



Attorneys, industry executives review legislative session

Can 60 days change the tidings for Florida's future? Government leaders, business executives and Floridians statewide are counting on it.

Each year, 160 Florida state house and senate members gather for two months that can dramatically impact the state's residents and businesses.

This year, the stakes are high across key sectors from the property and automotive insurance markets to hospitals and health care providers, secondary institutions and for employers statewide. All eyes between now and March 11 will be on the agendas of Gov. Ron DeSantis and senate and house

leadership.

In this panel discussion, attorneys and government professionals from law firm Greenberg Traurig and executive from several private-sector associations share their perspectives on the current legislative session and its implications for Florida's future.

Gus Corbella: What are some of the governor's priorities this session?

Hayden Dempsey: To set the stage for where the Legislature and the governor are, Florida's economic recovery from this pandemic has been nothing short of remarkable. Florida now leads the

nation in new business formations. In December, month-over-month revenues came in more than \$500 million above the previous monthly estimate. These state dollars, along with the federal dollars, amount to billions of extra dollars that the state was not anticipating. The issues that the Legislature will have this year won't involve dealing with revenue shortfalls. In terms of tax relief, the governor proposed reducing the tax on fuel in Florida by 25 cents per gallon, a 10-day disaster preparedness sales tax holiday, a sales tax holiday that applies to certain outdoor recreation equipment and tickets to sporting events,

museums, and arts events and a back-to-school tax holiday. In the area of education, the governor is proposing increasing teacher pay once again to a minimum of \$47,500 for starting teachers and a \$1,000 retention bonus for all current teachers. The governor also has proposed increasing per-student annual spending to \$8,000, about \$100 higher than the current fiscal year. He is proposing a \$5,000 signing bonus for law enforcement personnel and increasing pay for department of corrections and other state law enforcement agencies. He is proposing a \$350 million appropriation for affordable housing.

MODERATOR



Hayden Dempsey
Chair of the Florida Government
Law & Policy Practice
Greenberg Traurig

PANELISTS



Steve Balmer
President and CEO
LeadingAge Florida



Kerri Barsh
Co-Chair,
Environmental Practice
Greenberg Traurig



Gus Corbella
Senior Director,
Government Law & Policy
Practice, Greenberg Traurig



Barry Gilway
President, CEO and Executive
Director, Citizens Property
Insurance Corporation



Fred Karlinsky
Co-Chair, Insurance Regulatory
and Transactions Practice Group
Greenberg Traurig



David Mica, Jr.
Executive Vice President
Public Affairs
Florida Hospital Association

Another proposal that seems to be getting more attention is the creation of an election integrity unit, whose sole focus would be the enforcement of Florida's election laws, funded with approximately \$6 million. The supervisor of elections would receive \$8 million to continue cyber security efforts. And, finally, with health care staffing the governor is proposing increasing provider reimbursement across the board by a total of \$225 million, primarily for nursing homes and other home and community-based providers.

Corbella: Along with the governor, House Speaker Sprowls and Senate President Simpson shared their priorities at the start of the session. Can you touch on that?

Dempsey: Last year House Speaker Sprowls passed almost all his priorities. One had particularly strong bipartisan support -- increasing Medicaid eligibility for new moms from 60 days to a full year. This year he is proposing additional ways the state can help newborns and new mothers. He is also looking at increasing the homestead exemption by \$50,000 for law enforcement officers, firefighters, teachers and active-duty military.

The Speaker is also supporting legislation dealing with consumer data privacy, which would give consumers the right to know what has been collected about them, the right to correct online information, and to opt out of the sale of and sharing of this information. He also supports the recruiting and training of law

enforcement officers

In his final year as senate president Simpson wants to again increase investments in roads and infrastructure and expanding wildlife corridors. He supports requiring local governments to provide fiscal impact statements estimating the impact that new legislation may have on businesses. This would give citizens and businesses the right to hold governments accountable for any negative impact caused by a new ordinance.

President Simpson has mentioned increasing pay for both teachers and all the support people who are so critical in the K through 12 system. Another big item for the senate president is improving the foster care system. He has proposed increasing the early learning voucher that foster parents receive and if a foster parent is a relative of the child, they should receive the same level of reimbursement. That idea will certainly be hotly debated.

THE IMPORTANCE OF HEALTH CARE

Dempsey: There's legislation filed this session that would modernize nursing home staffing requirements. Is your association taking a position on what those requirements should be?

Steve Balmer: We have long argued that high quality staffing drives high

quality outcomes, so we have been reluctant to alter the minimum staffing standards. We support bills filed this legislative session that begin to rethink who might be included in those minimum standards. We are not interested in reducing the required hours of direct care,

because of course that is necessary. But we're supportive of reconsidering all the different professionals who could be included in those staffing standards and who are providing a level of skilled

professional care that's higher in some cases than what residents are receiving today. This is one of the creative solutions we've got to get behind to help deal with the workforce crisis.

Dempsey: Last year, the Legislature passed a bill that would provide businesses and healthcare providers protection from liability claims related to Covid. But those protections end this March. This year there's a bill filed that would extend Covid liability protection for businesses and healthcare providers for another year. Is that legislation that's important for you?

Balmer: Absolutely. We were strong supporters of the legislation when it was first passed last year. The extension of that Covid liability protection is important this year because the pandemic is not over. The challenges and risks that nursing home providers and their staff deal with daily haven't changed. The extension of Covid liability protection is critical because it will allow them to remain focused on delivering high quality care without looking over their shoulder to protect themselves against what we think are largely frivolous lawsuits.

Dempsey: Staffing is a challenge for hospitals like it is in nursing homes. What are some of the ideas that you all would like to see considered this year to address staffing?

David Mica, Jr.: By 2035, Florida is going to need an additional 60,000

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nurses to meet demand. The scary part is the basis of that data was done pre-pandemic. We are seeing 25% turnover and in the last year, almost a third turnover in critical care staff. We cannot go to a store to buy more nurses. We must train and build those nurses. So, the hospital association is really committed to working with our education partners and our regulators to continue to expand that marketplace and increase that pipeline.

Corbella: What are some of the Florida Hospital Association's priorities for this session?

Mica: There are a couple different arenas. Workforce is number one. The number two issue is behavioral health. Mental health and substance abuse are major issues that our hospitals are dealing with. Not just from the emergency room-type "revolving door," but really from the acuity of patients coming in. We are committed this year to working with our partners to expand in-home type care and other services that continue the continuum of care.

Corbella: What's the Florida Hospital Association's position on Covid liability protection?

Mica: We worked with the coalition last year and we're very supportive of it again this year. I want to be clear, it's not a full liability protection. But it's been very important for our hospitals that we haven't had to deal with as many frivolous lawsuits that sometimes surround these types of situations.

INSURANCE REFORMS

Fred Karlinsky: The Florida property insurance market is the most complex property insurance market in the world. In the last few years, we've suffered unsustainable losses for the industry. Action is needed so the market doesn't collapse. Discuss the magnitude of these losses and the potential implications that those losses have on the industry and the availability and affordability of coverage.

Barry Gilway: The only way to describe the property insurance industry is an absolute sea of red ink. After a few years of profitability from 2013 to 2017, the industry is losing a fortune. For 2021, third quarter numbers for the private property insurance industry show \$847 million in negative net income and an underwriting loss of \$1.147 billion. And that's in only the first three quarters of 2021. We are on track to have lost more money in 2021 than the industry did in all of 2020, when we reported about \$816 million in negative net income. The entire property market in Florida is driven by 52 private companies writing about \$11.6 billion in premiums and they only have about \$3.6 billion in surplus. And in one year, you have literally lost a third of that surplus. This is a general condition

that is impacting virtually every single company in the market. Rate increases are skyrocketing across the state, but many companies are still cancelling policies and cutting back exposure.

Karlinsky: When you talk about performance in the marketplace, you've got to talk about the growth of Citizens. Citizens' policy count has gone from a low of 450,000 policies two years ago to around 800,000 policies now. What steps is Citizens taking to stem the growth within the residual market?

Gilway: We have two pieces of legislation this year, HB 1307 and SB 1728, that could serve to increase the number of policies taken out of Citizens. Right now, even if the company offers a decent rate to the insured, it's automatic opt out. They can just say no. With both the House and Senate bills, we're optimistic that if we can get this 20% rule -- meaning if it's within 20% of Citizens' rate, you must accept the takeout offer -- that would be advantageous. We're also addressing inspections. We are making sure if the policy comes to Citizens, it's a well-maintained property. And we're working to attract investors to Florida to create new insurance companies. I'm spending a lot of time with companies to try to attract capital and then working closely with them on their strategic plans to determine if we can align the policies to take out of Citizens. Until we change the depopulation program, it's going to be difficult to improve Citizens financials

Karlinsky: What are some of the causes of Florida's market turmoil and is there anything, in addition to what we did in SB 76 last year, that regulators can do to help improve the marketplace?

Gilway: The top three issues are litigation, litigation, and litigation. If you go back to 2013, there were 270,000 litigated property cases. We just ended 2021 with 957,000 litigated property cases. You must ask what's driving that? SB 76, I think, was a huge success. We tried to potentially preempt litigation with notice of intent that had to be provided to the insurance company 10 days prior to

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filing a lawsuit, and then provide 14 day for the insurance company to look at the damage. So far this year, litigation has dropped for the top 20 companies in Florida, from 6,600 litigated cases each month as of July to 3,300 litigated cases in December. Sen. Boyd is trying once again this year, since we were not successful last year in getting the contract solicitation language and fines

Dempsey: The auto insurance industry has pointed to bad faith litigation as one of the biggest cost drivers in the automobile insurance market. How is the Legislature considering dealing with bad faith litigation?

Karlinsky: Last year the Legislature passed a bill that would have changed the system that we have had in place for nearly 50 years in Florida, a no-fault PIP system intended to be a self-executing system where you do not have a lot of litigation. However, the PIP system in Florida is a broken system that works. People are still insured, even though we have a higher-than-we-want uninsured rate. Even though the bill passed overwhelmingly with bipartisan support in the House and the Senate, Gov. DeSantis vetoed the bill and the

insurance industry ultimately was aligned in the request for that veto, as were medical providers and hospitals. A bill similar to last year's bill has been introduced, and we'll see what path it takes. There is a vibrant and competitive automobile insurance marketplace in Florida. And while I think the Legislature will have a robust debate on this issue, look to see the

inevitable result that rates will go up because of exposure of bad faith and because of higher limits. Therefore, it is likely we will keep the same system in place.

ROLE OF BUSINESS INCENTIVES

Dempsey: What's the status of funding for economic development and business incentives?

Corbella: Incentives themselves have been under fire. There's been a lot of debate around what role state government should have in using taxpayer dollars to lure businesses to Florida. Under Gov. DeSantis' leadership, as well as the Legislature's, we're going to see a lot of "shovel-ready projects," transportation infrastructure projects that will create jobs in local and regional areas of the state. The governor has proposed nearly \$4 billion for highway construction, some \$1.5 billion for resurfacing roads, \$117 million for infrastructure improvements, and nearly \$300 million in aviation improvements. The state's ports are big priorities for Gov. DeSantis and the Legislature. Efforts are focusing more on projects that can result in more jobs for Floridians.

Dempsey: Historically, the Legislature has supported film production in Florida. But in the last several years, there has been no direct assistance or tax incentives for filming in the state. Do you think that will be debated this year?

Corbella: Both Sen. Gruters and Rep. Trabulsy have filed legislation for several years to try to revive the incentives for film and TV production in Florida. Florida has a famous tradition of TV shows and movies being filmed here going back to the 1920 and 1930s. When incentives ran out a few years ago, there was a lot of criticism that viewed handing out incentives to any industry as corporate welfare. But now there's a realization that it's important to consider some of these bills to help Florida get back in the game and compete against states like Georgia, where a lot of the movie business moved. I always tell people no matter how you feel about the film or TV industry, if you scratch off the shiny veneer of Hollywood, what's behind it is jobs. I'm talking tens of thousands of jobs, not only in the industry itself, but also in the broader economy. It will be interesting to watch and see how that debate goes this year.

ENVIRONMENTAL PRIORITIES: CLEAN WATER, AIR QUALITY AND RESILIENCY

Corbella: As someone who has spent her career advising businesses and governments on environmental regulations and policies, Kerri discuss

some of the governor's legislative priorities and their significance to Floridians once implemented.

Kerri Barsh: One of the priorities is what I'll call "phase two" of the implementation of the governor's Blue Green Algae Task Force. As you may recall, the initial phase of the task force recommendations was implemented pursuant to the Clean Waterways Act. There are currently bills in both the House and Senate that would require owners of on-site sewage treatment and disposal facilities to engage in periodic inspections. These bills also would require the Department of Environmental Protection to engage in its own inspections every five years. This second phase of recommendations, which aims to further improve water quality, has ripple effects that touch marine and boating industries whose livelihood is based on clean waterways, but also on tourism. This priority is reflected in dozens of appropriation bill in geographic areas throughout the state that seek funding for the conversion from septic tanks to sewer systems.

Another bill would establish an Office of Resiliency within the executive office and allow the governor to appoint a resiliency officer. Having an executive level officer would speak to the importance of resiliency and sustainability as a priority for the governor.

Corbella: Typically, we have over 3,000 bills filed every session. What are some of the other bills that have caught the attention of the attorneys in the environmental practice?

Barsh: With Florida's expanding population, increased need for infrastructure and challenges from sea-level rise, the focus now is on

protecting the state's natural resources, while allowing for growth. With this in mind, there are several bills that we are watching closely. One of them has a very catchy title, "Brownfields to Bright Fields." This bill would require the Department of Environmental Protection and the Department of Agriculture and Consumer Services to undertake a viability study to determine whether brownfield (environmentally contaminated) sites or closed landfills could be used for solar energy production. This bill speaks to the need to look for ways to repurpose our available land. As Florida has grown, there's less unimproved land, putting a premium on the ability to "repurpose" property that was previously idle or is not being utilized at its highest and best use.

Barsh: A bill that could impact commercial and industrial property owners would create a Toxic Mold Protection Council. The council would help formulate permissible exposure limits for indoor air quality, including mold. Mold is ubiquitous and naturally occurring, especially in a hot and humid climate like Florida's. So, establishing indoor air quality criteria that must be maintained before remedial action takes place is legislation to watch, especially if you're in the industrial or commercial space.

Another bill in the House and Senate would require a statewide vulnerability assessment in coastal counties like Miami-Dade, Broward, and Hillsborough to assess the effects of saltwater intrusion on water supplies, and then develop a preparedness plan to deal with these impacts. This legislation is important for all Florida residents and for businesses that rely on the water supply, which covers virtually everyone.

CYBER AND DATA SECURITY

Dempsey: Speaker Sprowls has expressed support for data privacy legislation, regarding personal information that's collected by private entities online, then either passed along to other private entities or sold to other private entities. Last year one of the bills had a private cause of action that would allow the consumer to sue an entity that had personal information and wasn't following the new guidelines. What's your take on what policymakers should consider when trying to strike a balance between citizens' data privacy rights without over-regulating?

Karlinsky: The legislation last year became a non-starter for a lot of people because of the private cause of action. In Florida, the big debate is twofold. No. 1, is there going to be a private cause of action? If you take that off the table, which many in both chambers may want to do, then the real issue is who would the legislation apply to? The governor and others have made a big distinction between tech companies or big tech, and companies that in business may have some data. But the debate is how you regulate the companies that are in business to mine and sell data versus the companies where that's an ancillary part of their business. Whether this proposed legislation makes the finish line remains to be seen. If it doesn't this year, it's going to keep coming back until the Legislature and the executive branch reach what they believe is a balance to protect the data of Florida citizens.

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STREAMLINING THE TAX SYSTEM

Dempsey: The income tax a corporation pays is based on not just the revenue, but also the company's payroll and owned property. It is probably unnecessarily complicated. What are your thoughts on the potential benefits of simplifying the corporate income tax structure and reducing the seven-year depreciation period?

Karlinsky: The state of Florida has done a great job over the last 11 years trying to cut as many taxes as we can. We're in the greatest fiscal shape that the state has ever been in. But we still do not see enough Fortune 500 and Fortune 100 companies domiciled here. I think the tax system that we have does not foster investment and economic growth. It would be great for the state to reconsider how those taxes are calculated and collected. I think the Legislature and the executive branch are willing to look at these issues from a business perspective and try to get to the right place, even if it becomes a little bit difficult from a PR standpoint on the front end. I am hopeful that the tax system and the depreciation schedule will become more business friendly over time.

What would you consider a home run from this legislative session for your clients?

Kerri Barsh: Either greater funding or other incentives for resilient infrastructure, because I think that's critical to Florida's future. Resiliency takes a lot of different forms. Whether it is protecting our essential infrastructure from flooding, hurricanes, sea-level rise, or the like, having resilient infrastructure in place to prepare Florida for the next generation is vital.

Gus Corbella: Legislation being looked at to expand broadband coverage, particularly in Florida's rural areas, is not only important for telecommunications and people having access to the Internet, but also for the economy of the future. Also, given our strong fiscal position, if we can keep healthcare cuts to a minimum, if not non-existent, that would be a big victory as well.

Hayden Dempsey: The pandemic has shown that having an educated workforce to fill vacant positions is critical. We can really excel in that area.

The governor and the Legislature have been promoting and funding non-traditional, non-four-year university career paths, and that's going to continue. Regarding healthcare, the top issues are the nursing shortage and dealing with the kinds of behavioral health and mental health problems that have been exacerbated by the pandemic. What would be a home run is the significant funding increases in the governor's budget that are critical for kids' mental health needs.

Fred Karlinsky: Outside of the insurance industry, to me a home run for the state would be to change almost nothing. If you had to describe where we are in the state of Florida, the governor has had a certain theme over the course of time, and it is working. The state's economy is booming. One of the things we need is to have less regulation in the state and less volatility, so that businesses feel welcome to come here because with businesses come jobs, and that means better opportunities for our citizens.