EMPLOYER ADVOCATE

516 NORTH ADAMS STREET • P.O. BOX 784 • TALLAHASSEE, FL 32302 • PHONE (904) 224-7173 • FAX: (904) 224-6532

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INSIDE

In the last issue of ***Employer Advocate*** *we presented the argument New Taxes vs. No Taxes. As a representative of the business community, AIF continues to hold firm the position that now is not the time for higher or new taxes. Governor Chiles disagrees.*

Recently, the governor introduced his "Fair Share" Tax plan which he feels is necessary to raise the revenues to fund his "Investment Budget." It is AIF's position that government needs to take the money it has, set priorities and live within its means, just as private businesses and citizens must do. AIF, along with 26 other business associations, endorses the House Republican "Priority Budget" as an approach which merits serious consideration; and, further supports the methodology of curtailing non-essential government bureaucracy before increasing taxes.

In this issue, Dominic Calabro, President and Chief Executive Officer of Florida TaxWatch presents a review of the various state budget proposals for 1992-1993 and Randy Miller, AIF's tax consultant, presents our position on the House Republican "Priority Budget."

House Republican "Priority Budget" is the Fair Plan

By ***Randy Miller****, Consultant*
Carlton, Fields, Ward, Smith & Cutler, P.A.

As you are all aware, Governor Chiles vetoed the General Appropriations Act for fiscal year 1992-1993, on March 16, 1992. This veto was not unexpected, but was curious since it was the budget actually submitted by the Governor's office to the Legislature.

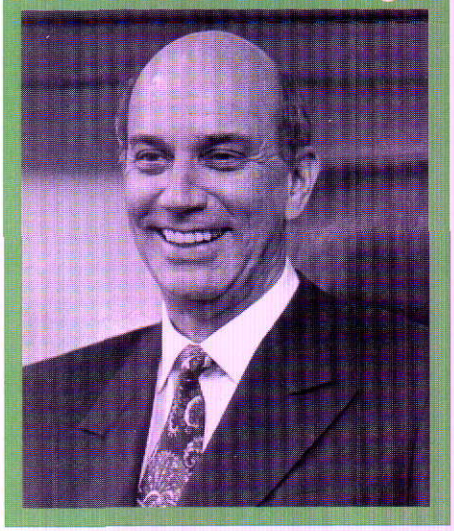
Many believe the veto was done for publicity purposes to highlight a need for additional tax revenue to fund critical needs of the State. The vetoed budget was called the "Reality Budget" and intentionally ignored necessary funding increases in education, prisons and the medically needy program in the Department of Health and Rehabilitative Services, even though the "Reality Budget" contained $654 million more in general revenue dollars generated from growth in existing taxes, not new taxes. The Governor was right in vetoing the "Reality Budget" because it did not address the critical concerns of the State.

However, there is some disagreement regarding how to proceed at this point. We do not agree that taxes should be raised during this recessionary period. Instead, we believe that priorities should be established and corresponding funding shifts should be made within existing revenues to fund the previously mentioned areas of concern. This proposition is easier said than done, but thanks to several freshman Republican House members a priority budget has been developed. The Plan is responsible and addresses the most critical needs in education, prisons and the medically needy, while cutting other spending levels.

There will be criticism of this effort from many sectors, but it should be remembered that prioritization of spending is the only way to solve the current problem. It is the same approach that we utilize in private business and in our own personal household budgets. The State of Florida should be no different ... trying to tax our way out of a recession defies logic.

The priority budget is the right prescription for recovery for the Florida economy.

President's Message



Will Enterprise Florida Work?

By Jon L. Shebel,
President & Chief Executive Officer, Associated Industries of Florida

"Quality of Life" is a buzzword for the criteria that define Florida as a desirable place to call home. When measuring that standard, we cannot forget that the condition of our state's economy sets the foundation for all the factors that add up to a superior quality of life. Policies that cultivate a strong vibrant economy sustain private and public efforts to enhance life in Florida.

In late April, Governor Lawton Chiles signed House Bill 55E into law. The law establishes Enterprise Florida, a statutorily created not-for-profit corporation charged with developing a strategic plan for statewide economic development. Enterprise Florida, as a centralized economic development unit, will coordinate existing, often fragmented, state and local economic development efforts.

Several elected officials will sit on the Enterprise board, including the Governor, Lieutenant Governor, the Secretaries of Commerce and Labor, the Commissioner of Education, and members of the Legislature. Twelve private sector business leaders will serve on the board as well, with the Governor and a private sector representative acting as co-chair.

The question is: Will Enterprise Florida work or will it turn out to be nothing more than a boondoggle? The 1992 legislation is step one. It establishes the Board of Directors and directs them to formulate a strategic plan, yet the Enterprise concept goes much further.

The Enterprise Florida blueprint calls for the eventual creation of a number of subsidiary corporations to provide such services as technology, training, capital, and new enterprise development. It calls for funding from private sources as well as legislative appropriations of public tax revenue. Ultimately, Enterprise Florida will assume all economic development functions from the Florida Department of Commerce — as well as absorbing the agency's funding for those activities. The goal is to encourage the formation and growth of high value-added industries and jobs in Florida as a means to raise our standard of living. Enterprise Florida could usher Florida into the next century of global competition — or it could prove to be a useless, empty shell.

As originally drafted, the legislation creating Enterprise Florida was seriously flawed. It looked like Enterprise was not being formed to carry out its worthwhile objectives, but rather to line the pockets of the organization designated to administer Enterprise. It would have been an easy task for that organization to take state appropriations and bury them in the thicket of loopholes.

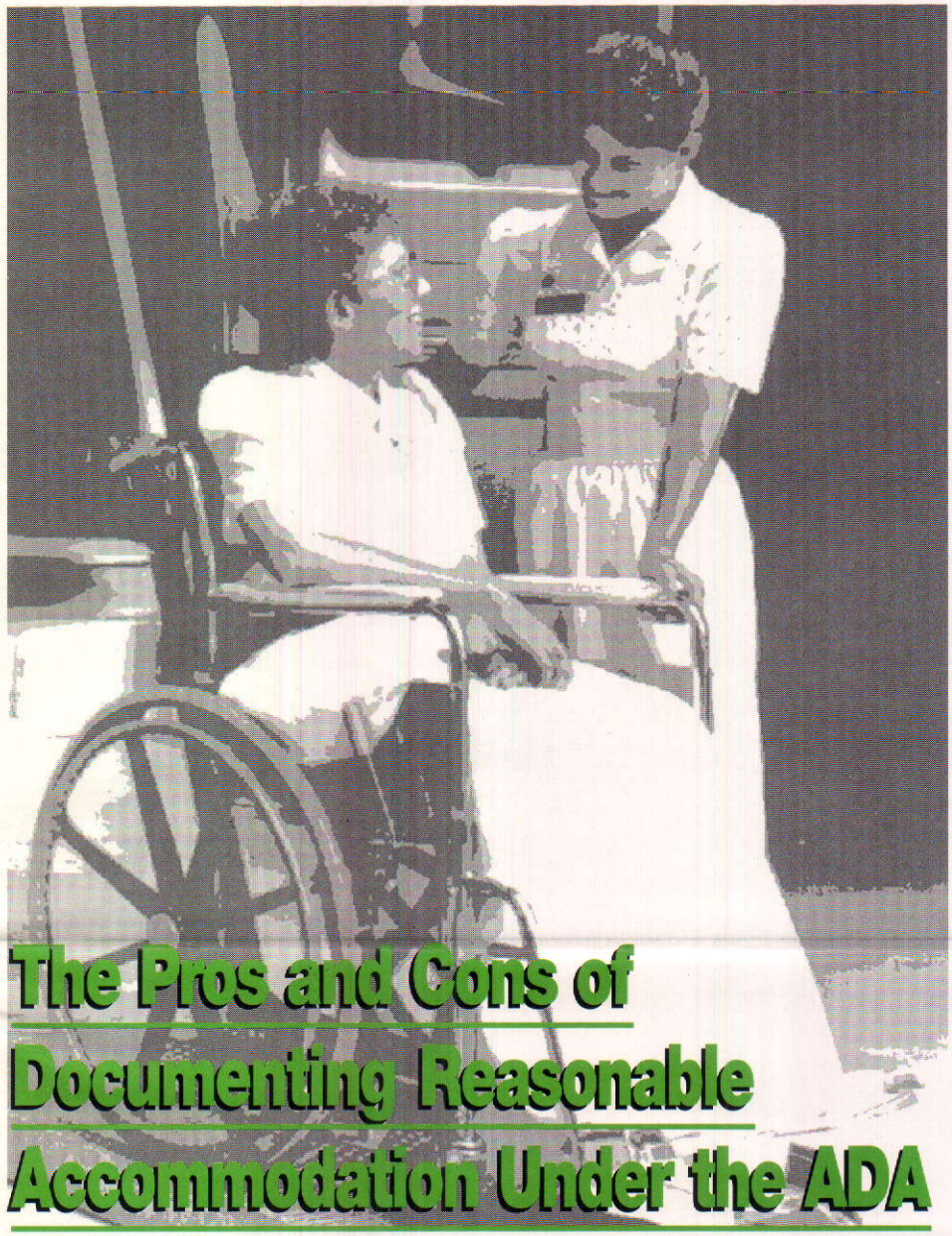
The law, amazingly enough, carried no audit requirement, no public record requirement, no prohibition against interested parties receiving state funds, no limit on the creation of subsidiaries, no prohibition against pledging the full faith and credit of the State of Florida and no limit on the amount of state money Enterprise could use. There was no guarantee that the private sector would even support Enterprise. In fact, lobbyists from one statewide business organization balked at a requirement that the private sector contribute funding to Enterprise before the State would put in any tax dollars. And with good reason. The law, in effect, opened the purse strings to an anointed private organization that would not have to justify its expenditure of the funds received.

Associated Industries remembers too well the "bad ol' days" when the state created boards to "aid the private sector" that then became black holes in which tax dollars turned into anti-matter. AIF does not want to see Enterprise turn into another one of these celestial quagmires. Yet, as we fought all through the regular session to have safeguards built into Enterprise, we ran into opposition every step of the way! There seemed to be a faction that wanted to prevent formulation of those very safeguards.

Eventually we got our way — sort of. A number of questions about Enterprise remain. If it takes over the six million dollar budget of the Department of Commerce will that money be better spent than it is now? How much state money will be invested in ultra-risky start-up ventures? One newspaper article quotes Enterprise Florida promoters as saying they would like to use State Pension funds for investment! Who will provide the necessary checks and balances? Will the Board have sovereign immunity from liability? To whom does the Governor owe a fiduciary duty while serving on a private board in his official capacity? Does sovereign immunity protect government officials against breach of a fiduciary duty? If so, how will the public be protected? How will money be contracted out? The questions continue.

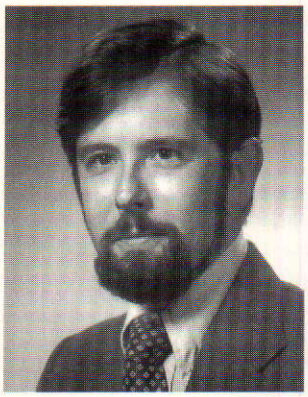
Economic development is a sensible, indeed, necessary pursuit. Florida can be a leader in attracting new business. Enterprise Florida can get us there. However, if Enterprise is to live up to its full potential, the government officials in control must put aside prejudices and favoritism. The Legislature must watch every penny spent by Enterprise because it gave Enterprise Florida the ability to expend state tax dollars without going to the Legislature for an appropriation.

Let Enterprise Florida be on notice: AIF will scrutinize every action! We want the Enterprise Florida concept to work. We don't want Enterprise Florida to feed the bank accounts of any organization or individual!



The Pros and Cons of Documenting Reasonable Accommodation Under the ADA

By: **John-Edward Alley**, *Esq., Alley & Alley Chartered*



An Introduction

Congress has recently estimated that there are some 43 million persons with disabilities in our nation. Title I of the Americans with Disabilities Act (ADA), which deals with the employment of persons with disabilities, will go into effect on July 26, 1992. The "heart" of the ADA is the duty it places on the employer to reasonably accommodate disabled employees. The ADA provides that it is unlawful for an employer not to make a "reasonable" accommodation to the known physical or mental limitation of an otherwise qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose an "undue hardship" on the operation of its business. A reasonable accommodation by definition may include, but is not limited to:

(i) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) job restructuring, part time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustments or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

Once an employee requests a reasonable accommodation, in a practical sense the reasonable accommodation process should be thought of as an open and free exchange between the employer and employee regarding what ways, if any, the employee can be accommodated to perform the functions of the position and enjoy the benefits and privileges of the position.

When an employer responds to a request for accommodation, an employer must attempt to determine what accommodations are available, and whether any of those accommodations are "reasonable" or, in contrast, would constitute an "undue hardship" to the employer. The various factors considered when determining whether an accommodation would create an undue hardship include, but are not limited to: financial resources of the business; size of the business; number of employees; and type of business operations.

Documenting the Reasonable Accommodation Process

Each time an employee requests an accommodation, an employer will need to decide whether to document the process it went through with the employee. There are pros and cons to such documentation.

Pros

Clearly, if the employer does in fact provide an accommodation to a disabled employee and that accommodation is successful, both in achieving satisfaction on the part of the employee and in enabling the employee to satisfactorily perform the job, then documentation of the request will generally be helpful. Documentation of such "success stories" will go a long way toward demonstrating compliance with the law in other cases where the employer is attempting to convince the EEOC or a judge or jury that a particular requested accommodation was not a "reasonable" one or would pose an "undue hardship."

Cons

On the other hand, what about documentation when an employee has requested accommodation, but the employer has reached the conclusion that there is no "reasonable accommodation" which would not pose "undue hardship?" Should an employer plan to document such situations and, if so, how?

Since the ADA is not specific as to whether any specific accommodation is "rea-

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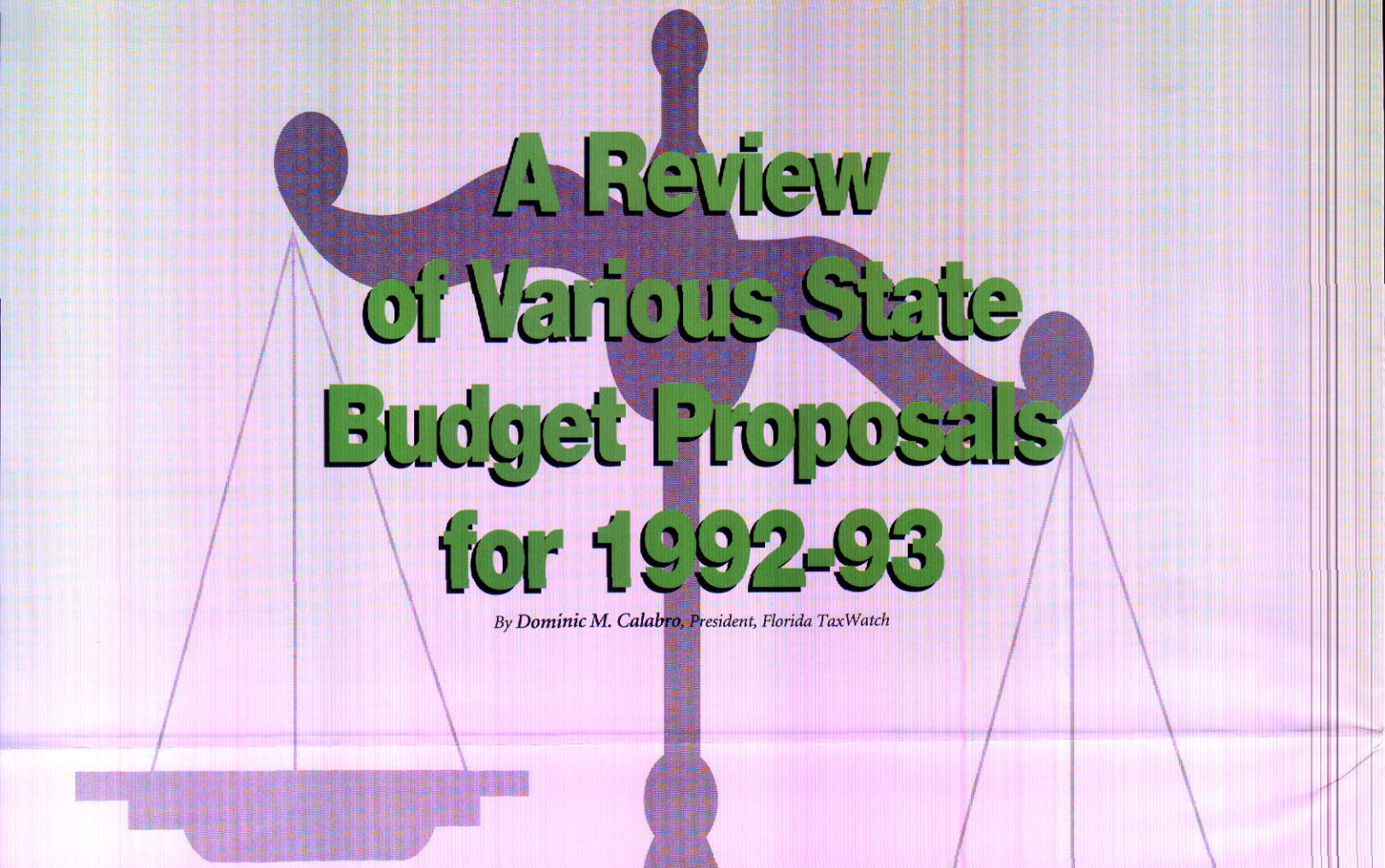


A Review of Various State Budget Proposals for 1992-93

*By **Dominic M. Calabro**, President, Florida TaxWatch*

On March 4, 1992, the Legislature passed a General Appropriations Bill for the operations of state government for fiscal year 1992-93. This bill, referred to as the "Reality Budget," was within the 1992-93 estimate of revenues available without any new or increased taxes. Totalling approximately $30 billion, the 1992-93 budget is more than $1.1 billion (3.8% increase) greater than the 1991-92 estimated expenditures of $28.9 billion. Included in the increase for 1992-93 is more than $654 million of growth in general revenue.

Stating that the "Reality Budget" was insufficient to meet the state's needs, Governor Chiles vetoed the General Appropriations Act on March 16, 1992. As a result of this veto, the Legislature will meet in Special Session beginning June 1, 1992 to consider other budget recommendations, with the goal being to pass an acceptable budget for the 1992-93 fiscal year, which begins July 1, 1992. The table on page 5 summarizes three of the current proposals and how each addresses the major concerns with the "Reality Budget" - Education, Prisons and the Medically Needy program in the Department of Health and Rehabilitative Services.

Using the "Reality Budget' as the basis of comparison, Republican House members (Reps. Hawkes, Corr, Feeney, Johnson and others) developed a "Priority Budget."

Their proposal is within current revenue projections, provides additional funds for public schools and the medically needy program, and opens existing vacant prisons. This is accomplished through position reductions, a 30% cut in the Legislature's own budget and additional reductions in the expense and capital outlay categories. To adjust technical issues, the "Priority Budget" was amended in May, 1992.

In contrast to the House Republican "Priority Budget," Senator Bud Gardner has proposed a supplemental budget that addresses the three major concerns (and others) through a $576 million tax increase, primarily through the removal of selected sales tax exemptions, an increase in the intangibles tax and changes to the alcoholic beverages tax.

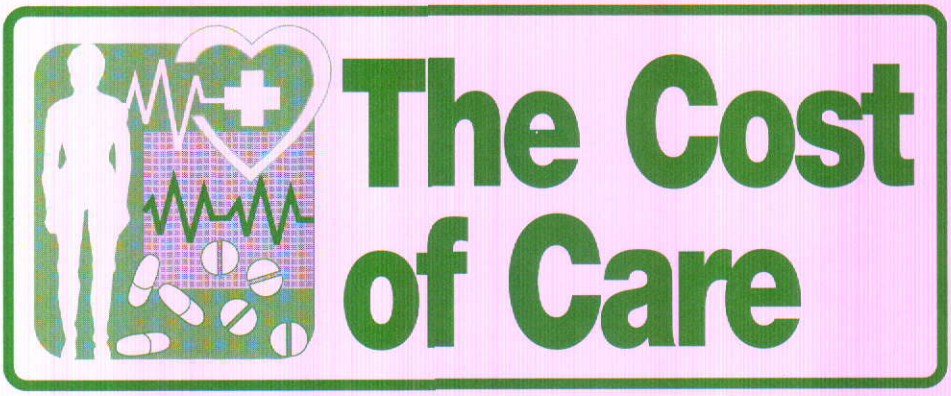
Governor Chiles has proposed an "Investment Budget" that is more than $2.2 billion greater than the "Reality Budget." This is accomplished through a $1.35 billion tax increase (first year amount) which goes significantly beyond the issues addressed in the Reality Budget. Other issues funded are salary increases, a lottery buyback in education, increases in AFDC, Elderly and Early intervention issues. Recently, the Governor has proposed a new tax package, "Fair Share," which raises approximately the $1.35 billion in revenues needed to fund the "Investment Budget" in 1992-93, but grows to $2.5 billion on an annual basis.

Dominic M. Calabro

State Budget Proposals for 1992-93

Selected Issues	Reality Budget Conference Bill *(Governor Vetoed)*		House Republican Priority Budget		Senate (Gardner) Supplemental Bill		Governor's Investment Budget	
	Yes/No	GR Cost	Yes/No	GR Cost	Yes/No	GR Cost	Yes/No	GR Cost
1. Tax Increase	N	-	N	-	Y	$576 M	Y	$1.4 B
2. Public Schools								
Restore FEFP Funding to 1991-92 Level (Per FTE) Conference Bill @ $3,043/WFTE; 1991-92 @3,123/WFTE	N	-	Y	$200.0 M	Y	$195 M	Y	$195 M
3. Community Colleges								
Restore Funding to 1991-92 Level ($567.7 M)	N	-	N	-	Y	$13.5 M	Y	$15.7 M
1992-93 Enrollment Growth (Estimating Conference)	N	-	N	-	Y	$31.2 M	Y	$19.3 M
4. University System								
Restore funding to 1991-92 Level ($1.042 B)	N	-	N	-	Y	$62.4 M	Y	$42 M
1992-93 Enrollment Growth (Estimating Conference)	N	-	N	-	Y	$21.0 M	N	-
1992-93 Enrollment Growth (Agency Request)	N	-	N	-	N	-	Y	$58.2 M
5. Health and Rehabilitative Services								
Restore Medicaid @ 100% Fed Poverty (Elderly & Disabled)	N	-	Y	$14 M	Y	$54.3 M	Y	$54.3 M
Restore Medically Needy Program	N	-	Y	$24 M	Y	$24.1 M	Y	$24.1 M
Restore Medicaid for Pregnant Women & Children < 1 @ 185%	N	-	Y	N/A	Y	$28.8 M	Y	$28.8 M
6. Corrections								
Fund Prison Beds Frozen in 1991-92 (2,772)	N	-	Y	$21 M	Y	$19.5 M	Y	$23 M
FD Operations of Prison Beds Under Const '91-92 (Phase-In 536)	N	-	Y	(see above)	Y	$06.8 M	Y	(see above)
Phase-In 3,000 Beds 1992-93	N	-	N	-	N	-	Y	$4.9 M
7. Working Capital Fund Level	Y	$150 M	Y	$165 M	Y	$150 M	Y	$150 M
8. Total Budget		$29.997 B		$29.919 B		$30.800 B		$32.207 B
9. Number of State Employees (FTES)		133,048		130,478		133,328		139,878

Note: B = Billions, M = Millions, GR= General Revenue



The Cost of Care

Conservatives and liberals alike have declared health care the issue of the '90s — and with good cause, as these statistics show:

- *Health care absorbs 12% of the United States' GNP — the world's highest ratio.*
- *Health care spending in this state is expected to grow from $31 billion in 1991 to $90 billion by the end of this decade.*
- *Florida ranks third nationally in uninsured population — nearly one in four Floridians under the age of 65 are without coverage.*
- *In 1990, Florida's Medicaid costs rose four times faster than the increase in state dollars.*

The problems in our state's and nation's health care system are manifold. Costs have risen at an average of 20% every year for the last 20 years. Nine years ago, the state spent 4.7% of general tax revenues on Medicaid; today the figure is 13%. The medical machine consumes an ever-growing slice of the fiscal pie. It depletes private and public resources desperately needed for other concerns. It stifles our competitive ability and economic viability.

Between 2.2 and 2.5 million Floridians cannot afford health insurance. Unfortunately, far too many people in responsible positions show restricted interest in addressing the conditions that have created the problem. They propose instead to force subsidy of a system that is out of control. They take their lead from popular opinion. A Wall Street Journal/NBC News Poll conducted in June of 1991 asked the question: should all employers, regardless of size, **be required to provide** health insurance for their employees? Sixty eight percent of the respondents said yes. Governor Chiles will propose a mandatory insurance plan for employers and insurers by the end of 1994, if the crisis remains unalleviated. Clearly, universal health care or a pay-or-play system may be in Florida's future if the number of uninsured Floridians is not significantly reduced.

Commendably, our state's lawmakers have chosen to pursue an effective, affordable remedy to the health care crisis through free enterprise. The last issue of ***Employer Advocate*** made mention of the Employee Health Care Access Act. It is part of a bold program called the Florida Health Plan, proposed by the Governor and passed by the Legislature during the 1992 Session. The Florida Health Plan is built on three standards: get people covered, keep them covered, and bring accountability into the system.

Of the large number of uninsured Floridians, 75% are workers or dependents of workers. According to 1989 statistics, 54% of the working uninsured were employed by groups with 25 or fewer employees. The Employee Health Care Access Act carries provisions that make insurance available and affordable to companies with 25 or fewer employees (see chart on facing page). The Act, which lifts the cost burden imposed by a menu of unnecessary benefits while extending guaranteed access to small employer groups, opens the door to those who lack insurance for necessary medical treatment.

To focus exclusively on gathering everyone into the insurance fold, however, begs the question. The large pool of uninsured citizens exists, not because people don't want to buy health insurance. It exists because they *cannot* buy it. It simply costs too much. And the forces that spike the extravagant increases in cost have continued unabated for years. Until the state exerts control over those forces, the trend will persevere. There is a state agency that could spearhead this effort, but until now Florida's Health Care Cost Containment Board (HCCCB) has been a paper lion, with a limited purview and virtually no power.

This year, however, the tide has turned on official disregard of the runaway greed in the medical community. Data collected by the HCCCB led to passage of a law that bans physician referral of patients to clinics and facilities in which the physician holds a financial stake. According to independent studies and HCCCB reports, the ban on this practice could save over $500 million a year in unnecessary medical treatment. This is the first victory won against the state's insatiable medical profiteers. These efforts to collect data on practices that send health care costs reeling out of control, combined with legislation to curb these practices, must continue. Hopefully, the Florida Health Plan will conspire to this end, without causing another bout of overzealous government regulation.

State leaders have issued a challenge to business to participate in a free-enterprise settlement to the problems in health care. We urge you to contact Melissa Reese at the association offices (904-224-7173), if you have not already done so, to request our analysis on the provisions of the Employee Health Care Access Act. Between 2.2 and 2.5 million Floridians have no health insurance. The Governor and Legislature are committed to getting these people covered by the end of 1994. Right now there are three options for achieving this goal: open market alternatives, universal health care, or a pay-or-play system. The last two options would force employers to pay taxes to support a state-run insurance program. Both would result in bloated bureaucracies, increased costs, and reduced quality of care.

Enlightened citizens know there is no silver bullet to cure our ailing health care system. It will take a concerted effort on all fronts to convert a troubled structure to one that functions effectively and efficiently. The Florida Health Plan offers the only workable solution for a society founded on open market initiative. We know business will uphold its end of the bargain. AIF will continue to press government on its commitment to control the runaway cost of care, a pursuit that is vital to the well-being of the State.

The Employee Health Care Access Act Comparison of Costs

The purpose of the Employee Health Care Access Act is to make affordable health insurance plans available to small employers. The following cost illustrations compare premium rates between the current policy with all mandates, the Basic Health Benefit Plan, and the Limited Benefits Policy. Rates are not available for the Standard Health Benefit Plan. ***The prices are for demonstration purposes only. They do not represent actual quotes on policies.***

Current Plan - All Mandates
Plan Design

- Comprehensive Medical (No PPO)
- $300 Deductible
- 80/20% Coinsurance
- $2,000 Stop-Loss
- Full Maternity
- All Mandates

Employee Rate: **$218.26/employee**

Basic Health Benefit Plan - Same as Current Plan Design, except:

- 30 days of inpatient hospitalization

Mandates

- Newborn child coverage
- Well child coverage
- Coverage for adopted children
- Coverage for handicapped children
- Mammograms

Employee Rate: **$148.80/employee**

Limited Benefits Policy
Benefit Component

Cost of Basic Hospital Coverage **$78.44**
- Covers room, board, and extras, cost of hospital stay

Cost of Inpatient Physician Services and Surgery **$27.79**
- Surgery in the hospital, physician visits, anesthesia, x-ray, and lab costs

Cost of Other Services (not provided on in-patient basis): **$69.70**
- Physician services, outpatient and office surgery

Cost of Coverage for X-ray and lab costs: **$17.48**

Employee Rate for Total Plan: **$190.41**

This plan includes $200 deductible, 20/80% coinsurance payable until $2,000 in charges have been incurred. This plan does not cover drugs outside the hospital. It builds in the savings of Cost Manager Provisions.

Limited Benefits Policy - *with Managed Care Feature*
Benefit Component

Cost of Basic Hospital Coverage: **$43.20**
- Covers inpatient hospital care, Emergency Room facility charge, outpatient hospital care

Cost of Extended Hospital Coverage: **$22.40**
- Covers inpatient hospital care, outpatient hospital care

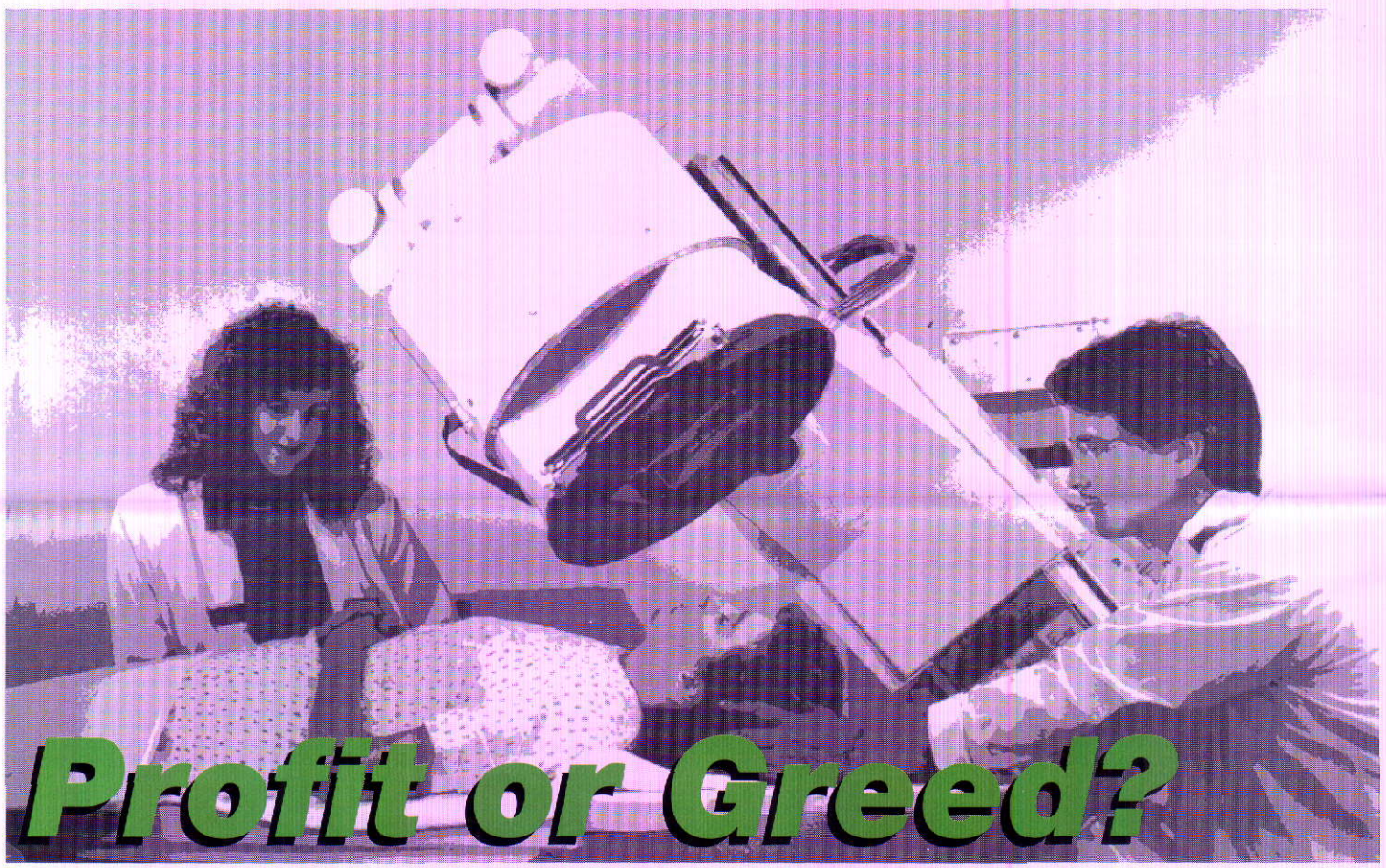
Cost of Basic Physician "Non-Hospital" Coverage: **$17.60**
- Covers all other outpatient physician care in physician's office, miscellaneous services, and outpatient surgery performed in the physician's office.

Employee Rate - all available coverages **$83.20**

Employee Rate - basic and extended hospital coverage **$65.60**

All figures could vary by market, product design, geographic location, and census (people make-up) of the group.

CHALLENGING CLINICS:



Profit or Greed?

Finally, the state took steps to put a dent in runaway health care costs. And, as expected, some elements in the medical community launched an immediate attack.

The closing hours of the 1992 Regular Session brought victory in a hotly contested debate over a bill that prohibits doctors from referring patients for lab tests, diagnostic imaging, physical therapy, and radiation therapy at clinics in which the doctors own a financial stake. Independent sources estimate this practice of self-referral costs $500 million in unnecessary treatment. The Florida Medical Association and other medical interests weighed in heavily against the measure. Independent clinic owners, business groups, the insurance industry, the American Medical Association, and others lined up in its support.

Immediately after passage of the bill into law, the independent clinics withdrew their support and raised a furious outcry. The reason for their about-face? An amendment to the bill imposed a fee cap of 115% of the charge set by Medicare for services in the four affected areas. The independents cried foul, claiming the fee cap would run them out of business.

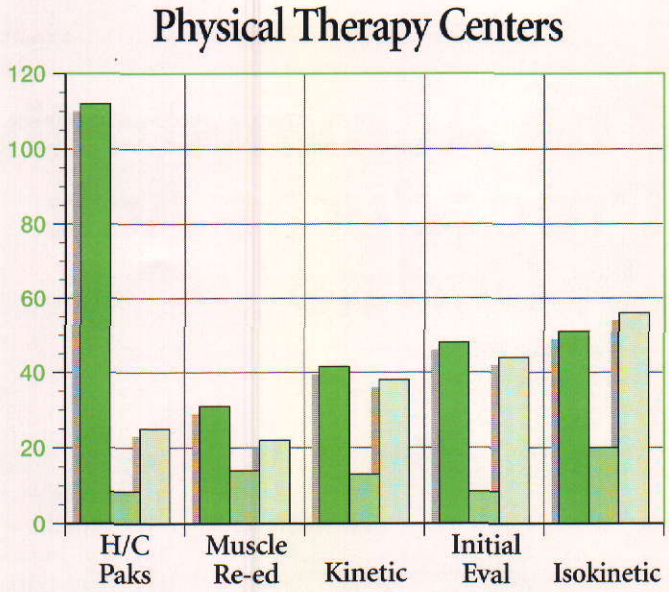
Are the claims true? AIF compiled data of statewide high and low charges at diagnostic imaging centers, physical therapy centers, and clinical laboratories, then compared them to the new allowable high charge. The comparison charts clearly illustrate the absurdity of the clinic owners' complaint. For example, a chest MRI can cost as much as $1,749, or as little as $179. Something is amiss with a $1,500 price differential. The new law grants a high charge of $1,089. This hardly poses an economic threat.

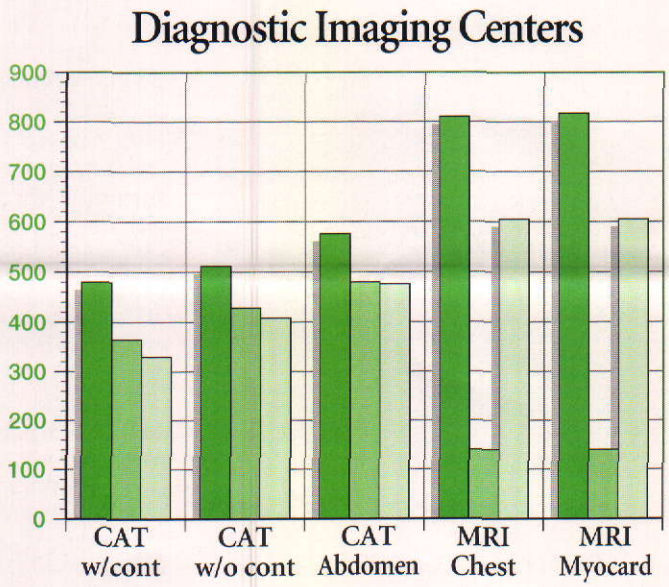
In early May, AIF challenged the clinics to open their books to independent CPAs for review. If the accountants will attest to pro forma statements proving that the fee caps will drive clinics into bankruptcy, AIF will make the necessary adjustments. So

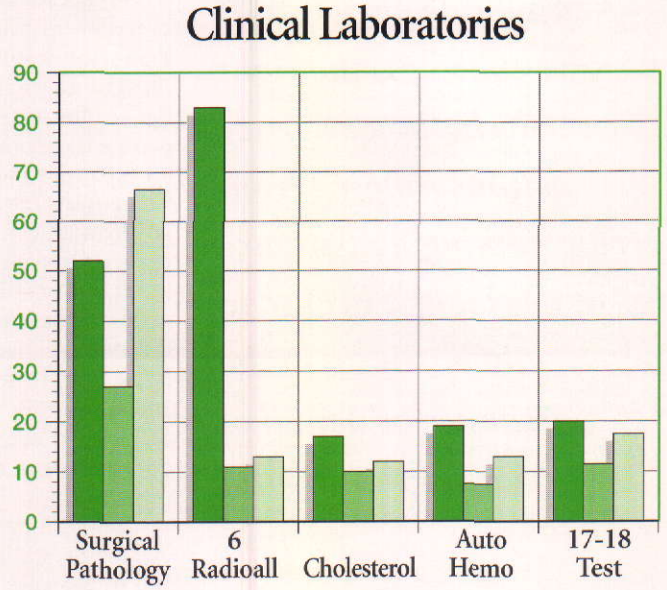
Comparision of Allowable Charges

- Current Charges
- Current Statewide Low Charges
- New Allowable Charge

A chest MRI can cost as much as $1,749, or as little as $179. Something is amiss with a $1,500 price differential.





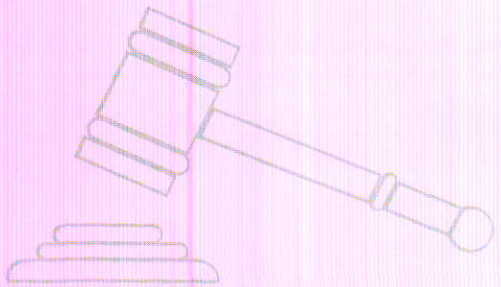


far, there have been no takers. We suspect that reluctance on the part of the clinic owners to take our little test stems from a desire to hide evidence that the cap on fees will only put a cap on greed, not reasonable profits.

The independent clinic owners are trying to convince the bill's original sponsor, Rep. Charlie Roberts (D-Titusville), to repeal the fee cap. So far, he and Rep. Elaine Bloom (D-Miami Beach) are holding firm. AIF is mounting a vigorous campaign against the efforts of the clinic owners. The fee provisions must be allowed to stand. They correct a flagrant abuse in the health care community and serve notice that the heady days of exorbitant medical profiteering are drawing to a close.

The relentless upward drive of health care costs saps our state's economic vitality. 1992 marks the beginning of meaningful reform. AIF intends to make sure Florida holds to this course.

The Administrative Procedures Act: An Update



By **Martha Edenfield**, *Esq., Oertel, Hoffman, Fernandez & Cole, P.A.*

The APA affects all businesses regulated by any state agency as it gives business the right to challenge agency actions ranging from rule making, to issuance or denial of a license to do business, to the issuance or denial of an environmental permit.

The Administrative Procedures Act (APA) provides the procedures citizens use to file grievances against actions taken by state agencies which affect them. The APA affects all businesses regulated by any state agency as it gives business the right to challenge agency actions ranging from rule making, to issuance or denial of a license to do business, to the issuance or denial of an environmental permit.

During the 1992 Regular Legislative Session, state agencies pushed to strengthen their regulatory authority and weaken opportunities for public participation. However, the Legislature spoke clearly and unequivocally. In numerous hearings, legislators stated they would move only to "rein in" agency action and would act to strengthen legislative and public participation in rule making and agency action.

Significant legislation that puts teeth in the APA was passed and signed by the Governor. The following is a synopsis of major portions of that legislation.

Economic Impact Statements

Rules established by agencies affect the everyday operation of business even more than statutes passed by the Legislature. Statutes grant agencies their regulatory authority, but the agency head has the power to choose the method of regulation. It can be an expensive method or a reasonable one. Current law requires that agencies prepare an economic impact statement to force agencies to consider cost. In the past, economic impact statements were often meaningless recitations of agency findings which did not adequately take into account the impacts and effects on private individuals and businesses. The new law now requires agencies to consider the costs of regulation, as well as the impacts and effects of regulation.

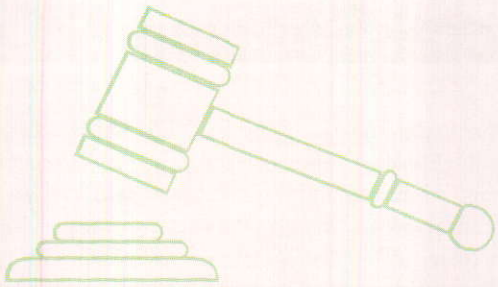
New economic impact statements must include an estimate of the cost to the agency and to any other state or local entities of implementing and enforcing the proposed action. It must also include an estimate of costs or economic benefit to all persons directly affected and an estimate of the effect of the proposed action on competition, and on the open market for employment if applicable. Further, an analysis of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985 must be included.

Additionally, as of July 1, 1992, the effective date of this act, all economic impact statements must include a comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of not adopting the rule, a determination of whether less costly methods or less intrusive methods exist for achieving the purpose, a description of reasonable alternative methods which were considered by the agency and a statement of the reasons for rejecting those alternatives, and a detailed statement of the data and methodology used in making the estimates required.

A challenge to a rule based on an economic impact statement must be brought in an administrative proceeding within one year of the effective date of the rule. Grounds for invalidating the rule based on a challenge to the economic impact statement are limited to the agency's failure to adhere to procedures or failure to consider information submitted to the agency regarding specific concerns about the economic impact of a proposed rule when such failure substantially impairs the fairness of the rulemaking proceeding. Thus, it is important that affected companies submit economic impact information when applicable.

The statute provides that in adopting rules, all agencies must choose the alternative that imposes the lowest net cost to society based upon the factors above or provide a statement of the reasons for rejecting that alternative.

Associated Industries of Florida worked for two years with Senator Karen Thurman (D-Inverness) and other business interests to pass these much needed changes to economic impact statement requirements.



Duties of the Joint Administrative Procedures Committee (JAPC)

Under the old law, the Legislature had little oversight in rule making. The JAPC examined rules to determine:

- Whether the rule is an invalid exercise of delegated legislative authority;
- Whether the statutory authority has been repealed;
- Whether the rule reiterates or paraphrases statutory material;
- Whether the rule is in proper form; and
- Whether the notice given prior to adoption was sufficient to give adequate notice of the rule.

The new law provides that the JAPC will now examine:

- Whether the rule is consistent with express legislative intent pertaining to specific provisions of law which the law implements;
- Whether the rule is necessary to accomplish apparent or expressed objectives;
- Whether the rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- Whether the rule could be made less complex or more easily comprehensible to the general public;
- Whether the rule reflects the approach of the regulatory objective with lowest net cost to society;
- Whether there exists an emergency to justify the rule, if the agency exceeded statutory authority; and
- Whether the rule was promulgated in compliance with Section 120.54(9), Florida Statutes, governing the promulgation of emergency rules.

The JAPC may request information from agencies as reasonably necessary and the committee shall consult with the standing legislative committees with jurisdiction over the subject areas of the rules. This new legislative oversight is critical for business as it will inhibit an agency from over-regulating.

The effective date of the legislation is July 1, 1992. The provisions relating to Joint Administrative Procedures Committee review were effective upon becoming law, April 9, 1992. The law contains other minor procedural modifications as well.

The Pros and Cons of Documenting Reasonable Accommodation Under the ADA

(Continued from page 3)

sonable" or constitutes "undue hardship," creating a document which lays out the employer's analysis in response to a request for reasonable accommodation may set in stone a thought process which is later found to be unlawful. In documenting its response to a request for reasonable accommodation, an employer could create evidence against itself. The risk of this, regarding requests for reasonable accommodation, is substantially greater under the ADA because:

(1) the law is new and not yet well understood;

(2) the type of affirmative obligations imposed on employers are unique in the law, and it will probably be a long time before many front line supervisors are aware of the full extent and force of their obligations under the law; and

(3) the wide variety of accommodations which might or might not be considered "reasonable" inherently makes it difficult for a single, brief document to anticipate and analyze why various alternatives to accommodation were rejected.

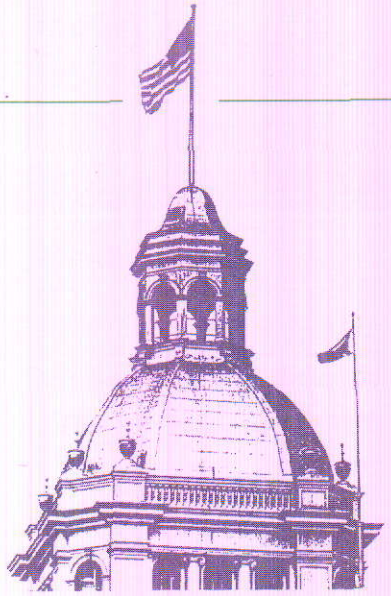
In addition, the ADA does not require the employer to make a written record regarding an employee's request for reasonable accommodation — but if the employer does so, the EEOC requires that such records be kept for at least one year.

Conclusion

The advantage of creating a record memorializing an employer's negative response to a request for a reasonable accommodation exists only if the employer fully understands the possible depths of its legal obligations, and is able to document its reasons in a manner which shows its compliance with the law. If the employer chooses to document why it is not making a reasonable accommodation, such records should be made on the advice of experienced labor counsel and in anticipation of litigation, and should be prepared not by first line supervisors, but by Human Resources people or others who have become well trained in this area of the law.

For more specific information about ADA requirements affecting employment contact:

Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507
(202) 663-4900 (Voice)
(800) 800-3302 (TDD)



Special Session "H"

When the Senate President and House Speaker issued their Joint Proclamation setting forth their call for items to be considered in Special Session "H" it was generally agreed that the call was broader than expected. Clearly, the principal thrust of the Special Session will be to pass a budget and consider taxing alternatives but the Legislature will also be taking up legislation ranging from solid waste management to unemployment compensation.

Although legislative leaders have yet to express any desire to pass the Governor's "Fair Share Tax Reform" program, the fight is going to be intense. If we had been assigned the task of coming up with the absolute worst tax program for business we couldn't have done a better job than what he proposed. It is chock-full of disincentives for businesses considering Florida as a relocation site. It epitomizes the theme of "class warfare" which is being espoused by Democrats across the country. It polarizes even further the "haves" and the "have nots."

Workers' compensation will also be on the table, coming at the heels of efforts throughout the Regular Session to pass a meaningful reform package. AIF's support for the package waxed and waned as the true dollar value of various proposals crystallized. AIF would prefer to see nothing passed during the Special Session than for the Legislature to enact meaningless legislation and give the Legislature an excuse for refusing to do anything substantive during the 1993 Regular Session.

There is a "glitch" bill to correct the effective date language in the compromise unemployment compensation bill which passed and was recently signed into law. Apparently a critical error was made in the effective date provision relating to the elimination of the social security offset, cutting out those persons receiving social security benefits that the new law was designed to help. The Legislature will also be looking at legislation to index the maximum weekly benefit amount at 60% of the statewide average weekly wage, the same idea considered this past Regular Session and several previous sessions. Chances for passage are better than 50-50. AIF will oppose the "formula concept."

Another unresolved issue of major importance is solid waste management and the advanced disposal fee (ADF). Disagreements over where the ADF is to be assessed could scuttle attempts to pass a comprehensive solid waste bill during the Special Session. Another hot area for legislative attention is where the estimated $150 million in ADF money is to be spent. The debate centers on whether it should become General Revenue to be spent for education or for recycling—its original purpose.

AIF, in coalition with other business interests succeeded in shepherding to the Governor's desk a bill regulating physician self-referrals, commonly referred to as the "Joint Venture" bill. This legislation, which could profoundly influence health care costs in Florida, is now threatened by the physicians, lawyers and others whose profits will be lowered once the law becomes effective. Legislation to undo what we managed to get done will be considered and the economic forces at work make it questionable whether the new regulation will stand.

One would think with this flurry of activity that we were already in the 1993 Regular Session. It is quite possible that Special Session "H" will be extended far beyond its slated completion date of June 19, 1992.

Associated Industries of Florida
516 NORTH ADAMS STREET • P.O. BOX 784 • TALLAHASSEE, FL 32302