



# DAILY BRIEF

**From March 4, 2010**

AIF was in full swing today as one of our priority bills was work-shopped by the Senate Judiciary Committee. SB 744 by Senator Garrett Richter (R-Naples) seeks to correct a patently unfair Supreme Court decision, which prohibits juries in Florida from hearing all the evidence relating to an automobile crashworthiness case. A strong message was sent today to the members of the committee that this issue must be resolved and that the bills in the House and Senate should be brought to a vote. Check out the Legal & Judicial section of today's *Daily Brief* for a complete report on this important workshop.

In addition, AIF played a prominent role during another workshop – this time on recycling in the Senate Environmental Preservation and Conservation Committee. AIF's Environmental Sustainability Council has led the way in proposing common sense recommendations for improving Florida's recycling and reuse rates. A number of the Council's recommendations will be included in the recycling bill offered by Chairman Lee Constantine (R-Altamonte Springs).

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## **Legal and Judicial**

The Senate Judiciary Committee held a two-hour long work shop this morning on SB 744 Relating to Negligence/Products Liability Action by Senator Garrett Richter (R-Naples). This proposed legislation seeks to clarify the legislature's intent as it relates to apportionment of fault in crashworthiness cases. More specifically, it states that juries in these cases must consider the fault of all individuals and entities who contributed to the accident when apportioning fault among the parties and nonparties included on the verdict form. Due to the 2001 Florida Supreme Court *D'Amario v. Ford Motor Company* decision, juries are currently not presented all the evidence surrounding the details of automobile accidents when an auto manufacturer is sued in an action challenging a vehicle's crashworthiness. Florida is the only state that prohibits the introduction of any evidence relating to the driver's condition at the time of the crash.

In other words, drivers who are drunk, underage, without license or under the influence of any manner of illegal substances, bear no responsibility of fault in crashworthiness cases because their condition is never shared with the jury. This results in jury awards being astronomically higher in Florida than any other state for these types of cases. This is also more burdensome for American car manufacturers because foreign car manufacturers are rarely sued in these cases since obtaining their vehicle design evidence from foreign countries is so difficult.

Today's workshop featured representatives from Ford Motor Company as well trial lawyers who represent plaintiffs in these types of cases. Ford has recently identified that fixing this unfair exception is their number one priority nationwide. Other car

manufactures like GM and Chrysler have not been targeted by trial lawyers as much as Ford because by taking federal bailout money their pending cases were dismissed.

Both sides presented their arguments and then answered a litany of questions from committee members. Members of the Ford team were very clear in their statements that they are not seeking to change or weaken the crashworthiness doctrine in Florida. Instead, they are seeking to return Florida law to the pre-*D'Amario* days when juries were allowed to hear all the evidence in a case. Furthermore, they spoke about the explosion in the number of crashworthiness cases in Florida, where Ford is spending nearly \$30 million a year on these cases. These are dollars that could be spent on hiring employees, research and development, and re-investing in Florida.

Members of the Committee including Senator Carey Baker (R-Eustis) and Mike Fasano (R-New Port Richey) were surprised to hear that Florida is the only state in the country that currently has this exception. Senator Mike Haridopolos (R-Melbourne) stated that it was the Legislature job to provide a level playing field and that the court room scales should be balanced. He asked “why we wouldn’t want all the information relevant to case to be available to the jury?” He went on to state that the Legislature should clarify this decision in order to better serve the people of Florida. The bill’s sponsor, Senator Richter, provided an effective close on his bill by stating that Lady Justice is “blind but not deaf” and he urged Chairman Joe Negron (R-Stuart) and members of the Committee to hold a vote on the bill.

**AIF SUPPORTS efforts by the Florida Legislature to clearly express that a Florida Supreme Court-created standard regarding crashworthiness is absurd and unfair. We must send a message to the rest of the country that Florida is a fair state to do business. This can be achieved by clarifying the Legislature’s intent that all information regarding a case must be made available to a jury.**

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## Space

HB 969 Relating to Space & Aerospace Infrastructure by Representative Steve Crisafulli (R-Merritt Island) passed the House Transportation and Economic Development Appropriations Committee unanimously today. The implications of Representative Crisafulli’s bill are twofold; allow flexibility in expending previously appropriated funds to benefit Launch Complex 46, in addition to Launch Complex 36; and provide better infrastructure to service a more diverse aerospace program at Kennedy Space Center. There was very little discussion or debate on the bill, however several members expressed their support for job creation efforts in the aerospace industry as a whole. Representative Jennifer Carroll (R-Jacksonville) provided the example of the Cecil Field commercial launch zone initiative in the Jacksonville area. Representative Evan Jenne (D-Ft. Lauderdale) made the point that every county in Florida is affected by the space industry, including dozens of contracts in his home county of Broward. AIF, Space Florida, Embry Riddle and others waived in support of the bill.

The bill will now move to the [House](#) Full Appropriations Council on Education & Economic Development for further consideration.

**AIF SUPPORTS giving Space Florida the flexibility to allocate any of the un-obligated Launch Complex (LC) 36 funds for any purpose determined to have the greatest benefit to the commercial space industry in Florida.**

## Taxation

The Senate Energy, Communications and Public Utilities Committee unanimously passed SB 1202 Relating to Prepaid Wireless Telecommunications Service by Senator Mike Bennett (R-Bradenton).

Senator Bennett explained that the bill does not create a new fee or tax. Instead, it defines a collection method for an existing fee to fund public safety and 911 services around the state. He said the fee was originally created on landlines; then added to wireless phones to create a unified, statewide E911 funding system. Prepaid is one of the newer technologies, but it is still a wireless phone and this bill creates the collection method of the fee to occur at the time when an actual transaction takes place. This methodology allows the proper county to receive the revenue.

Four amendments were offered to the bill and all were adopted without objection. Three of the four were technical in nature, but one of the amendments would allow retailers to keep 25 percent of the proceeds collected from E911 fees for a period of one year in order to offset the costs incurred from collecting and remitting the E911 fees to the state. The chairman began calling speakers, the first of whom was **Randy Miller of the Florida Retail Federation**. Mr. Miller strongly opposed requiring the retailers to collect the fee, requesting that the committee defer the bill to allow retailers to work with the 911 Board and the communications industry. He was the only speaker who opposed the bill.

The counties, Sheriff's Association, 911 Dispatchers and **Frank Meiners with Associated Industries of Florida** all supported the bill. Mr. Meiners testified that this bill is one of AIF's priority bills for the 2010 session because it will help maximize the recovery of E911 fees which are required to provide for public safety. He further explained that the bill is based on a model developed by industry and the National Council of State Legislators that has been enacted in Texas, Louisiana, Maine and Wisconsin, and is pending in 14 other states.



Frank Meiners

SB 1202 will now progress to the Senate Community Affairs Committee for further consideration.

**AIF supports legislation that will help maximize the recovery of E911 fees which support public safety in Florida.**

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## Health Care

The Senate Health Regulation Committee met today to consider a number of bills, including the proposed constitutional amendment SJR 72 Relating to Health Care Services by Senator Carey Baker (R-Eustis).

SJR 72 is designed to protect Floridians from potential federal legislation that would mandate individuals to purchase health insurance coverage and would levy monetary penalties if an individual does not comply. Senator Baker was clear that this resolution was not designed to negate any federal health care reform bill that may be approved, but only addresses the individual mandate provision. Senator Baker noted that the individual mandate, at this moment in time, appears to have been removed from the

latest version of the federal reform bill. If the status quo remains, he admitted, SJR 72 would address a moot problem.

For his closing remarks, Senator Baker quoted Benjamin Rush, a colonial physician known as the "Father of American Medicine." Rush was a signer of the Declaration of Independence and served as the Surgeon General of the Continental Army. "The Constitution of this Republic should make special provisions for medical freedom. To restrict the art of healing to one class will constitute the Bastille of medical science. All such laws are un-American and despotic. Unless we put medical freedom into the constitution the time will come when medicine will organize into an undercover dictatorship and force people who wish doctors and treatment of their own choice to submit to only what the dictating outfit offers."

SJR 72 was approved by the committee and will now head to the Senate Judiciary Committee. The House companion HJR 37 by Representative Scott Plakon (R-Longwood) is in the Health Care Regulation Policy Committee but has not yet been heard.

**AIF SUPPORTS proposals that ensure the availability of health insurance products to employers and individuals that are tailored to their unique needs and resources.**

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## **Environmental**

The Senate Environmental Preservation & Conservation Committee held a workshop today on recycling. At the beginning of the workshop, Chairman Lee Constantine (R-Altamonte Springs) outlined the issues that he is including in a recycling bill. We are happy to report that many of the recommendations that AIF's Environmental Sustainability Council (ESC) provided to Senator Constantine have been incorporated in the proposed bill including:

- Research is needed to see why existing waste management and recycling programs in the state have not been better used
- Create a Recycling Business Assistance Center (RBAC)
- Require state agencies to lead by example and recycle at all facilities
- Require public schools to recycle
- Encourage and track environmentally friendly state purchases

Other proposals likely to be included in the bill would:

- Direct each county to reduce the amount of solid waste disposed of on an incremental basis to reach the 75% goal by 2020: 50% by 2012; 60% by 2015; 70% by 2018; and 75% by 2020
- Direct DEP to evaluate the current compost goal and research other organic recycling technologies to help counties develop markets suitable to their needs and to increase composting opportunities
- Revise the definition for "source separated" to allow commercial dumpsters to utilize single stream for their recycling needs
- Require all new construction & demolition debris (C&D) landfills to be lined
- Require all C&D debris to be processed at a material recovery facility prior to disposal
- Require that the material recovery facilities recycle at least 60% of the material they accept and 75% by 2020

Representatives from the glass recycling industry wanted to see a bottle bill or some other type of mandate program so that they can obtain the materials they need for their operations; however, Senator Constantine informed them that the legislation would not be successful if such mandates were included.

**Keyna Cory, lobbyist for AIF's Environmental Sustainability Council**, participated in the workshop and was supportive of many of the ideas that may be incorporated into the bill. However, the one proposal that was opposed by AIF required private businesses with 50 or more employees to report the recyclable materials they collect beginning on January 1, 2011. AIF originally suggested that the Florida Department of Environmental Protection (DEP), in conjunction with the private sector, develop a survey asking Florida companies for recycling/reuse information to determine if DEP has accurate recycling percentages. In addition, companies who volunteer recycling information should be rewarded with incentives like special preferences if they bid on government contracts. AIF will be working firmly to change this reporting mandate to a voluntary system.



Keyna Cory

A draft of the recycling bill will be available Friday, March 5. Amendments need to be filed by Monday afternoon and the bill will be heard by the committee on Tuesday.

**AIF believes that Florida can increase its recycling rate, but the management of waste is more than just recycling. We look forward to working with Senator Constantine on how Florida can do more to reduce waste, reuse materials, and divert waste from our landfills. Florida has an opportunity to help create markets for recyclables and beneficial reuse of key materials. By creating markets for profitable materials, we can help create jobs.**

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## Education

Today the Senate Policy and Steering Committee on Ways and Means considered SJR 2 Relating to Class Size Requirements for Public Schools by Senator Don Gaetz (R-Destin). This bill would place the Class Size mandate back on the ballot for voters to consider and allow a modification that would increase flexibility in implementing the requirement. The debate and subsequent vote were largely along party lines, with Democrats opposing the measure. The Florida Education Association also testified in opposition to the measure. The measure passed its final committee stop in the Senate and is already placed on the calendar for second reading on the Senate Floor.

The proposed amendment would require the same class sizes that are required currently - 18 in K-3, 22 in grades 4-8, and 25 in 9-12 - to be measured at the *school* level (rather than at the *class* level which is required for next year).

Additionally, the measure adds a "hard cap" so that the school averages have to be achieved within a hard limit of 21, 27, and 30 in individual classes. By maintaining the measurement at the school level, principals would have the flexibility to increase a class above the original limit by having another class below the original limit, thus being able to better balance and manage class scheduling and avoiding a significant disruption when an unplanned child enrolls - often referred to as the 19th child scenario.

For example, a school could have a 3rd grade class of 21 as long as another class of 15 was in place so that the school average was still a class size of 18. This is an improvement over current scenarios where a school might have a class of 30 with



another specialized class of 6. Under the new law, the class of 30 in 3rd grade would not be allowable.

**Keyna Cory, AIF's Senior Lobbyist**, testified in support of the resolution because it strikes the right balance of maintaining the spirit of the class size reduction mandate, but gives a workable solution to implementation issues.



Keyna Cory

The measure must still pass both chambers and then must be approved by voters in November by a 60% margin.

**AIF SUPPORTS the measure because it does not go backward on class size achievements to date. Additionally, the proposed amendment supports ensures that Florida's children have access to rigorous or specialty courses such as AP, arts, etc. which we believe are essential to providing well rounded and prepared graduates.**

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## **Growth Management**

Today the Senate Community Affairs Committee considered SB 1742 Relating to Growth Management by Senator Mike Bennett (R-Bradenton). As the first growth management bill to be heard in the Senate, it passed out unanimously with no debate or amendments - a rare and possibly bad sign for a growth management bill. This bill is NOT the major growth management legislation that Senator Bennett's committee will put forward. As the bill moves along, it may be amended to include the "patch" language that developers need (should last year's SB 360 be struck down by the courts).

This bill contains several provisions, including the following:

- Defines "transit oriented development" as a pedestrian, bicycle friendly community, or "green" development in short, and then exempting those developments from transportation impacts
- Requiring proportionate - share contributions that include trips from an earlier phase of development to credit mitigation done in the earlier phase and adjust for the time value of money
- Requiring the costs of mitigation for transportation impacts to be distributed to all affected jurisdictions;

Senator Bennett's bill will now proceed to the Senate Transportation Committee for further consideration.

**AIF believes legislators should address some of the shortcomings associated with 2009's SB 360 that removed many developments from state transportation concurrency, but not from local government ordinances requiring similar concurrency provisions.**