

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
WEEKLY UPDATE**



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FROM THE WEEK OF APRIL 25 – APRIL 29, 2005

## **LEGAL REFORM**

This was a very active week for legal reform in the Florida Legislature. The bills encompassing the legal reform package could not have progressed this far without the leadership of Speaker Alan Bense who has made tort reform his priority issue this session. Governor Jeb Bush has also championed this issue and has made it clear that tort reform is a major priority to him.

Representative Don Brown in filing HB 1513 with some of the more controversial issues in it deserves to be recognized and acknowledged for his incredible efforts. Representative Dennis Ross also stepped up to the plate once again to continue the effort to move this bill out of the House to the Senate.

Other tort reform issues that have already passed the House and are on their way to the Senate are: premises liability; limiting the legal expansion of the definition of duty by a utility company and asbestos.

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

On Tuesday, April 26, 2005, the House of Representatives began consideration of HB 1513 by Representative Don Brown (R-DeFuniak Springs) relating to venue, sellers' immunity from liability, and the abolishment of joint and several liability. The bill is and has been strongly supported by AIF and the Florida Coalition for Legal Reform and contains many of the important tort reform provisions AIF has been advocating for a very long time – most importantly the elimination of joint and several liability.

The bill stops venue shopping by specifically designating the places where a lawsuit can be brought. The practice of searching for a venue more inclined to award higher verdicts is curtailed by this legislation.

In the area of products liability, Representative Brown explained that the bill protects small businesses from lawsuits in cases where a consumer is harmed or suffers damages due to a product defect. The bill will provide immunity to the retailer that purchases a product from the manufacturer, sells it to the consumer and the seller had no knowledge of any defect should the defect cause injury. However, if personal service cannot be obtained against the manufacturer in Florida, then the retail establishment selling the product is not immune from suit.

The abolishment of joint and several liability will insure that the person who causes the harm pays for the harm they cause. It eliminates the right to force the "deep pocket", usually a business, from having to pay a majority of the damages when it has not caused the damages. The "deep pocket" will only be responsible for paying its *prorata* share of the economic damages it individually caused.

At 5:45 p.m., a motion was made to temporarily postpone House Bill 1513. Accordingly, the bill was added to the Calendar for April 27, 2005.

On Wednesday, April 27<sup>th</sup>, the House again considered House Bill 1513. Speaker Alan Bense (R-Panama City) began the amendatory process after instructing the members that questions and debate had already taken place the day before. There were three amendments offered to House Bill 1513. The first amendment, offered by Representative Brown clarifies the definition of the term "principal place of business" and added a statutory cross-reference. The amendment was adopted without debate.

The second amendment, offered by Representative Dan Gelber (D-Miami Beach) provided that in a strict liability suit against the seller of a product, the seller has a right to produce an indemnification against the manufacturer. Representative Brown and Representative Fred Brummer (R-Apopka) urged the chamber to vote the amendment down, as it would weaken the bill. The majority of the House members agreed and the amendment failed.

The third amendment, offered by Representative Kevin Ambler (R-Tampa) sought to prohibit the allocation of fault to a nonparty and inclusion of the nonparty on the jury verdict form by reintroducing the *Fabre* decision. Representative Seiler declared that the amendment would prevent frivolous lawsuits because *Fabre* encourages attorneys to include nonparties in litigation. Representative Brown countered, observing that *Fabre* held that fault should be apportioned amongst all wrongdoers, regardless of whether they are parties to the lawsuit. Representative Brown also noted that in 1999, a panel of prominent judges in the state, testifying before the Legislature, observed that *Fabre* has not had a negative impact on the courts ability to move cases through the system. Representative Brown stated that if the members adopted this amendment, then they were not engaging in true tort reform. The amendment failed and the bill was rolled to third reading, meaning that the House must still take a final vote on the bill.

On Thursday, April 28<sup>th</sup> legal reform history was made when the House passed HB 1513 by Representative Don Brown by a 79-32 vote. HB 1513 achieves significant reform and increases fairness in the judicial system by abolishing joint and several liability, limiting the practice of venue shopping, and reducing product seller liability. HB 1513 is now being considered by the Senate.

### **HB 785 - Relating to Asbestos-related Claims**

The House of Representatives also considered HB 785 by Representative Dan Gelber (D-Miami Beach) on Wednesday, April 27<sup>th</sup>. The bill 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 was rolled to third reading without debate, and on Thursday, April 28<sup>th</sup> it was temporarily postponed.

## **House Bill 1925 - Relating to Class Action Lawsuits**

On Wednesday, April 27<sup>th</sup>, HB 1925, relating to class action lawsuits by Representative David Simmons (R-Altamonte Springs) was considered. Representative Simmons offered three amendments to the bill. The first amendment adds legislative findings as to the need for class action reform. The amendment was adopted without debate. The second amendment, clarifies the content of the notice that the plaintiff is required to give a defendant before instituting a lawsuit. The amendment was adopted without debate. The third amendment, simply provides that a settlements presented to the court will conform the requirements of Federal and Florida Rules of Civil Procedure and the bill. This amendment was adopted without debate as well.

Representative Seiler attempted to introduce a strike-all amendment that would have removed the right to cure portion from the bill. The amendment failed and the bill was prepared for a final vote which took place on Thursday, April 28<sup>th</sup>. HB 1925 passed by a margin of 90-28 and is now headed to the Senate.

## **House Bill 551-Relating to Vehicles/Financial Responsibility**

The House considered HB 551, by Representative Alan Hays (R-Umatilla) on Wednesday, April 29<sup>th</sup>. HB 551 revises definition of "rental company" for purposes of exclusion from exemption from application of certain limits of liability. HB 551 expands the definition to include certain related rental or leasing companies & certain holders of motor vehicle title or equity interest in motor vehicle title under certain circumstances. There were no amendments or debate; the bill was rolled to third reading. On Thursday, April 28<sup>th</sup> the House unanimously passed HB 551 and now the bill moves to the Senate for consideration.

## **Substitute Communications System Tax**

On Tuesday, April 26<sup>th</sup> the Senate Community Affairs Committee passed CS/SB 2070 by Senator Lee Constantine (R-Altamonte Springs). This bill deals with the substitute communications systems tax. The bill, as originally drafted, repealed this unfair tax, but at a previous committee stop it was amended to merely establish a moratorium on the tax until 2007. The bill was also amended to include a task force that would review and evaluate existing national and state regulatory and tax policies relating to the communications industry and make recommendations to the Legislature concerning the scope of communications services that should be subject to the communications service tax.

Although SB 2070 was passed today, strong statements were made by members of the Committee that they wanted a full repeal of the substitute communications systems tax. Senator Constantine informed the committee that he is still working towards that goal.

SB 2070 was withdrawn from its last committee of reference and placed on the Senate calendar.

**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 Tuesday, April 26<sup>th</sup> the Senate Ways and Means Committee passed SB 360 by Senator Mike Bennett (R-Bradenton). This is the Senate's growth management bill. While AIF supports growth management, we have concerns with certain sections of this bill. They are as follows:

- **Fair Share:** SB 360 authorizes proportionate share contributions across the board, regardless of whether there is a concurrency problem, "to ensure that level-of-service standards" are maintained. Where there are levels of service pressures, the developer must demonstrate that improvements will be made in order to use the appropriate share approach. Given the adequacy of past and prospective infrastructure funding, these provisions will result in unreasonable high development exactions by local governments.
- **Concurrency:** SB 360 changes the time at which concurrency is determined from certificate of occupancy to "approved to commence development "for water, parks, and transportation. This definition will vary from jurisdiction to jurisdiction, is often too early in the development process to be meaningful, and will cause great confusion in implementation. The bill also changes the time requirement for when interstate highway system facilities must be under actual construction to within 3 years from current law of 5 years, adds new requirements for existing and future transportation concurrency exception areas, and limits the de minimus impact exception.
- **Urban Development and Redevelopment:** SB 360 narrowly defines urban service boundaries and has limited incentives for urban service boundary designation.
- **Financial Feasibility:** SB 360 contains an open-ended definition of financial feasibility which will be difficult to interpret and administer. It should be limited to the five year capital improvement schedule. The bill also requires that a yearly plan amendment is required to update the schedule, which can currently be done by ordinance, and is subject to the compliance review process. Other plans amendments cannot be processed until the financially feasible capital improvement schedule plan amendment is found in compliance and the local government may also face sanctions.

SB 360 will now be considered on the Senate floor.

Its House counterpart HB 1865 was considered on the floor of the House on Wednesday, April 27th. Most notably the House plan includes lots of new money. It includes \$1 billion for transportation projects and \$500 million to be split between school construction and water projects. The legislation is funded with \$200 million from DOC stamps and the remainder being diverted from general revenue.

The House plan tries to incentivize counties by setting aside \$450 million for state matches on local projects. An example would be those projects categorized as “capacity relief” to the state system, which would receive a 65 percent state match. “Regionally significant” projects are eligible for a 50 percent match.

Other areas of the state will also be encouraged to organize regional Metropolitan Planning Organizations (MPOs) in order to partner with the Florida Department of Transportation. The regional MPO group will make recommendations and the department will establish criteria to rate and prioritize those recommendations.

The House bill was rolled over to third reading. Informal work on differences between the House and Senate versions is anticipated to be ongoing. The House is attempting to argue that their bill is less punitive to local governments, has a softer edge on concurrency and includes a pay-as-you-go provision for developers. It also places heavy emphasis on urban infill and redevelopment. There is a strong consensus among interested parties that the House growth management proposal is a stronger product at this time.

**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.**

#### **CONSTITUTIONAL AMENDMENT REFORM**

The House of Representatives passed the three proposed House Joint Resolutions which would make it tougher to amend Florida’s constitution on Tuesday, April 26th. After months of debate regarding the effects these proposals would have on the Constitutional amendment process in our state, the bills’ sponsor Representative David Simmons (R-Altamonte Springs) was successful in passing the three proposals that the House Judiciary Committee had crafted.

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.

The first two proposals were met with heavy debate from members of the Democratic members who viewed them as too restrictive. During debate Representative Dan Gelber (D-Miami Beach) proclaimed that by increasing the vote margin to 60 percent the legislature was “building a moat around the Capitol and raising the bridge” thereby shutting the citizens of Florida out. Representative Simmons replied that these measures were not intended to shut the citizens out but instead to preserve the process and the Constitution itself from special interest groups.

On the issue of the subject matter filter (HB 1727), the debate centered around the definition of what constituted a fundamental right. Again Representatives Gelber and Tim Ryan (D-Dania Beach) questioned the sponsor on what the unintended consequences of this bill would be. They worried whether members of the Supreme Court were qualified to decide what issues could be considered as fundamental rights.

HB 1741 (the fiscal impact) proposal was amended on the floor by Representative Joe Pickens (R-Palatka). The original bill set a benchmark of 1/10 of 1 percent of the budget as the number which would trigger this proposal. HB 1741 as amended now has a benchmark of 2/10 of 1 percent of the general revenue for a given year. The reasoning behind this amendment was that it should not apply to the entire budget, since the budget includes trust funds.

HB 1723 passed on an 86-30 vote, HB 1727 passed on an 88-27 vote, and HB 1741 passed 97-16. The bills have now been sent to the Senate and are in messages.

**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.**

## TAXATION

On Wednesday, April 27<sup>th</sup> the Senate 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 has been sent over to the House 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.**

## HEALTHCARE

On Thursday, April 28<sup>th</sup> the House thoroughly debated HB 6003 (this bill combines HB 1869, HB 1871, HB 1873, and HB 1875) sponsored by the House Health and Families Council. 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.

It is expected that the House will cast a final vote on HB 6003 sometime 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.**

- 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.