

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
WEEKLY UPDATE**



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**FROM THE WEEK OF MAY 2 – MAY 6, 2005**

The 2005 legislative session came to an official close on Friday, March 6th with the Legislature adjourning at 11:49 PM. The last day of session was a whirlwind from beginning to end, an extension was even signed by both the Speaker and the Senate president to prolong the session into the early morning hours, but in the end the political deal-making eventually stopped and in the words of the Senate President Tom Lee (R-Brandon) it was time to “end the horse-trading and be statesmen.”

Several of the top priorities for the Speaker and the Senate President died during the last hours of the 2005 session. The legal reform measures championed by Speaker Allan Bense (R-Panama City) died in the Senate and the lobbyists’ disclosure bill, a top priority for President Lee, died in House messages.

A great victory for the business community was obtained when the repeal of the Substitute Communication Systems Tax was passed. This bill, one of AIF’s top legislative priorities, was three years in the making. It was one of the first bills passed this session by the House and one of the last to be approved by the Senate.

The \$63.5 billion dollar budget was passed late Friday night after House and Senate leaders reached an agreement earlier this week. This budget reflects an increase of 8.4% over last year’s budget. The Governor now has 30 days to sign, veto, or line-item veto aspects of the General Appropriations Act.

Today we will be bringing you details of what happened in both chambers on the final day of session as well as the days leading to the final day. We will be providing a more detailed analysis of the main issues from this session in the soon to be released edition of the “Employer Advocate.” Make sure to be n the lookout for other AIF publications including the annual “Voting Records” where you will be able to see how all legislators rank on business issues as well as the second annual “Champion of Business” awards which will be announced soon.

**LEGAL REFORM**

AIF and the Florida Coalition for Legal Reform advocated a comprehensive package of legal reform bills aimed at increasing fairness and predictability in our state’s legal system for Florida’s business community. In the end, AIF and the Coalition were successful in passing some legislation that will help Florida’s businesses compete on a level playing field.

Unfortunately, the passage of much needed legal reform legislation including the abolishment of joint and several liability, the “holy grail” of legal reform died in the Senate in the last hour of session. AIF and the Coalition will continue to build upon the successes of this year’s legislative session, including the historic passage by the full House of Representatives of HB 1513 by Representative Don Brown (R-DeFuniak Springs).

Below is a subject by subject recap of the legal reform bills AIF has been tracking all session long, beginning with the bills that passed.

### **Asbestos**

Two asbestos related bills passed this legislative session. SB 2228 Related to Asbestos Related Claims by Senator Dan Webster (R-Winter Garden) was unanimously passed by the House on Monday, May, 2<sup>nd</sup>. SB 2228 limits the liability of a successor corporation’s asbestos-related liabilities incurred as a result of a merger or consolidation with another company. **The bill is now on the way to the Governor for consideration.**

The second asbestos bill is a more comprehensive piece of legislation. HB 1019 Relating to the Asbestos and Silica Compensation Act by Representative Joe Pickens (R-Palatka) is a sweeping reform which will insure that funds are available to those who are truly impaired by exposure to asbestos and silica. It will bar claims from those who are not impaired. The bill sets up strict medical criteria to determine those who are truly injured.

On Wednesday, May 4<sup>th</sup> HB 1019 was passed by the Senate on a 32-8 vote. It was slightly amended on a request by Senator Steve Geller to remove a provision in the original bill which required claimants to give out their social security numbers. HB 1019 was sent back to the House as amended and finally passed 103-13 on Thursday, May 5<sup>th</sup>. **The bill is now on the way to the Governor for consideration.**

### **Street Lights**

On Wednesday, May 4<sup>th</sup> the Senate passed HB 135 Relating to Street Lights by Representative Dwight Stansel (R-Live Oak) on a 37-1 vote, after previously having substituted HB 135 for its Senate companion SB 1790 by Senator Webster. The bill provides that a streetlight provider will receive protection from liability if it has designated procedures in place to respond to a notice that a streetlight is not working and informed its customers and the general public of those procedures. Additionally, a streetlight provider must repair the streetlight within 60 days of receipt of actual notice that the streetlight is not working, except in instances where repair is not possible due to circumstances beyond the provider’s control, such as a natural disaster. **HB 135 will now be sent to the Governor for consideration.**

## **Road Builders' Liability**

The Senate considered SB 460 Relating to Transportation by Senator Jim Sebesta (R-St. Petersburg) on Wednesday, May 4th. This is the Department of Transportation's yearly omnibus bill which addresses a myriad of transportation-related issues. One of the bill's provision provides that private road construction contractors are not liable to a claimant for personal injury, property damage or death arising from the performance of the contract work if at the time of the accident, the contractor was in compliance with Florida Department of Transportation (FDOT) contract documents material to the condition and/or defect that was the cause of the accident.

Senator Sebesta offered several amendments to the bill which were adopted. The first amendment limits liability for DOT contractors for accidents occurring in a construction zone when the accident occurs due to the driver's intoxication or reckless driving.

The second amendment provides that if DOT and its contractors are immune from liability as provided by the bill or not named as parties to a suit, they may not be named on the jury verdict form or found to be at fault. This amendment adopts the language of the Supreme Court's *Fabre* decision.

Senator Sebesta moved to take up the House companion bill – HB 1681 by Representative Ray Sansom (R-Ft. Walton Beach) and substitute the language of SB 460 as amended.

HB 1681 was then unanimously passed by the Senate and sent back to the House where it was unanimously passed as amended on the last day of Session. **HB 1681 is now on its way to the Governor.**

## **Vicarious Liability**

On Tuesday, May 3<sup>rd</sup> the Senate unanimously passed HB 551 by Representative Alan Hays (R-Umatilla). HB 551 expands the scope of the definition of the term "rental company" to include a related rental or leasing company that is a subsidiary of the same parent company of the renting or leasing company.

Current law limits liability of a rental car company if damages are incurred while the vehicle is out of their direct control and injuries occur. However, HB 551 was filed to provide that same protection to business entities holding a motor vehicle title or equity interest pursuant to an asset-backed ownership of a fleet of motor vehicles, even though the rental car operators actually control the vehicle.

**HB 551 will now be sent to the Governor for consideration.**

## **HB 1513 Relating to Civil Justice Reform**

HB 1513 Relating to Civil Justice Reform by Representative Don Brown (R-DeFuniak Springs) was the comprehensive legal reform package advocated by AIF and the Florida Coalition for Legal Reform. As originally filed, this bill addressed twelve different subject areas of civil reform. However, due to significant negotiations with all interested parties and other legislators, the bill was pared down to three issues: the repeal of joint and several liability, liability protection for product sellers and venue reform.

HB 1513 achieved historic status once it passed the House of Representatives on April, 28<sup>th</sup>. No other piece of legislation providing for the abolishing of joint and several liability had ever made it that far in the legislative process. Unfortunately, the bill did not have a Senate sponsor and it was never heard by any Senate committee. **HB 1513 died in the Senate Committee on Commerce and Consumer Services.**

### **Premises Liability**

On Thursday, May 5<sup>th</sup> the Senate considered SB 2566 Relating to Negligence by Senator Dan Webster (R-Winter Garden). This bill deals with slip and fall cases as well as premises liability. The original language in the bill would provide protection to retailers in cases where a foreign substance caused a person to become injured as long as the retailer did not have prior knowledge of the existence of the substance. The original bill also provides some guidelines to retailers for establishing an alleged “safe harbor.” The intent of this provision is to provide some protection from lawsuits to those retailers who meet the complex guidelines set out by the bill. The business community adamantly opposed any legislation that created these mandatory security measures. This laundry list of expensive security measures has the potential of increasing litigation enormously because businesses would surely be penalized if they did not immediately implement these costly steps. This language was a result of compromise during the committee process, during which the business community had earlier expressed its opposition.

During the amendatory process Senator Webster offered an amendment that would delete the “safe harbor” language and insert language allowing the intentional tortfeasor (the person who committed a crime) to be placed on the jury verdict form in order for a jury to be given the chance to fairly apportion fault. This would prevent businesses from having to pay an unfair amount of the damages just because a crime occurred on their property. The amendment would do nothing to prevent juries from finding businesses at fault if they indeed were negligent and it would protect small businesses who could not afford to meet the complex and expensive “safe harbor” guidelines. This amendment was supported by the business community, but many members debated against the amendment calling on distorted hypothetical fact scenarios to play on the sympathies of other Senators. The amendment ultimately failed by a 16-24 margin.

A motion was made to substitute SB 2566 with its House companion HB 1931 by Representative David Simmons (R-Altamonte Springs). HB 1931 was then amended to reflect the Senate language and was passed unanimously by the Senate on Friday, May 6<sup>th</sup>. The bill was sent back to the House where it was amended by Representative David Simmons (R-Altamonte Springs) to remove the “safe harbor” language and require the intentional tortfeasor to be on the jury verdict form only if the criminal act occurred outdoors. The revised version of the bill was passed by the House on an 87-30 vote. **HB 1931 was sent back to the Senate, but was never heard again, so it died in messages.**

## **Product Seller Liability**

On Thursday, May 5<sup>th</sup> the Senate took up SB 2568 Relating to Liability for Products by Senator Webster. This bill provides product sellers with some protection from liability as long as they are not aware that any of the products they are selling are dangerous or malfunctioning. The bill still allows injured parties to sue product sellers if the manufacturer of the product cannot be found or if the manufacturer is from another country.

Senator Webster offered an amendment which would exempt protection from liability if the seller altered, modified, installed, or failed to maintain the product in a manner that caused harm to the claimant. An amendment by Senator Bennett was adopted that provided the same protection offered to product sellers to product installers such as contractors or builders.

Despite these amendments, SB 2568 is still not strong enough to have a significant impact on litigation reform for the business community.

**SB 2568 was rolled over to third reading but a vote was never taken, thereby killing the bill on the Senate Calendar.**

## **Class Action**

The Senate also considered SB 2564 Relating to Class Actions by Senator Webster on Thursday, May 5<sup>th</sup>. This bill would limit class actions to only include Florida residents and non-residents whose cause of action occurred in Florida. One amendment was adopted that would exempt Federal and civil rights cases from the requirements of this bill.

**SB 2564 was rolled over to third reading but a vote was never taken, thereby killing the bill on the Senate Calendar.**

AIF salutes Speaker Bense and President Lee for the leadership roles they played in bringing the legal reform debate to the forefront of the legislature this session. Although a few issues passed, much work still remains to create a level playing field for all businesses and individuals involved in the judicial system. AIF will continue to lead the charge for the legal reforms needed to ensure Florida's continued economic prosperity.

## **Substitute Communications Tax**

On Thursday, May 5<sup>th</sup> the Senate took up SB 2070 Relating to Communications Services by Senator Lee Constantine (R-Altamonte Springs). In its current shape, the bill provides definitions of what constitutes a substitute communications system and it establishes a taskforce for the purposes of studying all aspects of this technology and its potential impact on tax revenue for Florida.

The bill was rolled over to third reading and negotiations were ongoing to determine whether the tax will be repealed outright or if the Senate will establish some type of moratorium-the length of which is still undetermined.

On the last day of Session, SB 2070 was finally passed by the Senate after being on the calendar for several days last week. An amendment by Senator Haridopolos was adopted that repealed the onerous tax outright, much to the joy of all the members of a broad coalition of businesses including AIF that have been advocating the repeal of this tax.

The bill was passed unanimously by the Senate and immediately sent to the House where it was read and passed unanimously. SB 2070 is now on its way to the Governor.

**AIF supports total repeal of the substitute communications system tax because as the law is now written, any business with a computer network or an in-house telephone system may become subject to the communications services tax.**

## **GROWTH MANAGEMENT**

On Wednesday, May 4<sup>th</sup> the Senate passed SB 360 Relating to Growth Management by Senator Mike Bennett (R-Bradenton) on a 34-5 vote. This is the Senate's comprehensive Growth Management package. The bill requires a local government's comprehensive plan to be financially feasible and the capital improvements element in a local comprehensive plan to include a schedule of improvements that ensure the adopted level-of-service standards are achieved and maintained. Also, it requires an annual review of the capital improvements element to maintain a financially feasible 5-year schedule of capital improvements. The bill strengthens the link between development approval and water supply planning. Several amendments were adopted by the bill's sponsor which would put the bill in the necessary posture in order for the Senate to negotiate with the House.

The House received SB 360 from the Senate on Thursday, May 5<sup>th</sup>. The bill was thoroughly debated and several amendments were adopted by Representative Randy Johnson (R-Winter Garden) that conformed the Senate language to that of the House. The bill was passed by the House 98-20 and a motion was made to accept the Senate's offer of taking this issue to conference.

The conference committee met throughout the day on Friday, the last day of session, and the bill was ultimately passed during the late evening hours. Both sides had to compromise but a historic product was still achieved. SB 360 will now be sent to the Governor for consideration.

**AIF supports any piece of legislation which encourages smart, sustainable growth. Florida's cities and counties must provide the roads, bridges, and water necessary for businesses to grow and flourish, while at the same time preserving the natural beauty that makes Florida such a unique state.**

## **Health Care**

On Monday, May 2<sup>nd</sup> the House passed HB 6003 (this bill combines HB 1869, HB 1871, HB 1873, and HB 1875) sponsored by the House Health and Families Council by a margin of 81-34. HB 6003 is the Medicaid reform bill that creates two pilot programs that will test innovative ways to provide health care services in the future.

The bill creates a Medicaid managed care pilot program in Broward, Duval, Baker, Clay and Nassau counties. All Medicaid recipients in these counties will be offered flexible health plans to meet their needs or they will be enrolled in various managed care programs.

The bill also creates a second pilot program that will focus on long term care services and be conducted in a rural and urban county to be determined at a later date. House members debated the bill for nearly 5 hours and adopted several amendments that added many safeguards and legislative reviews for the programs. This reflects the "go slow" approach legislators have demonstrated because of concern over changing our health care delivery system for Florida's elderly and vulnerable populations. It is hoped that the pilots will demonstrate innovative ways to provide services more efficiently and stem the rising Medicaid costs that affect Florida's budget.

HB 6003 was then taken up by the Senate on Friday, May 6<sup>th</sup> and the bill was substituted by its Senate companion, SB 838 by Senator Durell Peaden (R-Crestview). SB 838 was then taken up by both chambers with a constant stream of amendments throughout the last day of session. SB 838 was eventually passed by both chambers and is now on the way to the Governor.

<p><b>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.</b></p>
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#### **CONSTITUTIONAL AMENDMENT REFORM**

On Monday, May 2<sup>nd</sup> the Senate considered three Joint Resolutions designed to make it more difficult to amend Florida's Constitution. SB 4 would institute a subject matter filter by which the Florida Supreme Court would review each proposed amendment to ensure that only those provisions or proposals that amend or repeal an existing section of the Constitution on the same subject and matter; address a right of a citizen of the state related to Article I of the Florida Constitution; or change the basic structure of state government as established in Articles II through V of the Florida Constitution. Currently, the Florida Supreme Court can only decide whether the ballot title language meets the single-subject rule. Senator Jim King (R-Jacksonville) offered an amendment to SB 4 that would make the language similar to its House companion HB 1727. The amendment was adopted, but then Senator Rod Smith (D-Gainesville) offered a substitute amendment that deleted language, originally found in the House version, that would make it impossible for proposed amendments to change or limit the powers of the Executive, Legislative, or Judicial branches. Senator Smith explained that he offered this amendment because the "Constitution is the people's document and they have the right to limit or expand the power of their government." Senator Smith went on to explain that he did not think deleting this language would cause the House to reject the Senate's position.

A motion was made to substitute HB 1727 as amended in place of SB 4. HB 1727 was withdrawn from any committees in the Senate and was placed on the Senate Calendar

SB 6 by Senator Jim King would require that any proposed Constitutional amendment, whether initiated by citizens or the legislature, be required to receive at least 60 percent of the vote in order to pass. An amendment by the bill's sponsor was adopted that made the language in SB 6 identical to its House companion HB 1723. A motion was made to substitute HB 1723 in place of SB 6. HB 1723 was withdrawn from any committees in the Senate and was placed on the Senate Calendar.

The third and final bill dealing with Constitutional amendment reform was SB 2200 by Senator Jeff Atwater (R-North Palm Beach). SB 2200 would require that any amendment or revision proposed by the citizen initiative process that imposes a cost on the state, municipal or local government greater than one-tenth of one percent of the state budget must pass by at least 2/3 of those electors voting on the proposal, which is the same vote margin required by the legislature. A strike-all amendment was offered by Senator Atwater which changed the original language of the bill. The strike-all changed the one-tenth of one percent of the budget requirement to two-tenths of one percent of the general revenue. Senator Atwater explained that the reason behind this amendment was that it should not apply to the entire budget, since the budget includes trust funds. The adoption of this strike-all amendment brought the Senate language in line with its House companion HB 1741. Again a motion was made to substitute HB 1741 for SB 2200. HB 1741 was withdrawn from all its reference committees in the Senate and was placed on the Senate Calendar

In the end the only provision to pass this legislative session was HB 1723, the 60 percent requirement. If signed by the Governor, the proposal will be put on the ballot during next year's general election and left up to the voters to decide. The other two proposals were never voted on and both died on the Senate Calendar.

**AIF supports reforms to the process for amending the state Constitution by citizen initiative. Florida's Constitution is too easily manipulated by special interests, subverting the deliberation of public policy decisions and threatening the business community with the enactment of economically destructive programs and mandates.**

### STATE COURT FUNDING

On Wednesday, May 4<sup>th</sup> the Senate passed SB 2048 Relating to Judges by Senator Victor Crist (R-Tampa). This bill deals with the certification of circuit court, county court, and district court judges. The bill's sponsor stated that the need for judges is paramount and therefore SB 2048 creates an additional 55 new judges for the state of Florida. The bill also appropriates the sums of \$8,203,458 in recurring funds and \$306,659 in nonrecurring funds from the General Revenue Fund to the circuit and county courts. During the next year an additional 55 judges will be authorized bringing the total number of new judges to 110.

On the last day of session, SB 2048 was passed by the House 113-3. Representative Bruce Kyle (R-Ft. Myers) offered an amendment that would have increased the number of judges being funded the first year but it was defeated. SB 2048 is now on its way to the Governor.

**The business community depends on the court system to resolve property disputes, contract disputes, and other civil matters. In fact, most of the court system's time is business-to-business activity. Therefore, AIF supports any effort by the Legislature to sufficiently fund our state's court system.**

## TAXATION

On Tuesday, May 3<sup>rd</sup> the House unanimously passed SB 1056 Relating to Business Entities by Senator Ron Klein (D-Delray Beach). This bill seeks to harmonize many of Florida's existing statutes relating to business entities with provisions found in business friendly states such as Delaware and Nevada. This bill would effect how corporations, limited liability companies, not-for-profit corporations, and partnerships are regulated by the State.

According to the bill's sponsor the goal of this legislation is to make Florida as attractive to new businesses as possible. The Florida Bar along with other interested parties have been working on these vast reforms for almost two years.

SB 1056 had already been passed by the Senate and will now be sent to the Governor for consideration.

**AIF supports efforts by the legislature to bring Florida to the forefront of streamlined, business-friendly corporate environments, thereby making it attractive and as easy as possible for companies to do business in our state.**

On Wednesday, May 4<sup>th</sup>, The Senate unanimously passed HB 101 Relating to Sales Tax Holiday on School Supplies by Representative Ray Sansom (R-Ft. Walton Beach). Since 1998 some version of this legislation has been filed in order to provide a period of time during which clothing valued under \$100 and school supplies valued under \$10 are to be exempt from any sales tax. The nine-day period would extend from July 23 through July 31. Similar legislation was passed during last year's session.

HB 101 is now on its way to the Governor.

A similar bill was also unanimously passed by the Senate on Wednesday – HB 6001 Relating to Hurricane Preparedness by the House Committee on Finance and Tax. This bill provides that no sales tax will be collected between June 1, 2005 and June 12, 2005: (1) on any portable, self-powered light source selling for \$20 or less; (2) on any portable, self-powered radio, two-way radio, or weather band radio selling for \$50 or less; (3) on any tarpaulin or other flexible waterproof sheeting selling for \$50 or less; (4) on any self-contained first-aid kit selling for \$30 or less; (5) on any ground anchor system or tie-down kit selling for \$50 or less; (6) on any gas or diesel fuel tank selling for \$25 or less; (7) on any package of AA-cell, C-cell, D-cell, 6 volt, or 9 volt batteries, excluding auto and boat batteries, selling for \$30 or less; (8) on any non-electric food storage cooler selling for \$30 or less; and (9) on any portable generator selling for \$500 or less to provide light, communications, or food preservation.

HB 6001 is now on its way to Governor.

**AIF supports increasing business activity by allowing Floridians to purchase essential school and hurricane supplies without having to pay sales tax.**

On Friday, May 6<sup>th</sup>, the last day of the regular session, the House passed SB 2348 Relating to the Intangible Personal Property Tax by Senator Mike Haridopolos (R-Melbourne) by an 86-30 vote. This bill reduces to 0.5 mill the rate of annual (recurring) tax imposed on stocks, bonds, notes, and other intangible property, and provides for the tax to be repealed effective January 1, 2007. No change is made to the 2 mills non-recurring tax imposed upon obligations secured by liens on Florida property.

SB 2348 had already been passed by the Senate and is now on its way to the Governor.

**AIF supports efforts to repeal or modify the Florida Intangibles Tax. The lower we can get the intangibles tax, the better chance Florida has to attract new businesses that bring with them more jobs for our citizens.**

#### ENVIRONMENT

On Monday, May 2<sup>nd</sup> the House unanimously passed HB 937 Relating to Contamination Notification by Representative Bill Galvano (R-Bradenton). This bill provides for contamination notification requirements when contamination has migrated beyond the property boundary of the originally contaminated site, and provides specific criteria associated with each notice provided by the Department of Environmental Protection (DEP) and the site rehabilitator.

HB 937 was taken up on Thursday, May 5<sup>th</sup> by the Senate and passed unanimously without any new amendments added. HB 937 is now on its way to the Governor.

**AIF supports this bill and would like to thank Representative Galvano for his commitment to work with the business community. With this proposed legislation in place, surrounding property owners and businesses will benefit by having more timely and comprehensive information on the progress of the cleanup of nearby properties. In addition, it will aid them in making better informed decisions regarding their potential risks of exposure and appropriate ways to reduce or eliminate risk.**

- 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.