

# LEGISLATIVE WEEKLY UPDATE



## FOR THE WEEK OF FEBRUARY 4 – 8, 2002

### "Living Wage" vs. Minimum Wage

The House Fiscal Policy & Resources Committee passed HB 859 by Representative Allan Bense (R-Panama City) today. 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.

Representative Allan Bense was unavailable for the entire debate on the bill. Representative Frank Attkisson (R-Kissimmee), a cosponsor of the bill, began the presentation on the bill and spoke expertly on the impact such a wage mandate would have on the Kissimmee hospitality industry.

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.

### Tax Reform

This week was a busy week on the Tax Reform front, although the plan was not actually voted on or considered in any House Committee.

- Members of the House Select Committee on Florida's Economic Future held another public hearing on the issue last night in Miami. People were invited to make their opinions heard at 7 p.m. at the Graham Center at Florida International

University. Today, the select committee held its final hearing in Jacksonville at 2 p.m. in the city council chambers. The House committee will issue its final report next week.

- At the request of the House Republican Task Force on Tax Reform, AIF's Senior Executive Vice President Randy Miller testified before the Committee on Tuesday, February 5. As a former Executive Director of the Department of Revenue, Mr. Miller was asked to remark on his experiences in that capacity when called upon to implement the now infamous 1987 services tax. This tax was later repealed. The committee's interest in Mr. Miller's recollections was stoked by the eerie similarities between the 1987 services tax and the Senate's tax reform plan.
- On Wednesday, February 6, AIF confirmed that the Governor's Office, through Lt. Governor Frank Brogan, had sent word to the Senate President's leadership team that the Governor would indeed oppose Senator McKay's tax reform plan.
- On Thursday, February 7, Governor Bush spoke before a Tallahassee business group outlining his opposition to the McKay plan. In addition, the Governor's Office released a seven - page letter, which also explained his opposition to the plan. The letter was reasoned, and in considerable detail exploded many of myths and faulty presumptions the Senate made in crafting and approving the plan. Of particular note, the letter destroyed the working presupposition the Senate has repeated over and over that Florida is facing a \$4 billion "hole" in its budget between the years of 2002 and 2006. In addition, the Governor wondered why, if indeed Florida were facing such a deficit, the Senate is supporting a plan that is supposed to be "revenue neutral." If it were neutral, then why would it help in making up this monstrous deficit? The Governor asked the Senate to call a spade a spade and come out honestly and portray this "reform" for what it is, a tax increase.
- Florida Taxwatch, a nonpartisan, nonprofit public policy research group, released a statement expressing its reservations about the Senate's tax reform plan. Taxwatch noted that Florida's businesses were already taxed at a rate that ranked them fifth in the nation among the fifty states. Taxwatch referred to the plan as simply, "rearranging the attic."

AIF is opposed to the Senate's tax reform plan. It unnecessarily and injuriously amends the Florida Constitution as a vehicle for the reform. Any consideration of Florida's sales tax exemptions should remain under the direct purview and authority of the Executive Branch and Legislature. Also, the plan compromises any rational consideration of the sales tax exemptions under current law by establishing a predetermined end result. If adopted, the plan will require the repeal of \$4.2 billion in sales tax exemptions regardless of their merit or their ability to meet objective criteria or *any* criteria. Finally, the plan is based upon faulty or outright inaccurate assumptions regarding Florida's future tax revenues.

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.

## Unemployment Compensation Benefits Expansion

The Senate Commerce and Economic Opportunities Committee passed SB 1220 by Senator Debbie Wasserman-Schultz by a vote of 10 – 0, on Tuesday, February 5.

The bill purports to be an economic recovery bill in the wake of the September 11 attacks on the U. S., as expressed in its introductory intent language. The bill provides for an "alternative base period" whenever an individual is not monetarily eligible in a "base period" under current law to receive unemployment compensation benefits. The bill specifies, for 2.5 years, alternative time periods and amounts of payments of unemployment compensation, an increase in weekly benefit amounts for unemployment compensation purposes. The increase in the weekly wage benefit amount is \$25 or 15%, whichever is greater. The estimated fiscal impact of this wage increase would be over \$100 million. The bill was amended to remove a provision that provided for an "acceleration" of the benefit payments, which had a \$57 million price tag.

While well intended, an expansion of the current unemployment benefits would be a mistake. Given the current economic conditions in Florida, the Unemployment Compensation Trust Fund is under stress, and any further monetary demands on the fund could trigger a rate increase. Section 443.131(3)(e) 1.c., F.S., provides that when the balance of the Unemployment Compensation Trust Fund is less than four percent of the state's taxable payrolls, a positive adjustment factor will be computed and included in the variable adjustment factor used in computing the tax rates for all experience-rated employer accounts. The adjustment remains in effect for every year that the fund balance is below four percent. The effect of this adjustment is to raise the tax rates for all rated employers who are below the maximum rate until such year as the fund balance is again equal to or greater than four percent of the state's taxable payrolls.

A further increase in the Unemployment Compensation tax rate could have the perverse effect of causing employers to further cut back on their number of employees. 96% of Florida's employers have 10 or fewer employees, according to our most recent statistics. Other means must be identified to assist the unemployed than further lifting funds out of an already depleted Unemployment Compensation Trust Fund, if that need is identified by the Legislature.

## Economic Stimulus Bill

The House Committee on Economic Development and International Trade passed HB 779 by Representative Bev Kilmer (R-Marianna), on Wednesday, February 6. This bill is an attempt at providing some economic stimulus. According to a House Committee staff analysis, the major provisions of the bill do the following:

- Amends current law, temporarily broadening the eligibility criteria for the Capital Investment Tax Credit Program to include qualified target industries and lowering the capital investment and jobs thresholds;
- Amends current law to change how, when and by whom the annual economic development incentives report is published:
- Amends the Qualified Defense Contractor Tax Refund Program, expanding the program to include the aviation industry, temporarily allowing companies to continue in the program when targets are not met, and providing prorated refunds to businesses participating in the program:
- Amends the Qualified Target Industry Tax Refund Program, temporarily allowing companies to continue in the program when targets are not met and providing more prorated tax refunds to businesses that participate in the program.

The Revenue Impact Conference estimates the bill would have an annualized negative \$18.8 million impact on General Revenue for the 2002-03 fiscal year. Of course, the Revenue Impact Conference never sees a positive economic impact from cutting taxes or expanding tax refunds on any proposal.

While AIF has no position on this bill it appears to be a reasoned approach to economic stimulus by reducing, albeit temporarily, the tax burden on Florida's businesses while in some instances, broadening their ability to qualify for additional tax credit.

## Environmental Lawsuits

HB 819 by Representative Gaston Cantens (R-Miami) passed the House Agriculture Committee with only one negative vote, on Wednesday, February 6. This bill clarifies that "intervene" under s. 403.412(5), citizen standing in environmental lawsuits merely authorizes a party to "intervene" in an already ongoing administrative proceeding and does not provide an independent basis by which an unaffected party may "initiate" an administrative proceeding. One amendment was adopted to further clarify this issue. As we have reported before on a similar bill in the Senate, SB 270 by Senator Jim King (R-Jacksonville), this legislation will assist in preventing an environmentalist who, though directly unaffected by a permit in question, "intervene" for the purposes of harassment and delay.

The bill also clarifies that the prevailing party attorney's fees provision in s. 403.412 applies to any action instituted under that section expressly including both judicial and administrative actions.

The bill eliminates an unnecessary appeal to the Cabinet of Water Management District decisions, which have undergone a Division of Administrative Hearings (DOAH) administrative hearing. It is more appropriate for a requested appeal to go to the Judiciary, rather than the Cabinet.

HB 819 is supported widely throughout the business community.

AIF supports this bill. It corrects a well - intended Administrative Procedures Act provision that has been abused by members of the professional environmentalist lobby to financially injure those businesses seeking to expand and develop their commercial interests.

### Governor Supplements His Original Proposed Budget

On February 6, 2002, the Governor released a Supplemental Budget to his original proposed budget for the 2002-03 fiscal year, released just prior to the beginning of the Regular Session.

The Budget Supplement highlights five areas according to the Governor's Office:

- Developmentally Disabled Additional \$162.6 million
- School Readiness Additional \$41.4 million
- Prescription Drug Benefits Additional \$32 million
- Substance Abuse Initiatives Additional \$13.8 million
- Domestic Violence Additional \$8.6 million

Some of these dollars are either "catch up" dollars from last fall's budget cutting exercise or they represent a real increase over last year's original budget.

### Health Insurance

The House Committee on Health Regulation considered HB 913 by Representative Frank Farkas (R-St. Petersburg) today. 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.

Representative Gayle Harrell (R-Port St. Lucie) offered a series of late filed and hand written amendments to the bill. No one in the audience had received a copy of the amendments before the meeting. The first amendment adopted requires the carrier to offer, through the employer, the ability for the employee to purchase, at the employee's expense, a catastrophic policy or a standard or basic plan. This would add a mandate onto the limited policies allowed by this bill. The other amendment adopted requires the Department of Insurance (DOI) to evaluate the implementation of the bill and its impact on the entities that provide the plans, the number of enrollees, the participants covered by the plans and their access to care and the scope of health care coverage offered under the plans, and an assessment of the plans and shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, no later than January 1, 2007. Two other amendments offered by Representative Gayle Harrell were withdrawn until she had the time to work out the language with the sponsor of the bill. Her bad amendments could jeopardize this good bill.

There was an up roar in the Committee upon its adjournment. Several people had traveled from out of town to oppose the bill. Because of time limitations, they were not allowed to speak to the Committee before the Committee voted on the bill. Vice Chair of the Committee, Representative Eleanor Sobel (D-Hollywood) refused to recognize Chairman Farkas request to vote on the bill at a time certain (when a chairman is offering a bill before the chairman's own committee, protocol dictates the chairman surrender the chair to the vice chair). Therefore, after several legislators offered their opinions on the proper procedure, Chairman Farkas resumed his role as Chair and ordered the Secretary to call the roll on the bill. It received a favorable vote and the bill now goes to the Council for Competitive Commerce.

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.

HB 911, also by Representative Frank Farkas, related to studying mandated health coverage under current law, was not considered today since the Committee ran out of time. It should appear on the next Committee agenda.

### **Administrative Procedures Act**

HB 257 passed the House Council for Smarter Government by a 10-3 vote on Thursday, February 7. The provisions in HB 257 by Representative Joe Spratt (R-Sebring), if enacted, will go a long way to minimize 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.

These important revisions to the APA give a permit applicant an opportunity from the beginning of a proceeding to address the issues being raised, instead of 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.

The bill also restores the pre-1996 "default" language that makes clear that an application is deemed approved without further action by the agency thereby avoiding unnecessary judicial proceedings and updates the Equal Access to Justice Act by increasing the maximum fees and costs that may be awarded to small businesses from \$15,000 to \$50,000.

The Judicial Oversight Committee amendments traveling with the bill were adopted and incorporated as a Committee Substitute. This was the last referral for HB 257. The bill is now available for consideration on the House floor. The Senate companion bill, SB 280 by Senator Ken Pruitt (R-Port St. Lucie) has passed Senate Judiciary Committee and is now in 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.**

**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.**

- 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.