ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE DAILY BRIEF
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TAXATION

Today, the House Commerce Committee heard a presentation on the Streamlined Sales and Use Tax Agreement, which is an attempt among state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The project proposes that states conform their sales and use tax laws to a simplification method that would apply to all sellers. Thirty-nine states, including Florida and the District of Columbia, are involved in the project.

The committee heard testimony in support of the project from several sources, including Arthur M. Simon, AIF senior vice president for governmental affairs, who testified that it is fundamentally unfair that brick and mortar retailers in the State of Florida are placed at a competitive disadvantage, simply because they collect and remit sales tax in compliance with Florida law. Others echoed the same view.

Committee members were impressed with arguments but voiced some skepticism about the likelihood of passing legislation this year. Although a bill is moving in the Senate, a companion measure has not yet materialized in the House.

You may view a video clip from the House Commerce Committee Meeting by going to http://www.aif.com/taxmedia.htm.

AIF believes that the State of Florida could equalize the treatment of all retail vendors regarding the assessment and collection of state sales tax if a uniform national collection system is developed. Furthermore, the state treasury would benefit since the use tax currently levied, but not collected on catalog and Internet sales, would be collected and remitted to the state treasury.

PRIVATE PROPERTY RIGHTS PROTECTION

Today the Senate Comprehensive Planning Committee heard SB 1164, sponsored by Senators Ken Pruitt (R-Port St. Lucie) and Steven Geller (D-Hallandale Beach). This bill amends the Bert J. Harris Private Property Rights Protection Act (Harris Act).

In 1995, the Harris Act was enacted by the Legislature to create a cause of action providing for relief or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state unfairly affected real property.

This bill amends the Harris Act to require a governmental entity to report a claim presented to the entity under that section to the state land-planning agency. The bill also deletes references to "ripeness" and clarifies that a governmental entity must issue a "final decision" identifying permissible uses of the subject property. The bill clarifies that the issuance of a final decision by a governmental entity or the failure to do so is the last prerequisite to judicial review of merits. The bill provides that the enactment of a law or adoption of a regulation does not constitute applying the law or regulation to the property. Finally, the bill expressly waives sovereign immunity for the state itself and for its agencies and subdivisions for liability for actions subject to the Harris Act.

Much of the debate in committee centered on language in the bill that makes the waiver of sovereign immunity retroactive to May 11, 1995. Although an amendment was offered and accepted to delete the problematic language, the amendment was not enough to satisfy some critics, most notably the City of Miami Beach which is involved in a lawsuit that might be adversely affected by the new legislation.

Senator Geller, who chairs the committee and Senator Larcenia Bullard (D-Miami) both, spoke in favor of the bill. Each proclaimed that the bill is quite consistent with the spirit and intent on the original act, which one judge in Dade County has seemingly misinterpreted. The bill passed without any dissenting votes.

Last week, the companion bill, HB 113, sponsored by Representative Jeff Kottkamp (R-Cape Coral), was heard before the House Subcommittee on Local Affair. One amendment filed on this bill deleted the sovereign-immunity provision altogether, thereby gutting the bill and the underlying act. Efforts are underway, however, to convince House members to accept compromise language, similar to that passed today by Senator Geller's committee.

The Harris Act provides an avenue for property owners to protect their property rights against state overreaching. The Legislature must take actions this year to ensure that the Harris Act continues to protect Florida citizens and businesses from government over-regulation. AIF will continue to support legislation that protects private property rights.

MINIMUM WAGE

Today, the Senate Comprehensive Planning Committee heard SB 54, sponsored by Senator Lee Constantine (R-Altamonte Springs), which is the Senate's version of HB 321, about which we reported last week.

Currently, Florida has no statewide minimum wage but there is no law that preempts local ordinances or that prohibits a local government in this state from establishing a minimum wage that exceeds the federal minimum wage.

This bill prohibits the political subdivisions of the state from requiring employers to pay a minimum wage other than a federal minimum wage, or from requiring employers to apply a federal minimum wage to wages that are exempt under federal law. The bill does, however, allow political subdivisions to establish minimum wages for their employees, for employees of private employers under contract with the political subdivision, and for employees of employers receiving direct tax abatements or subsidies from the political subdivision.

Associated Industries of Florida would like to see the bill go farther by also banning living-wage ordinances that target contractors providing goods and services to local governments. In the final analysis, the higher-than-minimum wages mandated by these types of local ordinances result in higher costs of doing business and higher-than-necessary taxes, which is a byproduct of wage levels dictated by local government edict rather than the law of supply and demand.

Nevertheless, some legislators who are generally staunch opponents of government intervention in the free market are also opposed to legislation that interferes with the home-rule powers of local government. Hence, SB 54 and HB 321 are deemed by many to represent a politically viable middle ground on this issue. Locally elected officials would be allowed to make business decisions affecting their local government entities but would be barred from exercising a more egregious power to affect business decisions by purely private parties.

A lot of testimony in committee preceded the vote on the bill. Organized labor and some local governments are opposed to any restriction on the power of municipalities to enact minimum wage laws at the local level. Two minutes before the committee meeting was scheduled to end a vote was taken on the bill with everyone except Senators Geller and Bullard voting for the bill. Senator Skip Campbell (D-Ft. Lauderdale), who was on the prevailing side, voted for reconsideration, leaving the bill alive in this committee for another week.

On balance, SB 54 and HB 321 represent an important step in the right direction, especially for the hospitality industry in Florida. As a matter of principle, however, AIF continues to oppose all costly living wage mandates at the local level including those that are limited to commercial transactions involving local government entities.

TRANSPORTATION – DOT CONTRACTS – PROFESSIONAL SERVICES

The House Committee on State Administration gave a favorable vote to CS/HB 357 by Representative Bev Kilmer (R-Marianna). The bill provides that professional firms that have contractually agreed to provide construction engineering and inspection services to the Department of Transportation will be considered agents of the state for the purposes of limiting liability under Florida's sovereign immunity statute, but will not be considered agents of the state for the purposes of worker's compensation laws. The contract must also provide that the state be exempt from any liability incurred as a result of negligence by the contractor.

The bill may in fact lower the professional liability insurance premiums of the engineering and inspection firms. It is anticipated that these firms will in turn offer lower prices to DOT for their services.

At this juncture, there is no companion bill in the Senate.

AIF supports legislation, such as CS/HB 357, that reduces the cost of doing business for both the state and private parties who contract to perform services for the state.

Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- 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.