



# DAILY BRIEF

From February 16, 2012

Several of AIF's biggest priorities for the 2012 Legislative Session advanced today in committee, on the Floor or by way of final approval by Governor Rick Scott. Here's a look at the day in review:

- Governor Scott signed into law one of AIF's top environmental priorities for 2012. HB 7051 Relating to Rules Establishing Numeric Nutrient Criteria by the House Agriculture & Natural Resources Subcommittee and Representative Matt Caldwell (R-Ft. Myers) is legislation needed to send the Florida Department of Environmental Protection's new rules on numeric nutrient criteria (NNC) to the US Environmental Protection Agency. AIF applauds Governor Scott and the Legislature for their unanimous support of this critical legislation.
- SB 1514 Relating to Tax on Sales, Use, and Other Transactions by Senator Nancy Detert (R-Venice), which passed the Senate Banking and Insurance Committee, would compel online retailers charge sales taxes on products shipped to Florida thus leveling the playing field for Florida-based retailers. The bill was amended today to appease concerned parties about potential tax increases on Floridians.
- SB 1372 by Senator JD Alexander (R-Lake Wales) would reduce hidden "hurricane assessments" on policyholders by reducing the amount of reinsurance backed by the state-run Hurricane Catastrophe Fund. This legislation passed with overwhelming support in the Senate Banking & Insurance Committee. Read AIF's Statement on SB 1372's Passage.

In addition, Governor Scott signed off on the State Legislature's proposed Congressional Redistricting Maps. It is anticipated that opponents to the plan will file their recently publicized challenge in Leon County Circuit Court at any moment.

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## Economic Development

The Senate Commerce and Tourism Committee passed SB 1168 Relating to Freight Mobility Development by Senator Jeremy Ring (D-Margate).

SB 1168 creates the "Freight and Logistics Facility Credit", which provides tax credits relating to increased trade activities at port facilities. Credits can be used against the intangible personal property tax, the excise document tax, the sales and use tax, the corporate income tax, or the insurance premium tax. The tax credit is equal to either \$3,000 per "qualified full-time employee" who is hired as a result of increased "qualified trade activities," or 5% of any "capital investment" made by the taxpayer to facilitate increased "qualified trade activities." The taxpayer must elect which credit to take and may only take one type of credit per year for the same activity. Each taxpayer is eligible only up to a maximum of \$500,000 per taxable year in credits and any unused credits may be carried forward for up to 10 taxable years. The program would begin on January 1, 2013 and extends through January 1, 2017.

Furthermore, SB 1168 conforms the statutes to the current funding practice for the Florida Seaport Transportation and Economic Development (FSTED) Program of \$15 million (instead of \$8 million), at which it has been funded since 2004, and also removes caps on funding for each port of \$7 million per year and \$30 million over 5 years.

Lastly, an allocation of \$35 million from the State Transportation Trust Fund (STTF) is requested to fund the initiative.

SB 1168 will now proceed to its final stop in the Senate Budget Committee. A comparable measure in the House – HB 679 by Representative Lake Ray (R-Jacksonville) – is currently awaiting hearing in the House Business & Consumer Affairs Subcommittee.

### **AIF supports legislation that encourages hiring and increased capital investments at Florida’s port facilities.**

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#### **Taxation**

The House Economic Affairs Committee considered proposed committee bill **(PCB) EAC4** Relating to Exemptions from Local Business Taxes.

This legislation specifies that an individual licensed and operating as a broker associate or sales associate is not required to apply for an exemption from a local business tax or take certain actions relating to a local business tax. The bill prohibits a local governing authority from holding such exempt individual liable for the failure of a principal or employer to comply with the tax.

During public testimony, Amber Hughes of the Florida League of Cities spoke against the bill citing revenue stream concerns and the desire for comprehensive reform of the Local Business Tax rather than taking a “piecemeal” approach. Alternatively, **AIF Lobbyist Frank Meiners** waived in support of the proposal.



Representative Jim Waldman (D-Coconut Creek) spoke against the bill in debate; however, he explained that he was open to changing his mind if it made it to the floor. Representative Steven Perman (D-Boca Raton) spoke in favor of the bill, explaining that is unfair for a Realtor Associate who must work under a Broker to have to pay the local business tax.

**EAC4** was submitted as a committee bill with only Representative Waldman voting against the measure. The measure will now be assigned a bill number and referenced to additional committee(s) for further consideration.

### **AIF SUPPORTS legislation that will eliminate local business taxes levied on Florida’s small businesses.**

Also on Thursday, the Senate Banking and Insurance Committee overwhelmingly passed one of AIF’s top taxation measures – SB 1514 Relating to Tax on Sales, Use, and Other Transactions by Senator Nancy Detert (R-Venice).

Known as the “E-Fairness” measure, this legislation would compel online retailers charge sales taxes on products shipped to Florida. Online retailers would be liable for paying the tax if the retailer has a relationship with persons in the state helping them solicit business. In addition, the bill also includes a “click-through” nexus provision by extending Florida sales tax to dealers who enter into agreements with Florida residents, and instances where the residents receive commissions for referring customers by a link on an Internet website.

During consideration, a “strike-everything” amendment sponsored by Senator Mike Bennett (R-Bradenton) was adopted that changes the bill in a significant way. SB 1514 now contains a “revenue neutral” provision that would allow any additional revenue collected by online retailers to be returned to Floridians through tax relief. Senator Detert explained that such savings, which would be apportioned

at the discretion of the Legislature, could be relayed to Florida-based businesses in the way of tax relief in an effort to further spur job creation.

Members of the committee commended Sen. Detert for her work on this legislation and further expressed support for the need to close this loophole, which “amounts to picking winners and losers in government policy.”

SB 1514 will now proceed to the Senate Floor. The House has yet to take any action on this issue this session.

**AIF SUPPORTS efforts to enforce the fair collection of state sales tax. Common sense updates can and should be made to Florida’s tax system to level the playing field for all retailers selling goods in Florida.**

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## **Legal and Judicial**

The House Judiciary Committee considered and passed HB 1013 Relating to Residential Construction Warranties by Representative Frank Artiles (R-Miami).

This legislation addresses a common law implied warranty of fitness and merchantability related to the purchase of improved real estate purchased from the builder. This common law implied warranty applies to buildings and other improvements which are affixed to the real property, as opposed to fixtures that can be removed from the real property without damage to the premises.

A recent District Court of Appeal (DCA) court decision expanded the common law implied warranty of fitness and merchantability to off-site improvements, such as roads and drainage areas within a subdivision. The DCA opinion is contrary to a previous Florida Supreme Court opinion. This bill provides that the implied warranty of fitness and merchantability or habitability does not include off-site improvements.

HB 1013 has passed its final committee of reference and will now proceed to the House Floor. The Senate companion – SB 1196 by Senator Mike Bennett (R-Bradenton) – awaits consideration in the Senate Budget Committee.

**AIF SUPPORTS legislation that will provide clarity as it relates to warranty obligations, thus promoting a more decisive environment for conducting business in Florida.**

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## **Education**

The House Education Committee took up and passed HB 1191 Relating to Parental Empowerment in Education by Representative Michael Bileca (R-Miami).

HB 1191 enables parents, by petition, to request that the school district implement a parent-selected turnaround option if a school in the lowest performing category does not improve performance in the initial year of implementing a turnaround option selected by the school district. The turnaround option requested by parents must be considered for implementation by the district school board at a publicly noticed meeting if the petition is signed and dated by a majority of the parents of eligible students, i.e., students enrolled in the school or students who are scheduled for assignment to the school in the following school year.

Within 30 days of receiving notice from the Department of Education (DOE) that the school did not improve performance under the preceding turnaround option, each school district must notify parents that they may submit a petition requesting that a parent-selected turnaround option be implemented for the school in the following school year.

Representative Bileca offered a “strike-everything” amendment that addresses some concerns raised by Democratic members of the committee. Specifically, the amendment added several safeguards to the petition process. One provision, for example, states that parents cannot be paid for their signatures.

Despite these concessions, the bill passed along party lines with Democratic members opposing.

HB 1191 is now ready for action on the House Floor. The Senate companion – SB 1718 by Senator Lizbeth Benacquisto (R-Wellington) – is currently in the Senate Budget Subcommittee on Education Pre-K - 12 Appropriations.

**AIF will continue to SUPPORT legislative changes that will increase digital learning and improve foundational skills and readiness for college and careers.**

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## **Business Regulation**

The Senate Commerce and Tourism Committee passed committee bill SB 2106 Relating to Tipped Employees on a bi-partisan vote of 5-1.

SB 2106 creates an optional guaranteed wage for tipped employees in Florida. An employer may elect to guarantee tipped employees a certain wage for tipped employees who meet the eligibility requirements for the tip credit under the federal Fair Labor Standards Act (FLSA). Specifically, the wage must equal at least 130 percent of the state minimum wage, rounded up to the next cent.

The election must remain in effect for 1 year from the date of the election and until revoked by the employer. An employer who makes such election is deemed to have met the requirement to pay Florida minimum wage, but must still meet the requirements of the FLSA.

Numerous restaurants stood in support of the bill due to the fact that it gives them another avenue in which to calculate employee’s salaries. Supporters stated that by allowing this option, employees would earn more money and the restaurant would be able to forecast labor costs better. By doing this, supporters argued that it will free up capital to hire additional employees and/or expand operations.

The bill is now slated to advance to the Senate Regulated Industries Committee.

**AIF SUPPORTS legislation that will offer employers an option when it comes to calculating a wage for tipped employees, thus giving the employer greater freedom in how they chose to run their business and stimulating job creation.**

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## Insurance

The Senate Banking and Insurance Committee passed SB 1372 Relating to Florida Hurricane Catastrophe Fund by Senator JD Alexander (R-Lake Wales).

This legislation would reduce hidden “hurricane assessments” on policyholders by reducing the amount of reinsurance backed by the state under the current Hurricane Catastrophe Fund (CAT Fund). SB 1372 diminishes the size of the fund from \$17 billion to \$12 billion over five years, pushing private insurers and state-backed Citizens Property Insurance Corporation to buy more reinsurance in the private market. With erratic financial markets, the CAT Fund’s ability to retrieve bonds has condensed leaving the fund with a \$3.2 billion shortfall in the event of a catastrophic storm.

Citing opposition to SB 1372 during debate, Senator Mike Fasano (R-New Port Richey) was the only no-vote and the measure passed 8-1. Members of the business community, including AIF, all stood in support of this much needed legislation. Florida’s property insurance system is in need of real reform and this legislation takes an important step in addressing the potential crisis that could arise from the CatFund going insolvent.

SB 1372 has one remaining stop in the Senate Budget Committee. The House proposal – HB 833 by Representative Bill Hager (R-Boca Raton) – remains in the House Insurance & Banking Subcommittee.

**AIF SUPPORTS legislation that introduces greater stability to the state’s Hurricane Catastrophe Fund.**

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## Environmental

SB 1324 Relating to Metal Theft by Senator Jim Norman (R-Tampa) unanimously passed the Senate Criminal Justice Committee.

SB 1324 increases the penalty for a person found guilty of metal theft from a first degree misdemeanor to a third degree felony. In addition, this bill also incorporates the definition for electrical substations.

Metal theft has been on the upswing across the State of Florida. In recent metal theft incidents, electrical substations have been a major target for thieves. When this crime occurs, it not only costs the company and rate payers money, lives are at stake. Outages effect medical equipment used at homes, street lights can go dark and in Miami-Dade a woman was killed while crossing a dark street.

SB 1324 has one remaining stop in the Senate Budget Committee. The identical House proposal – HB 1323 by Representative Brad Drake (R-DeFuniak Springs) – awaits hearing in the House Judiciary Committee.

**AIF and the Floridians for Copper & Metal Crime Prevention Coalition SUPPORT legislation that will enact precautionary methods to help deter the removal of metal from private property and government structures, causing economic loss for both the private and public sectors.**

Also on Thursday, the full House of Representatives took up HB 1389 Relating to Water Storage and Water Quality Improvements by Representative Steven Perman (D-Boca Raton) on final passage. The measure passed with unanimous consent by a vote of 118-0.

This legislation encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands. Currently, if a landowner uses its property to store water there is a fear that the property could be classified as a wetland if an attempt was made to revert it back to agricultural use. This legislation clarifies that the land would not be classified as a wetland. Now the

agricultural community will be able to store the much needed water on their property without this concern moving forward.

HB 1389 could provide an economic benefit to farmers and ranchers by increasing their ability to store water and provide water quality benefits on their land without incurring the permitting restrictions associated with creating wetlands.

HB 1389 will now proceed to the Senate for final passage by its members. The identical Senate proposal – SB 1858 by Senator Thad Altman (R-Melbourne) – is currently in the Senate Budget Subcommittee on General Government Appropriations.

**AIF will continue to SUPPORT legislation encouraging public-private partnerships for Florida's infrastructure needs, particularly as it relates to water.**