



DAILY BRIEF

From April 12, 2011

As several legal reform proposals continue to move through the Legislature, AIF is excited to work closely with executive & legislative leaders to implement these much needed changes. Florida's employers understand that to stimulate job creation and economic growth, AIF must act quickly to address cost drivers associated with expensive litigation, egregious court settlements and fraudulent claims. Some of the top priorities making their way in the House & Senate include:

- SB 1930/SB 1694 – These proposals will help correct the current Personal Injury Protection (PIP) benefits system and thus, bring down the costs associated with automobile insurance premiums borne by Florida's employers.
- HB 201 – This legislation aims to level the playing field by ensuring that juries hear all evidence of facts leading up to a vehicle accident. This will provide Florida's jury system with a fair and balanced approach to these types of litigation, and thus, a reduction in large settlements that are otherwise unwarranted.
- SB 1590 – By preventing unqualified "expert testimony" in medical malpractice cases, SB 1590 will discourage unscrupulous behavior and reduce outrageous court settlements sought by such individuals.

Read more in today's edition of the Daily Brief to learn how these drastic reforms can help Florida's businesses in these difficult times.

Taxation

Representative Steve Precourt (R-Orlando) presented HB 7221 Relating to State Revenue Limitations before members of the House Appropriations Committee today. He explained that the Joint Resolution would limit revenues collected by state government to the amount collected the previous year, plus an annual adjustment based on a combination of population growth and the rate of inflation. Any funds in excess of the limits will be placed in the state's "rainy day fund" until that fund reaches 10 percent of the prior year's total budget – at that point, the Legislature must vote to either provide tax relief or reduce property taxes. The Legislature, by a two-thirds vote of the membership of each house, may increase the allowable state revenue for any fiscal year.

AIF Lobbyist Frank Meiners was present to waive his time in support of the joint resolution. In debate, members seemed to fall largely along party lines; however, Majority Leader Carlos Lopez-Cantera (R-Miami) spoke strongly in support of the measure and it passed by a vote of 14 to 10.



HB 7221 will now proceed to the House calendar while its companion, SB 958 by Senator Bogdanoff (R-Ft. Lauderdale), resides in House Messages. Should HB 7221/SB 958 pass, they will head to the ballots in 2012 to be voted upon by Florida's citizens. A 60% rate of approval is necessary for their implementation into constitutional law.

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.

Senator Mike Fasano (R-New Port Richey) introduced SB 658 Relating to Homestead/Non Homesteaded Property in the Senate Judiciary Committee today. Senator Fasano explained that this legislation proposes amendments to the State Constitution to prohibit increases in the assessed value of homestead property if the just value of the property decreases, reduces the limitation on annual assessment increases applicable to non-homestead real property to 3% from the current 10% and provides an additional homestead exemption for owners of homestead property who have not owned such property for a specified time before purchase of their current homestead property.

A courtesy strike-all amendment was introduced by Senator Arthenia Joyner (D-Tampa) and was accepted without objection. Senator Garrett Richter (R-Naples) then introduced a late-filed amendment that modified the cap on commercial property tax to 5%. This amendment was accepted without objection. In addition, Senator David Simmons (R-Altamonte Springs) then introduced a series of late-filed amendments, all of which he withdrew; however, Senator Simmons, by introducing said amendments, wished to demonstrate that the bill as it stands still needs much modification. His views were shared by a number of public speakers, most notably the Florida Board of Realtors, the Florida League of Cities, and the Florida League of Counties. It was made clear, however, that the bill's sponsor, Senator Fasano, shared the concerns of Senator Richter, Senator Simmons and interested parties who testified today. Senator Fasano remarked that all they were doing now was molding the bill to conform to what the House was doing and would hope to incorporate everyone's concerns as the bill moved on through its scheduled committee stops.

In debate, Senators John Thrasher (R-Jacksonville), Simmons and Richter spoke in favor of the bill, while Senator Joyner spoke against it. The bill passed out of committee on a party line vote.

SB 1722, the legislation to statutorily implement SB 658 - should it pass and be approved by voters - was also passed out of the Senate Judiciary Committee today.

SB 658 will now advance to the Senate Budget Committee. The House proposal, HB 381 by Representative Chris Dorworth (R-Heathrow), remains in the House Appropriations Committee.

AIF SUPPORTS legislation to provide business owners with the knowledge and predictability that their tax assessments on property will not increase dramatically from year to year, thus encouraging expansion and job creation.

Insurance

Today, Florida's Office of Insurance Regulation released its report on its in-depth review of data relating to personal injury protection (PIP) automobile insurance claims data. The report concluded that for every dollar of premium a PIP automobile insurer collects, over \$1.18 on the average is going to pay for claims, business expenses and litigation expenses. The report cited sharp increases in PIP automobile insurance fraud as the major cost driver contributing significantly to recent automobile insurance rate increases. Bolstered by this report, the Senate Banking and Insurance Committee approved two PIP reform measures today – SB 1930 by Senator Elynn Bogdanoff (R-Ft. Lauderdale) and SB 1694 by Senator Garrett Richter (R-Naples).

A strike-all amendment was offered to SB 1930 today by the bill's sponsor to address concerns by all stakeholders. Senator Bogdanoff explained that she did her best to work with all parties without negating the fundamental intent of the measure; to discourage fraudulent acts associated with personal injury claims. Fundamentally, SB 1930 requires the insured and medical providers to submit to an examination under oath (EUO) and prevents the recovery of benefits if a claimant is found to file false or misleading statements. The second PIP reform bill by Senator Richter also addresses these cost drivers that result through costly litigation. As amended, SB 1694 caps PIP claimants' attorney fees at \$10,000 on personal injury claims. This legislation will help correct the current system and thus, bring down the costs associated with automobile insurance premiums.

Despite concerns by members who supported the bill today, Senator Bogdanoff & Senator Richter have agreed to continue working with interested parties to address concerns moving forward.

Following passage out of their first committee of reference, the two PIP reform proposals will now advance separately. SB 1930 will now advance to the Senate Criminal Justice Committee for further consideration. SB 1694 will proceed to the Senate Judiciary Committee.

AIF SUPPORTS legislation that will rein in increased costs associated with fraudulent PIP claims. Florida's businesses and consumers should not continue to shoulder the burden of additional "fraud taxes" initiated by unscrupulous practices.

Space

Today, members of the Senate Commerce & Tourism Committee overwhelmingly passed SB 790 Relating to Tax Credits by Senator Thad Altman (R-Melbourne). This bill authorizes an aerospace-sector jobs tax credit and tuition reimbursement tax credit against state corporate income taxes. The intent of the bill is to encourage both the creation of aerospace jobs and the increased availability of higher education and training to existing aerospace industry employees.

SB 790 has one more stop in the Senate Budget Committee. The House proposal, by Representative Ritch Workman (R-Melbourne), HB 143 has already been passed by the full House.

AIF SUPPORTS legislation that will create jobs within the aerospace sector, while maintaining those currently in existence. With the Space Shuttle program nearing its end, failing to act would have drastic consequences for the space industry in the state and associated jobs in those businesses.

Growth Management

Today the Senate Transportation Committee considered SB 1512, yet another growth management bill introduced by Senator Mike Bennett (R-Bradenton). After passing out of committee with one amendment, the Senate's version of comprehensive growth management legislation:

- Revises the definition of "financial feasibility" to change the requirement that committed or planned funding sources be available for years 4 through 10 (current law requires the funding sources be available for years four and five) of the capital improvement schedule.
- Specifies the role population projections should play in land use planning (i.e., revises the needs test).
- Requires local governments to designate long-term transportation management systems if transportation deficiencies are projected to occur within 10 years.

- Revises the methodology for calculating proportionate-share and proportionate fair-share and removes impacts to toll roads from the definition of proportionate-share and proportionate fair-share.

SB 1512 will now proceed to its last committee - the Senate Budget Committee. It is anticipated that this legislation will be combined with SB 1122, also sponsored by Senator Bennett, to form the Senate's growth management package for 2011.

AIF SUPPORTS efforts to re-write Florida's growth management laws in a way that will foster economic activity and job growth. Florida is a growth state and in order to turn our economy around we must repeal and reform some of the regulations that currently stymie responsible development.

Business Regulation

Today, the Senate Judiciary Committee passed SB 1772 by Senator Alan Hays (R-Umatilla) pertaining to self-service storage facilities. The measure seeks to change the notice requirements relating to enforcing an owner's lien against goods stored in a self-service storage facility. The original bill deleted the requirement that the sale or disposition of the property be advertised once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self service storage facility is located; however, Senator Don Gaetz (R-Niceville) filed an amendment to reverted back to current law.

AIF believes public notice in newspapers and on websites serve an important function. Without this notification, a person or business could lose their personal items due to a billing error or an incorrect address. In these difficult economic times, it is far more advantageous to have greater transparency in these circumstances.

AIF OPPOSES efforts to diminish public notice requirements relating to personal property; however, AIF commends Senator Hays for working with interested parties to amend this legislation and allow for proper public notice.

Economic Development

Today, the House Finance and Tax Committee, chaired by Vice Chair Chris Dorworth (R-Lake Mary), passed a piece of economic development legislation that AIF has supported throughout the 2011 session. HB 287 by Representative Eric Eisnagle (R- Orlando) amends business eligibility requirements that allow local governments to grant economic development ad valorem tax exemptions, following voter referendums, to new or expanding businesses in order to help stimulate economic activity. The authority to issue exemptions is valid for ten years and may be renewed through a succeeding referendum. Exemptions are issued by ordinance at the discretion of the board of county commissioners, or a municipal governing authority.

HB 287 revises the process by which local governments can issue exemptions for economic development purposes, changes business eligibility requirements for this exemption and removes outdated limitations. Furthermore, the bill authorizes counties and municipalities that have already held or are in the process of holding referendums to issue exemptions under any future revision to the law without holding additional referendums.

AIF was present to testify in support of HB 287 today. The measure was passed unanimously by members of the committee.

The bill has one final stop in the House Economic Affairs Committee. The Senate measure, SB 506 by Senator Ellyn Bogdanoff (R-Ft. Lauderdale), is now in the Senate Commerce & Tourism Committee.

AIF SUPPORTS legislation that will stimulate economic activity by providing tax relief to new and expanding businesses in Florida.

In the House Economic Affairs Committee, Representative Eisnaugle passed another economic development-related measure today – HB 879 Relating to Tax Refund Program for Qualified Target Industry Businesses. 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. Representative Doug Holder (R-Bradenton) added an amendment broadening the efforts of the energy zone economic incentive areas in designated instances.

HB 879 has passed its final committee of reference and will now be placed on the House Calendar. The Senate's proposal, SB 1318 by Senator Lizbeth Benacquisto (R-Wellington), is scheduled to be heard by the Senate Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations on Wednesday, April 13th at 11:00 am.

AIF SUPPORTS continued availability of state funds for creating incentives that will stimulate economic development and recruit businesses to Florida – a top priority for Governor Rick Scott.

With little time remaining in the House Appropriations Committee today, members took up and passed HB 1231 Relating to Telecommunications by Representative Mike Horner (R-Kissimmee). Representative Horner briefly explained that the bill completes retail deregulation of wire line telecommunication services and maintains the role of the Public Service Commission in resolving wholesale disputes between service providers.

HB 1231 continues the Legislature's past reform of the regulation of communications services in Florida to recognize the rapid changing competitive market. The bill repeals the final roadblock of retail telecommunications service regulation, while maintaining the Public Service Commission's role in resolving inter-company disputes in the wholesale market.

HB 1231 has already been scheduled for consideration by the House State Affairs Committee on Thursday, April 14th at 9 am.

AIF SUPPORTS legislation that modernizes Florida's communications laws and empowers consumers, not state regulation, to pick winners and losers. Further, AIF supports these much-needed reforms to keep and create jobs, and to spur investment, as Florida competes with states that have already created an attractive investment environment.

Health Care

The House Judiciary Committee approved HB 1193 Relating to Health Insurance by Representative Matt Hudson (R-Naples) today. This bill would prohibit a person from being compelled to purchase health insurance which is specifically directed toward negating the individual mandate contained in the recently enacted Federal Health Care Reform Act. The Senate companion, SB 1754 by Senator Rene Garcia (R-Miami), was also approved in the Senate Health Regulation Committee today.

Members of the Legislature have also introduced proposals this year, similar to HB 1193 & SB 1754 that would preempt the Federal Health Care Reform Act by way of Florida's Constitution. HJR 1 by Representative Scott Plakon (R- Longwood) and SJR 2 by Senate President Mike Haridopolos (R- Melbourne) would place before the voters on the ballot in November 2012, a constitutional amendment that would prohibit a law or rule from compelling, directly or indirectly, any person or employer to purchase health care coverage.

SB 1754 will now head to its last committee of reference - the Senate Rules Committee. HB 1193 proceeds next to the House Health and Human Services Committee.

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

In effort to address the number of frivolous lawsuits brought against nursing homes in Florida, members of the Senate Health Regulation Committee approved SB 1396 by Senator Ellyn Bogdanoff (R-Ft. Lauderdale). The bill was amended with language that currently is contained in SB 1972 - the Senate's Medicaid Reform bill. As amended, SB 1396 contains:

- Additional requirements for suing an officer, director, or owner of a nursing home;
- Non-economic damage caps at \$300,000 on wrongful death actions, regardless of the number of claimants, brought against a nursing home;
- A requirement that a claimant demonstrate that a reasonable basis exists before being able to recover punitive damages and allows the defendant to actively refute the claimant's evidence; *and*
- A requirement that the claimant produce evidence the defendant actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence.

SB 1396 will now proceed to the Senate Judiciary Committee for further deliberation. The House companion, HB 661 by Representative Matt Gaetz (R-Shalimar), is currently in the House Judiciary Committee.

AIF will continue to SUPPORT proposals that discourage frivolous lawsuits and gratuitous settlements on the backs of Florida's employers. AIF commends Senator Bogdanoff for her leadership in seeing this proposal through the Legislative process.

The Senate Banking and Insurance Committee unanimously approved SB 1522 Relating to Wellness or Health Improvement Programs by Senator Don Gaetz (R-Ft. Walton Beach) today which would allow health insurers to offer a voluntary wellness or health improvement program to employers and employees. Further, insurers would be allowed to encourage participation in these wellness programs by providing rewards or incentives. The language in this bill is also contained in SB 1972 which is the Senate's Medicaid Reform plan.

SB 1522 will now advance to the Senate Rules Committee. The House companion - HB 445 by Representative Clay Ingram (R- Pensacola) - will be heard in the House Health and Human Services Committee on Wednesday, April 13th at 1:00 pm.

AIF SUPPORTS legislation will lead to a healthier workforce and lower premiums. Costs to insurers could be offset by a reduction in the insurer's medical expenses due to having a healthier insured population. Furthermore, this legislation will offer these incentives without mandating coverage on the backs of Florida's Insurance providers.

Legal & Judicial

Today, the House Judiciary Committee passed two important tort reform bills that will enhance the image of Florida's litigation environment as a friendlier place for businesses.

First, the House Judiciary Committee unanimously passed HB 201 by Representative Marlene O'Toole (R-The Villages) relating to evidence introduced into trial in negligence cases of crashworthiness. This bill has been the subject of much tort reform discussion throughout the legislative session. A Senate proposal, SB 142 by Senator Garrett Richter (R-Naples), has already passed the Senate; however, the House version at this point is less clear in changing the status of current law. The goal of Representative O'Toole is to make sure that juries hear all evidence of facts leading up to a vehicle accident, including condition of the driver and other factors unrelated to the vehicle design. This situation resulted from a Florida Supreme Court ruling which bars the admission of any evidence surrounding an accident other than the product design. The current House version is weaker than both the bill as originally filed and the current Senate version. AIF will continue to work with policymakers to revert the bill back to its original form, ensuring that Florida's jury system will again be provided with a fair and balanced approach to these types of litigation.

HB 201 will now proceed to the House Calendar for consideration by all members.

AIF SUPPORTS efforts by the Florida Legislature to clearly express that a Florida Supreme Court-create standard regarding crashworthiness is absurd and unfair.

The House Judiciary Committee also passed HB 391 Relating to Expert Testimony by Representative Larry Metz (R-Eustis). This bill simply aligns the Florida standard for admission of expert testimony with the federal standards. This consistency among the districts is much needed by Florida businesses to be certain that "junk science" is not the basis of jury awards and other judicial orders that govern our state.

HB 391 is now ready to be heard on the House floor.

AIF SUPPORTS revising current law to create a more fair and balanced formula for applying interest to damage awards.

The Senate Commerce & Tourism Committee passed SB 1610 Relating to Minimum Wage by Senator Nancy Detert (R-Venice) with overwhelming support today. Each year, the Agency for Workforce Innovation (AWI) calculates the state's minimum wage based on the formula provided in the Florida Constitution. The law requires that the minimum wage be increased based on increases in inflation and can never be lower than the federal minimum wage. Unfortunately, in the past few years, Florida's economy has experienced a period of deflation and the law is silent as to how periods of deflation are to be considered in the calculation. During these times, AWI has completed its calculation using the deflation but has established Florida's minimum wage equal to the federal level. Not surprisingly, labor groups have sued the state over this calculation.

Fortunately, SB 1610 will clarify the calculation of the minimum wage for economic conditions that are not already expressed in the state constitution. The bill does not lower the minimum wage or conflict with the Constitution. It simply brings clarity for the AWI in its calculations when economic conditions occur that the constitution did not address.

SB 1610 will now advance to the Senate Governmental Oversight and Accountability Committee for further consideration by its members. The House proposal, HB 1425 by Representative John Tobia (R-Melbourne), is currently in the House Economic Affairs Committee.

AIF SUPPORTS legislation to bring clarity and predictability to this process that will avoid litigation and create a fair and balanced approach to the calculation of minimum wage in Florida.

The Senate Banking & Insurance Committee unanimously approved SB 1590 Relating to Medical Malpractice Action by Senator Alan Hays (R-Umatilla) today. By strengthening standards relating to medical malpractice claims, this legislation will:

- Requires a physician or osteopathic physician, who provides expert testimony concerning the prevailing professional standard of care, to be licensed in this state. *This will prevent the admission of unqualified expert testimony from individuals who may not be competent in these types of cases.*
- Requires a claimant to submit information that is potentially relevant to the claim of personal injury or wrongful death. *This provision will level the playing field and ensure that all pertinent facts are brought forth in the consideration of claims.*
- Authorizes a defendant, or his or her legal representative access, to conduct interviews of the claimant's treating health care providers without notice. *Providing defendants the opportunity to conduct interviews without prior notice will discourage frivolous claims and significantly reduce the compulsion to commit fraud.*

In light of the debate and testimony provided during committee, AIF waived its time in support of SB 1590.

SB 1590 will now advance to the Senate Banking & Insurance Committee. The House proposal, HB 479 by Representative Mike Horner (R-Kissimmee), is scheduled to be heard in the House Judiciary Committee on Thursday, April 14th at 9 am.

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 for his hard work and leadership on this very important issue.

Guns in the Workplace

The Senate Judiciary committee passed SB 234 Relating to Firearms by Senator Greg Evers (R-Milton) today. This legislation, more commonly known as the "Open Carry" bill, would allow those individuals with a concealed weapons permit to carry their firearms in the open. The bill was met with strong opposition from the members of law enforcement as well as representatives from the business community including Associated Industries of Florida.

Senator Ellyn Bogdanoff (R-Ft. Lauderdale) introduced an amendment that would have relaxed the bill's intent by providing concealed weapons permit holder protection when inadvertently displaying their firearm in the public. Representatives from the NRA spoke in opposition to the Bogdanoff amendment and the sponsor ultimately withdrew her amendment when she realized she did not have the votes to get it passed.

During debate several members of the Committee expressed their concerns with the bill. Senator David Simmons (R-Altamonte Springs) pledged to work with the bill's sponsor to work out a compromise between members of the NRA, law enforcement, and the business community.

SB 234 will now be considered by the Senate Rules Committee.

AIF OPPOSES legislation that would allow for “open carry” of firearms in Florida. Employers, especially those who operate storefronts where there is a lot of foot traffic, are concerned with the potential unintended consequences and liability that could arise from allowing the public to openly carry guns in places of employment.

Seaports

Today, the House Economic Affairs Committee unanimously approved HB 399 Relating to Seaports by Representative Lake Ray (R-Jacksonville). Construction to widen and modernize the Panama Canal is nearing completion, and seaports on the entire U.S. coastline are considering their options on how to best position themselves to participate in what is expected to be an economic windfall in maritime transit of oil, foodstuffs, consumer goods, and other cargo. HB 399 requires the Department of Environmental Protection (DEP) to issue a notice of intent for a port conceptual permit within 30 days after receiving the application. Requiring DEP to issue a notice of intent for a port conceptual permit within 30 days will provide more certainty to port related businesses, thereby reducing their costs. DEP is supportive of this provision and voiced support for the legislation in Committee.

HB 399 will now advance to the full House for consideration. The Senate companion, SB 768 by Senator Jeremy Ring (D-Margate), has been scheduled for a hearing by the Senate Budget Committee on Friday, April 15th at 1:30 pm.

AIF SUPPORTS efforts to include port incentives in any economic development proposals that are considered during the 2011 Session. Florida’s 14 deepwater seaports are significant economic drivers for the state and must be provided with adequate funding to promote development and growth.