



2009 Legislative Report May 18, 2009

The Manufacturers Association of Florida (MAF) lobbied and monitored a wide variety of proposed bills this year, as well as appropriations issues. We worked closely with our member organizations and companies as well as allied associations and others to accomplish mutual goals.

This report was compiled from personal knowledge, actual bill language, the 2009 *Session Summary of Legislation Passed* by the Florida Senate, and LobbyTools, Inc. With one exception, the report does not reflect the Governor's action on these bills. The bills will not become law unless the Governor expresses his approval. To check whether or not these bills have become law, visit www.leg.state.fl.us.

The laws and appropriations chosen for this report were:

- a) issues MAF monitored or lobbied;
- b) thought to be of interest to MAF members' overall business operations;
or
- c) for general knowledge of new laws that could have an impact on manufacturers' businesses.

The membership of MAF was taken into consideration when reporting on bills. However, this report is not intended to be a complete report of all the changes in law affecting the business of manufacturers.

Regular Session of the Florida Legislature

The Regular Session of the Florida Legislature convened on Tuesday, March 3, 2009 and adjourned on Friday, May 8, 2009. During the Regular Session there were 2,065 general bills filed for the Session and 235 general bills passed by both Chambers and sent to the Governor. MAF monitored 181 of the bills filed. The Florida Legislature also passed a \$66.5 billion state budget for 2009-2010 to the Governor for his approval.

MAF's Role

MAF took a high profile role this Session, particularly on the issue of sales tax exemptions. Manufacturers have approximately 15 sales tax exemptions they enjoy and all of them were on the "chopping block" this Session. MAF testified over and over again in the House and Senate against the repeal of these exemptions and also testified on behalf of the water bottling manufacturers to help them retain their exemption, as well as to avoid a severance tax on water.

The foresight that MAF members had in commissioning a study of manufacturing tax exemptions and their impact on Florida's economy was brilliant. As legislators continued to ask for facts on why specific sales tax exemptions should be retained, the facts were available to them on the manufacturing sales tax

BOARD MEMBERS

Platinum

Mosaic Company
PCS Phosphate-White Springs
Swisher International, Inc.

Silver

Florida Mfg Extension Partnership
Florida Power & Light
Hoerbiger Corporation of America
Mitsubishi Power Systems America
Progress Energy

Bronze

Atlantic Marine Holding Company
Crowe Horwath LLP
CSX Transportation
Enterprise Florida, Inc.
Fuchs Lubricants Co.
Knight's Armament Company
Lockheed Martin
Tropicana Products, Inc.

Associations

Bay Area Manufacturers Association
Capital Region Manufacturers
First Coast Manufacturers Association
Florida Minerals & Chemistry Council
Florida Sterling Council
Manufacturers Association of Central
Florida
Marion Regional Manufacturers
Association
Sarasota-Manatee Manufacturers
Association
South Florida Manufacturers Association
Southwest Regional Manufacturers
Association

PARTNERING ORGANIZATIONS

Associated Industries of Florida, Inc.
FLATE Florida Advanced Technological
Education Center
Florida Biofuels Association, Inc.
Florida United Tax Managers Association
Space Florida

exemptions because of the TaxWatch study entitled *Economic Impact Analysis of Florida's Manufacturing Sector, March 2009*.

Once legislators agreed that repealing the sales tax exemptions was unwise, MAF was able to move on to an offensive position. Based on input from MAF leaders, we proposed a two-year sales tax exemption for all manufacturing machinery and equipment purchased to produce tangible personal property for sale, provided the purchase was more than \$5,000. No individual taxpayer could receive more than \$50,000 in sales tax refunds, and the program was capped at \$2.5 million/year, first come first served. Rep. Ellyn Bogdanoff was our biggest supporter, with Rep. Jim Waldman taking the lead on the issue for the House Democrats. (The House Democrats' support came as a result of the TaxWatch study.) This proposal passed the House of Representatives, but the bill died in the Senate.

Another one of our priority issues was passage of the conversion of the SIC code to the NAICS code in the municipal utility tax law in order for municipalities to waive utility taxes to retain or recruit businesses. Working together with the First Coast Manufacturers Association and their legislative delegation, primarily Sen. Jim King, Rep. Jennifer Carroll, and Rep. Lake Ray, we were ultimately successful in passing the provision.

In the appropriations arena, MAF set out to preserve worker training funding and again we were successful. In 2008 the Legislature approved \$2 million for Incumbent Worker Training (IWT) and \$5 million for Quick Response Training (QRT) for a total of \$7 million. This year proposals were \$2-\$4 million for Incumbent Worker Training and \$0-\$2 million for Quick Response Training. In the end, through our work with Rep. Audrey Gibson, Sen. Mike Fasano and Sen. Tony Hill, the Legislature approved \$2 million for IWT from the state, \$2 million for IWT from federal stimulus money and \$3.3 million for Quick Response Training for a total of \$7.3 million for 2009-2010. Since manufacturers use the majority of this training money, this was of particular importance to us.

MAF also took a lead role on SB 114/HB 1229 on Contaminated Sites. Throughout the session we worked with sponsors, other lobbyists and the Department of Environmental Protection to craft a bill that we could live with, should it pass. While we had come to a compromise by the end of session on the issues, in the end the measure failed.

Some of the other issues on which we spent time lobbying included the lease fees for submerged lands, workers compensation insurance, economic development bills important to the economic development coalition, secret ballot, extended permits, incentives for capital investment, property taxes, offshore oil and gas exploration, and corporate income taxes.

Following are bills of interest to manufacturers that passed.

Bills of Primary Interest that Passed

HB 73 Enrolled –Economic Development Project Expedited Permitting

This law provides an expedited permitting process for specific economic development projects that have been identified by a municipality or county as a “target industry” business. Wetland resource and environmental resource permits issued by the Florida Department of Environmental Protection (FDEP) or the water management districts would be eligible for expediting, except those requiring approvals by the Trustees of the Internal Improvement Trust Fund. Permits for projects in a charter county, with a population of 1.2 million or more that have entered a delegation agreement with FDEP or a water management district, are eligible for expedited permitting upon resolution by the charter county governing board based on whether or not the business is a “target industry” business. The effective date is July 1, 2009.

CS/CS/HB 127 Enrolled – Enterprise Zones

This bill allows the City of Ocala to apply for enterprise zone status for the city’s west end, up to 5 square miles. The effective date is January 1, 2010.

CS/CS/HB 227 Enrolled – Impact Fees

As many of you are already aware, local governments are increasingly imposing impact fees to fund their sagging budgets. This law provides that in any action challenging an impact fee the government has the burden of proving by a preponderance of the evidence that the imposition or the amount of the fee meets the requirements of state legal precedent. The court may not use a deferential standard. The effective date is July 1, 2009.

CS for SB 344 Enrolled - Safety Belt Law

Previously, you could not be stopped by police for failing to wear a seat belt, but could be ticketed for it if there was another violation at the same time; with passage of this bill you now can be stopped and ticketed for not wearing a seat belt. The effective date is June 30, 2009.

CS/CS/SB 360 Enrolled – Growth Management

This bill modifies growth management laws, transportation and school concurrency requirements, affordable housing provisions, and permitting requirements for permits obtained under the Manage and Storage of Surface Waters section (Part IV) of Chapter 373, F.S. The revisions are intended to stimulate development and ease permitting burdens.

Chapter 373 Part IV permits issued by the Florida Department of Environmental Protection or a water management district having an expiration date of September 1, 2008 through January 1, 2012, are extended and renewed for a period of two years following their date of expiration. This extension includes local government-issued development orders. Permit holders opting to use the extension must notify the agency no later than December 31, 2009. Exceptions to the permit extension include Army Corps of Engineers permits, a permit in

noncompliance, or a permit that would delay or prevent compliance with a court order. The bill is effective upon becoming a law.

CS/CS/HB 485 Enrolled – Fast Track Economic Stimulus for Small Businesses

This bill creates state tax credits for corporate income tax and premium insurance tax for private investments through a Qualified Community Development Entity in businesses within low income communities. The cap on Florida tax credits is \$97.5 million over 7 years and the tax credits can be carried forward for up to 5 years. The credits can be claimed beginning in the program's third year. The program expires December 31, 2022. Investors in Florida New Markets projects can recapture up to 39 percent of their investment as a state tax credit, in addition to the 39 percent federal income tax credit allowed under the federal program.

To be eligible, a business must derive at least 50% of its total gross income each taxable year from its business activities within the low income community; create or retain jobs that pay an average wage of at least 115% of the federal poverty wage for a family of four (\$25,357); and not be engaged in golf courses, massage parlors, tanning salons, and sale of alcohol for off-site consumption. The effective date is July 1, 2009.

CS/CS/HB 521 Enrolled – Ad Valorem Assessments

Historically, the property tax appraiser has been presumed to be correct in the assessment of your taxes. Taxpayers who disagreed had the burden of proving the appraiser was not correct, which was expensive and usually unsuccessful. With passage of this bill, the property appraiser is presumed correct only if the appraiser proves that the assessment was arrived at by complying with statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. A taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment. In an ad valorem tax assessment challenges, the burden of proof is on the party initiating the challenge. The procedure for challenging the assessment is provided. The Legislature expresses its intent that the taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. In essence, the new law holds tax assessors accountable for using generally accepted appraisal practices and gives taxpayers a greater chance for success in a challenge if the tax assessor does not use accepted appraisal practices. The bill is retroactive to January 1, 2009.

CS/SJR 532 Enrolled – Property Taxes

This is a proposed constitutional amendment that will go to the ballot in November 2010. The voters will decide whether to:

- a) create an additional property tax exemption for first time homebuyers who have not owned a home in 8 years and purchased the home on or after January 1, 2010; and
- b) create an assessment limitation for non-homestead property of 5%.

If approved by voters, both provisions would be effective January 1, 2011.

CS/HB 903 Enrolled – Workers Compensation Costs

In November of 2008 the Florida Supreme Court ruled that attorneys' fees could not be capped in workers compensation cases. In response, the Florida Department of Insurance approved a 6% workers compensation insurance rate increase in April 2009. With passage of this bill, the cap on attorney's fees in workers' compensation cases is restored. The result will be the reduction, once again, in workers compensation insurance costs. The effective date is July 1, 2009.

CS/CS/SB 1078 Enrolled - Water Management Districts/Limitation of Liability

Of interest to the private sector, a private landowner who provides an easement to a water management district to provide access through private land to lands or water areas that a water management district has made available for recreational purposes is covered with liability protection. This is effective July 1, 2009.

CS/ CS/SB 1100 Enrolled - Department of Highway Safety and Motor Vehicles

This law changes a number of driving laws. Most importantly, currently if you are driving and approach an emergency vehicle with emergency signals on or a tow truck with flashing amber lights you must move into the next lane to pass. With passage of this bill, if you cannot safely move into the next lane then you must slow your vehicle to 20 miles per hour less than the posted speed limit. This law is effective upon becoming a law (when signed or allowed to become law by the Governor).

SB 1112 Enrolled (Chapter 2009-18, L.O.F.) – Corporate Income Tax

This bill replaced statutory changes made in 2008 with a new procedure to account for bonus depreciation and additional expensing on corporate tax returns. The bill spreads out the amount of bonus depreciation or additional expensing claimed by a taxpayer on a federal return over a 5-year period on the Florida return. It provides that a taxpayer claiming bonus depreciation or additional expensing on its federal tax return add 80% of the amount so claimed to Florida taxable income. In each of the four subsequent tax years, the taxpayer can subtract from taxable income 25% of the amount by which taxable income was increased. This law has been approved by the Governor and was effective January 1, 2008.

CS/CS/HB 1423 Enrolled – Fish and Wildlife Conservation Commission

For boat or ship manufacturers, those using boats in their businesses, large landowners, or those with businesses located on the water, this law changes a number of boating, vessel registration, fishing and hunting laws. A few are highlighted below.

- It allows local governments to establish boating restricted areas and at the same time prohibits such governments from imposing certain restrictions on boats or boating.
- Gasoline on boats is regulated.

- Illegal taking of fish, wildlife, and alligators is redefined.
- Hunting and fishing fees are increased.
- Penalties for aquatic weed or plant and fish and wildlife violations are revised.
- A pilot project on public mooring fields is authorized
- Activity around coral reefs is further regulated.

Most of the provisions are effective July 1, 2009.

CS/CS/SB 1616 Enrolled – Career and Adult Education

The Department of Education Division of Workforce Education has been renamed to the Division of Career and Adult Education. The bill aligns career education certification to the needs of business and industry through industry certifications approved by Workforce Florida, Inc. Industry certifications attained by a student would be designated on the student's standard high school diploma.

The eligibility for bonus weight funding for career and professional academy industry certifications through the Florida Education Finance Program is clarified to apply only to those certifications identified annually in the Industry Certification Funding List pursuant to rules of the State Board of Education. The requirement for adult high school students to complete a credit in fine or performing arts for graduation purposes is repealed.

The Office of Program Policy Analysis and Government Accountability is required to conduct a review of student outcomes in workforce education degree and certificate programs offered by community colleges, independent institutions, and school districts, which are not included on locally targeted occupations lists through Workforce Florida, Inc. or on the statewide occupational forecasting list developed by the Workforce Estimating Conference. The review must also examine the cost to students and the cost-effectiveness of state funding for school district and community college workforce programs, successful program completion and employment placement rates, and include a survey of former students to determine employment and compensation information. The effective date is July 1, 2009.

CS/SB 1748 – Department of Revenue

This law makes administrative changes at the Department of Revenue (DOR). DOR is authorized to charge administrative collection processing fees for late filing of tax returns, late payment of underpayments, and late payment of audited payments. The fees apply retroactively to any omissions due prior to the passage of this law although DOR may not collect such fees until September 1, 2009. The bill is effective upon becoming a law.

CS/CS/SB 1778 Enrolled - Department of Highway Safety and Motor Vehicles

All vehicle registration fees and fees for documents from the Department of Motor Vehicles and Highway Safety have been increased 25-200%. Also, license

plates will be issued every 10 years instead of every 6 years. The bill is effective September 1, 2009.

CS/CS/SB 1840 Enrolled – Protecting Health/Surcharge on Tobacco Products

This bill levies a \$1 per pack surcharge on cigarettes. This surcharge is expected to raise \$942 million each year and reduce cigarette consumption by 9-10%. Tobacco products, other than cigarettes and cigars, are subject to a surcharge equal to 60% of the wholesale sales price. This surcharge on “other tobacco products” is expected to raise \$48 million each year. The effective date is July 1, 2009.

SB 2080 Enrolled – Water Resources

This law covers a variety of environmental issues such as water quality and supply projects, water management district governing board terms, staff authority, water well contractor licensing and penalties, long term permits for water supply or renewable energy projects, alligator trapping and farming, Florida Friendly Landscaping, and repeals a prohibition against issuing a certain Class I landfill permit in the Southwest Florida Water Management District. A few of the key points that may be of interest to manufacturers are described below.

The West Central Florida Water Restoration Action Plan is established. It includes the:

- Central West Coast Surface Water Enhancement Initiative to make additional surface waters available for public supply and to limit groundwater withdrawals .
- The Ridge Lakes Restoration Initiative to improve the water quality of 130 lakes in Polk and Highlands counties by designing systems to treat stormwater runoff.
- The Upper Peace River Watershed Initiative to recharge aquifers, restore flow of surface waters, and restore capacity of natural systems to store surface waters.
- Central Florida Water Resource Development Initiative to limit groundwater withdrawals and develop alternative water supplies for Polk County.

The Plan shall be submitted to the Legislature for review in 2010. If no action is taken by the Legislature, it shall be deemed approved.

The governing boards of the water management districts are directed to delegate their authority to the executive director to take final action on consumptive use permits, environmental resource permits, and petitions for variances or waivers, except for denials. The executive director may delegate this authority to the staff. Such delegation is not subject to rulemaking authority of Chapter 120, F.S. A governing board member is prohibited from intervening in the staff review process prior to the application being submitted to the governing board for action. A governing board may revoke a consumption use permit for nonuse over a 4 year period.

Where landowners make extraordinary contributions of lands or construction funding to enable the implementation of alternative water supply projects, water management districts and the Florida Department of Environmental Regulation may grant permits for such projects for up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and public and private water utilities, with exceptions. The long term permits are subject to periodic review through reporting requirements. Permits issued for renewable energy generating facilities or the cultivation of agricultural products on lands consisting of 1,000 acres or more for producing renewable energy may be granted for up to 25 years based on reasonable assurances that permit conditions will be met. The effective date is July 1, 2009.

CS/SB 2282 Enrolled – First Responder Services

This law prohibits a county or municipality from imposing a fee or seeking reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by ambulance services.

A first responder means a law enforcement officer, firefighter, or an emergency medical technician or paramedic who is employed by the state or a local government or a law enforcement officer, firefighter, or emergency medical technician or paramedic volunteer engaged by the state or local government. The effective date is July 1, 2009.

SB 2330 Enrolled – Corporations

This bill revises laws pertaining to for-profit and not-for-profit corporations. The revisions relate to administrative matters, voting rights, membership rights, distributions, dissolution, and creditors' rights. It creates a new category of not-for-profit corporations, known as mutual benefit corporations. Most of the bill provisions are effective October 1, 2009; the others are effective upon becoming a law.

CS/SB 2504 Enrolled - Corporate Income Tax

This is the annual tax code change to adopt changes to the Federal Internal Revenue Code. It is effective upon becoming a law.

HB 5013 Enrolled – Transportation

This law provides legislative intent that construction aggregate materials mining is an industry of critical importance to the state. It expands the Small County Outreach program for transportation projects, authorizes the Northwest Florida Regional Transportation Planning Organization, and establishes a pilot program on energy and economic development.

The Energy Economic Zone Pilot Program will develop a model to help communities cultivate green economic development, encourage renewable electric energy generation, manufacture products that contribute to energy conservation and green jobs, discourage sprawl, develop energy efficient land use patterns, and develop greenhouse gas reduction strategies. Applications for the pilot project must:

1. Identify the proposed location of the energy economic zone in an urban service area but may include a landfill outside the urban service area;
2. Present a proposed strategic plan for development and redevelopment in the energy economic zone;
3. Demonstrate consistency of the plan with the local comprehensive plan or include plan amendments necessary to achieve consistency; and
4. Identify comprehensive plan amendments that will be proposed.

The strategic plan must integrate multi-modal transportation facilities with land use development patterns to reduce reliance on automobiles, encourage certified green building developments and renewable energy systems, encourage creation of green jobs, and demonstrate how local financial and regulatory incentives will be used. At least one grant shall be awarded and the recipient community must have previously demonstrated a commitment to energy conservation, carbon reduction, green building and economic development. The pilot community and businesses within it will be provided technical assistance in applying for grants. Reports must be submitted to the Legislature. The effective date is upon becoming a law.

CS/CS/HB 7031 – Economic Development

This bill addresses a number of economic development issues, some of which are described below. It:

- Includes alternative and renewable energy projects in the group of Innovation Incentive Program projects handled by the Office of Tourism, Trade, and Economic Development, with specific requirements for these projects;
- Revises the municipal utility tax exemption to change the basis of the exemption from the Standard Industrial Code (SIC Code) designation to the North American Industry Classification System (NAICS Code) designation in order for municipalities to provide an electric or gas tax exemption to a more narrowly focused group of businesses. This is generally used for retention or recruitment purposes. It updates the industry codes in other areas of tax law.
- Creates a uniform state incentive application review and approval process for the various state business incentives reviewed by Enterprise Florida, Inc. and approved by the Office of Tourism, Trade, and Economic Development. A business applying for a state incentive will know within 32 days if he or she is successful.
- Adjusts the definition of a rural community to increase the population cap from 100,000 to 125,000 for any county that is adjacent to another county with no more than 75,000 residents.

- Allows Quick Action Closing Fund eligibility criteria to be waived in rural areas.
- Designates EFI as the clearinghouse for information about Florida's business opportunities and economic incentives.
- Amends the Qualified Defense and Spaceflight Contractor Incentive Program to reduce the cumulative award cap an eligible business may receive from \$7.5 million to \$5 million.
- Lowers the capital investment requirement for the brownfields incentive program from \$2 million to \$500,000 for areas that do not require extensive site cleanup.

The effective date is July 1, 2009.

HB 7123 Enrolled – Military Base Closures

A 9-member Florida Council on Military Base and Mission Support is established. It will provide oversight and direction for initiatives, claims, and actions taken on behalf of the state relating to federal Base Realignment and Closure Commission activities. Legislative leaders and the Governor will each appoint three members to include legislators and other persons knowledgeable of military base issues and defense industry related economic development in Florida. The council will submit a report to the Legislature each January 1. The bill is effective July 1, 2009.

What Failed to Pass?

- Regulation of activities around springs
- Repeal of sales tax exemptions
- Bottled water severance tax
- Manufacturing sales tax relief on machinery and equipment for a 2-year period
- Increases in environmental fines and penalties
- Cumbersome notification requirements for contaminated sites
- Clean energy bills
- Approval of oil and gas exploration off Florida's coast
- Implementation of the working waterfront constitutional amendment
- Increased fees for submerged land leases

Appropriations Items of Interest

The Legislature agonized over budget cuts this year to match depressed state revenues. In the end they were able to weave a budget together that utilized federal stimulus money, moved money between and out of trust funds (little nexus anymore between the source and the use), utilized proceeds from the proposed Seminole Gaming Compact, set new fees for vehicle registrations and drivers' licenses, imposed an additional \$1 per pack tax on cigarettes, imposed increases on other tobacco products (except cigars), made program cuts, and set a 2% pay cut for state employees earning \$45,000 or more.

Below are the appropriations we were working on:

Quick Action Closing Fund	\$13.4 million (a significant decrease)
Incumbent Worker Training	\$4 million
Quick Response Training	\$3.3 million

Acknowledgements

We wish to particularly thank the following legislators for their hard work on behalf of manufacturers:

Rep. Ellyn Bogdanoff (Manufacturing sales tax exemptions and holiday)
Rep. Anitere Flores (Workers compensation)
Rep. Jim Waldman (Manufacturing sales tax “holiday”)
Sen. Jim King/Rep. Jennifer Carroll/Rep. Dave Murzin/Rep. Lake Ray (Economic development NAICS code)
Rep. Audrey Gibson/Sen. Tony Hill/Sen. Mike Fasano (Workforce training funds)

We wish to thank the following groups and companies for their work with us on specific issues:

Associated Industries of Florida (Tammy Perdue and Jose Gonzalez)
Atlantic Marine Holding Company (Herschel Vinyard)
Enterprise Florida (April Money and Mike Preston)
First Coast Manufacturers Association (Lad Daniels, Debbie Warren, Herschel Vinyard and the members)
Florida Beverage Association
Florida Chamber of Commerce (Gabe Shehane and Adam Babington)
Florida Economic Development Council (Amy Evancho)
Florida Minerals and Chemistry Council
Florida TaxWatch
Florida United Tax Managers’ Association
Holland & Knight (Larry Sellers)
Hopping Green & Sams (Frank Matthews and Vicki Weber)
Workforce Florida Inc. (Chris Hart)
JM Families (Claude Revell)
Mosaic Company (Eileen Halloran and Mark Kaplan)
PCS Phosphate (Stan Posey)
Public Affairs Consultants (Keyna Cory)
Tropicana Products, Inc. (Steve Lezman and Rheb Harbison)

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