

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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LEGAL REFORM

The House of Representatives took up HB 1513 by Representative Don Brown (R-DeFuniak Springs) during its session today. 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 has been paired down to three issues: the repeal of joint and several liability, liability protection for product sellers and venue reform.

Representative Brown explained that the tort system was costing Florida's consumers and businesses millions of dollars each year but returns only pennies on the dollar in awards to plaintiffs. HB 1513 addresses the basic issue of fairness in our judicial system. The abolishment of joint and several liability would ultimately lead to damages being fairly distributed according to responsibility. If one party is 10 percent liable they should only be required to pay 10 percent of the damages even if they have the deepest pockets of all parties involved.

Representative Brown fielded several questions from members on the floor. Each of the bill's provisions was questioned, but Representative Brown was able to masterfully address each of the concerns.

In the end, the bill was temporarily passed because the House ran out of time and had to adjourn. HB 1513 will be taken up tomorrow during special order.

HB 551 Relating to Vicarious Liability for Rental Car Companies by Representative Alan Hays (R-Umatilla) was not considered due to time constraints.

On the Senate Side the Judiciary Committee passed two legal reform bills today - SB 1030 Relating to Vicarious Liability by Senator Skip Campbell (D-Tamarac) and SB 2002 Relating to Sovereign Immunity for Law Enforcement Officers.

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, SB 1030 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.

Under SB 2002 a law enforcement officer would not be liable for damages to a third party for injury or death caused by a person fleeing from an officer if: (1) the pursuit is conducted in a manner that does not involve a willful or wanton disregard for the safety of people or property by the officer; and (2) the officer has a reasonable belief that the person he or she is pursuing has committed a felony.

Both bills received no debate and were passed unanimously. They will now be debated on the floor of the Senate.

Vicarious liability and sovereign immunity for law enforcement agents are 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.

The Senate Transportation and Economic Development Appropriations Committee passed SB 460 Relating to Transportation by Senator Jim Sebesta (R-St. Petersburg). This is the Transportation Department'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.

During the meeting, Senator Tony Hill (D-Jacksonville) offered an amendment that would undo the provision which extends immunity to FDOT contractors and would only provide immunity to contractors after a project was completed. The unfriendly amendment was ultimately defeated thanks to the persuasive arguments of the Florida Transportation Builders Association who testified that the great majority of lawsuits against contractors occur while a project is being completed not after it has been accepted by the Department.

During the meeting Senator Paula Dockery (R-Lakeland) spoke in favor of the Senator Hill amendment and stated that she felt that the immunity provided by this bill would go too far in protecting road builders and hurting citizens. The bill was ultimately passed by a 5-1 vote with Senator Paula Dockery as the only no vote on the bill. SB 460 will now be debated on the Senate floor.

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 legal system that will bring about reasonableness, fairness, and predictability.

SUBSTITUTE COMMUNICATIONS SYSTEMS TAX

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's next stop is the Senate Government Efficiency Appropriations Committee.

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

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 by the Senate Rules & Calendar Committee. Its House counterpart HB 1865 will be on the Special Order Calendar in the House tomorrow. 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 today. 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 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.

OTHER BILLS OF INTEREST:

Ethics and Elections

The Senate Judiciary Committee passed SB 1996 Relating to Petition Fraud by Senator JD Alexander (R-Lake Wales). SB 1996 imposes a series of safeguards on the initiative petition process. The bill attempts to closely regulate the petition verification process, to require that additional information be provided to a voter who signs a petition, and to regulate petition circulators, in particular paid circulators, primarily by requiring greater disclosure on the part of the circulators.

The bill also authorizes additional criminal sanctions against people who abuse the petition process, either through fraud and misrepresentation, or through the misuse of signed petitions or voter registrations. According to the sponsor, the bill is aimed at providing much needed oversight and structure in the area of petition signature gathering and the business of paying signature gatherers.

During the meeting several citizens groups including the League of Women Voters and Common Cause Florida testified against the bill stating that the bill creates many onerous provisions for volunteer groups who go out and gather signatures. Senator Alexander stated that much work had been done to take away some of the more restrictive clauses but that ultimately a law was needed to reign in some of the fraud that has been committed by paid signature gatherers.

Several committee members expressed some concern over the constitutionality of this bill. Senator Skip Campbell (D-Tamarac) explained that the US Supreme Court has ruled that it is okay to pay signature gatherers. This bill would not make it illegal to pay signature gatherers but it would make it illegal to pay according to the number of signatures gathered by an individual.

In the end the bill passed by a 5-3 margin, with Senators Skip Campbell, Dave Aronberg (D-Greenacres), and Steve Geller (D-Hallandale Beach) voting against the bill.

SB 1996's House companion, HB 1471 by Representative Dudley Goodlette (R-Naples) was passed today by the House of Representatives 96-22. The bill received heavy criticism from Democratic members who felt that it was too restrictive and too heavy-handed and that bill would serve to intimidate citizens who might want to get involved in the petition process.

Representative Goodlette assured members that this bill was needed in order to discourage fraud from happening and that this bill would help restore trust in the process of amending the Constitution.

Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- 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://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.