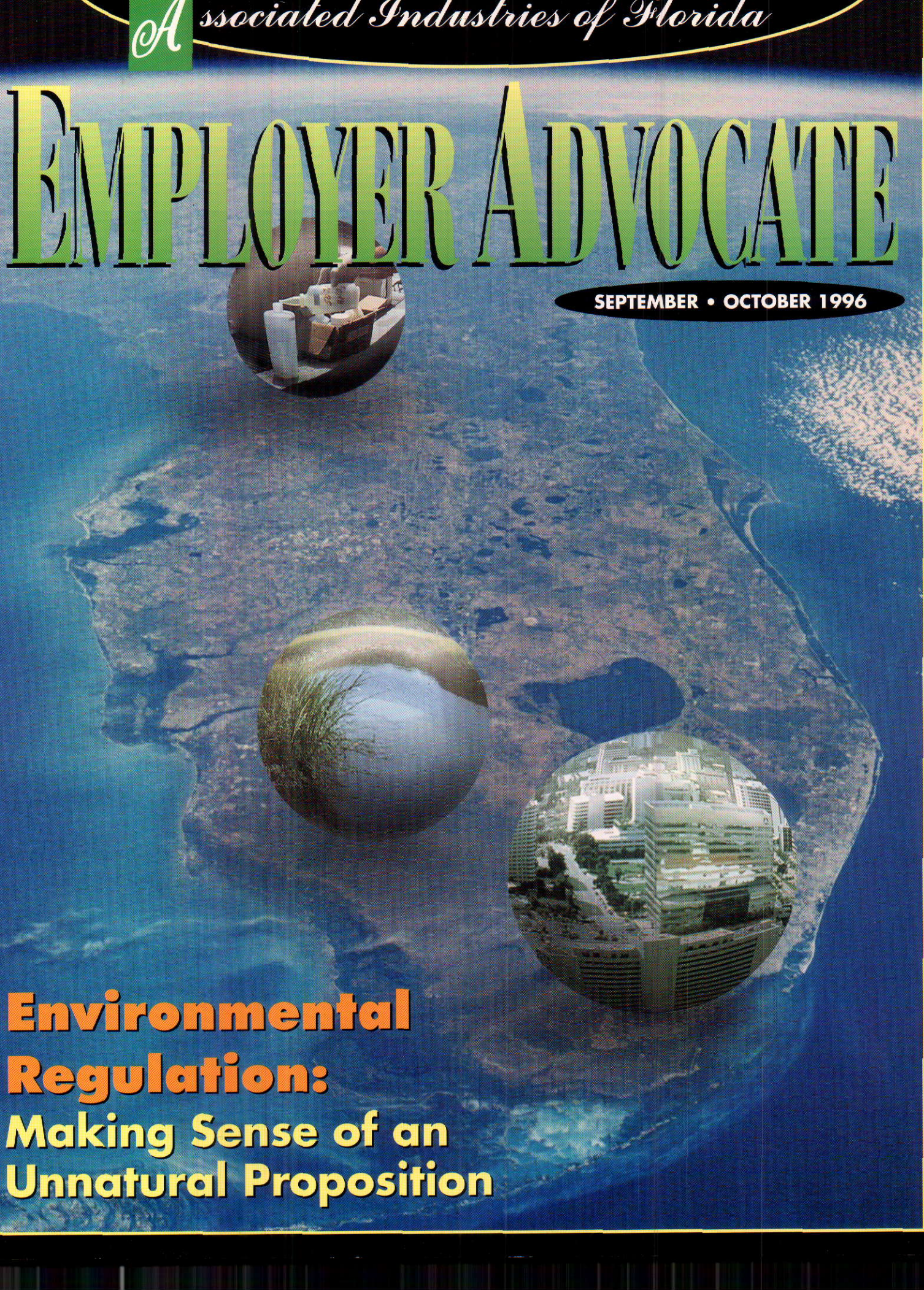
Associated Industries of Florida

EMPLOYER ADVOCATE

SEPTEMBER • OCTOBER 1996



Environmental Regulation: Making Sense of an Unnatural Proposition

THE VOICE OF FLORIDA BUSINESS

Since 1920, Associated Industries of Florida (AIF) 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.

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Associated Industries of Florida

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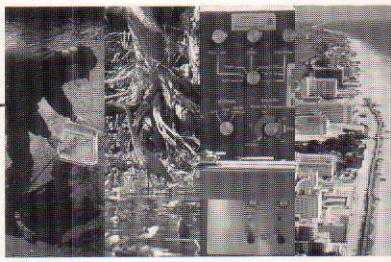

Cover Story

Democracy's Toil

by Jon L. Shebel,

President & CEO

If the World Series goes to seven games, major league baseball's champions will be crowned on Oct. 29, nine days before Americans head to the polls to decide who will handle the reins of power for the next two years.

We call baseball America's game not because it's the most popular (it's not) but because it bears so many similarities to democracy. If you expect to win all the time, baseball and democracy are not for you. Both require patience and depend on skill and timing instead of brute force.

Those who love baseball take hope in the fact that the World Series happens every year; presidential elections occur only every four years. Others who consider the sport dull take no solace in that fact. When the 52 American hostages returned from Iran and were given lifetime baseball passes, someone asked, "Haven't they suffered enough?" There are those who might repeat those words when it comes to voting, the paperwork of citizenship.

Since the Motor-Voter bill was signed into law a few years back, we've been treated to monthly reports celebrating the number of new voters signing up. We welcome these new participants in democracy, but the new ease of registering raises a question: If someone can't take the time to make the one trip that once was necessary to register, will they take the time to make their way to the polling place, much less prepare themselves to make informed decisions once they get there?

Voting is just one of the duties of citizenship; the responsibility is lifelong and requires a daily engagement of effort. As I write this, some AIF members are joining the staff in a project that is part of that effort.

During July, they spent 72 hours over nine days in five cities interviewing 135 candidates running for seats in next year's Legislature. The sessions are a valuable opportunity for business people to gauge the opinions and the quality of campaign contenders.

That information is used by AIF and the members to decide which candidates will receive contributions and support. It's part of a concerted program to help business people make informed decisions about candidates.

The interviews also give business people and candidates a chance to discuss some important issues. The opportunity is educational for all the participants.

In governing, there are no challenges that entail easy solutions and no politician can come to Tallahassee with a prefabricated plan to settle a problem. The sheer mechanics of lawmaking precludes that possibility.

Governing is, to a large degree, making choices based on inadequate information. Even with all the facts, lawmakers cannot predict the future — they cannot know, with absolute certainty, the results of their decisions. So, we have to trust them to have the capacity to make the best decisions based on the information at hand.

AIF's candidate interviews help business people learn about each candidate's ability to make good decisions and about the principles and character that guide the individual's decision-making process.

AIF is making available to members a list of candidates it is supporting in legislative races. The endorsements are based on our research and the input of business people across the state. If you would like a copy of the list, please contact AIF's political operations department at (904) 224-7173.

Campaign promises are easily made and, sometimes by necessity, easily broken. That's why it's important to take the full measure of a candidate beyond the words glibly uttered on the campaign trail. I hope our information will help you do that.

What if you were able to offer your employees

a benefit that *costs* them nothing?

a benefit that costs your company *nothing*?

a benefit that saves your employees money?

a benefit that saves your company *money*?

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A DIVISION OF

Associated Industries of Florida Service Corporation

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

Finding Some Good in the Bad News

There's never much of a victory in saying, "I told you so," if what you've been telling is bad news. But that's the case in the June Supreme Court decision on Florida's Medicaid Third-Party Liability Act.

Depending on your perspective, the story behind passage of that law is now either legendary or extremely tiresome. But the facts bear repeating.

In the last hours of the 1994 Legislative Session, Gov. Lawton Chiles secretly added an amendment onto a Medicaid bill of minor importance. The amendment was adopted without any public hearing, debate, or opportunity for testimony. The sneak attack was successful and the amendment became law.

That new law (known throughout the nation as either the Medicaid Third-Party Liability Act, the bad-for-business law, or the tobacco law) has received more legislative and public attention than any other law passed during Gov. Chiles's two terms in office.

Immediately upon learning of the amendment, Associated Industries voiced its strenuous objections. The 1995 Legislature voted by an overwhelming majority to repeal it. Gov. Chiles vetoed the repeal.

In the 1996 Legislative Session, a majority of lawmakers wanted to override the veto, but a majority wasn't enough; the business community needed the votes of two-thirds of the members of both chambers. A minority of Democratic senators, joined by two Republicans, blocked the override of the veto. Thus, despite the will of a majority of members of the Legislature, that law remains in effect today.

Florida Supreme Court Issues Warning

AIF remains in steadfast opposition to the law. Our opposition is the subject of much finger-pointing because it is our contention that this bad-for-business law puts every Florida business in extreme danger. When AIF made that case publicly (and in opposition to the governor) his staff accused AIF of scaring the business community.

In an effort to get the necessary minority number of votes, his staff convinced their friendly senators that the law only applied to tobacco companies. They accused AIF of protecting tobacco at the expense of the interests of the rest of our members. Out of the thousands of businesses belonging to AIF, only two are related to the tobacco industry. AIF's opposition was based on concern for every member and every Florida employer.

On June 27, 1996, all Floridians learned that AIF was telling the true story all along.

On that date, the Florida Supreme Court upheld the constitutionality of the law and also resolved the question of its application. The court affirmed that, "after the modifications made in 1994, there can be no doubt that the Act is intended to create an independent cause of action to which traditional affirmative defenses do not apply."

Justice Charles T. Wells in his concurring opinion wrote, "The statute, by its language, is not limited to tobacco companies or to products or to any potential tortfeasors. ... Therefore, in the future, the State could attempt to pursue recoveries from any tortfeasors, including individuals involved in automobile accidents and those involved in any kind of accident which results in the expenditure by the state of Medicaid costs."

This law is dangerous. It can be used against anyone and it must be repealed.

Defenseless

The Medicaid Third-Party Liability Act allows the government to sue any person or company that causes the state to expend Medicaid funds, and the defendant cannot support his innocence.

For example, suppose you were involved in a car accident where your vehicle struck two other vehicles and the drivers of both were injured. One is a Medicaid recipient and one is not. When the driver who is not on Medicaid sues you, you can defend yourself. But when the government sues you on behalf of the Medicaid recipient, you are already guilty because you have no courtroom defenses.

The law is grossly unfair when applied to individuals as in the aforementioned example. But it is even more unfair when applied to a company. The law allows the government to lump claims together and sue for thousands of claims at once. This way the company can find itself sued by the state for untold millions and it has no weapons for self-defense.

A grocer can be sued for selling red meat to thousands of customers because the meat allegedly caused heart disease. A realtor can be sued for selling houses with lead-based paint. The list is endless. According to the Florida Supreme Court, as long as this law remains in effect, every Floridian is a potential target.

So far the government has only used the bad-for-business law once: to sue tobacco companies. That could change at any moment, however; probably as soon as some well-connected trial lawyer convinces a governor to give him a chance to sue someone.

A Case for Civil Justice Reform

Gov. Chiles bills his Medicaid crusade as a way to "make tobacco pay." Pay they will. With no defenses they have no choice but to pay. The bulk of the money won't be going to the taxpayers, however. The only people they will be paying are the trial lawyers whose friendship with members of the governor's staff was rewarded with the opportunity to prosecute this case.

The trial lawyers will pocket around $400 million to handle a case where the defendants can't defend themselves. This windfall profit to trial lawyers is typical. It points to one more reform needed in the civil justice system. Trial lawyers should not receive a windfall fee for doing little or no work.

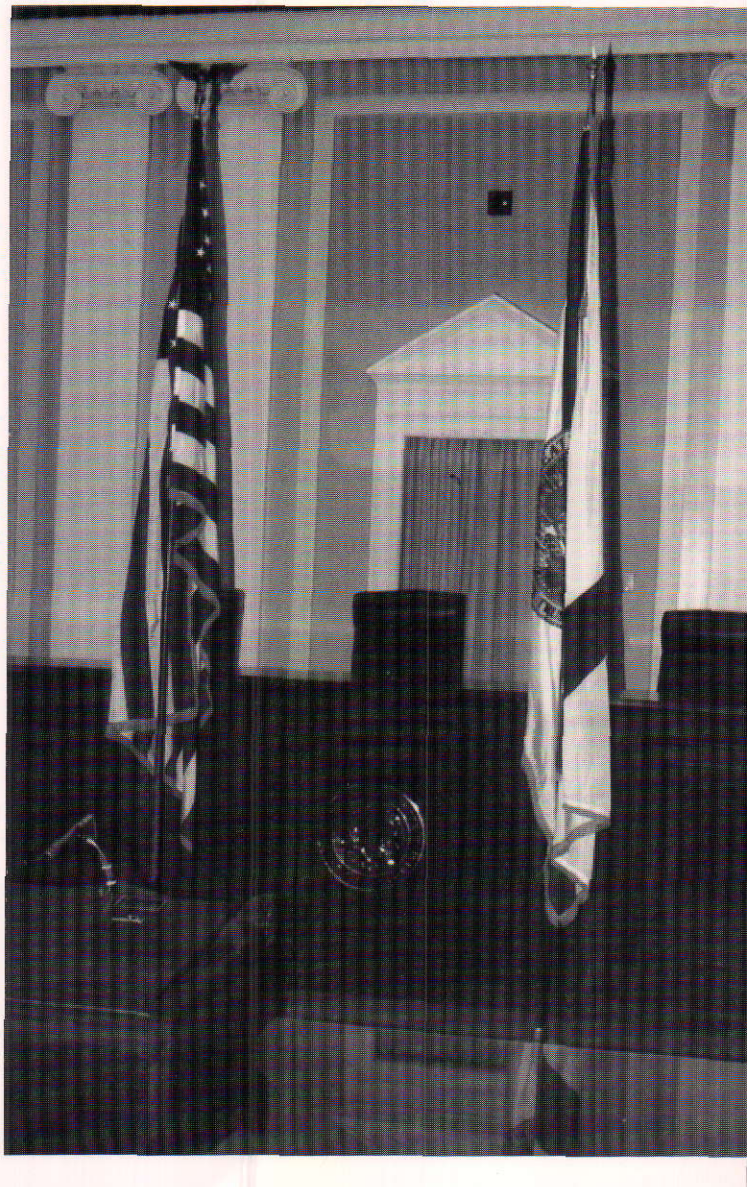
Fighting for Rights

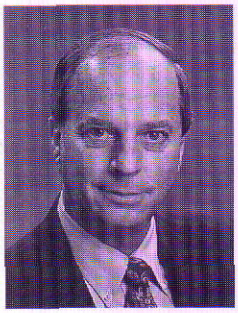
Our opposition to the law is not a case of AIF protecting tobacco. Nor are we advocating a free ride for tobacco. Rather, AIF is opposed to a law that takes the right to self-defense away from any and all Florida businesses. Thus, AIF will continue to fight against this law.

If the law is repealed, the government and the tobacco companies will have to determine how the government proceeds in the lawsuit already filed against tobacco companies.

In the 1996 Session, AIF advocated an increase in the sales tax on tobacco to pay Medicaid costs. None of the tax money would have gone to trial lawyers; Florida's taxpayers would have received the full benefit of those extra funds. Lawmakers rejected our proposal to enact the tax in exchange for repeal of the law.

In the months ahead, AIF will decide what remedies to this law it will pursue in the 1997 Legislative Session. Only one thing is certain: AIF will continue to oppose the bad-for-business law. ■





by Frank T. White,

AIIC Executive Vice

President & COO

Erosion of the 1993 Reforms

When employers won key reforms to the workers' compensation law in 1993, experienced observers asked themselves, "How long will it take for victory to turn into defeat?"

The answer: two years.

We are now witnessing a relentless erosion of the legislative intentions underlying the 1993 reforms. The disintegration is stemming from liberal judicial interpretations as well as trial bar tactics.

There's a serious concern that not only will the recent rate reductions disappear, but we will also begin to face future rate *increases* as the erosion begins to work its way into the rate-making process over the next several years.

Here are some of the areas that are causing us the most concern.

Permanent Total Disability

Even though the Legislature attempted and intended to tighten the definition of permanent total disability, it appears more petitions for permanent total are being filed than were before (see *Employer Advocate*, May/June 1996). The fact that judges of compensation claims are allowed to determine who qualifies under Social Security contributes to the problem, as does the 104-week limitation on temporary benefits.

Premises Rule and Going and Coming Rule

In the 1993 reforms, the Legislature attempted to make a firm statement that occupational causation was a necessity for compensability of a work-related accident. Recent cases have determined that the premises rule exception to the going and coming rule was not affected by the 1994 changes. This basically negates the qualification that work performed must be the major contributing cause of an injury or death. We can expect to see further erosion of the link between work and workers' compensation.

Trial Attorney Tactics

The Legislature intended to curtail litigation by having conflicts resolved through the ombudsmen program of the Employee Assistance Office (EAO) or through mediation. Lawmakers and employers believed this program would result in fewer petitions being filed, less attorney involvement, and effective mediation. This has not been the case.

Instead, many claimant attorneys are flooding the EAO with requests for assistance and petitions for benefits. Not only are the EAO personnel unable to timely and effectively respond, but the carriers' adjusters are unable to keep up with the massive paper influx.

Thus, once again multitudes of claims end up in litigation and before the judges where claimant attorneys demand and usually receive a larger fee.

Petition Filings

The reform act did not allow for petitions to be filed until after 30 days from the date a request for assistance was filed. A carrier then had 14 days to respond to the petition with either a denial or by providing the requested benefits.

A case recently decided by the First District Court of Appeals states that if a carrier does not formally file a denial on each specific petition filed on a totally controverted case within 14 days, it is assumed the carrier has accepted the entire claim as compensable. Furthermore, the carrier waives its defenses and rights.

It can be assumed that this decision will affect all petitions, whether or not the claim has been denied in its entirety, and there will be even more petitions filed on an ongoing basis. Carriers will be inundated with more paperwork in the hopes they will miss a petition through oversight or be unable to respond in a timely manner.

In addition, there is a recent First DCA opinion holding that an employee does not always

need to go first to the EAO before filing a petition for benefits. Attorneys can now amend their pre-trial stipulations or have issues heard at hearings that have not gone through the EAO.

The intent of the Legislature has been seriously altered and now, instead of the 21 days to respond to claims under the old law, carriers could conceivably have no time or, at best, 14 days.

Drug-Free Workplace

Case law has modified the drug-free workplace portion of the statute by determining that even if an employee tested positive for drugs at the time of an accident, he cannot necessarily be denied benefits. It can be assumed the drug-free workplace rules and law will erode even further to the point that there is no incentive for a carrier to offer a 5-percent drug-free workplace premium credit, because there will be no savings on the employer's losses.

Mediation

The Legislature believed and intended that most disputes could be resolved at mediation, so funding was provided for state mediators. Today, the state mediation process is often ineffective due to an inadequate number of mediators. This results in lengthy scheduling delays.

Furthermore, many state mediators are poorly qualified and not committed to their obligations. As a result, many carriers are hiring private mediators in order to expedite the process and to resolve issues or settle claims. This is an increased cost to the carriers that will ultimately be passed on to the policyholders and their customers.

Medical Treatment

The Legislature attempted to contain medical costs through the passage of statutory language concerning managed care and medical treatment. Claimant attorneys are in the process of shooting down carriers' managed care programs. As the Jan. 1, 1997, managed care mandate approaches, we can expect to see increased litigation.

In those cases where managed care does not yet apply, attorneys are still insisting on lists of three physicians in every specialty, and the judges are ordering carriers to provide them with those choices. Like the Super Doc program, the expert medical advisors' program is basically non-existent. Medical costs continue to rise.

Attorney Fees

The attempt to limit and curtail attorney fees by changing the schedule has been totally futile. For the most part, claimant attorneys are not paid according to the fee schedule but instead are granted a fee according to the time expended on a claim. This method of awarding a fee perpetuates the filing of unnecessary requests for assistance and petitions for benefits, the kind of make-work tactics that trial lawyers use to justify higher fees.

Conclusion

These are the eight major areas where we have seen the erosion of the 1993 reforms. Undoubtedly, there are others that have not yet become apparent or that the attorneys have not yet begun to exploit, such as the area of supplemental benefits.

And so the cycle of reform, decay, and crisis begins again in workers' compensation. AIF has already started developing legislative proposals for the 1997 Session that we hope will break the cycle. Florida employers can't afford a return to the bad old days of workers' compensation. ■

We are now witnessing a relentless erosion of the legislative intentions underlying the 1993 reforms.

by Jeb Bush,
Chairman, The
Foundation for
Florida's Future

"25/25 Vision": Tax Relief for Florida Business

The state of Florida has a little secret. What would you say if you discovered that Florida has stashed away millions of taxpayer dollars—Florida business dollars—in an over-built-up fund, fed by years of overcharging Florida taxpayers? Would you advocate returning that money to its rightful owners, the taxpayers of Florida, or would you support its use to expand government?

Your answers to these questions will help decide Florida's economic direction. We will either continue on a path of a status quo policy that takes too much money from Florida's businesses and workers, or we will shift to a pro-growth, pro-jobs policy. You and I will decide.

The excess funds are found in the Florida Unemployment Compensation Trust Fund. This fund is designed to provide temporary relief for Florida's unemployed.

Every business in Florida, whether large or small, pays unemployment insurance taxes to the state and federal governments for each of its employees. Unemployment benefits are paid by the state from these tax dollars. While a reserve in the fund is prudent to protect Florida workers and businesses from the effects of severe economic downturns, there comes a point past which prudence turns to excess. In Florida, that time is now.

In most years, the amount of tax dollars going into the fund, along with interest earned on the moneys, exceeds the benefits paid out, thereby increasing the dollar amount in the reserve. Last year, for example, Florida collected $755 million in unemployment insurance taxes and earned $118 million in interest.

At the same time, the state only spent $691 million on unemployment benefits. Florida businesses paid into the system $182 million more than was needed. That's a lot of potential jobs and a lot of business capital.

As of May 31, 1996, the balance in Florida's unemployment compensation trust fund had reached $1.997 billion. Without any additional tax payments from businesses, the state of Florida could continue to make payments to the unemployed for almost three years at the current payout levels. In contrast, the national average among the states is 1.6 years' worth of reserve.

And, despite the huge surplus, Florida's fund continues to grow. Such growth is accomplished on the backs of Florida business. There is an old saying that is appropriate here: "Kings ought to shear, not skin their sheep."

Why should we continue to build a reserve that is already replete with funds? The answer is that we should not. Instead, we should follow the lead of several states that have seen the light and have begun to give their businesses a break.

In North Carolina, for example, in a special legislative session that lasted a mere two and a half hours, state lawmakers placed a moratorium on collection of the unemployment compensation tax for 1996. The tax break: $140 million.

In Georgia, the Southeastern Legal Foundation, a conservative legal advocacy group under the leadership of Matt Glavin, fought for and won a $65 million tax cut. Next year, they are going back for more.

And last year, Kansas instituted a two-year moratorium on their unemployment compensation tax. It was so successful at lowering unemployment and building businesses that Kansas extended the moratorium for another year—this time, with the blessing of business and labor groups.

For these states, the tax cuts and moratoriums are putting millions of dollars back into businesses. Such an infusion of capital has resulted in measurable job growth and increased business investment. Unemployment is down and the local economies are

Foundation for Florida's Future

looking up. So what can be done here in Florida?

In the coming months, I will be advocating a 25-percent cut in Florida's unemployment tax, that will pump more than $150 million back into our businesses. While lifting the tax burden on Florida's businesses, a $150 million tax cut will still allow Florida to increase the maximum weekly benefits to the unemployed by $25.

Under this plan, Florida's workers lose none of their security, but gain the promise of revitalized business and job growth. In short, the proposed tax cut and increase in benefits is an economic development plan that actually benefits Florida's homegrown businesses and workers. It also sends a message to businesses looking to move to Florida: When you come to the Sunshine State, you will not be forgotten and you will not be taxed into bankruptcy.

This tax cut should not be a partisan matter. Most agree that the fund is already large. For example, earlier this year, the Jobs and Education Partnership of Enterprise Florida (JEP), suggested that it would explore the use of the unemployment compensation trust fund for job training and placement programs. While Enterprise Florida has abandoned plans to pursue this option, it serves as further recognition that the trust fund is already at a sufficient level.

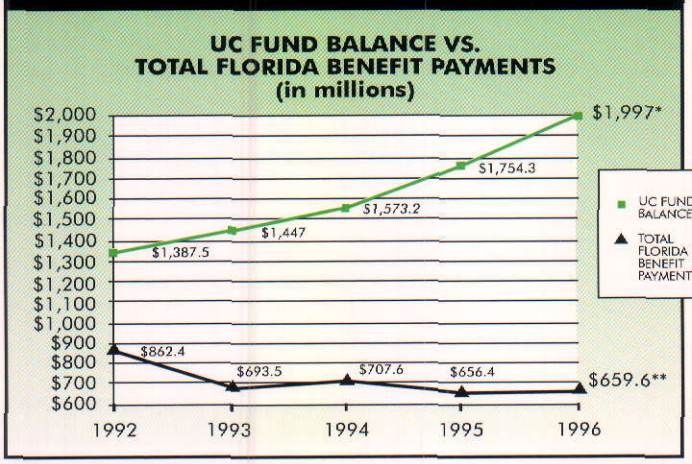
If the fund is large enough to finance the funding of additional government programs, then it should be large enough to accommodate a tax break for businesses and workers.

Fortunately, our proposal has broad bipartisan support. It is being co-sponsored by Reps. Dave Bitner (R-Port Charlotte), Bob Starks (R-Casselberry), and Fred Lippman (D-Hollywood), and Sens. Charles Williams (D-Live Oak) and John McKay (R-Bradenton).

Yet, even with this bipartisan support, there are still those in Tallahassee who would like to commandeer these tax dollars for continued growth of the fund. For one, Florida's own Department of Labor has floated the idea of increasing the unemployment compensation tax even as the fund fast approaches an historic all-time high.

A 25-percent cut in the unemployment compensation tax will provide a deserved respite from the assault of increased regulations, mandates, and taxation by all levels of government.

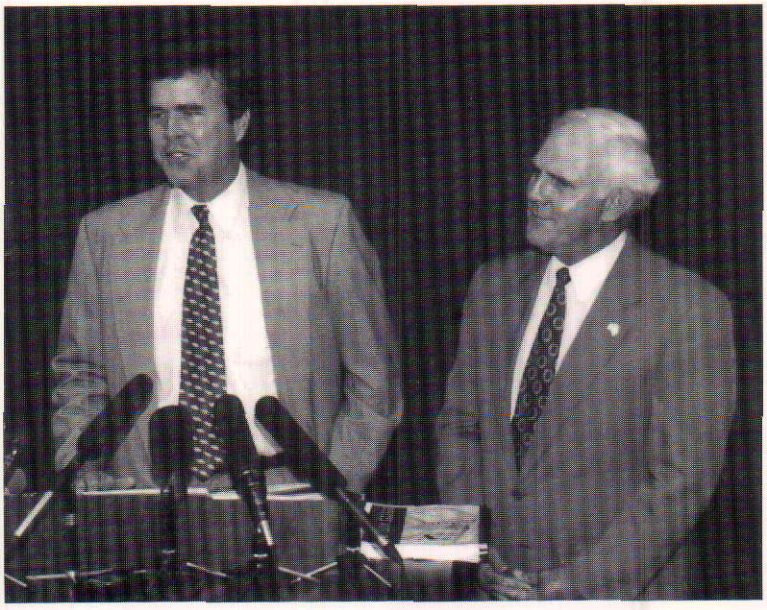
Unemployment Compensation Tax Cut



SOURCE: Florida Department of Labor and Employment Security, Division of Unemployment Compensation. *As of 5-31-96. **Past 12 months ending 3-31-96.

Giving a break to businesses and workers—the source of economic growth and prosperity in Florida—is the right thing to do. And, we can do so while still protecting our unemployed workers.

Other states are seeing the results of such cuts—more jobs and fewer people out of work. Everyone is a winner. In today's parlance, a cut in Florida's unemployment insurance tax is a "no brainer." ■



Jeb Bush announces his "25/25 Vision" proposal with Sen. Charles Williams during a recent press conference.

"Modern industrial civilization, as presently organized, is colliding violently with our planet's ecological system. The ferocity of its assault on the Earth is breathtaking, and the horrific consequences are occurring so quickly as to defy our capacity to recognize them. ... We must make rescue of the environment, the central organizing principal for civilization."

Vice President Al Gore, *Earth in the Balance* (1992)

Environmental Regulation: **Making Sense of an Unnatural Proposition**

by Jacquelyn Horkan, Employer Advocate *Editor*

What happens when the war is won but some of the soldiers refuse to stop fighting?

That's the situation we face in Florida and America today, where environmental warriors have reorganized economic life so that ecological protection is the daily concern of business owners and operators.

The benefits gained from this transformation have been enormous—and so too have been the costs. The Environmental Protection Agency (EPA) estimates that environmental regulations cost $170 billion a year; compliance costs could rise to $200 billion by the end of the 1990s.

While the benefits may have exceeded the costs in the early days, the current command-and-control model of environmental regulation has reached the point of diminishing returns. Since 1970, $1.4 trillion has been spent cleaning up about 90 percent of industrial air and water pollution; eliminating the next 5 percent could cost $1.6 trillion.

To give a new context to the memorable words of Thomas Jefferson, environmental laws have "sent out swarms of Officers to harass our people, and eat out their substance."

Business people are now willing partners in environmental protection but most are crying, "enough is enough." Illogical regulations dictate standards as well as the technology that must be used to meet the standards, whether the technology is workable or not. Lethargic bureaucrats detain permit applications on whimsy. Billions are spent to reduce risks that do not exist.

And through it all, environmental activists claim that *any* change will "undermine virtually every health protection that the American people depend on."

Stepping into the fray is Virginia Wetherell, secretary of the Department of Environmental Protection (DEP). She promises to inject common sense, balance, and cooperation into Florida's scheme of environmental protection. For that, the media routinely criticizes her policies, her management decisions, her connections, her supposed partialities, and—in the case of the *Florida Trend*— even her hair.

What's a reformer to do?

In the Way of Progress

Wetherell is a former legislator, businesswoman, and executive director of the Department of Natural Resources, the agency that was combined with the Department of Environmental Regulation to create DEP.

She speaks with a soft, Southern accent that belies a firm, no-nonsense approach to running her agency. Wetherell has earned the personal trust of many in the business community. Robert Coker, U.S. Sugar Corp.'s vice president for community and governmental affairs, says, "The only person who has

really tried in the last 20 years to bring reason to the whole process is Virginia Wetherell."

That trust is Wetherell's personal capital. She's using it to build an environmental protection framework based in the free market, and powered by incentives, cooperation, and voluntary initiatives on the part of business.

The star attraction is something called ecosystem management. DEP defines ecosystem management as, "an integrated flexible approach to management of Florida's biological and physical environments—conducted through the use of tools such as planning, land acquisition, environmental education, regulation, and pollution prevention—designed to maintain, protect and improve the state's natural, managed and human communities."

If, after reading that, you still have no idea what ecosystem management really means, you're not alone. The concept of ecosystem management as a method for managing specific areas is not new. Florida's innovation comes in the way it plans to use ecosystem management as the framework for regulating the natural resources of the entire state.

Florida's ecosystem management strategy was the result of an extended and intense series of meetings between representatives of business, environmental organizations, and DEP. The process took about two years.

DEP is still in the process of taking ecosystem management out for test rides, but they're pleased with the results so far.

The Big Picture

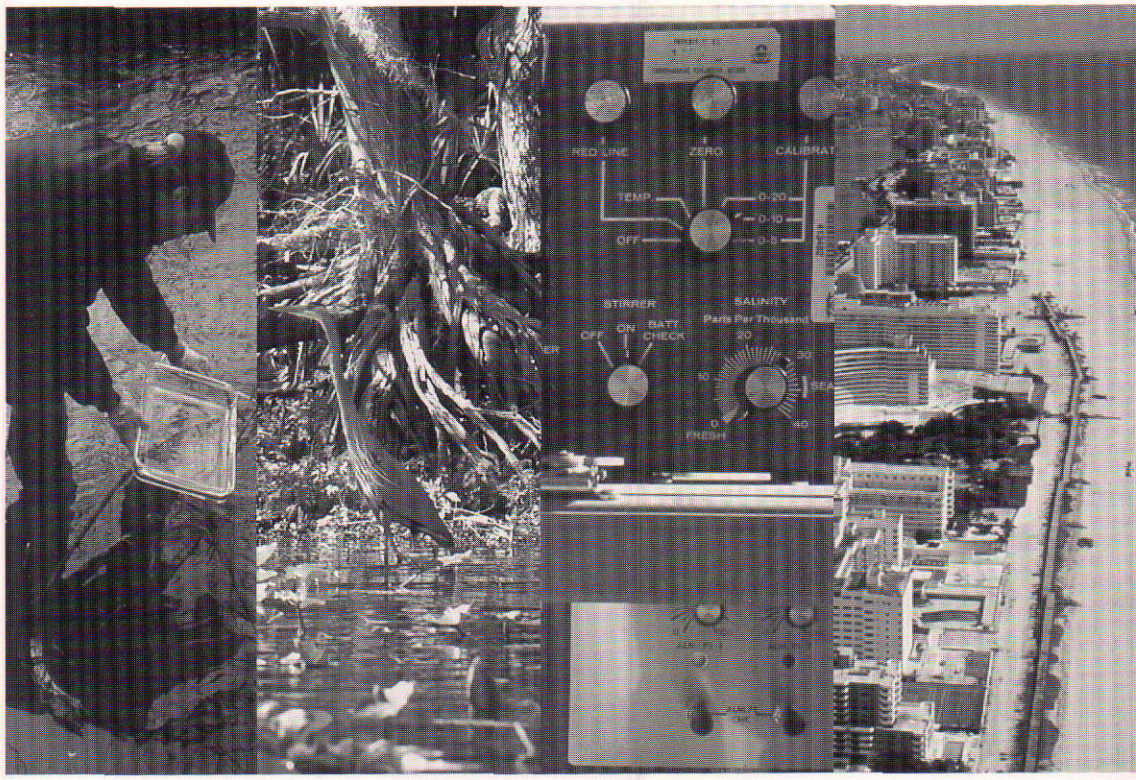
Ernie Barnett, DEP's director of ecosystem planning and coordination, describes his charge as voluntary, alternative decision-making opportunities, "doing something good for the environment but also making good business decisions."

His office is using ecosystem management to guide restoration and conservation efforts in the Everglades, the Hillsborough River Basin, and Apalachicola Bay. In a few test cases, the concept has been applied to companies seeking environmental permits. In these instances, the company volunteers to embark on an alternative to the standard permitting process.

Barnett and his staff bring together into a team all of the regulators that would undertake individual permitting reviews on a project. Together with the company and other interested parties, the team negotiates a streamlined process for approving the permits, thereby saving the company time and money.

Says Barnett, "If we're going to do something different and bend our rules and be more flexible, we're going to try to get something better for the ecosystem."

Barnett cites the ongoing CF Industries project as a prime example of this approach.



Wetherell knows that the success of DEP's mission depends upon a change of attitude in Washington.

CF Industries mines phosphate near Plant City. A byproduct of phosphate processing is a substance called gypsum. Gypsum is radioactive and, therefore, has to be stored in stacks rather than disposed of or used in another way. The CF Industries gypsum stacks are nearing capacity. Faced with the prospect of either shutting down or going through the arduous, costly—and uncertain—permitting process, CF Industries approached DEP and suggested an alternative.

The company needed space to build the gypsum stack. It owned land down the road from its existing site, but the property was in the middle of a critical greenway. The county owned land adjacent to the plant but was unwilling to sell it since the land was part of a wildlife corridor.

DEP brought together all of the local, regional, state, and federal agencies that would be part of the permitting process and presented CF Industries's proposal. The company would swap tracts with the county, with the county getting the larger tract. Since CF Industries only needed a third of the county's land, they would maintain the rest of it as a natural preserve, thereby preserving the wildlife corridor.

In return, CF Industries would save money on the permitting process while gaining a greater measure of certainty.

The same cooperative spirit reigned in another partnership, this one between DEP, EPA and Jack Berry Corporation, a citrus processor. That company currently operates under 25 different permits from 12 agencies. Not surprisingly, with such a complex permitting scheme, the company was periodically in non-compliance.

DEP, EPA, and Jack Berry Corporation agreed to take the different permits and consolidate them into the form of an easily understood operating manual. Instead of applying for 25 permit renewals every five years, the company will only have one permit to renew. By cutting down on the regulatory hoops, the company will save millions in compliance and permitting costs. Company management has agreed to take half of any real dollar savings and roll it back into the plant to improve its environmental impact.

Both cases are opportunity for hope among the optimists. "[Ecosystem management] is not the ultimate, but it's a positive step in the right direction," says John Wiley, environmental health and safety team leader at Monsanto's Pensacola plant.

The Wages of Virtue

Wiley is one who is well-versed in the rigors of seeking an environmental permit. He says he's been told by the state that his plant holds the largest number of air permitting sources of any company in the state. Wiley has no objection to being regulated, but he does object to the inefficient manner in which his company is regulated.

While Monsanto works to improve on environmental standards—surpassing regulatory requirements—the company often has to wait six months just to get official approval to implement processes that reduce pollution. That is why Wiley is excited about ecosystem management.

"It gives us, as industry, some latitude to do what we know how to do best," he says. "At the same time, it gives the agency the opportunity to regulate us."

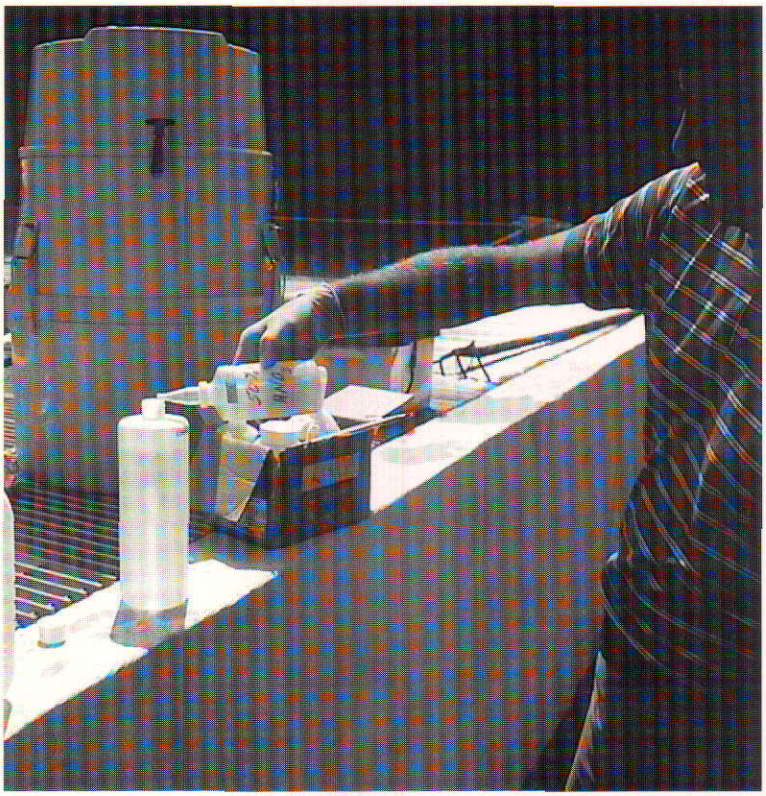
Wiley has been watching the development of common sense environmental initiatives at both the state and the federal level, and he's far more impressed with what's going on in Tallahassee than with events in the nation's capital.

He calls EPA's efforts fragmented, recalling a recent EPA conference he attended where officials handed out a list of different common-sense initiatives going on throughout the agency. Wiley glanced at the list and noticed some that were missing. Not even EPA knows what belongs on its own list.

So far, it seems to be a case of sounds great, less filling.

Whether EPA is truly ready to shed its antagonism toward business is also unclear. EPA Secretary Carol Browner's rhetoric strikes some as schizophrenic. Depending on her audience, she either embraces partnerships with industry or repudiates them.

Wetherell knows that the success of DEP's mission depends upon a change of attitude in



Washington. Many of the laws and regulations she administers were born there and, until EPA and other federal agencies undergo a conversion, her options are limited.

For environmentalists and regulators raised in the command-and-control framework, cooperating with business is tantamount to sleeping with the enemy. For now, Wetherell is just trying to get the reluctant parties to attend happy hour together.

As Ernie Barnett observes, "There's a fallacy of those who think you have to harm the environment to make money or you have to harm business to protect the environment."

Wetherell and Barnett reject the zero-sum game of environmental protection. When environmental activists and regulators complain that cooperating with industry means lowering standards, Wetherell responds, "I just say, give me an example. Show me one place where we have decreased the environmental standards. They can't give me an example because it's not there. They just have this anxiety. EPA has that same kind of anxiety."

The anxiety stems from an anti-technology, anti-business attitude that has fueled the environmental movement from its birth. The earliest protectionists were intellectuals and poets of the 19th century who revered nature as the refuge of those who found the human world of the industrial age unfriendly to their heightened sensibilities.

The antagonistic attitude toward technology and industry led to the adversarial nature of environmental protection. And it has bred an atmosphere of such extreme distrust that healing the rift is a monumental task.

A Disreputable Legacy

According to estimates, one out of every 10 Americans took part in the first Earth Day 26 years ago. A few months after the big event, President Richard Nixon rewarded the efforts of participants by creating the Environmental Protection Agency. Within two years, the new bureaucracy firmly established its mode of operation for the coming decades.

In that year, 1972, EPA administrator William Ruckelshaus banned all use of DDT. His decision came in the midst of public controversy over use of the pesticide and after a 1971 public hearing during which 150 scientists gave testimony and 300 technical documents were submitted documenting the environmental and public health impacts of DDT.

The hearing examiner determined that a total ban on DDT was not desirable based on the scientific evidence, observing, "There is a present need for the continued use of DDT for the essential uses defined in this case." In other words, the scientific evidence supported regulation and controlled use of the pesticide, but indicated no need for a total ban.

Ruckelshaus, however, obeyed public opinion, at the expense of science. Thanks to his decision,

The antagonistic attitude toward technology and industry led to the adversarial nature of environmental protection.

we lost the benefits of this important chemical and pseudoscience became a credible tool in the hands of environmentalists. Thus was inaugurated what one observer calls "the technique of making unsubstantiated allegations stick."

Fast forward a few years to Feb. 26, 1989, when the most glaring example of this tactic occurred. On the evening of that day, Ed Bradley of *60 Minutes* informed his viewing audience that, "the most potent cancer-causing agent in our food supply is a substance sprayed on apples to keep them on the trees longer and make them look better."

That substance was Alar and the broadcast kicked off "The Great Apple Scare of 1989." Bradley based his story on information from a group called the National Resources Defense Council (NRDC), which had hired David Fenton, the boss of a public relations firm based in New York and Washington, D.C. The back of Fenton's newsletter identifies the firm's motto: "If you don't like the news, go out and make your own."

NRDC and Fenton certainly did make news with their P.R. campaign. What they declined to inject into their publicity were the facts. An EPA study indicated that Alar might cause cancer in as many as 50 out of a million people. How did they know this? They fed mice a dose of Alar 35,000 times higher than a schoolchild's estimated daily intake. In other words, a schoolchild would have had to eat 50,000 pounds of apples a day over a lifetime before facing the risk of contracting cancer from Alar.

A schoolchild would have had to eat 50,000 pounds of apples a day over a lifetime before facing the risk of contracting cancer from Alar.

Bradley did not pass this information on to his estimated 50-million viewers. Neither did the other reporters who pounced on the story. The U.S. Department of Agriculture later estimated that apple growers in Washington State alone lost at least $125 million in the six months after the story broke. It was an economic disaster created by junk science. But it wasn't a complete economic disaster.

David Fenton wrote a memo dated May 22, 1989, in which he boasted, "a modest investment by NRDC re-paid itself manyfold in tremendous media exposure (and substantial, immediate revenue)."

Environmental catastrophes lead to media exposure which leads to revenue for environmental organizations. Some mainstream environmental organizations disdain those tactics, but competition for members leaves others eager to adopt any means to boost enrollment. The media are willing accomplices when it comes to giving free publicity to alarmists.

Newsweek columnist Gregg Easterbrook has formulated a law of doomsdaying: Schedule your

predicted catastrophe for five to 10 years from now. That way, it's soon enough to terrify but when nothing happens no one will remember you were wrong.

Doomsday scheduling and the technique of making unsubstantiated allegations stick are powerful weapons. The current favorite catastrophe is global warming. Twenty years ago, it was global cooling.

This boy isn't finished crying wolf because fomenting insecurity makes people unwilling to tinker with environmental regulations they don't understand but that apparently are saving them from unimaginable disasters.

Environmental Fundamentalism

Assuaging those fears has given birth to a constitutional monstrosity, namely the abandonment of private property rights. Regulators can essentially confiscate a citizen's land, eliminating all practical use of the property without paying a cent for the privilege.

The confiscation is primarily done in the name of wetland and species protection and it has led to some of the most perverse results you'll find in the annals of environmental law. A north Florida man was fined and sentenced to jail for spreading sand on a lot *less than half an acre in size*. Why? He had filled a "wetland" without permission from the U.S. Army Corps of Engineers.

A western rancher received the same treatment for shooting a bear that was attacking his flock of sheep. The bear was a threatened species. Apparently the sheep weren't.

Countless stories are told of landowners protecting themselves by destroying the habitats of protected species.

What's wrong with this picture? Nothing, claim some environmental activists and politicians. Last year, Vice President Al Gore called congressional efforts to reform these misshapen laws "a jihad on the environment." Bruce Babbitt, secretary of the U.S. Department of Interior, urges environmentalists to behave as "barbarians at the gate."

Despite their confidence in Virginia Wetherell, is it any wonder that some business people remain skeptical about the potential for reform of environmental regulation when there are so many who stubbornly refuse to admit any necessity for change?

The brewing controversy in ecosystem management is a prime example of the legacy of 25 years of environmental inflexibility.

High and Dry

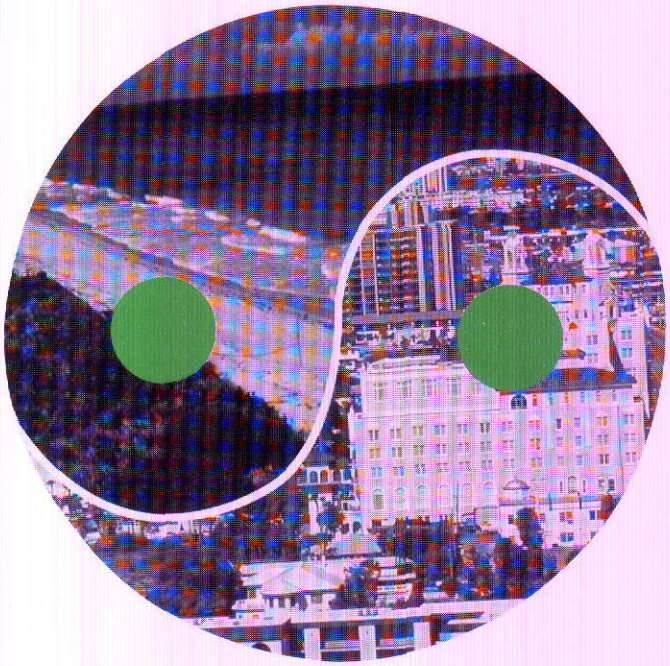
Currently, a number of agencies on every level regulate wetlands, those low-lying damp areas that we used to call swamps. Wetlands are deemed important because they help control flooding, filter pollutants from water, and provide habitats and breeding grounds for a diversity of animals and plants.

Wetlands protection is one of those areas of environmental law and regulation that yields costly and nonsensical results. Developers pay dearly to restore and protect tiny, postage-stamp-sized wetlands with little or no ecological value. According to a study by DEP, 83 percent of these restoration efforts have failed.

Assuaging those fears has given birth to a constitutional monstrosity, namely the abandonment of private property rights.

Since 1993, developers have been able to buy wetland credits from groups called mitigation bankers. The bankers purchase large tracts of damaged wetlands, restore them, and sell the credits to developers who are then able to proceed with a project elsewhere. Having experts restore and protect larger tracts makes more sense economically and ecologically.

Nevertheless, finding that your property contains wetlands is the worst fear of any owner of a small tract. That swamp could mean the loss of your investment or your right to build your dream home. If you own



Wetherell wants to prove that a cooperative, incentive-based permitting scheme does offer the best of two worlds: environmental protection and economic progress.

upland property, land that is higher and drier, you're in luck—for now.

The major gripe most environmentalists have with ecosystem management is that it doesn't give DEP the power to regulate uplands. Furthermore, they are not pleased with Wetherell because she refuses to pursue that authority.

According to environmentalists, minus the flexibility to regulate both uplands and wetlands, ecosystem management is doomed to failure.

Here's the scenario they propose. Let's say you own 100 acres of land that includes 26 acres of wetlands and 20 acres of uplands. The wetlands are of marginal ecological value and therefore suitable for development. The uplands, on the other hand, are prime habitat for some important species.

As the law stands, regulators would have to protect the wetlands, but could do nothing to preserve the uplands, which might be 10 to 50 times more important environmentally. For ecosystem management to fulfill its promise, regulators should have the flexibility to let the owner develop the 26 acres of wetlands while protecting the uplands.

"There has to be flexibility and a degree of trust, a willingness to move in this direction on both the business side and the environmental side," says Charles Lee, senior vice president of Florida Audubon.

That degree of trust simply does not exist, however. Based on past experiences, business representatives believe that eventually regulators would insist on preservation of both the 26 acres of wetlands *and* the 20 acres of uplands.

Regulatory creep has always been the way of environmental protection. Among business people, there's a real concern that ecosystem management could easily turn into an exaction process. In return for flexible and expedited permitting, regulators will want more and more from companies.

The Beginning of Change

For business people, the new attitude at DEP represents a fresh start, although they wonder whether the new air will eventually stale. They also wonder why the efficient and amicable permitting process in ecosystem management should be considered a benefit as opposed to a norm.

Wetherell hopes it can become the norm. She wants to institutionalize the transformation of her agency so that it doesn't depend on her presence there. She wants to prove to other federal and state agencies that a cooperative, incentive-based permitting scheme does offer the best of two worlds: environmental protection and economic progress.

Barnett and his staff are providing consultation to four other states and one foreign country (Bolivia) that want to implement ecosystem management initiatives within their governments. He tells these other officials not to adopt Florida's program as their model, but to use Florida's method of cooperation among interested parties as their model.

While Wetherell and Barnett counsel patience, others are not willing to wait. "I want to be positive, but I think that if the attitude we apply to ecosystem management is wait and see, then I think it's going to crash and burn," says Lee.

In the last analysis, ecosystem management represents a fundamental shift from the old philosophy that business people must be punished because they gain economic benefits at the expense of the environment. It all seems to come to down to what is ultimately a false choice: either environmental pollution or economic pollution.

And so Virginia Wetherell continues her effort to prove to skeptical business people, environmentalists, and regulators across the nation that there is another alternative. ■

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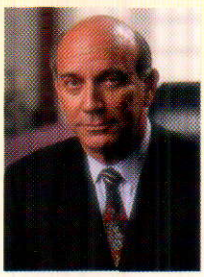

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An Interview with Virginia Wetherell, Florida's DEP Secretary

Employer Advocate: The environmentalists seem to object to any change. One of their arguments is that we've had this regulatory scheme for 30 years and it's worked so well, why change it? How do you respond to that?

Virginia Wetherell: Well, I would respond, "look around at the state of Florida and ask yourself, has it responded that well?" I think the answer is yes, in some respects it has. Our water quality has improved. We don't have any counties right now that are not in compliance with the federal air emissions standards. So we've seen some great improvements. And perhaps that command and control philosophy was appropriate, 30 years ago, when we had major pollution in this country. But we have made some great strides in environmental protection. The methodology needs to change. And as businesses become good corporate citizens, which I think 90 percent of the businesses are, they want to do the right thing, and as that has happened, command and control becomes inappropriate. We need to partner with them instead, and see what we can do together to do even further improvements on a voluntary basis.

The method I'm moving in is contrary to what a few of the more extreme environmental groups want. Now, there are some environmental groups who support what we're doing. The Nature Conservancy, Florida Audubon have said that they totally agree with ecosystem management. So, what we're brought up against are those very vocal, more extreme environmental groups who, because they had some success with the old way and because they want more regulation of private property, are not going to be happy with the department's new philosophy which is, let's work together to find solutions that will bring us even greater environmental protection, but do it in a way that is a participatory process with the citizens of the state.

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EA: How do you counter the criticisms of that small, but very vocal, segment on the fringe?

VW: We keep trying to bring these fringe groups into our discussion so they can hear it and they can get better informed and understand and perhaps support, but part of me says that they don't want to hear it. And part of it is membership drives, too. They have an organization based on the fact that they've got to find problems. So, if they work to support us, then they kind of lose a lot of the purpose of their membership. That's a pretty harsh statement to make on my part, but I think there's some of that membership drive out there.

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EA: There's been a lot of coverage in the newspapers lately about the decline in the number of criminal and civil prosecutions that DEP is pursuing. Explain the decline and what that means in terms of environmental protection.

VW: One of the results of having increased compliance, people understanding the rules and staying in compliance, is going to be fewer enforcement actions. And, if we're doing our job, we will have fewer and fewer enforcement actions. We have been measured in the past

"What should this agency be doing to help people get in compliance so that we don't have these pollution problems?"

by environmental groups and by the media by the number of enforcement actions we take. And I have to ask anyone who approaches me with this philosophy, "Does that mean we're doing a good job at protecting the environment by catching people who are polluting?" Or can we start to look at what should this agency be doing to help people get in compliance so that we don't have these pollution problems and therefore we don't have to have these enforcement actions. I think we're doing the right thing and I hope to see fewer enforcement actions. Now, if we aren't taking enforcement when we have a bad actor, then we're not doing our job. And I think if you look at the record since I've been here, we've taken an enforcement action which was the largest enforcement action in the history of this agency. So when we have a bad actor, we jump in there. I think we're really moving in the right direction.

EA: There are a lot of people in the business community who are still a little skeptical about all of this, whether there is any real change taking place. They wonder how long is it going to take before regulators slide back into the old pattern of business is the bad guys. And some of them also feel that the more cooperative, responsive permitting process, the team permitting that you're trying to do in ecosystem management, isn't an incentive. It should be the norm. What do you say to that?

VW: To the first part, which is the skepticism, I think that's very natural, given the adversarial relationship that's developed over the last 20 years. All I can ask is that they continue to work with us. And I think over time, the skepticism will go away if they look at the CF Industries success story or the Jack Berry success story. Follow those, follow the others that are developing and talk to those people. Then measure us based on that.

Now, in regard to whether or not this should be the norm—we don't have the luxury for it to be the norm in that the current regulatory system, at the federal level, is still the same. The EPA has delegated its air, water, and waste programs to the state of Florida. We have just about all of the federal programs delegated to us. But they're delegated to us in a very specific prescribed way. And we have to follow their way.

We've got to prove that this works, really, and be a model to the rest of the country before you're going to see a lot of change on the federal level. So, we've just got to do a great job. ■

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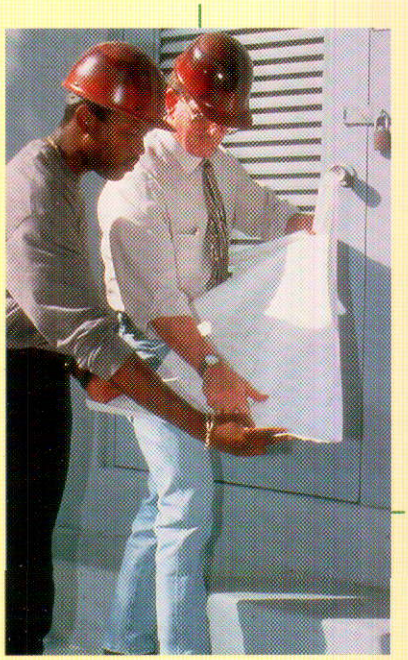

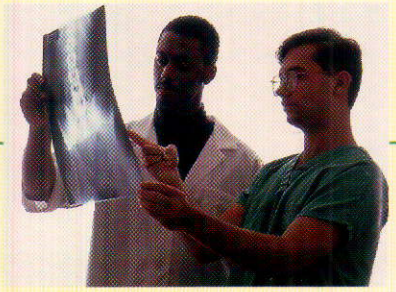

Refocusing Our Priorities

by the Honorable John L. Mica, U.S. House of Representatives (R-Fla.)

Protecting the environment is not the real question being debated in Congress. Every Republican, every Democrat, and the one Independent agrees that we must protect the environment and conserve our natural resources. The real debate is about changing our current philosophy of paying more but receiving less for our environmental protection dollars.

Republicans have long championed environmental protection. In fact, the federal Environmental Protection Agency (EPA) was created under President Nixon in 1970. Efforts by the Clinton Administration to portray bipartisan environmental and regulatory reform legislation as anti-environment are serious distortions of both fact and intent. All Americans—and all Republicans—support clean air, water, and land. However, we believe that for the amount of taxpayer dollars our federal government is spending, we are not receiving enough in the way of true environmental protection and cleanup.

Over the past few decades, our country has achieved great success in improving environmental quality. Today, however, our federal budget deficit of $5 trillion is placing severe constraints on how we spend our money. Our budget crisis is forcing us to make sacrifices and spend less as we seek to restore our fiscal house to order. We must reconsider our current approach to preserving our natural resources and find ways to obtain more effective environmental protection with our limited taxpayer dollars.

In addition, much of the federal government's environmental approach has been based on the assumption that a command-and-control regulatory apparatus from Washington, D.C., is the best way to care for the environment. With this philosophy we created an EPA bureaucracy that has made significant progress over the past two decades. Unfortunately, over time, this bureaucracy has grown unchecked, has lost focus, and today simply does not work well.

More and more of our resources are being diverted from protecting the environment to maintaining this bureaucracy. This command-and-control regime costs more than an estimated $170 billion annually, or over $6,500 per family per year. Furthermore, the legal thicket resulting from over 10,000 pages of environmental regulations issued by unelected EPA officials and bureaucrats leaves well-intentioned citizens confused and in doubt about whether they are complying with the law. The bureaucracy has also focused on trivial problems, has ignored more dangerous ones, and is now failing to ensure public health and safety.

Today we have layer upon layer of environmental rules and regulations, laws, agencies, and bureaucracies. In 1972, few states or local jurisdictions were involved in environmental enforcement. Now, 47 states and countless local governments operate competent environmental protection agencies. Meanwhile, EPA has grown into an army of 18,000 federal employees, with 6,000 regulators and administrators in Washington alone. Do we really need a duplicative federal army of regulators and administrators?

Even a cursory review of EPA's programs, particularly its hazardous waste cleanup efforts under Superfund, should spark alarm among environmentalists and taxpayers. Since Superfund's establishment in 1980, only a handful of the 1,500 sites on the National Priority List have been cleaned up. Under current law, most of the billions of taxpayers dollars spent on Superfund have only paid for attorney fees and studies.

Just as alarming, the General Accounting Office reported in August 1995 that EPA is not cleaning up sites that pose the greatest risk to human health and safety, but rather sites that are being selected based on political reasons. Bipartisan support exists to reform this ineffective and costly federal program and require polluters to pay.

Unfortunately, our reform efforts have been unfairly mischaracterized and attacked.

With the expiration of the 1979 Federal Clean Water Act, both Republicans and Democrats agree that certain provisions of this law also need to be reformed. City, county, and state officials from across the country have testified before Congress, and we have considered their recommendations for changes.

These officials testified to the absurdity of classifying dry western riverbeds as "swimmable and fishable" in the current law. They complained that requiring wetlands permits for desert parking lots did not make sense. Alaskan officials told of being forced to dump fish guts upstream just to comply with EPA testing requirements in their otherwise pure natural streams.

Even the mayor of Orlando, a city in my district, complained about the forced cost of removing certain naturally occurring substances at the beginning of the city's water treatment process and replacing them at another point—simply to comply with EPA regulations.

Reform is clearly needed, and we responded by introducing legislation to revise and improve the Clean Water Act. Unfortunately we were then besieged by a barrage of untrue and unfair accusations.

While proposed reforms to Superfund and the Clean Water Act have stalled, we have succeeded in correcting another bungled EPA program with passage of the Safe Drinking Water reauthorizations in both the House and Senate.

Under current law, EPA and local water authorities are on a "regulatory treadmill." EPA is required to arbitrarily issue regulations on 25 new contaminants every three years regardless of whether the contaminants are dangerous or even exist in local water supplies. Our bipartisan bill repeals this 1986 requirement and gives EPA, the states, and the public water systems the flexibility to focus their limited resources on the most dangerous contaminants— those that pose the greatest risk to human health and are likeliest to occur in a local water supply.

Our bill strengthens public health protection, reduces unfunded mandates, and increases the cost-effectiveness of one of our nation's most important public health and safety laws. While our accomplishment is encouraging, we must continue working to revise our environmental protection programs.

The 1994 congressional election sent the wake up call to Washington, D.C., that the American taxpayers are tired of big government imposing unnecessary and intrusive regulations on them.

Certainly our federal government must maintain and enforce high water, air, and land standards. However, it has become clear that maintaining EPA's one-size-fits-all policy does not recognize the topographical, ecological, or biological diversity of our vast country. It has also become clear that this approach is failing to make the best use of our limited tax dollars.

While we all want to live in a clean environment, the time has come to reexamine our approach, refocus our priorities, and reform our regulatory apparatus. With our limited resources, we must begin receiving more for our environmental protection dollars. We must continue to support a common sense approach to protecting our environment. We need reasonable, practical regulations that will govern our natural resources in a sensible, affordable, and effective manner.

Reckless charges by those interested only in preserving the status quo will not address serious flaws in our current federal environmental programs. Only by taking positive action and working together can we make an effective difference for our environment. ■

It has become clear that maintaining EPA's one-size-fits-all policy does not recognize the topographical, ecological, or biological diversity of our vast country.

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Changes on the Horizon?

A major overhaul of the Florida Constitution may only be a couple of years away and work to revise the document may begin as soon as spring 1997.

When the Florida Constitution was revised in 1968, the newly created Article XI, Section 2, provided for the convening of a constitution revision commission 10 years after the adoption of the 1968 revision and every 20 years after that.

So it is that we find ourselves facing the first of the scheduled revisions in the 20-year cycle, perhaps in a way not anticipated by the crafters of the 1968 document.

Article XI, Section 2 prescribes the jurisdiction of the commission and establishes a time frame for completion of its work. Specifically, the commission is to examine the constitution except for matters relating to taxation for the state budgetary process, and is to have any proposed amendments completed and ready for ballot placement not later than 180 days before the general election.

This last provision, if strictly adhered to, poses a timing problem that would actually require the commission to produce its work product in May 1998, one month *before* it is scheduled to convene in June 1998. When such a problem presented itself to Gov. Reuben Askew in 1977, he requested an advisory opinion from the Florida Supreme Court on how best to implement Article XI, Section 2. The court wisely suggested that the commission convene after the 1977 regular Legislative Session, thereby allowing itself ample time to complete its work before the general election in November of 1978.

During the 1996 Regular Session, the Legislature sought to make the Supreme Court's suggestion official with the enactment of a joint resolution, SJR 210, by Sen. John Grant (R-Tampa).

The joint resolution also removes the restrictions that prevent the revision commission from reviewing matters relating to taxation and state budgets so that it will be empowered to review the whole of the Florida Constitution.

These two changes will go into effect if the joint resolution is ratified by a majority of electors who vote on it during the upcoming general election. If past experience is any gauge of how voters will behave, it is likely that the electorate will ratify the proposal, ensuring its incorporation into the Florida Constitution. That means that by June 1997, the 37-member commission will be up and running.

Choice and prescription will play a part in determining who sits on the commission. Bob Butterworth, as the attorney general, will automatically be a designated member. Fifteen members, including the chairman, will be chosen by Gov. Lawton Chiles. Nine members each will be chosen by the Senate president and the House speaker. Three members will be selected by Chief Justice Gerald Kogan after consultation with the other Supreme Court justices.

What this eminent and comprehensive review of the constitution represents for AIF and the business community is a rare opportunity to positively affect the document that embodies the fundamental principles by which we govern ourselves. From recommendations about who should be appointed to the commission to suggestions about what changes should and should not be made to the state's constitution, it is not too early for Florida business to consider what it hopes to accomplish through the work of the 1998 Constitution Revision Commission. ■

by Diane Wagner Carr, Vice President & Assistant General Counsel

by Mary Ann Stiles, Senior Partner of Stiles, Taylor & Metzler, P.A. & AIF Workers' Compensation Consultant

Security Measures for Judges

The 1996 Legislature funded a recommendation by the governor to appropriate $651,000 to implement security measures for judges of compensation claims and their offices. Judges of compensation claims decide and adjudicate issues relating to injured workers and employers. Up to this point, they have not had adequate permanent security measures at their offices for protection while conducting hearings or daily business.

There have been many instances of potential and actual threats against judges and their staff that resulted in concerns about the continued security of the judges, their staff, witnesses appearing on behalf of employees and employers, as well as legal counsel for both sides.

Florida Supreme Court Marshal Wilson E. Barnes demonstrates security measures already in place at the state's high court.

Judges across the state have reported incidents of disgruntled claimants making threats against them because of the way they adjudicated disputes. The inadequacy of previous security even led at least one judge to purchase a pistol and complete the training for a concealed weapons permit. The lack of formal security resulted in suspicious or threatening conduct by individuals that caused apprehension about whether state officials would take any action to appropriate funds for protection of participants in the workers' compensation system.

For the past two years, AIF actively lobbied the Department of Labor, the governor's office and the Legislature to provide funding for security. The funding was also supported by the Worker's Compensation Oversight Board, a labor and management committee that is responsible for recommending improvements to the compensation system. In addition, the Workers' Compensation Section of The Florida Bar also supported funding for this purpose.

The Legislature included an appropriation of $651,000 in the budget this past session. Chief Judge Shirley Walker will be administering the implementation of the funding. Judge Walker plans to hire permanent, either public or private, security officers who will be available for the immediate curtailment of any threat to state officials, counsel, or witnesses. In addition, the funding will be used to purchase either stand-alone metal detectors or hand-held metal detectors that will be used by the security officers. Judge Walker is currently deciding how to protect offices that have multiple entrances to allow continued freedom of access while insuring the safety of people in the offices.

This summer, in incidents in two separate parts of the state, attorneys in this firm had to arrange for security measures at mediation conferences they were scheduled to attend because of concerns about the safety of the participants. Those types of extraordinary measures should not be necessary once appropriate procedures are in place in all the offices.

Judge Walker anticipates that security will be operational by the end of the summer. Employers frequently are required to appear as witnesses at these hearings and security will enhance the confidence and the comfort of all witnesses and participants.

Expenditure of funds for this purpose is a long overdue development and sorely needed for the system. Fortunately, the Legislature finally listened to AIF on this issue before some serious incident occurred that may have resulted in serious injury or death.

A Calculated Change

During the 1996 Session, the Florida Legislature made several changes to the unemployment compensation law. The most significant change, which relates to the methodology for establishing eligibility and calculating benefits, institutes the high quarter method for establishing eligibility and weekly benefit payments.

High Quarter Method

Prior to the effective date of the new law, in order for a claimant to meet the monetary eligibility criteria for receiving benefits, he had to have worked 20 weeks during the 52-week base period and had earnings of at least $400.

Since part of the eligibility criteria relied on the number of weeks worked, the administrative burden was placed on employers to report that information for each employee. There is no similar reporting requirement for employers filing annual federal unemployment (FUTA) tax reports. Additionally, only five states (including Florida) still used a benefit formula based on weeks worked.

Effective July 1, 1996, an individual's weekly benefit amount is calculated by taking one-twenty-sixth of the total wages paid for covered employment during the quarter of the claimant's base period when wages were highest—hence the name high quarter. Under the high quarter system, an individual must have earned at least $3,400 in the 52-week base period and must have wages in the base period equal to one and a one-half times his high quarter earnings.

This change is not expected to significantly alter the benefit qualification threshold; those claimants qualifying under the old system should qualify under the high quarter system and those who would not qualify under the old system should not qualify under the high quarter system.

The high quarter method, on the other hand, will help reduce the administrative burden on employers because they will no longer be required to report the number of weeks worked for each employee when filing quarterly unemployment tax reports pursuant to state law. By only having to report wages earned per quarter, Florida employers will now report to the Florida Department of Labor the same information, in the same format, as that reported to the IRS for federal unemployment tax purposes.

The new law also makes the following additional changes to the procedures for employer tax rate appeals, voluntary contributions, and "common paymaster" arrangements.

Tax Rate Appeals

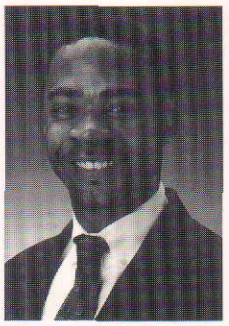
Effective July 1, 1996, employers now have 20 days to protest tax-related determinations made by the Bureau of Tax. Under prior law, employers were limited to 15 days. The new 20-day time limit now conforms to the 20-day time limit allowed for protesting the payment of unemployment benefits to former employees.

Voluntary Contributions

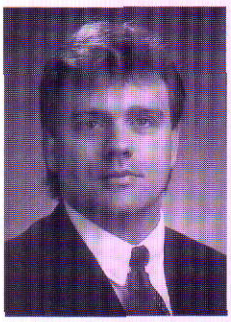
With the exception of new employers, unemployment compensation tax rates are based on experience; more former workers collecting unemployment benefits translates to a higher tax rate. The new law provides limited relief for employers facing higher tax rates by allowing them to make voluntary contributions in lieu of a rate increase.

Common Paymaster Arrangements

The new law allows for "common paymaster" arrangements, conforming Florida law to federal regulations. These regulations permit two or more related corporations that share the same employees to combine the wages of those employees for the purposes of the taxable wage base. The common paymaster reports wages and pays taxes on the shared employees. This reduces the tax liability associated with wages paid to shared employees. ■



by Kevin R. Neal, Assistant Vice President, Governmental Affairs



by Stephen B. Trickey, Senior Vice President & Chief Operating Officer, Florida Business Network

Will the Information Superhighway Influence the 1996 Elections?

Right now, there are probably dozens of conferences, meetings, and expos underway all over the country, examining either the significance of the Information Superhighway or how and why to use it. These meetings are most likely attended by database professionals, technical support people, and the omnipresent computer junkies.

At the same time, there are smaller but much more intense meetings being held in various hideaways in Washington, D.C., and capitol cities across America by political leaders. Their purpose? To discover the best means to exploit the capacity of the Internet, and other information sources that derive from the Internet, for their political purposes. This is an appropriate and smart action for them to take.

It would also be an appropriate and smart action for those of us who participate in the elections by way of voting for and contributing to candidates.

Let's start with the Internet. There are literally hundreds of Internet sites that do nothing but provide information on the 1996 elections. Some of the best sites are operated by media sources such as the *Washington Post*, ABC News, CNN, C-Span, and *Time* magazine.

These sites make an enormous amount of information available with the click of your mouse. You can visit the *USA Today* political site and get recent poll results. Browse through the *Time* and *Washington Post* sites and read the most recent political commentaries. Skip over to the Federal Elections Commission site and find out the latest contribution totals for all federal candidates.

Yes, there is plenty of information for anyone interested in the presidential or congressional races. But what about Florida politics? Granted, there isn't the same level of information available; nevertheless, the rusty iron gate that sequestered information on candidates and campaigns has been unlocked.

The gate was nothing more than the lack of a medium to disperse vast quantities of data that traditional media had no interest in reporting. It was opened through a partnership between state government and private industry. This partnership is crucial on the state level because there isn't an organization like CNN or ABC News to give national-level coverage to Florida.

Kudos have to go to Secretary of State Sandra Mortham for sticking to her 1994 campaign promise to make more information available. She understood what all of us on the private side have faced for years; that when it came to election information the word "available" was misleading.

Sure the information was "available"—if you had half your life to go the 18th floor of the Capitol in Tallahassee and wait in line while some overworked clerk dug through a file for a report. Oh, you wanted all reports on many candidates? Bring meal money, a cot, and you might get lucky.

The Florida Business Network (FBN) changed all that with its coverage of the 1992 election. That year, we took a big step by simply providing basic information on all candidates, including bios, addresses, phone numbers, etc. It may not sound

like much, but believe me, in 1992 it was the cat's meow.

In 1994, FBN broke new ground by developing a database that listed nearly every contribution for every candidate running for the state House and Senate. Furthermore, we had search capabilities that allowed the user to find who gave how much to what candidate, when they gave it, and where they were from.

We also developed a comprehensive occupation category listing that would tell you how much a candidate got based on the occupations of the contributors. In other words, we could tell how much money candidate "A" received from the legal or medical professions as well as from those in specific industry categories.

We believe FBN provides the information it gathers better than anyone in the country. This is true because our users are normally people who, for one reason or another, have a professional interest in the information. They are law firms and lobbyists who work in the legislative process; they are campaign managers and candidates; and, most importantly, they are business people from across the state who have to keep up with how government influences their operations.

This large, yet specific, segment of users are the bread and butter of our operation. However, AIF has always maintained that anyone and everyone should have access to this same information. This makes for informed citizens and better participants in the election process.

As a matter of fact, were it not for the financial obligations that running a complex operation like FBN entailed, we would have freely given the data to anyone who wanted it years ago. This is why we have been such avid supporters of the state's efforts to release its information electronically.

The state Division of Elections (under the guidance of director David Rancourt and his computer staff, headed by Sandy Brill) has developed a wonderful contribution database on Florida candidates.

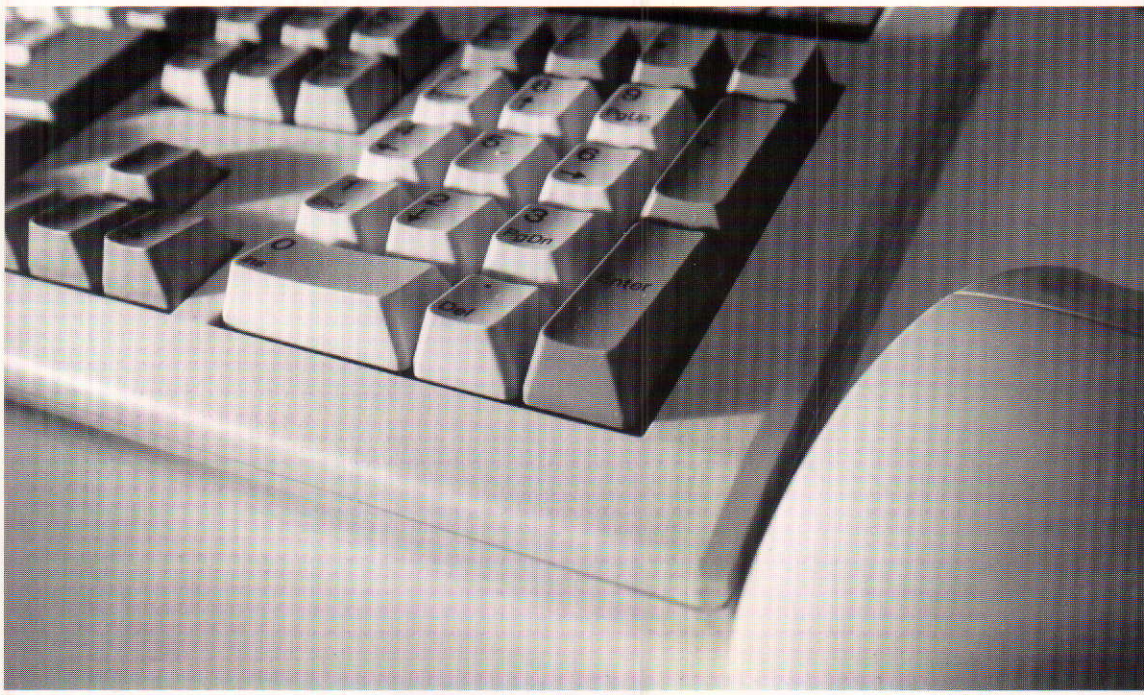
Will the state's free information hurt the efforts of private sector on-line systems like FBN? If I had a dollar for each time someone called to ask if I was worried that FBN would be devastated by the release of free information from the state, I could retire.

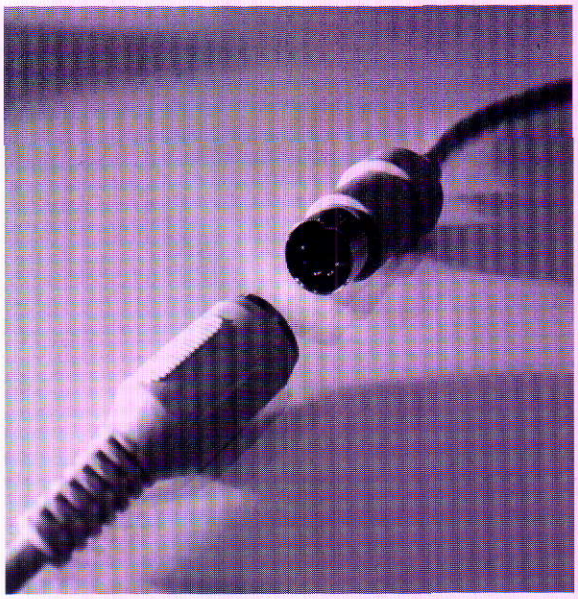
If FBN's sole purpose was to make money the easy way, then, yes, we would be concerned about free information coming from the state. But the real purpose of FBN is to take the very same information that is released by the state, reformat it, link it, and combine it with other types of information.

In other words, we use our expertise to improve the basic data and then make it available to the business community and others involved in the governmental process.

For example, let's say you are citizen "A" and you are curious about who contributed to the campaign of your state representative. You could take advantage of the Division of Elections

Through the FBN on-line system, accurate candidate data is available in a user-friendly manner — with the touch of a button, voters can make more informed choices.





Elections involve the give and take of information — the Internet enhances those connections between citizens and candidates.

Internet site to get your answer easily and quickly.

But let's say that you are businessman "B" who has been solicited for a contribution by this same state representative and you want to find out if this guy supports business issues. FBN is the only place to get that answer.

Like the state system, FBN would allow you to find out who has given money to that candidate. But, with FBN, you could then get every vote he has cast on business issues (going back to 1979). You could search our data base of major newspapers to find articles about him. All of this can be done in a matter of minutes.

So, in a nutshell, we are happy that the state is making more of its information available so that anyone, regardless of his level of involvement in the process, can find important basic information. That has always been a goal of AIF.

The state should make the information available, but it's up to private vendors to organize and analyze the data for specialized purposes.

So back to the main question in this article. Will all this information make a difference in the 1996 elections? When you think about it, the Internet, as a public resource, is a new invention. Like all inventions, it is only as good as the benefits it offers and the way it is used.

For years, the delivery of campaign information was a one-way street. The professional media controlled what they would and would not report. Campaigns decided what information they would release. And citizens took what they could get.

Now, that burden of discovery has shifted to all of us. It is up to us to use the Internet to find out as much as we can before we make a decision about who we plan to support for national, state, and local offices. In Florida, we can take advantage of the state's efforts to provide basic data and FBN's efforts to provide value-added specialized data to acquaint ourselves with candidates before we put them in office.

Over the past 20 years, discontent with the people and the system of politics has grown. Yet, incumbents are still virtually guaranteed re-election because their names are familiar. Candidates are still getting elected without opposition. It is true that elections are driven by TV sound bites, slick brochures, and high-priced campaign consultants.

All these new sources of information allow us to stop the train and put it on a track we choose. We can use a system like FBN to find out how they really voted and what they really support. We can go to the Internet and take advantage of all the data, commentaries, and polls on a national level.

Furthermore, we can do this on a schedule that is convenient for us, in the comfort of our own homes. Frankly, it isn't going to get much easier than that. So, use your computer to help you make better decisions. If you don't have a computer, go to the local library; there should be one there that will allow you to get to the Internet.

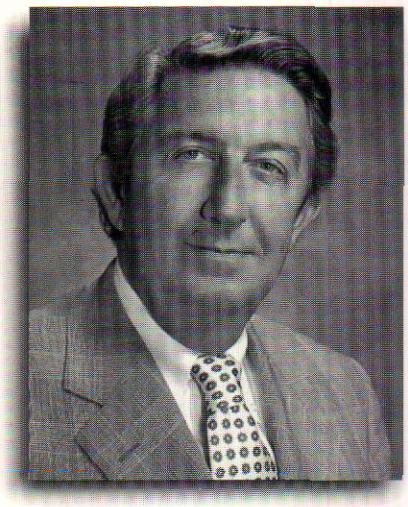
Your participation will show the information providers that you want and need the information they are making available, giving them a reason to continue providing it.

It will show the candidates, campaign managers, and political parties that you are watching, that they better say what they mean, and mean what they say. Because, if they don't, the citizens will find out about it.

AIF Remembers Past Chairmen

On July 16, 1996, Associated Industries lost a true friend and leader with the passing of H.M. "Mack" Evans Jr.

Mr. Evans was a gracious, warm, soft-spoken man. Of all his good qualities, however, the one that stands out is his loyalty.



H.M. "Mack" Evans Jr.
1926 - 1996

At the time of his death, Mr. Evans was the chairman of Williamson Feed Mills in Jacksonville, Florida. He began his employment there in 1948. He served on AIF's Board of Directors for 19 years; he was elected chairman in 1994.

His tenure as chairman came at a crucial time as the business community faced pitched battles against trial lawyers in the Legislature and the courtroom. From eliminating joint and several liability to challenging Florida's Medicaid Third-Party Liability Law, Mr. Evans gave firm and confident support to the association's efforts.

He could always be counted on to find the time to attend board meetings and take care of association business. Although ill with the cancer that would take his life, Mr. Evans took part in his last board meeting on March 5, 1996.

Mr. Evans was also an amateur painter and dedicated community leader.

He will be missed by his family, friends, the people of Jacksonville, and all us at AIF.

It is with great regret that we also mark the loss of another friend of AIF.

Randy Thomas, who passed away in June, founded McDuff Appliance Stores in 1944, and served as the chairman of the board and CEO until the company was sold to Tandy Corporation in 1985. Mr. Thomas also owned extensive real estate holdings throughout Florida.

He lent his knowledge and expertise to the business community by serving on AIF's board of directors from 1970 to 1996, including one term as chairman in 1977-1978.

Randolph R. Thomas
1918-1996

Mr. Thomas was more than an astute businessman. He served his community with dedication and vigor. He spent three terms as the chairman of the Jacksonville Port Authority. He devoted energy and leadership to a number of charitable organizations, including the Big Brothers of America and the national board of trustees of the Leukemia Society.

He was a 33rd degree Scottish Rite Mason and a potentate of the Morocco Temple of the Shrine.

All of us at AIF offer our condolences to the family and friends of Mr. Thomas.

by Lytha Page Belrose, Program Administrator, Florida Business Partners for Prevention, Florida Department of Juvenile Justice

Florida Businesses Recognized for Juvenile Crime Prevention Programs

Gov. Lawton Chiles announced the winners of the 1996 Governor's Community Investment Awards at a special ceremony held in the cabinet meeting room on March 27, 1996. These awards were created in 1995 by Gov. Chiles, Florida Department of Juvenile Justice Secretary Calvin Ross, and the Florida Business Partners for Prevention to recognize and honor business leaders for their voluntary involvement and initiative in creating positive alternatives to crime for Florida's youths. These businesses have invested time and resources in programs that help youths at risk of becoming involved in the juvenile justice system.

According to Ross, "The Florida Business Partners for Prevention is a public/private partnership providing business expertise that benefits the department's decision-making process, in areas such as capital improvements, quality assurance of prevention and intervention programs, management information systems, siting facilities, and education and job training for juvenile offenders."

Nearly 200 highly successful programs were nominated for the 1996 awards program, doubling the number nominated the first year. Seven companies, representing eight separate initiatives to provide young people with positive outlets and alternatives to criminal behaviors, were selected to receive Governor's Community Investment Awards. The young people served by these programs range in age from preschool to college.

"These eight programs alone have served more than 3,700 youths," said Ross, "All of the winning programs have very good track records of helping our target population of at-risk youths."

If your company is voluntarily providing time, talent, or resources to a juvenile crime prevention or intervention program, please contact the Florida Business Partners for Prevention office at (904) 921-5900 for a copy of the 1997 Governor's Community Investment Awards nomination form. The postmark deadline for submitting the form is Jan. 10, 1997.

Winners of the 1996 Governor's Community Investment Awards

Corporation Category

JM Family Enterprises, Inc., located in Deerfield Beach, sponsors the Youth Automotive Training Center & Florida Ocean Sciences Institute. Founded in 1984, the training center provides an intensive nine-month educational and vocational program for 20 young men and women to learn the skills necessary for a career as an automotive technician. Today, 96 percent of the graduates are employed.

Franchise Category

McDonald's Restaurants, located in Tampa, sponsors Caspers Company. The company has provided speakers and employment trainers for as many as 50 youths a day. Twenty percent of them have been or are employed by the company.

Independent Business Category

Edward J. Gerrits, Inc. (d.b.a. Gerrits General Contractors), in Miami, sponsors the

Gerrits Leprechaun Boxing Gym. The company purchased and renovated a building to create a boxing gym for youths. There is no fee for membership. The 75 youths who are members now are simply required to remain drug-free and out of trouble with the law. The gym has produced five top-10 ranked professional fighters and 25 amateur champions who started boxing as children in the program.

Non-Profit Organization Category

Jacksonville Jaguars Foundation sponsors the Honor Rows Program, which provides local youth service agencies with rows of Jaguar football game seats as incentives to encourage and reward youths for reaching goals. In 1995, 1,332 youths were awarded seats and game experiences.

Governor's Special Recognition Category

Pratt & Whitney Government Engines & Space Propulsion in West Palm Beach sponsors two programs: the Juvenile Justice Role Model Project and the Career Advancement Program. The Role Model Project provides stipends to students who are working toward degrees in the juvenile justice field to offer a pool of professionals well-trained in delivering services to at-risk youths, working in partnership with the Florida State University. The Career Advancement Program (CAP) diverts at-risk youths with full-time employment and vocational training for two years. When each CAP participant completes their two years, Pratt & Whitney assists them with finding new full-time employment.

Governor's Special Recognition Category

The law offices of Holland & Knight, with headquarters in Tampa, sponsors a program called Opening Doors for Children, which uses innovative volunteer programs and the majority of the Holland & Knight charitable resources to tutor and mentor at-risk youths and their families for an extended period of time in the nine communities where an office exists, involving 100-150 employees.

Governor's Special Recognition Category

One hundred and twenty five different businesses in Brevard and Seminole counties work with the state attorney's office in Titusville in the Project Pay-Back Program. This is the only program currently existing that approaches victim restitution with the intention of holding juveniles solely accountable for their crimes. Juveniles work with one of the 125 businesses nominated to reimburse the victims of their crimes. ■

Building Community Through Culture

by Mary J. Brogan,

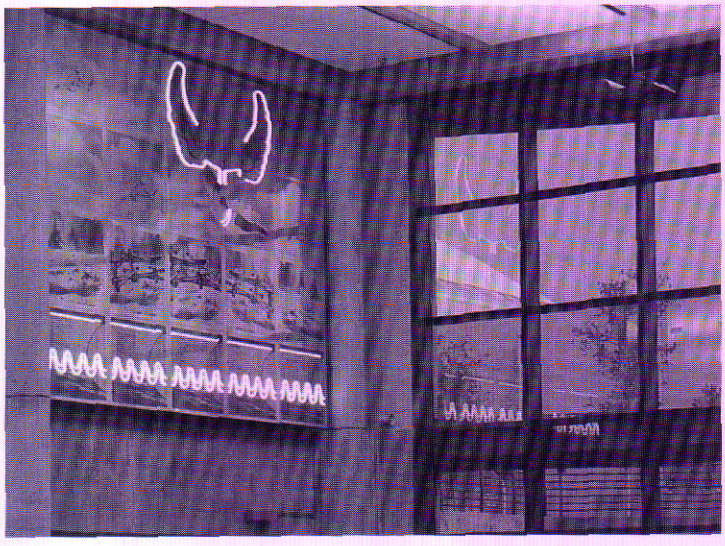
Campaign Co-Chair,

Capital Cultural

Center Campaign

Not only does Florida have an inviting climate, beautiful beaches, and a relaxing atmosphere, it has wonderful people who join us from all over our great country and from all around the world. The respect of culture and other related experiences in our state exemplifies a true interest in supporting our precious resource, the people of Florida.

Having been an educator and an admirer of the arts throughout my lifetime, I truly believe cultural experiences enhance life. The cultural arts enrich our daily existence in many ways. They assist us in understanding so much about living in our world. The arts are essential to the development of people of all ages in our communities. Many of us, in this busy age, turn to cultural experiences as a way of spending meaningful moments of leisure. The arts enhance education, not only within the classroom, but throughout the entire community.



Many view support of the arts and culture as an extravagance when so many other problems call for attention. Nothing could be further from the truth. Culture creates civic bonds and elevates the citizens.

The promotion of cultural experiences will not solve all the challenges we face as a community, but it will assist in raising the educational level and strengthen the understanding of others. The culture of a society is a snapshot of civilization and can be most beneficial in cultivating improvements for the future of our state.

Throughout our state, centers of cultural enhancement provide a clear expression of civic pride and have positive consequences on economic development, education, tourism, and the rejuvenation of many communities. Consider the benefits to Florida.

A greater ability to attract and retain new business and industry

Residents, tourists, and business prospects alike expect a certain level of cultural amenities when contemplating Florida as a home or destination. The cultivation of cultural experiences through the performing arts and visual arts make Florida more competitive.

In this day and time, we find many business entities utilizing culturally enriching projects as a means of enhancing the lives of employees and customers within a community.

More than ever, businesses are recognizing the talents of their employees and are nurturing these talents as a means of inspiring creativity, innovation, productivity, and problem-solving skills.

A stronger sense of community spirit is developed within a diverse workforce through the availability of cultural activities. A healthy sense of belonging to a community is a positive catalyst for progress within the world of business and industry.

A stronger education system

Florida's communities, like most communities throughout the nation, strive to provide a quality educational experience for people of all ages. Along with the basic curriculum, exposure to the arts within our communities promotes a well-rounded individual. Cultural experiences throughout our state enhance the educational level of our citizenry.

Studies concerning the experiences of young people with art and cultural activities have proven the value of supporting cultural affairs in our communities. Students who have had culturally enriching experiences are more likely to score well on standardized tests and less likely to enter the criminal justice system.

Increased tourism and convention trade

The presence of art and cultural amenities greatly increase the interest of tourists and those searching for convention sites.

Enhanced development of our cities, towns and neighborhoods

Vital, dynamic centers of culture stimulate new entrepreneurial ventures and promote the restaurant and retail trade. Regional development is augmented through the patronage of culture-related centers.

Improved cultural and educational enrichment

The Legislature has dubbed Florida "The State of the Arts." This designation promotes an area of responsibility for Floridians to embrace: supporting cultural and educational efforts that will enable our state to become a leader in educationally enriching endeavors for the betterment of our society.

At present many progressive Florida cities, including the capital city, have accepted the challenge to move toward the cultural enhancement of their communities. Tallahassee is a city of endearing contrasts. It is nestled among gently rolling hills dotted with plantations, magnolias, and moss-covered oaks and is also influenced by the nearby Gulf of Mexico and the Florida Panhandle.

Driven by the power of state government and esteemed academic institutions, Tallahassee is, at the same time, touched with the soft southern influences of charm, beauty, and gracious hospitality. As the gateway city for many visitors, it has endeavored in recent years to improve cultural amenities to a level comparable with other capital cities. Today, thanks to a bold vision and creative partnerships, a cultural center is emerging in the heart of the downtown community.

Like so many other Floridians, I came from somewhere else. A native of Cincinnati, Ohio, I moved to Martin County in 1970. When my husband was elected commissioner of education two years ago, we moved to Tallahassee. At that time, Florida's capital was one of only two state capitals that didn't have a cultural center, but residents here had already begun the work needed to remove themselves from that list.

Scheduled to open next year, the Capital Cultural Center will bring hands-on programming in science, technology, and mathematics, as well as high-quality visual art experiences, to all of the city's citizens and visitors.

As an educator, I know the benefits cultural centers provide to students of all ages. Your support will help to expand cultural, educational and entertainment horizons throughout our state. Your involvement will enrich the quality of life now and for generations to come within Florida. ■

For more information on the Capital Cultural Center, please contact the campaign office at (904) 671-4888.

Students who have had culturally enriching experiences are more likely to score well on standardized tests.

CHPAs: Affordable Health Care For Small Business

by George E. Lackman Jr., Vice President - Corporate Development, First Union Bank of Florida & Area 6 CHPA Chairman

Recently marking a second anniversary, Florida's Community Health Purchasing Alliances (CHPAs)—the "chippas"—are breaking down the barriers to affordable, high quality health care coverage for Florida's small businesses. In fact, never before has health insurance been so affordable, so accessible, and so simple.

Locally-based non-profit corporations, the CHPAs pool the buying power of small businesses and the self-employed to purchase high-quality health care coverage at the best rates. The CHPAs were established to put health insurance within reach of small businesses with 50 or fewer employees—representing 90 percent of Florida's work force. Today, more than 17,000 small businesses benefit from the program, covering nearly 77,000 employees and their families statewide. Of those now served by the CHPAs, more than half were previously uninsured.

Through the CHPAs, Sunny Manufacturing, Inc., a Longwood small employer, is saving $676 a month and providing health care coverage to more of its employees than ever before. The company's comptroller, Harold Klein, personally went without health care coverage for four years because of the out-of-reach costs.

Like many CHPA members, Klein cites quality coverage options, choice, administrative advantages, and cost savings among the major factors in selling their businesses on the CHPAs.

Quality Coverage Options

The CHPAs offer access to dozens of the nation's largest and most reputable insurance carriers. Coverage options include health maintenance organizations (HMOs) and preferred provider organizations (PPOs) with a variety of coverage choices. Benefit packages include a basic plan, a standard plan, and the newly-introduced, richer-in-benefits plus plan. Even under the basic plan, the benefits are comprehensive, ranging from doctor visits and prescription drug coverage to mental health and hospice services.

Choice

Choice is a CHPA hallmark. The CHPAs are the first and only insurance option that allows each employee to choose a different plan, even a different insurance company. Employers have the option of which plans to offer. Most employers allow their employees to select from among all of the available plans.

Administrative Advantages

No matter how many different plans employees choose, employers receive only one invoice and write only one check each month. The CHPAs also make it easy to quickly compare rates on identical coverage with one toll-free telephone call to (800) 4MY-CHPA.

In presenting quotes, the CHPAs rank all available plans, from lowest priced to the highest, clearly profiling options from dozens of different insurance companies in an easy-to-understand format. The CHPAs also guarantee stable rates with no increase for a full year.

Cost Savings

As a result of recent reform initiatives, health insurance policies for groups of 50 or fewer employees are "community rated." All employers in the same community pay the same premium for identical policies regardless of claim volume or utilization. By law, small group rates may vary based only on age,

gender, county of residence, number of dependents, and tobacco usage.

The CHPAs offer competitive group rates on quality plans by recognized national insurers. The savings are often substantial, ranging from 5 to 30 percent as compared to traditional insurance plans.

Looking Ahead

The CHPAs are working to maintain price competitiveness, introduce new plans, attract a higher volume of new business, and enhance consumer services.

New features include "composite rating." Businesses with at least 10 participating employees can have their rates averaged into a single premium rate. Previously, different rate groups paid different rates. This new option further simplifies adding or subtracting coverage during the contract year.

Employers who hire workers through leasing companies now have more options too. If the leasing company does not offer coverage, the employer can cover leased workers through the CHPAs. Some CHPA insurers also allow the employer to forego coverage through the leasing company in favor of coverage though the CHPAs.

Development of a computerized directory is under way to provide more information about local doctors, hospitals, and other providers accessible through each CHPA plan.

The demand for greater value and quality has led the CHPAs to launch a new consumer satisfaction study among a sampling of its members. The results, expected to be released by year-end, will help employers and their workers make more informed choices about their health care.

Small businesses will also soon be able to shop for health insurance on the Internet with the new CHPA Home Page scheduled for release this fall.

We've all paid the price for Florida's huge uninsured population. The cost of caring for the uninsured is almost always shifted to hospitals, to taxpayers, and eventually to the insured via higher premiums. The CHPAs have made significant inroads into extending coverage to the uninsured, saving taxpayers an estimated $21.9 million in otherwise uncompensated hospital care.

The CHPAs also now generate more than $102 million in annual premiums. Consequently, the program has increased competition and sparked lower health care costs for all employers along with a healthier, more productive work force. ■

For more information or for a customized rate quote, call your insurance agent or (800) 4MY-CHPA [(800) 469-2472].

The CHPAs offer competitive group rates on quality plans by recognized national insurers.

by David P. Yon,

Executive Vice

President & CFO

Surprise — That's an Employee!

Be forewarned: trouble will ensue if the Internal Revenue Service decides you have more employees than you say you do.

One of the IRS's most significant compliance issues is whether a worker is an employee or independent contractor. Why is the IRS so interested in this subject? The answer is that a big pot of tax dollars is at stake.

Reclassification of independent contractors as employees can have devastating tax and other consequences for small and large businesses alike. The resulting tax assessments, penalties, and interest can bankrupt an otherwise successful business! In four recent years, 6,900 employment tax audits resulted in $468 million worth of proposed assessments—an average of almost $68,000 per audit.

Independent Contractors

Accountants, lawyers, builders, and other professionals are examples of independent contractors; they actually run their own businesses and have other clients. They set their own hours and methods for performing a job or fulfilling an engagement and don't necessarily have to report to the employer on a regular basis.

Employees

Generally, if workers have their work hours set for them, have their tools provided, are told what to do and how to do it, and can be terminated, they are employees. Working full time or part time makes no difference, nor does allowing them the freedom to get the job done any way they choose.

It also doesn't matter if they are called independent contractors in a contract. If they meet the IRS employee rules, they are considered employees.

Responsibilities of Contractors

When a person is hired as an "independent contractor," there are several things that must be done to avoid difficulties with the IRS. These are:

- File form 1099 with the IRS and give a copy to the independent contractor.
- Keep good records on each worker, including address, Social Security and/or employer identification number (whether independent contractor or not).
- Maintain a record of payments to workers, showing dates paid and taxes withheld and deposited (if any).

Tax Consequences

If workers are classified as employees, the employer must pay half the FICA taxes and withhold the other half (along with federal income taxes) from the employee. The employer must also pay federal and state unemployment taxes on its employees. The failure by an employer to properly withhold and remit withheld income taxes, along with the employer's and the employee's portion of FICA, almost always results in underpayment and late payment penalties as well as interest.

The IRS moves quickly and surely where payroll taxes are concerned; the agency views these as employees' funds and imposes a fiduciary liability on the employer. The liability for unpaid payroll taxes, penalties, and interest is not limited to the corporate level; certain corporate officers and/or owners can be held personally liable for unpaid payroll taxes, penalties, and interest.

Employee Mandates and Thresholds

The Occupational Safety and Health Act of 1970 (OSHA), the Employee Retirement Income Security Act of 1974 (ERISA), and the Americans with Disabilities Act of 1990 (ADA) impose compliance costs on a business when the number of employees exceeds certain levels. The con-

sequences of having workers reclassified as employees include the assumption of responsibility for nondiscrimination and coverage requirements for company pension and profit-sharing plans and for workers' compensation purposes.

Workers' Compensation

Workers' compensation typically does not cover workers classified as independent contractors since they are not on the company payroll. Since workers' compensation premiums can be a business's largest insurance outlay, some companies attempt to reduce this cost by classifying workers as independent contractors.

There's a catch here, however. Workers' compensation provides limited compensation in the event of an accident. Workers *incorrectly* classified as independent contractors may sue for damages in a civil suit where the employer will not have the protection of the workers' comp system.

Pension and Profit-Sharing Plans

Retirement plans are not considered tax qualified (and therefore eligible for favorable tax treatment) unless they meet minimum funding and other waiting and age requirements.

If these coverage requirements are not met due to unforeseen circumstances, such as reclassification of employees, failure to satisfy nondiscrimination tests may result in the loss of favorable tax treatments and of corresponding tax deductions for plan contributions. And, as if this wasn't enough, the employees in the plan may lose their tax deferrals and the workers who were improperly classified as independent contractors may bring action against the employer under ERISA for being wrongfully excluded from the plan.

Providing a "Safe Harbor"

The IRS has a set of criteria called a "safe harbor" that, if adhered to, provide assurances that workers are properly classified. These criteria are based on the relatively new Section 530 of the Internal Revenue Code and the traditional 20-step test.

Internal Revenue Code Section 530 precludes the IRS from retroactively correcting erroneous classifications of workers if an employer consistently and in good faith classified them as independent contractors. Of particular importance here is industry practice. This section applies if an employer has:

- not treated the worker as an employee in the past;
- consistently treated the worker as an independent contractor on all documents maintained and returns filed (contracts, Form 1099, etc.);
- some reasonable basis, such as reliance on authority, prior IRS audit, or industry practice, for treating the worker as an independent contractor; and
- not treated another worker in a similar position as an employee.

The most traditional criteria for determining the classification of a worker is the IRS 20-point test. Generally, the more "yes" answers there are to the 20 questions, the greater the likelihood that the worker is an employee and not an independent contractor. If you have questions about the criteria, contact the IRS to obtain a copy of the list.

New Developments

Recently, the IRS announced three major initiatives designed to assist employers in their classification of workers.

1. *Classification Settlement Program.* This will offer qualified employers up to an 87.5 percent, sliding-scale discount on back payroll tax liability to settle classification issues. To qualify, generally, an employer must have filed form 1099 but does not, necessarily, have to meet the other requirements of Section 530.
2. *Early Referral Appeals Procedure.* This allows employers being examined to request early referral of employment tax issues directly to appeals. Issues that can be referred under this program include: 1) whether an employee is a statutory employee; 2) whether Section 530 applies; and 3) whether certain payments are exempted from the definition of wages. This procedure is being tested for one year.

3. *New training manual on worker classification.* This manual, designed to provide guidance as to who is an employee and who is an independent contractor, has been released in draft form. This manual attempts to simplify and explain the 20-step test used in worker classification as well as other criteria the IRS will use in making judgments. The manual covers all the relevant laws, however, it does contain some changes in the IRS's approach and/or position.

Employee vs. Independent Contractor

The IRS recognizes that factors determining worker status change over time and it no longer considers the following as indicative of a worker's status: 1) part time instead of full time; 2) working for one business rather than several; 3) temporary/short-term work; 4) on or off-site workplace; 5) flexible hours; 6) whether uniforms are required; and 7) an office at home. The principal determination of classification is still whether the employer has the *right* to direct and control the worker, regardless of whether that right is exercised.

Section 530

The manual tells agents to look for possible relief under Section 530, even if the employer does not raise this issue. Where industry practice is relied upon, the employer must prove it knew of the industry practice and when it knew. Relief is not obtained if the employer mistakenly, but in good faith, believed it knew what industry practice was. However, this may result in a waiver of penalties.

If Additional Information is Needed

The IRS will provide the following free publications to assist employers in determining the classification of workers.

- Publication 15, *Employer's Tax Guide (Circular E)*
- Publication 15-A, *Employer's Supplemental Tax Guide*
- Publication 505, *Tax Withholding and Estimated Tax*
- Publication 1779, *Employee or Independent Contractor Brochure*

Conclusion

Employment tax issues are always sensitive, however, the IRS has always considered proper classification of workers as one of the most sensitive. This is because the financial impact is generally large (it can involve many workers for many years and affect retirement and other benefit plan compliance), because of the fiduciary nature of amounts of income tax and social security tax withheld (or supposed to be withheld) by employers, and the potential that exists for workers' income to go unreported. In light of these new developments, businesses may want to re-examine worker classifications.

Relying on industry practice or other "safe harbors" to determine whether to classify workers as employees or independent contractors will not always be sufficient to satisfy the IRS in an examination. If there is any doubt, the conservative, "sure" thing to do is to classify the worker as an employee. ■

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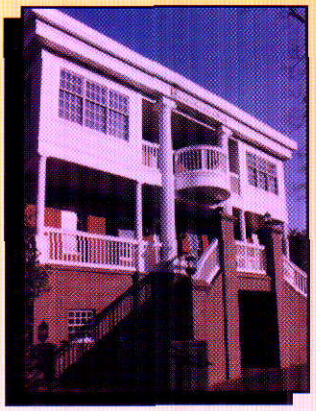

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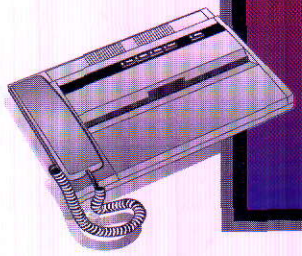

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