



DAILY BRIEF

From March 9, 2011

With the help of business-minded policy makers, many of the issues that AIF is championing this legislative session are moving at a rapid pace. Last year's controversial "teacher quality" bill from 2010, for example, is preparing for its final vote in the Florida Senate this week. Other measures, including legislation to lighten the burden of Unemployment Compensation taxes on business, are also moving swiftly through the legislative process.

Read today's edition of the Daily Brief to learn more about the House's advancements on Pension reform, proposed changes to Florida's judiciary system, and the consideration of the controversial "Open-Carry" gun legislation by the Senate Criminal Justice Committee. Don't forget to visit AIF's "Session Central" website daily for up-to-the-minute updates on legislation progress, news, and other media.

Unemployment Compensation

Today, the Florida House of Representatives considered HB 7005 Relating to Unemployment Compensation by Representative Doug Holder (R-Sarasota). With the intent to reform Florida's Unemployment Compensation system, HB 7005 is a work product of the House Economic Development and Tourism Subcommittee chaired by Representative Holder, who presented the bill on the House floor today. Amendments to the bill, primarily technical in nature, were adopted and the bill was rolled to Third Reading.

It is anticipated the final House vote will be taken on this bill tomorrow during session at 1:00 p.m. on Thursday, March 10th.

The Senate Judiciary Committee also heard a similar measure on unemployment Compensation today – SB 728 by Senator Nancy Detert (R-Venice). The most significant difference between the Senate and House bills is that the House measure contains direct tax calculation changes that will impact the unemployment tax rates that Florida employers must pay in 2011. Both bills provide some dramatic reform to the claims benefit procedures governing the system that will cut down on fraud and help sustain the unemployment compensation trust fund in the long run. These measures are also expected to save employers money as they are implemented into the system.

One new item the Senate adopted today which was strongly supported by AIF was the transition of the payment system away from paper checks to debit cards and electronic funds. Many sources believe this measure alone will save the state over \$10 million annually in check processing and postage costs.

Related to a claimant's state and federal benefits, both the House & Senate bills:

- Tie a UC claimant closer to the workforce system by requiring a claimant, after benefits eligibility is established, to complete an initial skills review as a reporting requirement which results are reported to the workforce system;
- Match up state law with federal law changes to allow for federally-funded extended benefits to be drawn down to the unemployed;

Relating to qualification for benefits, both the Senate & House bills:

- Revise how employee misconduct is determined and defined by revising the language of statutory construction and review, and specifying certain forms of misconduct such as chronic absenteeism or tardiness;
- Expand when an employee is disqualified from benefits related to committing a crime connected with work so that the crime does not have to be punishable by imprisonment for it to be used for disqualification, and specify that a claimant in prison is disqualified from benefits.

Regarding appeals of benefit determinations, both the House & Senate bills:

- Codify certain agency rules related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances;
- Allow a claimant to file an appeal of a benefit determination made by the Unemployment Appeals Commission in the appellate court near the claimant.

Relating to employer taxes, the House bill:

- Reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate;
- Reduces the number of available benefit weeks and ties the number of available benefit weeks to the unemployment rate, meaning the higher the unemployment rate the greater the number of available benefit weeks and vice-versa.
- Both bills allow employers to continue to have the option to pay their UC taxes in installments over the course of the year in 2012, 2013, and 2014.

AIF salutes Senator Detert and Representative Holder for their strong leadership to ensure that employers will see relief from unfair tax rate increases in the future and to guarantee that individuals who most deserve benefits will continue to receive them. AIF urges all House members to vote **YES** on HB 7005 tomorrow when it is considered for final passage.

Education

This morning the Senate convened in session to discuss SB 736 Relating to Education Personnel by Senator Stephen Wise (R-Jacksonville), along with its proposed amendments. Senator Evelyn Lynn (R-Daytona Beach) withdrew all three of her amendments and Senator Anitere Flores (R-Miami) withdrew her amendment, as well. Controversy arose when Senator Bill Montford (D-Tallahassee) introduced his amendment, which essentially advocated a new kind of three year contract for teachers linked to performance, instead of the original one-year contract provision found in the bill. After lengthy debate, the amendment was voted down primarily along party lines.

Questioning on SB 736 began with extended questions and answers between Senator Wise and Senator Jack Latvala (R-St. Petersburg) to clarify how teachers will be evaluated. Most of the questions centered on how we are to keep effective teachers in schools without extended contracts. Toward the end of the meeting time, Senator Paula Dockery's (R-Lakeland) questions expressed major concerns about the bill, including its financial impact on the state.

SB 736 is now in position for final passage on the Senate floor tomorrow. The House companion, HB 7019 by Representative Erik Fresen (R-Miami), will be heard in the House Education Committee – its final committee stop before reaching the House floor.

AIF SUPPORTS legislation that recognizes teacher quality as an essential part to improving students' preparation for higher education and employment. By changing the salary structure to reward teachers for student achievement, Florida's best teachers will have a longer career in the classroom.

Legal and Judicial

Today, the Senate Judiciary Committee favorably passed an important piece of tort reform legislation relating to the admissibility of expert witness evidence in litigation. SB 822 by Senator Ellyn Bogdanoff (R-Ft. Lauderdale) will provide consistency for the criteria to be used in evaluating expert evidence between federal and Florida courts.

The admissibility of expert scientific testimony has been a focal point of tort reform in recent years. The admission of "junk science" has increased due to the tendency of trial judges to allow evidence in to court that is built on scientifically weak studies or dubious expert witnesses. In 1993, the United States Supreme Court established guidelines for federal judges for admitting scientific evidence and expert testimony. However, that standard is not binding on Florida state court judges, which has ultimately resulted in judges having total discretion to determine which opinions are admissible. This allows for different standards to be applied in different areas of the state.

In order to address this problem, many states are adopting legislation similar to Senator Bogdanoff's bill, which use the standards for reliability and accuracy of scientific and technical evidence that the federal courts use. AIF strongly supports the passage of this legislation which ensures that trial judges are forced to conduct deliberative hearings in order to ascertain the qualification of a witness to testify as an expert. This bill will also require expert testimony relating to scientific evidence to be based on sufficient facts and be the product of reliable principles.

SB 822 passed today on a party line vote of 5-2. The next scheduled committee of reference is the Senate Budget Committee.

AIF SUPPORTS legislation that will go a long way to help Florida correct a litigation crisis that increase costs to all American businesses and consumers. AIF applauds Senator Bogdanoff's vision and leadership in sponsoring this critical legislation to make Florida a better place to conduct business.

Open-Carry Legislation

Today, the Senate Criminal Justice committee considered SB 234 Relating to Firearms by Senator Greg Evers (R-Crestview). This bill would expand Florida's current concealed weapons law to allow for those license holders to carry their weapons in the open. As originally filed, SB 234 would also allow license holders to carry their firearms into career centers, nonpublic elementary and secondary school facilities, as well as colleges and universities. The committee room was packed with both supporters and opponents of this controversial piece of legislation. Representatives from all the private and public universities and colleges as well as student leaders were in attendance.

Senator Evers offered an amendment to the bill which added a reference to an existing list of locations and businesses where guns are not allowed. This list of locations was originally included in the "Guns in the workplace" bill that passed two years ago and includes locations such as schools, correctional institutions, nuclear facilities, national defense, aerospace, or homeland security facilities, and businesses where the primary activity is the manufacture of combustible or explosive materials, etc.

Following the adoption of this amendment, Senator Paula Dockery (R-Lakeland) offered an additional amendment which deleted the language in the original bill which would have allowed persons with concealed weapons permits to enter school and college campuses. There was no vote on the bill because the Committee ran out of time. The bill is expected to be back on the agenda at the next meeting.

AIF OPPOSES legislation that would permit "open-carry" of firearms in Florida. The passage of this type of law could drastically expand liability concerns for business owners by creating a new duty of care related to having knowledge of a potential dangerous instrument on an employer's premises.

Health Care

On the second day of the 2011 Session, the full Senate approved a bill filed by Senate President Mike Haridopolos (R-Melbourne). Senate Joint Resolution (SJR) 2 is a proposed constitutional amendment that would allow Floridians to opt-out of the individual healthcare mandate to purchase health insurance, which is currently contained in President Obama's Patient Protection and Affordable Care Act – more commonly known as "ObamaCare". The federal law currently requires every American to obtain health insurance by 2014.

The bill was approved by a vote 29-10, which followed largely along party lines. One exception was Democratic Senator Bill Montford (R-Tallahassee) who voted in favor of the bill.

Following its passage by the full Senate, SJR 2 will now proceed to the House for consideration. The House companion, HJR 1 by Representative Scott Plakon (R-Longwood) has not yet been heard. If this measure passes the Legislature, Florida voters would be given the chance to vote on this issue on the 2012 ballot. At least 60 percent of the voters would have to approve of the language for it to be added to the Florida Constitution.

AIF is OPPOSED to the dangerous and radical proposals passed by Congress to overhaul our nation's health care system. AIF commends President Haridopolos for introducing legislation that will protect Florida consumers from the overreaching arm of federal healthcare.

Pension Reform

The House Government Operations Subcommittee dedicated its entire meeting on Wednesday to taking testimony about local pension plans, which the Florida League of Cities is asking the Legislature to change substantially. As has been the case in the Senate, today's House meeting was heavily attended by police and fire fighters from throughout the state. The committee took no votes today.

Chairman Jimmy Patronis (R-Panama City) first heard from FSU Professor David Matkin who discussed pension recommendations in a report issued by the LeRoy Collins Institute. The Institute's recommendations tend to align with the position of the Florida League of Cities, which chiefly seeks to:

- Give local governments more flexibility in the use of insurance premium taxes that are used in part to fund local pension funds, but doled out by the state with significant restrictions; *and*
- Eliminate the mandatory use of 300 hours of overtime salary in the computation of a pension benefit.

The committee also heard protracted testimony from the Florida Police Benevolent Association and the Florida Association of Professional Fire Fighters. Both organizations want the Legislature to take no action whatsoever. The unions assert the cities and counties are approaching the Legislature to resolve bargaining issues that local elected officials have not been able accomplish back home. As stated in one testimony, each year the cities and counties have asserted "home rule" as a means to keep the Legislature out of their business. Now they are asking the Legislature to get involved in their local business.

Coincidental to today's committee hearing, House Bill 1405 by Representative Ritch Workman (R-Melbourne) was introduced in the House of Representatives. Representative Workman indicates his nearly 200-page bill largely represents Gov. Rick Scott's position on the future of the pension fund, which is to close the Florida Retirement System to new entrants and begin a requirement going forward that new entrants contribute 5 percent of salary into a defined contribution, or 401(k) fund. Representative Workman's bill has not been referred to any committees at this time.

AIF SUPPORTS efforts to bring Florida's pension system more in line with that of the private sector. Florida's taxpayers are shouldering the burden of the growing liability of these state and local government pension plans.

Ethics and Elections

Today, the House Civil Justice Subcommittee adopted two proposed constitutional amendments relating to the judiciary. The first, **CVJ 4** Relating to Judicial Retention Elections, would require judges subject to merit retention elections to receive at least 60% of the votes in order to be retained. Under current law, if a majority of the votes are cast for retention (50%+1), the justice or judge continues in office. This bill simply extends that threshold to 60%. The bill was passed by a vote of 10-4

The second measure under consideration, **CVJ 5** requires the Judicial Qualifications Commission to make the records of its proceedings public on the same basis as the Florida Ethics Commission; however, information that is otherwise confidential or exempt will retain its status. The measure was passed unanimously with no opposition by members of the committee.

CVJ 4 and **CVJ 5** will now be refilled and assigned to further committees of reference. Should they pass the Legislature this session, Florida voters would be given the chance to vote on these constitutional amendments on the 2012 ballot. At least 60 percent of the voters would have to approve of the language for it to be added to the Florida Constitution.

Following the passage of the two proposed amendments, the Committee held a workshop on a proposal to split the current seven-member Florida Supreme Court into two five-judge courts. One would handle strictly criminal cases while the other would handle all civil matters. The proposal is driven by the inordinate amount of time spent by the current Court in reviewing death penalty cases and the resultant delaying effects on other cases on its docket. The Committee will revisit the subject and will consider actual legislation in the next week or so.

AIF is closely monitoring the developments associated with these proposals. AIF's members are interested in judicial reform and we will be taking a position on these issues once all of the information regarding the proposals becomes available.

Growth Management

Today, the Senate Judiciary committee took up and passed SB 410 Relating to Impact Fees by Senator Mike Bennett (R-Bradenton). This legislation would create the "preponderance of the evidence" standard of review for the government in cases challenging the imposition or amount of an impact fee. At the present, a local government wins if their action was "fairly debatable". Under SB 410, local governments must prove their case by the preponderance" of the evidence, which is the standard in civil cases today. Essentially, the bill will take away the "upper hand" that local governments have in defending their ordinances in court.

AIF SUPPORTS a thorough review and, where appropriate, a limitation on the use of impact fee. Through all of the Legislature's attempts to lower taxes, they have yet to place any mandates of fairness or limitation on the ever-growing local government funding source of "user fees".

Finance and Tax

The House Finance and Tax committee met today to examine the Corporate Income tax for possible modifications that would further employment possibilities for Floridians. Dr. Don Langston, the Committee's Staff Director, was introduced by Chairman Steve Precourt (R-Orlando) to give a presentation on the possible modifications.

Mr. Langston's presentation included the possibility of changing the state's corporate income tax apportionment formula to a single sales factor along with other credits, cutting the corporate income tax rate (which Governor Scott has recommended) and creating new credits or exemptions. **AIF lobbyist Frank Meiners** testified in support of an optional, not mandatory, move to the single sales factor apportionment factor.



Following the questions by members to better understand the presentation, Ben Phipps – a member of the AIF tax committee – testified that chapter 221 of Florida Statutes relating to emergency excise tax should be repealed to simplify the filing of corporate income tax in Florida.

As a whole, the members of the committee supported the repeal of chapter 221. Representative John Julien (D-N. Miami Beach) took a particularly keen interest in the presentation and suggested that he may file legislation in the future to repeal Chapter 221.

AIF SUPPORTS the repeal of Chapter 221. While it currently adds little to state revenues, its repeal will do away with an unnecessary burden on Florida's corporate income taxpayers. Furthermore, AIF SUPPORTS legislation that would enact an optional Single Sales Factor formula for determining a company's corporate income taxes. This move would encourage companies to relocate or expand in Florida due to the advantages of determining income taxes solely on a company's sales, and not by the amount of property or payroll they may have.

Transportation

The Senate Committee on Transportation met today and considered SB 1150 Relating to the Department of Highway Safety and Motor Vehicles by Chairman Jack Latvala (R-St. Petersburg). This legislative package includes provisions that will:

- Create the Division of Motorist Services and eliminate the Divisions of Driver's Licenses and Motor Vehicles. This is part of the Department of Highway Safety and Motor Vehicles' (DHSMV) reorganization plan;
- Modernize the format for a motor vehicle certificate of title;
- Create a bonding program for the replacement and issuance of motor vehicle titles; *and*
- Authorize the DHSMV to implement a new pilot program limited to state-owned vehicles to evaluate new designs and concepts for license plates.

The bill passed unanimously and will proceed to the Senate Governmental Oversight & Accountability Committee for reference by its members.

AIF SUPPORTS legislation that will streamline departmental services to capitalize on operational efficiencies, provide significant cost savings and enhance customer service delivery.