



FOR MARCH 12, 2002

SENATE PRESIDENT MCKAY ANNOUNCES TAX INCREASE IS DEAD

The Florida Senate's proposed tax increase is dead. It has been reported to AIF that late today Senate President John McKay (R-Bradenton) informed the press that the Senate's proposed budget would not include the \$1.1 billion tax increase. The \$1.1 billion increase, comprised of repealed sales tax exemptions, was tucked into the Senate proposed budget bill two weeks ago in Senate Appropriations. Last week, Senate Majority Leader Jim King (R-Jacksonville) reluctantly broke from his leader and announced his opposition to the tax increase, which was a major blow to proponents of the plan. The next blow came when the Revenue Estimating Conference announced Friday of last week that Florida's tax revenue would swell by an additional \$623 million over previous estimates for the 2002-03 fiscal year. So in addition to crumbling Republican support, Democrats in the Senate also began to melt away this weekend. There is simply no support for the increase in the Senate or House.

A BETTER IDEA

Tomorrow, Senator Richard Mitchell (D-Jasper) will hold a press conference with representatives of the business community, including AIF, to announce his advocacy for a methodical, structured review of all of Florida's sales tax exemptions. This has been AIF's suggestion all along and we appreciate the Senator's interest in such a rationale review.

HOW DID WE GET HERE?

As we predicted and made public incessantly in this AIF Daily Brief, AIF letters, AIF documents and AIF Internet notices, both Senator John McKay's tax reform plan by Constitutional amendment and this latest proposed tax increase were fraught with major flaws. In both cases, the plans, under enormous political pressure, lurched towards a wholesale repeal of sales tax exemptions without adequate review or consideration. In the case of the reform plan, the Senate felt compelled to craft an "implementing" bill, CS/CS/SB 1106, both repealing and protecting exemptions, to "buy off" support for the Constitutional amendment. There was little or no debate over this implementing bill. The hurried crafting of the bill gave lie to the Senate's intentions to only rid the statutes of "bad" exemptions. Because the plan compelled them to reach a pre-determined amount of additional sales tax dollars (first \$ 9 billion and then \$4.1 billion in new dollars) they had to repeal exemptions hither and yon. The latest incarnation, the blatant tax increase in the budget bill, again found the Senate awkwardly and with little debate proposing sales tax exemptions for repeal with little or no consideration or debate.

AIF would support a measure that provided for a methodical review, utilizing objective criteria, of all the current sales tax exemptions enjoyed by businesses, organizations and services. Florida's current business sales tax exemptions actually comprise only \$1.88 billion of the \$22 billion total in sales tax exemptions. We believe the vast majority of these business exemptions would withstand even the most severe scrutiny if the criteria embraced economic competitiveness, fairness and benefit to Florida's overall economic growth.

WORKERS' COMPENSATION "REFORM" LEAVES FLORIDA'S EMPLOYERS BEHIND

The Senate Banking & Insurance Committee passed SB 2304 by Senator Jack Latvala (R-Palm Harbor) after amending the bill. Senator Jack Latvala's amendment was a "strike everything" amendment that dramatically rewrote the bill by removing the substantive and, of course, more controversial, reform measures necessary to reduce costs in the system and increase benefits to injured employees.

The rewritten bill's adoption came on the heels of yesterday's press conference by the Coalition of Business and Insurance Industry – which includes AIF - announcing its withdrawal of support for the worker's compensation reform bills under consideration in both the House and Senate. Late last week, the National Council on Compensation Insurance, Inc. released an analysis of both bills showing an increase in costs to the workers' compensation system and Florida's employers, if enacted. HB 1947 was calculated to potentially increase costs by as much as 4% and SB 2304 by 7 to 13%. Friday of last week, the Coalition informed the Senate bill sponsor, Senator Jack Latvala, of its withdrawal of support. Senator Jack Latvala, after some consideration, decided to press ahead with a more limited bill.

CS/SB 2304 does speed up the delivery of benefits to injured workers procedurally, but with the bill allowing attorneys to continue to draw hourly fees, it is unlikely that this language will have any real impact. The hourly attorney's fees provide an irresistible incentive to prolong cases regardless of any statutory mandates. AIF has already heard talk in the hallways by claimants' attorneys that they would be able to finesse these "benefit speed up" provisions in the bill. Senator Jack Latvala's amendment also incorporated language by Senator Bill Posey (R-Rockledge) that attempts to address the rampant fraud and abuse of the construction exemptions under current law. However, Senator Jim King (R-Jacksonville) and others in the Committee recognized that Senator Bill Posey's "reform" does not do nearly enough. The Committee settled for this revision language in the face of certain opposition by the House to any fraud reforms with more teeth.

Mr. Jon Shebel, AIF President and Chief Executive Officer testified regarding the Coalition's withdrawal of support. Mr. Shebel reminded the Committee that the Coalition would be quick to support a bill that genuinely reduced costs and increased benefits to injured workers. Mr. Shebel pointed out that the Coalition simply could not support a rewritten Senate bill that was largely a "wash" when it came to cost savings and call it "reform." Mr. Shebel called the conduct by contractors refusing to provide workers' compensation coverage for the workers "criminal" by exposing workers' to the risk of losing, "everything, their livelihood and their health." Mr. Shebel thanked the Committee for its willingness to adopt stronger language if only the House would have cooperated.

AIF General Counsel and lead counsel on the workers' compensation issue, Mary Ann Stiles, testified that the Coalition would be willing to work on the issue in the remaining days of session. Stiles stated there was "still time," to do something of value and, "it would be a shame to waste these two years of effort to reform the (workers' compensation) system."

Upon passage, it was appalling to see claimants' attorneys clap for a bill that does not increase benefits and does nothing to provide workers' compensation insurance to workers on a construction job in the homebuilding industry or on a commercial construction project valued less than \$250,000, (Senator Bill Posey's language). Are these the people that are supposed to care so much about the injured worker? The only "special interest" receiving any relief in this bill was the claimants' attorneys with the continued preservation of their hourly fees.

MORE WORKERS' COMPENSATION LITE IN THE HOUSE

Late today, AIF received word that the House will also take up workers' compensation reform tomorrow with every intention, like the Senate, of doing a "Workers' Compensation Lite" bill. Representative Dennis Ross (R-Lakeland) or Representative J. D. Alexander (R-Winter Haven) may offer a "strike everything" amendment tomorrow on HB 1947 that, while containing some practical improvements, will not remotely approach the reforms necessary for Florida's workers' compensation system nor will it increase benefits to injured workers.

AIF has worked very hard with members of the Coalition to make substantive changes to the system. That effort has failed. AIF does not want to do anything that does not resolve or slow down the crisis looming in this state.

Florida's Workers' Compensation system is slowly unwinding into a completely unworkable, unaffordable process that neither serves the employer or the employee. AIF supports real, substantive reform that will repair the system and insure adequate care and benefits for injured workers. Half-baked attempts to protect the financial interests of attorneys and fraudulent business operations that refuse to cover their employees only compromises any real reform. Now is the time to enact reforms before the system is in complete collapse. The system was designed to be self-executing. The system was designed to make sure an injured employee received the speedy and necessary care in order to return to their rightful place in the workplace. It was not designed to provide a career path for bureaucrats and attorneys.

FOOD SAFETY AND RESTAURANT INSPECTIONS

CS/HB 155 by Representative Allen Trovillion (R-Winter Park) was amended today on second reading and rolled over to third reading for final consideration by the House later this week. Representative Allen Trovillion offered a "strike everything" amendment that, in part, represented an agreement between AIF and other Tallahassee hospitality organizations. As you may recall, the bill was amended in the committee process last month that had the effect of privatizing and directing a Hospitality Education Program to only one private sector entity. In addition, it raised fees on Florida's restaurants dramatically, by statute, where it was unnecessary. AIF loudly objected. Since that time, AIF has worked with the Department of Business and Professional Regulation, other hospitality organizations and Representative Trovillion to craft a better product. That "better product" was the substance of the amendment today. The bill no longer raises inspection fees, recognizing that the Department could already do this by rule. The bill does allow the Department to raise the fee, if necessary, on the Hospitality Education Program, but only because this particular fee was oddly capped in statute. In addition, there is no longer any provision that provides any privatized state contract by statute to any single hospitality organization in Florida.

AIF is no longer opposed to CS/HB 155, which, not too long ago, was irrational and unfair to private sector providers of food safety training.

MORE OPTIONS IN HEALTH CARE

HB 111, by Representative Sandra Murman (R-Tampa), was passed by the House today by a vote of 115 yeas and 2 nays. The bill provides a pilot project “health flex plan” insurance program. The bill specifies three pilot service areas where the highest number of uninsured citizens live, as identified in Florida Health Insurance Studies conducted by the Agency for Health Care Administration. To qualify for the pilot program, an insured must make less than 200% of the poverty level income and must not be covered by private insurance or public assistance. Carriers will be allowed to market an insurance product to these uninsureds and hopefully will be providing affordable health care coverage. These plans are to be “flexible” and not burdened by the micro-managing mandates required by current law on all policies and drive up the cost of insurance premiums. There are approximately 1.2 million uninsured in Florida that would qualify for this type of health plan. These pilot projects will sunset July 1, 2004, unless specifically reenacted by the legislature. The companion is SB 1286 by Senator Jack Latvala. Actually, SB 1286 is one of three bills that were cobbled together in the Senate Banking & Insurance Committee two weeks ago. These three bills, SB 1286, 1008 & 1134, were passed by the Senate Health, Aging and Long Term Care Committee.

There are over 2 million uninsured Floridians. AIF supports innovative efforts by the Legislature to provide Florida’s citizens with affordable health insurance products. Florida’s employers can only benefit by a state policy that brings more people “in” to the insurance pool and spreads the risk, the costs, and keeps Florida citizens out of the emergency rooms.

PERMITTING AND ENVIRONMENTALISTS

The Senate Natural Resources Committee passed SB 270 by Senator Jim King (R-Jacksonville) today. The bill seeks to limit the ability of individual activists to intervene in pending permitting actions by developers. Under current law, it has been too easy on occasion for individuals and groups to intervene and gum up the permitting process simply because they have the notion that economic growth or development is bad. While current law requires that a group or individual must be “affected” or have a “substantial interest” with regards to the development project in question, the law is drawn loosely enough to permit parties to intervene that are not really affected.

The environmental lobby launched a predictable war against the bill. The press lapped up their concerns, giving coverage to the issue that was biased, one-sided and worth hundreds of thousands of dollars if a public relations firm produced the same coverage on contract. As a result, the Committee adopted amendments to restrict the bill’s narrow influence further. None the less, Senator Jim King was agreeable and did not fight the amendments. And, as usual, the environmentalists thanked the Committee for its painful efforts by remaining opposed anyway. The bill still does some good, disallowing an individual to intervene in a pending permitting case if that individual has absolutely nothing to do with the case under any circumstance.

AIF supports the bill. Although watered down, the bill still provides that commercial development cannot be inhibited by people who simply opposed development under any circumstances and have no substantial interest in the development’s outcome.

Lawsuits and Banana Peels

The Senate Banking & Insurance Committee passed SB 2256 by Senator Ginny Brown-Waite (R-Brooksville) today. As we have previously reported, the bill addresses the tort issue of customers slipping on a fruit or some other food product, falling and then, as a result, suing the store.

The need for this legislation was created by yet another unfortunate anti-business decision by the Florida Supreme Court last fall. The Florida Supreme Court struck again on November 15, 2001, handing down an opinion on a “Slip & Fall” case that only distantly had anything to do with prior precedent or pre-existing law.

In question was the classic “slip and fall” litigation, where the plaintiff claimed injury on the store premises as a result of slipping on a fruit product and falling. In this *Owens v. Publix Supermarkets* case, the Court held that the plaintiff need only show that they fell as a result of the errant fruit product. Thenceforth, the burden of proof immediately shifts to the defendant to prove non-negligence. The defendant must now show that its actions were reasonable both with regards to inspection and maintenance procedures.

Prior to this decision, the burden fell upon the plaintiff in a slip and fall case to show that the defendant had constructive knowledge of there being an errant fruit substance dangerously lurking on the premises’ floor. This higher, and genuinely more practical standard, allowed on a fairly consistent basis, defendants to obtain a summary final judgement without trial where proof was lacking. With this recent Court decision, every slip and fall case is virtually guaranteed to go before a jury. Needless to say, this decision by the Court will cost businesses millions of dollars each year. The Florida Supreme Court has simply turned the law on its head with its *Owens v. Publix Supermarkets* decision.

While this compromise bill between the Academy of Florida Trial Lawyers and the business community does not take us back to the common law standard held prior to the *Owens* case, the bill does restore some balance and equity.

By dramatically shifting the burden of proof in slip and fall cases to the defendant, the Florida Supreme Court increased the legal exposure of Florida’s employers exponentially by the tens of millions of dollars. The Florida Legislature must act to restore some sanity and clarity to a body of case law maimed by the Court. The bill that passed today represents a compromise between the interests of the trial attorneys and the business community.

Stay tuned to our daily brief and to our web site at www.fbnet.com as the legislature makes some very important decisions on the state’s economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). 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>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.