

# LEGISLATIVE WEEKLY UPDATE



## FOR THE WEEK OF JANUARY 7 – JANUARY 11, 2002

Friday, January 11 represents the last full day of interim committee meetings prior to the beginning of the 2002 Regular Session of the Florida Legislature. With the two special sessions during the fall of 2001, new issues as a result of the war on terrorism and terrorist states and the necessary reworking of the interim committee schedule, this past week was the first in a long time that seemed “routine.” In preparation for the January 22 launch of the Regular Session, the Legislature addressed a number of substantive issues. Here is a summary of those of keen interest to Florida’s business community.

### **Senator Jim King Sworn-In as Senate President-Elect**

On Tuesday, January 8, Senator Jim King (R-Jacksonville) was designated by a vote of the Florida Senate as the Senate President-Elect for the 2003-04 biennial. Senator John McKay (R-Bradenton) is the current Senate President and his term as leader of the body expires later this year.

We congratulate Senator King and look forward to working with him in the weeks ahead.

### **Tax Reform**

SJR 938 by Senator Ken Pruitt (R-Port St. Lucie) was considered Wednesday, January 9 in the Senate Finance and Taxation Committee. The bill, which promises to be the single most controversial and influential issue of the 2002 Regular Session, was not voted on by the Committee. It was merely discussed. Testimony was taken and 13 proposed amendments were introduced. The Committee voted upon none of the 13 amendments.

Although the bill is sponsored and supported by Senator Pruitt, it is the brainchild of Senate President John McKay (R-Bradenton). Senator McKay believes Florida tax structure is broken and must be fixed to insure stable, equitable and sufficient revenue for Florida’s needs in the near and far future.

Broadly, his reform proposal eliminates three major taxes, throws a fence around those sales tax exemptions related to “necessities” and reduces the sales tax rate from 6 to 4%. In doing so, the plan requires that the 2003 and 2004 Legislatures will have to repeal at least \$9.5 billion in current tax exemptions. The overall theory is to broaden the base of the sales tax, increase the number paying the tax, while simultaneously lowering the rate. (A more detailed explanation of the plan at the end of this section.) The nettlesome detail is this: **Even if the Legislature repealed *all* the business, organizational and miscellaneous sales tax exemptions (which would be disastrous), only \$3.58 billion in revenue would be raised. In order for the math to work, the Legislature would then have to repeal exemptions related to households and services, which brings us right back to the ill-fated Sales Tax on Services in 1987.** As former Major League baseball player and part-time economist Yogi Berra once observed, “Déjà vu all over again.”

In his introductory remarks, Senator Pruitt stated that this proposal represents an effort to create a, “equitable, efficient, stable tax structure.” However, it is important to note that the sales tax exemptions that the proposal *mandates* remain on the books – related to residential rents, groceries, health services, prescription drugs and basic residential phone services – *are the very sales tax items* that would stabilize the state’s revenue stream. In other words, the sales tax exemptions that Senator McKay wants to protect are the very ones that, if repealed, would generate the steady tax dollars so desired in good times and bad.

Testimony given in opposition to the proposed reform plan reflected AIF’s position. While an orderly, methodical review of all of Florida’s sales tax exemptions is an idea with merit, reforming Florida’s tax structure by a Constitutional amendment and artificially squeezing Florida’s sales tax exemptions until \$9.5 billion pops out - regardless of the merits of those exemptions - is not the way to pursue reform.

At the appropriate time, AIF will release an alternative plan that we believe will provide for the necessary consideration of Florida’s tax structure without unduly jeopardizing the competitiveness and prosperity of Florida’s economy.

Here is a detailed summary of SJR 938:

- The state’s current 6% sales tax rate is fixed by the Florida Legislature. McKay’s proposal reduces that rate to 4% by a constitutional amendment. The proposal is characterized as being “revenue neutral” by reducing the rate while at the same time broadening the tax base by repealing a variety of current exemptions.
- So-called “basic needs” would be spared. Groceries, residential rent, health care services, prescription drugs and basic telephone service would be exempt under the proposal. Also eliminated would be the alcoholic beverage tax, the hospital bed tax and the intangibles tax.

Senate President McKay’s constitutional amendment to lower the sales tax rate from 6 to 4% would also include the following language:

- The amendment would require a 3/5’s vote of both legislative houses before the sales tax could be raised.
- The amendment would also require a 3/5’s vote of both houses of the legislature before any new exemption could be adopted.
- All tax exemptions and exclusions are repealed under the proposal and will have to be reinstated by a subsequent session of the Florida Legislature.

**AIF continues to agree that the Florida Legislature could and should perform a detailed review of Florida's existing sales tax exclusions/exemptions to satisfy the legitimate concerns related to the fairness and equity of the exemptions in questions. However, Florida's tax code is a creature of the statutes and should remain so. Further, AIF is free to argue that such a review should be conducted, as a statutory exercise, in large part because *the exemptions that AIF has supported can withstand the scrutiny of even the most exacting criteria.* (See AIF Press Release on "[The McKay Plan](#)" at [aif.com](#).)**

**In other tax reform news this week, on Wednesday, January 9, Speaker of the House Tom Feeney (R-Oviedo) announced the creation of a House Select Committee on Tax Reform to evaluate Senator McKay's proposal and to solicit, organize and analyze input from Florida's citizens. It is the Speaker's hope that this Committee can provide some insight and direction to the House members on this issue as the Regular Session begins later this month.**

### **Workers' Compensation**

The House Insurance Committee met on January 8, 2002 and heard a report from the insurance industry re the "Impact of the Terrorist Attacks on the Insurance and Reinsurance Markets and on Policyholders". The information was very informative and useful. The one report that stood out and is one of the best reports heard in a very long time was made by Alice D. Schroeder, a Senior US Nonlife Equity Insurance Analyst with Morgan Stanley in New York. She does not work for the insurance industry but analyzes the market to identify and research investment opportunities among United States property and casualty insurance stocks for Morgan Stanley's institutional and retail clients.

She discussed the impact not only that the terrorist attack had but the impact that the declining investment rates are having on the insurance industry as a whole due to underwriting losses that will be incurred. She predicted that several companies will in fact either go into rehabilitation or simply go under. That the estimated impact of the 9/11 attack has created insured estimated losses at \$50 to \$55 Billion. She believes that the attack loss could exceed \$80 Billion. Ms. Schroeder testified that this one act will equal the damages done by Hurricane Andrew - 1992 - \$19.6 Billion; Northridge Earthquake - 1994 - \$16.3 Billion, Storms Lorhar/Martin - 1999 - \$8.5 billion; Typhoon Mirelle - 1991 at \$7.1 Billion; Storm Daria - 1995 at \$6.1 billion plus two other hurricanes two storms and a typhoon.

She further discussed how the insurance industry is rethinking the way they issue policies. It was never envisioned that one disaster could result in the loss of so many lives and property damage in one area at one time.

She discussed the fact that workers' compensation has no terrorist exclusion and everyone working in the buildings that planes hit was covered under workers' compensation. She warned this fact alone will have a substantial impact on our reinsurance market that can not yet be determined.

Chairman Leslie Waters (R-Largo) is to be commended on putting together such a timely discussion of an issue that no one knows what the end result will be as to insurance losses and the way that business will be done in the future.

In the Senate Banking and Insurance Committee meeting on Wednesday, January 9 the National Council on Compensation Insurance, Inc. released a "Florida Law Memo" estimating the, "Rate Impact of Totally Eliminating Construction Exemptions." The memo's conclusions were encouraging and unsurprising. If the exemptions enjoyed by construction contractors under current Florida Worker's Compensation law were completely eliminated, the NCCI estimates that worker's compensation rates would decline from 0.2% to 15.6% for contractors. The direct impact to all other industry groups would be 0% and the overall average rate impact would decline .01% to 4.0%. The NCCI stipulates that, of course, if the exemptions are removed, the reduction on rates will still pivot on actual compliance which shifts the issue to the matter of enforcement.

In the past, AIF has worked with the Legislature during worker's compensation reform efforts to accommodate the concerns of the construction industry, embracing a scheme of exemptions that would protect what can truly be characterized as the "little guy." However, over the years, the increasingly bold, reckless and egregious fraud on the part of some elements in the industry has made the maintenance of such exemptions untenable. Bad actors in the trade have found clever avenues to exploit these "good faith" exemptions and have undermined the system for all. Particularly hard hit are those honorable contractors who are absorbing astronomical increases in their rates as a result of an increasingly shrinking pool of participants to spread the risk. More importantly, Florida's workers are done a grave disservice by these fraudulent practices, placing them one workplace accident from disability, unemployment and little adequate care or rehabilitation.

**AIF is heartened to see empirical evidence that mirrors what we have been arguing in the Legislature for the last several sessions. The exemptions under current law are an invitation to fraud, distort the worker's compensation market and leave an inexcusable number of Florida's workers vulnerable to catastrophic injury or disability without adequate care or provision.**

### **Equal Pay Commission Act**

The Senate Commerce and Economic Opportunities Committee passed SB 310 by Senator Mandy Dawson, (D-Ft. Lauderdale) on Tuesday, January 8, which establishes an ominous sounding "Equal Pay Commission," unanimously with amendments. The bill creates a commission to study whatever underlying reasons there may be for wage disparities between men and women and minority women in Florida. The commission will be made up of nine appointees, the group comprised of individuals who typically have an interest or expertise in such matters.

The bill was amended by the committee to effectively sunset the Commission on June 30, 2003. According to the bill, during this Commission's brief life, it is to supply a report to the Governor, Senate President, the Speaker of the House and the Secretary of the Department of Labor and Employment Security. The report is supposed to summarize or document pay inequities in the private sector and to recommend policy solutions to these inequities. If the legislature finds the report or the conduct of the Commission compelling enough, the legislature can affirmatively restore the Commission to life by canceling the June 30, 2003 sunset.

**While AIF appreciates the Committee's efforts to limit the life and mission of the Commission, AIF continues to take a dim view of any governmental body that purports to investigate or recommend intrusive solutions to so-called "compensation problems" in the market place. The question should not be why certain individuals are not paid more by employers. The question is what can be done to equip prospective employees, regardless of race or sex, with compelling skills that have an attached market value? Marketable skills will always attract competitive compensation.**

## **Environmental Protection**

On Tuesday, January 8, SB 270 by Senator Jim King (R-Jacksonville) was "temporarily passed" by the Senate Judiciary Committee. "Temporarily passed" is legis-speak for, "we'll have to take it up next time." While the Committee swooned at the Senator's testimony on the bill there was some confusion on Senator Skip Campbell's (D-Tamarac) part as to the actual content of the bill. There may have been some confusion in the actual crafting of the bill, since it actually represents one half of a bill introduced last year. Regardless, a provision or two was in the bill that the committee staff could not quickly unwind or explain. To end the confusion, Senator King courteously offered to delay consideration of the bill until the committee meets again.

The bill stipulates that if a person is not injured or effected by a proposed business development, they should not be able to initiate proceedings against a permit applicant. This provision prevents environmental extremists, on an individual basis, from swooping in and tying up a permitting process when they have no personal direct stake in the outcome, outside their own ideological motivations. The bill streamlines the administrative process, is in the interest of judicial economy and discourages filing administrative actions for dilatory purposes only. The bill is a good bill and it is supported by AIF.

**AIF supports legislation that will restore sanity to a permitting process that currently promotes or abides endless delays by those who have no material stake in the outcome of the applicant's project.**

## **Administrative Procedures**

On Tuesday, January 8, the Senate Judiciary Committee passed SB 280 by Senator Ken Pruitt (R-Port St. Lucie). The bill promotes actual settlement by requiring all issues be stated up front in the process, (meritorious suits will be unaffected) thereby limiting frivolous or harassing suits. The bill will end filing suits for delay or harassment purposes only and will help small businesses and individual permit applicants which are currently suffering under the current law which permits harassment by lawsuit on these matters.

The usual litany of horrors were paraded by the environmentalist lobby, which has no ethical scruples about harassing a business person with suits simply for the purpose of delay and to drain the businesses' assets. Senator Skip Campbell (D-Tamarac), who is not typically perceived as a "friend of small business" was a tiger on the issue, repeatedly and directly challenging the environmentalists on their characterizations of the bill. "Where does it say that?" or "I don't see the bill doing what you say it will" were his repeated remarks to the opponents of the bill. Senator Campbell does not suffer fools lightly.

The bill was passed unanimously by the Committee. Its next stop is the Senate Committee on Governmental Oversight and Productivity.

**AIF supports reform efforts of the APA that will insure that business owners receive fair treatment and consideration by an administrative procedures process currently burdened with frivolous and harassing suits.**

## **Governmental Reorganization**

HB 577 by Representative Mark Flanagan (R-Bradenton) continued its march through the House committee process early Tuesday, January 8, with unanimous approval by the House Insurance Committee. The House Banking Committee previously approved the bill on December 18, 2001. AIF supports this bill which is very similar to a bill approved by the House last year. The Senate failed to act on the House version last year and ultimately, no cabinet reorganization statute was adopted.

To recap the issue, in November 1998, the voters approved Constitutional Revision Eight restructuring Florida's Cabinet and merging the Cabinet offices of Treasurer and Comptroller into one Chief Financial Officer. These revisions will become effective January 7, 2003. The new Cabinet 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 these two offices are collapsed together or removed from the Chief Financial Officer Cabinet position.

**AIF believes the structure that would both best represent the intent of Constitutional Revision Eight while maintaining the integrity of the regulatory process is found in HB 577 and is as follows:**

The new Constitutional Office of Chief Financial Officer should be just that! – a Chief *Financial* Officer. The Florida Legislature should *only* transfer those Constitutional and related duties of the Office of Comptroller and Office of State Treasurer to the new office. These functions and responsibilities are immense and overwhelming when you consider the size and scope of the Florida State Government – including a \$50 billion budget and billions in fund balances, billing and investments

The regulatory duties of the Comptroller - banking and securities – and the regulatory duties of the State Treasurer – insurance regulation – should be assigned to a *separate* Department, with that Department being collegially managed by the Governor and Cabinet through an Executive Director who must be confirmed by the Senate. This is a configuration paralleling the one found for the Florida Department of Revenue, the Florida Department of Law Enforcement and the Florida Department of Highway Safety and Motor Vehicles. Within this new Department of Insurance and Financial Services, the regulation of insurance should be assigned to a “Commissioner of Insurance,” and regulation of banking and securities should be assigned to a “Commissioner of Financial Services.” These Commissioners should be appointed by the Executive Director of the Department and be subject to approval by the Governor and Cabinet

**Three Senate bills have been introduced by Senators Jack Latvala (R-Palm Harbor), Rudy Garcia (R-Hialeah) and Steve Geller (D-Hallandale Beach). Broadly, all three bills stray from the House concept by giving the new CFO position direct regulatory authority and oversight.**

The HB 577 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 commissioner-selection process. In addition, this structure provides for a fair and equitable regulatory environment for the insurance and banking industries while in no way diminishing the historic oversight and enforcement authority practiced by the current Treasurer and Comptroller.

### **Nursing Home Care**

SB-276 by Senator Victor Crist (R-Tampa) was passed by the Senate Health, Aging and Long-Term Care Committee on Thursday, January 10, by a vote of 11 – 0. The bill revises the membership and terms of office for the Governor’s Panel on Excellence in Long-Term Care. The panel was created to provide oversight and citizen input and recommendations for future legislation related to the provision of nursing home care in Florida.

As you may recall, the issue of Elder Care Reform was a large one during last year’s regular session. A two-pronged reform bill did pass last year, incorporating both reforms in the actual provision of care including adequate funding and litigation reform. The litigation reform provisions were developed and adopted to prevent Florida’s nursing home care providers from being sued into oblivion by an egregiously aggressive cadre of trial attorneys that were taking advantage of what was then a body of Florida law that provided little of the legal protections afforded other health care providers. Unsurprisingly, the pitched battle featured the business community - led by AIF -and the trial attorneys over the litigation portions of the bill. Fortunately legislation was adopted to provide significant legal relief for long term care providers.

This battle has bled over to some degree into the consideration of SB 276. Basically this bill and the companion House bill, HB 255 by Representative John Carassas (R-Largo) were crafted to eliminate participation on the panel by citizens that are in some way connected to a nursing home care provider. Conversely, the bill did nothing to eliminate the participation of those citizens on the panel who have a connection to law firm (trial attorney) interests.

On January 8, the House Elder and Long-Term Care Committee amended HB 255 to insure that if those citizens who have a relationship with a long-term care provider cannot participate on the panel, then neither can those associated with law firm interests. What's good for the goose is good for the gander. The bill passed 10 – 0.

Similar action was not taken on SB 276 today. Senator Crist has courteously offered to work with the long- term care providers in crafting a “conflict of interest” provision that embraces the concerns of both parties.

SB 276 is next destined for consideration by the Senate Governmental Oversight and Productivity Committee.

**AIF supports a Panel composition that equitably and fairly represents all the citizens who have a stake in the performance and delivery of elder care services.**

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**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](mailto:aif@aif.com) or call the Governmental Affairs department at (850)224-7173.**

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