

ASSOCIATED INDUSTRIES OF FLORIDA

LEGISLATIVE WEEKLY UPDATE



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FOR THE WEEK OF MARCH 17-21, 2003

THE FIRST THIRD

Florida has one of the shortest legislative sessions of any major state in the country. Each year the session begins on a Tuesday morning and, if all goes well, it ends on a Friday evening 60 days later. Although the regular session can be extended, ordinarily it lasts for nine consecutive weeks.

Given finite time constraints, which are established in the state Constitution, the legislative process tends to follow a familiar path. During the first three weeks, legislators spend most of their time in committee meetings. During the next three weeks, formal legislative activities are divided more evenly between committee meetings and floor debate. In the last three weeks, standing committees wind down their activities while the House and Senate ramp up floor debate on the bills that managed to clear all committees of reference. Finally, in the last few days of the session, floor debate focuses on “messages,” which is legislative parlance for bills that are bouncing back and forth between the House and Senate in an ongoing process of negotiation and agreement on substantive provisions before the Legislature adjourns “sine die.”

By the end of week three, a bevy of major issues usually emerges from the cacophony of bills that are introduced early in the session. This year is no exception. It is now quite apparent that medical malpractice and workers’ compensation will be two of the biggest and most hotly debated issues of the 2003 legislative session. Consequently, these issues are not likely to be resolved until the very end and may become inextricably linked. In week nine House and Senate leaders may “trade off” provisions in one bill for concessions in the other, as part of a comprehensive settlement of all outstanding items. In the legislative process, “everything is related to everything.”

House and Senate differences in style, strategy, and substance are reflected in the handling of these two important issues.

With regard to workers’ compensation, a House select committee chaired by Representative Dennis Ross (R-Lakeland) has labored long and hard through a series of evening meetings to craft a consensus position on this very difficult issue. In contrast, the Senate has not yet taken up the workers’ compensation issue in committee. A handful of key senators, however, are believed to be meeting unofficially and behind the scenes to craft a workers’ compensation bill for formal consideration by the Senate Banking and Insurance Committee later in the session.

In the House the medical-malpractice issue is also on a fast track. Today, House members approved HB 1713 by Representative Frank Farkas (R-St. Petersburg), which caps non-economic damages, adopts certain other tort and insurance reforms, and promotes quality health care. In the Senate, ten different medical liability bills are still mired in committee.

House action this week was deliberately timed to get the medical malpractice bill out of the 120-member House and into the 40-member Senate, just in time for the arrival next week in Tallahassee of a massive number of doctors and other constituents to lobby legislators in support of meaningful medical liability reform. The more experienced senators, however, are moving somewhat more slowly on the medmal issue.

Substantively, legislative leaders in the Republican-controlled House of Representatives generally support the doctors. Their counterparts in the Republican-controlled Senate are tilting toward the trial lawyers – traditional allies of the Democratic Party in Florida. This, however, is only week three and the Senate may merely be posturing. At this point it is too early to tell.

In a nutshell, the House is out front on medical malpractice and workers' compensation, in an attempt to garner early and widespread support, whereas the Senate is moving cautiously and strategically, in patient anticipation of the all-important end game.

STATEWIDE MINIMUM WAGE

On Monday, the House Committee on State Administration took up HB 321, sponsored by Representative Connie Mack (R-Ft. Lauderdale). This bill will prevent local governments in Florida from enacting ordinances that require private employers to pay a minimum wage higher than the federal minimum wage.

Several presenters spoke in opposition to the bill, stating that this may prohibit local governments from setting minimum wages for their employees and those who contract with them. Supporters presented research showing that with a living-wage mandate, jobs will be lost and employers would see their wage costs skyrocket.

On balance, HB 321 represents an important step in the right direction, especially for the hospitality industry in Florida. As a matter of principle, AIF continues to oppose all costly living-wage mandates at the local level because they interfere with the employer-employee relationship, distort the market, and fail to achieve their stated objectives of alleviating poverty.

Highway Safety and Commercial Vehicles

Tuesday, the House Transportation Subcommittee on Transportation Systems voted favorably on two bills designed to improve conditions on the state's highways.

Representative Irving Slosberg (D-Boca Raton) introduced HB 497, which would create a two-year highway-safety pilot project on I-95 in Palm Beach County beginning on October 1, 2003. This would restrict commercial vehicles with three or more axles to the two outermost lanes of traffic, except for when the driver is preparing for a left turn, avoiding a hazardous road condition, or being otherwise directed by law enforcement.

The second bill was HB 1205, sponsored by Representative Andy Gardiner (R-Orlando). It expands the power of the Motor Carrier Compliance Office to keep off of the highways commercial motor vehicles that violate safety and other motor-carrier laws.

AIF supports reasonable, cost-efficient measures to improve safety on the state's highways.

SMOKE-FREE WORKPLACE

On Tuesday, the House Business Regulation Committee approved PCB BR 03-01, which embraces the subcommittee's recommendation to ban smoking in all restaurants and bars. The only exceptions to the amendment's ban on workplace smoking would be retail tobacco shops; tobacco manufacturing, distributing, and leaf facilities; designated hotel guest rooms; and private residences.

The House committee bill differs from the approach being taken by the Senate, which adopts a broader interpretation of permissible activities under the anti-smoking amendment.

Arguably, the Senate bill fails to satisfy the constitutional requirement, whereas the House bill exceeds it. It will be interesting to see how the two chambers reconcile this dispute later in the session.

AIF will continue to monitor the implementation of Amendment 6 to ensure that it does not place undue burdens on employers and their ability to conduct business.

MINING

On Wednesday SB 472 was adopted in the Senate by a vote of 37 to 1. The bill creates a streamlined administrative hearing and procedures process for allegations of property damage caused by the use of explosives and blasting associated with construction-materials mining. An amendment adopted on Tuesday fixed an objection AIF had to the bill's provisions as they relate to attorney fees. The original bill awarded attorney fees to the prevailing party, not to exceed \$15,000. The amendment awards attorney fees to the prevailing party if the suit is ruled frivolous under current law.

The House companion bill is still before the House Insurance Committee.

AIF supports this bill because it reduces waste by, among other things, giving both the plaintiff and the defendant incentives to avoid frivolous lawsuits.

AUTOMOBILE/PIP REFORM

Wednesday, SB 1202, sponsored by Senator J.D. Alexander (R-Winter Haven), which relates to motor vehicle insurance, was before the Senate Banking and Insurance Committee. This bill includes the following provisions:

- increase the threshold to move from the PIP system to the tort system
- remove the contingency fee multiplier
- allow for optional PPO-type coverage for first-person medical expense
- establish a mediation provision for expeditious resolution of disputed PIP claims
- establish a medical fee schedule of 150 percent of Medicare
- impose harsher penalties for all kinds of automobile insurance fraud.

AIF supports SB 1202. It restores the original intent of Florida's no-fault automobile insurance law and will reduce the cost of motor vehicle insurance in the Sunshine State.

ENVIRONMENTAL PROTECTION

On Wednesday the House Subcommittee on Environmental Protection considered HB 1123, sponsored by Representative Donna Clarke (R-Sarasota), which deals with contaminated site rehabilitation. HB 1123 applies risk-based corrective-action principles to all contaminated sites throughout the state. These principles include the following:

- establishing cleanup target levels for groundwater, surface water, and soil
- providing for alternative cleanup levels based on the applicant's risk assessment studies
- issuance of "no further action" by DEP based on the applicant meeting cleanup target levels using the best available technology.

Wednesday, the House Natural Resources Committee passed HB 741, sponsored by Representative Dennis Ross (R-Lakeland). HB 741 eliminates, by statute, a common law cause of action for a property owner to sue a responsible party for causing pollution by the release of dry-cleaning solvents that has migrated beneath the property, and thereby diminishes the value of his property.

AIF supports reasonable, cost efficient measures to clean up contaminated sites. AIF also supports legislation to stop the double dipping that has occurred with property owners receiving damages for the lost value of the contaminated property and rehabilitation of the property to its pre-contamination status.

EDUCATION

On Wednesday the Senate unanimously passed SB 1436, which implements the class-size reduction amendment approved by Florida voters in last November's general election. The bill establishes the following:

- constitutional class size maximum
- accountability for class-size reduction measures
- Class Size Reduction Lottery Revenue Bond Program
- special retirement program
- Florida BEST Program.

Funding remains an open issue that will not be resolved until the House and Senate take up appropriation bills (and perhaps new revenue bills) in earnest later in the session.

AIF supports legislation to implement the class-size amendment in a manner that relies on efficiency and flexibility, allowing districts to use their money in ways that do the most to improve the quality of education in the state.

PUBLIC LANDS AND WATER RESOURCES

On Wednesday, the House Subcommittee on Public Lands and Water Resources approved HB 1005, sponsored by Representative Baxter Troutman (R-Winter Haven). This is the water management and inter-district project bill. The legislation requires that the Legislature adopt the Florida Water Plan and prohibits a water management district from requiring a permit for use of reclaimed water. It also allows for the use of water reservations in conjunction with the Everglades Restoration Plan, but repeals further water reservations.

AIF supports reasonable measurers to protect and improve public lands and water resources in Florida, provided that such measurers do not impose unwarranted restrictions on developmental activities that support and maintain Florida's economy.

FINANCE AND TAXATION

On Thursday, the Senate Finance and Taxation Committee passed SB 1430 sponsored by Senator J.D. Alexander (R-Winter Haven) and SB 1774 sponsored by Senator Walter Campbell (D-Tamarac). Both bills are related to gross-receipt-tax exemptions on natural and/or manufactured gas.

Testimony from several members of the manufacturing community indicated that without these exemptions, plants would be forced to close, cut back, or relocate. The committee's Democratic chairman urged his members to support these bills because they would allow several of Florida's manufacturers to continue operating in the state.

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

FUNDING FOR THE STATE COURT SYSTEM

The House Select Committee on Article V met on Thursday and presented a draft proposal of its recommendations. The committee was created to implement Amendment 7, approved by Florida voters in 1998, which shifted funding for the state court system from county governments to the state; Article V is the section of the constitution that creates the state judiciary.

By next week's meeting the committee will roll out a bill in draft form and by the following week, the members plan to vote the bill out of committee.

Implementation of this constitutional amendment will result in a \$300 million decrease in county expenses and a corresponding increase in state spending. Rather than allowing county governments to reap a windfall, AIF supports an effort by the Legislature to reduce local ad valorem taxation to offset the mandated increase in state funding for the state court system.

WORKERS' COMPENSATION

Tuesday's meeting of the House Select Committee on Workers' Compensation was devoted to testimony regarding construction industry exemptions and the recommendations of the Governor's Commission on Workers' Compensation Reform.

Most of the testimony was in favor of repealing the exemptions for the construction, while expressing concern over the details of implementation and the availability and affordability of insurance for small, family owned contractors.

The remainder of the meeting was devoted to a roundtable discussion in which each member provided their priority issues which they believe should be included in the workers' compensation reform legislation.

The priorities identified by members ranged across the board, from workplace safety to fraud prevention to fixing the medical fee schedule to eliminating the construction exemptions. Several members agreed with the principle reforms advocated by AIF and the Coalition of Business and Insurance Industry regarding elimination of awards of hourly fees for claimant attorneys and decreasing the frequency of permanent-total disability claims.

On Thursday the House Select Committee on Workers' Compensation met to discuss and vote on the committee's final report, which will be used to draft legislation.

When the committee finished its work, the business community fared well. If the final bill that conforms to these proposals is enacted, it will reduce rates and reduce them significantly. Every one of the Coalition of Business and Insurance Industry's major proposals are in the report that will be presented to Speaker Johnnie Byrd (R-Plant City). Chairman Dennis Ross (R-Lakeland) is to be commended for ensuring that all members

of the committee had an opportunity to contribute to the committee's work and the final report is the product of consensus among the members.

Please go to <http://fbnnet.com/2003-Articles/WCissue2.htm> to read a thorough analysis of the select committee's report

AIF supports legislation that will bring more employers into compliance with the workers' compensation law, while reducing the amount of litigation over claims. Promoting greater fairness and efficiency in the system is necessary to curtail escalating costs for the business community, which can only come with a health insurance market.

MEDICAL MALPRACTICE

On Wednesday, the House of Representatives took up the medical-liability insurance bill, HB 1713, sponsored by Representative Dudley Goodlette (R-Naples) on second reading. House members spent about four hours debating a series of amendments to the bill. Overall the amendments adopted improved the bill. The cap on non-economic damages and "bad faith" insurance reform are both critical for insurance rate relief for health care providers in Florida. Conversely, bad provisions, such as an expansion of damages in "wrongful death" cases – which the House wisely rejected – would increase rather than decrease the cost of medical liability insurance.

Please go to <http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief10.htm#Medical Malpractice> to view the amendments as reported in the Wednesday Daily Brief.

Thursday, the Senate Health Aging and Long Term Care Committee considered a series of bills pertaining to medical malpractice reform, five of which were sponsored by the committee chair Senator Burt Saunders (R-Naples). His bills encompass many of the recommendations of the Governor's Select Task Force on Healthcare Professional Liability Insurance. The meeting did not go well for health care providers who are looking to the Legislature for meaningful tort and insurance reform to reduce skyrocketing medical-liability premiums.

Not a single bill recommending the \$250,000 cap on noneconomic damages, limits on attorney fees in medical-liability actions, and retaining the Florida insurance code, the statutory basis for "bad faith" liability made it through the committee. They did pass without any amendment, language which contains the task's force recommendation to improve the quality of care in Florida.

Please go to <http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief11.htm#Medical Malpractice> to view a report on Thursday's hearing..

The governor says he will veto any bill that does not substantively address the malpractice issue. If necessary, he will call a special session to resolve the issue favorably and provide Florida's doctors with much needed liability relief.

Today, after several hours of debate, the House gave final approval to HB 1713 which reforms the medical liability laws in Florida. The vote of 95-19 demonstrated the support this bill has garnered in the House. The bill now goes to the Senate, where the Senate Health Aging and Long Term Care Committee on Thursday rejected many of the key elements contained in the House bill. It is expected that this issue will be hotly debated until the end of the session.

AIF supports a comprehensive package of measures designed to alleviate Florida's medical liability crisis, including, most notably, a \$250,000 cap on noneconomic damages and necessary revision 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.

- 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.