



DAILY BRIEF

From May 3, 2011

Today marked a tremendous victory for the business community with the defeat of a proposal to mandate E-Verify for all employers. The Senate has been working diligently to pass comprehensive reform this year; however, AIF has been working closely with stakeholders to defeat the mandated use of "E-Verify" by Florida's employers. It has been strongly suggested by members of the Florida House that this issue is dead for the 2011 Session.

Aside from immigration reform, the Senate saw a great number of proposals move forward today that will benefit Florida's business community. A few of the measures that passed out of the Senate chamber today included reform to medical malpractice liability, relief to employers by reducing unemployment compensation taxes, and the annual corporate income tax "piggyback" measure. We expect to see many of these priorities passed in the final days of the 2011 Session as the House and Senate continue their negotiations.

Health Care

Today, the full Senate amended and passed HB 479 Relating to Medical Malpractice by Representative Mike Horner (R-Kissimmee) on a vote of 30 to 9. The Senate's amendments removed language that would protect hospitals from liability when a contracted physician (not an employee) is being sued for medical malpractice. Provisions that remain in the bill include:

- Creation of an "expert witness certificate" for physicians from other jurisdictions who plan to testify in a Florida medical malpractice case;
- A requirement that medical malpractice insurance contracts 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;
- Clarification that records, policies, or testimony of an insurer's reimbursement policies or decisions regarding the care received by the plaintiff are not admissible in any civil action;
- Requirement that the plaintiff 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.

After being amended, HB 479 must now head back to the House for consideration by its members.

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 and Representative Horner for their hard work and leadership on this very important issue.

Another health care measure passed by the Senate today was HB 445 by Representative Clay Ingram (R-Pensacola). The bill 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 Senate companion, SB 1522 by Senator Don Gaetz (R-Ft. Walton Beach), was laid on the table and substituted for HB 445.

Since HB 445 has cleared both Chambers, the measure will now head to the Governor for final passage.

Legal & Judicial

Today, the full Senate took up and unanimously passed SB 450 Relating to Emergency Management by Senator Mike Bennett (R-Sarasota). 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.

Following its expeditious passage today, SB 450 will now proceed to the House for final passage.

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.

Unemployment Compensation

Another one of AIF's top measures was passed by the Florida Senate today relating to the Unemployment Compensation system – SB 728 by Senator Nancy Detert (R-Venice). Senator Detert has been the Senate leader on this legislation throughout this session. The House had passed their version much earlier in the session and it was that version, HB 7005 by Representative Doug Holder (R-Sarasota), considered today in the Senate. Senator Detert filed an amendment that brought the House bill closer to the original Senate version, and now the bill is very close to having agreement and consensus between the two chambers. The primary distinction at this point is the duration of unemployment benefits. The Senate version as passed today now implements a sliding scale for duration of benefits tied to the state's unemployment rate. The scale caps benefits at the current state maximum of 26 weeks, but also reduces duration to as low as 12 weeks when the unemployment rate is 5% or lower. The House's original version of the bill simply decreased duration of benefits to 20 weeks; however,

there have been ongoing discussions between House and Senate leaders and we anticipate those discussions will continue in the coming days.

Despite this remaining issue of benefit weeks, both the House and Senate versions of the bill are 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.

HB 7005 contains the following 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 to 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.

As amended, HB 7005 passed by a vote of 29-10 on the Senate floor. A copy of the engrossed bill passed by the Senate today can be found at this link. HB 7005 will now return back to the House for consideration by its members.

AIF applauds Senator Detert on the passage of the Senate legislation today and salutes both she and Rep. Holder for their leadership on this issue throughout session. AIF encourages both chambers to continue working together to reach an agreement on those issues that remain unresolved so that the much needed relief to maintain and sustain Florida's unemployment system can be achieved.

Taxation

Today, the Senate took up SB 1998 Relating to Corporate Income Tax by Senator Ellyn Bogdanoff (R-Fort Lauderdale). Following questions by Senator Arthenia Joyner (D-Tampa), Senator Bogdanoff explained that each year Florida passes a "piggyback" bill to adopt the federal changes that were made to the corporate income tax code.

In some cases, however, when the federal code changes allow for increased depreciation of certain assets that would cost the state revenue, the state does not always codify those particular changes. She went on to say that in 2008 and 2009, the "piggyback" bill allowed the taxpayers to spread the benefits received by the federal code changes over 7 years.

SB 1998 extends this process for the 2010 and 2011 federal changes, thus avoiding the \$500,000,000 estimated loss in corporate income tax.

Senate President Mike Haridopolos (R-Melbourne) took up the House measure, HB 7185 by Representative Steve Precourt (R-Orlando), and asked if there were amendments. Senator Bogdanoff explained that the only change was the Governor's Corporate Income tax cut by increasing the exemption on taxes owed from the current amount of \$5,000 to \$25,000. After being amended, HB 7185 passed unanimously by a vote of 39 to 0.

Following the adoption of amendments, HB 7185 must now head back to the House to be voted on by its members.

AIF SUPPORTS the adoption of a corporate income tax "piggyback" bill that codifies federal income tax code changes and ensures that businesses are not burdened with keeping two sets of books.

Right before adjournment of the Senate, members took up SB 912 Relating to Affordable Housing by Senator Mike Bennett (R-Bradenton) for consideration. This bill removes the statutory limitations on the amount of documentary stamp revenue that goes into the State Housing Trust Fund and the Local Government Housing Trust Fund. Furthermore, it provides that funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for use in the State Apartment Incentive Loan Program, Florida Home ownership Assistance Program, Community Workforce Housing Innovation Pilot Program, or the State Housing Initiatives Partnership Program may not be used to finance or otherwise assist new construction until July 1, 2012.

While the removal of the cap is accomplished by this bill, the provision freezing monies for any new construction programs reflects a desire on the part of the Legislature to lessen the glut of housing on the market today.

With the House version having already passed, members substituted SB 912 for HB 639 by Representative Gary Aubuchon (R-Cape Coral). HB 639 and passed the measure by a vote of 37-2. SB 912 will now head to the Governor for final approval.

AIF SUPPORTS legislation that repeals the Housing Trust Fund cap and appropriates all doc stamp revenue toward affordable housing. AIF has worked closely with the Sadowski Coalition in effort to allocate these funds for which they were originally intended.

Today, the Senate took up HB 311 Relating to Local Business Taxes by Representative Kenneth Roberson (R-Port Charlotte) on the Special Order Calendar. The Senate measure's sponsor, Senator Nancy Detert (R-Venice), explained that the bill provides that an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

HB 311 was substituted by its Senate companion, SB 582, and subsequently passed unanimously by the full Senate.

Following passage by both chambers, HB 311 will now proceed to the Governor's desk for his approval.

AIF SUPPORTS legislation that eliminates the requirement for certain employees to pay a "local business tax" if their employer is already paying a similar tax. This legislation will reduce the tax burden on employees across Florida and create a more business-friendly environment at a time when Florida's economy needs it the most.

Immigration

Today, 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.

Senator JD Alexander (R-Lake Wales) gave an impassioned speech in opposition to the amendment, in which he expressed firsthand knowledge of the problems he personally experienced when using E-Verify in his family's farming business. Republicans voting against the amendment were Senators Alexander, Elyn Bogdanoff (R-Ft. Lauderdale), Charlie Dean (R-Inverness), Nancy Detert (R-Venice), Miguel Diaz de la Portilla (R-Miami), Anitere Flores (R-Miami), Rene Garcia (R-Hialeah), Dennis Jones (R-Seminole), Jack Latvala (R-St. Petersburg), Jim Norman (R-Tampa), Garrett Richter (R-Naples), and Stephen Wise (R-Jacksonville).

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.

The bill has rolled to third reading where it may be brought up in the coming days. Members of the House have expressed opposition to the Senate proposal, suggesting that this issue may be dead for the 2011 Session.

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.