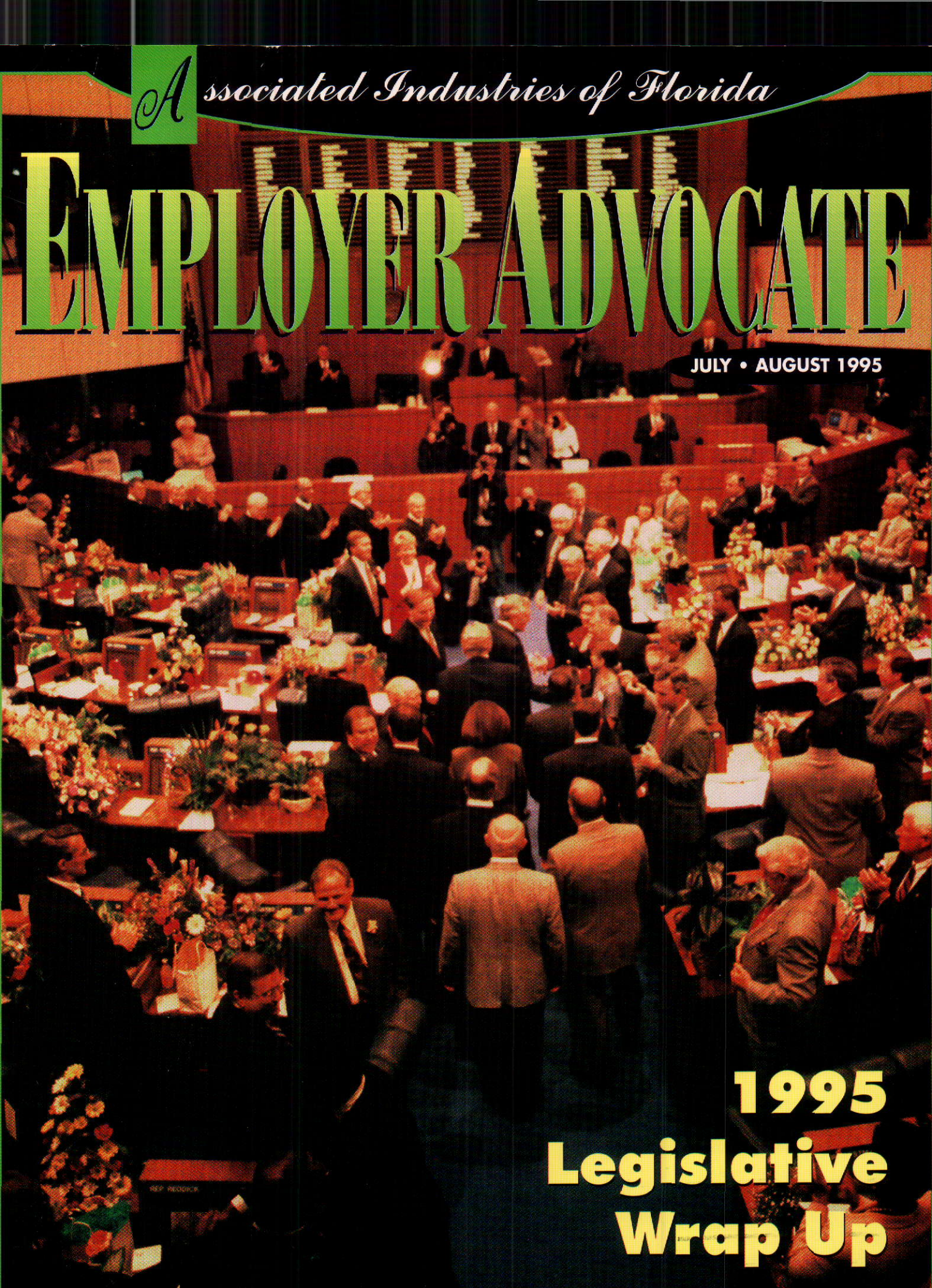
Associated Industries of Florida

EMPLOYER ADVOCATE

JULY • AUGUST 1995



1995 Legislative Wrap Up

Celebrating 75 YEARS

THE VOICE OF FLORIDA BUSINESS

Since 1920, Associated Industries of Florida has stood firm on the side of prosperity and free enterprise. With headquarters standing on the road that connects the Capitol to the Governor's Mansion, AIF represents the link between responsible public policy and a thriving economy. AIF offers the business community a gathering place to meet with government leaders to preserve and defend Florida's prosperity.

Dedicated to and owned by the members of Associated Industries, the building is a tribute to the efforts of employers—the men and women who provide jobs, manufacture goods, and supply services to the citizens of Florida.

When your business brings you to Tallahassee, we invite you to set up shop at Florida's corporate headquarters.

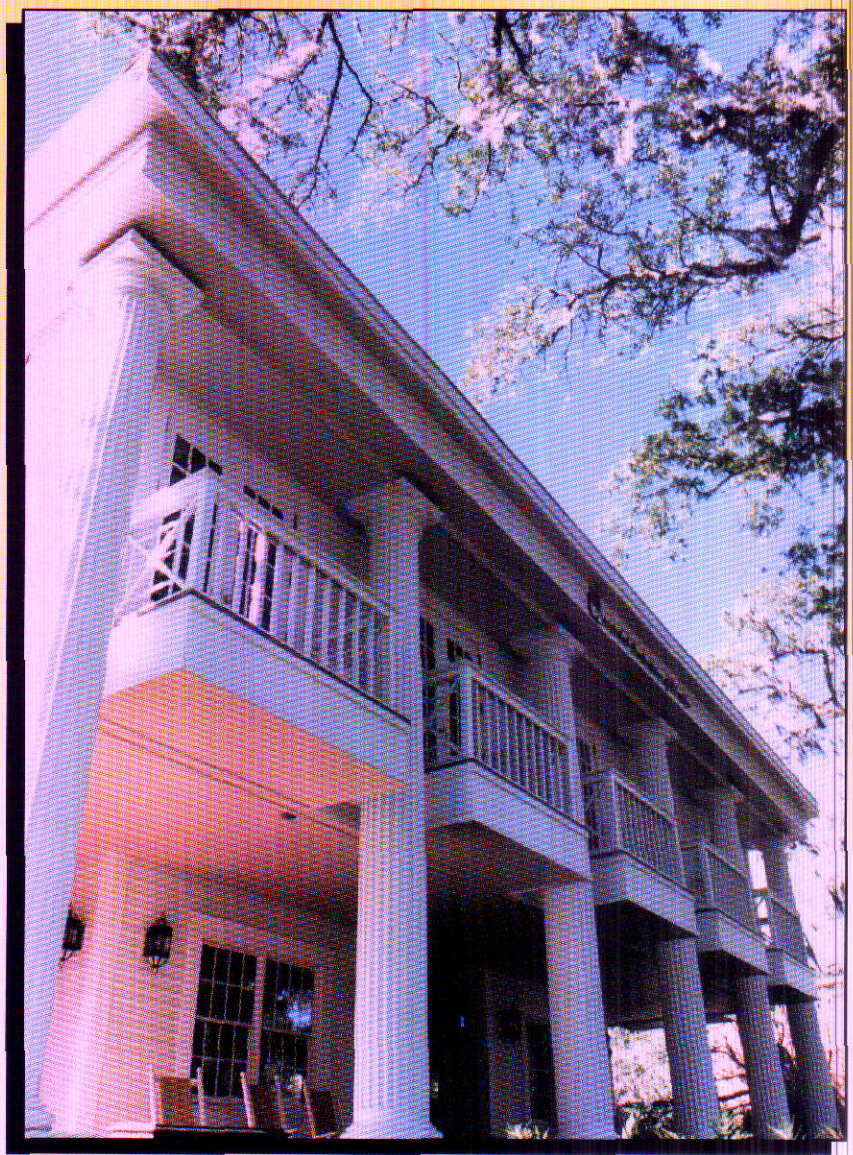


Photo by Hugh Scoggins

Associated Industries of Florida

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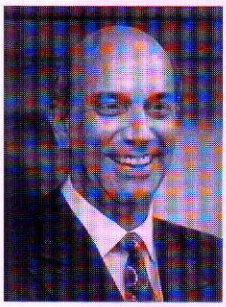


Jon L. Shebel

President

and CEO

Back to the Basics

That quiet, steady, clicking noise you hear is probably the ratchet of popular opinion and public policy turning right.

Anyone looking for grand gestures and sweeping new programs during this last legislative session was bound for disappointment. Gov. Lawton Chiles offered a modest list of proposals to the Legislature, focusing mostly on freeing the energy of the economy from the chains crafted by government over the last few decades.

But the governor's sun was eclipsed by the even more limited and uncomplicated agenda of Senate President Jim Scott. Scott's set of priorities rested on the fundamentals of government's role in society: public safety, education, and economic development.

Unfortunately, solutions in the economic development arena fell prey to politics. Republicans looked askance at Chiles's plan to abolish the Department of Commerce and transfer many of its functions to Enterprise Florida. The governor's reluctance to put the Enterprise Florida plan up for negotiation ultimately killed all development proposals.

This inflexibility bodes ill for our state. The rules governing governance are rapidly changing as Republicans gain power and conservative philosophies gain widespread approval. Gov. Chiles, born and raised, in a political sense, in the post-New-Deal model of governing, appears unprepared to adjust to the state of politics as it exists today.

Whether or not you agree with President Franklin Roosevelt's policies, he was an exceptional leader. He not only understood the needs and aspirations of the American people; he was able to bring those desires to fruition through the political process.

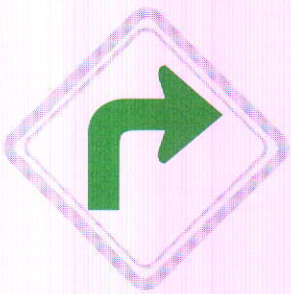
Sen. Scott understands Floridians' fear of crime and concern about the education system. During the session, he narrowed his attention to addressing those anxieties within the framework of a limited and frugal government.

This year, the Senate President could afford to function as a minimalist so soon after the last election when voters across the country resoundingly rejected the Democratic party's vision of governing. In the future, if the GOP gains greater control over Florida's government, the people of our state, accustomed to government activism, may well expect broad, visionary programs that will hardly cohere to the less is more credo.

Right now, we are hovering on an historical brink in economic policy. In the years ahead, we may find ourselves returning to the energy and opportunity of a free market. Or we may find ourselves still mired in the stagnation of an economy under the command of government.

The idea of centralized control of economic matters is so firmly ingrained in the public consciousness that we could easily find our political leaders straying back to that operational framework.

At AIF, we plan to help you keep an eye on the economic policies of this state. Efforts to restore our state to a productive and vital climate for business must not be allowed to wither under an onslaught of political one-upmanship. ■



Right now, we are hovering on an historical brink in economic policy.

Who's In Charge Here?

by Jacquelyn Horkan, Employer Advocate Editor

As old-time poker players know, the winners tell jokes and the losers grumble, "just deal the cards."

During the 1995 session, Gov. Lawton Chiles could be excused for feeling like the player who lost his shirt in an all-night, high-stakes game. It is Chiles's misfortune to serve as governor during a tectonic shift in Florida politics. He joined the gubernatorial race in 1990 after quitting the U.S. Senate in frustration over what he saw as terminal gridlock. Chiles relished the prospect of serving as captain of Florida's massive ship of state.

However, to use another water metaphor, today's purveyors of government activism look less like pilots and more like weary salmon struggling upstream against rain-choked rivers.

During the 1995 Session the governor was little more than a presence to be studiously ignored. According to Chiles's then chief of staff Tom Herndon, the governor intentionally offered up a limited menu of legislative programs but even that was spurned by lawmakers in a manner Herndon described as vitriolic.

The governor's general counsel, Dexter Douglass, is soliciting help from prominent attorneys across the state to research the extent of the governor's authority to issue executive orders. According to Douglass, this will restore Florida's political nexus to its proper alignment.

Members of the governor's staff — predictably — believe that a strong chief executive is essential to Florida's progress. They want to restore what they see as a draining of power from their boss to the guys and gals in the other part of the Capitol — the Legislature.

No real misdirection of authority, however, has occurred. As Diane Wagnar Carr, AIF vice president and assistant general counsel, observes, "This particular governor is looking weaker but that's not a usurpation of power. It's an accurate reflection of the political climate of the state."

The First Branch

The governor was handcuffed this session by a phenomenon rare to Florida: a legislature and a governor controlled by different parties. That's only happened two other times in the last 120 years; once in 1966 and once in 1986. In those years, Republican governors Claude Kirk and Bob Martinez tussled with Democratic legislatures. This year, the Democrat sat in the governor's mansion while Republicans held the reins in the Senate and more or less shared them in the House.

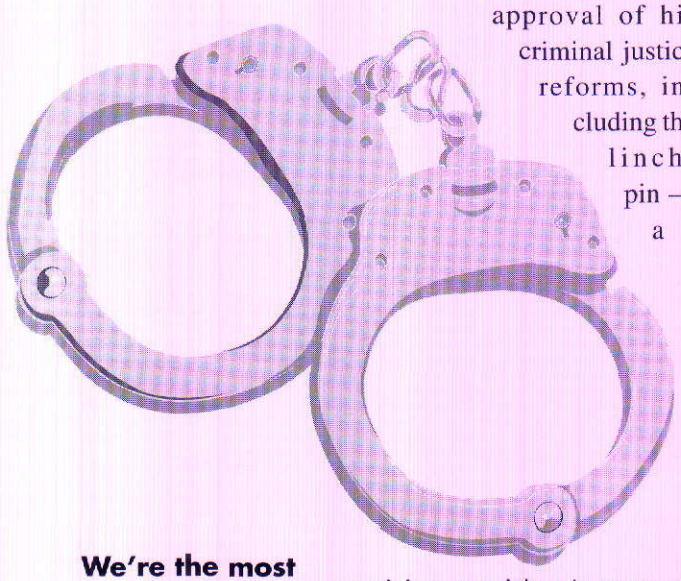
If nothing else, the newfound clout of the Florida GOP brings a wholesome air to governance by opening the political marketplace to competition. It also brings the focus away from the government-as-the-solution mode we've been in for the last several decades.

The principle of limited government reigned supreme in the Senate where President Jim Scott (R-Ft. Lauderdale) set a

If nothing else, the newfound clout of the Florida GOP brings a wholesome air to governance by opening the political marketplace to competition.

Senate President Jim Scott (R-Ft. Lauderdale)

short list of priorities — criminal justice and education — and *stayed on course from day one.* As a matter of fact, by day two, he had managed to gain Senate approval of his criminal justice reforms, including the linchpin — a provision requiring inmates to serve at least 85 percent of their sentences.



We're the most violent and lawless of the 50 states — only Washington, D.C. exceeds Florida in this dubious honor.

Both the U.S. and Florida constitutions identify the securing of domestic tranquility as one of the primary duties of government. The debate over prisons during the last thirty years highlights the difference between the liberal and conservative paradigms of government. Under the liberal set of rules, crime is treated with rehabilitation and prevention in the form of social services.

Unfortunately, this combination does not seem to work. Our state, which accounts for 5 percent of the nation's population, tallies up 8 percent of the crimes committed. We're the most violent and lawless of the 50 states — only Washington, D.C. exceeds Florida in this dubious honor.

The solution for Scott and his fellow conservatives hones in on punishment as the means for achieving public safety. It is an approach widely favored by Floridians who have little patience with a system that caters to criminals at the expense of citizens.

The fiscal year 1995-96 appropriations act passed by the Legislature reflects the conservative view of matters. It increases spending for schools and prisons while decreasing the amount spent on welfare and other social services.

In combatting crime, Sen. Scott won the battle over policy and funding. As they have in the last two years, the governor and House leadership wanted to borrow money by issuing bonds to pay for prison construction, thereby freeing up money this year for education and social services. And again, the Senate refused to budge.

The 1995 Senate was a mirror reflection of Scott's personality and leadership style. What he lacks in ideology he makes up for in political pragmatism. Both Scott and House Speaker Peter Wallace (D-St. Petersburg) are legislative veterans who have worked their way up through the ranks to find themselves charged with leading chambers with narrow majorities. In Wallace's case however, he is presiding over what may be the last years of a century of dominance by the Democratic party.

Newcomers to political dominance, the GOP still lingers in the honeymoon period of power. After years as the party on the outside peering through windows into the rooms of power, they retain a certain spirit of cohesiveness that is lacking in the Democratic party. Scott's narrow majority in the Senate was strengthened by conservative Democrats who shared his views.

Wallace, on the other hand, found his tenuous majority complicated by conservative Democrats in the House. Earlier this year, he fought off a challenge to his position as speaker when conservative members of his party threatened to form a coalition with GOP members to displace him with one of their own. As a result, he was forced to a greater degree of compromise, putting him in a defensive position rather than allowing him to

take the initiative.

Gov. Chiles further complicated Wallace's job by forcing him to play blocking guard on the administration's pet proposals. Wallace fought off attempts to sever the link between AIF's economic development proposals and the governor's plan to privatize the Department of Commerce. As a result the AIF package died.

The Speaker was not as successful at fending off efforts to repeal the Medicaid Third-Party Liability amendments passed during the last session. The amendments and the lawsuit against tobacco companies they authorized have become the flagship of the Chiles's administration.

Wallace found himself pinched between the governor's office, which wanted to keep the bill repealing the amendments off of the floor, and Republicans and conservative Democrats who demanded an opportunity to vote on the measure. Finally, the speaker relented and gave the bill a hearing. The House voted for repeal by a margin of 102 to 13. The governor vetoed the bill and now the Legislature will be faced with voting on an override of the veto.

Despite Wallace's preeminent leadership position, the most interesting player in the House drama proved Republican leader Dan Webster (R-Ocoee). If the Republicans gain control of the House after the 1996 elections, Wallace will pass the speaker's gavel to Webster.

While Senate Republicans continue to display a steadfast sense of loyalty to their party, Republicans in the House show a curious split. Webster comes from the section of the GOP comprised of fiscal and social conservatives. If he becomes speaker, he will have to maintain unity between his compatriots and the moderates and liberals in his party.

The phrase liberal Republican may seem an oxymoron; they are actually more similar to moderate Democrats. Led by Rep. Jim King (R-Jacksonville), they attempted their own palace coup this session, challenging Webster's prerogative to succeed himself as the leader of their party in the House.

The most interesting political battle lying in wait after the 1996 elections may occur between these factions among the House members of Republican party. Until then, the question everyone is asking is "Will Lawton Chiles make a comeback?"

The Quality of Leadership

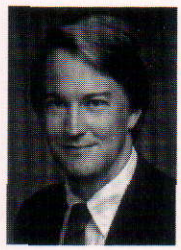
Looking to chief executives — whether they be presidents or governors — as the only source of leadership has been common to 20th century government in America. But they are hardly the only desirable political option available to us.

In Florida, the House speaker and the Senate president hold as much power as the governor but nowhere near as much popular attention, probably due to the fact that most of us don't vote in the contests that these legislative leaders must win.

In his last general election, Senate President Jim Scott needed the votes of only 1.35 percent of Florida's voting population. Speaker Wallace needed a mere .44 percent to gain the top position in the House of Representatives. By contrast, in the 1994 race, about one-third of Florida's registered voters cast their ballot for Chiles, a fewer less than a third voted for his opponents, and the remainder didn't vote at all.

That need to gain widespread approval is a source of power for those who inhabit the governor's office, but it springs from a fickle and uncertain fountain. It is particularly problematic for Chiles. The results of a six-week polling program conducted by AIF just prior to last year's general election revealed a disturbing trend for Chiles. He consistently scored high in voters' estimation of his character and personality while approval of his job performance dwelled in the basement. In other words, Floridians see the governor as a likeable fellow but they are not particularly enamored with him as a leader.

Over the centuries, volumes have been written about leadership. One of the most recent



House Speaker Peter Wallace (D-St. Petersburg)

House Republican Leader Rep. Dan Webster (R-Ocoee)

Rep. Jim King (R-Jacksonville)

Efforts to expand the governor's influence through executive orders should also trouble thoughtful observers of our state's political structure.

books, *Certain Trumpets*, by Pulitzer prize winner Garry Wills, dissects the qualities of leadership. His evaluation paints a somber picture for the governor. Wills writes, "A leader whose qualities do not match those of potential followers is simply irrelevant. The world is not playing his or her game."

According to Wills, leadership requires three components: a leader, followers, and a common goal. As AIF's poll results suggest, in Chiles's case, the leader and the followers do not share a goal. Chiles's greatest weakness may be his inability to draw a majority of citizens to his causes. Since assuming the governor's office, he seems to prefer forming coalitions with those who are like-minded and outspoken in their opinions rather than seeking broad-based acceptance of his ideas.

Chiles's recalcitrance over unlinking his disdained plan to privatize the Department of Commerce from AIF's electrical usage tax exemption and funding for Florida's ports proved fatal for these two vital economic development measures.

His incapacity for compromise killed a settlement negotiated by AIF to the dispute over his Florida Health Security program. After submitting a low-balled education budget to the Legislature, on the first day of the session Chiles grandly pronounced his plans to call a special session to enhance funding for education, a suggestion that surprised every lawmaker.

Republican legislators scoffed at his proposal but no doubt it rankled and set a poor tone for the next 60 days. With their newfound power, Republicans prepared to flex their muscles. Chiles apparently did little to convince them to keep their display of political brawn to a minimum.

We The People

The person sitting in the governor's office enjoys three broad bands of power: hiring and firing state and county officials; the ability to veto legislation and specific appropriations; and his command of the bully pulpit. The last two offer Chiles his most effective weapons against the authority of the Legislature.

By the end of May, rumbles emanated from the governor's office concerning a possible veto of the Legislature's appropriations bill. Chiles was displeased with the amount spent on prisons at the expense of education and social services. The criticism about the level of education funding is an artful dodge. At the Senate's behest, lawmakers actually topped Chiles's education budget by $300 million.

However, Chiles has made no secret of his strategy to use schools and schoolchildren as the lever to fulfill his desire to increase taxes through what he eu-

Last day of session: Senators Bill Turner (D-Miami Shores) and Mario Diaz-Balart (R-Miami) debate the budget issue.

phemistically refers to as tax reform. He is rumored to have plans to do this by leading a petition drive to get a constitutional amendment on the 1996 ballot.

Serious students of constitutional law and tax policy worry about such a move. Chiles promises a revenue-neutral tax reform plan. Study of his proposal indicates that it will meet the revenue-neutral objective in the first few years but will shortly result in a blossoming of tax dollars.

That Chiles will pursue his ambitions via the petition drive further exacerbates the concerns of those who worry that the integrity of our state Constitution is threatened by the ease with which it is amended to indulge the fancies of outspoken interest groups.

Efforts to expand the governor's influence through executive orders should also trouble thoughtful observers of our state's political structure. The power of executive orders is circumscribed by the statutory authority outlined by the Legislature. Given the governor's difficulties with lawmakers during the last session, one can easily draw the opinion that Chiles wants to use executive orders as a path to avoid legislative approval of his projects.

The governor recently attempted to use an executive order to forestall AIF's pursuit of a court challenge to the Medicaid Third-Party Liability lawsuit against the tobacco companies. Circuit Court Judge F.E. Steinmeyer ruled against Chiles, telling the governor he did not have the authority to rewrite legislation.

Business may also witness another expansion of government power, similar to that which has occurred through the rule-making process as state agencies have stretched the boundaries of statutory authority to its farthest limits.

If Chiles does pursue this effort, we can look forward to some turbulent years as the governor, the Legislature, and the citizens battle each other in the courtroom. Business may also witness another expansion of government power, similar to that which has occurred through the rule-making process as state agencies have stretched the boundaries of statutory authority to its farthest limits.

The Spirit of Cooperation

The governor has made clear that he is now in what he calls his "I don't give a damn phase." Everyone in Florida should hope that he starts giving a damn soon.

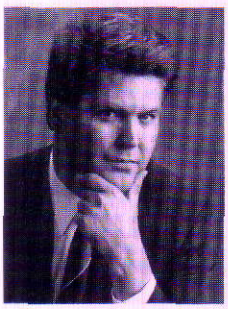
Under the system of government adopted by our country as a democratic republic, no one leader is vested with a great deal of power. That forces our elected officials to compromise with each other. Chiles seems to view that as an unnecessary evil.

If he can learn to collaborate with Republican legislators, if he can learn to view them as his fellow pilots instead of adversaries, the people of Florida may find that our elected officials can help us solve the problems and challenges we face without impoverishing us or trespassing on our freedom.

Unfortunately, Chiles seems locked in a win-lose pattern of politics and, right now, his Republican counterparts hold the upper hand because they reflect the public desire for less government. If he can move his journey to the political high road by offering to cooperate and compromise, he may find the Republicans willing to travel with him. ■

Perspective as a Freshman — 1995 Legislative Session

The Honorable Jim Horne, The Florida Senate



Sen. Jim Horne

(R-Jacksonville)

As the newly elected Florida Senator from District 6, it is a privilege to have the opportunity to share with AIF's readers my perspectives as a freshman in the 1995 Legislative Session.

The session began on March 7 with a real bang. Gov. "He-coon" Chiles, looking rejuvenated and sounding like Jeb Bush, promised to eliminate over half of all government regulations, get tough on crime, streamline government operations, promote economic opportunities, reform the educational system, and restore accountability to HRS.

A bold agenda by any standard. However, the recent election in November was a clear mandate from the voters to avoid "politics as usual" and to restore a sense of accountability to government. In a sense, there was a call to action and nothing less than our immediate attention would suffice. The voters had lost faith in our political system and had become frustrated and cynical.

As a third-generation native of northeast Florida, I too had become frustrated with government's unresponsive nature to the real problems affecting our lives. So it was with mixed emotions, skepticism, and excitement that I took my place with 39 other senators (5 other freshmen and 34 veterans) to begin the business of our state. It was an almost overwhelming experience to be a part of the time-honored traditions of the Florida Senate.

Perhaps my first achievement in the 1995 Session was mastering the new language of the Legislature. Almost immediately, I had to familiarize myself with the myriad of acronyms such as PCB's, FEFP, AG, GO, CSB's, PECO, PEPC.

Then there were the new politically correct terms. People aren't "laid off" from jobs; instead they experience a "career change opportunity." When General Motors closed one of its plants, they called it a "volume-related production schedule adjustment." Students don't fail anymore, they "achieve a deficiency." Sounds like something to be proud of! Tests are now called "evaluation instruments." Bus drivers are now "certified adolescent transportation specialists." At some hospitals, patients never die, they just experience a "negative patient-care outcome." Governments never raise taxes, they "enhance revenues."

I wonder if Benjamin Franklin's proverbs would be remembered today if he had said, "There's nothing certain in life but negative patient-care outcomes and revenue enhancements"?

Once I had mastered the new language and become familiar with my fellow legislators, staff, and the countless people entering through the revolving door of my Senate office, I made every attempt to keep up with the 3,000 bills dealing with every conceivable subject that were

considered throughout the session.

As leadership began to prioritize the issues and identify those "must-pass" pieces of legislation, crunch time began to hit Tallahassee! During those last few hectic days, I tried to conduct business by the "Code of the West" — you must stand up for what is right even if you stand alone, you must keep your promises, and most importantly, it is better to lose your life than your good reputation.

As a freshman Senator this year, I was very pleased to play a role in our budget-making process by serving as a member of the Senate conference committee (Subcommittee B, Education). This conference committee was charged with the responsibility of working out the pivotal differences between the Senate and House budget proposals for the upcoming fiscal year.

While an arduous task, the process was more practical than in prior years because the Republican-led Senate had every intention of making sure that our state budget lived within its means by eliminating inefficient or ineffective programs, privatizing certain governmental agency tasks, shifting as many dollars as possible to our public education system, while accomplishing this with no new or additional taxes.

It was a good session because the Legislature began to prioritize the needs of our state. Florida's short-term pain most decidedly will become a long-term gain. Overall spending for education increased from 49 percent to 51 percent of general revenue. Our criminal justice budget increased from 13 percent to 16 percent. We reduced our social services budget from 32 percent to 28 percent.

These were all steps in the right direction. Furthermore, it is safe to characterize the 1995 Session as a good one for business, primarily because of what we did or didn't do. The people wanted less government and the Legislature made every effort to pull in the reins. The business community wanted the Legislature to stand up to special interests in the areas of health care, tort reform, and economic affairs and the Legislature responded.

Prior to my election to the Florida Senate last November, I talked to multitudes of people about what changes needed to be addressed by our state government. The ideas expressed to me, as well as my own concerns for citizens of my district, led to the successful passage of many of my legislative initiatives.

The Common Sense Approach

The bills I sponsored incorporated a common sense approach to some of the everyday problems faced by so many of us. The direction I took was basically aimed at:

- Providing a safe learning environment for our school children and protecting our classroom teachers from juvenile offenders;
- Cutting the bureaucratic red tape and streamlining our state agencies;
- Privatizing certain governmental agency tasks so that they run more like a business and less like a bureaucracy;
- Making our streets safer by strengthening our DUI laws;
- And — one of my biggest successes this year — giving our juries and judges the opportunity to protect our children who are brutalized by child abusers.

Although partisan politics continued to play a significant role during the 1995 Session and often times the discussions and debates were rather heated, I found myself truly impressed by the willingness of my colleagues to let bygones be bygones for the sake of compromise and the will of the people.

The camaraderie between fellow Senators was extraordinary given the political climate and I feel fortunate to have been a part of changing state government for the better. ■

I found myself truly impressed by the willingness of my colleagues to let bygones be bygones for the sake of compromise and the will of the people.

Why Employer Advocate?

by Jodi L. Chase, Senior Vice President & General Counsel

Jodi L. Chase

Senior Vice President & General Counsel

The *Employer Advocate*, your association's magazine, is enormously popular. The new format, well-written articles, illustrations and graphics, and the information it provides are well received by AIF members. However, this magazine stands for so much more than can be seen in its pages. The true value lies between the pages.

The name of this magazine was carefully chosen to communicate what your association is all about. AIF is your advocate on business issues. We work to improve political and governmental conditions so you can concentrate on success for your business and your employees.

AIF often takes positions before the Legislature that are unpopular to people outside business. Some observers believe that AIF advocates some issues a little too zealously. And sometimes it seems that AIF has few allies in the legislative process. That is because we believe that if AIF didn't take a strong position for you, no one would.

Your association is different from others. We go about the business of advocating without much fanfare. When the Florida Department of Labor and Employment Security proposed a lifting rule that would have severely curtailed the ability of employees to perform their job duties, we made some quiet phone calls to department officials and talked to them about the hardships the rule would create. Officials listened and gave us a commitment to withdraw the rule once the public hearings were complete.

The department rightfully wanted to give the public an opportunity to air their views on the issue. A public announcement that the rule would be withdrawn would have preempted the public's right to comment. So AIF honored the commitment and refrained from issuing press releases or public condemnations.

When the issue of joint and several liability was moving through the House of Representatives during the 1995 Session, AIF quietly put together a strategy with members of the House who are some of your most reliable supporters. We gathered the votes to defeat the proposition in the House Judiciary Committee and quietly negotiated with key Representatives to remove the authority for the House Judiciary Committee to conduct further meetings.

When it looked like the Legislature was going to attack managed health care, and thereby raise your costs, AIF spent days with members of the Legislature in thoughtful, careful negotiations to mediate differences between HMOs and health care providers.

The AIF staff are champions of the free enterprise system. We recognize that jobs and economic opportunity will solve many of Florida's problems.

We know that most employers are honest, hardworking people who want their businesses to grow and prosper, who want their employees to prosper along with them.

That is what this magazine stands for. We are your advocate. We always stand strong for you. We are not always popular. We don't look for headlines. Just results. ■

We work to improve political and governmental conditions so you can concentrate on success for your business and your employees.

Economic Development

The Florida Jobs Act of 1995

by Randy Miller, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.

A news conference was held on February 2, 1995, to unveil the economic development initiative of Associated Industries of Florida for the 1995 Session.

At the conference, the Florida Jobs Act of 1995 was discussed with the press and subsequently was reported in all the major newspapers in the state.

It was explained that the AIF Tax Committee, made up of representatives of member companies, had structured an economic development proposal that would create more new jobs, retain current manufacturing-sector jobs and send a positive message about the business climate in the state of Florida. The proposal addressed many of the problems the tax committee felt were responsible for the loss of 55,000 high-wage manufacturing jobs over the last several years, and included some provisions that would encourage future business development. The AIF jobs bill as presented to the Legislature included the provisions outlined above.

- Repeal of sales tax on electrical energy used in manufacturing.
- Repeal of sales tax on equipment and machinery used for pollution control which exceeds government requirements.
- Expanding sales tax exemption for research and development to include real and personal property.
- Removing corporate tax barriers to encourage research and development activities conducted through sponsored research at state universities.
- Removing productivity increases and $100,000 tax threshold from expanding business sales tax exemption.
- Creating a $500 corporate tax credit for any corporation that creates a high-wage job.
- Creating a new exemption for the transfer of tangible corporate assets between 100 percent, commonly-owned affiliated corporations.
- Amending the current documentary stamp tax law to exempt transfers of realty between 100-percent, commonly-owned affiliated corporations.

Randy Miller

AIF Tax

Consultant

As the legislative session neared, we began discussions with the leadership in both houses. We were particularly pleased with the reception in the Senate and we were encouraged by the fact that the House Republicans felt that such a program was needed. In those early meetings, it was decided that Sen. Alberto Gutman (R-Miami) would sponsor the AIF bill in the Senate and Rep. Bob Starks (R-Casselberry) vice chairman of the House Finance and Tax Committee, would sponsor the bill in his chamber.

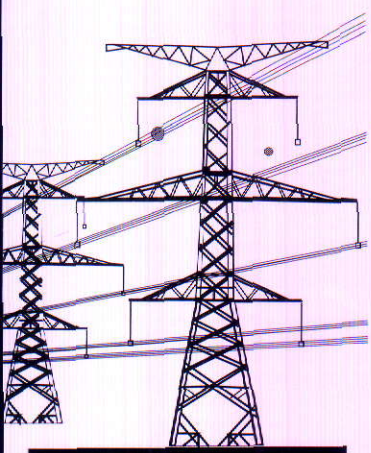
Both the House and Senate bills were introduced and assigned to the appropriate committees for hearings.

Once it was apparent that

The electrical energy exemption was now caught in a political battle pitting the governor and House against the Senate.

there was a serious effort to move these bills through the committee process, the Revenue Estimating Conference met and began to assess the fiscal impact of the proposal. The Revenue Estimating Conference, through its consensus process, calculated that the bill, in its original form, would "cost" the state hundreds of millions of dollars. While some of the methodology employed by the Revenue Estimating Conference could be challenged, it was too late in the process to make adjustments to the bill to overcome some of those concerns.

Therefore, a decision was made to save the central element of the bill by amending out all provisions except the sales tax exemption for electrical energy used in manufacturing. This provision is sorely needed to place Florida on equal footing with the other southeastern states which, for the most part, exempt from taxes electrical energy used in manufacturing.



It was felt this provision would allow Florida to protect current manufacturing jobs and begin the reclamation of some of the 55,000 jobs that were lost. Also, the various legislative committees embraced this effort since the $27 million annual cost of this exemption would be phased in over a 5-year period, making the annual cost a manageable number within the budgetary confines of available revenue.

At the same time the House Commerce Committee began developing a bill that would consolidate and improve various economic development programs and would also abolish the Florida Department of Commerce and transfer many of its functions to Enterprise Florida, a public-private entity created by the 1992 Legislature.

This idea was one of Gov. Lawton Chiles's main legislative initiatives for the 1995 Session. The Florida Senate did not embrace the Chiles proposal and warned us not to allow our initiative on the electrical energy exemption to become entangled in this move by the governor's office.

Not surprising to anyone, that is exactly what happened when the House Commerce Committee included the electrical energy exemption in the Enterprise Florida bill. The Enterprise Florida bill was subsequently passed by the full House of Representatives and sent to the Senate where it fell into a "black hole."

The Senate passed a bill containing our electrical exemption, but it was sidetracked in the House. The electrical energy exemption was now caught in a political battle pitting the governor and House against the Senate.

As time ran out on the 1995 Session, an appeal was made to Gov. Chiles through Lt. Gov. Buddy MacKay to decouple the electrical energy exemption from the Enterprise Florida legislation so that this important exemption could be enacted since both chambers endorsed the concept.

The lieutenant governor stood firm in his position that the electrical energy exemption had to be a part of the Enterprise Florida bill, which ensured that the exemption would not pass during the 1995 Session.

The governor, along with members of the Senate and the House, all agree that electrical energy used in manufacturing should be exempted from sales tax. We hope to gain passage of the exemption during the 1996 Session, or during a special session if one is called before the 1996 Session.

AIF is committed to passing this very important legislation and will concentrate its efforts for passage when the Legislature returns for a special session or its regular 1996 Session.

Florida Business Pins Its Hopes on Enterprise Florida

by Diane Wagner Carr, Vice President & Assistant General Counsel

In 1992, then-secretary of commerce Greg Farmer released a proposal to form Enterprise Florida, a public-private partnership in economic development. AIF criticized Farmer's proposal on several points and eventually had it amended to address AIF's concerns.

Business's arguments in support of Enterprise Florida were several, but one point was made repeatedly. The Department of Commerce had not been able to produce significant improvements with regard to economic development. It had not succeeded in working closely enough with members of the Legislature and accomplished business leaders to bring about the transformation of Florida's economic climate which many felt — and still feel — is unfriendly, if not hostile, to the expansion of business and the creation of jobs.

Since its inception in 1992, Enterprise Florida has received $19 million from the state as seed money to finance industrial development and $45.9 million from the private sector in matching funds or inkind contributions from banks, developers, and other companies. With its money and manpower, Enterprise Florida has established three affiliates intended to provide incentives and training for higher-wage jobs, has organized a venture capital pool to stimulate new businesses, and has formed technology centers to create and expand high-technology companies in Florida. Through its Job & Education Partnership, it has also succeeded in attracting about 8,000 jobs to the state.

Despite these accomplishments, Enterprise Florida has been criticized for failing to meet its prescribed objectives. Though supporters argue that it has accomplished more in the last three years to foster economic development than has the Department of Commerce over the last several decades, detractors insist that it has not produced the desired results. Most naysayers admit, however, that the quick and quantifiable results they are looking for are not so easily gotten from a newly created entity charged with such an enormous mission.

Keenly aware of the good and bad grades legislators, lobbyists, and business leaders have given Enterprise Florida, Gov. Chiles decided to use the 1995 Session as an opportunity to vest the entity with even greater economic development responsibilities and functions through the privatization of the Department of Commerce. He reasoned that what was needed to increase the intensity of the state's approach to economic development was more, not less, private sector involvement in the effort.

The Governor's privatization plan was distilled into bill form by the House Commerce Committee. The bill's specifics required that Enterprise Florida take over economic development duties, including recruiting industry and conducting economic research and analysis. The Florida International Affairs Commission was assigned to handle foreign trade and marketing, and a newly created Office of Trade and Economic Development would be housed in the governor's office to oversee the two groups and implement programs that offer incentives for new industry to locate to Florida.

Unfortunately, the road to enactment proved rockier than supporters had anticipated. Some Republican legislators argued that international duties should be vested in the secretary of state, while members of both parties expressed concerns about accountability since many more general revenue dollars would be funneled to the public-private entity if privatization were achieved. Some legislators went even further in their criticisms and labelled the project an altogether bad idea. In the end, the will of the opposing forces

Diane Wagner Carr

Vice President &

Assistant General

Counsel

Brain Snack

The art of progress is to preserve order amid change and to preserve change amid order.

Alfred North Whitehead

Florida business has learned the hard way that the status quo should not be allowed to stand in the way of progress.

proved stronger than that of the bill's supporters and plans for passage faded as the 1995 Session drew to a close.

Though passage of the bill privatizing the Department of Commerce and further empowering Enterprise Florida remained elusive this year, the governor, many legislators, and business leaders agree that a second attempt should made in the 1996 Session. Plans are already underway for continued work and negotiations during the interim to determine whether a bill can be developed that will satisfy the political and policy concerns of enough members of the Legislature to make passage likely.

All involved agree that failure to move forward with economic development initiatives will only serve to make Florida an even less attractive venue for new and existing businesses. Florida business has learned the hard way that the status quo should not be allowed to stand in the way of progress.

If the governor and the Legislature truly want to succeed with Enterprise Florida, they should listen carefully to Howard Hodor, the group's president; Alan Lastinger, it's vice chairman and president of Barnett Banks; and Dick Nunis, chairman of Walt Disney Attractions and of the Florida Council of 100.

These gentleman are all on the Enterprise Florida board and have been the most active participants in trying to accomplish the goals and objectives of the organization as established by the 1992 legislation. The only way for Enterprise Florida to thrive is for the governor and the Legislature to hand the reins to successful business leaders like Hodor, Lastinger, Nunis, and their compatriots on the board.

If the Chiles's administration tries to retain control over Enterprise Florida to the same degree it exercises over state agencies — and brings in another political hack to lead the effort — then Enterprise Florida is doomed.

Only by letting the business leaders on the Enterprise Florida board run the show can this venture succeed. ■

Energizing Florida's Economy — With the Three Ts

by The Honorable Kendrick Meek, Florida House of Representatives

Rep. Kendrick Meek

(D-Miami)

It is a fact that critical times demand critical decisions. Energizing Florida's economy is one such critical issue of this time.

The highly successful Summit of the Americas was one unprecedented moment in our state's history that we can all be proud of. But that milestone, etched in grandeur and hard work, exacted a thoroughly decisive enterprise on state government.

Precisely at a time when it was needed, government leadership and business entrepreneurship arrived at a historic convergence of efforts. Multi-agency cooperation at the federal and state level reached its peak level with our state's businesses and entrepreneurs to bring about a gathering of 34 duly elected leaders from the United States, Canada, and our neighbors from the Latin American/Caribbean hemisphere.

Accordingly, I propose that

we capture the boldness of that Summit initiative by energizing Florida's economy through the three Ts of telecommunications, technology and tourism. I believe Florida is poised to take the lead on the burgeoning telecommunication business initiative. Many of our nation's leading firms in telecommunications are located right here in our state. It would indeed be myopic if we did not take advantage of their presence and participate in their ongoing investments in furthering their reach into the global market.

The promises of modern technology have definitively forged a common legislative and business agenda, bringing about the kind of transformation desirable for our state's economy. This can only mean more jobs and the emergence of greater employment opportunities for all Floridians.

Tourism, our state's biggest source of revenue — and America's fastest growing industry with last year's $2-billion surplus — must not be left behind either. In fact, as Florida seeks these new frontiers in the highly specialized and lucrative fields of telecommunications and modern technology, the tourism industry could be seen as an added bonus toward many more business opportunities emerging from these burgeoning enterprises.

The three Ts of telecommunications, technology, and tourism firmly buttress the tripartite beacons of progress and development for our state's economy, and are inextricably linked. In fact, if we are to succeed during the remaining half of this century's last decade, there is a need to craft practical agreements on policy objectives and specific proposals for a common executive, legislative, and economic agenda.

A collaborative thrust strengthening Florida's work force is crucial, especially at a time when our state must seize every opportunity to realize its great potential of assuming a leadership role among the trading communities in the Latin/Caribbean hemisphere. Specifically, South Florida's geographical location is one good reason that has buoyed the emerging successes of business pacts with nations in the Caribbean/Latin-American hemisphere. Obviously, there should not be any doubt concerning the transformation of our state into our nation's prime gateway for international trade and commerce.

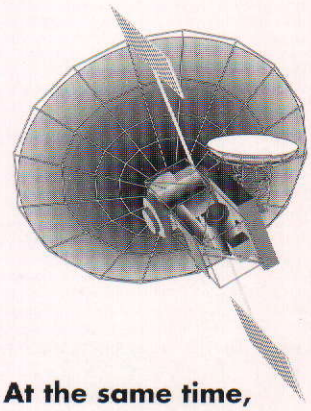
For this to happen, however, there should be a united front. Resources from our state's firms dealing with telecommunications and advanced technologies, along with other ancillary businesses, must capitalize further on our state's initiative to lead. This will inevitably provide Florida with a greater competitive edge and access to global telecommunications and technology markets in our immediate hemisphere.

I would urge an innovative approach toward the establishment of both short and long-term initiatives to coordinate and focus current efforts and resources from both state agencies and the business sectors. Such a move would certainly position Florida's competitive edge in responding to the demands of the global market.

Initial aggressive efforts in restoring economic stability and business reforms in Florida have inevitably opened a window of opportunity which may well create our state's best prospects for sustained growth and development during the remainder of this century.

At the same time, however, we cannot relent in our common agenda to level the playing field of enterprise for every Florida business. Joint economic ventures wherein small and medium-scale business entrepreneurs participate with established telecommunications and technology firms will certainly produce free competition, thereby assuring greater efficiency in the delivery of goods and services to prospective clients throughout the hemisphere.

But other specific tasks must also be accomplished. Among these are initiatives designed for accelerating and energizing the growth of our state's agricultural industry, closing the gap between state revenues and public expenditures, mobilizing investments, and raising the quality and quan-



At the same time, however, we cannot relent in our common agenda to level the playing field of enterprise for every Florida business.

tity of our human capital.

The urgency of the moment suggests that we harness the vast potential of the 3 Ts toward our common agenda in energizing our state's economy. As the Summit of the Americas summoned our togetherness toward our mutual responsibility for the well-being of all Floridians, let us seize the challenge which this opportunity presents to us. Setting aside political gridlock in our quest to de-emphasize partisanship, it is incumbent upon us to bring about the ambience of confidence-building in the midst of conventional checks and balances in favor of policy consensus and harmonized action.

To forestall the emergence of a potential "jobless growth" phenomenon that could very well threaten our state, it is crucial that we embark on this creative enterprise. The time has come for us to maximize the potential of Florida's business work force — their literacy, their competency, their resourcefulness, and their high sense of entrepreneurial readiness to take up the competitiveness of the global markets not only in our neighboring hemisphere, as exemplified by NAFTA, but also in other multinational economic pacts such as the European Common Market or the emerging Asia-Pacific Economic Council.

Adopting business self-discipline and civic responsibility as a principle of our public policy, it is incumbent that our self-interests be reconciled with the higher objective of Florida's common good. We must pursue a free market economy, focusing on the telecommunications enterprise and the demands of technology which must be harnessed along side our state's economic empowerment.

This is the clarion call for our state's leadership initiative as we embark on global competition right next door to our Caribbean/Latin-American hemisphere — and beyond. However, our success in this endeavor is very much contingent upon our doing away with the old politics of partisanship, and working together for Florida's common good and the well-being of all.

The highly successful Summit of the Americas paved the way for all Floridians, particularly those in leadership positions in government as well as in business, to become highly sensitized to the needs and aspirations of our state's economy. It is time we demonstrate political acumen and business maturity by coming together to consult, discuss and reach a consensus in a congenial but urgent gathering to respond to the crucial demands for energizing our state's economy.

Although the intensity of political cooperation and business collaboration seen during the period leading up to the Summit would be next to impossible to replicate, I hope that the spirit of that Summit rekindles our entrepreneurial spirit to take up the challenge posed by the emerging demands of the global market. I believe we find ourselves in an historic win-win situation, for we are precisely at the cutting edge of making and shaping our state's economy.

When everything is said and done, Florida shall have seen its economy in a more prosperous state. Our urban centers will thrive because much-needed resources created by the demands of telecommunications and modern technology will be pumped more vigorously into local economies, creating more jobs and greater economic opportunities.

Through the convergence of efforts between our state government and countless allied firms and industries presently involved in telecommunications and modern technology, Florida will have been transformed into a vital link of commerce and industry to the global market.

Buoyed by our state's competitive edge and bolstered by our strategic location in the hemisphere, I feel strongly that the time has come to transform Florida into a veritable gateway to the hemisphere's international business on telecommunications and modern technology. Accordingly, our tourism industry will eventually be the corresponding receptacle for these burgeoning business enterprises.

This is the clarion call for our state's leadership initiative as we embark on global competition.

Environment

Reform Of The Environmental Regulatory Commission

by Martha Edenfield, Akerman, Senterfitt & Eidson, P.A.

The Environmental Regulatory Commission (ERC), as originally created, was to be composed of seven citizens of the state appointed by the governor, subject to Senate confirmation. Membership was statutorily required to be representative of, but not limited to, interest groups including agriculture, real estate, environmentalists, the construction industry, and lay citizens. The ERC exercises the exclusive standard-setting authority of the Department of Environmental Protection (DEP), except in limited areas.

The ERC was originally to be a standard-setting commission and a check on the agency. Throughout its history, the ERC has traditionally made findings based on scientific data and information. In recent years, however, the ERC has gone beyond its prescribed role by setting its own policy, thereby becoming a voice for environmental extremists.

ERC members have established their own agenda and proceeded beyond standard-setting into the environmental advocacy arena, even to the point of lobbying the Legislature on positions contrary to that of the DEP secretary and, presumably, the governor.

As the ERC moved further away from its stated statutory mission and into policy adoption, regulated interests called for legislative review of the commission's functions and the wisdom of allowing the ERC to continue in its current form.

The Legislature addressed the membership and duties of the ERC by passing the committee substitute for House bill 855. The bill requires ERC members to be representative of the development industry, local government, the environmental community, industry, lay citizens, and members of the scientific and technical community. The bill provides that some members should have substantial expertise in the areas of transport and fate of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.

The bill further provides that the ERC is prohibited from establishing DEP policies, priorities, plans, or directives and vests rule-making responsibility with the secretary of the DEP.

The legislation also addresses staffing problems of the DEP. Since the merger of the departments of Natural Resources and Environmental Regulation into the DEP there has been a morale problem and an attitude that could be characterized as insubordination toward the office of the secretary.

The bill removes certain positions from career service protection, including those in DEP assigned the duty for environmental or program administration. The bill also exempts from career service those positions that are supervisory and require licensure as an engineer pursuant to chapter 471. This provision will give the secretary of the DEP much more discretion and latitude in the termination of DEP employees who ignore or violate her authority.

This bill should go far in changing the attitude of DEP employees toward the secretary and toward the public they serve. Further, this will eliminate the pursuit of individual agenda by DEP employees who were previously secure in the knowledge that they could not be fired because of the protection of career service. This bill will give the secretary the needed authority to get the department under control and better able to serve the public. ■

This bill should go far in changing the attitude of DEP employees toward the secretary and toward the public they serve.

Martha Edenfield

AIF Environmental Consultant

Repeal of the ADF

by Jacquelyn Horkan, Employer Advocate Editor

In a no-new-taxes year, the Florida Legislature carefully allowed one tax to die.

Associated Industries did not take a position on repeal of the ADF, however we have always questioned its rationale.

The advanced disposal fee (ADF), enacted as part of the 1988 Solid Waste Act, was designed to encourage recycling. The tax was actually a penalty on consumers who bought products packaged in containers made of materials that did not meet state-established recycling goals.

The tax revenue raised through ADF was used to help local communities fund solid waste control projects. When it went into effect on October 1, 1993, consumers paid one penny for each container they bought that was made from a substance that did not meet the recycling goals. Since aluminum and steel had already met the goals, ADF was only applied to plastics and glass.

On January 1 of this year, the ADF increased to two-cents per container and was projected to provide $30 million in revenue during the 1995-96 fiscal year. The original law, however, included a provision to sunset the ADF in October of 1995, unless the Legislature decided to reenact the tax.

Few in the Legislature took seriously attempts to reenact the ADF. The only real controversy surrounding the tax involved what action the Legislature had to take on the issue. Last fall, the governor's working group on the ADF had a difference of opinion as to whether the repealer language in the statute required specific legislation acknowledging the demise of the ADF.

On the last day of the regular session, that difference of opinion remained. AIF argued that the repeal of the ADF stood unless the Legislature took action to reenact it. To supplement our position, we asked the Department of Revenue for an advisory opinion.

The department management informed us that they would look to legislative intent to determine whether the ADF was repealed as of October. In the absence of a bill to provide certainty as to legislative intent, the department would look to the appropriations bill. Since the Legislature's budget provided for a phase out of 45 of the remaining 47 ADF staff positions, the department considered the ADF repealed.

The Department of Environmental Protection will continue its audits of activity for the effective period of the ADF. A number of companies have received exemptions from the ADF based on promises to meet recycling goals. The Department of Revenue has warned that if any of those companies have not met their goals, they will be subject to assessment for fees, penalties, and interest.

Associated Industries of Florida did not take a position on repeal of the ADF, however we have always questioned its rationale. Recycling is a laudable goal in some circumstances, however,it is not always viable or practical. For instance, recycling of plastic materials actually costs more in natural resources than it saves.

AIF continues to advocate scientific verification of presumed environmental problems accompanied by market-based solutions. ■

AIF continues to advocate scientific verification of presumed environmental problems accompanied by market-based solutions.

Health Care

Medicaid Waiver

by Jodi L. Chase, Senior Vice President & General Counsel

In 1994, Governor Lawton Chiles unveiled Florida Health Security (FHS), a bold health care reform program supported by hospitals, health insurers, and business. Unfortunately, FHS is not supported by the Legislature.

Florida Health Security is based on the grant of a waiver of federal Medicaid spending rules. It allows Florida to draw down federal money, match it with state and private funds, and use the funds to subsidize the purchase of private health insurance by small employers and their employees.

The state's share would not be funded out of general revenue (no new tax money), but through savings generated by enrolling current Medicaid recipients in managed care programs.

In 1994 the Legislature did not approve the plan because the federal government had not granted the waiver. The Legislature argued that without the waiver the plan was baseless. Republicans also feared the size of the program and argued against creating a new entitlement program.

At the end of 1994, the federal government granted the waiver. Business worked with key legislators to scale down the program and ensure it was not a new entitlement. Employers, tired of paying health care costs for people without insurance or who can't afford to provide health insurance for employees, eagerly awaited implementation of the waiver.

In the 1995 Session, the Legislature failed to bring a waiver-implementation bill to the floor of the House or Senate for a vote.

Many employers still support implementation of the Medicaid waiver so long as certain conditions are met. The purchase of health insurance must be voluntary; no employer should be mandated to purchase coverage. The coverage must be of limited duration with policies expiring within a certain time frame.

All expenditures must be checked and available dollars must be verified by an outside actuary or accountant. All policies must be sold through the private sector; government (including local government) must not be allowed to enter the health insurance business.

Employers support implementation of the waiver because it will help lower health care costs. Prices can't be lowered until the market of patients paying the full price for services grows. We are in a shrinking market. Fewer patients have coverage. They pay what they can. The cost difference is shifted to patients with health insurance coverage. Premiums have to rise to cover the increased costs.

In addition, providing private coverage using federal money reduces the state budget. The fastest growing element in the state budget is Medicaid expenditures. The waiver could bring private coverage to many who might otherwise be covered by Medicaid.

This year, Republicans were reluctant to pass a bill implementing the waiver because of uncertainty in Washington concerning how Congress will handle Medicaid. Congress will decide whether it will send Medicaid money to states in a block grant.

If they do so, Congress must decide the growth factor built into the block grants, and decide whether states which have implemented a waiver will receive additional federal funding. Until Congress moves on Medicaid, Florida is likely to remain at a standstill on the waiver and on further health care reforms to lower health care costs for employers. ■

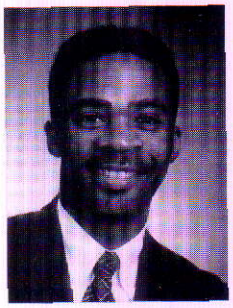
Jodi L. Chase

Senior Vice President & General Counsel

Employers support implementation of the waiver because it will help lower health care costs.

Repeal of State Contractor Health Insurance Mandate

by Kevin Neal, Assistant Vice President, Governmental Affairs



Kevin R. Neal
Assistant Vice President, Governmental Affairs

In 1992 the Florida Legislature passed the first phase of Gov. Lawton Chiles' landmark health care reform legislation aimed at increasing access to health insurance. One key factor in garnering business support for the initiative was repeated assurances that reform would be done on a voluntary basis with no mandates.

That no-mandate promise was broken when a provision was slipped into the 1992 health care bill requiring all contractors competitively bidding on state projects in excess of $100,000 to provide access to health care and hospitalization for their employees and dependents. In addition, contractors would be held responsible for ensuring that any subcontractors and suppliers used on the contract provided health insurance benefits to their employees. The mandate was to take effect on July 1, 1994.

A coalition of construction-related groups filed suit against the state to prevent implementation of the mandate. While the lawsuit was still pending, AIF fought for repeal of the mandate language during the 1994 Session. The Governor's office, however, opposed repeal in what appeared to be an attempt to use the mandate as a bargaining chip to secure passage of other bills.

The repeal effort failed during the 1994 Session and the anxiety escalated as the date for implementing the mandate drew closer. The Department of Management Services released emergency rules to implement the mandate. One day before the law and rules were to take effect, a federal court issued a permanent injunction prohibiting the implementation of the health insurance mandate.

Although the law was enjoined by the federal court, the Agency for Health Care Administration wanted the mandate language to remain in statute so that it could withstand a legal challenge. During this year's session, AIF worked to have the mandate language wiped from the books for good.

A repeal of the mandate law was contained in a reviser's bill that became law without the Governor's signature. Perhaps, now that the mandate language has been erased from the law books, Florida can continue to move forward in setting an example for the rest of the country in reforming its health care delivery system. ■

Why AIF Supports Managed Health Care

by Jodi L. Chase, Senior Vice President & General Counsel

One hallmark of the 1995 Session was the strong attack on managed health care. Several bills moved through the process, ranging from a complete abrogation of managed care to a first step around it.

AIF was criticized for opposing these bills and supporting managed care so strongly. Many health care providers were especially confused and angry at our position. AIF took a position on these bills because employers pay for health insurance for employees. Managed care provides a choice of health insurance options with different prices. AIF simply wants to preserve an employer's choice of plans and freedom to design a health insurance plan that best meets the financial and health care needs of employees. Changes to managed care will also cause immediate price increases for workers' compensation insurance, which is unacceptable.

Managed health care is a concept that describes many different health insurance products sold in the market today. Health maintenance organizations

(HMO) and preferred provider organizations (PPO) are the most prominent. But managed care also refers to point of service plans and even touches the utilization review process inherent in indemnity insurance.

Managed care is also practiced in workers' compensation. In fact, a premium credit is available when managed care is used in workers' compensation. Some of the proposed changes to managed care impact all types of health insurance sold today.

In its simplest terms, managed care refers to case management. The care and treatment of patients who are covered by managed care is managed by a primary care doctor who makes sure that patients receive the services they need from the most appropriate type of provider, in the most appropriate setting. Utilization of services is checked so patients are not subjected to unnecessary testing or overcharging for services.

A managed care organization (the insurance carrier, HMO, or utilization review company) contracts with a limited number of certain providers to service patients. That is why, in managed care, patients choose from a list of providers. In an HMO, patients can only go to providers outside the list in an emergency or if they pay for services out of their own pocket. In a PPO, patients can go to providers out of network, but they pay a higher co-payment for those services.

The incentive for providers to contract to provide managed care is that the HMO or carrier can guarantee that provider a number of patients. To illustrate, let's look at a hypothetical HMO, called The Employer's Choice, which covers the lives of 10,000 employees. Managers of this HMO will negotiate with a primary care doctor, promising that a percentage of those 10,000 employees will use that doctor. In exchange, the doctor agrees to charge those patients a lower rate than he charges other patients, and agrees to abide by various other contract terms.

Some HMO's are staff model HMOs, which means that the doctors are employees of the HMO, but most managed care is done by provider contract. The providers are independent contractors who sign an arm's-length contract.

Managed care providers have complaints about the system. They do not like having their contracts terminated. They do not like being turned down when they seek contracts. They do not like having their medical decisions questioned. Some specialists do not like having to wait for a primary care doctor to refer patients for specialty care. They complain about quality. They complain about price.

All of their complaints have some validity. The trick is to try to provide some satisfaction to a contracting provider's complaints without raising the prices employers pay for health insurance. This task is nearly impossible to accomplish if government is allowed to mandate contract terms. Nevertheless, some opponents of managed care seek to do just that.

They want laws that control who the managed care organization must contract with. They want laws that allow some people to circumvent their primary care doctor. Anti-managed care forces want government to mandate that certain services must be provided in a certain manner. They seek mandates that would allow only doctors to perform certain clerical functions in an insurance company. Other laws they favor would force an insurance company to tell a provider certain proprietary information about its business practices, and would allow doctors to price-fix in contravention of antitrust laws.

These laws do not allow flexibility; they chisel market conditions into stone. They obliterate an employer's choice of products. These are the laws AIF opposes.

Laws are perhaps best used to stop abuses in the system. These are the changes to managed care laws that AIF advocates. A contracting provider should have notice that the contract will be canceled. Not all contracts provide for notice of termination. The law can mandate that they do.

(Continued on page 24)

These laws do not allow flexibility; they chisel market conditions into stone. They obliterate an employer's choice of products. These are the laws AIF opposes.

FLORIDA: W

Insuring Florida's Business Future

When you buy insurance, you're not looking for excitement — you're looking for security. And that's why Associated Industries of Florida, the state's leading broad-based employer association, created Associated Industries Insurance Services (AIIS). Large or small. Family-owned or corporate conglomerate. AIIS stands ready to assist you with your insurance needs.

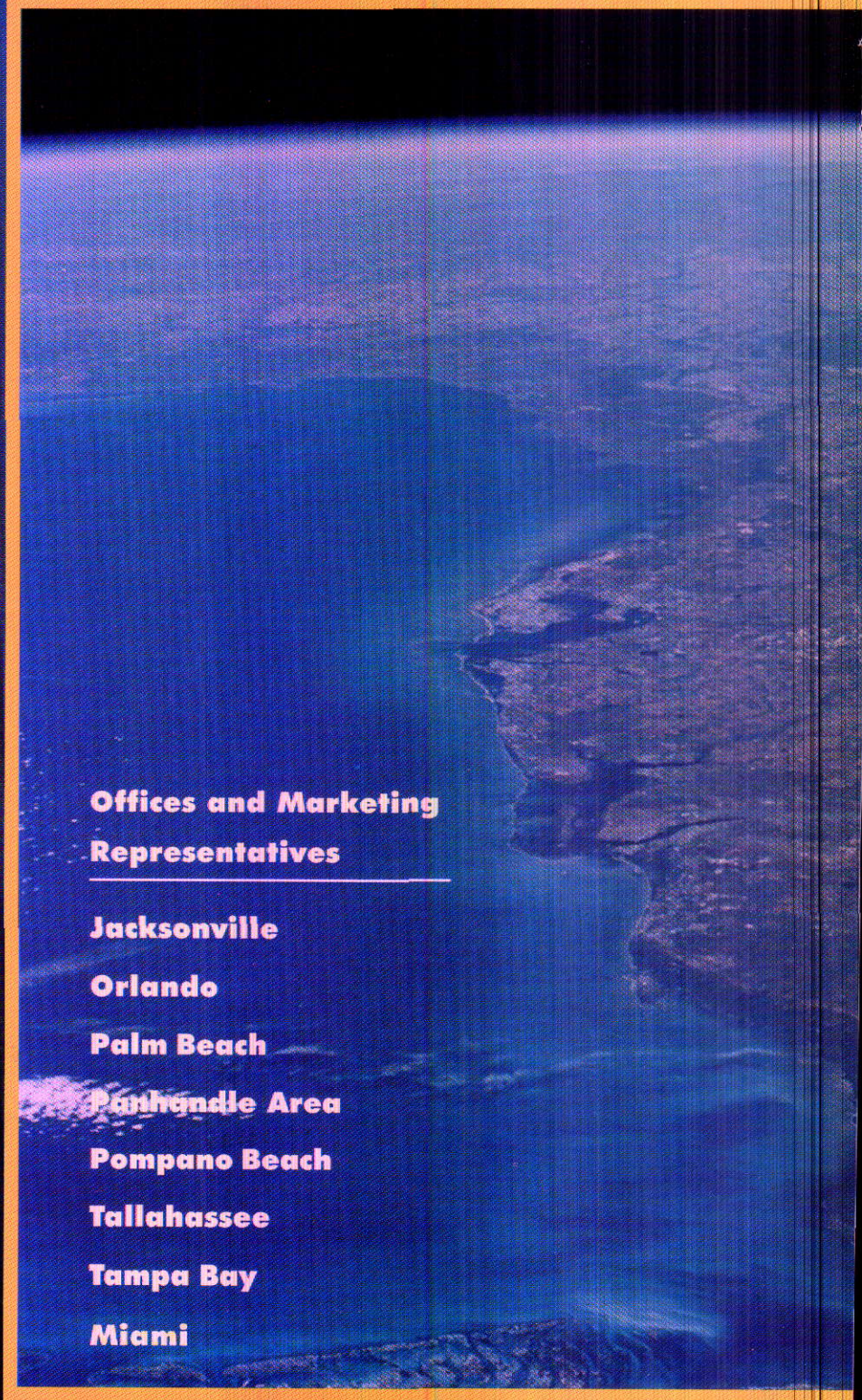
The AIIS Shield

Associated Industries of Florida Property & Casualty Trust (AIFPCT) is a self-insurance fund offering workers' compensation coverage to AIF members.

Associated Industries Insurance Company (AIIC) is our newest insurance operation — more on this soon!

For more information, call the AIIS office today. Ask about our comprehensive workplace safety programs. Find out about our conscientious underwriting practices. And inspect our careful financial structure that protects the premiums you pay.

1-800-866-1234



Associated Industries of Flori

VE'VE GOT YOU COVERED!

Photo by: National Aeronautics and Space Administration

da Property & Casualty Trust

The answer is increased competition so that only the best systems of health care delivery survive in the market.

An HMO should not sign provider contracts with the intent to advertise having certain doctors on the panel, and then cancel the contracts when it attracts patients. The law should declare that an unfair trade practice. A doctor should be able to talk to another doctor when a medical decision is questioned. The law can provide access to a company doctor.

And potential purchasers of an insurance policy should know what drugs are covered and which providers are on the panel before they decide to buy. Providers should receive swift decisions on questions concerning potential antitrust violations; if they do not violate antitrust, they should have some assurances from regulators that they may proceed with the activity.

Florida is fortunate to have a very competitive health care market. Twenty-five HMOs operate here. Some other states have only two. The purchasers of health care (employers and employees) should be able to regulate the market. Managed care should not be shielded from competition. If managed care does not suit your needs, you will not purchase it.

But laws that take away your choice of managed care are not the answer. The answer is increased competition so that only the best systems of health care delivery survive in the market. That is why AIF supports managed care. If managed care is to fail, it should fail because you, the purchaser do not want to buy the product. It should not fail because government passes a law. ■

International Trade

Creating a World Class Trade System in Florida

by The Honorable Ron Klein, Florida House of Representatives

Rep. Ron Klein (D-Boca Raton)

The economic well-being and future of Florida is substantially linked to international trade. International commerce is one of the key elements of Florida's economy, representing approximately 16 percent of Florida's gross state product.

Florida's geographic proximity to Latin America and the Caribbean makes Florida the ideal transhipment point for many imports and exports to and from these areas. In fact, Florida has long considered itself the "Gateway to Latin America" because of the amount of U.S. exports that flow *through* Florida to Latin America and the Caribbean, and the amount of exports *originating* in Florida that flow to Latin America and the Caribbean.

The importance of Florida to hemispheric trade was recently reinforced as 34 democratically-elected hemispheric leaders met last December in Miami at the Summit of the Americas. These leaders signed a pact to create the "Free Trade Area of the Americas" — a $12-trillion market with over 800 million customers — by the year 2005.

The impact and importance of international trade on Florida's future business economy can not be stressed enough. The impact of international trade on Florida's manufacturing industry alone is staggering.

● *The Wall Street Journal* reported that Florida led the Southeast with $14.4 billion worth of manufacturing exports in 1994 — 70 percent more than

the second-ranked state, Virginia.

- For every $1 billion of trade, approximately 20,000 jobs are created in Florida. This means that $14.4 billion of trade translates into 288,000 high-paying jobs.
- Ninety-two percent of export sales from Florida in 1993 consisted of manufactured goods. The growth of exports in high-technology and high-wage industries, such as scientific and measuring instruments, industrial machinery and computers, and transportation equipment, exceeded 100 percent during the period from 1987 to 1993.
- Almost half of all the businesses exporting in the South Atlantic region are located in Florida. Florida currently ranks third among all states in the number of business entities that are engaged in exporting.

The new global marketplace not only means emerging markets, but a new world trade order where those with access and the technological dexterity to take an advantage of such access will dominate.

Country-specific rules, technological advancements, and global trade agreements all impact the way the world trades. Competing in this new world trade order not only requires businesses to achieve dynamic efficiency in their operations, but requires state government to continuously communicate with the private sector and seek advice as to what role, if any, the state can play in facilitating and encouraging international trade in Florida.

Given the high economic stakes for Florida, the House of Representatives Commerce Committee began an ambitious review of international trade in Florida prior to the 1995 Regular Session. Based on input from the organized business community as well as individual small-business owners from all over the state, our committee developed the following framework for analyzing, evaluating, and implementing state trade policies and programs.

A clear and focused international trade plan. There must be a single plan of action for Florida's agencies to follow in their international activities. This plan requires the support of the governor and Legislature, and the expertise of all agencies, professionals, and businesses involved in international trade. Public/private partnerships like the Florida International Affairs Commission and Enterprise Florida could be empowered to execute this program. However, the executive and legislative branches must ensure that the entity is empowered with the authority and appropriate resources to ensure that it has the capacity and long-term commitment to achieve a successful state international development policy.

Active state and federal coordination. Florida must be aggressive in pursuing interaction with the federal government on trade issues, including encouraging discussions about enlarging NAFTA to include other Latin American countries, as well as other global trade agreements. These national policies are a necessary part of our state global trade strategy.

A method of acquiring and disseminating trade-related information and education. The state must assist in the development of trade leads and information related to foreign business practices in a manner that is both cost-effective and timely.

The Florida Trade Data Center, created in 1993, can provide these services. The center currently helps international executives identify new markets and build export sales by providing the most up-to-date, accurate information on foreign marketing distributors and trade opportunities. Resources should be allocated to ensure that the center is accessible to businesses throughout Florida.

Access to capital and investment funds for export financing needs. Providing access to capital for small, export-ready firms is a key component for support of international trade. Florida's small business community is unable to enter the global marketplace without adequate capital.

In 1993, the Florida Legislature created the Florida Export Finance Corporation (FEFC), and appropriated $1 million for loan guarantees. Although this

Florida currently ranks third among all states in the number of business entities that are engaged in exporting.

Florida needs to create an export assistance program that assists export-ready firms in all areas of promotion and trade finance.

limited funding significantly diminished the abilities and impact of the FEFC, the FEFC was able to support over $8 million in exports by Florida businesses. In addition to providing guarantees, the FEFC also provides information and assistance to Florida businesses out of its Miami office, specifically assisting businesses in obtaining credit and political risk insurance from the Export-Import Bank of the United States.

In order to increase the availability of FEFC loan guarantees, the minimum amount of funds for the FEFC's total guarantee authority should be $15 million. This amount would provide for an effective statewide export-financing operation.

Intensive export assistance for export-willing and export-ready firms. International trade professionals have agreed that government trade programs more than pay their way by facilitating sales that would not otherwise occur. In an evaluation submitted to the U.S. Economic Development Administration (State Export Promotion Policies), Dr. Rodney Erickson stated that an additional expenditure of $1,000 on export promotion and assistance may generate a $432,000 increase in state exports.

Florida needs to create an export assistance program that assists export-ready firms in all areas of promotion and trade finance. This program should involve the private sector or other assistance providers as export counselors. At a minimum, this assistance should include the following:

(1) Help small businesses overcome obstacles to completing export transactions, including identifying trade leads.

(2) Provide guidance and assistance involving export finance strategies, programs, and resources.

(3) Assist in matching client needs with the range of available public and private sector export service providers, including locating distributors and trade facilitators.

Upgrade international trade infrastructure. We need an efficient intermodal transportation infrastructure that allows Florida's ports to support Florida's international trade, and allows Florida's ports to compete with other U.S. ports for market shares of new emerging markets. Florida's ports (nine deepwater seaports, eight seaports, and 12 airports with customer service) are our primary trade facilitators, and handled over 100 million tons of cargo and over 7 million passenger embarkations and disembarkations in 1991. Florida's seaports alone accounted for nearly 250,000 seaport-related jobs and approximately $600 million impact.

Florida's ports are the central piece of Florida's international trade, and will only become more critical to Florida's efforts to take advantage of new trade opportunities with Mexico as a result of NAFTA. Aggressive competition from other state ports such as Savannah, Charleston, New Orleans, and Houston means that Florida ports must constantly strive to ensure they have adequate infrastructure to move goods faster and cheaper than these ports. Ensuring that Florida ports remain viable and have the capital, facilities and capacity to meet the demands and needs of the global marketplace, as well as compete for roles in new emerging markets must be part of any state trade policy.

The analysis and proposed strategy discussed in this article is dependent on Florida's business community recognizing an historic window of opportunity. Our state stands ready to provide assistance to small and medium-sized businesses as they seek new markets for their products and services. The future of this public-private cooperation, if acted on in a timely manner will provide a strong and stable economic engine for this state well into the 21st century. ■

Florida's seaports alone accounted for nearly 250,000 seaport-related jobs and approximately $600 million impact.

Business v. Trial Lawyers: A Standoff

by Jodi L. Chase, Senior Vice President & General Counsel

The business community has been at odds with trial lawyers for many years. Over the last year and a half, however, the differences reached the boiling point.

It started in 1993, when the Florida Supreme Court interpreted Florida's comparative fault statute in the now famous *Fabre* decision.

Fabre is an important case for employers. Business often finds itself in an awful position when defending itself in a lawsuit involving product liability, personal injury, or wrongful death (tort actions). McDonalds was sued because they served their coffee too hot. An elderly patron spilled coffee in her lap in a McDonalds' drive-through and sued the chain because she burned herself.

Fabre allows a defendant to tell the jury the whole story surrounding the incident. Suppose there was more to the McDonald's story than meets the eye. *Fabre* gives the fast-food chain the opportunity to tell the jury that the car behind the plaintiff bumped her car, causing a jolt that resulted in the spill.

Without *Fabre*, the jury could only consider the fault of the defendant and the plaintiff. They could not apportion fault to the driver in the car behind the plaintiff's automobile, or to an employee who ignored company practices and brewed the coffee too hot. If those people are not either defendants or plaintiffs, the jury cannot consider their fault. The jury can only find the plaintiff and defendant at fault. If the other parties are at fault but can't be held accountable, McDonalds ends up paying for the actions of everyone at fault.

Technically, *Fabre* works just as the example does. A defendant may present evidence to the jury showing that a party outside the courtroom is at fault for the injury. The jury can then apportion some of the fault to the absent party. The defendant does not have to pay money damages for non-economic damages that are apportioned to anyone else.

Parties that contributed to an injury could be absent from the courtroom for many reasons. They might have settled with the plaintiff, they might be foreign nationals, they might be immune from suit, or they might have simply disappeared or died. *Fabre* is indeed important to business. It is equally important to trial lawyers.

Trial lawyers do not like apportioning fault to other parties. Every penny the defendant doesn't have to pay because someone else contributed to the injury, is a penny the trial lawyer loses.

Trial lawyers don't like complicated cases. They like pitting a sympathetic plaintiff against a big, bad corporation. They don't want the jury to consider the fault of anyone else.

It is fair to say trial lawyers hate the *Fabre* ruling.

During the past two legislative sessions, the trial lawyers brought a bill to the Legislature to overturn *Fabre*. Their bill would only allow the jury to consider the fault of plaintiffs and defendants in a tort lawsuit. Led by AIF, business won the battle but knew the war would continue.

AIF began combat for this year in April of 1994. Association members from around the state interviewed hundreds of incumbent legislators and candidates for office. Employers told candidates and incumbents the real story behind the trial lawyers' efforts and carefully explained the merits of the *Fabre* decision.

Most candidates and incumbents listened. By the time the 1995 Session convened, a majority of the members of the new Legislature agreed with AIF. But, the legislative process works in stages, beginning with committees. The first steps in the effort to retain *Fabre* were taken in the House and Senate Judiciary Committees where the trial law-

Jodi L. Chase

Senior Vice President & General Counsel

Employers told candidates and incumbents the real story behind the trial lawyers' efforts and carefully explained the merits of the *Fabre* decision.

yers are in control.

As expected, the Senate Judiciary Committee approved the trial lawyer bill by a vote of 4 yeas and 3 nays. Without other Senate committee references, the trial lawyer bill moved to the Senate floor and attention switched to the House Judiciary Committee. That is where loyal supporters of business worked best.

Led by House Republican Leader Dan Webster (R-Ocoee) and Judiciary vice chair John Thrasher (R-Orange Park), business prevailed and the bill received an unfavorable vote of 8 yeas to 9 nays. The pro-business votes, however, were not solid.

Rep. Tom Warner (R-Stuart) sympathized with the trial lawyers and wanted both sides to reach an agreement. He moved to reconsider and leave the issue pending. That motion kept the bill alive, opening the way for a vote at the next meeting.

With time running out on the trial bar, they scurried to muster enough votes for the bill before the final week of regularly scheduled committee meetings. On the last available day for a meeting of the Judiciary Committee, business saw good fortune smile from the face of President Clinton.

The president asked two members of the House of Representatives to accompany him on his trip to Haiti. Those two members, who support the trial bar, happened to sit on the Judiciary Committee. Their absence meant sure failure for the joint and several bill.

Under House rules, committees must get permission from the House Rules Committee if they want to schedule a meeting after the expiration of the regularly scheduled committee meetings. Reps. Thrasher and Webster thwarted efforts to schedule a Judiciary Committee meeting by drafting an amendment to the calendar and, with AIF's help, putting together a unanimous vote to remove the authority for any further Judiciary Committee meetings.

Now, the trial lawyers would need a two-thirds vote of the entire membership of the House of Representatives to hold a meeting and vote their bill out. Because of the work AIF members did in previous months, a two-thirds vote would be impossible. The bill would die.

AIF members won another battle against the trial lawyers, but there are two parts to this story: the legislative battle won by AIF and the cost of that battle.

In 1986, when the Florida Legislature made comparative fault the law of the land, it also limited punitive damages awards. Thirty-five percent of every punitive damage award goes to the state to pay for indigent medical care. Attorneys were precluded from recovering fees on that percentage of the award. This was a deterrent to punitive damage awards.

That law is repealed effective July 1, 1995. Business tried to reenact it, but the fight over joint and several stalled all civil justice bills, both pro-business and anti-business.

So the question remains: what was the cost of the victory? AIF's deliberately chose the strategy to prevent further meetings of the House Judiciary Committee as the surest step to killing the trial lawyer's joint and several bill. In doing so, we had to give up an issue that was a little less important.

The impasse between the trial lawyers and business is not a healthy situation. The members of the Legislature do not enjoy being squeezed between trial lawyers and business. They want to please all sides but all sides can't be pleased.

Trial lawyers want the system to favor plaintiffs. Defendants want fairness. Business knows the civil justice system, as it stands today, costs too much and puts innocent employers at risk.

Business would like to move ahead with a civil justice reform agenda. But when two sides arguing over an issue cannot reach common ground, the political system freezes. Movement for both sides stops.

AIF believes the Florida Legislature is more pro-business than at any other time in our modern history. We also believe the trend is in favor of employers. AIF will continue to work on a civil justice reform package. At the same time, we will seek paths to reduce the political antagonism between the trial lawyers and employers without abandoning our principles. If any business group can do it, it's AIF.

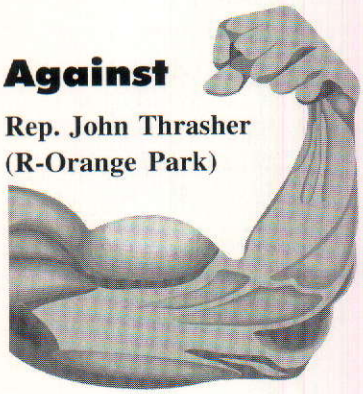
AIF members won another battle against the trial lawyers, but there are two parts to this story: the legislative battle won by AIF and the cost of that battle.

Closing Arguments For And Against Repeal of *Fabre*

Transcribed From Committee Meeting Tape.
House Judiciary Committee Meeting, March 27, 1995.

Against

Rep. John Thrasher
(R-Orange Park)



I think the law as interpreted by the Supreme Court of Florida is about common sense and about economic development. This law was passed after great deliberation in 1986 by this Legislature, after debate and after much consternation and after a lot of concern about the kinds of things that were going on in our litigation system. ...

Well, I've got to tell you what I'm going to rely on, and what I have relied on, and it's really the case decided by the Supreme Court as authored by the justice, the current chief justice of the Supreme Court. And if you would indulge me, Mr. Chairman, I would like to read to the members of the committee a paragraph, not out of context, but the concluding paragraph authored by Chief Justice Grimes. ...

"We conclude that the statute is unambiguous. By its clear terms, judgment should be entered against each party liable on the basis of that party's percentage of fault. The Fabres' percentage of fault was 50 percent. To accept Mrs. Marin's position would require the entry of a judgment against the Fabres in excess of their percentage of fault and directly contrary to the wording of the statute. We reject the suggestion that the statute is ambiguous because it fails to define the whole by which the party's percentage of fault is to be determined. The fault which gives rise to the accident is the whole from which the fact finder determines the party defendant's percentage of liability. Clearly, in concluding, the only means of determining a party's percentage of fault is to compare that party's percentage to all other entities who contributed to the accident regardless of whether they have been or could have been joined as defendants." ...

I think if we want to send the right messages to the businesses of the state of Florida, to the citizens of the state of Florida, and to any people outside the state of Florida, we'll maintain the law as the Supreme Court of Florida has said it ought to be maintained and I would urge the members to vote against this legislation. ■

Rep. John Thrasher
(R-Orange Park)

For

Rep. Bill Sublette
(R-Orlando)

One of the reasons — I think it's very interesting to point this out — that so many of us have so little to say on this issue this year is because, frankly, we're exhausted by this issue. We've been through the ringer on this issue for a year and a half now. It's been an extremely frustrating issue, and one of the reasons that it is so frustrating is because it is a very, very complex issue. Unfortunately, and I think this is one of the very unfortunate things about this debate, is that complexity is often times glossed over and not given credit for how complex it is.

This issue is not about joint and several liability. It has never been about joint and several liability. I don't know that you'll be able to find a lawyer in the Legislature who understands joint and several liability, or a corporate lawyer who understands joint and several liability, will be able to make a credible argument or will even attempt to make a credible argument that it's about joint and several liability.

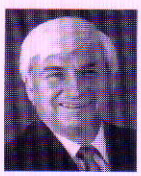
Rep. Bill Sublette
(R-Orlando)

My point is that, frankly ladies and gentlemen, this issue is a tempest in the teapot of Tallahassee. It matters a whole lot to the lobbying corps, matters a little bit to the legislators, but to your average business person back in district, *if* they understand that issue, it is not a significant issue to them and it is not one that is going to cause their businesses to fail or to succeed. Economic development? This debate has absolutely 100 percent nothing to do with economic development.

If anybody is going to make that argument, I would challenge them to come in and bring me your certificates of insurance and show me how your insurance rates have gone down since 1992 because of the *Fabre* decision...

And I would argue to you that it is just plain and simple, inherently unfair to allow a defendant, and this is really what the issue boils down to in a nut, to allow a defendant at trial for the first time, to make an argument that an individual or business that has not been mentioned or has not been brought into the lawsuit by that defendant be placed on a jury verdict for the first time at trial.

Rep. Buzz Ritchie
(D-Pensacola)



Rep. Allen Boyd
(D-Monticello)

Rep. Dan Webster
(R-Ocoee)

Repeal of the Amendment to the Medicaid Third-Party Liability Act

by Jodi L. Chase, Senior Vice President & General Counsel

At 12:01 a.m., one minute into overtime of the 1995 Regular Session, the House of Representatives passed a bill to repeal the secret amendments to the Medicaid Third Party Liability Act.

These are the amendments that were slipped into an otherwise uncontroversial bill on the last night of the 1994 Session by a handful of legislators. These are amendments that take away ***all*** defenses when the state sues a company or industry to recover Medicaid costs.

These are amendments that secretly reversed hundreds of years of settled law in Florida. These are the secret amendments that put every Florida business in imminent danger of being sued and having no defenses.

These are the secret amendments that all business feared and wanted repealed. If these amendments, repealed in Senate Bill 42, are so harmful, why did the House wait until 12:01 a.m. to act?

House Speaker Peter Wallace (D-St. Petersburg) controls his chamber's calendar. The Speaker decides which bills House members will vote on and which ones will simply die. Wallace decided he did not want the House to repeal the secret amendments, despite the fact that an overwhelming majority of House members wanted to vote yes.

All session long, tension existed between conservative Democrats and Republicans on one side, and the Speaker and liberal Democrats on the other. On the last night, the tension of the tug of war ended with a victory for conservatives. Speaker-designate Buzz Ritchie (D-Pensacola) and Rules Chairman Allen Boyd (D-Monticello) teamed up with Republican Leader Dan Webster (R-Ocoee) to force a vote on Senate bill 42.

The bill passed by a vote of 102 yeas to 13 nays.

Gov. Chiles vetoed the bill as he had promised and the business community will lobby the Legislature to override the veto.

Private Property Rights

A Step in the Right Direction

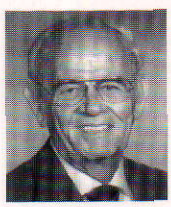
by Samual J. Ard, Director of Governmental Affairs, St. Joe Forest Products Co.

With the urging and assistance of Associated Industries of Florida, the 1995 Legislature passed, and the governor signed into law, the Bert Harris, Jr. Private Property Rights Act. AIF and several of its member companies have been active participants for a number of years in helping to arrive at this final product.

The 1995 Act was truly a bipartisan effort on both sides of the legislative hallway. Sen. Charles Williams (D-Live Oak) and Rep. Ken Pruitt (R-Port St. Lucie) filed identical versions of a property rights constitutional amendment. Sen. John McKay (R-Bradenton) and Rep. Bert Harris (D-Lake Placid) filed identical versions of a property rights bill. In the end, with these four proponents working together as a team, the House of Representatives adopted a compromise amendment to a dispute resolution bill filed by Rep. Dean Saunders (D-Lakeland) which will give property owners redress when governmental regulations have restricted uses or diminished the value of their land.

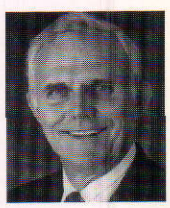
The compromise language creates a new legal remedy in circuit court only for all future regulations. Future applications of *existing* laws, rules, or ordinances will still be determined on a case-by-case basis using prior case law, in which very few recoveries are made unless the governmental regulation has resulted in a complete occupation and/or devaluation of private property. The new law does not apply to any federal governmental actions, or any federal program administered by the State of Florida or its political subdivisions.

Floor debate on the issue occurred late in the session, and as such the Senate was positioned to accept amendments adopted by the House. A somewhat controversial amendment was added at the request of property rights advocates which protected reasonably foreseeable uses of property in the future. Under this amendment, such uses are protected if they are not speculative in nature, are suitable for the property, are compatible

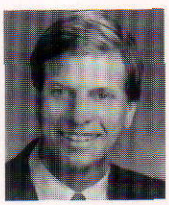


Rep. Bert Harris (D-Lake Placid)

Rep. Ken Pruitt (R-Port St.Lucie)

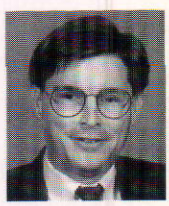


Sen. Charles Williams (D-Live Oak)



Sen. John McKay (R-Bradenton)

Rep. John Thrasher (R-Orange Park)



Rep. Dean Saunders (D-Lakeland)

Samual J. Ard

Chairman

AIF Private Property Rights Committee

The 1995 Act was truly a bipartisan effort on both sides of the legislative hallway.

It is important for AIF and its member companies to maintain a vigilant eye on upcoming test cases under this new law.

with adjacent land uses, and have created an existing fair market value in the property which is greater than the fair market value of the actual, present use or activity.

The type use contemplated by the supporters of the amendment would be land under agricultural production which is, or will soon be, surrounded by more intensive land uses, such as residential development. It was argued that the value of the land should be based on fair market value which includes the foreseeable residential use, rather than solely upon the value of the present agricultural use.

Another amendment offered and later withdrawn by Rep. John Thrasher (R-Orange Park), would have applied the bill to any application of existing laws, rules, or regulations.

As a courtesy to the sponsors, Rep. Thrasher withdrew this amendment from consideration by the House after he was notified that such an amendment would probably guarantee a gubernatorial veto. However, Rep. Thrasher made an impassioned floor speech in which he cautioned the House of Representatives that without such an amendment the 1995 property rights legislation would only be "half a loaf," and that it was his intention to see this issue addressed in the near future.

Under the first section of the legislation a landowner is entitled to relief if he has suffered an "inordinate burden" on his property, which is defined as one that causes the owner to permanently bear a disproportionate share of a burden imposed for the public good which in fairness should be born by the public at large. The law does not protect against temporary losses to property or governmental decisions addressing public nuisances.

The landowner must first give the appropriate agency of government a 180-day period to review the case and offer a settlement. If the landowner rejects the settlement the issue can then be taken to court. If the judge rules that the landowner is entitled to compensation, a jury will determine the amount. The landowner has one year after the new regulation is applied to file suit.

The second section of the bill contains Rep. Saunders's dispute resolution process, which applies to existing and future laws, rules, and regulations. The new law establishes a process, not to exceed 165 days, in which a special master will mediate cases where the landowner believes a governmental action has unreasonably or unfairly burdened the use of the property.

After the process, the matter is considered "ripe" and the landowner can take the matter to court without further administrative proceedings. This section is modeled after the 1993 report of the Governor's Property Rights Study Commission. The request for a special master must be made within 30 days of the disputed governmental action.

It is important for AIF and its member companies to maintain a vigilant eye on upcoming test cases under this new law. There is no clear line of demarcation determining what is an "inordinate burden" nor is there any case law determining a "reasonably foreseeable use" as contemplated by the statute.

A determined judicial effort by property rights supporters could make this legislation a reality. However, inattention to detail and lackluster legal defense by these same supporters could leave us hungry for the rest of the half-loaf, guaranteeing us at best only the two end slices for years to come.

In closing, a special thanks goes out to all AIF members who have served on the Property Rights Committee during the past four years. Also, keep AIF informed as to how this statute affects you in the future so that changes can be proposed. Only through your diligence will this year's efforts benefit Florida's business environment. ■

Brain Snack

The system of private property is the most important guaranty of freedom, not only for those who own property but scarcely less for those who do not.

F.A. Hayck

Ratification

Ratification of Proposed Constitutional Amendments: Why Florida Needs a Supermajority Requirement

by Diane Wagner Carr, Vice President & Assistant General Counsel

Of the many Floridians who argue that it is far too easy to amend Florida's Constitution, most agree that at least one more amendment is needed: an amendment that would require ratification of all future amendments by a supermajority vote of the electorate.

The Florida Constitution may be amended in five ways: proposal by the Legislature, which must be agreed to by three-fifths of the membership of each chamber; revision commission, which is convened every tenth year and will meet again in 1998; citizen initiative; constitutional convention; and report of the Taxation and Budget Reform Commission. An amendment proposed by any of these methods is then subject to ratification by the electors in the next general election after the amendment is proposed and filed with the Secretary of State.

Presently, after placement on the ballot for voter approval, proposed constitutional amendments must be ratified by a simple majority of the electors casting ballots in a general election. What this means is that, in many cases, the votes of just a little over 21 percent of eligible voters are sufficient to amend the constitution. This is because only 42 percent of voters actually register and vote in an average general election cycle. Consequently, making proposed amendments subject to ratification by a supermajority is often cited as a necessary procedure to increase the level of voter participation in the task of amending the document embodying the fundamental principles of Florida government.

Supporters of a super-majority requirement also argue that constitutions are sacrosanct and should not be easily amended because they form the basis of the social contract between the people and their government and prescribe the elemental terms and conditions of their relationship to each other. As evidence of the need for a higher ratification hurdle in Florida, they cite some interesting amendment statistics.

Since its major revision in 1968, 97 amendments have been proposed to the Florida Constitution and 73 have been adopted. This is especially noteworthy when contrasted with the U.S. Constitution which has only been amended 27 times in over 200 years. The Bill of Rights, ratified in 1791 as part of the original constitution, comprises ten of those.

For members of the business community, the ease with which the Florida Constitution can be amended exacerbates what many feel is already an unstable and unfriendly business climate. Whenever they consider the cost of doing business in Florida, employers must factor in how it is that they might deal with situations in which the fundamental rules upon which their operations are based may be changed with little warning.

They must further consider the ease with which opposing market or political forces may seek ratification of an amendment that adversely affects economic livelihood. This concern alone is enough to make many Florida-based companies, as well as those contemplating a move to this state, rethink their decisions to broaden their Florida operations or locate in the Sunshine State.

A further concern of supermajority supporters is that a proliferation in the number of constitutional amendments adopted will have the effect of tying the hands of elected officials at the state and local levels so that they are unable to deal decisively with many of the problems they were elected to solve.

Diane Wagner Carr

Vice President &

Assistant General

Counsel

For members of the business community, the ease with which the Florida Constitution can be amended exacerbates what many feel is already an unstable and unfriendly business climate.

RATIFICATION

This is how some constitutional commentators have described the situation in California where the number of constitutional amendments adopted in the last ten years has soared to thirty. In order to avoid a similar scenario in Florida, supporters argue that a supermajority requirement, while allowing a greater number of voters a voice in amending the constitution, also ensures that elected officials continue to be vested with sufficient authority to do the job they were elected to do.

During the 1995 Regular Session, AIF joined forces with the Academy of Florida Trial Lawyers, No-Casinos, and TaxWatch to promote the enactment of joint resolutions filed by Rep. Bud Bronson (D-Kissimmee) and Sen. Charles Bronson (R-Indian Harbour Beach) to raise the number of electors required to ratify a proposed constitutional amendment from a simple majority of the electors voting to three-fifths of those casting ballots in a general election.

The joint resolution passed the House and was voted out of Senate committee, but did not clear its final hurdle on the Senate floor. Despite the fact that enactment was not attained this year, AIF and the other supporters plan to regroup and expand their forces in the interim and begin working for passage in 1996.

Regulatory Reform

The Administrative Procedure Act

by Martha Edenfield, Akerman, Senterfitt & Eidson, P.A.

Martha Edenfield

AIF Consultant

As a fundamental concept of democracy, the Florida Constitution creates three branches of government to provide checks and balances on each other.

The legislative branch makes policy, the executive branch implements policy, and the judicial branch interprets and enforces legislative intent. This is a key to understanding our state government.

The problem with the Florida Administrative Procedure Act (APA) is that some executive agencies, headed by overzealous bureaucrats, have tested the legal limits of statutory authority by passing rules which exceed the authority delegated to them by the Legislature when it enacted the laws.

Over time and as the APA has been subject to case law interpretation, it has become apparent that agencies have used the APA to test the bounds of their authority. However, when an agency promulgates the most stringent possible rule, not only does the rule being tested assume an unearned measure of deference, the private sector is forced to challenge that rule and thereby become the only check on the agency. This is a cost and a burden that the private sector cannot — and should not — continue to bear. Government must return to functioning as three co-equal branches of government with checks and balances on each other.

Furthermore, merely freeing regulators from having to make rules or from adherence to the rules they have enacted is not the answer to the problem. Giving bureaucrats more freedom does not equate to giving the regulated community more freedom. Instead, freeing regulators from rule-making and from obeying the rules they themselves have enacted will create a government by bureaucrats. Clearly, government by bureaucratic whimsy is not the answer to unburdening the regulated private community.

This year's APA reform bill was the work product of Sens. Charles Williams (D-Live Oak) and John McKay (R-Bradenton) and Reps. Ken Pruitt (R-Port St. Lucie), Bud Bronson

(D-Kissimmee), and Charles Sembler (R-Vero Beach). It represents an attempt to balance the need for rules repeal and less government with the need of the regulated to know what is expected and required of them to comply with the law.

The bill represents over two years of legislative effort, begun by Sen. Williams under then-Senate President Pat Thomas's leadership and continued under Senate President Jim Scott's leadership. Work began in the House with 1993-94 House Speaker Bo Johnson's Select Committee on Agency Rules chaired by Rep. Randy Mackey (D-Lake City) and Rep. Pruitt.

Efforts continued this year with Rep. Bronson's Select Committee on Streamlining Governmental Regulations.

The legislation contains many provisions to fine-tune the APA, but more importantly the bill contains key provisions which are major policy shifts in how executive agencies adopt and justify rules.

The bill requires that when a petition is filed challenging a proposed or adopted rule, the agency, instead of the challenger, shall have the burden to prove by competent substantial evidence that the rule is a valid exercise of delegated legislative authority.

If the agency fails to prove the validity of the rule, the hearing officer shall declare the rule invalid. In that case, a judgment for attorney's fees and costs shall be awarded against the agency for costs and reasonable attorney's fees unless the agency demonstrates that its actions were substantially justified, or special circumstances existed which would make the award unjust.

This provision represents a major shift in policy. Prior to the enactment of this legislation, any person or association that challenged a rule had the burden of showing that the rule was invalid. The agency merely had to show that its interpretation was one of any permissible interpretations of legislative intent.

This was a near impossible burden to meet as the private sector often fell victim to rules and policies which, although they could be construed as a permissible interpretation of the legislation, were clearly not what the Legislature intended.

The use of the attorney's fees award in instances in which the agency was not justified in its actions in promulgating the rule should keep agencies from promulgating unreasonable and improper rules and from testing the limits of their authority through rule-making.

This legislation provides a procedure for consideration of the impact of adoption of rules on small businesses, small counties, and small cities. The agency may be required to prepare a statement of estimated regulatory costs, including monitoring and reporting, that will be incurred by affected persons. Rules may be held invalid for failure to comply with this requirement.

Previously, rules incurred a presumption of validity by having merely been through the rule adoption procedures. This legislation provides that when a rule is challenged, the rule is not presumed to be valid or invalid. This levels the playing field for private litigants to demonstrate that a rule was not adopted pursuant to legislative intent and delegated legislative authority, and is therefore invalid.

In keeping with the governor's promise to repeal rules, the bill contains provisions designed to expedite the repeal of rules. By October 1, 1995 each agency must submit a list of rules recommended for repeal. Agencies under the governor must submit their lists to the governor while governor and Cabinet agencies must submit their lists to the governor and Cabinet.

The bill provides for an expedited repeal through public notice in the *Florida Administrative Weekly* unless a substantially affected person files an objection. If the rule repeal is objected to after publication, the rule repeal will be submitted to the Legislature for review and consideration during the 1996 Regular Session. If the Legislature takes no action on the rule repeal, the rule remains in effect.

Rep. Charles Sembler

(R-Vero Beach)

Rep. Bud Bronson

(D-Kissimmee)

Giving bureaucrats more freedom does not equate to giving the regulated community more freedom.

Without the provision for expedited repeal, every single repeal of rules must go through the entire rule-making procedure including the possibility of rule challenge proceedings.

The bill creates the Florida Administrative Law Revision Council which is required to report to the Legislature and governor by January 2, 1997, recommending more comprehensive revisions to the APA.

The bill was amended to include the controversial DOT "Common Sense in Government" 3-year pilot project allowing the DOT to suspend all rules and follow "guidelines." In developing guidelines and implementing statutory authority, the DOT can deviate from guidelines to assure that a reasonable result will be produced.

The DOT act also includes mandatory alternative dispute resolutions prior to formal administrative hearings and includes prevailing party attorney fees for all appeals of the hearing officers' orders.

The linking of these two bills ensures that legislative oversight regarding policy to be executed by agencies will be strengthened while engaging in a pilot project allowing one executive agency to operate pursuant to guidelines only.

Provisions of Senate bill 1390 by Sen. John Ostalkiewicz (R-Orlando) were incorporated into the APA bill, requiring that agencies review all rules and designate those for which a violation would be considered minor.

For those minor violations, the first response for an agency charged with enforcement is a notice of noncompliance with no fine or other penalty. The notice must specify how compliance may be achieved and set forth a reasonable time for compliance.

While it is widely expected that the governor may veto the APA reform bill, it would be a more reasonable course of action for the governor to allow these changes to go into effect and, if necessary, review these changes and any other recommendations made by the Florida Administrative Law Review Council in the 1997 Regular Session. ■

A True Common Sense Initiative

by Martha Edenfield, Akerman, Senterfitt & Eidson, P.A.

The costs to the private sector are such that businesses, farmers, ranchers, and property owners are joining with local government officials to demand better allocation of resources.

Since the environmental movement has become mainstream, air and water have indeed become much cleaner. Environmental advocates are now focusing on removing the last percent of environmental pollutants at an enormous expense with little or no demonstrable benefits. As more and more capital is devoted to environmental protection, regulation, and enforcement, it has become painfully clear that economic resources — in both the public sector and private sector — are limited.

Further, due to the emotional nature of the environmental movement, public and private economic resources are wasted on every environmental "crisis of the moment," often with inflexible standards which have no basis in human or environmental health and safety.

The costs to the private sector are such that businesses, farmers, ranchers, and property owners are joining with local government officials to demand better allocation of resources.

One such prioritization is a utilization of risk analysis for state agencies prior to the adoption of proposed rules. A risk analysis must include a best estimate of the risk to the health and safety of individual persons addressed by the rule and the effect of the risk on human health and the environment.

During the 1995 Session, the Florida Legislature joined a risk analysis bill to the proposal for reforming the Environment Regulatory Commission (ERC). This legislation represents an important acknowledgement by the Florida Legislature that economic resources for environmental protection, both public and private, are not unlimited and that choices must necessarily be made to prioritize the use of our economic resources in the environmental area.

The bill creates the Risk-Based Priority Council to recommend guidelines for conducting

risk analysis to the governor, Legislature, and agencies. The council is composed of eight members with education in and experience related to risk assessment, statistics, human health, toxicology, the transport and fate of water and air pollutants, epidemiology, and economics.

The council is required to submit a report by October 1, 1996, to the governor, Legislature, and agencies recommending guidelines for conducting risk analysis. The bill specifies the required elements of the report, including recommendations for the type, nature and scope of rules that should be subject to risk impact statements, a method for obtaining data to serve as the basis for risk analysis, and the process for conveying the results of a risk analysis in easy-to-understand terms.

The bill amends the Administrative Procedure Act to provide that the Department of Environmental Protection (DEP) is required after October 1, 1995 to prepare risk impact statements for approval by the Environmental Regulation Commission (ERC) on any proposed rule that establishes or changes standards or criteria based on impacts or effects on human health.

The Department of Agriculture and Consumer Services must prepare similar risk analyses after October 1, 1996. The bill does not create a new cause of action or basis for rule challenge nor does it diminish any existing cause of action or basis for bringing a rule challenge.

Workers' Compensation

Workers' Compensation: Looming Crisis in the SDTF

by Frank White, AIFPCT Executive Vice President & CEO

The state's workers' compensation system remained relatively untouched during this year's legislative session. With the massive overhaul of the system effective in 1994, little or no activity was expected with this year's session.

One item of note, however, did arise which may have significant cost implications on future workers' compensation insurance premiums — funding concerns for the Special Disability Trust Fund (SDTF). The SDTF was created to help employers who either return injured workers to work or employ workers with prior injuries. Should one of these workers suffer a subsequent injury, the SDTF will help pay some of the benefits and medical costs, depending upon the seriousness of the second injury. This only occurs, however, if the employer attests to knowledge of the prior injury.

In this way, the employer's insurance premiums are not charged with all of the costs of the subsequent injury.

Costs of this program rose sharply in fiscal year 1994-95 and requests for further significant increases were made for FY 1995-96 with continued increases projected for the future. These costs are ultimately built into the insurance rates and, thus,

Frank White

AIFPCT Executive Vice President & CEO

The most disturbing fact is that no one has a good handle on the amount of unfunded liability that really rests with the SDTF

have a direct bearing on the workers' compensation premiums all employers pay.

With the projected escalation in costs, the Legislature acted to freeze the 1995-96 assessment rate at the current level. This freeze is only a temporary measure to hold down the impact on workers' compensation premiums. Unfortunately, this action does nothing to solve the problem and, in reality, only adds to the ever-growing deficit in this fund.

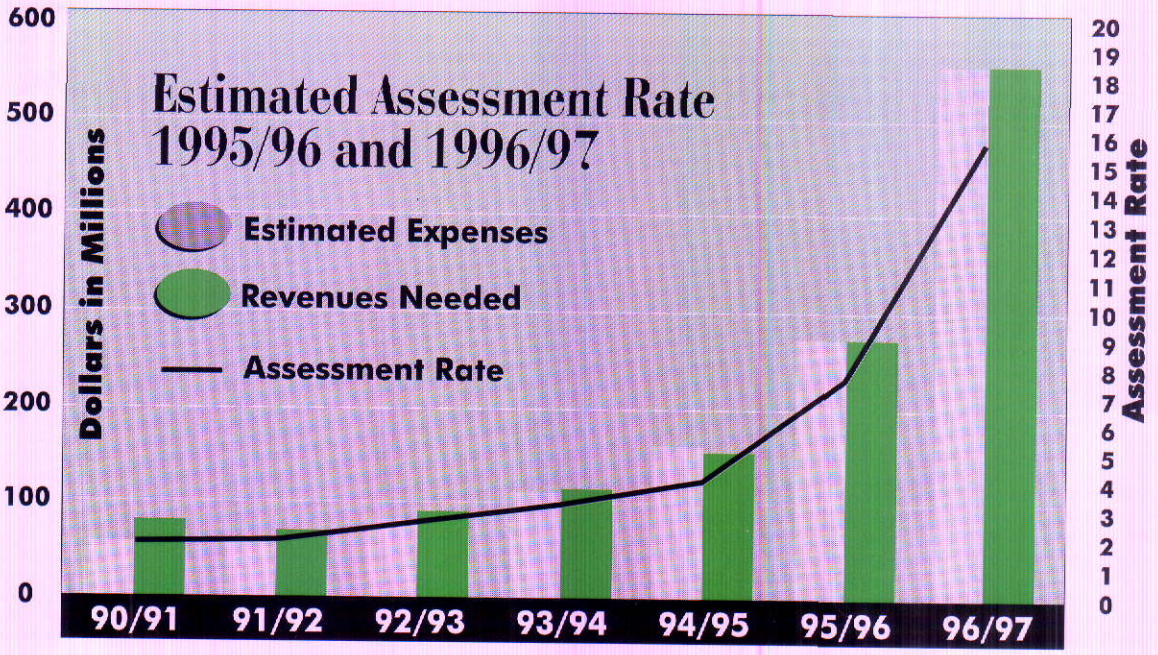
In practice, however, this was not always happening. For several years in the past, the fund had a tremendous backlog in processing claims for SDTF acceptance and the paperwork necessary to secure approval of the claim was horrendous. Recently, these problems were rectified somewhat but, as a result, payments out of the SDTF have begun to balloon.

Making matters even worse, the SDTF is funded on a pay-as-you-go basis. Therefore, the SDTF has acknowledged responsibility for future payments on claims which must be funded through future assessments (sound familiar?) and, in turn, higher workers' compensation premiums.

The most disturbing fact is that no one has a good handle on the amount of unfunded liability that really rests with the SDTF. This is in terms of both currently accepted claims and those claims for which the SDTF will ultimately have responsibility but which have yet to be filed. The attached chart shows one estimate of an increase in the SDTF assessment to almost 17 percent for 1996-97. This compares to the current rate of 4.5 percent.

It is only hoped that the year gained by this temporary assessment freeze is put to good use. The Department of Labor and Employment Security must be encouraged to take this time to commission a thorough actuarial/financial analysis of the unfunded liability. Until such a study is completed, no rational funding plan can possibly be assembled and no cost-benefit of the program, with possible recommended changes, if required, can ever be forthcoming. ■

SPECIAL DISABILITY TRUST FUND



Assumes $3,433,454,245 Premium Base and elimination of $30M backlog each year.

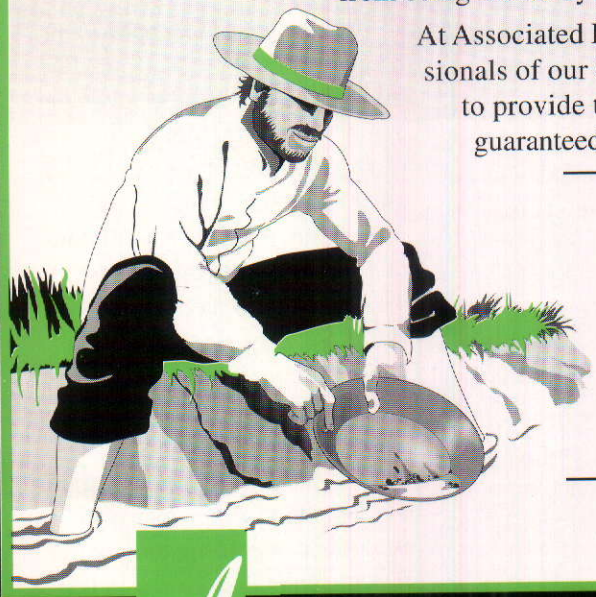
The Quoted Price Is Not Always The Product Cost!

These days, the old adage "all that glitters is not gold" is as applicable to the world of Workers' Compensation Insurance as it is to the world of mining. Buyers of workers' compensation coverage are often lured into a decision by the gleam of "fools' gold" in the form of a low quote. This deception takes the form of a low estimated annual premium on a guaranteed cost policy, or an unrealistically low basic premium factor on a retrospectively rated policy.

Before accepting that low price or the low factor, you should carefully examine what lies beneath the golden sheen. What you should look for is an insurance company with a loss prevention program designed to prevent the occurrence of loss and a claims department employing aggressive case management if a loss should occur. You should also ask if the product has the approval of the Florida Department of Insurance.

Having done a little exploration, you can then assess whether the underwriters' quoted premium is really the product's actual cost, or just another "program of the month" marketing ploy.

Following these basic insurance guidelines will lead you to real value and keep you from being fooled by a glitzy presentation.



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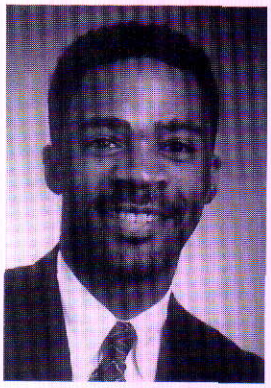
Bad Things That Didn't Happen

by Kevin Neal, Assistant Vice President, Governmental Affairs



Kevin R. Neal

Assistant Vice President, Governmental Affairs

For many long-time ob servers of the Florida Legislature, 1995 was full of uncertainty. With the sweeping GOP victories in the November elections, 1995 was dubbed the Republican Revolution.

Surely changes in Florida's political landscape would spell instant relief for our state's business community? Not really. At least, not initially. This was especially true in the House of Representatives. Many anti-business bills that would have sailed through the former liberal-leaning House seemed to be on the same course under the new, more conservative House. This led many observers to question whether the conservative shift would actually benefit the business community.

Legislation calling for more government intrusion into business affairs and bills that would have placed additional costs and obligations on businesses wended their way through the committee process. This was despite the governor's and House Speaker's early commitment to make government less burdensome to business. As time drew near on the end of the session, House GOP members, Republican Leader Dan Webster, finally realized how to harness their newfound power and put the brakes on all the anti-business bills. In the end, only bills having broad-based, bipartisan support made it to the floor.

Here are a few examples of the anti-business bills that were considered, and ultimately rejected, by the Legislature.

Mini Family and Medical Leave Act, by Rep. Suzanne Jacobs (D-Delray Beach)

Two years ago, Congress passed the federal Family and Medical Leave Act of 1993. The FMLA grants eligible employees up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The FMLA applies to public employers and to private-sector employers who employ 50 or more people.

The Jacobs bill was patterned after the federal FMLA, but, would have expanded its application to private-sector employers with 10 or more employees. Obviously, had this bill passed into law, it could have destroyed some small businesses. Smaller companies just don't have the resources to calmly wait for an employee to return from an absence amounting to almost 25 percent of the year.

Gender-Based Pricing, by Representatives Debbie Wasserman Schultz (D-Davie) and Alex Villalobos (R-Miami)

There was nothing fair about the so-called "Fair Pricing Act." This legislation would have required businesses to charge men and women the same price for the same or similar goods or services. Although much of the debate on the bill focused on hair styling and dry cleaning businesses, the bill would have applied to all industries. Businesses would have faced potential liability over pricing decisions that are based on many variables beyond their control.

The bill made it out of committee, but was never taken up for consideration on the House floor.

Indexing of U.C. Benefits, by Rep. Steve Geller (D-Hallandale)

The perennial unemployment compensation benefits indexing bill reared its ugly head once again. Currently, weekly unemployment benefits are calculated as a fraction of a worker's former salary, with a minimum of $10 and a maximum of $250. This bill would have eliminated the $250 weekly cap and index the maximum benefit amount as a percentage of the statewide average weekly wage.

Organized labor has pushed the indexing bill for many years because it would guarantee automatic annual increases in benefits. The bill made it out of two House committees, but was never taken up for consideration on the House floor. ■

Brain Snack

Reality is always more conservative than ideology.

Raymond Aron

1995 Election Law Changes — Almost Status Quo

by Marian Johnson, Vice President, Political Operations & David Johnson, Political Operations Assistant

Just imagine it's September 1998. Labor Day was hot ... lots of candidates campaigning ... kissing babies, shaking hands ... first primary finally over!

It was a divisive primary, but now the Florida Democratic Party has just nominated U.S. Sen. Bob Graham to run again for his old job as governor. In the process, Graham defeated three Cabinet officers, a couple of congressmen and another prominent, high-profile official ***without*** a runoff.

But — during the free-for-all for the gubernatorial nomination, only Joe E. Campaigner filed to run for Graham's Senate seat — and that's the problem. To retain Graham's Senate seat, the Democrats need a stronger candidate. U.S. Senate Minority Leader Tom Daschle places a call to Florida Democratic leaders urging that they have Mr. Campaigner drop out and replace him with one of the candidates defeated in the governor's race. But Daschle is told that is impossible since doing so is against Florida law.

Improbable? Perhaps, but not impossible. In 1994, the strongest Republican field in state history competed for the gubernatorial nomination. Two Cabinet officers, a former Senate President, and the son of an ex-president composed the field.

The Democratic incumbent was saddled with a president so unpopular that he rebuffed the president's offers to campaign on his behalf. Republicans, scenting victory at all levels, called the 1994 races a mandate against the Clinton administration.

In the Republican primary, Jeb Bush won so decisively that his closest rival, Secretary of State Jim Smith, withdrew from the run-off. Within days, Frank Darden, a dark horse candidate for the post of Agriculture Commissioner withdrew and Jim Smith was selected to replace him.

There were rumors that other lesser known candidates for Cabinet posts would withdraw to be replaced by defeated Republican gubernatorial hopefuls. State Democrats and newspaper editorials cried foul and charged that an unethical deal had been arranged before the primary in which the Republican Party would have unknowns file for the Cabinet posts and then withdraw to be replaced by the losers of the gubernatorial primary.

State Republican chairman Tom Slade and the candidates denied the allegations. However, under then-existing state law, if a candidate withdrew from a race, that candidate could be replaced by another, even if the replacement candidate had run for one post and lost.

Democrats vowed to change that law. They charged that

Marian Johnson

Vice President

Political

Operations

The bill, passed unanimously by both chambers, prevents candidates from switching races to run for another office.

Smith had an unfair advantage over incumbent Bob Crawford. The millions Smith had spent in the battle for the Republican nomination had given him massive name recognition. Furthermore, he had already exceeded the spending cap for Cabinet-post candidates who receive matching funds.

A lawsuit was filed. State courts disagreed and ruled that Smith was eligible for matching funds. Smith was defeated in the general election. Could it have been he failed to respond to negative television commercials or was it voter disgust with the way he obtained his nomination? Who knows. No matter, it was a close race.

In our current legalistic society, whenever something happens that someone doesn't like, his first thought is, "There ought to be a law." So it was in the 1995 Session. With bills sponsored by Rep. Anne Mackenzie (D-Ft. Lauderdale) and Sen. Rick Dantzler (D-Winter Haven), the election law was amended. The bill, passed unanimously by both chambers, prevents candidates from switching races to run for another office. It also, forbids a candidate from withdrawing his candidacy unless he can attest, under oath, to reasons of personal hardship. Governor Chiles allowed the bill to become law without his signature.

There were many other bills filed during the 1995 Session that would have changed Florida's current election laws, including a technical rewrite to eliminate the second primary, reform campaign phone call practices, and revise the constitutional amendment process. But Senate bill 2, dubbed "The Jim Smith Memorial Act" by many legislators and some newspapers, was the only one that passed.

Sometimes the hand that feeds the child gets bitten, and so it could be in this case. This "Jim Smith Memorial Act" may ultimately wind up hurting those who wanted it the most — the Democrats. The Democratic Party was the majority party by default for many years. This has changed.

The Republican Party has been growing and expanding for a decade now, as evidenced by the 1994 elections. The Florida Senate gained a Republican majority and the Florida House closed the gap much tighter than many people expected. With the Republican Party of Florida on the rise, in the future it may be the Democrats who will want to switch weaker candidates for stronger ones who are defeated in a primary. ■

Rep. Anne Mackenzie (D) stresses her point to the Republican side of the House.

Audit Odds Are Rising: IRS Resurrects an Old Program

by David P. Yon, Executive Vice President & CFO

This October, the Internal Revenue Service begins conducting its Taxpayer Compliance Measurement Program (TCMP). In this program, randomly selected taxpayers will be asked to document every item on their 1994 Federal Income Tax returns. And they literally mean every item.

The TCMP uses a statisti cal sampling technique to allow the IRS to build a profile of taxpayers. This year, 153,000 tax returns will be targeted. It is expected that this program will take 30 months to complete.

This year, the IRS has added two items which will make the program worse than it was in 1989, the last time the IRS conducted a TCMP. The first one is the IRS's Market Segment Specialization Program (MSSP). The second one is the use of "economic reality" checks.

The MSSP is designed to familiarize revenue agents with a particular business or industry so they can focus on sensitive areas and turn up any discrepancies. This negates the advantage the taxpayer has in knowing his business better than the revenue agent.

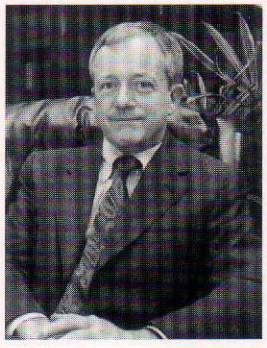
The "economic reality" check means that the Internal Revenue Service looks at how taxpayers spend money in relation to the type of income they report. For example, does the amount of reported income correspond with the taxpayer's lifestyle?

To answer these questions, the IRS can look at all credit records, local property records and any other records that might relate to assets owned or liabilities owed. In some cases, the IRS may use Form 4822 to require taxpayers to list living expenses for the year. This form has not been used much except in cases of suspicious criminal activity.

Any business which inherently has the capacity to under report income is especially at risk. This includes people who are self-employed or who deal with large amounts of cash on a routine basis.

If you are selected for such an audit, there is not much you can do except be prepared. It is especially important to document the sources of all cash and deposits. Obviously, good records are very important since it is often difficult to reconstruct items that occurred several years prior. Another self-defense measure is to attach an explanation to your tax return if you have any unusually high deductions.

Finally, be absolutely certain that the numbers on your return match the numbers on the 1099's and other forms that have been sent directly to the Internal Revenue Service. ■



David P. Yon

Executive Vice President & CFO

While the Time is Right

by Doc Kokol, Vice President, Video Production

Doc Kokol Vice President, Video Production

If you have something to sell, much of your time is spent trying to get the attention of your prospective buyers.

Advertising agency clients prepare themselves to pay dearly whenever they hear account executives talk about ***break-through advertising*** — as in break through the clutter and noise in television, radio, and newspapers.

So just how do you rise above the noise and get noticed? One method might be video direct marketing. We are all naturally curious. Having that VHS videocassette mysteriously appear in your mailbox is just too much to bear. Chances are, you have a VHS tape player in your home and you will look at the tape.

In today's competitive marketplace, videotape marketing is as cost-effective as traditional print material.

The videotape, along with companion print material, makes for an unbeatable combination. Now your clients can see it, watch it work, and hear all about why your widget is better than everyone else's. You can show the product in operation or let satisfied customers tell your story for you.

Marketing by direct-mail videotape was once reserved for the big guys. Several luxury car manufacturers offered a free video to preview their latest top-end vehicles. Campaigns were tied to television commercials that showed the car speeding along a beautiful mountain road. Want to know about the accessories, colors, or cost? Calling the 800 number brought a tape with all the specifics directly to your home.

Another example of direct marketing with videotape was done by a major Florida grocery chain. After identifying individuals living within their service areas, the chain sent out videotapes showcasing its new gourmet sections. To top it off, if you brought the tape into the store you could trade it in for a pound of shrimp.

People are creatures of habit — get them into the store, treat them right, and they will come back — and probably end up spending more than the cost of a complimentary pound of shrimp.

That's great for the big guys, but what about the rest of the business community? In today's competitive marketplace, videotape marketing is as cost-effective as traditional print material. We have been able to show our clients how we can produce, duplicate, box, and ship a videotape at a cost comparable to producing a full-color print piece mailed to a customer list of 5,000.

Just like all advertising trends, this tool will eventually loose its charm as the public reaches the saturation point. Today, a videotape received in the mail will get watched, but that won't last forever. We are working with our clients to exploit this window of opportunity -- and to know when to stop.

If you are interested in learning more about direct-mail videotape advertising, contact me at AIF headquarters. Or you can send me Internet mail — my address is kokol@polaris.net.

Next issue: They still look like telephones, but they can do almost everything but make coffee in the morning — and that may be coming.

When It's Too Important To Settle for Second-Best

CHOOSE THE FBN SYSTEM

Each legislative session, Florida employers collectively hold their breath. After all, no one group in Florida has as much at stake in what happens in the Florida Legislature as the business community.

Every year our state lawmakers file approximately 4,000 bills. Regardless of whether it's taxes, fees, regulations, or insurance, you want to know the impact each may have on your business. While there are other sources of legislative information, both on-line and print, one fact remains clear.

No one can report to you on business issues as well as the Florida Business Network (FBN).

The reason is simple: the FBN system is the ***only*** on-line computer service developed by those directly involved in this state's business issues. The FBN system is the ***only*** one with analyses and updates available directly from the people who patrol the halls of the Capitol every day, debating business issues before the Legislature.

And there's a big difference between those who report what they *hear* and those who report what they ***know.***

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Plus, you'll get the following ***exclusive*** information from FBN.

- Up-to-the-minute analyses written by business experts as developments occur.
- 21 years of historical voting records that let you know how each legislator voted on business issues.
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So don't settle for any other run-of-the-mill on-line service. Get the one with over 100 years of collective experience in reporting business issues from the state capital.

For More Information

For more information about FBN, contact Stephen Trickey, Vice-President and Chief Operating Officer, 904/224-7173.

Photo by Ray Stanyard

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When Tomorrow's Too Late

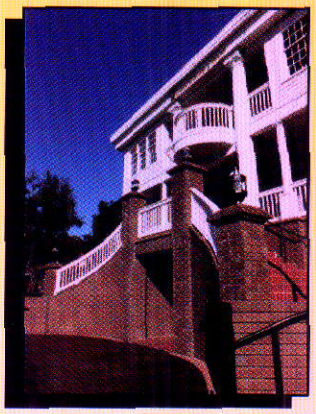


Photo by Hugh Scoggins

Delay equals lost opportunities.

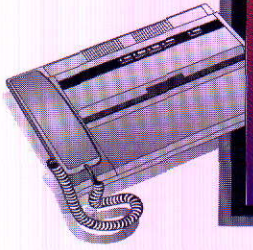
That's especially true when lawmakers meet in session. If you wait 'til tomorrow to find out what they're doing today, you've lost your opportunity to influence final decisions.

Associated Industries of Florida implemented the Florida Business FaxNet to let Florida employers penetrate the legislative decision-making process. When you sign up for the Florida Business FaxNet, you'll receive fascimile transmissions from the AIF lobbying team *before* lawmakers vote on pivital business issues.

We explain the issues and give you a choice of messages you can send to your representative and senator. You fax your message back to us and we make sure your legislators hear from you.

Sign up for the Florida Business FaxNet today. Don't lose your opportunity to make your voice heard.

The Florida Business FaxNet - putting Tallahassee back in touch with you.



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