

FOR JANUARY 23, 2002

Following yesterday's opening joint session and "State of the State" speech by the Governor, the Legislature accelerated into "full session mode" with extensive committee hearings on a number of issues that affect Florida's employers.

### **BUSINESS DAMAGES**

SB 248 by Senator Lee Constantine (R-Altamonte Springs) was passed today by the Senate Judiciary Committee.

Prior to 1999, businesses that were entitled to file a business damage claim had to be in business for more than five years prior to the taking of the property. This meant that businesses that were operating less than five years but which sustained substantial damage to their business could not even file a claim for those damages. In 1999, Section 73.071, F.S., was amended to allow a business in existence for more than four years to bring such a business damage claim. Because of the belief by various condemners that such a change would "open the flood gates" of business damage claims, a sunset provision was placed in the 1999 statute that was designed to "sunset" the four-year change and automatically revert the law back to five years.

SB 248 would maintain the four-year threshold for business damage claims in Florida, if adopted.

**AIF supports the legislative extension of the four-year threshold for business damage claims. It is only ethical and fair that businesses whose ability to engage in commerce is inhibited or severely compromised by the state (road building, road expansion, road maintenance) should be compensated justly by the state. AIF supported the original amendment to the law that reduced the time an owner had to be in business from five years to four years in order to gain standing for compensation from the state.**

### **ADMINISTRATIVE PROCEDURES ACT**

The Senate Judiciary Committee also approved SB 270 by Senate President-Elect and current Senate Majority Leader Jim King (R-Jacksonville). The bill attempts to restore some fairness and equity to an environmental building permit process that has become hopelessly bogged down in costly and purposeful legal delays engineered by environmentalists.

The bill clarifies current law, limiting the ability of “just anyone” to initiate an administrative hearing in opposition to a development. Currently, people who have no practical or personal interest in a commercial permitting process are initiating administrative hearings in attempt to, “protect the environment.” These initiatives have taken on the gleam of outright harassment and are adding considerable dollars to the cost of residential and commercial development. As Senator Campbell (D-Tamarac) so aptly put it in his defense of the bill, a person seeking to initiate an administrative hearing has to have “nexus to the permit in question. The bill passed by a vote of 9-2

It is important to note that the usual crowd of environmentalists testified in opposition to the bill using their typical alarmist language (and veiled threats). The members of the Senate Judiciary Committee will absolutely be flooded with sharp emails from the environmentalist network, which preys on uninformed citizens (who live in bedroom communities built and developed by the very same people the Florida Wildlife Foundation and Sierra Club now oppose). Please visit our the Committee link on our website, find the Senate Judiciary Committee and send them an email thanking them for a tough, courageous vote on our behalf. They deserve it.

Senators Ron Silver (D-North Miami Beach) and Daryl Jones (D-Miami) were the two “no” votes.

**AIF supports legislation that will restore sanity to a permitting process that currently promotes or abides endless delays by those who have no material stake in the outcome of the applicant’s project.**

#### **PATIENT SELF-REFERRAL ACT – KIDNEY DIALYSIS**

The Senate Health, Aging & Long Term Care Committee passed SB 726 by Senator Jack Latvala (R-Palm Harbor). The bill amends current law, prohibiting kidney dialysis care providers from “self-referring” and performing their own “in-house” diagnostic lab work.

Two of the world’s largest kidney dialysis companies have a major presence in Florida. In fact, one of these companies recently moved their North American headquarters to Ft. Lauderdale. Together, these companies employ hundreds of Floridians in high paying, high-tech, bio-medical jobs.

The analysis and lab work necessary for life-saving kidney dialysis treatment is extremely time sensitive and must be accomplished under extraordinarily rigid quality controls. It is very beneficial to the patient and the attending physician to have the lab work handled and coordinated by the center already performing the dialysis. The feedback is almost immediate, allowing the physician to monitor status and alter the care plan as needed.

This system has performed so well for patients - whose very existence is inextricably tied to proper dialysis and lab diagnosis - that a very small fraction of competitors are seeking to pass SB 726 mandating what kind of labs the dialysis centers can make use of. This tinkering with the free market system would not only cost the state hundreds of high-end jobs but, much more importantly, put thousands of kidney dialysis patients at enormous risk.

**AIF opposes playing games with the *Florida Statutes* by passing a law solely intended to benefit a few who are unable to compete in the current, well-tested market system. As an added inefficiency in the health care marketplace, this proposal would serve as a cost-driver to the costs of health care and Florida’s employers.**

## **Worker's Compensation Reform**

The House Insurance Committee met today and the reaction to the meeting by those in attendance was that there is no real interest in the House Insurance Committee doing a bill. Chair Leslie Waters (R-Seminole) made an initial statement that she did not know what she wanted to do on workers compensation yet. The general consensus is that we felt we were told to go into a room and work it out. And not to come out of that room until it was done.

Well we tried that last year and have tried it for many years and the only interest groups that are on the other side of the issues are the claimant's attorneys and the Florida Home Builders. Everyone else is in agreement. We have gone as far as we can. It is now time for the Legislature to make the hard decisions. If there is no real savings and reform, the Coalition has advised that it will not support legislation just for the sake of legislation. The system is headed for a crisis and maybe the best time for the employers of this state to be heard is when we get to that point. Maybe then, someone will listen and not just to those that have a vested interest in the system.

We were told after Session last year, by Speaker Tom Feeney (R-Oviedo) and Representative Leslie Waters (R-Seminole), that there would be a good workers' compensation bill and one that the employers could live with. However, there needed to be broad base support for the bill between the business community and the insurance industry. Well, we went out this summer, put that coalition together and have a great product that will increase benefits to injured workers while at the same time stopping the litigation abuse in the system.

The Workers Compensation Research Institute and the NCCI has advised the Legislature of the problems in the system. The NCCI states some of the problems are:

1. High frequency of permanent total claims - three times higher than countrywide.
2. High medical costs for permanent partial claims - two times higher than countrywide.
3. Higher medical costs for temporary total claims - 60% higher than countrywide.
4. Attorney involvement - significant in Florida and also helps explain the cost drivers. When attorneys are not involved, the difference in claim costs between Florida and countrywide is minimal. When attorneys are involved, the difference in claim size between Florida and countrywide is nearly 40% (based on NCCI study).

Do they really think we make this up? Hello - is anyone listening to the business community? To the insurance community? Or the experts? No. They are listening to the claimants' attorneys, who will not be paid as much as they make now, but will still be in the system.

For some reason, the Florida Workers' Advocates have been more successful in convincing the Legislature to do nothing than all of the business and insurance industries combined. They are very adept and were able to get the committee to focus on small issues today like, what do you pay defense lawyers, who reports what; misleading the committee that there would be no attorneys in the system if "you pass this bill". One would think that since they have been saying that since 1978, the Legislature would get tired of hearing it. It simply is not true. But it was obvious that Representatives Joe Negron (R-Stuart) and Eleanor Sobel (D-Hollywood) have bought into their misrepresentations. One of them led the committee to believe that if there was a medical only claim and the bill was \$12,000 that the fee would be \$1000. That representative of the claimant's attorneys did not admit that they would be paid on the minimum or the fee schedule, whichever is higher. The fee would not be at hours based on the minimum of \$1,000 but would be on the schedule. The fee would be \$1,950.00.

Another claimant's attorney tried to focus the debate on who has to report what fees. She actually made the statement that defense fees are not reported. She should be introduced to Rule 38-F-3.0214

They have been successful at focus on the minutia and get the focus off the real issues. The Coalition bill did not have a real hearing today. There were many issues that were in that bill that did not get heard. And one has to wonder if anyone really wanted to hear it.

Representative Dennis Ross' (R-Lakeland) bill will increase rates. He gives everyone a little something. For instance he wants to increase the medical fee schedule to 150% of the Medicare schedule. The NCCI costed this out last year at a potential rate increase of 25%. Yet he has it in his bill. When we tried to increase benefits last year to injured workers and it was going to cost 5.6% increase, we could not do that. And medical costs make up approximately 60% of the claims dollar. How does one justify paying medical a bigger percentage without addressing the injured workers?

Doctors state that they will not treat because they do not get paid enough money. Yet employers have to buy workers compensation at high costs and are forced to carry coverage that many cannot afford. Then they wonder why an employer goes bare. Carriers tell the Legislature that for every \$1 that it writes it is losing an average of \$1.18 in this state. There was definitely reluctance by some to believe it. Rather the Florida Workers' Advocates put out a "study" that in no way represents the insurance industry and some take it as gospel.

The only person so far that has set down with the Coalition several times and listened to its concerns has been Senator Jack Latvala (R-Palm Harbor). Representative Don Brown (R-Defuniak Springs) did try to get at the committee the focus on the above cost drivers. Representative Jerry Melvin (R-Ft. Walton Beach) has stated he wants change and has worked to get it.

Needless to say, the business community is very discouraged.

On another front, the Senate Banking and Insurance also met today and heard presentations from NCCI that to eliminate exemptions could have savings in the construction rates from -.5% to -27%.

Judge Bill Pfeiffer presented the challenges DOAH has faced getting the JCC merged into DOAH. He also advised of the fact that in Miami 3000 old Petitions were found that had not been entered the system. One wonders where the attorneys for those claimants were and why they were not moving those Petitions forward. Didn't they notice that no mediations or hearings were being held on their Petitions? And one wonders why the claimant and the employer are frustrated with the workers compensation system.

## **CABINET REORGANIZATION**

The Senate Banking & Insurance Committee took up the issue of reorganizing the Florida Cabinet for the third straight year with the consideration of Senate bills' SB 232 by Senator Steve Geller (D-Hallandale Beach) and SB 662 by Senator Jack Latvala (R-Palm Harbor). The two bills, both similar in their construction and intent were combined as a "committee substitute." In combining the bills, the Committee was addressing the issue of reorganizing the Florida Cabinet as mandated by the voters in 1998.

To recap the issue, in November 1998, the voters approved Constitutional Revision Eight restructuring Florida's Cabinet and merging the Cabinet offices of Treasurer and Comptroller into one Chief Financial Officer. These revisions will become effective January 7, 2003. The new Cabinet will consist of the Chief Financial Officer, the Attorney General and the Agriculture Commissioner. The offices of an elected Secretary of State and Commissioner of Education will be eliminated from the Cabinet.

The language in Constitutional Revision Eight merging the Cabinet offices of the Treasurer and Comptroller did not provide direction as to how the statutory responsibilities currently assigned individually to the Treasurer and Comptroller should be treated. The statutory responsibilities at stake include the regulation of banking, securities and insurance. As amended by the Committee, this new hybrid CS/SB 232/662 bill places the CFO very much in charge of all three industries by giving the officer the authority to directly appoint three commissioners with regulatory oversight over these three industries.

AIF believes the structure that would both best represent the intent of Constitutional Revision Eight while maintaining the integrity of the regulatory process is best found in HB 577 by Representative Mark Flanagan (R-Bradenton). His bill creates a true CFO, one that is proscribed with the Constitutional duties of financial oversight of the state government.

The new Constitutional Office of Chief Financial Officer should be just that! – a Chief *Financial* Officer. The Florida Legislature should *only* transfer those Constitutional and related duties of the Office of Comptroller and Office of State Treasurer to the new office. These functions and responsibilities are immense and overwhelming when you consider the size and scope of the Florida State Government – including a \$50 billion budget and billions in fund balances, billing and investments.

The regulatory duties of the Comptroller - banking and securities – and the regulatory duties of the State Treasurer – insurance regulation – should be assigned to a *separate* Department, with that Department being collegially managed by the Governor and Cabinet through an Executive Director who must be confirmed by the Senate. Within this new Department of Insurance and Financial Services, the regulation of insurance should be assigned to a “Commissioner of Insurance,” and regulation of banking and securities should be assigned to a “Commissioner of Financial Services.” These Commissioners should be appointed by the Executive Director of the Department and be subject to approval by the Governor and Cabinet

**The HB 577 structure provides for the simplification and consolidation of governance, a desire expressed by the vote of the people in 1998, while at the same time providing for the necessary public and legislative oversight of the commissioner-selection process. In addition, this structure provides for a fair and equitable regulatory environment for the insurance and banking industries while in no way diminishing the historic oversight and enforcement authority practiced by the current Treasurer and Comptroller. The hybrid CS/SB 232/662 bill fails to meet these standards.**

Stay tuned to our daily brief and to our web site at [www.fbnnet.com](http://www.fbnnet.com) as the legislature makes some very important decisions on the state's economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

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- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.