

Transmittal via Email

MEMORANDUM

TO: Tirbod Fattahi, President
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Florida Society of Oral and Maxillofacial Surgeons

FROM: Mike Huey, Chris Hansen and Todd Steibly

DATE: June 3, 2013

SUBJECT: 2013 Legislative Review

The 2013 Session came to a close at 7:16 p.m. on Friday, May 3rd, after the Legislature passed the largest budget in the state's history and tackled numerous highly publicized issues in the waning hours. Campaign finance and election reform, tax exemptions for Florida manufacturing, salary increases for teachers, state employee pay increases and extending health care coverage to the state's uninsured were some of the more prominent issues that defined this Session.

Non-Covered Services

The major bill for the FDA and a priority for FSOMS was the Non-Covered Services legislation, which prohibits insurers, HMOs, and Prepaid Limited Health Services Organizations from requiring a contract with a dentist that mandates the fees the dentist may charge for non-covered services provided to an insured. Senate bill 924 unanimously passed the Senate, but the companion bill died in the House. Politics played a large role in the demise of the House bill, along with a strong lobbying effort by the HMO industry. Based upon the Senate's unanimous support for the bill, we believe that the merits of the legislation are evident when the facts are presented. Looking towards 2014, FSOMS and FDA must convince House Leadership to allow an open and fair hearing on this issue.

Surgical Technologists

Another issue that FSOMS followed closely was SB 360 – Surgical Assistants/Surgical Technologists, by Senator Rene Garcia. As originally filed, the

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legislation prohibited a hospital or ambulatory surgical center from employing, contracting with or granting surgical privileges to a surgical assistant who is not certified by the American Board of Surgical Assistants, the National Board of Surgical Technology and Assisting, or the National Surgical Assistant Association. We met with the bill sponsors to voice our concerns about the legislation's impact if surgical privileges were restricted in this fashion. In its final form, the bill did not limit surgical privileges and instead only required specific credentials for surgical assistants who are either employed by or under contract with a hospital or ACS. The legislation ultimately failed, but we expect this issue to surface again next year.

Budget

On May 20th, the Governor signed the largest budget in the state's history - \$74.5 billion. This year's budget is a \$4 billion increase over last year, and boasts an additional \$1.1 billion in education funding, which translates to an increase of \$404 in spending on each student and provides a \$2,500 across-the-board raise for teachers. After seven years of no cost-of-living increases, Legislators also gave state employees a \$1,400 pay increase.

Other notable care funding issues include: \$8.5 billion for transportation projects, a 3-percent tuition hike for college and university students (which was vetoed by the Governor); \$152 million for Everglades restoration; \$45 million for business incentives; and, a 3-day back-to-school sales tax holiday on the purchase of clothes, school supplies and computers.

The Governor approved nearly 95-percent of the budget the Legislature sent to him while vetoing \$368 million in spending on specific projects, including \$50 million for the Coast-to-Coast connector — a bike trail from St. Petersburg to Titusville, \$46 million in college and university tuition hikes, and nearly 150 other projects. The new budget will take effect July 1st.

Tort Reform

Over the last several Sessions, the passage of expert testimony legislation has been a battle between the plaintiff's bar and the business community, and this Session, the Legislature passed HB 7015. Currently, Florida follows the standard established in the case of *Frye v. United States* to determine whether scientific and expert testimony could be admitted into evidence. In *Frye*, the court established a test regarding the admission of

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expert testimony requiring judges to determine whether an expert's testimony is based on a scientific principle or discovery that has gained "general acceptance" in the particular scientific field. HB 7015 rejects the Frye standard and provides a three-part test to determine whether expert testimony will be admitted in a particular case. This bill adopts a standard commonly referred to as the Daubert standard, which requires the court to determine if: (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case.

The Legislature also made changes to rules governing expert witnesses in medical malpractice lawsuits by passing SB 1792. The bill requires that expert witnesses testifying in medical malpractice cases practice in the exact area of practice, rather than a similar area. The bill also revises informal discovery procedures by authorizing the defendant and his/her insurer to conduct ex parte interviews of a claimant's treating health care providers.

Trauma Services

There were very few health care-related bills that passed this Session. House bill 1159 was one of those bills, and covered several issues, including trauma, obstetrical services for specialty children's hospitals, health care clinic exemptions, and insurance coverage for cancer treatments. Deregulating the process for trauma center designation became the focal point and the most controversial of the provisions of HB 1159. On the last day of Session, legislators scuttled the idea of deregulation and created a limited statutory exception to allow the designation of a trauma center in a rural area.

Other Bills of Interest

Campaign Finance and Elections

The Legislature also reformed campaign finance and elections laws this Session. Attempting to curb fundraising abuses that have been the subject of media reporting during the last campaign cycle, the Legislature banned Committees of Continuous Existence – or CCEs – and increased the contribution caps for statewide candidates from \$500 to \$3,000, and non-statewide candidates (legislative races) from \$500 to \$1,000. The new law also expands early voting sites, requires eight days of early voting for eight hours each day and allows counties to expand early voting to 14 days for 12 hours each day, including the Sunday before an election.

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Corporate Tax Exemptions

Legislation was filed to further increase the exemption from the corporate income tax. The expanded exemption was projected to have a \$20 million per year fiscal impact, which proved to be the death knell for the issue this Session. We anticipate this legislation will be filed again next Session.

Texting While Driving

For the last five years, legislation has been filed to ban texting while driving. This Session, the Senate and House finally reached an accord on the issue and passed SB 52 – by Senator Nancy Detert (R-Venice). The legislation makes texting while driving a secondary non-moving violation, which means law enforcement must stop a motorist for another reason before one can be charged with a violation. If signed by the Governor, first-time violators will face a \$30 fine.

Should you have any questions concerning the information provided in this report, please do not hesitate to contact us.

JMH/CKH/TCS:eeh