



*A*ssociated Industries of Florida

# EMPLOYER ADVOCATE

March 1995

The  
Florida  
Jobs Act  
of 1995



*Celebrating*  
**75**  
YEARS



# THE VOICE OF FLORIDA BUSINESS

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

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

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



Photo by Hugh Scoggins



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# EMPLOYER ADVOCATE

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## Dusting off the Legacy



**Jon L. Shebel**

**President**

**and CEO**

*In 1787, a constitutional convention began in Philadelphia. Its purpose: to design a new framework for our young nation's central government.*

**F**ive years of operation under the Articles of Confederation had convinced our country's leaders that the system needed work. As the delegates to the convention met in secrecy, a cloud of rumors circulated, including allegations that they planned to install George Washington as king.

Of course, that didn't happen. Our country was born of a broad and general outburst of distrust of authority, especially kings. The delegates to the Philadelphia Convention were searching for a model to replace our first powerless central government with a more brawny, yet still restrained, system.

There's an old story — maybe true, maybe not — that one Philadelphia matron met Benjamin Franklin on the street as the convention drew to a close, and asked him what they had done during their private sessions. "We've given you a Republic, madam," Franklin replied, "if you can hold it."

That republic was built on

the virtues of individual autonomy, freedom from all ties of dependency, and the primacy of the states. Many of the great political debates of our nation's history — beginning with ratification of the 1787 constitution — center on the balance of authority between the states and the federal government.

The recent GOP conquest of Congress may be traced, in part, to that debate. One hundred years ago, 41 million Americans were served by 14,000 non-postal federal workers — an average of one federal bureaucrat for every 2,900 citizens. Today, we average about one per 100 inhabitants of our country. Many Americans believe that there are too many of them for each of us. And their magnitude translates to a forfeiture of our freedom.

The polls conducted by AIF prior to last November's general election disclosed a sweeping lack of respect for our state lawmakers, part of a decades-old national trend of contempt for politicians at every level. Distrust of government is part of the American character, but the degree of negativity is now inordinately high.

Coincidentally, this trend corresponds with the growth of government intrusion. Local, state, and national politicians have become enthusiastic planners of our lives. There is so much government, with so many

people — elected and non-elected — involved at so many levels, is it any wonder that we eye all of them as one swarm of intruders?

Few of us feel that their interference actually improves our lives. Proponents of big government nevertheless, believe they could do better with more tax money. They commonly spout criticisms of Florida's "inadequate tax base." At AIF, we look at the situation from a more traditional American perspective: the inadequacy is in our economic base.

The friends of government see tax reform, in the guise of tax increases, as an enhancement to that elusive condition they call "quality of life." We believe tax reform must embrace the rationale of capitalism.

Tax policies that strangle the entrepreneurial drive or punish economic expansion are foolish. Free market strategies that result in increased wages and production propagate a sturdy economy. More goods and services can be bought, which means more goods and services must be produced, which means more demand for people to create the goods and services. And so the circle of prosperity expands.

That philosophy is the basis of two legislative proposals crafted by AIF. The Jobs Package relies on the intelligent application of state fiscal policy as a spur for economic growth. Our plan to reform the Administra-

**Tax policies that strangle the entrepreneurial drive or punish economic expansion are foolish.**





tive Procedures Act, the process bureaucrats use to develop rules and regulations, devises a long-term strategy to free business from the red-tape swamp.

Both proposals are outlined in this edition of *Employer Advocate*. I urge you to acquaint yourself with these issues and then ask your representative and senator to support the AIF initiatives.

Democracy depends on a growing economy for its upward tide. That's why our founders opted for a commercial republic. They wanted a nation built on the energy and potential of the people.

The congressional members of the GOP promise a return to republicanism and federalism — the principles of shared power between the national and state governments with the states taking the lead on domestic affairs. That bodes well for our state.

Despite the low opinion of Florida's Legislature, that body is closer to the people than Congress. Reducing the role of federal government in the administration of daily life will simplify the political process and improve our ability to hold politicians accountable for their decisions.

Let's make sure the officials in Washington and Tallahassee intend to dust off our legacy of republicanism and democracy, a legacy which recognizes that prosperity arises from the products of free markets, not the products of government. ■

# The Florida Jobs Package of 1995

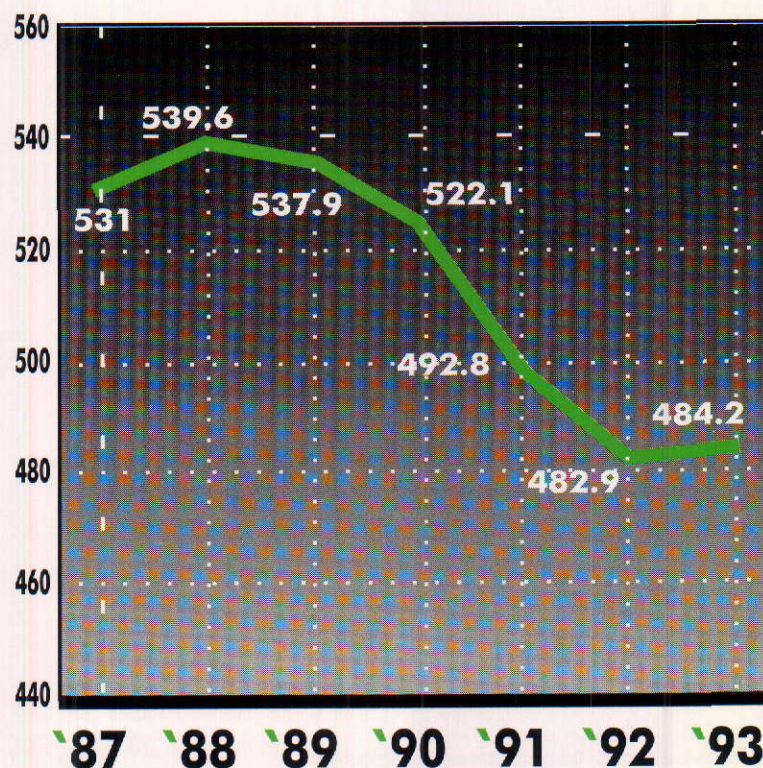
## *Where is Our Economic Recovery?*

by Jodi L. Chase, AIF Senior Vice President and General Counsel

**M**anufacturing is the engine that drives a modern economy. Manufacturing jobs are higher paying and more stable than service, retail or tourism jobs. For example, the Florida Department of Labor and Employment Security reports that the median

hourly wage for a Florida cashier is \$10. The median hourly wage for a Florida machinist is \$12.70.

Nationally, the average weekly manufacturing wage in March 1994, was \$502.80. In the retail trade, the average wage for that same period was



US Dept. of Labor  
reveals drop in  
Florida's  
manufacturing  
employment  
(in hundreds).



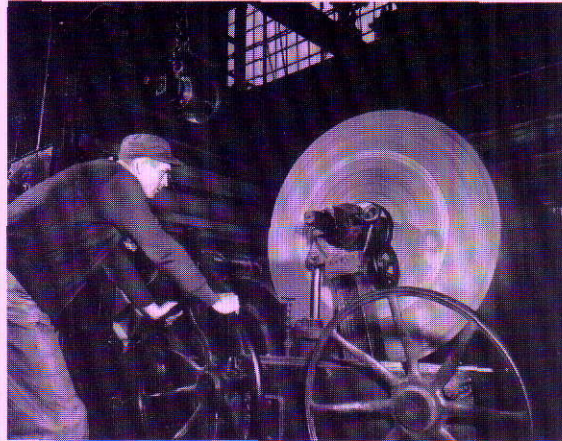


**On a national average, manufacturing wages exceed those in the retail industry by almost \$300 per week.**

\$212.04, a difference of almost \$300.00 per week.

Our state has far too many low-wage service jobs. Florida's average hourly wage in March of 1994 was \$9.89. The average hourly wage in March of 1994 for an Indiana worker was \$17.49. In fact, almost every state in the nation reflects higher hourly wages than Florida. A random survey shows Alabama at \$10.69, Georgia at \$10.19, North Carolina at \$10.65 and South Carolina at \$9.93. (*U.S. Department of Labor, Bureau of Labor Statistics, May 1994.*)

The wage picture in our state is bleak. The decline in manufacturing jobs in Florida over the past few years is a warning signal that our economy is in need of repair. In five years, Florida has lost almost 60,000 manufacturing jobs. In the same time



period, our neighboring states also lost manufacturing jobs. Our neighboring states are regaining those jobs; Florida is not.

For example, in 1988 Alabama had 380,000 people employed in the manufacturing sector. In 1993, they had 383,000. Georgia registered 574,000 manufacturing jobs in 1988, and 554,000 today. Florida still shows a net loss of 55,000 jobs. Where is our economic recovery?

An economy that produces is a healthy economy. An economy overly reliant on services is a subservient economy,

far too susceptible to downturns. Consider that the national unemployment rate in service jobs for April 1994 was 8.5 percent. In manufacturing, it was 5.9 percent for the same period.

Unfortunately, Florida now has a subservient economy, dependent on tourists and others from out of state to supply the demand for our service industries. Florida employers are also highly vulnerable to national

business trends. Economic blips in other states undermine our ability to create jobs.

What our state needs is diversity — in-state manufacturing industries providing new markets for our existing

businesses while creating opportunities for new businesses. With the opening of international trade barriers, we have a choice to make. Do we take advantage of new markets or do we watch our state fall into a greater decline?

If Floridians want to increase our prosperity, if we want to lower our crime rate and our teenage pregnancy rate, Florida must encourage the retention and creation of high-paying manufacturing jobs. Given the attitude of our government, as compared to that in our competing neighboring states, this task will not be easy. The first step must be to keep our current employers in-state. We must stop the out-migration of jobs.

AIF has identified six strategically placed statutory changes that we believe must be made in order to keep jobs in Florida. We have combined them into a Jobs Package which we will present to the Legislature.

The package was designed by comparing conditions in our state with those in our neighboring states, and with the input of business leaders. Plant managers, chief operating officers and chief executive officers de-

**The US Department of Labor compares weekly wages of both the manufacturing and retail industries.**







scribed the factors of competition they must consider in order to keep jobs at their Florida manufacturing plants. They described the forces that lead to job loss and job retention.

These business representatives explained to us that something as simple as the tax rate on a plant's \$1 million per month utility bill canceled plans for expansion in Florida. They lamented the taxation of research and development in this state and related fears of tax increases for the Public Education Capital Outlay Fund (PECO) which funds construction of new schools.

We saw that neighboring states encourage pollution prevention by giving tax exemptions on new pollution prevention equipment. Florida, on the other hand, continually demands more pollution prevention but charges sales and property taxes when a company voluntarily surpasses the state's technological requirements. In other words, when a Florida company chooses to install better equipment, the state makes them pay.

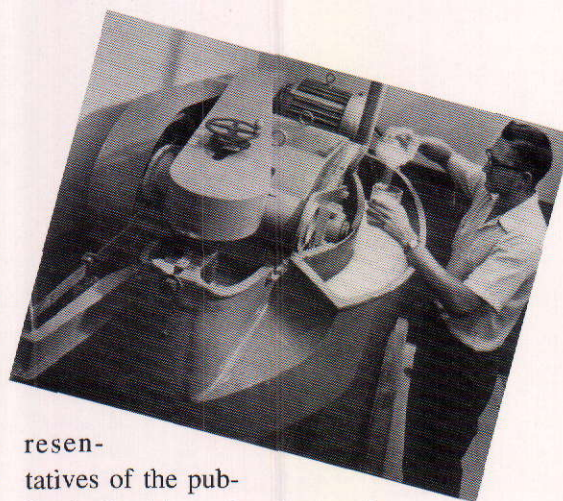
All of these experiences showed AIF why, when management has to decide between Florida and other states, they don't

choose Florida.

The AIF Jobs Package is not a giveaway. It is limited and narrow. It only addresses areas where Florida does not compete well with other states. Then it aligns our policy with our neighbors. It does not attempt to exceed the business friendly attitude of our neighbors. The goal is to keep jobs at home.

Giveaways are designed to attract new jobs. At AIF, we believe we must first keep existing jobs before we can attract new ones.

Some of the changes we propose represent an immediate revenue loss to the state. The Legislature must not reject the package on that basis. As rep-



resentatives of the public, the Legislature has the moral obligation to avoid actions that harm the public. A weak economy and lack of job opportunities is harming employers and employees alike.

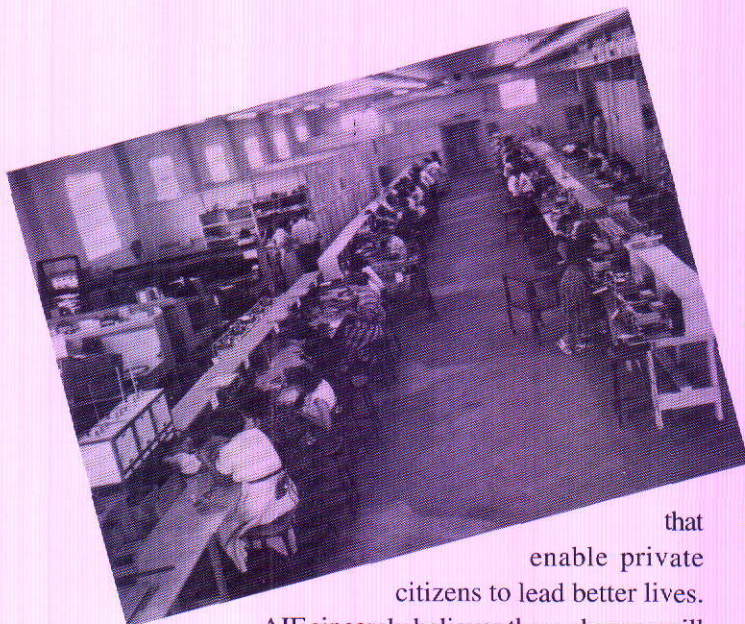
The government cannot repair the marketplace. Only the private sector can do that. Thus, the Legislature has the responsibility to make cuts in government

## Where is Florida's Economic Recovery?

	1988	1993
<b>Alabama</b>	<b>380,000</b>	<b>383,000</b>
<b>Georgia</b>	<b>574,000</b>	<b>554,000</b>
<b>Florida</b>	<b>net loss of 55,000 jobs</b>	

Although our neighboring states have suffered decline, they are regaining those jobs—Florida is not.





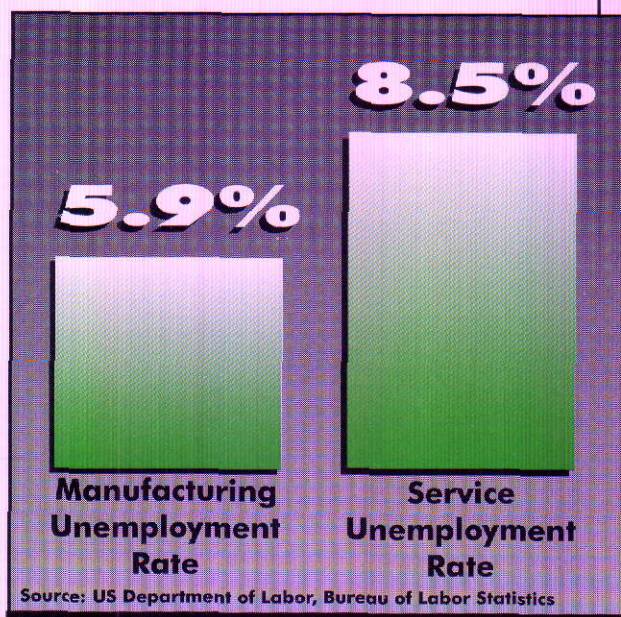
## 1950s Electronics Plant in Orlando

that enable private citizens to lead better lives. AIF sincerely believes these changes will bring about increased economic activity, which will bring increased tax revenues.

This will not happen overnight. But consider: in December, 1994, the state had to make a downward readjustment of more than \$100 million to its estimate of state general revenue. Most of it was due to sluggish economic growth.

The state's general revenue is connected to private sector economic activity. After all, government doesn't tax itself. It taxes the private sector. With this Jobs Package, we will be able to work together to enhance the private and the public economy. ■

An economy overly  
reliant on services  
is a subservient  
economy, far too  
susceptible to  
downturns.



# The Florida Jobs Act of 1995

## KEY FEATURES

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





# Health Care Reform

## *The Next Step*

by The Honorable Patsy Kurth, the Florida Senate



**I**n Florida, there are 2.7 million people without health care coverage, while 145,000 businesses do not offer health insurance to their employees. Considering that much of the cost of caring for the uninsured — a majority of whom are working — is shifted to the 165,000 businesses who do provide insurance, health care reform must remain a top priority of the Legislature.

In past sessions the Legislature has enacted several significant health care reform measures. For example, the Healthy Start prenatal care program was passed during the 1991 Session and is paying off for Floridians. Since 1991, Florida's infant mortality rate has fallen below the national average and we have seen a decrease in high-risk pregnancies and low birthweight babies. Another example is the Health Care and Insurance Reform Act, passed in the 1993 Session. This act provides a way for small busi-

nesses with fewer than 50 employees to pool their resources and negotiate with

health care providers for the best price through Community Health Purchasing Alliances (CHPAs).

The 1993 Act also instituted the practice of community rating for pricing small business group health insurance policies. Community rating means that a serious medical condition resulting in high claims for an individual in the group will not cause the premiums of the entire group to escalate.

Community rating set the stage for the business community to work with the insurance industry during the 1994 Session to develop the Florida Health Insurance Continuation Act. This bill would have created a state COBRA to fill the gaps that the federal COBRA does not address.

Basically, those workers employed by a firm with fewer than 20 workers could continue their coverage for up to 12 months after leaving the job. The premium would be paid by the employee. This would provide a

way for those workers to maintain coverage until they secure other employment. Because of community rating, an employer would not face escalating rates should there be a claim.

Although agreed to by both business and the insurance industry, the legislation providing for a state COBRA did not become law in 1994, since it was part of a controversial health care reform package that failed in committee. In the upcoming session of the Legislature, I will be leading a bipartisan group of legislators who will be introducing the Florida Health Continuation Act as a separate bill.

Florida has taken steps on the journey toward providing access to affordable health care to all Floridians. Passage of the Florida Health Continuation Act will bring us significantly closer to the end of our journey. ■



**Florida has taken steps toward providing access to affordable health care to all Floridians.**

**Rep. John Cosgrove (D-Miami) taking the lead on the bill's passage in the House.**





# Rulemaking Reform: *Bureaucratic Hoopla?*

by Jodi L. Chase, AIF Senior Vice President and General Counsel

*In his inaugural speech, Gov. Lawton Chiles announced that Lt. Gov. Buddy MacKay will be disposing of 50 percent of the state's administrative rules. Some groups want to make it harder for agencies to make rules. No one can argue against efforts to reduce bureaucratic red tape, but the answer is not to erase half of the rules or to slow down the rulemaking process.*

**Government with "wobble room" is government that takes advantage of the private sector.**

**A**n employer needs to know the rules of the game. You need to know how many inspections a year to expect, who will conduct the inspections, what notice the inspector must provide to you, what forms you need to fill out, how much time you have to fill

out forms, etc. In fact, if government is going to serve you well it should have almost no discretion.

Government should have to follow a written rule for every procedure and you should have the right to challenge the actions government takes at any time. Government with "wobble room" is government that takes advantage of the private sector. It brings to mind an inspector showing up unannounced at the door of a business.

The solution we need is a permanent one, not one-time drastic surgery. The problem Florida citizens face is not so much the number of rules, but how the rules come about. To find a solution to that problem, we need to fix the Administrative Procedures Act (APA) which provides the guidelines agencies follow when promulgating rules.

The Constitution creates three branches of government to provide checks and balances on each other. The problem with the APA is that it forces the private sector to be the check and balance on the executive branch.

The judicial branch should balance the executive branch. The legislative branch makes policy, the executive branch implements policy and the judicial branch interprets and enforces legislative intent. The problem of overzealous agencies will not be solved unless the private sector is no longer the balancer.

This is not to say that red tape is not strangling business opportunity in this state and this country. It is. However, every administrative rule is promulgated because a law grants the authority to make that rule. The bigger problem facing Florida business is the superfluous proliferation of new laws and new regulatory programs.

The rulemaking process must be fixed, but the more important issue is the size of government. The issue for business is who should be granted more freedom to be creative and entrepreneurial: business or government? AIF believes government must be bound by rules as a rein on tyranny. Business must be freed from excessive laws and programs. Still, how do we deal





with the administrative rulemaking process?

A major problem with agency rules is that they don't adhere to legislative intent. For example, in 1993, the House considered an onerous tax on computer services. Luckily that bill was defeated. The Legislature spoke clearly when it killed that bill and said "we don't approve of taxing computer information." Yet, just a few months after the session ended, the Department of Revenue tried to tax computerized information by rule. That is wrong and that is what must be stopped.

Under current law, every time an agency steps out of bounds, some private citizen has to step up and pay the costs associated with a rule challenge. When the citizen challenges the state agency, he walks into the hearing at a disadvantage because the state action is presumed to be correct. So, not only does he have to pay; the citizen has the burden of proving the rule is wrong. That's backwards.

Government works for the people, not the other

way around. Government should not be presumed correct. The state should have to prove that its actions are legal. People — taxpayers — should not have to prove that government is wrong.

What's more, if a court agrees with the private citizen and says that a rule is invalid, the agency should have to pay the private citizen's attorney's fees and costs. This is the right thing to do because that private citizen showed government that it was wrong and spent hard-earned money in the process.

Employers are tired of "the people" working for government. Government must work for us for a change.

Half the rules *should not* be repealed. That gives government

a better chance to harass citizens. Instead, private citizens should recover attorney fees and costs from the state if the citizen wins any kind of administrative proceeding. And, the burden of proof in a rule challenge should be shifted to make the state agency prove its rule properly reflects legislative intent.

If the state can't prove that, and it loses, then it should pay fees. In other words, government should be held accountable for its actions.

Before we begin randomly erasing rules, let's make the process right. Then we can begin to repeal redundant and unnecessary rules. But we should not reach for some arbitrary number of rules to repeal. ■

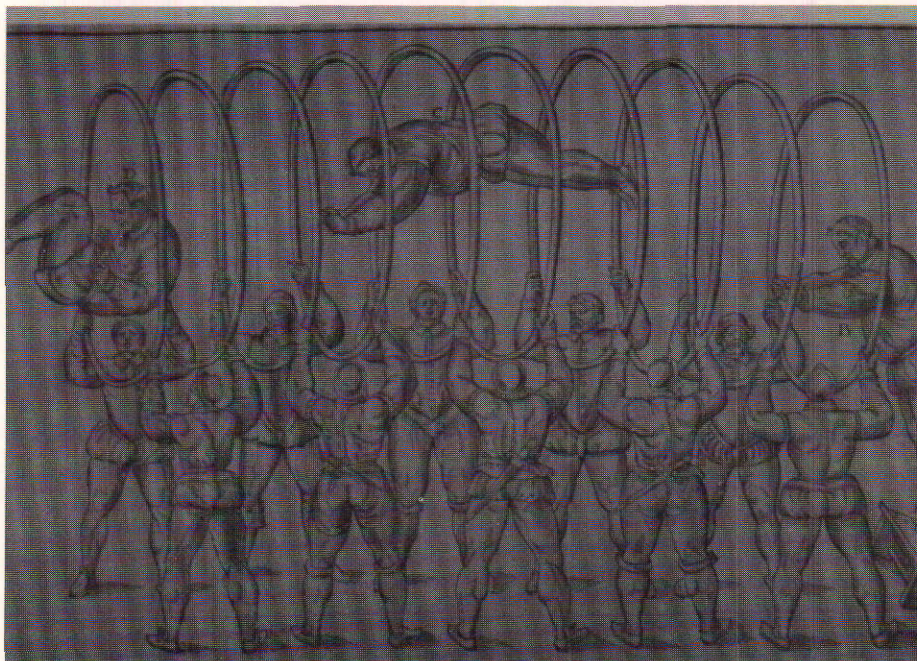


Photo:  
The Image Bank-  
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# AIF Proposal to Reform the Florida Administrative Procedures Act

by Jodi L. Chase, AIF  
Senior Vice President and  
General Counsel

*As the previous article explains, there is a right and a wrong way to fix "over-governing." AIF has prepared a bill to fix the process by which state agencies are enacting rules that restrict*

*political and economic freedom. Until this process is fixed, businesses and individuals will still be vulnerable to bureaucratic excesses and government interference.*

**The bill shifts the burden of proving that a rule is a valid exercise of delegated legislative authority.**

## Point 1

The AIF bill does not attempt to arbitrarily reduce the number of rules promulgated. It is vitally important that government adhere to strict rules when determining the rights of citizens. Thus, rulemaking is essential.

## Point 2

This bill restricts the ability of agencies to go beyond the authority granted to them by the Legislature. Remember, the Legislature is in charge here, but the private sector still needs agencies to tell it what lawmakers demand of the private sector.

## Point 3

The bill shifts the burden of proving that a rule is a valid exercise of delegated legislative authority. Currently the private citizen has that burden. Under the AIF bill, the agency would have the burden. This is the most direct route to APA reform. A rule should be presumed invalid until the agency shows its validity. Once courts and hearing officers begin enforcing this provision, agencies will have to carefully craft their rules to be sure they can prove the rule's validity.

## Point 4

The bill allows a prevailing private citizen to recover attorney's fees and costs from an agency. This provides a further guarantee that agencies only enforce the power lawmakers give them. This is an important feature for two reasons. First, it gives the agency a financial stake in its actions. Second, under APA, the citizen acts as a "private attorney general." It is good public policy to reduce the financial risk a citizen is exposed to when acting in this capacity. This is done in other areas such as the Unfair and Deceptive Trade Practices Act.

## Point 5

The bill limits the appellate court's ability to misplace deference. This bill will not work if appellate courts grant deference to agency rules rather than to the underlying legislation. The AIF proposal gives more authority to a hearing officer's final order and clearly states that a rule is presumed to be invalid unless the agency meets its burden of proof.

These are the most important, and perhaps the only, changes necessary to accomplish rulemaking reform. ■



## Party Strength in the Florida Legislature

by Marian P. Johnson, Vice  
President, Political Operations

In 1960, if you wanted a bill passed in the Florida Legislature, you most definitely went to see a Democrat who may have been a member of the powerful "Pork Chop Gang." You see in 1960, the Florida Legislature had a total membership of 95 — 88 Democrats and only seven Republicans.

In almost every election since 1960, Republicans have gained a few more seats. Today, they approach parity. The GOP controls the Florida Senate (21 to 19) and are only four seats short of controlling the House of Representatives (63 to 57).

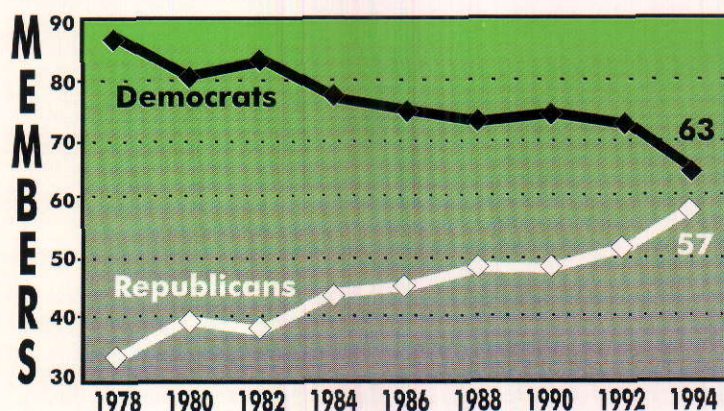
What does all of this mean to Florida businessmen and women? If you want a piece of legislation pushed through the Legislature today, you need to be able to deal effectively with members of both parties. While these conditions certainly create a more complicated and delicate process, it does have its obvious advantages.

The wisdom of our democratic system can usually be found in a compromise hammered out by adherents of two competing political ideas. Remember, winning political campaigns and passing legislation is a matter of building coalitions. That idea is not much different from your personal or business life — there is a lot of give and take. ■

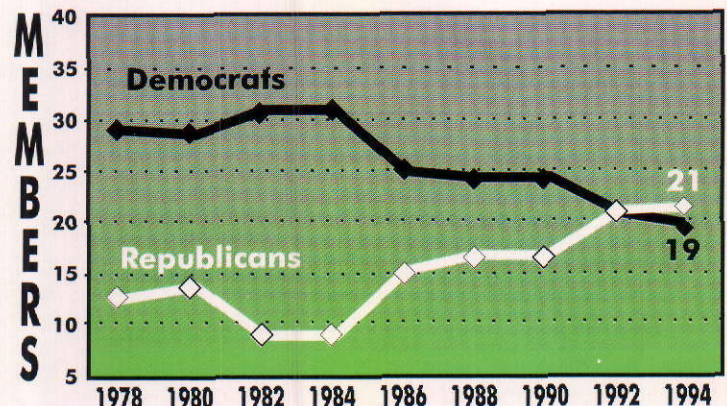
The original "Pork  
Chop" gang — 1956  
Special Session.



### The House of Representatives



### The Senate







# *A*ssociated Industries of Florida

## Protecting Florida's Free Enterprise System

*by Jodi L. Chase, AIF Senior Vice President and General Counsel*

*AIF's mission is to protect and enhance the free enterprise system. AIF works to accomplish the mission in many ways, the most prominent being our legislative program. With the opening of the legislative session just a few weeks away, we thought this would be a good time to introduce you, the members of AIF, to us — your Legal and Governmental Affairs Department.*

**Our team is able to cover any issue or bill that might affect our members.**

Each session, lawmakers file approximately 3,000 bills or legislative proposals for consideration by the Legislature. Out of this number, approximately 500 bills have the potential to impact business. Some are positive and merit passage. Most are negative and must be stopped. Those in the latter category range from laws requiring inspection of personnel files to new taxes or regulation. AIF assigns a lobbyist to “work” each one.

The Legal and Governmental Affairs Department is made up of three in-house lobbyists, a legislative assistant and a clerk. We also employ the best and brightest contract lobbyists who are specialists in key areas. Our team is able to cover any issue or bill that might affect our members. The team is lead by AIF President and CEO, Jon L.

Shebel.

As the senior vice president and general counsel, I supervise the legislative effort and coordinate the strategic plan for each session. I also have primary responsibility for health care, insurance and environmental legislation, as well as those bills that pertain to legal and judicial matters.

Diane Wagner Carr is vice president and assistant general counsel. Diane has extensive lobbying experience, beginning her career as a lawyer/analyst for the House Commerce Committee. She will focus on bills that address regulatory reform and civil justice.

Kevin Neal, the AIF assistant vice president for governmental affairs is also a former House of Representatives staffer. Unemployment compensation and labor issues are Kevin's areas of





expertise.

Environmental issues are handled by Martha Edenfield, an accomplished environmental lawyer and lobbyist who restricts her practice to representation of business clients.

Issues of taxation and government revenue are handled by Randy Miller. Randy is a past director of the Florida Department of Revenue and a recognized expert on taxation.

Workers' compensation issues are handled by Mary Ann Stiles who is recognized throughout the nation as an expert on this subject.

Don Reed, a past minority leader for the Republican Party in the Florida House of Representatives works with members of the Katz, Kutter law firm handling insurance issues.

The AIF team is rounded out

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## **AIF is often called the state's most influential business lobby.**

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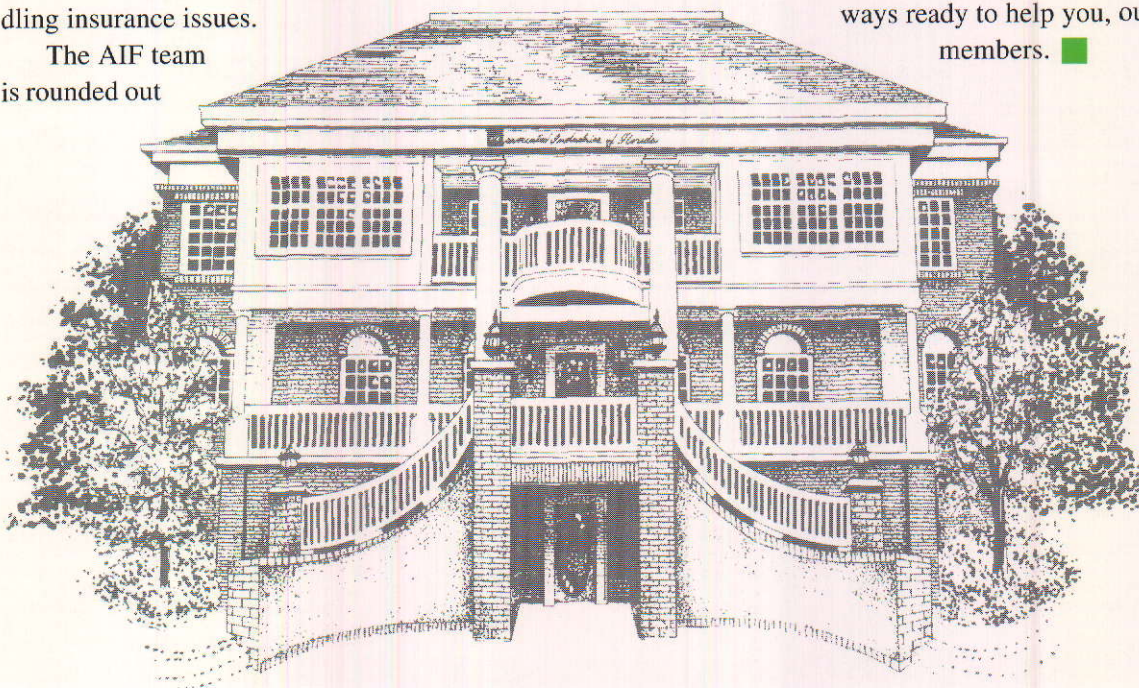
with Damon Smith, a former aide to Gov. Lawton Chiles when he served Florida as a U.S. Senator, and Damon's partner, Frank Mirabella. They handle all general business issues that come before the Legislature.

The professional team is backed up by the entire AIF staff. Leading the effort at AIF headquarters is Mark Hicks, the legislative assistant. He is as-

sisted by Anne Fitch, who provides clerical support.

AIF is often called the state's most influential business lobby. We believe our effectiveness is due to our team approach to lobbying, our commitment to our cause, and, most importantly, the commitment of our members. Please contact your Legal and Governmental Affairs staff if you have any needs. As the "Voice of Florida Business" we are always ready to help you, our members. ■

**We believe our effectiveness is due to our team approach to lobbying, our commitment to our cause, and, most importantly, the commitment of our members.**

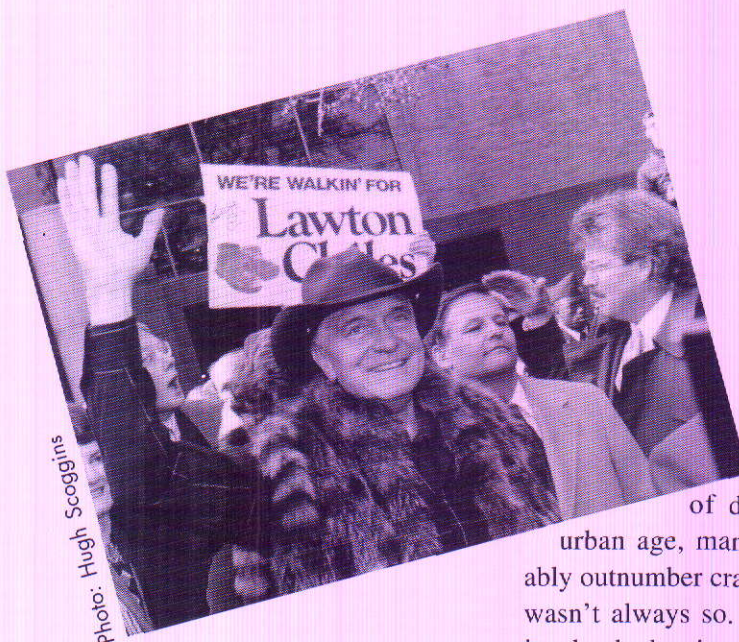






## Politics and Crackers

by Jacquelyn Horkan, Employer Advocate Editor



**Gov. Lawton Chiles,  
Florida's He-Coon II,  
sports a raccoon  
vest at the street  
party celebrating  
his second  
inauguration.**

*In this year of 1995, we celebrate the 150th anniversary of Florida's statehood and the 75th anniversary of the formation of Associated Industries of Florida. To celebrate these two occasions, we'll be taking a look back at the history of our state and the business people who have made it work.*

Once on the brink of extinction, Florida's Crackers are enjoying a resurgence in popularity. Thanks to Gov. Lawton Chiles's now-famous warning to Jeb Bush, almost everyone in Florida knows why the he-coon

walks just before the light of day. In this urban age, manatees probably outnumber crackers, but it wasn't always so. Chiles may just be the last in a long line of Cracker politicians who blended shrewd instincts with a somewhat nonchalant attitude toward propriety. They all brought a common touch to public office that their constituents found endearing.

Chiles's appropriated his "He-Coon" title from former Panhandle congressman, Bob Sikes. Okaloosa county voters sent Sikes to the U.S. House of Representatives in 1942 and rewarded his efforts on their behalf with 18 consecutive election victories. Under a cloud of scandal, Sikes retired from Congress in 1978.

He is best remembered as an

enthusiastic dispenser of pork for his district and his state. His long tenure as chairman of the subcommittee that doled out defense dollars enabled Sikes to endow Florida with a string of major military installations that run along the state's western coast.

On the political family tree, Chiles and Sikes are direct descendants of one of Florida's most colorful politicians: Sidney J. Catts. Catts was an ordained Baptist minister who spoke freely of a "vision" in which his dead mother urged him to fulfill his "duty" — running for political office.

In the fall of 1915, the crossroads of Catts's destiny converged in Tallahassee when he attended the annual West Florida Baptists' convention. Baptist residents of the capital city provided housing for the delegates and Catts was assigned to be a guest of Gov. and Mrs. Park Trammell at the Executive Mansion.

During his stay, Catts inspected the grounds of the Mansion and grilled his hosts for de-





tails about their home. During the last meal he shared with the First Family, Catts asked Gov. Trammell to disclose the amount of rent he paid to live in the splendid house. Trammell replied, "Reverend, it is provided rent-free by the taxpayers of Florida."

Shortly thereafter, Catts announced his candidacy for the 1916 gubernatorial campaign.

As a campaigner, Catts was innovative, opportunistic, unique -- and inflammatory. Running as the candidate of the common man, he urged his followers to call him Uncle Catts and ended every speech by thundering, "Just remember Florida Crackers. You only have three friends in this world: God Almighty, the Sears Roebuck catalog and Sidney J. Catts."

Catts was the first candidate to use the automobile as a campaign tool. Up to that time, most candidates stuck to the roads and railroads. Catts equipped his Model T Ford with loudspeakers — another innovation — and drove into the state's most remote outposts. Opening his public addresses with a prayer, Catts would then introduce himself to his onlookers: "You may call me Catts, but don't call my children kittens."

With the preliminaries out of way, Catts would embark on his main theme. Anyone who thinks politics is dirty today should thank his lucky stars he wasn't around in 1916. Catts ran a nasty campaign, taking full advantage

of the anti-Catholic fervor sweeping the state.

He accused the Catholic Church of spending \$180,000 to defeat him. At one point he charged that his enemies were storing weapons in the cellar of a Catholic cathedral in Tampa, part of a plan to conquer Florida for the Pope. There was no cathedral in Tampa at the time and none of the city's Catholic churches had cellars, but mere facts were never enough to slow down Sidney J. Catts.

For instance, one of his aides would don the garb of a Catholic priest to make violently anti-Catts speeches before rural Protestant crowds. Catts would respond to the "threats" uttered during these tirades by waving loaded pistols on the stump and reminding the audience that he was one of them.

On his inauguration day,

Catts used those threats to earn himself a footnote in history. He is the only governor since the Reconstruction era to carry a loaded pistol in his pocket on inauguration day. According to Catts, "Apalachicola Catholics" had threatened to assassinate him, and, therefore, he was obligated to protect himself.

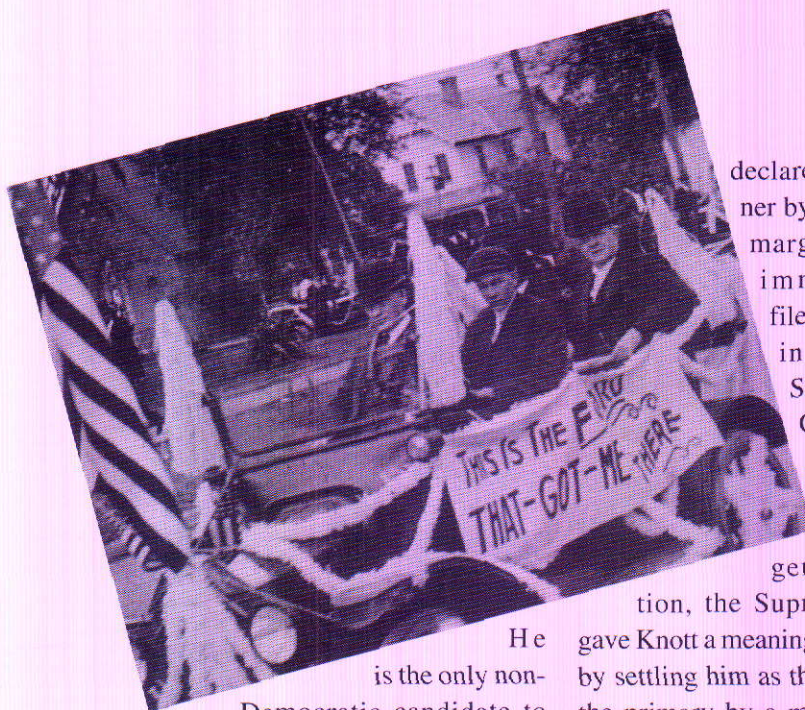
For his inauguration parade, he draped his trusty Model T with a banner reading, "This is the Ford that got me here," making him the first governor to opt for an automotive instead of a horse-drawn conveyance for the event. His was also the first inauguration recorded by a movie camera. Visitors to the state Archives in Tallahassee can watch this silent record of the Catts inauguration.

The very fact that Catts took the oath of office earned him yet another asterisk next to his name.



**Former U.S.  
Congressman  
Bob Sikes, the  
original He-Coon**





**Gov. Sidney J. Catts  
on his triumphant  
inaugural ride  
through the streets  
of Tallahassee.  
Driving the car is  
Catts's son, Rozier.  
The governor's  
campaign manager,  
J.V. Burke, rides  
shotgun next to the  
younger Catts.**

Democratic candidate to win a gubernatorial election between 1872 and 1966.

Actually, Catts began his campaign as a Democrat running against five fellow party members. In 1916, a new election law went into effect that replaced the traditional second primary runoff with a complicated system of first and second choice balloting. The setup so thoroughly confused voters and officials alike, that no one was sure how many votes any of the candidates had actually received.

By all counts, Catts and William V. Knott, the state treasurer, were the two top vote-getters, but under the new law only one would move on to the general election as the official nominee of the Democratic party. After a few weeks passed, Catts was

declared the winner by a 263-vote margin. Knott immediately filed an appeal in the state Supreme Court.

Thirty days before the general election, the Supreme Court gave Knott a meaningless victory by settling him as the winner of the primary by a margin of 43 votes. Knott had taken the high road, promising that he would not campaign until the Supreme Court decided the issue. Catts, however, was unencumbered by such niceties of conduct.

As Knott waited, Catts took to the campaign trail, whipping up his Cracker supporters with allegations that the insiders were trying to rob the common folks of the votes they cast for him. Uncle Catts christened himself the people's nominee while labeling Knott as the candidate of the courts, the elite and the powerful.

When the Supreme Court gave Knott the official nomination of the Democratic Party, Catts had himself declared the nominee of the Prohibition Party. On election day, voters faced a

ballot listing the candidates for governor in alphabetical order without identifying party affiliations. A Socialist and a Republican, longshots in everyone's book, headed the ballot. Catts came next, followed by Knott. Noel A. Mitchell, an independent who received 193 votes, brought up the rear.

The placement of names, combined with Knott's self-imposed campaign silence, gave Catts a 9,000-vote edge. The Catholic-hating, gun-toting Baptist preacher had earned his rent-free home for four years.

Despite his tactics on the stump, Catts was a calm and serious governor. He asked the Legislature to begin the task of reapportionment, a constitutionally mandated duty that lawmakers had simply ignored for 30 years. He advocated women's suffrage and compulsory education for all Florida children between the ages of six and 16. He successfully lowered taxes while securing passage of an ambitious and greatly needed road expansion project.

He reformed the state's notorious convict lease program, whereby private citizens "rented" prisoners as a source of cheap labor. The prisoners lived in horrendous conditions and suffered severe abuse. Catts also sought



to improve the treatment of the mentally ill. His legislative package, however, met the sturdy opposition of lawmakers.

Old-line Democrats were infuriated by Catts's campaign tactics and his rebellion against the party. Furthermore, Catts was a progressive and a populist who raised the hackles on members of the largely conservative Legislature. As a matter of fact, his anti-business, anti-railroad, pro-union opinions helped lead to the creation of Associated Industries of Florida.

During the second decade of this century, unions aggressively allied themselves with the socialist party. In the course of Catts's term, Lenin overthrew the Russian government and established his "Workers' Paradise." Union leaders joyously adopted the chief Bolshevik as their savior and pioneer.

Throughout his campaign and his tenure as governor, Catts bitterly criticized corporations and railroads as tax-dodgers. He promised to go after the pocket-books of the wealthy and force them to pay their fair share (a familiar refrain for populist, Cracker politicians).

The governor selected a former union lobbyist to serve as his state labor commissioner. Catts sought creation of a work-

ers' compensation program that would place an assumption of guilt on the employer of an injured worker while providing sweeping and generous compensation to the worker.

The events of the time disturbed the scions of free enterprise. The normally conserva-

tive Jacksonville paper, the *Florida Times-Union*, appointed itself the official media organ of the Catts's administration, to the shocked dismay of local business leaders. Catts's affinity for organized labor galvanized them into action. In July of 1920, several of these employers joined to-



**A poster from the 1920 gubernatorial campaign urges voters to kick out Catts**





gether and formed the Duval County Employers Association. Ten years later, they would take the organization statewide and rename it Associated Industries of Florida.

Part of the group's mission, as described in the original corporate charter, was "to promote and encourage good will, harmony and fair dealing among its members and between them and their employees."

The AIF founders also hoped to give themselves an organized voice in the deliberations of government. The association was to help employers combat the punitive and costly programs favored by organized labor.

The agenda of Catts and the labor unions were largely ignored during his time in Tallahassee. In 1920, his term expired. At the time, Florida's constitution prohibited governors from succeeding themselves, so Catts had to wait four years before making another run for the governor's office.

In 1924, Catts declared himself as a candidate. He tried riding his horse of fear back to Tallahassee, but this time around religious intolerance wasn't the ticket to victory. As a matter of fact, a candidate by the name of John W. Martin used Catts' bombast as a weapon against the former governor.

As the story goes, during one of Martin's campaign speeches, the candidate was continually interrupted by a heckler

screaming "Hooray for Catts."

Finally, Martin paused, looked out at his audience and said, "My friends, you gave your support to Catts on his promise to run the Pope out of business. Did he keep his promise? No! While he was governor, mind you, and supposed to be looking after this promise he made you, one Pope died and he let them appoint another without raising a finger to stop it!"

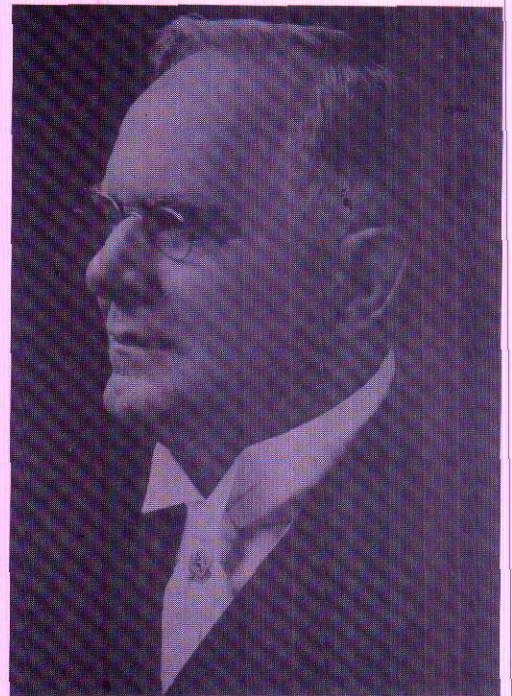
Martin won the primary and the general election in a landslide. Catts ran and lost again in 1928. In April of 1929, a federal grand jury indicted him on charges of counterfeiting. After a declared mistrial, Catts was acquitted of the charges after a second trial. Revelations during that hearing tarnished his reputation, however, and forced him to abandon his political ambitions. He died at DeFuniak Springs on March 9, 1936.

While Catts comes down to us through the years of history as an unsavory demagogue, we can learn some lessons from him. Campaigns are certainly cleaner today than they were in the past. And, as Catts shows us, what a politician says during a campaign sometimes bears little relation to what he does as a public official.

Most significantly, Catts is proof that one bad apple can't spoil the whole state. The checks and balances in our system of government, and the division of power, protect us against the rogues we elect. In the long run, few politicians are as important as they think they are.

But was Catts really the rascal that he seems? Was he really a religious bigot? Strangely enough, as governor he employed a Catholic as his executive secretary. He freely gave his blessing when one of his sons married a Catholic.

After his inauguration, Catts was asked by a priest why he told so many lies about Catholics. The good Cracker may have answered all questions when he told the priest, "Brother, it was just politics." ■



**The Honorable  
Sidney J. Catts,  
Governor of the  
State of Florida,  
1917-1921**





# OEA

## *An Answer to Costly WC Litigation*

by Frank T. White, AIFPCT Executive Vice President & CEO

### *Workers compensation*

*insurance has become a complicated and confusing system for a worker unfortunate enough to have suffered a significant injury.*

*Understanding the benefit entitlements and such terminology as maximum medical improvement and permanent impairment is no small feat.*

**W**hile insurance companies, or at least AIFPCT, attempt to work with injured workers in navigating the system, injured workers sometimes would like to seek a verification of their benefit entitlement from an outside source. In the past, this often came by way of retaining a lawyer with needless expense to the injured worker.

In an attempt to assist the injured workers and reduce needless litigation, the Legislature authorized the Department of Labor to establish the Office of Employee Assistance. The OEA will attempt to resolve differences between the insurance company and the injured worker. This is just the first step in a program the Legislature established as a means of assisting injured employees.

The OEA, will not only answer an injured worker's question, but will also attempt to resolve differences that may arise between the insurance company and the injured worker. In cases of legitimate disputes brought to it by the injured worker, the OEA intervenes on his behalf in an attempt to resolve any differences between the insurance company and employee. This often results in an amicable resolution of outstanding issues, again all being accomplished without the need for costly legal proceedings.

Where disagreements cannot be resolved through discussions between the insurance company and the claimant, with the OEA as the facilitator, a formal petition may then be filed. Unless

waived by both parties, mediation must be held with a State-appointed mediator, or presiding, before a judge can hear a case. Legal representation is not required and subsequent legal action is not prohibited regardless of the outcome of the mediation.

This entire alternate dispute resolution mechanism was established to help guide an injured employee through a complicated system and to reduce needless and costly litigation. The key element in its success, however, is the initial contact by the injured employee when the need first arises. ■

### **For More Information**

The OEA has established regional offices throughout the state for local service and installed a toll-free hotline:

**1-800-342-1741**

Brochures explaining the entire process are sent to each injured employee by the insurance carrier, and these brochures may be obtained for posting on employee bulletin boards.

**The OEA will attempt to resolve differences between the insurance company and the injured worker.**



# AIF Introduces New Staff Members



**Marian P. Johnson**

*Vice President,  
Political Operations*

The one event that propelled Marian Johnson into the political world was hearing presidential nominee Barry Goldwater deliver his call to arms at the 1964 Republican Convention: "Extremism in the defense of liberty is no vice and moderation in the pursuit of justice is no virtue." She took up the call, volunteered for his campaign, and has stayed active in politics ever since.

One of her duties at AIF involves interviewing and evaluating candidates for the state Legislature to determine which ones will best serve the interests of the business community. In doing so, Johnson believes she can help future generations of Floridians, such as her grandchildren; giving to them a Florida unfettered by mindless governmental regulations.

She sums up her professional

goals: "I believe business is the backbone of our state. It provides the jobs, products, and services that create Florida's prosperity. The business climate in Florida is not too good right now. It's hard for both small business and large companies.

"And I care for the future of

my family, including my grandchildren and all future generations. I feel that in this position, I can promote a better Florida, a simpler Florida. One that isn't strangled by regulations but one in which people can prosper and look forward to a better tomorrow." ■



**Gordon Lightfoot**

*Vice President,  
Training and Education*

Employment training, safety, and health are the main priorities facing Gordon Lightfoot in his position as vice president of training and education.

Lightfoot also sees a need to respond to the massive transition of the economy. He understands that the economy is a system driven by business, creating jobs and wealth.

He recognizes that business faces a tangle of new, confus-

ing, and often burdensome red tape. State, local, and federal regulations can have a drastic impact on the business community. Many times, businesses are not familiar with these regulations and this lack of awareness can have drastic results on them.

Lightfoot will represent the AIF members on various state and local economic development boards, as well as councils dedicated to employment training. He is involved in Enterprise Florida's Jobs and Education Partnership, a coalition designed to advance Florida's growing economy. He is currently a member of the State Job Training Coordinating Council, which advises the governor on the federal Job Training Partnership Act programs in Florida.

Lightfoot will devote most of his time to developing training programs for employers and employees in the areas of employment skills, safety, and health. ■

**"I believe business is the backbone of our state. It provides the jobs, products, and services that create Florida's prosperity"**





**Robert D. McRae**

*Vice President & MIS  
Director*

"A bridge between the technical and nontechnical nature of computers" is how Bob McRae, defines his position. With computers and the information super-highway becoming more and more a part of our daily life, McRae is the person at AIF who understands the technical aspects of computers and can translate his specialized language into terms that all users can understand.

He views his first objective as maintaining a secure and reliable computer system for all of the members of AIF. His second objective is to broaden the base of computer users in the AIF community. He considers his greatest accomplishment at AIF to be the design and implementation of the FaxNet system.

With his knowledge of and love for computers and computer systems, McRae bears a great deal of responsibility for making sure AIF employees can get their hands on the information they need to serve the members. ■

**Diane Wagner Carr**

*Vice President & Assistant  
General Counsel*

Diane Wagner Carr brings to AIF a broad range of experience in the connection between the public and private sectors.

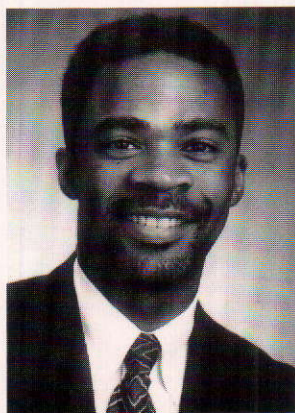
She began her legislative career while still in law school when she served as an intern with the House of Representatives Committee on Governmental Operations. Upon graduation from the FSU College of Law in 1988, she was named counsel to the House Commerce Committee.

Carr then worked in private practice, representing corporate clients in legislative and regulatory matters. She recently held the position of vice president of



government relations for the Florida Bankers Association. While there, she was responsible for formulating and executing the legislative and political agendas for the banking community.

Just prior to joining AIF, Carr had returned to the private practice of law, specializing in banking, health care, and workers' compensation issues. ■



**Kevin R. Neal**

*Assistant Vice President,  
Governmental Affairs*

Kevin Neal joins AIF after a stint in state government as a legislative specialist for the Agency for Health Care Administration. Prior to that he was employed by the Florida House of Representatives as a staff analyst for the Committee on Reapportionment and also as a staff analyst in the House Majority Office.

Neal is a graduate of the FSU College of Law and Florida A&M University. While attending law school, he was the recipient of the Virgil Hawkins Law Fellowship. ■

**"A bridge between the technical and nontechnical nature of computers" is how Bob McRae, defines his position.**





## *A Tribute to a Legend*

# *In Memoriam*

### **Glen P. Woodard**

*In 1957, Mr. Woodard joined the staff of Winn-Dixie Stores as the corporation's chief lobbyist and still retained that affiliation at the time of his death.*

**Every business person in Florida lost a friend on January 25, 1995, when Glen P. Woodard passed away.**

**G**len Woodard held strong beliefs about the importance of our state's free enterprise system and the necessity for entrepreneurs to practice their skills in an open market, free of government interference. He



not only represented Winn Dixie; he was a strong and forceful voice for all business interests.

He joined the AIF Board of Directors in the 1960s and served as chairman in 1966. He also brought his leadership to a number of other business associations. Jon L. Shebel, president and chief executive officer of AIF remembers Mr. Woodard as a mentor and a guide. As Shebel recalls, Mr. Woodard

taught hundreds of business lobbyists in Florida and across the nation to work together and to watch out for each other's company's concerns.

"I heard him say many times," says Shebel, "Your ox may not be in a ditch, but you'd better go help the other company or you'll find yourself alone when your ox is in the ditch."

Woodard was regarded in Tallahassee as a master of the legislative process. His friends will long remember his earthy sense of humor, colorful language and love of a good cigar. They will also remember his unswerving dedication to all who sought to create their own success in the marketplace. ■





# GATT

## Revenue Provisions

*(Reprinted with permission from the Commerce Clearing House).*

*If you thought 1994 passed  
without federal tax increases,  
read the following. The  
passage of the General  
Agreement on Tariffs and  
Trade means that many  
individuals and employers will  
find themselves saddled with a  
larger tax burden.*

**Y**ou've no doubt heard about passage of the GATT trade agreement.

Whether it turns out to be good or bad for the country as a whole won't be known for some time. What is known is that it will decrease tariffs. As a result, the GATT enabling legislation contained a number of revenue raisers to offset the losses. A major pension reform bill also was grafted onto GATT. Some of the changes may affect your individual tax situation, but most are business related.

GATT's hodgepodge of tax changes doesn't have any real theme, and hasn't received much attention in the news. So a quick rundown of the major provisions is the best way to alert you to actions you may need or want to take.

### Individual Changes

After 1996, you can choose to have tax withheld from your social security benefits (and other federal payments, such as crop disaster payments and CCC loans). You can select withholding at a rate of 7, 15, 28, or 31 percent. Fifteen percent withholding on unemployment benefits also will be available.

After 1994, the maximum amount of salary that can be put away each year in your 401(k) plan won't be increasing as regularly as it has in the past. Inflation adjustments used to be rounded in steps of \$1. But now the current limit of \$9,240 won't be increased until the inflation adjustment brings it to the next multiple of \$500.

By 1997, social security numbers will be needed for all tax dependents to claim exemptions and child care credits -- no matter how young the dependent

**The GATT enabling  
legislation  
contained a  
number of  
revenue raisers to  
offset the losses.**





is. For the 1995 return, you'll need a number for any dependent born before November 1, 1994.

Starting in 1995, 85 percent of a nonresident alien's social security benefits will be included in taxable income, unless this conflicts with an existing tax treaty. And nonresident aliens won't be eligible for the earned income tax credits unless they opt to be taxed as residents.

Armed Forces personnel stationed abroad will be eligible for the earned income tax credit starting in 1995.

## Partnership Changes

After 1994, a big tax break for partners will be gone. Partnership distributions of marketable securities will be treated like cash distributions for purposes of measuring a partners' gain. Partners will have income to the extent that distributed securities and money exceed their tax basis in the partnership. This will require revision of many partners' exit plans.

## Corporate Changes

Starting in 1995, the IRS will be paying corporations 1<sup>st</sup> percentage points less interest on their tax overpayments than they now are entitled to. The lower rate will be paid on tax overpayments in excess of \$10,000.

Most excise taxes will have to be paid earlier starting in 1995. Taxes for the semi-monthly period from September 16 through September 26 will have to be paid or deposited by September 29th, so that government gets paid in its current fiscal year.

Corporations with substantial tax underpayments that are attributable to tax shelter activity will be hit with a 20-percent penalty unless they had reasonable cause for taking the position they took.

Starting next year, corporations will have to pay estimated tax on their income from controlled foreign corporations and certain amounts related to the possessions tax credit.

## Pensions & benefit changes

A temporary rule allowing excess funds in defined benefit pension plans to be used to fund retiree health accounts has been extended for an additional five years, through tax years beginning before 2001.

A large group of highly technical pension reforms were enacted. Most of these deal with large underfunded plans. The changes generally impose beefed-up funding standards and increased PBGC premiums for underfunded plans. Single-employer defined benefit plans that

are fully funded will no longer have to make quarterly estimated funding contributions in future plan years.

## User Fees

The IRS's authorization to charge fees to taxpayers who request letter rulings, determination letters and the like, has been extended an additional five years.

While none of GATT's changes may seem earth shattering, there are quite a few of them, and most people will be affected to some degree.

Our aim is keep you up to date on all significant tax developments, and assure you that you will hear about future tax opportunities and pitfalls as well.

Please contact us if you need additional information on any of these changes or other tax matters. ■

**The changes generally  
impose beefed-up  
funding standards and  
increased PBGC  
premiums for  
underfunded plans.**





# Laws, Lawyers & Lawmakers

by Jacquelyn Horkan, Employer Advocate Editor

*As the advertisements for the  
movie Jaws used to warn,  
"Just when you thought it was  
safe to go in the water ..."  
Only in this case, it's not the  
water teeming with killer  
sharks that we should fear; it's  
the upcoming legislative  
session brimming with  
desperate trial lawyers.*

**L**ast year's defeat of the joint and several bill — together with the heavy election losses suffered by trial lawyer candidates — has led many business lobbyists to let down their guard. Even the *Florida Trend* predicted a meltdown of power for the once-mighty Academy of Florida Trial Lawyers in the magazine's November 1994 edition.

Don't count on it.

## Reversal of Fortune

Across the nation, the trial lawyers have been on a roll for three decades. Back in the 1960s, judges began loosening six decades worth of common law tradition as it relates to torts — that area of law that covers personal injuries, product liability negligence, and malpractice.

A few years ago, a study conducted by the Rand Corporation, a California think tank, concluded that awards for tort litigation, such as malpractice

and product liability, rose by 9,100 percent between 1960 and 1984. And that number has been adjusted for inflation.

The erosion of common law doctrines in tort spawned the manufacture of imaginative claims by plaintiffs and their lawyers. Noneconomic damages — such as pain and suffering, loss of consortium, and mental anguish — all made for costly and capricious jury awards.

Combined with the craze for spiralling noneconomic damage awards came a propensity to award punitive damages against companies that were found at fault. According to *Forbes* magazine, up until the litigation explosion begun in the Sixties, punitive damages were upheld on only three occasions throughout this country's history.

Punitive damages are one of the problematic areas of personal injury law. If an individual or corporation willfully and intentionally harms another, perhaps,

**To business**

**people, the fate of**

**joint and several**

**liability is a**

**matter of justice**

**and economics.**





it is fair that the entity at fault should receive punishment in the form of a monetary penalty.

In many cases, however, punitive damages are awarded as a matter of course, not a matter of punishment. There is often no rationale for the amount of damages. They can merely depend on the plaintiff's lawyer's success at gaining a deep measure of compassion for his client. Although the law limits punitive damages, an enormous judgment for punitive damage, is often based on nothing more than emotional appeal.

Some of the blame for the current dilemma can be placed on so-called consumer advocates, such as Ralph Nader, who created a culture where a lawsuit or government action was the solution to every grievance. They also bred a sense of class

envy, the little guy against the rich, powerful, rapacious, and wicked big guys.

That class struggle has become an unexamined and ingrained attitude of many in American society. It enables the trial lawyers to portray themselves as some sort of noble band of crusaders for those little guys. It also contributed to the development of the doctrine of joint and several liability.

### Wronging Rights

The doctrine of joint and several liability was enacted by judges in the courtroom, not elected lawmakers in the state capitol. It is based on a belief that whenever someone is injured, someone else must pay, without regard for degree of responsibility or blame.

Under joint and several, a

plaintiff could collect the entire jury award of damages from one defendant, even if other parties were also at fault for the accident. In other words, one defendant could be found 1 percent at fault in an accident and end up paying 100 percent of the damages if the other defendants were poor, underinsured or somehow free from liability for their actions.

To business people, the fate of joint and several liability is a matter of justice and economics. After all, this doctrine allows a plaintiff to collect 100 percent of damages from a company even if the company is only 1 percent at fault for the accident resulting in the lawsuit.

For the trial lawyers, it is, first and foremost, a matter of money. Most plaintiff attorneys get paid on a contingency basis. In other words, if one of these lawyers wins the lawsuit for his client, he gets paid a percentage of the award given to the plaintiff. If he wins, but the defendant is poor, the trial lawyer can't collect his full fee.

Under joint and several, he only has to find some deep pocket — usually a business — that has some remote connection to an accident, and then sue that deep pocket.

The 1986 Legislature outlawed the application of joint and several liability to noneconomic damages. For seven years, the plaintiff's bar relied on legal doublespeak to dodge that pro-



Photo: Hugh Scoggins

**Sen. Peter Weinstein  
(D-Tamarac) argues  
for passage of the  
joint and several bill  
during the 1994  
Session.**





hibition.

In November of 1993, the Supreme Court put a stop to the trial bar's evasive maneuvers. In the *Fabre v. Marin* opinion, the justices decreed that a defendant was liable only for his portion of the damages, not anyone else's.

At the time of the decision, AIF's lobbyists predicted that the Academy of Florida Trial Lawyers would make reinstatement of joint and several liability the nucleus of their legislative efforts during the 1994 session.

And indeed, they did.

### Sausages and Laws

Credit Otto Von Bismarck, 19th century chancellor of Germany with the remark, "People who like sausages and laws shouldn't watch either of them being made." In other words, it can be a disturbing process.

Part of the ugliness of the legislative process arises from one axiom of our government that frustrates some, escapes the notice of others and should reassure us all: laws are not supposed to be easily enacted. That's why a network of structural and procedural checks and balances exists.

In theory, if a bill can survive the process, it's probably something we need. Of course, theories don't always survive the translation to practice. Nevertheless, in the case of the trial academy's attempt to restore joint and several, the process actually worked quite well.

The joint and several bill died on the last day of the session, when the trial lawyers were unable to overcome the procedural morass. It was a whimpering finale to a brawling fray that filled the sixty-seven days of the 1994 regular and extended sessions.

### Sneak Attack

While the reinstatement of joint and several liability was the major play in the Academy's game plan, a small, elite group of personal injury lawyers were pursuing a hidden agenda. In the closing hours of the session, they launched a sneak attack on defendants' rights with the help of a quintet of powerful lawmakers.

The attack came in the form of an amendment to an otherwise innocuous bill. In its original form, the bill merely transferred authority for Medicaid fraud con-

trol from one state agency to another. The sneak amendment converted it into a law that sent a rising tide of liability crashing against almost any company that conducts business in Florida.

Both the House and the Senate proceeded to approve the amendment without much question. A few days later, however, the issue exploded into controversy.

A later analysis of events indicated that only six elected officials in the state of Florida actually understood the import of the Legislature's action. Taking the lead in the Senate was Sen. W.D. Childers (D-Pensacola), with Sens. Howard Forman (D-Hollywood) and Ken Jenne (D-Ft. Lauderdale) sponsoring the offending amendment.

On the House side, they were Reps. Bo Johnson (D-Milton), speaker of the 1994 House, and Peter Wallace (D-St. Peters-

### BRAIN SNACK

*"Alas! Victor, when falsehoods can look  
so like the truth, who can assure  
themselves of certain happiness."*

**Mary Shelley,**  
*Frankenstein*





burg), chairman of the House Rules Committee. These five legislators were joined by Gov. Lawton Chiles in piloting passage of the amendment.

It was actually was the work product of the Inner Circle, a club of sorts for personal injury lawyers who have won at least one \$1 million award. It was labelled as a measure to enable the government to recover the costs of treating Medicaid patients for smoking-related diseases. Most of the lawmakers who supported the measure did not even read the language of the amendment.

Later, they realized that the contents were misrepresented to them. Cigarette manufacturers were not the sole targets of the bill. It could be used to recover damages from any manufacturer of any product that any trial lawyer could allege had caused any medical problem for any Medicaid recipient.

In other words, the law opened the door for lawsuits against cattle farmers who could be sued based on a study showing that beef consumption caused high cholesterol. Candy makers could be sued for tooth decay or medical problems related to obesity. The liquor industry could be sued for conditions related to alcoholism.

The sweeping liability provisions of the law did not end with manufacturers. Any company that transported or sold any of

these products was also hitched to the bill's train of culpability.

Newspapers across the state condemned the Legislature for passing the bill. Most of the criticisms were aimed at the method by which it was enacted. It was never debated in committee or on the floor. And its contents were misrepresented to lawmakers both verbally and in writing.

Every bill considered by the Legislature, has to be presented in written form with all new language underlined so that lawmakers and the public can readily understand the extent and nature of the changes.

Significant new language in the Medicaid Third Party Liability amendment, as it was presented to legislators, was not underlined. Therefore, in the bustle of the final days — as Representatives and Senators were debating the appropriations package, the Everglades bill and health care reform — most did not bother to read the amendment carefully or research its effect.

Those who merely criticize the means of passage ignore the staggering impact this bill has on our state's legal canons. It wipes out important common law doctrines for defendants to these lawsuits. Defendants to these actions would not be able to argue that the Medicaid recipient assumed the risk of smoking cigarettes, eating beef, devouring candy or consuming alcohol.

This law says that a person cannot be held responsible for his own actions if the taxpayers assume the cost of treating his illness.

The law is written so that the state may pursue a lawsuit with an enviable certainty of victory. After all, defendants would have access to few, if any, of the defenses they would enjoy if sued by a private citizen. The law is also written so that the state can farm its lawsuits out to private personal injury lawyers who, of course, will be eligible for contingency fees amounting to hundreds of millions of dollars.

Under the law, these trial lawyers can pursue damages based on statistical evidence. They do not have to produce Medicaid patients who allege harm at the hands of the defendants. They do not have to prove conclusively that the product caused the harm.

The plaintiffs' attorneys do not even have to prove that the Medicaid patient used a particular brand of product. If the manufacturer sells its product, be it cigarettes, steaks, candy bars or bourbon, in the county where the Medicaid recipient lives, that manufacturer is going to be held liable for damages.

Trial lawyers have been called the masters of defending indefensible positions. Harvard law professor Laurence Tribe gives a stunning example of that

**This law says that a  
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his illness.**





mastery.

In defense of the Florida Medicaid Third Party Liability Law, Dr. Tribe sees no injustice in absolving people of responsibility for their actions, because they are not doing the suing — the state of Florida is. And as he so blithely observes, “The state of Florida certainly did not inhale.”

So this law sets the state up as an innocent party against anyone it chooses to identify as guilty. And the law is drafted so that anyone the state chooses to call guilty, automatically becomes so. What makes the matter particularly distasteful is the attempt to wrap the scornful manipulation of the notions of fair play in a blanket of concern for the taxpayer.

Dr. Tribe, who has made prosecution of cigarette manufacturers a personal crusade, volunteered his time to the state of Florida in the preparation of its case against the tobacco companies. The suit is now ready to go to court; the lawyers are simply waiting for Gov. Chiles to give the go-ahead.

In the meantime, Associated Industries, joined by Publix Super Markets, the National Association of Convenience Stores and Philip Morris has filed a lawsuit against the state seeking to have the legislation declared unconstitutional. That lawsuit is also pending.

### The Upcoming Test

Which brings us to the 1995 session and the exaggerated reports of the death of the Academy of Trial Lawyers.

The issue of joint and several liability will be back this year, as will AIF's attempt to repeal the Medicaid Third Party Liability Act. Business will be fighting against a desperate and very much alive foe.

No victory against the trial lawyers is easily secured. As the passage of the Medicaid Third Party Liability bill indicates, they are not above using sneak attacks and subterfuge to gain the advantage. But why?

The answer is simple: attorneys' fees. Trial lawyers usually take a plaintiff's case on a contingency basis. When a plaintiff wins a jury award, the lawyer gets as much as 40 percent of the verdict. The payoff to a trial lawyer is not based on any rational grounds, such as the amount of work he put in on the case. It is based on how much sympathy the jury has for the plaintiff.

That's why the personal injury lawyers hunger for a return of joint and several liability. That is why they pursue an agenda of looser rules in civil cases that penalize the defendant. That's why they pursue expanded occasions for litigation in civil rights, product liability, and medical malpractice. We expect

the lawsuit to be filed before the Legislative Session.

The trial lawyers have convinced many in the state capital, the media and the general public that they are selfless individuals, concerned only with the rights of the little people. Maybe so, but their benevolence has a dark side. It lines their own pockets at the expense of consumers, taxpayers, employers, employees and our concept of justice and fair play.

AIF has begun its preparations to respond to the trial lawyer attack on the repeal of joint and several liability. The Academy's joint and several bill (SB 644) has already been filed by Sen. Peter Weinstein (D-Tamarac).

All too often, the wily stratagems of the trial lawyers have put business in a defensive position. If you want to help us take the offensive, call your senator and representative today. Let them know that you will not support any vote in favor of the trial lawyer bid to undermine the integrity of our state's economy and courtrooms.

Tell them that it's time to put to rest the misguided notion that employers have endless pools of wealth — deep pockets — that can eternally survive the gulping consumption of thirsty trial attorneys. ■

**And as he**

**[Dr Laurence Tribe]**

**so blithely observes,**

**“The state of Florida**

**certainly did not**

**inhale.”**





## If Electrons Flow Through IT...

by Irv B. "Doc" Kokol, Vice President, Video Productions

*Over the next year, I will write*

*about a diverse range of*

*topics: the information*

*superhighway electronic*

*marketing; advances in*

*telephone technology;*

*interactive media; and other*

*issues that you indicate you*

*would like to hear more*

*about.*

**What started as an experiment to see if computers could talk to each other has grown into a communications highway of unknown dimensions.**

By way of introduction, my job was once described as "if electrons flow through it" before "it" was my responsibility. My background and training is in communications, from telephone systems to satellite technology to film and video productions. I confess, that I am one of those guys who just has to have the latest gadget or widget to try out.

Let's start with the big one — the information super highway — the Internet. What started as an experiment to see if computers could talk to each other has grown into a communications highway of unknown dimensions. With a connection from a computer to a telephone, you become part of the new worldwide community. Unlike the media of television and radio, this is a community where everyone and anyone can be heard.

For several years the Internet was the domain of those who wore pocket protectors. You had to speak *Unix* to make yourself

heard on the network and I think you needed a secret handshake to get in the door. It's all changed now. The Internet is available to everyone. Publications like the "Big Dummy Guide to the Internet" are available, and software makes navigating the Internet as easy as pointing to a picture and clicking a mouse.

So what's in it for the business community? It provides a quick method of sending and receiving Electronic Mail (E-mail). I recently directed an interactive video project for Florida State University. Everything was great until the principal instigator went on a research trip to New Zealand. Through the Internet, we were able to keep in touch, and review scripts and time tables in near real time. I would send him a message to his Internet address in New Zealand, and within minutes the message was in his computer waiting for him to retrieve it. It's quick, direct and inexpensive. It's becoming commonplace to find an E-mail address on business cards





## The Internet started out as a research system, and is truly unrivaled in the amount of information you can find on it.

right below the telephone and fax number.

The Internet started out as a research system, and is truly unrivaled in the amount of information you can find on it. It's all available for free; all you need to know is where to look. The problem is that there are so many places to look that you can spend days trying to find the right data bank. But take heart, there are several programs within Internet to help you find what you want. (More about those next month.) Once connected, you can retrieve text, audio and graphics from the remote computer storing information as diverse as the current weather in Caracas to the complete records of the U.S. Supreme Court to virtual art galleries you can electronically walk through.

Many companies use the Internet to announce new products, provide technical help to clients, and, through the advent of graphic interfaces, show their latest widget in living color. The

system is used to provide the on-line catalogs of products and can take and receive orders. There is work underway to ensure the security of on-line banking and credit card information, which will allow for on-the-line banking and purchases with credit cards.

The commercialization of the network is something new, and there are still some growing pains involved. It is safe to say that this use of the Internet is growing and will continue to do so.

Throughout the year, we will feature how members of AIF are using the Internet for research and marketing. AIF is in the process of setting up a node on the Internet; in the meanwhile, if you have a good example of how the net works for you, drop me a line at my temporary Internet address, [kokol@freenet.fsu.edu](mailto:kokol@freenet.fsu.edu), or by mail at the AIF

Next issue: look for more Internet information, and the latest on interactive television and what it can mean to your future and your bottom line. ■

### BRAIN SNACK

*"If a man has a talent and cannot use it, he has failed. If he has a talent and uses only half of it, he has partly failed. If he has a talent and learns somehow to use the whole of it, he has gloriously succeeded and won a satisfaction and triumph."*

**Thomas Wolfe**

**Unlike the medium of television and radio, this is a community where everyone and anyone can be heard.**





# Member Survey

*In an effort to deliver increased member benefits Associated Industries has created a new department of training and education. We will be initiating programs in two areas: 1) employment and training; and 2) safety and health training and education. In order for us to focus on the specific issues and needs of our membership, we have developed the following survey to give you an opportunity to tell us what your specific training and education needs are.*

All information contained in your response to this survey will be kept **STRICTLY CONFIDENTIAL**.

Once you complete this survey, please mail it back to: Gordon Lightfoot, Vice President, Training and Education, AIF Service Corporation, P.O. Box 784, Tallahassee, Florida 32302-0784.

## Employment and Training

1. Are you familiar with the provisions of and services offered through the Job Training Partnership Act (JTPA)? ☐ Yes ☐ No
2. Do you need to provide any services to recent/potential laid-off employees? ☐ Yes ☐ No
3. Are you in need of or do you anticipate hiring new employees? ☐ Yes ☐ No
4. Are you familiar with the provisions of the "Target Jobs Tax Credit" program of the state's Department of Labor and Employment Security? ☐ Yes ☐ No
5. If YES, do you need any technical assistance to apply for credits? ☐ Yes ☐ No

## Safety and Health Training and Education

1. Does your company have a safety and health committee? ☐ Yes ☐ No
2. Does your company have the capability to produce its own safety and health training materials? ☐ Yes ☐ No
3. Do you have a need for assistance in developing specialized safety and health training and education materials for your own company? ☐ Yes ☐ No
4. Could you use assistance in obtaining or developing any of the following items listed?

- ☐ Written Safety & Health Plan
- ☐ Written Hazard Communication Policy
- ☐ Written Substance Abuse Policy
- ☐ Copy of Americans with Disabilities Act
- ☐ Copy of OSHA General Industry Standards
- ☐ Copy of OSHA Construction Standards

## Seminars

1. Please check one or more seminars your company may be interested in attending:

- ☐ Workers' Compensation
- ☐ Safety & Health General
- ☐ Safety & Health Specific:

- ☐ Fitness & Nutrition
  - ☐ Workplace Security
  - ☐ Corporate Libel & Slander Issues
  - ☐ Americans with Disabilities Act
  - ☐ Human Resource Management
- Other areas of interest?

## Confidential Use Only:

Name

Title

Company

Address

Daytime Phone

FAX

Thank you in advance for your assistance. If you have any questions please give Gordon Lightfoot a call at (904) 224-7173.





# VISIT THE CAPITOL Without Leaving Your Office

*W*hat you read in the newspapers isn't always the whole story and the promises you hear from lawmakers don't always hold water. So let the Florida Business Network put you in the know about what's really happening in the halls of government.

Developed by corporate executives for corporate executives, FBN is the computerized governmental information system for Florida employers. All you need to put FBN to work for you is your computer and four keys. Easy-to-follow directions give you an on-screen guide as you quickly access the information you need to keep track of what the lawmakers in Tallahassee are up to.

With a few taps on your keyboard you can do the following:

- ▶ Read analyses of proposals
- ▶ Find out what bills under consideration affect your business
- ▶ Gain insight on how the legislators voted
- ▶ Track down your legislator to express your views

#### Member Discount

As a member of Associated Industries, you receive a discount on FBN's annual subscription fee.

If you want to make a difference in the Legislature, let FBN put a powerful tool at your fingertips.

#### For More Information

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

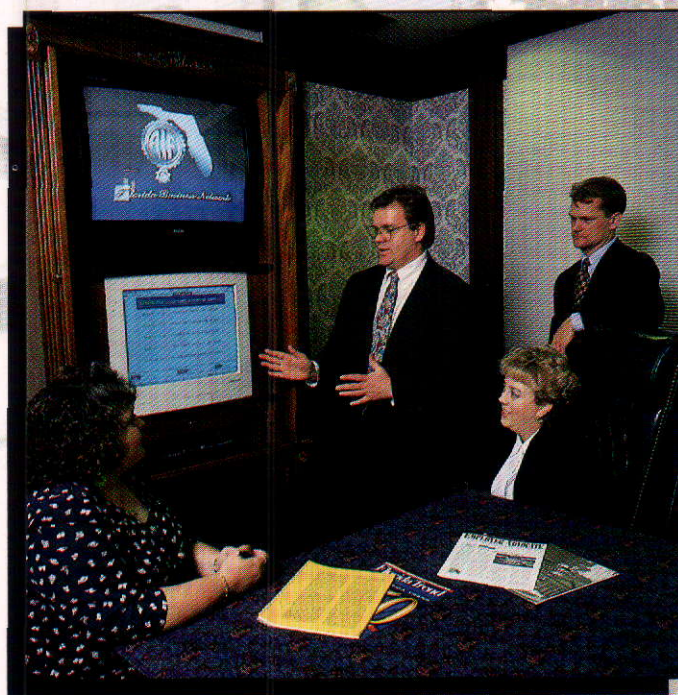


Photo by Ray Stanyard

## *Florida Business Network*

A DIVISION OF

## *Associated Industries of Florida Service Corporation*





# WHEN TOMORROW'S TOO LATE



Photo by Hugh Scoggins

*D*

elay equals lost opportunities.

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

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

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

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

AIF FaxNet - putting Tallahassee back in touch with you.



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