

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FROM THE WEEK OF MARCH 21 - MARCH 24, 2005

AIF brings you our weekly report a day early this week. Both the Senate and the House of Representatives have canceled all meetings for Friday, March 25 in observance of the Easter Holiday.

LEGAL REFORM

On Monday, March 21st, the Senate Transportation Committee temporarily postponed SB 460 Relating to Transportation by Senator Jim Sebesta (R-St. Petersburg). The bill was supposed to include language from the Florida Transportation Builders Association which would expand the protection of road builders from damaging and onerous lawsuits as long as it was found that these businesses had met all the state and national requirements for safety in their work zones.

The language is expected to be included in the bill now that all interested parties have had a chance to meet and discuss the bill's provisions. The bill will be on the agenda for the next meeting of the Senate Transportation Committee which will be held on Tuesday, March 29th.

AIF supports the concept of protecting our state's road builders from onerous lawsuits and this 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.

Wednesday, March 23rd 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.

MEDICAID REFORM

The House Health Care committees held a workshop Wednesday, March 23rd 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 House 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.

TAXATION

On Tuesday, March 22nd the House Finance and Tax Committee considered a series of proposed committee bills. HFT 01 would repeal the tax on the retail sale of alcoholic beverages for consumption on the premises of a business establishment. Back in 1990, Florida enacted a law that taxed the retail sale of alcoholic beverages. A move to eliminate this "drink" tax has taken some time. The tax was reduced by one-third in 1999 and again by one-half in 2000. This proposed committee bill would eliminate the remainder of the tax and reduce the burdensome record-keeping required of businesses that sell alcoholic beverages. This so-called "sin tax" is poor public policy originally adopted as a "quick fix" source for additional state revenue.

After lively debate, the Committee gave the measure a favorable vote with 5 yeas and 3 nays and now the proposed committee bill has been assigned a bill number (HB 1803).

AIF supports the final repeal of this tax to eliminate a cumbersome, expensive, and regressive burden on both Florida's hospitality establishment and Florida's consumers.

Another proposed committee bill considered by the Committee was HFT 03, also known as the "Corporate Piggyback" bill. Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal income as the tax base for the Florida Income Tax. The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 during 2004, by adopting the Internal Revenue Code as in effect on January 1, 2005. HFT 03 ensures that corporations which are subject to Florida corporate income tax can base their calculations on current IRS rules. Failure to incorporate this proposal would require corporations to keep two sets of accounts: one for Florida and one for IRS.

HFT 03 was assigned a bill number (HB 1809) and will now make its way through the rest of its committee stops. Its Senate companion, SB 1798 Relating to Corporate Income Tax by Senator Jeff Atwater (R-North Palm Beach) was unanimously approved on Wednesday, March 23rd by the Senate Government Efficiency Appropriations Committee. SB 1798 was only referenced to this one committee and will now be debated on the Senate Floor.

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

On Thursday, March 24th the House Economic Development, Trade and Banking Committee passed HB 27 Relating to Sales Tax Exemptions for Machinery & Equipment by Representative Matthew Meadows (D-Lauderhill) This bill revises the existing sales and use tax exemption for industrial machinery and equipment purchased for use in an expanding facility that is engaged in spaceport activities or for use in an expanding manufacturing facility, by removing a limitation in the current law that the exemption applies solely to tax amounts above \$50,000 dollars per calendar year.

It also removes the \$100,000 dollar threshold applicable to purchases of machinery and equipment pursuant to federal procurement regulations. The bill retains the requirement that the taxpayer demonstrate that the machinery and equipment will be used to increase productive output by at least 10 percent at the facility. The bill will initially reduce Florida's tax revenues but the move will eventually pay off as manufacturers and factories purchase more machinery and expand their operations.

AIF, who is also the Florida affiliate of the National Association of Manufacturer (NAM), has supported the elimination of sales tax on machinery and equipment for years. With Florida's current economic situation, now is the time to eliminate this tax and allow Florida to be competitive with its neighboring states.

AIF supports eliminating the requirement that businesses pay the first \$50,000 in sales taxes per calendar year on manufacturing inputs. Eliminating this requirement would level the playing field for Florida manufacturers and would improve Florida's ability to compete for higher paying jobs, which would lead to an overall net increase in state revenues.

GROWTH MANAGEMENT

The House Growth Management Committee passed HB 1173 relating to Local Government Land Development Requirements by Representative Donna Clarke (R-Sarasota) on Tuesday, March 22nd. This bill codifies case law as it relates to local government collection of impact fees. This bill establishes a uniform standard for the collection of impact fees in an effort to rein in the excessive assessments by local governments which drive up the cost of new development in our state. The bill requires local governments to assess impact fees based on the most recent accurate and relevant data available; the lack of consistent criteria to determine the collection of fees results in unfair and inappropriate fees. Often, local governments collect impact fees to pay for capital improvements based on the impacts of the new development and, then tax these same homeowners via ad valorem taxes to pay twice for the same capital improvements.

The bill corrects this disparity by providing for a credit against impact fees paid by the fee payer or property owner, to the local government or other service provider by providing financial relief by means of impact fee credits to homeowners who are also paying local government taxes for the same improvements or services provided by the local government. The bill also requires that the fees collected be spent to address the impacts the local government incurs or to benefit the new development or fee, not in some other jurisdiction of a county which is not remotely impacted by the new development.

The Committee adopted several amendments to satisfy municipalities, as well as school boards concerns with this legislation. Representative Clarke should be commended for her willingness to work with all stakeholders on this issue without losing sight of her goal to provide financial relief for new home buyers and a fair and equitable method of collecting impact fees.

Senator Mike Bennett is sponsoring the companion measure, SB 2302, which has yet to be heard in committee. HB 1173 will now be heard by the House Local Government Council.

AIF supports legislation that improves Florida's growth management process. As Florida continues to grow by nearly 1000 people per day, we must ensure affordable housing is available for all residents. The wide disparity and inconsistency of collecting impact fees has led to exorbitant increases in the cost of housing in several areas throughout the state; this bill begins to address these disparities.

ECONOMIC DEVELOPMENT

On Tuesday, March 22nd the Senate Committee on Commerce and Consumer Services gave unanimous approval to SB 1770, The Florida Enterprise Zone Act. This bill is a product of an interim project by the committee. SB 1770 reenacts and extends the Florida Enterprise Zone program and its related various state and local enterprise zone incentives until 2015. The bill also requires re-certification of existing zones, expands related incentives, and requires additional zone reporting requirements.

The Florida Enterprise Zone Act was created in 1994 to: "provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas". At the end of 1994 there were 30 enterprise zones. As of July 1, 1995 there were only 19, but the law has been amended over the years and now there are 53 state enterprise zones, including 26 rural zones and 25 urban zones.

The bill was amended to match its House companion, HB 1725, and now will be heard by the Senate Community Affairs Committee.

AIF supports legislation that extends and expands the Enterprise Zone program. Enterprise zones help to create jobs and enhance good economic growth for Florida, especially in areas of the state that historically have not attracted industry and economic activity, by providing incentives and tax breaks to businesses that relocate to these zones.

On Thursday, March 24th the House Committee on Economic Development, Trade and Banking unanimously approved HB 1219 Relating to Florida Youth Summer Program by Representative Chris Smith (D-Ft. Lauderdale). This bill creates a pilot program which will provide summer jobs to at-risk and disadvantaged youth between the ages of 14 and 18. The Florida Youth Summer Program pilot project will be conducted through the Regional Workforce Board, more specifically District 22 which is located in Broward County. According to the bill's sponsor, this pilot program will give 500 kids an opportunity to work and learn life skills. The participants will earn minimum wage and will not be able to work more than 30 hours per week during the summer months.

AIF supports this legislation and applauds Representative Chris Smith for putting forth a new and innovative way of not only training our future workforce but also helping youth who are at-risk or disadvantaged.

TRANSPORTATION

The House Committee on Transportation gave unanimous approval of HM 985 by Representative Ray Sansom (R-Ft. Walton Beach) on Tuesday, March 22nd. This House Memorial urges the President and the Congress to expedite reauthorization of the Transportation Equity Act for the 21st Century also known as TEA-21 and guarantee that Florida and the other 49 states receive at least a 95 percent rate of return on all federal transportation funds distributed. TEA-21 was enacted by Congress in 1998 and authorized both substantive law and program funding for federal highways, bridge repair, public transit, and highway congestion and safety initiatives for a six year period (1998-2003). Unfortunately TEA-21 expired on September 30, 2003 but Congress has maintained short-term funding for the last 18 months by 6 extensions. The current extension expires May 31, 2005.

Currently Florida gets only 86 cents in federal transportation funding for every one dollar in federal transportation taxes and fees that it collects and remits. This House Memorial is requesting at least 95 cents.

HM 985 will now be heard by the House Rules and Calendar Council.

AIF supports HM 985 so that Florida can receive its fair share of transportation dollars. The increase in funding will generate jobs and help build roads to move people and goods in a more efficient manner.

ETHICS AND ELECTIONS

On Wednesday, March 23rd 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 Wednesday'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.

- 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.