

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FROM THE WEEK OF APRIL 18 – APRIL 22, 2005

LEGAL REFORM

On Friday, April 22nd the Florida House of Representatives passed three tort reform bills that AIF has strongly advocated for the past several months as part of this year's tort reform agenda. Reforms relating to asbestos litigation, streetlight liability and premises liability are all part of the tort reform package that AIF began promoting with the formation of the Florida Coalition for Legal Reform and the publication of its comprehensive proposed legislation and book explaining why such reforms are necessary to Florida's future success. Below is a subject by subject recap of the major legal reform bills moving through the process.

HB 1513 (Comprehensive Legal Reform Bill)

On Monday, April 18th the House Judiciary Committee passed an amended version of HB 1513 by Representative Don Brown (R-DeFuniak Springs) relating to 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, Representative Brown offered a strike-all amendment that brought the bill to three issues: the repeal of joint and several liability, liability protection for product sellers and venue reform.

Please go to <http://www.fbnnet.com/DailyBriefs/2005DailyBriefs/DB23.htm> read a full report and vote count on HB 1513 from Monday's House Judiciary meeting.

On Wednesday, April 20th HB 1513 and the abolishment of joint and several liability cleared its final committee of reference- the House State Administration Council. This was a historical day for the business community and its legal reform efforts. With the tremendous efforts of Representative Don Brown (R- DeFuniak Springs), not only did the abolishment of joint and several liability pass, so did eliminating some of the abuses in Florida for venue shopping. Florida's venue law has caused South Florida courts to be declared one of the country's worst "judicial hellholes" in the country. The bill also limits a product seller's liability in a lawsuit when a business puts a product on the shelf, which it does not manufacture, alter, or know the product was defective. However, the bill still protects injured persons and allows the product seller to be sued if the manufacturer who was the cause of the defective product is not subject to jurisdiction in the United States. The passage of this bill through the committee is another significant step towards true legal reform in Florida. This could not have happened without Representative Brown and the support of leadership, specifically Governor Bush and Speaker Allan Bense (R-Panama City). The bill passed by a vote of 6-2 with Representatives Don Brown, Ellyn Bogdanoff (R-Ft. Lauderdale), Tee Holloway (D-Miami Gardens), Jeff Kottkamp (R-Cape Coral), and Ron Reagan (R-Sarasota). Those voting against the bill and against the business community were Representatives Mary Brandenburg (D-West Palm Beach) and Audrey Gibson (D-Jacksonville).

HB 1513 will now be debated on the House floor.

Product Seller Liability

On Wednesday, April 20th the Senate Judiciary committee considered SB 2568 Relating to Product Seller Liability by Senator Webster. There is a misconception surrounding this bill that product sellers can never be liable and injured persons will have no one to sue if this bill passes. However this is NOT the case. The bill specifically provides that if the manufacturer cannot be sued in the United States then the product seller can be sued. This bill insures that there is always somebody from whom an injured person can recover. ALWAYS. Usually it will be the manufacturer, but if for some reason the manufacturer cannot be sued in Florida, then the product seller can be sued.

There was significant debate during the meeting regarding this bill and SB 2568 received a tie vote (a tie vote defeats the bill). However, thanks to a procedural move by Senator Posey, the bill was retained in committee to be heard at the next meeting. Voting in favor of the bill and with the business community were Senators Dan Webster, Alex Villalobos, Carey Baker, and Charlie Clary. Voting against the business community's position were Senators Dave Aronberg, Skip Campbell, Steve Geller and Bill Posey.

On Friday, April 22nd, the Judiciary Committee reconvened and again considered SB 2568. A series of amendments was offered by Chairman Dan Webster (R-Winter Garden) that clarified that the protections of the bill applied to products manufactured in the United States. The bill was passed unanimously and now heads to the full Senate for consideration. The corresponding language in the House for this proposal can be found in HB 1513, the legal reform bill sponsored by Representative Don Brown (R-DeFuniak Springs)

Asbestos

On Wednesday, April 20th the Senate Judiciary Committee passed SB 2562 Relating the Asbestos & Silica Compensation Act by Senator Dan Webster (R-Winter Garden). The primary opposition to this bill came from Senators Steve Geller (D-Hallandale Beach) and Skip Campbell (D-Tamarac). Senator Campbell presented several amendments to the bill which would have significantly diminished the bill's impact and taken away the protections the business community desperately needs on this subject. Several business experts in this field testified that over 70 companies across the country have filed for bankruptcy because of these rampant asbestos lawsuits. Yet, Senator Geller and Senator Campbell ignored this appalling statistic and went to great lengths to try to derail this very good bill.

Ultimately, the bill passed out of the committee by a vote of 6-2. Voting with the business community were Senators Dan Webster, Alex Villalobos (R-Miami), Dave Aronberg (D-Greenacres), Carey Baker (R-Eustis), Charlie Clary (R-Destin), and Bill Posey (R-Rockledge). Voting against the bill were Senators Skip Campbell, and Steve Geller. SB 2562 now heads to the Senate floor for debate and a final vote.

The House counterpart, HB 1019 by Representative Joe Pickens (R-Palatka) passed the House by a vote of 90-22 on Friday, April 22nd. AIF salutes Representative Pickens for his leadership in sponsoring the bill, as well as Representatives Paige Kreegel (R-Punta Gorda), Dennis Baxley (R-Ocala) and Ed Homan (R-Tampa) for their comments in debate that led to the bill's passage.

Streetlights

On Tuesday, April 19th the Senate Communications and Public Utilities Committee passed SB 1790 Relating to Street Lights by Senator Dan Webster (R-Winter Garden) and the Senate Judiciary Committee today. This bill provides immunity from lawsuits to the state, local governments, and electric utilities as the result of accidents caused by the failure to provide, operate, or maintain streetlights or other illuminating devices unless a written contract specifies that an electric utility or local government assumes liability.

Most of the parties involved have been working for over two years to come up with a compromise that would serve both the utilities and the public. SB 1790 differs from its house counterpart HB 135 by Representative Dwight Stansel (R-Live Oak) in that it provides full immunity to the utilities and municipalities. HB 135 provides immunity but it also contains several provisions which hold utilities to a greater level of accountability.

During the meeting Senators Les Miller (D-Tampa) and Dave Aronberg (D-Greenacres) inquired about this difference between the two proposals. Senator Webster replied that it was his intention to leave SB 1790 as was written and that negotiations between the Senate and the House leadership were taking place.

Senator Aronberg stated that he was very much in favor of the House's proposal and that he could not vote in favor of SB 1790 until it matched HB 135. Both Senator Miller and Aronberg voted against the bill. SB 1790 passed by a 5-2 margin and will now make its way to the Senate floor.

On Friday, April 22nd the House passed HB 135 by Rep. Dwight Stansel (D-Live Oak) providing protection from liability for utility companies in certain situations when damages occur in a location where a streetlight malfunctions. There was virtually no debate over this bill, and it passed the House by a vote of 112-1.

Premises Liability

On Wednesday, April 20th the Senate Judiciary Committee unanimously passed, SB 2566 Relating to Premises Liability and Negligence by Senator Dan Webster. This bill provides that, when a person slips and falls on a “transitory foreign substance” (ie: liquids or food products) in a retail establishment, the injured person must prove the retail establishment had knowledge of the condition and that the condition existed for a sufficient time for the retail establishment to have taken action to remedy the condition. This bill also provides for the apportionment of damages to intentional tortfeasor in actions alleging negligent security.

During the meeting an amendment was adopted to the bill that may represent a small set back on this issue. However, Chairman Webster told the committee how businesses need a fair playing field in this area to keep them from having to pay than the damages caused by their own actions. Chairman Webster pledged that he will continue to work with the business community as this bill moves through the committee process. The bill will now be considered by the full Senate.

On the House side, HB 1931 Relating to Negligence in Premises Liability Cases by the Judiciary Committee passed by a vote of 88-26 on Friday, April 22nd. HB 1931 provides protection for business owners in the event of injuries arising from the criminal or intentional acts of others outside their control.

Class Action

On Friday, April 22nd the Senate Judiciary Committee unanimously passed SB 2564 Relating to Civil Actions by Senator Dan Webster (R-Winter Garden). This bill would allow for a 60-day right to cure period before a class action can be commenced. The bill also requires proof of actual damages to the class before an award or settlement is approved by the court.

Its House counterpart, HB 1925 by the Judiciary Committee has passed all its committees of reference and its waiting to be considered by the House.

SB 2564, as passed today, is also part of the issues contained in the AIF tort reform package. However, the language in this bill and the other bills sponsored by Senator Webster may need to be further addressed in the next few days before a final vote of approval by the entire Florida Legislature. AIF salutes Senator Webster for his leadership on this bill as well as the other legislation he has sponsored which are vital to Florida’s business community.

WORKERS' COMPENSATION

After the passage of the 2003 workers' compensation reforms, AIF has strongly advocated that no additional changes should be made to the workers' compensation law and the new reforms should be allowed to work to assure stability in the market. Since 2003, Florida employers have enjoyed an overall average rate reduction of almost 20%. However, the attacks to these critical savings surfaced again this week.

An amendment was submitted on an insurance bill with the misrepresentation to several legislators that it was supported by the business community and the insurance industry. It was circulated in a stealth-like manner designed to slip under the radar and avoid public scrutiny and debate. If passed, this amendment would have required employers and carriers to authorize at least one additional physician on every case in which a drug test was required at the time of the work injury. Obviously, if such a measure was adopted claims costs would increase and these savings would be diminished. Fortunately, AIF was able to work with the legislators and this amendment was withdrawn at the time that it was considered by the House Commerce Council.

AIF will continue to monitor this issue and strongly oppose it as well as any measure that could increase workers' compensation rates .

TAXATION

On Wednesday, April 20th the House of Representatives passed HB 1803 Relating to Alcoholic Beverages and Taxation by Representative Fred Brummer (R-Apopka) on a vote of 94 - 23. The bill eliminates the tax on the retail sale of alcoholic beverages sold for consumption on the premises of a vendor.

Since 1990, Florida has imposed a tax on the retail sale of alcoholic beverages sold for consumption in a commercial establishment. The tax rate was reduced by one-third in 1999, and again by one-half in 2000. Current tax rates are: 3.34 cents per 1 ounce of spirits or 4 ounces of wine, 1.34 cents per 12 ounces of beer, and 2 cents per 12 ounces of cider.

The repeal of this inventory tax will reduce the burdensome record-keeping and taxation required of business that sell alcoholic beverages. This so-called "sin tax" is poor public policy originally adopted as a "quick fix" for the then-perceived needs of the state for additional revenue.

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

CONSTITUTIONAL AMENDMENT REFORM

The House Justice Council passed three proposed Constitutional amendments designed to make the process of amending Florida's Constitution more difficult on Wednesday, April 20th. Florida's Constitution is one of the easiest Constitutions in the country to amend. In 1968, lawmakers provided Floridians with a citizen's initiative process which would allow Constitutional amendments to be placed on the ballot. Lawmakers laid out a series of requirements that needed to be met before a proposed amendment could reach the ballot including the gathering of signatures. Since 1968, Florida's Constitution has been amended a number of times. In recent years, the number and type of amendments being added to our state's document have been troubling.

Representative David Simmons (R-Altamonte Springs) presented all three proposals on behalf of the House Judiciary Committee. HB 1723 would increase the margin of approval for a proposed Constitutional amendment to 60 percent instead of the current simple majority of 50 percent plus 1. HB 1727 would institute a subject matter "filter" that would limit the subject matter of any proposed Constitutional amendment to include 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. HB 1741 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.

During the meeting two technical amendments were passed that would bring the language in the House bills closer to the language of their Senate companions (SB 4, SB 6, and SB 2200). The Senate proposals have all passed their committees of reference and have made their way to Senate Floor.

A fourth House proposal, HB 1721, was not taken up by the committee. This bill would require that an amendment to or revision of the Florida Constitution proposed by citizen initiative, in addition to being approved by a majority of the electors voting on the amendment must also be approved by a majority of those voting on the amendment or revision in at least half of the Congressional districts of the state. This proposal did not have a Senate counterpart, and it is our understanding that the House has decided to back off from this proposal because of the low interest in the Senate.

On Friday, April 22nd all three proposals were brought up during the House session and were prepared for a final vote which should take place next week. The Senate bills are waiting to be voted on by the full Senate.

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.
Environment

On Wednesday, April 20th the House State Resource Council unanimously passed HB 137 by Representative Dwight Stansel (R-Live Oak). 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.

HB 137 will now be taken up on the floor of House.

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.

GROWTH MANAGEMENT

The House State Infrastructure Council unanimously approved HB 1865 Relating to the Growth Management Incentive Act by Representative Randy Johnson (R-Winter Garden) on Thursday, April 21st. This is the House's comprehensive growth management package. The bill's sponsor along with Representative Mike Davis (R-Naples), who also played a big role in the development of this legislation, received praised and appreciation for their commitment and long hours of work dedicated to this project.

A strike-all amendment offered by Representative Johnson was adopted which replaced the previous language of the bill. As amended, the bill creates the "Sustainable Florida Act of 2005" and declares urban infill and redevelopment as a high state priority and promotes such development through relaxed procedures and state funding incentives. The bill strengthens concurrency requirements (concurrency is the practice of ensuring that new developments are surrounded by the necessary roads, schools, and water), creates certain financial feasibility requirements, and strengthens intergovernmental coordination requirements, for schools, roads and water to mitigate issues resulting from continued growth in the state's population.

To ensure that these strengthened concurrency requirements do not result in forcing development out of urbanized areas and into undeveloped rural or agricultural areas, the act creates incentives to encourage urban infill and redevelopment. The bill provides for proportionate-share mitigation (or pay-as-you-go) to make sure that current development is not constrained by, or assessed for, impacts related to system backlogs and facilities deficits.

Representative Johnson stated that this was only the first step towards making real progress in the area of growth management and that although the bill was very comprehensive, there are still hundreds of issues that need to be addressed. He also stressed that local governments and municipalities must play an equal part in order to make this plan work. Under this proposal, the state will provide local communities with millions of dollars in funding towards infrastructure, schools, roads, and technical assistance as long as local governments match some of this funding. Local governments are given full autonomy to decide on how to come up with the matching funds. This bill would provide \$450 million dollars towards roads, \$50 million dollars towards bridges, \$100 million dollars for sustainable water programs, \$50 million dollars for education, and approximately \$3 million dollars in the form of technical assistance to local governments so that they could learn how to draw down these dollars.

Finally, the bill calls for the creation of a Century Commission composed of elder statesmen whose job it would be to study growth in Florida and develop a plan for the future of our state. This commission would be required to present their plan to a joint meeting of the Senate and House of Representatives.

The Senate is also working on its own Growth Management product. During the meeting Representative Johnson stated that the Senate's package was incomplete at this time, but that this was by design. The two sides may go into conference to work out their difference but this has yet to be determined.

AIF supports any piece of legislation which encourages smart, sustainable growth. HB 1865 is only a first step albeit a giant step towards addressing some of the backlog in Florida's infrastructure needs. 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.

UTILITIES

On Thursday, April 21st the House Commerce Council approved CS/HB 1325 by Representative Frank Attkisson (R-Kissimmee), the "Governmental Authority Provision for Communication Services Act of 2005." This proposed legislation provides that except in limited cases, no government authority shall provide certain telecommunication services to its residents without first give written notice to all dealers of communications services. If no dealer of communications services responds, then the government authority must retain a feasibility consultant to assess the feasibility of the government authority providing the service. If found feasible, the government authority must hold a public hearing to provide the public an opportunity to consider the contents of the study and to offer comments and by vote decide whether or not to provide service. The final step to the process is for the government authority to have a referendum so that the voters can decide whether or not the government authority should proceed and provide the service.

CS/HB 1325 has passed its last committee of reference and now will be heard on the House floor.

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.