



FOR THE WEEK OF JANUARY 28 – FEBRUARY 1, 2002

Tax Reform

The Florida Senate approved Senate President John McKay's (R-Bradenton) tax reform package, CS/SJR 938 and CS/CS/SB 1106, by substantial majorities on Thursday, January 31. The Senate Joint Resolution, which needed 24 votes or 3/5 of the body to place a proposed amendment to the Florida Constitution on the November ballot, received 31 yeas and 9 nays. The implementing bill, CS/CS/SB 1106 was adopted by a vote of 32 yeas and 8 nays. Both the proposed amendment and the implementing bill are now on their way to the Florida House of Representatives for consideration. Before adopting CS/CS/SB 1106, the Senate further amended this bill to exempt barbers, beauticians and transportation services on a voice vote.

On Tuesday, January 29, the tax package won approval by the Senate Rules & Calendar Committee.

The package consists of two pieces of legislation, CS/SJR 938, which contains the language placing a proposed amendment to the Florida Constitution on the November Ballot. CS/SJR 938 stipulates that the sales tax rate will be reduced from 6 to 4.5% and repeals all sales tax exemptions except for those related to groceries, medicines, health services and residential rent and others salvaged by the Legislature during the 2003 and 2004 sessions. CS/CS/SB 1106 is the implementing bill. Both bills are by Senator Ken Pruitt (R- Port St. Lucie) at the direction of Senate President McKay.

AIF Polling on the Tax Plan

AIF held a press conference on Wednesday, January 30 to release the results of a poll, taken January 27 and 28, measuring the voting public's response to Senate President John McKay's (R-Bradenton) plan to reform Florida's tax code through a constitutional amendment.

Video clips of the press conference can be viewed at <http://aif.com/taxreform>.

The numbers for the proponents of this tax reform plan were not good. Forty-eight (48) percent of the respondents believe the plan would ultimately increase the amount of taxes their family would pay. Only 26% believe their taxes would drop while 25% were unsure.

More compelling was the survey result that found 69% opposed taxes on services, such as haircuts, dry-cleaning, membership dues and residential cleaning. Worse yet for the McKay plan was the resounding response of 73% of the respondents who believe that the state is spending too much money, not that tax revenues are insufficient. In other words, just shy of three-quarters of the voting public believes that the problems lie on the spending side, not the revenue side. This public opinion reflects the same conclusion reached by the Sales Tax Reform Task Force in its report released on Monday, January 28.

Eerily, another independent Mason/Dixon poll was released this week which validated the poll results culled by AIF. As both the AIF and Mason/Dixon poll aptly illustrate, the public has no stomach for this tax reform proposal.

Public Hearings Continue on Tax Plan

Public Hearings were held today in Panama City and Pensacola with surprisingly large attendance by the public. The public testimony gleaned from these hearings continues to be in overwhelming opposition to the proposed tax reform plan.

What Exactly Is the Proposed Plan?

The proposed reforms of Florida's tax code are comprised of CS/SJR 938 and CS/CS/SB 1106. The proposed CS/SJR 938 is merely a Legislative resolution to amend the Florida Constitution by a vote of the citizens in November.

CS/SJR 938

- CS/SJR 938 provides for a proposed amendment to the Florida Constitution. If approved by a 3/5 vote of both the Senate and House chambers, the proposed amendment to the Constitution would be placed on the November ballot for approval by Florida's voters. The proposed amendment would:
 1. Reduce the current sales tax rate from 6% to 4.5%.
 2. Repeal all current sales tax exemptions, effective July 1, 2004; except for related to groceries, medicines, health services and residential rent.
 3. Provides that the Florida Legislature can affirmatively resurrect sales tax exemptions during the 2003 and 2004 Regular Sessions. Those affirmatively preserved by the Legislature during those two sessions will not be subject to repeal on July 1, 2004.
 4. Following the July 1, 2004 date, the Legislature can only enact new sales tax exemptions by a 3/5 vote.

5. Following the July 1, 2004 date, the sales tax rate of 4.5% can only be increased by a 3/5 vote of the Legislature.
6. In the fiscal year 2004-05, the implementation of the plan must be "revenue neutral."
7. The Hospital "bed tax" is repealed.

CS/CS/SB 1106

- Since this is a Joint Resolution, the Legislature must come up with an "implementing bill" or General Law to statutorily apply the dictates of the Constitutional amendment. Currently this would be CS/CS/SB 1106.
- In reducing the tax rate from 6% to 4.5%, the implementing bill seeks to enumerate which sales tax exemptions, in addition to those preserved in CS/SJR 938, should be maintained after July 1, 2004 and which should remain subject to repeal. In enumerating these exemptions, the bill must identify \$4.2 billion in new sales tax revenue. In other words, the bill seeks to repeal enough exemptions to fund an additional \$4.2 billion in money to compensate for the 1.5% reduction in the sales tax rate, effective July 1, 2004.
- Since a sitting Legislature cannot "bind" a future-sitting Legislature, the bill is more a "negotiating tool" or a "promise" than anything else. It still remains that the 2003 and 2004 Legislatures will have to pick through all the exemptions and find the \$4.2 billion. Also, those voting for this bill, at least 8 Senators, will not be in office during the 2003 and 2004 Legislatures (due to term limits), so any "deals" cut in enacting this bill will automatically evaporate, both institutionally and individually. The eight term-limited Senators number does not include those who may lose re-election in November and not return.

This is the very ill conceived form of tax reform AIF feared would take place. 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 very scenario AIF predicted would occur.

The Florida Constitution is not the appropriate vehicle for tax reform. The Legislature has already lost latitude with the Constitutional prohibitions against a personal income tax and an ad valorem property tax. In addition, by placing the Legislature on a timeline with a dictated amount of additional tax dollars to be found (\$4.2 billion) any objective, honest debate with regards to the merits of any

given exemption are indelibly compromised. Taxation is and should be the prerogative of the Executive Branch and the Legislature.

Health Care Insurance

The usual battle over the provision and cost of health insurance heated up in the Senate Banking & Insurance Committee on Monday, January 28. At issue was SB 362 by Senator Burt Saunders (R-Naples). The bill is referred to as the, "prompt pay" bill because it deals with issues related to the prompt payment of insurance dollars to health care providers and consumers. But more accurately, it should be referred to as the, "prompt increase in employer premiums" bill because that's what it would do. While the committee did adopt a "strike everything" amendment (a "strike everything amendment" replaces an entire bill with new language) which did make significant improvements to the bill, it still needs work.

At principle issue, as always, is a provision providing for a "civil action" or lawsuit, for insurance companies' refusal to cover certain types of doctor ordered care. The trial attorneys have been working overtime for years to attempt to widen their access to HMOs through the courts. Every session they bash away with legislation in an attempt generate more litigation over the provision of care. The potential of course, is millions of dollars for trial attorneys and skyrocketing premiums for Florida's employers.

While the committee approved the bill by a vote of 10-1, it was made clear by members of the committee that the civil cause of action provision and other provisions were problematic and the bill would have to be "cleaned up" before it went to the Senate floor. Senator Burt Saunders' (R-Naples) efforts to address AIF's concerns and the concerns of others are appreciated.

The House version of "prompt pay," HB 293 by Representative Holly Benson (R-Pensacola) and others was "temporarily passed," on Wednesday, January 30, which is Legislative parlance for delaying consideration until the Committee meets again. The bill, as drafted, places an enormous administrative burden on health maintenance organizations, limiting their ability to accurately manage their finances. This version does not provide for litigation over the provision of care. However, in an attempt to speed the process, the bill provides for what could be tremendous financial losses for insurers.

While AIF is sympathetic to the concerns of health care providers and consumers with regards to prompt payment there remains the inescapable reality that if the issue is not addressed carefully, any solution could do more harm than good. In addition, such 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.

Also, on Wednesday, January 30 The House Committee on Insurance gave favorable votes to HB 911 & HB 913, both by Representative Frank Farkas (R- St. Petersburg). Last Session, the Legislature appropriated \$200,000 to fund the study of proposed health benefit mandates. As of today, none of these funds have been spent. HB 911 requires that an unspecified "portion" of these funds be used by the Office of Legislative Services to contract for the completion of a report assessing the impact of a list of 18 existing mandated health benefits and three proposed mandated health benefits. An amendment was offered at the request of Representative Farkas to study only future mandates. This amendment was also amended to include medical nutrition therapy and occupational therapy in the study. It was a first for AIF to stand up in the Insurance Committee and support a "mandate bill." However, AIF believes that the study will shed some light on the cost of future mandates. The bill now goes to the House Committee on Health Regulation. As we have reported many times before, Legislative mandates, which require insurers to provider specific types of coverage in their health policies are a tremendous cost-driver to the system and ultimately increase premiums for Florida's employers.

Florida has some 51 mandates in law, many of them well intended. A careful review is necessary, however, to address the law of unintended consequences. It does no good if Florida law requires a "Cadillac" health insurance policy that no one can reasonably afford.

HB 913 is in response to the declining number of carriers who were offering small employer health benefit plans by changing the "Employee Health Care Access Act." According to a representative from Blue Cross Blue Shield, the "flexible plan" described in this bill could save employers 20% on their insurance premiums by lifting restrictions upon deductibles, coinsurance, co-payments, and maximum annual or lifetime payments. Also the bill requires the appointment of a new health benefit plan committee every 4 years, beginning October 1, 2003 in order to review the program. The bill now goes to the Committee on Health Regulation.

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.

Supreme Court Selection and Terms

On Tuesday, January 29, SB 162 by Senator Anna Cowin (R-Leesburg) was "temporarily postponed" in the Senate Judiciary Committee. This means the Committee will have to get back to the bill next time. SB 162 proposes an amendment to the State Constitution to make proceedings of judicial nominating

commissions public and to abolish retention elections for the offices of Supreme Court Justice and district court of appeal judge, making the offices appointive by the Governor, subject to Senate confirmation, with no one eligible to serve more than 18 consecutive years.

HB 567 by Representative Fred Brummer (R-Apopka) has not been heard in committee and it has been withdrawn from further consideration. At this point, we are not aware if another House companion bill will be introduced.

While AIF has no position on this bill, it is a fascinating proposal. Unlike tax exemptions, the "ground rules" for Florida's judiciary are rightfully housed in the Florida Constitution. Any attempt to alter these ground rules must go through the Constitution. Senator Cowin's proposal is yet another attempt to something – *anything* - to re-establish some accountability to a Judiciary system run amok, unresponsive to the body politic and the expressed will of the Legislature. The courts have taken to crafting law as opposed to interpreting law through the Constitution, which is its duty. And, simply put, the Supreme Court has a less than veiled contempt for the business community, seemingly ruling against businesses at every turn.

Stay tuned to our daily brief and to our web site at <http://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.