



## A Fair Portion of Lunacy

By Jacquelyn Horkan

In politics these days any proposal described as “fair” is probably going to cost you money.

Such is the case with the so-called Fair Share Health Care Act. Passage of this bill has become a priority for organized labor in 30 or so states, including Florida.

Fair Share legislative proposals range in details but they generally require companies of a certain size to choose between spending at least eight to 11 percent of their payroll on health insurance for employees or paying a health-care “tax” to the state that would be used to finance care for the uninsured.

As an end-run effort to enact a universal health care mandate, the bill is bound to fail.

As an illustration of the strategy of using politicians to carry out economic vendettas, the bill is a classic example.

Fair Share is the brainchild of the Service Employees International Union, which has for years been trying to unionize workers at Wal-Mart. Unsuccessful through traditional means of organizing a workforce, the union turned to a new tactic: it asked lawmakers in the state of Maryland to intervene.

Last year, at the behest of the union and its supporters, Maryland’s overwhelmingly Democratic Legislature imposed a payroll surcharge on every private business in the state with more than 10,000 workers that spent less than eight percent of payroll on health-insurance premiums.

A mere four or five employers met the 10,000-employee minimum but only one missed the eight-percent spending

minimum: Wal-Mart.

Although Maryland’s Republican governor wisely vetoed the legislation, the state’s Legislature subsequently overrode the veto, reaping a tempest of criticism.

The Washington Post — hardly a bastion of pro-business sentiment — called the bill “a legislative mugging masquerading as an act of benevolent social engineering.”

Emboldened by its success in Maryland, backers of Fair Share have cast a wider net, hoping to convince more states to entrap a larger pool of businesses. Florida’s version of Fair Share, filed by Rep. Susan Bucher (D-West Palm Beach) and Sen Skip Campbell (D-Tamarac) sets the formula at 10,000 employees and nine percent of payroll.

Fair Share will not, however, dramatically increase the number of insured Floridians. In fact, the only statistic it is likely to boost is the number of unemployed Floridians. That’s basic economics: if you raise the cost of something, fewer people are going to buy it. If Fair Share raises the cost of employment, business will employ fewer workers — and usually those with few skills who are often one paycheck away from destitution.

Furthermore, Florida is a small-employer state. Small firms are less likely to purchase insurance for one reason. They can’t afford it. And they can’t afford it, in part, because Florida forces an employer who is trying to purchase insurance for its employees to pay for coverage of a costly load of conditions and services. An employer has no choice but to pay for these mandated coverages, regardless

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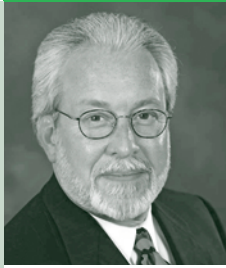
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## On the Job

By Barney T. Bishop III

**A**ssociated Industries of Florida exists because the threats to the private enterprise system are constant. Witness the latest iteration filed by two liberal Democratic legislators both from southeast Florida.

Sen. Skip Campbell, a Ft. Lauderdale trial lawyer and Rep. Susan Bucher, a “full-time legislator” from West Palm Beach are sponsoring the labor-backed Fair Share Health Act (see cover story), which AIF will fight to the fullest of our abilities.

Sen. Campbell, a Democratic candidate for attorney general, might well use the proposal to propel himself into Florida’s Cabinet. Whether or not it passes, he is sure to campaign as the candidate who will defend regular people against big, greedy corporations. Labor-influenced organizations such as ACORN could try to replay their success with a minimum wage to pursue passage of Fair Share as a proposed constitutional amendment.

To help confront this challenge, AIF has created a Mandatory Health Insurance Task Force which has already been meeting.

This coming legislative session presents many challenges for the business community. Most importantly we are on the verge of achieving a long-time goal: complete and total repeal of the doctrine of joint and several liability. This vital reform has already begun its passage through the Florida House of Representatives. If last year is any testament, it will prevail again and be sent to the Senate with a resounding vote of support. With at least 21 votes in the Florida Senate, joint and several repeal will be sent to

the Gov. Jeb Bush who will promptly sign it.

Beyond tort reform, there are a host of other critical issues that AIF will work on in the next few months that you will read about in this issue. Know that AIF will commit all of our resources to advocate for what is best for Florida’s employers. But there are other reasons that an organization such as AIF exists and it’s because sometimes business needs somebody that can take the “slings and arrows” for an unpopular cause.

Such is the case on the issue of energy costs for Floridians, which we expect to take center stage during the session. In December, AIF became the first and only statewide business organization in Florida to advocate for exploration and drilling in the eastern Gulf of Mexico for oil and natural gas. We were immediately attacked by some sectors of the tourism industry, yet on January 2, VISIT FLORIDA released its tourism projections for 2006, which had been cut more than half because of the high cost of fuel for automobiles, buses and planes.

The enviros also chimed in, warning of tar balls marring our pristine beaches — despite the fact that the Gulf Coast just survived two major hurricanes with no environmental damage from the rigs or platforms!

Recent polls show that many Floridians reject the alarmists and agree with AIF that responsible action must be taken to alleviate the rising cost of fuel and if it can be done in a responsible manner then we should support it.

AIF exists for many purposes. Most importantly it exists to serve you, our members, to keep you informed of the challenges that we collectively face, and to provide you with the means to overcome those challenges. This is what we have been doing for you for more than eight decades, and it is what we dedicate ourselves every day to continuing to do. ■

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of whether they are wanted or needed. Only four states provide for more insurance mandates than Florida, one of them is Maryland, the home of Fair Share.

If advocates of Fair Share really wanted to help the uninsured, they would start pushing for the repeal of some of those mandates, rather than piling on another. Making insurance more available and affordable is not the point, however.

According to organized labor and other advocates of Fair Share, big businesses have plenty of money but do not provide adequate health care coverage for their employees, creating a drain on taxpayers. Similar drain-on-taxpayer allegations have been used to justify the lawsuits against cigarette manufacturers, purveyors of fast food, gun merchants, and paint companies.

Like those other corporate targets, Wal-Mart has undergone a multi-pronged public relations attack by unions, left-wing interest groups, and deep-pocket personal-injury lawyers. They have been assisted willingly or unwittingly by journalists who repeat the anti-Wal-Mart invective as if it were fact. But this campaign, just like those against the other corporate targets, is not a quest for truth.

Wal-Mart is big and successful, which automatically makes it unpopular with a certain segment of the population. On the other hand, the retail giant is extremely popular with people shopping for bargains or looking for entry-level and part-time jobs.

When Wal-Mart enters a market, retail prices typically decline by 5 to 8 percent. One strategy the company uses to keep its prices low is to avoid unionization, which usually results in above-market costs for wages and benefits.

And while it may be dependent on low-wage, low-skilled labor, Wal-Mart is hardly stingy. Its employees are only slightly more likely than the national average to rely on Medicaid. According to a survey by The Segmentation Company, when seven percent of Wal-Mart's new hires join the company they are enrolled in Medicaid. At the end of



two years, only three percent still remain dependent on the publicly funded health insurance program.

Part-time and full-time employees alike can sign up for health insurance once they meet eligibility standards. Of Wal-Mart's 1.6 million employees, 86 percent are insured, over half of them through the company.

Wal-Mart falls into Maryland's Fair Share trap not because it neglects its employees' health care needs. Rather, Wal-Mart is able to use innovative approaches to spend less money on insurance than do other companies. In some markets, Wal-Mart employees can choose from among 18 different plans, one of which charges \$11 in monthly premiums with \$3 co-pays.

Most employers lack the edge that Wal-Mart's sheer bulk gives the company when it comes to leveraging health insurance dollars. Small employers in Florida have to take what the market gives them and state law makes those pickings slim. While Florida lawmakers, in recent years, have tried to expand the health care options available to small businesses, their attempts have met with limited success. Florida's market is still too restrictive.

***If advocates of Fair Share really wanted to help the uninsured, they would start pushing for the repeal of some of those mandates, rather than piling on another. Making insurance more available and affordable is not the point, however.***

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# The Forgotten Resource

By Jacquelyn Horkan

*Florida cannot be satisfied with a business-as-usual approach to information technology.*

**I**T used to be the domain of the pocket protector geeks tucked away in basement offices.

Today the geeks are the office heroes and information technology — or IT, for short — is now the backbone of the computer world.

From recovering a lost file to getting e-mail back on-line to making sure the planes land on schedule, IT staff members are major players in the way products and services are delivered in the United States. They sit at the boardroom table as corporate vice presidents and increasingly CIOs (chief information officers) are leapfrogging CFOs to take their place as CEO.

Why? Because the IT shops of companies and governments are where the institutional knowledge of an organization is increasingly found.

Many corporations have discovered, to their dismay, that saving money on IT funding is penny wise, but pound foolish. The state of Florida may be on the verge of learning that same lesson the hard way.

As private corporations have found over and over again, an upfront investment in IT can save money and improve service. Some segments of the Florida Government are so bad and outdated that services (to citizens and business) are suffering.

The computer systems at the state Department of Corrections (DOC) control all of the state prisons and prisoners. Those systems are so old and outdated that if they were to crash, finding someone who could fix them would be nigh unto impossible. A breakdown could pose a serious threat to the public safety. The same is the case with the computers designed to run public health and welfare programs.

When Jeb Bush became governor in 1999, he immediately set about to bring much-needed changes to the way Florida's state government finances, manages, and plans for its IT needs. Despite the 'e-Governor's' best

efforts, Florida still suffers from an outdated IT infrastructure.

Florida also lags behind many other states in per capita IT spending, including New York, which Florida will surpass before 2010 as the third-largest state in the Union.

To help address that deficit, AIF has created the IT Council, which is dedicated to helping elected officials and policymakers understand how to best bridge the gap. At a recent meeting in its state headquarters, AIF hosted a meeting of some of the most prominent IT corporations and service providers in the world. Their common goal: Promote IT as a way to transform government, making it more efficient and more accessible to its citizens.

The council will also concentrate on nourishing Florida's IT industry. Members will analyze existing barriers in regulations and the tax code, along with means to provide for an trained and competent IT workforce.

Florida cannot be satisfied with a business-as-usual approach to information technology. Despite the proliferation of cheap PCs, IT costs are not getting cheaper. In fact, security, support, and software licensing costs are spiraling upward.

In our state's multilingual society, confronting the threats of a pandemic flu, global terrorism, and sophisticated criminal gangs, the tools must be in place to sort critical information and quickly relay it to caregivers, first responders, government agencies, and the general public.

The world moves at Internet speed today and so must Florida's government. Ignoring our state's IT needs will strangle the ability of Florida businesses and residents to grow and prosper. ■

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# Identity Theft and Consumer Privacy

By Nick Iarossi

According to a 2003 Federal Trade Commission report, over the five preceding years, identity theft had cost victims \$5 billion, while the price tag for businesses and financial institutions was ten times that amount.

Those who steal identities steal money from businesses. On the other hand, government efforts to protect consumers against identity theft have the potential to hurt more than they help by unnecessarily hindering commercial transactions.

Since this is an election year legislators are eager to respond to constituents who clamor for greater protection against identity theft and misuse of private information.

This is an important issue for people who own and operate businesses because they will be forced to pay for any new measures designed to protect their customers' personal information. AIF is already tracking several bills to ensure that they do not produce unnecessary barriers to free and voluntary commercial transactions.

A measure sponsored by Rep. Sandra Adams (R-Oviedo) and Sen. Durrell Peadar (R-Crestview) would allow consumers to place a security freeze on their credit report, preventing unauthorized access to credit information or new extensions of credit while the freeze is in effect. Other states with similar laws have encountered problems because deactivating the freeze can take several days. Many times a consumer fails to remove the freeze before shopping for a car, getting a bank loan, opening a store credit account, etc. As a result, the consumer is unable to get instant credit and consummate the purchase.

Another bill by Rep. Ari Porth (D-Coral Springs) and Sen. Dave Aronberg (D-Greenacres) amends the Electronic Mail Communications Act to provide criminal penalties for sending unsolicited commercial electronic mail messages. The bill has been

nicknamed as the "Can Spam Email Act."

Under a bill by Sen. Skip Campbell (D-Tamarac) disclosing, selling, or transferring an individual's personal identification information to a foreign country without first obtaining the individual's consent would be considered a deceptive and unfair trade practice punishable as a third-degree felony. Many large companies ship that kind of information to India or other countries for data entry. Under this proposal, companies could not do so unless they received authorization from each individual whose information would be shipped. The prohibition would include customer call centers where an individual's personal information is visible on a computer screen. The practical effect of this legislation would make it impossible for companies to utilize foreign services.

Sen. Gwen Margolis (D-Miami) wants to prohibit the use of Social Security numbers on insurance identification cards, student identification cards, and certain information sent by mail. The legislation would also ban the use of Social Security numbers for obtaining certain goods or services except as legally required. Many businesses utilize social security numbers because it is the only unique identifier available.

AIF will analyze legislation carefully to ensure that any proposals dealing with identity theft and privacy conform to generally accepted business practices. AIF will fight to prevent legislation that creates unnecessary administrative costs associated with developing new systems. The business community is committed to fighting identity theft and protecting the privacy of their customers, however, enforcement of Florida's existing laws in these areas must be accomplished to prevent future crimes. ■

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# A New Day Dawning?

By Mary Ann Stiles & Tamela Perdue

**L**ife in Florida is a paradise in many ways and our vast natural and economic resources make many businesses proud to call Florida home.

For many years, however, the handling of negligence cases and damage awards by Florida's judicial system has overshadowed the ability of businesses and individuals in Florida to realize their full potential. Now, however, it appears that a new day may be on the horizon. It appears that lawmakers in both chambers will have the opportunity to abolish the inequity that the doctrine of joint and several liability places on our negligence system, leaving a legacy of a fair and just legal system for many generations to come.

Associated Industries of Florida and its fellow members of the Florida Coalition for Legal Reform have long advocated for and supported all legislative initiatives that foster fairness and predictability in our state's legal system. At this time, the abolition of joint and several liability is the one reform proposal that will provide the greatest impact across all industries.

This issue will be the focus of our greatest efforts. Other tort reform measures may arise and many will receive our support. We will not condone any legislation, however, that compromises or weakens the elimination of joint and several liability. We will also defend against any attempts by the trial bar to "compromise" on other legislation so that they can avoid the elimination of joint and several while still proclaiming that they participated in tort reform.

Last year we published an incisive guide to many of the reforms needed to fix Florida's current legal system. *Reforming Florida's Future: An Overview of the Need for Tort Reform in the Sunshine State* included a model lawsuit reform bill that encompassed over 20 different issues that we identified as worthy of



legislative attention. That publication ignited a tort-reform debate in the halls of the Capitol that culminated in the Florida House of Representatives, under the leadership of House Speaker Allan Bense (R-Panama City), passing a comprehensive tort reform bill. The package, sponsored by Rep. Don Brown (R-DeFuniak Springs), would have saved a significant amount of money on many of the goods and services on which businesses and individuals have come to rely. Unfortunately, this bill got tangled up with several other pieces of major legislation during the last hours of the 2005 session in negotiations with the Senate and did not pass the full Legislature.

Our commitment to lasting and meaningful tort reform did not end on the last day of the 2005 session. AIF lobbyists and coalition members worked throughout the interim and are still working to build support for the repeal of joint and several liability. We have worked hard to educate senators and representatives alike about the many benefits Florid-

*Repealing joint and several liability is the key to true success in the legal attacks thrust at businesses across this state every single day*

ians will reap from this legislation to transform our unfair negligence system into a system that is fair, balanced, and just. Fortunately, in working with other members of the business community we have been able to confirm that our position is now shared by the other business groups: the elimination of joint and several is the top priority for the 2006 session. That dedication has also been communicated to leadership in the Senate and the House.

Our support for other tort reform issues has not waned, yet we realize that repealing joint and several liability is the key to true success in the legal attacks thrust at businesses across this state every single day. We are encouraged by House Speaker Bense's decision to give a hearing to Rep. Brown's joint and several bill in the House Judiciary Committee before session begins. We appreciate the votes of the seven representatives on the House Judiciary Committee who approved that bill on January 25, 2006.

We also applaud the commitment of Senate President Tom Lee (R-Tampa) who publicly acknowledged the importance of true tort reform for the State of Florida and promised to present this issue to the Senate in the early weeks of the upcoming session. SB 2006,

which is identical to the Brown bill, has been filed in the Senate by Sen. Dan Webster (R-Winter Garden).

We will continue to encourage the Legislature to step up to its rightful role and not allow the judiciary to shape policies for our state that should be left to our representative branch of government. Once again, the question Florida's leaders must answer is not *whether* a governmental response is needed but how — and when — will government respond to the abuses of the judicial system that are crippling Florida business. The continuation of joint and several liability in this state is jeopardizing Florida's future and we must work together to improve our economy and ensure a fair and equitable legal system for all Florida's citizens. ■

Mary Ann Stiles and Tamela Perdue are with the law firm of Stiles, Taylor & Grace, of which Stiles is the founding partner. Both are consultants to Associated Industries of Florida. Stiles serves as general counsel emeritus and Perdue as general counsel (e-mail: [mastiles@stileslawfirm.com](mailto:mastiles@stileslawfirm.com); [tperdue@stileslawfirm.com](mailto:tperdue@stileslawfirm.com)).

*AIF and its fellow members of the Florida Coalition for Legal Reform have long advocated for and supported all legislative initiatives that foster fairness and predictability in our state's legal system.*

## In the Know!

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**Barney T. Bishop III**  
PRESIDENT & CEO

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*"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



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# A Burst of Energy

By Jacquelyn Horkan

*Rather than imposing new taxes or mandates, the governor's plan seeks to remove regulatory barriers that have hindered the development of new electric-generation capacity.*

Florida's economy thrives on the energy that businesses need to produce goods and provide services to consumers. And that's why AIF was the state's major business association to sign on as a supporter of national and state efforts to expand our state's energy supplies.

The 2003 northeastern blackout, hopscotching crude oil prices, and the interruption in fuel supplies after Hurricane Katrina have been reverberating throughout the nation's economy. According to PNC Financial Services, energy costs have replaced employee health insurance as the single biggest concern of small business owners.

Rising costs and dwindling availability of dependable and affordable supplies of electricity and fuel pose unique concerns for Florida.

While we are the fourth most populous state, Florida ranks third nationally in total energy costs. Less than one percent of the energy used here is consumed here. Delivery of fuel supplies is hampered by Florida's unique geography; 98 percent of our transportation fuel arrives by sea whereas other states rely on pipelines.

Florida citizens and businesses use 28 million gallons of motor vehicle fuel each day; consumption is expected to grow to 32 million gallons a day in ten years. Electricity usage is expected to increase by almost 30 percent over the next 10 years.

Current forecasts indicate that state's new generating capacity will be 80 percent natural gas and 19 percent coal-fired, leaving Florida overly reliant on one type of rather expensive energy.

At AIF's Dec. 12, 2006 press conference on this issue, several business leaders gave examples of the negative impact of escalating energy costs on their ability to sustain and grow operations. Gov. Jeb Bush has grasped

the initiative, compiling a package of proposals that address the twin dilemmas of energy costs and supplies.

The governor is asking lawmakers to approve the 2006 Florida Energy Act, a four-year, \$75-million-dollar effort that balances conservation with new energy supplies. Rather than imposing new taxes or mandates, the governor's plan seeks to remove regulatory barriers that have hindered the development of new electric-generation capacity. It also relies on targeted incentives designed to spur efforts to develop alternative fuels and next-generation energy technologies.

As Gov. Bush said in his announcement of the plan, "A reliable, cost-efficient supply of energy is critical to Florida's continued prosperity. Through diversity and conservation efforts, we can reduce our dependence on imported oil, spur economic growth and ensure that a balanced mix of fuel sources and technologies are readily available for years to come."

AIF also announced its support for the bill introduced by U.S. Representative Richard Pombo and negotiated by Gov. Bush, which calls for limited exploration and recovery of undiscovered oil and natural gas resources in the Eastern Gulf of Mexico. The bill balances the need to expand drilling and exploration with protection of Florida's environment, national military interests, and tourism.

Over the long-term, Florida's economy depends on an aggressive approach to developing alternative energy sources including nuclear, hydrogen, ethanol, coal, solar and wind to meet the state's future needs.

Much of Gov. Bush's Florida Energy Act represents the first step in this process. AIF applauds his foresight and promises to continue leading the effort by business community to ensure that lawmakers follow through on these important initiatives so that they become guiding principles for our state. ■

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# Heading for a Market Meltdown

By Gerald Wester

**F**lorida is on the verge of a property insurance meltdown. Hurricane and sinkhole losses (see sidebar) have seriously strained the resources of both the voluntary market and the public sector mechanisms of Citizens Property Insurance Company and the Florida Hurricane Catastrophe Fund. Additionally, a busy hurricane season forecast for 2006 creates an urgent need for lawmakers to address the marketplace vulnerability during this legislative session.

State-owned Citizens, which in four years has become Florida's second largest property insurance company, has a \$1.4 billion deficit in cash needed to pay hurricane losses. Citizens' cash deficit will be funded through premium surcharges, projected to result in a minimum 15 percent premium increase for each residential policyholder. Hurricane losses have totally depleted the cash resources of Florida's Hurricane Catastrophe Fund.

Florida insurance companies have replaced approximately \$1 billion of capital that was depleted as a result of 2004 hurricanes. Additional replacement capital will be necessary as a result of 2005 hurricane losses. A number of insurance companies are re-evaluating their hurricane exposure and reducing market share in some cases. The Office of Insurance Regulation estimates that approximately 250,000 policies will not be renewed this year. These non-renewals have not been offset by new companies entering the market.

The 2005 Legislature enacted several changes to laws governing property insurance in a sincere attempt to stabilize the market. Their actions are likely to hurt more than they help because the new law imposes 16 new counterproductive price, product and marketing requirements on insurance companies.

Based on comments made at a series of statewide meetings, many legislators now appear ready to abandon government com-

mand-and-control in favor of a market-based approach to revitalize the private property insurance market.

Legislative focus has shifted to attracting new insurance capital that will fulfill the demands of current and future property insurance needs.

AIF will continue to work with lawmakers to develop proposals that will fix the problems in the market before it's too late.

## A Sinking Feeling

Is that crack in the foundation a result of normal settling, poor construction, or a sinkhole?

Florida law mandates that property insurance cover losses caused by sinkholes. Aggressive solicitation by plaintiffs' attorneys and unscrupulous contractors has resulted in an unprecedented number of Tampa Bay claimants alleging that sinkholes caused the damage to their property.

Resolution of sinkhole claims has now become a matter for litigation, significantly reducing availability of private property insurance in the Tampa Bay area. State-owned Citizens Property Insurance Company is now the number one insurer in many Tampa Bay counties. In just three years Citizens's coverage in Hernando, Hillsborough, Pasco and Pinellas counties has increased from 1,012 policies to more than 140,000.

Several Tampa Bay legislators have filed a bill establishing an alternative process that utilizes a neutral expert evaluator to determine whether damage is the result of a sinkhole and to resolve other sinkhole claim disputes.

The proposed legislation is an effort to drive out of the system the frictional costs resulting from litigation over damages caused by cracking and settling. ■

Gerald Wester is Managing Partner with Capital City Consulting, LLC, a Tallahassee-based lobbying firm (e-mail: [gwest@capcityconsult.com](mailto:gwest@capcityconsult.com)).

**Legislators now appear ready to abandon government command-and-control in favor of a market-based approach to revitalize the private property insurance market.**

# Lawmakers Asked to Cut Taxes, Boost Economy

By Keyna Cory

***“Just because you collect the tax dollars, does not mean that you have to spend them.”***

– House Speaker  
Allan Bense

## Intangible Personal Property Tax

Florida is one of only four states that tax intangible personal property, which includes such things as stocks, bonds, notes, and certain other documents that oblige someone to pay the holder money.

In 1998, Florida’s lawmakers recognized the economic disincentives created by the intangibles tax, which has also been called a tax on savings because it penalizes people who use their money for investment purposes rather than spending it. Over the next three years lawmakers phased in an exemption from the tax for accounts receivable. During the same period, the Legislature reduced the annual tax rate from 2 mills to 1 mill.

Two years ago, legislators again took up the job of reducing the burden of this imprudent tax by increasing the personal exemptions from \$20,000 to \$250,000 in total taxable assets for individuals and from \$40,000 to \$500,000 for married couples filing a joint return. In 2005, the annual tax was cut again, to half a mill, effective January 1, 2006.

Rep. Fred Brummer (R-Apopka), and Sens. Mike Haridopolos (R-Melbourne) and Jeff Atwater (R-North Palm Beach) have each filed bills that would finally wipe the annual intangible personal property tax off the state’s tax code.

Some will claim that eliminating this tax harms the poor and needy while rewarding the rich. That argument ignores the fact that every intangible tax dollar paid represents a dollar that is not spent in creating more jobs

and opportunities.

## Manufacturing Machinery and Equipment

Legislation has been filed to broaden an existing sales tax exemption for industrial machinery and equipment that is purchased to expand a facility engaged in manufacturing or spaceport activities.

Under current law this exemption does not apply until a business pays \$50,000 in sales tax. Rep. Matt Meadows (D-Lauderhill) and Sen. Jeff Atwater (R-North Palm Beach) want to eliminate that provision, thereby providing for a full, rather than partial, sales tax exemption. To become eligible for the exemption, the business must demonstrate that the industrial machinery and equipment it purchases will be used to increase productive output at the facility by at least 10 percent.

Florida currently charges sales tax twice on many of the materials and machinery in-state companies use to make goods — once before they are used and once after they appear as the final product. Plants in several of our neighboring states, including Georgia, are exempt from this double taxation, which gives them an unfair advantage over our home-grown manufacturers.

Florida currently has over 16,000 manufacturing facilities and roughly 14,000 have 10 employees or fewer. Rep. Meadows and Sen. Atwater’s bills provide a much-needed incentive for existing manufacturers to remain here while helping to attract new manufacturing plants.

The exemption on manufacturing machin-



ery and equipment will help nourish our manufacturing sector, giving the state a diversified economy and adding to Florida's luster nationally and internationally.

### Sales Tax Holidays

Bills filed by Rep. Joe Negron (R-Stuart) and Sen. Jeff Atwater (R-North Palm Beach) would establish a one-week sales tax holiday on virtually every purchase costing under \$5,000, such as clothing, furniture, televisions, electronics, computers, vehicles, and recreational equipment. The tax-free week, from July 31 through August 6 would represent the largest single tax cut in Florida history.

In announcing the proposal, Rep. Negron told the press that the House plans to use the unexpected surge in tax revenue to fund priorities, save for the future, and give back to the taxpayers. This proposal is the fairest way to give back to the citizens because it benefits everyone, from the richest to the poorest. House Speaker Allan Bense (R-Panama City Beach) threw his support behind the idea, telling reporters. "Just because you collect the tax dollars, does not mean that you have to spend them."

Sales tax holidays have grown in popularity over the last several years, to the delight of individuals and businesses alike. When consumers take advantage of these holidays, they spark Florida's economy, bringing long-term and short-term gains for all Floridians.

### Hurricane Preparedness

Over the last two years, plenty of Floridians have learned that preparedness is the key to surviving a hurricane both in your personal and your business life.

To help citizens of the state ready themselves for the next storm, Rep. Ron Greenstein (D-Coconut Creek) and Sen. Cary Baker (R-Eustis) want to set aside a period of time when Floridians can buy the hurricane supplies they need without paying sales tax.

If the proposal becomes law, purchases made from June 1 until June 12 of items from a predetermined list of necessities would be exempt from sales. ■

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# Lawmakers Tackle Eminent Domain & Redevelopment

By Rayford Taylor



*Under current law, a thriving business that falls within a redevelopment area designated as blighted could face condemnation.*

**C**an government force you to sell your home or business, then transfer ownership of it to a private entity involved in a development project designed to boost the area's economy?

The U.S. Supreme Court says yes. In *Kelo v. City of New London*, a decision handed down last June, the justices ruled 5-4 that economic development is a "public purpose" that legitimates the use of the government's power of eminent domain.

The decision prompted widespread concern that local and state governments would view the case as giving them the green light for a massive expansion of government's power to take control over a citizen's private property.

In *Kelo's* wake, virtually every state is evaluating its eminent domain laws. In Florida, the scrutiny has focused primarily on safeguards against takings designed to remedy slum or blighted areas under the home rule authority of certain cities and counties or the Community Redevelopment Act. Those concerns have been focused primarily on the establishment of Community Redevelopment Agencies (CRAs) to carry out activities within the redeveloping area.

The business community must become involved in this issue because, under current law, a thriving business that falls within a redevelopment area designated as blighted could face condemnation. Even if the business is not located within a redevelopment area, it could be subject to condemnation by a charter county or municipality for economic development even though the business is not blighted or otherwise engaged in an inappropriate use of the property.

Under Florida law a business that is totally condemned through eminent domain would not always be entitled to recover business damages as a result of that condemnation. If the business is renting the property and building it might receive no compensation at all.

Under current law, a municipality or county receives special authority once it makes a finding that a slum or blighted area exists within a redevelopment area, those powers include the ability to authorize the issuance of revenue bonds; to acquire property (by eminent domain if necessary); to demolish, remove, or dispose of property; and to use tax-increment financing. Property rights advocates contend the current definition of "blight" is so broad and so vague that private property transfers to other private property owners can and do occur solely for economic purposes.

Litigation is ongoing in various parts of Florida concerning the condemnation and transfer of property to private developers when the existing owners will not voluntarily sell a piece of property slated for economic development. Counties, cities, and CRAs contend that the power to condemn for economic development is a necessary tool for them to effectively revitalize rundown areas. Private property rights advocates contend it is an inappropriate exercise of the eminent domain power, and that private property should not be subject to condemnation for transfer to private developers.

House Speaker Allan Bense created the House Select Committee to Protect Private Property Rights to look into the matter, while



Senate President Tom Lee assigned that responsibility to the Senate Judiciary Committee

The select committee has received testimony concerning the use of the eminent domain power in such a broad context and is considering limiting or restricting the use of eminent domain to only parcels that are found to be truly blighted, are slums, or constitute a risk to the public health, safety and welfare. At the present time, neither the House nor the Senate committees have proposed legislation but both committees are continuing to take testimony and develop comprehensive approaches to this issue.

There has been testimony that if the Florida Legislature wishes to prohibit or limit the use of eminent domain solely for economic development purposes, it will have to address not only the statutes governing CRAs, but also Chapters 127 and 166 of the Florida Statutes that deal with home rule authority for counties and municipalities.

As might be expected, this is a complex and difficult subject, but Florida business needs to closely monitor legislation. The potential effect on many Florida businesses could be devastating if the current law is not amended to protect a business from being condemned solely for the purpose of transferring the property to a developer because local government wants to redevelop the area in which the business is located. ■

**Rayford Taylor is with the law firm of Stiles, Taylor & Grace, and consultant to Associated Industries of Florida (e-mail: [rtaylor@stileslawfirm.com](mailto:rtaylor@stileslawfirm.com)).**

## Taking What's Yours

**E**minent domain is the power of government to condemn private property and convert it for public use, subject to reasonable compensation. The power of government to take property is limited by the federal and state constitutions.

Generally speaking, property taken through condemnation must be for a valid governmental purpose or for protection of the public health, safety and welfare. Such traditional takings have involved condemnation for roads, schools, prisons, parks, etc.

The *Kelo* decision arose out of a situation in Connecticut where in 2000, after decades of economic decline, the City of New London approved an economic development plan to revitalize the economy by developing an area along the shore.

The goal of the plan was to build an upscale hotel, business, and shopping center that would complement the facility a pharmaceutical company was building, as well as create jobs, increase taxes, and encourage revitalization of the rest of the city. The development corporation negotiated the purchase of many parcels of property from land owners in the development area. Ms. Kelo and several other owners refused to sell, however, prompting the filing of condemnation proceedings to seize their property.

There was no dispute in that particular case about whether the properties being condemned were not blighted. They were simply in the way of the city's plans for economic development.

# Pre-Session Business Report

## Ethics & Elections

### Constitutional Amendment Reform

By Jose L. Gonzalez

**D**uring the upcoming session, lawmakers will again take up proposals to reform the process for amending Florida's Constitution via citizen initiative.

In recent elections voters have had to confront a barrage of amendments that have made it to the ballot. This troubling trend has led members of the Legislature to seek changes that will protect our state's top document from provisions that don't belong there, while also protecting voters' fundamental right to change the constitution.

In November of 2004, Floridians approved the first of the initiative reform amendments. As a result, the sponsor of a constitutional amendment proposed by citizen initiative must, by February 1 of the year on which the amendment will appear on the ballot, file with the secretary of state the requisite number of initiative petitions that are necessary to get the amendment on the ballot.

That initial reform has already borne fruit. As a result of the 2004 reforms, only two citizen's initiatives were successful in meeting the February 1 deadline. No other citizens' initiatives will be allowed on the 2006 ballot.

Last year, the Legislature passed a joint resolution that will appear before voters in the upcoming November election. This reform proposal requires that a constitutional amendment proposed by any citizen initiative must gain at least 60 percent of the votes cast on the amendment; currently only a simple majority vote is required to adopt an initiative.

This time around, lawmakers will be asked to adopt two joint resolutions that place additional reforms before voters in the general election. The first would institute a filter that limits the subjects that citizen initiatives can address to those provisions that directly affect the relationship between governed and government.

The second joint resolution would require a two-thirds vote for a constitutional amendment that increases an "existing state tax or fee" with a "significant fiscal impact greater" than two-thirds of one percent of the state's general revenue.

AIF supports these measures that raise the threshold for enactment of citizens' initiatives. Florida must rein in a system that allows special interests to subvert sound public policy decisions. Florida's Constitution should not be demeaned as the vehicle for economically destructive programs and mandates.

## Legal & Judicial

### Guns in the Workplace

By Keyna Cory

**M**any businesses have banned the possession of weapons on their property as a measure to protect customers and employees. Under legislation filed by Rep. Dennis Baxley (R-Ocala) and Sen. Durell Peaden (R-Crestview) an individual would be allowed to lock his firearms in his vehicles, even on private property where guns are not allowed. Rep. Baxley says his bill, along with its Senate companion sponsored by, will "protect businesses from liability created by criminal conduct in parking lots."

According to the sponsors, law-abiding citizens already have a constitutional right, as well as a statutory, right to carry firearms in their private vehicles for lawful purposes. They say that keeping a firearm locked securely in a vehicle in a parking lot is part of that right.

Opponents of the proposed legislation argue, however, that the Second Amendment right to bear arms does not trump the property owner's right to decide what happens on his property. Some employers already have rules that ban firearms from their property and have concerns about the safety of their

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employees and customers if an exemption is made for firearms in a locked car.

The bill provides immunity for employers from any liability in the event of any criminal or otherwise unlawful use of the firearm that results in injury or death, but puts an employer in jeopardy of felony charges if it tries to ban firearms in a locked car parked on its property.

While AIF appreciates the good intentions of the sponsors, the association will be opposing the bill. Property owners have the ultimate right to decide whether guns should or should not be allowed on their property.

More importantly employers need the freedom to ban firearms on their property in the interests of employee safety.

## Public Safety

### **Making the Jessica Lunsford Act Workable**

By Keyna Cory

Last year's Jessica Lunsford Act is helping to help protect children from assault by high-risk sexual offenders, mostly by increased monitoring of sexual offenders and predators once they re-enter the community.

The law has come to the attention of the business community because it also requires background screens for non-instructional or contractual personnel who provide services to traditional public schools, charter schools, and alternative schools. It has proven a costly mandate that some school districts may be abusing. Any employee of a private contractor with access to school grounds or funds must now undergo a Level 2 background screen, which checks person's fingerprints against the state and national databases.

School districts have been encouraged to share background screening results with other public school districts so that one employee working in multiple districts only has to undergo one screening. Many districts have not done so, citing concerns about liability. As a result, a vendor or contractor with an employee working in more than one county would have to pay each county to conduct the exact same background check

multiple times, rather than conducting the screen once and sharing the information with each different county.

School boards are allowed to charge a processing fee, which in one district runs as high as \$43. The fee is added on to the \$47 charge for checking the state and federal databases. Depending on the school district, a private contractor or vendor must pay anywhere from \$60 to \$90 before an employee can enter school grounds to fulfill his duties.

This delays the delivery of services that school districts need while driving up the costs for those services.

Sen. Nancy Argenziano (R-Crystal River), the sponsor of the Jessica Lunsford Act, wants lawmakers to enact a glitch bill to fix a few problems with the bill. One area that needs to be addressed is defining "incidental contact" with a student so that someone who would have direct contact with a student would have to undergo a more rigorous screening process than would delivery persons or other employees. AIF believes that the issue of information sharing between school districts should also be addressed in any potential glitch legislation.

At the request of House Speaker Allan Bense (R-Panama City) and Senate President Tom Lee (R-Brandon) the commissioner of the Florida Department of Law Enforcement, Guy Tunnell, established a database on background check information so that districts could check on vendors and contractors who had already undergone screening.

This is an imperfect solution, however, because only the district requesting the check would be notified if the status of a vendor or contractor changed. Until a permanent fix can be found the database will help the business community comply with the spirit of this noble legislation.

The House Committee on Criminal Justice has already filed a proposal that addresses some of these concerns and the Senate is expected to do the same.

AIF will continue working to ensure that

*The proposal changes the way class size compliance is met by calculating the size by student-teacher ratio rather than using teacher-classroom ratios.*

the glitch bill fixes the concerns of the business community while upholding the integrity and purpose of this vital piece of legislation.

## Education

### Changes to Class Size Limits in Store?

By Ronald L. Book

**I**n November 2002, Florida voters approved a constitutional amendment to reduce class sizes in all grades to a set limit by the year 2010.

The initiative, which was approved by 52.4 percent of the electorate, establishes inflexible maximums of no more than 18 students in pre-kindergarten through third grade, 22 students in grades four through eight and 25 students in high school. Gov. Jeb Bush has been an opponent of the class size measure since its inception, arguing that the state cannot afford to hire the large number of teachers and build the many additional classrooms necessary to fulfill the strict requirements.

The Legislature approved legislation to implement the constitutional amendment during a special session in 2003. Since then, there have been several attempts to relax the requirements of the amendment and one proposal to repeal it all together.

This year, the House and Senate are considering a joint resolution on class size that would allow voters to consider a new constitutional amendment on this issue in the 2006 general election. Current law requires that class size be calculated on a school by school average. The Joint Resolution proposes freezing class sizes at the current district average, while limiting the size per class to no more than five students above the district average. Additionally, the proposal moves the date required for full compliance with the constitution's requirement from the beginning of the 2010 school year to the beginning of the 2009 school year. The proposal changes the way class-size compliance is met by calculating the size by student-teacher ratio rather than using teacher-classroom ratios. Lastly, the House recently amended its proposal to require school districts to spend 65 percent of their budget on classroom instruction.

Today's students are tomorrow's workforce, and students must study in an environment that is most conducive to learning. AIF supports finding innovative solutions to meet the needs of Florida's students. AIF will continue to work with the Legislature to ensure that educational gains realize through Gov. Bush's leadership can be continued and expanded upon.



# Court Gives Employers Victory

By Rayford Taylor

The First District Court of Appeals recently upheld the attorney-fee reforms of the 2003 workers' compensation law. The attorney-fee provision was a crucial part of comprehensive reform proposal enacted by lawmakers in 2003, which have resulted in a 25 percent average decrease in workers' comp premiums for Florida employers.

The 2003 package of reforms were drafted under the leadership of Mary Ann Stiles, AIF general counsel, as part of a multi-year effort by the Coalition of Business and Industry, an ad hoc employer group formed to pursue the much-needed changes in the system.

The attorney-fee reforms were vehemently opposed by the trial bar, which knew the changes would eliminate their ability to delay resolution of cases for no other reason than to drive up the fees they would receive. Under the new law, attorneys for injured workers receive a fee based on a percentage of benefits secured on behalf of the injured worker. The only exception to the ban on hourly fees applies to medical-only cases of up to \$1,500 in benefits, in which case the attorney can be awarded a one-time hourly fee.

The ruling is a true victory for Florida's employers. Since the law's passage, the trial bar has filed several appeals attempting to overturn the attorney fee provision or have the reforms interpreted in a manner which would still allow them to get fees based upon their hours. Those other cases still working their way through the appellate process and seek to attack this important law for Florida business. At present, there are at least five other cases challenging the attorney fee reforms on various theories. To date, AIF has appeared as Amicus Curiae in three of those cases urging the result reached in this case. ■

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## AIF Scheduled Events

2 0 0 6

### March

- 6 AIF 2006 "Welcome Back" Reception  
5:30 – 8:00 pm • AIF Headquarters – Tallahassee
- 7 **Opening Day of Regular Session**

### April

- 3 AIF Mid-Session Legislative Update  
7:30 – 8:30 am • Governors Club – Tallahassee

### May

- 5 **Last Day of Regular Session** (*Sine Die*)
- 22 Incumbent Fundraising Event – *Orlando*  
5:30 – 7:00 pm • Hyatt Regency  
Orlando International Airport
- 23 FBU Candidate Interviews – *Orlando*  
8:30 am – 5:00 pm • Hyatt Regency  
Orlando International Airport

### June

- 6 FBU Candidate Interviews – *Tampa*  
9:00 am – 5:00 pm • Hyatt Regency
- 6 Incumbent Fundraising Event – *Tampa*  
5:30 – 7:00 pm • Hyatt Regency
- 7 FBU Candidate Interviews – *Tampa*  
9:00 am – 5:00 pm • Hyatt Regency
- 19 FBU Candidate Interviews – *Ft. Lauderdale*  
9:00 am – 5:00 pm • Hyatt Regency Pier 66
- 19 Incumbent Fundraising Event – *Ft. Lauderdale*  
5:30 – 7:00 pm • Hyatt Regency Pier 66
- 20 FBU Candidate Interviews – *Ft. Lauderdale*  
9:00 am – 5:00 pm • Hyatt Regency Pier 66

### July

- 10 Incumbent Fundraising Event – *Sarasota*  
5:30 – 7:00 pm • Hyatt Regency
- 11 FBU Candidate Interviews – *Sarasota*  
9:00 am – 5:00 pm • Hyatt Regency
- 25 FBU Candidate Interviews – *Tallahassee*  
9:00 am – 5:00 pm • AIF Headquarters

### August

- 3-4 AIF Educational Conference – *Ponte Vedra*  
10:00 am – 4:00 pm • Ponte Vedra Club & Inn

### September

- 5 AIF Primary Election Watch Reception  
7:30 pm until • AIF Headquarters – Tallahassee

### November

- 7 AIF General Election Watch Reception  
7:30 pm until • AIF Headquarters – Tallahassee
- 14 Swearing In Ceremony – Tallahassee

For more information about any of these events contact Briana LaFave at (850) 224-7173.



AIF Headquarters is located at 516 North Adams Street, Tallahassee.

Members will receive complete information on all events via fax/e-mail.

For up-to-date  
information  
on business  
issues, visit  
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*(continued from page 3)*

According to one estimate, the number of firms offering health insurance has dropped from 69 percent in 2000 to 60 in 2005. In that same period, premiums have risen by 73 percent. Americans who want to be insured but aren't can usually be found working for small firms that simply can't afford the cost of health insurance.

If Fair Share were a legitimate attempt to provide employer-based coverage for uninsured workers, the proposal would be aimed at small firms, a ridiculous solution that is neither politically palatable nor economically feasible.

In 2005, the Florida Senate, unbeknownst to most of its members, actually enacted a Fair Share law in the closing days of the session via a stealth amendment offered to another bill by some of the chamber's top Democrats. AIF lobbyists Guy Spearman and Keyna Cory

discovered the subterfuge and organized an effort to get the amendment reconsidered and defeated.

How thankful should we all be? Take a look at the impact Fair Share could have on Maryland's economic climate.

Because of Big Labor's victory, Wal-Mart is reconsidering plans to build a distribution center in one of the state's poorest communities. Fair Share simply could make the project too much of a financial risk. Wal-Mart's pull out would eliminate 800 potential jobs in a rural area where per capita personal income is 46 percent below the average.

Unless that's what you want for Florida, tell your senator and representative to reject Fair Share. ■

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