



DAILY BRIEF

For the 2020 Legislative Session

From January 30, 2020

LEGAL & JUDICIAL

HB 7 – Relating to Legal Notices

On Thursday, January 30, **HB 7** by Representative Randy Fine (R-Palm Bay) was heard by the House Judiciary Committee and was reported favorable with 11 yeas and 7 nays. **AIF's Senior Vice President of State and Federal Affairs, Brewster Bevis, spoke in opposition of this legislation.**

All meetings of a county, municipality, school board, or special district at which official acts are to be taken or at which public business is to be discussed or transacted must be open to the public and notice must be given. All legal notices and publications must be made in a newspaper that meets the following qualifications:

- Published at least once a week;
- At least 25 percent of its words are in English;
- Considered a periodical by the post office;
- For sale to the general public; and
- Contains information of interest or value to the general public in the affected area.

The bill would allow a governmental agency the option to deviate from print and publish legally required advertisements and notices on a publicly accessible website.

HB 7 will now move to the House State Affairs Committee.

AIF opposes internet-only public notice, as it eliminates the wide net created by print media and the internet combined. Webpages are present one day and gone the next; the internet is an inherently unreliable platform for critical information.

HB 741 – Relating to Asbestos Trust Claims

On Thursday, January 30, **HB 741** by Representative Tom Leek (R-Daytona Beach) was heard by the House Judiciary Committee and was reported favorable with 12 yeas and 6 nays. **AIF's Senior Vice President of State and Federal Affairs, Brewster Bevis, stood in support of this legislation.**

Asbestos is the name given to six naturally occurring fibrous minerals resistant to chemical, thermal, and electricity damage historically used in construction, manufacturing, and fireproofing. When handled,

asbestos separates into microscopic particles, exposure to which causes cancer and other diseases, including lung cancer, mesothelioma, and asbestosis, which can take 20 to 40 years to develop following initial exposure.

Workers exposed to asbestos began falling ill and in turn sued the corporations responsible for their exposure. As the suits against these corporations piled up, many filed for reorganization under Chapter 11 of the United States Bankruptcy Code, which in turn stayed all current suits against the respective corporation.

The bankruptcy court faced a unique scenario, where corporations were able to reorganize while shielded from future suits. These suits would instead be filed against a trust fund formed by the company seeking bankruptcy reorganization.

Presently, where liability for an asbestos injury comes from both a trust and a solvent corporation, an injured person may sue the solvent corporation to recover its share of the harm, and a court may offset the judgment by the amount of trust payments the plaintiff received for the same injury. However, where a plaintiff files a trust claim after obtaining a judgment in a civil action alleging the same injury, a court loses its ability to offset the judgment against the solvent defendant. Plaintiffs use this loophole to increase their compensation for a single injury, essentially double-dipping.

The bill:

- Requires a plaintiff to:
 - Provide a sworn statement verifying that he or she investigated all asbestos trust claims and filed all asbestos trust claims he or she is eligible to file.
 - Identify all asbestos trust claims the plaintiff filed and provide all trust claim material.
- Allows a court stay an asbestos action if the plaintiff did not file an asbestos trust claim he or she was eligible to file.
- Allows a defendant to seek discovery directly from an asbestos trust and requires the plaintiff to provide all necessary permissions for the release of trust claim material and governance documents.
- Allows a trial court to adjust the judgment in an asbestos action by the amount of any subsequent asbestos trust payments made to the plaintiff if the plaintiff makes an asbestos trust claim after obtaining a judgment in the asbestos action.

HB 741 will now go to the Senate for consideration.

AIF supports legislation that curbs “double dipping” of the asbestos trust fund which ensures that all Floridians affected may be adequately compensated.

Proposed Committee Bill JDC 20-03 – Relating to Contingency Fee Multipliers

On Thursday, January 30, **PCB JDC 20-03**, sponsored and heard by the House Judiciary Committee, was reported favorable with 13 yeas and 5 nays. **AIF’s Senior Vice President of State and Federal Affairs, Brewster Bevis, stood in support of this legislation.**

In certain situations, after the resolution of a court case, the court may require one party to pay the opposing party's attorney fees. Several Florida and federal statutes, known as "fee-shifting statutes," entitle the prevailing party to a "reasonable" attorney fee as a matter of right. When a fee-shifting statute applies, the court must determine what constitutes a "reasonable" attorney fee.

Florida courts calculate reasonable attorney fees under the "lodestar amount." The lodestar amount, in this context, is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate for the attorney's services on behalf of the insured or beneficiary.

Federal case law states that a contingency fee multiplier may only be used in rare and exceptional circumstances, and that the multiplier is completely unavailable under certain federal statutes. Contrary to Federal case law, the Florida Supreme Court in 2017 ruled that the contingency fee multiplier in Florida courts is not subject to the "rare and exceptional circumstances" requirement. Thus, there is now a difference between Florida and federal law with respect to this issue.

The bill prohibits a court from using a contingency fee multiplier when calculating an attorney fee award unless an applicable statute expressly allows use of the contingency fee multiplier.

The PCB will now be given a number and committee references.

AIF supports legislative efforts that prevent unscrupulous actors from taking advantage of property insurance disputes which keeps insurance rates low and allows growth in Florida businesses.

HB 519 – Relating to Private Property Rights Protection

On Thursday, January 30, **HB 519** by Representative James Grant (R-Tampa) was heard by the House Commerce Committee and was reported favorable with 13 yeas and 8 nays. **AIF's Senior Vice President of State and Federal Affairs, Brewster Bevis, stood in support of this legislation.**

The Takings Clause of the U.S. Constitution prohibits the government from depriving a person of his or her private property for public use "without just compensation." However, not every government action burdening private property amounts to an illegal "taking" under the Takings Clause. Florida law provides legal remedies when a local government burdens property rights in a manner that does not amount to a "taking."

The bill requires a local government, when settling property rights claims, to treat similar properties similarly. If the government settles or the property owner secures a judgment declaring an inordinate burden, there is a presumption that similarly situated parcels are also inordinately burdened and entitled to the same settlement terms or judicial determination. The bill also makes it easier for a private property owner to challenge a local regulation burdening his or her property by:

- Allowing a jury or the court to consider business damages in making its damages calculation;
- Removing a provision allowing the government to seek attorney fees and costs when a property owner refuses a bona fide offer which reasonably would have resolved the property claim fairly.

Additionally, when a local government is poised to impose an exaction upon private property, the bill allows the property owner to sue without having to wait for written notice of the exaction.

HB 519 will now move to the House Judiciary Committee.

AIF supports private property rights which create a prosperous business climate in Florida.