

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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LEGAL REFORM

Today the House Judiciary Committee heard HB 135 Relating to Street Lights by Representative Dwight Stansel (R-Live Oak). The bill's sponsor explained that the bill would provide protection from immunity for utility providers if injuries arose in which a street light outage was a factor. This immunity would only apply if the utility company had actual notice of the outage and failed to make repair within 60 days of receiving that actual notice. The bill also contains additional time periods for repair in extraordinary conditions, such as severe storms or tornadoes. If an official state of emergency is declared the bill provides that such outages must be repaired within 365 days following cessation of the emergency condition. The utility company is also free from liability if the outage occurs due to the customer's request, failure to pay a bill or other breach of the contract for service.

Representative Dan Gelber (D-Miami Beach) and Jack Seiler (D-Pompano Beach) both had concerns about the bill's definition of "actual notice." Representative Seiler commented that the actual notice definition was more of an acknowledgement by the company that they received a notice of an outage rather than simply that the notice was provided to the company. Representative Gelber felt that the definition of actual notice in the bill technically would not include any means by which a utility employee learned about an outage in the normal scope of their work. Both Representative Stansel and Chairman David Simmons (R-Altamonte Springs) stated that the bill's intent was not to provide a shield of liability in instances where utility employees had notice of an outage but did not make a timely repair because the notice did not come through the specific means referenced in this definition. Both the chairman and the sponsor agreed to continue to work on this aspect of the bill through its next committee of reference.

Additionally, Representative Seiler had a series of six amendments prepared for the bill that he explained but ultimately withdrew. He promised to continue to work with the bill sponsor through the committee process to see if his concerns could be addressed at a later date. In addition to the question of notice, Representative Seiler was concerned about the time frame for which repair could be delayed due to the discretion of the utility provider rather than requiring extraordinary conditions to exist before allowing additional time for repair.

The bill passed the House Judiciary Committee unanimously. It will next be heard by the House Justice Council.

AIF supports the concept of providing protection to utility companies that show strong corporate responsibility by repairing street lights within a reasonable time frame. The street light issue is part of the overall debate on legal reform. As such, AIF is supporting changes to the current tort system that will bring about reasonableness, fairness, and predictability.

In addition to the street light bill, the House Judiciary Committee heard additional testimony during a workshop on premises liability, which is part of the governor's tort reform package. This is also one element of the tort reform package developed and advocated by the Florida Coalition for Legal Reform and AIF. Premises liability is one facet of joint and several liability – a doctrine which needs to be completely abolished in the State of Florida.

Chairman Simmons laid out several different approaches to looking at the premises liability issue which include:

- (1) Placing the intentional tortfeasor on the jury verdict form in all premises negligence cases.
- (2) Requiring the jury to hold the business owner defendant to a standard of comparative foreseeability
- (3) Limiting the evidence of prior crimes on a property that a plaintiff can introduce to only those crimes similar in nature to the crime in question during the trial; and
- (4) Creating a list of security standards that would function as a safe harbor for a business faced with a negligence action if all required safety measures had been implemented although the crime still occurred.

The committee heard testimony from representatives of both the trial bar and the business community on this issue. The trial lawyer stated that the law should not be changed and that adding the intentional tortfeasor to the verdict form would always provide the business with 100% defense from any case and would confuse the jury by mixing negligence standards and intentional tort standards.

Representatives from the business community, however, pointed to the greater policy concerns if the law is not changed. These cases should be judged on the basis of fault. People and businesses should not be responsible to pay for wrongs that they did not commit or for the wrongs of others. It was also pointed out that the trial lawyers frequently say that juries are the best places for deciding the law. Therefore the law must allow for the intentional tortfeasor to be on the jury verdict form so that the jury can apply the laws of foreseeability and negligence to these cases and determine which proper party is at fault for the injuries suffered.

There was also significant debate among the committee members. Representative Dennis Baxley (R-Ocala) questioned why society no longer requires personal responsibility and allows businesses to pay for wrongs that they did not commit or control. He stated that the true victims are the business owners who are stuck with these lawsuits and have to close their doors or terminate employees or cannot afford to educate their children. He believes that a common sense approach of not requiring businesses to pay more than their fair share is the way the issue needs to be resolved.

Representative JC Planas (R-Miami) stated that although he understands both sides of the issue, he does not want to create disincentives for businesses to locate in poorer neighborhoods in an effort to re-develop and revitalize an area. He also stated that it is the government's responsibility to protect people and prevent crime – not the responsibility of a business owner. He pointed to the revitalization of Times Square in New York City. New York's mayor promised businesses that the city would provide protection if the businesses would come back, and that formula worked. Representative Planas suggested that all sides begin meeting again to work out a compromise on this issue for the committee to consider at a later date.

Representative Jeff Kottkamp (R-Naples), who worked significantly on this issue last year, pledged to work with all the parties again this year and reach a compromise that would be able to be passed in both chambers. Chairman Simmons announced that a premises liability bill would be voted on in the next committee meeting and that class action reform would be discussed in a workshop format at the next committee meeting.

Premises liability is part of the overall debate on legal reform. As such, AIF is supporting changes to the current tort system that will bring about reasonableness, fairness, and predictability. AIF will continue to closely monitor this bill to see if the final language meets these principles.

TAXATION

The Senate Government Efficiency Appropriations Committee gave unanimous approval to SB 1798 Relating to Corporate Income Tax by Senator Jeff Atwater (R-North Palm Beach). This bill is also known as the corporate "piggyback" bill. This bill ensures that corporations who are subject to Florida corporate income tax can base their tax calculations on current Internal Revenue Service rules. If the Legislature does not pass this good legislation, Florida corporations would have to keep a double set of books.

Its House companion (HB 1803) was passed out of its first committee of reference on March 22nd. SB 1798 was only referenced to this one committee and will now be debated on the Senate Floor.

AIF supports the passage of this bill so that Florida corporations do not have to endure the burdensome task of filing duplicate tax records.

MEDICAID REFORM

The House Health Care committees held a workshop on the Medicaid reform proposal. No votes were taken; the Committee only took testimony from the public and allowed members to ask questions about the proposed bill. The Elder and Long Term Care Committee walked through the long term care portion which would eventually move all Medicaid long term beneficiaries into an integrated care plan. Some key highlights are:

- Committee staff said it is unclear if the long term care portion of reform would start in two to three years or if it would be phased in over that period. Staff said that is a policy question to be answered.
- Representative Hugh Gibson (R-The Villages) Chairman of the House Elder & Long Term Care Committee said that the current successful Nursing Home Diversion program must be preserved and that any final bill will protect that program.
- The Committee will attempt to vote on the long term care portion of the bill next week.

AIF supports market based reforms to the Medicaid program so long as they continue to ensure that the truly needy have access to quality care.

ETHICS AND ELECTIONS

The House State Administration Council unanimously passed HB 1177 by Representative Baxter Troutman (R-Winter Haven). This bill would put a Constitutional amendment on next year's ballot which, if passed, would increase the term limits for members of the Legislature from eight years to twelve years. This increase in term limits would also apply to the Governor and members of the cabinet. It retains the eight year term limit for the Office of Lieutenant Governor. If passed by Florida voters, the increase in term limits would not apply to any sitting members of the legislature or executive branch.

Representative Troutman filed an identical bill during the 2004 session. That bill received favorable support in all committees of reference. The bill was placed on the special order calendar, but died on the last day of session.

A representative from the national group "U.S. Term Limits" testified during today's committee meeting in opposition to increasing term limits to twelve years. According to a recent poll of 3,500 Floridians (conducted by US Term Limits), 78 percent of those polled are in favor of term limits, 74 percent are in favor of keeping term limits at eight years, and 85 percent believe the legislature should not be debating any proposal to increase term limits.

The bill was viewed favorably by all members of the committee who defended its merits during debate. HB 1177 will now be head on the floor of the House.

AIF supports extending term limits from eight to twelve years in order to once again allow members of the legislature to become statesmen well versed in the intricate complexities of crafting public policy. The overall impact of term limits on the Legislature has been to cull the Senate and House of its leaders, at a time when the "state" needs their knowledge and experience the most.

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://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.