EMPLOYER Advocate

Winter 2004 • Vol. 3, No. 1

Politics

2004 – The Year of Initiative Reform?

By Doug S. Bailey

Florida's citizen-initiative process has been at the center of controversy for nearly a decade. There are those who believe that the public interest can best be discovered through a deliberative process by informed and enlightened representatives. Others believe that direct democracy is essential in giving voice to the people's opposition to the elite in business, politics, and in culture.

During the 2004 Legislative Session, lawmakers will consider reforms aimed at making the state's citizen-initiative process more rigorous, thus protecting the sanctity and supremacy of the constitution and lessening the potential for the ratification of costly and socially irresponsible amendments.

Amending the constitution to address the problems with the current initiative process, however, will be a politically challenging endeavor. Any initiative reforms agreed upon by the Legislature will require popular approval during the next general election.

Ultimately, the fate of the reform effort will depend on those very citizens whose ability to responsibly amend the constitution is at the crux of the challenge.

Lawmakers will need to identify reform proposals that are both meaningful and politically viable. Otherwise, the initiative reform movement of 2004 will go down in smoke and it may take another ten years and a few more special-interest boondoggles before we get this chance again.

Florida's Hyperactive Constitution

Florida's hyperactive constitution has been amended, via the citizen initiative process, 16 times in 30 years, but the trends of the last decade are most alarming. After an auspicious beginning in 1976, the use of the popular initiative decreased such that citizen initiatives were entirely absent from state ballots from 1982 to 1992. From 1992 to 2002, however, the use of the popular initiative has increased substantially. During an average election Florida voters are asked to consider about six initiatives per year and they are approving nearly 87 percent — well above the national popular-initiative approval rate of 40 percent. In the last two election cycles (2000 and 2002) voters approved 100 percent of the popular initiatives that appeared on the ballots.

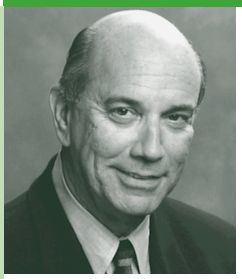
There is too much money and special-interest-group influence in the state's initiative process. Voters are often under-informed and, as a result, are unable to make responsible decisions in the voting booth. Minority rights are potentially at risk, and harmful fiscal and social implications are often left unexamined.

Because of Florida's irresponsible citizen-initiative process, careful policy analysis and thoughtful, honest debate has been trumped by bumper stickers, sound bites, interest-group endorsements, and slick 30-second television advertisements.

This is not the way our government was designed to work. Direct democracy as practiced in Florida's citizen initiative process contradicts the principles of our republican

(Please see page 3)

What's Inside



A Pox on Both Your Houses

By Jon L. Shebel, *Publisher*

Forget the presidential election, a tight budget, and education. The big issue this year is constitutional amendments.

Okay, that might be a bit of an exaggeration, but Florida employers ignore the petition-drive plague at their own risk. Those friendly people at your local grocery store who are collecting signatures to put a constitutional amendment on the ballot are but the smiling face of a beast that threatens the very root of representative government.

Simply put, Florida's constitution is too easily changed, leaving it open to manipulation by special interests, which subverts the process of deliberation over public policy decisions and threatens the business community with the enactment of economically destructive programs and mandates.

This is a new phenomena, created by a close cadre of consultants and experts who have used their past failures to build an entire industry aimed solely at the passage or defeat of constitutional amendments. This political-industrial complex has devised strategies designed to trick unsuspecting citizens into approving measures they would otherwise quickly reject.

Citizens should be aware of the use of this strategy by two groups called Floridains for Patient Protection and Citizens for a Fair Share.

Floridians for Patient Protection is chaired by Scott Carruthers, who is also executive director of the Academy of Florida Trial Lawyers, while the fair-share crowd gets its leadership from Sandra Mortham, the executive vice president and CEO of the Florida Medical Association. The doctors and the lawyers are engaged in a game of constitutional chicken. Both are pursuing passage of citizen initiatives that strike deep at the heart of the other's wallet.

The trial-lawyer group is collecting signatures for three anti-doctor initiatives. The first would effectively force doctors to charge all their patients the same fees they get from Medicaid, which are deliberately set below cost to artificially deflate the cost to government. The second would make public all adverse incident reports against doctors and hospitals. While this may sound refreshing, it would in fact prohibit the open reporting of these incidents, which is crucial to improving patient safety. The third and final amendment would take away the license of any doctor who committed three or more acts of medical malpractice. This probably would do little to improve the health of Florida patients, but it would severely restrict access to physicians in high-risk specialties, such as obstetricians, who are the frequent targets of malpractice litigation.

The doctors' one amendment is perhaps the most draconian. It would limit plaintiff attorney fees in medical-malpractice litigation to 30 percent of the first $250,000 of damages received by the claimant, and 10 percent of damages in excess of $250,000. I will argue as hard as anyone — and harder than most — for the need to place limits on the runaway civil litigation system, but this proposal goes too far.

It does not belong in the constitution, it ignores the recent medical-liability reforms, and it stinks of retribution.

AIF has written to every M.D. and D.O. licensed in the state of Florida, asking them to withdraw their support of the Florida Medical Association's amendments. The business community has stood by the medical community in the past and will do so again, but only when the effort promises constructive results. Nothing positive can come from this game of constitutional brinkmanship. ■

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

Employer Advocate

Published by Associated Industries of Florida Service Corporation to inform readers about issues pertinent to Florida's business community.

PUBLISHER
Jon L. Shebel

ASSOCIATE PUBLISHER
Stephen B. Trickey

EDITOR
Jacquelyn Horkan

DESIGNER
J. Gregory Vowell

EDITORIAL OFFICES
516 North Adams St.
Post Office Box 784
Tallahassee, FL
32302-0784
Phone: (850) 224-7173
Fax: (850) 224-6532
E-mail: *aif@aif.com*

(Continued from page 1)

form of government. Our founders considered — and rejected — direct democracy models of governance. They chose instead to create a representative government in which voters would elect individuals to pursue and represent the best interests of the people.

If Floridians are to govern themselves directly through the initiative, we must develop a more fiscally and socially responsible process that protects the supremacy and sanctity of our constitutional form of government.

Initiative Reform Models

Reform of the initiative process will proceed along both statutory and constitutional avenues.

Though a myriad of reform concepts will be proposed and debated, expect the following three concepts to be the focus and primary objectives of the 2004 initiative reform movement.

Ratification-threshold increase: A joint resolution raising the ratification threshold of constitutional amendments from a simple majority to between three-fifths and two-thirds will be the linchpin of all the reform proposals advanced by the Legislature.

Raising the bar for ratification is an expression by the legislative leadership of a desire to make it more difficult to amend the constitution than it is to amend statutes. A ratification-threshold increase would most likely apply to all amendments placed on the ballot, not just those proposed by citizen initiative.

When applied to the 2002 citizen-initiative election results, a three-fifths or 60-percent ratification threshold would have caused the defeat of the universal pre-K initiative (59.2 percent), the class-size initiative (52.4 percent) and the pregnant-pig initiative (54.8 percent). In 2000, a 60-percent requirement would have defeated the high-speed-rail initiative, which only collected 52.7 percent of the vote.

Judicial filter: Another popular reform idea takes the shape of joint resolution to modify the parameters of the Supreme Court review of amendments, authorizing the court to determine the appropriateness of a ballot initiative for inclusion in the constitution. Currently, the court's review is limited to evaluating whether the amendment meets the single-subject requirement and whether the ballot title and summary accurately explain the amendment.

An expanded role for the judiciary would arguably eliminate those initiatives that otherwise would be best left to the statutes.

New amendment filing deadline: Currently amendments must be filed with the custodian of state records 91 days prior to the general election. A joint resolution will be advanced that will move that filing deadline so as to allow eight to ten months for consideration of proposed amendments.

A February 1 deadline would arguably allow for a more deliberative and thoughtful analysis of the fiscal and social implications of a proposed constitutional amendment. The interim period between February 1 and a November election would also allow for legislative preemption, agency implementation and fiscal analysis, and thoughtful debate and reflection.

Political Reality

Until now, most of the discussion surrounding initiative reform has been limited to the chambers of academia and government. Outside of political clubs, think tanks, and legislative committees, there is hardly a groundswell of interest in the political philosophies of the Founding Fathers or in the events leading to the various populist movements of the late 19th and early 20th centuries.

Initiative reform creates an opportunity for a great public debate on the theories of republicanism and the hazards of minority rule. We as the business community are confronted with an alluring task: engaging the public in an educational debate on the benefits of representative forms of government versus the consequences of direct democracy.

Advancing initiative reform will be one of the most significant propositions this legislature will consider during the 2004 Session. However, the complexities of two ideologically unaligned legislative bodies and their

(Please see back page)

Initiative reform creates an opportunity for a great public debate on the theories of republicanism and the hazards of minority rule.

A Cure for What

by Jacquelyn Horkan, *Editor*

Florida health officials estimate that 2.8 million Floridians under the age of 65 lack insurance.

Access to affordable health coverage has been a recurring dilemma, both nationally and in our state, for the last two decades, and the problem has intensified in recent years.

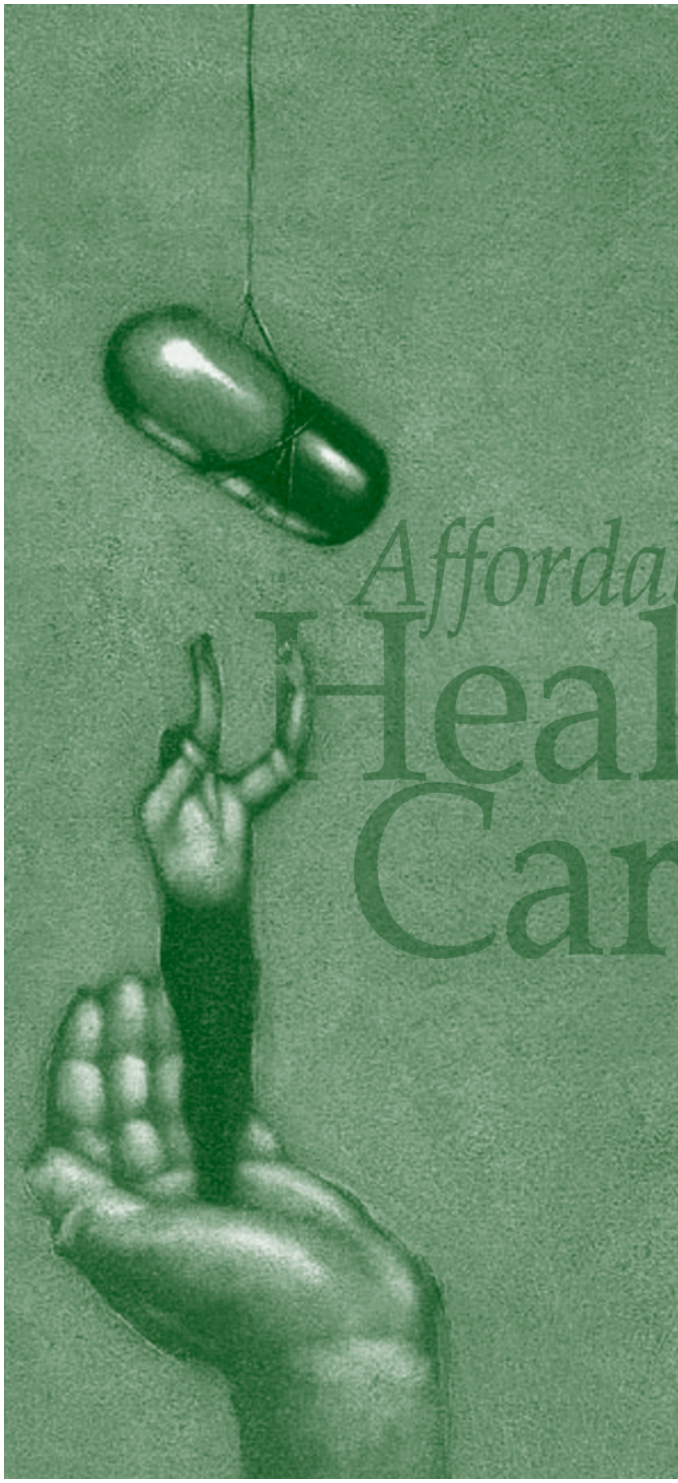
Florida employers were hit with double-digit premium increases in 2003, and a recently published Towers Perrin survey predicts more of the same in 2004. These cost increases have contributed to the erosion of employer-sponsored health-insurance coverage. The Florida Office of Insurance Regulation estimates that enrollment in small group health-insurance plans dropped by 13.2 percent between 2001 and 2002, while large group coverage decreased by 6.1 percent during the same period. This trend is troubling because employers are responsible for providing health benefits to 61 percent of insured residents in the state.

Surging health-care costs result in across-the-board increases in insurance costs, which forces more people to drop their coverage. Florida health officials estimate that 2.8 million Floridians under the age of 65 lack insurance.

National statistics about the numbers of uninsured are sketchy. The Institute of Medicine cites a commonly used estimate that 43 million Americans are uninsured for an entire year and many more go without for short periods of time. The Congressional Budget Office, on the other hand, discredits that amount.

According to the CBO's data analysis, somewhere between 21 million and 31 million people were uninsured for the entire year in 1998, the most recent year for which reliable comparative data were available. Given historical trends, the budget office says, such figures haven't changed substantially since 1998. Furthermore, the CBO estimates that, at any point in time during the year, about 40 million people were uninsured; and nearly 60

(Please see page 7)



Ails

Taking Health Care Out for a Test Drive

Consumer-driven health care is an option more employers are embracing in order to continue providing health insurance benefits to their employees. This newly developing approach relies on savings accounts, funded through pre-tax dollars, combined with high-deductible health-insurance plans. The formula lowers premiums for employers and employees, gives employees greater discretion over their health-care resources, and puts more spending decisions in the hands of patients.

A key to the success of consumer-driven health care, however, is access to meaningful data on health-care costs and quality. Through the Comprehensive Health Information Systems Advisory Council, Florida already collects information on the state's health care delivery and financing systems. Data analysis is provided on costs and financing, including trends in health-care prices, costs, and the sources of payment.

Contained among the recommendations of the governor's task force and the Farkas committee are new measures to expand the information available to consumers of health care via the Internet, including cost comparisons for hospitals, doctors, and procedures. Patients would also gain access to quality data, such as a physician's success rate on a certain procedure.

Unlike other major purchases a consumer may make, such as a car or a house or groceries, consumers are limited in their ability to make educated decisions regarding plans of treatment or the selection of a provider. While technological innovations and changes in consumer attitudes have spurred the creation of a vast network on information on most large purchases, health care has long been the domain of third-party payers, thereby removing the link between cost and quality.

In health care as in other markets, an educated consuming public increases healthy competition, which reduces costs and — in the case of health care — saves lives. ■

Unlike other major purchases a consumer may make, such as a car or a house or groceries, consumers are limited in their ability to make educated decisions about health care.

Battling the Anti-reform Party

by Jacquelyn Horkan, *Editor*

Even as the Legislature focuses its efforts on expanding access to affordable health insurance, it will have to resist the siren call of the anti-reformists who will be pushing measures that actually increase costs. Their litany is a familiar one, but here's a reminder of some of the bad memories they are likely to recall.

An HMO civil remedy would eventually aggravate an insurance crisis lawmakers are now seeking to avoid.

Any Willing Provider

"Any willing provider" legislation would force HMOs to pay for treatment provided by any provider willing to accept the fees negotiated with the health plan's network of physicians. What sounds reasonable, however, isn't. Allowing any doctor to treat a subscriber eliminates the HMO's negotiating advantage, which will inevitably result in higher costs of health care without any increase in quality.

HMO Civil Remedy

This proposal would expand the rights of HMO subscribers to sue a health plan whenever it declined to authorize payment for a service or treatment ordered by a doctor within the HMO's provider network. In addition, subscribers could collect non-economic and punitive damages, as well as attorney fees.

The consequences of providing this latitude to litigious subscribers and their attorneys should be obvious. To avoid lawsuit harassment, health plans would approve payment of any service even if it wasn't covered, wasn't necessary, or wasn't even beneficial under standards of practice.

HMO patients already have the right to file a lawsuit to compel their health plans to provide either a requested service or reimbursement for the out-of-pocket fees incurred in obtaining the treatment. If the patient prevails he can also recover attorney fees from the HMO. Civil remedy laws merely pad the award by adding non-economic and punitive damages.

In addition, the state has built an extensive system to address grievances by subscribers against their HMOs, which was recently expanded and strengthened by the Legislature. This resolution process helps patients get the care they need without the lengthy delays involved in a court trial. It also helps keep health insurance affordable and available. An HMO civil remedy would do neither and would eventually aggravate an insurance crisis lawmakers are now seeking to avoid.

Benefit and Treatment Mandates

Mandates are state-imposed requirements on health-insurance providers, which force policyholders to pay for certain benefits and treatments, whether the policyholder wants them or not. The cost of mandates are difficult to quantify but a 2002 study conducted by PriceWaterhouse Coopers suggests that mandates are responsible for increasing costs by 15 percent.

According to a 2001 study conducted by the Florida House of Representatives Insurance Committee, our state imposes 51 mandates on health insurers and HMOs, second only to Maryland. In 1987, the Legislature passed a bill that required submission of a social and financial impact statement by the sponsor of any proposed mandate. Since that time 35 of those 51 mandates have been enacted, mostly without a cost-benefit analysis. Although most mandate sponsors ignore this cost-benefit-analysis requirement, Florida can no longer ignore the economic facts.

Over the last several years, common mandate proposals have included coverage of fertility treatments, birth control, and autism. Recent mandate bills have been met with skepticism by lawmakers educated in the costs and effects of their decisions. Calculating the costs and benefits of those 51 benefits already on the books remains an unfinished task. ■

Jacquelyn Horkan is a freelance writer in Tallahassee, Florida (e-mail: *jhorkan@aif.com*).

(Continued from page 4)

million people were uninsured at some point during the year.

An interesting side note to the disparate estimates: In its report the Institute for Medicine identifies universal coverage as the most important goal in the health-care debate, something they acknowledge cannot be achieved voluntarily.

Although the extent and precise nature of the problem is somewhat unknowable, we do know that the uninsured can be grouped into three basic categories: those with short-term gaps in coverage; those who are chronically uninsured; and those who, because of poor health or serious illness, are uninsurable in the private market. Recognizing these differences is crucial to reforming the delivery and financing of health care in this state. In Florida 60 percent of uninsured workers lack coverage because their employers cannot afford the costs of group insurance.

Last summer two panels were convened to study the problem. On August 25, 2003 the Governor's Task Force on Access to Affordable Health Insurance was created with 17 members, including business people, health-care professionals, consumers, and policy experts. Eleven days earlier, House Speaker Johnnie Byrd (R-Plant City) had appointed Rep. Frank Farkas (R-St. Petersburg) chairman of the newly created House Select Committee on Affordable Health Care for Floridians. The governor's task force was co-chaired by Lt. Gov. Toni Jennings and Chief Financial Officer Tom Gallagher, both of whom, perhaps coincidentally, are top Republican Party prospects to replace Gov. Jeb Bush when his second term ends in 2007.

AIF, in a coalition with insurance carriers and other employer groups, tracked the work of the governor's task force and the select committee chaired by Rep. Farkas, participated in their meetings, and presented recommendations on possible paths for reform.

The coalition developed a list of 10 objectives that informed the group's work. The overriding goal pursued by AIF was to increase access to affordable care by extending private health insurance to as many Floridians as possible without jeopardizing the access that others currently enjoy.

Both panels have issued their recommendations for reform. The political muscle behind the two groups guarantees that some action will be taken during the 2004 session. The question is what will lawmakers do and how much will they want to spend.

According to AIF health care consultant, Bob Asztalos of Buigas Asztalos & Associates, the reports from the two groups contain similar policy prescriptions.

"There are some good ideas in both reports for employers who can't afford coverage now," said Asztalos. "One of the most significant would relax state mandates on policies, which would allow more flexibility in tailoring insurance plans to meet the needs of the person buying the policy."

While some of the best recommendations are free, others would require some government funding. The governor's task force and the Farkas committee, for example, both recommend establishing a high-risk pool for individuals who cannot get coverage in the open market. Creation of such a pool had been a top priority of CFO Gallagher, but his enthusiasm was tempered by Lt. Gov. Jennings's insistence that existing government revenues would have to fund the pool. A tax increase for the high-risk pool was deeply opposed by AIF because it would increase the cost of health insurance for other Floridians, risking their access to care.

Other reforms dependent on government revenues include expanding KidCare, which uses state and federal funds to provide premium subsidies to low-income children. If KidCare is to be granted more funding, AIF will insist that safeguards be put in place to make sure that parents with health insurance aren't dropping their coverage in order to receive subsidized care for their children. ■

Jacquelyn Horkan is a freelance writer in Tallahassee, Florida (e-mail: *jhorkan@aif.com*).

AIF members sign up for the *Daily Brief* and *Weekly Update* legislative reports on AIF's Web site *http://aif.com*

Written by Water

by Jacquelyn Horkan, *Editor*

A French proverb says, "An injury is engraved in metal, but a benefit is written in water." In Florida, however, benefits and injuries are not written in water; they are written *by* water.

Since its earliest days as an undeveloped territory, mosquito-infested swamps were the enemy to Floridians, and forward-thinking pioneers tried to drain them and put the land to productive use. Killer hurricanes in the 1920s and 30s turned the marshy tracts into watery graveyards, inspiring even more drainage projects.

Today, however, we recognize that these much-maligned swamps, which we now call wetlands, are essential to ensuring a productive natural environment as well as a reliable source of clean water. What's more, in the last 80 years, beginning with the discovery of saltwater intrusion into St. Petersburg's municipal wellfields, Floridians have come to realize that our state's abundance of water doesn't guarantee protection against localized shortages of the stuff.

Water wars are nothing new but, here on the East Coast, they have not simmered with the threat of violence as they have in the arid West. In Florida, we have plenty of water — we just don't always have it in the right places at the right times.

Since 1972, when the Legislature created the five water management districts, water supply policies have been developed to avoid the parochialism that can result from treating water as a local resource. Regional water solutions were developed and implemented to avoid water wars such as those that plagued the Tampa Bay area throughout the 1980s and 1990s. Water was declared a state resource and the ability to use it was governed by consumptive-use permits, a water-allocation system administered by the water management districts.

Each and every one of the goals listed in the State Comprehensive Plan depends on a healthy and growing economy.

The idea of government command and control of water supplies is a relatively new one. It may not be the best economic or public policy but it is an indelible legacy of the progressive — some might say utopian — instincts of past Legislatures.

Their trust in enlightened elites of the elected and bureaucratic stripe is enshrined in Florida's growth management laws and the State Comprehensive Plan, enacted in 1972. The State Comp Plan lists 25 elements, which have not changed since 1985, to consider in managing growth and development. Listed in order of priority, the economy ranks at a lowly 21, despite the fact that each and every one of the goals listed in the State Comprehensive Plan depends on a healthy and growing economy.

The tension between development and water still bubbles beneath the surface and remains essentially unresolved.

In the summer of 2003, the Florida Council of 100 issued a report claiming that Florida faced acute water shortages and recommended, among other things, revising state law to allow the transfer of water across political and hydrological boundaries. The report met with rejection from almost every part of the state, water-rich as well as water-hungry.

Bills were introduced in the 2003 Legislative Session to impose new "water concurrency" requirements for land-use permits. Such legislation would have a chilling effect on residential and commercial development in Florida. Moreover, such legislation would have created a disincentive

Securing Property Rights

We often speak of our fragile natural environment, but conservation of our ecological resources depends on protection of another fragile system: our economic system, upon which relies the conditions of prosperity that underwrite our social priorities.

The Florida Legislature would do well to recognize the importance of economic rights by enacting amendments to the Bert Harris Private Property Rights Act that will fix the sovereign immunity and statute of limitations glitches, which are necessary to prevent local governments from abusing private-property owners' rights to use their property.

The Harris Act has largely served its purpose of deterring local governments from over-regulation of the use of private property. There are a few local governments, however, that continue to defy the Harris Act by challenging every claim in order to limit uses of private property and then using litigation as a dilatory tactic to prevent landowners from receiving compensation. Two sections of the Harris Act must be amended to prevent local governments from abusing private-property owners' rights to use their property.

The first issue found in the Harris Act involves sovereign immunity. Subsection 13 of the act had been construed by a Miami-Dade Circuit Court judge to prevent all claims for monetary damages against local governments. This interpretation nullified the entire Harris Act and rendered it completely meaningless. Under this interpretation, a landowner could never receive damages under the Harris Act. While this ruling was subsequently overturned, AIF supports amending the act to clarify the act's limited waiver of sovereign immunity in order to avoid confusion in other jurisdictions.

This interpretation nullified the entire Harris Act and rendered it completely meaningless.

The second issue involves the statute of limitations found in Subsection 11 of the act. The AIF-supported amendment eliminates confusion by clarifying that when a law or regulation is adopted that immediately affects a specific parcel of land, the one-year statute of limitations may begin to run upon adoption of the regulation if actual notice is given to the landowner. In other cases where a law or regulation does not immediately affect a specific property, the one-year statute of limitations runs from the time the government takes a specific action regarding a landowner's property.

Amending the Harris Act will clarify that the one-year statute of limitations for bringing a claim under the act does not begin to run until either a property owner receives actual notice of the law or regulation or when a specific action of the governmental entity affects a particular parcel of real property.

Protection of private property rights is a core value upon which this country was founded. The Harris Act provides for redress by property owners against state action. Since its enactment in 1995, the Harris Act has had a deterrent effect on government overreaching. These legislative fixes are necessary to ensure the Harris Act continues to work to protect Florida citizens and businesses from government over-regulation. ■

for governmental entities to properly plan for the expansion of water resources to meet Florida's future needs.

Since water is a state resource, the development of water supplies is a function of long-term planning by governmental entities. Transferring that responsibility to private citizens will harm the state's economy while leaving Floridians vulnerable to future water shortages. The Legislature should, however, investigate the creation of incentives for private companies to develop and build state-of-the-art facilities, such as desalination plants, that will help ensure water resources that are adequate for Florida's future. ■

Jacquelyn Horkan is a freelance writer in Tallahassee, Florida (e-mail: *jhorkan@aif.com*).

Issue Roundup

by Jacquelyn Horkan, *Editor*

The diversion of these revenues is not a new phenomenon, but it is an exercise in fiscal dissipation that lawmakers should terminate.

Substitute-Communications Services Tax

During the summer of 2003, the Florida Department of Revenue (DOR) released its rule applying the 2001 communications-services tax to substitute-communications systems. DOR's interpretation of the law applied the 9.17-percent statewide communications-services tax (plus local taxes of varying rates) to a number of common devices that are used at virtually every place of business in the state, including most telephone systems, computer networks, and wireless dispatch systems.

The tax would be payable on the actual cost of operating and maintaining the system, which DOR defined as including such things as depreciation, repair and maintenance costs, and employee salaries and benefits.

The problems with the rule as it was developed by DOR were manifold but mainly arose from two defects: the definition of the word "substitute" and the definition of the term "switched service."

According to those involved in crafting the original tax bill, the Legislature contemplated that a substitute-communications system would be taxable if it were a switched system with a dealer providing the communication path. DOR interpreted it to mean any system that allowed communication, including a group of computers and printers linked together in a home.

This is a deeply complex issue that requires a precise blending of tax policy and engineering, adaptable to rapidly changing technology, while adhering to the stringent guidelines of statute and the procedures for adopting agency rules. Clearly the rule violated legislative intent if only because the communications-services tax was intended to be revenue neutral, while the department's interpretation of this portion of the tax would provide a huge revenue boost for state and local governments. Ambiguity was written into the law, however, which left DOR without the statutory boundaries to limit the tax from the broadest application possible.

With all of the flaws inherent in the rule DOR subsequently announced that it would not be proceeding with implementation of the tax on substitute-communications systems. Instead, DOR staff has asked the Legislature to fix the law, by either repealing the language or redrafting it in a way that eliminates the underlying ambiguity.

The language relating to taxation of substitute-communications systems needs to clarify how DOR is to apply the tax, namely by applying a clear and limited definition of what constitutes a taxable system, namely one with a switched service wherein the communications path is provided by a dealer. If clarity is not possible AIF supports deleting the language referring to the tax on substitute communications services.

Diverting Trust Fund Revenues

In 2003, the Legislature diverted money from dedicated trust-fund revenue streams to plug up holes in general revenues. All indications are that the governor and Legislature intend to pursue that same imprudent fiscal policy for FY2004-05.

The diversion of these revenues is not a new phenomenon, but it is an exercise in fiscal dissipation that lawmakers should terminate. Trust-fund revenues typically flow from sources, such as user fees or taxes, on activities that benefit from the programs they fund.

Last year's diversion of $200 million from the Transportation Trust Fund poses a particular threat to Florida's economy at a time when state leaders are putting so much into boosting the development of high-paying jobs. According to the Florida Department of Transportation, every dollar invested in Florida's transportation infrastructure yields $5.50 in economic activity. Based upon that figure, a $200 million raid amounts to a $1.1 billion hit on the prosperity of Florida's citizens.

As a general statement of policy, AIF believes that trust-fund revenues should not

be diverted for any purpose beyond their original intent. If a trust fund is accumulating too much revenue or if it no longer serves a priority of the people of Florida, the Legislature should take action to reduce the amount of money that flows into the trust fund or it should cease to exist. If, however, the trust fund continues to fulfill a primary function of public policy, using those funds for other purposes is merely a case of "robbing Peter to pay Paul."

Mold Litigation

Florida property insurance rates already are among the highest in the nation due to hurricanes, sinkholes, and our unique insurance-litigation environment. Florida employers cannot afford a spread of the mold-litigation contagion that has infected Texas and California, which threatens the affordability and availability of homeowner and commercial property insurance here.

News reports routinely refer to "toxic" or "killer" mold. According to both the Centers for Disease Control (CDC) and the Environmental Protection Agency, however, there is no link between mold and serious illnesses. "There are very few case reports that toxic molds inside homes can cause unique or rare health conditions," the CDC noted in a report. "The common health concerns from molds include hay fever-like allergic symptoms."

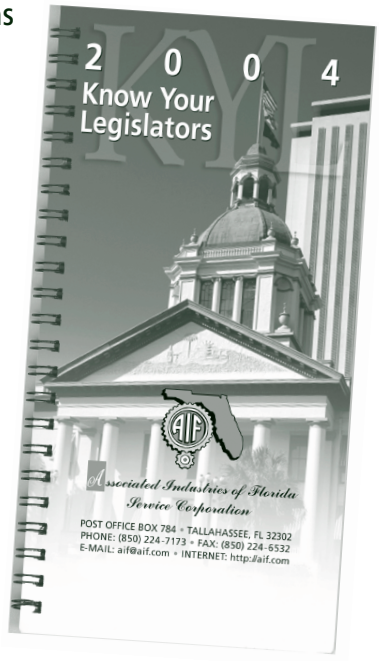
In addition, this "plague" is not blamed on a new strain of mold or sudden increase in real mold damage. The only change precipitating this crisis is the evolution of a new formula by plaintiff attorneys, which transforms water-loss property claims into lawsuits for bodily injury, huge attorney fees, and punitive damages.

The mold litigation explosion has devastated the Texas insurance market and major carriers in Florida are reporting dramatic increases in claims for mold, which rarely occurred in Florida two years ago. This fact, combined with Florida's unique legal doctrines and damp climate, make Florida a perfect environment for this litigation infestation to thrive and to destroy the state's

Same Book, New Look!

It's been called the lobbyists' bible; we call it *Know Your Legislators*, and it's ***available now with spiral-binding***. Spiral-binding is longer lasting and allows the book to open flat, freeing up the user's hands.

The new full-color front of the book covers the same valuable directory that Floridians have come to trust.



This pocket-sized guide, published by AIF, is the *original directory of the Florida Legislature.*

Every AIF member gets one complimentary copy, and additional copies are available starting at $5 each — $1 more for spiral binding. Place an order by calling AIF's publications department, or place an on-line order on our Web site *(http://aif.com)*.

To Order Your Copies, Call (850) 224-7173

The average cost per policyholder per year in Texas due to mold increased 1,805 percent between the first quarter of 2000 and the third quarter of 2001.

insurance market, unless immediate, appropriate action is taken.

Mold litigation losses could become more severe in Florida than in any other state because of our unique laws that produce huge attorney fees and "bad faith" damages, even if the court agrees that the insurer had a completely reasonable basis for its actions. Florida also has an unusually large population of public adjusters, who aggressively recruit policyholders to file claims. And finally, Florida faces the unique exposure of hundreds of thousands of dollars of water losses at one time due to a hurricane.

Florida's hot and humid climate provides a perfect home for mold to take hold and thrive. Mold losses have not historically been a major factor in insurance costs and premiums in Florida because legitimate mold claims were not frequent or large. In fact, the vast majority of "mold" cases have never been covered by insurance, but rather are maintenance issues that are best dealt with by homeowners, not insurers.

Rate increases necessary to cover this unprecedented surge in mold claims have made homeowners insurance premiums in Texas and California the highest in the country and forced some insurers to suspend writing new homeowners business in several states, including Florida. The average cost per policyholder per year in Texas due to mold increased 1,805 percent between the first quarter of calendar year 2000 ($23.32) and the third quarter of 2001 ($444.35).

As with homeowners insurance, current commercial liability rates were developed using claims data from a time when mold lawsuits were relatively rare. As such, current liability insurance rates do not contemplate this emerging issue. And, because the extent of the emerging mold litigation crisis in commercial insurance cannot be accurately predicted, it is almost impossible to accurately price for this exposure.

AIF will ask lawmakers to take action this year to shield insurance carriers and their clients against a Texas-sized insurance crisis grounded not by liability, negligence, or science, but in the actions of rapacious personal-injury lawyers, self-styled "expert" witnesses, and greedy plaintiffs.

Premises Liability Reform

Florida employers who own or manage property face inequitable exposure to liability for intentional criminal acts of third parties. Since Florida courts apply the doctrine of joint and several liability to premises liability cases, an employer can find himself paying all of the civil damages awarded to a plaintiff who is the victim of a criminal attack on the employer's property, even though the employer has done everything he can to protect the safety of his customers.

AIF supports applying comparative fault, rather than joint and several liability, to all intentional torts so that property owners and managers would only be liable for damages arising from their own negligence.

AIF also supports the creation of a statutory affirmative defense, similar to the approach adopted for the convenience-store industry, which would allow a defendant employer to demonstrate to the jury that he practiced security conscious methods of operation. This rebuttable defense would require the defendant to show that it fulfilled at least six of eight requirements, such as installing security cameras, emergency call boxes, and lights of a certain brightness.

Workers' Compensation Rate Reform

As part of the 2003 workers' compensation reforms, the Florida Senate and some members of the House of Representatives insisted on a study of Florida's current system for setting workers' compensation rates. These reform skeptics wanted to investigate alternative rate-making mechanisms, in the belief that a lack of competition was keeping workers' comp insurance costs high.

Currently, all workers' compensation insurance carriers in the state use rates that are set by the Office of Insurance Regulation based on data collected by NCCI, a private rating organization. Florida uses a "full" rate for workers' comp, which means that the

rates approved by state regulators are used by all carriers. Carriers then use such instruments as innovative premium plans and workplace safety programs to make their products more affordable in the marketplace.

Supporters of a popular alternative — called loss cost, or open rating — argue that applying the principles of competition to the pricing of workers' comp insurance policies would deliver a much-needed dose of market discipline, which would accrue to the benefit of employers. A closer look at the records of states with the two opposing systems, however, revealed that rating methodologies alone do not correlate to lower premiums.

An abundance of data indicates that the high price of Florida's workers' comp system is the result of neither a lack of competition nor of the current rating system. In fact, according to a couple of highly predictive measures, there exists a healthy level of competition in our workers' comp market. Among the factors that do demonstrably affect premium costs are actual benefit levels, which in Florida rank among the highest in the nation, and expense levels, including litigation costs, taxes, and assessments, where again Florida earns a high ranking.

In a state such as Florida, where the cost ratio is 118 percent, there is no evidence that profit margins are inflated and that a conversion to loss-cost would force carriers to wring out savings on premiums charged to employers.

AIF believes that the current system will, in the long run, provide greater stability in the marketplace. The dramatic reforms enacted in 2003 must be given time to realign the system and bring it back to the kind of stability that will result in lower premiums.

Furthermore, staying with the tried and true will protect Florida employers against a replay of the debacle in California, where large carriers swept in after the conversion to open rating, captured the market, drove out the local insurers, then abandoned the state when costs started escalating.

The joint select committee created in the 2003 reform legislation reached the same conclusion and voted against recommending a switch in Florida's rate-setting methodologies. Clear and convincing evidence is not enough to sway the opinions of insurance-carrier skeptics so this issue may be reborn during the upcoming session.

Alternative Rate Mechanisms

The Office of Insurance Regulation sets all rates for workers' compensation policies issued in the state and carriers are allowed minimal discretion to depart from those rates in the premiums they charge to their policyholders.

Carriers currently are allowed to utilize several voluntary rating options, including dividends, deviations, large deductibles, consent-to-rate, retrospective-rating plans, increased employer-liability limits, waiver of subrogation rights, and schedule ratings. Many of these are frequently used successfully, particularly dividends and large deductibles. Deviations, however, are very difficult to obtain in Florida, primarily because the Office of Insurance Regulation has to consider the overall market effect of each deviation before granting authority to the carrier to use it, a subjective measure that effectively repeals the ability to use deviations as a mechanism to lower rates.

Consent-to-rate plans are primarily used in other states as a mechanism to help an employer avoid entering a joint underwriting association or residual market, which typically charge rates well above market levels. This mechanism could be refined in Florida to benefit employers and carriers as a means to depopulate the residual market.

To assist more employers in exiting the residual market, AIF also supports the creation of incentives for carriers that utilize consent-to-rate plans, or provisions contained in last year's reform legislation, to depopulate the JUA. These could come in the form of abatements to the Workers' Compensation Administrative Trust Fund and Special Disability Trust Fund assessments, or as premium tax credits. ■

Jacquelyn Horkan is a freelance writer in Tallahassee, Florida (e-mail: *jhorkan@aif.com*).

For more information on the issues covered in *Employer Advocate*, visit AIF's members only Web site, *http://fbnnet.com*

Associated Industries o

AIF lobbyists, representing centuries of accumulated experience in politics and government, spent more

Dear Florida Employer:

By standing up for your right to succeed, free from government intrusion and interference, Associated Industries of Florida helps companies like yours grow.

For most of this century, wherever and whenever governmental officials have met, Associated Industries has made sure they listen to the voice of the state's employers.

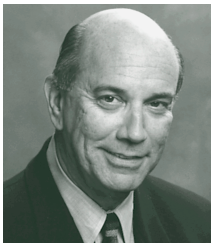
We champion the value of hard work and productive endeavor and the incentive offered by the ability to make a profit. We make sure government officials understand the consequences of their actions on the ability to succeed in Florida.

Like it or not, the decisions made in Tallahassee can make the difference between success and failure in commerce. When those decisions are made, Associated Industries speaks out on the side of success.

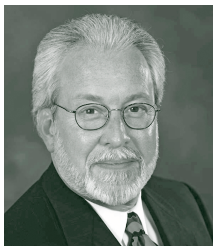
If your company does not belong to Associated Industries, please consider the benefits of joining. With your support, we can grow in our mission to promote a vigorous economy, filled with the promise of abundance for every person who calls Florida home.

Jon L. Shebel
President & CEO

Officers



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.



Barney T. Bishop III
Chief lobbyist & chief political officer of Associated Industries of Florida ... President & CEO, The Windsor Group … former aide to state Treasurer Bill Gunter … 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.

Mary Ann Stiles, Esq.
General counsel of Associated Industries of Florida ... managing partner in the law firm of Stiles, Taylor, & Grace, P.A. ... more than 31 years of legislative and lobbying expertise before the Legislature and other branches of government ... graduate of Hillsborough Community College, Florida State University, and Antioch Law School.

Chris Verlander
Senior vice president — corporate development of Associated Industries of Florida ... more than 24 years of expertise in insurance lobbying activities ... former president (1994-1997) and vice chairman (1997-1999) of American Heritage Life Insurance Company ... B.S. from Georgia Tech and M.B.A. from the University of Florida.

"The AIF staff is extremely competent and highly respected as one of the best lobbying groups in Tallahassee, and is, as a result, very effective in representing business."

Lance Ringhaver, President – *Ringhaver Equipment Company*

l Florida 2004 Lobbying Team

than 10,000 hours in the Capitol during the 2003 Legislative Session *advocating for your business interests.*

Consultants

Robert P. Asztalos
Partner with the lobbying firm of Buigas, Asztalos & Associates and director of governmental affairs for Delta Health Group ... more than 16 years of experience as lobbyist on the state and national level ... Former Director of Legislative Affairs for the Florida Health Care Association and Senior Congressional Affairs Representative for the American Health Care Association in Washington, D.C. ... Master's degree in Legislative Affairs and a Bachelor's degree in Political Science from George Washington University.

Doug Bailey
Senior political officer of Associated Industries of Florida ... executive vice president & COO, The Windsor Group, a governmental relations consulting firm … areas of expertise include appropriations, criminal justice, and behavioral health care issues and campaigns and elections ... B.S. in political science from Western Carolina University, M.P.A. from The Askew School of Public Policy and Administration at Florida State University.

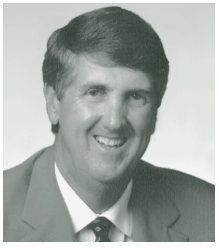
Ronald L. Book, Esq.
Principal shareholder of Ronald L. Book, P.A. … former special counsel in Cabinet and legislative affairs for Gov. Bob Graham … and formerly worked for Florida House of Representatives … 32 years of expierence in government and legislative activities … areas of expertise include legislative and governmental affairs with an emphasis on sports, health care, appropriations, insurance, and taxation … graduate of the University of Florida, Florida International University and Tulane Law School.

Keyna Cory
President, Public Affairs Consultants, a public affairs and governmental relations consulting firm ... more than 19 years of experience representing a variety of clients, from small entrepreneurs to Fortune 500 companies, before the Florida Legislature ... majored in political science at the University of Florida.

Tamela Ivey Perdue, Esq.
Shareholder with the law firm of Stiles, Taylor & Grace, P.A. … more than three years experience representing insurers and the business community on workers' compensation issues … established legal practice specializing in workers' compensation defense … formerly worked in the Florida Senate Majority Office, Rules Committee and Committee on Ethics and Elections … B.S. from Lee University and J.D. from Stetson University.

Jim Rathbun
President of Rathbun & Associates ... more than 15 years of experience representing individuals and entities before the Legislature, state agencies, and the governor and Cabinet ... formerly worked with the Florida House of Representatives and served as staff director of the House Republican Office ... B.S. from Florida State University.

Guy Spearman, Esq.
President, Spearman Management, Inc., government relations consulting firm ... 30 years of experience representing a variety of clients from small to large ... graduate of Auburn University and Florida State University College of Law.



Gerald Wester
Managing partner, Capital City Consulting, LLC ... former chief deputy over Florida Department of Insurance's regulatory staff ... more than 28 years of lobbying experience ... expertise in insurance, banking, and health care issues ... Bachelor's and master's degrees from Florida State University.

Mike Zagorac
Former senior vice president, public affairs for Hill & Knowlton, Inc. ... former vice president of public affairs for the Jack Eckerd Corporation and vice president of the National Association of Chain Drug Stores ... more than 35 years of experience in media and public relations, community affairs, and environmental issues ... Bachelor's degree from Purdue University and M.B.A. degree from American University.

For more information on the benefits of membership in AIF, visit *http://aif.com*

(Continued from page 3)

members' personal agendas, combined with the politics of a presidential election year could end up discounting whatever meaningful reform will be proposed. Let's hope not.

As it stands now, however, there is little indication that Floridians are open to limitations on their right to pursue ballot initiatives, no matter how irresponsible the current process might be. Recent public opinion research indicates that 70 percent of Floridians approve of the citizen initiative constitutional amendment process. Voters indicate an appreciation for the sanctity of the constitution (53 percent), and nearly half (46 percent) believe that too many ballot questions appear from year to year. When voters are faced with the prospect of restrictions on their access to direct democracy, however, their support wanes; 50 percent favor leaving the process the way it is. Only 42 percent favor making the process more difficult and the remaining 8 percent are undecided.

That 8 percent may hold the key to what, if any, reform is ratified this year. The Legislature should consider proposing reforms aimed at creating a more responsible citizen initiative process, while maintaining citizen access to the document. The arguments should be about making the process more reflective of the lasting public interest and less reactive to transitory public opinion. ■

Doug S. Bailey is the senior political officer for Associated Industries of Florida (e-mail: doug@the windsorgroup.net).

Associated Industries of Florida Service Corporation
516 NORTH ADAMS STREET
P.O. BOX 784 TALLAHASSEE, FL 32302-0784