

LEGISLATIVE WEEKLY UPDATE



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FOR THE WEEK OF JANUARY 22-25, 2002

Today marks the first full week of the 2002 Regular Session of the Florida Legislature. Following the traditional opening ceremonies and the "State of the State Address" (full text and audio available on our website) by Governor Jeb Bush on Tuesday, January 22, the Florida Legislature hit the ground running.

Here's a review of the issues we reported on this week plus a summary of today's activities.

TAX REFORM

SJR 938 and its implementing bill, SB 1106, both sponsored by Senator Ken Pruitt (R-Port St. Lucie) at the direction of Senate President John McKay (R-Bradenton), finally received a hearing today in the Senate Finance & Taxation Committee. After very little debate by the Senators, both the resolution and the implementing bill were passed unanimously by the Committee. While the bills received the Committee's support many of them did not look happy.

Meanwhile, a public hearing in Orlando on the proposal, sponsored by the Florida House, drew a crowd of between 150 and 200 citizens. Approximately 75 actually testified. 70 were angrily opposed and five spoke in favor. The five in favor of the proposal were those who live off of business tax dollars and believe that this proposal promises to deliver more.

The Committee also took public testimony, which was very revealing. There was a dramatic contrast between the individuals testifying. Those representing employers, small and large, were opposed. Those representing groups that depend on government funding supported it. We've been told that this proposal is not a tax increase. If so, then why are all these groups that live off of Florida tax dollars jumping up and down in favor of the bill? It is because when all is said and done on this issue, the proposed amendment to the Florida Constitution is, in fact, an attempt to confuse the voters into voting themselves a tax increase so the Legislature will not have to take responsibility for the increase.

Larry Fuchs, former Executive Director of the Department of Revenue, took a break from retirement to testify in favor of the bill. This is the same former Director who appeared in a statewide magazine several years ago bemoaning that, "Florida is broke," and that the state needed new and greater sources of tax revenue.

The proposal has already changed significantly since it first surfaced in January. The new version released for review yesterday no longer lowered the sales tax rate from 6% to 4%. Now, the proposal reduces it to 4.5%. Also, SJR 938 no longer proposes to eliminate the alcoholic beverage "drink tax" or the intangibles tax.

CS/SJR 938 is a Legislative resolution to amend the Florida Constitution by a vote of the citizens in November. The proposed amendment to the Constitution stipulates that all of Florida's sales tax exemptions are repealed on July 1, 2004. Excepted from this are those exemptions related to groceries, health services, prescription drugs and residential rent. It is up to the Legislature during the 2003 and 2004 sessions to see what exemptions they wish to keep and which ones to leave repealed with the end game being they must come up with \$4.2 billion in new dollars.

Since this is a Joint Resolution, the Legislature must come up with an "implementing bill" in order to statutorily apply the dictates of the Constitutional amendment. The proposed implementing bill provides a long list of additional exemptions to be maintained. In other words, in order to win the adoption of this proposal, Senator McKay is already bargaining away exemptions to "buy off" the opposition. Left in the barrel are those individuals, groups, industries and associations that have had neither the time nor money to broadcast television commercials in opposition to the proposal. Listed in CS/SB 1106 by Senator Ken Pruitt (R-Port St. Lucie) are a whole list of exempted businesses, services and household exemptions; sewage and garbage collection services, automobile trade-ins, items manufactured for export, electricity used for manufacturing, eye glasses, insurance premiums, real estate agency fees, radio and television broadcast advertising and on and on. With the stroke of a pen, with no debate, methodical review, with no standard or criteria, the Senate President wants to protect these exemptions as a whole, all tumbled into the same bill like a child's toy box. This is reform?

The implementing bill is only a promise, at best. A sitting legislature cannot bind a future-sitting legislature. The next sitting Legislature in 2003 or 2004 may still repeal all these exemptions Senator. McKay is bargaining away in an attempt to pass reform –any reform – if they so choose. The bill is merely a "good faith" offer to those groups that have had the political clout to pound the Senate.

All of this bargaining in a collapsed time frame and the bundling of exemptions into one bill is what AIF feared would happen. AIF supports and is willing to debate the business community's sales tax exemptions enjoyed under current law. AIF believes our employer's exemptions have merit and that they can be defended on any reasonable standard. We support an orderly, methodical review of all of Florida's sales tax exemptions. We do not support a review demanded by an amendment to the Florida Constitution with a clock ticking ever louder demanding that the Legislature scramble to find billions of dollars in sales taxes. The indiscriminate inclusion of a whole host of exemptions in the implementing bill, selected by a few staffers in the Senate to push back political opposition is the worst approach possible to actually reforming Florida's tax structure.

We anticipate that the bill will be heard on the Senate Floor next week.

Tax Reform should not be done by amending the Florida Constitution via a vote of Florida's voters. It is the prerogative of the legislature and executive branch. We support an orderly review of Florida's sales tax exemptions. As the state grows, if genuine pressure develops on the state's resources, the Legislature has the adequate tools and resources available to conduct such a review. Remember that it is the Florida Constitution that arguably has Florida in this ill-fitting tax box to begin with. The document prohibits both a statewide personal income tax and an ad valorem tax on property. Do we really need to squeeze more tax policy into the Constitution? AIF thinks not.

And neither should you. Visit the legislative directory on the website and find your Senator to let him or her know how you feel about this "tax reform."

BUSINESS DAMAGES

The Senate Judiciary Committee passed SB 248 by Senator Lee Constantine (R-Altamonte Springs) Wednesday, January 23.

Prior to 1999, businesses that were entitled to file a business damage claim had to be in business for more than five years prior to the taking of the property. This meant that businesses that were operating less than five years but which sustained substantial damage to their business could not even file a claim for those damages. In 1999, Section 73.071, F.S., was amended to allow a business in existence for more than four years to bring such a business damage claim. Because of the belief by various condemnors that such a change would “open the flood gates” of business damage claims, a sunset provision was place in the 1999 statute that was designed to “sunset” the four-year change and automatically revert the law back to five years.

SB 248 would maintain the four-year threshold for business damage claims in Florida, if adopted.

AIF supports the legislative extension of the four-year threshold for business damage claims. It is only ethical and fair that businesses whose ability to engage in commerce is inhibited or severely compromised by the state (road building, road expansion, road maintenance) should be compensated justly by the state. AIF supported the original amendment to the law that reduced the time an owner had to be in business from five years to four years in order to gain standing for compensation from the state.

ADMINISTRATIVE PROCEDURES ACT

The Senate Judiciary Committee also approved SB 270 by Senate President-Elect and current Senate Majority Leader Jim King (R-Jacksonville) on Wednesday, January 23. The bill attempts to restore some fairness and equity to an environmental building permit process that has become hopelessly bogged down in costly and purposeful legal delays engineered by environmentalists.

The bill clarifies current law, limiting the ability of “just anyone” to initiate an administrative hearing in opposition to a development. Currently, people who have no practical or personal interest in a commercial permitting process are initiating administrative hearings in attempt to, “protect the environment.” These initiatives have taken on the gleam of outright harassment and are adding considerable dollars to the cost of residential and commercial development. As Senator Campbell (D-Tamarac) so aptly put it in his defense of the bill, a person seeking to initiate an administrative hearing has to have “nexus to the permit in question. The bill passed by a vote of 9-2.

The House Judicial Oversight Committee passed HB 257 by Representative Joe Spratt (R-Sebring) yesterday. The bill is the House companion to SB 270.

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.

PATIENT SELF-REFERRAL ACT – KIDNEY DIALYSIS

On Wednesday, January 23, the Senate Health, Aging & Long Term Care Committee passed SB 726 by Senator Jack Latvala (R-Palm Harbor). The bill amends current law, prohibiting kidney dialysis care providers from “self-referring” and performing their own “in-house” diagnostic lab work.

Two of the world’s largest kidney dialysis companies have a major presence in Florida. In fact, one of these companies recently moved their North American headquarters to Ft. Lauderdale. Together, these companies employ hundreds of Floridians in high paying, high-tech, bio-medical jobs.

The analysis and lab work necessary for life-saving kidney dialysis treatment is extremely time - sensitive and must be accomplished under extraordinarily rigid quality controls. It is very beneficial to the patient and the attending physician to have the lab work handled and coordinated by the center already performing the dialysis. The feedback is almost immediate, allowing the physician to monitor status and alter the care plan as needed.

This system has performed so well for patients - whose very existence is inextricably tied to proper dialysis and lab diagnosis - that a very small fraction of competitors are seeking to pass SB 726 mandating what kind of labs the dialysis centers can make use of. This tinkering with the free market system would not only cost the state hundreds of high-end jobs but, much more importantly, put thousands of kidney dialysis patients at enormous risk.

AIF *opposes* playing games with the *Florida Statutes* by passing a law solely intended to benefit a few who are unable to compete in the current, well-tested market system. As an added inefficiency in the health care marketplace, this proposal would serve as a cost-driver to the costs of health care and Florida’s employers.

WORKER’S COMPENSATION REFORM

The House Insurance Committee met Wednesday, January 23 and the reaction to the meeting by those in attendance was that there is no real interest in the House Insurance Committee doing a bill. Chair Leslie Waters (R-Largo) made an initial statement that she did not know what she wanted to do on workers compensation yet. The general consensus is that we felt we were told to go into a room and work it out. And not to come out of that room until it was done.

Well, we tried that last year and have tried it for many years and the only interest groups that are on the other side of the issues are the claimant's attorneys and the Florida Home Builders. Everyone else is in agreement. We have gone as far as we can. It is now time for the Legislature to make the hard decisions. If there is no real savings and reform, the Coalition has advised that it will not support legislation just for the sake of legislation. The system is headed for a crisis and maybe the best time for the employers of this state to be heard is when we get to that point. Maybe then, someone will listen and not just to those that have a vested interest in the system.

The Workers Compensation Research Institute and the NCCI has advised the Legislature of the problems in the system. The NCCI states some of the problems are:

1. High frequency of permanent total claims - three times higher than countrywide.
2. High medical costs for permanent partial claims - two times higher than countrywide.
3. Higher medical costs for temporary total claims - 60% higher than countrywide.
4. Attorney involvement - significant in Florida and also helps explain the cost drivers. When attorneys are not involved the difference in claim costs between Florida and countrywide is minimal. When attorneys are involved, the difference in claim size between Florida and countrywide is nearly 40% (based on NCCI study).

For some reason, the Florida Workers' Advocates have been more successful in convincing the Legislature to do nothing than all of the business and insurance industries combined. They are very adept and were able to get the committee to focus on small issues today like, what do you pay defense lawyers, who reports what; misleading the committee that there would be no attorneys in the system if "you pass this bill". One would think that since they have been saying that since 1978, the Legislature would get tired of hearing it.

The only person so far that has set down with the Coalition several times and listened to its concerns has been Senator Jack Latvala (R-Palm Harbor). Representative Don Brown (R-DeFuniak Springs) did try to get at the committee the focus on the above cost drivers. Representative Melvin (R-Ft. Walton Beach) stated he wants change and has worked to get it.

Needless to say, the business community is very discouraged.

On another front, the Senate Banking and Insurance also met on Wednesday, January 23 and heard presentations from NCCI that eliminating the construction exemptions from the worker's compensation system could have savings in the construction rates from -.5% to -27%.

Judge Bill Pfeiffer presented the challenges DOAH has faced getting the JCC merged into DOAH. He also advised of the fact that in Miami 3000 old Petitions were found that had not been entered the system. One wonders where the attorneys for those claimants were and why they were not moving those Petitions forward.

CABINET REORGANIZATION

The Senate Banking & Insurance Committee took up the issue of reorganizing the Florida Cabinet for the third straight year with the consideration of SB 232 by Senator Steve Geller (D-Hallandale Beach) and SB 662 by Senator Jack Latvala (R-Palm Harbor). The two bills, both similar in their construction and intent were combined as a "committee substitute." In combining the bills, the Committee was addressing the issue of reorganizing the Florida Cabinet as mandated by the voters in 1998.

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 provide direction as to how the statutory responsibilities currently assigned individually to the Treasurer and Comptroller should be treated. The statutory responsibilities at stake include the regulation of banking, securities and insurance. As amended by the Committee, this new hybrid CS/SB 232/662 bill places the CFO very much in charge of all three industries by giving the officer the authority to directly appoint three commissioners with regulatory oversight over these three industries.

The structure that would both best represent the intent of Constitutional Revision Eight while maintaining the integrity of the regulatory process is best found in HB 577 by Representative Mark Flanagan (R-Bradenton). 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. 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. 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. This bill creates a true CFO, one that is proscribed with the Constitutional duties of financial oversight of the state government.

The House State Administration Committee passed HB 577 yesterday by a unanimous vote.

AIF believes that 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. The hybrid CS/SB 232/662 bill fails to meet these standards.

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.