



**From October 9, 2009**

This week marked the first time legislators returned to Tallahassee since the end of the 2009 session. It also represents the official countdown towards the beginning of the 2010 legislative session. Most of the business was conducted on Tuesday and Wednesday and by late Thursday most legislators were on their way back home. The majority of the substantive work this week focused on hearing various presentations and updates on a number of issues, which will likely surface during next year's legislative session. This week's report includes a number of updates on the issues most important to AIF members and the greater business community.

As always, the budget continues to be the number one topic in Tallahassee. It appears that Florida's budget will contain to see a deficit. Revenue estimators have projected a \$2.6 billion deficit, much of which can be blamed on Medicaid costs.

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## **Taxation**

On Wednesday, October 7th, the Senate Finance and Tax Committee held a workshop on Single Sales Factor (SSF). SSF refers to a corporate income tax formula used by a number of states in which corporate income taxes are based 100% on sales within the state. Currently, Florida employs a "double weighted" sales factor, but still considers the amount of property and payroll a company has when determining the amount of corporate income taxes it must pay. Florida could experience considerable gains in job formation, capital investment, and economic growth with a move towards the use of SSF.

During the workshop, Senate staff provided extensive background on the corporate income tax in Florida and they included some sample scenarios of what would happen under a SSF formula for companies who "elect" to use this formula.

Also presenting was DOR staff who addressed some of the "sourcing" issues that may arise from this change. Of particular concern however was the insistence of DOR staff to revisit some of the "add back" provisions that together we defeated last session including throwback, inter/intra company sales, royalties, etc. Although no bill has been filed regarding these issues, AIF will remain vigilant should these issues begin to surface.

**John Hall** with the Florida Center for Fiscal and Economic Policy (a liberal think tank) also testified in opposition to a move towards SSF...this group is an advocate for combined reporting and instituting a throwback rule in Florida.

Florida TaxWatch then testified, giving some examples on how an optional move to SSF would benefit the state of Florida and could be a vehicle for attracting new investment. TaxWatch has put out an excellent report which can be found here:

<http://www.floridataxwatch.org/resources/pdf/03252009SingleSalesFactorCorporateIncomeTax.pdf>

AIF was also asked by Chairman Thad Altman (R-Melbourne) to testify in order to provide an industry perspective. **Jose L. Gonzalez, AIF's Vice President of Governmental affairs** shared some of the feedback we received from many of our member companies. AIF's message was that our membership could support a change to SSF only if it were to be optional or if it applied only after reaching a certain investment "threshold." AIF also made it abundantly clear that we would not be able to support any move towards combined reporting or the enactment of a "throwback" rule.

**AIF is part of a Florida TaxWatch workgroup composed of a number of business groups and individual companies who are looking at ways to bring about new investment to Florida. There is wide agreement by the group that any move towards a SSF must be optional in order to avoid any unintended consequences for companies that would not be benefited by a move to this type of apportionment formula.**

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### **Worker's Compensation**

On Tuesday, October 6th, the Office of Insurance Regulation held its formal rate hearing to set workers' compensation rates for 2010. The National Council on Compensation Insurance (NCCI) is recommending a reduction of 6.8 percent—the seventh straight experience-related decrease proposed by NCCI since the historic 2003 reforms. If granted, this would mean Florida employers have seen their workers' compensation rates decrease by a cumulative average of over 63% in the past 6 years.

In addition to the expert actuaries and economists presented by NCCI in support of the filing, there were two witnesses recommending different rate amounts. One was the Insurance Consumer Advocate who opined that all Florida property and casualty insurers are carrying reserve balances that are too high. The other witness was sponsored by the Florida Worker Advocates, the workers' compensation arm of the trial lawyers. Most industry observers and experts agree that the recommendations of both these witnesses would ultimately disrupt Florida's stable and successful workers' compensation market and that their recommendations will jeopardize the availability of coverage if ultimately embraced.

**AIF believes that the NCCI filing for an additional average 6.8% rate decrease is appropriate and will maintain affordable rates and available coverage for Florida's employers, and provide continued market stability. This decrease comes at a time in our economic history where lower costs are much needed for the ongoing viability of Florida business.**

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### **Growth Management & Economic Outlook**

On Tuesday, October 6th the Senate Community Affairs Committee met, and heard reports on Florida's economic outlook - yes our recovery will be slow, in large part due to continuing housing difficulties, and on future population trends- yes we will continue to grow and be "greyer"; but the real show was a report by **DCA Secretary Tom Pelham** on the implementation of SB 360, the controversial growth management bill passed last session, largely due to the persistence of Community Affairs Chairman Mike Bennett (R-Bradenton).

SB 360 was hailed as a potential key to "jump starting" Florida's development engine because of the elimination of state transportation concurrency as well as the DRI process in 238 cities and all or part of 7 counties as a result of them being classed as a Dense Urban Land Areas. Now, it was thought, without the burdensome transportation concurrency exactions, many projects that had become unfeasible as a result of those exactions, would again be viable.

As Chairman Bennett listened in obvious frustration, Secretary Pelham set forth the following:

- SB 360's removal of state concurrency requirements does NOT limit a local government's home rule power to adopt such ordinances or exactions;
- Local governments had home rule power to adopt transportation concurrency before SB 360, and by its own language the bill did not limit that power, nor does the bill contain preemption language;
- SB 360 did alter existing local comprehensive plans - until a local government amends its plan, existing transportation concurrency provisions remain in effect.

Suffice it to say, we can probably expect a "re-visit" to some of the provisions in SB 360, and almost assuredly the ones that caused the most controversy last session.

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## Transportation

The Florida Legislature began preparing for the 2010 Legislative Session this week by having a series of committee meetings, known as "Committee Week". If 2009 will be remembered for anything it will be the historic stimulus package, or the America Recovery and Reinvestment Act that sent billions of dollars in Federal aid to states across the nation including Florida. One of the biggest beneficiaries in Florida of stimulus funds was the Florida Department of Transportation (FDOT). Over \$1 billion was allocated for Florida's transportation needs and is to be distributed through FDOT for projects qualifying under federal requirements.

In both the House and Senate this week, **FDOT Secretary Stephanie Kopelousos** spoke to members of both Chambers setting out the Department's list of priorities for these stimulus funds as well as explaining the process by which FDOT has selectively chosen to fund sustainable projects as opposed to repair or resurfacing jobs. In recent months various members of Congress and the Federal Department of Transportation have criticized Florida officials for not having distributed the entire amount of stimulus funds allocated to the state. Secretary Kopelousos took the opportunity this week to explain to legislators the extensive "strings" that came attached with the stimulus funds and that nearly 36% of all dollars distributed from FDOT are federally funded projects, and thus must meet these extensive and often cumbersome Federal requirements. Secretary Kopelousos went on to explain that FDOT has chosen to specifically fund long term, sustainable projects with the new stimulus funds that will create jobs for a longer period of time rather than short term jobs. In doing so, the ability to immediately distribute all the stimulus funds is made more difficult. This is because the larger, more sustainable jobs take time to get in the proper posture to meet the Federal requirements to be eligible to receive the stimulus funds. Members of both Chambers congratulated the Secretary for taking a pragmatic and responsible approach to using the funds. It is expected that the FDOT will return in December with another update on the progression of the distribution of these funds.

**AIF supports the approach the FDOT has taken in utilizing these stimulus dollars. While the state is currently at record level unemployment in some areas we must encourage our state officials to be responsible and smart in utilizing these funds. Secretary Kopelousos and her staff seem to be taking this approach and AIF supports the FDOT's work to date.**

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## Insurance

The Senate Banking & Insurance Committee met on Tuesday, October 6th and heard reports from **Commissioner Kevin McCarty** of the Office of Insurance Regulation (OIR), **Susanne Murphy** of Citizens Property Insurance Corporation (Citizens), and **Steve Burgess** on the Florida Hurricane Catastrophe Fund (Cat Fund). During his remarks, McCarty stated that some insurance companies will fail, to which Sen. JD Alexander (R-Lake Wales) charged McCarty would be responsible if they did. **Sen. Alexander** cited shortfalls in the Cat Fund, insufficient rates, and proposed federal bonds not in place. McCarty retracted his statement based on the remedies available to OIR for an undercapitalized insurer: administrative supervision, merging with other companies, requiring additional capital. McCarty also wants the \$5 million capital requirement for new insurers to be increased. OIR has partnered with the California Earthquake Authority and Ash Williams to request federal bond guarantees, but doesn't expect the issue to be taken up until after the national healthcare debate is settled, sometime in December. **Sen. Alexander** asked McCarty why he urged a veto of HB 1171, a bill supported by AIF which would have given consumers the choice to remain with their insurance carrier, at the end of the session. McCarty said the bill was supposed to be an expansion of the consent to rate, but evolved into a deregulation bill that didn't provide consumer choice. Sen. Alexander accused McCarty of "being busy hastily running State Farm out of the state." Chairman of the Banking and Insurance committee, Sen. Garrett Richter (R-Naples), asked how we can move toward a market based rate setting process. McCarty responded that the "Glide Path" legislation passed last session is the best approach in the homeowners market. McCarty believes that companies underestimated the number of current policyholders eligible for mitigation discounts, which has affected their bottom line.

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## Economic Development

During this week's Legislative Committee week, various state agencies and government partners in economic development efforts presented before the House and Senate Committees on Economic Development. Officials from the Florida Sports Foundation, Office of Tourism Trade and Economic Development, and Enterprise Florida all gave brief overviews of their organization's structure, history and mission statement to legislators. With Florida's economy being the most pressing issue of the last 18 months, members of the House and Senate are eager to find avenues where state agencies and quasi-government groups such as these can lend a helping hand to struggling sectors of our economy.

During the 2009 session, there was specific emphasis placed on the return on investment that these groups produced for the state. As approach the 2010 Legislative Session, there will be renewed efforts by the organizations to continue to use their appropriated funds in a way that truly brings economic development to Florida.

**AIF has been supportive of the mission of these organizations and will continue to call on these groups to use taxpayer funds in the most efficient and effective way possible to help grow our economy. While Florida remains a business friendly state, we must not take our past success for granted. AIF will continue to advocate on behalf of any policies that help existing businesses expand and efforts to attract new and innovative jobs to our communities.**

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## **Underground Petroleum Storage Tanks**

The House Natural Resources Appropriations Committee and the Senate General Government Appropriations Committee heard a presentation by **Mary Jean Yon**, Director of the Department of Environmental Protection – Division of Waste Management about the status of the underground petroleum storage tank clean up. In the early 1980's, petroleum contamination impacted public and private drinking water systems in many location around the state. Legislation was passed in 1984 requiring corrosion protection on all steel tanks. In 1990, Governor Bob Martinez and the Cabinet directed the Department to require regulated aboveground and underground petroleum tank systems to have secondary containment before 2010. Realizing the high cost of upgrading these systems, the Department created a phase in for completion. The deadline for completion for underground storage tanks is December 31, 2009 and aboveground storage tanks deadline is January 1, 2010.

Even though all facilities and owners/operators of storage tanks received notification letters from the Department reminding them of the 2010 deadline beginning in 2007, not all upgrades have been completed. According to Ms. Yon, 82% of the underground storage tanks have been upgrades and 95% of the aboveground storage tanks have been upgraded.

The Department is trying to work with those facilities that have begun upgrading their sites but may not be finished by the deadline. Unfortunately, some facilities have waited until the last minute to schedule work and with these economic times are having a hard time meeting the deadlines.

With ground water being the primary source for drinking water to over 90% of Florida's residents, it is important for these petroleum tanks to be secured from leakage. Clean up cost for an average site is over \$400,000. Several speakers asked the legislators to make sure to leave adequate funding in the trust fund for clean ups. They cited lay-offs of people with specific skills will make it difficult to get the cleanup program back on track. The Department has received grants from EPA but more funding is needed.

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## **Water Issues**

Senate President Jeff Atwater (R-Palm Beach) announced the creation of the Senate Select Committee on Florida's Inland Waters. Senator Lee Constantine (R-Altamonte Springs) was named as the chair. President Atwater has not named the other members of the Select Committee as of this date. The committee will work to identify policies that will protect and promote water quality and consumption.

Springs protection is one of the more complex environmental challenges facing the State. The committee will address the broad array of water quality issues related specifically to springs protection. The select committee will have authority to conduct hearings and propose legislation for the 2010 Legislative Session.

On the House side, Chairwoman Trudi Williams (R-Ft. Myers) of the House Agriculture and Natural Resources Committee announced this week that she will be holding a committee workshop on the issue of numeric nutrient criteria setting on November 3. These new water quality regulations for nutrients such as nitrogen and phosphorus – which as a result of litigation, are being spearheaded by the US EPA – will have huge environmental and economic impacts throughout the state.