ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE DAILY BRIEF
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FLORIDA LEGISLATURE CONCLUDES 2002 REGULAR SESSION…KIND OF

When the Legislature convened on January 22, it was charged with two Constitutional duties: one; redrawing the house, senate and congressional district lines and two; adopting a 2002-03 fiscal year budget. It appears the Legislature will accomplish the former and not the latter. Amazingly, the House and Senate were able to pull together redistricting at the eleventh hour. This is the same process that took numerous special sessions in 1992 and ultimately the courts had to solve the impasse over the issue. However, the budget remains unresolved. But one must remember that the Legislature is technically, "ahead of schedule," having convened in January instead of March. Thus, the Legislature has the luxury of returning home and waiting for yet another Revenue Estimating Conference report in May which will give them an even more accurate picture of what amount of revenue the State can anticipate for the 2002-03 fiscal year.

Another issue that remains is the rewriting the Florida Education Code, in order to bring it into conformity with the recent A+ and Education Governance reforms adopted in recent years. While the House and Senate arguably had a "deal" on the bill, the clock ran out on their efforts. Right now, we are hearing that the Governor will request a Special Session next week to solve this one remaining policy issue. After conferring with the House and Senate leadership, it is expected that the Governor will issue a call for a Special Session, on the budget, at a later date, as noted above.

FLORIDA CABINET REORGANIZATION FAILS TO PASS…AGAIN!

For the third straight year, the Florida House and Senate failed to come to agreement on the Constitutional and statutory responsibilities of the newly created State Chief Financial Officer (CFO). CS/CS/SB 662/232 by Senators Jack Latvala (R-Palm Harbor) and Steve Geller (D-Hallandale Beach) was taken up this evening after the House, who approved it this morning, sent it down to the Senate, by a vote of 74-44. The House was noticeably unenthusiastic about the bill during its considerations, with Representative J. D. Alexander (R-Winter Haven) giving it only lukewarm support, suggesting that the bill fell far short of creating the independence from the CFO necessary for the regulatory oversight of the insurance and banking industries. The sponsor of the House bill on the issue, Representative Mark Flanagan (R-Bradenton), gave an impassioned speech against the CS/CS/SB 662/232 compromise, decrying it is an unethical combination of powers for the new CFO, giving the office the ability to both regulate financial services and to act as the chief investor for the State. "Can you imagine? A CFO that both invests for the State AND oversees the financial services industry? There's something WRONG with that!" Representative Mark Flanagan shouted. Nevertheless, the House leadership, intent on keeping its word with the Governor's Office and the recalcitrant Senate, reluctantly sent the bill down with four amendments.

AIF, which was opposed to the Senate version of the bill as well, worked in opposition to the bill all day. As it turns out, according to the Senate's staff attorneys, one of the amendments on the bill was unconstitutional.. The Senate found itself in the awkward position of having to amend out the unconstitutional language and send it back to the House, *again*. In the meantime, AIF successfully won support in the Senate to further amend the bill, giving the regulation of the insurance and financial services industries the independence they must have from the direct oversight of the CFO. Senate President John McKay (R-Bradenton) got wind of this and tensely told Democratic Minority Leader Senator Tom Rossin (D-Ft. Myers), AIF's amendments sponsor, that he, "would not take Mitchell's (Senator Richard Mitchell (D-Jasper)) amendments." Representative JD Alexander, released from the commitment he had to fulfill earlier in the day, then decided, okay Senate, you can make the bill constitutional, but we won't take it without the additional amendments (supported by AIF). And so, the Senate stripped off the unconstitutional amendment, refused to consider Senator Richard Mitchell's good amendments, and sent the bill back down to the House. The bill never resurfaced for the rest of the evening.

The newly created office of CFO officially begins next year, so the Legislature must act this year to give adequate time for the massive transition accompanying the merging of the two State Cabinet offices, that of the Treasurer and Comptroller. The Legislature does have the time, however; technically the Legislature could do it during the organizational Session in November. It is better to enact good policy late than bad policy on time.

Representative Mark Flanagan needs to be saluted in this space for his unswerving efforts on this issue. He made every effort to see to it that a bill that best served the citizens of Florida was adopted. In addition, Representative JD Alexander was terrific under tremendous pressure in negotiating this issue with the Governor's Office and the Senate. When the issue was truly in the balance, Representative JD Alexander showed tenacity and conviction in bringing to a halt a bill that was a bad deal.

The regulation of banking, insurance and securities and where it is housed is the prerogative of the Legislature. In reality, the Florida Legislature could place the regulation of those industries under the authority of any State entity it chose. 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 while combining the Constitutional, financial duties originally intended by the voters in their approved amendment to the Florida Constitution in 1998.

SENATE SEALS DEAL ON TAX REFORM

The Senate gave final approval to the Tax Reform plan this evening previously approved by the House last night. The negotiated plan agreed to by the House Leadership, Governor Bush and the Senate Leadership, HJR 833 passed by a vote of 30 Yeas and 9 Nays.

The agreed upon reform plan provides for a Constitutional amendment to appear on the ballot in November. If approved by the voters, the amendment creates a 12-member joint committee of the House and Senate to exist for three years. During those three years, this joint committee composed of six members appointed by the presiding officers of each chamber, would review all of Florida's sales tax exemptions. By a simple majority of seven votes, the committee could "de-authorize" a sales tax exemption, which would expire on July 1, the year following the committee's adjudication. The only way the sales tax exemption can be spared in the amendment is if the entire Legislature by joint resolution votes to override the committee's de-authorization. No later than March 1, 2004, 2005 and 2006 will the committee present its findings to the Legislature.

AIF is relieved to see a tax reform plan adopted that does not contain a "sunset" of all the sales tax exemptions under current law. As we stated in December regarding Senate President McKay's initial plan, an automatic sunset is a prescription for chaos and it dilutes any real, methodical review of the exemptions. This was proved out when the Senate tried to awkwardly craft an implementing bill for their original proposal which provided "carve outs" for specific industries in an effort to "buy" support for the plan. In addition, AIF is relieved to see a tax reform plan that does not have a predetermined outcome. As you may recall, President John McKay's original plan alternately called for an additional $9 billion and then $4.6 billion in additional sales tax revenue. Like a sunset, a predetermined outcome would have corrupted any real, objective review of the sales tax exemptions since a certain dollar amount had to "found" among the outstanding exemptions.

To be sure, AIF is disappointed to see the Senate's compulsion for placing a tax reform plan in the Florida Constitution succeed, if the voters approve it in November, because that is simply no place for tax policy to be established. Tax policy is and should be a prerogative of the Legislature and is a creature of the statutes. Endless policy clutter in the Constitution, which is virtually impossible to remove, violates the very premise of what a state constitution should embody as a function of proscribing the powers, duties, rights and responsibilities of the state's civil government and its citizens.

In the end, this tax reform plan is an overly elaborate mechanism designed to accomplish a simple review of Florida's sales tax exemptions. AIF historically and, in December, vocally supported a methodical review of the state's sales tax exemptions. AIF, having successfully advocated the adoption of numerous sales tax exemptions, believes our members' exemptions are completely defensible by any standard embracing economic competitiveness, equity and commercial growth. We are afraid that some industries, deprived of any particular influence at the Capitol, may well be "thrown to the wolves" regardless of the merits of their respective exemption. However, it must be said, every beneficiary of a sales tax exemption must be able, at some point, to adequately and succinctly defend their exemption as a matter of policy. The path the Florida Senate and Senate President John McKay took to accomplish this goal was unnecessarily arduous, originally impractical and damaging to the good order of the Regular Session.

Nonetheless, it could have been worse.

RETAILERS RE-GAIN SOME PROTECTION FROM BANANA PEEL LAWSUITS

A game of Legislative Ping-Pong resulted in the passage of legislation restoring some tort protections lost by retailers as a result of a Florida Supreme Court ruling late last year. In the midst of the confusion of numerous bills sailing back and forth between the two chambers in the final days and hours of the session, Representative David Simmons (R-Altamonte Springs) wisely pivoted and tacked the substance of HB 1545 onto SB 1946. As a result, the Senate caught SB 1946 on the rebound and adopted both the original language in the bill and HB 1545, as well.

As we have previously reported**,** the need for this legislation was created by yet another unfortunate anti-business decision by the Florida Supreme Court last fall. The Florida Supreme Court struck again on November 15, 2001, handing down an opinion on a "Slip & Fall" case that only distantly had anything to do with prior precedent or pre-existing law.

In question was the classic "slip and fall" litigation, where the plaintiff claimed injury on the store premises as a result of slipping on a banana and falling. In *Owens v. Publix Supermarkets*, the Court held that the plaintiff need only show that they fell as a result of the errant fruit product. Thenceforth, the burden of proof immediately shifts to the defendant to prove non-negligence. The defendant must now show that its actions were reasonable both with regards to inspection and maintenance procedures.

Prior to this decision, the burden fell upon the plaintiff in a slip and fall case to show that the defendant had constructive knowledge of there being an errant fruit substance dangerously lurking on the premises' floor. This higher, and genuinely more practical standard, allowed, on a fairly consistent basis, defendants to obtain a summary final judgement without trial where proof was lacking. With this recent Court decision, every slip and fall case is virtually guaranteed to go before a jury. Needless to say, this decision by the Court will cost businesses millions of dollars each year. The Florida Supreme Court has simply turned the law on its head with its *Owens v. Publix Supermarkets* decision.

Special note needs to be given to Senate President-Elect Jim King (R-Jacksonville) who, on behalf of the business community, broke through the bureaucratic marsh of the Senate and saw to it that the bill was brought to the floor and effectively advocated its adoption. Without his assistance and push, the bill simply would not have passed.

Recognition and thanks needs to be expressed to the author of the Senate companion, SB 2256 by Senator Ginny Brown-Waite.

By dramatically shifting the burden of proof in slip and fall cases to the defendant, the Florida Supreme Court increased the legal exposure of Florida's employers exponentially by the tens of millions of dollars. The Florida Legislature must act to restore some sanity and clarity to a body of case law maimed by the Court. The bill that passed today represents a compromise between the interests of the trial attorneys and the business community. However, the bill still needs some "work" to get it closer to the necessary defenses businesses enjoyed prior to the *Owens* decision.

An additional Daily Brief will be provided next week wrapping up all the legislation that was tracked by this reporting service during the 2002 Regular Session.

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.