

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
WEEKLY UPDATE**



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**FROM THE WEEK OF MARCH 14 - MARCH 18, 2005**

### **LEGAL REFORM**

Monday on the steps of the Old Capitol, Governor Bush joined a wide array of civic groups, professional associations, and small business owners at a rally to urge the passage of significant legal reform in the state of Florida. Also present at the rally was Senate President Tom Lee (R-Brandon), Speaker Allan Bense (R-Panama City), members of the Florida Coalition for Legal Reform (FCLR) and the Florida Justice Reform Institute (FJRI).

Chief among the Governor's concerns is the elimination of joint and several liability, class action reform, asbestos litigation, limiting venue shopping, and premises liability just to name a few. In fact, Governor Bush stated that "He was for all tort reform," referring to the broad package of legal reform that has been filed by Associated Industries of Florida and the FCLR.

Several national legal reform figures also addressed the crowd this morning, including Tiger Joyce, president of the American Tort Reform Association (ATRA) and Dan Pero, president of the American Justice Partnership-a nationwide coalition of advocates for legal reform at the state level.

On Wednesday, March 16<sup>th</sup> the House Judiciary Committee was scheduled to hear HB 135 Relating to Street Lighting by Representative Dwight Stansel (D-Live Oak) on Wednesday. This bill provides that neither the state, nor any of its officers, agencies or instrumentalities, nor any electric utility that provides, maintains or operates street lights, security lights or other similar illumination, may be held liable for any civil damages for injury or death affected or caused by the adequacy or failure of that illumination, unless such liability was expressly assumed by written contract. This bill further specifies that no such entity owes a duty to the public to provide, operate, or maintain the illumination in any manner, unless such a duty is expressly assumed by written contract.

However, at the outset of the meeting Chairman David Simmons (R-Altamonte Springs) announced that the bill would be temporarily passed (meaning that a vote would be deferred until the Committee's next meeting). Representative Stansel further explained that the legislators and utility companies were continuing to work on drafting compromise language that could pass both the House and the Senate. Representative Stansel assured the committee that definitive language would be completed by this Friday at noon.

**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. AIF will continue to closely monitor this bill to see if the final language meets these principles.**

Also on Wednesday, the Senate Transportation Committee heard another legal reform bill, SB 1030 Relating to Vehicles and Financial Responsibility, filed by Senator Skip Campbell (D-Tamarac). The bill was presented by a staff member who explained that the bill was written to correct a "glitch" in current law relating to the financial liability of motor vehicle rental companies.

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, the bill 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.

SB 1030 was unanimously passed by the Committee and will now be heard by the Senate Banking and Insurance Committee.

The House Civil Justice Committee considered a similar measure, HB 551 Relating to Financial Responsibility for Motor Vehicles and Vicarious Liability by Representative Alan Hays (R-Umatilla). The bill as originally drafted would change current law relating to the financial liability of a rental car company if damages occur while a vehicle is not within the operation or control of the rental car company. Current law limits this liability for rental car companies, but this bill would extend that protection to additional business entities holding title to the fleet of cars.

An amendment by the bill's sponsor was passed that clarified that the protections in the bill would extend to rental car companies, title holding companies and other similar business entities.

Committee Chairman Mark Mahon (R-Jacksonville) noted that the bill was scheduled to be heard at a previous committee meeting, but was delayed due to the "controversy" surrounding the bill between the business community and the trial lawyers. The chairman thanked the parties and the bill sponsor for their willingness to delay the bill's hearing until they could work out their differences.

Representative John Stargel (R-Lakeland) asked whether Representative Hays had addressed the concerns of the trial attorneys who were previously advocating against the bill's passage. Representative Hays responded that the trial bar had agreed that it would not object to the bill's passage out of this particular committee.

There were no other comments or questions from the Committee and HB 551 was passed unanimously by the Civil Justice Committee. The bill is next referred to the House Committee on Insurance.

**Vicarious 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. As of now AIF prefers the House version of this proposal because it meets the principles of legal fairness and predictability.**

## CONSTITUTIONAL AMENDMENTS

On Tuesday, March 15<sup>th</sup> the Senate Ethics and Elections Committee passed three Senate Joint Resolutions designed to make amending Florida's Constitution more difficult. All three proposals, if passed by the legislature this year, will still have to be approved by voters.

In recent years, Florida has seen a dramatic increase in the number of Constitutional amendments brought forth via the citizen initiative process; the joint resolutions passed today are aimed at curbing this recent phenomenon. The three proposals, sponsored by Senator Jim King (R-Jacksonville) and Senator Jeff Atwater (R-North Palm Beach), are mirror images of the proposals by Representative Pickens (R-Palatka) finding their way through the House. SJR 6 increases the vote threshold for passing an amendment or revision to 60 percent, SJR 4 requires that Constitutional amendments and revisions by initiative pass a subject matter filter, and SJR 2200 requires 60 percent voter approval on all proposed amendments or revisions which would impose a significant financial impact on state government in excess of 1/10 of 1 percent of the state's budget (roughly 60 million dollars based on last year's budget).

The only difference between the two chambers is that the Senate, to this day, has not taken up the proposal of requiring Constitutional amendments brought up by citizen initiative to pass by a 60 percent margin in 60 percent of Congressional districts.

All three proposals passed unanimously today, and faced very little debate from the members of the committee. The only opposition came from members of the public, including Ben Wilcox of Common Cause, who testified that his organization was opposed to these proposals unless a statutory initiative alternative was included in the proposals. A statutory initiative process would allow Floridians to place new statutes or revisions of statutes on the ballot. As has been the case recently, this idea was met with heavy criticism from members of the committee who cited the usual examples from California's experience with its statutory initiative process.

Senator Atwater, closing on his presentation, reminded the committee and members of the audience that these proposals were but a "menu" of options that the citizens of Florida could pick and chose from. In other words, Floridians might decide that they want to increase the voting threshold to 60 percent but not limit the subject matter of proposed Constitutional amendments or they might not approve any of the proposals at all.

**AIF supports reforms to the process of 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.**

On Thursday, March 17<sup>th</sup> the House Ethics and Elections Committee unanimously passed HJR 1177 Relating to Term Limits by Representative Baxter Troutman (R-Winter Haven). HJR 1177 proposes to amend Art. VI, s. 4 of the Florida Constitution to increase the current term limits from eight years to twelve years, for Florida Representatives and Senators, or any member of the Cabinet. It retains the eight year term limit for the Office of Lieutenant Governor.

If passed by the legislature, the proposed constitutional amendment will be presented to the electors of Florida during the November 2006 general election, and if approved, will apply only to those officers whose consecutive years in office begin in November 2006 or after.

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 number of states have taken steps to repeal term limits legislation. According to NCSL figures, 16 states have had legislation to alter their term limits since 1999. Idaho repealed its term limits law in 2003 and Utah did the same in 2004. Term limits was the issue of the day during the early 90s and many states including Florida bought into the idea that term limits were a positive thing. After nearly 12 years with term limits most people involved in the legislative process have come to realize that term limits have not lived up to its promise.

The current eight year term limit for members of the legislature has lead to intensified internal politics in which members are forced to start seeking support for a leadership position literally after being elected. In addition and more importantly, institutional knowledge has shifted from individual members to lobbyists and staff.

The bill received strong support from members of both parties and the public. HJR 1177 will now be heard by the House State Administration Council.

**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.**

## TAXATION

SB 56 Relating to Streamline Sales and Use Tax by Senator Skip Campbell (D-Tamarac) was passed unanimously by the Senate Committee on Commerce and Consumer Services on Wednesday, March 16<sup>th</sup>. This bill would bring Florida law into compliance with the provisions of the national Streamlined Sales and Use Agreement and enables Florida to petition for membership in the Agreement.

This bill adopts definitions and procedures to streamline Florida's sales tax system as it relates to e-commerce. Thirty-nine states and the District of Columbia have already adopted such legislation. This legislation will put Florida businesses on a level-playing field with out-of-state companies who are selling products to Florida's resident via the internet, mail order, etc. by requiring these entities to collect and remit Florida sales tax to the Department of Revenue. Currently, Florida businesses are losing customers to these virtual businesses because consumers are not being assessed sales tax on e-commerce purchases. Although, Florida law requires consumers to pay such taxes, few are aware that they are required to pay, or that there is a penalty for not paying sales tax at the time of purchase.

The bill will now be heard by the Senate Ways and Means Committee.

**AIF supports implementation of the statutory mechanisms needed to allow Florida to enter into the Streamlined Sales and Use Tax Agreement with other states. If a uniform national collection system is developed, Florida could equalize the treatment of all retail vendors regarding the assessment and collection of state sales tax. Further, the state treasury would benefit since the use tax currently levied but not collected on catalog and Internet sales would be collected and remitted to the state.**

On Friday, March 18<sup>th</sup> the House Fiscal Council also approved the "Sales Tax Holiday" bill (HB 101) by Representative Ray Sansom (R-Fort Walton Beach). This bill provides an exemption from sales tax for certain items sold between July 23 and July 31, 2005. These exempted items include books, clothing, and school supplies.

HB 101 will now be heard on the House floor.

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

Also on Friday, the House Fiscal Council approved HB 963 by Representative Fred Brummer (R-Apopka) Friday on a vote of 17 yeas to 5 nays. Florida is at a disadvantage by having an intangible tax. Only three other states have it. Florida has two different intangible personal property taxes: an annual (or recurring) tax on the value of stocks, bonds, notes, and other intangible personal property as well as a non-recurring tax on obligations secured by liens on FL realty. The recurring tax is imposed at the rate of 1 mill and the non-recurring tax is at 2 mills. FL Constitution caps the rate of intangible tax at 2 mills.

HB 963 repeals the 1 mill recurring tax but does not make any changes to the non-recurring tax. The bill will now be heard on the floor of the House.

**AIF supports the repeal of the intangible tax. It is wrong to penalize businesses and individuals who save or invest their money. We need to make Florida competitive with other states and by removing this bad tax.**

## HEALTH CARE

All five health care committees in the House held a joint meeting on Wednesday, March 16<sup>th</sup> to review a draft of the Medicaid reform proposal crafted by the leaders of those respective committees.

The plan would establish two pilot areas, one urban and one rural to move Medicaid beneficiaries into managed care, create health savings accounts or allow them to opt out for private health insurance. Two potential pilot sites are Miami-Dade and rural northeast Florida. The plan would not only reform outpatient and acute care services but will also require the establishment of long term care networks for all beneficiaries over the age of 65. These networks would manage all long term care services, including nursing home care for a limited period.

Tuesday, the Governor released a separate Medicaid demonstration proposal that varies from the House plan. It is unclear how the two plans will be merged together or if that will happen at all.

Democratic members raised objections and multiple questions to the plan. Republican members were united in praising it. It is expected that this bill will quickly move through the House.

**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.**

## ENVIRONMENTAL

The House Committee on Environmental Regulation unanimously passed HB 137 by Representative Dwight Stansel (D-Live Oak) on Thursday, March 17th. This bill would give incentives to businesses that have a good compliance record with the Department of Environmental Protection (DEP). Some of the incentives include: longer duration of permits, less inspections and expedited renewal process.

To obtain the compliance incentives, an applicant must affirmatively request them as part of the permit application. Keyna Cory testified on behalf of AIF in support of this good bill.

HB 137 will now be heard by the House Agriculture & Environment Appropriations Committee.

**AIF supports legislation that considers a businesses' past performance in the permitting process. AIF believes that regulated entities should receive some benefit for past good behavior and should not be subject to arbitrary or uncertain punishment.**

## **HOMETOWN DEMOCRACY AMENDMENT STRUCK DOWN BY THE FLORIDA SUPREME COURT**

On Thursday, March 17<sup>th</sup> the Florida Supreme Court released its ruling on placing the Hometown Democracy Amendment on this year's ballot. According to the majority opinion "We hold that the proposed amendment should not be placed on the ballot because the ballot summary is misleading and does not comply with section 101.161(1) of Florida's statutes which lays out the guidelines for a proposed amendment's ballot title and summary.

This proposed amendment would have required a local referendum to adopt a new comprehensive plan or to approve any changes to a local comprehensive plan. The clear objective of proponents of this amendment is to slow growth by requiring it to be approved by the "ballot box".

The process of amending a local government comprehensive plan is already an arduous, time-consuming process. Additional requirements such as the one proposed in the Hometown Democracy initiative would make the process even more onerous, costly, and uncertain thus adversely affecting Florida's business climate.

**AIF applauds the efforts of the Florida Home Builders Association and the Association of Florida Community Developers for their advocacy on educating the public on the dangers of this proposed Constitutional amendment.**

Please <http://www.floridasupremecourt.org/decisions/2005/sc04-1134.pdf> to read the Supreme Court's entire opinion.

## UTILITIES

For many years, AIF has supported legislation that would level the playing field when the private sector has to compete against a local government to provide certain services. In 2000, AIF supported the solid waste industry when they successfully passed the "Fair Competition Act". For the past few years the telecommunication industry has tried for a similar law. The House Committee on Utilities and Telecommunications has taken the first step by passing HB 1325 by Representative Frank Attkisson (R-Kissimmee) on Friday, March 18th. This bill creates the "Governmental Authority Provision of Communications Services Act of 2005". This bill would prevent a governmental authority (GA) from providing covered service (i.e. cable service or telecommunications services) unless they are unable to find a private sector provider. The GA must do research, hold public hearings and finally hold a referendum for approval to provide services.

**AIF will continue to support legislation that would create a fair and level playing field when businesses compete against local governments.**

- 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.