



DAILY BRIEF

From April 1, 2009

Most of today's action took place in the [Senate Judiciary Committee](#) as a number of contentious bills were on the agenda. The Committee took up issues dealing with surplus lines insurance, workers' compensation, and it was slated to consider the "Parental Authority" bill, but because of the controversial nature of this bill and time constraints the Committee never got to the bill.

The Senate will be in Session on Thursday at which time they will be voting on [SB 360](#) Relating to Growth Management by [Senator Mike Bennett \(R-Bradenton\)](#). Much debate is anticipated on this good bill for the business community. Senate leaders have identified [SB 360](#) as one of their priorities this session.

Workers Compensation

Today, the [Senate Judiciary Committee](#) began its deliberations over [SB 2072](#) Relating to Attorney's Fees/Workers' Compensation Cases. [Senator Garrett Richter \(R-Naples\)](#), the bill's sponsor, requested that the Chair, [Senator Lee Constantine \(R-Altamonte Springs\)](#) allow public comments early on in the handling of the bill because time was significantly constrained at prior meetings where the bill was heard. Therefore, **Chair Constantine** allowed the introduction of an unfriendly amendment by [Senator Jeremy Ring \(D-Margate\)](#) that was similar to the unfriendly amendments that were voted down last week in the House. However, before the senators began debating the amendment, and as the committee's meeting time dwindled, **Chair Constantine** called for the bill to be temporarily postponed and announced that the bill would not be heard again in the [Senate Judiciary Committee](#) until the week of March 13th.

AIF strongly supports Senator Richter's [SB 2072](#) with NO amendments. Effective today, April 1, 2009, the workers' compensation rates are increased 6.4 percent for all Florida employers directly resulting from the [Murray](#) decision of the Florida Supreme Court. Over the next two years, those rate increases will continue to at least 18.6 percent due to the Murray decision alone unless the Florida Legislature acts this year and passes **Senator Richter's** good bill. The House companion, [HB 903](#) by [Representative Anitere Flores \(R-Miami\)](#), passed the Florida House of Representatives yesterday and the Florida Senate must follow suit as swiftly as possible for the restoration and survival of Florida's prosperous economy.

AIF SUPPORTS efforts to pass workers' compensation legislation that clarifies the intent of the 2003 reforms and prevents Florida's workers' compensation system from deteriorating to pre-2003 status.

Growth Management

Today, the [House Economic Development and Community Affairs Policy Council](#) unanimously approved [HB 227](#) Relating to Impact fees by [Representative Keith Fitzgerald \(D-Sarasota\)](#). The bill changes the burden of proof for a challenger to merely a preponderance of the evidence, thus alleviating a local government's presumption of correctness that currently attaches to impact fee ordinances.

The bill was amended to include a two-year freeze on impact fees. **David Hart** of the Florida Home Builders Association spoke in favor of the amendment and thanked AIF, realtors and others for their help in drafting legislation prohibiting the increase of impact fees.

[HB 227](#) is now headed to the floor to be considered by all 120 members of the House of Representatives.

[HB 227's](#) Senate companion, [SB 580](#) by [Senator Mike Haridopolos \(R-Melbourne\)](#), was unanimously approved by the [Senate Judiciary Committee](#) today.

[SB 580](#) will now be considered by the [Senate Finance and Tax Committee](#).

AIF SUPPORTS legislation that eases the burden of proof on impact fee challenges. This statutory fix will level the playing field for businesses in any court challenge so that governments are not presumed correct in their methodology when increasing an impact fee, or crafting a new one.

Health Care

Today, the [House Health and Family Services Policy Council](#) unanimously approved [SB 285](#) Relating to Medicaid Low-Income Pool and Disproportionate Share Program by [Representative Jimmy Patronis \(R-Panama City\)](#). The bill aims modify the makeup of the Low Income Pool (LIP) Council. The LIP Council is currently made up of representatives from the hospitals that receive income from the \$1 billion in Federal funds it draws down yearly. The bill also ensures that no registered lobbyist can serve on the council, as well as expands membership to non-hospital representatives.

[Representative Kevin Ambler \(R-Tampa\)](#) complemented the bill sponsor on his consensus bill. [HB 285](#) will now be considered by the [House Health Care Appropriations Committee](#).

AIF SUPPORTS legislation that eliminates the Low Income Pool (LIP) Council and places responsibility for recommendation and distribution of these funds in the hands of the Legislature and experts at the Agency for Health Care Administration (AHCA).

Today, the [Senate Health Regulation Committee](#) unanimously approved [SB 242](#) Relating to Autism Spectrum Disorder Screening/Minors by [Senator Jeremy Ring \(D-Margate\)](#). The bill requires that a physician refer a minor to an appropriate specialist for screening for autism spectrum disorder under certain circumstances.

The committee adopted three amendments, offered by [Senator Mike Bennett \(R-Bradenton\)](#), pertaining to the content and schedule of childhood vaccinations. **Senator Bennett** gave his word to the committee that he would work with pediatricians to give them the right to refer a patient wishing to partake in an alternative vaccination schedule different from one recommended by the physician to a different physician, and include other medical professionals who administer vaccinations in the bill. Senator Bennett also stated that he would work with physicians in regards to the proposed elimination of vaccinations containing mercury in the State of Florida.

The measure will likely be heavily revised in its next committee stops. [SB 242](#) will now be considered by the [Senate Banking and Insurance Committee](#).

AIF OPPOSES any health insurance mandate that makes coverage less affordable and accessible without greatly contributing to the increased well-being of all Floridians.

Insurance

Today the [Senate Judiciary Committee](#) narrowly approved (5-4) [SB 1894](#) Relating to Surplus Lines Insurers by [Senator Mike Bennett \(R-Bradenton\)](#). The bill specifies the legislature's intent to exempt surplus lines insurance from chapter 627, F.S. by providing that the provisions of chapter 627, F.S. do not apply to surplus lines insurance unless a statutory section in chapter 627, F.S. specifically states it applies to such insurers. On June 26, 2008, the Florida Supreme Court ruled that surplus lines insurance is not exempt from all of these requirements. The practical impact of the Supreme Court decision is the elimination of surplus lines insurance in Florida. If this finding is not addressed legislatively, insurance will not be available for hard to place or unique commercial risks as well as high value or unique residential properties.

Access to this insurance market is critical, since 15% of businesses in Florida rely on surplus lines insurance for their property and casualty insurance. A strike-everything amendment by [Senator Mike Fasano \(R-New Port Richey\)](#) was adopted in committee today; thereby, eliminating an anti-business amendment sponsored by [Senator Jeremy Ring \(D-Margate\)](#) at the last committee stop.

[SB 1894](#) will now be considered by the [Senate Finance and Tax Committee](#).

AIF supports this measure as a way to ensure the continued accessibility of Surplus Lines insurance in Florida. Approximately fifteen percent of Florida businesses procure their property and liability insurance through the Surplus Lines insurance market. Without this market, insurance will not be available to many of these businesses with hard to place risks and unique insurance needs.

Legal and Judicial

Today, the [Senate Commerce Committee](#) unanimously approved [SB 872](#) Relating to Fictitious Names by [Senator Chris Smith \(D-West Palm Beach\)](#). Public notice laws are an important issue and are included in AIF's [2009 Session Priorities](#). In 2001 the Legislature gave the Secretary of State the authority to waive the requirement to publish a fictitious name in a newspaper of general circulation and post those names on their website. The current exemption language does not provide notice to individuals who do not have access to the internet. [SB 872](#) will still allow fictitious names to be posted on the Secretary of State's website, but reinstates that fictitious names are to be published in print as well.

Keyna Cory, AIF's Chief Lobbyist, spoke in favor of the bill stating that this clarification in law is a good step towards protecting businesses.

[SB 872](#) will now be considered by the [Senate Judiciary Committee](#).

AIF believes that legal notices should be published in print as well as posted on the internet to increase the opportunity for the public to receive important information, and protect the public by providing information on the parties who are doing business in their area.

Economic Development

Today, the [House Economic Development and Community Affairs Policy Council](#) unanimously approved [HM 1483](#) Relating to United States-Colombia Free Trade Agreement by [Representative Juan Zapata \(R-Miami\)](#). The House Memorial urges the US Congress to support the establishment of a free trade agreement between the US and Columbia.

The pending approval of this free-trade agreement is dependent upon prompt action by members of Congress. The Florida Legislature should send a strong message of support for this very important free trade agreement. In addition to helping our friends abroad, this agreement will significantly aid both national and Florida economies at a time an economic boost is greatly needed. Florida's 14 deep water ports would see an influx of commerce with our proximity to Colombia and this opportunity cannot be overlooked. Colombia is one of Florida's top trade partners and thus legislators should do everything in their power to advocate for the approval of this agreement.

AIF stood in support of this HM because it should have a positive economic impact to Florida especially our ports.

[HM 1483](#) will now be considered by the [House Rules and Calendar Council](#).

AIF strongly supports this measure and applauds Representative Zapata for his commitment to this issue. Exports out of Florida are one of the few bright spots in our state's economy and approval by the US Congress of this free trade agreement would be an instant boost for business in Florida.

Taxation

Today, the [Senate Finance and Tax Committee](#) unanimously approved [SB 2546](#) by [Senator Thad Altman \(R-Melbourne\)](#). According to the bill's sponsor, the bill aims to modernize the Florida statutes compared to other states and would make income tax fair for home-grown Florida companies by requiring multi-state companies to more appropriately apportion their share of income taxes to Florida.

Some of the provisions in this 61-page bill include:

- Classification of partnerships: would require taxpayer adherence to classification for federal purposes
- Non-business income (NBI) redefined and limited: NBI would now be an amount that cannot constitutionally be included in apportionable income, without any reference to the functional and transactional tests, which would be stricken.
- Add-back of two years for expenses related to a sold asset, apparently where the proceeds of sale were treated as NBI.
- Add back of intercompany expenses, including expenses relating to intangibles, interest, and management fees (broadly defined). Focus is on companies filing separately. Uses 50% ownership test for "intercompany"
- Limits NOL carryovers from years ending prior to December 31, 2009, by requiring add-back of intangible expense, interest expense, & management fees.
- Requires detail of all intercompany transactions with each return, with no exceptions for consolidated filers & negligence penalty for failure to do so.
- Eliminates mechanism for deconsolidation.
- Limits use of NOLs incurred by entities before becoming a member of consolidated return (SRLY rule), apparently to reverse the holding in *Golden West* case.
- Eliminates the grandfather nexus consolidation election that authorized continued filing by a group as it was comprised prior to September 1, 1982.
- Specifically provides that intercompany sales are excluded from sales factor for consolidated filers.
- Provides criteria for sourcing services, including throwback of 50% to Florida if the taxpayer is not subject to income tax in the state where the service is received, and throw out rule for "nowhere" sales.
- Revamps apportionment for financial institutions.
- Corporations filing nexus group returns would file separately or include in a consolidated return all entities included in the federal consolidated return.
- Provides enhanced rulemaking authority to the Department of Revenue including the authority for rules "interpreting each definition used in this chapter." This is very broad authority, almost a blank check, and in excess of the authority given to other agencies.
- Purports to "clarify" that 2002 legislation requiring interest on amounts paid per RAR adjustments was intended to apply retroactively.

Representatives from all the major business groups in Florida provided comments to the Committee on the bill. For the most part, business groups urged committee members to go slow, especially when making such broad policy changes at a time when the economy is facing a significant down-turn.

Frank Meiners, on behalf of AIF, testified that while we understood what the Committee members were trying to do with the bill, it would discourage investment in the state. Currently, Florida is a favorable state to invest in, but this bill changes that by being too broad and including some provisions that do not exist in any other Southeastern state.

[Senator Jeremy Ring \(D-Margate\)](#) asked AIF what could be done to attract more companies to locate in Florida. Meiners responded that one solution could be for the state to enact a single sales factor to apportion income in Florida. **Senator Ring** then asked the Chair of the Committee to please consider doing that.

[Senator Mike Bennett \(R-Bradenton\)](#) stated that he did not believe any company would leave the state or not come to Florida because of the changes proposed by the bill; they would just pay the tax.

The Senators were concerned about passing a bill so complex in such a short amount of time, and **Senator Ring** suggested delaying the vote to hear from more stake holders.

Because we are already near the mid-point of session, **Chairman Altman** asked his fellow committee members to pass the bill, but he promised to work with all interested parties in the next couple of days to try to arrive at a bill that industry could live with.

[SB 2546](#) will now be considered by the [Senate Commerce Committee](#).

AIF strongly opposes this bill because it is overly broad and discourages investment; and therefore, economic development in the state. Moreover, the bill includes provisions that no other competing state currently has making Florida at a real disadvantage when competing for jobs with our neighboring states.

The [Senate Commerce Committee](#) unanimously approved [SB 2270](#) Relating to Corporate Income Tax/Water's Edge Group by [Senator Dan Gelber \(D-Miami Beach\)](#). The measure aims to close loopholes that multi-state companies are using to lower their state income. Essentially, the bill would mandate "combined" reporting, which would require all corporations that are members of a newly defined "water's edge group" to file a tax return combining income from subsidiaries outside the state of Florida and then apportioning the combined income to Florida based upon a statutory formula. **Senator Gelber** used the example of Wal-Mart using a provision of law allowing them to deduct lease expenses to an affiliated company located in a state that does not have an income tax.

He further stated that a number of states have adopted the "combined reporting" statute, reiterating that it was only fair to go to this type of income reporting because Florida-only companies do not have the ability to make similar deductions.

Senator Gelber also stated that he would like the \$364.5 million this bill would raise in additional corporate income taxes to go towards funding for education.

AIF and other business groups testified in opposition to the bill, but did so in a hurried manner as the Chair was pushing to get to a vote before running out of meeting time.

During debate, several Senators stated that they would vote yes on the bill just to allow for further discussions on this major change to Florida's corporate income tax structure.

This is not Florida's first experience with this proposal. When the unitary tax was first enacted, Florida corporations were told it was a fairer share of state corporate income taxes. Instead, major multi-state companies left Florida including IBM and Sony. It was such a bad idea, Florida repealed it in 1984. **Representative Gelber** is once again touting this idea as a way to "level the playing field" for those Florida-based businesses that must compete with large corporations with a nation-wide footprint.

[SB 2270](#) will now be considered by the [Senate Finance and Tax Committee](#).

AIF opposes any legislation that would bring about “combined reporting” or establish a “unitary tax” in Florida. Taxing our way out of a recession is not feasible and this type of legislation sends a terrible message to companies and investors looking to invest in our state. Florida tried this approach once before and it was a disaster, costing the state thousands of jobs.

Transportation

Today, the [Senate Transportation Committee](#) unanimously approved [SB 422](#) Relating to Department of Transportation by [Chairman Andy Gardiner \(R-Orlando\)](#). This piece of legislation contains several provisions that the Department of Transportation and other transportation related industries have been keenly watching and involved with for several years.

The bill would allow for large hangers that are used in the assembly of airplanes to be exempt from local concurrency requirements, it grants the ability for Public Private Partnerships to be used by local governments for the operation and construction of existing or new roads, and includes language codifying state law that would adjust state truck weight requirements to allow for a small overage in weight if the overage is caused due to the truck having installed an anti-idling device.

The bill goes on to further implement language that makes a declaratory statement that aggregate materials are of critical state importance. Aggregate mining is a critical issue for the state of Florida, and with limited resources at our disposal, AIF has urged lawmakers to put into statute provisions that will protect the state and the mining industry from further impediments that are misguided and have motives to shut down mining all together. Transportation infrastructure projects will require a healthy amount of aggregate materials and having to import the materials is neither cost effective or time efficient.

[SB 422](#) will now be considered by the [Senate Governmental Oversight and Accountability Committee](#).

AIF supports this legislation as it will positively impact transportation infrastructure projects in the near future. We will continue to monitor and report on its progression through the process.