

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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FROM APRIL 9, 2003

WORKERS' COMPENSATION

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

Today, the House Insurance Committee considered PCB IN 03-02 on workers' compensation. Before the committee meeting started the proposed committee bill's provision offered an estimated two-percent savings; by the time the meeting ended, amendments had been adopted to the bill that will probably result, at first glance, in a cost **increase** of least a 4 percent increase in premiums.

Representative Don Brown (R-DeFuniak Springs) offered a key amendment supported by the business community that would have eliminated hourly rate attorney fees, but the amendment failed.

Voting against this amendment were the following:

Kim Berfield (R-Tampa), Insurance Committee Chair
Dennis Ross (R-Lakeland) Workers' Compensation Select Committee Chair
Gaston Cantens (R-Miami).
John Carassas (R-Largo)
Donna Clarke (R- Sarasota)
Terry Fields (D-Jacksonville)
Bill Galvano (R-Bradenton)
Anne Gannon (D-Delray Beach)
Dan Gelber (D-Miami Beach)
Audrey Gibson (D- Jacksonville)
Adam Hasner (R-Delray Beach)
Marcelo Llorente (R-Miami)
Stacy Ritter (D-Coral Springs)
John Stargel (R-Lakeland)
Irving Slosberg (D-Boca Raton)

Instead, these representatives voted to set a contingency fee of 20 percent for all benefits secured, while allowing an hourly fee in medical-only cases up to \$5,000 and in compensability cases up to \$20,000. Representative Brown commented that after this amendment passed it might as well have been appropriate to also rename the entire workers' compensation statute, the Attorney's Compensation Act.

If the attorney-fee amendment was not enough, the committee also voted to increase fee reimbursements to 100 percent of Medicare for physicians, ambulatory surgical centers, work-hardening programs, and pain programs. This amendment also increases fees for surgical procedures to 140 percent of Medicare. In addition to these increases, the amendment allows for a five-percent fee increase in these schedules for each of the next five years. This amendment has already been priced to yield at least a two-percent cost increase and there are not enough savings to offset this cost increase.

The House Insurance Committee is listening to someone, but it is not the business community. When Associated Industries of Florida, the Florida Retail Federation, the National Federation of Independent Businesses, and the Florida Chamber cannot get the attention of the committee, there is no chance of reforming a workers' compensation system to reduce costs and halt the crisis facing the state.

Representative Ross promised that the so-called Cavey amendments, which reverse last year's procedural statutory changes, would never be considered. Today, those were not only considered, they were unanimously adopted. This will absolutely increase litigation, thereby increasing costs.

The original PCB also created the Workers' Compensation Appeals Commission, which would have brought consistency to the cases governing workers' compensation, in contrast to inconsistency in the First District Court of Appeals that currently exists. That provision was also eliminated from the PCB by amendment, leaving the House workers' compensation bill as nothing more than a hodge-podge of ideas that does nothing but increase costs.

Permanent total disability (PTD) benefits were the only issue that went in favor of the business community. The PCB contains measures that eliminate the troublesome Social Security analysis for PTD determinations and stops PTD benefits at age 70, restoring the original intent of the act to have a wage-replacement system and not a retirement system. There were amendments filed to strike these elements from the PCB, but the committee rejected them and left the PCB's important provisions on this issue intact.

The Senate was scheduled to unveil its package of workers' compensation reforms this afternoon in the Banking and Insurance Committee but committee action on this matter was postponed to next week. At this point, therefore, we are still unsure of the Senate position.

AIF supports necessary legislation to curtail escalating workers' compensation costs. In order to achieve this result, AIF supports legislation that eliminates the ability of claimants' attorneys to collect fees based on hourly rates in virtually all circumstances.

MEDICAL MALPRACTICE

The laundry list of medical malpractice bills came before the Senate Judiciary Committee today, including SB 560, SB 562, SB 564 and SB 2620, all sponsored by Senator Burt Saunders (R-Naples) and SB 1912, SB 2080 and SB 2120, sponsored by Senator Durell Peardon (R-Pensacola).

In accordance with a predetermined script, committee members combined these measures into three separate bills. The first committee substitute contained insurance provisions found in SB 560 and SB 2080, which includes a rate rollback. Senator Steven Geller (D-Hallandale Beach) and Senator Daniel Webster (R-Winter Garden), offered amendments to create an insurance fund that charges below-market rates with state government subsidies. Unlike the governor's recommendations, the bill contains no meaningful insurance bad-faith reforms.

This bill proposes the following legislation:

- requires the Office of Insurance Regulation to prepare a report on closed-claims information and medical-malpractice-insurer financial information
- provides for a rollback of medical malpractice insurance rates to levels in effect on January 1, 2001, with a mechanism to review proposed deviations from the rollback rate
- authorizes medical malpractice self-insurance funds
- requires the Office of Program Policy Analysis and Government Accountability to study the eligibility requirements for a birth to be covered under the Florida Birth-Related Neurological Injury Compensation Association and report to the Legislature by January 1, 2004
- authorizes healthcare facilities to apply to the Department of Financial Services for certification of any program that is recommended by the Florida Center for Excellence in Health Care to reduce adverse incidents; insurers must file with the Department of Financial Services a discount in the rate or rates applicable for insurance coverage to reflect the effect of a certified program; these facilities must receive a discount in the rate or rates applicable for mandated basic insurance coverage required by law
- creates a state-sponsored insurance company to provide an alternative source of excess insurance
- limits actions against medical-malpractice insurers to the insured for certain acts including violating of certain statutes and bad-faith acts committed while attempting to settle a claim

The committee next passed a substitute for SB 562 and SB 1912, which addresses medical discipline and licensure requirements. Senator Walter Campbell (D-Tamarac) proposed retention of the existing high burden of proof, as opposed to the lower standard in the bill. William Large, from the Department of Health, argued this amendment would make it harder for the Board of Medicine to discipline bad providers. The amendment was passed on a voice vote.

This bill revises regulations regarding healthcare facilities in a manner that promotes better patient safety. It also seeks to strengthen disciplinary proceedings against health care professionals.

The last committee substitute included many of the litigation reform provisions recommended by the governor's task force. Most notably, however, the committee failed to adopt an unconditional cap on noneconomic damages that would apply in all situations, which the governor's task force singled out as it's most important recommendation.

An amendment filed by Senator Alex Diaz de la Portilla (R-Miami) to remove the periodic-payments reforms in the bill was passed unanimously. An amendment filed by Senator Peadar deleted a proposal to ensure that the existing \$350,000 limit on pain and suffering would be an aggregate limit, when the plaintiff rejects arbitration and the claim goes to court. The committee then gutted the proposed sovereign immunity protections in the bill for emergency room workers.

The bill revises provisions relating to medical malpractice claims and actions as follows:

- revises criteria for “similar health care provider” for purposes of providing an expert opinion or to testify as expert witness regarding the prevailing professional standard of care in actions such that the expert must have in-kind experience, training, practice and expertise as the party against whom or on whose behalf the testimony is offered
- requires a setoff for economic and noneconomic damages, costs, and attorney’s fees against awards in medical-malpractice arbitration proceedings or a judgment in a medical-malpractice proceeding if there is an executed written release or covenant not to sue
- expands informal discovery in presuit screening and investigation to include the taking of sworn and unsworn statements of the parties or other health care providers, to make these statements discoverable and admissible for limited purposes, and to permit written questions to be submitted and answered
- limits claimant’s recovery in medical malpractice voluntary binding arbitration proceedings to the extent entitled by general law and the Wrongful Death Act
- extends immunity from civil liability under the Good Samaritan Act to health-care providers in a hospital under specified circumstances
- Extends sovereign immunity to health care professionals providing services in an emergency room or trauma center of a Florida-licensed hospital.

Former Speaker John Thrasher asked the committee to consider what it did today. He said there are real problems out there and that the Legislature will be back in special session. Art Simon, senior vice president of Associated Industries of Florida, spoke on behalf of the business community and advised the committee that the bills contain some very problematic provisions. They provide an illusion of relief and he urged them to move to the House and governor's positions.

Nevertheless, the committee then passed the three bills that make up its medical liability package.

AIF supports a comprehensive package of measures designed to alleviate Florida’s medical liability crisis, most notably, a \$250,000 cap on noneconomic damages and necessary revisions to Florida’s bad-faith insurance law. Now is the time for the Legislature to act decisively to provide immediate and lasting relief.

CONSTITUTIONAL AMENDMENTS

Today, the Senate Ethics and Elections Committee heard SB 2644, sponsored by Senator Anna Cowin (R-Leesburg). This bill amends the process of gathering signatures for citizen initiatives and suggests new deadlines for submission, review of signatures, and judicial review for proposed amendments.

The following are the key provisions of this bill:

- encourages sponsors of an initiative to submit the petition signatures to the supervisor of elections for verification no later than September 1 of the year preceding the next general election
- requires the attorney general to provide a motion for each petition requesting supreme court review on an initiative proposal be fulfilled prior to the first Tuesday in March of the year of the next general election
- prohibits giving or offering to give any pecuniary benefit in exchange for a petition signature

The committee passed the bill.

AIF supports measures that strengthen the integrity of the constitutional amending process, especially with respect to citizen initiatives.

ENVIRONMENT

The House Finance and Tax Committee heard CS/HB 1123, sponsored by Representative Donna Clarke (R-Sarasota), regarding contaminated site cleanup and received a favorable vote.

This bill would allow risk-based-corrective-action (RBCA) standards to be used for more categories of contaminated sites. Currently RBCA is used for underground storage tank, brownfields, and dry-cleaning contamination cleanup. The passage of this legislation would help clean up contaminated property quicker, having them available for property tax rolls and economic development.

Setting unreasonably high standards for remediating contaminated sites delays the cleanup of those sites, which harms the environment and the state's economy by keeping the property from being put to gainful use.

The Florida Legislature is drowning in water bills.

There are bills dealing with the Tohopekaliga Water Authority, Alafia Basin, Rodman Reservoir, water management districts, water control districts, Surface Water Improvement and Management (SWIM) program, and the list goes on and on. Why the interest in water? Some predict that if Florida follows past growth patterns, we will eventually run out of water. While conservationists and the business community agree that we need to protect our resources, we have different ideas on how to accomplish this goal.

The House Committee on Natural Resources considered several of the water bills today. Each bill passed with a favorable vote.

HB 807, sponsored by Representative Richard Machek (D-Delray Beach), was filed upon the request of the Florida Association of Special Districts. This bill would allow costs of improvements to original ditches, drains and other improvements of water control districts (there are approximately 90 of them) may be calculated into the apportionment of maintenance assessments of a water control district. It also exempts the water control districts from liability on district lands when such lands are used for recreational purposes.

HB 1005, sponsored by Representative Baxter Troutman (R-Lakeland), is the most controversial water bill of them all. In the original bill, existing statutory language was repealed that allows the Department of Environmental Protection (DEP) and the water management districts (WMD) to use water reservation by holding back from use water that would otherwise be available to consumptive use permit applicants.

Under current law such water can be reserved for the protection of fish and wildlife or public health and safety. The business community was concerned that this may place too many restrictions on consumptive use permits. One of the most unusual aspects of the legislation was that it required affirmative action by the Legislature to approve any amendments to the water resource implementation rule. This provision favored by the business community was taken out of the bill via an amendment offered by Representative Jack Seiler (D-Pompano Beach).

The bill was drastically changed with a strike-everything amendment. The bill as amended allows utilities control over reclaimed water. It also allows for WMDs to adopt water reservations by rules that they must be reviewed every five years. Also, the WMD must provide a recovery plan if it adopt a water reservation. Representative Troutman stressed to the committee that water reservations for the Everglades takes top priority and will not be changed. The bill received a favorable vote.

HB 1069, sponsored by Representative David Russell (R-Brooksville), started off as a bad bill for the business community, but the amendatory process improved it.

The original legislation was too restrictive. The strike-everything amendment now has each local government address in its comprehensive plan the water supply projects and sources necessary to meet existing and projected demands. DEP must develop a water conservation-guidance manual containing a menu of choices from which public water-supply utilities may select in the development of a comprehensive, goal-based water conservation program tailored to their individual service areas, which is effective and does not impose undue costs or burdens on its customers. It requires the WMD to develop and adopt rules for landscape irrigation for urban, commercial, and residential areas.

HB 1405 by Rep. Richard Machek (D-Delray Beach) revises the SWIM Act, which restores and protects water bodies of statewide and regional significance and directs WMDs to prepare lists of priority water bodies every three years and develop water body plans. HB 1405 retains the priority list and the plan review and approval requirements currently in law but it eliminates the requirements for WMDs to develop SWIM plans, giving the districts to develop that plans as an as-needed basis. This bill will help WMDs use the SWIM Program to improve water quality, restore wetlands, restore fisheries, and control invasive plants.

HB 1459, sponsored by Representative Machek, also directs DEP and WMDs to develop a water conservation guidance manual for water utilities for us in consumptive permitting in conjunction with other affect entities.

With many reoccurring themes in each of the water bills, it is expected that they will be combined into one bill before they reach the floor of the House. Water conservation guidance manuals and use of reclaimed water are just a few of the issues that are appearing in several bills.

AIF opposes legislation that imposes burdensome growth management restrictions on Florida business and industry under the guise of water resource protection. As such, AIF will continue to monitor these bills to ensure that no unfriendly amendments are added, which would adversely affect the state's economy.

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.