



DAILY BRIEF

From May 4, 2011

Florida's legal atmosphere is a vital component to attracting business to the state, while also affording existing employers the opportunity to keep their doors open. AIF has been a strong proponent for proposals that level the playing field for Florida's employers when legal claims are brought against them. As such, we are proud to report that two of AIF's top legal reform measures passed the Legislature today. Once signed in to law by Governor Rick Scott, the following bills will provide the business community with greater piece of mind against frivolous lawsuits:

- *SB 450 Relating to Emergency Management by Senator Mike Bennett (R-Bradenton)* – This proposal will provide immunity to businesses and individuals who voluntarily provide housing and shelter to first responders during natural disasters; *and*
- *SB 142 Relating to Crashworthiness by Senator Garrett Richter (R-Naples)* – This legislation will ensure that juries receive all of the information pertaining to crashworthiness cases. Prior to the passage of this legislation, current law prohibited the introduction of any evidence relating to the driver's condition at the time of an automobile crash when that driver is suing an auto manufacturer over the "crashworthiness" of the vehicle.

Legal & Judicial

Today, the full House took up and unanimously passed SB 450 Relating to Emergency Management by Senator Mike Bennett (R-Sarasota) in an expeditious manner. This legislation provides civil immunity to any person who gratuitously provides housing, shelter, food or certain other provisions in the wake of a declared disaster to first responders. SB 450 is important to community recovery and business continuity following catastrophic events. When communities are able to provide for their own first responder communities they are able to restore services and return to a state of normalcy much more quickly.

SB 450 is now ready to be enrolled and sent to the Governor to be signed into law.

AIF SUPPORTS legislation that offers basic protection from unnecessary litigation to business owners who offer their services to first responders during natural disasters. Furthermore, AIF commends Senator Bennett for his vision and leadership in bringing forward this proposal.

Prior to the House's passage of SB 142 Relating to Negligence by Senator Garrett Richter (R-Naples) today, Florida was the only state in the nation that prohibits the introduction of any evidence relating to the driver's condition at the time of an automobile crash when that driver is suing an auto manufacturer over the "crashworthiness" of the vehicle. For instance, a jury might never know the driver involved in a lawsuit was drunk at the time of the crash. Not giving the jury all the details, including a critical piece of information about the driver's condition, is unfair and absurd. Correcting this inequity will now open the doors to automotive manufacturing companies that previously had not considered Florida as a base of operation. Associated Industries of Florida (AIF) deeply appreciates the hard work and unwavering commitment of both Senator Garrett Richter and Representative Marlene O'Toole (R-Leesburg) who played critical roles in getting this good piece of legislation passed through both chambers.

SB 142 will now be enrolled and sent to the Governor for final approval.

AIF SUPPORTS efforts by the Florida Legislature to clearly express that a Florida Supreme Court-create standard regarding crashworthiness is absurd and unfair. Furthermore, AIF proudly congratulates Senator Richter and Representative Marlene O'Toole on achieving passage of this important legislation today.

Seaports

Today, HB 283 Related to Seaport Security by Representative Dana Young (R-Tampa) passed the Legislature and will now head to the Governor to be signed into law. This has been a top priority of AIF and our Florida Maritime Council (FMC) for many years. We appreciate the commitment and leadership of this year's sponsors, Representative Young and Senator Jack Latvala (R-St. Petersburg). Thanks are also due to all the AIF Maritime Council members who worked so tirelessly for all these many years to make Florida a better place for doing business.

The bill removes expensive and duplicative security background screening procedures and aligns Florida's security measures with the federal standards administered through the Department of Homeland security. This matters to businesses because the bill will significantly lower the cost per employee working on each port by eliminating the state background checks which are unnecessary since federal background checks are already conducted. This will help Florida companies across all industries lower the transportation and shipping costs of the supplies they purchase and the goods they sell.

AIF SUPPORTS legislation to reduce red tape and regulatory burdens, such as duplicative security credentialing, which encumber businesses in their daily work. AIF salutes Representative Young for her leadership in passing legislation that will undoubtedly make Florida a more attractive place for doing business.

Space

The House voted to pass one of AIF's top space priorities of 2011 – SB 652 Relating to Liability of Spaceflight Entities by Senator David Simmons (R-Altamonte Springs). The bill will remove the sunset provision in Florida's current law providing immunity to spaceflight companies for injuries or death resulting from the normal risks associated with this risky activity. Eliminating the sunset provision will provide a sense of stability on this issue and keep Florida competitive with other states looking to recruit companies in this growing field.

SB 652 has been enrolled and will proceed to the Governor's desk for final consideration.

AIF SUPPORTS this bill and the entire space agenda, and will work with Space Florida and other partners in the aerospace industry to make Florida a desirable location for aerospace commerce. Senator Simmons is to be commended for his efforts to make Florida a desirable location for commercial spaceflight by extending liability protections for commercial space companies.

Immigration

The Senate took up and passed their comprehensive immigration reform measure today in an unusual fashion – without any questions or debate. Arguably one of the most controversial issues of 2011, this proposal was immediately voted on and passed following a brief explanation by sponsor Senator JD Alexander (R-Lake Wales). It is interesting to note that Senator Alexander voted against the measure on the floor today.

As was reported yesterday, the Florida Senate voted down an amendment being offered by Senator John Thrasher (R-Jacksonville) that would have essentially forced Florida's employers into using the flawed and error prone federal E-Verify system. The mandated use of E-Verify is strongly opposed by AIF.

The amendment would have required employers who did not use the E-Verify system on their employees to pay \$500 per employee found to be illegal for a first offense, \$1,000 per employee found to be undocumented for the second offense and \$1,500 per employee found to be undocumented for the third offense.

After the failure of the Thrasher amendment, the Senate voted to pass, via voice vote, a strike-all amendment to the underlying bill (SB 2040) being offered by Senator JD Alexander which removed all E-Verify requirements for public sector and private sector employers. The amendment would also allow law enforcement entities to check the legal status of individuals after the individual had been arrested.

It is unknown whether the House will take up the Senate bill as amended because it is a much more watered down version of the House version. With only two days left to go time is running out for passage of immigration legislation.

AIF OPPOSES the mandated use a flawed and error prone E-Verify system on Florida's employers. While we agree that the immigration system in the United States is broken, we fully believe this issue of immigration reform should be addressed in Washington, DC not in Tallahassee, Florida. AIF salutes members of the Senate, under the leadership of Senator Alexander, for ridding this proposal of its provisions concerning the mandated use of E-Verify.

Taxation

Brought up for final passage today, members of the Senate took up and considered HB 1163 Relating to Ad Valorem Taxation by Representative Chris Dorworth (R-Lake Mary). The measure passed overwhelmingly by a vote of 28-8.

This implementing bill amends Florida Statutes to reflect the provisions of House Joint Resolution (HJR) 381 which will reduce the annual growth in assessment limitation on certain non-homestead property, from 10 percent to 5 percent, upon voter approval of the amendment. Further, the bill clarifies that the non-homestead assessment limitation does not apply to improvements made to the property. If approved by the voters with the 2012 presidential preference primary, this provision takes effect on January 1, 2012. If approved by the voters with the 2012 general election, the provision takes effect on January 1, 2013.

Beginning with the 2012-2013 fiscal year, the bill also requires the Legislature to consider appropriating funds to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties which occur as a direct result of the implementation of the provisions contained in HJR 381. Any appropriated monies will be distributed among the fiscally constrained counties based on each county's proportion of the total reduction in tax revenues.

HJR 381 was also passed on the Senate floor today by a vote of 25-12.

HJR 381 & HB 1163 have been ordered enrolled and will advance to the Governor for his approval.

AIF SUPPORTS legislation that will provide a more equitable property tax system and help for first time home owners.

Today, the House took up House Joint Resolution (HJR) 958 Relating to State Revenue Limitation by Representative Steve Precourt (R-Orlando). Representative Precourt explained that the resolution would place a revenue limitation based on population and CPI increase that could be overturned by the legislature if necessary by a super majority vote.

In debate, much of the opposition fell along party line as Democratic members spoke against the bill. Following a close by Representative Precourt to close, the measure passed by a vote of 78-40.

The resolution has now passed both chambers and will be placed on the ballot in the presidential primary election in 2012.

AIF SUPPORTS legislation that establishes a state revenue cap because it is clear that the state has not demonstrated fiscal constraint in the past when revenues were increased beyond the critical needs of the state. AIF believes that spending excess revenues, especially creating recurring programs that must continue to be funded in the future, places the state in the position to possibly raise taxes to meet those needs when revenues fall of. Furthermore, placing a smart cap in the constitution that requires a super majority encourages fiscal discipline for future legislative bodies.

Health Care

This afternoon, the House passed one of Senate President Mike Haridopolos' (R-Melbourne) top priorities for the 2011 legislative session – House Joint Resolution (HJR) 2. 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 of 80-37, which followed largely along party lines as expected.

Following its passage by the full Senate, SJR 2 will now proceed to Florida voters to be voted on in 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 SUPPORTS efforts to give Floridians the opportunity to vote in favor of “opting out” of federal health care reform.

The full House approved HB 479 by Representative Mike Horner (R-Kissimmee) Relating to Medical Malpractice. AIF has worked diligently with physicians against trial attorneys to maintain the most important provisions in the bill. The final bill contains the following provisions:

- Allows a defendant to interview a claimant's health care providers without the presence of the claimant if the defendant provides 10 days notice of the intent to interview;
- Creates an "expert witness certificate" that an expert witness who is licensed in another jurisdiction must obtain before testifying in a medical negligence case;
- Provides for discipline against the license of a physician, osteopathic physician or dentist that provides misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine or the practice of dentistry;
- Provides that medical malpractice insurance contracts must contain a clause stating whether the physician or dentist has a right to "veto" any admission of liability or offer of judgment made within policy limits by the insurer;
- Provides that records, policies, or testimony of an insurer's reimbursement policies or decisions relating to the care provided to the plaintiff are not admissible in any civil action; *and*
- Provides that a plaintiff in a medical negligence action must prove by clear and convincing evidence that the failure of a health care provider to order, perform, or administer supplemental diagnostic tests is a breach of the standard of care.

Since the House & Senate have agreed to identical language for HB 479, its passage today will send the bill to the Governor's desk for final consideration.

AIF SUPPORTS proposals to discourage fraud abuses associated with medical malpractice claims. Current practices invite fraud and subsequently higher health care-related costs for Florida employers. AIF commends Senator Hays & Representative Horner for their hard work and leadership on this very important issue.

HB 935 by Representative Richard Corcoran (R-New Port Richey) heads to the Governor after being approved by the full House today. This bill encourages primary care providers and urgent care centers to post their schedule of prices for medical services in return for being exempt from license fee and continuing education requirements. This legislation will encourage Floridians to become more educated about the cost of health care services.

AIF SUPPORTS legislation that provides accountability amongst Florida's health care providers. Providing clarity in these types of services will bring private health care providers more in line with other private-sector industries by increasing efficiency and promoting accountability.

Economic Development

In the Senate today, members took up and considered SB 1318 Relating to Targeted Economic Development by Senator Lizbeth Benacquisto (R-Wellington). This bill would expand the definitions of a qualified targeted industry (QTI) to include efforts to expand trade and international economic activity. As a global hub for international activities, Florida's economic development statutes should include incentives in this area.

In effort to bring SB 1318 in line with its House bill, the bill was broadened in scope to include the efforts of the energy zone economic incentive areas in designated instances. SB 1318 was subsequently substituted for HB 879 by Representative Eric Eisnaugle (R-Orlando) and passed by members of the Senate with unanimous consent.

HB 879 will now head to the Governor for final passage.

Insurance

Today, the Florida House approved SB 408 Relating to Property and Casualty Insurance by Senator Garrett Richter (R-Naples). This comprehensive insurance bill will effectively encourage private property insurers to increase their market share. Increased reliance on private insurers is vital for the restoration of the private residential insurance market and will reduce Citizens and the potential for hurricane-related taxes.

The House voted 85-33 in favor of SB 408, which was amended today to replace language approved by the Senate last week with the House version. As amended presently, SB 408 no longer exempts insurers from providing mandatory comprehensive sinkhole coverage.

SB 408 will now head back to the Senate for a final vote.

AIF SUPPORTS legislation which reduces the time frame to file hurricane claims from 5 years to 3 years after the hurricane; increases solvency requirements for insurance companies; eliminates public adjusters' abuses; and repeals the current requirement that property replacement costs be paid up front and replace with the payment of actual cash value with a holdback until repairs are actually completed.

Business Regulation

Today, the Senate took up SB 1382 Relating to Agency Rulemaking by Senator Mike Bennett (R-Bradenton) for consideration. Last session, HB 1565 passed and provided major changes to the way an agency would promulgate new rules. Despite a veto by then-Governor Charlie Crist, the legislature voted to override HB 1565 during a special session last spring.

SB 1382 will provide earlier notice to the public and the Department of State that a proposed rule will require legislative ratification. The published notice of proposed rulemaking will include a statement as to whether the rule will require ratification. In addition, SB 1382 clarifies and corrects provisions affected by the passage of HB 1565 in the special session in November. Specifically, the bill:

- Directs an agency to state in their notice of rulemaking, whether the agency expects the rule to require ratification. Ratification is required when a proposed agency rule will cost \$1 million or more over a 5 year period;
- Authorizes an agency to withdraw a rule before it becomes effective, if it has not been ratified within 90 days of submission to the Legislature for ratification;
- Clarifies language declaring when a rule becomes effective if ratification is required;
- Clarifies that neither emergency rules nor rules adopting federal standards are subject to ratification; *and*
- Shortens the time allowed for a challenge after publication of a revised statement of estimated regulatory costs

HB 1565 also creates particular exemptions to legislative ratification. Some of these exemptions have been incorporated into other pending legislation, including:

- The triennial building code and amendments to the building code;
- The triennial fire code and amendments;
- Toll rate increases by the Department of Transportation;
- The Student Success Act exemption, which was passed earlier this Session, is brought into chapter 120 where it can more easily be found by administrative lawyers and attorneys for school districts

SB 1382 was substituted for its House companion, HB 993 by Representative Ken Roberson (R-Port Charlotte) and passed. In light of the amendments, it must now be sent back to the House for final approval.

AIF SUPPORTS efforts to keep agencies from promulgating burdensome rules and stifling further expansion and growth within Florida's economy.

Growth Management

Today, the Senate took up and passed SB 410 Relating to Impact Fees by Senator Mike Bennett (R-Bradenton). In what has continued to be a non-controversial issue, SB 410 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.

Although this bill was passed once previously in the Senate, it was returned by the House following some technical changes made to the language. The full Senate concurred with the changes and passed the bill unanimously. SB 410 has been ordered enrolled and will head to the Governor for final consideration.

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".

Education

Today, the Senate passed another top AIF education priority - HB 7197 Related to Digital Learning by Representative Kelli Stargel (R-Lakeland) - which was substituted for the identical Senate companion, SB 1620 by Senator Anitere Flores (R-Miami). The bill incorporates the 10 elements of a high quality digital learning program and requires that students entering the ninth grade in 2011-2012 and thereafter must enroll in at least one online course in order to graduate from high school. The bill also requires districts to make multiple paths of virtual education available to students. It allows for the creation of virtual charter schools, as well as requires the online administration of all statewide assessments.

With little debate, HB 7197 was voted along party lines at 27-12 and is ready to be signed into law by the Governor.

Unemployment Compensation

Yesterday AIF reported that the Florida Senate had passed legislation reforming the unemployment compensation system. This evening, the Florida House considered that bill - HB 7005 by Representative Doug Holder (R-Sarasota) - sent over from the Senate and made a few amendments. The bill still remains close to having consensus in both chambers yet a few differences remain. Tonight, the House adopted 4 amendments. One changed the maximum weeks of benefits awarded to 23 if the state unemployment rate exceeds 10.5%. The House bill also now makes the tax calculation revisions retroactive to 2011 rather than prospective to 2012. There were also some administrative changes that removed some fiscal impacts to the state.

In the remaining two days of session, we are certain the House and Senate will continue to discuss this important issue for Florida's economy and we are hopeful that agreement will be reached on this few remaining differences. As we have reported previously, the bill is very strong on other cost saving measures. The bills update and revise the claims process of the unemployment system to guarantee that only people who truly qualify for benefits are receiving payments. Most importantly for Florida's employers, the bill will revise the tax calculation formula and provide some savings to many employers across the state, based on each individual company's experience with the system.

The bill contains the following specific provisions:

Relating to the benefits procedures, the bill:

- Ties a UC claimant closer to the workforce system by requiring a claimant, at the time an application for benefits is undertaken, to complete an initial skills review which results are reported to the workforce system;
- Matches up state law with federal law changes to allow for federally-funded extended benefits to be drawn down to the unemployed;
- 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;
- Revises how employee misconduct is determined and defined by revising standards of statutory construction and review, and specifying certain forms of misconduct such as chronic absenteeism or tardiness;
- Expands 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 specifies that a claimant in prison is disqualified from benefits;
- Codifies 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; and
- Allows 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 bill:

- Reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate;
- Allows 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 congratulates Representative Holder on the passage of this bill through the House today and continues to applaud both he and Senator Detert for their leadership on this issue throughout session. AIF encourages both chambers to continue working together to reach agreement on those issues that remain unresolved so that the much needed procedural and other changes necessary to maintain and sustain Florida's unemployment system can be achieved.