

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
DAILY BRIEF**



P.O. Box 784 • Tallahassee, FL 32302 • Phone: (850) 224-7173 • Fax: (850) 224-6532 • Internet: <http://aif.com> • [fbnnet.com](http://fbnnet.com)

**FOR FEBRUARY 20, 2002**

**FLORIDA HOUSE SLAMS SENATE TAX REFORM PLAN**

As planned, the Florida House of Representatives met as a “Committee of the Whole,” to debate the Senate tax reform plan. The results were astonishing. The plan was rejected by a vote of 0 yeas and 100 nays. (Many reports mistakenly have the “no” votes totaling 99. Rep. Renier Diaz de la Portilla (R-Miami) was absent from the floor during the vote and later recorded his “no” vote with the House.) While popular legislation or simply non-controversial legislation may often receive overwhelming “yes” votes, long time Capitol observers are scratching their heads trying to remember when last any proposal on any topic received such a resounding “no” vote.

Weirdly, led by Minority Leader Lois Frankel (D-West Palm Beach), 20 Democrats walked out of the Committee meeting of the full House in protest of the proceedings. They were protesting the rules adopted by the House Leadership to facilitate the debate. Frankel was particularly alarmed that the whole idea of a “Committee of Whole” was even engineered to hear the Senate Plan. However, this unusual proceeding was necessitated by the Senate’s refusal to actually release the plan to the House. Stranger yet, no House member had volunteered to Senate President John McKay (R-Bradenton) that they would sponsor a House version of the bill. The House, in an effort to move the session onto other more important, and pressing matters (like a state budget), had to create a bill, create a committee and create rules to govern the debate from nothing. Why sit out the debate? Strange circumstances demand an artful response, which House Speaker Tom Feeney (R-Oviedo) provided. Apart from sucking up a lot of press on the Capitol Rotunda, Frankel and her followers instantly made themselves irrelevant on the issue.

The most striking characteristic of the House debate was the stories. While the Senate debate focused on abstract notions of revenue shortfalls, recessions and more government spending, the House members told story after story about members in their districts, businesses, friends, associates and family and how they would be directly harmed by the Senate plan. Representatives Nancy Detert (R-Venice) and Sara Romeo (D-Tampa) even spoke as business people and their personal experiences regarding the ill fated services tax of 1987. Not only did the House Select Committee on Florida’s Economic Future take public testimony all over the state from real people and experts, but it was obvious that the House members had turned their collective ear towards the folks they represent. The debate was simple, honest and genuine and it certainly reflected the genius of our forefathers in constructing a deliberative body created for the expressed purpose of being “close to the people.” While the members that left the chamber in protest were Democrats, many other Democrats stayed and the 0-100 vote was bipartisan and stunning.

**AIF is opposed to the Senate’s tax reform plan. It unnecessarily and injuriously amends the Florida Constitution as a vehicle for the reform. Any consideration of Florida’s sales tax exemptions should remain under the direct purview and authority of the Executive Branch and Legislature. Also, the plan compromises any rational consideration of the sales tax exemptions under current law by establishing a predetermined end result. If adopted, the plan will require the repeal of \$4.2 billion in sales tax exemptions regardless of their merit or their ability to meet objective criteria or any criteria. Finally, the plan is based upon faulty or outright inaccurate assumptions regarding Florida’s future tax revenues.**

**AIF would support a measure that provided for a methodical review, utilizing objective criteria, of all the current sales tax exemptions enjoyed by businesses, organizations and services. Florida's current business sales tax exemptions actually comprise only \$1.88 billion of the \$22 billion total in sales tax exemptions. We believe the vast majority of these business exemptions would withstand even the most severe scrutiny if the criteria embraced economic competitiveness, fairness and benefit to Florida's overall economic growth.**

#### **FOOD SERVICE INSPECTIONS**

Senate bill 1450 by Sen. Lee Constantine (R-Orlando) thankfully went into a ditch today in the Senate Regulated Industries Committee. A hospitality organization tried to get the Committee to put the same bad amendment on SB 1450 that they were successful in placing on HB 155 by Rep. Allen Trovillion (R-Winter Park) last week. As you may recall, on HB 155, a "strike everything" amendment was adopted that raised substantially the fees on food service establishments, privatized food service training and steered the certification training, education and state money to only one, possible provider, cutting out a true, private sector competitive bid process. While the House Committee chairman and members of the committee may have been unaware of the true intent of the amendment, it was "inside baseball" and ugly policy at its worst.

AIF and other hospitality interests were successful in letting the Senate Committee know what was afoot and the amendment had a very cold reception in the Senate committee. After some harsh questioning, Senate Vice Chair Jim King (R-Jacksonville) moved that consideration of the bill be deferred.

**If the Division of Hotel & Restaurant wishes to privatize this activity, at the minimum, this privatization should be conducted by bid and not be directed to one group by statute. AIF is opposed to the bill and the Senate amendment because it is arguably unethical, increases fees and costs to the hospitality industry and is largely unnecessary.**

#### **PATIENT SELF-REFERRAL ACT – KIDNEY DIALYSIS**

The Senate passed SB 726 by Sen. Jack Latvala (R-Palm Harbor) on second reading today. "Second reading" is the step on the floor where the body entertains amendments to a bill before rolling it over to "third reading" for a vote on final passage. The bill amends current law, prohibiting kidney dialysis care providers from "self-referring" and performing their own "in-house" diagnostic lab work. A final vote is likely tomorrow.

Two of the world's largest kidney dialysis companies have a major presence in Florida. In fact, one of these companies recently moved their North American headquarters to Ft. Lauderdale. Together, these companies employ hundreds of Floridians in high paying, high-tech, bio-medical jobs.

The analysis and lab work necessary for life-saving kidney dialysis treatment is extremely time sensitive and must be accomplished under extraordinarily rigid quality controls. It is very beneficial to the patient and the attending physician to have the lab work handled and coordinated by the center already performing the dialysis. The feedback is almost immediate, allowing the physician to monitor status and alter the care plan as needed.

This system has performed so well for patients - whose very existence is inextricably tied to proper dialysis and lab diagnosis - that a very small fraction of competitors are seeking to pass SB 726 mandating what kind of labs the dialysis centers can make use of. This tinkering with the free market system would not only cost the state hundreds of high-end jobs but, much more importantly, put thousands of kidney dialysis patients at enormous risk.

**AIF opposes playing games with the Florida Statutes by passing a law solely intended to benefit a few who are unable to compete in the current, well-tested market system. As an added inefficiency in the health care marketplace, this proposal would serve as a cost-driver to the costs of health care and Florida's employers.**

**WORKERS' COMPENSATION REFORM** – *Coalition bill survives first committee stop with one major snag*

The House Insurance Committee met this morning primarily to consider PCB 02-02a on workers' compensation reform. The Committee Bill was largely comprised of provisions recommended by the Coalition of Business and Industry (Coalition), of which Associated Industries of Florida is a member, but was not as sweeping as the Coalition would have liked. In any event, the PCB is a strong piece of legislation and the Coalition supported it as introduced.

As usual in workers compensation, every other interest group in the state tried to use the amendatory process to thwart the good work of the Committee Chair, Representative Leslie Waters (R-Largo), and the Coalition.

Representative Eleanor Sobel (D-Hollywood) offered the first such amendment which would require employers, carriers and managed care companies to authorize or deny any request for medical treatment within seven days or bear the cost of the requested benefits. The Coalition opposed this amendment. The arguments tendered by Representative Sobel and the Florida Workers' Advocates (a group of claimant attorneys) incorrectly explained that currently there is no specific time requirement for providing medical care, so this provision was needed.

Mary Ann Stiles, General Counsel for Associated Industries of Florida, gave counter testimony on behalf of the Coalition. She noted that when medical benefits are provided pursuant to 440.13, f.s., the employer/carrier is already required to furnish medically necessary treatment within a reasonable time. If that request is in writing from a physician, the carrier has only 3 business days to make a written response. If that request is for a specialist, surgery, physical and occupational therapy, or diagnostic tests costing more than \$1,000, the current law requires that the employer/carrier furnish or deny the request within ten (10) business days. However, when managed care was mandated, all medical treatment was then furnished under managed care rules rather than under 440.13, as outlined above. Managed care placed grievance procedures and other onerous burdens on the injured workers, which do delay the provision of medical treatment. However, last year the Legislature eliminated mandatory managed care and the PCB already contains language that clarifies the legislative intent to do away with all mandatory managed care, regardless of accident date. Therefore, the PCB already addressed the concerns of this amendment by placing all medical treatment back under the provisions of 440.13, f.s. and removing the delays of managed care.

Additionally, Representative Sobel's amendment did not contemplate the source of the request, whether it was from an authorized treating physician, if over-utilization was occurring or if the request was part of a fraudulent scheme.

The amendment failed 13-2.

**NOTE:** Representatives' votes in support of the Coalition position are in italic.

**FOR the Amendment:** Representatives Fields (D) and Sobel (D)

**AGAINST the Amendment:** Representatives Carey Baker (R-Eustis), Kim Berfield (R-Clearwater), Donald Brown (R-DeFuniak Springs), Donna Clarke (R-Sarasota), Jim Kallinger (R-Winter Park), Denise Lee (D-Jacksonville), Perry McGriff (D-Gainesville), Jerry Melvin (R-Ft. Walton), Joe Negrón (R-Stuart), Dennis Ross (R-Lakeland), Davis Simmons (R-Altamonte Springs), Doug Wiles (D-St. Augustine) and Leslie Waters (R-Largo).

Representative Don Brown (R-DeFuniak Springs) sponsored one of the amendments supported by the Coalition, necessary to reduce costs, which would limit payment of permanent total disability (PTD) benefits to age 72 or up to 7 years carried through after age 65, if the accident occurs after the claimant reached age 65. There were several groups and committee members who voiced opposition to the amendment indicating that it had constitutionality problems and seemed to be an age discrimination matter. Representative Dennis Ross (R-Lakeland) argued that the amendment could be unconstitutional because of the age restriction. However, this is a very unlikely outcome since the old wage loss system, which terminated benefits at age 65, already passed the constitutional test in the courts of the State of Florida. Additionally, there are a host of other states, which terminate PTD benefits at an age certain, some states cease at age 55. Representatives Brown and Representative Melvin argued that the workers compensation system was never intended to be a retirement system, but was designed to help injured workers either return to work or to reach a point where their normal social security retirement benefits would begin. Prior to age 62, the employee does not get social security and workers compensation. After age 62, the employee does receive those benefits. This amendment is a cost saving measure that had to be included in the bill in order to increase benefits to injured workers caught in the middle.

The amendment passed with a favorable vote of 8-6.

**FOR the Amendment:** Representatives Baker (R), Brown (R), Clarke (R), Kallinger (R), Melvin (R), Negrón (R), Simmons (R), and Wiles (D)

**AGAINST the Amendment:** Representatives Berfield (R), Terry Fields (D-Jacksonville), Lee(D), Ross (R), Sobel (D), and Waters (R)

Representative Ross also offered an amendment vital to the Coalition's goals correcting the Burger King and Wilkins decisions which stop supplemental benefits at age 62 today. Currently, only those that become PTD after age 65 get continual supplemental benefits under Wilkins. The amendment corrects this imbalance. This amendment does not affect the actual PTD compensation benefits the worker receives.

This amendment passed with a favorable vote of 9-5.

**FOR the Amendment:** Representatives Baker (R), Berfield (R), Brown (R), Clarke (R), Kallinger (R), Melvin (R), Negrón (R), Ross (R), and Simmons (R)

**AGAINST the Amendment:** Representatives Fields (D), Lee (D), Sobel (D), Waters (R), and Wiles (D)

The Coalition was extremely successful in blocking an unfriendly amendment concerning attorney's fees offered by Representatives Ross, Berfield, Joe Negron (R-Stuart) and David Simmons (R-Altamonte Springs). The amendment would drastically increase carrier-paid attorney's scheduled fees to claimant's attorneys in two ways. First, it would increase the current statutory fee schedule to 20% of the first \$5,000 in benefits and 15% of any benefits secured thereafter. This alone is a significant increase over the current statutory fee schedule which provides 20% of the first \$5,000, 15% of the second \$5,000, 10% of any remaining benefits in the next ten years, and 5% of the amount after ten years. In addition, the amendment would allow a judge to approve an attorney's fee up to \$2,500 for every medical-only petition that a claimant's attorney would file and allow 15% or a reasonable hourly rate in cases involving a denial of compensability. If this amendment would have passed, experts predict that the frequency of medical-only petitions would increase dramatically, and increase litigation. Representatives Ross and Simmons and the Florida Workers Advocates (FWA) repeatedly and wrongly argued that if their amendment were not adopted, the attorney would only get a one time fee up to \$1,500 on each case relating to medical benefits. Such a ludicrous argument ignores the statutory fee schedule. The claimant's attorney will always be entitled to recover a fee based on the fee schedule – any number of times that a benefits is improperly denied. The FWA and Voices groups also argued that without this amendment many injured workers would not have adequate legal representation. This is an argument that these groups have shouted about during any change over the past 20 years and it has never happened. Many employers and insurance companies may have been driven out of the workers comp system, but attorneys have always been involved. And they will continue to be in the system.

The amendment failed by a 7-7 vote.

**FOR the Amendment:** Representatives Berfield (R), Fields (D), Lee (D), Negron (R), Ross (R), Simmons(R), and Sobel (D)

**AGAINST the Amendment:** Representatives Baker (R), Brown (R), Clarke (R), Kallinger (R), Melvin (R), Wiles (D), and Waters (R)

Clearly, the most contentious group of amendments debated today involved the issue of construction exemptions. The PCB, as written, would eliminate all coverage exemptions in the construction industry with the exception of up to 3 corporate officers owning at least 10% of a corporation. Unfortunately, Representative Berfield sponsored a group of 3 amendments that totally nullified the bill's exemption provisions and savings in this area. There was very little debate among the committee members, which seems to indicate that the Florida Homebuilders Association had more lobbying influence than the Coalition, the FMA, the labor unions, and the FWA combined. All of these groups support the elimination of exemptions without any amendments on this issue. The Homebuilders are the only people who support Representative Berfield's amendments but they were able to convince many other committee members that her approach was preferable. If the construction exemptions are not a major part of reform, then the Coalition will have to reconsider its support of the entire bill.

The amendments passed by an 11-4 vote.

**FOR the Amendments:** Representatives Baker (R), Berfield (R), Kallinger (R), Lee (D), McGriff (D), Negron (R), Ross (R), Simmons (R), Sobel (D), and Wiles (D)

**AGAINST the Amendments:** Representatives Brown (R), Clarke (R), Melvin (R), Waters (R)

As to the medical fee schedule, Representative Ross offered a substitute amendment that allows Employers and Carriers to negotiate with health care providers above or below the fee schedules when coordinating medical services to injured workers. This amendment passed unanimously. While the Coalition was opposed to the amendment as written, the Coalition is working very hard on an amendment that will better balance costs paid to physicians as part of the 60% pie portion that overall medical benefits consume.

Chair Leslie Waters (R-Largo) worked extremely hard to guide this legislation through committee. Please email, call or visit her and express your appreciation for her fine leadership and diligent efforts. Also, be sure to thank all the other Representatives listed above who supported and protected the Coalition's positions.

Stay tuned to our daily brief and to our web site at <a href="http://www.fbnet.com">www.fbnet.com</a> as the legislature makes some very important decisions on the state's economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). Please send your comments or suggestions to us at [aif@aif.com](mailto:aif@aif.com) or call the Governmental Affairs department at (850)224-7173.**

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.