

# Capitol Report - February 21, 2003

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The Legislature concluded its final week of interim committee meetings today, and numerous controversial issues are poised for action when the 2003 Regular Session begins on March

## **4.Administrative Procedures**

House Bill 23 by Rep. Joe Spratt (R-Sebring) was passed unanimously by the House Judiciary Committee on Thursday. The bill seeks to amend chapters 120 and 57, Fla. Stat., regarding challenges to agency rulemaking and permitting decisions.

Among other things, the bill would expedite hearings on challenges and tighten requirements on agencies and third-party petitioners who challenge agency decisions. The bill would also provide for attorney fees to prevailing parties in administrative hearings as well as appellate hearings, including occasions when a government agency is the losing party.

At Thursday's meeting, the original contents of HB 23 were completely stricken and new bill language was adopted. [Click here](#) for the new bill language and look for the amendment adopted on February 20.

In a related story, a court ruling in Florida's 2nd Circuit this week effectively ended a lawsuit filed last year to strike down a law related to third-party challenges.

The lawsuit was filed by several environmental groups claiming that the law in question (Chapter 2002-261, LOF) was a violation of the single-subject requirement for bills passed by the Legislature. (See HB 813 from the 2002 session.)

The law contains provisions related to Everglades restoration and restrictions on initiating third-party challenges under Chapter 120. Circuit Judge Ralph Smith ruled that the bill did not violate the single-subject requirement and that the plaintiffs failed to show they had been harmed.

## **Nursing Home Tort Reform**

The Joint Select Committee on Nursing Homes sent recommendations this week to Senate and House leadership for addressing what has been described as an ongoing nursing home crisis in Florida.

Two years ago law was enacted to improve nursing homes' quality of care and reduce their tort liability in hopes of making liability insurance more available and affordable. Those 2001 tort measures failed to work, according to the industry, and the Legislature will tackle the issue again this year in response to the industry's outcry.

The 2001 law placed caps on punitive damages awards against nursing homes but placed no caps on awards for pain and suffering. This year's Joint Select Committee now recommends an arbitration system that would place a \$250,000 cap on pain and suffering awards related to medical incidents, but not on issues of custodial care. Those medical-related pain and suffering awards outside of arbitration would be capped at \$350,000 if a plaintiff refuses to accept an offer to enter arbitration.

The Joint Select Committee's recommendations are simply suggestions at this point, but the issue will definitely be addressed and bills will be filed after the Regular Session commences.

## **Water Resources**

The House Subcommittee on Public Land and Water Resources heard testimony this week from David Struhs, secretary of the Florida Department of Environmental Protection, regarding proposed changes to "Chapter 62-40, Water Resources Implementing Rule."

The rule has not undergone review in six years, despite its own requirement that it be reviewed every four years. In addition, amendments enacted by the Legislature in 1997, 1998, and 1999 have rendered portions of the rule obsolete. The rule now needs to be updated to address pressing issues such as increases in demand, water shortages, and problems with water quality.

The effective date for the Chapter 62-40 rule is unique from rules promulgated by other state agencies. If rule challenges to Chapter 62-40 are resolved in time, the proposed amendment would become effective following the 2003 Legislative Session. If not resolved, the rule would not become effective until the end of the 2004 Legislative Session, which will give lawmakers time to address any lingering controversies.

The department's problems in adopting a new rule are mostly centered on the issue of water reservation, which reserves water from use by permit. The law already allows the department to use water reservation as a tool to protect fish and wildlife as well as public health and safety. It is a power that the department is likely to use in the Everglades restoration project. The business community, however, is concerned with the extent of the department's reservation powers, which could hinder economic development.

Water resources could become a major issue in 2003, as manifested in legislation that could impose

water concurrency requirements on new residential and commercial developments. Developers say that would have a chilling effect on economic growth and would remove the incentive for governmental entities to properly plan for expanding water resources through technology such as desalination. (See Senate bills 1044, 156, and 266.)

## **Medical Malpractice**

The Governor's Select Task Force on Healthcare Professional Liability Insurance has released its final report to the Governor and the Legislature. The Task Force has made 60 recommendations for reforming med-mal, mostly related to tort reform and improving health care quality.

The Task Force recommends a \$250,000 cap on awards for non-economic damages and even goes out of its way to emphasize that the liability cap is its most important recommendation. This issue still promises to be the most controversial of the entire 2003 Legislative Session.

The House Select Committee on Medical Liability Insurance, however, indicated this week that it will not prepare legislation or even make recommendations to House leadership on how to address the issue. Instead the committee will release a report on available options, including some not included in the Task Force's report.

## **Senate Still Searching for New Tax Revenue**

The Senate Finance and Taxation Committee had a proposed committee bill on its agenda Thursday that would remove a tax exemption on natural gas shipped into Florida from other states. Currently natural gas sold within Florida is subject to a gross receipts tax, but natural gas purchased from out-of-state suppliers and not transported by Florida companies is tax-exempt.

The Committee estimates that the tax exemption costs Florida about \$14.3 million per year, based on the numbers from fiscal year 2000-01. That is a very attractive number to Senate leaders who are looking for any and all ways to bolster state revenue as Florida faces a huge budget crisis this year.

At Thursday's committee meeting, however, Chairman Skip Campbell (D-Tamarac) announced that the proposed bill would not be discussed that day and would be deferred to the committee's next meeting after Regular Session begins in March.

House Speaker Johnnie Byrd (R-Plant City) and Governor Jeb Bush are still maintaining their strong opposition to any tax increases this year. How the budget crisis will be resolved still remains to be seen. **Carlton Fields Lobbying Team**

Governor Bob Martinez, Tampa.

Allen Brown, Tallahassee.

Rheb Harbison, Tallahassee.

Mike Olenick, Tallahassee.**Important Legislative Dates**

- March 4, 2003: Regular Session convenes
- March 4, 2003: 12:00 noon, deadline for filing bills for introduction, House and Senate
- April 22, 2003: 50th day-last day for regularly scheduled Senate committee meetings
- May 2, 2003: 60th day-last day of Regular Session

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