

# LEGISLATIVE WEEKLY UPDATE



## FOR THE WEEK OF FEBRUARY 11-15, 2002

### TAX REFORM UPDATE

The House Fiscal Policy and Resources Committee “workshopped” the Senate Tax Reform Plan today. Representatives of the business community testified regarding the plan, providing insight on what compliance with the expanded sales tax would do to their industries’ operations. Without exception, representatives of the trucking, small businesses, construction, pulp and paper and accountancy industries testified that the proposed tax plan would be excessively burdensome, expensive, regressive and punitive. Where possible, many Florida-based business operations would simply move to Georgia. This is the testimony that Senate President John McKay is characterizing as a, “sham.”

AIF Senior Executive Vice President Randy Miller also testified before the committee. Speaking as an officer of AIF and as a former Executive Director of the Department of Revenue, Mr. Miller advised the committee of the breadth and reach of the tax and the Department of Revenue’s ability to “reach out” and find those tax dollars. Mr. Miller agreed with prior testimony that collecting and remitting the tax would be a profoundly difficult administrative burden, requiring that roughly 200,000 business would be drafted into this role by the plan. Mr. Miller pointed out that of the \$22 billion in uncollected sales tax dollars; business exemptions only comprise \$1.88 billion. Service exemptions comprise \$12 billion of the \$22 billion in exemptions. “The Senate plan is a Services Tax, make no mistake about it,” Mr. Miller advised the Committee. In answering questions, Mr. Miller stated that DOR would need nearly 200 auditors and several million dollars in order to implement and enforce the tax plan. Miller reminded the Committee that taxing and collecting taxes on services is a, “very complicated, extremely complicated endeavor that has not really discussed in any detail.”

The House Select Committee on Florida’s Economic Future released their findings to the public today. As expected, the Committee advised the Speaker of the House that, based upon the Committee’s received public testimony and consultations with experts in the tax field, the House should reject the Senate President John McKay’s plan.

The report reflected AIF’s contentions that:

- The plan, following its initial “revenue neutral” status in 2004-05 would indeed be a tax increase.
- Florida’s tax collections are sufficient and the structure is not, “broken.”
- Florida’s spending is not controlled, as it should be, leading to inevitable shortfalls during economic slowdowns.
- The Senate plan would do little to protect Florida during economic recessions.
- The Senate plan remains regressive, maintaining a greater tax burden on lower income citizens.
- The Senate plan is indeed a “tax shift” of upwards of \$1.4 billion to Florida’s business community.
- Florida historically and most recently, has performed well during recessions when compared to other states.

- Any reforms of Florida’s tax structure must protect Florida’s competitive position in the global economy.
- A methodical review of Florida’s current sales tax exemptions, using an objective criterion, embracing equity, consistency, ease of administration and competitiveness would be a worthy exercise.
- A radical reform of Florida’s tax structure, whatever its technical merits, should not be executed through an amendment to the Florida Constitution – tax law is a creature of the statutes and should remain so.

The Senate’s tax reform plan took another hit on Tuesday, February 12. Representative Tom Feeney (R-Oviedo), Speaker of the Florida House of Representatives, released a statement this morning saying with regards to the proposed reforms stating, “I intend to vote no.”

The following are some key excerpts from Speaker Tom Feeney’s statement:

- “Florida’s fundamental tax structure is not substantially flawed.”
- “Floridians are not under taxed.”
- “Florida’s job growth leads the nation, due in part to the state’s favorable tax code. While the United States as a whole, lost jobs in 2001, Florida increased job growth by 138,000.
- “Dr. Henry “Hank” Fishkind, economist to the Florida Senate, testified before the House Select Committee that some 30,000 – 400,000 Floridians would have to begin compliance measures and add administrative duties of collecting taxes on services they provide to their workload. Plumbers, tile setters, barbers, coin laundry operators, lawn service companies and hundreds of other professions will need to become tax collectors. Bureaucratic headaches will be poured on small businesses in Florida.”
- “In future years this plan turns into the largest tax increase in Florida’s history, leading to bigger government and more spending. This will hurt job growth, hurt economic development, and hurt Florida’s future.”
- “Even if these tax policy plans were positive, tax and fiscal policy should not be micro-managed and imbedded in perpetuity in Florida’s Constitution.”

Speaker Feeney has committed to a full and fair hearing of the proposal. We expect it to come to the floor in the next two weeks for a vote. Curiously, although the Senate passed its proposal, the Senate has not released the Senate Joint Resolution and implementing bill to House messages. Administratively, whenever the House or Senate passes a bill, it travels to the other chamber where it resides in “messages.” From messages it is either brought to the floor for consideration or referred to the receiving chamber’s various committees, depending upon the rules governing that chamber during the session. So, technically, the House has no plan to vote on at this time.

To view video clips of Speaker Tom Feeney’s February 13<sup>th</sup> Press Conference visit <http://aif.com/taxmedia.htm>

## **CABINET REORGANIZATION**

On Monday, February 11, the House Fiscal Responsibility Council approved HB 577 by Representative Mark Flanagan (R-Bradenton). The vote was 23 yeas and 0 nays. The next stop for the bill is the Council for Competitiveness Commerce. As you may recall, a House “Council” is the umbrella committee that oversees the work and provides final review on legislation produced by various “families” of committees. For example, the House Fiscal Responsibility Council is the final stop for legislation generated by the appropriations, tax, and governmental oversight committees.

As we have previously reported, HB 577 embraces a reorganization of the Florida Cabinet supported by AIF. The 1998 voter-approved revision of the Florida Cabinet collapsed the State's Treasurer & Insurance Commissioner and State Comptroller into one office known as the Chief Financial Officer. HB 577 places the new CFO firmly in charge of the state's finances and the Constitutional duties currently shared by both offices. However, the bill places the necessary distance between the CFO and the extensive duties of regulating the insurance securities and banking industries. While the Senate is moving a version advertised as a "compromise" with the House position, we maintain that the House bill best protects the citizens of Florida from the potential political compromise of the Office of CFO while insuring the regulatory integrity of these industries.

On Tuesday, February 12, the Senate Governmental Oversight & Productivity Committee passed CS/SB 232/662 by a unanimous vote. This 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 the regulatory oversight over these three industries.

**AIF supports the House position on the reorganization of the Florida Cabinet. HB 577, by Representative Mark Flanagan (R-Bradenton), 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. Visit AIF 2002 Issue pages to view our position on CS/SB 232/662**

#### **LOCAL GOVERNMENTS & MINIMUM WAGE**

On Tuesday, February 12, the Senate Comprehensive Planning, Local & Military Affairs Committee passed SB 1902, by Senator Durell Peaden (R-Crestview), by a vote of 7 – 0. 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.

An amendment was offered and adopted by the Committee, which permitted a local government to establish a minimum wage in excess of the federal wage if it is adopted by a community referendum. Although this weakens the bill, the referendum requirement is still a high bar to reach for proponents of such wrongheaded economics.

**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.**

## FOOD SERVICE INSPECTIONS

A bad bill was considered Tuesday, February 12, made even worse by an amendment, then passed. The House State Administration Committee adopted the bill, HB 155 by Representative Allen Trovillion (R-Winter Park). Originally, the bill required a \$150 “reinspection” fee on food service establishments. The reasoning was, if a food service establishment, i.e. a restaurant, is found to be in non-compliance by a Division of Hotels and Restaurant inspector, the restaurant will need to be reinspected at a later date. The Division claimed the additional \$150 fee was necessary to recoup the costs associated with reinspection.

Ostensibly, Representative Allen Trovillion offered a “strike everything” amendment (which totally rewrites the bill) to address the concerns that such a fee would provide a perverse incentive for the Division to suddenly start reinspecting *a lot* of restaurants to garner the additional funds. However, the amendment was much darker than the original bill.

The amendment takes the Division of Hotels and Restaurants Health Education Program (HEP) and privatizes it, stipulating that the education service would be provided by a “private, nonprofit organization.” HEP does not certify, it educates. However, as part of the HEP service, HEP representatives do *steer participants* to those companies, for profit or nonprofit, that do provide the food certification training. So, an organization that is fortunate enough to get the HEP contract will then be able to refer participants to its own certification programs and services, thus locking down the food training market in Florida from start to finish. The amendment also increases fees and costs to restaurants and other food service establishments. In addition, this “mysterious” private nonprofit organization would get funds from the Division to administer the HEP program. Adding to the perversity of directing public dollars to expressly benefit one organization, it is equally troublesome that an organization would support legislation that drives up fees on its own membership.

**If the Division wishes to privatize this activity, at the minimum, this privatization should be conducted by bid and not be directed to one group by statute. AIF is opposed to his bill because it is arguably unethical, increases fees and costs to the hospitality industry and unnecessary.**

## MORE BUREAUCRACY IN THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

On Tuesday, February 12, the Senate Agriculture and Consumer Services Committee passed SB 2072, by the Committee Chairman Senator Steve Geller (D-Hallandale Beach). The bill is basically a “wish list” from the Department of Agriculture and Consumer Services and one of its wishes isn’t any good.

The bill creates an Advisory Council to consider information that is already public along with information that is currently being presented to the industry *Quarterly* (involving disciplinary actions) and to the of Department of Agriculture & Consumer Services (DACS). The bill does nothing more than create another bureaucratic layer.

Providing advice to DACS on the conduct of pest control enforcement activities does not require the formation of an Advisory Council. Advisory Councils have been suggested in the past. The attitude of previous and current leadership is that such proposals are not common sense, believing in that adding another administrative layer will cause unnecessary confusion.

**AIF opposes this provision in the bill. The creation of the Council would supplant and displace the functions of an existing Florida Professional Applicators Alliance comprised of four associations. The Alliance regularly meets with DACS officials to discuss all phases of the industry including enforcement. At the Alliance meetings there is an excellent working relationship with DACS officials. Creating the proposed council would also add unnecessary administrative costs to serve a function now effectively being accomplished by the Alliance.**

#### **MORE BURDENS ON EMPLOYER'S HEALTH INSURANCE CARRIERS**

On Tuesday, February 12, HB 293 by Representative Holly Benson (R- Pensacola) was temporarily passed (consideration delayed) in the House Committee on Judicial Oversight after many concerns were raised not only about the contents of the bill, but the technical aspects as well.

This "Prompt Payment Bill" contains a civil cause of action for non-payment, "one-way" attorneys' fees and a shortened period of time for insurance companies to audit request for payments, just to name a few problems.

The medical profession claims that they need a civil cause of action as a "hammer" to make insurance companies pay in a more timely manner. However, if this bill were passed, it would unquestionably cause insurance premiums to rise as a result of costly, debilitating litigation. In Additionally, insurance companies would have to pay bills even if they are not submitted properly and oddly hope that if there is an error, they can collect an over payment.

Thanks to Representative Dudley Goodlette (R-Naples), a motion was made to temporarily pass the bill until some of these issues can be resolved. The committee unanimously agreed with him. Therefore, the bill should be heard in the committee next week. The doctors have been intransigent on these issues and refuse to administer their practices in a manner that would facilitate "prompt pay."

**AIF opposed to this bill in any form. So-called "well intended" legislation always seems to originally contain a "sneak attack" by trial lawyers with language empowering them to bring suit against HMO with definitions and standards that would place the insurer at a costly, even crippling disadvantage. Florida's employers are the primary providers of health care benefits in Florida. Their ability to pay for this benefit must not be weakened any further by attorney-driven increases in their premiums. In addition, any problems with "prompt pay" lay at the feet of the medical practitioners, who, for whatever reasons, inadequately or unprofessionally administer their billing and provide the carriers with information that is inadequate, incomplete or just plain wrong.**

#### **WORKERS' COMPENSATION REFORM**

The House Insurance Committee met on Wednesday, February 13, to take up PCB 02-02a, relating to workers compensation. While PCB 02-02a did not have all of the components of the Business Coalition bill (the Coalition comprised of business and insurance carrier representatives), drawing upon components from last year's bill, it would have reduced costs and at the same time increased benefits to injured workers.

The proposed draft bill:

- eliminated the exemptions in the construction industry, except for up to 3 corporate officers owning at least 10% of a corporation, such exemptions to be effective January 1, 2004;
- created a study commission that would review the market place and report back to the Legislature whether or not adequate coverage existed;
- insured prompt medical treatment to injured workers by clarifying that managed care is no longer required;
- guaranteed injured workers would be able to completely resolve each petition within 6 months from the filing of the petition rather than the 12 to 24 months minimum today;
- created enforcement powers to insure employers not misrepresent payroll or classification;
- required reporting to DBPR of any employer certified under chapter 489 who fails to secure coverage;
- increased the fees paid for IMEs to reverse a recent First District decision to insure injured employees can get an IME;
- simplified the calculation of the average weekly wage so that injured workers benefits are calculated by the employer correctly from the start;
- defined permanent total disability to stop the abuses but at the same time give the Judge of Compensation Claims the discretion to determine permanent total disability rather than the arcane social security standards that have nothing to do with work place injuries;
- made the Office of Employees' Assistance voluntary rather than mandatory to eliminate the delay of having to file a request for assistance and wait for a bureaucratic agency to make a decision that is not binding anyway;
- eliminated the Request for Assistance and allows the Petition to be filed immediately;
- allowed public and private mediators so that all mediations are handled within 90 days and stop the long delay today;
- sanctioned attorneys who fail to complete the pretrial stipulation at the mediation to avoid delay in setting the final hearing;
- eliminated the incentive to litigate every case rather than resolves issues timely by both the claimants' and defense bar by eliminating hourly rates but rather pay fees by the employer/carrier based on a 20/15/10/5 formula with 15% paid for settlement of cases;
- allowed a one time only medical fee up to \$1,500 if fee schedule is not sufficient and the same for denying of compensability both paid by the employer/carrier;
- reversed Turner, U. S. Sugar vs. Henson; Burger King and Wilkins and other cases that negatively impact the system.

Representatives Dennis Ross (R-Lakeland), David Simmons (R-Altamonte Springs) and Joe Negron (R-Stuart) drafted an amendment that would have paid attorneys fees of 20% on the first \$5,000 and 15% on all benefits thereafter; and guaranteed a \$2,500 fee for every medical petition for benefits. In "compensability" cases, the judge would be allowed to approve an attorneys' fee of 15%, plus an additional fee based on a **reasonable hourly rate**. (Attorneys don't have it this good under current law!).

Together with their amendment, they joined Representative Kim Berfield (R-Cleawater) in support of her amendment to keep the exemptions in the construction industry. Her amendment would allow exempt sole proprietors, partners and corporate officers to work on prime contracts for commercial buildings less than \$250,000 and all residential buildings. While they would characterize this as an effort to compromise, this amendment would do virtually nothing to stem the fraud and abuse that drains the system and leaves injured workers without adequate care.

The Coalition was advised that if it agreed to these two amendments then Representatives Dennis Ross, David Simmons, Joe Negron and Kim Berfield would support what was left of the bill. The Coalition said thanks, but no thanks. The problem with the system today is that it is always fixed with band-aides by legislators who are afraid to stand up for what is right and stop the fraud in the construction industry and reduce attorney involvement. The National Council on Workers Compensation found attorney involvement is a tremendous cost-driver, spiking Florida's costs 40% higher than any other state to which Florida was compared. The system was originally designed to be self-executing with only the rarest of attorney involvement. Members of the Committee will have to actually make decisions and dismiss the seduction of half-measures that seek to smooth over very real policy questions and only do more harm than good.

House Insurance Committee Chairman, Representative Leslie Waters (R-Largo) was not afraid to stand up and be counted. She had the bill temporary passed meaning any detailed consideration or vote on the bill was delayed until the next meeting. (The amendments by Dennis Ross, David Simmons and Joe Negron showed up at 8:45 a.m. one and one-half hours before the committee would meet.)

The good news is that Representatives Don Brown (R-DeFuniak Springs), Donna Clarke (R-Sarasota), Terry Fields (D-Jacksonville), Perry McGriff (D-Gainesville), Jerry Melvin (R-Ft. Walton Beach), Doug Wiles (D-St. Augustine) and Leslie Waters listened and stood ready to vote in favor of real reform.

The bad news is that with the construction industry elimination of exemptions, Representative Carey Baker (R-Eustis) and Jim Kallinger (R-Winter Park) could not support the bill.

The Coalition has already decided that if there is no meaningful reform - if legislators do not get passed the rhetoric and listen to the facts - it will not support reform just for reform's sake. Some members of the committee could take a lesson from their Chairman who has crafted a bill that will reduce rates. It will not reduce rates as much as the Coalition bill, which produces 2% to 8% savings, but it is a good start. In addition, Senator Jack Latvala (R-Palm Harbor) has taken the time to listen to all sides and make up his own mind. He has filed a bill, SB 2304, which promises to address almost all the ills of the current system and reduce costs.

**AIF supports PCB 02 -02a by Chairman Leslie Waters. Florida's Workers' Compensation system is slowly unwinding into a completely unworkable process that neither serves the employer or the employee. The bill represents real, substantive reform – the only reform that will repair the system and insure adequate care and benefits for injured workers. Half-measures and inside games to protect the financial interests of attorneys and doctors only make matters worse. Now is the time to enact reforms before the system is in complete collapse. The system was designed to be self-executing. The system was designed to make sure an injured employee received the speedy and necessary care in order to return to their rightful place in the workplace. It was not designed to provide a career path for bureaucrats and attorneys.**

#### **BUSINESS OPPORTUNITIES IN BROWNFIELDS**

On Wednesday, February 13, the House Natural Resources and Environmental Protection Committee passed HB 1281 by Representative Bob Allen (R-Merritt Island). The bill eliminates a local participation requirement for qualified, targeted business participation in "brownfields redevelopment bonus refunds." The bill also reduces from 80 percent to 60 percent the required threshold average annual payment for participation in brownfields redevelopment bonus refunds.

Passage of HB 1281 would create more opportunities for businesses to redevelop brownfields areas and would allow a broader range of businesses to qualify for brownfields redevelopment, job credit incentives.

**AIF supports the clean up and return to economic viability of these abandoned and often contaminated areas. This legislation will make the difference between property sites remaining abandoned and blighted or returning as a productive and useful element in the community.**

#### **EXPANDED HEALTH CARE ACCESS**

HB 111 by Representative Sandra Murman (R-Tampa) unanimously passed out of the House Council for Healthy Communities on Thursday, February 14. The bill provides a pilot project insurance program. The bill specifies three pilot service areas where the highest number of uninsured citizens live, as identified in Florida Health Insurance Studies conducted by the Agency for Health Care Administration. To qualify for the pilot program, an insured must make less than 200% of the poverty level income and must not be covered by private insurance or public assistance. Carriers will be allowed to market an insurance product to these uninsureds and hopefully will be providing affordable health care coverage. There are approximately 1.2 million uninsured in Florida that would qualify for this type of health plan. This pilot project will sunset July 1, 2004, unless specifically reenacted by the legislature.

The big ringer in this pilot project is that in these specified areas, insurance carriers will be able to market products free from the heavy hand of regulation. They will be able to limit or eliminate the mandates that drive up premium costs. Florida has dozens of mandates on Florida's insurance providers' health insurance products, requiring certain types of coverage be offered as part of the product, whether or not the consumer wants it or not and whether or not anyone can actually afford it. This type of "Utopian" policy has driven millions of people and employers out of the health insurance market.

**AIF supports this bill. It is a worthy experiment to see if the insurance carriers will market a health insurance product that is competitively priced for the currently uninsured based upon the regulatory relaxation, including the lifting of mandates, provided for in this bill.**

#### **COMMUNITY COLLEGE FUNDING**

Besides overall funding which is always the predominant issue, two of the big issues for community colleges this year involves statutorily addressing the community college program funds (CCPF) distribution formula. Even though the state annually apportions the funds to the 28 community colleges, the lack of a statutory basis permits the legislature to adhere to or ignore the past practices of fund distribution as they see fit. All of the Community College Presidents have written letters endorsing the concept of putting into law this distribution formula. Senator Alex Villalobos (R-Miami) and Representative Ralph Arza (R-Hialeah) are the prime sponsors of this legislation in their respective chambers. There has been some concern about addressing the issue by placing it in statute because of the *Honore* class action lawsuit, which alleges that the state is not adequately funding education for K-12, and thus in violation of a recent constitutional amendment.

AIF in conjunction with the legislative liaisons (lobbyist) for each of the community colleges was able to address this concern. In consultation with the House Appropriations General Counsel and the House General Counsel, the community colleges have agreed upon some language, which will not be prejudicial to the state's defense in the *Honore* lawsuit, while maintaining the need for a statutory distribution formula.

**AIF supports this legislation. The budgetary funding process for Florida's community colleges has been inconsistent and at times inequitable. An already excellent system for higher learning would benefit immensely by the implementation of a funding formula that brought predictability, equity and reason to the process. Florida's community colleges are hamstrung by a current funding approach that compromises planning, asset allocation and operating revenue administration. Ultimately, it is Florida's students that suffer. Florida's employers can only benefit from a first class education system. Adopting a statutory distribution formula is a critical step in making both Florida's education system and its graduates first class.**

#### **COMMUNITY COLLEGES AND WORKFORCE DEVELOPMENT FUNDS**

The other key issue is the division of the workforce development funds into two separate funds, one designated for community colleges and one for public school districts. Heretofore, these dollars have been lumped together in one pot of money. Thus, when the legislature was forced to cut dollars in the Special Session last fall, community colleges were hit both in their CCPF funding category and in their Workforce Development funding category. By separating the pot into two distinct funds, the future of those dollars will be predicated on performance by community colleges without being tied "at the hip" with school district funding.

AIF again was helpful in securing the support of both House and Senate Appropriations staff to agree to the segregation of these funds.

**AIF supports the segregation of these funds between the school district funding and community colleges. Treating these entities separately in the budgetary process will provide for a more practical understanding of what each party needs and how the dollars are being expended.**

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