



# TALLAHASSEE NEWS

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## **Broward Days**

Mayor Ken Keechl, Commissioner Ilene Lieberman and HSD Department Director, Susan Myers were in Tallahassee.

## **Online Travel Companies (OTC) Bills Considered**

Competing proposals addressing the collection and remittance of local tourist development taxes were heard in separate committees this week. On Wednesday, March 17<sup>th</sup>, the House Economic Development Policy Committee considered, amended, and passed HB 1241 which represents the OTC industry position. The bill modifies the terms "consideration" "rental" or "rents" as used in current state tourist development tax and sales tax laws to mean the amounts received by the operator of a transient accommodation such as a hotel, apartment house, roominghouse, and timeshare. The bill excludes payments received by OTCs receive when booking reservations on behalf of a transient accommodation operator. In addition, while hotel operators must state separately the room rental charge and applicable taxes on a receipt, OTCs are specifically exempt from this requirement. Despite the concerns expressed about the bill, committee members voted to move the bill forward with the hope that additional changes could be made to the bill as it moved through the committee process. The bill will be heard in the House Finance and Tax Council next week.

In separate action the same day, the House Finance and Tax Council considered HB 335. The bill is intended to clarify that internet-based rental transactions for transient accommodations are subject to state sales tax and local tourist development taxes. Under the bill OTCs must register with the Florida Department of Revenue (DOR) and remit taxes on the total rent charged to customers unless the hotel owner or operator agrees in writing to collect and remit the applicable taxes on the OTC's behalf. The bills specify requirements for any such agreement between an owner/operator and OTC. DOR must provide amnesty to OTCs for unpaid taxes, penalties, & interest, under specific conditions, for rentals that occurred prior to July 1, 2010. After hearing from interested stakeholders and debating the bill, the bill sponsor requested the bill be temporarily postponed because there were not sufficient votes to pass the bill out of the Council. HB 335 will be back on the Council agenda next week at the same time as HB 1241.

## **Local Government Prompt Pay Legislation Move Forward**

HB 1157 and SB 1056 which make changes to the Local Government Prompt Pay Act (Act) passed their first committees of reference this week. The bills' sponsors stated the changes are necessary to ensure that local governments timely pay construction contractors, provide transparency concerning the persons who must receive, review and approve proper invoices, and provide finality with regards to public construction projects. The bill's proposed changes to the Act include:

- Identifying the individual who must review payment requests and invoices in the invitation to bid or request for proposal.
- Providing a payment request is "deemed" accepted if not rejected with the 20 business days currently required in state law. The bill requires that a local government specifically "reject" a payment request or invoice that does not meet the contract requirements.
- Requiring that local governments develop and timely delivery a "single" list of the items necessary to render the public construction project complete and acceptable. Failure to timely deliver the single punch list will require a contract extension and loss of the right to assess damages for delay caused by the contractor's failure to timely complete the project.
- Requiring local governments to commence dispute resolution procedures within 45 days after a dispute arises between a vendor and the local government. Failure to timely commence the dispute resolution process will result in the waiver of the local government's objections to the vendor's payment request or invoice.
- Providing for an award of reasonable attorney's fees and court costs to the prevailing party in an action to recover amount due under the Act.

County staff is working with the bill sponsors, industry representatives, and other interested local governments to address concerns with the bill.

## **Sovereign Immunity Caps Likely to Increase**

Legislative leaders have apparently decided to increase the state's sovereign immunity waiver caps for the first time in 29 years, as legislation quickly moved out of House and Senate committees this week. The House Civil Justice and Courts Policy Committee on Tuesday, March 16<sup>th</sup>, considered and passed HB 1107 which sought to provide a bifurcated sovereign immunity liability system. The bill provided separate caps for the state and its agencies, and for political subdivisions of the state. In addition, the bill would authorize political subdivisions (but not the state) to settle judgments in excess of the caps without a claims bill passed by the Legislature. Payment of excess judgments could be made not only from insurance, as currently authorized in statute today, but also from self-insurance funds and other funds available to the subdivision for settling claims and judgments.

For a short time, confusion reigned over the committee as it dealt with several amendments designed to limit the overall impact of the increased caps. As passed, HB 1107 increases the caps, beginning October 1, 2010, for political subdivisions from the current \$100,000 per claim and \$200,000 for all claims arising from an incident or occurrence, to \$200,000 per claim and \$400,000 per incident or occurrence. Effective October 1, 2011, however, the caps for political subdivisions are increased to \$250,000/\$1,000,000. Language allowing local settlement of excess judgments was removed.

On March 18<sup>th</sup>, the Senate Judiciary Committee heard the companion measure, SB 2060, but considered and passed the bill in less than 15 minutes and without taking public testimony. Unlike the house measure, SB 2060 simply increases the caps to \$200,000 per claim and \$300,000 per incident or occurrence. If the bill passes, the new caps will take effect October 1, 2011.

House Bill 1157 next moves to the House Full Appropriations Committee on Education and Economic Development for consideration. Senate Bill 2060 next goes to the Senate Community Affairs Committee.

### **Sale of Event Tickets Legislation**

The Senate Commerce Committee this week considered and passed Senate Bill 1190 which is intended to ensure that publically owned venues retain the capacity to refund all receipts from ticket sales upon the cancellation of an event, which protects ticket purchasers and venues from financial loss. The bill creates s. 817.358, F.S., to require an original seller of tickets to either:

- Retain all receipts received from a sale of a ticket, including taxes and fees, until the date of the event; or
- Require any person seeking advance release of funds from ticket sales to provide a surety bond to the venue in an amount equal to the greatest the amount the person is seeking in advance, before releasing any funds.

The bill provides that an original seller does not have to deposit ticket receipts into an escrow or separate account while the funds are being held. If an event is cancelled, the ticket purchaser is entitled to a refund of all receipts from the sale of the ticket, including taxes and fees. These requirements apply only to original sellers, which are venues, persons or firms that contract to sell tickets on behalf of a venue and collect the purchase price from the ticket purchaser. Venues are limited to facilities owned by the state, a county, a municipality, or other governmental entity which offers services to the general public. The new statute applies to primary ticket sales (as opposed to secondary or resale). It does not apply to tickets:

- That have the word “nonrefundable” conspicuously printed on the face of the ticket;
- For professional sports events;
- For amateur sports events sanctioned by the Amateur Athletic Union of the USA, Inc.;
- For motorsports events as defined in §288.1171 and §549.10, F.S.;
- For events promoted exclusively by an educational institution;
- For postseason collegiate sporting exhibitions or athletic contests sanctioned by the National Collegiate Athletic Association; or
- For a pugilistic exhibition regulated under Chapter 548, F.S.

The bill now moves to the Senate Finance and Tax Committee for consideration.

### **House and Senate Sessions**

Both the House and Senate met in Session on Thursday of this week. Bills on third reading in the House included the HB 7069, Background Screening which revises the required information for individuals seeking employment with children, vulnerable seniors, and the disabled. This bill is a result of an investigative report featured in the Sun Sentinel that found loopholes in the screening process for people working with elders and children. On second reading and rolled to third reading. was HB 315 which prohibits adoption agencies from

disqualifying a potential adoptive parent due to owning firearms. HB 315 by Rep. Horner, was sent to the Senate and substituted for its Senate companion which was also on third reading, SB 530 by Sen. Altman. The bill, supported by the NRA, is expected to be signed by the Governor. The House unanimously passed HB 1 by Rep. Ari Porth, which seeks to eliminate the statute of limitations for wrongful deaths and it now goes to the Senate. HB 7101 which extends a deadline from 2012 to 2016 for counties to develop touchscreen devices for blind voters also passed unanimously. On third reading in the Senate, SB 86 by Sen. Sobel expanding excusal from jury duty to include individuals with parental responsibilities and practicing psychologists passed.

### **Children's Services Councils**

The Senate Children's Services Council bill, SB 1216 by Sen. Negron and 10 co-sponsors was heard in Children, Families, and Elder Affairs. The amended bill which removed the requirement of a budget submission to the Board of County Commissioners and calls for a vote of the electorate every six years to either retain or dissolve the taxing authority, passed on a 6-2 vote with Sen. Rich and Sen. Justice voting in the negative. The bill schedules the elections dependent on the date of the last referendum creating the taxing authority; councils created in 1990 would be required to be on the ballot in 2010, those created after 1990 but before 2001 would be on the ballot in, 2012, and those created between 2000 and 2010 would be on a ballot in 2018.

### **Controversial Resolutions**

Two legislative proposals considered by the Senate relate to federal issues. A proposed constitutional amendment, SJR 72, by Sen. Baker proposing that the state would not have to follow any federal law which would require health care coverage was heard in the Senate Judiciary Committee. Debate centered on the constitutionality of the proposal, federal law versus states rights, as well as the constitutionality of the federal government requiring health coverage. This was the second stop for the bill; it passed on a 6-3 vote and has two more committee stops. Its companion bill in the House is sponsored by Reps. Plakon, Workman, and Ray has fifty-four co-sponsors and has not been heard. Additionally, the Senate also considered SB 10 by Senate President Atwater which calls for a convention to amend the United States Constitution to require a balanced budget and limit the authority of Congress over federal funding that is allocated to the states. The bill passed its second reading 28-12. Also, by Senate President Atwater, SB 2742, would require a nonbinding referendum for Florida voters in November regarding the issues of a federally balanced budget. The bill passed on third reading by a 26-13 vote.

### **Qualified Tax Incentives (QTI)**

SB 1856 (HB 1509 & 7109), legislation intended to extend the Qualified Target Industry Tax Refund program, sponsored by Sen. Garcia, was passed unanimously by the Commerce Committee on March 17. The Committee Substitute, as amended, restores the use of ad valorem tax revenue that may be refunded under the program and reinstates the ability to use the statewide average wage when calculating private sector wages. The legislation is intended to entice new companies to locate in Florida, create high-paying jobs, and encourage existing companies to expand their workforce. The bill passed 10-1.



### **Homeless Hate Crimes**

Rep. Porth's Crimes Against Homeless Persons bill, HB 11 (SB 506), was passed 14-1 in the House Criminal & Civil Justice Policy Council on March 16. The bill defines homeless as a person "lacking a fixed and adequate night time residence" and makes it a third degree felony with a penalty of up to five years in prison for violation of this proposed law. According to testimony, Broward County leads the state and Florida leads the nation in crimes against homeless persons, with over 200 deaths in 2009. The beating and subsequent murder of Norris Gainer in Broward County was highlighted. The bill requires criminal investigators to prove intent to harm *because the person is homeless*. HB 11 now moves to the Floor to be placed on second reading.

### **Jobs For Florida**

SB 1752 (HB 1509), sponsored by Sen. Gaetz, passed the Senate Policy & Steering Committee on Ways and Means on a vote of 22-2. The bill as amended in the committee substitute increases the amount of tax refund payments available to pay Florida's share of refunds under the qualified defense contractor and space flight business tax refund program and the tax refund program for qualified target industry businesses. This wide-ranging jobs and economic development bill has a current price tag of \$187 million over three years, and is intended to pump \$30 million into the state's threatened space industry, while providing millions more in tax breaks to companies hiring unemployed Floridians, manufacturers buying new equipment and numerous tax incentives for film production, boat and aircraft manufacturers, and on building material used in enterprise zones around Florida.

We continue to work with the bill's sponsor and other members of the committee to clarify and amend language in sections 23 and 24 of the current committee substitute.

- Section 23 amends s. 373.4141, F.S., to require DEP, a Water Management District, or a *local government with delegated permitting authority* [emphasis added] to approve or deny a permit within 30 days of receipt for activities involving the management or storage of surface waters. After 30 days, the permit will be approved by default, unless the permit is part of a federally delegated program.
- Section 24 amends s. 373.441, F.S., to specifically:
  - ❖ provide for a local government to petition the Governor and Cabinet for the review of a request for a delegation of authority which DEP has not acted on within 1 year of the local government's submission, or which DEP has denied
  - ❖ require DEP to provide specific detail of why it denied a local government's request for a delegation of authority, including the statutory or rule provisions that the local government's submission did not satisfy
  - ❖ specify that the Governor and Cabinet may reverse DEP's decision
  - ❖ provide that a county having a population of more than 75,000 or a municipality serving populations of more than 50,000 must apply for delegation of authority on or before June 1, 2011 or be preempted. A county, municipality, or local pollution control program that fails to apply for delegation of authority may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.

### **Florida Water Quality Standards Compliance Delayed**

In a letter to Florida Department of Environmental Protection (DEP) Secretary Mike Sole in March 17, the U.S. Environmental Protection Agency (EPA) expressed its intent to delay until 2011 the numeric water quality limits (phosphorous and nitrogen pollution in state water bodies).

Under the EPA plan, which is the result of a lengthy legal fight between the state and environmentalists, Florida waters would be grouped with different nutrient allotments depending on the characteristic of the water. The state has argued that the standards would be unfair because they would only be applied to Florida, but environmentalists sued state regulators for failing to enforce the federal Clean Water Act. A third party arbiter is being used to assess what accounts for the differences between the EPA's scientific analysis and Florida's. Public hearings held across the state by EPA have been dominated by complaints from farmers and business owners about the cost of complying with the increased requirements.

In the letter to Sole, the EPA stated: "The U.S. Environmental Protection Agency (EPA) appreciates the continued feedback and perspectives expressed by the Florida Department of Environmental Protection (FDEP), and the comments and concerns expressed to us by Florida citizens at the recent public hearings with regard to the January proposed Water Quality Standards Rule for nutrients in Florida's lakes and flowing waters." The EPA has promised to work more closely with state officials going forward, and will announce in early April the specific plans for that review.

### **Energy Efficiency and Conservation Legislation**

Property Assessed Clean Energy (PACE), PCB EUP 10-03, was approved this week by the House Energy & Utilities Policy Council and allows local governments to issue bonds for retrofitting homes or businesses. The bonds would be backed by property assessments to homeowners and small businesses paid through a fee on recipients' tax bills. Environmentalists have stated to the media that while the PACE bill is a valuable small step, it is not a replacement for the bills they have pushed for since Gov. Charlie Crist signed a 2007 executive order calling for a 20% carbon reduction by the year 2020.

SB 774/HB 1417 would require publicly-regulated power companies in Florida to produce 20% of their electricity from renewable and clean energy sources, but has yet to be taken up.