



L o n g T e r m C a r e

## Slaying the Beast

By Jacquelyn Horkan, *Editor*

**H**ugh Lofting's children's novel, *The Story of Dr. Doolittle*, featured exotic creatures called pushmi-pullyus, described thus: "They had two heads with sharp horns, one head at each end of their body."

To understand the dilemma facing the long-term-care industry, imagine an editorial cartoon with a figure identified as "nursing homes" under siege by a herd of ravenous pushmi-pullyus, each with one head labeled "lawyers" and the other named "inadequate reimbursement."

The 2001 Legislature took aim at the strange herd by enacting SB 1200 and SB 1202, which combine lawsuit reforms with measures vital to improving the quality of care and increases in the Medicaid reimbursement rates. Both bills will help the industry redirect money and resources away from lawsuits and toward improving the quality of care provided to residents of long-term-care facilities.

Industry representatives began the session by readily acquiescing to tougher regulation in return for protection from the lawsuit onslaught. The industry has also faced up to its failures and embarked on a self-policing program that will operate separately from the augmented state regulatory efforts.

Until the very end of the session, however, trial lawyers and their allies were unwilling to make any compromise that might shut off access to the nursing-home-litigation honey pot. They justified their obstinacy with professions of a selfless interest in protecting

residents. Their assertions were weakened by a lack of any evidence that all of their lawsuits had achieved any improvement in the lives of nursing-home residents.

In fact, the evidence paints a contrast to the abysmal picture of nursing-home abuse bandied about by plaintiff lawyers. Florida inspectors have a reputation as among the toughest in the nation. The results tallied from their reports show that Florida nursing homes merit poor scores on such measurements as food sanitation, care planning, dignity, and assessments. On the other hand, they rank among the best in the nation when it comes to quality of care, accident prevention, pressure sores, and assistance with activities of daily living.

Nonetheless, a disturbing trend has developed: The number of violations for staffing shortages more than doubled between 1993 and 1999. At the same time, the population of nursing homes grew more frail and debilitated, requiring higher levels of care. Thus, the need for more staffing came at the very time that the facilities could not afford the expense of adding personnel.

Nursing home lawsuits are on the rise throughout the country, but the problem is particularly grim in Florida. The depth of the problem is revealed by a few statistics. The average size of a claim filed by a Florida nursing home under its liability policy was 250 percent higher than the rest of the country in 1999. This state accounts for 10 percent of the nation's nursing home beds and 40

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## Unconventionalities

By Jon L. Shebel, *Publisher*

**W**hat do judges, nursing homes, and state workers have to do with your ability to make a profit? The answer boils down to the accountability of those who exercise the power we grant to government.

Florida's judicial system — and, in fact, the entire nation's — has grown inimical to the independent functioning of the free market as a result of the left-wing bias of the lords of the legal profession. The court reform bill enacted by the Legislature will help return accountability to those who serve on the bench, without undermining judicial independence. That's good news for all Florida businesses, who must live under the interpretations of law handed down in courtrooms across the state.

The power of judges over your business is less significant, however, than the influence exerted daily by state bureaucrats. Florida's civil service system, which establishes personnel rules for state employees, is an antiquated, creaky brute that shields incompetent, inefficient, and insubordinate state workers, while doing nothing to reward those who work hard and pursue innovation.

Business people rely on the bureaucracy more than the average citizen, and bear a higher burden for tax dollars wasted on inefficiency. That over-reliance on business for tax dollars also triggered AIF's engagement in the nursing-home industry crisis. About 80 percent of the funding for nursing homes derives from government revenues. Right now, the demand for government

funding of nursing homes will only increase in the future. Wasting that money on frivolous litigation and poor care translates directly to a waste of your hard-earned dollars.

Attacking the stresses on the nursing-home industry ensures that your tax dollars are put to their best use, in part, by opening the market for long-term-care policies. This growing field of insurance provides individuals with the means to pay for the services they will need when they grow old and frail. Transferring financing of long-term care away from government and onto individuals will rescue Florida and the nation from future budget shortfalls. It will also give individuals control over the long-term-care options they prefer, rather than having those choices dictated to them by government.

The victories aside, 2001 produced a disturbing note. Until this session, the cumulative voting percentages of Republicans and Democrats in favor of AIF's positions have typically been comparable, with the GOP usually more pro-business. AIF's records, however, show a 50-point differential between Republican and Democratic pro-business scores for 2001.

One reason for the unprecedented discrepancy was the unconventional nature of the 2000 session. Gone was the profusion of less controversial bills that typically saturate the legislative session and on which Republicans and Democrats tend to coalesce. Instead the emphasis was on a handful of major issues that defined party differences. Those bills on which the Republican and Democratic caucuses clashed were often the same high-profile ones into which AIF poured enormous resources and time.

As long as the Democratic leadership insists on opposing free-market solutions, the performance of rank-and-file caucus members will continue to suffer. For the good of the state's economy we hope they rethink their positions on the issues of concern to Florida's employers. ■

**Jon L. Shebel is president and CEO of Associated Industries of Florida and affiliated companies (e-mail: [jshebel@aif.com](mailto:jshebel@aif.com)).**



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### PUBLISHER

Jon L. Shebel

### ASSOCIATE PUBLISHER

Stephen B. Trickey

### EDITOR

Jacquelyn Horkan

### PUBLICATIONS SPECIALIST

J. Gregory Vowell

### EDITORIAL OFFICES

516 North Adams St.  
Post Office Box 784

Tallahassee, FL

32302-0784

Phone: (850) 224-7173

Fax: (850) 224-6532

E-mail: [aif@aif.com](mailto:aif@aif.com)

# Putting the Civil Back in Civil Service

By Jacquelyn Horkan, *Editor*

**D**espite all the sound and fury, Gov. Jeb Bush won passage SB 466, which was based his package of reforms to state government's civil service system in a significant first step to improving the accountability of state employees.

Created to exert control over society, governmental agencies have a natural incentive to expand their authority. Holding them accountable for the use of power can be difficult because the ship of state is so large and responsibility is so widely distributed. Gov. Bush's changes to the state personnel system were designed to increase individual accountability among state employees.

Service First was the subject of a bitter battle between left-leaning labor unions, particularly the American Federation of State, County and Municipal Employees (AFSCME), that are still fuming over George W. Bush's presidential victory. While this issue may seem one of narrow political interest, concerning only those few who actually receive a paycheck from the state of Florida, reform of the civil service system as encompassed in Service First is of benefit to all Floridians who pay taxes and depend on state employees for everything from driver's licenses to social services to environmental permits.

Gov. Bush took a balanced approach to improving the civil service system, combining incentives with penalties for poor performance. Opponents of the plan objected to any measure that gave supervisors the power to punish workers, including those that made it easier to reprimand or fire inefficient or insubordinate employees.

The squabble reached epic proportions when union officials convinced Leon County Circuit Judge L. Ralph "Bubba" Smith to issue an injunction to keep lawmakers from meeting

on any subject involved in a collective bargaining impasse between government and union negotiators. The order was so broadly written that it not only prohibited legislative action on Service First, it also made budget talks strictly forbidden for 20 days. When the House and Senate leadership defied Judge Smith's trampling on the doctrine of separation of powers, he ordered them to explain why he should not hold them in criminal contempt. The Florida Supreme Court intervened and averted a constitutional crisis by ruling that Judge Smith had overstepped his jurisdiction.

During the last week of session, lawmakers reached agreement on their version of the package and passed it into law on the final day. While the final product is a slightly weakened version of the original Service First proposal, the legislation retains the most muscular provisions devised by the governor. It should provide relief to all businesses with firsthand experience of the inefficiency and frustration that marred the old system.

## SB 466

**Effective date:** Upon becoming law

**House vote:** 73-43

**Senate vote:** 23-15

**Final action:** Signed into law May 14

**Jacquelyn Horkan is editor of *Employer Advocate* and AIF's online magazine *Florida Business Insight* (<http://flabusinessinsight.com>). Her e-mail is [jhorkan@aif.com](mailto:jhorkan@aif.com).**

*Created to exert control over society, governmental agencies have a natural incentive to expand their authority.*

## Service First Highlights

- Moves 16,165 managerial and supervisory employees to Selected Exempt Service, where they receive a more lucrative benefits package but can be reassigned or replaced at the pleasure of the department head
- Creates performance-based bonuses, expands ability of agency heads to grant salary increases, and expands the state-employee education and training program
- Expands the definition of "cause" for employee discipline to include poor performance and streamlines the employee grievance and appeals processes
- Eliminates "bumping," which allowed senior employees to take over the jobs of employees with less tenure when jobs at an agency were cut
- Doubles the probationary period for new employees from six months to one year

(continued from page 1)

percent of the losses paid. There are 22.6 claims for every 1,000 occupied beds in Florida compared to seven claims for the other states. Attorneys for both defendants and plaintiffs account for 49 percent of the claims costs paid by liability insurers.

Lawsuits and demographic, however, were not the only source of pressure on the industry. Some large nursing-home chains banked their futures on a generous loophole in the Medicare reimbursement schedule. When Congress closed loophole, the chains were left with a back-breaking load of debt and no revenue to service it. Nursing home residents grew increasingly dependent on Medicaid and Medicare to pay for their stays at the facilities. Nursing homes lose an average of \$15.74 a day on these residents. With fewer and fewer private-pay residents, the nursing homes were caught in an inexorable cash squeeze.

The situation reached a crisis point last year when insurers began tripling liability premiums, even for homes and assisted-living facilities (ALF) that had never been sued. ALFs are required by state law to carry liability insurance. Many lenders insist that nursing homes carry liability insurance as part of their loan agreements. The scarcity and cost of insurance threatened wholesale closures of the facilities.

Nursing homes and ALFs were governed by two separate chapters of law that contained broadly worded language defining what they could be sued for. Patients' rights sections of the statutes attracted lawsuits because they included such vague concepts as the right to dignity, privacy, and health care. As a boon to lawyers, their fees were added on to any settlement or award.

Lawsuits alleging even the most trivial transgressions were routinely settled by nursing homes and ALFs that merely sought to cut their losses. A facility that was sued would have its operations disrupted by a plaintiff lawyer who sought to boost his fees by deposing almost every one of its employees. The longer the case dragged on, the higher the costs and fees that would have to be paid to the plaintiff lawyer.

*The laws enacted by the Legislature protect the rights of residents in lawsuits similar to those that make the headlines, while blocking the frivolous or abusive ones you never hear about.*



The laws enacted by the Legislature protect the rights of residents in lawsuits similar to those that make the headlines, while blocking the frivolous or abusive ones you never hear about. More importantly, the legislation will improve the lives of residents by attacking the causes behind poor or inadequate care.

**SB1200**

**Effective date:** Upon becoming law  
**House vote:** 99-21  
**Senate vote:** 39-0  
**Final action:** Signed into law May 15

**SB1202**

**Effective date:** Upon becoming law  
**House vote:** 109-8  
**Senate vote:** 38-0  
**Final action:** Signed into law May 15

**Jacquelyn Horkan is editor of *Employer Advocate* and AIF's online magazine *Florida Business Insight* (<http://flabusinessinsight.com>). Her e-mail is [jhorkan@aif.com](mailto:jhorkan@aif.com).**



## Long-term-care Reform Highlights

### Quality of Care

- Gives the state the power to deny an application, or suspend or revoke a facility's license, under certain circumstances; requires the state to revoke a facility's license if it meets certain guidelines for substandard or insufficient quality of care.
- Increases the frequency and scope of visits by quality of care monitors.
- Institutes stronger requirements governing resident-grievance procedures and gives the state added authority to investigate and punish facilities for noncompliance with the procedures.
- Increases minimum staffing requirements.
- Provides additional funding to increase Medicaid reimbursement rates.
- Strengthens requirements for charting of services provided to residents; institutes new and expanded training programs for non-physician caregivers.
- Mandates risk-management programs at facilities to improve the quality of care.
- Establishes reporting by facilities on staff turnover, staff stability, and staff-to-resident ratios; increases the penalties for failure to comply with minimum staffing requirements; adds requirements for additional reports designed to give early warning of possible problems.

### Tort Reform

- Replaces strict liability with clearly drafted negligence standards; conforms standards of care to medical malpractice law; establishes exclusive remedy for a claim based on negligence or a violation of a resident's rights.
- Establishes a three-tier system for awards of punitive damages, similar to that contained in the 1999 tort reform act, with higher limits in the first two tiers; second or third-tier punitive damage awards will automatically be referred to the appropriate law enforcement agency for investigation; punitive-damage awards will be divided equally between the plaintiff and the Quality Improvement Trust Fund.
- Institutes a two-year statute of limitation with a four-year statute of repose; six years for claims alleging fraud, fraudulent concealment, or intentional misrepresentation of facts that prevented discovery of the injury.
- Repeals add-on attorney fees and costs for injury death cases; imposes a cap of \$25,000 on fees for claims that involve violations of residents' rights.

## WHAT DO YOU NEED TO KNOW?

On AIF's Web sites you'll find the information you need — when you need it — on the political, legislative, and regulatory efforts that are shaping your company's future.

### Associated Industries of Florida Online

- Links to all of AIF's web sites, both public and members only
- Access to AIF research and issue pages
- Ability to print mailing labels for Florida lawmakers

<http://aif.com>

### Florida Business Insight – The Magazine of Free Enterprise and Public Policy

- Timely analysis of political and economic developments
- Expert advice on how to comply with laws and regulations
- In Box — a tour of the outlandish and outrageous world of current events
- Dateline: Florida Business — the latest breaking news on Florida's economy

<http://flabusinessinsight.com>

### Florida Business Network (limited to AIF members)

- Complete information on important business bills
- AIF legislative positions and *Voting Records*
- Articles from Florida's leading newspapers
- All past issues of *Daily Brief*, *Weekly Legislative Update*, and *Action Reports*
- E-mail notification on bills of interest
- Member issue-response program

<http://fbnet.com>

### Florida Business United Online (limited to FBU members)

- Expert analysis of the political climate
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- Complete voter registration, voter performance, and election history profiles for every legislative district in the state
- One-of-a-kind campaign contribution reports that rank political contributions by occupation and industry
- Detailed biographical and issue profiles for every qualified state legislative candidate

<http://fbunet.com>

### Associated Industries Insurance Company

- Information for injured workers about how to navigate the workers' comp system
- Resources for employers to help them control their workers' compensation costs
- *How-to Manual of Safety*, providing all the tools to create a workplace safety program

<http://aiic-insurance.com>

# Unfinished Business

By Jacquelyn Horkan, *Editor*

**F**or yet another year, the Legislature adjourned with the desperately needed reform of the state's workers' compensation system left undone.

Some progress was made with the passage of HB 1803, a package of noncontroversial amendments that address a number of administrative and procedural problems. One of the bill's most important provisions removed the mandatory use of managed care in the provision of health care to injured workers, which was instituted in 1993. The managed-care requirement was an experiment that failed. The cost-saving features of managed care were ineffective in workers' comp because of the cost-control mechanisms already in place; instead it actually increased costs by adding another layer of paperwork and administrative oversight.

HB 1803 also made substantive changes to the Office of Judges of Compensation Claims, which hears benefit disputes, that will improve accountability and streamline the hearing process.

The passage of HB 1803 provided some solace for the defeat of the major reform bill that was crafted with the assistance of Mary Ann Stiles, AIF's general counsel and government-affairs consultant. Stiles, nicknamed the Queen of Comp for her depth of knowledge of the field of workers' comp law, had designed a package that attacked the two major cost-drivers in the system: attorneys' fees and overuse of permanent-total disability.

Stiles shepherded the reform bills past a series of hostile attacks by workers' comp claimant lawyers who feared the loss of their gravy train. The fault for the bill's failure on the last day of session falls not on the claimant lawyers, however, but on a group of so-called business lobbyists who did not take the time to understand the bill.

The carefully developed legislation killed

by these ill-informed business lobbyists ironed the wasteful and costly kinks out of the workers' comp system. By their last-minute intervention, they played right into the hands of the claimant lawyers who are the only ones guaranteed to benefit from manipulative litigation and abuse of the permanent total designation.

## The Price of Pinching Pennies

The reform package would have doubled the impairment benefits due to an injured worker after he reaches maximum medical improvement. The 1993 reforms slashed benefits to injured workers in a desperate attempt to cut premium costs. Those benefit cuts had a perverse effect, however. More and more workers hired lawyers in an effort to increase their benefits. The pursuit of permanent-total-disability designations for their clients was one part of the strategy adopted by claimant lawyers.

Permanent-total disability is supposed to be reserved for those with injuries so severe that they will never be able to work again. Instead, it has become a haven for injured employees who could work but choose to stay at home and collect disability checks. This gaming of the system has produced a malignancy of rising costs.

While the benefits outlined in Florida's workers' comp law are the lowest in the nation, the actual benefits paid rank among the highest. Thanks to the ingenious schemes of injured workers and their lawyers, Florida employers pay among the highest premium rates in the United States. Much of the fault can be traced to abuse of the permanent-total designation.

In Florida, permanent-total disability accounts for 20.5 percent of all non-medical benefits. Only Colorado pays a higher percentage, barely squeaking by Florida at 20.9 percent. Compare that to New York (2.5

*The confusion of the anti-reform business lobbyists has forced employers and employees alike to wait another year for relief.*

percent), California (6.4 percent), Texas (8.1 percent), South Carolina (8.5 percent), and Georgia (8.1 percent). Permanent-total disability levies a substantial tariff on goods manufactured in Florida.

AIF's proposal launched a multi-pronged attack on the permanent-total disability conundrum. By increasing impairment benefits, the bill would have alleviated some of the frustration experienced by injured workers who run out of benefits before they are prepared to return to work, thereby lessening their incentive to hire lawyers. By itself the benefit increase was predicted to boost rates by six to 6.7 percent.

Offsetting the premium-hike were provisions to attack the real causes of Florida's high rates. The bill would have made it tougher to be designated as permanently and totally disabled. Restricting permanent total to those incapacitated by a workplace injury would save money for Florida employers by curtailing the payment of costly, lifetime benefits to those who don't need them.

## Cutting Costs the Right Way

The bill based on Stiles's ideas also cut back on the waste and expense engendered by claimant lawyers. Of all workers' comp injuries in Florida, 95 percent are handled without lawyers and lawsuits; the other five percent that are litigated account for 70 percent of the benefit dollars paid out.

Claimant lawyers drive up costs in every segment of the system. First, they boost medical benefits by shopping around among friendly doctors to find questionable impairment ratings for their clients. The ultimate goal is to add up the impairment ratings until they qualify the claimant for permanent total disability; even if the claimant doesn't meet that threshold, every dubious percentage of impairment increases the amount of indemnity benefits paid to claimants and, by no coincidence, the amount of fees earned by the lawyers.

The quest for these fees is what is forcing premium rates upward. The lawyers exploit

every loophole they can find — or create — in order to pad their wallets. One loophole they created involves hourly fees. Workers' comp claimant lawyers are supposed to be paid on a contingency basis, using a schedule of contingency percentages set forth in the statutes. If a case meets certain qualifications — for example, it is extremely complex — a judge of compensation claims can award the attorney hourly fees. Judges have taken a very lenient approach to awarding hourly fees, which gives claimant attorneys a powerful incentive to waste time building up billable hours. In fact, there a number of cases where the carrier ended up paying more to the attorney than it did to the claimant.

As a result, the workers' comp system is now attorney-driven and filled with perverse incentives. One of these is the creation of delays. In some areas of the state, an injured worker has to wait up to a year and half for a final determination of his claim as the lawyers on both sides churn the case and drive up their billable hours. During this time a claimant may be going without the treatment or benefits he desperately needs.

The confusion of the anti-reform business lobbyists has forced employers and employees alike to wait another year for relief. The 2002 legislature will convene in January, two months earlier than usual because of reapportionment, and AIF will gear up once again to win passage of legislation to correct the flaws in the state's workers' comp system.

### HB 1803

**Effective date:** October 1, 2001

**House vote:** 110-5

**Senate vote:** 39-0

**Final action:** Signed into law May 30

**Jacquelyn Horkan is editor of *Employer Advocate* and AIF's online magazine *Florida Business Insight* (<http://flabusinessinsight.com>). Her e-mail is [jhorkan@aif.com](mailto:jhorkan@aif.com).**

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story on  
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# What Passed

By Curt Leonard

## EDUCATION

### Education Governance

With the approval of SB 1162, the Florida Legislature continues the process of establishing a unified system for governance of Florida public education, from kindergarten through graduate school. The bill directs the governor to appoint members of a new state Board of Education by July 1, which he has already done. This body will share its duties with the governor and Cabinet, which now sits as the state Board of Education, until a 1998 constitutional amendment reorganizing the Cabinet takes effect in January 2003. They and an advisory committee will work out the operating details and report back to the 2002 Legislature. The bill also replaces the Board of Regents with an appointed board at each university.

AIF supports these efforts to implement reform of our education system. Florida's employers need high quality, trained, and equipped people to meet the needs of an increasingly high-tech, knowledge-based economy. These reforms are an important first step in improving the quality of potential employees for the business community, and they brighten the future for all of Florida's citizens.

**Effective date:** July 1, 2001

**House vote:** 70-45

**Senate vote:** 27-10

**Final action:** Signed into law June 6

### Tax Credits For Non-Profit Scholarship Funds

The Florida Legislature passed HB 21 by Rep. Mike Fasano (R-New Port Richey) and others to provide corporate income tax credits for corporate donations to non-profit scholarship funds. Under the bill companies receive a 100-percent corporate-income-tax credit for monetary donations to a nonprofit scholarship-funding organization. The credit may not exceed 75 percent of a taxpayer's total liability after all other credits are taken, and the total amount of credit granted in a year is capped at \$50 million.

Any proposal that promotes and encourages competition in the education monopoly promises to benefit students. Opponents expressed concern that the scholarship monies could be used to allow children to relocate to other public or private schools, which was actually an argument for the bill. Many of the state's failing schools are in poor neighborhoods. These scholarship funds will provide opportunities for students trapped in poor schools to migrate to better schools in better areas. Education is not simply an exercise in reading, writing, and arithmetic; the ability to move to other schools provides for broader socialization, allowing the students to interact with students from all walks of life. Wasn't this the purpose of forced bussing promoted by our liberal friends not too many years ago?

**Effective date:** July 1, 2001

**House vote:** 72-44

**Senate vote:** 25-14

**Final action:** Signed into law June 13

### Teacher Liability Protection

The Florida Legislature approved HB 409 by Rep. Frank Farkas (R-St. Petersburg) and the House Lifelong Learning Council to protect teachers from lawsuits.

Public-school teachers and other educational personnel have become ripe targets for litigation over actions related to discipline, grading, and other classroom decisions. Many of these lawsuits are frivolous, wasting time and money that could better be spent on helping children learn. They also undercut the ability of instructors to render accurate measurements of student performance and to maintain classroom order.

Under this act, the state of Florida will provide liability insurance at no cost to teachers, guidance counselors, school psychologists, librarians, and all other staff members who provide direct instruction to students.

**Effective date:** July 1, 2001

**House vote:** 117-0

**Senate vote:** 36-4

**Final action:** Signed into law May 16





## HEALTH CARE

### Pharmacy Licensure

SB 654 by Sen. Burt Saunders (R-Naples) creates licensure by endorsement for pharmacists in other states. In other words, it allows pharmacists in other states to relocate to Florida and continue to practice professionally without having to “start all over” with Florida’s professional licensure requirements. Every state in the country, except for Florida and California, provides licensure by endorsement. This bill will assist tremendously in solving the problems faced by retail pharmacy establishments in finding enough pharmacists to serve the needs of their customers.

**Effective date:** Upon becoming law

**House vote:** 118-0

**Senate vote:** 38-1

**Final action:** Signed into law June 6

### Restrictions on First-Class Care

SB 1568 by Sen. Jim Sebesta (R-St. Petersburg) busts an agreement struck by the Florida Medical Association and the business community on the question of who is qualified within a health maintenance organization (HMO) to make medical decisions on behalf

of Florida patients. The legislative agreement adopted in 2000 provided that all health plans are required to use licensed physicians rather than insurance personnel to make treatment decisions, or so-called “adverse determinations.” SB 1568 stipulates that only a Florida-licensed physician can make determinations on a treatment plan. The legislature passed it, forgetting that last year’s carefully negotiated compromise protected consumers against decisions driven purely by cost, while also giving health plans the authority they need to provide the best and most efficient care.

Proponents of the bill argued that this legislation allows Florida’s patients to receive “accountable care” from a doctor based in Florida, where disciplinary measures can take place. Lost on the Legislature was the fact that the Florida Board of Medicine has been extraordinarily lax, if not outright negligent, with respect to disciplining Florida doctors. This is a false argument anyway, since HMOs are held accountable, both by regulators and the marketplace, no matter where the doctor is located.

SB 1568 was just one of a slew of “anti-HMO” bills introduced this year, and the only one that passed. Anti-HMO bills fall into the category of politically attractive but fatal to the ability of Florida employees to retain access to affordable, high-quality health care. Thanks to the efforts of the Senate and House leadership, few of the bills received anything more than cursory consideration in the committee process.

While introduced with the best of intentions, much of the legislation sought either to weaken HMOs’ ability to manage costs or to mandate certain types of coverage, regardless of the actual cost. Substantive and sweeping reforms were enacted in 2000, and the governor and lawmakers deserve credit for rejecting most of the anti-HMO proposals and giving last year’s reform time to take effect.

**Effective date:** January 1, 2002

**House vote:** 116-3

**Senate vote:** 38-0

**Final action:** Signed into law June 6

*Anti-HMO bills fall into the category of politically attractive but fatal to the ability of Florida employees to retain access to affordable, high-quality health care.*

## LEGAL & JUDICIAL

### Government Accountability

SB 822 by Sen. Buddy Dyer (D-Orlando) institutes limits on contingency fee contracts between state government and private attorneys. The bill requires that a private attorney who contracts with the state maintain documents and records and make them available for inspection.

The Florida business community has a compelling interest in seeing to it that Florida's tax dollars are administered in a fair and equitable manner, particularly as it relates to any state legal action against a private sector entity. In addition, public scrutiny of the retention of private counsel and the contractual arrangements established may assist in ensuring that the state does not gratuitously seek legal remedy without first conducting an adequate policy debate on the issues involved.

**Effective date:** July 1, 2001

**House vote:** 119-0

**Senate vote:** 36-0

**Final action:** Signed into law June 19

### Civil Liability/Gun Manufacturers

SB 412 by Sen. Charlie Bronson (R-Indian Harbour Beach) prohibits civil actions against firearms and ammunition manufacturers, distributors, dealers, and trade associations by certain governmental entities under certain circumstances.

The bill was prompted by the appearance of gun manufacturers on the "hit list" of municipal, county, and state governments and their trial attorney friends who had participated in the looting of the tobacco companies. In a cultural and legal environment where personal responsibility and accountability have been virtually eliminated, gun manufacturers became a tempting target in need of protection.

Lawsuits against the gun industry for damages, abatement, or injunctive relief resulting from the lawful design, marketing, or sale of firearms to the public are prohibited. The specified entities prohibited from bringing such suits are the state, counties,



municipalities, special districts, or other political subdivisions of the state. The bill does not prohibit an individual from bringing a suit for breach of contract, breach of express warranty, or injuries resulting from a defect in materials or workmanship.

Passage of this bill was only the first step in ensuring that our own governments, lacking the political will or wherewithal to ban or regulate products, will not use legal artifice to plunder industries such as alcoholic beverage manufacturers, fast-food chains, and any other business that has, at some time, produced something that may have been subject to misuse or abuse.

**Effective date:** upon becoming law

**House vote:** 78-35

**Senate vote:** 27-12

**Final action:** Signed into law May 1

*In a cultural and legal environment where personal responsibility and accountability have been virtually eliminated, gun manufacturers became a tempting target in need of protection.*

## Motor Vehicle Crash Reports

HB 1805 by Rep. Leslie Waters (R-Largo) implements one of the suggestions arising from last fall's statewide grand jury report dealing with insurance fraud. According to the report, approximately \$1.1 billion in fraudulent auto-insurance claims are filed annually, with a large portion of that sum directly attributable to personal-injury protection (PIP) fraud.

An unholy alliance of doctors, chiropractors, and lawyers conspired openly and aggressively to persuade those involved in car accidents to file fraudulent PIP claims. The conspirators hired runners to monitor police reports of car accidents. Car accident victims, no matter how minor the accident, were solicited by the runners to file claims for medical services a result of the accidents. Personal hectoring and repeated phone calls shortly after an accident were not uncommon.

Kickbacks of as much as \$600 were used by the runners to entice accident victims into seeking "therapy" at facilities nicknamed "crash clinics," which were set up for the express purpose of treating accident victims. Some crash clinics also cooperated with lawyers who might file personal-injury lawsuits on behalf of the crash victims.

Florida's no-fault auto insurance law guarantees up to \$10,000 in medical care to anyone injured in a crash. This provides the ingredients for a soup of illegal solicitation of accident victims, billing for unnecessary services, and patient brokering. According to the Florida Department of Insurance, these fraudulent schemes add an estimated \$246 a year to the price the average Florida family pays for auto insurance.

Florida Bar rules prohibit telephone solicitations and impose other restrictions on lawyers, such as requiring them to wait 30 days before contacting crash victims. As is usually the case, the Bar has shown little, if any, interest in enforcing these rules or sanctioning lawyers who violate them.

HB 1805 would reduce the ability to engage in these schemes by imposing a period of confidentiality on victims' personal information that is collected by law enforce-

ment agencies and stored by the state for motor-vehicle crash reports. Only authorized parties can obtain crash reports including the personal-identity information during the exempted period. With a reduction in this ugly fraud, insurance rates should decrease.

A law that had prohibited the use of police crash reports for commercial solicitation was recently ruled unconstitutional by the Florida Supreme Court, but the effect of that decision on HB 1805 should be minimal.

Rampant auto-insurance fraud not only costs Florida citizens. It breeds contempt for the law while diminishing respect for the medical and legal professions.

**Effective date:** upon becoming law

**House vote:** 115-0

**Senate vote:** 39-0

**Final action:** Signed into law June 6

## Judicial Selection Reform

On the last day of the session lawmakers passed a compromise on court reform. CS/HB 367 gives the governor practical control over the membership of the state's 26 judicial nominating commissions that recommend candidates to the governor for vacancies on the bench.

Under current law, the governor selects three of the nine members of each commission. The Florida Bar appoints the other three and those six pick the remaining three commissioners. CS/HB 367 gives five direct appointments to the governor who will then choose the final four members from a list submitted by the Florida Bar. The governor will be able to reject the Bar's slates of finalists until they contain candidates he deems fit for consideration.

While the change is not as great as that originally supported by AIF, it is a move in the right direction to limit the input of the Florida Bar. Of course, the press has opined that "politics" has been interjected into the court selection process, as if the whole judicial nominating commission system was some kind of organic operation, untouched by human hands and conducted with holy motives.

This is a predictable approach by the press, which has always treated The Florida Bar,

Visit <http://aif.com> for Voting Records a comprehensive report on the issues followed by AIF and how lawmakers voted on them.



*What those such as Sen. Wasserman-Schultz choose to ignore is the fact that only 40 percent of Florida's population enjoy the benefits of a private health- insurance policy*

environmentalists, the unions, and feminist groups as "neutral" participants in the process rather than revealing them to be the politically charged, disciplined, well-financed, and ideologically motivated partisans that they are. The Florida Bar's input needs to be limited because it is a private group with its own agenda, its own perspective, and its own priorities, which do not always agree with those embraced by the larger public.

The Florida Bar may once have been a politically neutral organization, suited for its role in assisting in the selection of judges, but that is no longer the case. Giving The Florida Bar a privileged position in selecting candidates makes no more sense than it would to bestow such power on the Audubon Society or the local Kiwanis Club.

**Effective date:** July 1, 2001

**House vote:** 68-48

**Senate vote:** 29-10

**Final action:** Signed into law June 19

## TAXATION

### Intangibles Tax Reduction

Although the intangibles tax did not suffer final repeal this year, the Legislature did adopt HB 21, House Majority Leader Mike Fasano (R-New Port Richey), which raised exemptions from \$20,000 to \$250,000 for individuals and from \$40,000 to \$500,000 for married couples. It also granted a \$250,000 exemption to businesses. Since a taxpayer is not required to remit taxes due of less than \$60, the change removes from the intangible tax roles individuals with intangible assets of less than \$310,000 and couples with less than \$560,000.

The Senate added some major amendments to the bill, including one by Sen. Jim Horne (R-Orange Park) that was barely mentioned in the last-minute consideration of the bill. It would help Florida begin requiring mail order and Internet sales companies to collect and remit sales tax by authorizing the director of the Department of Revenue to enter into the Streamlined Sales and Use Tax Agreement with other states. The system, developed by the National Conference of State Legislators, would provide uniform tax

rates and other procedures to simplify collection of sales taxes by out-of-state companies and help overcome their objections that have kept Congress from requiring the collections.

AIF salutes the House and Senate leadership for further chipping away at the intangibles tax, a Depression-Era relic that is punitive, inhibits the movement of capital, penalizes savings and investment, imposes double if not triple taxation on citizens, and provides an enormous disincentive for corporations to relocate their companies to Florida

Florida's participation in the Streamlined Sales Tax Project is the first step to having all the 45 states with a sales tax adopt a uniform system for the assessment and collection of the sales taxes. This procedure will relieve vendors from many of the existing burdens while placing Main Street, catalog, and Internet vendors on a level-playing field so that no one has an economic advantage based on the collection or non-collection of sales taxes. The State of Florida will also realize additional tax revenues if this uniform system is implemented.

**Effective date:** July 1, 2001

**House vote:** 72-44

**Senate vote:** 25-14

**Final action:** Signed into law June 13

### Communications Services Tax Simplification

CS/CS/SB 1878 by Sen. Jim Horne (R-Orange Park) consolidates seven taxes and fees into a single communications tax. The bill is designed to be "revenue neutral," meaning that by combining the taxes, taxpayers are not incurring greater tax liability. The telecommunications explosion has created a nest of confusing taxes on various communication services. It is hard for the state to collect, and even harder for taxpayers to identify exactly what they are paying. The simplified tax creates equity in the collection and administration of the taxes, while giving taxpayers a better understanding of how much they are paying in taxes, which creates more accountability with the Legislature.

**Effective date:** October 1, 2001

**House vote:** 99-15

**Senate vote:** 39-0

**Final action:** Signed into law June 1



# What Didn't Pass

## Prescription Insurance and Contraceptives

SB 168 by Sen. Debbie Wasserman-Schultz (D-Pembroke Pines) died in the Senate Appropriations Subcommittee on General Government. Simply put, the bill required any health insurer providing prescription-drug coverage also to provide coverage for oral contraceptives.

Currently, Florida law mandates that health-insurance policies include coverage of 51 different types of procedures and illnesses, whether the policyholder wants them or not. What those such as Sen. Wasserman-Schultz choose to ignore is the fact that only 40 percent of Florida's population enjoy the benefits of a private health-insurance policy, and the numbers are dropping as the costs of the insurance continue to spiral.

Some of those 51 mandates represent smart policy decisions and, arguably, reduce long-term costs to the carriers and to the employers buying the coverage. But many are burdensome and drive up prices beyond the reach of employers who would like to purchase basic health-care coverage for their employees. Until a system is established for the objective cost-benefit evaluation of current and proposed mandates, AIF is opposed to the imposition of any additional health insurance coverage mandates.

## Industrial Sales-Tax Exemption

HB 527 by Rep. Rob Wallace (R-Tampa) died in the House Council on Fiscal Responsibility. The bill amended state law to provide a full (rather than partial) sales-tax exemption on industrial machinery and equipment used in the expansion of existing spaceport and manufacturing facilities.

Under current law, the partial exemption only applies after the first \$50,000 in sales tax has been paid. Southeastern states all provide a full exemption. As is the case with much of



Florida's tax code, the partial exemption is a disincentive to smaller manufacturers who wish to grow and expand their operations. A full exemption would promote growth and jobs while putting Florida on a more level playing field with neighboring states when manufacturing operations are considering a move to the region.

## Supermajority Approval

One good idea that has languished in the halls of the Legislature for several years again faded away during the 2001 session. The proposal would have required approval by 60 percent of the voters to adopt a constitutional amendment. If it had passed the House and Senate, the proposed constitutional amendment would have gone before the voters in 2002.

Spurring interest in the supermajority amendment was passage of the statewide high-speed rail system constitutional amendment last November by a mere 53 percent majority. As if the adoption of the constitutional amendment by such a bare majority is not enough to give pause, a small percentage of those Florida citizens eligible to vote actually went to the polls. In other words, a very small number of Florida's citizens are responsible for placing a mandate in the state's constitution for construction of an expensive and controversial high-speed rail system.

The Florida Constitution is a document crafted to protect the rights and privileges of Florida's citizens and to define the constraints

of governmental power. It is an organizing document designed to provide an outline for the governance of Florida's citizens. In the case of the high-speed rail system, there are exceptional costs and complex policy questions related to the merits of such a system that far exceed the bare paragraph allotted to assist voters in making such a momentous decision on an election day.

AIF supports the requirement for supermajority approval of constitutional amendments as a means to protect citizens generally, and employers specifically, from the tyranny of the majority.

### **Tax Reform**

HJR 689 by Rep. Rob Wallace (R-Tampa) gave up the ghost on the House Special Order Calendar. Its Senate companion, SB 1414 by Sen. Bill Posey (R-Rockledge) died without ever receiving a hearing in a Senate committee. Both items would have required a three-fifths majority vote of the legislators in both the House and the Senate on any bill to raise taxes or fees, or to repeal a sales-tax exemption. Currently, as with any bill, only a simple majority is required for a tax increase to win adoption.

If it had passed the House and Senate, the measure would have gone to the voters in 2002 to decide whether to add it to the constitution.

AIF believes this proposal has merit. Tax increases, fee increases, and the removal of sales-tax exemptions are seen by many lawmakers as painless medicine when state revenues tighten. A two-thirds vote, as opposed to a simple majority, would require the sponsor to make a more compelling and considered case for any proposed tax increase, fee increase, or sales-tax exemption removal. Government's authority to tax the money earned by businesses and individuals is a tremendous power and should not be exercised lightly.

### **Unemployment Compensation Benefits for Birth & Adoption**

CS/SB 500 by Sen. Debbie Wasserman Schultz (D-Pembroke Pines) died in the

Senate Finance & Taxation Committee. The bill would have dipped into the unemployment compensation trust fund to finance up to six weeks of paid leave for parents of newborns and newly adopted children. Why is it that when certain legislators want to help their constituents, the proposal usually costs Florida's employers money?

AIF opposed CS/SB 500 because, while well intended, it sought to fund a social welfare program through the unemployment compensation trust fund. Adequate federal and state law is available to accommodate employees who welcome newly born or adopted children into their homes.

### **Cabinet Reorganization**

The legislature failed to enact any legislation accommodating the 1998 constitutional amendment restructuring Florida's Cabinet and merging the cabinet offices of the treasurer and the comptroller into that of chief financial officer. This constitutional revision will become effective January 7, 2003, after which the Cabinet will consist of the chief financial officer, the attorney general, and the agriculture commissioner. The secretary of state and commissioner of education will become appointed positions and will be eliminated from the Cabinet.

Since the 1998 amendment only addressed the duties assigned to the treasurer and comptroller by the Constitution, the Legislature must decide how to treat the responsibilities assigned to each by statute, specifically those involved in regulation of the insurance, banking, and financial services industries. AIF supported Comptroller Bob Milligan's proposal, encompassed in HB 681 as passed by the House, by Rep. Leslie Waters (R-Largo), that created three departments, one each for insurance, banking, and financial services, that would assume the regulatory duties of the two obsolete Cabinet officials. An executive director, appointed by the governor and Cabinet and approved by the Senate, would nominate the three department heads who would then receive final approval from the governor and Cabinet.

*(Continued on page 20)*

# Et Cetera

By Jacquelyn Horkan, *Editor*

And now for the rest of the story — the laws enacted by the Legislature that may not affect your business directly, but that you need to know about.

## Sharpening the Pencil Act

CS/CS/HB 269 extends the education-reform project of the Bush Administration to the local school districts. Under the Sharpening the Pencil Act, each school district will undergo a best financial-management practices review every five years in the hope that the districts will improve their use of resources and identify methods for saving costs. Reviews of this type performed for the Polk, Brevard, and Martin County school systems revealed combined possible five-year savings of more than \$30 million if the district officials adopted all of the recommendations. This review process, combined with the selected performance reviews, will help restore accountability and improve effectiveness at the local level. The money spent by taxpayers on education should be accompanied by promises that it will be spent wisely.

**Effective date:** July 1

**House vote:** 117-0

**Senate vote:** 36-1

**Final action:** Signed into law May 30

## Sales Tax Holiday

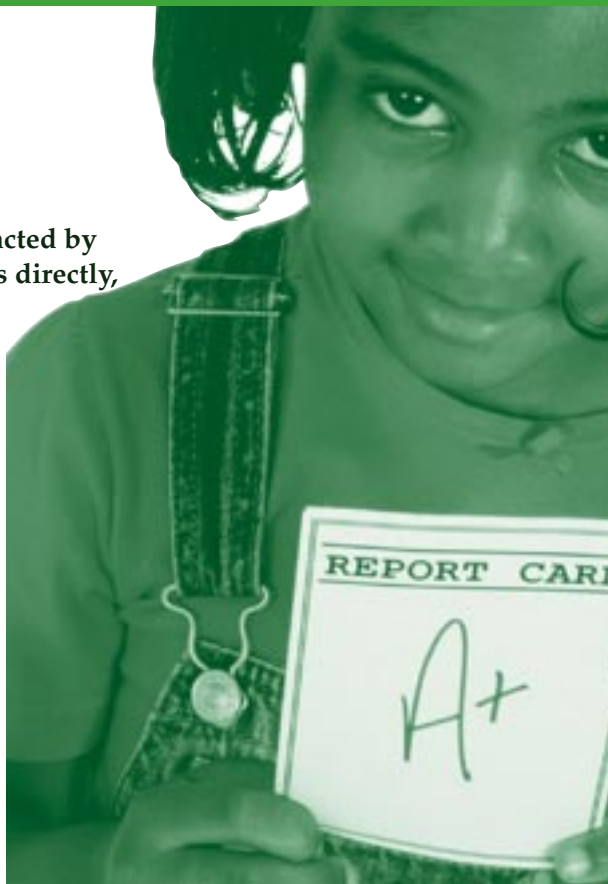
With HB 251, sponsored by Rep. Bev Kilmer (R-Marianna), the Legislature extended the popular sales tax holiday for a fourth year. For a nine-day period beginning on July 28, 2001, Florida shoppers will not have to pay sales tax on the purchase of any item of clothing sold for \$100 or less. The tax will be due on some items such as in-line skates, briefcases, jewelry, handkerchiefs, and umbrellas. The holiday will save shoppers an estimated \$42.8 million.

**Effective date:** Upon becoming law

**House vote:** 99-12

**Senate vote:** 26-8

**Final action:** Signed into law June 1



For a full list of all the bills passed, visit AIF's Members Only Web site, <http://fbn.com>



## Economic-Impact Amendment

Lawmakers approved House Joint Resolution 571, a proposed constitutional amendment that would require the Legislature to prepare a report estimating the cost of any proposed constitutional amendment placed before the voters. Currently no economic-impact study is required, leaving voters in the dark about the budgetary effects of their decisions. This amendment will go before the voters in the 2002 general election.

**Effective date:** not applicable

**House vote:** 105-9

**Senate vote:** 36-0

**Final action:** Joint resolutions must be passed by three-fifths of the members of both chambers; they do not require action by the governor

Jacquelyn Horkan is editor of *Employer Advocate* and AIF's online magazine *Florida Business Insight* (<http://flabusinessinsight.com>). Her e-mail is [jhorkan@aif.com](mailto:jhorkan@aif.com).

# Associated Industries of Florida

Twenty-two lobbyists, representing almost 500 years of accumulated experience in politics and government, spent

**A**IF's contingent of lobbyists is not only one of the largest in the state, it comprises the best and brightest names in Florida politics. These men and women reached the pinnacles of government leadership, steered the course of state party politics, and served in the administrations of former presidents of the United States. Their knowledge encompasses the issues and the processes of lawmaking. And they understand business, running their own companies and facing the challenge of meeting a payroll.



Seasoned veterans, they apply their skill and understanding to helping you achieve success in the marketplace.



**Jon L. Shebel** – President & CEO of Associated Industries of Florida and affiliated corporations ... more than 32 years as a lobbyist for AIF ... directs AIF's legislative efforts based on AIF Board of Directors' positions ... graduated from The Citadel and attended Stetson University College of Law.  
**Issues:** General issues



**Randy Miller** – Senior executive vice president & COO of Associated Industries of Florida ... responsible for the daily operations of AIF ... former special consultant to Pennington, Moore, Wilkinson, Bell & Dunbar, P.A. ... former executive director of the Florida Department of Revenue ... expertise in state and local tax issues, including consulting, lobbying, and government agency liaison ... B.S. from Florida State University.  
**Issues:** Taxation, general issues



**Mary Ann Stiles, Esq.** – General counsel of Associated Industries of Florida ... managing partner in the law firm of Stiles, Taylor, & Grace, P.A. ... more than 28 years of legislative and lobbying expertise before the Legislature and other branches of government ... graduate of Hillsborough Community College, Florida State University and Antioch Law School.  
**Issues:** Workers' compensation reform



**Chris Verlander** – Senior vice president - corporate development of Associated Industries of Florida ... more than 21 years of expertise in insurance lobbying activities ... former president (1994-1997) and vice chairman (1997-1999) of American Heritage Life Insurance Company ... B.S. from Georgia Tech and M.B.A. from the University of Florida.  
**Issues:** Cabinet reorganization



**Curtis L. Leonard** – Governmental affairs manager of Associated Industries of Florida ... over 14 years of experience in lobbying the executive and judicial branches ... areas of specialization: health care, taxation, private property rights ... former staff analyst with the Florida Legislature ... B.A. in political communications from Florida State University.  
**Issues:** General issues



**Barney T. Bishop III** – President & CEO, The Windsor Group ... former aide to state Treasurer Bill Gunter ... former executive director of the Florida Democratic Party ... more than 22 years of experience in legislative and political affairs ... areas of expertise include appropriations, criminal justice, and behavioral health care issues ... B.S. in political & judicial communication from Emerson College in Boston.

**Issues:** Appropriations, cabinet reorganization, civil-service reform, nursing-home reform, judicial reform



**Ronald L. Book, Esq.** – Principal shareholder of Ronald L. Book, P.A. ... former special counsel in cabinet and legislative affairs for Gov. Bob Graham ... 29 years of experience in government and legislative activities ... areas of expertise include legislative and governmental affairs with an emphasis on sports, health care, appropriations, insurance, and taxation ... graduate of the University of Florida, Florida International University, and Tulane Law School.

**Issues:** Economic development, regulated industries, transportation



**Jodi L. Chase, Esq.** – Of Jodi Chase, P.A. ... former executive vice president & general counsel of AIF ... areas of specialization include health care, legal and judicial issues, and business issues ... undergraduate and law degrees from Florida State University, both with honors.

**Issues:** Nursing-home reform, judicial reform



**Keyna Cory** – President, Public Affairs Consultants, a public affairs and governmental relations consulting firm ... more than 16 years of experience representing a variety of clients, from small entrepreneurs to Fortune 500 companies, before the Florida Legislature ... majored in political science at the University of Florida.

**Issues:** Health regulation, nursing-home reform, banking & insurance, cabinet reorganization



**Martha Edenfield, Esq.** – Partner in Pennington, Moore, Wilkinson, Bell & Dunbar, P.A. ... more than 16 years of lobbying experience before the Legislature and other branches of government ... areas of expertise include environmental and administrative law ... graduate of Florida State University and Florida State University College of Law.

**Issues:** Environment & growth management, nursing-home reform, cabinet reorganization, health care



# 2001 LOBBYING TEAM

more than 10,000 hours in the Capitol during the 2001 Legislative Session *advocating for your business interests.*



**Ralph Haben Jr., Esq.** – Partner in the law firm of Haben & Richmond, P.A. ... former speaker of the Florida House of Representatives (1981-1982) ... as a member of the House from 1972 to 1982, served on every major committee and received numerous awards in recognition of legislative accomplishments ... B.A. from the University of Florida and J.D. from Cumberland College of Law.  
**Issues:** Workers' compensation



**Damon Smith** – Partner in the public and governmental relations firm of Mirabella, Smith & McKinnon ... more than 16 years of legislative lobbying experience ... former south Florida aide to U.S. Sen. Lawton Chiles ... B.S. in journalism from the University of Florida.  
**Issues:** Banking & insurance, commerce & economic development, regulated industries, cabinet reorganization, civil-service reform, government reform



**Frank Mirabella** – Partner in the public and governmental relations firm of Mirabella, Smith & McKinnon ... more than 15 years of legislative lobbying experience ... B.S. in government from Florida State University.  
**Issues:** Government reform, regulated industries, cabinet reorganization



**Arthur E. Teele Jr., Esq.** – Commissioner of the city of Miami ... chairman of the city of Miami Community Redevelopment Agency ... former chairman of the Metro-Dade Commission ... former vice president & general counsel of AIF ... former administrator of the Urban Mass Transportation Agency under the Reagan administration ... also served on the President's Task Force on Urban Affairs ... B.S. from Florida A&M University and J.D. from Florida State University.  
**Issues:** Local government, political affairs



**Pete Mitchell** – Consultant for Pennington, Moore, Wilkinson, Bell & Dunbar, P.A. ... former assistant state insurance commissioner and treasurer ... former staff director for the Committee on Appropriations, Florida House of Representatives ... B.A. in business administration and computer science from Southridge State University, with honors.  
**Issues:** Education, appropriations, ethics & elections, government reform



**John Thrasher** – Partner in the lobbying firm Southern Strategy Group ... former speaker of the Florida House of Representatives (1999-2000) ... as a member of the House from 1992 to 2000, was instrumental in protecting Floridians' access to health insurance, shepherding tort reform legislation, and promoting pro-free-market policies ... recognized frequently for legislative accomplishments ... B.S. and J.D. with honors from Florida State University.  
**Issues:** Does not lobby the legislature



**Ken Plante** – President of Plante & Adams, Inc. ... more than 33 years of governmental experience ... former director of legislative affairs, Office of the Governor (1999) ... former Florida senator (1967-1978) and Republican leader (1976-1978) ... member of the Florida Constitutional Revision Commission (1977-78) and chairman of the Commission's Finance and Taxation Committee ... a founder and first president of Florida Tax Watch.  
**Issues:** General issues



**Screven Watson, Esq.** – Partner in Southern Consulting Group ... more than 13 years of experience in Florida politics ... former executive director of the Florida Democratic Party ... has worked with numerous Democratic Party officials, on both the national and the state scene ... B.A. from Southern Methodist University and J.D. from Nova Southeastern.  
**Issues:** Banking & insurance, environment, regulated industries, cabinet reorganization



**Jim Rathbun** – President of Rathbun & Associates ... more than 12 years of experience representing individuals and entities before the Legislature, state agencies, and the governor and Cabinet ... formerly worked with the Florida House of Representatives and served as staff director of the House Republican Office ... B.S. from Florida State University.  
**Issues:** Agriculture, commerce & economic development, ethics & elections, cabinet reorganization, civil-service reform



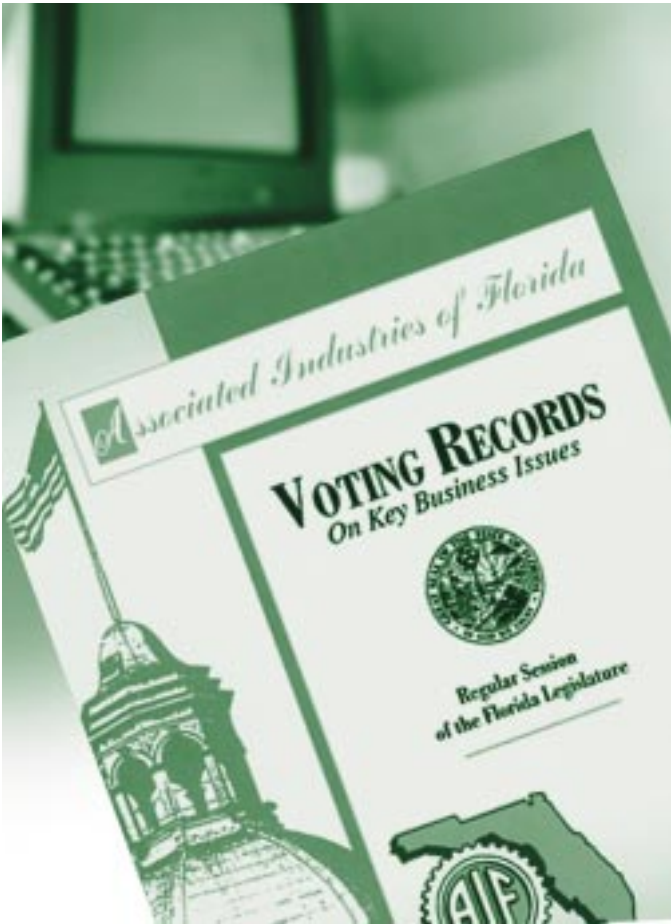
**John Wehrung** – Tidewater Consulting, Inc. ... more than 12 years of experience in political and governmental affairs ... former political director of the Republican Party of Florida ... engineered the 1996 GOP takeover of the Florida House ... served as chief of staff for the General Counsel's Office at the Republican National Committee from 1991-1993.  
**Issues:** Workers' compensation, ethics & elections



**Tom Slade** – President of Tidewater Consulting, Inc. ... more than 41 years of experience in politics and government ... Republican Party of Florida National Committeeman elect ... served as state chairman of the Republican Party of Florida from 1993-1999 ... former state representative and state senator ... served as vice-chairman of the Florida Taxation and Budget Reform Commission in 1990.  
**Issues:** General government, political affairs



**Gerald Wester** – Governmental consultant with the law firm of Katz, Kutter and Haigler, P.A. ... former chief deputy over Florida Department of Insurance's regulatory staff ... more than 25 years of lobbying experience ... expertise in insurance, banking, and health care issues ... Bachelor's and master's degrees from Florida State University.  
**Issues:** Health care, Health Maintenance Organizations (HMO's)



## AIF's comprehensive ranking of lawmaker performance is on its way to a computer near you.

*Voting Records* is one the state's most unique post-session wrapup tools. The AIF staff compiles thousands of votes cast by each Florida representative and senator on key business bills.

What makes *Voting Records* stand out from the rest? AIF's record includes more votes on more bills than anyone else. It tallies votes on the bills and amendments to the bills, both in committee and on the floor. And unlike other groups, AIF's results are purely objective; no votes have been given added significance, which tends to skew the results.

The full *Voting Records* will soon be available online (<http://aif.com>). ■

## Tort Reform Update

Business people well knew that winning passage of the massive tort reform bill in 1999 was just the first step. Now we're in phase two: defending the law against a trial-lawyer lawsuit to overturn it.

The Supreme Court of Florida refused to hear a case overturning the 1999 law that sought to shield Florida's employers from frivolous and excessive lawsuits and damage awards. The court's 6-0 decision returns the case to the First District Court of Appeal. The First District had originally taken a pass on the case, asking that the Supreme Court review it because of its importance.

The appellate review stems from a decision in February of this year by Circuit Court Judge Nikki Clark, striking down the tort-



# Don't Second that Election

The major election reform bill enacted during the session contained a provision abolishing future second, or runoff, primary elections. In the past, second primaries were required whenever none of the candidates in a first primary race received a majority of the ballots cast; the two top votegetters would face off in the runoff, with the winner moving on to the general election.

In statewide races, first primaries usually benefited those from large-population areas or those with the most appeal to the party rank-and-file. The second primary helped bring to office some rather illustrious figures who made their home base in more sparsely populated areas, most significantly former Gov. LeRoy Collins and a little-known U.S. Senate candidate by the name of Lawton Chiles.

The lack of a second primary in next year's gubernatorial election may provide Demo-

cratic voters with an interesting dilemma. So far, nine different politicians have been mentioned as potential candidates. One of them, Attorney General Bob Butterworth, is reluctant to run, which leaves a potential slate of eight credible candidates. If all eight go ahead with their plans, and no one else enters the race, the winner would only have to receive a 12.6 percent share of the votes cast to win the party's nomination.

That means that the candidate from south Florida has the best chance of pulling off a victory — except that four of the eight hail from Miami-Dade, Broward, or Palm Beach counties. Chances are they could end up cancelling out each others advantage, which leaves the field open for former Congressman and Ambassador Pete Peterson.

If there are two or more winners who receive identical numbers of votes, they will draw lots to decide who gets the nomination. ■

reform law on highly technical grounds. Under the Florida Constitution each law enacted by the Legislature must be limited to a single subject. Judge Clark declared the 1999 law in violation of that constitutional requirement, despite three Florida Supreme Court rulings in the past 20 years holding that tort reform constitutes a single subject.

The defendants immediately appealed her decision to the First District, which promptly asked the state Supreme Court to take on the case. In April the Supreme Court declined early review of the Clark decision in a unanimous decision and bounced it back to the First District.

The delay was a victory for business because it means the law will get the most careful and comprehensive review possible. The case is now in the briefing phase at the First

District, which should end in early August. Within 90 days after that, oral arguments will be scheduled. Once the process at the appeals court is finished, the case will move on to the Supreme Court.

The only issue at controversy right now is Judge Clark's application of the single-subject clause. If the Supreme Court upholds the trial judge's ruling, the business community will have to get the 1999 law reenacted in several different bills, which will then each be challenged. If the court rejects Judge Clark's decision, the law will go back to the trial court for a hearing on its substantive provisions.

Either way, relief from frivolous litigation is a long time coming. Here's a word of advice: Keep the pressure on elected officials to find a lasting fix to the problem. ■

If you're an AIF member and haven't already gotten your FBN login ID and a password, call the Florida Business Network at (850) 224-7173.





For more comprehensive information on these issues, visit <http://aif.com>



(continued from page 14)

CS/SBs 164 & 1970 by Sens. Jack Latvala (R-St. Petersburg) and Steven Geller (D-Hallandale Beach) provided that the CFO would shoulder both the constitutional and the statutory duties of treasurer and comptroller. The CFO would appoint heads of the divisions responsible for regulating insurance, banking, and financial services, who then be subject to confirmation by the State Board of Administration (governor, chief financial officer, and attorney general). The State Board of Administration would enjoy the power to terminate a division head. The division heads would have the authority for "final agency action." This language was amended onto HB 681 by the Senate and sent back to the House for its approval. This version died in House messages.

Although the Senate expanded the oversight of the governor and Cabinet over the statutory and regulatory duties of the division heads in its final version of the bill, the language did not provide the complete oversight supported by AIF and the House. Under the Senate version, the Office of the CFO remained overly burdened with responsibilities that compete with those granted to the Office of the Governor.

Faced with an implacable deadline of January 2003, lawmaker must act on this issue in the 2002 session. AIF will continue to argue in favor of the approach recommended by the comptroller and outlined in the original House bill.

**Curt Leonard is AIF's governmental affairs manager (email: [cleonard@aif.com](mailto:cleonard@aif.com)).**



P.O. BOX 784 TALLAHASSEE, FL 32302-0784  
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