

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
INTERIM BRIEF**



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WEEKLY INTERIM LEGISLATIVE BRIEF FROM FEBRUARY 22, 2001
SOURCE: ASSOCIATED INDUSTRIES OF FLORIDA

CABINET REORGANIZATION

On Monday, **February 19th**, a joint workshop was held by the House committees on Banking, Insurance and State Administration to discuss implementation of the constitutionally mandated reorganization of the Florida Cabinet. In November 1998, the voters approved Constitutional Revision Eight, restructuring Florida's Cabinet and merging cabinet offices of the Treasurer and the Comptroller into one Chief Financial Officer (CFO). These revisions will become effective January 7, 2003. The new Cabinet structure will consist of the CFO, the Attorney General, the Agriculture Commissioner and the Governor. The offices of an elected Secretary of State and Commissioner of Education will be eliminated.

The committees discussed a draft proposal similar to the one considered by the House last year (which did not pass). The draft creates an executive director with ministerial oversight over three department deputies, one each for banking, insurance and securities. The executive director would be subject to appointment by the governor and approval by the senate. The three department deputies would have the power of final agency action and oversee the statutorily mandated regulatory oversight of the three industries. According to the proposal, the executive director would report to the Cabinet. Under extraordinary circumstances, a regulatory action by one of the department deputies could be appealed to the Cabinet, which would enjoy the power of a veto over the disputed regulatory action.

While AIF would like to see further details as the issue progresses, this proposal seems to be heading in the right direction. This proposed structure provides for the simplification and consolidation of governance, a desire expressed by the vote of the people in 1998, while at the same time providing for the necessary public and legislative oversight of the executive director and, by extension, the department deputy selection process. In addition, this structure provides for a fair and equitable regulatory environment for the insurance, securities and banking industries while in no way diminishing the historic oversight and enforcement authority held by the current treasurer and comptroller.

Additional workshops will be held on this issue.

WORKERS' COMPENSATION REFORM

On Tuesday, **February 20th**, the Senate Banking & Insurance Committee considered three proposed committee bills and then took testimony regarding proposed reforms of the Florida's workers' compensation system.

One of the proposed committee bills approved by the committee and supported by AIF, transfers judges of workers' compensation claims from the Division of Workers' Compensation to the Division of Administrative Hearings. AIF believes that such a transfer would improve both

objectivity and accountability in the hearings' process. The committee bill was voted out with Senators Debbie Wasserman-Schultz (D-Pembroke Pines) and Tom Rossin (D-Ft. Myers) the only "no" votes.

The discussion of proposed reforms of the workers' compensation system revolved around the two key and most controversial issues; attorneys' fees and the elimination of many of the exemptions provided for in current law. The committee was generally sympathetic to the need to address both of these politically difficult issues.

Senator Walter "Skip" Campbell (D-Tamarac) asked Mary Ann Stiles, AIF General Counsel and lead AIF advocate for workers' compensation reforms, if she could support legislation bringing the law governing the workers' compensation system all the way back to pre-1978 with regards to benefits for workers and with attorneys' fees being calculated solely on a contingency fee basis. Ms. Stiles said, yes, if the following provisions were included; payment resolution and petitions addressed by privatizing the mediation process and the elimination of mandatory managed care.

On Wednesday, **February 21st**, the House Insurance Committee endorsed what Chairman Leslie Waters (R-Largo) described as a non-controversial workers' compensation bill. The committee then held a workshop to discuss and learn more about the workers' compensation issues deemed as controversial.

The non-controversial bill, a proposed committee bill (PCB IN-01-01) was approved unanimously by the committee and now will become a full-fledged bill for introduction. Despite its non-controversial status, the bill does contain significant changes to the law:

- Elimination of docking orders
- Strengthening of the statutory requirement for specificity in petitions for benefits
- Creation of a specialized section of the First District Court of Appeals to handle workers' compensation cases.

Two provisions were removed from the bill before its approval. These controversial provisions were:

- Elimination of mandated managed care and,
- Deletion of the requirement that judges of compensation claims approve settlements.

During the workshop portion of the meeting, considerable time and debate was devoted to the exemptions issue. As we have reported before, specific exemptions from the mandate that all employers participate in the workers' compensation system are a tremendous cost-driver to the system. Under current law, for example, construction entities do not have to participate in the workers' compensation system if they have "three or less" employees. This accommodation is currently being abused by many in the industry by simply naming the three employees as officers in the company. Or, if the company has, for example, 12 employees, they simply divide the company up into four separate entities. These exemptions, though originally crafted with the best of intentions, are suffering from creative and corrupt schemes and subsequently are pushing costs up for all the "good guys" who are in compliance with the law. Currently, estimates are that up to \$1 billion is being lost in premium. Somebody has to pay for this enormous loss; Florida's employers and employees.

The committee discussed different options on how to best plug this drain on the system, but no option had substantive merit when evaluated in any great detail. AIF believes strongly that these exemptions must simply be eliminated for the common good.

NURSING HOME REFORM

On Thursday, **February 22**, the House Elder and Long Term Care Committee held yet another workshop on proposed solutions to the nursing home crisis in Florida. As we have previously reported, numerous assisted living facilities and nursing homes in Florida are on the verge of shutting down. Due to a uniformly weak statute in Florida law, several trial attorneys have carved a spectacularly rewarding niche by suing nursing homes for damages. While quality of care issues certainly are a matter for the legislature to address, and they are being addressed, the provision of alternate care and practical limitations on what is now a trial attorney feeding frenzy are needed for true and effective reform. As a result of the unrelenting litigation, nursing homes are losing insurance coverage and "going bare." There is only one insurer left in Florida underwriting nursing homes and this insurer has indicated that it will be turning out the lights and leaving Florida at the beginning of June. Long-term care insurance rates are rocketing through the roof, doubling and tripling from one year to the next.

The committee addressed this issue at length during the workshop. Select trial attorneys are actively pushing a Joint Underwriting Association as a solution to the problem and are, of course, opposed to tort, or lawsuit reform. *See our Daily Brief for February 7th on FBNNET.com, for a detailed explanation of why AIF sees the proposed JUA as a very poor solution to the problem.* While the committee came to no clear conclusions in the workshop, it was clear that the committee was unconvinced that a JUA was a practical solution. Perhaps Sterling Shuttleworth, CEO and President, Uni-Ter Underwriting Management Corporation, put it best when he said, "you will have to create an environment through tort (lawsuit) reform and (improved) risk management."

CITIZEN'S RIGHT TO HONEST GOVERNMENT ACT

As you may recall, we reported on HB-3 by Rep. Randy Ball (R-Titusville), commonly known as the Citizen's Right to Honest Government Act in our Weekly Update on January 25th. The legislation is the work product of the Public Corruption Study Commission. HB-3 is the same bill that was passed by the House of Representatives during 2000 Legislative Session. The bill failed passage in the Senate.

We reported that an issue of particular concern in the bill was its definition of "public servant." "Public servant" was defined in the bill to mean, "any officer, director, partner, manager or representative of an employee of a nongovernmental entity that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of a state, county, municipal, or special district agency or entity." As this definition suggested, the bill cast a wide net, capturing employers and employees who could face criminal legal exposure for the even the most remote legal or contractual relationship with a governmental entity. Such a definition was problematic and needed to be corrected.

On **February 22**, in the House Crime Prevention, Corrections & Safety Committee, an amendment drafted by AIF was adopted by the committee, clarifying and limiting the definition of "public servant." AIF thanks Rep. Ball for working with AIF to craft a more reasonable and practical definition that best suits the overall intent of the bill.

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://fbnet.com>
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