

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
INTERIM BRIEF**



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**WEEKLY INTERIM LEGISLATIVE BRIEF FOR THE WEEK OF FEBRUARY 6-10, 2006**

**TAXATION**

On Thursday, February 9<sup>th</sup> the House Fiscal Council passed HB 209 by Rep. Fred Brummer (R-Apopka). This bill eliminates the last piece of the intangible personal property tax. The bill is now ready to be debated on the floor. Intangible personal property to which the tax applies includes, among other things, stocks, bonds, notes and other obligations to pay money. Only four states in the country have this onerous tax. HB 209 eliminates the .5 mill annual intangible personal property tax.

**AIF supports the repeal of the intangible personal property tax. It is wrong to penalize businesses and individuals who save or invest their money. By removing this bad tax, Florida will become more competitive with other states since Florida is one of the four states who have this tax.**

Also on Thursday, the Senate Government Efficiency Appropriations Committee passed several important bills for AIF. First, two “sales tax holiday” bills received favorable votes. SB 692 by Sen. Dan Webster (R-Winter Garden) gives a nine day period where no sales tax is collected on certain items such as books, clothing, school supplies or certain bags having a selling price of \$50 or less. Families with school age children have grown fond of this holiday and use this period of time to buy the necessary items for “back to school.” SB 692 will now be heard by the Senate Ways and Means Committee.

Sen. Cary Baker’s bill, SB 24, also received a favorable vote from the committee. His bill gives a “sales tax holiday” on items needed to prepare for a hurricane. The time period for sales tax holiday begins on the first day of hurricane season and last for 12 days. During this time period, items such as flashlights, batteries, water proof sheeting; tie down anchor systems; fuel tanks and non-electrical food storage cooler selling for \$30 or less will be exempt from sales tax. The next stop for SB 24 is the Senate Ways and Means Committee.

Finally, the Committee approved SB 1198 by Sen. Jeff Atwater (R-North Palm Beach) relating to corporate income tax. This bill updates the Florida Income Tax Code to reflect changes in the US Internal Revenue Code enacted by Congress in effect January 1, 2006. The legislation ensures that corporations that are subject to Florida corporate income tax can base their tax calculations on current IRS rules. This “piggybacking” measure is critical. If the Legislature fails to pass this legislation, it would result in Florida corporations to keep a separate set of books; one for the IRS and one for Florida. SB 1198 is now ready to be debated on the floor of the Senate.

**AIF supports sales tax exemptions for back to school buys and hurricane preparedness. Sales tax holidays have grown in popularity over the last several years, to the delight of individuals and businesses alike. When consumers take advantage of these holidays, they spark Florida's economy, bringing long-term and short-term gains for all Floridians.**

## CONSTITUTIONAL AMENDMENT REFORM

On Wednesday, February 8<sup>th</sup> the House Judiciary Committee voted 12-2 to assign a bill number to a proposed committee bill (HJD2) which would increase the vote margin required to pass any Constitutional amendment with a significant fiscal impact. The bill would require a two-thirds approval margin for any proposed Constitutional amendment which increases an existing state tax or fee. Current law already requires a two thirds approval margin for Constitutional amendments which impose a new state tax or fee. A "significant fiscal impact" is defined as any amount greater than 2/10 of one percent of general revenue.

Chairman David Simmons (R-Altamonte Springs) informed the members that a similar bill was passed out of the committee last year and that all if not most members had voted to support this proposal. Rep. Dan Gelber (D-Miami Beach) expressed some concerns and questioned the Chairman on what happens when state revenue fluctuates during good or bad economic years. Chairman Simmons explained that that is why they had written the proposal to be a percentage of general revenue. General revenue is a "moving target" he said and therefore we wanted to come up with a number that would work on any given year.

Several members of the business community, including AIF, were present in support of this legislation. Those who spoke in opposition of the bill pointed out that this would create another hurdle for citizens to pass amendments to the Constitution.

**AIF supports requiring a 2/3<sup>rds</sup> vote to pass any Constitutional amendment which would increase a state tax or fee. Requiring a higher threshold should discourage the adoption of unfunded mandates that must be funded by the Legislature. These unfunded mandates lead to higher taxes and many times force the legislature to look for existing programs and services to cut in order to pay for ill-conceived amendments.**

Also on Wednesday, the Senate Judiciary Committee voted unanimously to assign a bill number to an interim project designed to streamline Florida's Constitution. SB 1918, as it is now filed, seeks to clean-up many of the grammatical errors, obsolete language, and other technical mistakes currently found in the Constitution. In addition, the proposed joint resolution repeals language providing for term limits on federal officeholders which has been found to be unconstitutional. Lastly, the proposed joint resolution provides for the repeal of the pregnant pig amendment and its preservation as a statute.

Many of the Democrats on the committee expressed their angst at the possibility of this bill being a vehicle for transferring many of the recently passed Constitutional amendments to the Florida statutes. Amendments like slot machines and the smoking ban have been adopted because the Legislature has failed to address them. There are some who feel that these "legislative matters" do not belong in the Constitution.

Senators Steve Geller (D-Hallandale Beach) and Skip Campbell (D-Tamarac) repeatedly asked Chairman Dan Webster (R-Winter Garden) for his assurance that he would not support any floor amendments that would remove certain contentious amendments and put them into the statutes. Sen. Webster explained that he was not “looking to make any new enemies” and that his goal was to put out a good product that everyone would be proud of. Another concern was with the House version of this proposal and with the possibility that it be substituted for the Senate’s bill at the last minute. Sen. Webster stated that he had no control over what the House would put in their version of this clean-up, but reiterated that he was not looking for enemies.

**AIF supports Sen. Webster’s attempt to clean-up our state’s top document. Although this bill only focuses on grammatical and obsolete language and the pregnant pig amendment, it is a good first step towards streamlining this document.**

## **LEGAL AND JUDICIAL**

The Senate Judiciary Committee approved SB 262 by Sen. Mike Bennett (R-Bradenton) relating to the Administrative Procedures Act (APA). The APA allows a person to challenge the decisions of a state agency. The APA also provides for legislative oversight of agency rules. The APA also created the Joint Administrative Procedures Committee (JAPC) to be a check on legislatively created authority, as interpreted by executive agencies. JAPC is a joint standing legislative committee consisting of three House members and three Senate members.

SB 262 will clarify the duties of JAPC making it clear that the committee shall maintain a continuous review of statutes that authorizes agencies to adopt rules. The bill also makes changes to the Florida Equal Access to Justice Act. This act allows small business parties to receive attorney’s fees and costs when they prevail in certain adjudicatory or administrative proceedings under the APA and SB 262 expands the definition of “small business party” to an individual whose net worth did not exceed \$2 million at the time the action was initiated by the state agency. Currently, only businesses with less than 25 employees or a net worth of not more than \$2 million, including both personal and business investments are covered by the Florida Equal Access to Justice Act.

Another provision of the bill will provide the public with greater access to the Florida Administrative Weekly (FAW), which publishes notices and other various materials filed by the state’s administrative agencies. FAW will have advanced search capabilities, which should result in potential cost savings to users of the FAW.

The Governor vetoed similar legislation last Session (SB 1010). The legislation filed this year addresses the concerns of the Governor.

**AIF supports the changes to the Administrative Procedures Act. Sometimes what the legislature intended for a law is lost in the translation by the state agency. Clarifying the role of the JAPC will make it harder for state agencies to incorrectly interpret legislation.**

## **PRIVATE PROPERTY RIGHTS/EMINENT DOMAIN**

On February 7, 2006 the Select Committee on Protect Private Property Rights met. Chairman Rubio stated at the beginning of the meeting that the focus would be on selecting one of the three definitions for the taking of private property.

### **Option 1:**

A parcel or property is eligible for taking if:

- a. The parcel is impaired by reason of dilapidation, deterioration, age or obsolescence of structures located on the parcel and the current condition of the property poses an immediate threat to public health or
- b. The current condition of the parcel poses an immediate threat to surrounding by fire or other causes; or
- c. The parcel has been the subject of chronic violations of the municipal or county code or the current condition of the parcel poses an immediate threat to public health or safety or surrounding property by fire or other causes.

### **Option 2:**

Property within a community redevelopment area may be taken by a county or city only for traditional public purposes such as roads, schools, parks, etc. Property within a community redevelopment area may not be taken, however, for the purpose of removing an immediate threat to public health and safety.

### **Option 3:**

A parcel of property is eligible for taking if taking the property is reasonably necessary to eliminate an immediate threat to public health or safety caused by the current condition of the property.

Rep. Everett Rice (R-Indian Shores) addressed the Committee and observed that Kelo type takings have happened in Florida for the past 2 decades. Rep. Rice expressed his support for a constitutional amendment in addition to the statute in order to provide the maximum amount of protection to Floridians.

There was a great deal of discussion regarding combining Option 1 and 3 with a heightened level scrutiny and the clear and convincing evidence standard. Chairman Rubio expressed concern that no consensus would be reached on language before the start of session. Ultimately, Chairman Rubio decided that staff should take into consideration all the comments regarding Option 1 and 3 and combine those options into one definition. At the next meeting the Committee will vote either for Option 1/3 or Option 2.

**AIF is actively monitoring the progress of the Select Committee. Proper limitations and procedures must be established before local governments are allowed to take private property through the power of eminent domain.**

### **HEALTH CARE**

Each of the health care agencies gave a report this week to all of the Health Care Committees and Council. The Secretaries reported on the top 10 trends, opportunities and challenges that each of their respective agencies will face in the upcoming years. A main concern for all of the agencies was the nursing shortage that our state has. This shortage, if left unresolved, can impact adequate access to health care services and can lead to increased health care premiums. The business community must pay close attention to the issue of nursing shortages and work in conjunction with the state to provide incentives for nurses to come to Florida.

The uninsured was also a major theme with Secretary Alan Levine (Agency for Health Care Administration). There are currently over 3 million Floridians who do not have insurance. The majority

of the uninsured tend to be in the Hispanic and African American communities and work for small employers. People who do not have insurance tend not to seek medical services until the conditions are serious and more costly because they opt to get their care in the emergency room. This is creating a challenge for hospitals, local, municipal, and state government who are left to deal with the cost of uncompensated care. The lack of a policy to address the uninsured has resulted in some radical proposals from the Democrats. They include the mandatory payroll tax (HB 813 and SB 1618) that has been filed by Rep. Susan Bucher (D-West Palm Beach) and Sen. Skip Campbell (D-Tamarac). Another example is Sen. Gary Siplin's (D-Orlando) bill that requires universal coverage of children (SB 310).

Secretary Levine also emphasized the need for transparency in health care. Florida has taken a lead in providing consumers with information about performance in hospitals. Having this type of information on all of the other health care providers will empower the consumer and help employers in selecting quality providers. By using this data both quality of health care will improve and the costs of health care will be reduced. AIF has been active in the fight to provide consumers with as much access to medical cost and performance data as possible.

## **DOMESTIC SECURITY AND ECONOMIC DEVELOPMENT**

Seaport security has been the subject of committee meetings in both the Senate and House this week and some of the sentiments expressed are that changes need to be made. John LaCapra, President of the Florida Port's Council, essentially told legislators that in some cases not only is security overly restrictive but it is also focused in the wrong direction.

The state's focus has been on landside access to ports with waterside security the purview of the federal government. LaCapra believes that the waterside of ports is the more critical issue and that landside access restrictions could be putting Florida ports at an economic disadvantage with the competition in other states.

While landside port security is the state's responsibility, the feds have established minimum standards which many states have adopted. However, Florida has legislated far greater controls, which come at a significant price and the bill has been paid at the expense of port maintenance and development.

Following the attacks of September 11th, the Florida Legislature made provisions that allowed ports to use their state allocation of economic development funding for security expenses. Next they mandated security measures that for the last few years have cost ports every dime of that revenue and more. While opportunities for expanding the economic prowess of Florida's fourteen deep water ports have been on the increase, they have not had the needed investment dollars to accommodate growth or even maintain existing infrastructure.

Fortunately, with hundreds of thousands of jobs and hundreds of billions of dollars in annual economic impact dependant on the success of Florida's ports, a few enlightened lawmakers are beginning to express the appropriate concern. At a meeting this week of the Senate Transportation Committee, Sen. Mike Bennett (R-Bradenton) questioned the validity of tens of millions of dollars in security expenses by asking, ". . . so how many people have we caught." He wanted to know what results have come from the investment. No one in the room had an answer to the question.

Sen. Gwen Margolis (D-Bay Harbor Island) noted that she understood because of these ever increasing costs, the Port of Miami lost money last year for the first time ever. Senate Transportation Chairman, Jim Sebesta (R-St. Petersburg) concluded that he wants to investigate the situation with idea that maybe Florida should relax landside security in accordance with federal standards.

Chairman Sebesta floated the idea of forming an adhoc group of public and private interests to undertake a quick fact finding mission in order to determine what changes might be appropriate.

**Please send your comments or suggestions to us at [aif@aif.com](mailto: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.