ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE DAILY BRIEF
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Daily Brief
For March 7, 2002

Senator Jim King Splits with Senate President McKay Over Taxes

The Capitol continued to vibrate today from the news that Senate Majority Leader Jim King (R-Jacksonville) would not support Senate President McKay's latest tax increase plan. With the so-called "tax reform plan" going nowhere, Senator McKay, Senator Don Sullivan (R-St. Petersburg) and Senator Jack Latvala (R-Palm Harbor) crafted a proposed $1.1 billion tax increase by unilaterally repealing sales tax exemptions and sticking the increased dollars in the Senate's proposed budget. The exemptions repealed in the plan were included with no debate or review. While President McKay has whined continually about the famed Ostrich Feed exemption, no one in the Senate, including him, has mentioned the included repeals related to sales tax exemptions for management, management consulting and public relations services. Added to the list are the exemptions for computer programming, systems design and data processing. Those two categories are about $800 million of the $1.1 billion and hit every business in Florida like a brick.

It was a tough, tough decision Senator King had to make yesterday. But looking on in horrified silence, as his Senate President lurched from one tax binge to another, could no longer be sanctioned by Senator King and he had to make his break. AIF acknowledged this in a letter to Jacksonville business leaders, congratulating Senator King's tough and necessary stand in a rapidly deteriorating situation. With votes for the plan melting away, the Senate President delayed consideration of the Senate's budget plan. The Senators on the floor today looked like unwilling actors in a staging of Jean-Paul Sartre's existentialist drama, **"No Exit."**

The good news is the Revenue Estimating Conference meets tomorrow and the results of that meeting may well provide an EXIT for everybody. Numbers on the tax money pouring into the state coffers are looking increasingly positive, with a possible increase of $500 to $600 million in state revenue over the Conference's last estimate. Not bad for an antiquated, maladjusted tax system trapped in the 18th century. If the dollars come in around that amount, a deal of some kind could be struck whereby this burst of funds could be sent to increased funding for education. The Governor has suggested just this idea.

Senate Okay's Powered Shopping Carts for the Disabled

The Senate gave final approval to SB 1832 by Senator Durell Peaden (R-Crestview) today. The bill basically provides that if a retailer, such as our large Florida grocery stores, offers a motorized or powered shopping cart for use, they can't be sued if the patron using the cart suffers an accident harming the driver or others. Retailers have made it clear to the Florida Legislature that if they cannot enjoy some protection from lawsuits for providing this service, they would have to simply discontinue the practice. Of course, the Academy of Florida Trial Lawyers were completely uncomfortable with this bill and testified against it every step of the way through the committee process. However, the Academy could never come up with any real alternative. They just saw an opportunity for plentiful lawsuits slipping away and could do nothing to stop it. In a moment of good natured kidding, Senator Skip Campbell (D-Tamarac), who is a trial attorney, said that the night before this bill was heard in the Senate Judiciary Committee two weeks ago, he went to a local grocer and actually got hit by one of these powered carts. "I wasn't hurt, " said Campbell, "therefore, I support the bill."

Kudos to the Senate for passing a common sense bill.

AIF supports the bill. These common sense protections from excessive litigation are necessary to insure that Florida's retail establishments can continue to provide a valued service to the their customers.

Tort Reform in Jeopardy Thanks to Senate Vote

SB 1334 by Senator Tom Lee (R-Tampa) won final approval by the Senate today on Third Reading by a vote of 31 to 5. In so doing, the Senate sent to the House a bad bill that maintains the legal limbo of Florida's 1999 Tort Reform Act – perhaps the most important bill adopted on behalf of Florida's business community in decades.

As we reported last night, the Senate heard the bill yesterday on Second Reading, which is the step of the process whereby amendments are heard and potentially adopted. Bills can be adopted on Third Reading, but it is much harder, given that two-thirds of the chamber must agree to hear the amendment. SB 1334 is supposed to be a biennial and mundane exercise the Legislature goes through in adopting prospective law and spreading it across the statutes. In other words, the bill is designed to lay the groundwork in advance of those laws to be adopted during the current session, and see to it that they are technically and soundly incorporated into the Florida Statutes upon their publication. In this particular case, the bill was both retrospective and prospective, in that this legislative exercise had not been executed in 1999, 2000 and 2001.

If passed as written SB 1344 would have had the effect of mooting a damaging Circuit Court ruling against the 1999 pro-business, tort reform law. By spreading the 1999 Act throughout the statutes, the bill would have removed the "single subject" objection ruled by the Circuit Court judge. In other words, it was very important to the business community that the Senate, without any amendments, adopt the bill. Well, it was amended, the Senate taking up and passing an amendment by Senator Skip Campbell (D-Tamarac) that effectively left tort reform in a lurch by sustaining the Circuit Court ruling.

AIF will be working to insure that the House companion, HB 1103 by Representative Dudley Goodlette (R-Naples) is not equally compromised by the Academy of Florida Trial Lawyers and that the House bill is the version that goes to the Governor for final approval.

AIF supports HB 1103, which provides for the routine adoption of Florida Law into the statutes without playing political games at the expense of Florida's employers.

Senate Inches Closer to House on Cabinet Reorganization

The Florida Legislature is still trying to implement the 1998 Constitutional Amendment combining the Cabinet Offices of State Treasurer and State Comptroller into one Chief Financial Officer position.

The Legislature was unsuccessful in both 2000 and 2001 in coming to an agreement on how to combine the high offices and if they can't do it this year, the courts will have to resolve it since the constitutional amendment becomes effective in 2003.

The public voted for a new office that would combine the Constitutional duties of the Treasurer and the Comptroller into one Chief Financial Officer (CFO). However, there are statutory and regulatory duties under those offices that also need to be sorted out and that is where the disagreement has been between the Senate and House. The Treasurer holds oversight of the insurance industry. The Comptroller has oversight of the banking and securities industries.

If the CFO were to absorb the regulatory oversight over the insurance, banking and securities industries, that office would be arguably more powerful and definitely more politicized than that of the Governor's Office. AIF and the House have held 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. AIF supports HB 577 by Representative Mark Flanagan (R-Bradenton) which creates the Department of Insurance and Financial Services. 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, conducts 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 amended and approved their version of the new CFO arrangement, coming closer to the House plan in SB 662/232 by Senators Jack Latvala (R-Palm Harbor) and Steve Geller (D-Hallandale Beach). The Senate plan has no Executive Director. The CFO directly appoints two "division heads" – not commissioners – and 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. Not bad.

Problematic to AIF is that the attorneys, auditors, administrative staff and budget will all be under the control of the CFO and not the 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.

HB 577 was heard on Second Reading today, was not amended and rolls automatically over to Third Reading for final approval by the House.

The regulation of banking, insurance and securities and where it is housed is the prerogative of the Legislature. The Florida Legislature could place the regulation of those industries under the authority of the Capitol lawn maintenance crew. 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.

Florida Employer's Win a Big Health Care Battle in the House

Representative Frank Farkas (R-St. Petersburg) was able to beat back one bad amendment after another today and preserved the bill for a final vote on Third Reading. This bill makes changes to the Employee Health Care Access Act, which was enacted in 1992 to promote the availability of health insurance coverage to small employers regardless of their claim experience or their employees' health status. The bill is an attempt to streamline law that is burdensome to both health insurance carriers and the insured. The bill attempts to provide a stripped-down health insurance product that provides health care insurance without the expensive, mandated, bells and whistles that so many consumers do not need or want.

The whole point of the bill is to provide simplified, more affordable policies to a market in dire need of alternatives. The number of employers that can afford health insurance for themselves and their employees has dropped by 15% since 1997.

Several legislators seemed to be convinced that Florida's employers would immediately drop their current plans as soon as possible so they could jump at the new, "bare bones" policies to save money. Representatives Lois Frankel (D-West Palm Beach), Anne Gannon (D-Delray Beach), Sara Romeo (D-Tampa) and Mike Fasano (R-New Port Richey) seemed totally unmoved by the plain fact that some insurance is better than no insurance. Prodded on by wealthy specialist doctors that may be dropped out of these "Chevrolet" plans, opponents of the bill kept running amendments that would make the bill unworkable by requiring elements of a "Cadillac" plan.

Manuel Priequez (R-Miami) got an amendment on the bill in the previous House Health Communities Council hearing that requires these stripped down policies to enumerate and characterize every health mandate in Florida law and to explain whether or not the policy carriers such mandate. This would total over 55 pages in text and would be virtually unreadable for the typical consumer. AIF has suggested that a simple list of the mandates in reduced print would suffice but he has rejected such an offer. Representative Priequez is being entirely unreasonable and he needs to be contacted by the business community to express their dismay with his unwillingness to negotiate.

In addition, it has to be noted that opposition to this bill, and any creative reform of the current health system, is rooted in a much darker agenda. There are elements in the Florida Legislature and far Left of the Democratic Party that would love to see the whole health care system collapse of its own weight. They support "Universal Health" or a socialist monopoly of Florida's health care system. Until the Republicans took over in 1996, there was such a bill introduced every year in the House and Senate that did just that. Non-plussed by Canada's near bankruptcy with its socialist health care system, proponents of such a system will fight at every turn against any reforms that assist Florida's employers in providing quality health insurance to their employees.

AIF supports the bill. Any efforts to restore flexibility and competitiveness to the health insurance market and to limit the micro-management of the State in these matters would only be of benefit to Florida's employers.

Local Governments and the So-Called Living Wage

The Florida House heard HB 859 by Representative Allan Bense (R-Panama City) today and rolled the bill over to Third Reading for final consideration at a later date. The bill restricts local governments from arbitrarily mandating that local employers pay a minimum wage in excess of the federal minimum wage. Characterized as a "living wage," the idea originally gained momentum in California (where else?) where local governments began mandating employers holding a local government contract pay wages in excess of the minimum wage. However, this idea accelerated into local governments requiring local employers, under contract or not, to pay an excessive wage. The bill does nothing to inhibit local government contracts with employers, but it does prohibit the arbitrary mandate of an exorbitant minimum wage on employers who have no contractual relationship with a local government.

AIF supports the bill. A "living wage mandate" would have an extraordinarily damaging effect on the hospitality business community. Artificially increasing the level of wages paid will cause businesses to shut down, reduce hours, reduce staff and increase prices. Discretionary dollars, typically spent in the hospitality sector, would simply go somewhere else, decreasing the level of business activity indefinitely. Finally, such a skewed wage increase will attract more qualified applicants, moving aside the very employees the wage increase was designed to assist.

Health Plans Under Assault, Again

SB 1490 by Senator Skip Campbell (D-Tamarac) and the Senate Health, Aging and Long Term Care Committee will be heard next Monday in the Senate Health and Human Services Subcommittee. The bill represents the largest and most expensive of any proposed mandate on health insurance providers in recent memory. This bill redefines *emergency medical condition* to include psychiatric disturbances and substance abuse, relating to health insurance and relating to health maintenance organizations. The bill establishes coverage requirements for providing emergency services and care under individual, group, blanket, or franchise health insurance policies, preferred provider organizations, and exclusive provider organizations. The bill gives the physician who stabilizes a patient's emergency medical condition sole discretion to continue to care for the patient in the hospital for any medically necessary follow-up or to transfer care of the patient to a provider that has a contract with the insurer (Medicaid, health insurer, health maintenance organization, preferred provider organization, or exclusive provider organization).

This is an enormous expansion of the coverage(s) mandated on health plans under current law.
In addition to the coverage of "psychiatric disturbances" and substance abuse in an emergency room environment, the bill stipulates the health plan must cover whatever the doctor recommends in additional care, whether the health plan provides such care in its original plan or not.

Worse yet, AIF has heard that because of the potential cost to Medicaid and Medicare under this proposal, an amendment will be offered Monday to exclude these services from the bill, leaving the insurers to foot the entire bill.

This bill is monstrously expensive and ill conceived. In short order, it would wreck the finances of health plans in this state, driving up costs to Florida's employers. AIF is opposed to this bill. Florida's employers are currently experiencing double digit increases in their premiums. This bill would only exacerbate the situation.

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.