

2009 Regular Session Wrap-up

In this Report...

AIF and its members had an incredibly successful legislative session this year, even in light of the challenges presented by the budget crisis. This report highlights AIF's victories as well as the bad business legislation that we were instrumental in defeating this year in an easy to read chart format. In some cases, AIF was able to amend bills so that what eventually passed will not be as harmful to Florida's private-enterprise system. This report recaps the 5 major issues affecting the business community. As always, AIF will be publishing its widely anticipated *Voting Records* and *Champions for Business* publication in the coming weeks. In addition, AIF will be releasing its post-session *Employer Advocate* newsletter. Each of these publications will also be available on our website: www.aif.com.



ASSOCIATED INDUSTRIES OF FLORIDA

The Voice of Florida Business Since 1920

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Florida's Business Community Successfully Advances ECONOMIC STIMULUS PACKAGE 2.0

Asphalt Contractors Association of Florida
Associated Builders and Contractors of Florida
Associated Industries of Florida
Association of Community Developers
Building A Safer Florida
Florida Association of Broadcasters
Florida Association of Homes and Services for the Aging
Florida Association of Realtors
Floridians for Better Transportation
Florida Credit Union League
Florida Cultural Alliance
Florida Engineering Society
Florida Farm Bureau
Florida Fertilizer and Agrichemical Association
Florida Home Builders Association
Florida Institute of Consulting Engineers
Florida Natural Gas Association
Florida Pest Management Association
Florida Petroleum Council
Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association
Florida Retail Federation
Florida Transportation Builders Association
Florida Trucking Association
Florida United Business Association
National Federation of Independent Business

The close of the 2009 Legislative Session brought with it some sense of relief, although the challenges facing legislators were of historic proportions. The state's deep budget hole created an environment of uncertainty and frustration in Tallahassee. AIF and its business community partners responded to these challenges by once again developing and offering solutions in the form of the *Economic Stimulus Package (ESP) 2.0*. This year, over 25 business groups came together to offer recommendations for stimulus in the areas of: Transportation, Water, Affordable Housing, Education Facilities, Space, Home Mitigation, Regulatory Relief, Tourism, Economic Development, and Information Technology. These recommendations were presented to a number of House and Senate committees and were evaluated by a team of economists from Florida TaxWatch. Using the REMI model, the experts at TaxWatch concluded that if enacted the recommendations included in *ESP 2.0* would:

- Save or create 109,000 jobs in FY 2009-10
- Provide \$12.3 billion in labor compensation for Florida's workers and generate \$15.2 billion in Florida's GDP

ESP 2.0 Recommendations Passed:

Transportation

HB 7141 – Seaport Security **PASSED**

By Rep. Sandy Adams (R-Oviedo) Eliminates duplications in security credentials and reduces costs for tenants in Florida's 14 deep water ports.

Economic Development

HB 485 – New Markets Development Program **PASSED**

By Rep. Will Weatherford (R-Wesley Chapel) Provides \$250 million in private sector investment in low-income communities within 12 months.

Regulatory Relief

HB 73 – Expedited Permitting **PASSED**

By Rep. Robert Schenck (R-Springhill) Provides targeted industries with a shortened time frame (45 days) for permit approvals.

SB 360 – Community Renewal Act **PASSED**

By Sen. Mike Bennett (R-Bradenton) This growth management package was amended to include permit extensions for local government approvals of projects under the DRI process and places a two-year moratorium on new impact fees.

HB 227 – Impact Fees **PASSED**

By Rep. Gary Aubuchon (R-Cape Coral) Reduces the burden of proof for challenging impact fees enacted by local government.

2009 Session At-A-Glance

AIF Successfully **Defeated** the Following Attempts to Damage Florida's Legal and Business Climate:

TAXATION			
Sales Tax Exemptions	House and Senate Finance and Tax Committees	Would have eliminated critical exemptions for the business community	Died in Committee
Unitary Tax	HB 1247 by Rep. Randolph SB 2270 by Sen. Gelber	Would have enacted combined reporting in Florida	Died in Committee
Corporate Income Tax Changes	SB 2546 by Sen. Altman	Substantial tax increase for employers in Florida	Died in Committee
Rental Car Surcharge	Amendment filed to SunRail legislation (SB 1212)	Large tax increase for rental car companies	Died on the Senate Floor
Unemployment Compensation	HB 1333 by Rep. Rader SB 516 by Sen. Hill	Increased employer contributions and expanded pool of beneficiaries	Died in Committee
ENERGY/ENVIRONMENT			
Motor Vehicle Emission Standards (CA-LEV)	HB 1309 by Rep. Rader SB 1994 by Sen. Constantine	Would have required Florida to become a California Low Emission State	Died in Committee
Beverage Container Deposits	HB 435 by Rep. Rader	Creates a mandatory deposit on bottles	Died in Committee
LEGAL AND JUDICIAL			
Vicarious Liability	Amendment filed to SB 422	Drastic increase in liability for car truck rental companies	Died in Committee
FEES			
Solid Waster Disposal Fee	HB 5121 by Rep. Poppell	Would have enacted a \$1.25 fee/ton	Died in Budget Conference
100% Increase in Tag Fees	HB 5011 by Rep. Glorioso	Would have doubled tag fees for all cars and trucks in Florida	Increase limited to 35%

As the Voice of Florida's Business, AIF **Successfully** Advocated the Passage of the Following Bills:

LEGAL & JUDICIAL			
Workers' Compensation	HB 903 by Rep. Flores	Restores fairness and predictability to Florida's Workers Compensation System	PASSED
Fictitious Names	SB 872 by Sen. Smith	Ensures that important business information is printed in newspapers	PASSED
Court Funding	SB 2108 by Sen. Pruitt	Provides for greater accountability for the Clerk of Courts budget	PASSED
TAXATION			
Presumption of Correctness	HB 521 by Rep. Lopez-Cantera	Levels the playing field between property owners and property appraisers	PASSED
Non-Homestead Assessments	SB 532 by Sen. Lynn	Constitutional Amend. to reduce assessments caps from 10% to 5%	PASSED
Corporate Income Tax Glitch	SB 1112 by Sen. Altman	Fixed costly glitch to Florida's corporate income tax laws	PASSED
INSURANCE			
Property Insurance Reform	HB 1495 by Rep. Nelson	Establishes glidepath for actuarially sound Citizens Insurance rates and reduces Cat Fund exposure	PASSED
Surplus Lines	HB 853 by Rep. Patterson	Ensures access to this important line of coverage for employers	PASSED
Residential Property Insurance	HB 1171 by Rep. Proctor	Provides consumer choice for selecting residential insurance policies	PASSED
BUSINESS REGULATION			
Telecommunications De-Reg.	SB 2626 by Sen. Haridopolos	Reduces unnecessary industry regulation and increases consumer choice	PASSED
Fertilizer Model Ordinance	SB 494 by Sen. Bennett	Reduces regulatory burden for the use of fertilizer across the state	PASSED
GROWTH MANAGEMENT			
Community Renewal Act	SB 360 by Sen. Bennett	Relaxes some of the state's growth management laws to encourage economic activity in Florida	PASSED
Impact Fees	HB 227 by Rep. Aubuchon	Reduces the burden of proof for challenging impact fees	PASSED
HEALTH CARE			
LIP Council	HB 285 by Rep. Patronis	Increases transparency by prohibiting lobbyist from serving on the Low Income Pool Council	PASSED

The Issue ...

Increasing the Tax Burden on Florida's Businesses

As a result of the state's budget crisis, proposals in both the House of Representatives and Senate were considered this session that would have radically altered Florida's tax structures. These proposals were purported to either "close tax loopholes" or eliminate "unnecessary" sales tax exemptions. In reality, they were attempts to raise revenue through increases in taxes for business owners. These proposed changes to Florida's tax structure would affect thousands of companies and would increase their tax liabilities in such ways that future decisions to invest capital of infrastructure in Florida could be impacted. Taxpayers make significant financial decisions based on the current tax laws. Those decisions must be undermined by legislation imposing new or increased tax liabilities after the fact.

Corporate Income Tax

In the area of corporate income taxes, AIF was actively involved in the **defeat** of two very bad proposals coming out of the Florida Senate. The first proposal, **SB 2546 by Sen. Thad Altman (R-Melbourne)** would have enacted a number of provisions dealing with how income is apportioned in Florida. This would either place Florida at a significant competitive disadvantage to our neighboring states or enact provisions that would be unique to Florida. The other proposal, **SB 2270 by Sen. Dan Gelber (D-Miami Beach)** would have enacted "Mandatory Unitary Combined Reporting" in Florida and would require that all multi-state and multi-national businesses file based upon their "waters edge group" or businesses that have common ownership.

Property Taxes

Two excellent pieces of legislation dealing with property tax reform **passed** this year. The first, **HB 521 by Rep. Carlos Lopez-Cantera (R-Miami)** levels the playing field between property appraisers and property owners. The current property appraisal system is weighed heavily on the side of property appraisers. This legislation would require property appraisers to prove that their assessment of a property's value was arrived at by complying with all Florida laws. **SB 532 by Sen. Evelyn Lynn (R-Ormond Beach)** is a joint resolution that places a proposed constitutional amendment on the November, 2010 general election ballot, which if passed by the required 60 percent margin, would reduce the maximum increase in assessed value for non-homestead property owners from 10% to 5%.

Sales Tax Exemptions

Both the House and Senate thoroughly reviewed Florida's existing sales tax exemptions. Half-way through the session, the Senate Finance and Tax Committee announced that they would not pursue any sales tax exemptions eliminations. On the other hand, the House Finance and Tax Council led by Chair Ellyn



The Bottom Line...

- Florida businesses dodged a bullet with the defeat of costly proposals to alter our state's corporate income tax structure (**SB 2270 and SB 2546**).
- Important property tax reform legislation passed this session, which provides tax payers with the ability to challenge their property's assessed value (**HB 521**).

What AIF Followed...

SB 2270 (Unitary Tax) by Sen. Dan Gelber (D-Miami Beach) **died in committee**.

SB 2546 (Corporate Income Tax Increases) by Sen. Thad Altman (R-Melbourne) **died in committee**.

HB 521 (Presumption of Correctness) by Rep. Carlos Lopez-Cantera (R-Miami) **PASSED**

SB 532 (Non-homestead Assessments) by Sen. Evelyn Lynn (R-Ormond Beach) **PASSED**

HB 7159 (Sales Tax Exemptions) by Rep. Ellyn Bogdanoff (R-Ft. Lauderdale) **died in committee**.

Bogdanoff (R-Ft. Lauderdale) did file legislation, **HB 7159**, which included a number of exemptions to be repealed in exchange for the enactment of a sales tax holiday for school and hurricane supplies.

What was at Stake for Florida Employers...

The Legislature could have enacted changes in our state's tax structure, which could have literally put the future success of Florida employers in jeopardy. Many of the proposed changes would have been retroactive to tax years beginning in 2000. Retroactive changes may have unintended consequences for a company's financial reporting.

The Issue ...

Workers' Compensation

Once again, workers' compensation was likely the most volatile issue the Florida Legislature addressed during the 2009 session. This year, the debate was focused on the Florida Supreme Court's October 2008 ruling in which it declared the statute ambiguous relative to the application of a statutory fee schedule for attorney's fees in litigated workers' compensation cases. Strict application of the statutory fee schedule is the single element of the 2003 landmark workers' compensation reforms to which the 60% rate reductions of the past five years can be attributed.

This year AIF continued to lead the Workers' Compensation Coalition for Business and Industry, in urging the Legislature to pass its ultimate product, **HB 903 by Rep. Anitere Flores (R-Miami) and/or SB 2072 by Sen. Garrett Richter (R-Naples)** to clarify the statutory ambiguity and firmly and clearly state its intention that the fee schedule must apply in all cases. Without this correction, Florida's businesses would once again be facing a workers' comp crisis which is a barrier to the creation of jobs and successful competition with bordering states for important new business and industry. The Florida Legislature tackled this crisis in a deliberative and sometimes dramatic manner, but ultimately passed **HB 903** on May 1, 2009.

What was at Stake For Employers

Prior to the bill's passage, Florida employers already experienced an increase to workers' compensation rates of 6.4%, effective April 1, 2009. Such increases would have continued without the passage of **HB 903**. Now, once the Governor signs this legislation, the National Council on Compensation Insurance will make a new rate filing effective with the implementation of the bill on July 1, 2009, to reverse the April rate increases. Further, the NCCI predicts that future rate hikes resulting from the *Murray* decision will be avoided.

Simply put, Florida's economy cannot handle a workers' compensation rate increase — particularly this one that would have quickly resulted in another workers' compensation crisis. The Florida Supreme Court engaged in policy-making when issuing its opinion and attempting to return the system to its pre-2003 status. The passage of **HB 903** was a clear and resounding message from the Florida Legislature that it fully intended to cap attorneys' fees in workers' compensation cases relative to a percentage of benefits secured. This nexus is pivotal to guarantee that injured workers receive the vast majority of benefits their employers pay to them when they are injured and most vulnerable.

AIF salutes the Florida Legislature for passing **HB 903** and preserving Florida's successful and self-executing workers' compensation system as it always intended.



The Bottom Line ...

- The 2003 Workers' Compensation reforms **saved Florida businesses 60%** over a five year period.
- These savings were **reversed** when Florida employers got a 6.4% rate increase due solely to the judicial interpretation changing the attorney fees.
- **HB 903** guarantees this year's increases will be reversed as soon as the legislation becomes effective.
- With a struggling economy businesses don't need their workers' compensation rates increased

What AIF Followed ...

HB 903 (Workers' Compensation) by Rep. Anitere Flores (R-Miami) **PASSED**

The Issue ...

Business Regulation

AIF was actively involved in the area of business regulation this year and was a prominent member of the Streamlining Task Force, a group of business associations including the Home Builders, the Agriculture community, and Developers interested in finding ways to eliminate unnecessary government regulations. A number of bills were filed this session with the intent to streamline the permit process, extend existing permits, eliminate duplications in regulations, and expedite permits to help create jobs.

Leading up to the final days of session it looked as if these proposals were in good shape to pass. **HB 7143 by Rep. Trudi Williams (R-Ft. Myers)** the main regulatory reform package that included a number of recommendations from the Streamlining Task Force, passed the House of Representatives unanimously. Unfortunately, the legislation was slowed down in the Senate, whose members were less inclined to pass these reforms. The Senate's version of regulatory reform came in the form of a proposal originating from the Senate Select Committee of Florida's Economy chaired by Sen. Don Gaetz (R-Ft. Walton Beach). Their proposal would have established a "one-stop shop" for state licensure.

As is usually the case during the final hours of session, legislation in the form of amendments to other bills is considered. This year was no different, as a number of pro-business regulatory reform provisions were amended onto the main growth management package, **SB 360 by Sen. Mike Bennett (R-Bradenton)**. A number of AIF supported reforms were included in this bill and are now on their way to the Governor for his approval. Another important piece of legislation that passed this session deals with expedited permitting for targeted industries. **HB 73 by Rep. Robert Schenck (R-Springhill)** will encourage business growth and expansion by mandating that state required permits for storm water and environmental resource permits be approved or denied within 45 days rather than the current policy of 90 days upon submission.

What Was at Stake for Employers

Employers across Florida were clamoring for less regulatory red tape, especially in light of current downturn in the economy. With very little dollars to spend in stimulating the economy, legislators looked towards less regulation as a way to kick-start Florida's economy. The current duplication in regulatory laws costs businesses not only an enormous amount of money, but time as well. To make matters worse, there are times when an employer complies with one regulation for a permit, only to be denied a permit from another state agency because of that very same compliance.



The Bottom Line ...

- Legislation passed which provides exemptions from transportation concurrency and DRI process requirements in municipalities having densities of 1,000 persons per square mile (**SB 360**).
- Impact Fees will now be easier to challenge thanks to legislation which reduces the burden of proof for businesses looking to challenge local governments (**HB 227**).
- A two-year moratorium on new impact fees has been passed by the Legislature (**SB 360**).
- Existing DEP and water management district permits will be extended for two years (**SB 360**).
- An expedited permitting process for targeted industries has been passed (**HB 73**).

What AIF Followed...

SB 360 (Community Renewal Act) by Sen. Mike Bennett (R-Bradenton) **PASSED**

HB 73 (Expedited Permitting) by Rep. Robert Schenck (R-Springhill) **PASSED**

HB 227 (Impact Fees) by Rep. Gary Aubuchon (R-Cape Coral) **PASSED**

HB 7143 (Regulatory Reform) by Rep. Trudi Williams (R-Ft. Myers) **passed the House unanimously but died in Senate Messages**

The Issue ...

Property Insurance

The return of a competitive private property insurance market to Florida has been one of AIF's main priorities since the dreadful 2004 and 2005 hurricane seasons. Previous actions by lawmakers in Tallahassee have spelled a decline in competition and the resurgence of the state as the largest provider of property insurance. Recent studies and testimony from experts have revealed that Florida is on the verge of financial ruin due to state's insistence on assuming greater responsibility for hurricane losses by dramatically increasing reinsurance coverage through the Florida Catastrophe Fund (Cat Fund) and authorizing the state's insurance company, Citizens, to unfairly compete with private property insurance companies.

This session, lawmakers in both chambers realized that past practices could no longer continue and that a course correction was warranted. Significant legislation was filed and passed this year that lays the foundation for future reforms of Florida's property insurance laws. For starters, legislators passed **HB 1495 by Rep. Bryan Nelson (R-Apopka)** which contains AIF's priorities to remove Citizens' existing rate freeze; require Citizens to increase its rates by 10% annually until such rates are actuarial sound; phase out Cat Fund coverage; and continue the state's My Safe Florida Home program. These provisions will encourage the restoration of Florida's private property insurance market. Also, potential hurricane taxes on employers' insurance premiums to pay for Citizens and Cat Fund deficits will be reduced.

Legislators also approved **HB 853 by Rep. Pat Paterson (R-DeLand)** which clarifies an ambiguity created by a recent Florida Supreme Court ruling by clearly stating that certain regulatory restrictions do not currently apply to surplus lines insurers. The bill will allow employers to continue to find property and liability insurance coverage tailored to meet their specific needs through the surplus lines market.

Last but not certainly not least, **HB 1171 by Rep. Bill Proctor (R-St. Augustine)** was passed this year. This legislation provides for limited residential property insurance rate deregulation, which will help restore Florida's private property insurance market.

What Was at Stake for Employers

The failure of the Cat Fund to fully meet its obligations in the event of a hurricane or series of hurricanes will result in delays or non-payment of claims for homeowners and business owners. Furthermore, it could also spell the financial failure of the state's insurance company, Citizens, and many Florida-only property insurance companies.

The expansion of the Cat Fund and the growth of Citizens have placed the state of Florida in great financial peril.

- The state's insistence on paying for hurricane losses after



The Bottom Line ...

- The Florida Legislature took decisive action to ensure that the surplus lines market remains a viable product for employers in Florida (**HB 853**).
- Consumers will now have a choice to select the type of residential property insurance coverage and premium they want without interference from state regulators (**HB 1171**).
- A strong first step towards actuarially sound Citizen Insurance rates was taken and the state's Cat Fund exposure was reduced (**HB 1495**).

What AIF Followed...

HB 853 (Surplus Lines) by Rep. Pat Patterson (R-DeLand)
PASSED

HB 1171 (Residential Property Insurance) by Rep. Bill Proctor (R-St. Augustine) **PASSED**

HB 1495 (Property Insurance) by Rep. Bryan Nelson (R-Apopka) **PASSED**

the fact requires that storm losses be paid in the form of taxes (assessments) on virtually all lines of insurance. This includes auto, personal and professional liability, etc.

- Florida's property owners (residential and commercial) will become responsible for paying off the state's enormous exposure in the event of a bad storm or series of storms, rather than spreading the risk world-wide.
- Employers would have to pay 40% of all taxes (assessments) to pay for hurricane damages.

The Issue ...

Unemployment Compensation

The viability and maintenance of Florida's Unemployment Compensation system faced threats on multiple fronts throughout this legislative session. Most notably, the Unemployment Compensation Trust Fund balance will be **completely depleted** by mid-summer 2009. Therefore, Florida's employers, for the first time in many years, needed to work with state leaders to develop the least onerous plan for increasing tax payments to the Trust Fund to restore it to a positive state.

At the same time that the Trust Fund is struggling to pay its obligations, a recent court ruling expanded the number of weeks a person can collect unemployment benefits when they resign to at least 26 weeks beyond the effective date of their resignation in certain instances. The Florida Legislature listened to the input of Florida's business community to craft legislation for rebuilding the Trust Fund balance in a way that is comparable to the UC tax levels employers pay in neighboring, competitive states. The result of those discussions and analysis was **SB 810 by Sen. Rudy Garcia (R-Hialeah)** and its House companion measure, **HB 7147 by Rep. Dave Murzin (R-Pensacola)**.

What was at Stake For Employers

UC Trust Fund Solvency

The Unemployment Compensation Trust Fund solvency had to be addressed so that Florida's unemployed citizens will continue to receive benefits. The current fund balance has fallen below 3.7% of statewide payroll, which is the existing threshold point at which Florida employers must pay higher state unemployment taxes. Because there will be a deficit balance before those funds can be collected, Florida will have to borrow approximately \$3 billion federal dollars to maintain payments at the current level of beneficiaries. Therefore, when the tax is levied, a higher rate than that used in the past will need to be charged so that the repayment obligations can be on Florida's terms rather than dictated by the federal administration.

The following are three components of the current tax structure that will be adjusted beginning January 1, 2010 to best mitigate the financial and regulatory burdens that the fund, and ultimately Florida's employers, will bear to sustain the system's functionality during this period of economic downturn:

- For the years 2010-2015, the taxable wage base will increase to the first \$8,500 of payroll per employee. Currently, this level is \$7,000 per employee, which is the lowest level in the country and has not been raised in over 30 years.
- The trigger point of the fund will increase to 4% of statewide payroll for the point at which state unemployment taxes are increased. This change should remain in place at least as long as there is a debt balance owing to the federal government.
- For the years 2010-2015, the recapture period during which

the fund balance must be restored is shortened from 4 years to 3 years. This change also includes identifying the balance point of the fund at 5% of statewide payroll instead of 4.7%.

Almost 60% of all Florida businesses are at the minimum experience rate. These changes will mean an average increase of only \$35 per employee per year while in effect.

Federal Stimulus Dollars: **Accept or Reject?**

The debate over expansion of unemployment benefits, and the increased taxes businesses will have to shoulder to fund the expansion, took new meaning this year because of two aspects of federal economic stimulus dollars that are available to Florida.

One portion of the stimulus dollars should be accepted and the passed legislative measures will allow receipt of those funds in Florida. This may range from \$400-700 million in federal stimulus dollars to extend the duration of unemployment benefits for those individuals who are currently receiving unemployment compensation. Acceptance of these funds does not increase taxes on Florida businesses nor expand the current statutory guidelines for qualification and calculation of benefits.

The more controversial portion of the available federal stimulus dollars has been dubbed the "modernization" funds. These dollars represent about \$444 million but require statutory expansion of the qualification criteria prior to acceptance. The problem is that the federal dollars are a one-time infusion but the price tag is a permanent and definite long-term annual cost to Florida businesses of over \$70-225 million. Accordingly, AIF opposed **SB 516** by Sen. Tony Hill (D-Jacksonville) which would lead to the acceptance of these funds and the statutory changes their receipt would require. These changes were not included in the bill that passed the Florida Legislation this year.

THE BOTTOM LINE ...

- Legislation passed, which will increase tax payments by employers to the state's Unemployment Compensation Trust Fund (**SB 810**).
- This is the **least onerous** option for employers and will maintain the Trust Fund's solvency and preserve benefits for employees.

What AIF Followed...

SB 810 by Sen. Rudy Garcia (R-Hialeah) **PASSED**

SB 516 (Modernization Funds) by Sen. Tony Hill (D-Jacksonville) **died in committee**.