

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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HOUSE ADOPTS RATIONALE TAX REFORM, SENATE TRIES

The House took up HB 2027 on second reading to consider amendments before rolling the bill over to third reading for final passage later this week.

As we reported, HB 2027 is the House “answer” to the Senate’s awkward and ill considered attempts at tax reform during the first six weeks of session.

Under the leadership of Representative Rob Wallace (R-Tampa) the House Fiscal Policy and Resources Committee adopted a tax reform plan on Monday that provided for an 18 member joint committee of both the House and Senate. HB 2027 provides that nine members of each chamber would review the sales tax exemptions under current law for three years, providing recommendations made by a super majority vote to the full Legislature on which exemptions should be repealed or maintained.

Representative Rob Wallace’s plan mirrors a proposal advocated by AIF since December and we believe it provides for a rational approach to tax reform.

Wednesday evening, the Senate answered by amending its version of tax reform onto CS/SB 1844 by Senator Jim King (R-Jacksonville). CS/SB 1844 was originally drawn to create an Emerging Technology Commission at the behest of Governor Bush. Senator Ken Pruitt (R-Port St. Lucie), sponsor of the amendment, saw this bill as a good “vehicle” for a Senate counter-offer. Essentially, the amendment provides for a Joint Legislative Committee on Tax Exemptions. This Committee is to perform a rolling ten-year review of, presumably, ten *categories* of sales tax exemptions - one category a year. With the exception of those exemptions related to groceries, rental housing, medicine, etc., a twelve member joint committee of the House and Senate will review all the exemptions under Ch. 212, Florida Statutes. Somewhat weirdly, the Committee will decide what category they will review prospectively in the next session and provide for an automatic sunset of those exemptions eighteen months following that session. So, unless the Legislature re-enacts any one of those exemptions in the category under review in that session, eighteen months hence that exemption will expire. Exemptions recommended for continuance and with the consent of the entire Legislature will then have a shelf life of no more than an additional ten years before they are to be reviewed again, presumably under the same mechanism.

This Senate tax reform counter proposal was also amended onto a “economic stimulus package” bill supported by the Governor, as well, CS/CS/HB 779 by the House Council for Competitive Commerce.

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. However, AIF is opposed to any “sunset” review, which presupposes that a sales tax exemption should expire unless extended by a proactive act of the Legislature. A “sunset review” no matter how artfully crafted, still provides for an extreme

disruption of business investment, risk capital, planning and continuity so necessary to the business climate for Florida's business enterprises.

CABINET REORGANIZATION

The Florida House passed CS/CS/SB 577 by Representative Mark Flanagan today, giving final approval to their version of the new Chief Financial Officer (CFO) arrangement, mandated by a revision of the Florida Constitution in 1998, by a vote of 1118 - 0. AIF supports HB 577 by Representative Mark Flanagan (R-Bradenton) which creates the Department of Insurance and Financial Services. Under the proposal, the Governor and Cabinet serve as the head of the department, with responsibility for rulemaking. An Executive Director appointed by the Governor and Cabinet, subject to Senate confirmation, would conduct administration and personnel activities. The functional regulation of insurance and financial services entities are under the direction of commissioners appointed by the Executive Director, subject to approval of the Governor and Cabinet. The Commissioner of Insurance is responsible for regulation of insurance and serves as State Fire Marshal. The Commissioner of Financial Services is responsible for regulation of banks, credit unions, other financial institutions, finance companies, funeral and cemetery services, and the securities industry. Each commissioner has authority to take "final agency action" for purposes of the Administrative Procedure Act.

The Senate companion, SB 662/232 by Senators Jack Latvala (R-Palm Harbor) and Steve Geller (D-Hallandale Beach) provides that the CFO directly appoints two "division heads" – not commissioners – and that they are then subject to approval by the Governor and the Cabinet. However, the CFO must appoint these two individuals in consultation with the Governor and the division heads must be approved unanimously by the four-member Cabinet. This bill was passed by the Senate last week and resides on the House calendar.

Problematic to AIF in the Senate bill is that the attorneys, auditors, administrative staff and budget would all be under the control of the CFO and not the proposed division heads of the Banking & Securities and Insurance Divisions. The division heads will be out on an "island" surrounded by people over whom they will not have true authority. This is not good and still lends too much authority to the CFO over these enormous industries.

AIF and the Florida House hold that the CFO should simply administer the state finances, which are the constitutionally mandated responsibilities of the two current and soon-to-be-combined offices of Comptroller and State Treasurer.

The regulation of banking, insurance and securities and where it is housed is the prerogative of the Legislature. In reality, the Florida Legislature could place the regulation of those industries under the authority of any State entity it chose. There is nothing that requires and neither did the voters contemplate requiring that all these industries fall under the direct sway of the CFO. AIF believes that the House plan insures the regulatory oversight, consistency and authority needed to protect both Florida's consumers and the integrity of the Office of the Chief Financial Officer while combining the Constitutional, financial duties originally intended by the voters in 1998.

PERMITTING AND ENVIRONMENTALISTS

The House took up CS/HB 819 by Representative Gaston Cantens (R-Miami) on third and final reading today and passed the bill by a vote of 71 Yeas and 46 Nays. 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 House had previously adopted amendments on second reading to restrict the bill's narrow influence further. 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 people who simply opposed development under any circumstances and have no substantial interest in the development's outcome cannot inhibit commercial development.

SPEEDING THE PERMITTING PROCESS

The House passed CS/HB 257 by Representative Joe Spratt (R-Sebring), by a vote of 94 Yeas and 24 Nays. If the Senate concurs, the bill will go a long way towards minimizing unnecessary delays in the administrative hearing process.

Among its provisions, the bill makes clear that a petition for administrative hearing must state with particularity how a petitioner's substantial interests are or will be affected by the challenged action and the bill requires the person signing any pleading to certify that, to the best of that person's knowledge, the pleading is not being presented for any improper purpose. The definition of "improper purpose" is expanded to include a needless increase in the cost of litigation. The bill also requires an administrative law judge, upon request, to enter an initial scheduling order to facilitate the just, speedy and inexpensive determination of the proceeding.

The bill further revises the APA by giving a permit applicant an opportunity from the beginning of a proceeding to address the issues being raised. This is opposed to the current practice of applicants being "blind-sided" by allegations to be made at some future time while the permit at issue (and often a business opportunity) languishes awaiting the outcome of the frivolous proceeding.

Representative Joe Spratt needs to be congratulated for nursing a complex, easily demagogued, issue through the process. In addition, Representative Jack Seiler (D-Ft. Lauderdale) needs to be applauded for getting up in defense of this good bill on the floor. While many members of his party were reading from the extreme environmentalists' "script" on the issue, Representative Jack Seiler actually *read the bill* and explained in a reasoned voice what the bill did and did not do.

The Senate companion bill, SB 280 by Senator Ken Pruitt (R-Port St. Lucie) has not been considered on the Senate floor and remains referred to the Senate Government Oversight and Productivity Committee.

AIF supports this legislation. It makes necessary changes to a body of law that through misuse, has evolved from a citizen protection act into act rife with unnecessary costs and delays incurred by Florida's employers. The legislation restores balance to the system.

SENATE HEALTH CARE REFORM?

Late Wednesday evening, the Senate took up their health care "package" which was comprised of CS/CS/SB's 1286, 1134 & 1008. In doing so, they chose to substitute the package with the House companion, if there is such a thing to three different bills, CS/HB 913 related to flexible health plans. At this point, the wheels came off. In addition to a "strike everything" amendment offered by Senator Jack Latvala (R-Palm Harbor) that included disastrous language on kidney dialysis, the House version of "prompt pay," and the Insurance Department's health care package, dozens of other amendments were debated and adopted. The bill swelled into a classic "train" - a combination of good and bad policy, all of which the House is expected to swallow whole. We do not have a detailed analysis of what the bill contains, and neither do most of the Senators who sat through or even managed some of the amendments. Senator Al Lawson (D-Tallahassee) was left to plaintively ask; "just how many bills are on this train?" Senator Jack Latvala took umbrage, saying he had painstakingly explained "everything" in the bill. Sen. Lawson replied that the explanations were "not sufficient" and that some of these issues were complex. Sensing frustration in the Senate, Senator Jack Latvala suggested that the bill could be revisited on third reading and maybe some of the amendments that were vexing the Senate could be stripped off. Senator

Ron Silver (D-North Miami) finally made a motion to "temporarily pass" the bill (defer consideration) and leave the massive amendment to the bill pending. The Senate thereby agreed to revisit the bill tomorrow.

Suffice to say the House will have a couple of days to sort through this health train and decide what to do. It would be a tragedy if the Florida's small employers lost a chance to insure themselves and their employees under the bill's original flexible health plan provisions because the Senate got both too greedy and too political and engorged a bill with policy they knew the House simply could not absorb or accept.

Stay tuned to our daily brief and to our web site at www.fbnnet.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://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.