

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
DAILY BRIEF**



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**THE FINAL WEEK BEGINS**

The final week of the 2002 Regular Session began today. For those wandering the hallways of the Capitol, the question of the hour is “is this really the final week?” Given the tax reform stand off between the House and Senate, major policy issues slowed to a crawl during most of the session. In addition, the House and Senate were both of a mind to wait until the Revenue Estimating Conference could give them “solid” numbers on how much revenue to expect for the 2002-03 fiscal year before settling down to craft their respective budgets. The Conference Report only came out a two weeks ago.

So, what needs to be done? In addition to the budget, the Legislature needs to finalize reapportionment and a reorganization of the Florida Cabinet. Reapportionment, as we have previously reported, is an intensely political and difficult exercise and is just as demanding as crafting a budget. Cabinet Reorganization, as mandated by a 1998 amendment to the Florida Constitution, has been a sticky issue for two years now. The House and Senate are wrestling to resolve their differences on just how centralized the fiscal and regulatory responsibilities should be under the newly created Chief Financial Officer for the State of Florida which is a merger of the current offices of State Comptroller and Treasurer.

A good sign was observed this evening when the Senate, somewhat oddly, took up the House proposed budget and amended it, rolling it over to third reading for final consideration sometime later this week. Typically, the House and Senate pass their respective budgets and then go to a conference committee, comprised of representatives of both chambers, to hammer out their differences. In this case, the Senate chose not to necessarily meet with the House, but to simply amend the House budget bill and hope that the House will concur or at least come further towards the Senate’s position. AIF consultants at the Capitol reported that it appeared the Senate did no great violence to the House product, but, no doubt, there are some real differences between the two chambers. As we have previously reported, the Senate has had second thoughts about a bill that it and the House adopted tracking state law with the federal law recently enacted to give corporations tax relief. The Senate now seems to believe that the tax relief could “cost” the state upwards of two hundred million dollars in tax revenue. Tonight’s machinations on the Senate floor seemed to indicate that the Senate was working some budget maneuvers to manage this issue. The Senate taking up the House budget is a good indicator that there will be a concerted effort to get a budget done by Friday, March 22<sup>nd</sup>.

## BANANA PEELS AND LIABILITY

The House took up HB 1545 by Representative David Simmons (R-Altamonte Springs) and passed it by a vote of 115 to 0. The Senate companion is SB 2256 by Senator Ginny Brown-Waite (R-Brooksville); the bill resides on second reading in the Senate.

**As we have previously reported**, the need for this legislation was created by yet another unfortunate anti-business decision by the Florida Supreme Court last fall. The Florida Supreme Court struck again on November 15, 2001, handing down an opinion on a “Slip & Fall” case that only distantly had anything to do with prior precedent or pre-existing law.

In question was the classic “slip and fall” litigation, where the plaintiff claimed injury on the store premises as a result of slipping on a banana and falling. In this *Owens v. Publix Supermarkets* case, the Court held that the plaintiff need only show that they fell as a result of the errant fruit product. Thenceforth, the burden of proof immediately shifts to the defendant to prove non-negligence. The defendant must now show that its actions were reasonable both with regards to inspection and maintenance procedures.

Prior to this decision, the burden fell upon the plaintiff in a slip and fall case to show that the defendant had constructive knowledge of there being an errant fruit substance dangerously lurking on the premises’ floor. This higher, and genuinely more practical standard, allowed on a fairly consistent basis defendants to obtain a summary final judgement without trial where proof was lacking. With this recent Court decision, every slip and fall case is virtually guaranteed to go before a jury. Needless to say, this decision by the Court will cost businesses millions of dollars each year. The Florida Supreme Court has simply turned the law on its head with its *Owens v. Publix Supermarkets* decision.

**By dramatically shifting the burden of proof in slip and fall cases to the defendant, the Florida Supreme Court increased the legal exposure of Florida’s employers exponentially by the tens of millions of dollars. The Florida Legislature must act to restore some sanity and clarity to a body of case law maimed by the Court. The bill that passed today represents a compromise between the interests of the trial attorneys and the business community. However, the bill still needs some “work” to get it closer to the necessary defenses businesses enjoyed prior to the *Owens* decision.**

Stay tuned to our daily brief and to our web site at [www.fbnet.com](http://www.fbnet.com) as the legislature makes some very important decisions on the state’s economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

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- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.