, and several Governors.

This past week State Senate Pro Tem Del Marsh specifically asked for API to provide input on two important questions:

1. **What impact is the current shutdown having on civil liberties?**
2. **What economic impact is being felt by the current efforts of the Alabama Department of Labor?**

The following summations and proposals stem from two base premises:

1. **Premise One** – this societal shutdown cannot be considered a “new normal” – it is abnormal in every respect and we must see our way out of it.
2. **Premise Two** – Freedom in all respects must be preserved.

In order to best emerge from the economic shutdown that has stemmed from the response to the novel coronavirus API recommends further that any plan to reopen Alabama be postured as a “whole-of-society” response. We specifically recommend viewing it from three angles in doing so: **social, economic, and academic.**

It is our sincere hope that this proposal will be received in the manner in which it was drafted – with the utmost desire to see Alabama not just survive, but actually thrive in the wake of the pandemic and be better postured for future generations who might face such extreme circumstances.

Respectfully,

The staff of the Alabama Policy Institute

**“THE BALANCING ACT MUST NOW TURN TO THE
INEXORABLE TENSION BETWEEN A HEALTHY CITIZENRY
AND A HEALTHY ECONOMY, BOTH OF WHICH COMBINE TO
FORM A HEALTHY SOCIETY”**

I. BOTTOM LINE UP FRONT

- The Governor of Alabama has certain limited discretionary powers to declare a state of emergency and to emplace restrictive regulations and to suspend existing laws.
- Any such restrictive regulations and suspensions of law must be reasonable and limited in time and scope to **avoid becoming a violation of constitutional rights**.
- The potential exists for those adversely affected by the State’s current “Stay-At-Home” directive and for businesses deemed “non-essential” to litigate their grievances on multiple grounds:
 - o The closure of businesses past a “reasonable” point may be grounds for a claim of an **“unjust regulatory taking”** for which the government must provide compensation.
 - o Closure of “non-essential” entities while others remain open may be deemed an **unequal treatment under the law**.
 - o Requirements for **school closures and online education may result in claims of unequal treatment under the law** for those who do not have access to the necessary resources.
 - o Continued **limitations on public gatherings** will likely lead to equal protection claims where gatherings of one group and size is allowed, while another group and size is not.
 - o Continued limitations on public gatherings past a “reasonable” point may constitute a **violation of the constitutional right to freedom of assembly**.
- Congress has dramatically increased the scope of unemployment compensation and medical leave laws through the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security Act (CARES).
- While helpful to individuals out of work the unfortunate impact of FFCRA and CARES is the disincentivization of workers to work and/or return to work. **Many individuals are actually now being paid more to not work.**
- The Alabama Department of Labor (ADOL) has the discretion to set and/or enforce standards on the receipt of unemployment benefits. **That discretion needs to be better focused:**
 - o The ADOL is currently “encouraging” applications for benefits.

- The ADOL requires very little proof other than “self-certification” that an applicant has met the standards necessary to apply for enhanced unemployment compensation.
- The ADOL does not provide as much information to employers about their protections from fraudulent claims as it does to individual applicants.
- The FFCRA and CARES provisions are disproportionately burdensome to small businesses. The State has a vested interest in the protection of both employers and employees

II. RECOMMENDATIONS

- a. **The Governor’s Task Force should become a daily living entity whose members are representative of the various branches and departments of state government, the medical community, and the business community. This task force should be stood up and meet daily in a designated work area (“war room”) with the sole focus of synthesizing and synchronizing the way forward to reopen Alabama’s social, economic, and academic sections of society. (See Appendix 1)**
- b. **The Governor’s Task Force should immediately set both small and large milestones that inform the citizenry of the way forward via regular press conferences so as to avoid the appearance of indifference to the encroachment on civil liberties.**
- c. **The Governor’s Task Force should be the sole source of messaging for state government with weekly or bi-weekly press conferences to update the citizens of the State of Alabama.**
- d. **The Alabama Department of Labor should cease the “encouragement” of individuals to apply for benefits and instead retool its message to be one of informing of the responsible application for said benefits.**
- e. **The Alabama Department of Labor should require a second layer of certification, or proof, of the need for benefits other than the mere open ended “self-certification” that currently exists.**
- f. **The Alabama Department of Labor should ensure that equal emphasis is placed on the needs and concerns of employers by establishing a staffed employer CV-19 hotline, employer webinars, and other such resources.**
- g. **The Alabama Legislature should strongly consider a special session to pass legislation that provides protections/indemnity to businesses and local governments who face claims of liability related to the CV-19 pandemic and the government shutdown.**
- h. **The Alabama Legislature should strongly consider immediate passage in special session of legislation that enhances the enforcement of fraudulent unemployment and medical leave claims. This same legislation should further reduce the amount of state unemployment benefits to ensure that applicants are not paid more to be out of work than they were before losing their jobs.**
- i. **The Alabama Legislature should strongly consider additional legislation that provides tax incentives and the expansion of opportunity zones to encourage businesses to remain intact, hire employees, and potentially to expand.**

III. EXECUTIVE SUMMARY

From the beginning of the coronavirus pandemic to the present API has been tracking and reporting on its impact and government action, or inaction, related thereto. (See Appendix 2) On April 2nd, 2020, API issued its first analysis of the CV-19 impacts on the State of Alabama. On April 9th, 2020, API prepared and submitted a proposal to the Office of the Governor and to Senator Del Marsh on a proposed revision of the current task force to enable a daily working group with authority to act. As requested thereafter by the Senate Pro Tem the Alabama Policy Institute has spent a great deal of time preparing this study.

Within this study is a review of current law impacting our state government's ability to act in the midst of unprecedented international circumstances. This proposal is not exhaustive by any means and is expected to be a living document that can be updated over time, to include possible revisions to the list of recommendations on page 3.

API determines that given the current circumstances that the State of Alabama, and other states as well, are nearing the point of a constitutional crisis. Key action in the short term will be necessary to avoid the unnecessary infringement of constitutionally assured rights for Alabama citizens. Similarly, the State of Alabama must ensure that it provides a solution that is equitable to all citizens and avoid the potential scenario whereby the State appears to be selecting winners and losers in the economy, in the social fabric, and in the academic arenas.

The following represent key research developed by policy analysts at API that bears upon the findings and recommendations herein.

IV. INTRODUCTION

The Constitution of Alabama provides as follows regarding the role of government in the lives of Alabama's citizens: "...[T]he sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions, it is usurpation and oppression."¹ To that end API acknowledges that Governor Kay Ivey has issued lawful orders and proclamations designed to buffet the growth and expansion of the novel coronavirus, CV-19. The law of the State does appear to be in her favor at this time. But as the Governor herself has openly stated, government can shut down a business but it cannot reopen it once it has closed for good. The balancing act must now turn to the inexorable tension between a healthy citizenry and a healthy economy, both of which combine to form a healthy society.

Throughout Alabama's history, and especially in the years since reconstruction, there have been key instances of executive action that have been meted out in direct response to civil unrest and natural disasters. In 1954 Alabama Governor Gordon Persons declared martial law in Phenix City and sent the Alabama National Guard to enforce this edict. Other notable instances of executive action have occurred, both pro and con, during the civil rights movement, Hurricane Katrina, the BP Oil spill, and countless natural disasters. All of these examples have had limited scope and duration combined with specific

¹ Alabama Const. Art. I, Sec. 35.

purposes. While those examples may be instructive they are not directly on point with the closing of the entire State such as what is seen now.

Despite the law of the State affording the aforementioned police power to the Office of the Governor it does not prevent the citizens of this state from asserting their rights under the Constitution of the United States. No amount of state law can abridge those rights in perpetuity.

In order to ensure that the citizens of Alabama understand that there is in fact a limited scope and duration to the Governor's stay-at-home order there must be a consolidated messaging of the issue. Currently Alabama government appears to be speaking through multiple voices which creates confusion. It is also imperative that the milestones for recovery be labeled and announced soon so that anxious citizens may be able to project confidence in the way forward. Lastly, various government offices in Alabama must consider their role in the "big team" and coordinate their efforts and communications in a clear, cogent and cohesive manner. A key example for the purposes of this proposal is the Alabama Department of Labor which appears to be driving Alabama's workforce toward incentives while neglecting the needs of the general employers, thereby creating a catch-22 in which government disincentivizes labor while alternately professing to be worried about small business owners.

V. DOES STATE GOVERNMENT HAVE THE AUTHORITY TO ISSUE A "STAY AT HOME" ORDER? YES, WITHIN REASON.

A. Constitutional and Statutory Authorities

The Constitution of Alabama provides as follows regarding the role of government in the lives of Alabama's citizens: "...[T]he sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions, it is usurpation and oppression."² Toward those stated goals, the Constitution of Alabama established three branches of government: an executive branch, a legislative branch, and a judicial branch.³ "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Alabama.'⁴ "The governor shall be commander-in-chief of the militia and volunteer forces of this state..., and he may call out the same to execute the laws, suppress insurrection, and repel invasion..."⁵

In analyzing the balance between Alabama's constitutionally-protected guarantees listed above and the government's authority to exercise the powers of the state in furtherance of the public's health, Alabama Courts have stated as follows:

"The government does not interfere with or impair 'any one's constitutional rights of liberty or of property, when it determines that the manufacture and sale of intoxicating drinks, for general or individual use, as a beverage, are, or may become, hurtful to

² Alabama Const. Art. I, Sec. 35.

³ Alabama Const. Art. III, Sec. 42

⁴ Alabama Const. Art. V, Sec. 113

⁵ Alabama Const. Art. V, Sec. 131

society. Those rights are best secured, in our government, by the observance, upon the part of all, of such regulations as are established by competent authority to promote the common good. No one may rightfully do that which the law-making power, upon reasonable grounds, declares to be prejudicial to the general welfare.’...Neither the fourteenth amendment, nor any other, ‘was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people.’...All personal and related rights and privileges, whether arising out of contracts or out of or pertaining to property, are subject to the lawfully exercised police power of the state, directed to the protection of the public health, the public morals, and the public safety...

The declarations of our Constitution guaranteeing the rights of life, liberty, and the pursuit of happiness, and asserting the limits of rightful functions in government, on the one hand, and, on the other hand, denouncing the excession of such limits as usurpation and oppression, were never intended to restrict the rightful exercise of the police power by the state. All such rights are assured by the organic laws, but the assurance is ever subject to the power of police, to be exercised for the public welfare, that from necessity inheres in the government of the state. **It is the peculiar function of the lawmakers to ascertain and to determine when the welfare of the people requires the exercise of the state's police powers, and what are appropriate measures to that end, subject only to the power and authority of the courts to see, when assured to the requisite certainty, that the measures of police so adopted do not arbitrarily violate rights protected by the organic laws.**⁶ (emphasis added)

However, while Alabama Courts are clear that the government has the power to regulate actions that affect the public’s health, this authority to do so must be done in conjunction with Alabama’s constitutional mandate that “[t]he legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state.”⁷

To that end, Alabama’s legislature has enacted a series of laws governing quarantine within the State of Alabama.⁸ In particular, section 22-12-4 of the Alabama Code, provides as follows: “[t]he Governor, whenever he deems it necessary, or the State Board of Health, shall proclaim quarantine, and when proclaimed, said Board of Health shall enforce such quarantine under such regulations as may, from time to time, be prescribed.”⁹ Furthermore, the State Board of Health is imbued with considerable authority in regards to the public’s health, including, but not limited to the following:

- “(1) To exercise general control over the enforcement of the laws relating to public health...
- (3) To investigate the influence of localities and employment on the health of the people.
- (4) To inspect all schools, hospitals, asylums, jails, theatres, opera houses, courthouses, churches, public halls, prisons, stockades where convicts are kept, markets, dairies, milk

⁶ *Southern Express Co. v. Whittle*, 69 So. 652, 656 (Ala. 1915).

⁷ Alabama Const. Art. IV, Sec. 89

⁸ Ala. Code §§ 22-12-1 through 22-12-29.

⁹ Ala. Cod § 22-12-4.

depots, slaughter pens or houses, railroad depots, railroad cars, street railroad cars, lines of railroads and street railroads (including the territory contiguous to said lines), industrial and manufacturing establishments, offices, stores, banks, club houses, hotels, rooming houses, residences and other places of like character, and whenever insanitary conditions in any of these places, institutions or establishments or conditions prejudicial to health, or likely to become so, are found, proper steps shall be taken by the proper authorities to have such conditions corrected or abated...

(6) To adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the state, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents and employees as in the case of health laws, and a quorum, as provided for by the constitution of the medical association of the State of Alabama, shall be competent to act...¹⁰

The Governor's Stay-at-Home Order of April 3, 2020 referenced § 22-2-2 in directing the shutdown of all non-essential businesses and the cessation of non-essential activities in the state of Alabama.

VI. QUESTIONS OF CIVIL LIBERTIES IN THE CURRENT PANDEMIC SHUT DOWN

A. What Constitutes a Taking?

Traditionally, when one hears the legal term "taking," one thinks of a physically invasive regulatory taking accomplished through the doctrine of eminent domain. Certainly, physical invasion seems the common factor in the majority of takings cases throughout Alabama, and American, jurisprudence. Such takings require a clear, physical presence: "As set forth in our long-standing precedent, the taking, injury, or destruction of property must be through a physical invasion or disturbance of the property, specifically "by the construction or enlargement of [a municipal or other corporations'] works, highways, or improvements," not merely through administrative or regulatory acts."¹¹

However, physical invasion or disturbance is not the only manner in which the government can accomplish a regulatory taking. Indeed, "a use restriction on real property may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial public purpose...or perhaps if it has an unduly harsh impact upon the owner's use of the property." As a result, the question of what constitutes an impermissible taking involves a case-by-case examination of various factors, including, "[t]he economic impact of the regulation on the claimant..., the extent to which the regulation has interfered with distinct investment-backed expectations..., [and] the character of the governmental action...A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government...than when interference arises from some public program adjusting the benefits and burdens

¹⁰ Code of Ala. § 22-2-2.

¹¹ Town of Gurley v. M & N Materials, Inc., 143 So.3d 1, 13 (Ala. 2012).

of economic life to promote the common good..., and while the economic impact of a regulation is relevant, mere diminution in property value because of regulation does not constitute a taking.¹²

In interpreting the State of Alabama's Constitution in regards to regulatory takings, the Supreme Court of Alabama has recognized that, while eminent domain and regulatory takings predate both state and federal constitutions, the State of Alabama has seen fit to curb the use of regulatory takings by requiring compensation for any such takings: "[J]ust compensation [must be paid] for any private property taken." Furthermore, the "Takings Clause of the Fifth Amendment to the United State Constitution states that private property shall not "be taken for public use, without just compensation."¹³

"Two independent bases underlie the requirement that property owners be compensated for losses due to takings. First, the Fifth Amendment requires that owners whose property is taken for "public use" must receive just compensation...If a local government's 'police power regulation is not enacted in furtherance of the public health, safety, morals, or general welfare' there can be no 'public use' of a landowner's property and, correspondingly, no Fifth Amendment taking...Compensation for losses due to invalid uses of the police power could still be available, however, under the Fourteenth Amendment's due process clause...The analysis used to calculate the proper compensation is the same whether a property owner has suffered a Fifth Amendment taking or a Fourteenth Amendment due process violation..."¹⁴

In the event that the State of Alabama's shut-down of non-essential businesses is deemed, at some point in the future, to have been unreasonable or to have had an unduly harsh impact upon the owner's use of the business, then we, in all likelihood, will begin to see a flood of small businesses filing lawsuits against the State for just compensation. Even without such a finding, it is highly likely that we will see some such suits in the future. Importantly, "the Constitution requires compensation for a temporary regulatory taking."¹⁵

In the event that a use restriction is established as a taking, inverse condemnation claims become foreseeable: "This Court stated...inverse condemnation is defined as the taking of private property for public use without formal condemnation proceedings and without just compensation being paid by a governmental agency or entity which has the right or power of condemnation."¹⁶

B. How Does the State Address Equal Treatment Under the Current Abnormal Circumstances?

As the Supreme Court of the United States has made clear, "[t]he Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar

¹² Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 124 -127 (1978).

¹³ Town of Gurley v. M & N Materials, Inc., 143 So.3d 1, 13 (Ala. 2012).

¹⁴ A.A. Profiles, Inc. v. City of Fort Lauderdale, 253 F.3d 576, 583, 2001 U.S. App. LEXIS 11738, *14, 31 ELR 20654, 14 Fla. L. Weekly Fed. C 790.

¹⁵ Wheeler v. Pleasant Grove, 833 F.2d 267, 270 (11th Cir. 1987) (citing First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987)).

¹⁶ State DOT v. Land Energy, Ltd., 886 So. 2d 787, 792 (Ala. 2004).

Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”¹⁷

“[W]hen the ‘right invoked is that to equal treatment,’ the appropriate remedy is a mandate of equal treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class...”¹⁸

In response to the novel coronavirus, small businesses have been forced to carry an undue amount of the economic pressure presented by the State’s response. Many small businesses, unable to meet the requirements of certain legal loopholes, have been forced to shut down for the time being whereas “big-box” stores providing fundamentally similar goods and services have been allowed to remain open due to loopholes.¹⁹ Working from the premise that use-restrictions on business operations, such as the State’s current shutdown of non-essential businesses, amount to “regulatory takings,” then allowing “big-box” stores to continue to operate creates potential equal protection claims wherein small businesses in the State of Alabama are denied Constitutional rights and receive disparate treatment under the law.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”²⁰ “The mandate of the Equal Protection Clause essentially is “that all persons similarly situated should be treated alike....A cause of action pursuant to § 1983 [which provides a federal cause of action against any person who deprives another of his federal rights] requires proof that (1) a person acting under color of law (2) deprived the plaintiff of a federal or constitutional right...To prevail on a § 1983 conspiracy claim, “a plaintiff must show an underlying actual denial of [his] constitutional rights,” and “that the defendants reached an understanding to deny the plaintiff’s rights.

[E]qual protection claims fall into three categories...The first category... is a claim that a ‘statute discriminates on its face...To prevail, a plaintiff must prove that there is ‘no rational relationship’ between the regulatory classification and a legitimate governmental goal; however, if a suspect class or fundamental right is at issue, the level of scrutiny is heightened...’The second type of equal protection claim is that neutral application of a facially neutral statute has a disparate impact...’The third type of claim, an as applied claim, ‘is that defendants are unequally administering a facially neutral statute.’²¹

Clearly, the first category does not apply in our current environment. Given the novelty of the COVID-19 pandemic, there is a clear rational relationship between the current regulations requiring certain non-essential businesses to close and a legitimate governmental goal. However, the second and third categories of equal protection claims might present complications. For instance, while the regulations requiring shutdown appear neutral, as does the application of these regulations, it remains clear that the regulations are having a disparate impact on small businesses. Likewise, it could be argued that the State,

¹⁷ *Armstrong v. United States*, 364 U.S. 40, 49 (1960). See also *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 123 (1978).

¹⁸ *Heckler v. Matthews*, 465 U.S. 728, 739-740 (1984).

¹⁹ McCain, Dana Hall, *COVID-19 Restrictions Unfairly Choke Small Businesses*, <https://www.alabamapolicy.org/2020/04/08/covid-19-restrictions-unfairly-choke-small-business/> (last visited Apr. 17, 2020).

²⁰ U.S. Const. amend. XIV.

²¹ *Hope for Families & Cmty. Serv. v. Warren*, 721 F. Supp. 2d 1079, 1135 (M.D. Ala. 2010).

by allowing certain large businesses that can satisfy the requirements of certain legal loopholes, is unequally administering a facially neutral statute.

C. The danger of abridging the freedom of assembly

The First Amendment to the Constitution of the United States directs as follows: “**Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of** speech, or of the press; or **the right of the people peaceably to assemble**, and to petition the Government for a redress of grievances.”²²

“The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental...‘The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.’ The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress...[T]he right is one that cannot be denied without violating those fundamental principle of liberty and justice which lie at the base of all civil and political institutions, -- principles which the Fourteenth Amendment embodies in the general terms of its due process clause.

These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.”²³

[A]ny attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable.²⁴

²² U.S. Const. amend. I.

²³ De Jonge v. Oregon, 299 U.S. 353, 364 (1937).

²⁴ Thomas v. Collins, 323 U.S. 516, 530 (1945).

Clearly, there is a danger, given the current social circumstances presented by the COVID-19 pandemic, that our freedom to assemble peaceably could be violated. Not only does the First Amendment to the Constitution of the United States protect the right of the people to assemble peaceably, but the First Amendment also protects the right of the people to exercise religion freely.²⁵ The limitations on public gatherings will likely lead to equal protection claims if and when the general population begins to question whether there exists a rational relationship between the limitations and a legitimate governmental goal.

²⁵ U.S. Const. amend. I.

VII. THE ALABAMA DEPARTMENT OF LABOR'S INTERACTION WITH THE CORONAVIRUS ECONOMY – GOOD AND BAD.

A. UNEMPLOYMENT COMPENSATION

Pre-COVID-19

Under the pre-COVID-19 unemployment benefit standards in Alabama, residents hoping to receive income from unemployment had to be out of work due to no fault of their own and must be then seeking, able, available, and willing to do appropriate work. Unemployment compensation did not replace the wages of furloughed workers or workers who have had their hours reduced, although workers were eligible to receive unemployment if their income fell below the amount for which they were eligible (the maximum in Alabama is \$275 a week).²⁶

Alabama's minimum weekly benefit before the Covid-19 legislation was passed by Congress was \$45, and its maximum was \$275. The length of benefits was dependent on the unemployment rate, but qualifying individuals were generally provided unemployment compensation for up to 14-20 weeks. In the absence of any future legislative action these numbers would again become the norm upon a return to a pre-Covid-19 economy.

New Benefits through the Federal CARES Act

The new benefits, through the Pandemic Unemployment Assistance program created by the CARES Act, are available to many who were not eligible before, including self-employed individuals and independent contractors. They must, however, be out of work because of the pandemic. This includes those who have lost clients (for self-employed individuals), those who were about to start a new job but can't because of the coronavirus, those who work at businesses that are now closed, and those who are not working because they are caring for people at home who otherwise would be at school or some other facility.²⁷

Newly eligible recipients will receive, at a minimum, half the average unemployment state benefit plus \$600 (described below), although many in Alabama will receive the full maximum amount. The stimulus package also allows these benefits to exceed the normal benefit period for up to 39 weeks (previously 14-20 weeks).²⁸

As a result of the Federal CARES Act, unemployment benefits in many states will increase by \$600 a week for both new and previous recipients (on top of their state benefit). It is important to note that states are not required to enter into an agreement with the federal government, which will pay for the increase in

²⁶ Claims and Benefits FAQ, Alabama Department of Labor. Accessed April 17, 2020. <https://labor.alabama.gov/uc/claims.aspx>.

²⁷ Zinn, Dori. "Coronavirus Unemployment: Everything You Need to Know about Payments, Applying and More." CNET. CNET, April 2, 2020. <https://www.cnet.com/personal-finance/coronavirus-unemployment-payments-applying-and-more/>.

²⁸ Liu, Jennifer. "Are You Newly Eligible for Unemployment Insurance? Here's What to Know." CNBC. CNBC, April 9, 2020. <https://www.cnbc.com/2020/04/01/are-you-newly-eligible-for-unemployment-insurance-heres-what-to-know.html>.

benefits. However, any state that does is required to give the full amount.²⁹ Alabama has accepted the federal offer.

The \$600-a-week extra benefit will end on July 31st.

At up to a total of \$875 a week (the maximum state payment plus the \$600 increase), Alabama's new weekly unemployment benefits are almost three times the wages of a full-time, minimum wage worker. The effective rate, in fact, is \$21.87 per hour. Many unemployed residents, therefore, will make more money in benefits than those who continue to work in the private sector making real wages. And for many essential workers, it isn't even close.

This, along with the fact that employees do not have to be terminated from employment, raises questions about abuse and the disincentivizing of work. It is not unimaginable that a worker at an essential business such as a grocery store, 1) sees that they can make more money from unemployment, 2) claims that they quit because they felt unsafe at work because of COVID-19, and 3) gains approval and receives three times the income they would have had if they continued working. This is clearly a problem.

Substantiating a Claim for Unemployment

Even so, according to the Alabama Department of Labor, applicants must substantiate a COVID-19 claim. This may include proof of a medical diagnosis for the claimant or their family member, or proof of quarantine by the employer or "an applicable government entity". For other reasons, the required proof is less clear.³⁰

The Alabama Department of Labor does state that benefits are not available to those who quit without good work-related cause or to those who do not return to work.³¹ Those who commit fraud are, under the CARES Act, subject to fines, confinement, disqualification for future payments, prosecution, and even time in prison.³²

Even so, the full scope of reasons which may qualify for unemployment (the CARES Act includes those who "quit his or her job as a direct result of COVID-19" as qualifying) remain unclear in the federal law

²⁹ *The "Coronavirus Aid, Relief, and Economic Security Act"*. 116th Congress of the United States. Page 38. <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

³⁰ Coronavirus and Unemployment Insurance Benefits, Questions and Answers, Alabama Department of Labor. Accessed April 17, 2020. https://labor.alabama.gov/newsfeed/news_covid19/Coronavirus_and_Unemployment_Insurance_Benefits_UPDATED_FAQ.pdf.

³¹ "Alabama to begin processing claims under CARES Act provisions", Alabama Department of Labor News. Alabama Department of Labor, April 13, 2020. https://www.labor.alabama.gov/news_feed/News_Page.aspx?id=221.

³² *The "Coronavirus Aid, Relief, and Economic Security Act"*. 116th Congress of the United States. Page 40. <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

and the state is left to determine exactly who may qualify.³³ Exactly what this means is up to the state. The Alabama Department of Labor's says that applications will be addressed in a case by case manner.³⁴

A Potential Problem for Small Business Owners

The incentive against work may bleed over into a problem for small business owners who have taken out loans that may be forgivable under the CARES Act. Since loans are forgivable only if at least 75% of funds are used for payroll, a decrease in payroll would result in the loss of the forgivable status for the small business. This would, however, occur only in situations where workers quit and potentially commit fraud by filing for unemployment and the employer does not quickly replace those employees. The exact language from the Small Business Administration can be found below.³⁵

“Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.”

Can the State Government cap unemployment benefits? How does the State respond to fraud?

Since the increased unemployment program is voluntary, the state can end the federal agreement with a 30-days notice. States who continue to stand in agreement however, are required to give the full \$600 a week increase. There is no flexibility here. This increased benefit ends by July 31st. There does seem to be some room in the CARES Act for states to end these benefits earlier than July 31st if they wish.³⁶

On the state level, Section 25-4-74 of the Alabama Code of 1975 governs unemployment benefits. The number of weeks of benefits residents may qualify for is based on the unemployment rate in the state over the last three months and can range from 14-20 weeks with an additional five weeks to those who are “making satisfactory progress in a job training or a certification program”. Changing this would require an act of the State Legislature.³⁷

Where the state has the most immediate freedom to cap unemployment benefits is in interpreting who qualifies in the first place under the ambiguous stipulation that those who have “quit his or her job as a

³³ Zinn, Dori. “Coronavirus Unemployment: Everything You Need to Know about Payments, Applying and More.” CNET. CNET, April 2, 2020. <https://www.cnet.com/personal-finance/coronavirus-unemployment-payments-applying-and-more/>.

³⁴ Coronavirus and Unemployment Insurance Benefits, Questions and Answers, Alabama Department of Labor. Accessed April 17, 2020. https://labor.alabama.gov/newsfeed/news_covid19/Coronavirus_and_Unemployment_Insurance_Benefits_UPDATED_FAQ.pdf.

³⁵ Paycheck Protection Program. US Small Business Administration. Accessed April 17, 2020. <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.

³⁶ The “Coronavirus Aid, Relief, and Economic Security Act”. 116th Congress of the United States. Page 39. <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

³⁷ Section 25-4-74. Code of Alabama, 1975.

direct result of COVID-19” are eligible.³⁸ As mentioned before, the state is determining eligibility on a case by case basis.

What burden of proof can the state ask of unemployment recipients?

Code of Alabama 1975, Section 25-4-90, gives the Alabama Labor Secretary the power to make the rules over claim filing.³⁹ The CARES Act, specifically, requires “self-certification” of eligibility for benefits.⁴⁰ What this looks like, in practice, is largely up to the state. If Alabama wants to increase its burden of proof (which it already requires to some level as described earlier), it has the power to do so.

In terms of prosecuting fraud, Department of Labor Public Information Officer Kelly Betts wrote in an email to API that, while they have staff that handle unemployment fraud, the Department relies on tips and employer data for information.⁴¹ Even so, the Department does regularly prosecute those committing unemployment fraud.⁴²

B. EXPANDED FAMILY and MEDICAL LEAVE

FMLA Background

The Family Medical Leave Act of 1993 became law in the early weeks of Bill Clinton’s first term as president. FMLA is administered through the U.S. Department of Labor’s Wage and Hour Division.⁴³

The law provides that certain employees may take up to 12 weeks of job protected unpaid leave in a calendar year for specified family and medical reasons. FMLA also requires that an employees group health benefits be maintained for the duration of their leave.⁴⁴

Reasons that an employee can take leave under FMLA include: the birth and care of a newborn child; adopting or taking a child into foster care; the care of an immediate family member with a serious health condition; or to take leave if the employee is experiencing a serious health condition.⁴⁵

There are several conditions that apply to FMLA. To be eligible, employees must have worked for their employer for at least 12 months, worked at least 1,250 hours over the previous calendar year, and work at a location that employs at least 50 people within a 75-mile radius.⁴⁶

³⁸ Zinn, Dori. “Coronavirus Unemployment: Everything You Need to Know about Payments, Applying and More.” CNET. CNET, April 2, 2020. <https://www.cnet.com/personal-finance/coronavirus-unemployment-payments-applying-and-more/>.

³⁹ Section 25-4-90. Code of Alabama, 1975.

⁴⁰ *The “Coronavirus Aid, Relief, and Economic Security Act”*. 116th Congress of the United States. Page 33. <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

⁴¹ Email to the Author. April 17, 2020.

⁴² “Alabama Department of Labor obtaining convictions for unemployment compensation fraud”, Alabama Department of Labor News. Alabama Department of Labor, February 21, 2020. https://labor.alabama.gov/news_feed/News_Page.aspx?id=198

⁴³ Title 29 U.S. Code, Chapter 28- Family and Medical Leave.

⁴⁴ United States Department of Labor, “Fact Sheet #28: The Family and Medical Leave Act”, Revised 2012, <https://www.dol.gov/agencies/whd/fact-sheets/28-fmla>.

⁴⁵ Ibid.

On the employer side, to be obligated to provide FMLA benefits the employer must have employed at least 50 individuals in 20 or more workweeks in the preceding calendar year. The law applies to state and federal government agencies, as well as public and private elementary and secondary schools, regardless of the number of people that the entity employs.⁴⁷

How did the Families First Coronavirus Response Act impact FMLA?

The FFCRA leave provisions became effective on April 1 and will apply to leave taken through the end of calendar year 2020. The act provides for emergency paid sick leave as well as expansion of family and medical leave for employees impacted by Coronavirus.⁴⁸

Under the provisions of FFCRA, an employee who is seeking treatment for COVID-19 or is subject to a quarantine may receive up to two weeks (80 hours) of paid sick leave at the employee's regular pay rate (up to \$511 per day). The normal requirement of being employed for at least one year does not apply to the emergency paid leave provisions. It also provides that employees may take up to two weeks of leave at two-thirds their usual pay rate (up to \$200 per day) to care for a sick or quarantined individual or to provide care to a child whose school, daycare facility, etc. has been closed due to COVID-19.⁴⁹

FFCRA goes even further by requiring employers to provide additional leave to employees who have worked for the entity for at least 30 days. The law grants employees up to an additional 10 weeks of paid leave at two-thirds their regular pay rate in order to provide care to a child whose school is closed. Benefits under this provision are capped at \$200 per day or \$10,000 total.⁵⁰

The provisions of FFCRA are disproportionately harder on small businesses compared to large corporations. Unlike FMLA, which requires an employer to have at least 50 full-time employees, the stimulus bill applies to any employer with less than 500 employees. Businesses with less than 50 employees may qualify for an exemption of the requirement to provide leave due to school closings but must prove that the leave requirements would threaten the viability of the business.⁵¹

However, all businesses impacted by the provisions of the FFCRA are eligible for dollar-for-dollar reimbursements in the form of a tax credit for all qualifying wages paid under the act as well as the costs of maintaining an employee's healthcare coverage.⁵²

This too is problematic though. Presumably, a refundable tax credit would not be paid to employers until they pay their calendar year 2020 taxes next year. This does nothing to help the short-term financial pain being experienced by many small and mid-size businesses. Businesses that cannot already afford to offer

⁴⁶ Ibid.

⁴⁷ Ibid

⁴⁸ See: Public Law 116-127, Families First Coronavirus Response Act.

⁴⁹ United States Department of Labor, "Families First Coronavirus Response Act: Employer Paid Leave Requirements", <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

paid sick leave can't afford to wait until they file their next tax return to be reimbursed.⁵³ There's also the fact that the credits will cost the federal government (i.e. American taxpayers) an estimated \$105 billion.⁵⁴

Regardless of if and when an employer may be reimbursed for the costs of the leave, this creates a broader societal problem. Under the provisions of FFCRA, there is little incentive for some employees to work. They can receive two-thirds of their salary for more than two months without being required to do any actual work. This puts more strain on American businesses that are already struggling due to the impacts of Coronavirus. Those who can work, be it in person or remotely, should do so. Extended leave benefits should be reserved only for individuals who have no other options and only when it will not create an undue hardship for their employer. In those instances, there should be specific conditions that must be met and oversight in place to ensure that fraud is not occurring.

If an employer can't afford to pay expanded leave for an employee, what happens?

As referenced above, there are cases in which an employer with less than 50 employees may be exempt from providing expanded benefits under FFCRA. The law provides exemptions if:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.⁵⁵

The law further clarifies that the exemption applies if one of the above conditions is met and leave is requested to provide childcare.

While these exemptions may be helpful to companies with 50 employees or less, what about companies with 51 employees? Larger "small businesses" will likely have more employees apply for expanded benefits than a company with 50 employees or less.

Like the provision that applies the expanded leave to companies with less than 500 employees, even the exemptions are picking winners and losers. As suggested above, if this emergency leave program is going to exist, it should be targeted to employees that are experiencing a true hardship, not people who want to receive two-thirds pay for doing no work. If there are going to be exemptions to the law, they should apply in any circumstance where it creates a hardship for an employer, regardless of size.

⁵³ Rachel Greszler, "Costly new sick leave mandate would hurt businesses", USA Today, March 17, 2020, <https://www.usatoday.com/story/opinion/todaysdebate/2020/03/17/coronavirus-costly-sick-leave-mandate-would-hurt-businesses-editorials-debates/5074494002/>.

⁵⁴ Congressional Budget Office, H.R. 6201, Families First Coronavirus Response Act, April 2, 2020, <https://www.cbo.gov/publication/56316>.

⁵⁵ United States Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

What can the State of Alabama do?

Alabama does not have a law requiring employers to provide paid or unpaid sick leave. However, Alabama employers would be subject to the provisions of FFCRA. The burden is on employers to document whether an employee is eligible for the expanded benefits and to apply for the refundable tax credit as a means of reimbursement. The federal Department of Labor controls oversight and enforcement.

Unlike unemployment benefits, the state has no direct role in paid leave or FMLA benefits.

One thing that the state could do is to stop directly encouraging the public to apply for benefits under the FFCRA and CARES act. A March 31 press release from the Alabama Department of Labor encourages employees to apply for CARES Act and other Coronavirus stimulus benefits.⁵⁶ This is the wrong approach. The state should have information about new benefit programs available but should not go so far as to encourage anyone who may be eligible to apply.

Another step that the Alabama Department of Labor could take is to also have resources for small business owners available. At a minimum there should be a document showing the exemptions to the emergency paid leave provisions of the FFCRA. Small business owners should know that there are options available to them if granting emergency leave would cause hardship to their business. As it stands, information on the Alabama Department of Labor website are skewed towards those applying for benefits, not the employers that are impacted.

In terms of allegations of fraud, again the state does not have a direct role. The burden is on the employer to determine and document abuse of the leave statute. It is easier for an employee to file a complaint against an employer than vice versa.

⁵⁶ Alabama Department of Labor, "ADOL ENCOURAGES EMPLOYEES TO FILE FOR BENEFITS UNDER THE CARES ACT", Press Release, March 31, 2020, https://www.labor.alabama.gov/news_feed/News_Page.aspx?id=208.

APPENDIX 1

A proposal for the establishment of a
Governor's special task force for social,
economic and academic recovery for the
State of Alabama in the wake of the
coronavirus pandemic

SEAR TASK FORCE

The Governors Special Task
Force for Social, Economic and
Academic Recovery



The Alabama Policy Institute
2213 Morris Avenue, First Floor
Birmingham, AL 35203
205-870-9900

09 April 2020



Dear Governor Ivey,

As you know the Alabama Policy Institute has been advising both public and private figures in Alabama for some three decades on matters of conservative public policy. API has maintained its stance as a non-partisan proponent of free markets, limited government and strong families throughout its existence. In doing so it has been our honor to be of service to countless members of the State Legislature, various State departments, members of Alabama's US delegation, and several Governors.

During this current crisis our staff has been working to track and refine various aspects of the social, economic and education-based impacts on Alabama resulting from the CV-19 outbreak and containment policies by state and local officials. It is our determination that we will see a light at the end of the tunnel soon. But in saying that we also believe that it is imperative that your office projects a plan for an orderly phased approach to the reviving of our great State. Now more than ever the citizens of this State need to see the Office of the Governor and be inspired.

With that in mind the leadership at API hereby submits this proposal for your consideration which advocates for the establishment of a special Governor's task force that will examine, plan for, and implement the effective return to viability of Alabama's social, economic and academic environments. We have notionally given it the title of the Governor's SEAR Task Force.

It is our sincere hope that this proposal will be received in the manner in which it was drafted – that being the utmost desire to see that the work that your office has done to posture our State for the future does not falter now – that Alabama not just survive, but actually thrive in the wake of the pandemic and be better postured for future generations who might face such extreme circumstances.

Respectfully,

Caleb Crosby
President of API

Carl Jones
COO of API

Phil Williams
Director of Policy Strategy
And General Counsel, API

ISSUE: Currently there is a rightful focus on the containment of the Covid-19 outbreak. However, all policies of containment have the secondary adverse effect of damaging Alabama's economy and social fabric through the required shutdown of many private sector businesses and tourism industry, the closure of schools at all levels, and the stymieing of Alabama's social networks. The people of Alabama have been largely cooperative and understanding of government action to date. However, it is expected that at some point very soon individuals will become more focused on restrictions of liberty and depressed economic status. The underlying question will become the overt demand – “what price do we put on the broader quality of life?” This is already becoming evident in various locales worldwide.⁵⁷

MISSION: to identify and advise the Governor on a plan for the phased reopening of Alabama society through the orderly and timely rescinding of policies and proclamations at the state and local level that served to contain the Covid-19 outbreak. To further identify Executive and/or Legislative action needed to promote said phased reopening. To conduct a full after-action review of Alabama's response to the Covid-19 outbreak and make recommendations for potential future pandemics.

SOLUTION: Recently the Trump Administration indicated the intent to establish a separate task force solely focused on the phased reopening of society.⁵⁸ The need for such a task force indicates an awareness that while a governing body can shut down a society, a business, a school, that reopening it all is much more difficult. The Governor's office would benefit from the establishment of a special task force whose sole focus is related to the reopening of society as a whole. This task force is envisioned not as an ad-hoc group who meet occasionally, but rather as an actual function of governance meeting on a daily basis. Said task force should be clothed with the authority of the Governor's office and chaired by an individual whose title should be something akin to “Special Chief of Staff”. This task force should be staffed with individuals assigned to it on temporary duty from the various departments of state government who have actual authority to speak for their respective department. Further, this task force should identify clear metrics for recovery that have the ability to be implemented, and not just suggested.⁵⁹

FRAMEWORK: API recommends that the Governor's SEAR Task Force be formed immediately and assigned office/work space – a war room if you will – in which to meet, plan and work daily. We recommend that this war room be located in the Capitol to better allow for the necessary daily updates to the Governor and senior staff. At a minimum API recommends that the SEAR Task Force should consist of the following dedicated members who report daily and solely to the task force office to conduct task force business:

⁵⁷ Austria reopening - <https://herman Cain.com/austria-enough-reopening-next-week/>

⁵⁸ Trump Admin task force - https://www.washingtonpost.com/politics/trump-preparing-to-unveil-second-coronavirus-task-force-officials-say/2020/04/08/e0808922-7a05-11ea-b6ff-597f170df8f8_story.html

⁵⁹ AEI - <https://www.aei.org/research-products/report/national-coronavirus-response-a-road-map-to-reopening/>

- Special Deputy Chief of Staff – a non-government, non-elected individual with personal knowledge/experience of governance, management of a joint staff and crisis planning. This individual should report directly to the Office of the Governor.
- A representative from the Governors communications staff
- A representative from the Office of the State Health Officer
- A representative from the Office of the State Treasurer
- A representative from the Office of the Secretary of Department of Education
- A representative from the Office of the Secretary of the Department of Labor
- A representative from the Office of Secretary of Commerce
- A representative from the Office of the Secretary of Information Technology
- A representative from the Office of the Attorney General
- A representative from the Office of the Administrative Office of Courts
- A representative from the Office of the Secretary of Agriculture
- A representative from the private sector – small business
- A representative from the private sector - industry
- A representative from the private sector – retail
- A representative from the Alabama Farmers Federation
- A representative from the utilities sector

GOVERNORS CHARGE: The Governor’s charge to the task force should require the following in order to achieve a “whole-of-society” solution:

1. Establish the metrics at which point Alabama can say with confidence that it has established the needs of the medical community to contain and treat CV-19
2. Establish the metrics at which point Alabama can begin to reopen retail, industrial and business establishments
3. Establish the metrics by which Alabama can reopen certain geographic areas ahead of others (no blanket solutions)
4. Establish the criteria by which the Alabama education system may reopen schools and universities for normal attendance
5. Establish the criteria by which social and faith-based gatherings may reoccur
6. Conduct a full after-action review of Alabama’s response at all levels to the Covid-19 crisis and make recommendations for future responses
7. Conduct joint press conferences on a bi-weekly basis at a minimum in order to update the citizens of the State as to the work being done on their behalf

DURATION AND PURPOSE: The SEAR Task Force should be considered limited in time and scope. It should be chartered by proclamation of the Governor for a 3-6 month period of existence at which point it will be disbanded. The SEAR Task Force should exist for one reason – to reopen the State of Alabama.

APPENDIX 2



THE GOAT HILL INTELLIGENCER

A Research Publication of the Alabama Policy Institute



COVID-19 in Alabama

A Primer on the Impacts of the Coronavirus on the State

Justin Bogie, Senior Director of Fiscal Policy

Parker Snider, Director of Policy Analysis

Executive Summary

The impacts of the coronavirus on the health, social wellbeing, economy, and state government of Alabama are unprecedented.

To this date, millions of Alabamians have upended their lives to stop the spread of COVID-19. Over 1,000 have contracted the virus and some have succumbed to it.

The effects of social distancing on the economy of Alabama and, as a result, the state's financial well-being are likely to be dramatic as well.

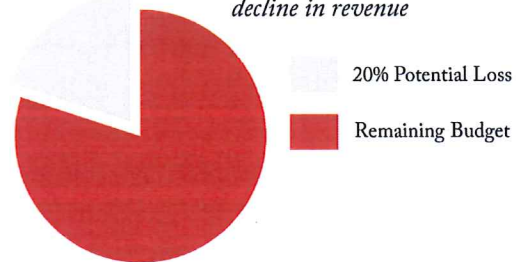
Budget-wise, Alabama could see a decrease of \$1.3 billion in the Education Trust Fund budget if income and sales tax drop by 20%. The General Fund could also see its funding stream decrease by \$400 million, assuming a 20% decrease in its revenue sources as well.

The teetering economy also increases pressure on the already-underfunded Retirement Systems of Alabama, which supposes as generous 8% annual return.

Additionally, legislative priorities for the year that had gained significant traction, including the approval of medical marijuana, a ban on transgender surgeries and therapies for minors, a statewide lottery, and more have been sidelined.

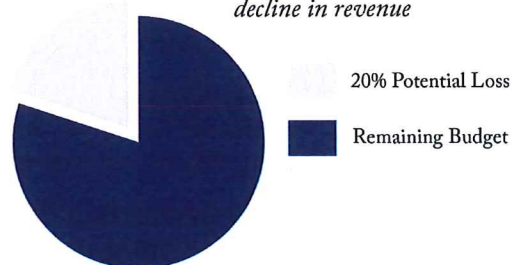
\$1.3 billion potential decrease

Education Trust Fund
Potential Losses assuming 20% decline in revenue

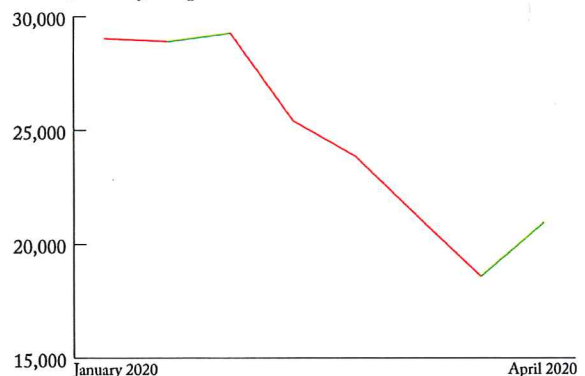


\$400 million potential decrease

General Fund
Potential Losses assuming 20% decline in revenue



Dow Jones Industrial Average
January - April 2020



Introduction

In a matter of days, the threat of the coronavirus shifted from an abstract idea to a confirmed reality for millions of people across the United States. As initial cases in Washington and New York in those arriving home from foreign countries grew to community spread in Florida, California, and eventually Alabama, federal and state health officials faced difficult decisions concerning recommendations and orders that drastically impacted life for all Americans.

To this day, the coronavirus continues to spread across the nation and around the world, its ability to upend regular life unlike anything in recent history.

The potential detriment of COVID-19 on the health of millions of Americans is, of course, of utmost importance. It is, in fact, the sole reason we allow our lives to be upended. We care about our communities and seek to protect those most susceptible to the disease.

Even so, it is important to grasp the full impact of the coronavirus on our lives, and specifically on our home state of Alabama. This includes the health impacts, of course, but also the impacts to our social structures, our economy, and our state government. Detailing the full impact is our hope for this *Guide*.

Impact on Health

According to the World Health Organization (WHO), the coronavirus can affect people in different ways. COVID-19 is a respiratory illness, however, and most who are infected will have a fever, shortness of breath, and/or a dry cough. Other symptoms include aches and pains, sore throat, and, in some, diarrhea, nausea, or runny nose.

Most people, according to the WHO, will experience mild to moderate symptoms that do not require special treatment.

The death rate, currently thought to be around 1%, shows that COVID-19 is 10 times more deadly than the flu

according to Dr. Anthony Fauci.¹

Those who are older or have pre-existing conditions such as high-blood pressure, heart disease, lung disease, cancer, or diabetes, tend to more often develop serious illness than younger people.

Unlike with the flu, no population has a built-up immunity to COVID-19. This is why it is so infectious and why governments have made such drastic measures to contain and stop the spread of the coronavirus.²

That said, competing models of infection and an ever-changing mitigation strategy have left much about the spread of the virus in question. Data from China has proven to be unreliable, and differences in infection rates in areas such as New York City, especially compared to Alabama, make determinations of the “peak” difficult to ascertain. Nationwide, President Trump has suggested that the peak infection rate will be mid-April.³ Alabama’s peak, however, will likely be later.⁴ Overall, however, projections change regularly and the true impact of the virus is largely unknown.

Current Statistics (updated April 2nd, 2020):⁵

Total Confirmed Cases: 962,977

Total Deaths: 49,180

Total Confirmed US Cases: 216,798

Total US Deaths: 5,153

Total Confirmed Alabama Cases: 1,161⁶

Total Alabama Deaths: 17

Social Impact

When the first health recommendations regarding social distancing were voiced from the CDC, the White House, and local governments across the state and nation, social life in America became one of the earliest casualties. The gatherings that characterize and dominate so many of our lives—family gatherings, religious services, conferences, sports, concerts, et cetera—were immediately called into question. Some, such as the 2020 NCAA Basketball Tournaments, were cancelled outright. Others, such as gatherings of the local church, were forced to adjust to

online means of community and growth. These impacts were immediately felt and, to this day, residents continue to find creative ways to adjust social patterns of life as a result of the COVID-19 pandemic.

Families

One of the most significant impacts of the coronavirus is its effect on families. For many, school closures and work-at-home policies have forced nuclear families into spending increased time together. For those families with older adults or persons with pre-existing conditions, however, COVID-19 has resulted in isolation and loneliness as older family members are restricted from seeing relatives except through a window (in some documented cases) and those with preexisting conditions are kept away from family members even in the same home.⁷

Churches and Religious Gatherings

Apart from the impact of the coronavirus on families, perhaps the most significant social impact of the coronavirus in Alabama has been its impact on churches and religious gatherings. With 86% of Alabamians identifying as Christian according to Pew Research, millions across the state face a temporary new normal in which weekly rhythms of worship, small groups, and other gatherings are dramatically changed.⁸ Many have adjusted to online services,⁹ drive-through confession,¹⁰ or drive-in church.¹¹ While human ingenuity and technology have made social distancing possible in religious communities, the long-term cost of cancelling in-person gatherings is difficult to ascertain.

Entertainment and Recreation

Another social impact of the coronavirus has been the cancellation or adjustment of entertainment and recreational activities. On March 11th, the NCAA announced that the March Madness Basketball Tournaments would be held without crowds.¹² While that tournament was later cancelled completely, this

announcement was the first in a series of entertainment and sports cancellations or postponements that, for many Americans, served as the first notice that COVID-19 would greatly impact their lives.

In the days following the NCAA's announcement, almost all live events were cancelled or postponed. Most movie theaters have shut their doors as the global box office comes to a halt and shoots for television shows and films are delayed.

Personal recreation has been impacted as well. With most gyms closed, local sporting leagues games delayed, and schools closed to normal K-12 sports, residents across the state are adjusting to at-home workouts and, when they do venture outside, maintaining the recommended six-foot distance between themselves and others.

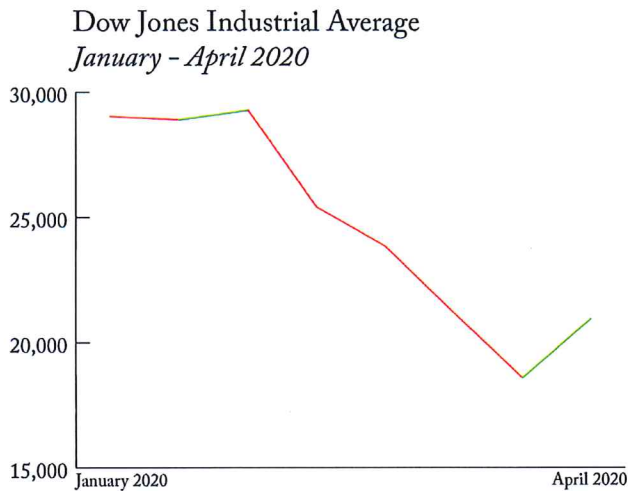
Socioeconomic Impact

Before we shift to discussing the economic impact of the coronavirus, it must be remembered that economics is not simply about dollars and cents. There are, in fact, human consequences to a faltering economy. Job losses, lack of regular income, and other economic changes can increase rates of depression, suicide, and perhaps even social unrest.¹³ Examining the economic impact is not a cold, heartless thing to do, but an important factor to consider when determining the best way forward in a global pandemic.

Economic Impact

There is much uncertainty as to what economic impacts Alabama and the nation may feel as a result of the COVID-19 pandemic. Many businesses have temporarily shut down. From March 22-23 alone, the Alabama Department of Labor reported 17,000 new unemployment claims were filed.¹⁴ Schools across the state are closed. At least 175 million Americans are being told to shelter in place, only leaving their homes for necessities such as medical appointments, food, and

exercise.¹⁵ The last week of March, in fact, saw over 6.6 million Americans file for unemployment.¹⁶ That is double the record set just the week before as the stock market and other economic indicators continue to signal a potential recession.



While the stock market shows the immediate impact on the financial markets, the short and long-term effects are hard to predict. The biggest factor in determining how much economic pain the state of Alabama and its residents feel is how long it takes for communities to get back to business as usual. If most aspects of life return to normal in a matter of weeks, the impact will be felt but there is hope that the state's economy can quickly recover. If COVID-19 shutdowns persist for months, the hardships for individuals, businesses, and state and local governments will be more severe and long-lasting.

While the effects are hard to predict, we can at least consider how major disasters have affected the economic health of areas in the past. In 2001, for example, after the attacks of 9/11, New York City lost 143,000 jobs a month in the following three months.¹⁷ Assuming the impact to Alabama is similar over the next three months (an assumption, indeed), Alabama would lose 87,000 jobs every four weeks. This direct correlation may not come to fruition, but it does highlight the real effects that a crisis can have on local economies.

For state government, however, there are a number of impacts that will have to be confronted in the coming weeks and months. In addressing these trying issues,

lawmakers must seek to ensure the health and safety of Alabamians while striving to minimize the economic impacts felt by the state.

Impact on Alabama Government

From short-term delays of the Legislative Session to the long-term impact of an underperforming economy on the state budgets, Alabama's state government is not immune to the impact of the coronavirus. While these effects may not receive much attention in light of the more immediate impacts Alabamians are feeling, they are nonetheless significant.

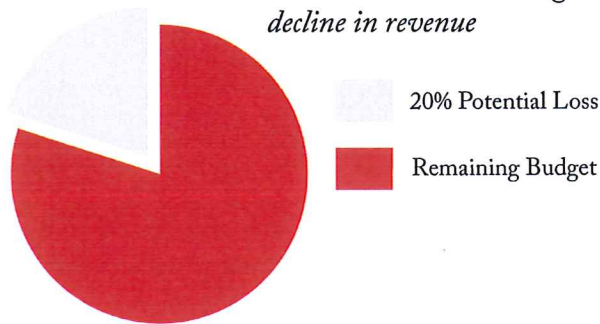
Education Trust Fund

The main sources of revenue for the Education Trust Fund (ETF) are sales and income tax receipts. In 2019, an estimated \$6.3 billion of \$7.0 billion in ETF receipts came from these sources.¹⁸ State revenues for FY 2020 and beyond will almost certainly be impacted by the business closures associated with COVID-19. Depending on how much 2020 revenues fall below projections, both the ETF and General Fund budgets could be forced in proration, meaning cuts will be necessary to balance the budgets.

It is difficult to project with accuracy what the impact to the 2020 ETF budget may be. However, looking at a couple of scenarios may give the state an idea of the potential revenue shortfall. Considering income and sales tax receipts, if only those sources fall by 10%, revenues to the ETF would decrease by approximately \$633 million for the current fiscal year (2020). If sales and income tax revenues fall by 20%, that would leave a gap of nearly \$1.3 billion this year.

\$1.3 billion potential decrease

Education Trust Fund *Potential Losses assuming 20% decline in revenue*



One caveat is that the 2020 impact on income tax receipts may be somewhat minimized since they are based on 2019 income. However, the state has already delayed the filing deadline until July 15, 2020.¹⁹ Despite the delay, those citizens with tax bills due may have a hard time paying them if the disruptions caused by COVID-19 persist.

Depending on the size of the FY 2020 shortfall, all or some of it could be filled through the ETF's Rainy Day Account and/or rolling reserve fund. Exhausting those funds this year could make budgeting for FY 2021 even more difficult though.

Even greater uncertainty persists in terms of the FY 2021 ETF budget. Alabama law requires that the state legislature pass the ETF and General Fund budgets each year, but doing so under the current cloud of uncertainty is unlikely, meaning that a special session focused on the two state budgets will be forced to convene sometime prior to September 30.²⁰

Under a best-case scenario, Alabamians can hope that life will be back to normal by then and budget impacts will be minimal. Regardless, it is more important now than ever for lawmakers to be prudent and carefully prioritize taxpayer resources.

General Fund Budget

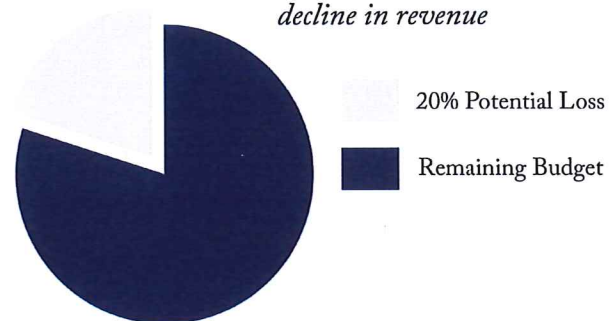
As with the ETF, the future of this and the FY 2021 General Fund Budget are unpredictable. The General

Fund gets the majority of its revenue from various tax receipts and investments, including: ABC Board receipts, ad valorem taxes, corporation taxes, insurance company taxes, sales and use taxes, and interest on the Alabama Trust Fund, among others.

A decline in some of these revenues is inevitable, though the General Fund may not be as significantly impacted as the ETF since it is not reliant on income tax receipts. If total General Fund revenues fall by 10%, that will mean a loss of over \$200 million in 2020. A 20% loss would double that figure to over \$400 million this year.²¹ Like the ETF, the General Fund also has a Rainy Day Account that could help ease some of the immediate economic impacts caused by COVID-19.

\$400 million potential decrease

General Fund *Potential Losses assuming 20% decline in revenue*



Under a more dire scenario, federal reserve officials have estimated that unemployment could reach as high as 30%.²² The impacts of such a high unemployment rate on Alabama income tax receipts could be several billion dollars in 2021.

Like the ETF, the status of the FY 2021 General Fund Budget is uncertain. The legislature will need more time to evaluate the impacts of COVID-19 before it can responsibly develop next year's budget proposal.

State Rainy Day Accounts

As referenced previously in this guide, both the ETF and general fund have rainy day accounts that can be accessed in order to prevent proration.

The ETF Rainy Day Account is part of the Alabama

Trust Fund, which was created in 1985. Both the General Fund and ETF rainy day accounts were established in 2008 and are intended to provide additional General Fund and ETF funding if there is a revenue shortfall. The source of funding for each account is derived from Alabama's oil and gas royalty revenues.

A maximum of 6.5% of the ETF's previous year appropriation can be withdrawn from the fund in a given year, less any previously withdrawn amount that has not been repaid. This leaves the legislature with an estimated \$430 million that could be available to offset proration in 2020. The state constitution requires that any funds withdrawn from the ETF Rainy Day Account must be repaid within six years.

The ETF also has a rolling reserve fund (created in 2013) that can be used to help prevent proration. An amount up to 1% of the previous fiscal year's Education Trust Fund appropriations is transferred from the ending balance of the Education Trust Fund (assuming there is a surplus) to the reserve fund annually until the Fund reaches 7.5% of the previous year's appropriation. There could be as much as \$300 million available, assuming no funds have been withdrawn since 2015.

The State General Fund also has a rainy day account that may be utilized to prevent proration. State law provides that up to 10% of the previous year's general fund appropriation (less amounts not repaid) may be withdrawn from the account if the governor orders proration. The state has 10 years to pay back money taken from the General Fund Rainy Day account.²³ Based on FY 2019 appropriations, the state could withdraw up to \$200 million in 2020 for proration prevention.

The 2020 Legislative Session

If the budgets and a few other pieces of critical legislation are the only matters of business for the rest of this year, a number of other bills (many which are controversial and promised to command much media attention) are dead. This is a significant blow to supporters of these pieces of legislation. A few select examples of impacted legislation

are listed below.

SB165 – This bill would have legalized medical marijuana for use in the state of Alabama. Before the legislature left on Spring Break (and before the coronavirus had any real impact on Alabama), SB165 had received a favorable report from the Senate Judiciary Committee and, the day before break, passed the full Senate by a vote of 22-10.

HB76 – This bill would have created a Tier III retirement program that offered state employees more benefits during retirement. Even though it would increase the state's unfunded pension liability—which is already at an unsustainable level—the legislation passed the House by a vote of 103-0 on February 18th.

SB282 and HB418 – These bills both aimed to legalize a state-sanctioned lottery within Alabama's borders. Both would have required a vote of the people, scheduled for this November. These are not bills that should be considered essential in any understanding of the word.

SB219 and HB303 – These bills would have banned transgender surgeries and hormone therapy on minors. Although an important step to end experimentation on the state's children, it is unlikely that this would be deemed essential to government function.

HB352, HB353, SB259, SB250 – These bills would lower taxes on Alabamians that were inadvertently raised as a result of the Tax Cuts and Jobs Act of 2017. These bills were never heard in committee in either legislative body, although support for them was widespread.

There are many other bills that will likely be on hold until the next legislative session, including attempts to eliminate the grocery tax, ban smoking in cars with minors, allow early voting, abolish the office of the State Auditor, and more. In fact, almost 950 bills and resolutions have been filed in the 2020 Legislative Session already. Only 84 have passed.²⁴ For reference, in the 2019 Regular Session, 653 bills and resolutions passed.²⁵

Retirement Systems of Alabama

RSA, and in turn, Alabama taxpayers, could be particularly susceptible to the economic risks associated

with the COVID-19 epidemic.

RSA guarantees an eight percent average investment return over time. In an era of historically low interest rates, eight percent is a lofty goal to achieve under good economic circumstances.²⁶ Given the current upheaval of the stock market, it is unlikely RSA will see positive growth this year. If COVID-19 sparks a longer-term recession, it may take longer for RSA investments to recover.

In 2018, the state contributed more than \$1.2 billion towards employee retirement benefits.²⁷ If RSA falls short of the 8% goal for an extended period, it could put taxpayers on the hook for tens of millions of additional dollars in retirement benefits.

RSA is already seeing a more immediate impact from the COVID-19 epidemic. RSA owns the 11 courses making up the Robert Trent Jones Golf Trail as well as eight associated resorts. As of March 13, 2020, RSA CEO David Bronner said that the golf and resort operations had not been impacted yet.²⁸ However, since that time greater social distancing restrictions have been placed on Alabamians. People are being encouraged to stay home if possible, meaning less tourism dollars coming into the state.

In the short-term, this will certainly impact RSA's bottom line. Over the long run though, RSA's resorts and the Robert Trent Jones Golf Trail could fair better than its private counterparts. Since these resorts and golf courses are backed by taxpayers, RSA will be better equipped to weather the storm than small business owners who may be forced to close their independent golf course or event venue.

State Employees Temporarily Sheltered

Unlike the private sector, which feels the immediate

¹ Ibid.

² Huang, Pien. "How The Novel Coronavirus And The Flu Are Alike ... And Different." NPR. NPR, March 20, 2020. <https://www.npr.org/sections/goatsandsoda/2020/03/20/815408287/how-the-novel-coronavirus-and-the-flu-are-alike-and-different>.

impact of an economic downturn, any government is one step behind in terms of falling revenues and layoffs. That said, the thousands of government employees are sheltered from the economic effects of, in some cases, their own decisions regarding the economic well-being of the state. Any federal direct payments being discussed will likely not take this into account, allocating tax dollars to those who have encountered no loss in income at similar levels to those who have been temporarily furloughed or permanently laid off.

Even so, this sheltering from the economic fallout is not permanent. If the economy falters long-term as a result of the coronavirus, agencies will face proration and potential layoffs as a result of Alabama's balanced budget requirement. There is, as described earlier, a way to avoid full proration, however, through accessing the Education Trust and General Fund Rainy Day Accounts.

Conclusion

From our basic social interactions to the long-term health of our economy and the ability of the State Legislature to govern, the impact and reach of the coronavirus is massive. Living memory offers no similar occurrence. Even so, our leaders and decision makers need not dictate our collective future in a vacuum. Health officials, economists, elected officials, and others need to grasp the full impact of this national pandemic.

It is a difficult time. That is undeniable. It is in these difficult times that the ingenuity of Americans and Alabamians must be harnessed to arrive at a solution that prioritizes human life *and* the general social and economic welfare.

And there is a solution. Our job, empowered by a full picture of COVID-19's impact, is to find it.

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