



INTERIM LEGISLATIVE BRIEF

From November 4, 2011

In what has proven to be a relatively quiet week in the halls, AIF continued its push forward on the issues that are most important to Florida employers. With plenty at stake in 2012, here is a “snapshot” of our efforts during the first interim committee week in November:

- **Drug Repackaging:** AIF stood with legislative members and a coalition of business leaders on Wednesday of this week to hold a press conference on drug re-pack legislation and the importance of closing this loophole. In an effort to control skyrocketing workers’ compensation costs, SB 668 by Senator Alan Hays (R-Umatilla) and HB 511 by Representative Matt Hudson (R-Napes) will save the state up to \$62 million. To read more, [click here](#).
- **Numeric Nutrient Criteria:** AIF has worked closely with the Florida Department of Environmental Protection (DEP) and Department Secretary Herschel Vinyard to develop scientifically feasible criteria for Florida’s water bodies. Earlier this week, AIF sent a letter to Secretary Vinyard encouraging the Department to move forward with the NNC rulemaking process. On Thursday, Sec. Vinyard ordered the Department to move forward with rulemaking criteria that AIF and the business community support.

In addition, AIF hosted the inaugural meeting of its newest policy council this week – the Manufacturers Council of Florida. AIF was proud to welcome Representative Lake Ray (R-Jacksonville) and provide a forum for members to discuss the issues most important to them. Additionally, Rep. Ray listened to input and recommendations concerning his recently filed legislation that will develop local government growth enterprises throughout the state (HB 515) and offer tax incentives on capital investment (HB 507) to encourage manufacturers to expand their operations in Florida. [Click here](#) to read more about the newly created council and its policy initiatives for 2011-2012.



Be sure to keep an eye out for AIF’s 2012 Session Priorities publication, scheduled for release in conjunction with our annual Tallahassee Pre-Session Briefing on Monday, December 5th.

Insurance

On Wednesday, November 2nd the House Insurance & Banking Subcommittee passed HB 245 by Representative Jim Boyd (R-Bradenton) allowing surplus lines insurers to participate in Citizens' takeout program.

Under current law, surplus lines insurers may not participate in the depopulation program because the program is limited to insurers licensed in Florida. Surplus lines insurers are approved, but are not licensed, to do business in Florida. HB 245 will allow such insurers to acquire policies currently held by the state-backed Citizens Property Insurance Corporation. Intended as an insurer of “last resort,” Citizens is currently the state’s largest property insurer. Governor Scott has made it a top priority this session to reduce the size and risk of Citizens.

The bill's companion bill – SB 758 – sponsored by Senate Banking & Insurance Chairman Garrett Richter (R-Naples) has been referred to the Banking and Insurance Committee and awaits consideration.

The measure passed by a vote of 13-1 and will now proceed to the House Economic Affairs Council.

AIF will continue to SUPPORT legislation that will reduce Citizens' exposure and, thus, hurricane taxes on insurance premiums for Florida's employers.

Energy

On Wednesday, November 2nd the Senate Communications, Energy, and Public Utilities Committee took up and passed SB 238 Relating to the Florida Renewable Fuel Standard Act by Senator Greg Evers (R-Crestview). This legislation would delete the requirement that all gasoline sold or offered in the State by a terminal supplier, importer, blender and wholesaler must contain, at a minimum, 10 percent ethanol.

Though the bill would not require the elimination of ethanol, it would let the market decide what to produce and market to the consumer. There were numerous questions about how this bill would relate to the Federal guidelines, though it was indicated that there are no requirements for individual states to use ethanol. It was also noted that there are a couple of ethanol plants in Florida and plans for more; however, none produce much ethanol at this time and most of the ethanol is produced outside of the state of Florida.

SB 238 was passed with one dissenting vote by Senator Chris Smith (D-Ft. Lauderdale). The bill will now proceed to the Senate Commerce & Tourism Committee for further consideration.

AIF is closely monitoring this piece of legislation which has some very direct implications for our state and has not taken a position at this time.

Growth Management

On Wednesday, November 2nd the House Community and Military Affairs Subcommittee met to discuss several pieces of legislation relating to growth management policy.

HB 4003 Relating to Growth Policy by Representative Jose Felix Diaz (R-Miami) aims to repeal section 163.2523, F.S., and thus eliminate the Urban Infill and Redevelopment Assistance Grant Program. The program was created as part of the 1999 "Growth Policy Act" to help local governments revitalize distressed urban areas. The Legislature appropriated \$2.5 million in fiscal year 2000-2001 to the program, but has not appropriated funds in subsequent years. This bill does not affect a local government's ability to designate an urban infill and redevelopment area and to offer local incentives within the area in order to target economic development and job creation.

The bill passed with near unanimous consent and only one dissenting vote by Representative Mark Pafford (D-West Palm Beach). HB 4003 will now proceed to the House Economic Affairs Committee – its final committee stop before the House floor.

In addition, the Committee took up and passed HB 4027 Relating to Community-Based Development Organizations by Representative Daryl Rouson (R-St. Petersburg). This bill repeals the Community-Based

Development Organization Assistance Act, which has not been funded or implemented since it was created by the Legislature in 2000.

Once again, the bill passed with overwhelming support and one no-vote by Representative Pafford. HB 4027 will now advance to its final stop in the House Economic Affairs Committee.

The final bill brought forth for consideration was a proposed committee bill (PCB) CMA 1. This legislation makes minor changes to the procedures for the creation of a municipality by revising the deadline for submission of a feasibility study of a proposed incorporation of a municipality as well as the requirement for the content of the study.

With little debate or comment, the PCB passed with unanimous consent and subsequently filed as HB 7001

Environmental

The House Rulemaking & Regulation Subcommittee met on Wednesday, November 2nd and received a presentation from Mr. Don Rubottom, Committee Staff Director. Mr. Rubottom updated the members on the new online survey launched last week. The "YourVoice" survey is an online tool that will survey business owners and stakeholders to collect feedback on any potential burdensome rules and regulations for Florida businesses. The comments may be considered as ideas for future legislation.

In addition, information gathered by the survey will be used to inform members of the House Rulemaking & Regulations Subcommittee and the Senate Committee on Governmental Oversight and Accountability, and may be used to adopt rules and regulations to protect the health, safety and welfare of Floridians.

Mr. Rubottom stated that he had met with the House Majority and Minority Office to analyze feedback received from the survey. Every Monday they will download information for their individual members to use. Comments about local governments will be forwarded to their respective local government representatives. Comments on substantial issues will be forwarded to committee staff directors. Several of the comments discussed at Wednesday's meeting voiced concerns about local business taxes and licensure.

Legislators were encouraged to spread the word about the survey through their respective websites, Facebook page and Twitter. Rep. Jimmy Patronis (R-Panama City) commented as he was leaving the meeting that he had already "Tweeted" about the new website.

Mr. Eric Miller, the Committee's Staff Attorney, briefed members on the latest Executive Order 11-211 by Governor Rick Scott. This new Executive Order supersedes Executive Order 11-72: Office of Fiscal Accountability and Regulatory Reform (OFAR). The Governor made the changes in wake of the *Whiley v. Scott* opinion which stated that the Governor could not mandate that all rules go through OFFAR. Instead, all agencies not under the direction of the Governor may use OFFAR to conduct analyses of existing rules or proposed rulemaking, rule amendment, or rule repeal, as requested by agency heads. The other sections found in the original Executive Order remained intact.

Water issues continue to be a hot topic in the Florida Legislature this year. This week, the House Agriculture & Natural Resources Subcommittee, the House State Affairs Committee and the House Select Committee on Water Policy heard presentations concerning both water supply and quality in Florida.

The presentations in the House Agriculture & Natural Resources Subcommittee and the House State Affairs Committee were very similar. First, Dr. Ann Shortelle – the new Director of Water Policy for the Florida Department of Environmental Protection (FDEP) – talked about water use and supply. She gave an overview of the 5 water management districts (WMD) and their responsibilities. DEP has oversight for WMDs and is looking to make improvements with regulatory streamlining and statewide consistency. DEP also conducts WMD budget reviews.

In Florida, water is a resource of the state and for uses other than private wells for domestic water use, Florida requires consumptive use permits (CUPS). There are criteria for the issuance of CUPS to make sure that it is consistent with the objectives of the WMD and not harmful to the water resources. DEP is currently working on a “CUP Consistency Review” that has already begun. They are currently gathering stakeholder input so that they can prioritize identified inconsistencies and other issues. From February, 2012 – September, 2012, DEP will develop policies to resolve inconsistencies, codify by rule as needed and develop any legislative concepts for the 2013 session. Their goal is to make the CUP program less confusing for applicants, treat applicants equitably statewide, streamline the process and incentivize behavior that protects water resources including conservation while protecting the environment.

Dr. Shortelle also discussed the regional water supply planning process and how to meet future demands. Florida needs to develop more water supplies and encourage water conservation.

She talked about the Water Protection & Sustainability Program. This program was established in 2005 by the Legislature to fund alternative water supply projects, surface water improvement and management, Total Maximum Daily Loads (TMDLs), and Disadvantaged Small Community Wastewater Programs. Funding for the WPS Trust Fund has dwindled over the past few years. AIF has been working closely with the Florida Water Alliance to promote funding for alternative water supply projects.

Other topics discussed were Minimum Flows & Levels and Reclaimed Water. A Reclaimed Water Working Group has been working to find a balance between operational flexibility and the need to meet future water. We expect to see legislation filed on reclaimed water soon.

Rich Budell, the Director of Agriculture Water Policy at the Department of Agriculture and Consumer Services talked about the importance of agriculture in Florida and what the industry does with regards to water consumption. He feels that we won't run out of water, but we will run out of cheap water and must figure out a way to sustain funding for alternative water supply development.

Mr. Budell also discussed the numeric nutrient criteria issue. He told policymakers that his department supports FDEP's efforts to adopt state NNC and that they should be setting the standards, not the Environmental Protection Agency.

Finally, there was a presentation by the Everglades Foundation about Everglades Restoration efforts.

The House Select Committee on Water Policy heard a presentation by Greg Munson, the Deputy Secretary of Water Policy and Ecosystem Restoration for FDEP. Like Dr. Shortelle, Mr. Munson stated that the Department is looking to bring about some consistency in the permitting process. He told the legislators that of the 5 WMDs, three of them have new Directors (South Florida WMD, Southwest Florida WMD and St. Johns WMD). The three main issues that they are looking at right now include:

1. The current disconnect with permitting and financing the project in relation to durations. If a project is financed for 30 years it should also be permitted for 30 years;
2. Permit Duration- the 10 year review can sometimes be burdensome and can actually result in a process similar to re-applying instead of just a check point; *and*
3. Harm- the definition is different in every water management district.

Mr. Munson then added a fourth:

4. Water Conservation- why would a group participate if they don't get anything out of conserving water?

The Department is currently in the scoping process where they have reached out to groups to find out what the problems are and what fixes are needed. After this is completed FDEP planning to begin developing policies in the next 11 months.

Jon Steverson, Legislative Affairs Director for FDEP, updated the members about the numeric nutrient criteria issue. Secretary Herschel Vinyard decided to move forward with NNC rulemaking. According to Mr. Steverson, the federal government and the EPA are encouraged by the department's rule making. In November, FDEP will begin estimating the cost assessment and developing a timeline. In December, the Rule will be presented to the Environmental Regulation Commission for approval.

Health Care

On Thursday, November 3rd the House held a Pre-Session Briefing for its members to discuss, among other issues, the Medicaid reform initiative approved last session. Florida's request for a waiver from the federal requirements to implement the new reforms has not yet been approved. In the meantime, the Medicaid Program is projected to take up \$21.2 billion of a \$30 billion health care budget in this state. Overall, Florida's budget is projected to have a \$1.6 billion shortfall for the coming year - \$968 million of that is from the increasing cost of the Medicaid Program.

Currently, the most contentious sticking point in the negotiations is the unwillingness of the Centers for Medicare & Medicaid Services (CMS) to accept Florida's Achieved Savings Rebate (ASR) process over a required Medical Loss Ratio (MLR).

Carol Gormley, Staff Director for the House Health and Human Services Committee, noted that a Medical Loss Ratio (MLR), which is the spending on medical care divided by premium revenue, is a single number and that much confusion remains over what services fall within the category of medical care versus administration. Ms. Gormley noted that a MLR does not measure quality and doesn't allow for varying care models.

The ASR approved by the Legislature caps overall profit to ensure that plans do not overspend on administration or earn profit at the expense of patient care. The ASR requires plans that exceed an

appropriate profit threshold to pay dollars back to the state which will eliminate an incentive to withhold appropriate spending on health care services.

Ms. Gormley further stated that CMS has expressed an unwillingness to allow the ASR instead of a MLR; however, the Agency for Health Care Administration (AHCA) does not have the authority to implement a MLR based upon the reform law passed last session. As such, if the MLR is required, the Legislature would have to reopen this issue for session.

AIF strongly SUPPORTS the Medicaid reform efforts passed during the 2011 session and supports the Agency for Health Care Administration's efforts to obtain a waiver from the Centers for Medicare & Medicaid Services.