EMPLOYER Advocate
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Legal Reform

Senate Backs Away from Meaningful Lawsuit Reform

By Mary Ann Stiles and Tamela Perdue

What's Inside

Although the Florida Legislature spent long hours debating the merits of meaningful legal reform, at the end of the session all that talk resulted in only a little tinkering around the edges of the state's civil justice system.

The two chambers were a study in contrasts throughout this debate. Under the leadership of Speaker Allan Bense (R-Panama City), the House of Representatives advanced a meaningful legal reform agenda. The vehicle for that, HB 1513 by Rep. Don Brown (R-DeFuniak Springs), would have leveled the playing field for all businesses and individuals by eliminating the unfair doctrine of joint and several liability, which requires one defendant to front the entire damage award if other defendants, even those that are more negligent, can't afford to pay their share.

HB 1513 also contained venue reforms and measures to protect sellers of products from liability, in certain situations, for damages caused by a manufacturer. Although they had the chance, the Senate never debated HB 1513 and they never took it up for a vote, choosing instead to weaken other legal reform measures, forcing the business community to withdraw its support for those bills.

The Fight Must Continue

Because the Legislature failed to enact comprehensive legal reform, businesses that plaintiff lawyers classify as deep pockets will continue as the targets for frivolous litigation. The legal system's economic toll will continue to rise.

By the end of 2003, that cost had risen to $246 billion or $845 for each person living in the United States. Remember, every time a business is sued, it incurs additional unexpected costs even if it wins the lawsuit. To every citizen of this state that means higher prices for the products and services we use every day.

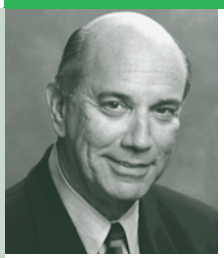
Many Florida business owners and executives are joining together in a quest to solve the state's tort problems. The scope of problems is vast, but Florida's business leaders are united and dedicated to working with the Legislature over the next year to bring about significant change to protect Florida's future.

Where Change is Needed

At the session's onset, AIF released an agenda of 23 different reforms that state business and industry leaders considered worthy of legislative attention; asbestos and streetlight reforms that passed were a part of that package.The key concept that still requires the immediate attention of the Legislature is the abolition of the doctrine of joint and several liability.

Imposed on the state by the courts and not the Legislature, joint and several has been mockingly called the "deep pocket" rule, because it lets plaintiff lawyers drag minimally liable businesses into lawsuits because they

(Please see page 3)



The Vote Not Taken

By Jon L. Shebel, *Publisher*

After 35 years as a lobbyist for Associated Industries of Florida, the one lesson I've learned is that you never take a legislator's support for granted. When someone we count on votes against us, we may be disappointed but we still respect opposition based on conscience, knowledge, and the interests of the legislator's constituents.

Some members of the business community have come to take for granted that a Republican-controlled Legislature automatically translates to a pro-business Legislature. While often true, it hasn't always been the case on some of the most critical issues for Florida employers. That was the case with workers' compensation a few years ago, and this year with legal reform.

There are a number of good and positive changes that need to be made in our legal system, but let's be clear. If Florida lawmakers really want to make a difference in the state's legal system, they have to eliminate joint and several liability.

We're not asking them to take an unprecedented and risky step. In the past several years, 26 other states have recognized the error of their ways and repealed joint and several. All of them, and some were our close neighbors, boosted their economies by injecting evenhandedness into their court systems. Florida businesses still labor under an irrational and unjust civil justice system.

In the Florida House, the courage of people like Rep. Don Brown and Speaker Allan Bense gave the business community all we really wanted and that was a chance for the members of the Florida House to cast a vote up or down on the issue of joint and several liability. Thanks to their leadership, 2005 was the first time ever that a chamber of the Florida Legislature repealed joint and several. Now all we needed was a chance in the Florida Senate.

Someone from AIF's team of lobbyists made the case to every single senator: that true and meaningful tort reform cannot be accomplished without the passage of HB 1513. Then we waited and looked forward to the debate among the 40 men and women of the Florida Senate, many of whom we supported in their campaigns. Who would cast votes in favor of a more balanced legal system?

But on the one bill that employers across this state wanted to pass, nothing happened. Not one word of debate was spoken, not one vote recorded on joint and several liability in the Florida Senate. It was as if the issue did not exist.

Since then employers from all over the country have flooded my phone and e-mail with the question: What happened?

I'm not sure I can answer that, but I will say "Do not give up."

Many business people are frustrated and want to use the 2006 election to retaliate against legislators who did not stand up for a fair and balanced legal system.

Right now, though, we need cooler heads to prevail so that we can achieve the goal we seek, which is a fair legal system. To that end, AIF is supporting the call for a special session. We encourage Gov. Bush, House Speaker Allan Bense (R-Panama City) and Senate President Tom Lee (R-Brandon) to reintroduce HB 1513, to make it available for debate and finally a vote.

Stay tuned. I believe that under the solid leadership of Gov. Bush, House Speaker Bense, and Senate President Lee we will have an opportunity to find out which senators and representatives want to give you relief and those who are okay with you running your business with a target on your back for unwarranted and unfair lawsuits. Once we know that, then we can discuss how it will reflect in the 2006 election season. ■

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have the ability to pay awards that the truly negligible cannot afford.

This theory is applied to economic damages in tort actions in Florida and has been problematic in cases where the primary or most responsible defendant is bankrupt or otherwise judgment proof, as well as in cases where the plaintiff settles with one defendant but subsequently is awarded a greater amount of damages. In such instances the settling defendant is still responsible for the difference between the settlement amount and the award.

This rule gives plaintiffs and their attorneys incentives to search out the most financially viable defendant against whom a cause of action can be generated. This rule should be replaced with a system that holds the defendant liable only for that portion of damages caused by its own individual negligence.

Why Act Now?

Florida citizens, including business owners and executives, have elected government leaders who realize that our current system, which confers financial rewards upon the few, needs to be changed to ensure a fair and equitable democratic government for all of Florida's citizens. Gov. Jeb Bush, the strongest advocate for the business community, who called for significant tort reform throughout this legislative session, leaves office at the beginning of 2007.

The time may never be better to achieve the important goal of meaningful and lasting legal reform, and it may be that true reform can only be achieved during a special legislative session this summer. The time to act is now before the balance of power in the legislative bodies shifts to future leaders who may not be as conservative or inclined to tackle such an important issue.

The longer we wait, the longer businesses will be stuck in these unpredictable situations. Some businesses could afford to provide better benefits and wages to their employees, pass additional savings onto their customers, expand their operations, start new endeavors — if the bottom line were better protected against frivolous lawsuits.

With an ever-expanding marketplace and newly available technology, greedy plaintiffs and their attorneys have more opportunities to organize attacks against businesses. Without significant legal reform, no industry is safe. Gov. Bush needs the support of the House speaker and the Senate president to act now, to call a special session for the sole purpose of enacting tort reform and ensuring Florida's continued economic prosperity.

Four legal reform proposals that did pass the full Legislature were asbestos reform, liability protection for utility companies in certain instances of streetlight malfunction, road builders' protection and vicarious liability.

Asbestos Reform

HB 1019, the Asbestos and Silica Compensation Fairness Act of 2005, by Rep. Joe Pickens (R-Palatka), was co-sponsored by Reps. Dean Cannon (R-Winter Park), Jennifer Carroll (R-Jacksonville), Dudley Goodlette (R-Naples), Denise Grimsley (R-Sebring), Ed Homan (R-Tampa), Dave Murzin (R-Pensacola), and John Stargel (R-Lakeland).

Asbestos is a generic term for a family of fibers that has been used for hundreds of years in thousands of materials preferred for its fireproof and flexible characteristics. In the 1960s, however, studies began linking asbestos to several health conditions, most commonly asbestosis — a scarring of the lung tissue — and mesothelioma — cancer of the pleural lining around the chest and abdomen.

Although state courts do not categorize cases by type, making it difficult to ascertain the number of asbestos cases in state forums, statistics from the federal courts are illuminating — and disturbing. From 1966 through the end of the 1970s, approximately 950 asbestos-related cases were filed in federal courts.This number rose dramatically in the first half of the 1980s, with approximately 10,000 cases filed from 1980 to 1984. A lull in litigation occurred between 1995 and 1998, but by 1999 a new wave of litigation began, primarily because the courts allowed thousands of people to receive compensation even if they had no evidence of injury or damage resulting from the alleged asbestos exposure.Today in South Florida, there are over

With an ever-expanding marketplace and newly available technology, greedy plaintiffs and their attorneys have more opportunities to organize attacks against businesses.

The asbestos litigation swamp has bankrupted more than 70 American companies, and the resources from which truly injured individuals may recover are dwindling.

800 separate asbestos cases waiting to be tried — and bogging down the state court system.

The asbestos litigation swamp has bankrupted more than 70 American companies, and the resources from which truly injured individuals may recover are dwindling. With these facts in mind, business advocates asked the Legislature to pass a bill that preserves resources and provides recovery for those who are truly injured by shutting off the spigot for those who have suffered no harm. The bill does protect those who fear that they will develop symptoms later in life by basing the statute of limitations on the actual onset of symptoms, rather than exposure as it is now.

HB 1019 requires plaintiffs to show actual physical impairment based on certainspecified medical criteria before they can bring an asbestos-related claim (this does not apply to those who have been diagnosed with mesothelioma). It also demands that plaintiffs provide evidence of physical impairment before their cases can proceed.

After this bill becomes law, plaintiffs will also be required to submit a sworn statement specifying the locations and dates for the alleged exposure.

The bill prohibits any award of punitive damages and prohibits any award based on the fear or risk of cancer in instances where the plaintiff has not been diagnosed.

This act will go a long way to restoring sanity to this area of law and business by ensuring that those who are injured and truly sick will be compensated while preserving resources for those who become sick in the future.

Effective Date: July 1, 2005
Senate vote: 32-8
House vote: 103-13
Final action: Pending

Streetlights

In 2003 the Florida Supreme Court ruled that a utility company had a legal duty to third parties, who are not their customers, for accidents occurring in areas where street lights are not working properly because of an alleged failure of the utility company to maintain the street light [*Clay Elec. Coop. v. Johnson Inc.*, 873 So. 2d 1182 (Fla. 2003)].

One of the most significant problems caused by this ruling has been the increased liability utility companies face for streetlights that don't light, even if they have no knowledge or awareness of the outage to make necessary repairs. This decision has also had the predictable effect that Florida utility companies have been forced to defend against frivolous lawsuits, incurring significant costs that undermine their ability to provide service to Florida's residents and businesses in the most cost-effective manner.

Offering a comprehensive solution to this problem is HB 135, sponsored by Rep. Dwight Stansel (D-Live Oak) and cosponsored by Reps. Kevin Ambler (R-Tampa), Dennis Baxley (R-Ocala), Dean Cannon (R-Winter Park), Larry Cretul (R-Ocala), Denise Grimsley (R-Sebring), Ed Homan (R-Tampa), Dave Murzin (R-Pensacola), William Proctor (R-St. Augustine), Franklin Sands (D-Ft. Lauderdale), and John Stargel (R-Lakeland).

This bill provides protection to all utility providers from liability for damages affected by the malfunction or failure of a streetlight unless the utility company failed to maintain the light in good condition. All utility providers must notify their customers of the designated procedures for the response to any and all notices that a light is not working.Once a utility provider receives actual notice of a non-working streetlight, it must make the repairs within 60 days, except in the case of natural disasters or weather related conditions beyond the provider's control, in which case additional time frames for repairs are specified.

Effective Date: Upon becoming law
Senate vote: 37-1
House vote: 112-1
Final action: Pending

Road Builders' Protection

Rep. Ray Sansom (R-Ft. Walton Beach) was the chairman of the House Transportation Committee and primary sponsor of HB 1681. Although this bill addresses a myriad of transportation issues, for the business community its most important feature is a limitation of legal

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Why Business is Calling for a Special Session

By Barney T. Bishop III

The number one issue for the business community during the 2005 Legislative Session was reform of the civil justice system, or what is popularly called "tort reform." Consequently AIF and 48 other companies and associations created the Florida Coalition for Legal Reform (FCLR) to deal with this very important issue.

Meeting every Monday throughout December, January, and February, the group crafted a 111-page bill outlining recommended changes to Florida law.The cornerstone of the bill was the repeal of joint and several liability, a court-adopted doctrine that forces solvent defendants to pay for the wrongs committed by insolvent defendants. We believe that this is unfair — and our polling shows that most people agree — but in Florida it's the law.

The House this past session did something no legislative body has ever done in the history of this state: it passed a bill that repealed joint and several liability.

That bill was sent to the Florida Senate and, despite the fact that Republicans control the Senate handily, the bill was never even brought up for discussion.

We have a governor in Jeb Bush who made tort reform a mainstay of his legislative agenda. We have a House Speaker in Allan Bense who likewise made tort reform the linchpin of his agenda.The only missing party is the Senate. The unfortunate fact is that the plaintiff bar has successfully curried favor with certain key Republican senators who control the fate of legal reform.

How do we counteract that? Our options are to wait for the next legislative session in 2006, an election year, which lessens our chances to accomplish anything meaningful, or to try and get our political leaders to call a special session.

Special sessions focus lawmaker attention on a limited menu of issues. Legislators will be impatient to get back to their businesses and families and vacation plans. Success doesn't always come quickly; the long, hot summer of medical-malpractice reform in 2003 was proof of that. But if the groundwork is properly laid, a special session could give the business community much-needed relief from Florida's civil-justice nightmare.

We have a challenge before us, but we can turn that into an opportunity. We must be united if we ever expect to be successful. The business community has shown that we can come together in the session. We have the governor on our side and the leadership of the House. Now, we must work the Senate. It will not be easy and it ain't gonna be pretty, but our window of opportunity ends next May when the 2006 session is over. Between now and then, we must be persistent and tenacious.

Let Gov. Jeb Bush and House Speaker Allan Bense know you support a special session on legal reform. Let your senator know that you'll be watching what he or she does. And watch out for news from AIF on all the developments in the months ahead. ■

Barney T. Bishop III is president of Associated Industries of Florida and affiliated companies (e-mail: *bbishop@aif.com*).

Personal ID Security and Business Obligations

By Nick Iarossi

In response to the recent epidemic of security breaches whereby unauthorized persons gained access to personal customer information through company databases, the 2005 Florida Legislature passed House Bill 481 by Speaker Pro Tempore Leslie Waters (R-St. Petersburg). This new law requires companies to notify consumers when their unencrypted computerized personal information has been acquired by an unauthorized person. Sen. Dave Aronberg (D-Greenacres) carried the legislation in the Senate with the help of Sen. Skip Campbell (D-Tamarac).

A broad spectrum of businesses worked tirelessly with Rep. Waters, the Office of the Attorney General, and the statewide prosecutor to draft and lobby the legislation. There was a shared feeling among members of the business community that they needed to take a proactive role after it became apparent that legislators wanted to address the issue. The business community wanted a fair and reasonable bill that would protect consumers without placing unnecessary burdens on businesses.

Unlike similar legislation that passed in California, the new Florida legislation provides for exemptions that clarify when notification is not required after a breach. These exemptions were developed to prevent notification when a determination was made by the business maintaining the computerized information that identity theft was an unlikely result of the breach.

An entity that maintains data on behalf of another company must meet separate requirements. The bill provides that a person who maintains unencrypted computerized personal information on behalf of another business must notify the business within 10 days if its system security has been breached. The two companies can then agree upon which company will send notification to the affected consumers, if needed. If an agreement cannot be reached, however, the company with the direct relationship to the consumer will be liable for the notification.

Businesses with a primary or functional federal regulator are exempt from the Florida law if the federal regulator has established security breach notification procedures.

The legislation provides deadlines for consumer notification of a breach. Late notifications will be subject to civil penalties enforced by the Department of Legal Affairs.

Effective Date: July 1, 2005
Senate vote: 38-0
House vote: 112-0
Final action: Awaiting governor's signature

Fair Competition

Most people believe that governmental entities should limit themselves to services that the private sector cannot or should not provide, such as police and fire protection. It's a little known fact, however, that many private sector companies have to compete against governmental entities for business. Many governmental entities are in the solid waste business and some are now getting into the telecommunications business,

using tax dollars to compete with taxpayers.

For many years, AIF has supported legislation that would level the playing field when the private sector is forced to compete against a local government to provide certain services. In 2000, AIF supported the efforts of the solid waste industry in the passage of the Fair Competition Act. In recent years the telecommunications industry has tried to duplicate that success, and this year the hard work paid off.

Rep. Frank Attkisson (R-Kissimmee) filed the Governmental Authority Provision of Communications Services Act of 2005, which was subsequently amended onto HB 1322 and enacted by the Legislature. The bill prevents governments from providing certain services, including high speed Internet access, cable service, or telecommunications services unless a private sector provider is not available. The governmental authority must do research and hold public hearings before providing such services.

Effective Date: Upon becoming law
Senate vote: 32-2
House vote: 111-4
Final action: Signed into law by governor.

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Florida Adopts Model Act for Partnerships

By Mary Ann Stiles and Tamela Perdue

SB 1056 by Sen. Ron Klein (D-Miami Beach) deals with the formation, continuation and dissolution of limited partnerships, based on the model act developed by the National Conference of Commissioners on Uniform State Laws and modified by The Florida Bar to accommodate Florida-specific issues.

This lengthy bill contains over 120 sections. For an overview of some of the bill's important sections, log onto AIF's Web site (aif.com) and open the Information Center.

Effective Date: January 1, 2006
Senate vote: 40-0
House vote: 112-0
Final action: Awaiting action by governor

Mary Ann Stiles and Tamela Perdue are with the law firm of Stiles, Taylor & Grace, of which Stiles is the founding partner. Both are consultants to Associated Industries of Florida and Stiles serves as general counsel (e-mail: *mastiles@stileslawfirm.com*; *tperdue@stileslawfirm.com*).

Some Wins, Some Losses

By Keyna Cory

IT Florida later estimated the tax could have cost Florida businesses $200 million to $500 million a year if enforced.

In the closing minutes of the 2005 Legislative Session, a united business community gained passage of its top taxation priority — repeal of the substitute communications systems tax.

For a piece of legislation that never received a negative vote and enjoyed the full support of Gov. Jeb Bush, passage of SB 2070 was no easy task. It took a major push by the Coalition to Repeal the Substitute Communications Systems Tax, with its 47 members, ranging from small businesses to the state's largest associations, including Associated Industries of Florida (AIF). Even organizations such as Florida TaxWatch, Enterprise Florida, and IT Florida joined the efforts of the coalition to abolish this tax.

This costly tax was inadvertently enacted five years ago when the Legislature embarked on a major rewrite of Florida's communications tax law to bring it up to date with the explosion of technology choices.

The 2000 rewrite followed a 1985 overhaul when the term "substitute communications systems" was added to the list of services subject to gross receipts and sales tax. In 1985 most of the communications services we take for granted today were not yet in existence; the land-line telephone was still the most common means of communication.

The original intent of taxing substitute communications systems was to provide equal tax treatment on an in-house telephone system and telephone service purchased from a commercial provider. By 2000, the tax's potential scope had evolved along with innovations in communications technology. Those innovations were not properly addressed by the Legislature when it defined taxable communications services as those that transmit or route voice, data, audio, video or any other information or signals by any existing or future medium or method. This opened the door for the Department of Revenue to define substitute communications as intercom systems, two-way radio systems, computer networks, and a host of other devices that lawmakers never intended to tax as communication systems.

No one realized the magnitude of the problem until the Department of Revenue held a workshop on August 1, 2003, to draft rules on what was considered a substitute communications system for the purposes of taxation. As the discussion went on the list of taxable items grew longer and longer. IT Florida later estimated the tax could have cost Florida businesses $200 million to $500 million a year if enforced. Even individuals could have been forced to pay taxes on computer systems they used in their homes.

To make matters worse, Florida was the only state in the nation with such a tax. Therefore, businesses were wary about relocating to Florida because of the uncertainty of whether the substitute communication systems tax was going to be enforced and, if so, what would be included in the definition. Why would any company want to relocate to Florida and possibly have to pay up to 14 percent tax on its internal communications systems?

To correct the problem, the Florida House of Representatives unanimously passed HB 49 by Rep. John Stargel (R-Lakeland) during the first week of the Legislative Session. Rep. Stargel's bill enjoyed bipartisan support with 58 co-sponsors.

In the Senate, supporters of the repeal encountered several road blocks. Sen. Mike Haridopolos (R-Melbourne) sponsored SB 818, the companion to HB 49, with the bipartisan support of 23 co-sponsors. Unfortunately, that bill was never heard. Instead, Sen. Lee Constantine (R-Altamonte Springs), chairman of the Senate Committee on Utilities and Communications, amended his version of the repeal, SB 2070, so that it merely suspended application of the tax for two years while creating a task force to review the matter.

At every committee stop along the way, Sen. Constantine was asked by his fellow senators to change his bill to a full repeal, but it was not

until the final hours of the session that the bill was amended to include the full repeal and returned to the House for final passage.

SB 2070 as passed by the Legislature not only contains the repeal, but also creates a nine-member task force to consider how communications services should be taxed.

The task force is charged with studying the following issues:

- national and state regulations and tax policies relating to the communications industry, including the Internet Tax Freedom Act
- levels of tax revenue that have been generated by state communications services taxes and whether future revenues will be sufficient to fund government services and bonds
- options for funding such services and bonded indebtedness if future revenues from communications services taxes are found to be insufficient or unreliable
- affect of communications services taxes on Florida's competitiveness
- how changes in communications technology affect the ability to design tax laws
- administrative burdens imposed on service providers

The bill appropriates $100,000 for task force members' expenses and $500,000 to pay for experts, consultants, and services needed to carry out their mission.

Effective Date: July 1, 2005
Senate vote: 40-0
House vote: 116-0
Final action: Signed into law

Taxation

With the positive fiscal situation in Florida, the business community had hoped to repeal some taxes that repress our state's economy. In his state of the state address Gov. Bush mentioned several taxes that were ripe for repeal. While the House supported his ideas the Florida Senate proved recalcitrant and chose not to back many of his proposals.

The following is a report on the sales tax exemptions supported by AIF.

What Passed …

Sales Tax Holiday

HB 101 by Representative Ray Sansom (R-Ft. Walton Beach) continues a seven-year tradition of exempting from payment of sales tax certain purchases of clothing and school supplies. This year's Sales Tax Holiday will begin on July 23 and last through July 31, and will apply to items of clothing valued under $50 and school supplies valued under $10. Passage of this bill represents a one-time savings of $35.5 million for Floridians.

Effective Date: July 1, 2005
Senate vote: 38-0
House vote: 112-1
Final action: Pending

Repeal of the Intangible Personal Property Tax

Currently Florida statutes impose two different intangible personal property taxes. An annual (or recurring) tax is imposed at the rate of one mill on the value of stocks, bonds, notes, and other intangible personal property. A one-time (or non-recurring) tax is due on obligations secured by liens on Florida realty at the rate of two mills.

Individuals and businesses are currently obligated to pay the recurring tax on stocks, bonds, notes, governmental leaseholds, and interest in limited partnerships registered with the Securities and Exchange Commission. Current law provides an exemption from the recurring tax of $250,000 for individuals and $500,000 for couples. The law also provides a $250,000 exemp-

tion for corporations and other legal entities.

HB 963 by Rep. Fred Brummer (R-Apopka), as it passed the House, repealed the one mill recurring tax imposed on stocks, bonds, notes, and other intangible property. The Senate, however, objected to a full repeal and reduced the millage rate to 0.5 mills in SB 2348, by Senator Mike Haridopolos (R-Melbourne), which passed both chambers.

No change was made to the two-mill non-recurring tax imposed upon mortgages and real estate transactions.

AIF supported the repeal of the intangible tax. It is wrong to penalize businesses and individuals who save or invest their money. Since only three other states have a similar tax, it is imperative that Florida becomes competitive by removing this flawed tax. While this session's tax cut is a positive step, we hope that next year the Legislature can eliminate the last 0.5 mil of the intangible personal property tax.
Effective Date: January 1, 2006
Senate vote: 28-11
House vote: 86-30
Final action: Pending

Corporate Piggyback

Each year the Florida Legislature must enact legislation that adopts the federal income tax code as the basis for application of the state's income tax. The passage of SB 1798, sponsored by Sen. Jeff Atwater (R-North Palm Beach) ensures that corporations subject to Florida corporate income tax can base their calculations on current IRS rules. If the Legislature had not passed this legislation, corporations would have had to keep two sets of records: one for Florida and one for IRS.
Effective Date: Upon becoming law
Senate vote: 40-0
House vote: 116-0
Final action: Signed into law

… And What Didn't

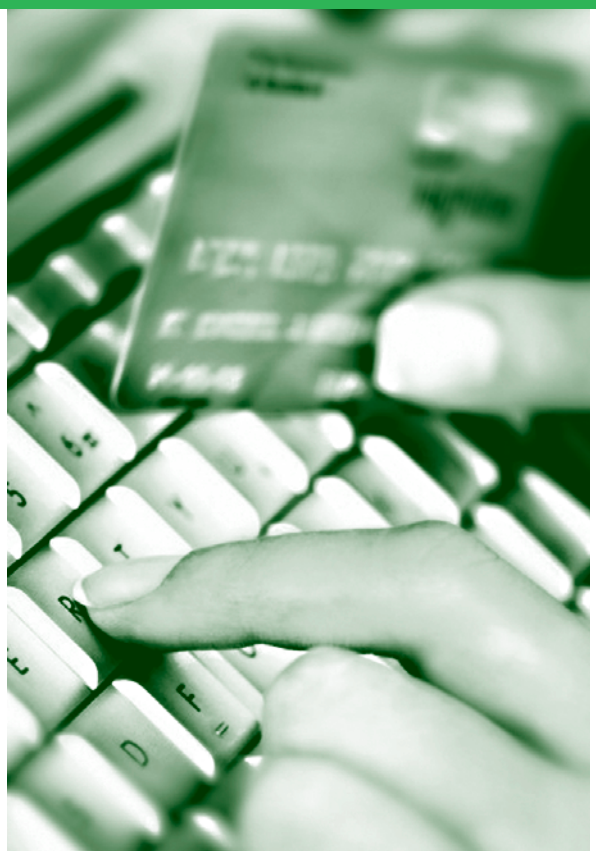
Exemption on Manufacturing Machinery & Equipment

Florida currently has more than 16,000 manufacturing facilities and roughly 14,000 of them employ no more than 10 workers. Although the per-employee numbers are low, these are high-paying jobs.

HB 27, sponsored by Rep. Matt Meadows (D-Lauderhill), and SB 2312, by Sen. Rod Smith (D-Gainesville), would have provided a much-needed boost to efforts to retain these facilities in our state while attracting new manufacturing plants. Under current tax law, Florida charges sales tax on the machinery and equipment used to make a product and again when the product is finished. This is not the case in neighboring states, including Georgia, where sales tax is only charged on the finished product, not on the equipment that makes it.

The Meadows-Smith bills would have alleviated that burden by broadening an existing sales tax exemption for industrial machinery and equipment purchased for use in an expanding facility. The Legislature in 1996 lowered the maximum amount of sales taxes a business had to pay on industrial machinery and equipment from $100,000 in taxes per calendar year to the current $50,000. The proposed legislation would have completed the phase out by providing a full, rather than partial, sales tax exemption if the business can demonstrate that the purchases would be used to increase productive output at the facility by at least 10 percent.

The bill passed the House but died in the Senate.



Sales Tax Exemption for Research & Development

SB 2362 by Sens. Rod Smith (D-Gainesville) and Mike Fasano (R-New Port Richey) would have exempted from sales tax machinery and equipment used predominately — at least 50 percent of the time — for research and development. The bill allowed the Legislature to review the exemption by July 1, 2015. Enterprise Florida and the Office of Program Policy Analysis and Government Accountability (OPPAGA) would have been in charge of studying the effects of the exemption and reporting back to the Legislature.

Neither the House companion bill nor the Senate bill passed this session.

Streamlined Sales and Use Tax

SB 56 by Sen. Skip Campbell (D-Tamarac) would have brought Florida law into compliance with the provisions of the national Streamlined Sales and Use Tax Agreement and allowed Florida to petition for membership in the agreement.

The bill adopted definitions and procedures to streamline Florida's sales tax system as it relates to e-commerce. Currently 39 states and the District of Columbia have adopted such legislation. Had it passed, this legislation would have put Florida businesses on equal footing with out-of-state companies who are selling products to Florida's residents via the Internet, mail order, etc., by requiring these entities to collect and remit Florida sales tax to the Department of Revenue. Florida businesses lose customers every day to these virtual shops because consumers are not being assessed sales tax on e-commerce purchases. Although Florida law requires consumers to pay such taxes, few are aware of the requirement.

The House rejected the proposal and the bill died in the Senate. Many legislators believe if they pass this legislation they are voting for a tax increase or a new Internet tax. AIF argues, however, that it is not a new tax but rather a more efficient way to collect taxes that are already due to the State of Florida.

Repeal of the Drink Tax

HB 1803 by the Finance and Tax Committee and Rep. Fred Brummer (R-Apopka) and SB 1658 by Sen. Mike Fasano (R-New Port Richey) would have repealed the tax on the retail sale of alcoholic beverages for consumption on the premises of a business establishment.

The 15-year old drink tax was reduced by one-third in 1999, and again by one-half in 2000. Currently the tax rates are 3.34 cents per 1 ounce of spirits or 4 ounces of wine; 1.34 cents per 12 ounces of beer; and 2 cents per 12 ounces of cider. As you can see this is not an easy tax to calculate. Many small restaurant owners claim they spend more money calculating the tax than they actually remit to the Department of Revenue.

AIF supported the repeal of this tax to eliminate the cumbersome, expensive, and regressive burden on both Florida's hospitality establishment and Florida's consumers. The House voted to repeal the tax but the measure died in the Senate. ■

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For the most current information on bill status, visit *www.flsenate.gov* and *www.myfloridahouse.com*

Water for the Future

By Keyna Cory

Communities must now incorporate planned alternative water supply projects in their comprehensive plans.

For several years, the Florida Senate has made a study of state regulation of water supplies and any public policy adjustments necessary to protect this vital natural resource.In a statewide tour , the Senate Committee on Natural Resources heard the concerns of those living in the northern part of the state that their water would be piped to the lower half of the peninsula, while residents of South Florida were more concerned about growth management and how to incorporate water issues into growth policies.

In the 2005 Legislative Session that time and effort came to fruition, with the perseverance of Sen. Paula Dockery (R-Lakeland).SB 444, one of the last bills passed this session, embodies a comprehensive rewrite of state water law, making numerous changes to the state's resource development efforts.

The bill defines the roles of local governments and water management districts and how they should work together in developing a regional water supply plan as well as alternative water supplies. Some of the changes include provisions for priority funding assistance from water management districts for the development of alternative water supplies and provisions to encourage the formation of regional water supply authorities and multi-jurisdictional water supply entities.

Funding for projects is also addressed in this legislation. It provides that applicants seeking help with funding for alternative water-supply projects provide at least 60 percent of the cost of the project. Each water management district must set a goal of matching 100 percent of the state funding provided to the district for alternative water-supply development. A new funding program was created entitled the Water Protection and Sustainability Program. The growth management bill (see page 19) allocated $100 million in funding for the program in FY2005-06 from documentary stamp tax revenue, with general revenue kicking in another $100 million.

The money will be disbursed as follows:

- $100 million will be allocated for alternative water supplies
- $50 million for the TMDL (Total Maximum Daily Load) program
- $25 million for the Surface Water Improvement and Management (SWIM) Program
- $25 million for the Disadvantaged Small Community Wastewater Grant Program.

In future years the distribution will be 60 percent for alternative water supplies, 20 percent for TMDL, 10 percent for SWIM, and 10 percent for small communities.

Communities must now incorporate planned alternative water supply projects in their comprehensive plans. Planners must also ensure that adequate water supplies will be available to serve a new development at the time the certificate of occupancy is issued.

With the passage of this legislation, along with the growth management bill, local governments will have to work in tandem with the water management districts to make sure water will be available for Florida's future.

Effective Date: Upon becoming law
Senate vote: 38-1
House vote: 114-0
Final action: Pending

Contamination Notification

CS / HB 937 by Rep. Bill Galvano (R-Bradenton) was inspired when residents of Tallavest, a community within his district, discovered dangerous contaminants had leached into the ground from a nearby piece of property. The residents then found out that the Department of Environmental Protection (DEP) knew of the contamination three years before they did.

Rep. Galvano's bill outlines guidelines for notification when the property owner or the

person providing site rehabilitation of a contaminated area discovers that pollution has migrated beyond the boundaries of the property. The person in charge then has 10 days to advise the Division of Waste Management at DEP, via certified mail and on a form adopted by DEP, of what has occurred. Within 30 days after that, DEP is required to send a copy to all owners of record for the affected land.

DEP may collaborate with the Department of Health to establish procedures for responding to public inquiries about health risks associated with contaminated sites. The legislation will also require DEP to send a notice to the chair of the school board if one of district's schools sits on affected property. The school board will then have the responsibility to notify teachers and parents in a way prescribed by DEP rule.

Rep. Bill Galvano demonstrated a great commitment to working with the business community on this bill. He had a tough time trying to balance the needs of the business community with the draconian, punitive — and unworkable — measures favored by environmental activists. Thanks to his negotiating skills and patience, Florida now has a good law that will protect property owners and businesses.
Effective Date: September 1, 2005
Senate vote: 39-0
House vote: 115-0
Final action: Signed into law

Underground Petroleum Storage Tanks

The Florida Legislature unanimously approved a bill that encourages owners of underground petroleum storage systems to upgrade their tanks to secondary containment in advance of the December 31, 2009 deadline. Owners and operators have been reluctant to upgrade in advance of their site's priority cleanup number because of the threat of finding contamination not previously detected and therefore increasing cost.

Owners and operators will now be paid $50,000 for a single facility to remove and treat limited soil contamination associated with the tank upgrades; the reimbursement could go as high as $100,000 in some situations if DEP makes a determination that cost-effectiveness and environmental benefits warrant the increase.

The rest of the clean up on the site would occur when the site's priority ranking number comes due. By removing some of the contaminated soil at the time the tanks are upgraded, the overall cost to clean up the site may be less.
Effective Date: July 1, 2005
Senate vote: 39-0
House vote: 117-0
Final action: Signed into law

Florida Incentive-Based Permitting Act

Had it passed, HB 137 by Rep. Dwight Stansel (D-Live Oak) would have given incentives to businesses that kept good compliance records with the Department of Environmental Protection (DEP). The incentives included longer duration of permits, fewer inspections, and an expedited renewal process. To obtain the compliance incentives, an applicant had to request them as part of the permit application.

DEP has adopted the motto, "More protection — less process," a concept embodied in the Florida Incentive-Based Permitting Act. The proposed legislation would have benefited companies who have been in existence for four out of the past five years with a good compliance record.

Opponents of the legislation aired misleading statements in the media, calling the bill a "get out of jail free" card for polluters, although the bill did nothing to limit DEP's authority to shut down a bad facility, or to inspect a company it believed was polluting.

The legislation enjoyed tremendous support in the House but the Senate companion bill died in committee. AIF hopes the Florida Legislature will consider this bill again next year so that good stewards of Florida's natural resources can be rewarded. ■

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Associated Industries o

AIF lobbyists, representing centuries of accumulated experience in politics and government, spent more th

Dear Florida Employer:

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Jon L. Shebel, Chief Executive Officer

Officers

Jon L. Shebel
Chief Executive Officer of Associated Industries of Florida and affiliated corporations ... more than 36 years as a lobbyist for AIF ... directs AIF's legislative efforts based on AIF Board of Directors' positions ... graduated from The Citadel and attended Stetson University College of Law.

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President of Associated Industries of Florida … former President & CEO, The Windsor Group ... former aide to state Treasurer Bill Gunter … former executive director of the Florida Democratic Party … more than 26 years of experience in legislative and political affairs … B.S. in political & judicial communication from Emerson College in Boston.

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Chris Verlander
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Consultants

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f Florida 2005 Lobbying Team

han 10,000 hours in the Capitol during the 2004 Legislative Session *advocating for your business interests.*

Ronald L. Book, Esq.
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Gerald Wester
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Former senior vice president, public affairs for Hill & Knowlton, Inc. … former vice president of public affairs for the Jack Eckerd Corporation and vice president of the National Association of Chain Drug Stores … more than 36 years of experience in media and public relations, community affairs, and environmental issues … Bachelor's degree from Purdue University and M.B.A. degree from American University.

"The AIF staff is extremely competent and highly respected as one of the best lobbying groups in Tallahassee, and is, as a result, very effective in representing business."

Lance Ringhaver, President – *Ringhaver Equipment Company*

Caution Guides Medicaid Reform

By Bob Asztalos

The debate has shown that, while the current system is too expensive and inefficient, the people of Florida don't want to rush into another 40-year mistake.

After bitter debate, pressure from major health care and advocate groups, and expressions of fear from average Floridians, the Legislature chose to pursue a go-slow approach to Medicaid reform by creating two pilot programs that will be under tight legislative review. Nevertheless, this bill can lay the foundation for restructuring Medicaid as a more vibrant and patient-centered program.

Nearly all involved with Medicaid agree that the current system is flawed. Recipients are limited in where they can seek treatment. Providers are unhappy with excessive paperwork and low reimbursement rates. Government officials fear that the costs are uncontrolled and unsustainable. Consensus breaks down, however, when the discussion turns to solutions.

In March, Gov. Jeb Bush opened the legislative session by calling for bold reform of Medicaid. He proposed a two-pronged approach that would establish Florida as a leader in modernizing the 40-year old Medicaid program.

Senior Health Choices would have shifted most program participants over the age of 60 living in specified areas of the state into managed care networks for their long-term-care services, which include nursing home, home health, and adult day care as well as other post-acute-care services. The plan would have severed the direct relationship between health care providers and the state, which administers the Medicaid program. Instead, managed care organizations would manage the services and payments and ultimately save the state money.

For Florida's other Medicaid recipients, the governor proposed a managed-care system benefit package tailored to their individual needs. Participants would be given options, such as establishing Health Savings Accounts with basic or catastrophic benefit packages, as well as being able to select plans based on the types of benefits offered.

These two plans, if implemented, would have established Florida as a laboratory for solving the problems that plague the current national system. Wary of the governor's ambitious approach, lawmakers opted for a compromise bill that creates two pilot projects.

The first is an integrated long-term-care pilot for individuals over the age of 60 in two parts of the state to be determined by the Agency for Health Care Administration (AHCA). Nursing home care is outside the pilot unless AHCA can justify its inclusion.

The second pilot will incorporate all health care services under a managed care model and will be conducted in Broward, Duval, Baker, Clay, and Nassau counties. AHCA is directed to develop the plans and obtain the necessary federal waivers, but it cannot implement the pilots until the Legislature approves the final plans.

The debate has shown that, while the current system is too expensive and inefficient, the people of Florida don't want to rush into another 40-year mistake. Many involved in the discussions want to make sure that managed care will provide a solution before trusting it as the model for protecting access to quality care for the state's needy and vulnerable citizens.

Effective Date: July 1, 2005
Senate vote: 39-1
House vote: 88-24
Final action: Signed into law

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Mixed Results

By Mark Flynn

The 2005 Regular Session of the Florida Legislature produced mixed results in terms of economic development. The best news is the passage of a sweeping growth management act. While it includes some controversial provisions that may require further legislation before they can be implemented, the most important aspect of the legislation is the dedication of $1.5 billion in new money to state infrastructure.

The biggest disappointment for business in general was the Legislature's failure to pass significant tort reform. The abolition of the doctrine of joint and several liability would have been a boon for economic development in a state that is home to a community ranked seventh on the American Tort Reform Association's list of "Judicial Hellholes."

Economic-development funding through the budget of the Office of Tourism, Trade & Economic Development (OTTED) remained consistent, but key programs are still underfunded and, in fact, continue to shrink as a percentage of the total OTTED budget. The following are some of the key bills in the 2005 Session.

Re-Enactment of Key Tax-Refund Programs

The sunset of the Qualified Target Industries (QTI) & Qualified Defense Contractor (QDC) programs was extended from this year until June 30, 2010. HB 1483 also provides an exemption from performance standards for businesses impacted by a named hurricane or tropical storm.

The bill also provides that refunds exceeding one-year's appropriation are to be paid from funds allocated in the following year.
Effective Date: Upon becoming law
Senate vote: 39-0
House vote: 112-2
Final action: Pending

Enterprise Zones

While HB 1725 delayed the expiration of the Florida Enterprise Zone Act until December 31, 2015, many of the bill's provisions place new restrictions and regulations on both existing zones and on the creation of new ones. According to the Florida Revenue Estimating Conference, these changes will reduce state and local investment in enterprise zones by $6.1 million in the coming fiscal year and by $15.3 million in 2006-07.

All existing enterprise zones shall cease to exist on December 21 of this year, unless redesignated before that date by OTTED.

The bill also expands the responsibilities for enterprise zone development agencies created by enterprise governing boards. It gives them standing to obtain development consulting from Enterprise Florida and the University Partnership for Community Development.
Effective Date: July 1, 2005
Senate vote: 39-0
House vote: 116-0
Final action: Pending

Appropriations

The good news is that funding for QTI & QDC is included in a budget line item with nearly $4 million more than last year. The bad news is that for the second year in a row, that money must be shared with the High Impact Performance Incentives (HIPI) program. Previously, HIPI had its own line item. In addition, a new version of QTI for the aerospace industry has been added to the mix, with $3 million specifically earmarked for that program.

The best guess for how the money will be divided may be indicated by what is anticipated in the budget for QTI local matching money, usually about 25 percent. If those numbers remain constant, QTI could receive over $24 million. Under that scenario $3 million would be left for HIPI with a few hundred thousand going to QDC.

The bottom line is that there is a couple of million more dollars available than there was last year.

For the second year in a row the Legislature allocated $10 million for Florida's Quick Action Closing Fund, after leaving it unfunded in 2002 and 2003. ■

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Session Business Report

Constitutional Amendment Reform

Hoping to capitalize on a fresh start and new leadership, the business community asked lawmakers to address the process whereby Florida's constitution can be amended. The business community has long advocated making the process more difficult, noting that our state's foundational document has been hijacked by special interest groups.

A menu of proposals was introduced in both legislative chambers — similar to the proposals that died during the final hours of last year's session. Rep. David Simmons (R-Altamonte Springs) and Sens. Jim King (R-Jacksonville) and Jeff Atwater (R-North Palm Beach) wanted to offer three sets of reform provisions to voters in the 2006 election. While the measures seemed on the fast track, they ultimately stalled in the Senate.

Only one of the three proposals was eventually enacted, HB 1723 by Rep. Simmons, which requires a 60-percent approval rate for proposed amendments. This higher threshold would apply to any amendment placed on the ballot, whether it arrive via citizen initiative, the Legislature, revision commission, or constitutional convention.

Of the two failed reform bills, one would have limited the subjects that could be addressed through citizen initiative by requiring Florida Supreme Court review to ensure that an amendment fell into one of the following categories:

- amend or repeal an existing section of the Constitution on the same subject and matter
- address a right related to Article I of the Florida Constitution
- change the basic structure of state government as established in Articles II through V of the Florida Constitution

The other bill would have required a two-thirds vote for constitutional amendments with a fiscal impact greater than .02 percent of the state's general revenue.

Adoption of the ratification-threshold increase will be a significant step forward. The political viability of reform is a matter than remains untested. Therefore, the business community must continue its efforts to protect the sanctity of the state constitution even if it means making the initiative process more difficult.

HB 1723
Effective Date: Upon passage by voters
Senate vote: 37-3
House vote: 86-30
Final action: To be placed on next general election ballot

Ethics and Elections

Although the state fared better in the aftermath of the 2004 presidential election than it did during the 2000 debacle, several incidents prompted lawmakers to undertake some reform in the area of election law.

The reforms were spread across three separate pieces of legislation, HB 1567 by Rep. Ron Reagan (R-Naples) and HB 1589 and 1591 by Rep. Don Brown (R-DeFuniak Springs).

The bills raised spending caps in a governor's race from the existing $6.3 million to $20 million (Cabinet candidates can now spend up to $10 million each). They increased the buffer zone between voters and campaign workers from 50 feet to 100 feet and limited early voting to eight hours a day on weekdays and a total of eight hours each weekend. This last provision will have a significant impact on how Floridians can vote. In 2004, voters could begin casting their ballots 15 days before the primary and the general elections. More than 2 million Floridians voted early or by absentee ballots, nearly two and half times the number of people who voted by absentee ballots in 2000.

HB 1589 eliminated the second primary, an election that occurs when no single candidate in a primary wins a majority of the vote. The Florida Legislature suspended the second primary in 2002 and 2004, as a result of pressure from federal officials, who believed there was simply not enough time during the allotted nine weeks to hold three elections. The second

primary was scheduled to return for the next cycle if legislators did not take action.

AIF supports the elimination of the second primary and applauds the Legislature for its action. Adoption of this legislation will give supervisors of elections and their staff an appropriate amount of time to do their jobs efficiently and will allow voters to better concentrate on candidates and the issues. This legislation should go a long way to ensure that votes are counted in a timely and efficient manner.

Legislation was also introduced to help Florida meet the January 1, 2006 federal deadline for states to comply with the Help America Vote Act (HAVA). HAVA, enacted in 2002, was designed to establish minimum election administration standards for states and units of local government with responsibility for the administration of federal elections.

HB 1567
Effective Date: January 1, 2006
Senate vote: 29-9
House vote: 82-36
Final action: Pending

HB 1589
Effective Date: January 1, 2006
Senate vote: 33-5
House vote: 81-26
Final action: Pending

HB 1591
Effective Date: Contingent
Senate vote: 39-0
House vote: 116-0
Final action: Pending

Growth Management

SB 360 by Sen. Mike Bennett (R-Bradenton) tackles current and future growth management challenges within Florida. It appropriates $1.5 billon in new money for various transportation, water, and school infrastructure programs.

The bill places multiple requirements on local governments to ensure all new developments adequately meet level-of-service standards and that financial means are available to meet any infrastructure needs. While AIF supports the concept of developers paying for the impact of their development, this bill raises some concerns about how it puts the concept into practice. A development, for example, could be found not in compliance with financial feasibility capital improvement elements because a local government has allowed a backlog of projects to develop. Developers could thus be stuck with either footing the bill to bring the county up to date, thereby driving up the cost of development as a whole, or new developments could simply be halted until the local government addressed all of its infrastructure shortfalls. Neither solution bodes well for Florida's economy.

Additional restrictions on new development include requirements to ensure adequate water supplies before a certificate of occupancy can be issued. The measure requires that adequate school facilities be in place or under actual construction within three years after the issuance of final subdivision or site-plan approval. All transportation facilities must be in place or under actual construction within three years from the local government's approval of a building permit or its functional equivalent.

The bill does provide developers with proportionate share alternatives to ease the burdens placed on them. They are only required to pay their development's fair share of impacts on the community, but the definition of proportionate share is rather vague and needs to be

To get the whole story on the 2005 Session, check out AIF's other reports:

Voting Records

Champions For Business

further defined to protect developments from being gouged by local governments to pay for additional community needs not directly related to their development.

In addition the bill creates multiple commissions and task forces to review Florida's growth management policies including a Florida Impact Fee Review Task Force. This task force will be composed of 15 members charged with surveying and reviewing the current use of impact fees and case law controlling the use of impact fees. The task force shall provide a report to the governor and Legislature by February 1, 2006. AIF supports the review of impact-fee-collection methodology and commends the Legislature for incorporating such a review into growth management reform.

While AIF supports many concepts within this package, the rule-making, implementation, and legislative amendatory process will play a crucial role in how this measure impacts development within the state of Florida. Both Sen. Bennett and House sponsor Rep. Randy Johnson (R-Winter Garden) have publicly stated that a glitch bill is needed to address many of these concerns and AIF looks forward to working with them during the 2006 Legislative Session to make the appropriate changes.

Effective Date: July 1, 2005
Senate vote: 40-0
House vote: 98-20
Final action: Pending

(from page 4)

liability for road builders and contractors. In the past courts have held road-building companies liable for damages even when the contractor met all state-mandated specifications and criteria and there was no flaw in the workmanship or design of the project. This bill exempts a contractor from liability for personal injury, property damage or death arising from the performance of the contract work if, at the time of the accident, the contractor was in compliance with Department of Transportation's applicable contract documents. The bill also provides that when death, injury, or damage results from a motor vehicle crash within a construction zone in which a driver was under the influence of drugs, it is presumed that the driver's operation of the vehicle was the sole proximate cause of the death, injury or damage. Both provisions create a more fair and balanced approach to the legal problems facing Florida's businesses.

Effective date: Upon becoming law
Senate vote: 39-0
House vote: 116-0
Final action: Pending

Vicarious Liability

Rep. Allan Hayes (R-Umatilla) also took a leading role in helping the business community's efforts this year by filing HB 551 relating to vicarious liability for rental car companies. Current law limits vicarious liability of owners of motor vehicles who lend a car to a person. This law expands the scope of the protections to subsidiary rental or leasing companies and the holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held under, or to facilitate, asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company in the operation of such rental company's business.

The bill limits the liability of the aforementioned companies for the operation of the vehicle or the acts of the operator to a maximum of $100,000 per person, $300,000 per incident for bodily injury, and up to $50,000 for property damage.

Effective date: July 1, 2005
Senate vote: 38-0
House vote: 116-0
Final action: signed into law

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