

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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For the Week of April 16-20

WORKERS' COMPENSATION

On Monday, April 16, Senate Banking & Insurance Chairman *Jack Latvala (R-Palm Harbor)* allowed testimony Monday from a group of injured workers bused from around the state to delay work on the workers compensation reform bill, SB 1188. Under consideration was a Proposed Committee Substitute (PCS) to the bill, providing for a full and complete reform of the system. Despite regular pleas from Chairman Latvala that testimony be directed toward specific parts of the bill, the workers took more than an hour making general complaints about the present system. Sen. Latvala pointed out to several that the bill aims to correct some of their complaints, such as speeding the resolution of claims.

Chairman Latvala, who has worked diligently to develop a bill to resolve the two problems he cited: high premiums and low benefits, said the bill would be considered again before the committee next week. That meeting's focus will be testimony on the bill and amendments, and in the meantime, Sen. Latvala said, he will try to reduce 42 pending amendments to the PCS to four or five central issues, such as removal of exemptions for construction workers.

On Wednesday, April 18 the House Council for Competitive Commerce under the leadership of Council Chairman *J. D. Alexander (R-Winter Haven)* took up, considered, and adopted a "strike everything" amendment that vastly improved HB 1927. The adopted committee substitute includes many of the recommendations of Associated Industries of Florida and is similar to the Senate bill, PCS/SB 1188 by *Senator Jack Latvala (R-Palm Harbor)*.

This redrawn bill simply means prompt payment and less litigation for injured employees while increasing their benefits. The bill doubles the benefits to an injured employee with 5% impairment who earns \$400 a week, i.e., instead of \$2000 in impairment benefits, he or she will receive \$4000 in impairment benefits. The bill embodies the practical and needed reforms that can and will serve those for whom the system is intended; Florida's employers and injured employees.

The bill awaits consideration by the full House.

AIF supports and applauds the efforts of both Sen. Jack Latvala and Rep. J. D. Alexander on this issue. Their leadership on what can be a complex and politically volatile issue has been indispensable.

COURT REFORM

On Tuesday, April 17, the Senate Judiciary Committee adopted a compromise version of CS/SB 822 by *Sen. Anna Cowin (R-Leesburg)* to bring more public accountability to bear on the selection of the state's judges. The bill, as amended by the committee, would reduce Judicial Nominating Commission membership from nine to seven and have the governor appoint all seven. Under the amendment, the governor would appoint three lawyers from candidates by the Florida Bar, another lawyer and three non-lawyers of the governor's choosing. The Bar would submit three nominees for each of the three Bar vacancies, and the governor could reject all three as many times as it takes to get an acceptable nominee.

Under current law, judicial nominees are sent to the governor by the judicial nominating commissions comprised of three appointments from the Florida Bar, three by the governor and three selected by the first six. The House version was passed by the House and is now pending consideration in the Senate, CS/HB 367 by *Rep. Fred Brummer (R-Apopka)*. CS/HB 367 simply gives all nine judicial nomination slots to the governor to appoint.

Opponents of the reform efforts opine that, “everything is fine,” and that these reform efforts are “politically motivated.” “Politics are being introduced into the sanctified chambers of the courts!” is the accusation. This is a false and hollow claim, and a legislator who is also an attorney and a member of the Florida Bar usually extends it. The facts are, unlike forty years ago, the Florida Bar is a politically charged organization, which conveniently also holds tremendous sway over the selection of judges in Florida. The Florida Bar is, in fact, a “special interest” whose interests do not always align with the popular or expressed will of the people. They are not scientists, they are not objective scholars and they do have a political agenda. To pretend otherwise is foolhardy. Given their exaggerated influence on the judicial nominating process, judges have been and are being selected that have a profoundly ideological view and interpretation of the law.

Our system of governance is designed to create “tension” between the three branches of government and “tension” between the government and competing interests groups. Right now, there is no “tension” between the judiciary and the voters. In far too many cases, the judges airily rule by decree. The House and Senate bills are a valuable and just exercise in reintroducing the necessary political “tension” and accountability to the courts without lurching towards a directly elected judiciary. AIF supports these efforts.

TORT REFORM

On Tuesday, April 18, we reported the Supreme Court of Florida refused to hear a case overturning an AIF supported 1999 law that helped shield Florida’s employers from frivolous and excessive law suits and damage awards. The court’s 6 – 0 decision returns the case to the 1st District Court of Appeal. The 1st District had originally taken a pass on the case, asking that the Supreme Court to review it because of its importance.

This issue came about when Circuit Court Judge Nikki Clark struck down the tort reform law earlier this year.

The tort reform law was struck down based on a technical judgement made by Judge Clark. The Florida Constitution requires that a new law be limited to a single subject. Despite the fact that three Florida Supreme Court rulings in the past 20 years have held that “tort reform” constitutes a single subject, Judge Clark held that the reform law violated the single subject requirement. Judge Clark did not rule on the substantive merits of the tort reform law.

The 1999 reforms, despite the furious opposition of the trial bar and largely hostile media coverage, were passed with the intent of making Florida tort law consistent with tort law common throughout the United States. The law levels the playing field for all parties in a civil suit and ensures fair compensation for the injured plaintiff. The law also lends predictability to Florida's legal system, a must for employers who watched with horror as Florida's legal system began to awkwardly blend into an adjunct of the Florida Lottery for plaintiffs and their attorneys.

AIF hopes for a thorough and methodical review of the 1999 law by the court.

EQUITY IN LIQUOR LICENSES

On Tuesday, April 17th, SB 1312 by *Sen. Burt Saunders (R-Naples)*, a bill related to public health, was amended by the Senate Judiciary Committee in an effort to repeal a reprehensible tax on the hospitality industry. In the 2000 session, the legislature passed a new fee increase on new and existing businesses who need a quota liquor license for their business plan. This new law resulted in an increase in liquor license transfer fees from approximately \$27,000 to \$91,000, which is collected by the state upon transfer of the license.

Not only is this astronomical new tax driving the cost of entering the market higher, it has raised the prices of all quota licenses, which has had a predictable, negative impact on the cost of business and the pricing of products to consumers.

This new fee increase creates higher prices for consumers and creates an uneven competitive edge for license-holders who are not required to pay this high tax because the state issued their license in advance of an arbitrary date and therefore are "grandfathered" in. AIF supports this amendment and the repeal of this punitive and reckless tax.

EDUCATION REFORM

On Tuesday, April 17, the House Education Appropriations Committee approved CS/HB 1533 by committee *Chair Evelyn Lynn (R-Ormond Beach)*, which reorganizes education governance into a single system from kindergarten through graduate school, implementing the 1998 constitutional revision. The governor would be required to appoint the Florida Board of Education by July 1 and it would serve under the State Board of Education, the governor and Cabinet, until the constitutional revision takes effect in January 2003. The Board of Regents and state Board of Community Colleges would be abolished, and the governor would appoint governing boards at each university in July.

AIF supports the implementation of these very important reforms. Florida's employers need a first class education system. After all, today's students are tomorrow's employees. In addition, AIF hopes in the months ahead, the legislature and governor see to it that the state's community college system and its role in workforce development and training is fully funded and recognized. Currently, workforce development, adult training and specialized skill's training is a hodge-podge effort split unevenly between the community colleges and high schools and other entities. These efforts need to be consolidated under the community colleges to take advantage of their efficiency, facilities and superior resources.

GOVERNMENT

On Tuesday, April 17, the Senate Judiciary Committee approved CS/SB 822 by *Sen. Buddy Dyer (D-Orlando)*. Among other provisions, the bill provides limitations on contingency fee contracts for private attorney services. The bill requires that a private attorney who contracts with the state maintain documents and records and that the attorney makes such documents and records available for inspection.

AIF supports the provisions of this bill outlined above. The Florida business community has a compelling interest in seeing to it that Florida's tax dollars are administered in a fair and equitable manner, particularly as it relates to any state legal action against a private sector entity. In addition, public scrutiny of the retention of private counsel and the contractual arrangements established may assist in insuring that the state does not gratuitously seek legal remedy without an adequate policy debate.

TAX LIMITATION

On Tuesday, April 17, HJR 689 by *Rep. Rob Wallace (R-Tampa)*, which would require a three-fifths majority vote of the legislators in both the House and the Senate on a bill to raise taxes, or fees, or to repeal a sales tax exemption, was approved by the House Fiscal Responsibility Council. Rep. Wallace, Chairman of the Fiscal Policy and Resources Committee, introduced the bill in an effort to make it considerably more difficult for the legislature to raise taxes, fees or to take away a sales tax exemption. Currently, as with any bill, only a simple majority is required for a law to win adoption.

SJR-1414 by *Sen. Bill Posey (R-Rockledge)*, the Senate companion bill, has not been heard in the Senate nor does it appear likely that it will be.

AIF believes this proposal has merit. Tax increases, fee increases and the removal of sales tax exemptions, are in many respects, all too easy for the legislature to adopt when the state's revenues tighten. A two-thirds vote, as opposed to a simple majority, would require the bill's sponsor or sponsors to make a more compelling and considered case for any proposed tax increase, fee increase or sales tax exemption removal. The state government's authority to tax or accrue the money held by businesses or individuals is a tremendous power. The authority should not be executed lightly.

ECONOMIC DEVELOPMENT

AIF supports efforts to keep the Florida Marlins baseball club in Florida. Currently there are two pieces of legislation to facilitate keeping the Marlins in Florida and the economic benefits that such a professional sports operation provides.

The first piece of legislation is an extension of the existing parking surcharges in the City of Miami. The second piece is a rebate of sales taxes generated by the operation of a new ballpark.

HB 1189 by *Rep. Mario Diaz – Balart (R-Miami)* and SB 2168 by *Sen. Alex Villalobos (R-Miami)* provide for a “brownfields” based rebate of sales taxes to contribute to the construction of the facility. On Wednesday, April 18, the bill was passed by the Council for Smarter Government. It now awaits consideration by the full House.

The rebate would be revenue neutral and would be based on rebating back all of the sales tax in excess of what the Marlins generated in the year 2000.

The rebate dollars would be used for the construction of the facility.

The rebate is based on sound public policy, promoting an economic engine that is a professional sports team, rehabilitating a “brownfield” (land of reduced value and usage because of environmental damage) and promoting the clean up of the Miami River (where the new ball park will be located).

The Senate bill, SB 2168, has been approved by the Senate Committee on Comprehensive Planning, Local and Military Affairs and awaits consideration by the Senate Appropriations Committee.

The state of Florida has a long and established policy of providing sales tax rebates for the promotion and retention of professional sports franchises. The Florida Marlins should be no different. With the cooperation of the local government of Miami, it’s local legislative delegation and the support of Florida’s employers in the area, AIF supports legislation providing for an extension of the existing parking surcharges in the City of Miami and the sales tax rebate.

NURSING HOME CARE REFORM

On Wednesday, April 18, the Senate Appropriations Committee approved CS/CS/SB 1202 by *Sen. Ginny Brown-Waite (R-Brooksville)* to rescue nursing homes after working through a series of amendments to get the cost within the \$26 million currently allocated in the Senate budget. The quality of care reforms in the bill have exceeded what the Senate originally budgeted for the improved care and oversight of the nursing home and assisted living facilities care providers. The committee approved an amendment to raise the annual license fee for nursing home from \$35 to \$50 a bed and allow the Agency for Health Care Administration to adjust the amount annually based on the consumer price index. The agency also would be able to raise the \$50 assisted living facility fee by the rate of inflation. The committee removed the requirement to have direct-care and indirect-care sub-components in payments for patient care, removing a \$48.9 million cost.

The tort reforms so critical to reform of the nursing home care system escaped unscathed by the committee.

A shortfall of a billion dollars in the Medicaid dollars, such as we have this year, can have an enormous ripple effect throughout the budget, the state’s tax policy and ultimately, the business community. We pay the taxes. AIF supports the nursing home care reform legislation for that reason.

In the House Council for Ready Infrastructure, on Friday April 20th, HB1879 was amended to conform in part with the Senate version, CS/CS/ 1202 by *Sen. Ginny Brown-Waite (R-Brooksville)*. One portion of the tort reform package within the bill, relating to punitive damages, was further amended in an attempt to address concerns of the trial bar and committee members. AIF concurred with the amendment. If the tort section of the bill is further weakened, excessive litigation will continue and long-term care insurers will not return to Florida. In addition, the litigation will not only place greater financial pressure on nursing homes and assisted living facilities, it will also continue to drain state Medicaid dollars out of the nursing homes – Medicaid dollars that we provide as Florida’s taxpayers.

CS/HB 1879 now moves to the House Council for Health Communities for consideration.

If the tort section of the bill is further amended and weakened, it will reduce these reform efforts to a hollow and ineffective exercise. AIF supports the tort provisions in the House bill as currently written.

Both bills, CS/CS/SB 1202 and CS/HB 1879 have been crafted to address critical problems related to nursing home care in Florida; quality of care and excessive litigation. While issue related to quality of care remain outstanding, we hope that the House Council will see fit to preserve the *tort provisions* in the House bill and not waste the hundreds of hours in negotiations that have been spent by all the parties involved to write this bill.

FLORIDA CONSTITUTION

On Thursday, April 19, the House Procedural and Redistricting Council approved unanimously a proposed constitutional amendment, HJR 571 by *Rep. Randy Johnson (R-Winter Park)*, to require economic impact statements to accompany proposed constitutional amendments on the ballot. For example, voters approved creation of the high-speed rail system without being informed that the actual cost of the system defies concrete estimate and will run in the billions of dollars.

While AIF took no position on this proposed and eventually adopted amendment to the constitution, we find it very troublesome that amendments can be adopted by the voters with little or no accurate background information provided. The high-speed rail amendment has a potentially enormous impact on the state’s budget and, by extension, Florida’s business community. An idea simply “sounding good,” is a poor basis for amending the state’s constitution. The voters need to get the facts on what the potential economic impact may be of a proposed amendment to our state’s most sacred civil document.

CABINET REORGANIZATION

On Friday, April 20, the full Senate approved CS/CS/SB's 1970 & 164 by *Senators Latvala (R-St. Petersburg) and Geller (D-Hallandale)* on second reading. SB 1970 and SB 164 are written to carry out the constitutional revision merging the Cabinet offices of treasurer and comptroller.

As we have previously reported, in November 1998, the voters approved Constitutional Revision Eight restructuring Florida's cabinet and the merging cabinet offices of the treasurer and the comptroller into one chief financial officer. These revisions will become effective January 7, 2003. The new cabinet structure will consist of the chief financial officer, the attorney general and the agriculture commissioner. The offices of an elected secretary of state and commissioner of education will be eliminated from the cabinet. The language in Constitutional Revision Eight merging the cabinet offices of the treasurer and comptroller did not contemplate or provide direction as to how the statutory responsibilities currently assigned individually to the treasurer and comptroller should be treated. Therefore, the Florida Legislature has wide latitude in how the statutory functions of the comptroller and treasurer are collapsed together or removed from the chief financial officer cabinet position.

The bill merges the legislatively assigned duties of regulating insurance, banking, and financial services under the elected Chief Financial Officer who would appoint the commissioners overseeing those three departments. *Sen. Jack Latvala (R-Palm Harbor)*, said the measure is intended as a strong Senate position for negotiations with the House.

The current House bill, HB-681 by the *Rep. Leslie Waters (R-Largo)* and the House State Administration Committee, would place regulation of insurance, banking, and financial services under the direction of department appointees with oversight by the Governor and Cabinet. An appointed executive director would provide administrative services for the three departments and select the appointees for the three respective posts. The House bill provides for the Comptroller performing only those duties provided by the Florida Constitution. Comptroller Robert Milligan recommends this approach.

Once in conference committee, where representatives of the two chambers meet to hammer out differences, Sen. Latvala predicted a workable product would be crafted.

AIF supports the approach recommended by Comptroller Milligan as embodied in the House proposal.

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.

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.