

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
WEEKLY UPDATE**



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**FROM THE WEEK OF MARCH 13 – MARCH 17, 2006**

Below is a recap of some of the important business bills that were considered by the Legislature this week. You can access each day's complete report by clicking on the "Daily Brief" links on the right hand side of your screen.

**LEGAL REFORM**

The Speaker's top priority this session, the repeal of joint and several liability, was debated on the floor of the house this week.

On Wednesday, March 15<sup>th</sup> Representative Don Brown (R-DeFuniak Springs) presented HB 145 Relating to Damage Apportionment during second reading. Representative Brown proved once again what a good orator he was by masterfully explaining the legal history behind Florida's negligence system and showed how the current doctrine of joint and several liability is unfair and should be abolished. He explained that this is a simple bill that restores fairness and predictability to the legal system and ensures that no businesses or individuals should pay for the wrongdoings of another. This bill will create a most fundamentally fair system which equates responsibility for damages with fault.

Representatives Jack Seiler (D-Pompano Beach) and Arthenia Joyner (D-Tampa) filed an amendment that Representative Brown described, as being very bad and hostile to the intent of his bill. The amendment would defeat the entire purpose of the bill and institute a so called "Fabre fix". That amendment failed by a vote of 38-77. Representatives Seiler and Joyner filed 2 other amendments which were withdrawn. One would remove all caps from medical malpractice cases and the other would remove immunities from negligence cases that currently exist in statute. Representative Kevin Ambler (R-Tampa) also filed a mandatory insurance rate rollback amendment but withdrew the amendment with no debate or discussion.

On Thursday, March 16th the Florida House of Representatives passed HB 145 by a vote of 97-23. The bill was the subject of some lengthy debate over fairness in Florida's legal system. Representative Brown explained that the bill was written in order to match responsibility for damages with the allocation of fault.

In a moving speech, Representative Ken Sorensen (R-Tavernier) shared his personal experiences involving two of his sons who were tragically injured - one through disease and one through an accident. He told the members of the House that it would be easy for him to look around to find the deepest pocket to go after the most money for his children or grandchildren, but as a matter of good public policy, he knew that neither he nor his family would want someone to pay them who was not responsible for the damages they suffered.

In his closing remarks Representative Brown reminded the members that the bill is simply about fairness and not requiring anyone in a lawsuit to pay for more than the share of damages that their own actions caused.

HB 145 now goes to the Senate for consideration.

**AIF supports legislation that would increase fairness and predictability in Florida's legal system. Significant legal reform must be achieved in Florida and the only way to achieve true reform is by abolishing the doctrine of joint and several liability.**

### **PRIVATE PROPERTY RIGHTS**

On Monday, March 13<sup>th</sup> the House Select Committee to Protect Private Property rights met to consider HB 1567, House Joint Resolution 1569 and House Joint Resolution 1571. Chairman Marco Rubio (R-Miami) explained the Committee was not voting to pass the bills out of committee, but rather to decide whether the bills would be part of the Committee's recommendations in its report. Chairman Rubio explained that the bills were filed under his name, because procedurally that was the only way that the bills could be filed.

HB 1567, the Committee's comprehensive eminent domain bill, was passed unanimously by the committee. The bill would eliminate the ability to take property for the purpose of eliminating slum or blight conditions in a geographical area and to enhance the tax base in community redevelopment areas, but allows takings of a parcel of land to eliminate an existing threat to public health or safety. HB 1567 provides additional notice requirements to property owners; provides that the condemning authority must demonstrate by clear and convincing evidence that they are taking the property in order to eliminate a threat to public safety or public health. The bill also prohibits transfers of taken property to private entities with some exceptions.

The Committee also passed HJR 1569, which proposes to amend the Florida Constitution to prohibit the transfer of private property taken by eminent domain pursuant to a petition filed on or after January 2, 2007 except under limited circumstances. The proposed amendment would allow the transfer of property taken pursuant to eminent domain for: use by a party providing common carrier services; use as a road or right of way open to the public for transportation; use by an entity in providing electricity, gas, water, wastewater, storm water, runoff, sewer, pipeline or telephone services or to eliminate an existing threat to public health or safety. Representative Evers again offered an amendment, which was adopted, that clarified that a condemning entity may only transfer property after it has held the parcel for 5 years. The Committee voted favorably for HJR 1569 as amended, with Representatives Joyner, Greenstein and Seiler voting against the resolution.

HJR 1571, which proposes to amend the Florida Constitution to provide that when a person's homestead property is taken by eminent domain and the person purchases another property within 2 years of the taking and establishes the property as his or her homestead, the newly established homestead property must be initially assessed at less than just value, as provided by general law. HJR 1571 also received a favorable vote.

Both of these House Joint Resolutions, if passed by the Legislature, would be placed on the next general election ballot for the citizens of Florida to approve.

Chairman Rubio asked the Committee to give suggestions for which House committees the bills should be referred to for consideration. The Committee members suggested that the bills be

considered by the House Growth Management Committee, House Local Government Council and the House Justice Council.

On Wednesday, March 15<sup>th</sup> the Senate Judiciary Committee heard testimony on SB 2168 Relating to Eminent Domain. The presentations were very short and came from speakers representing landowners, developers and governmental entities. There are some vague references to "public welfare" in the bill as a reason for taking property and the presenters believed that those references could be tightened. All presenters were encouraged to continue working with committee members and staff to develop better language. The bill will likely be brought before the committee again in two weeks. There were no questions or other debate amongst the senators at today's meeting.

**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.**

#### UTILITIES AND TELECOMMUNICATIONS

On Tuesday, March 14<sup>th</sup> the Senate Communications and Public Utilities Committee unanimously passed SB 1318 Relating to Cellular Telephone Solicitation by Senator Victor Crist (R-Tampa). The bill prevents unsolicited telephone calls to a cellular phone without an existing business relationship.

Several members of the business community met with Senator Crist to express some concerns with this legislation. Currently, the Federal Do Not Call List allows consumers to put their cellular telephone numbers on this list for free. In addition it is very difficult for companies who use phone solicitation as a marketing tool to determine which numbers are cellular telephones. Senator Crist believes that consumers are paying for their cellular phone and having to pay for a telemarketing call is not fair.

SB 1318 has passed all of its committee stops and will now be heard on the floor of the Senate. Its House companion, HB 777 by Representative Ed Homan (R-Temple Terrace), was heard by the House Agriculture Committee on Wednesday, March 15<sup>th</sup>.

Several members expressed concerns with this piece of legislation and felt that the bill was too far reaching. Mike Fields testified against the bill on behalf of Bank of America. He explained that there is already a Federal "do not call" list for both land and cellular phone lines, which has been working very well for those individuals who do not wish to receive solicitation calls. Currently, charities and political candidates are exempt from this "do not call list." In addition, the committee grappled with the issue that it is virtually impossible for the business community to determine which telephone numbers correspond with land lines and which numbers are cellular lines. Representative Larry Cretul (R-Ocala) pointed out that there currently exists technology which allows calls to traditional land lines to be automatically forwarded to cell phones. Representative Dwight Stansel (D-Live Oak) used himself as an example, noting that he does most of his business from his pick up truck and that he places sales calls from his cell phone to other cell phones. Representative Stansel was concerned that this legislation would affect folks like him.

In the end, Representative Homan reluctantly accepted the committee's recommendation to temporarily pass his bill in order to work with the business community on some of problems with the bill.

**AIF is closely monitoring the progress of this legislation to determine its impact on the business community.**

## ENVIRONMENT

On Tuesday, March 14<sup>th</sup> the Senate Environmental Preservation Committee unanimously approved SB 2126 Relating to Petroleum Contamination by Senator Cary Baker (R-Eustis). Since 1986, Florida has tried to address the problems of pollution from leaking underground petroleum storage systems through incentive programs. Problems exist with getting insurance for those companies going through the process. This bill establishes a presumption regarding the discovery of contamination at underground petroleum storage tanks. The contamination is presumed to be part of the original discharge that qualified the site for state cleanup funding. This will help alleviate the insurance crisis facing many underground storage system owners.

The legislation is intended to clarify that contamination found during any upgrade to an existing facility is presumed to be related to "old discharge" and therefore should not affect the coverage provided by the facility owner's insurance when upgrading the underground storage tank system to new safer standards. According to staff analysis, this legislation should remove any impediment for facility owners or to upgrade early and it allows facility owners to take advantage of the financial incentives provided by the 2005 Legislature.

**AIF supports legislation that would encourage private owners of underground petroleum storage facilities to clean up and upgrade their tanks. Providing incentives will presumably encourage owners to clean their sites in a timely matter.**

The House Environmental Regulations Committee voted to introduce its proposed committee bill, HER2 Relating to Brownfields on Wednesday, March 15<sup>th</sup>. It is basically the same language as its Senate companion, SB 1092, by Senator Lee Constantine (R-Altamonte Springs). The bill will increase the amount of credit from 35% to 50% that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated Brownfields or dry-cleaning site, and increases the amount of tax credit that may be granted to a tax credit application per year from \$250,000 to \$500,000.

**AIF supports legislation to increase existing tax credit provisions which will create additional incentives for businesses to voluntarily cleanup eligible contaminated sites. Cleaning up Brownfields increases future job opportunities and economic growth for area residents, while at the same time restoring a region's environmental integrity.**

On Friday, March 17<sup>th</sup> the House Agriculture and Environment Appropriations Committee unanimously approved HB 261 by Rep. Dwight Stansel (D-Live Oak), the Florida Incentive-Based Permitting Act. This bill will provide the Department of Environmental Protection the authority to consider a history of regulatory compliance by an applicant when DEP is considering whether to issue or reissue a permit to the applicant. The applicant would have to request incentives as part of the permit application. This would allow businesses in the state who are good stewards of Florida natural resources to have longer permits; expedited permitting and less inspections therefore saving time and money. As Rep Ken Littlefield (R-Zephyrhills) stated, "You always do better with carrots than sticks. If you use sticks, then people will just stay status quo. Incentives motivate people to do more." DEP said they were not against incentives, they would prefer to put more punishment on those who do wrong. Rep. Ralph Poppell was quick to respond, "Going through the permitting process is punishment enough!"

The bill now goes to the State Resources Council.

**AIF supports legislation that takes into account a company's past performance in the DEP permitting process. AIF believes that regulated entities should receive some benefit for good behavior and should not be subject to arbitrary or uncertain punishment.**

#### **GUNS IN THE WORKPLACE**

On Wednesday, March 15<sup>th</sup> the House Judiciary Committee once again temporarily passed HB 129 by Representative Dennis Baxley (R-Ocala) also known as the "Guns in the Workplace" bill. Several amendments were in the committee packet which would have brought the House version closer in line with its Senate companion. Chairman David Simmons (R-Altamonte Springs) said that he woke that morning at 5:00 a.m. with a new idea on how to get all of the parties together on this bill, but did not elaborate on what his compromise would be.

**AIF opposes legislation that prohibits businesses from enforcing or maintaining policies that ban guns in the workplace. Employers should be allowed to establish these types of policies and exert their rights as property owners. Maintaining a safe work environment is paramount for the longevity of any employer in Florida.**

#### **TAXATION**

On Wednesday, March 15<sup>th</sup> the "Florida Manufacturing Global Competitiveness Act", SB 1206 by Senator Jeff Atwater (R-North Palm Beach) received unanimous approval by the Senate Commerce and Consumer Services Committee. This bill expands the sales tax exemption from partial to full for machinery and equipment used by expanding facilities engaged in spaceport or manufacturing activities. Currently, this machinery and equipment is exempt from sales tax in excess of 50,000 dollars. It also expands from partial to full sales tax exemption for machinery and equipment used by expanding businesses that manufacture tangible personal property pursuant to federal procurement contract.

Senator Atwater explained that the committee had voted out the same bill last year, but that unfortunately, it did not make the cut when the legislature was negotiating last year's budget.

The manufacturing industry in Florida is at a disadvantage with neighboring states who already grant sales tax exemptions for machinery and equipment used for manufacturing. This legislation will help Florida be competitive and attract more manufacturing firms to the state, thus creating more high skill, high wage jobs.

SB 1206 will now be heard by the Governmental Efficiency Appropriations committee.

**Florida's tax code is not only the source of revenue for state government – it is also an important economic development tool. There are times when exempting an item from taxes will bring more money into the state than would be realized if it were taxed. AIF supports a full tax exemption on machinery and equipment used by expanding spaceport and manufacturing facilities.**

On Thursday, March 16<sup>th</sup> SB 1198 Relating to Corporate Income Tax by Senator Jeff Atwater (R-North Palm Beach) was read a second time on the Floor of the Senate. This legislation is also known as the “Corporate Piggyback” bill and updates the Florida Income Tax Code to reflect the changes made by the US Congress in 2004 to the US Internal Revenue Code of 1986.

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal income as the tax base for the Florida Income Tax. Passage of this bill ensures that corporations which are subject to Florida income tax can base their calculations on current IRS rules. If the legislature does not pass this legislation, corporations would have to keep two sets of records: one for Florida and one for the IRS.

SB 1198 is now ready for a final Senate vote.

**AIF supports the passage of this bill so that Florida corporations do not have to endure the burdensome task of filing duplicate tax records.**

#### **CONSTITUTIONAL AMENDMENT REFORM**

The Senate Committee on Criminal Justice met on Wednesday, March 15<sup>th</sup> to reconsider Senate Bill 1244, An Act Relating to the Petition Process by Senator JD Alexander (R-Lake Wales). The bill is an attempt to provide transparency in the signature gathering process. Senate Bill 1244 has several key provisions which provide that: a petition must be submitted to the supervisor of elections within 30 days; signature gatherers may not be paid based upon the number of signatures gathered; paid signature gatherers must wear badges indicating that he or she is a “paid petition circulator” and private property owners may permit or prohibit activity which support or opposes initiatives.

At the Committee's last meeting held on March 8, 2006, this bill received an unfavorable vote, however, a motion was made at that meeting to reconsider the vote. Before the vote could be reconsidered at today's meeting, Senator Jim King (R-Jacksonville) moved to temporarily postpone the bill.

Its House companion, HB 773, by Rep. Dudley Goodlette (R-Naples) was also temporarily postponed on Friday, March 17<sup>th</sup> by the House Transportation & Economic Development Appropriations Committee.

**The petition gathering process must be regulated in order to ensure that special interests do not break the law to get proposed citizen initiatives on the ballot. AIF supports the provisions in this bill which address the issue of fraud, but is carefully monitoring the progress of this legislation in order to ensure that citizens are not completely shut out of the democratic process.**

## LEGAL AND JUDICIAL

On Thursday, March 16<sup>th</sup> the House Business Regulation Committee passed HB 841 Relating to Limitations on Supersedeas Bonds by Chairman Frank Attkisson (R-Kissimmee). Chairman Attkisson explained that when a business or individual is sued successfully and wants to appeal a ruling, they are frequently required to post a bond to ensure that there is no economic waste of assets during the course of the appeal. Currently, in most cases, the bond amount must equal the amount of the judgment plus 2 years of interest at the statutory rate. This legislation would limit the bond amount for large employers with over 400 employees to \$25 million. The bond limit for smaller companies and individuals would be the lesser of \$1 million or 5% of the appellant's net worth.

Representative Attkisson filed this bill because he believes that the unlimited bond amounts create an access to courts problem for many businesses and individuals at the appellate level who are not able to secure a bond that large. All of the committee members who questioned and debated the bill expressed a support for the concept of limiting the bond amounts. However, some had suggestions that the lower threshold for smaller employers and individuals may not be based on the appropriate standard. Chairman Attkisson promised to work with the committee members in the upcoming committee stops to work out the practical applications of the bill that were questioned.

The bill will next be heard in the House Justice Council.

**AIF supports legislation that would provide businesses seeking appellate review of judicial decisions a more cost effective and practical way to access the appellate court system.**

## IDENTITY THEFT

On Thursday, March 16<sup>th</sup> the House Economic Development, Trade & Banking Committee unanimously voted to introduce their proposed committee bill HED3 Relating to Internet Phishing. Representative Frank Farkas (R-St. Petersburg) presented the bill because of his previous work on this issue. The bill creates the "Anti-Phising Act of 2006" and will prohibit the acquisition of personal identifying information through the use of a website or e-mail with the intent to possess or use such information fraudulently. Internet "Phishing" typically occurs when a person attempting to obtain personal information sends an e-mail that appears to come from a financial institution or well know e-commerce site. The email requests the recipient to provide personal information such as social security numbers and account information.

The bill establishes civil causes of action for internet service providers, web pages, and trademark owners who are harmed by those individuals who deceptively pass themselves as official representatives of such groups. Penalties of up to \$100,000 are established for violators.

**AIF supports efforts to protect businesses and their customers against identity theft and other forms of fraud, which are economic drains and undercut our state's growing reliance on technology.**

## INSURANCE

The second week of the session began with a presentation from the Weather Channel Meteorologist/Hurricane Expert Dr. Steve Lyons. He said the obvious: Florida, because of its large coastline and high population living near the coast, is the most vulnerable of all the states to hurricanes. He further said that Florida's hurricane vulnerability has not necessarily increased due

to an increase in hurricane frequency, but due to tremendous growth of properties being developed and people living so close to the coastline. He concluded by saying that the best defense against hurricanes is mitigation including sound building codes.

The following is a brief synopsis of Week 2 Insurance Legislative action:

On Thursday, March 16th the House Insurance Committee approved its property insurance bill with new provisions to address Citizens' problems and to provide a more favorable regulatory environment for property insurance companies. The Committee rejected a Democratic proposal to make Citizens the statewide insurer of hurricane losses up to \$500,000 per claim. Jack Nicholson, Chief Executive Officer of Florida's Catastrophic Fund, testified that if this provision had been in effect for the 2004 and 2005 hurricane seasons the state would have had to issue \$15-20 billion in new bonds to pay for losses. This would have had a devastating impact on the state's A+ credit rating. Florida's total state debt today is approximately \$20 billion. Jack summarized the state's choices by stating that he feels that the worst alternative is to fund Florida's hurricane exposure through debt and that the best alternative is to fund such exposure with capital.

The Committee chose a capitalization alternative. The bill has several provisions requiring Citizens to adopt rates which will substantially minimize subsidies from non-Citizens policy holders. Further, the bill reduces Citizens exposure by eliminating homes valued at \$1 million or more on the coast and certain second homes from eligibility for coverage. Under other provisions of the bill private insurers may provide coverage for these homes without the rates for such coverage being subject to the state's Office of Insurance Regulation's (OIR) review and approval. Private insurers' rates for other homes which on the statewide average do not exceed 5% and average 10% in any one territory also will not be subject to OIR's approval under provisions of the bill. The OIR representative testified in favor of this rate flex provision.

The news is not so good in the Senate. The Senate Banking & Insurance Chair distributed an outline of proposed provisions under consideration for inclusion in the Senate's property insurance bill on Wednesday, March 15th. The committee's outline includes many of the Citizens eligibility provisions; however, it includes significant new burdensome requirements on property insurers. One of these provisions significantly impacts both insurers and mortgage lenders. This provision would require insurers to issue separate checks directly payable to policyholders for the lesser of \$20,000 or the first 20% of the estimated total covered claim amount for the replacement or repair of dual-interest (mortgaged) properties.

**AIF opposes a command-and-control approach to insurance regulation. Attempts to artificially strangle price increases only hastens the demise of a healthy market. Fortunately, many legislators appear ready to abandon government control in favor of a market-based effort to revitalize the private property insurance market.**

- 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.