ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE WEEKLY UPDATE
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# FOR THE WEEK OF MARCH 18-22, 2002

***SPECIAL EDITION***

This is a "Weekly Brief" Special Edition. Included in the Special Edition area the key business related issues that we consistently reported on throughout the 2002 Regular Session. At a later date we will be publishing in our Employer Advocate magazine a comprehensive report on the bills that passed and those that did not.

## IT'S OVER, BUT IT'S NOT

As it has been widely reported in the press, there remains several issues that went unresolved during the Regular Session. Primary among them is the budget for the 2002-03 fiscal year. The House and Senate are about $500 million apart in their respective budgets, plus they have some disagreements over priorities within the budget. Of extreme interest to the business community is the "corporate tax piggyback." The Florida Senate has had second thoughts about adopting the corporate tax piggyback bill, which is state legislation that aligns with federal corporate tax law. Typically, this bill is adopted annually without debate. However, given the federal economic stimulus package that was passed just a few weeks ago and the accelerated depreciation schedule for corporations granted by federal package, the resulting impact on the state budget has given Senate leaders pause. The estimated "cost" to the state budget in lost tax revenue is estimated as $200 million for this fiscal year. The Senate, having already passed the "piggyback" is now figuring a way out to recapture the lost revenue through the budget negotiations. Of course, the Senate is forgetting that the legislation is called a "stimulus bill" and should result in business expansion, more jobs and more spending on goods and services. "Losing" $200 million is an ephemeral number based on fifth grade math and the estimate does not embrace the real positive impact on economic activity. AIF supports the House position of maintaining this state corporate tax piggyback law.

Also left unresolved is a rewrite of the Florida school code. Given the extensive reforms of the state education system these last few years, it is very important that the school code be updated and, in places, rewritten, to reflect the policy changes now in statute.

Finally, the issue of implementing by statute the merging of the Cabinet positions of State Treasurer and State Comptroller into a new, single position of Chief Financial Officer (CFO) is unresolved. The House and Senate have been tied in knots over this for three straight sessions. At issue is what to do with the statutory, regulatory duties of the new CFO. Currently, the Treasurer regulates insurance in Florida. The Comptroller regulates banking and financial services. It has long been the AIF position and the House position that the CFO should not inherit regulatory oversight over all these industries in addition to the financial oversight duties already bequeathed to the Office by the State Constitution. AIF's position is that the regulatory oversight should be independent of the CFO, in matters concerning the regulators' in-house budget, staff, attorneys, regulatory authority and appointments. The proposed commissioners overseeing the insurance and financial services should be subject to collegial oversight by the Governor and the Cabinet – not just the CFO.

A "bad" bill largely conferring such dangerous powers to the CFO was averted in the final hour of the Session last Friday night. Whether it is soon or in the organizational session of the Legislature in November, this issue will need to be resolved this year.

**SOME CALL IT "TAX REFORM"**

The Senate and House gave final approval to a tax reform plan on Friday, March 22. The negotiated plan agreed to by the House Leadership, Governor Bush and the Senate Leadership, HJR 833 passed by a vote of 30 Yeas and 9 Nays in the Senate and the House adopted it by a vote of 74 Yeas and 43 Nays.

The agreed upon reform plan provides for a Constitutional amendment to appear on the ballot in November. If approved by the voters, the amendment creates a 12-member joint committee of the House and Senate to exist for three years. During those three years this joint committee, six members appointed by the presiding officers of each chamber, would review all of Florida's sales tax exemptions. By a simple majority of seven votes, the committee could "de-authorize" a sales tax exemption, which would expire on July 1, the year following the committee's adjudication. The only way the sales tax exemption can be spared in the amendment is if the whole Legislature by joint resolution votes to override the committee's de-authorization. No later than March 1, 2004, 2005 and 2006 will the committee present its findings to the Legislature.

AIF is disappointed to see that the Senate's compulsion for placing a tax reform plan in the Florida Constitution succeed, if the voters approve it in November, because that is simply no place for tax policy to be established. Tax policy is and should be a prerogative of the Legislature and is a creature of the statutes. Endless policy clutter in the Constitution, which is virtually impossible to remove, violates the very premise of what a state constitution should embody as a function of proscribing the powers, duties, rights and responsibilities of the state's civil government and its citizens.

**In the end, this tax reform plan is an overly elaborate mechanism designed to accomplish a simple review of Florida's sales tax exemptions. AIF historically and, in December, vocally supported a methodical review of the state's sales tax exemptions. AIF, having successfully advocated the adoption of numerous sales tax exemptions, believes our members' exemptions are completely defensible by any standard embracing economic competitiveness, equity and commercial growth. We are afraid that some industries, bereft of any particular influence at the Capitol, may well be "thrown to the wolves" regardless of the merits of their respective exemption. However, it must said, every beneficiary of a sales tax exemption must be able, at some point, to adequately and succinctly defend their exemption as a matter of policy. The path the Florida Senate and Senate President John McKay (R-Bradenton) took to accomplish this goal was unnecessarily arduous, originally impractical and damaging to the good order of the Regular Session.**

**RETAILERS RE-GAIN SOME PROTECTION FROM BANANA PEEL LAWSUITS**

In the midst of the confusion of numerous bills sailing back and forth between the two chambers in the final days and hours of the session, Representative David Simmons (R-Altamonte Springs) wisely pivoted and tacked the substance of HB 1545 onto SB 1946. As a result, the Senate caught SB 1946 on the rebound and adopted both the original language in the bill and HB 1545, as well.

As we have previously reported**,** The need for this legislation was created by yet another unfortunate anti-business decision by the Florida Supreme Court last fall. The Florida Supreme Court struck again on November 15, 2001, handing down an opinion on a "Slip & Fall" case that only distantly had anything to do with prior precedent or pre-existing law.

In question was the classic "slip and fall" litigation, where the plaintiff claimed injury on the store premises as a result of slipping on a banana and falling. In *Owens v. Publix Supermarkets*, the Court held that the plaintiff need only show that they fell as a result of the errant fruit product. Thenceforth, the burden of proof immediately shifts to the defendant to prove non-negligence. The defendant must now show that its actions were reasonable both with regards to inspection and maintenance procedures.

Prior to this decision, the burden fell upon the plaintiff in a slip and fall case to show that the defendant had constructive knowledge of there being an errant fruit substance dangerously lurking on the premises' floor. This higher, and genuinely more practical standard, allowed on a fairly consistent basis defendants to obtain a summary final judgement without trial where proof was lacking. With this recent Court decision, every slip and fall case is virtually guaranteed to go before a jury. Needless to say, this decision by the Court will cost businesses millions of dollars each year. The Florida Supreme Court has simply turned the law on its head with its *Owens v. Publix Supermarkets* decision.

Special note needs to be given to Senate President-Elect Jim King (R-Jacksonville) who, on behalf of the business community, saw to it that the bill was brought to the floor and effectively advocated its adoption. Without his assistance and push, the bill simply would not have passed. His effort bodes well for the business community and his upcoming service as Senate President.

Recognition and thanks also needs to be expressed to the author of the Senate companion, SB 2256 by Senator Ginny Brown-Waite (R-Brooksville).

**By dramatically shifting the burden of proof in slip and fall cases to the defendant, the Florida Supreme Court increased the legal exposure of Florida's employers exponentially by the tens of millions of dollars. The Florida Legislature must act to restore some sanity and clarity to a body of case law maimed by the Court. The bill that passed represents a compromise between the interests of the trial attorneys and the business community. However, the bill still needs some "work" to get it closer to the necessary defenses businesses enjoyed prior to the *Owens* decision.**

**HEALTH CARE REFORM COLLAPSES OF ITS OWN WEIGHT**

As is often the case during the last few days of session, a lot of good bills and bad bills found themselves amended to one another in an effort by legislators to get their particular bills passed as the clock wound down. And also, as is often the case, such an effort in health care reform resulted in nothing getting passed.

An effort was made in the waning hours to combine legislation that: provided health care insurance flex plans to small employers (AIF supported); kidney dialysis legislation that prohibited kidney dialysis clinics from "self-referring" for lab blood work (AIF opposed); "prompt pay" legislation attempting to insure providers got paid promptly by insurance carriers (AIF supported the House version of the bill); and numerous and sundry other health care legislation.

While the initial amendment offered by Senator Jack Latvala (R-Palm Harbor) seemed to accomplish this in an almost orderly fashion, other Senators came forward with still more amendments reflecting their bills that were, until this point, still stuck in a committee somewhere or buried deep in the Senate Presidents' priority list.

The whole package got huge, disorganized and confusing to the legislators themselves. Senator Jack Latvala made a couple efforts on the floor to unwind the mess, but in the end, there was too much in the bill that the House didn't like, didn't care about or simply lost interest in as a matter of policy.

**AIF was opposed to the Kidney Dialysis Legislation. It was a blatant attempt by some kidney dialysis providers to "break up" the market share of other providers they were competing against. AIF was initially opposed to the "prompt pay" because the bill contained provisions that were completely unfair in making carriers pay doctors expeditiously. While the House bill finally reflected language AIF could live with, we are not disappointed to see the legislation die at the end of session. AIF supported the small employer, health flex plan legislation. It contained innovative reforms that would have potentially made health insurance more affordable and accessible to Florida's small employers. It is a shame that legislation such as this, that held the potential to benefit so many, was lost in the midst of end-of-session gamesmanship and deal making. AIF congratulates Representative Frank Farkas (R-St. Petersburg) for fighting the good fight on this bill.**

**WORKERS COMPENSATION REFORM**

AIF originally supported HB 1947 by Representative Leslie Waters (R-Largo) and the House Insurance Committee and SB 2304 by Senator Jack Latvala (R-Palm Harbor). Both bills, although not identical, held the potential to increase benefits to injured workers while reducing costs to Florida's employers. However, as compromise after compromise was forced upon the Florida Coalition of Business and Insurance Industry and AIF as a participating member of the Coalition, the bills lost their luster. Three weeks before the end of session, analysis by the National Council on Compensation Insurance, Inc. showed that the bills would, in fact, increase costs to the system without increasing benefits to injured workers. At this point, it became untenable for the Coalition to continue its support.

Again, forgotten was the fact that the system is supposed to be "self-executing" for both the employee and employer. Legislators became distracted and overly concerned about taking care of the doctors, the attorneys and fraudulent employers who abuse the law and do not participate in the system. As a result, the Legislature was unwilling to limit the involvement of attorneys in the process and their excessive hourly fees. As a result, the Legislature was unwilling to clamp down solidly on fraud and abuse by closing the construction exemptions loopholes. As a result, the Legislature was unwilling to fight off health care providers aggressively seeking out gratuitous compensation for their treatment of injured workers. And, as a result, injured workers saw no increase in their benefits.

The Legislature did pass SB 108 by Senator Rod Smith (D-Gainesville). The bill became a "vehicle" in the House where it was amended by Representative Dennis Ross (R-Lakeland). To the benefit of Florida's employers, the bill was amended to clarify existing law with regards to the "managed care opt out." The Agency for Health Care Administration was misinterpreting law passed last year that allowed carriers to "opt out" of utilizing managed care for its provision of care to injured workers. A Ross amendment corrected this. In addition, a panel of three was established by an amendment to study the medical fees issue. This was done instead of making medical fees negotiable, which would have gutted the current medical fee schedule under law and driven up costs to the system – and Florida's employers. The House amendments took a stab at limiting the fraud and abuse to the system with regards to the construction exemptions, but no one, and especially Senators sitting on the Senate Banking and Insurance Committee, is delusional enough to think that the reforms will have any real impact.

**Florida's Workers' Compensation system is slowly unwinding into a completely unworkable, unaffordable process that neither serves the employer or the employee. AIF supports real, substantive reform that will repair the system and insure adequate care and benefits for injured workers. Half-baked attempts to protect the financial interests of attorneys and those fraudulent business operations that refuse to cover their employees, only compromises any real reform. Now is the time to enact reforms before the system is in complete collapse. The system was designed to be self-executing. The system was designed to make sure an injured employee received the speedy and necessary care in order to return to their rightful place in the workplace. It was not designed to provide a career path for bureaucrats and attorneys.**

**STAND OFF WITH THE FLORIDA ACADEMY OF TRIAL ATTORNEYS**

The House and Senate never could agree on a statutes adoption bill that, if passed, would have had the effect of mooting a court challenge to the 1999 Tort Reform Act.

The bill, SB 1344 by Senator Tom Lee (R-Tampa), represented a biennial and mundane exercise the Legislature goes through in adopting prospective law and spreading it across the statutes. In other words, the bill is designed to lay the groundwork in advance of those laws to be adopted during the current session and see to it that they are technically and soundly incorporated into the Florida Statutes upon their publication. In this particular case, the bill was both retrospective and prospective, in that this legislative exercise had not been executed in 1999, 2000 and 2001. If passed, as written, SB 1344 would have had the effect of mooting the damaging Circuit Court ruling against tort reform. In other words, it was very important to the business community that the Senate, without any amendments, adopted the bill.

Several weeks ago, the Florida Academy of Trial Attorneys (AFTL), realizing what was at stake with this pedestrian bill, stirred itself and in cooperation with Senator Skip Campbell (D-Tamarac), crafted an artful amendment that preserved the legal limbo status of the 1999 Tort Reform Act.

With so much at stake, the Senate went ahead and adopted the amendment by a vote of 20 yeas and 18 nays with two abstentions.

Thankfully, the House received SB 1334, stripped off the bad language and amended it the way it should be and then sent it back to the Senate. For reasons still a mystery to the business community, Senator Tom Lee, supposedly a "pro-business" legislator, recommended to the Senate that it not concur with the House. The Senate receded from the House amendment and sent the bill back. The House did not take the bill up again on the last day.

**AIF supported HB 1103, which represents doing the routine administration of the Legislature and Florida Statutes without playing policy games at the expense of Florida's employers.**

**BUSINESS WINS ONE OVER THE ENVIRONMENTALISTS**

Senator Jim King (R-Jacksonville) and Representative Gaston Cantens (R-Miami) won a game of cat and mouse against the radical environmentalists by tacking on a bill they hate to a bill they love.

SB 279 & HB 819, identical by the end of session, were amended onto Representative Paula Dockery's (R-Lakeland) "Everglades Restoration" bill, HB 813. HB 813 was passed by both chambers and is on its way to the Governor. AIF supported this bill by Senator Jim King and Representative Gaston Cantens, seeks to limit the ability of individual activists to intervene in pending permitting actions by developers. Under current law, it has been too easy on occasion for individuals and groups to intervene and gum up the permitting process simply because they have the notion that economic growth or development is bad. While current law requires that a group or individual must be "affected" or have a "substantial interest" with regards to the development project in question, the law is drawn loosely enough to permit parties to intervene that are not really affected.

The bill got amended and amended, narrowing its scope further and further, in attempt to insure that the average citizen still had the input necessary into the permitting process. While the bill could be stronger, it will still have the effect of eliminating the legal action of those who simply want to intervene for the purposes of harassment and to drain the resources of a developer or business seeking to expand without any real standing or arguable interest in the permit in question.

**AIF supported the bill. Although watered down, the bill still provides that commercial development cannot be inhibited by people who simply opposed development under any circumstances and have no substantial interest in the development's outcome.**

**HMOS SURVIVE A CLOSE CALL**

SB 1490 by Senator Skip Campbell (D-Tamarac) thankfully failed final passage on Friday. As we previously reported, he bill represented the largest and most expensive of any proposed mandate on health insurance providers in recent memory. The bill established coverage requirements for providing emergency services and care under individual, group, blanket, or franchise health insurance policies, preferred provider organizations, and exclusive provider organizations. The bill gave the physician who stabilizes a patient's emergency medical condition sole discretion to continue to care for the patient in the hospital for any medically necessary follow-up or to transfer care of the patient to a provider that has a contract with the insurer.

Worse yet, because of the potential cost to Medicaid and Medicare under this proposal, an amendment was offered and adopted in the Appropriations committee process to exclude these services from the bill, leaving the insurers to foot the entire bill! Employer health plans already pay the "cost shift" in their premiums to cover the unpaid bills by those who use emergency room services without the resources to pay their bills. Now, with this bill, employers would be asked to underwrite services outside the HMO contract and services that should be underwritten by Medicaid and Medicare.

The Senate passed the bill, however the House never took it up on the floor and it died.

**This bill was monstrously expensive and ill conceived. In short order, it would have wrecked the finances of health plans in this state, driving up costs to Florida's employers. AIF was opposed to this bill. Florida's employers are currently experiencing double digit increases in their premiums. This bill would have worsened the situation.**

**"Living Wage" Prohibition Dies**

House and Senate legislation that would have prohibited local governments from establishing "living wages" died after a good fight during the Regular Session.

HB 859 by Representative Frank Attkisson (R-Kissimmee) and Representative Allan Bense (R-Panama City) along with SB 1902 by Senator Durell Peaden (R-Crestview) would have restricted local governments from arbitrarily mandating that local employers pay a minimum wage in excess of the federal minimum wage.

Such local government action is part of a larger "movement" characterized as providing a "living wage," the idea originally gained momentum in California where local governments began mandating employers, holding a local government contract, pay wages in excess of the minimum wage. However, this idea accelerated into local governments requiring local employers, under contract or not, to pay an excessive wage. The bill did nothing to inhibit local government contracts with employers, but it did prohibit the arbitrary mandate of an exorbitant minimum wage on employers who have no contractual relationship with a local government.

SB 1902 died on the Senate Calendar. HB 859 remained in the committee hearing process and never made it to the House Calendar for final consideration.

**AIF supported the bill. A "living wage mandate" would have an extraordinarily damaging effect on the hospitality business community, violating every principle of Economics 101. Artificially increasing the level of wages paid will cause businesses to shut down, reduce hours, reduce staff and increase prices. Discretionary dollars, typically spent in the hospitality sector, would simply go somewhere else, decreasing the level of business activity indefinitely. Finally, such a skewed wage increase will attract more qualified applicants, moving aside the very employees the wage increase was designed to assist.**

Stay tuned to our daily brief and to our web site at 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.

**This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.**

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- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.