



From October 7, 2011

In what promises to be an unprecedented legislative session, policymakers continued to hear from top officials this week concerning the state's budget outlook, proposed legislation for 2012 as well as newly enacted laws and the impact they will have on Floridians. Some of the highlights from this week's committee discussions included:

- The ongoing discussion of numeric nutrient criteria and the efforts by the business community (DEP) to combat expensive regulations;
- Legislation that will allow for greater transparency in the sale or lease of taxpayer-funded hospitals – a measure that AIF strongly supports; *and*
- A proposal that will enhance economic development and commercial space business in Florida

Be sure to stay tuned! With the legislative session beginning in January, the release of AIF's *2012 Session Priorities* publication is just around the corner. In addition, keep an eye out for more information on one of our many statewide *Pre-Session Briefings* featuring appearances by legislative leaders, members of the business community and AIF's premier lobby team.

Environmental

Discussion about water issues continued this week as the House Agriculture & Natural Resources Subcommittee heard a presentation by **Drew Bartlett, Director for the Florida Department of Environmental Protection (DEP) Division of Environmental Assessment and Restoration**, concerning the numeric nutrient criteria issue. As we have previously reported, the US Environmental Protection Agency (EPA) is working on rules to establish numeric nutrient criteria for Florida's water bodies. Nutrients such as nitrogen and phosphorous are naturally found in water; however, excess nutrients can result in risks associated with human health and the environment. Certain environmental groups sued EPA and requested that they set numeric nutrient criteria for Florida's waters. Eight lawsuits representing 30 different parties have filed challenges claiming that EPA's necessity determination is invalid and that their criteria are arbitrary and capricious. Unfortunately, these cases could take two more years to resolve including appeals, and the new rules are scheduled to go into effect in March 2012.

DEP is working to resolve the problem. In April, 2011 DEP filed a petition with EPA requesting for them to rescind the determination to promulgate numeric nutrient criteria in Florida and rescind promulgated criteria. EPA has responded to the petition but unfortunately they did not grant or deny; therefore DEP has been holding public workshops beginning in June to discuss the numeric nutrient criteria rule concepts and circulated draft rules. DEP will need to decide in October whether to proceed with a Notice of Rulemaking. If they decide to move forward, then a statement of estimated regulated costs (SERC) will be conducted. In December, the Environmental Regulations Commission would need to adopt the rule so that it could be ratified during the 2012 Legislative Session. Once the rule has been ratified by the Legislature then it would be submitted to the EPA for approval.

There are three differences between the DEP draft rule and EPA's rule:

- DEP gives preference to nutrient Site Specific Science (TMDL) and EPA's rule does not;
- DEP only creates nutrient reduction expectations where necessary to protect Florida's water bodies and EPA's covers all water bodies regardless of its health; *and*
- DEP eliminates unnecessary procedures that do not add to waterbody protection and restoration and EPA uses federal procedures to overcome illogical outcomes.

EPA estimates that the annual cost for the numeric nutrient criteria would fall between \$135.5 and \$206.1 million. Cardno ENTRIX conducted a study and their figures are significantly higher. They believe the cost would range from \$298 million to \$4.7 billion. This wide range is due to the uncertainty over how the rule would be implemented. The National Academy of Sciences is currently conducting an independent review of EPA's analysis and the report is due in February 2012.

DEP is performing a costs analysis (SERC) of its rule and anticipates that the cost will be lower because they take in the following considerations:

- Uncertainties will be addressed;
- Reductions will not be expected in healthy waters; *and*
- An elimination of process costs.

As was mentioned previously, DEP has to decide whether or not to begin the rulemaking process. If they do not set state rules then the EPA rules will go into effect. Therefore, permits and TMDLs would be issued by EPA. Costs would be passed down to households, businesses and visitors! AIF and the business community are encouraging DEP to move forward with the rulemaking process.

Health Care

On Tuesday, the Senate Health Regulation Committee heard from the Agency for Health Care Administration (AHCA) on the progress of the Commission on the Review of Taxpayer Funded Hospital Districts. This group, established by an executive order by Governor Scott, is charged with performing a comprehensive review of hospitals funded through taxes. They must prepare a report, with recommendations, to the Governor and the Legislature by January 1, 2012. Among other issues, the Commission will determine if:

- Outcomes are better or worse in government operated hospitals than other hospitals;
- Costs in government operated hospitals are higher or lower to non-government operated hospitals offering similar services and how that would impact costs for Medicaid, the Low Income Pool and other reimbursement;
- Other models exist where local taxing authorities that provide, as an alternative to government operated hospitals, would allow the funds to follow the patient to either hospitals or community based outpatient services.
- The most cost-effective method for providing outpatient and inpatient hospital services to the greatest amount of persons.
- The governing model for government operated hospitals is in compliance with sunshine laws, take action in the best interest of the taxpayers and ensure accountability by board members.
- The practices used by government operated hospitals for compensating physicians with taxpayer dollars in a manner that would compete with those entities that do not receive taxpayer funding.

Chair Rene Garcia (R-Miami) signaled his strong interest in this Commission's work. Senator Garcia filed SB 464, similar to legislation he filed last year, which would restrict the sale of public hospitals by requiring the sale to be approved by the voters within that area and would have provided for more transparency in the process. The House passed their version last session, but the Senate did not. As a result, the Governor formed this Commission. "We want to have all the information possible before we start passing legislation", said Senator Garcia. Senator Garcia's concerns were echoed by Senate President Designate Don Gaetz (R-Ft. Walton Beach). "There are some public policy issues we need to deal with, said Senator Gaetz. There is an ongoing problem with how they (the hospitals) are managed".

On Thursday of this week, the Senate Health and Human Services Appropriations Chair Joe Negrón (R-Palm City) discussed the recent estimates from the Agency for Health Care Administration (AHCA) for the cost of the state's Medicaid Program. For FY 2011-12, it is estimated that the program will have a deficit in General Revenue of approximately \$286 million to \$346 million. Further, if nothing changes, the program will have a \$1 billion shortfall for FY 2012-13.

Negrón expressed frustration with the federal government's delay in approving the state's waiver request that was required when the 2011 Legislature passed comprehensive Medicaid reform legislation. Other states have requested and received similar waivers, such as Rhode Island and Texas. Chair Negrón also noted that if the waiver isn't approved, the committee would begin looking at cutting rates again.

Senate President Designate Don Gaetz asked that the committee discuss the hard issues versus soft issues to determine "who stays in the lifeboat." Gaetz is referring to a comment made by Negrón earlier this year when he characterized "hard social services" as those that provide services and have tangible benefits, such as prenatal care to at-risk women. On the other hand, Chair Negrón has stated his willingness to cut "soft social services" such as one that tried to persuade children from using drugs.

Currently, the federal government has granted a continuation of the state's current Medicaid waiver as they review the current waiver request. According to the new Medicaid law passed in 2011, implementation of the Long-term Care Managed Care component of the Statewide Medicaid Managed Care program is scheduled to begin by July 1, 2012 for a complete implementation date of October 1, 2013.

Growth Management

On Tuesday, October 4th the Senate Community Affairs Committee met and considered several pieces of legislation, including proposed committee bill (PCB) SB 7002, which would define "insignificant impact" for purposes of the mandates provision of the constitution.

This bill is the result of an interim report that was designed to explain the exemption from the mandates provision of the Florida Constitution and present a possible clarification.

Article VII, Section 18 of the Florida Constitution (the "mandates" provision) restricts the state's ability to: (1) require local governments to spend money; (2) reduce local government authority to raise revenues; and (3) reduce local governments' share of state taxes. The bill defines an insignificant fiscal impact as an annual amount equal to or less than 10 cents multiplied by the latest resident population estimate on April 1 by the Florida Demographic Estimating Conference for the applicable state fiscal year. In determining whether the fiscal impact of a law exceeds an insignificant fiscal impact, the average annual fiscal impact of the law, including any average annual revenues or savings that the law may create, must be taken into consideration.

It should be noted that by placing this definition in statute, the Legislature will be precluding itself from arguing that larger fiscal impacts are insignificant; it was this provision, among others, that was used 2 years ago to challenge SB 360, a growth management bill that the Legislature was later forced to re-pass in order to cure just this kind of infirmity.

The committee also heard a presentation from the Department of Economic Opportunity on special districts. While the presentation was meant to be informational only, it drew very critical questions and comments from several of the committee members. Given the concerns that the Governor has recently expressed about the districts and their taxing powers, this issue will surely be the subject of focus this session. Given the many districts in use today to provide everything from infrastructure development to fire control, AIF will continue to follow this matter closely.

Criminal Justice

On Tuesday, October 4th members of the Senate Criminal Justice Committee listened to some of the recommendations by watchdog group TaxWatch in a discussion that showed some of the flashpoints that could emerge as a potential issue in the drive to cut costs and prison populations.

According to Tax Watch, 11,479 students were arrested at Florida schools. Relying more heavily on "civil citations" could dramatically decrease that number and save the state between \$16.9 million and \$53 million, according to Robert Weissert – General Counsel to Florida TaxWatch – who presented the organization's latest report recommending ideas for cost-saving measures to the committee.

Nonetheless, the idea ran into some resistance from Sen. Charlie Dean (R-Inverness) who said that many school resource officers and others already try to deal with problems before resorting to arresting students. "Let's get back to the reality of what our school boards and school systems are looking at today," he said.

Weissert added that the number of students landing in jail because of arrests at school indicated that civil citations were not being used widely enough in instances like fights in the schoolyard. "That's a significant number, and I think that we as a state need to look at what we can do better there," he said.

Sen. Chris Smith (D-Fort Lauderdale) said he has represented students who are arrested for little more than a fight. He said sheriff's deputies often arrest students whenever they are called out to a school. "Some school districts are lazy," Smith said – later clarifying that many of them were simply busy with other things. If you look at those states, some kids are getting sent to jail without school intervention." "Misbehavior shouldn't become misdemeanors," Senator Smith said after the meeting.

Overall, the thrust of the TaxWatch report is to try to decrease recidivism and focus more on rehabilitation – with the aim of saving money in the process. It's not clear which of them might gain traction on the committee; and Chairman Greg Evers (R-Crestview) urged members to take time considering the proposals. "Let's don't immediately act off the cuff," Senator Evers said.

Taxation

On Wednesday, October 4th the Senate Community Affairs Committee met to consider SB 170, sponsored by Senator Thad Altman (R-Melbourne).

Senator Altman explained that the bill revises the requirements for a transferee to take possession of a business without assuming any outstanding tax liabilities of the transferor. He said with the current economy many businesses are closing and this bill makes it more attractive to potential buyers.

None of the members had any questions and the bill passed unanimously without debate.

AIF SUPPORTS this legislation because it makes Florida more attractive for potential buyers of businesses that have closed by providing certainty on not having to assume any outstanding tax liabilities or clarifying the maximum tax liability if the buyer agrees to assume them.

Space

On Tuesday, September 4th the Senate Commerce & Tourism Committee met to consider SB 110 Relating to Spaceport Territory by Sen. Stephen Wise (R-Jacksonville). This legislation will designate Cecil Field in Jacksonville as one of Florida's Spaceport Territories. Furthermore, the bill permits the board of directors of Space Florida to designate real property within the state as a spaceport territory if the property has been licensed by the FAA as a spaceport or if the property serves as space-related infrastructure.

SB 110 passed with near unanimous consent by a vote of 3-1, with Senator Evelyn Lynn (R-Daytona Beach) voting against the measure.

SB 110 will now advance to the Senate Community Affairs Committee for further consideration.

AIF SUPPORTS legislation that will potentially increase the economic development and commercial space business in Florida. Furthermore, Florida will remain competitive in attracting commercial ventures, such as space tourism when the space tourism industry progresses.