

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**

P.O. Box 784 • Tallahassee, FL 32302 • Phone: (850) 224-7173 • Fax: (850) 224-6532 • Internet: <http://aif.com> • fbnnet.com

FROM APRIL 2, 2003

MEDICAL MALPRACTICE

Today there was a press conference on Medical Malpractice Insurance by several Business Associations including: Associated Industries of Florida; Florida Retail Federation, NFIB, Florida Chamber of Commerce. Please go to the following link to view video clips of the Press Conference:

<http://www.aif.com/taxmedia.htm>

Please go to <http://www.frf.org/files/p168.doc> to view a press release from the Florida Retail Federation regarding Medical Malpractice.

WORKERS' COMPENSATION

Please go to <http://fbnnet.com/2003-Articles/TampaTribWC.htm> to view a letter to the editor of the Tampa Tribune regarding workers' compensation written by Mary Ann Stile, General Counsel Associated Industries of Florida.

CONSTITUTIONAL AMENDMENTS

Many legislators believe that it is too easy to amend the Florida Constitution, as evidenced by the recent Bullet Train, Class Size, and Pregnant Pig Amendments. In this regard the greatest concern rest with amendments that are placed on the ballot by way of paid-professional petition drives. Nevertheless, despite a growing consensus that something ought to be done about this problem, there is little agreement as to the best public policy approach.

Today, the Senate Ethics and Elections Committee, chaired by Senator Anna Cowin (R-Leesburg), entertained four bills relating to this issue. A fifth bill was heard by a House Subcommittee, chaired Representative Mike Hogan (R-Jacksonville).

The Senators took some testimony and generally discussed SB 1506, sponsored by Senator Jeff Atwater (R-Palm Beach Gardens) and SB 318, by Senator Rod Smith (D-Gainesville). Both these bills are intended to offer affected interest groups an alternative to procuring signatures for placement of preferred measures on the ballot to amend the state constitution. Here, however, the suggested cure may be worse than the underlying problem, as the bills – or, more formally these joint resolutions to amend the state constitution – would permit California style “Citizen Initiatives” for placement of statutory propositions on the statewide general election ballot.

After some discussion, the chair announced that SB 1506 and SB 318 would be “temporarily passed” until a subsequent meeting. This is a parliamentary maneuver that is sometimes employed to keep bills alive, when sponsors perceive that committee members are apt to vote against their measures.

The Senate Ethics and Elections Committee then moved on to SB 1172, sponsored by Senator Cowin. Currently, a proposed amendment to the state constitution can be ratified by a majority vote of persons voting on the amendment. Because of a concern that this requirement is too easy to satisfy – especially with regard to amendments that arise from ill-conceived petition drives – Senator Cowin’s bill, as filed, provided that a proposed constitutional amendment would not be ratified unless it also received a majority vote in a majority of Florida’s 67 counties. This “majority-majority” requirement, however, raised too many practical problems and was arguably in violation of the “one man, one vote” mandate of federal constitutional law. Therefore, Senator Cowin came to the committee armed with an amendment to rewrite her own bill.

As amended, the bill required an affirmative vote of a majority of all persons voting for anything in the general election. As correctly noted by Senator Paula Dockery (R-Lakeland), some persons show up on election day, vote for various candidates for public office, and then consciously decline to vote – one way or the other – on a constitutional amendment. However, under the bill’s “majority of persons voting” provision, abstention, in effect, counts as a NO vote. Moreover, as noted by Senator Gwen Margolis (D-Miami Beach), a former senate president, the operative effect of the provision would vary from year-to-year, and county-to-county, depending on the length of the ballot and the consequential drop-off in voting for specific constitutional amendments.

This provision prompted a freewheeling discussion and debate.

Moreover, Sen. Cowin’s bill, as amended, contained a second – even more controversial – provision. The second subsection stated that any amendment or revision to the state constitution ratified before January 1, 2004, could be repealed by the same vote as required for adoption. In other words, the offending Bullet Train, Class Size, and Pregnant Pig Amendments could someday be repealed by a mere majority of those voting on the repeal amendment. Whereas, any other provision in the constitution could not be repealed, absent an extraordinary majority, that is, a majority of all persons voting for anything in the same general election, regardless of how many persons actually vote for or against the subject amendment.

This too engendered a lot of discussion and debate. Senator Cowin, bowing to the inevitable, offered another amendment to delete the second provision.

Finally, Senator Cowin’s bill, as amended and amended again, passed the committee by a seven to three vote – despite some reservations expressed by a few of the senators who voted on the prevailing side.

Then the committee took up SB 1672, sponsored by Senator Bill Posey (R-Rockledge). In a nutshell this bill simply increases the threshold for ratification of a proposed constitutional amendment from a simple majority to two-thirds of all persons statewide voting on the amendment.

This bill too was the source of considerable discussion and debate, although in the final analysis, ease of understanding and willingness of the sponsor to consider changes in the next committee of reference (including perhaps a lower percentage for ratification) resulted in approval by committee members by a nine to one vote – with only Senator Margolis steadfast in the view that a proposed amendment to the state constitution ought to be ratified or rejected by simple majority vote.

On March 27, we reported the travails of HB 1521 by Representative Will Kendrick (D-Carrabelle). This is another bill dealing with the amendment process to the state constitution. As filed, the bill contained some useful provisions to tighten requirements for petition drives leading to constitutional amendments. However, it was watered down in the House Subcommittee on Ethics and Elections, in anticipation of another more comprehensive bill – a bill with strong leadership support – that was following in its wake. This afternoon, the House leadership bill, presently denominated as PCB PC-03-11, surfaced for a hearing in the abovementioned subcommittee.

Proposed Committee Bill PC-03-11 creates a joint resolution to increase signature gathering requirements for citizen initiatives. It also requires a two-thirds vote, rather than a simple majority vote, for ratification of constitutional amendments. (This is the same as Senator Posey's bill).

Moreover, PCB PC-03-11 contains language similar to the contested provision in Senator Cowin's bill that any repeal of a citizen initiative may be accomplished in the same manner as initial voter approval. Therefore, the Pregnant Pig Amendment, for example, could possibly be repealed a mere majority vote, notwithstanding the new requirement of a two-thirds vote for ratification of any amendments or revisions to the state constitution.

The subcommittee passed the PCB with little discussion or debate.

The people retain the ultimate right to alter or revise the state constitution in accordance with fundamental precepts of democratic rule. AIF supports measures that strengthen the integrity of the constitutional amending process, especially with respect to petition drives. The subject matter of proposed amendments should be constitutional in character, and clearly understood by an informed electorate. AIF opposes California-style "citizen initiatives" which result in changes to state statutes without legislative approval.

INSURANCE

Today, the House Subcommittee on Health Services heard and unanimously passed HB 169, sponsored by Representative Nan Rich (D-Sunrise), regarding the treatment of Autism Spectrum Disorders.

State laws that require private health insurance policies and health maintenance organization contracts to include specific coverages for particular treatments, conditions, persons, or providers are referred to as "mandates." Florida law mandates health insurance for a variety of conditions and services, i.e. diabetes, osteoporosis, mastectomies and mammograms. These mandated benefits affect plans covering an estimated 33 percent of all Floridians and 40 percent of insured Floridians. Self-funded plans provided by employers are not affected by these mandated benefit requirements.

Currently, Florida law does not mandate the treatment of autism spectrum disorder by health insurers or health maintenance organizations. HB 169 would prohibit health insurers or health maintenance organizations that are regulated by the state from excluding coverage prescribed by the referring physician for the treatment of autism. The bill does not place any limitation on the type and number of services to be covered.

Although this legislation is well intended, AIF opposes additional mandated coverage because the resultant cost increases could force some insurers out of the market and price health care insurance out of the reach of many employers and businesses.

ENVIRONMENTAL PROTECTION

Today, the House Judiciary heard and passed HB 741, sponsored by Dennis Ross (R-Lakeland). This bill is relating to liability under the Dry-cleaning Solvent Cleanup Program (DSCP). We previously reported to you that the senate companion bill, SB 956, sponsored by Senator Dennis Jones (R-Seminole) had passed through several committees.

Currently, the DSCP grants to eligible dry-cleaning facilities and wholesale supply facilities an exemption from liability for cleanup costs, provided that the facilities meet the requirement of the law and regulations.

HB 741 provides that a real property owner or nearby real property owner is not liable for claims, except for claims asserted by a governmental entity, for property damage of any kind due to dry-cleaning solvent contamination. This would have the effect of eliminating all causes of action for property damage, including common law causes for action. The immunity provisions of this bill would apply to sites eligible for cleanup under the DSCP and sites covered under a voluntary cleanup program.

AIF supports legislation, such as HB 741 and SB 956, that provides incentives for voluntary cleanup of polluted sites by property owners by offering them protection against wasteful litigation.

TAXATION

Today the House Finance and Tax Committee heard and passed HB 329, sponsored by Representative Ken Littlefield (R-Zephyrhills), relating to tax exemptions for fuels purchased by utilities.

Florida law provides an exemption to the gross receipts tax for the sale of natural gas to a public or private utility for use as fuel in the generation of electricity. The law also provides the purchase of natural gas or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, is exempt from public services tax. Under present law, the sale of manufactured gas to a public or private utility for use in the generation of electricity is subject to gross receipts tax and the purchase of manufactured gas is subject to a public service tax.

HB 329 will create an exemption for gross receipts tax for the sale of manufactured gas to a public or private utility for use in the generation of electricity and an exemption from the public service tax.

AIF supports legislation that removes taxes on manufacturing process that act as tariffs and diminish the competitive ability of Florida made goods.

WATER RESOURCES

Last week we reported that HB 279, sponsored by Representative Larry Cretul (R-Ocala), which pertains to consumptive uses and water permitting, received a favorable vote from the House Subcommittee on Public Lands and Water Resources. Today the House Natural Resources Committee also approved the bill following adoption of a "strike everything" amendment.

The original bill required that a person could not get a consumptive use permit (CUP) without first giving local governments due notice and the opportunity to object. It was required the applicant show that the proposed use of the water be consistent with the affected local government's comprehensive plan and that the permit applicant obtain necessary land use and zoning permits.

Now the bill requires that the local government receive notification by mail or electronic means that a consumptive use permit has been requested. The second part of the proposed legislation is that all permits issued under this section shall include language that the permit applicant shall comply with any applicable local government, state, or federal law, rule, or ordinance.

The bill has been drastically changed and is now more acceptable by the business community. The original bill could have potentially impact the development community in pursuing permits in timely manner.

AIF will oppose this legislation if it is modified in any manner to impose burdensome growth management restrictions on Florida business and industry under the guise of water or resource protection.

Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- 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://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.