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BILL WATCH

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2018 Legislative Session Wrap-Up

Good Morning. The Florida Legislature met yesterday afternoon in a rare Sunday session to take a formal vote on the last bill of the 2018 session – the budget for the 2018/2019 fiscal year that begins July 1. With its approval, the session is now over, and legislators can return their attention to their re-election campaigns. All 120 seats in the House will be on the November ballot, and 22 of the 40 seats in the Senate will be up for election. The Governor and the three cabinet members (CFO, Attorney General, and Agriculture and Consumer Affairs Commissioner) are also on the November ballot.

The session was scheduled to end this past Friday but disagreement over how to distribute \$318 million in Medicaid funding to Florida hospitals (hospital lobbyists were fighting “like hyenas over a static amount of money” chided the Senate’s budget chief, Senator Rob Bradley) delayed a final budget vote until yesterday.

The new budget is \$88.7 billion, \$3.8 billion (4.4%) more than the current year’s budget. It’s \$1.4 billion more than the Senate originally proposed spending and \$1.5 billion more than the House’s initial plan, but changed dramatically after the Parkland school shooting. The budget now includes an unplanned \$400 million for school safety enhancements and mental health programs, along with a variety of other “extras”. The largest increase - \$1.5 billion – was in the area of emergency management, much of it toward hurricane preparedness in response to lessons learned from Hurricane Irma. The budget now goes to the Governor who can exercise line-item veto power to trim the spending plan.

Budget items of interest to insurers include a \$3.6 million study of coastal sea level rise, \$327,000 for a study of coastal flood hazards, and \$15 million for a three-dimensional map of the entire state. The 3-D map would use LIDAR technology to provide much improved flood-risk and other data for emergency management officials. Our current maps haven’t been updated in more than 20 years. (More details below in the Hurricane Irma Impacts section.) A bill to keep Florida on Daylight Savings Time year-round, is also on the way to the Governor.

The legislature also passed a proposed \$168.6 million tax package that further reduces the business rent tax (commercial-lease tax) by another 0.1 cents, following last year’s 0.2 cents decrease. There’ll also be another sales-tax holiday in early August for back-to-school items. They also passed a measure that if approved by Florida voters on this November’s ballot, would require future legislatures to have a two-thirds vote of both chambers before imposing statewide tax increases.

We’ve added two brief sections in this Bill Watch on children’s issues and transportation issues. Without further ado, here are the winners and losers from the now-completed 2018 Florida Legislative Session in this wrap-up edition of **Bill Watch**:

Assignment of Benefits (AOB) – REFORM FAILED. While it was doubtful from the very start of this legislative session that meaningful reform would occur on this critical insurance consumer issue, the gun control debate pushed this issue the rest of the way out of the picture. So this will make the sixth year in a row that the Florida legislature failed to take action to reform obvious and growing AOB abuses. The

Florida Senate's version of AOB reform, [SB 1168](#) by Sen. Greg Steube (R-Sarasota), didn't make it before its final committee and thus didn't go to the full Senate for a vote. While the House passed its version of AOB reform in early January with [HB 7015](#) by Rep. Jay Trumbull (R-Panama City), the two bills were far apart on the key issue of attorney fees. The House bill established special two-way attorney fees for third-party claims while the Senate bill kept in place the one-way attorney fees that insurers and regulators blame for the AOB abuse and rising claims costs – and resulting rate increases. Compromise among insurance, legal, and contractor interests never happened this session. So special interests prevail over consumer interests, with abuse by bad actors who will continue to pocket ill-gotten gains.

See [Bill Watch Backgrounder: Assignment of Benefits](#) for more details on the history of AOB reform and these 2018 bills, the latest data, and past committee and stakeholder discussions.

A MODEST CHANGE TO AOB PRACTICE WAS PASSED BY THE LEGISLATURE. [HB 465](#) by Rep. David Santiago (R-Deltona), is on its way to the Governor for signature. This omnibus insurance bill changes several provisions of the insurance code. It contains an AOB provision that mediation may be requested only by the policyholder, as a first-party claimant; a third party, as assignee of the policy benefits; or the insurer. However, an insurer is not required to participate in any mediation requested by a third party assignee of policy benefits. Rep. Santiago has been a champion in the fight against AOB abuse for the past several years. Among other provisions in the bill:

- The addition of the Intelligent Mail Barcode or other similar tracking methods used or approved by the United States Postal Service as an acceptable delivery method under a policy's proof of mailing requirement;
- An exception from valuation rules for stocks in subsidiaries for certain foreign insurers under certain conditions;
- Revising requirements for rules adopted by the Department of Financial Services and the Financial Services Commission relating to the privacy of certain consumer information; and
- Revising the definition of the term "specialty insurer" to include viatical settlement providers.

Windshield AOB – REFORM FAILED. Likewise, Windshield AOB reform through Senator Dorothy Hukill's [CS/CS/SB 396](#) didn't make it before its final committee and thus didn't go to the full Senate for a vote. The bill would allow auto insurers to require an inspection of a damaged windshield of a covered motor vehicle before the windshield repair or replacement is authorized. The bill addresses what Sen. Hukill has called “the proliferation of damaged windshields in Florida by bad actors, waiting in parking lots and car washes, offering free windshields and incentives for their services, whether needed or not, and it's driving up costs.” The bill includes requirements that the inspection take place within 24 hours from the notice of a claim – but must be skipped if the damage has impacted the vehicle's structural integrity or otherwise would be a violation to drive on the roadway. The bill is also meant to cut down on the number of AOB lawsuits by out-of-network windshield shops. Those lawsuits, according to the state Department of Financial Services, have grown from 397 in 2006 to 19,513 in 2017.

Workers' Compensation – REFORM FAILED. Despite being fast-tracked by the Florida House, the Senate never produced a formal bill. Business groups' support of the House effort has been lukewarm, saying it could be “premature and ultimately, inadequate” especially in restricting attorney fees. The House, on January 12, passed [HB 7009](#) by Rep. Danny Burgess (R-Zephyrhills). It's a near replica of [HB 7085](#) from last session that died over disputes on maximum hourly attorney fees. This was one of the most contentious – and by court rulings, most immediate – issues facing the legislature after the state Supreme Court's 2016 ruling that our workers' comp system was unconstitutional.

Recent statistics do show increases in workers' comp legal fees, as [previously reported in the LMA Newsletter](#). Rep. Burgess said it was important to be proactive and pass reforms now, before the next rate increase. The bill eliminates fee schedules but puts a cap of \$150/hour on plaintiff (workers) attorney fees.

Workers' Compensation for First Responders – PASSED. At the Ringing of the Bell ceremony for Florida's fallen firefighters last week, Governor Scott said he plans to sign [CS/SB 376](#) by Senator Lauren Book (D-Plantation), increasing mental health benefits for first responders. The House unanimously approved the bill last Monday following Senate passage the week prior. The bill removes the requirement on some first responders that there be a physical injury in some circumstances in order to receive medical benefits, as well as lost wages, for a "mental or nervous injury", so long as the responder witnessed a specified traumatic event. These efforts are inspired, in part, by the city of Orlando's refusal to pay such benefits to a police officer reportedly diagnosed with PTSD after responding to the Pulse nightclub shootings.

Personal Injury Protection (PIP), also called No Fault Insurance – FAILED. The third of the big three insurance issues this legislative session (joining AOB and Workers' Comp reforms) was allowed to die, following a directed drama that played out before a Senate committee two weeks ago. It included a well-orchestrated effort by some insurance industry groups to kill the Senate version of PIP reform, [CS/SB 150](#) by Senator Tom Lee (R-Brandon). The feeling is that the juice isn't worth the squeeze in repealing PIP right now, without including meaningful protections from bad faith lawsuits that would likely go with the territory of returning to a tort system. The bill would eliminate PIP and would require motorists instead to carry Bodily Injury liability insurance, along with MedPay. The House passed a similar bill (but without MedPay) on January 12 with passage of [HB 19](#).

See [Bill Watch Backgrounder: Personal Injury Protection](#) for more details on the history of PIP reform and these 2018 bills, the latest data, and past committee and stakeholder discussions.

Hurricane Irma Damage – The legislature spent considerable time this session advancing specific recommendations by the House Select Committee on Hurricane Response and Preparedness following Hurricane Irma. Included are a number of evacuation-related proposals, including using passenger rail to evacuate citizens and looking at converting portions of highways during emergencies into all one-way traffic, a process known as "contraflow." Here's more on some specific bills and directives:

Tax Exemptions Related to Hurricane Response, Recovery, and Future Preparedness – PASSED. [HB 7087](#) is an omnibus tax package that creates several tax exemptions related to hurricane response, preparedness and recovery including:

- Sales tax exemptions for farms damaged by 2017 hurricanes for building materials used to repair nonresidential farm buildings and farm fencing.
- Refund of taxes on fuel used for agricultural shipments post Hurricane Irma.
- Citrus processing and packing equipment not being used will be assessed at the salvage value for the 2018 property tax.
- Agricultural property taken out of production can retain an agricultural classification for property tax purposes for five years.
- Residential homestead property damaged by a natural disaster is eligible for a refund of taxes paid.
- Documentary stamp tax exemption for emergency loans.
- Sales tax exemption for generators purchased for a nursing home or assisted living facility.

- A seven-day “disaster preparedness” sales tax holiday from June 1 to June 7, 2018, for disaster preparedness supplies. Tax-free items include: flashlights and lanterns costing \$20 or less; radios and tarps costing \$50 or less; coolers costing \$30 or less; and, generators costing \$750 or less, among others.

Affordable Housing – HB 7087 also included elements of a Hurricane Housing Recovery Program and a Rental Recovery Loan Program to provide Florida residents funding for emergency housing and repairs after hurricanes. The programs would be funded by a 20% allocation (about \$62 million this year) of the state’s existing Sadowski Affordable Housing Trust Fund.

Health Care Disaster Preparedness & Response – **FAILED**. A revamped [HB 7085](#) by Rep. Ralph Massullo (R-Beverly Hills) passed the House unanimously this two weeks ago and was sent to the Senate but never considered. The bill addresses the shortage of special needs shelters during Hurricane Irma and expands the list of people – including health care students and college professors – who can help provide care during disasters. The bill directs the state Department of Health, in coordination with the Division of Emergency Management and local emergency management agencies, to maintain a statewide registry of persons with special needs; requires nursing homes, assisted living facilities, home health agencies and nurse registries to have an emergency management plan & to conduct staff training; reassigns responsibility from DOH to AHCA for establishing & maintaining online database for licensees providing residential or inpatient services to report information regarding emergency status, planning, & operations; and requires licensees to provide for continuation of services under emergency conditions.

Trash Pickup – **SHELVED**. A week before the scheduled end of session, Rep. Randy Fine (R-Palm Bay) announced he was withdrawing from further consideration his [CS/HB 971](#). Fine said he has reached agreement with major municipal trash hauler Waste Management and will not pursue the bill this year. The bill would prohibit a municipal or private garbage service from charging customers for missed trash pickups, unless the trash is removed within four days of the normally scheduled date. A House committee had earlier removed telecommunications companies from the bill – they would have been prohibited from charging their customers for service that was interrupted for longer than 24 consecutive hours, unless it was the customers fault.

Underground Utilities – **PASSED**. Legislation ([HB 405](#)) was presented to the Governor this past Friday giving the state Public Service Commission the sole ability to require underground transmission lines. The move ends a court battle of home-rule by Miami-Dade County that wanted the right to determine underground transmission lines when it was reviewing FPL’s plans to add two nuclear reactors to its Turkey Point Generating Station. Senator Tom Lee, who had sponsored a companion bill in the Senate ([SB 494](#)), said the measure makes changes that essentially revert the siting process to what it had been for 45 years prior to the court ruling.

Nursing Home Emergency Power – **PASSED**. Despite having no funding bill out of concerns for the multi-million dollar cost, the House joined the Senate this past Friday in approving two Senate bills – [SB 7028](#) and [SB 7030](#) – that respectively would require assisted living facilities and nursing homes to have backup generators and 72 hours of fuel to power them in the event of another hurricane or other outage. The measures come with a big price tag of \$243 million for taxpayers over the next five years. The money will fund the venture for the state’s 3,000 Assisted Living Facilities, which unlike nursing homes, cannot offset the costs with Medicaid funding. The new rules replace the emergency rules the governor issued last September following the deaths of residents of a Hollywood nursing home that lost its air-conditioning system during Hurricane Irma.

Fuel Emergencies – **FAILED**. [CS/HB 7083](#) featured a number of the recommendations made in the House Select Committee on Hurricane Response and Preparedness report, with the primary focus though on better fuel delivery to Floridians during time of crisis, but was never adopted by the Senate. The bill would have required that a study be completed by July 1 that would outline how rail tank cars and mobile fuel transfer systems could be used as temporary storage and dispensing facilities for motor vehicle fuels before, during, and after a hurricane. The measure was prompted by the run on gas and various shortages that occurred during the evacuation from South Florida during Irma

And FAILED: [CS/CS/HB 553](#), a House omnibus bill on regulations by the Department of Agriculture and Consumer Services. This bill would empower the state agriculture commissioner to lower gas prices during an emergency. The measure's specific intent is to require gas stations that run out of lower octane fuel to then sell their higher octane fuels at the lower octane price. In a prior committee meeting, a representative from the Florida Petroleum Marketers Association said the measure would place Floridians at greater risk of predatory pricing in the longer term, because the big oil companies can afford to sell 93 Octane gas at 87 Octane prices while the smaller mom and pop operators cannot.

Governor Directives - Governor Scott in early February issued a series of directives to state agencies, mostly the Department of Transportation, to begin immediate work implementing some of the House Select Committee report's recommendations. The legislature **PASSED** a \$1.5 million appropriation for a feasibility study of extending the Suncoast Parkway from Crystal River in Citrus County to the Florida-Georgia border, to provide an additional hurricane evacuation route. A 13-mile extension into Citrus County is under previous construction; an additional 15-mile extension beyond that is on the books but is currently unfunded.

The Governor directed the DOT by this July, to identify areas along major evacuation routes where more fuel services are needed and look at options to expand fuel capacity for first responders. Other directives include expanding emergency shoulder use along key interstates, a strategy used during Irma last September as traffic backed up while motorists fled north on I-75 ahead of the storm. The Governor also directed that cameras and message signs be installed along I-75 from Ocala north to the Georgia state line and enhancements be made to the state's "Florida 511" traffic information website for motorists. The DOT's previous review suggested emergency shoulder plans for I-75 northbound from Alligator Alley in Fort Lauderdale; on the turnpike northbound from Orlando; on Interstate 95 northbound from Jupiter to south of Jacksonville; and on Interstate 10 westbound from I-75 to just east of Tallahassee.

The House Select Committee on Hurricane Response and Preparedness issued its final report on January 16 with 78 recommendations to make Florida a safer and better prepared state when the next big hurricane hits. [The report's](#) full list of 78 recommendations are in Appendix 3 beginning on page 43.

Hurricane Flood Insurance – **PASSED**. There are other bills prompted by Hurricane Irma's aftermath. [CS/CS/HB 1011](#) by Rep. Janet Cruz (D-Tampa) is on its way to the Governor for his signature. The measure was prompted by two realities: upwards of 60% of Irma's damage here was caused by water and up to 80% of Florida flood victims may not have either NFIP or private flood coverage. The bill would require homeowners insurance policies that do not include flood insurance (most don't) to so declare and would require policyholders to initial that declaration in acknowledgment.

Florida Hurricane Cat Fund – **FAILED**. An effort to return a portion of property insurance premiums to policyholders during quiet storm years failed for this session. [SB 1454](#) by Senator Jeff Brandes (R-St. Petersburg) passed its first hearing on February 20 before the Senate Banking and Insurance Committee but ran out of time and a last minute effort to amend its language onto another bill last week ultimately failed. Like the House bill below, it would accomplish savings, but more quickly, by eliminating the rapid

cash build-up factor resulting in immediate rate savings. “This bill is eliminating a hurricane tax on hardworking Floridians,” said Senator Brandes, during committee.

The House bill, [CS/HB 97](#) by Rep. David Santiago (R-Deltona) didn’t make it before its final committee and thus didn’t go to the full House for a vote. The bill, as does the Senate’s, addresses the growing balance – until Hurricane Irma - of the Florida Hurricane Catastrophe Fund. The Fund provides reimbursements to insurers for a portion of their catastrophic hurricane losses. Insurers pay premiums into the fund each year and pass the costs along to their policyholders, just like reinsurance. But in quiet years, the fund has grown beyond its current statutory requirement of \$17 billion, prompting the question: Should you reduce collections and thereby reduce premiums to policyholders?

Direct Primary Care – PASSED. The Senate last week passed the House’s [HB 37](#) by Rep. Danny Burgess (R-Zephyrhills), a cooperative effort with [CS/SB 80](#) by Senator Lee. It now awaits the Governor’s signature. Informally dubbed “concierge medicine for the masses”, the bill allows doctors to enter into monthly fee for service arrangements directly with individuals or employers, essentially bypassing health insurance organizations. Burgess, in explaining the bill on the House floor, said a lot of doctors don’t enter direct primary-care agreements because of regulatory uncertainty. The bill makes clear that direct primary care is not subject to insurance regulations. It requires direct primary-care contracts to be in writing and to describe the scope of services that would be covered. Primary care providers are defined as physicians, osteopathic physicians, chiropractors, nurses or primary-care group practices.

Rep. Burgess said the agreements are more affordable than insurance (typically costing about \$75 month) and co-sponsor Rep. Mike Miller (R-Winter Park) said the bill gives the “ultimate decision-making process” to doctors and patients. “We’re trying to lower the cost of health care and improve the outcomes,” he said. HB 37 is one of the five most-lobbied bills in the legislature according to a [recent report](#) by the Tampa Bay Times.

Health Insurer Authorization – FAILED. While [CS/CS/SB 98](#) by Senator Steube was passed by the Senate on January 31, its House companion [CS/CS/HB 199](#) by Rep. Shawn Harrison (R-Tampa) didn’t make it before its final committee and thus didn’t go to the full House for a vote. The bills collectively would require insurers and Medicaid HMOs to approve or deny prior authorization requests as well as appeals from denials of care within three days in non-urgent situations and one day if the care is urgent. It would also prohibit prior authorization forms from requiring information not necessary to determine the medical necessity or coverage for a treatment or prescription. Health insurers and their pharmacy benefits managers would also have to provide requirements and restrictions on prior authorizations in understandable language and to make them available on the internet, along with a 60-day notice of any changes. It also defines “step therapy” and prohibits insurers and HMOs from requiring patients repeat step therapy protocols.

Payment of Health Care Claims – FAILED. While Senator Steube successfully passed his [SB 162](#) that would prohibit health insurers and HMOs from retroactively denying insurance claims under certain circumstances, its House companion, [HB 217](#) by Rep. Bill Hager (R-Delray Beach) never reached its final committee stop. The bills would require that insurers verify a patient’s eligibility at the time of treatment to avoid doctors performing services that are later denied with insurers demanding repayment from the doctor or patient. The debate on the House bill at least, turned into a debate on the federal Affordable Care Act (Obamacare) because the bill would apply to policies both on and off the federal exchange.

Telehealth – FAILED. Efforts to bring telemedicine to full fruition failed yet again this legislative session. [CS/SB 280](#) by Senator Aaron Bean (R-Fernandina Beach) passed the Senate on March 2, but the House

never took up the bill. The House counterpart, [HB 793](#) by Rep. Massullo, was filed in late November and never received a hearing. The bills are part of a continued effort to put remote health practitioner visits via the internet on an equal footing as in-office visits, in order to reduce health costs and provide parity of care to rural patients. A state panel in 2016 executed a list of legislative directives to help smooth the kinks and establish recommended procedures to help make these bills a reality. SB 280 would establish the standard of care for telehealth providers; encourage the state group health insurance program to include telehealth coverage for state employees; and encourage insurers offering certain workers' compensation and employer's liability insurance plans to include telehealth services. The bill would also ban the use of telehealth for prescribing controlled substances to treat chronic or nonmalignant pain or for certifying patients for medical marijuana treatment.

Texting While Driving – FAILED. Senate Appropriations Chairman Rob Bradly (R-Fleming Island) stalled his chamber's version of the bill, effectively killing it. It would move Florida's current ban on texting while driving from a secondary offense (where you can be ticketed during a traffic stop made for another reason) to a primary offense. Senator Bradley has been quoted as having serious privacy concerns over [SB 90](#) by Senator Keith Perry (R-Gainesville), given that police would ultimately have to inspect a driver's cellphone to prove someone was texting. Bradley, a former prosecutor, felt enforcement of the proposed law would create 4th Amendment rights issues and likely lead to lawsuits. The House passed its counterpart, [CS/CS/HB 33](#) by Rep. Jackie Toledo (R-Tampa) by a vote of 112-2. Both bills included a requirement that the driver's race and ethnicity be recorded by law-enforcement officers when ticketing for texting while driving, out of concerns about racial profiling of minorities. Under the bill, first-time violators would face a \$30 fine plus court costs for a non-moving violation. Second-time offenders would face a \$60 fine plus court costs with a moving violation. Those involved in crashes or texting in school zones face additional penalties. Both bills require the officer notify the driver of the constitutional right not to have their cellphone examined by authorities. Neither applies to stationary vehicles. Florida is one of four states where texting while driving isn't a primary offense.

Controlled Substances – PASSED. This is the bill that almost didn't pass and only did when the Senate leadership late Friday agreed to loosen its requirement that only a specific medication-assisted treatment drug be used in Opioid addiction therapy. [HB 21](#) by Rep. Jim Boyd (R-Bradenton) passed both chambers unanimously Friday night and limits prescriptions for opioids in response to the statewide crisis of opioid abuse and overdose deaths. The bill would limit those with acute pain to a three-day supply. Doctors could go beyond that to a seven-day prescription for those determined medically necessary and the doctor would be required to write "acute pain exception" on the prescription. Patients with cancer or terminal illnesses and certain trauma patients would be exempted from prescription limits.

The bill requires two-hours of continuing education for those prescribing opioids and participation in the Prescription Drug Monitoring Program. It specifically requires doctors to check the database before writing prescriptions, to avoid enabling "doctor shopping" multiple-prescription patients.

The legislature is providing \$53.5 million for the treatment and prevention of opioid addiction. Included is nearly \$1 million to beef-up the above database so that it seamlessly links to doctors' electronic records. \$14.6 million of the total will go toward increasing access to treatment and reducing waitlists, along with expanding residential, outpatient, case-management, and a variety of medication-assisted treatment options. Another \$6 million will go to the Office of State Court Administrator for medication-assisted treatment for probationers and \$5 million to the Florida Department of Health for emergency opioid counteragent drugs to be made available to emergency responders for use in overdoses.

HB 21 is the most-lobbied bills in the legislature according to a [recent report](#) by the Tampa Bay Times.

Trade Secrets in Public Records – FAILED. [CS/HB 459](#) & [CS/HB 461](#) by Rep. Ralph Massullo (R-Beverly Hills) passed the House on February 21 but were never taken up by the Senate. The bills together eliminate trade secrets and its various definitions found in statutes and then restore them under a uniform definition and treatment. On February 16, three additional amendments were filed by Rep. Massullo, one of which would keep in place the bill's proposed elimination of public records exemptions for certain information that might reveal trade secrets held by the Department of Legal Affairs but take out previously proposed elimination of similar public records exemptions for trade secrets held by the Office of Insurance Regulation and future trade secret documents submitted to the Department of Financial Services or the Office of Insurance Regulation.

CS/HB 459 has companion [SB 956](#) and similar bill [SB 958](#) (both filed by Senator Mayfield in November) and CS/HB 461 has a similar bill in SB 958. Neither Senate bill ever had a hearing. HB 37 is one of the five most-lobbied bills in the legislature according to a recent report by the Tampa Bay Times.

Other Issues of Interest this Session

Transportation Issues - During our work in the legislature this session, we were part of a coalition dealing with a transportation issue. So many of you are Floridians and spend time up and down Interstate 4 which is the main thoroughfare between Orlando and Tampa. For those of you who make that I-4 trip routinely, you will understand why we are working on some transportation issues! Not many legislative proposals were successful but the conversation is fierce between managing Florida's nearly 21 million population and its 14 million cars, not including the 100 million annual visitors and their vehicles. [Click here](#) if you would like to catch up on transportation facts as discussed by the Director of Florida's Metropolitan Planning Organizations (MPO).

Children's Issues - There was a flurry of child welfare and social services discussion in the waning days of the legislative session. The Parkland tragedy certainly seemed to focus attention on the greater needs to Florida's children. We wanted to include this [review of children's bills](#) as of last Monday, provided by our friends at The Children's Campaign.