



# DAILY BRIEF

**From March 25, 2010**

The Florida Senate today passed four bills that resolve critical legal reform issues affecting Florida businesses, including the Transparency in Private Contracting Act (SB 712/HB 437) and bills related to slip and fall litigation, parental authority for signing waivers and sovereign immunity. These bills are among Associated Industries of Florida (AIF) top legal reform priorities for the 2010 Legislative Session.

The Senate also passed the massive “Jobs for Florida” package today. A number of other economic development proposals also advanced today. A complete report of these job bills as well as other AIF priorities is included in today’s *Daily Brief*.

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## **Economic Development**

Today, the Senate’s massive “Job for Florida” legislation unanimously passed the full Senate and in doing so, sent an incredibly comprehensive piece of legislation to the House that carries with it a daunting price tag of just over \$187 million.

SB 1752 by Senator Don Gaetz (R-Destin) is a combination of several pieces of standalone legislation and has been the product of the Senate’s Select Committee on Florida Economy for several weeks. The bill has been widely lauded by the business community, including AIF, as well as manufacturers, retailers and other outside groups. Perhaps of greatest importance to AIF is the \$30 million that will be allocated into Space Florida and other space related industries.

SB 1752, nonetheless, has not been without controversy. As originally drafted, the bill contained provisions that some say would strip local control for permitting, as well as mandated expedited permitting of environmental agencies to less than 30 days. This language was strongly opposed by local governments and members of the environmental community. In light of this controversy, the Senate adopted amendments that stripped these provisions out of the bill and in doing so alleviated many concerns that had arisen.

As provided by the President of the Senate’s office, highlights of the bill include:

- Creating a tax credit for small and large businesses that hire unemployed Floridians;
- Accelerating tax credits for capital-intensive industries in return for adding new, high-paying jobs;
- Improving competitiveness among Florida’s ports by granting tax credits in return for job creation;
- Commercializing research done in Florida universities and by Florida companies through a combination of state and federal grants;
- Doubling the state’s film incentive to include digital media companies producing long-term jobs in Florida;

- Supporting the space industry with financing for new and expanded space-related businesses, re-training workers now engaged in the Shuttle program and funding flexibility for Space Florida;
- Disposing of state-owned, non-conservation lands with proceeds used for job creation and economic development;
- Encouraging Florida-based manufacturers to invest in machinery and equipment over the next two years;
- Re-authorizing the Qualified Target Industry Incentive to link tax refunds with the number of jobs created, wages paid and location of businesses;
- Establishing the State University Research Commercialization Grant Program, a source of seed capital to take to market products developed by public ally sponsored research;
- Requiring greater transparency and “return on investment” results in the use of economic development funds;
- Improving the ability of local governments to receive delegated authority from the state to avoid duplicative regulatory reviews of the same project; and
- Helping first time home buyers by extending the Florida Homebuyer Opportunity Program

The House has yet to take up such a large economic development package to date. While various provisions of SB 1752 exist in pieces of legislation moving through the House, there is no direct companion for the bill at this time. Many speculate that the price tag will be too much for the House to swallow and that eventually this ambitious bill will take on a different form before its final passage.

SB 1752 will now move to the House of Representatives for consideration by its members.

**AIF is incredibly supportive of many of these provisions in the bill. While on their own they are important, when packaged together and utilized most of these incentives are an invaluable tool for businesses looking to locate or expand in Florida. We will continue to support measures in the House that mirror SB 1752 and will continue to work towards providing our members with the tools necessary to successfully grow in our state.**

Today, House Economic Development Policy Committee unanimously passed HB 773 Relating to Expedited Permitting by Representative Paige Kreegel (R-Punta Gorda) that would work towards expediting permitting for projects and jobs deemed to have an economic impact on the local community.

Currently, Florida statute allows for an expedited permitting of targeted economic development projects that meet certain job creation requirements. While good in theory, very few permit applications have benefited from this process with only three projects utilizing the process over the last four years. In practice, HB 733 would reduce the job creation requirements from 100 jobs to 50 jobs. It also broadens the eligibility to renewable energy projects that meet the job requirements. Lastly, the oversight of the permitting remains at the Department of Environmental Protection (DEP) while the economic development analysis will be administered by the Governor's Office of Tourism Trade and Economic Development (OTTED).

The bill will now be reported to the House Agriculture & Natural Resources Policy Committee.

**AIF SUPPORTS legislation that removes unnecessary levels of government oversight from the expedited permitting process. Removing OTTED from the environmental aspects of the expedited permit review chain may lead to streamlining of expedited permit and comprehensive plan amendment reviews by the DEP. Businesses would then need to execute only one agreement with the DEP, not separate ones with each agency or governmental entity.**

Today, the House Finance and Tax Council unanimously passed a high priority measure for AIF, HB 697 Relating to Entertainment Industry Economic Development by Representative

Steve Precourt (R-Orlando). This bill establishes the Entertainment Industry Economic Development program. This incentive, a twist from the existing Film and Entertainment program, would distribute state funds among several entertainment and film related industries, including commercial and music videos, independent productions and digital media types. Additionally, in oversight of the program, the Governor's Office of Tourism, Trade and Economic Development (OTTED) would administer the credits and be responsible for ensuring that recipients are adequately qualified to receive the post purchase tax credit. The credits would be transferable and the program would become effective in July 1, 2010.

Passing its final committee of reference, HB 697 will now proceed to House floor for a final vote by all members.

**AIF SUPPORTS passage of legislation creating a tax credit-based rebate incentive that is not subject to legislative appropriations. Digital media entertainment and film are two industries that Florida must grow to be a part of the global economic landscape.**

The House Finance and Tax Council passed **Proposed Committee Bill (PCB) FTC 10-11**, which includes a number of economic development provisions strongly supported by AIF. The bill includes language that makes it easier for manufacturers in Florida to take advantage of the state's sales tax exemption for machinery. The bill also creates a new program known as the "Local Government Distressed Area Matching Grant" which would allow the state to provide local governments with matching grants to aid with the attraction or retention of businesses to the state. In order to qualify, local governments would have to meet qualified expenditure guidelines. Qualified expenditures are defined as direct incentive payments, reduction of impact fees, permit fees, etc.

Perhaps most importantly, **FTC 10-11** provides for some significant appropriations for Florida's space industry including \$3.2 million for workforce training and \$10 million for infrastructure investments in the space industry. **Barney Bishop, President & CEO of Associated Industries**, testified in support of the legislation especially the sections dealing with space and thanked the Committee for their work on this bill. Bishop explained how for the last two years, AIF has been advocating on behalf of the space industry and for the need to ensure that Florida maintains its dominance in space. He highlighted the importance of the workforce training dollars as a way to prevent the "brain-drain" associated with the potential loss of the thousands of jobs in Cape Canaveral as a result of the phase-out of the space shuttle program.



**Barney  
Bishop**

In her closing, Chair Ellyn Bogdanoff (R-Ft. Lauderdale) reiterated the House's commitment to the space industry and remarked that it was still early in the process, but that it seemed as though both chambers have made space funding a priority.

**AIF SUPPORTS legislation aimed at protecting Florida's space industry and the thousands of jobs and billions of dollars it provides to our state.**

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## **Legal & Judicial**

Today, the Senate considered the Transparency in Private Contracting Act, HB 437 by Representative Eric Eisnaugle (R-Orlando). The bill's Senate companion, SB 712 by Senator John Thrasher (R-Jacksonville), was "laid on the table" by Senate members and substituted by HB 437. The bill was passed by a vote of 27-11.

This legislation has been a top priority of **Florida's Attorney General, Bill McCollum**. His tenacity and vision should be commended on this establishment of fairness in contracting for legal representation of the State of Florida.

Most importantly, this legislation puts reasonable limitations on contingency fee awards to private law firms, exclusive of costs and expenses related to litigation. This limitation would ensure that the people of Florida get the maximum benefit from the litigation, while attorney's working on these cases continue to receive adequate compensation. It defies imagination that \$50 million in attorneys' fees, exclusive of costs and expenses, would not be enough money to pay lawyers to represent the state, even in the most significant cases.

This bill also creates an open, accountable structure for how the office conducts business for the people of Florida. The bill requires that private legal services engaged on a contingency fee basis be competitively procured, if possible. It also requires the Attorney General to post those contracts, time cards and payment records online, thus providing more transparency and accountability to the Florida public.

Since the bills are identical in substance, and HB 437 was passed by the House of Representatives a few days prior, the bill's passage will allow it to proceed directly to the Governor to be signed into law.

**AIF salutes Senator Thrasher for his dedication to this important issue. Florida's Attorney General serves as the state's chief legal officer, thus requiring the resources that this bill provides to handle certain complex cases with this legislation's policy. This measure passed today will guarantee accountability, transparency and reasonableness in that process.**

Also considered during this morning's Senate Session was SB 1224 Relating to Negligence/Slip on Foreign Substance by Senator Andy Gardiner (R-Orlando). This legislation clarifies that a plaintiff bears the burden of proving that a business owner had constructive or actual knowledge of a hazardous condition on its premises when the plaintiff sues for damages from a slip and fall injury. This bill was desperately needed following a 2001 Florida Supreme Court decision that opened the floodgates of "slip and fall" litigation throughout the state, rendering the summary judgment mechanism meaningless since the Court placed the burden of disproving an injury allegation on the business owner. Since the plaintiff initiates the lawsuit, it is reasonable for the plaintiff to bear the burden of proving their case. This bill restores that important requirement. Since SB 1224's House companion, HB 689 by Representative Gary Aubuchon (R-Cape Coral), had already passed the House, the Senate took up HB 689. The bill was passed by a vote of 32-5.

SB 1224's House companion, HB 689 by Representative Gary Aubuchon (R-Cape Coral), passed a vote by the House of Representatives and will now proceed to the Governor's desk for his approval.

**AIF salutes Senator Gardiner for his courage in correcting this situation by creating a new law that levels the playing field and provides stability and fairness in litigated cases.**

The Senate passed another bill today that seeks to clarify a Florida Supreme Court ruling relating to a parent's ability to sign waivers for their children to participate in certain recreational activities. SB 2440 by Senator Mike Bennett (R-Sarasota) **unanimously** passed the Senate today. The House Criminal & Civil Justice Policy Council passed an identical measure, HB 285 by Representative Mike Horner (R-Kissimmee), earlier this week. This bill provides more clarity for the use of waivers, and should generate more predictability in those types of cases.

SB 2440 will now be sent to the House of Representatives for consideration.

**AIF salutes Senator Bennett for his diligence in working with all interested parties to create legislation that begins to address this important situation for Florida's tourist and recreational businesses.**

The final bill passed by the Senate this morning increased the amount of damages a local government can pay without requiring a claims bill before the Legislature. SB 2060 Relating to

Sovereign Immunity by Senator Mike Bennett (R-Sarasota) increases the current cap of \$100,000 per person and \$200,000 per incident to \$200,000 and \$300,000 respectively. It is important to note that these amounts had not been raised since 1981!

This measure is supported by local governments and attorneys for the injured claimants. A similar measure in the House, HB 1107 by Representative Peter Nehr (R-Tarpon Springs), has passed the Civil Justice & Courts Policy Committee.

SB 2060 will now move to the House of Representatives for consideration by its members.

**AIF salutes Senator Bennett for his vision in crafting legislation that provides a more efficient and equitable process for resolving legal disputes with local governments.**

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## **Insurance**

The House Insurance, Business & Financial Affairs Policy Committee approved two AIF priority insurance bills during their meeting today.

The first bill approved was HB 1563 Relating to Commercial Insurance by Representative Brad Drake (R-DeFuniak Springs). This legislation seeks to remove some of the regulatory rating requirements for a specific number of commercial insurance lines including:

- Excess or umbrella
- Surety and fidelity
- Boiler and machinery and leakage and fire extinguishing 41 equipment
- Errors and omissions
- Directors and officers, employment practices, and management liability
- Intellectual property and patent infringement liability
- Advertising injury and Internet liability insurance
- Property risks rated under a highly protected risks rating plan

Florida's commercial insurance market is extremely competitive. For this type of commercial insurance there are a number of providers in the market. AIF is concerned with the potential impact of government intervention in commercial rates. To attract and retain private capital to meet Florida's insurance needs, rates must be "market based" and regulated by consumers in a competitive environment, not by government.

HB 1563 will now be considered by House Government Operations Appropriations Committee.

**AIF SUPPORTS legislation aimed at de-regulating commercial insurance lines in Florida. Competition should be the primary determinant of insurance rates especially for commercial insurance, which is typically purchased by sophisticated business entities.**

The committee then passed HB 1181 Relating to Public Adjustors by Representative Janet Long (R-St. Petersburg). This legislation aims at reigning in unscrupulous public adjustors who entice homeowners to reopen claims against insurance companies. As a result of this practice millions of dollars of re-opened claims from the 2004-2005 hurricane seasons are creating a financial strain on insurance companies and the state of Florida. HB 1181 would require greater disclosure to homeowners from the part of these public adjustors. It also shortens the time frame claims can be open from five years to three.

HB 1181 will now be considered by the House Government Operations Appropriations Committee.

**AIF SUPPORTS legislation that attempts to regulate public adjustors and their operations in Florida. This legislation will help protect homeowners and reduce the number of frivolous claims.**

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## **Taxation**

Today, the House General Government Policy Committee unanimously passed HB 281 Relating to Communications Services Taxes by Representative Ron Schultz (R-Inverness). This bill provides Communications Service Providers an option of two methods to credit bad debt against taxes owed to the state and local taxing jurisdictions.

Representative Schultz explained that the bill was the combined efforts on local governments, the Department of Revenue and the communications industry. The bill passed with virtually no questions or debate.

HB 281 passed its last committee of reference today and will move forward to the House floor for further consideration.

**AIF SUPPORTS the more efficient and tax payer friendly policy in collecting and remitting taxes that Florida businesses generate.**

The House Finance and Tax Council unanimously approved legislation today creating a three-day sales tax holiday in Florida. HB 483 by Representative David Rivera (R-Miami) and HB 469 by Representative Anitere Flores (R-Miami) were combined into one bill by the committee today. The bills do away with sales tax on books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$50 or less. The same sales tax exemption would apply to school supplies valued under \$10 dollars. The proposed sales tax holiday would take place August 13-15, 2010.

HB 483 will now be considered by the House Policy Council.

**AIF SUPPORTS the enactment of a sales tax holiday for school supplies. Research has shown that customers increase their spending during these tax-free periods; therefore, stimulating economic activity in our state.**

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## **Ports**

Today, the House Economic Development Policy Committee unanimously passed HB 963 Relating to Florida Seaports by Representative Lake Ray (R-Jacksonville). Representative Ray explained that this bill will enhance the positioning of our state's seaports as global economic drivers of the future – particularly in light of the upcoming expansion of the Panama Canal and the resulting increased international trade activity in the ports.

HB 963 is now scheduled to be considered by the Agriculture & Natural Resources Policy Committee.

**AIF salutes Representative Ray for passing this bill through its second committee of reference and applauds his vision for recognizing the need to enhance Florida's seaports for a more prosperous future.**

The House Finance and Tax Council unanimously passed HB 1169 Relating to Florida Ports Investments by Representative Lake Ray (R-Jacksonville). This legislation is a priority of AIF's Florida Maritime Council (FMC) as it establishes a unique and creative way to fund infrastructure investments in Florida's 14 deep water ports. The bill creates an incentive for insurance companies to make investments in an administrative entity created by the bill in exchange of future insurance premium tax credits. The entity will make subsequent investments in port projects upon application by ports. The total amount of tax credits which may be allocated may not exceed \$100 million. Participating insurance companies may use no more than \$10 million annually.

During his presentation on the bill, Representative Ray explained that Florida must prepare for the expansion of the Panama Canal, which is currently underway. The future investments created by this bill would allow Florida ports to be deepened in order to receive these larger vessels. Florida must take advantage of its geographic advantage and drive as much economic activity from this expansion to our Florida ports. The bill was strongly supported by members of the business community, including AIF.

Having passed all its committees of reference, HB 1169 is now ready to be considered by the full House of Representatives.

**AIF and its Florida Maritime Council strongly SUPPORT legislation that creates mechanisms for infrastructure investments in our state's ports. Trade with our regional partners in Central, and South America is one of the strongest areas of our economy. This legislation will ensure that Florida is a leader in world trade.**

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## **Environmental**

Today, the House General Government Council unanimously approved HB 1109 Relating to Water Supply by Representative Trudi Williams (R-Ft. Meyers). The proposed legislation consolidates all water supply-related sections such as water supply policy, planning, production and funding currently spread throughout Chapter 373 and into a new Part VII of that Chapter. This measure will centralize water supply provisions into one location and will lead to a more efficient management and administration of water law.

After its passage in the House General Government Council, HB 1109 will now proceed to the House floor for consideration by all members.

**AIF SUPPORTS state funding for alternative water supply programs. Furthermore, AIF commends Representative Williams for the recognizing the importance of funding water supply projects under the Water Protection and Sustainability Program.**

Today, the House Agriculture and Natural Resources Policy Committee considered HB 1559 Relating to Recycling by Representative Michelle Rehwinkel-Vasilinda (D-Tallahassee). This is a major piece of recycling legislation that AIF is watching closely this session.

Chair Trudi Williams (R-Ft. Meyers) and other members of the committee expressed displeasure with many of the mandates they saw in the proposed legislation. Chair Williams is a strong supporter of recycling but was concerned that the strike all amendment to the bill would have unintended consequences.

**Keyna Cory, AIF's Environmental Sustainability Council (ESC) lobbyist**, spoke in favor of the strike-all amendment. The bill contains many of the recommendations that AIF's ESC has suggested to enhance recycling legislation this session. Ms. Cory explained that while some technical changes are still needed to be made, the bill is worthy of support by committee members today.



**Keyna  
Cory**

Unfortunately, some of the members of the committee were confused by the public testimony provided by other interested parties. Representative Jimmy Patronis (R-Panama City) made the motion to temporarily postpone the bill and the motion was adopted. Under ordinary circumstances, this motion is accepted as common practice; however, given the fact that there may not be any more committee meetings for the rest of the 2010 session, it could mean that the bill is dead. Representative Dwight Bullard (D-Miami) made a motion for reconsideration, but the members voted against the amendment and decided to let the bill remain temporarily postponed.

**AIF believes that Florida can increase its recycling rate, but the management of waste is much more than recycling. AIF SUPPORTS the creation of a Recycling Business Assistance Center; however, we will continue to oppose any mandates on the private sector.**

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## **Education**

The full Senate voted today to pass Senate Joint Resolution 2 by Senator Don Gaetz (R-Destin) by a vote of 26-12. This bill would place the Class Size mandate back on the ballot for voters to consider and allow a modification that would increase flexibility in implementing the requirement. The debate and subsequent vote were largely along party lines, with Democrats opposing the measure.

The proposed amendment would require the same class sizes that are required currently - 18 in K-3, 22 in grades 4-8, and 25 in 9-12 - to be measured at the *school* level (rather than at the *class* level which is required for next year). Additionally, the measure adds a "hard cap" so that the school averages have to be achieved within a hard limit of 21, 27, and 30 in individual classes. By maintaining the measurement at the school level, principals would have the flexibility to increase a class above the original limit by having another class below the original limit, thus being able to better balance and manage class scheduling and avoiding a significant disruption when an unplanned child enrolls - often referred to as the 19th child scenario.

The House companion measure is also ready for a floor vote.

**AIF SUPPORTS the measure because it does not go backward on class size achievements to date. Additionally, the proposed amendment supports ensures that Florida's children have access to rigorous or specialty courses such as AP, arts, etc. which we believe are essential to providing well rounded and prepared graduates.**

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## **Business Regulation**

The House Energy and Utilities Policies Committee unanimously passed HB 163 Relating to Prepaid Wireless Communication by Representative Joe Gibbons (D-Pembroke Park) after adopting an amendment that was a result of negotiations between the telecommunications industry and retailers. Last week, the bill was temporarily postponed by the Chairman.



As originally drafted, the bill would implement a system for collecting E911 fees from the sale of prepaid wireless phones by requiring retailers who sell these phones to remit the \$.50 cent per phone fee to the state. As amended today, the bill delays the collection of the fees until 2013.

HB 163 will now be considered by the House Finance & Tax Council.

**AIF SUPPORTS legislation that will help maximize the recovery of E911 fees which support public safety in Florida.**