

ASSOCIATED INDUSTRIES OF FLORIDA

LEGISLATIVE DAILY BRIEF



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Workers' Compensation Reform

Today, Associated Industries of Florida (AIF) was disappointed with the uneven work of the House Insurance Committee in its consideration of its workers' compensation reform bill, PCB 01-04. After dozens of hours of public testimony, hundreds of hours of exhaustive hearings by the Workers' Compensation Task Force, the results of which were reported to the House Insurance Committee in great detail, and countless personal briefings, the committee failed to produce a bill that fundamentally reforms a sinking workers' compensation system. Worse yet, in attempting to compromise on every issue, the committee somehow managed to produce a bill that will only further *increase costs* to Florida's employers and accelerate the system's collapse into fiscal disarray.

The Committee, chaired by *Rep. Leslie Waters (R-Largo)*, actually adopted an amendment by a voice vote scuttling language in the bill to reduce attorney's fees, which are an enormous cost-driver to the system under current law. However, on a roll call vote, the committee edged back and the amendment failed. The committee also adopted an amendment further liberalizing the law, which will permit more injured workers to achieve the "permanent total disability" designation. Adopting this amendment was totally at cross-purposes with the original intent of the draft bill and the report of the Workers' Compensation Task Force recommendations. Florida is already second only to Colorado in the percentage it pays in indemnity benefits for permanent total disability.

The committee also cast aside a compromise AIF had offered on closing the exemptions from required coverage currently enjoyed by the construction industry. Instead, the committee opted for yet another study of the issue. This much studied "issue" is draining an estimated \$1 billion in premium dollars out of the workers' compensation system due to egregious and aggressive fraud. Finally, the committee lamely agreed to a compromise that combines private and public mediation on workers' compensation cases, further increasing costs to Florida's employers.

The bill is next scheduled for a hearing by the House Competitive Commerce Council, chaired by *Rep. J. D. Alexander (R-Winter Haven)*.

AIF would like to see workers' benefits increased, but costs in the system must be decreased through significant reform. AIF hopes that the Council will be able to make substantive changes to the bill that will provide for real reform to a system under great stress, for the benefit of both Florida's employers and employees.

Civil Service Reform

Tensions continued today over an unprecedented "temporary restraining order" issued by a judge Tuesday afternoon forbidding a meeting of the legislature's Joint Committee on Collective Bargaining. House and Senate leadership were at a loss to find a precedent for such a court order. At issue is Governor Bush's "Service First" civil service reform proposal.

Both the House and Senate Appropriations Committees have budgeted an across the board 2% raise for state employees for the next fiscal year. However, under the Governor's plan, if adopted, across the board raises will ultimately be done away with and replaced with an arrangement where employees actually receive bonuses or pay raises based on performance. The state employees' union, the American Federation of State, County and Municipal Employees (AFSCME), scurried to a "special master" or referee to review the proposal. The special master held that the Governor's plan was, in his words, "Service Worst" and not a good plan, especially in light of the currently proposed 2% pay raise.

Under statute, when such a report is issued, there is a mandated 20 day cooling off period for both parties, the union and the executive branch, to evaluate the findings and to resolve disputes before meeting to negotiate in "collective bargaining." The AFSCME interpreted the legislative meeting as a violation of the 20-day cooling off period and asked for an injunction. This is despite the fact that the Governor *had not rejected* the report, and therefore, there was no "unresolved dispute."

Strangely, the judge actually issued the temporary restraining order, telling the legislative committee it couldn't meet. After reviewing about 500 years of common law dating back to King James and his dispute with four members of the British Parliament, the legislature held that the judge's ruling was "bizarre" and met anyway. Worse yet, the order was written broadly enough to be interpreted as *forbidding the legislature from meeting at all* and not just in the committee meeting under contention.

Most probably, the real strategy behind the union's legal maneuverings was to delay substantive consideration of SB 874 by Sen. Rudy Garcia (R-Miami), which is written to implement the Governor's plan. It is scheduled for a hearing tomorrow (4/5/01). The House has already approved the House version of the Governor's plan, HB 369, by Rep. Mario Diaz Balart. Under the judge's ruling, debating the bill in committee would arguably be a violation of collective bargaining procedure under statute.

The plan calls for a top to bottom reform of the state's antiquated civil service system. The personnel portion of the proposal would move about 16,300 Career Service employees in the "Selected Exempt" class, where they could be fired or reassigned without appeal rights. In addition, Governor Bush's plan would lower the standard for firing employees from "just cause," such as gross incompetence or outright insubordination to "reasonable cause." Conversely, managers under the plan would be able to distribute bonuses or raises without promoting employees out of their current positions.

The plan also eliminates the unseemly practice of "bumping" where if an employee's position is eliminated or reclassified, that employee can find any lower position they have held previously or are qualified for, and move down to that job, keeping their current salary, and "bump" the employee with less seniority out of that position. The newly "bumped" employee then peers further down the food chain, looking for yet another employee to bump.

The unprecedented court order has had the effect of simultaneously firing the interest of the legislature on two fronts; the Governor's Service First plan and court reform.

AIF supports the Governor's Service First plan. Not only does it hold the prospect of treating our civil service employees better; it promotes efficiency and accountability within the civil service system. Florida's employers, who interact with the state every day, would benefit tremendously from a motivated, lean and highly professional state employee force. In addition, the savings realized to the state in state employee reductions and added efficiency would save employer's tens, even hundreds of millions of tax dollars in the long term.

Nursing Home Care Reform

The Senate Judiciary Committee wrestled for three and a half-hours Wednesday with the nursing home bill, CS/SB 1202 by Sen. Ginny Brown-Waite (R-Brooksville), but managed to leave the pivotal litigation issues unresolved. The committee was about to vote on the key but contentious issue of limiting punitive damages against nursing homes when Chairman Locke Burt (R-Ormond Beach) stopped the action until next week. Sen. Jim Horne (R-Orange Park) had offered an amendment to limit punitive damages to three

time's compensatory damages or \$500,000 except when the home acted for unreasonable financial gain. In that case, punitive damages would be four times compensatory or \$2 million. Trial lawyers called the amendment "draconian," conveniently forgetting that the amendment is consistent with tort law for every other business in Florida. Sen. Burt directed committee staff to come back next week with an analysis of the amendments on punitive damages. Sen. Burt instructed interested parties to draft an amendment that is a compromise between Sen. Horne's plan and a more liberal one offered today by Sen. Walter "Skip" Campbell (D-Tamarac).

The committee earlier adopted an amendment by Sen. Daniel Webster (R-Winter Garden) to halt issuing certificates of need for more nursing home beds until July 1, 2006. It also approved amendments from Campbell to establish a nursing home joint underwriters association (JUA) assessing companies writing liability insurance in the state, except for homeowner's liability and to require the homes to carry liability insurance of \$250,000 per patient and \$500,000 per event. In each case, the panel ignored objections from the nursing home industry.

Lt. Gov. Frank Brogan, who chaired the task force on long-term care, visited with committee members at the meeting but declined to testify.

As AIF has communicated before, a JUA is not any kind of real solution to the insurance liability crisis in Florida. Florida's weak, current law makes every nursing home a poor risk for liability insurance. JUA's are designed to operate in a competitive market with a true mixture of good and bad risk, which helps washout the cost to the carriers. In addition, the premiums charged by the JUA will ultimately be cost prohibitive to the homes.

In the end, the Committee will ultimately have to make hard decisions regarding tort reform for nursing home care. There is no easy way out. If the issue is "compromised" too much, the long term care insurers will simply not return to Florida, which they have vacated in droves, because their exposure will have simply not been changed. The numbers do not lie. Liability insurance costs are doubling and tripling for homes, insurers have left Florida, and home are facing financial crisis. We hope the committee will see fit to do what it has to do next week.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF) and Jere Moore, AIF Reporter. 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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