

Budget Fax 2004

An Update on 2004-05 Legislative Action
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Legislative Update: One Week to Go

As usual, the 2004 Florida Legislature heads into the last week of its regular session with much left to be decided. The two chambers are currently in negotiations on the budget. Things had been going smoothly, but a potential roadblock arose yesterday in the form of a Senate plan to change the allocation formula for school funding to take money from larger urban counties and send it to some “higher-cost” counties. The House dissented and talks broke down. The final differences on the budget are expected to be personally resolved by the House Speaker and Senate President this weekend. It is hoped they can reach a compromise early next week in order to observe the constitutionally mandated “72-hour cooling off period” before members can vote on the budget so they can still adjourn on time next Friday.

In addition to the budget, there are a number of important pieces of legislation still pending. The following is an update of some of the issues that Florida TaxWatch has been following this session.

Taxing Substitute Communications. As part of the implementation process for the state’s new communications services tax, the Florida Department of Revenue developed a rule concerning substitute communications systems that would significantly raise taxes, create administrative burdens and seriously effect the competitiveness of our state’s businesses. The proposed rule would apply the tax very broadly, affecting every business with a computer network, telephone system or other communications system. Florida TaxWatch is unequivocally opposed to the tax and—in September 2003—recommended that the Legislature address this issue in a Special Session. The House and Senate both considered legislation (HB 735 and SB 2302) to remove all statutes addressing taxation of these systems. A Senate committee recently passed a compromise that places a moratorium on the tax until a task force can study it and make recommendations to the 2005 Legislature.

Corporate Income Tax Piggybacking. Legislation (SB 1826) has passed the Senate that would conform the Florida corporate income tax code to changes in the federal corporate income tax code. These changes include tax deferrals that would save Florida businesses \$138 million. Florida TaxWatch has a long-standing policy of supporting piggybacking corporate taxes with the federal code. The Governor has also recommended this in his supplemental budget proposal. Florida has historically coupled the state and federal codes, whether it resulted in tax increases or decreases. Not piggybacking would blunt the economic stimulus the federal law was designed to provide. The Governor’s Office estimates this would augment the 10,000 new Florida jobs created by a similar proposal in 2002. The bill is now in House messages.

Sales Tax Holiday. It appears the Legislature will pass another sales tax holiday – a nine-day period in which clothing, books and school supplies will be exempt from the state’s sales tax. This would save consumers \$44 million. After four years of the holiday, the Legislature did not pass one in the last two years. Both chambers support the plan, and while they are slightly different, it appears the House version will move forward.

Gas Tax Cut. Another tax cut gaining steam is the House plan to reduce state gas taxes by 10 cents per gallon for the month of August at a cost of almost \$70 million. A proposed committee bill passed the Appropriations Committee this week and is expected to pass the full House. The Senate has agreed to take it up, although leaders express doubt about the plan, particularly whether the full cut will be passed on to the consumer.

Proposed Constitutional Spending Limits. There are two proposed constitutional amendments being considered by the Legislature that put limitations on state spending. The Senate came forth with a plan (SJR 2506) to address a long-standing Florida TaxWatch concern—the spending of non-recurring revenues on recurring expenses. The Senate resolution would allow only 3% of state general revenues to be used for such spending, requiring a three-fifths vote to override. The House plan (HJR 385) would make the revenue limitation currently in the constitution more strict by setting the limitation at the level of actual revenue (instead of allowed revenue) and including Medicaid matching funds in the definition of revenues. It would also require a two-thirds vote to raise taxes. Both plans have passed their respective Chambers, but the House wants to tie the two together, an idea to which the Senate has not been receptive. Both plans certainly have merit. Florida TaxWatch was instrumental in getting the current spending limit adopted and has always pushed for it to be based on actual revenue. We have also been recommending a three-fifths supermajority to raise taxes since 1995.

Sales and Use Tax Exemption Review. The 2004 Legislature will not be addressing a comprehensive review of sales tax exemptions. Legislation that Florida TaxWatch helped draft at the request of the legislation’s sponsor never gained momentum. The bill would have established a Joint Legislative Committee to periodically review exemptions from Florida’s sales and use tax. TaxWatch supported the concept as a reasonable alternative to the “FAIR Amendment.” With the session ending, attention will now turn to that proposed constitutional amendment, and Florida TaxWatch will be releasing a report highlighting the various problems with that approach.

Florida Productivity Improvement and Accountability Act. Legislation to establish a productivity improvement and accountability process never received meaningful consideration either. It would have fully integrated cost savings with the state budgeting process and ensured that worthwhile ideas were fully explored and implemented. Under the legislation (HB 1151 and SB 78), the Governor would be responsible for including in his budget recommendations a certain number of ideas to reduce the cost and improve the efficiency of government. The recommendations would be submitted as legislation for the consideration by the Legislature, and agencies and the Governor would be required to report on the status of implementation. Florida TaxWatch will continue to push to ensure that cost savings ideas are an integral part of state budgeting.

Revenue Maximization. Florida TaxWatch is recommending that language be included in the budget implementing bill to help Florida achieve a very rare opportunity to bring in

hundreds of millions of dollars in federal funding without spending more money or making new commitments. This is money currently owed to Florida under a number of programs but that agencies for various reasons have not been able to collect. Last year, as part of our Joint Task Force report, Florida TaxWatch detailed a number of these opportunities and encouraged the Governor and state agencies to make them a priority. The state's Chief Financial Officer entered into a competitively-bid contract with a vendor—Maximus—to help the state get the money. The winning vendor was rated highest in quality, capability and price. It must enter into memoranda of agreement that spell out specifically what funds—and how much—will be collected. The vendor only gets paid when it collects the funds (4.75% of collections, after the first \$50 million.) To date, \$21 million in claims have been filed and \$33.3 million is expected to be collected this year. Under current proposed agreements with state agencies, another \$140 million could be collected next year. These collection will be recurring. And there is much more money out there. The state needs to make this a priority. Of immediate concern, due to an unexpected federal restriction, is the need for some legislative language that would facilitate the vendor being paid.

The Florida Impact Fee Act. Senate Bill 2874 would create a statute to set much needed parameters and properly regulate the implementation of impact fees by local governments. Florida Statutes currently provide no authorization for local governments to impose impact fees, although they are addressed by several statutes. This bill would provide that authorization and codify existing case law concerning impact fees. This addresses a serious deficit in state law by providing clarity and due process for all interested parties. Often local government officials who impose impact fees are not aware, or do not fully understand, the case law that exists. This can result in costly lawsuits and/or the hiring of consultants to assist local governments in the implementation or modification of impact fees. Codifying the law is important to protect local governments, developers, new growth residents and all citizens of Florida.

Counterfeit Cigarettes. A bill (SB 2676) to strengthen the distribution system for cigarettes in Florida is headed for the Senate floor. It would set up a structured distribution system with additional requirements and prohibit the transporting of cigarettes from Florida to another state without first paying the tax required by that state. Florida TaxWatch supports this legislation as a way to reduce counterfeit, contraband and "gray market" cigarettes to protect consumers and collect all the revenue rightly owed the state.

The Streamlined Sales Tax Project. Legislation (CS\SB 1072) to bring Florida's sales tax law into compliance with the Streamlined Sales Tax Project has passed the Senate but appears to have little chance in the House. On November 12, 2002 lawmakers and tax officials from Florida and 29 other "Implementing States" ratified the Streamlined Sales and Use Tax Agreement, a proposal to simplify their tax laws and enter into a voluntary pact to collect sales and use taxes online. Florida's tax system is particularly vulnerable to the growth of remote sales (including Internet, mail order, and telephone) because it relies so heavily on sales and use taxes. Even if the seller is located outside the state, a Florida resident making a remote purchase is still liable for paying the sales and use tax on that item. Currently remote sellers are not required to collect these taxes even though the transaction is taxed on a use tax basis, which is nearly impossible for the State to collect. A University of Tennessee study estimates that e-commerce cost Florida state and local governments \$932.2 million in uncollected sales and use tax revenues in 2001. It projects that cost to escalate to \$3.214 billion by 2006 and to \$3.944

billion by 2011. This means total ten-year losses (2002-2011) of \$28.6 billion. This is also unfair to “bricks and mortar” retailers who must collect the tax. Florida TaxWatch will continue its research to encourage the Legislature to take a leadership role in this effort.

Universal Pre-K. The Florida Legislature appears to be deferring decision until next year on most of the Universal Prekindergarten (UPK) implementation particulars; the amendment does not have to be implemented until the fall of 2005. At this writing, the House (HB 821) and Senate (SB 3036) bills have been passed into Appropriations. However there is no agreement yet as to the length of program day, total numbers of program hours, program options, teacher certification, student teacher ratios, or whether to conduct a 2,800 child pilot program this summer. Current versions of both bills potentially diminish the positive instructional impact of the UPK by greatly reducing the level of regulatory and programmatic requirements and by disregarding the recommendations of the Governor’s Universal Prekindergarten Advisory Council.

Constitutional Revision. The Senate passed CS/SJR 2392 which would require a supermajority vote of two-thirds in order to add any amendment to the Florida Constitution. This legislation is currently on the House calendar. The House’s plan would raise the threshold to two-thirds for citizen initiatives and would not apply to those from the Legislature, Taxation and Budget Reform Commission or the Constitutional Revision Commission. Florida TaxWatch has released a number of reports, beginning in 1994, urging a higher threshold before an amendment is added to the Florida Constitution. The recent influx of proposed constitutional amendments again brings the need for a higher standard to the forefront. A December 2003 Florida TaxWatch report entitled *Constitutional Revision: Protecting All Floridians from Minority Rule*, recommended requiring a three-fifths to two-thirds supermajority of those voting on proposed changes in order to amend the Constitution, a substantial increase from the simple majority currently in place.

Judicial Funding. On July 1, 2004 the state will assume the funding responsibility of most State Courts System, State Attorneys, Public Defenders and the Justice Administrative Commission operations that are currently funded by counties. This shift will mark the fulfillment of Revision 7 amending Article V of Florida’s Constitution, passed in November 1998 with the support of 56.9% of those voting on the proposal. Florida TaxWatch released *Proper Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy* in February 2004, addressing the critical need for vision and statesmanship to equitably fund these new responsibilities throughout Florida’s 20 judicial circuits.

The State Courts System initially requested \$170.6 million for Revision 7 funding issues, and the Governor included \$104.4 million in his recommended budget. Florida TaxWatch suggests a compromise of \$140 million for 2004-05—less than the \$154 million proposed by the House and substantially more than the \$112 million included in the Senate’s initial budget.