

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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ONLY TIME WILL TELL

This week Capitol pundits are buzzing about the Senate's lightning quick repudiation of Governor Bush's proposal to repeal the bullet train and class-size amendments to the Florida Constitution. Privately, many legislators grumble about the wisdom of these amendments and the cost of compliance; nevertheless they are not eager to publicly espouse the view that Florida voters were "ill-informed" when they voted to approve the offending provisions. After all, these are the same voters who elected the 160 members of the Florida Legislature. Moreover, some legislators strongly support the amendments in question. Consequently, in week two it seems inconceivable that 75 percent of House members and 75 percent of all senators will concur with the governor's call to accord Floridians an opportunity to reconsider the merits of these additions to the state constitution.

The Senate also seems primed to hand the governor another setback. In order to comply with the fiscal impact of the bullet train and class-size amendments (as well as other fiscal problems facing state government), the governor was compelled to submit a very austere budget proposal for Fiscal Year 2003-2004. Because of a budget shortfall estimated as high as \$4 billion, the governor believes that spending on some popular programs must be curtailed. Rather than raise new revenues (i.e., taxes and fees), the governor proposes a shift of about \$1 billion in trust funds to the general revenue account. This too met with strong Senate opposition this week.

Senators and affected interest groups say that a raid on trust funds — such as the highway construction trust fund — is highway robbery and a blatant breach of trust. So, legislators are beginning to look for new sources of revenue, at least in the Senate.

Some senators are moving toward acceptance of new gambling revenues as a means to close the revenue gap without deep cuts in essential state programs. Consequently, video lottery terminals (VLT) are gaining support in some circles, especially if their placement is limited to licensed pari-mutuel facilities. Gambling has little appeal for the governor and speaker of the House, so an exit strategy on the budget is still nowhere in sight.

Hope can be found in the adage, "The bills look better at closing time." It is amazing how legislators will vote for measures in week nine — the last week of the regular session — that they openly opposed every other week of the year. By week nine — and even more so, in week 10 or 11 or 12, if the session is extended — legislators may gain some new perspective and a renewed appreciation for compromise.

New revenue sources are still quite possible, including VLTs. To some extent, trust funds may need to be looted to cover general revenue needs, and most importantly, the Legislature may yet come around to the governor's point of view: that certain costly amendments must be severed from the state constitution. This is only week two and what looks bad today may look not-so-bad tomorrow.

— by Arthur M. Simon, JD, PhD, Senior Vice President for Governmental Affairs

MEDICAL MALPRACTICE

Monday, the House Health Care Committee released its medical-malpractice bill, then it passed the bill two days later with several amendments. Key amendments that passed on this bill include:

- strengthening the \$250,000 cap on non-economic damages by making it an aggregate cap
- removing the bad-faith insurance reforms
- deleting joint and several liability and replacing it with comparative fault
- deleting collateral source setoffs

In addition to tort reform, the bill would strengthen the Board of Medicine's ability to enforce physician discipline and would create an entity to provide liability insurance to physicians. The committee members rejected amendments to initiate a rollback in premiums immediately and if the law is held constitutional, a mandatory 25-percent rollback would go into effect.

Please go to the Media Center at <http://aif.com> to access the video file of testimony given by Art Simon in the House Health Care Committee regarding Medical Malpractice on March 12, 2003.

Go to

http://www.leg.state.fl.us/data/Committees/House/535mls/draft_report/draft_report_030303.pdf to view the House Select Committee on Medical Malpractice Draft Report.

Go to <http://www.doh.state.fl.us/> to view the Governor's Select Task Force on Healthcare Professional Liability Insurance report.

Go to <http://fbnnet.com/issuepages2003.htm> to view the AIF Issue Page relating to Medical Malpractice.

Health care providers in Florida are facing a medical liability crisis. Vulnerability to large jury awards is why insurers have left the state. Many doctors, especially in the high-risk specialties, are leaving too. AIF supports a \$250,000 cap on non-economic damages as necessary for meaningful and lasting relief.

SMOKE-FREE WORKPLACE

Tuesday, the House Subcommittee on Trades, Professions & Regulated Business met to discuss the recommendations it will present to the full Business Regulation Committee for its use in preparing legislation. It seems that the subcommittee has latched on to an easy solution. Instead of seeking loopholes in the amendment language, the subcommittee members want to prohibit smoking in all bars and restaurants. The bill should be heard next week by the full committee.

Wednesday, the Senate Regulated Industries Committee passed SB 742, which implements Amendment 6 on smoking in the workplace. Rather than taking the draconian approach of the House subcommittee, SB 742 would allow smoking in free-standing bars that receive no more than 30 percent of their business from the sale of food. Smoking would be banned in all restaurants, lobbies of hotels, and in airports. The bill will now go to the Senate floor.

AIF will continue to monitor the implementation of Amendment 6 to ensure that it does not place undue burdens on employers and their ability to conduct business.

NURSING HOMES

Tuesday, the Senate Health, Aging and Long-Term Care Committee considered SB 1220, which establishes an arbitration process with caps on non-economic damages similar to the process that now applies to medical-malpractice claims. The bill was postponed when it became apparent that the votes for passage were not there. Senator Lisa Carlton (R-Osprey), who chaired the Senate Select Committee on Nursing Homes, then stunned nursing home representatives by declaring that the issue was dead for the rest of the session. Nursing-home lobbyists are now regrouping and looking at other options to bring the bill back to life.

AIF supports a \$250,000 cap on non-economic damages for nursing homes. Vulnerability to large jury awards is why insurers have not returned to the Florida market. Therefore, AIF supports caps on non-economic damages for nursing-home liability cases to improve the accessibility to and availability of high-quality health care.

DRY CLEANING AND ENVIRONMENTAL CLEANUP

Monday, the Senate Natural Resources Committee discussed the Dry cleaning Solvent Cleanup Program (DSCP). SB 956 by Senator Dennis Jones (R-Seminole) that would offer some protection for property owners who are sued over contamination of nearby properties caused by the migration of dry-cleaning chemicals. The provision of immunity is based on the site being deemed eligible for cleanup under the DSCP. The bill also extends the statutory immunity to real-property owners who voluntarily engage in site cleanup, regardless of site eligibility under the DSCP.

AIF supports legislation, such as SB 956, that protects property owners against wasteful litigation when they are making a voluntary effort to clean up pollution .

TAXATION

Tuesday the House Subcommittee on Workforce and Economic Development began its meeting with the discussion and passage of HB 239 regarding community-contribution tax credits. Currently, businesses can take a tax credit of up to \$10 million statewide for contributing to eligible charities. This bill doubles the tax credit to \$20 million statewide.

AIF believes that this legislation serves the better interest of the state because it rewards businesses that make financial contributions to local charities, which often surpass the achievements of state programs for less money.

PERSONAL INJURY PROTECTION (PIP)

Wednesday, the House Insurance Subcommittee on Insurance Regulation met to hear PCB IN 03-01 relating to automobile PIP reform. The bill was passed with several amendments and will be heard in the full House Insurance Committee next week. Many of the amendments addressed fraud, but a provider fee schedule as well as a mediation amendment aimed at reducing litigation was voted down. An amendment limiting the use of contingency fee risk multipliers was approved, which will limit attorney's fees in some cases.

AIF supports reform to restore and set clear the laws pertaining to Florida's automobile no-fault insurance.

GROWTH MANAGEMENT

Wednesday, the Senate Committee on Comprehensive Planning heard SB 1044 sponsored by Senator Nancy Argenziano (R-Crystal River). This bill provides that a water management district may not issue a consumptive use permit unless the affected local government has been timely notified of the proposed permit and given an opportunity to file an objection with the district's governing board. The bill was amended to require the water management district to review certain portions of the regional plans every five years. Also discussed was the Smart Growth program, which encompasses different strategies for use in promoting urban growth and reducing sprawl. AIF will be watching development of this issue throughout the session to make sure Smart Growth doesn't become another name for land-use programs designed to hamper necessary commercial and residential development.

AIF supports growth that is based on the market principles of supply and demand and opposes any legislation that would make the permitting process more cumbersome by erecting barriers that strangle economic development in this state.

WORKERS' COMPENSATION

Tuesday, the House Select Committee on Workers' Compensation devoted its meeting to fraud and market availability. Workers' compensation fraud is a felony offense, the degree of which is determined by the amount of money involved. Approximately eight percent of the cases involve fraud by employees seeking benefits to which they are not entitled. The select committee then shifted its focus to the availability and affordability of coverage for employers. The following key points were revealed:

- only one carrier has returned to the Florida market following the recently announced rate increase
- small businesses are having a difficult time obtaining coverage because market restraints make them less desirable customers
- Joint Underwriting Association (JUA) rates are 199 percent higher than the voluntary market in Florida, while in other states the JUA rates are 35 to 45 percent higher.

While they have yet to be heard in committee, employers should be aware of SB 1946 and HB 1655. These identical bills seek to create a state-run Florida Employers Mutual Insurance Company for the purpose of writing competitive workers' compensation insurance. The bills also establish a new residual market with forced apportionment of risks among carriers. Defeating these two bills will be a top priority for Associated Industries of Florida (AIF). They rely on anti-insurance sentiment to advance the agenda of claimant lawyers and certain construction interests while ignoring the true flaws that are destroying the workers' compensation system from within.

Thursday's meeting of the House Select Committee on Workers' Compensation heard testimony from chiropractors, doctors, and employers. Each offered his own opinion as to why the system has failed.

The chiropractors believe that injured workers need more chiropractic care. Physicians argue that their fees for treating injured workers should be increased to double the Medicare fee schedule. Psychologists want more freedom to work in the system.

Then there was the owner of a family-run construction business who called Florida job sites “the new Florida Lotto.” Lawyers bilk the system by suing every contractor on the job site until they find a deep pocket, even if there is no liability.

The testimony of health-care providers and this one employer helped reveal, unwittingly and intentionally, the weakness of the workers’ compensation system. The secondary interests in the system — doctors, chiropractors, hospitals, clinics, psychologists, and especially lawyers — view the system as a host organism, which should feed them first.

The system was designed for the sole and mutual benefit of employers and injured workers. If the system isn’t working for them, it’s not working.

AIF supports legislation that will bring more employers into compliance with the workers’ comp law, while reducing the amount of litigation over claims. Promoting greater fairness and efficiency in the system is necessary to curtail escalating costs for the business community, which can only come with a healthy insurance market.

- by Mary Ann Stiles and Tamela Perdue , of Stiles, Taylor, and Grace, P.A.

EDUCATION

Thursday, the Senate Appropriations Subcommittee on Education met and considered SB 1646 and SB 1436 relating to the implementation of the class-size reduction amendment approved by voters. The two bills were combined into one and passed unanimously as SB 1436. A key provision repeals the statute that limits the number of charter schools in each district. Allowing the creation of more charter schools is an efficient and cost-effective method districts can use to meet the class-size mandate.

AIF supports legislation to implement the class-size amendment in a manner that relies on efficiency and flexibility, allowing districts to use their money in ways that do the most to improve the quality of education in the state

- 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://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.