



FROM MAY 1, 2003

LATE BREAKING NEWS

Having failed to pass a budget in a timely manner, legislators are now working feverishly to pass some other priority bills. The House and Senate each took action today on workers' compensation reform at; auto insurance bills are also on the move.

WORKERS COMPENSATION

Source: Mary Ann Stiles and Tamela I. Perdue; Stiles, Taylor and Grace, P.A.

The House workers' compensation bill, CS/HB 1837, overwhelmingly passed the House this morning, by a vote of 104 to 10. This provisions in this bill are estimated to bring about 14.15 percent savings overall, with an additional four percent savings accruing to the construction industry for a total of 18.15 percent.

The bill then went to the Senate, which took up the House bill instead of SB 1132. Even though the House leadership had warned against making any amendments to its bill, the Senate adopted five substantive amendments, one title amendment, and two technical amendments, which combined reduced the savings to less than 14.15 percent.

The amendments that were adopted are outlined below.

1. A late filed amendment by Senator JD Alexander (R-Winter Haven) changed the House language on attorneys' fees from the current statutory formula of 20 percent of the first 5,000; 15 percent of the next \$5,000; ten percent of the remaining amount of benefits secured during the first ten years; and five percent of the benefits secured after ten years, without any exceptions for hourly rates. They then adopted a formula of 20 percent of the first \$5000; 15 percent of the remaining amount during the first 10 years after the date the claim is filed. In lieu of that formula, the judge can approve a fee not to exceed \$1,500 at a maximum hourly rate of \$150 per hour, if the benefits secured are less than \$10,000. In those cases where the carrier denies an injury and the claimant prevails on compensability, in lieu of the attorneys fees equal to 15 percent of all benefits secured, the judge may award up to \$1,500 based on a maximum rate of \$150 an hour.

2. A second late filed amendment filed by Senators Charlie Clary (R-Destin) and Jeff Atwater (R-Palm Beach) made significant changes to the Joint Underwriting Association (JUA). The JUA is to be actuarially sound and must not be competitive with the voluntary market, thereby allowing the JUA to be the last resort for coverage. The plan creates tiers one and two that cannot exceed 125 percent of approved rates. Tier one must include employers whose premiums do not exceed \$20,000 and who have had no lost-time or incurred medical-only claims in excess of 50 percent of the premium in the preceding two years. Tier Two must include employers who are unable find coverage in the voluntary market but have an experience mod factor of 1.05 or less, and employers that fall into the categories of charitable and nonprofit organizations. A third tier is created for all other employers. This tier must be actuarially sound and self supporting. If the plan issues assessable policies insureds in tier three are liable on a pro rata basis for any deficits. If tiers one or two have a deficit, the department shall transfer a one-time allocation of an amount not to exceed \$5 million, subject to appropriation by the Legislature. After the transfer, if a deficit exists, the plan can levy assessments upon all workers' compensation policy holders not to exceed two percent of each policy holder's annual premium in any calendar year. Such assessments shall be collected by the carrier as a separate line item, in addition to the premiums charged by the insurers. If a deficit exists in tier three, the deficit may be funded through increased premiums charged to insureds of the plan.
3. An amendment by Senator Walter Campbell (D-Tamarac) weakened the House mental or nervous injuries provisions by eliminating the language that provided that in no event shall benefits for a mental or nervous injury be paid for more than three months after the date of maximum medical improvement.
4. Senator Bill Posey (R-Rockledge) filed an amendment that clarified what an affiliated person is who is delinquent in paying a stop-work order and penalty assessment to make it more difficult for someone to get around the order or assessment.
5. Senator Posey also filed an amendment, which passed on voice vote, to allow the chief financial officer to contract with state attorneys in the three largest judicial circuits to prosecute criminal violations of the workers compensation law, with the contract fees to be paid from the Workers' Compensation Trust Fund. The amendment further allows the employer or carrier to request from the unemployment compensation records, wages of an employee reported by any employer. The employer must consent as must any employer who paid the wages to the employee subsequent to the date of accident. The amendment also requires an annual report to the Legislature from the Department of Financial Services regarding the joint performance of the workers' compensation fraud and enforcing compliance with the workers' compensation coverage requirements under Chapter 440.

The final outcome in the Senate would have been much worse, were it not for the leadership and personal intervention of Senate President Jim King (R-Jacksonville). First, Senator King agreed to take up the better House bill rather than the inferior Senate bill. Then, he convinced his Senate colleagues to withdraw almost all of their pending amendments. Finally, he personally lobbied other senators to pass a strong, pro-business, workers' compensation bill. Regrettably, the Senate was not willing to pass the House workers' compensation bill "clean" (that is, without any amendments). Nevertheless, President King's efforts prompted the Senate to take a major step in the right direction.

The bill will now go back in messages to the House. The House can either refuse to concur in the amendments and send the bill back to the Senate or it could accept the amendments. Under House rules, however, amendments must be held for 48 hours, giving members a chance to review them. Unless by chance the House waives such a rule, passage of the Senate amendments this session is impossible.

AIF supports legislation that controls medical expenses, reduces litigation, and corrects inefficiencies in the workers' compensation system. Above all, AIF supports remedial legislation that will provide fairer benefits to injured workers and lower costs to employers.

AUTOMOBILE INSURANCE: PIP REFORM

The House bill relating to Florida's no-fault motor-vehicle insurance law, HB 1819, co-sponsored by the House Insurance Committee and Representative Kim Berfield (R-Clearwater) was ordered engrossed Wednesday afternoon after the adoption of a few amendments. In our last report, we advised you that one provision of this bill would sunset no-fault insurance in two years. A few minutes before midnight last night, the House passed an amendment by Representative Jack Seiler (D-Pompano Beach) eliminating the sunset amendment previously adopted. The bill is now set for a third reading on Friday.

Today, the Senate companion, CS/SB 1202, by Senator JD Alexander (R-Winter Haven) was on the special order calendar. Some amendments were adopted that improve the bill's prospects for final passage. It is on its way to the House in messages.

AIF favors reform of Florida's automobile insurance law to return stability to the no-fault insurance market by reducing unnecessary litigation over medical and lost-wage benefits.

SMOKE-FREE WORKPLACE

Today, HB 1757, co-sponsored by the House Business Regulation Committee and Representative Manuel Prieguez (R-Miami) had its third reading on the Senate floor where it passed on a 34 to 3 vote. As amended, HB 1757 prohibits smoking in enclosed indoor workplaces, public places, and other designated public areas. Smoking would be allowed in private residences; retail tobacco shops; designated smoking guest rooms in hotels; stand-alone bars with less than 12 percent of gross revenue from the sale of food; smoking cessation programs; medical or scientific research; and certain entertainment industry projects. The bill has been sent back to the House in messages.

AIF supports legislation that clarifies the legal obligation of employers to comply with the "no smoking" amendment to the state constitution.

HOMELAND DEFENSE

Wednesday, on a 118 to 0 vote, the House passed HB 1833, co-sponsored by the House Transportation Committee and Representative David Russell (R-Spring Hill). This bill establishes the Secure Airports for Florida's Economy (SAFE) Council.

The Senate companion, SB 2578, by Senator Jim Sebesta (R-St. Petersburg), was on today's Senate special order calendar. The bill was read a second time with amendments adopted. The Senate then laid SB 2578 on the table and substituted it with HB 1833. The bill was read a second time and awaits a third reading before going back to the House.

AIF supports legislation to promote homeland security in the State of Florida.

CONSTITUTIONAL AMENDMENTS

Monday, HB 1883, sponsored by the House Finance and Tax Committee along with Representative Randy Johnson (R-Winter Garden), passed on a 115 to 0 vote. This bill implements an amendment to the Florida Constitution by requiring a newly created Financial Impact Estimating Conference to prepare a clear and unambiguous 50-word financial impact statement for inclusion in the ballot summary of any amendment to the constitution proposed by initiative petition.

The Senate companion, SB 1322, by Senator Anna Cowin (R-Leesburg) was on the Senate special order calendar. The Senate laid SB 1322 on the table and substituted it with HB 1883. The bill was read a second time with amendments being adopted. The bill awaits a third reading.

AIF supports measures that strengthen the integrity of the constitutional amendment process, provided that the people retain the ultimate right to alter or revise the state constitution in accordance with fundamental precepts of democratic rule.

MINIMUM WAGE

SB 54, by Senator Lee Constantine (R-Altamonte Springs), passed the Senate on April 24 with a 22 to 13 vote. This bill prohibits political subdivisions of the state from requiring employers to pay a minimum wage other than that set by the federal government.

Today, the House companion HB 321, sponsored by Representative Frank Attkinson (R-Kissimmee) was on the special order calendar where it was temporarily postponed on second reading. The House special order calendar also contained SB 54, which was read a second time. An amendment was introduced, but failed to be adopted. The bill awaits a third reading.

On balance, SB 54 represents an important step in the right direction, especially for the hospitality industry in Florida. As a matter of principle, however, AIF continues to oppose all costly living-wage mandates at the local level including those that are limited to commercial transactions involving local government entities.

ENVIRONMENT

The Senate bill relating to liability under the drycleaning solvent cleanup program, SB 956, by Senator Dennis Jones (R-Seminole), passed the Senate on April 25 on a vote of 39 to 0.

The House companion HB 741, sponsored by Representative Dennis Ross (R-Lakeland), was on the House special order calendar today. The House laid HB 741 on the table and substituted it with SB 956. The bill was read a second time with no amendments added and now awaits a third reading.

AIF supports legislation that provides incentives for voluntary cleanup of polluted sites by property owners by offering them protection against wasteful litigation.

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.