

LEGISLATIVE SESSION SCORED VICTORIES FOR CONDO OWNERS, BUSINESS COMMUNITY

by Samantha Joseph

With questions swirling on whether Florida legislators violated the constitution by not passing a balanced budget at the end of the regular 2015 legislative session, lobbyists on both sides of each hot-button issue are tallying their losses and gains.

For the business community, led by the Florida Chamber of Commerce, the shortened House session left several question marks on its 2015 legislative priorities list that spanned issues from education reform to tax cuts and move to quell lawsuits against businesses.

Chamber officials acknowledged multiple unresolved priorities but one major victory—passage of a chamber-backed infrastructure bill designating freight and logistics zones.

The bipartisan bill authorizes single or contiguous counties to designate geographic areas as freight logistics zones eligible for state funding and other economic incentives. Its sponsor, Lake Ray, R-Jacksonville, is a member of the Transportation and Ports Subcommittee. Co-sponsors were Daphne Campbell, D-North Miami, and Charles Van Zant, R-Keystone Heights.

Fifty local chambers from across the state joined the Florida Chamber in Tallahassee to support the House tax-cut package and advocate for pro-business legislation. But at the end of the session, a \$4.2 billion gap separated the House and Senate budgets primarily due to disagreements over health care spending and the House's opposition to expanding Medicaid to more than 800,000 Floridians.

The Senate continued its session after the House's early adjournment, even though any bills passed during that period are likely to die, and lawmakers will have to convene a special session to approve the state's budget before July 1.

But despite only a moderately successful session, some advocates say legislators corrected several areas of "bad public policy."

"The bottom line is we're very, very happy with the way the session turned out," said Paul D. Jess, deputy executive director and general counsel of the nonprofit Florida Justice Association.

One of its biggest victories came with the death of insurance industry-backed House and Senate bills by Rep. John Tobia, R-Melbourne



Jason Kellogg

Beach, and Sen. Dorothy Hukill, R-Port Orange, that would limit homeowners' ability to assign insurance benefits to contractors.

Homeowners can assign property insurance benefits to contractors doing repairs, but insurers say padded bills have led to hundreds of lawsuits from disgruntled contractors looking to collect exorbitant sums.

The Florida Justice Association

sided with the contractors, arguing that current policies give homeowners the freedom to let professional contractors deal with insurance companies, rather than having to fight to wrangle benefits.

The bills, which would add a blanket provision to limit insurance assignments, died in committee.

“That was a major victory for us,” Jess said.

Another victory came when a bill, which would exclude some medical bills and limit insurance damages claimed after injury, passed on a divided vote in the House Civil Justice Committee but never got a hearing in the Senate and died relatively early in the session.

“Liability insurance companies have a responsibility under Florida law to settle claims in good faith,” Jess said. “They wanted a provision that they called a safe harbor, but actually what it would have been was a get-out-of-jail-free card.”

Meanwhile, for real estate investors, legislation that could alter property taxes in Miami and change the way bulk condo buyers operate were among the most-watched issues.

A move by Miami’s semi-autonomous Downtown Development Authority to solidify its position as a taxing authority passed the Florida House and is headed for Scott’s approval. The DDA has collected taxes for about five decades, but a lawsuit to question its standing as a taxing agency led the group to seek clarification from state lawmakers. A nod from Scott would solidify that group’s standing to collect property taxes as Miami’s booming real estate sector attracts increasingly wealthy buyers.

Meanwhile, proposed legislation approved by both the House and the Senate would force bulk condominium buyers to pay a premium to holdout owners. The engrossed bill, now headed to Gov. Rick Scott for approval, would require bulk buyers to pay holdout owners 110 percent—either of their purchase price or fair market value, whichever is greater.

It represents legislators’ latest attempts to correct unintended consequences of a policy change eight years ago.

Before 2007, bulk buyers needed a 100 percent vote from owners in order to terminate a condo association and gain control of a property. Deals crumbled easily if even one holdout owner refused to sell or leave. In 2007, just before the housing crash, the Florida Legislature changed the rules to allow termination if more than 80 percent of unit owners voted in favor and less than 10 percent objected.

But the economic recession created unanticipated pitfalls when investors swooped in to acquire bulk units in distressed projects, forcing struggling condo owners who bought at the height of the market to sell for massive losses and continued debt when their mortgages were underwater.

“Bulk buyers were very important to the economy because they were propping up the condo market,” said Jason Kellogg, a partner at Levine Kellogg Lehman Schneider & Grossman in Miami. “But it created all this tumult for consumers.”

The proposed law would maintain the 80-10 voting split to terminate condo association, but with added protections for unit owners. A vote

against termination would prevent future bulk sales for at least 18 months.

After a sale, owners of investment units could continue to rent their condos for up to 12 months to preserve their income stream, while residents with a homestead exemption would get a 1 percent relocation fee from the buyer.

The new law would also wipe out further mortgage commitments for unit owners who are current on mortgage payments and condominium association dues at the time of the sale.

Unlike the old law, which often left unit owners vulnerable to foreclosure actions to recoup deficiencies between the selling price and mortgage balance, the new law requires the fair market value payment to automatically satisfy the mortgage.

“The entities taking the brunt of the hit on this are the banks and the lenders, but the time is finally right for this to happen,” Kellogg said. Financial industry lobbyists appear willing to compromise in a strengthening market where rising property values will likely limit their losses on such deals, while freeing them from litigation against struggling borrowers.

But observers like Kellogg see potential for a new unintended consequence: alliances between bulk buyers who each purchase enough units to influence the termination vote without having to abide by the new proposed rules for bulk purchases.

“You could almost see joint ventures develop between separate bulk buyers,” he said.

Samantha Joseph can be reached at 954-468-2614.