

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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LEGAL REFORM

Today the Florida Senate considered SB 124 Relating to Sovereign Immunity for Law Enforcement by Senator Bill Posey (R-Rockledge). There were no amendments added to the bill and it will now be available on third reading for final passage by the full Senate as early as tomorrow.

The bill is part of the tort reform measures that AIF and the Florida Coalition for Legal Reform have supported since last year. This particular bill provides incentives for law enforcement agencies to adopt a standard policy for high speed chase events in order to have immunity from liability for potential injuries to third parties who may be hurt while not directly involved in the pursuit. The bill applies only to forcible felonies. Senator Gary Siplin (D-Orlando) expressed the most concerns with the bill and seemed to advocate requiring all law enforcement agencies to adopt such protocols rather than allow them discretion in exchange for the immunity. Senator Alex Villalobos (R-Miami) and Senator Rod Smith (D-Gainesville) both responded to these concerns and explained that many law enforcement agencies as well as the trial bar had worked with them during the negotiations on this issue and all believed that the incentive-based legislation would achieve the optimal results on this issue.

AIF supports this legislation and will continue to follow this issue through its final vote in the Senate. The identical House companion, HB 199 by Representative Pat Patterson (R-DeLand) is working its way through the committee process and is next scheduled to be heard by the House Judiciary Appropriations Committee.

WORKERS' COMPENSATION

Legislation relating to the Florida Workers' Compensation Joint Underwriting Association (FWCJUA) saw action in both the Senate and House of Representatives today. The Senate Banking and Insurance Committee heard their version of the bill – SB 2118 – during their meeting this afternoon. Senator Skip Campbell (D-Tamarac) filed an amendment which would have applied to the entire workers' compensation market and required prospective loss costs for rate making. However, Chairman Rudy Garcia (R-Hialeah) informed Senator Campbell that he intended to disallow the amendment because it was not germane to the bill which only related to the JUA and not to workers' compensation insurance in general. Chairman Garcia asked Senator Campbell to withdraw the amendment rather than force him to rule on this procedural issue. Reluctantly, Senator Campbell withdrew the amendment.

There were three other technical amendments added to the bill at this committee and it was unanimously approved with very little debate or discussion.

In the House Insurance Committee, Representative Kim Berfield (R-Clearwater) presented the House version of the bill – HB 7241. There were also a few technical amendments to this bill but it also passed unanimously by the committee. Both bills continue to be virtually identical. They propose to make the following changes to the JUA:

- The board membership would be expanded and all members would be appointed by the Financial Services Commission rather than from some appointments by the insurance industry as currently accomplished.
- The WCJUA would be required to use any policyholder surplus attributable to former subplan C prior to requesting funding from the State or assessing policyholders in the voluntary market for funding deficits in former subplan D, Tier One, and Tier Two.
- Access to funds in the contingency reserve for funding deficits in subplan D would be extended from January 1, 2007, to January 1, 2011.
- Extends the deadline for levying "below-the-line" assessments to fund deficits in subplan D, Tier One, and Tier Two is extended from July 1, 2007, to July 1, 2008.
- Requires the WCJUA to return any state funds in excess of the amount necessary to fund deficits in former subplan D or any tier.
- Requires the WCJUA to obtain prior approval of its rates by the Office of Insurance Regulation before implementing the rates.

The goals of this legislation are noble. However, there are some areas that may need additional revisions to develop a realistic and successful solution to the problems the WCJUA is now facing. According to AIF's General Counsel Tammy Perdue, who testified in both committees today, the primary issue of importance to the business community for this bill is the rate making process. Whatever the Legislature ultimately decides to do with regard to the WCJUA, it is imperative that the rates charged be actuarially sound at all times and in all plans. Failure to maintain actuarially sound rates will insure a crisis within a short time period which the Legislature will have to address. The Legislature has been dealing in good faith for a number of years with this issue and we trust they will continue to do so. It should be clear that it is not feasible to continue to have some employers get coverage through the JUA at rates which are lower than other similarly situated employers getting coverage in the voluntary market. All rates must be actuarially sound to avoid turmoil in the workers' compensation system market.

The business community and the insurance industry will work with legislators over the next few weeks to create good legislation that will not repeat past mistakes, particularly in arbitrary rate making. The House bill will next be heard by the House Fiscal Council and the Senate bill will next be heard by the Senate General Government Appropriations Committee.

AIF supports legislation that assists in fostering a stable workers' compensation system that makes coverage for all Florida employers available and affordable. We will continue to follow and provide updates on this legislation critical to the continued success of the workers' compensation system in this state.

The House Insurance Committee heard HB 141 Relating to Workers' Compensation for First Responders by Representative Sandy Adams (R-Oviedo). The idea of this bill has been around since the national tragedy of 9/11. The original bill sought to provide certain first responders such as firefighters and police officers with additional benefits in the event of workplace injury. The business community as a whole had not taken a position on the original bill because it only dealt with changes to Chapter 112 of the Florida Statutes, which deals exclusively with public officers and employees. At today's meeting though, Chairman Dennis Ross (R-Lakeland) offered a strike-everything amendment to the bill and re-wrote the bill into the workers' compensation statute, Chapter 440, Florida Statutes. The amendment would provide first responders with a lower burden of proof for occupational diseases, additional supplemental benefits if the employer did not participate in the social security program and compensability for small pox vaccinations and side effects resulting from these vaccinations. The original bill contained these provisions in addition to an increased attorney's fee schedule and the ability to receive psychiatric benefits without physical injury for workplace accidents.

Once the amendment was published AIF contacted all members of the House Insurance committee and expressed our extreme concern and objection to opening the workers' compensation statute for this or any other purpose. Florida's employers have seen savings from the 2003 workers' compensation reforms on average of over 30%. These savings will be decreased if not eliminated if the workers' compensation statute is opened and significantly changed. In addition to any legislative changes, there is also concern that changes to the statute may be interpreted by the courts to apply beyond their legislative intent which would also lead to increased costs.

The amendment was passed with no significant discussion from the members of the committee. Chairman Ross did not take any testimony from the public relative to the amendment or to the bill. However, there was a short exchange between he and Representative Adams during which he committed to her that he would personally work to insure that no other amendments be placed onto this bill. The bill will next be heard by the House Fiscal Council.

AIF strongly opposes any legislation that makes changes to Chapter 440, Florida Statutes. Such changes will disrupt the delicate balance of the workers' compensation system which, since the 2003 reforms, has brought increased availability and affordability of coverage for all Florida businesses.

INSURANCE

The House Insurance Committee unanimously passed HB 161 Relating to Mold Remediation and Assessment by Representative Carl Domino (R-Palm Beach Gardens). Currently, there are numerous companies in Florida that hold themselves out to be mold assessors or mold remediators or conduct mold related services. There is no licensure or regulatory requirements to be a mold assessor or mold remediator.

This bill provides education guidelines and certification for those who engage in business as a mold assessor or mold remediator. It requires an assessor to "maintain general liability and errors and emissions insurance of not less than \$250,000." It requires a remediator to maintain general liability insurance policy of not less than \$500,000 with specific coverage for mold related claims. The bill requires that a contract to perform mold assessment or mold remediation must be signed or otherwise authenticated by the parties.

Home inspectors are also not regulated. The bill states that "a person may not work as a home inspector unless" that person has successfully completed a course of study of not less than 60 hours...and passes a psychometrically valid examination in home inspections. The course of study "must be accredited by a nationally recognized third-party independent accrediting entity."

During the meeting Representative Domino offered four amendments. The first amendment specifies the education and training requirements separately for a mold assessor and a mold remediator. The second amendment clarified that a contract to perform mold remediation may be in hard copy or electronic copy. The third amendment specified requirements for mold assessors and remediators to purchase general liability and other applicable insurance takes effect January 1, 2007. The fourth amendment provides an effective date of July 1, 2006, except as otherwise specified. All amendments were adopted the committee. Representative Bill Galvano (R-Bradenton) commented that he wanted to make sure the training programs were balanced and that no sole provider had an advantage in offering these training programs.

This bill will affect the business community by requiring persons who engage in business with a focus on mold assessment or mold remediation or operate as a home inspector to incur the costs of education, certification, and operation requirements, as specified by the bill. However, these businesses will not be directly regulated by the Department of Business and Professional Regulation (DBPR).

AIF supports legislation that establishes guidelines for businesses that practice in the field mold assessment and remediation. These guidelines will protect both consumers and businesses from those who practice fraudulently.

WORKFORCE DEVELOPMENT

The Senate Commerce and Consumer Services Committee unanimously passed SB 2084 by Senator JD Alexander (R-Lake Wales). This bill is the 21st Century Technology, Research, and Scholarship Enhancement Act announced by Governor Jeb Bush in January of this year. The Act provides for the creation of the Florida Technology, Research, and Scholarship Board to guide the establishment of Centers of Excellence at state universities and the attraction of world class scholars through the 21st Century World Class Scholars Program. The bill provides \$50M in appropriations for the Centers of Excellence and \$50M for the World Class Scholars program.

Senator Jim King (R-Jacksonville) urged Senator Alexander to consider removing specialty clinics such as the H. Lee Moffitt Cancer Center from consideration. The bill will now be heard by the Senate Education Appropriations Committee.

AIF supports this investment in workforce development as it helps attract industry to the state and diversifies Florida's tax base.

UTILITIES AND TELECOMMUNICATION

The Utilities and Telecommunications Committee unanimously approved HB 1259 by Representative Marti Coley (R-Marianna). This bill is better known as the "Florida Electric Transmission Line Siting Act." This legislation encompasses many of the recommendations made by the Florida Energy Forum to the Transmission Line Siting Act (TLSA). These changes include:

- Simplifying and streamlining completeness and sufficiency procedures
- Reducing mandatory hearings
- Revising time limits
- Clarifying who may be an applicant
- Clarifying comprehensive planning and zoning issues

The purpose of these changes is to improve the efficiency of the TSLA and to clarify provisions that will expedite transmission line licensing, thereby ensuring faster development of more reliable electric transmission infrastructures.

This bill is in many ways a very technical bill; however these changes are necessary and if adopted will shorten the time period to site power lines by as much as 5 months!

AIF supports this legislation as it is a part of the energy plan for the State of Florida. The use of incentives and the removal of regulatory barriers is the best way to ensure that Florida takes the necessary steps to improve its energy infrastructure.

PRIVATE PROPERTY RIGHTS

HB 1567, HJR 1569 and HJR 1569 by Representative Marco Rubio (R-Miami) were heard on second reading on the floor of the House. These bills are the work product of the Select Committee to Protect Private Property Rights.

Representative Rubio stated that the bills were created in response to the United States Supreme Court decision in Kelo v. City of New London. Representative Rubio noted that the Select Committee engaged in a deliberative process that lasted over 6 months in drafting these bills.

Representative Dean Cannon (R-Winter Park) presented the bills to the House. Representative Cannon observed that HB 1567 essentially prohibits the transfer of property taken under the power of eminent domain unless the property is transferred for use by a common carrier; for transportation purposes; for public utilities and infrastructure; or for the provision of services and goods to the public. HB 1567 allows taken property to be transferred to a private entity after the governmental entity has held the property for 5 years and public notice and competitive bidding has occurred. The bill also restricts the power of eminent domain in community redevelopment areas. Additionally the bill enhances notice requirements for takings and raises the burden of proof to demonstrate that a taking is to eliminate a threat to the public health or safety.

Representative Anitere Flores (R-Miami), a member of the Select Committee asked Representative Cannon a series of questions which allowed him to further explain portions of the bill.

Representative Chris Smith (D-Ft. Lauderdale) filed an amendment which would have allowed for an extension of current law. Representative Smith stated that the amendment was needed because the bill in its current state would adversely impact certain Community Redevelopment Agencies (CRAs). CRAs are agencies created by local governments to revitalize and re-develop designated slum and blighted areas. Although Representative Priscilla Taylor (D-Riviera Beach) and Representative Anne Gannon (D-Delray Beach) spoke in favor of the amendment, Representative Smith ultimately withdrew the amendment.

Representative Cannon also provided explanations for HJR 1569 and HJR 1571 which are the proposed Constitutional amendments to be submitted to the citizens for approval. HJR 1569 contains essentially the same sustentative language contained in HB 1567. HJR 1571 allows for the portability of the "Save Our Homes" constitutional amendment which provides property tax protections when a person's homestead property is taken by eminent domain.

All three bills were each rolled over to third reading and are now ready to be voted on for final passage.

While AIF strongly supports efforts to boost economic development throughout the state, these projects should not proceed through the sacrifice of existing businesses. AIF supports legislation to ensure that when local government takes private property through eminent domain there are proper limitations and procedures in place to protect the rights of private property owners.

BANKING AND INSURANCE

The Senate Banking and Insurance Committee was supposed to spend most of its allotted time discussing SB 1980 Relating to Property Insurance by Senator Rudy Garcia (R-Miami) during its meeting this afternoon. Instead it was forced to temporarily pass Senator Garcia's bill.

Florida's property insurance market is facing a critical crisis as a result of the recent barrage of hurricanes hitting our shores. Citizen's Property Insurance Company, the insurer of last resort for many Floridians, is facing billion dollar deficits. As a result the legislature has made dealing with the complex issue one of its top priorities. Some of the reforms in SB 1980 include:

- Makes ineligible for coverage homes and other specified residential property valued at \$1 million or more, effective January 1, 2007, with certain exceptions.
- Requires the Financial Services Commission (Governor and Cabinet), rather than the Office of Insurance Regulation (OIR), to approve Citizens' plan of operation.
- Requires Senate confirmation of the Executive Director of Citizens.
- Requires Citizens to have an internal auditor who must submit an annual report to the board, the Financial Services Commission, and the Legislature.
- Requires OIR to do a market conduct examination of Citizens every two years.

- Requires the Auditor General to conduct an operational audit of Citizens every three years.

There was much debate over the provisions in the bill and several amendments were filed by committee members, some of them late-filed, which caused much confusion. After taking an informal recess, Chairman Garcia announced that there was not enough time to deal with all the issues raised by members of the committee and that the Senate President had approved a meeting on Friday of this week for the specific purpose of dealing with SB 1980. The Banking and Insurance committee will meet Friday, April 7th from 9:00 a.m. to 4:00 p.m.

AIF opposes a command and control approach to insurance regulation. Attempts to artificially strangle price increases only hasten the demise of a healthy market. Government control must be abandoned in favor of a market-based effort to revitalize the private property insurance market.

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