



2 0 0 4 E l e c t i o n

A Minimum Wage Increase Is Still a Bad Idea

By Doug S. Bailey

Next month voters will be asked to consider Amendment 5, Florida Minimum Wage Amendment. If approved, this amendment would add a new section to Article X of the Florida Constitution that would establish a state minimum wage of \$6.15 per hour (\$1.00 above the current federal minimum wage), and it would require an automatic annual increase in the state's minimum wage based, in part, on the nation's inflation rate.

Amendment 5's sponsor, The Association of Community Organizations for Reform Now (ACORN), has carefully revived a classic populist argument based on the Depression-era living wage campaign. This New Deal image of low-wage workers struggling to earn a living wage for their families is as moving in 2004 as it was during the debate on the 1938 Fair Labor Standards Act. Today, however, there exists decades of empirical research leaving no doubt that an arbitrary and regular increase in minimum wage will ultimately harm those it promises to help.

Who Earns a Minimum Wage?

Florida currently has 300,000 employees who would be affected by an increase in the state's minimum wage. Of those, only 14 percent (42,000) are sole earners in families with children. About 38 percent (114,000), mostly teenagers, live with a parent or relative, 19 percent (57,000) are dual earners in married couples, and 28 percent (84,000)

are single earners with no children.

The average family/dual income of Floridians who would benefit from the passage of Amendment 5 is \$41,402. This far exceeds the annual income of \$10,712 generated by a full-time minimum-wage job.

Craig Garthwaite, an economist at the Employment Policies Institute, describes a minimum wage increase as a "blunt policy tool, unable to discern between a low-wage employee and a low-income family head." As a result, the benefits of increasing the minimum wage more often than not are never realized by the poorest employees.

A June 2001 Stanford University study concluded that only 24 percent of the benefits from a minimum wage hike go to the poorest 20 percent of families, while 35 percent of the benefits goes to the richest 40 percent of families.

The Effects of a Wage Increase on Florida's Poorest Employees

The most compelling argument against Amendment 5 considers the unintended consequences generated by a mandatory wage increase. Of the state's 300,000-plus minimum wage earners, only 14 percent or 42,000 are sole earners in families with children. Raising the minimum wage will do more harm than good to this segment of Florida's workforce.

For years, advocates of a minimum wage increase have insisted that wage hikes would alleviate poverty among the nation's working poor. Unfortunately for thousands of Florida voters, this theory is flawed. In fact, a mini-

What's Inside

Common Sense
Term Limits: Time For a Change
by Jon L. Shebel

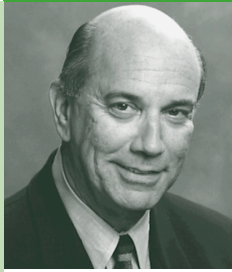
Will The Bleeding Finally Stop?
by Doug S. Bailey

New Health Insurance Options Available
by The Honorable Toni Jennings

Substitute Communications Services Tax
by Keyna Cory

AIF's Political Team

(Please see page 3)



Term Limits: Time For a Change

By Jon L. Shebel, *Publisher*

Amid the anti-incumbent fever of 1992, Florida's citizenry enacted the eight-year term-limit constitutional amendment by a margin of more than three to one.

Term-limit protagonists promised that the amendment was the only way to inject fresh blood into the body politic. They also argued that since governors and presidents were limited to eight years, it only made sense to level the playing field by applying a similar deadline to the legislative arena as well. Finally, it was suggested that certain legislators had spent too many years in power and that these entrenched professional politicians contradicted the American ideal of a part-time citizen legislature.

Term-limit opponents tried to make the case that the constant turnover among elected officials would transfer permanency — and thus power — to un-elected legislative staff and lobbyists. In fact, they asserted, a term limitation mechanism already existed, because any politician could be un-elected during a re-election campaign.

Now, with more than a decade of term-limits experience let's compare promises to reality. Prior to 1992, a House speaker served an average of 14 years before assuming his high position of power; that period of apprenticeship has now been cut to six years. The loss of training in consensus building and legislative leadership skills could affect the administration of the House. And, because senators, for the most part, are House graduates, their greater

level of experience can penalize the House in negotiations between the two chambers.

But the worst curse of term limits is that it culls the Senate and House of its leaders, at a time when the state needs their knowledge and experience the most. Elected officials must be ever vigilant for political job openings that can extend their political careers and restart their eight-year clocks. Many state legislators are simply returning to offices at the local level, which often have no term limits. The results can be enriching for a community but the overall impact on the Legislature has been negative.

While pro-term-limits sentiments still run high — some polls show that three out of four Floridians would ratify it again — some proposals have been advanced that would reduce its deleterious effect.

One promising solution would extend term limits from the current eight years to 12 years. At a minimum adding an extra four years would give House speakers additional time to polish the unique and indispensable skills involved in managing a large and diverse staff, building consensus among 120 elected representatives, and negotiating with more experienced Senate colleagues. That would definitely not be a bad thing.

More importantly, it would give legislators more opportunity to acquaint themselves with the legislative cycle so that the same bad ideas would not be reborn every eight years like clockwork.

Twelve-year terms would help improve our state's business climate because it would allow legislators to think about over-the-horizon issues and their potential solutions. Why, they may even be able to hang around long enough to see the fruits — or consequences — of their actions.

Now is the time to give serious examination to the mechanics of — if not the justification for — our state's term limit amendment. The chance to ameliorate the impact of term limits can be accomplished by either legislative prerogative or by voter initiative. Either way, if we can extend legislative terms, the state will benefit and so too will its citizenry. ■

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(Continued from page 1)

minimum wage increase would harm thousands of children and families who receive either government-subsidized healthcare or employer-provided health benefits.

ACORN's own research points to a devastating side effect of an arbitrary increase in the minimum wage. A June 16, 2004 University of Massachusetts-Amherst assessment of the fiscal impact of Amendment 5 indicates that by increasing the minimum wage in Florida, approximately 4,000 of Florida's most vulnerable citizens would exceed their Medicaid eligibility threshold and tens of

thousands of children will be forced from government subsidized KidCare coverage.

A majority of the research today would indicate that mothers in states that raised their minimum wage above the federal limit remained on public assistance an average of 44 percent longer than their peers in states where the minimum wage adhered to federal law.

Another consequence of Amendment 5 would be the diminishing ability of businesses to provide adequate healthcare benefits to their employees. Fewer workers eligible for employer-provided health care plans means a greater burden on the state's health care system and, ultimately, the taxpayers of our state.

During June 3, 2004 testimony at the state's Fiscal Impact Estimating Conference, economist Robert Pollin stated, "It is also likely that the state will incur some additional costs when people who have lost their Medicaid or KidCare coverage come to rely on hospital emergency room care to meet healthcare needs."

Decades of economic research can validate the assertion made in 1946 by economist George Stigler that, "The connection between hourly wages and the standard of living of a family is remote and fuzzy. Unless the minimum wage varies with the amount of employment, number of earners, non-wage income, family size, and many other factors, it will be an inept device for combating poverty even for those who succeed in retaining employment."

Small Business Choices

Florida's voters should take a common sense approach to understanding the relationship between mandated wage increases and the cost of doing business, especially as it relates to the state's small business community. In Florida, small businesses employ the largest numbers of minimum wage employees. Economist Steven Landsburg argues that a minimum wage increase is a tax that will be paid disproportionately by the small business owners who hire more minimum wage employees.

(Please see back page)

Portions of this article appeared in the Fall 2004 edition of *Journal*, published by the James Madison Institute, a Tallahassee-based think tank.

Will The Bleeding Finally Stop?

A Look into the Reversal of Fortunes for Florida's Major Parties

By Doug S. Bailey

Very few seats are still up for grabs when the general election rolls around and, therefore, few opportunities exist for the Democratic Party to begin reversing the trends.

For all but the closing years of the 20th century, Florida's Democratic Party maintained control of state politics. In fact, it wasn't until 1928 that the first Republican was elected to the House and for decades it was typical to see no more than four or five GOP-ers stalking the halls of the old Capitol building. The election of Ronald Reagan in 1980 began a nationwide shift toward the Republican Party and in 1982 the tide in Florida began to change as well.

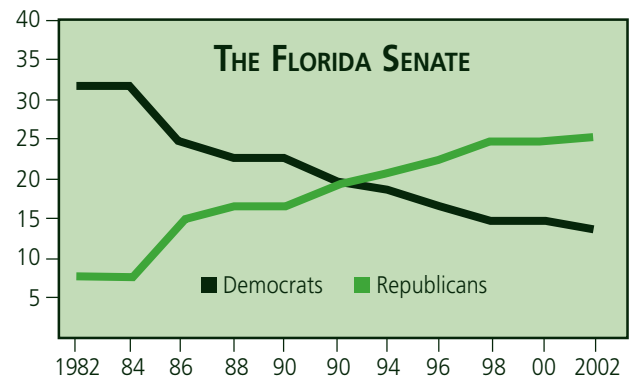
In the Florida Senate it was dramatic. From 1982 to 1992 Democratic membership declined from 32 members to an even 20. With the election of 1994, the Republicans captured the majority for the first time since Reconstruction.

The House transition was a bit slower but no less significant. In 1982 the Democrats held 83 seats; 16 years later the Republicans held 61 of the chamber's 120 seats.

The election of Jeb Bush in 1998 and the introduction of sophisticated redistricting software used during the 2002 decennial reapportionment added to the Republican momentum and today the GOP enjoys its largest majority ever.

Ironically, the term limit movement, introduced and advanced by Republican activists, installed a political revolving door at the state Capitol that may, ultimately, become the tourniquet that slows or even stops the Democratic bleeding. It is possible that the 2004 November election could finally mark the end of the party's decline.

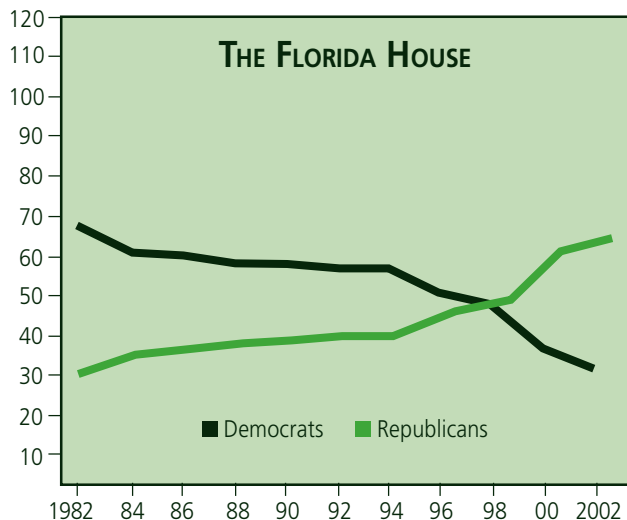
The swing toward Republican dominance seems to have leveled off at 26 senators and 81 representatives. This year both parties' fortunes will depend on the Democrats' ability to persevere to the end, both strategically and financially.



Florida could be called a Primary State, because the majority of our legislative elections are determined during the primary elections. Very few seats are still up for grabs when the general election rolls around and, therefore, few opportunities exist for the Democratic Party to begin reversing the trends. This summer Florida Business United, AIF Service Corporation's political arm, conducted its election-year candidate evaluations by focusing on the primary and general election campaigns in the so-called battleground seats. We identified five House elections that could determine whether or not the Democratic bleeding has truly stopped.

House District 20

Doug Wiles, the former Democratic majority leader who held this seat, was term limited and unable to run for re-election. The Democrats have fielded Barbara Revels, owner of Coquina Real Estate & Construction, Inc, and the Republicans hope to steal this one with Flagler College President Bill Proctor. Proctor will be a strong business candidate and has received the endorsement of AIFPAC and most business organizations from around the state. The prospects look promising for Proctor and this should be a pickup for the Republicans.



House District 28

Democratic seat holder Susan Kosmas was term limited and the Democrats turned to former Volusia County Commissioner Jim Ward to pick up the torch. Jim Ward suffered a defeat to Evelyn Lynn during the 2002 Senate District 7. Republican Dorothy Hukill is running a strong campaign and is poised to upset Ward in a close one on November 2. This was identified by the Democrats as a must-win race, but expect an upset.

House District 46

Incumbent Republican Heather Fiorentino has returned to local Pasco County politics and the Republicans have turned to her former legislative aide John Legg as her replacement. District 46 is the quintessential swing district and the Democrats have found a strong candidate in Dee Thomas. Legg made a great showing in the primary by beating a well-organized and well-funded John Stewart, but he may ultimately be outspent and upset in the general. This one is the Democratic candidate's to lose.

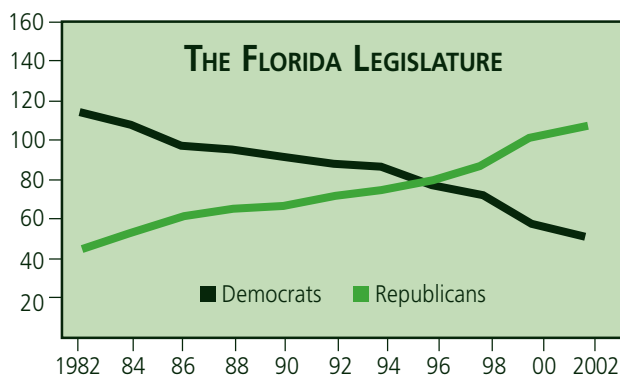
House District 85

Democrat incumbent Shelley Vana is facing perhaps the most formidable general election challenger in the state: Republican Andy Edwards. These two faced each other in a close 2002 campaign. Vana beat Edwards by just 607 votes in this traditionally Democratic seat. Edwards has been running a good race, but the late money has gone to Vana

and as the incumbent she maintains the advantage. The Democrats will keep this one.

House District 97

Democrat Nan Rich has vacated this Broward County seat to run for the State Senate. In 2002, 542 votes separated the winner and the loser thanks to a strong challenge from an outstanding Republican candidate. This go around the Republican's have found another strong candidate in Susan Goldstein. Goldstein by far is the stronger business candidate and her commitment to social service programs and her community ties should be enough to get her over the hump. The partisan nature of a contentious presidential election season makes this one too close to call.



With less than two weeks to go in the 2004 legislative election season there are few questions remaining. Expect the balance of power to remain the same in the Senate (26 Republicans to 14 Democrats). And perhaps, for the first time in a long while, the Democrats may stop hemorrhaging seats. While they are predicted to lose two legislative districts to the GOP, they are also likely to gain one. It's too early to tell, but it may be the start of a political rehabilitation for the once powerhouse party. ■

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Mr. Bailey would like to thank Molly R. Jennings, MS, director of political operations for The Windsor Group, for assisting in research and analysis for this article.

Voter's Choice

For more information on the proposed constitutional amendments, visit the Web site of the Division of Elections of the Department of State <http://election.dos.state.fl.us/index.html>

In the 2004 general election, Florida voters will be asked to approve or reject eight amendments to Florida's Constitution. Two were placed on the ballot by the Florida Legislature, the other six followed the citizens initiative route.

While the business community has taken a position on only two amendments — in support of Amendment 2 and in opposition to Amendment 5 — three other proposals are of particular interest to Florida employers.

Amendments 3, 7, and 8 all represent the fallout from the 2003 regular and special sessions when the medical community and plaintiff lawyers waged a long, intense, and furious battle over the state's medical-liability laws. Amendment 3 represents the Florida Medical Association's retribution against the Academy of Florida Trial Lawyers, which has engaged in its own act of revenge through Amendments 7 and 8.

Amendment 1

Reference: Article X, Section 22

Ballot Title: Parental Notification Of A Minor's Termination Of Pregnancy

Ballot Summary:

Proposing an amendment to the State Constitution to authorize the Legislature to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The amendment provides that the Legislature shall not limit or deny the privacy rights guaranteed to minors under the United States Constitution as interpreted by the United States Supreme Court. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the requirement for notification.

Full Text:

ARTICLE X

MISCELLANEOUS

Section 22. Parental notice of termination of a minor's pregnancy.—

The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirements for notifica-

tion and shall create a process for judicial waiver of the notification.

Amendment 2

Reference: Article IV, Section 10, Article XI, Section 5

Ballot Title: Constitutional Amendments Proposed By Initiative

Ballot Summary:

Proposing amendments to the State Constitution to require the sponsor of a constitutional amendment proposed by citizen initiative to file the initiative petition with the Secretary of State by February 1 of the year of a general election in order to have the measure submitted to the electors for approval or rejection at the following November's general election, and to require the Florida Supreme Court to render an advisory opinion addressing the validity of an initiative petition by April 1 of the year in which the amendment is to be submitted to the electors.

Full Text:

ARTICLE IV
EXECUTIVE

SECTION 10. Attorney General.—The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the ques-

tions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI expeditiously.

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, ~~initiative petition~~ or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.

~~(b)~~ A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

~~(c)(b)~~ The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

~~(d)(c)~~ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

~~(e)(d)~~ If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in

January following the election, or on such other date as may be specified in the amendment or revision.

Amendment 3

Reference: Article I, Section 26

Ballot Title: The Medical Liability Claimant's Compensation Amendment

Ballot Summary:

Proposes to amend the State Constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first \$250,000.00 in all damages received by the claimant, and 90% of damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This amendment is intended to be self-executing.

Full Text:

Section 1.

Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgement, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

This Amendment shall take effect on the day following approval by the voters.

Amendment 4

Reference: Article X, Section 19

Ballot Title: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines In Parimutuel Facilities

Ballot Summary:

Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in existing, licensed parimutuel facilities (thoroughbred and

harness racing, greyhound racing, and jai alai) that have conducted live racing or games in that county during each of the last two calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation.

Full Text:

Article X, Florida Constitution, is hereby amended to add the following as section 19:

SECTION 19. SLOT MACHINES -

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become

effective when approved by vote of the electors of the state.

Amendment 5

Reference: Article X

Ballot Title: Florida Minimum Wage Amendment

Ballot Summary:

This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right.

Full Text:

**A new section for Article X. is created
Florida Minimum Wage Amendment**

(a) **Public Policy.** All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.

(b) **Definitions.** As used in this amendment, the terms "Employer," "Employee" and "Wage" shall have the meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing regulations.

(c) **Minimum Wage.** Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of \$6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each

adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA, Employers may credit towards satisfaction of the Minimum Wage tips up to the amount of the allowable FLSA tip credit in 2003.

(d) Retaliation Prohibited. It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this amendment. Rights protected under this amendment include, but are not limited to, the right to file a complaint or inform any person about any party's alleged noncompliance with this amendment, and the right to inform any person of his or her potential rights under this amendment and to assist him or her in asserting such rights.

(e) Enforcement. Persons aggrieved by a violation of this amendment may bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of \$1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.

(f) Additional Legislation, Implementation & Construction. Implementing legislation is not required in order to enforce this amendment. The state legislature may by

statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body

5 Reasons to Vote No on Amendment 5

BEFORE YOU VOTE ON NOVEMBER 2 REMEMBER THIS: WE'VE BEEN HIT BY FOUR MAJOR HURRICANES COSTING US BILLIONS. NOW'S NOT THE TIME TO PUT FLORIDA'S ECONOMIC FUTURE IN FURTHER JEOPARDY. NOW'S NOT THE TIME FOR AMENDMENT 5. IT'S A DISASTER WE CAN'T AFFORD.



Amendment 5 means thousands of Florida jobs will be outsourced overseas



Amendment 5 means small businesses and employers across Florida will be forced to cut health care and pension benefits



Amendment 5 means 18,000 children will lose their health care benefits under Florida's KidCare program



Amendment 5 hurts seniors on fixed incomes by increasing costs for health care and prescription drugs

JOB LOSS ALERT

Both Oregon and Washington state experimented with Amendments like Amendment 5. The result? According to the U.S. Bureau of Labor Statistics, Oregon now has the second highest unemployment rate in America and Washington state now has the sixth highest unemployment rate. DON'T LET IT HAPPEN IN FLORIDA.

Vote "NO" on Tues., Nov. 2nd

Paid Political Ad sponsored and paid for by
The Coalition to Save Florida Jobs

**NOW'S NOT THE TIME
NO
on
5**

Amendment references, ballot titles, ballot summaries, and full text were taken from information published by the Department of State, Division of Elections.

to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

(g) Severability. If any part of this amendment, or the application of this amendment to any person or circumstance, is held invalid, the remainder of this amendment, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this amendment are severable.

Amendment 6

Reference: Article X, Section 19

Ballot Title: Repeal of High Speed Rail Amendment

Ballot Summary:

This amendment repeals an amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation system by the state and/or by a private entity.

Full Text:

Article X, Section 19, Florida Constitution, is hereby repealed in its entirety.

Amendment 7

Reference: Article X, Section 22

Ballot Title: Patients' Right to Know About Adverse Medical Incidents

Ballot Summary:

Current Florida law restricts information available to patients related to investigations of adverse medical incidents, such as medical malpractice. This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents, including those which could cause injury or death. Provides

that patients' identities should not be disclosed.

Full Text:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

1) Statement and Purpose:

The Legislature has enacted provisions relating to a patients' bill of rights and responsibilities, including provisions relating to information about practitioners' qualifications, treatment and financial aspects of patient care. The Legislature has, however, restricted public access to information concerning a particular health care provider's or facility's investigations, incidents or history of acts, neglects, or defaults that have injured patients or had the potential to injure patients. This information may be important to a patient. The purpose of this amendment is to create a constitutional right for a patient or potential patient to know and have access to records of a health care facility's or provider's adverse medical incidents, including medical malpractice and other acts which have caused or have the potential to cause injury or death. This right to know is to be balanced against an individual patient's rights to privacy and dignity, so that the information available relates to the practitioner or facility as opposed to individuals who may have been or are patients.

2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

"Section 22. Patients' Right to Know About Adverse Medical Incidents.

"(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

"(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

"(c) For purposes of this section, the following terms have the following meanings:

"(1) The phrases "health care facility" and "health care provider" have the meaning

given in general law related to a patient's rights and responsibilities.

"(2) The term "patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

"(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

"(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available."

3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

Amendment 8

Reference: Article X, Section 20

Ballot Title: Public Protection from Repeated Medical Malpractice

Ballot Summary:

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who

have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

Full Text:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

a) Statement and Purpose:

Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.

b) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

"Section 20. Prohibition of Medical License After Repeated Medical Malpractice.

"a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

"b) For purposes of this section, the following terms have the following meanings:

"i) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

"ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court or law, final administrative agency decision, or decision of binding arbitration."

c) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application. ■

New Health Insurance Options Available

By The Honorable Toni Jennings,
Lieutenant Governor of the State of Florida

HSA funds can be withdrawn tax free to cover qualified medical expenses. Unused balances roll over from year to year.

A major accomplishment of the 2004 Legislature was passage of recommendations presented by the Governor's Task Force on Access to Affordable Health Insurance.

As is the case with most states, Florida strives to provide an environment where all residents have access to affordable health insurance and, ultimately, quality health care. In 2003, Gov. Jeb Bush asked Florida's Chief Financial Officer Tom Gallagher and me to co-chair the task force in an effort to assess our health-insurance environment and recommend appropriate action.

During its series of public hearings throughout the state, our task force found that some 2.8 million Floridians lack health-care coverage; 80 percent of them are employed. About one-half of all uninsured people live in a household with a family member who is employed by a small business that is unable to offer health insurance because of limited financial resources. Task-force recommendations submitted to the Legislature focused on expanding the affordability and accessibility of health coverage for individuals and small employers through a variety of cost-saving measures, combined with improved standards for medical care.

The resulting HB 1629, the Affordable Healthcare for Floridians Act, was signed into law by Gov. Bush on June 14. Key features of the bill include requirements that each health-care facility publish average charges, give written estimates upon request, and provide detailed verification for itemized bills. The Agency for Health Care Administration (AHCA) will calculate charges for all facilities and post price

comparisons on the Internet.

In addition, consumers will be able to check performance records to determine how many times a facility has treated a condition or performed a procedure, along with mortality and infection rates and lengths of stay.

The act also creates the Florida Patient Safety Corporation to assist providers in improving quality and safety standards through evidence-based medicine and analysis of medical errors. These innovations, along with computerization of medical records, are expected to reduce errors while gaining efficiency in the delivery of health services.

The legislation expands the Health Flex program statewide and recreates Florida's high-risk insurance pool for people who otherwise would not have access to insurance. Small employers will be able to gain administrative efficiencies, negotiate rates, and pool risk to achieve lower premiums. Insurance plans for this group (2 to 25 employees) will provide either basic or standard benefits plus a new option: high deductible plans, paired with Health Savings Accounts (HSAs).

HSAs were authorized by recent Congressional Medicare reform legislation. Along with Flexible Spending Accounts and Health Reimbursement Accounts, HSAs provide a mechanism for people to save their own money in an account for use on health related expenses. Both an employer and an employee may deposit tax-deferred contributions to the account. HSA funds can be withdrawn tax free to cover qualified medical expenses. Unused balances roll over from year to year. The account is portable and



belongs to the employee.

The product will be available through insurance agents, financial institutions, and brokerage houses. As an incentive to service small business accounts, insurance agents are allowed to charge a fee rather than take a commission.

As consumers avail themselves of greater health-insurance choices and take advantage of improved information in selecting health-care facilities, all of us — individuals, employees and employers alike — will experience the benefits of this comprehensive revision of Florida's health care delivery system. ■

Lt. Gov. Toni Jennings is an experienced businesswoman and former Senate president (e-mail: fl_ltgov@myflorida.com).

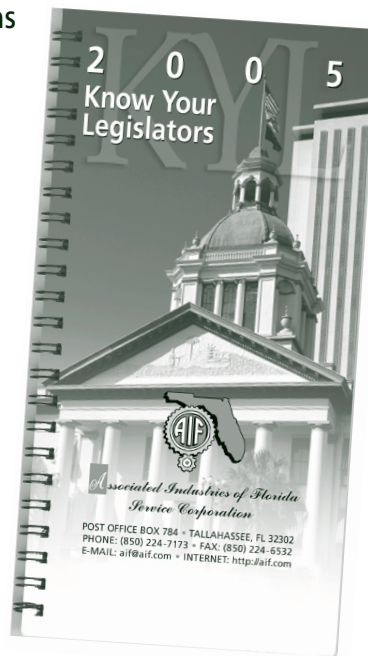
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Substitute Communications Services Tax

By Keyna Cory

Two or more computers networked together in an office or household environment or an office telephone system would be subjected to local and state communications taxes.

Florida is still recovering from the reputation it earned during the 1980s and 90s as the home of tax weirdness. A December special session could go a long way toward showing that we've learned from our past mistakes.

While the Florida Legislature, in recent years, has demonstrated admirable restraint when it comes to new taxes, there remains one blot on its pro-business tax record. It's called the substitute communications services tax.

The *Florida Statutes* define a substitute communications system as a stand-alone system providing its own exclusive communications service, as opposed to having the service provided through a third-party dealer. A tax on these systems was enacted in 1985 but has not been enforced.

The Department of Revenue (DOR) has begun to change all that, but in a manner that would effectively result in the imposition of a new tax on virtually every business and many households in the state. Problems in the wording of the statutory definition of substitute communications services means that two-way radios would be considered taxable services, on par with telephone companies. Two or more computers networked together in an office or household environment, or an office telephone system, would be subjected to local and state communications taxes.

Approximately \$300,000 in revenue is currently being collected from this tax. DOR has always found the tax so difficult to administer that they simply didn't try to enforce it, in fact very few taxpayers paid it. No other state in the country has such a tax and this would cause harm to Florida's economic stimulus and would harm the ability of state businesses to compete on a national and global scale.

During the summer of 2003, DOR initiated the rulemaking process as a prelude to collection of the communications services tax on substitute communications system. One public hearing revealed so many of the problems



inherent in implementing the tax that DOR officials decided to wait for direction from the Legislature on how to proceed.

AIF "Champions for Business" Sen. Mike Haridopolos (R-Melbourne) and Rep. John Stargel (R-Lakeland) filed legislation that would have repealed the substitute communications tax. Unfortunately, the bills failed to pass during the 2004 Regular Session. The Senate included language to delay the tax in the DOR legislative package it passed, but the provision was not taken up in the House during the closing hours of the session.

DOR is now trying to figure out how to implement the tax. Two workshops have been held — one in Tallahassee and the other in Tampa — to get public input on the tax. More will probably be scheduled as the regulators struggle to implement this complex statute.

In the meantime, AIF and the business community have not stopped their efforts to get this tax repealed. Rep. Stargel, along with Reps. Chris Smith (D-Fort Lauderdale), Jeff Kottkamp (R-Cape Coral), and Jack Seiler (D-Pompano Beach) have signed on as sponsors of a House repeal. Sen. Haridopolos will continue as the Senate sponsor. Gov. Jeb Bush has pledged his support to repeal the tax at the first available opportunity — which may be just a month away.

There is an increasing likelihood that a special session will be called in December to address hurricane-related matters. If so, AIF will continue working to add repeal of the communications services tax to the agenda. ■

Keyna Cory is the president of Tallahassee-based Public Affairs Consultants, Inc., and a legislative consultant to Associated Industries of Florida. (e-mail: keynacory@paconsultants.com)

Coordinating Business for Florida's Political Future

If you think politics doesn't matter, think about this:

The money you spend in **taxes.**

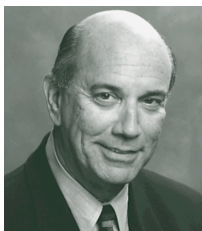
The time you spend jumping through **regulatory hurdles.**

The effort you spend fending off **frivolous lawsuits.**

All of that money, time, and effort is spent because of decisions made by politicians.

The Political Team of

Associated Industries of Florida Service Corporation



Jon L. Shebel

President & CEO of Associated Industries of Florida and affiliated corporations ... more than 35 years as a lobbyist for AIF ... directs AIF's legislative efforts based on AIF Board of Directors' positions ... graduated from The Citadel and attended Stetson University College of Law.



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Chief lobbyist & chief political officer of Associated Industries of Florida ... President & CEO, The Windsor Group ... former executive director of the Florida Democratic Party ... more than 25 years of experience in legislative and political affairs ... areas of expertise include appropriations, criminal justice, and behavioral health care issues ... B.S. in political & judicial communication from Emerson College in Boston.



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(Continued from page 3)

Smaller operations that make up the majority of Florida's business industry face narrow profit margins and stiff competition from larger national chains. Large businesses with a nationwide presence will be better able to absorb the payroll costs associated with minimum-wage increases because the majority of the nation still adheres to a federal standard.

Small business owners will have few choices in order to sustain profitability should Amendment 5 be adopted. Some might be able to, perhaps, absorb the increased operating expenses created by the heightened minimum wage. Most will have to make difficult choices, such as raising prices, thereby passing the increased payroll expenses on to their customers. Some business

owners will be forced to eliminate employees — thus increasing unemployment levels and reducing the ability to provide service to customers — or they can pass the increased payroll expense on to the employees by decreasing health care or fringe benefits.

Amendment 5 is another example of why our dangerous and irresponsible citizen initiative process needs reform. By increasing the minimum wage we will be significantly harming Florida's low and middle-wage earners and the businesses that employ them. ■

Doug S. Bailey is the executive vice president and COO of The Windsor Group and a Ph.D. student at The Askew School for Public Policy and Administration at The Florida State University (e-mail: doug@thewindsorgroup.net).



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