

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FOR THE WEEK OF MARCH 31-APRIL 4, 2003

BUDGET BRIEF

In Tallahassee one of the annual rites of spring is the passage of separate pro forma budgets by the House and Senate in Week Five of the nine-week legislative session. After hard-working members of House and Senate appropriations committees finish crunching numbers in accordance with the priorities by legislative leaders, the House and Senate take up in earnest their respective appropriations bills. The floor debate slogs through a lengthy list of (mostly futile) amendments that are offered by individual members hoping to score (some cheap) political points with constituents back home.

This is the one occasion when it is politically advantageous to be in the minority, because the party in control, whether Democrat or Republican, must face fiscal reality and act responsibly. Not so the minority party. The minority can say what it wants. The majority must do what it must.

The ritual never varies. Lots of speeches. Lots of whining. Lots of interest groups complaining, as always, that they are being short-changed.

Initial passage of House and Senate appropriations bills constitutes an important way-station along the road to formal approval of the general appropriations act (GAA). Initial passage of appropriations bills highlights differences in budgetary philosophy and focuses public attention on the road ahead. Most importantly, this is a necessary step that leads in due course to appointment of a House-Senate conference committee that truly writes the GAA.

This week the House passed an “austere” \$52 billion budget, which slashes education and health programs but does not raise taxes. The Senate, meanwhile, voted to add \$1.4 billion to restore funding for the state’s schools, the poor, the sick and the elderly. About \$950 million of the Senate’s proposal would have to come from increased taxes or new funding sources. Precisely where this new money comes from is yet to be determined. Spontaneous combustion? Prestidigitation? Perhaps. The remaining \$450 million dollars would come from a raid on trust funds, a form of legislative legerdemain which is widely opposed by the business community and specially affected interest groups. The House proposal also diverts money from trust funds, albeit a smaller amount.

Simply stated, the Senate says, “In our budget we mean to meet our needs,” whereas the House says, “We meet to budget within our means.” This sets the stage for budget deliberations in the final four weeks of the legislative session.

Certainly, the depth and breadth of differences in the House and Senate budgets should not be understated. However, it must also be remembered that the first round of budget bills to pass the respective chambers are early bargaining positions and not hard-and-fast determinations of a final GAA.

The session is young. Ample time remains for compromise and conciliation of pressing fiscal disputes.

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WORKERS' COMPENSATION

On Wednesday, we provided you with a link to view a letter to the editor of the Tampa Tribune written by Mary Ann Stiles, General Counsel, Associated Industries of Florida. .

Please go to <http://fbnnet.com/2003-Articles/TampaTribWC.htm> to view this letter.

Also on Wednesday, Associated Industries of Florida released a press release supporting recent comments by Lt. Gov. Toni Jennings on workers' compensation.

Please go to <http://fbnnet.com/2003-Articles/ToniJenningsPR.htm> to view this press release.

On Thursday, the House Insurance Committee met and was scheduled to vote on a proposed committee bill that was drafted from the report of the House Select Committee on Workers' Compensation. Prior to the meeting, however, House leadership decided to delay a vote on the pending measure (and accompanying amendments) out of concerns that the bill, as amended, would not result in enough savings.

<p>AIF supports legislation that controls medical expense, reduces litigation, and corrects inefficiency in the workers' compensation system. Above all, AIF supports remedial legislation that will provide fairer benefits to workers and lower costs to employers.</p>
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MEDICAL MALPRACTICE

The Senate Banking and Insurance Committee heard SB 1154 and SB 1912, both sponsored by Senator Durell Peaden (R-Pensacola), relating to medical malpractice.

SB 1154 would create the Health Care Professional Liability Insurance Facility, a not-for-profit entity to provide affordable "excess" liability insurance protection for doctors who have policies that only cover small claims (usually \$250,000 or less). SB 1912 would revise laws relating to risk management programs in hospitals, ambulatory surgical centers, and mobile surgical facilities.

The committee passed both bills with no debate so that they would be ready for consideration by the Senate Judiciary Committee next Monday. At that meeting, the committee is expected to meld several medical liability reform bills that have been approved by the various committees, into an omnibus Senate medical liability reform proposal. This proposal would most likely not include a cap on noneconomic damages.

AIF supports a comprehensive package of measures designed to alleviate Florida's medical liability crisis, including, most notably, a \$250,000 cap on non-economic damages and necessary revisions to Florida's bad-faith insurance law. Vulnerability to large jury awards is why insurers have left the state. Many doctors, especially in the high-risk specialties, are leaving too. Now is the time for the Legislature to act decisively to provide immediate and lasting relief.

TAXATION

The House Commerce Committee heard a presentation on the Streamlined Sales and Use Tax Agreement, which is an attempt among state governments, with input from local governments and the private sector, to simplify and modernize sales-and-use-tax collection and administration. The project proposes that states conform their sales-and-use-tax laws to a simplification method that would apply to all sellers. This will be a prelude to Congressional authorization for participating states to collect sales tax from so-called "remote sellers" (i.e., internet, catalogue, television purchases from sources outside of Florida.)

To view a video clip of testimony on this issue, please go to <http://www.aif.com/taxmedia.htm>

AIF believes that the State of Florida could equalize the treatment of all retail vendors regarding the assessment and collection of state sales tax if a uniform national collection system is developed. Furthermore, the state treasury would benefit since the use tax currently levied but not collected on catalog and Internet sales would be remitted to the state treasury.

Under present law, the sale of manufactured gas to a public or private utility for use in the generation of electricity is subject to gross receipts tax and the purchase of manufactured gas is subject to a public service tax. On Wednesday, the House Finance and Taxation Committee heard and passed HB 329, sponsored by Representative Ken Littlefield (R-Zephyrhills), which creates an exemption for gross receipts tax for the sale of manufactured gas to a public or private utility for use in the generation of electricity and an exemption from the public service tax.

AIF supports legislation that removes taxes on manufacturing processes, which act as tariffs and diminish the competitive ability of Florida-made goods.

The Senate Committee on Commerce, Economic Opportunities, and Consumer Services passed two bills that expand the availability of certain tax incentives and revise several existing economic development programs. The members voted to combine SB 2252 by Senator Lesley Miller Jr. (D-Tampa) with another bill sponsored by Senator Burt Saunders (R-Naples) to create CS/SB 2328.

Most notably, the CS/SB 2328 provides economic-development tax incentives for companies that purchase equipment and machinery, including molds and dies, for the purpose of research and development.

AIF supports CS/2328. Florida should exempt from the sales-and-use tax all items of tangible personal property that are purchased specifically for use in research and development activities. Legislation of this nature pays big dividends to Florida, because it makes the state's business climate much more attractive to high-paying high-tech industries.

PRIVATE PROPERTY RIGHTS PROTECTION

The Senate Comprehensive Planning Committee heard and passed SB 1164, sponsored by Senator Ken Pruitt (R-Port St. Lucie) and Senator Steven Geller (D-Hallandale Beach). This bill strengthens the Bert Harris Private Property Act. It requires a governmental entity to report Harris-type claims to the state land-planning agency. It deletes references to “ripeness” and clarifies that a governmental entity must issue a “final decision” identifying permissible uses of the subject property. The bill states that the mere enactment of a law or regulation does not, in itself, violate the act – because the act applies to laws or regulations, *as applied*. Finally, and perhaps most importantly, the bill expressly waives sovereign immunity for actions arising under the Harris Act.

The Harris Act provides an avenue for property owners to protect their property rights against state overreaching. The Legislature must take action this year to ensure that the Harris Act continues to protect Florida citizens and businesses from government over-regulation. AIF will continue to support legislation that protects private property rights.

MINIMUM WAGE

The Senate Comprehensive Planning Committee heard SB 54, sponsored by Senator Lee Constantine (R-Altamonte Springs), which is the Senate's version of the House's minimum wage bill, HB 321, about which we have previously reported.

This bill prohibits the political subdivisions of the state from requiring employers to pay a minimum wage other than a federal minimum wage, or from requiring employers to apply a federal minimum wage to wages that are exempt under federal law. The bill does, however, allow political subdivisions to establish minimum wages for their employees, for employees of private employers under contract with the political subdivision, and for employees of employers receiving direct tax abatements or subsidies from the political subdivision.

On balance, SB 54 and HB 321 represent 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 wage mandates at the local level including those that are limited to commercial transactions involving local government entities.

TRANSPORTATION

The House Committee on State Administration gave a favorable vote to CS/HB 357, sponsored by Representative Bev Kilmer (R-Marianna). The bill relates to Department of Transportation contracts for professional services.

This bill provides that professional firms that have contractually agreed to provide construction-engineering and inspection services to the Department of Transportation will be considered agents of the state for the purposes of limiting liability under Florida's sovereign immunity statute, but will not be considered agents of the state for purposes of worker's compensation laws. The contract must also provide that the state be exempt from any liability incurred as a result of negligence by the contractor. The bill may in fact lower the professional liability insurance premiums of the engineering and inspection firms. It is anticipated that these firms will in turn offer lower prices to DOT for their services.

AIF supports legislation, such as CS/HB 357, that reduces the cost of doing business for both the state and private parties who contract to perform services for the state.

SMOKE-FREE WORKPLACE

The House gave its approval to HB 1757, which seeks to implement the anti-smoking amendment of the state constitution which was approved by voters in last year's general election.

[Click here](#) to read an analysis of HB 1757 as reported in the March 27 Daily Brief.

The amendment allows smoking in a limited number of venues, including stand-alone bars; exactly what qualifies as a stand-alone bar has opened a great divide between the House and the Senate. The House would outlaw smoking in all bars, while the Senate would allow smoking in bars that sell food, as long as the food sales do not account for 30 percent or more of revenues.

This is an issue that affects all businesses in Florida, not just restaurants and bars. Although the constitutional amendment leaves little room for doubt as to the ultimate impact on most all workplaces in this state, AIF will continue to monitor Amendment 6 implementation bills to ensure that the final enactment does not place an undue burden on employers and their ability to conduct business.

CONSTITUTIONAL AMENDMENTS

Wednesday was a busy day for bills to amend the amending article of the state constitution.

Wednesday afternoon the Senate Ethics and Elections Committee, chaired by Senator Anna Cowin (R-Leesburg), entertained four bills relating to this issue. Senators took some testimony and generally discussed SB 1506, sponsored by Senator Jeff Atwater (R-Palm Beach Gardens) and SB 318, by Senator Rod Smith (D-Gainesville). Both these bills are intended to offer affected interest groups an alternative to procuring signatures for placement of preferred measures on the ballot to amend the state constitution. Here, however, the suggested cure may be worse than the underlying disease, as the bills — or, more formally these joint resolutions to amend the state constitution — would permit California-style citizen initiatives for placement of statutory propositions on the statewide general election ballot.

The committee then moved on to SB 1172, sponsored by Senator Cowin. Currently, a proposed amendment to the state constitution can be ratified by a majority vote of persons voting on the amendment; Senator Cowin's bill would add the requirement that it receive a majority vote in 34 of Florida's 67 counties. The committee then followed with SB 1672, sponsored by Senator Bill Posey (R-Rockledge). In a nutshell this bill simply increases the threshold for ratification of a proposed constitutional amendment from a simple majority to two-thirds of all persons statewide voting on the amendment.

Wednesday evening, House Subcommittee on Ethics and Elections heard PCB PC-03-11, a House leadership bill. It is a proposed constitutional amendment to increase signature-gathering requirements for citizen initiatives. It also requires a two-thirds vote, rather than a simple majority vote, for ratification of all constitutional amendments. This is the same requirement as set forth in Senator Posey's bill.

The people retain the ultimate right to alter or revise the state constitution in accordance with fundamental precepts of democratic rule. AIF supports measures that strengthen the integrity of the constitutional amending process, especially with respect to petition drives. The subject matter of proposed amendments should be constitutional in character, and clearly understood by an informed electorate. AIF opposes California-style "citizen initiatives" which result in changes to state statutes without legislative approval.

INSURANCE

Wednesday, the House Subcommittee on Health Services heard and unanimously passed HB 169, sponsored by Representative Nan Rich (D-Sunrise), regarding the treatment of Autism Spectrum Disorders.

Currently, Florida law does not mandate the treatment of autism spectrum disorder by health insurers or health maintenance organizations. HB 169 would prohibit health insurers or health maintenance organizations that are regulated by the state from excluding coverage prescribed by the referring physician for the treatment of autism. The bill does not place any limitation on the type and number of services to be covered.

Although this legislation is well intended, AIF opposes additional mandates on benefits and coverage because they drive up premium costs, exacerbating the existing problems of affordability and availability of health insurance.

The Senate Banking and Insurance Committee heard and passed SB 436, sponsored by Senator Walter Campbell (D-Tamarac), also known as the "any willing provider" bill.

"Any willing provider" clauses undermine the ability of managed-care companies to negotiate definitive terms with health care providers. As such, the legislation may increase the cost of HMO and PPO plans.

Interestingly, in the last ten days two important appellate court decisions were handed down, which impact directly on the bill. The United States Supreme Court upheld a similar "any willing provider" law in Kentucky. This helps to legitimize the pending legislation in Florida in the eyes of some senators. Closer to home, however the Florida Supreme Court held that managed care organizations may be liable for the medical negligence of their contract physicians. As such, opponents of SB 436 justly argue that quality control in physician selection is now more important than ever.

AIF opposes SB 436. Imposing "any willing provider" on the managed care health delivery system would be disastrous to employers' ability to provide health care coverage to their employees.

Two weeks ago the Senate motor vehicle insurance bill was discussed in a public workshop. On Thursday, the sponsor, Senator JD Alexander (R-Winter Haven), offered a committee substitute which was passed unanimously by the Senate Banking and Insurance Committee.

This bill seeks to remedy problems with the state's no-fault automobile insurance law. It limits the application of contingency fee risk multipliers, sets a medical provider fee schedule at 200 percent of Medicare, and provides for stronger fraud penalties. Additionally, the bill contains favorable mediation language. The bill, however, makes no change in the verbal threshold for bringing a tort action for serious personal injury.

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.

ENVIRONMENTAL PROTECTION

The House Judiciary heard and passed HB 741, sponsored by Representative Dennis Ross (R-Lakeland), relating to liability under the Drycleaning Solvent Cleanup Program (DSCP). We previously reported to you that the Senate companion bill, SB 956, sponsored by Senator Dennis Jones (R-Seminole), had passed through several committees. Currently, the DSCP grants to eligible drycleaning facilities and wholesale supply facilities an exemption from liability for cleanup costs, provided that the facilities meet the requirement of the law and regulations.

HB 741 provides that a real property owner or nearby real property owner is not liable for claims, except for claims asserted by a governmental entity, for property damage of any kind due to drycleaning solvent contamination. This would have the effect of eliminating all causes of action for property damage, including common law causes for action. The immunity provisions of this bill would apply to sites eligible for cleanup under the DSCP and sites covered under a voluntary cleanup program.

AIF supports legislation, such as HB 741 and SB 956, that provides incentives for voluntary cleanup of polluted sites by property owners by offering them protection against wasteful litigation.

WATER RESOURCES

Wednesday, the House Natural Resources Committee approved, with a "strike everything" amendment, HB 279, sponsored by Representative Larry Cretul (R-Ocala). It pertains to consumptive uses and water permitting. The amendment drastically improves the bill in the eyes of the business community. The original bill could have impeded the development community from pursuing and obtaining permits in timely manner.

AIF will oppose this legislation if it is modified in any manner to impose burdensome growth management restrictions on Florida business and industry under the guise of water or resource protection.

UNEMPLOYMENT COMPENSATION

Thursday, the Senate Banking and Insurance Committee passed SB 470, sponsored by Senator Debbie Wasserman Schultz (D-Pembroke Pines) and Senator Alex Diaz de la Portilla (R-Miami). The bill's sponsors describe it as a bipartisan initiative to redress some of the lingering economic effects of the September 11 hostage attacks. As amended by a committee substitute, it provides for a temporary increase in unemployment compensation benefits. The increased rates expire June 30, 2005.

AIF oppose any diversion of funds from the unemployment compensation trust fund. Likewise, AIF opposes any legislation to permanently increase benefits in a manner that negatively affects the solvency of the fund. Although SB 470, in its present form, is not so egregious it still raises concerns for the business community. As such, the bill will be closely monitored by AIF.

IDENTITY THEFT & INTERNET FRAUD

The Senate Insurance and Banking Committee heard and passed SB 1580, sponsored by Senator Dave Aronberg (D-Ft. Myers) relating to identity theft and fraud. This bill is a companion measure to HB 1161, by Representative Leslie Waters (R-St. Petersburg).

SB 1580 expands Florida laws regarding unfair trade practice, the misrepresentation with intent to deceive another person, and obtaining personal information for commercial solicitation, while setting into law the criminal penalties for identity theft.

Identity theft and internet fraud cost businesses in Florida hundreds of millions of dollars a year. AIF supports legislation that will protect consumers and businesses by promoting prevention and prosecution of these crimes. However, AIF continues to monitor these bills to ensure that they are not amended in a manner to impose wasteful or punitive burdens on businesses.

CHARTER SCHOOLS

Charter schools are privately-run but operate under a contract with a local school district. They are often free from state and local regulations and mandates, but are usually held accountable for the financial and academic performance of the school and its students.

The State Board of Education is authorized to enter into a performance contract with up to six district school boards for the purpose of establishing them as Charter School Districts. A district may submit a charter proposal that exchanges statutory and rule exemption for an agreement to meet performance goals. Once a district is granted charter status, the district may establish performance-based contractual relationships with its public schools for the purpose of giving them greater autonomy with accountability for performance. Four districts in the state have been granted charter status: Volusia, Hillsborough, Orange and Palm Beach.

Florida currently has 222 charter schools serving approximately 51,000 students.

Many AIF members plan to open charter schools or strongly support this approach to promoting choice in the public school system. Charter schools also provide a convenient vehicle for recruitment and retention of employees. Given the success of charter schools to date in Florida, and fiscal pressures caused by passage of the controversial class-size amendment to the state constitution, the legislature is looking once again at charter schools as a cost-efficient way of improving the Florida's system of public education.

What follows is a brief mid-session report on pending legislation relating to charter schools.

Thursday, the Senate Committee on Education met and considered two bills relating to charter schools and charter school districts, SB 2170, sponsored by Senator Bill Posey (R-Rockledge) and SB 2242, sponsored by Senator Daniel Webster (R-Winter Garden).

SB 2170 provides an alternative method for a school district to become a charter school district. In order for a district to qualify, 50 percent of the graded schools in the district must receive an "A" or "B," and no school in the district may be graded "D" or "F." The district could then apply to the State Board of Education to receive "charter" status. Charter district status will be renewed annually if the district maintains its percentage of "A" and "B" schools and does not have any "D" or "F" schools.

SB 2170 was temporarily postponed after Senator Ron Klein (D-Delray Beach) raised a number of questions related to the current funding formulas for school districts.

Of interest, Representative Stan Mayfield (R-Vero Beach) has filed a similar bill in the House, HB 1507, which has been referred to the House Subcommittee on Education Innovation, House Education K-20, and Appropriations. It has not been heard in any of its House committees yet. Given that next week may be the last for House subcommittee meetings, the bill must have a hearing next week or its demise is imminent.

The Senate Committee on Education then considered SB 2242. As filed, this bill does the following:

- establishes guiding principles for charter school applications and operations
- expands the list of who may sponsor a charter school by providing that a state university or community college may sponsor a charter school either on its own or in partnership with a nonpublic educational institution
- modifies the charter school application and review process for all applications
- modifies the required content of the charter itself, by requiring charters to ensure that the primary focus of the curriculum is reading, and also requiring that curriculum and instructional strategies are consistent with the Sunshine State Standards
- requires that internal audits be compared with the financial projections contained in the charter application, and requires auditors to notify the charter school governing board, the sponsor and the Department of Education if the audit reveals a deficit
- adds failure to participate in the state's education accountability system to the list of causes for non renewal or termination of a charter
- requires charter school's annual progress reports to include specific information on performance data, financial status data, data on current and planned facilities and information on school personnel, including the proportion of personnel that hold professional or temporary certificates
- repeals the cap on the number of charter schools that may operate in any county
- replaces the Charter School Review Panel with a Charter School Accountability and Funding Authority whose responsibilities will include recommending funding allocations for charter schools

Senator Anna Cowin (R-Leesburg) offered a strike-everything amendment to this bill, which was adopted with two handwritten amendments. The first handwritten amendment was a technical amendment. The only other amendment that was adopted was a second handwritten amendment offered by Senator Cowin. Her amendment removed references to funding capital outlay to charter schools by priority. The bill as filed would have removed the current formula for funding capital outlay for charter schools, and would have prioritized funding to schools with tax-exempt bonds issued by local governments and to schools with long-term financing. Additional amendments were included in the packet and additional handwritten amendments were filed at the committee meeting, but all were withdrawn.

The strike-everything amendment makes the following substantive changes:

- removes the provision that changes the current funding formula
- reclassifies lab employees (still analyzing the effect of this change)
- removes provisions that allow community colleges or universities to sponsor charter schools

Also noteworthy is SB 1436 (by the Senate Appropriations Committee) and HB 703 by Representative Joe Pickens (R-Palatka) and others, relating to class-size reduction. The House bill, which has cleared the Education K-12 Committee earlier this week, exempts charter schools from the definition of core curricula courses for purposes of implementing the class-size amendment to the state constitution. SB 1436, which already cleared the Senate chambers 36-0, contains no such express exemption. Both bills repeal section 1002.33(13), F.S., that limits the number of charter schools that may be approved in a school district.

Charter schools are cost-efficient, educationally effective, and are often located at or near an employer's place of business. AIF supports the expansion and development of charter schools in Florida.

- 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.