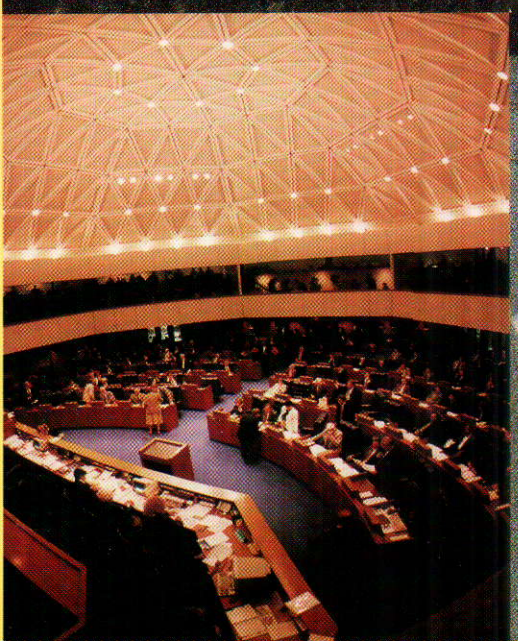
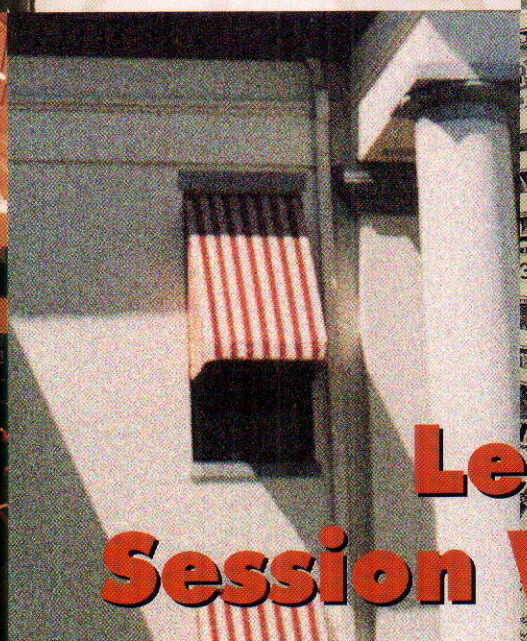
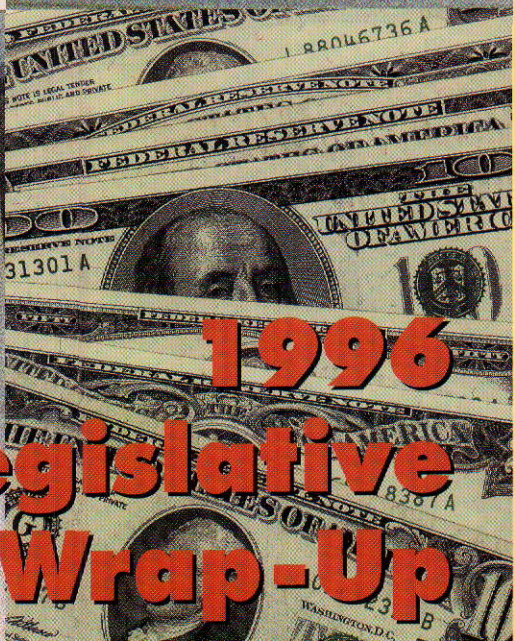
Associated Industries of Florida

EMPLOYER ADVOCATE

JULY • AUGUST 1996







1996 Legislative Session Wrap-Up

THE VOICE OF FLORIDA BUSINESS

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

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

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

Associated Industries of Florida

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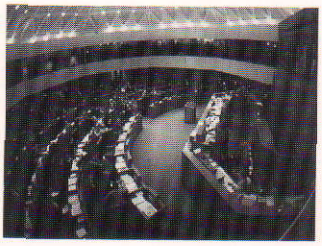
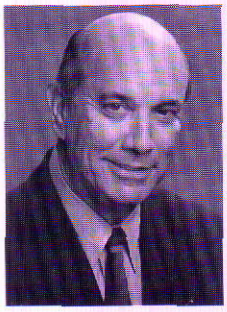




by Jon L. Shebel,

President & CEO

Open Letter to Dick Batchelor

Chair, Environmental Regulation Commission

During the 1996 Legislative Session, Associated Industries opposed your reconfirmation as chair of the Environmental Regulation Commission (ERC). I can't recall a single other instance when this association has taken such a public position regarding an appointment. In this situation, however, the depth of our concerns forces us to take the issue of your continuing service as chair of the ERC very seriously.

The ERC makes decisions that affect millions of people. The law establishes the ERC as a neutral, standard-setting body. It is not supposed to set public policy. It needs a chair that helps the body make decisions in a nonpolitical, professional manner. You seem to reject or misunderstand that mission.

You are not opposed because of the way you vote on the commission. Rather, you are opposed because you have turned an impartial body into a political organization. You continually step beyond the limits of your power by attempting to influence public policy and opinion.

In case you do not remember the charges against you, let me refresh your memory.

During your testimony to the Senate Natural Resources Committee, you stated that you never lobby environmental issues or attempt to influence policy. However, you filed expense vouchers requesting repayment from the state for trips you took to Tallahassee to meet with legislative staff on environmental issues. That is lobbying. Is the expense report legitimate? If so, how do you square that with your testimony?

A member of the public says that, as the chair at ERC meetings, you make personal remarks about people or organizations you don't like. You also denied this. However, notarized transcripts of ERC meetings expose you as doing exactly that. Once again, which words are really yours?

You held up implementation of a rule for two years because of your personal opposition. Scientists, Department of Environmental Protection staff, environmental activists, and the business community all supported the rule. Since you did not, Florida languished for two years while your personal feelings were mending.

The members of the public who belong to associations were afraid to testify against you because they believed you would seek retribution against them and the people they represent.

You assured lawmakers that this was unfounded. You would never punish someone for exercising his constitutional right to seek redress before government.

Mr. Batchelor, your words don't match your actions.

In the June issue of *Florida Specifier*, you clearly say that retribution is forthcoming. You are quoted as saying, "Our meetings will go on as long as necessary to hear all who want to testify — especially those not represented by lobby groups."

It is your role to hear all public views, not just those from people you like. We are alarmed that a government official in a democracy would convert his duties into a grudge match.

The statements you made to the *Florida Specifier* are further evidence of your unfitness to serve as ERC chair.

Mr. Batchelor, when lawmakers only temporarily passed your reconfirmation, they were warning you to behave in a more professional manner and treat all people with respect.

The opposition to you is not due to your votes, or because AIF is "afraid of public access," as you claim in your media blitz. It is because you have made a neutral body into a political body that you use to suit your whims.

You call your critics arrogant because they choose to exercise their constitutional right to oppose a government appointment. They are willing to meet with you. You, however, have turned down every request for a meeting.

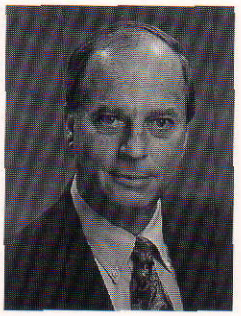
Once again we make the offer. Meet with people. Talk to them. And, most importantly, listen to them.

Without some attempt on your part to change the course of your behavior, AIF will be forced to continue to oppose your service as chair of the ERC.

Sincerely,
Jon L. Shebel,
President & CEO

Mr. Batchelor, you have made a neutral body into a political body that you use to suit your whims.

The Proof is in the Name



by Frank T. White, AIIC Executive Vice President & Chief Operating Officer

As far as AIF members were concerned, the negotiations and legal ceremony attending the conversion and merger of AIF Property & Casualty Trust (AIFPCT) with Associated Industries Insurance Company, Inc. (AIIC), were hardly momentous events. For policyholders, however, the benefits of the change are anything but minor.

AIFPCT was established in 1987 to conform with Associated Industries of Florida's long-standing dedication to serving the best interests of the members. The Trust was formed as a commercial self-insurance fund, which meant it was the first self-insurance fund in Florida to be regulated by the Department of Insurance (DOI).

Associated Industries chose this route because DOI would be tougher to please than the Department of Labor which regulated all of the other self-insurance funds. The higher standards meant greater security and protection for AIFPCT policyholders.

AIFPCT was born with the singular purpose of providing a program that would be financially stronger than its competitors, while aggressively seeking premium savings for policyholders. The conversion/merger of AIFPCT into a fully capitalized, non-assessable domestic stock insurance company is a continuation of that singular purpose.

Like all participants in self-insured programs, every AIFPCT policyholder was subject to an assessment if the reserves or assets of AIFPCT were inadequate to cover claims. AIFPCT's financial management plan was written to protect policyholders against that contingency, but the possibility still existed that you would have to pay up if AIFPCT could not pay out.

In addition, as part of the 1993 workers' compensation reforms, the state established the Florida Self-Insurance Fund Guaranty Association. All self-insurance funds, including AIFPCT, were required to participate in the guaranty association. That participation meant that AIFPCT policyholders could be required to pay an additional assessment if other self-insurance funds became insolvent and unable to operate and there were insufficient funds in the guaranty association.

The conversion to AIIC is a corporate restructuring that eliminates your company's potential exposure to assessments.

AIIC is formed as a stock insurance company. No single individual has an interest in the insurance company and all stock is held in trust for the association. Thus, by extinguishing all policyholder assessability while continuing members' interest in the insurance company through participation in the association, the conversion of AIFPCT into AIIC is the best solution to the potential assessments that were facing the Trust as a self-insurance fund.

The conversion of AIFPCT was not taken lightly by its board of directors or by the management of the association. After a complete and thorough analysis of the current business climate for workers' compensation insurance, the board directed management to explore alternative business solutions to the growing challenges.

Those challenges included the expressed interest of our policyholders and agents to eliminate assessability and the continued exposure of the potential of unfunded liabilities arising out of participation in the Florida Self-Insurance Fund Guaranty Association.

In examining conversion alternatives, the board directed staff to ensure that the path selected met three objectives.

- Any conversion not only had to relieve members of asessment potential in the future, but also had to relieve all present and former members of the Trust from any and all assessability arising from current or former exposures.
- The conversion could not place any undue debt burden upon the converted company

The only stockholders AIIC has to satisfy are the members of Associated Industries.

so as to hinder the ongoing insurance operations.

- Long-term objectives and members' interests through continued participation in Associated Industries of Florida had to be maintained and not sacrificed to achieve short-term returns.

With the help of outside experts, a conversion path was developed that addressed the business challenges and met all of the board's criteria. Through a series of legal steps, AIFPCT was converted and merged into AIIC. The members' interests in AIIC would be continued through membership in the association (at no cost) as the stock of the insurance operations would be held in trust exclusively for the association. There would be no individual ownership of any stock of AIIC, either internally or externally.

A strategic partnership was forged with the world's seventh largest reinsurer. This partnership encompassed both a reinsurance of the historical losses and an ongoing commitment through a prospective partnership on future business. This provided both the necessary capitalization to support current writings as well as additional capacity for growth.

By forming this alliance, AIIC did not have to borrow funds at exorbitant interest rates or sell any interest in the company. Without any debt burden or any stockholder returns to make, AIIC will be able to retain any earnings to continue to support its operations and growth.

In Associated Industries of Florida's continuing effort to provide the best possible solutions to Florida business needs, the conversion from AIFPCT to AIIC has been completed to guarantee the highest standards of quality and protection to our participating members. In the conversion, as in all association programs, the members come first.

AIIC: Common Questions & Answers

Will I have to buy a new policy? Not until it's time to renew your policy. Your AIFPCT policy will remain in effect as an AIIC policy until the end of your policy year.

Who owns the stock in AIIC? The stock is held in trust for the members of Associated Industries of Florida. There are no individual stockholders, either externally or internally. The only stockholders AIIC has to satisfy are the members of Associated Industries.

Will AIIC have the same rating plans? Yes, AIIC offers the same rating plans, such as the Jumbo Retro, that allow you to reap the benefits of controlling your workers' comp claims.

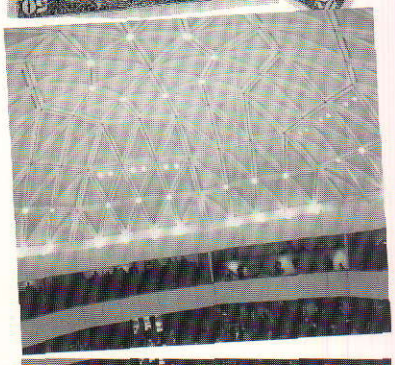
Will my company be dealing with new management at AIIC? AIIC is under the same management team as the PCT was. The only difference is in the name and a new corporate structure that protects your business from potential assessments.

Do I still pay dues to Associated Industries? As an AIIC policyholder, you are automatically a member of Associated Industries and you continue to receive the full benefits of membership.

Why make the change to AIIC? Under Florida law, all self-insurance fund policyholders in Florida face the potential of assessments if the fund cannot pay its claims. When AIFPCT was established in 1987, we developed a financial plan that would protect the assets of our policyholders from that ever happening, but the potential was still there no matter how efficiently the Trust was managed. The conversion removes *all possibility* for assessments on past, present, and future AIIC policyholders.

The 1996 Legislative Session: In Review

by Jacquelyn Horkan, Employer Advocate *Editor*



Someone once compared the task of legislating to herding cats.

The image of 160 independent felines may not correspond to a popular perception of lawmakers as docile creatures shepherded by high-flying special interests.

The popular perception is wrong.

Legislating is hard work; don't let anybody tell you otherwise. Lawmakers fulfill their responsibility in the full glare of the sunshine, with plenty of armchair quarterbacks second-guessing their every move.

They have to satisfy not one, not two, but thousands of bosses, each with conflicting ideas about what his public employee should be doing.

If that wasn't enough of a challenge, there's the whole system of checks and balances throwing roadblocks in their way. If one lawmaker has a brilliant idea, he has to get at least half of the other 159 lawmakers to sign on to his plan. And then, he's got to get his bill past the ever-present veto pen of the governor.

This 1996 Session was among the most bizarre in recent years, at least as far as the business community was concerned. It was a successful 60 days for the business community, but lawmakers scored the lowest in AIF's rankings that they have in years (see pages 30-31 for the rankings).

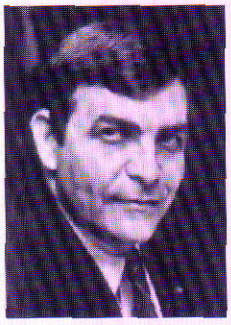
The poor showing can be attributed to a few health care issues where a large number of lawmakers voted for anti-managed care bills that ultimately failed to pass. The HMO civil remedy bill (see page 8) passed both chambers unanimously, knocking more percentage points off of the rankings. Gov. Lawton Chiles's veto of that bill turned defeat into victory for Florida's employers and employees.

The other significant factor in the rankings was the machinations over the Medicaid Third-Party Liability Act as lawmakers refused to override the governor's veto of the repeal of that law. The failure to override the veto was the only significant disappointment in 1996. Now the issue moves to the Supreme Court (see page 32). Where it goes from there remains to be seen.

The following pages contain analyses of the most important economic issues of the 1996 Session, the ones that may have an immediate impact on your business operations. ■

1996 Legislative WRAP-UP

1996 Legislature Passes AIF Jobs Initiatives



by Randy Miller, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A. & AIF Tax Consultant

1996 Legislative WRAP-UP

The closing paragraph of my article in the 1995 legislative wrap-up (*Employer Advocate*, July/August 1995) stated, "AIF is committed to passing this very important legislation and will concentrate its efforts for passage when the Legislature returns for a special session or its regular 1996 Session."

Now, with the adjournment of the 1996 Session, I am pleased to announce that AIF was successful in obtaining passage of that "very important legislation": the electric energy tax exemption. It was the centerpiece of the AIF-sponsored Florida Jobs Act of 1995, an economic development proposal that included several issues the AIF Tax Committee believed would foster economic development. The major emphasis was on the retention and expansion of manufacturing jobs.

Even though the 1995 effort failed, AIF worked over the interim between sessions to convince the governor's office and the Legislature that exempting electricity used in manufacturing from sales tax would stop the exodus of manufacturing jobs that has plagued Florida over the last several years.

This message was well received by Gov. Lawton Chiles who included the electricity exemption in his budget for the 1996-97 fiscal year. In addition, the House of Representatives included the exemption in its Enterprise Florida legislation. The Senate also indicated a willingness to support the exemption but was concerned that the original proposal contained no accountability provision to measure the effectiveness of the exemption.

Finally, all parties came to agreement and the sales tax exemption for electricity used in manufacturing was included in the Enterprise Florida legislation, SB 958, with accountability language, as well as a provision requiring recipients of the tax exemption to participate in the new welfare reform provisions of the WAGES (Work and Gain Economic Self-Sufficiency) program.

The WAGES provision does not actually require a business receiving the electric energy exemption to hire former welfare recipients but, in order to receive the exemption, a business must register with the WAGES Program Business Registry established by the local WAGES coalitions.

This registration establishes a commitment on the part of the taxpayer to hire WAGES program participants to the maximum extent possible consistent with the nature of the business. The Legislature felt that this linkage to welfare reform was a needed ingredient to make our economic development and welfare reform activities a unified effort to improve the quality of life within the state.

The electric energy tax exemption for manufacturers, contained in SB 958, is restricted to industries classified under Standard Industrial Classification (SIC) major group numbers 10, 12, 13, 14, and 20-39 inclusive. The exemption will be phased in over a five-year period, with 20 percent of the charges for electricity being exempted beginning July 1, 1996. Another 20 percent, for a total of 40 percent, of the charges for electricity will become exempt on July 1, 1997, and so on until July 1, 2000, when 100 percent will become exempt.

Also, a provision is included to allow municipalities to exempt electricity and natural gas from the provisions of the locally levied municipal utilities tax.

The Enterprise Florida Bill also contained another economic development incentive endorsed by AIF, which relates to a sales tax exemption for machinery and equipment used in expanding Florida businesses. The bill lowered the current $100,000 maximum sales tax payment on machinery and equipment used to expand an existing business by at least 10 percent in productivity increases. The new maximum

is $50,000 in sales tax liability.

We believe this change will encourage new expansion of existing Florida businesses and will create new jobs in our economy. This exemption is similarly linked to registration with the WAGES Program Business Registry established by the local WAGES coalitions.

The bill also contains several other issues related to revisions of the current enterprise zone tax credits, revision of the Qualified Target Industry Tax Refund Program, revising provisions governing the manufacturing facility bond pool to make more of the allocation available to small counties, and providing an intangible tax exemption for credit card receivables owed by an out-of-state cardholder to a national bank principally doing business out-of-state, but processing the credit card accounts in-state.

The rest of the provisions of SB 958 primarily relate to the organizational structure of Enterprise Florida and recognizes it as the principal economic development organization for the state of Florida.

AIF was also involved in other tax issues related to Internet access, bulletin boards, and electronic mail. The Florida Department of Revenue had indicated that the aforementioned services would be subject to gross receipts tax, sales tax, and local option sales taxes effective July 1, 1996, if the Legislature did not take action during the 1996 Session.

The Legislature passed language that would delay collection of the tax until July 1, 1997, and created the Florida Communications Tax Policy Commission, which would study the Florida tax code and how it applies to new and evolving communications technology.

Unfortunately, this legislation was contained in SB 624, which also earned the nickname the "1996 Tax Train." The governor's office publicly expressed concern with this bill because it contained 46 tax exemptions or abatements and would cost the state about $40 million in uncollected tax revenue when fully annualized.

On May 28, 1996, Gov. Chiles vetoed SB 624. In his veto message, the governor promised to create a study commission similar to the Florida Communications Tax Policy Commission contained in the vetoed bill. He will also ask the Department of Revenue to hold off collecting taxes on Internet access until the commission's report is completed.

Legislature Increases Penalties for Late Annual Reports

Next year, you'll save some money if you file an annual corporate report with the state of Florida. But make sure you return the report on time — or it'll cost you.

Corporate Filing Fee		
1996	1997	1998
$200	$165	$150

The 1996 Legislature lowered the cost for filing the reports and increased late penalties at the same time.

If a corporate report is not returned to the Division of Corporations by May 1, a late fee is assessed in addition to the filing fee.

Late Fee		
1996	1997	1998
$25	$385	$400

If the corporate report is not returned by Aug. 1, the Division of Corporations files for administrative dissolution of the corporation. Starting in 1997, corporations will have to pay much higher application fees to reinstate the corporation.

Reinstatement Fee		
1996	1997	1998
$175	$585	$600

IMPORTANT NOTICE

For manufacturers to qualify for the electricity sales tax exemption, they must register with the WAGES Program Business Registry established by their local WAGES Coalitions. At this writing, the coalitions have not been established, therefore, the registries do not yet exist.

No one knows for sure what steps you will have to take to claim the exemption until the registries do exist. AIF is working with the Department of Revenue and the appropriate legislative committees to craft procedures that clarify the steps for claiming the exemption.

Please contact the AIF legislative department at (904) 224-7173 to make sure you are on our list to receive notification of these procedures as soon as they are available.

Tug of War

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

Many of the legislative issues AIF is involved in are controversial and contentious. Health care issues are especially so.

AIF's health care mission is to promote passage of laws that bring Floridians access to affordable, quality health insurance.

To make that goal reality, we must protect managed care while fending off additional health benefit mandates. We must also support the cost reduction efforts of the state's Agency for Health Care Administration.

This strategy, unfortunately, conflicts with the interests of doctors and other providers who want to keep health care costs high. It also clashes with the agenda of trial lawyers who see health insurance as an unplumbed deep pocket. In the 1996 Legislative Session, this tension created a health care tug of war.

Bureaucratic Shuffle

Effective Jan. 1, 1997, the Department of Health and Rehabilitative Services (HRS) will be broken apart. On that date, the new Department of Children and Family Services (CFS) will assume responsibility for all of the state's social, economic, developmental, mental health, and substance abuse programs.

All of HRS's public health programs will be transferred to the new Department of Health (DOH).

The purpose of DOH is to promote and protect the health of all of the state's residents and visitors. The department secretary must be a physician. The Agency for Health Care Administration (AHCA) will remain intact except that regulation of the medical professions will be transferred to the new DOH.

AHCA is the state agency that helps private payers — employers, for the most part — keep health care costs down. For this reason, AHCA must retain an arms-length distance from medical providers in order to retain its objectivity. AHCA Director Doug Cook has done an excellent job of administering the regulatory mechanism for keeping costs down and availability up.

The Florida Medical Association (FMA) has been trying to create a separate health department for a decade as a vehicle for strengthening its hand in the regulation of the health care professions. This session, FMA succeeded in establishing a department of health. Whether this success will give the medical professions more control over regulation of the health market remains to be seen.

That would be a troubling development and it could best be avoided by keeping the new DOH focused on public health issues instead of market and regulatory issues.

Mandates for Compromise

A dozen different provider groups suggested health insurance mandates during the session. This is where the tug of war gets tough. Each proposed insurance mandate is grounded in some reasonable policy objective and each interest group has a plausible argument as to why employers should have to pay for their services. Yet each new mandate also costs money.

For instance, one proposal would have mandated that every insurance policy provide benefits for serious mental illness equal to benefits for physical illness. The proponents of this bill claimed it would only add $1 to the cost of health insurance. AIF maintained that it would add at least $100 per person per year.

If the mental illness mandate had become law, no employer would have been able to opt out of buying that coverage. Even if none of your employees wanted the coverage, you would have to pay the price. The affordability of health insurance is still marginal; every increase in cost reduces access to policies for more and more Floridians. Fortunately, the Legislature recognized this fact and did not enact this particular mandate.

Several other mandates did become law. Every health insurance policy is now prohibited from limiting the length of a maternity or newborn hospital stay

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to any time period that is less than that determined to be medically necessary. All policies must also cover the diagnosis and treatment of osteoporosis for high-risk individuals. Psychologists must be accorded the same status as other mental health providers when an insurer covers those services.

Each of these mandates will add some cost to premiums. In their original forms, each of these bills would have caused noticeable premium increases. AIF worked with the insurance industry to amend the bills to address the cost issue. AIF did not oppose any of these bills in their final form because they will improve quality at a reasonable cost.

HMO Teamwork

On one issue, the opposing sides agreed to drop their ends of the rope and work for a constructive solution.

Physicians felt they were being treated unfairly by HMOs. After weeks of discussions, all parties agreed that there were some legitimate complaints that needed attention. Crafting the solution took months of negotiations among FMA, AIF, and the insurance industry.

Senate Bill 910 was the result of that effort. Because it was a cooperative venture, the bill did pass and was signed into law.

The following changes are effective Oct. 1, 1996.

- The law clarifies how an HMO will reimburse for care provided at an emergency room outside the HMO network.
- The determination as to whether a true emergency exists will be made by the hospital physician.
- HMOs must give a provider 60 days' notice prior to canceling the provider's contract. Previously, contracts could be canceled without notice.
- Each claimant or provider who has a claim denied as not medically necessary must be provided an opportunity for appeal to the insurer's licensed physician. The insurer must respond to a medically necessary appeal within 15 days.
- All prospective customers of an HMO must be given detailed written information about the terms and conditions of the insurance plan before they purchase the policy.
- Knowingly misleading potential enrollees as to the availability of providers is now an illegal unfair or deceptive act.

The legislation also included the Florida Health Care Community Antitrust Guidance Act. This act provides for quick antitrust review when medical providers form business groups that might run afoul of antitrust laws.

The attorney general is authorized to issue a no-action letter that will protect the health care providers from prosecution. The physicians argue they need this protection in order to compete with HMOs.

Since all sides were able to reach agreement on these provisions, FMA did not try to pass more dangerous anti-managed care laws. FMA, however, did participate in gaining passage of the single worst health care bill of this decade.

One Side, then the Other

As the issues change, interest groups sometimes switch sides in the tug of war. While AIF was pulling with the FMA for passage of a bill changing contracting standards for commercial HMOs, we were tugging on opposite ends of the rope on a trial lawyer bill.

The Academy of Florida Trial Lawyers teamed up with FMA to gain unanimous passage of an HMO civil remedy bill. The bill would have allowed a trial lawyer to sue an HMO every time the HMO denied treatment, even if the care was denied because it was not medically necessary or it cost much more than other available procedures. This would have effectively destroyed the ability of an HMO to conduct utilization review, the bedrock of HMO coverage.

Fortunately, Gov. Lawton Chiles is a pioneer in the area of health care reform. He had grave concerns about the bill's impact on the cost and availability of HMO coverage to small business.

Sharing the concerns of business, the governor vetoed the bill and halted this attempt by the trial lawyers to undermine the affordability and accessibility of quality health insurance for Floridians. ■

Florida's New Health Insurance Continuation Act

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

Most employers are familiar with the federal health insurance continuation act known as COBRA. For those who aren't, this federal law requires an employer with more than 20 employees to offer an ex-employee the opportunity to continue his health insurance coverage under the company's group plan once the worker leaves employment with the company. If the employee elects to continue coverage, he then becomes responsible for paying his portion of the premium.

COBRA benefits allow a family to remain insured when the primary worker loses his job. In the past, it was impossible to grant the right to COBRA benefits to workers in small firms because of the administrative burden. The federal law requires the employer to notify the employee and other persons covered by the plan about their right to COBRA benefits.

Cost, however, was a more important deterrent to extending this program to employees of small businesses. COBRA requires that the separated employee remain a part of the employer's group for health insurance purposes. Group health insurance plans used to be medically underwritten. That meant the employer's premium for the entire group would rise if the former employee became seriously ill and had to file large claims under the group plan. Small employers found it difficult to pay for group health insurance to begin with; exposure to premium increases caused by former employees would have been unbearable.

In 1992, AIF helped the Legislature and Gov. Lawton Chiles rewrite the law governing small group health insurance policies. One of the reform's many accomplishments was that it completely changed the basis for setting premium rates for small businesses.

As of Jan. 1, 1994, a health insurer could no longer base premiums on an employer's claims volume. Today, policies sold to groups with 50 or fewer employees must be "community rated." All employers in the same "community" pay the same premium for identical policies regardless of utilization. Because of community rating, a major illness can no longer cause premiums to increase. This removed the biggest obstacle to applying COBRA to small employers.

AIF began working to enact this law three sessions ago. During that time, Rep. Stan Bainter (R-Eustis) and Sen. Patsy Kurth (D-Palm Bay) provided legislative leadership. This session, they were joined in the effort by Sens. Howard Forman (D-Hollywood), Jack Latvala (R-Palm Harbor), and Locke Burt (R-Ormond Beach) and the bill passed.

On Jan. 1, 1997, the Florida Health Insurance Coverage Continuation Act goes into effect. It requires that employees working in firms with fewer than 20 employees be offered the option to continue coverage in the employer's group health insurance plan upon the occurrence of a qualifying event.

AIF's top priority was that this law be easily administered and not burdensome to small businesses. Turnover in small firms is often too high to require an employer to notify all employees. Thus, Florida's act does not require the employer to take any action whatsoever. The insurer is responsible for notifying insureds and dependents about their continuation rights if a qualifying event occurs.

A qualifying event could be:

- the death of the covered employee;
- the termination or reduction of hours of the covered employee (termi-

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nation for gross misconduct, however, bars availability of benefits);

- divorce or separation from the covered employee's spouse;
- becoming entitled to Medicare benefits;
- a dependent child ceases to be a dependent under the policy; or
- the employer of a retired employee declares bankruptcy within one year of the employee's retirement.

Within 30 days after the occurrence of a qualifying event, the qualified beneficiary must give written notice of the event to the insurance carrier. Within 14 days after receipt of the notice, the insurance carrier must send each beneficiary an election form. The employee or dependent fills out the form and either purchases or declines coverage. *The former employee and/or his dependents are then responsible for paying their premiums.*

In most cases, the coverage is extended for 18 months. All plan books after Feb. 1, 1997, must contain a notice to beneficiaries regarding their rights and responsibilities under the act.

The Florida Health Insurance Coverage Continuation Act is a bold new step. It will bring access to health insurance for thousands of people who are between jobs. Expanding the numbers of Floridians covered by health insurance is important because expanded coverage reduces health care costs for all employers. ■

Editor's note: If you are a small employer looking for more information regarding health care insurance, you can call your insurance agent or your local CHPA. The CHPA system is Florida's small business health insurance purchasing pool. Because CHPAs leverage the purchasing power of small businesses, insurance rates for plans purchased through a CHPA are lower than those on the outside market. For more information call (800)-4-MY-CHPA.

State COBRA Questions and Answers

What is the state COBRA? It is a new law passed by the 1996 Legislature. The official name of the law is the Florida Health Insurance Coverage Continuation Act. It is referred to as the state COBRA because it is modeled in part on the federal COBRA.

What does it do? The state COBRA law means that a worker and his dependents can continue to receive health insurance benefits at group rates after he no longer works for you. This is important because insurance premiums for individual policies are so expensive. The difference between individual rates and the group rates paid under your business health plan often mean the difference between whether or not a family has the protection of a health insurance policy.

Who is covered by the law? It applies to Florida companies with fewer than 20 employees.

When does it go into effect? Jan. 1, 1997.

How does it work? If one of your workers ends his employment with you, he should notify your group health insurance company *in writing*. The insurance company will send him a form that he must return within 14 days if he wants to continue his health insurance benefits.

Not all employees are eligible for coverage under the state COBRA. For instance, if you fire someone for gross misconduct, he cannot continue to receive his insurance coverage under your policy.

The law also covers dependents of your employees. For instance, if an insured worker got a divorce, his spouse and children could elect to continue their coverage if they had previously been insured under your group plan.

Do I have to pay the premiums for people who don't work for me any more? No, the employee and/or his dependents have to pay the premiums.

How will this affect my insurance rates? The state COBRA *will not* cause an increase in your premiums. Since your policy is "community-rated," even if the former employee or one of his dependents becomes seriously ill and needs costly treatment, your premiums will not go up.

How will my employees know if they're eligible under the new law? After Feb. 1, 1997, the plan book your employees receive from your health insurance company will list the factors that determine whether or not they and their dependents will be eligible for continuation of benefits under the state COBRA. ■

Property Taxes: **Unsportsmanlike Conduct**

by Benjamin K. Phipps, The Phipps Firm

For anyone operating out of a shop, a store, an office, or even a factory, property taxes are now one of the heaviest expenses of doing business in Florida. Property taxes are now the most important source of revenue for most forms of local government and make up a large part of the taxes spent on our public schools. These taxes are levied according to the value of our property, and are called ad valorem taxes, meaning *to the value of.* That value is set by elected county property appraisers.

The Florida Constitution provides that property is to be taxed at its "just value," which is another way of saying fair market value. Obviously, the higher the value set by the property appraiser, the higher the taxes.

In recent years, there has been a great deal of pressure on the elected property appraisers, both from the state and from the local governments, to push values as high as possible. The increasing demands for service by local government require higher and higher tax revenues. All of this has resulted in some properties being valued at more than they are actually worth. This, of course, means that these property owners and their tenants are paying more taxes than they should. Any fair tax system demands that taxpayers have a reasonable means of challenging over-taxation.

As explained in the article *Ad Valorem Tax Assessments: Burden of Proof* in an earlier edition of this magazine (*Employer Advocate*, January/February 1996), Florida property taxpayers do not have such a reasonable means to challenge their taxes. AIF supported legislation during the 1996 Session to correct that situation. In essence, the AIF legislation changed the burden of proof necessary to overcome the property appraisers' assessment of value.

Presently, the highest burden in the United States is placed on Florida taxpayers. It is the requirement of overcoming Florida's unique "every reasonable hypothesis test." That means a taxpayer must prove that there is no reasonable way the property appraiser could have reached the value he placed on the property.

This is a test adopted by the courts, not by the Legislature, many years ago. The every reasonable hypothesis test has become so abused in recent years that taxpayers are seldom successful in challenging overassessment except when a property appraiser willingly admits a mistake.

The legislation proposed by AIF would change that burden to a simple preponderance of evidence, the one used in the vast majority of other jurisdictions. The preponderance of evidence rule is also applied in all federal taxes (including the income tax) and in all Florida state taxes.

The legislation was introduced in the House by Rep. Bob Starks (R-Casselberry) and by Sen. Jim Horne (R-Jacksonville) in the Senate. Joining them as co-sponsors were more than 90 House members and 30 senators.

The bills (HB 557 and SB 740) had been introduced early and thus received early committee attention. The bills were furiously opposed by a coalition of property appraisers, cities, counties, and school boards. Killing the bills was the number one legislative priority of a number of local governing boards, including the Metropolitan Dade County Commission.

They feared the reduction of tax revenue if taxpayers were given a fair opportunity to challenge overassessments. Representatives of local government were willing to admit that there were serious problems with Florida's ad valorem tax system, but asserted that they simply could not afford reduced revenues.

To support their cause, they wildly exaggerated the extent of over-taxation claiming it could

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be as high as $480 million *per year*. Supporters of the bill argued that this significant amount of revenues derived from overass-essments was the best reason for promptly enacting the reform.

The bills were heard by the judiciary committees of both chambers, as well as the two tax writing committees. An extraordinary total of 12 hours of committee hearing time was dedicated to a simple two-page bill that made a one-paragraph change in the tax law.

Local government lobbyists focussed their efforts on an attempt to substitute a study commission for the substantive reform contained in the proposed bills. Representatives of local government openly admitted that the purpose of the study commission was to kill the reform, permanently. Consequently, they were never able to muster the votes to have their amendment adopted in committee.

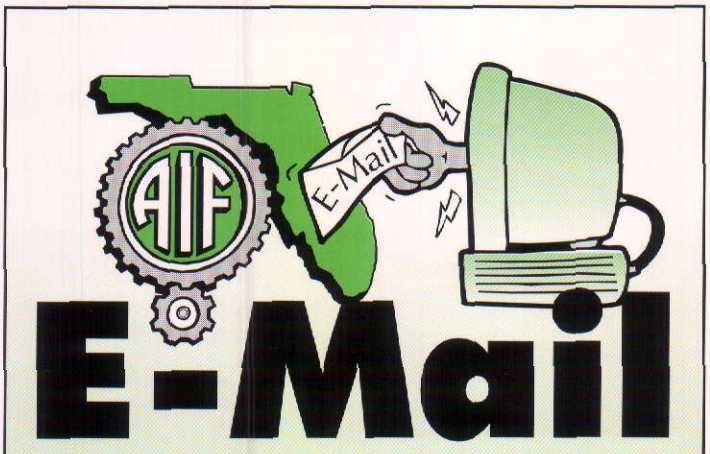
In the meantime, the opponents to the reform were able to convince several key staffers in the governor's office to proclaim that the governor would veto the legislation if it reached his desk. In an effort to mollify this opposition from the governor's office, sponsors of the legislation agreed to changes that would: 1) delay implementation of the bill until 1997; 2) provide that the bill reform would automatically expire at the end of three years; and 3) create two study commissions to determine the fiscal impact of the reform after that three-year period, and to propose other reforms in the ad valorem system.

The governor's office was persuaded by the outcry of local government officials that they could not tolerate successful taxpayer challenges to overassessments.

These modifications were adopted on the floor and the bill passed the House by a vote of 110-7, and the Senate by 36-4.

Local government then set out on a frantic, and ultimately successful, effort to persuade the governor's office to carry through with its veto threat. Despite the fact that proponents of the legislation greatly outnumbered the opponents, the governor's office was persuaded by the outcry of local government officials that they had become dependent upon the present level of tax revenues and could not tolerate successful taxpayer challenges to overassessments.

The reason the reform legislation had so many cosponsors and such enthusiastic legislative support was because almost every legislator was aware of the grave tax injustices that have occurred within their districts. The focus on this issue in 1996 will only intensify demands by Florida taxpayers that the presently unfair system be corrected. ■



by Martha Edenfield, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A. & AIF Environmental Consultant

The Tanks Program Gets Back on Track

The Florida Petroleum Cleanup Program was created 10 years ago to address the problem of contamination from petroleum storage systems. As the program matured many cleanups were initiated, often at sites that, though seriously contaminated, did not pose an immediate threat to human health.

As a result, the pace of cleanup work outstripped the available funds. In response, during the 1995 Session, the Legislature placed a moratorium on most petroleum cleanups effective March 27, 1995. Although the Legislature described the moratorium as a temporary solution and stated its intent to fully address those issues before the regular session adjourned in 1995, a permanent solution was not reached and the moratorium remained in effect until 1996.

The moratorium gave the Department of Environmental Protection (DEP) an opportunity to slow down the program and exercise greater administrative control over it. However, the moratorium had devastating consequences on Florida's property owners, lending institutions, local governments, and the environment.

Without assurance of cleanup, contaminated property could not be sold or used to operate a business. Without a state cleanup program, loans were not made for contaminated property. Properties were more likely to be abandoned, leaving owners and lenders with huge losses and creating blights throughout the state. Local governments lost tax revenues on useless and abandoned properties.

After grinding to a halt in the 1995 Legislative Session, the expected and hoped-for reform of Chapter 376's Underground Petroleum Storage Tank Cleanup Reimbursement Program (the tanks program) finally became a reality with the passage of HB 1127 by the 1996 Legislature. The bill began where the issue left off last year — hotly-debated and controversial — but ended very quietly following hundreds of hours of negotiations among the governor's office, DEP, and other interested parties.

The new law establishes a means to pay off the bloated backlog of over $300 million in cleanup work awaiting reimbursement from the Inland Protection Trust Fund. The backlog payoff will be accomplished through the creation of a public financing corporation that will issue certificates of indebtedness or bonds to pay off $100 million of the backlog each year.

A controversial element of the new law is the 3.5 percent/per year discount that will be applied to each reimbursement order in the backlog before it is paid. The theory behind the discount is that it is necessary to account for the present value of money.

In other words, because a person would have waited as much as two years to be reimbursed under the old program with a loss of value due to inflation, that person would essentially be receiving a "windfall" if

The tanks program was cleaning up petroleum contamination in Florida many times faster than a state enforcement program could ever have done.

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paid all of the money today. There are some who believe the discount is unfair and illegal. A lawsuit to test its constitutionality has been threatened.

The tanks program is now based on preapproval of cleanup costs with cleanups proceeding on a priority basis. In order to be eligible for reimbursement, the estimated costs of a cleanup must first be approved by the DEP. Furthermore, a cleanup cannot be started until cleanups have been completed or commenced on all higher-ranked sites, with rankings based on the degree of threat to human health and the environment.

A major new part of the tanks program is the provision for risk-based corrective action or RBCA (pronounced like "Rebecca"). Chapter 376 now requires DEP to incorporate RBCA to the maximum extent practical. In short, RBCA means that the scope, and thus the cost, of a cleanup will be determined in large part by the potential risk of exposure to humans and the environment.

In general, all cleanups under the old program had to meet the same cleanup standards without regard to the potential risk involved. A frequent example given to explain RBCA is a contamination site where the groundwater is not now being used or is not suitable for future use as a drinking water supply. Although other factors would also have to be taken into account in determining what level of cleanup must be undertaken at such a site, the potential risk to humans should be low and should result in a reduced cleanup effort.

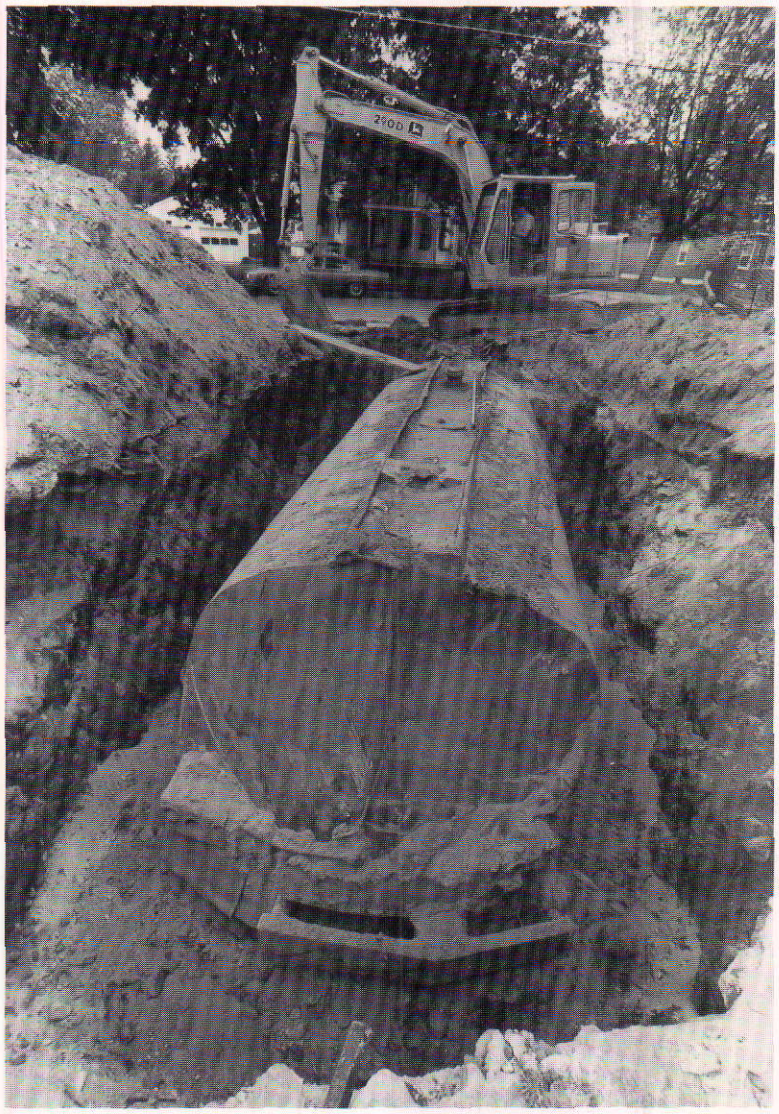

Photo Courtesy of Worcester Telegram & Gazette

There are many other provisions of the new tanks program which should make it a better one, such as improved efficiency in the review of reimbursement applications, the assignability of the right to reimbursement, and the creation of deductibles from insurance coverage for non-compliance with certain reporting requirements.

Implementing all the new provisions of Chapter 376 will be no easy task for DEP. Circumstances will surely arise that no one foresaw during the drafting of the legislation. Nonetheless, the fundamental question of whether Florida's tanks program would even continue to exist has been answered. The tanks program has risen from the ashes of the moratorium with a good chance of avoiding the need for a future moratorium. Nearly all of the many criticisms of the program have addressed in one form or another in the new law.

The tanks program's resurrection is strong evidence of the basic soundness of this program that, even with all its past faults, was cleaning up petroleum contamination in Florida many times faster than a state enforcement program could ever have done. In its new form, it should live up to its billing as a model program for use across the nation. ■

The tanks program is now based on preapproval of cleanup costs with cleanups proceeding on a priority basis.

Charter Schools a Reality in Florida

by Diane Wagner Carr, Vice President & Assistant General Counsel

With the passage of charter schools legislation, the business community joined Education Commissioner Frank Brogan, educators, administrators, and legislators to celebrate a legislative victory that was almost two years in the making. Even before he was elected, Brogan ran his campaign on a platform of accountability and reform, promoting local control of public schools, and an emphasis on measurable student achievement.

One of the most talked-about planks in his platform for reforming K-12 education was that of charter schools. Although careful not to tout charter schools as a panacea for the numerous problems faced by public schools, the candidate who became commissioner focused on charter schools as a means of introducing competition and accountability into the classroom.

Employers were quick to support the charter school concept given their recent experiences with hiring high school graduates. Many business leaders reported that graduates joining the workforce lacked basic reading, writing, and math skills that necessitated remediation at the employer's expense before they could successfully perform entry-level jobs.

The idea of charter schools appealed to these frustrated employers because charter school organizers, in return for a grant of greater regulatory freedom, would have to produce the student results spelled out in the charter. In effect, this made charter schools accountable for actually arming students with certain basic skills because the charter could be revoked and the school disbanded if the agreed-upon results were not achieved. The parallel for business leaders was akin to breach of contract — a consequence they readily understood.

Although the 1995 Session proved a disappointing first attempt to enact charter school legislation in Florida, the 1996 Session was the charm. The Senate took the lead on the issue and passed CS/CS/SB 334 by Sen. Don Sullivan (R-Seminole) during the first week of the session.

Progress in the House was somewhat slower, but the methodical pace actually succeeded in producing a greater number of supporters for the bill as they became better educated about the workings of charter schools. Rep. Joe Tedder (D-Lakeland) sponsored the companion to the Senate bill, HB 403, which passed the House by an overwhelming majority during the seventh week of the nine-week session, leaving ample time for the respective chambers to negotiate their few remaining differences.

One of the major provisions included in the House version, but not in the Senate, dealt with what is commonly referred to as school choice. House Bill 403 required all school districts to plan for controlled open enrollment, but did not require implementation. In school districts that implemented the controlled open enrollment provision, parents and students would have some choice of schools to attend and would not be limited to a single zoned site, as is the norm under present law.

The House version, including the school choice language, was the vehicle that passed both chambers handily and was signed into law by the governor. The bill's early effective date of July 1, 1996, is prompting some potential charter school organizers to gear up for charter approval by their local school board as soon as possible. Others are proceeding more cautiously.

Over the next few years as charter schools are approved for operation, it will be interesting to see if they become the models of accountability and results hoped for by many in the business community. No doubt, there will be successes as well as disappointments.

Even so, the fact that charter schools are now a reality in Florida is further evidence that the business community will not stand by and support the status quo for the state's public schools. ■

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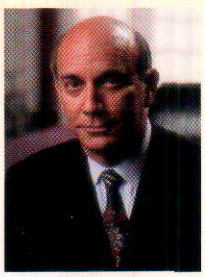

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For Whom the Phone Rings: **The Problem with Disclaimers for Political Calls**

by Diane Wagner Carr, Vice President & Assistant General Counsel

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How could AIF be against fair campaign practices? That's the question raised in many post-session newspaper articles about the failure of the Legislature to enact an election reform proposal endorsed by Secretary of State Sandra Mortham.

The question is imprecise. AIF's objections to the reform proposal hinged on one provision that was neither judicious nor appropriate.

That provision addressed the issue of campaign phone solicitations that was raised when the Chiles campaign made misleading phone calls with false attributions in the last days leading up to the 1994 election.

An alert St. Petersburg woman recorded the phone call and delivered the tape to her elected official, Sen. Charlie Crist (R-St. Petersburg). Coincidentally, Crist is the chairman of the Senate Executive Business, Ethics and Elections Committee. He launched a full inquiry into the matter.

The investigation resulted in the admission by two high-ranking Chiles campaign officials that they had authorized the phone calls. It also resulted in House and Senate bills that supposedly addressed the problems identified.

Although touted as solutions, the bills were overwrought attempts to regulate, not just candidates and their campaigns, but a myriad of calls associated with the political process.

The House and Senate bills differed in their approaches to regulating political calls, but both contained disclaimer requirements mandating that callers disclose to recipients of calls the identities of the individuals and entities paying for the calls. That may sound reasonable but, as is always the case in the legislative process, the specific language of each bill presented its own set of problems to be grappled with.

Both bills, in different aspects, injected unwieldy and imprudent disclaimer requirements on political phone calls. Both would have been difficult to enforce and would have achieved perverse results.

For instance, campaigns that use polling wisely desire objective conclusions. That is why many want to keep their identities confidential from those making *and* receiving the calls. The Senate bill would have eliminated this strategy.

Another, more important predicament in the House and Senate bills involved the manner in which they abridged the right to free political speech. Anonymous dissent is an old and cherished American tradition that allows members of the public to express their displeasure with those in government without fear of reprisal. Both bills ignored this prerogative.

Reaching agreement on solutions to the problems presented by the House and Senate bills proved a laudable goal, but a difficult task. Language crafted to solve one problem seemed to create another.

As the issue evolved, it became apparent that agreement on specific regulatory language would not materialize. AIF then joined with FEA-United and the AFL-CIO to encourage an exploration of the real motivation driving the proposed legislation and to craft solutions based on that.

If the problems presented by

the Chiles campaign phone calls were to be the basis for the regulation, then the regulation should be tailored to those specific problems. This is what AIF recommended, along with FEA-United and the AFL-CIO, when it encouraged the members of the House Committee on Ethics & Elections to adopt an amendment offered by Reps. Alex Diaz de la Portilla (R-Miami) and Alzo Reddick (D-Orlando).

This amendment specified that persons making calls to support or oppose a candidate, elected public official, or an issue would be prohibited from telling the recipient of a call that they represented a particular person or entity unless they had been given written permission to do so. Callers would also be prohibited from telling the recipient of the call that they represented a person or entity that did not exist. Civil penalties were prescribed for violations of these provisions.

In other words, the sponsor of the phone calls could choose to identify itself or remain a stranger to the recipient of the calls. If, as the Chiles campaign did, the source chose to lie about its identity, it would be subject to civil penalties.

This way, the recipient of the call could choose whether to believe, ignore, or investigate any allegations made by the phone caller.

With committee chairman Rep. Tracy Upchurch (D-St. Augustine) casting the only no vote, the committee overwhelming adopted the Diaz de la Portilla/Reddick amendment. Thus, the members of the committee determined that any attempt by the Legislature to regulate political speech — speech deserving the highest degree of First Amendment protection — should be as narrowly drawn as possible.

They affirmed that, should the Legislature feel compelled to regulate telephone solicitation in the context of political campaigns, it should take great care not to reach out and unnecessarily regulate persons and entities who have not been a party to wrongdoing and who do not want to have their free speech rights impinged.

With the adoption of the amendment, the position of the committee remained the position of the House. During the final hours of the session, however, Rep. Upchurch was joined by Rep. John Thrasher (R-Orange Park) in an attempt to reinstate much of the same disclaimer language that was repudiated by the committee. The language was part of a lengthy amendment offered to Secretary of State Sandra Mortham's election reform package sponsored by Rep. Thrasher.

Continued opposition to the overly expansive telephone solicitation language, coupled with debate and confusion on the House floor, meant that the amendment was never voted on and the House failed to act on the election reform package.

How the Legislature approaches telephone solicitation in sessions to come will, no doubt, be the subject of future discussions involving AIF and others keenly interested in solving specific problems associated with campaign calls without unduly burdening citizen participation in the political process.

This is the principle that will guide AIF in its work on telephone solicitation in the context of political campaigns. AIF will continue to support honest solutions, such as the one encompassed in the Diaz de la Portilla/Reddick amendment.

A cure for an illness should not worsen the health of the patient. The Legislature should not try to protect citizens from misrepresentations — an impossible task — at the expense of First Amendment rights to free speech. ■

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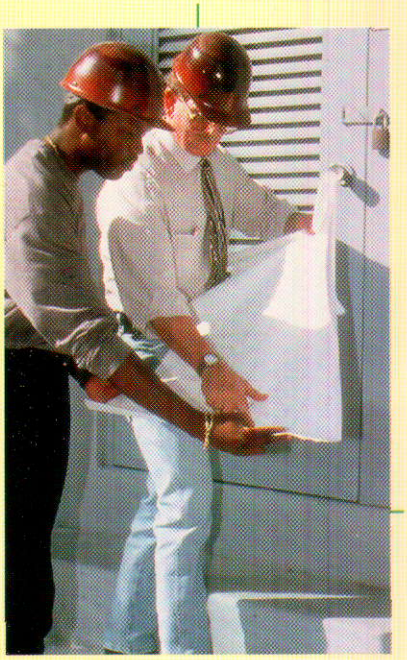
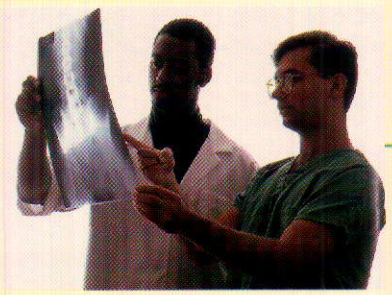
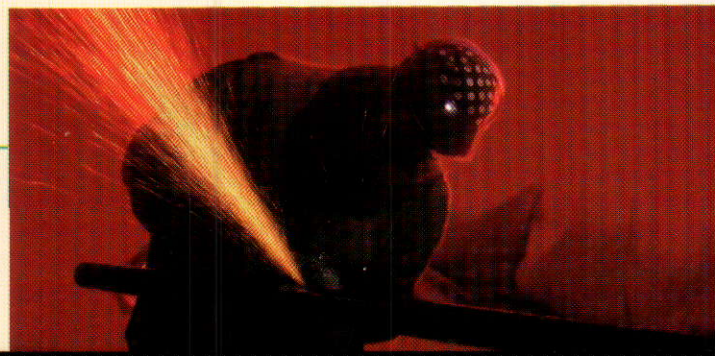


Associated Industries Insurance Services, Inc.

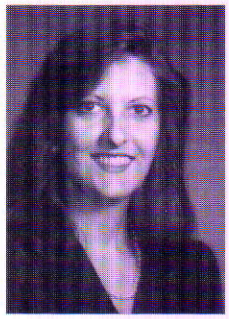
If your premium volume is large enough, you may be eligible to self-fund your own program. Associated Industries Insurance Services, Inc. (AIIS) is able to assist you in pursuing this kind of self-funded arrangement, and manage it as well. Also, AIIS provides Third Party Administration, which means we'll administer your claims and safety programs, too. ■





Administrative Procedure Act Reform Bill

by the Honorable Ken Pruitt, Florida House of Representatives, (R-Port St. Lucie)



Martha Edenfield, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A. & AIF Environmental Consultant

One of the most significant pieces of legislation affecting Florida's future easily passed the Legislature during the 1996 Legislative Session without much fanfare, barely even creating a blip on the news media's radar screen. Although the reform to the Administrative Procedure Act (APA) did not make headlines, the business community has devoted four years of work to the effort.

More than any other single legislative act this session, the Administrative Procedure Act Reform Bill, by Sen. Charles Williams (D-Live Oak) and Rep. Pruitt will significantly alter how business is conducted and how state government relates to private citizens in Florida.

History

The original APA, enacted in 1974, was a model piece of legislation providing a procedure for a Floridian to redress grievances against state agencies for their actions that affected the citizen's substantial interests. The APA provided a delicate balance between the three branches of government and the private sector. After 20 years of tinkering with the APA, both through legislative amendments and judicial interpretation, state agencies have been afforded great deference in rulemaking and actions based on the expertise of the agency.

Thus, instead of the three branches of government providing checks and balances on each other, the private sector was forced to be the check and balance on the executive branch, with no risk or repercussion to an agency for overstepping its delegated legislative authority. This shift in the balance of power was achieved at a tremendous cost to the private sector.

AIF took the lead in trying to reshift the balance of power to put the private citizen on a more level playing field with the state agencies.

Gov. Lawton Chiles also jumped on the "too many rules" bandwagon in his second term inaugural speech. Delivering the now-famous cook-shack story, the governor proclaimed rules repeal and reduction as a primary part of his agenda for 1995.

Initially, the struggle to shift the balance of power back to the citizen concentrated on the evil of the proliferation of rules. However, AIF also realized that merely freeing regulators from having to make rules or from adherence to the rules they enacted would only give agency bureaucrats more autonomy. Bureaucratic emancipation did not equate to giving the regulated community more freedom. Instead, liberating regulators from rulemaking and from obeying the rules they themselves had enacted would merely create government by bureaucrat.

The dilemma was about more than whether there were too many rules or not enough rules, as illustrated in the following two stories.

A construction company needed to do some culvert guttering work under a state road. The project required rental of heavy equipment and use of personnel and a state permit. After everything was in place to move forward with the project, the contractor went to the agency to pull the applicable permits, for which he was in total compliance. The permits should have been granted as a ministerial act. However, the permits were unexpectedly denied. Why?

The contractor went to pull the permits on a Friday and the agency had an unpublished policy that those permits could only be issued on Monday through Thursday, due to the frequent occurrence that those projects could not be timely completed, thereby causing construction delays over a weekend and necessitating agency personnel to work overtime on weekends.

The agency policy was valid. However, because it was unpub-

lished and was not required to be published, the private citizen spent valuable resources for equipment and personnel to sit idle.

Consider also the story of the mother of Sen. Rick Dantzler (D-Winter Haven). In a barn located on her property, Mrs. Dantzler makes low-fat chicken sandwiches for people with special dietary needs. In order to comply with the complex and strenuous state regulations governing food preparation, Mrs. Dantzler was required to install a grease trap, equivalent in size to the ones installed in commercial fried chicken restaurants.

There could be no exceptions to this rule, so it applied to Mrs. Dantzler even though the grease trap served no purpose (the preparation was, after all, low-fat) and requiring her to install a commercial-sized grease trap was absurd. Everyone agrees this is an absurd result. Everyone also agrees that there are situations where a grease trap should be required, but it would be impossible to list each and every situation in a rule.

The question plaguing the Legislature, the business community, and Gov. Chiles was how to reconcile the problems represented by these anecdotes. On one hand, requiring an iron-clad rule to list every feasible situation leads to absurd results; allowing agencies to run a "phantom government" based on unpublished policies leads to unfair results.

Dealing with "Phantom Government"

In an earlier attempt to address the "phantom government" issue and hold agencies accountable for their policies, the 1991 Legislature passed Section 120.535 of the *Florida Statutes,* which requires agencies to promulgate rules that are feasible and practicable.

However, since the passage of Section 120.535, agencies grew frustrated that every policy had to be adopted as a rule, resulting in a flood of rule promulgation. Frustration increased with the lack of flexibility in decision-making.

Despite all the rhetoric over too many rules and too much regulation, the real conflict about the APA and rules centers on the flexibility and the ability of an agency employee to use discretion versus the certainty needed by the regulated community that if certain conditions are met, a specific result will follow.

The 1995 Legislative Solution

During the 1995 Legislative Session, the governor proposed addressing part of the problem by allowing one agency, the Department of Transportation, to suspend rules and operate under "guidelines." The governor also favored repeal of Section 120.535, so that agencies would not be required to adopt rules.

The regulated community rallied behind a less drastic approach and, in 1995, the Legislature passed a comprehensive revision to the APA.

The legislation contained provisions to level the playing field between the private sector and agencies. The bill contained a repeal of Section 120.535, which required agencies to promulgate rules, but a similar section requiring agencies to adopt rules was included.

Believing that more extensive efforts must be made to change the bureaucratic process in order to achieve real and fundamental change, Gov. Chiles vetoed the bill. He then established the Governor's Administrative Procedure Act Review Commission.

The commission was charged with working to accelerate Florida's regulatory reform efforts by helping to build a more simplified APA, promote flexibility in agency decision-making, and explore alternative methods of resolving disputes between citizens and the government.

The Governor's APA Review Commission and the 1996 Legislation

The APA commission took very seriously the governor's charge, which included reviewing the intent of the Legislature in enacting the original APA and amendments to that original act, reviewing interpretations of the act by the court, and reviewing the current impact of the act and of Section 120.535.

(continued on page 25)

1996 Legislative WRAP-UP

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(continued from page 23)

The commission also reviewed the compatibility between the present APA and the governor's effort to reduce the number of rules on state government and to restore common sense to government decision-making, as well as exploring alternative methods of resolving disputes involving government.

The three top issues for AIF included retaining Section 120.535 with a provision for waiver of variance in exceptional circumstances, attorney's fees for rule challenges, and amending the burden of proof in rule challenges.

On May 1, 1996, Gov. Chiles signed into law the APA reform act that includes provisions for AIF's key concerns. It will become effective on Oct. 1, 1996.

Overall, the product resulting from the commission's work, in combination with the key provisions of last year's reform act, is a well-reasoned and deliberative product. It is designed to hone in on the problems that need to be addressed and to fine-tune the APA while keeping in mind the original legislative intent of the APA.

It is a superior product that, overall, will benefit the regulated community through increased flexibility, and will bring more accountability to agencies, restoring the balance contemplated by the original APA. Furthermore, the APA reform, as enacted, will relieve Mrs. Dantzler's chicken problem, the governor's cook shack problem, and the contractor's "phantom government" problem, alike.

1996 APA Reforms — Close-up

In passing the 1996 APA reforms, CS/SB 2290, the Legislature enacted the following recommendations of the APA Review Commission, combined with the best of the 1995 legislation.

Flexibility Through Waiver and Variance

Waiver and variance played a key part in the resolution of the flexibility versus certainty issue.

The regulated community doubted the wisdom of mass repeal of rules that, instead, would subject them to the whim and caprice of an agency employee (an employee who may or may not have a bias toward you or your competitor). Nevertheless, the regulated community also understood the desire of the governor to instill flexibility in the process to avoid absurd results.

Thus, the Governor's APA Review Commission, after much deliberation and research, concluded that a limited variance and waiver provision should be placed in the APA to provide procedures and criteria to deal with exceptional circumstances, such as Mrs. Dantzler's fat-free chicken venture.

The bill provides that a variance is a modification to all or part of the requirements of a rule. A waiver is a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Variances and waivers are to be granted if the person subject to a rule demonstrates that the purpose of the underlying statute has been achieved by other means and that application of the rule would create a substantial hardship or would violate principles of fairness.

A substantial hardship is defined as a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

Principles of fairness are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The person subject to the rule may file a petition with the agency requesting a waiver or variance. Agencies may not initiate variances or waivers on their own motion. The petition must state specifically how the purposes of the underlying statute will be

served and the facts that justify the issuance of a waiver or variance. Notice of waiver and variance petitions will be published in the *Florida Administrative Weekly* for comment by interested persons. The agency must grant or deny the request within 90 days or the petition is deemed approved.

The agency decision to grant or deny a waiver or variance must be based on competent substantial evidence and is subject to a formal hearing process. Through its proposal, the commission sought to introduce more flexibility into the application of agency rules while, at the same time, preserving the original goals of the APA.

The Need for Certainty — Section 120.535

Despite the governor's position on this section, the commission endorsed retaining Section 120.535, and emphasized that it was adopted to restore the APA to what lawmakers originally intended. The consensus is that Section 120.535 is a key element in combatting "phantom government," when agency policies are neither known nor consistently applied. Predictability in government decision-making was the primary goal of the original APA.

The commission, in considering the position that this section resulted in too many rules and agency inflexibility, concluded that the problem was not in the number of rules but in the overly-rigid rules adopted by some agencies. It was concluded that the general waiver and variance provision would help remedy that problem.

The original APA, enacted in 1974, provided a procedure for a Floridian to redress grievances against state agencies for their actions that affected the citizen's substantial interests.

In the 1996 act, the Legislature retained the rulemaking requirement in Section 120.535, recognizing that published rules help provide certainty to the regulated community and also help inform the general public of an agency's policies. Furthermore, the rulemaking process itself provides interested persons with the opportunity to comment on proposed rules and give necessary input to the agency as it develops its policies.

Leveling the Playing Field in Rule Challenges

Some agencies have promulgated rules that push the envelope by proposing rules based on the most stringent interpretation with the most dire effects on the private sector. The private sector has been forced to use its resources to challenge rules; however, there are no repercussions against an agency, even if it loses, as there are no provisions for recovery of attorneys' fees in rule challenges.

An agency loss was rare indeed, however, because the case law has developed such that any possible interpretation of a rule, short of despotic results, will be upheld and both proposed and existing rules are presumed valid.

Pursuant to the 1996 act, in proposed rule challenges the agency must prove that the proposed rule is not an invalid exercise of delegated legislative authority. Furthermore, a proposed rule is not presumed to be valid or invalid.

Existing rules are given a presumption of validity, although, due to other changes, the presumption is not as strong as it was, since rules must be supported by competent substantial

evidence and must not be arbitrary or capricious, as they have received scrutiny under the rulemaking procedures and may have been subject to an earlier challenge.

In both cases of proposed and existing rule challenges, hearing officers shall award attorneys' fees against an agency that does not prevail, unless the agency's actions were substantially justified. There is a fee cap on this provision of $15,000 plus reasonable costs.

Increased Legislative Oversight

The act provides for increased legislative oversight by requiring the Joint Administrative Procedures Committee (JAPC) to include additional information in its annual report to the Legislature, maintain a continuous review of the rulemaking process, and recommend to the Legislature changes to the statutes that authorize agencies to adopt rules. The JAPC is authorized to recommend legislation to modify or suspend the adoption of a proposed rule, or amend or repeal a rule or a portion thereof.

Statement of Estimated Regulatory Costs

The 1996 act permits a substantially affected person to submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule. The alternative must substantially accomplish the objectives of the law being implemented.

The real conflict about the APA and rules centers on the ability of an agency employee to use discretion versus the certainty needed by the regulated community.

The proposal may include the alternative of not adopting any rule, so long as the proposal explains how the lower cost objectives of the law will be achieved by not adopting a rule. An agency is required to prepare a statement of estimated regulatory costs upon submission of a lower cost alternative and the agency must either adopt a lower cost alternative or give a statement of reasons for rejecting the alternative in favor of the proposed rule.

Notice of Rule Development

The legislation includes a requirement that agencies file notice of development of a proposed rule to inform the public that a rule is being considered. It also requires that agencies hold a public workshop for rule development if an affected person requests such action. The bill permits negotiated rulemaking and requires consideration of this process when a complex rule is being drafted or when there will be strong opposition to a rule.

The Limitations on Use of Another Agency's Policies

An agency may not condition the approval of any license on compliance with the policies of another agency, unless the agency identifies the specific legal authority for the policy and a licensing agency provides the licensees with an opportunity to challenge the condition as invalid. ■

Editor's note: Rep. Pruitt, the House sponsor of the APA Reform Act, has been a leader in APA reform issues for four years. Both authors served as members of the Governor's Administrative Procedure Act Review Commission.

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

Some Important Housekeeping

Workplace Safety

During the 1996 Session, the Legislature adopted CS/HB 2389 relating to employer safety programs of the Division of Safety, Department of Labor and Employment Security.

The bill requires the Office of Program Policy and Analysis and Governmental Accountability (OPPAGA) to conduct performance audits of the Division of Safety for fiscal years 1995-96 and 1996-97. The audit is to examine activities related to employer safety programs, including consultations and enforcement activities.

The legislation also eases a burden on small businesses. As a result of the 1993 workers' compensation reform legislation, businesses with more than 10 employees were required to establish and utilize a workplace safety committee. Also, an employer with fewer than 10 employees that had been identified as having a high frequency and severity of work-related injuries had to meet certain safety requirements. These included appointing a workplace safety coordinator to establish and administer workplace safety activities. The committee substitute for HB 2389 raises the threshold on both these requirements to 20 or more employees.

The legislation also requires that the compensation, selection, and function of safety committees shall be a mandatory topic of negotiations with any nonfederal public certified bargaining agent.

The bill became effective when it became a law on May 30, 1996, without the governor's signature.

The House Commerce Committee will study workplace safety during the interim before the next legislative session. The committee envisions a large research project with a focus on federal and state workplace safety laws, regulations, and programs. The House intends to examine the federal Occupational Safety and Health Act (OSHA) and its regulations, with an emphasis on how OSHA is administered in the state of Florida.

The second prong of the project will examine the interaction between federal and state safety laws. The committee is planning to study other states that have elected to take over OSHA's responsibilities. The Commerce Committee will also attempt to obtain information on how effective workplace safety efforts have been, with any resulting impact on worker's compensation rates.

The third part of the project will include a description of Florida's situation relating to workplace safety. The committee will be looking at the state laws governing workplace safety, state resources and effectiveness, and the interrelationship between federal and state laws.

The House of Representatives interim review and the audit by OPPAGA must be completed between July 1, 1997, and Dec. 31, 1997. Following the reports, debate on the role of the Division of Safety is expected to continue during upcoming legislative sessions.

Special Disability Trust Fund

The Special Disability Trust Fund (SDTF) was established to encourage employers to hire injured workers. If the worker suffers a subsequent injury, the fund will pay some of the benefits and medical costs, depending on the severity of the second injury. The SDTF is financed through assessments on insurance companies which then pass the costs onto employers.

As reported in *Employer Advocate* (July/August 1995 and March/April 1996), unfunded liability in SDTF is raising concerns. The issue was examined and debated during the 1995 Legislative Session and again during 1996.

The SDTF issue came before

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the Legislature as a result of both economic and constitutional forces. Article III, Section 19(f) of the Florida Constitution, regarding re-authorization of trust funds, was interpreted as applying to the SDTF. Without the Legislature taking affirmative action, the fund would expire on Nov. 4, 1996.

In addition, during the 1995 Legislative Session, a cap of 4.5 percent was placed on the insurance company assessments. This cap was scheduled to expire on July 1, 1996. The Division of Workers' Compensation estimated that without the cap, the assessment would have exceeded double digits.

The SDTF is a pay-as-you-go system and is not prefunded as is the rest of the workers' compensation system. Following the 1995 Session, the Department of Labor and Employment Security contracted with an actuarial firm to review the unfunded liability of the SDTF.

The studies released by the actuarial firm of Milliman & Robertson examined the unfunded liability as of June 30, 1995. Milliman & Robertson estimated that all future payments required on accidents occurring on or prior to June 30, 1995, would be $4.7 billion on an undiscounted basis. The discounted present value of this unfunded liability was estimated at $1.9 billion.

These numbers raised additional legislative and employer concerns about the viability, growth, and future of the SDTF.

The consulting firm also estimated the impact of the 1993 legislative reforms on the fund. The reforms provide for a $10,000 deductible and lower amounts of reimbursement to employers/carriers. Milliman & Robertson estimated the changes to the fund's eligibility requirements would reduce the number of claims accepted by 14 percent and that, overall, accidents occurring on or after Jan. 1, 1994, would be reduced by 50 percent as a result of this legislation.

During the session, the House Commerce Committee approved HB 891, providing for the SDTF to curtail reimbursing for accidents arising after Jan. 1, 1998. The fund would have continued in existence thereafter in order to reimburse earlier accidents. The bill also amended procedure requirements of the SDTF and would have required proof of claims to be filed within one year of the date of notice. The bill would have established joint legislative management committees to contract with actuarial experts to again review the SDTF prior to the 1997 Legislative Session. The study was intended to include further information to identify trends, patterns, and costs of future claims. The bill died in the House Finance and Taxation Committee.

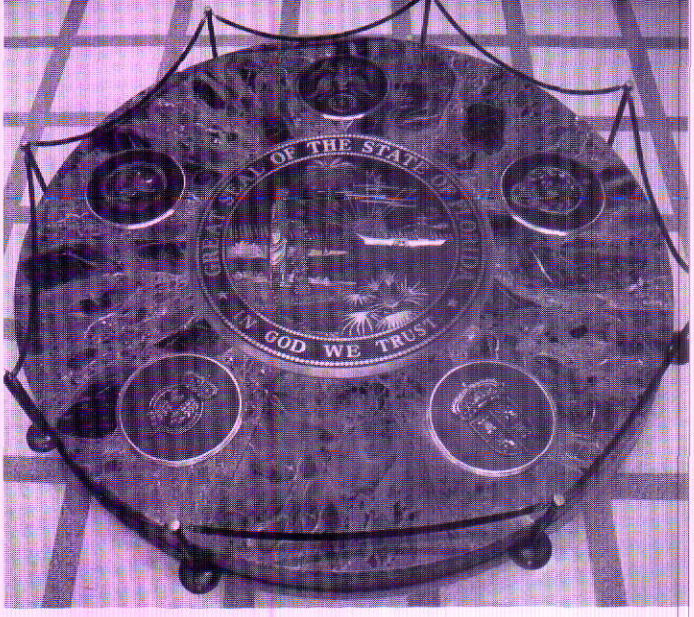
In the end, the Legislature adopted SB 1410, that, in accordance with the constitutional mandate, re-authorized the trust fund.

In an effort to address the rising assessments for paying claims, the Legislature also adopted a provision that maintained the current cap of 4.5 percent.

Associated Industries of Florida attempted to get legislation enacted that would have either terminated the fund at an earlier date or allowed individual companies to withdraw from fund participation. Under the proposal sponsored by AIF, the individual company would have lost the ability to seek reimbursement from the fund for all claims, but would have been relieved of all future assessments.

Since the readopted cap expires on June 30, 1997, SDTF issues will be a continuing source of debate in future sessions due to the magnitude of the unfunded liability and the continuing anticipation of increases in the assessment base. ■

Debate on the role of the Division of Safety is expected to continue during upcoming legislative sessions.



Voting Records on Key Business Issues

1996 Regular Session of the Florida Legislature

Democrats indicated by roman type ■ *Republicans indicated by italic type*

Senate Votes

Bankhead	78 %	*Grant*	82 %	*McKay*	83 %
Beard	89 %	*Gutman*	85 %	Meadows	85 %
Bronson	90 %	*Harden*	86 %	*Myers*	81 %
Brown-Waite	79 %	Hargrett	89 %	*Ostalkiewicz*	84 %
Burt	85 %	*Harris*	83 %	Rossin	85 %
Casas	91 %	Holzendorf	76 %	*Scott*	85 %
Childers	82 %	*Horne*	86 %	Silver	75 %
Crist	76 %	Jenne	79 %	*Sullivan*	89 %
Dantzler	81 %	*Jennings*	83 %	Thomas	86 %
Diaz-Balart	83 %	Johnson	76 %	Turner	91 %
Dudley	85 %	Jones	80 %	Weinstein	75 %
Dyer	89 %	Kirkpatrick	94 %	Wexler	74 %
Forman	69 %	Kurth	79 %	Williams	87 %
		Latvala	79 %		

Total Votes with AIF = 83 %

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House Votes

Albright	75 %
Andrews	77 %
Arnall	78 %
Arnold	76 %
Ascherl	75 %
Bainter	75 %
Ball	81 %
Barreiro	74 %
Betancourt	76 %
Bitner	75 %
Bloom	73 %
Boyd	83 %
Bradley	76 %
Brennan	78%
Bronson	76 %
Brooks	73 %
Brown	72 %
Bullard	77 %
Burroughs	79 %
Bush	71%
Carlton	72 %
Casey	70 %
Chestnut	77 %
Clemons	75 %
Constantine	76 %
Cosgrove	78 %
Couch	0 %
Crady	75 %
Crist	81 %
Crow	76 %
Culp	82 %
Davis	75 %
Dawson-White	71 %
Dennis	68 %
Diaz de la Portilla	79 %
Edwards	76 %
Eggelletion	78 %
Fasano	82 %
Feeney	75 %
Feren	73 %
Flanagan	73 %
Frankel	66 %
Fuller	79 %
Futch	78 %
Garcia	76 %
Gay	79 %
Geller	74 %
Goode	75 %
Graber	63 %
Greene	70 %
Hafner	77 %
Harris	89 %
Healey	73 %
Heyman	81 %
Hill	70 %
Horan	81 %
Jacobs	70 %
Johnson	78 %
Jones	76 %
Kelly	77 %
King	74 %
Klein	73 %
Lacasa	72 %
Laurent	78 %
Lawson	69 %
Lippman	79 %
Littlefield	74 %
Livingston	79 %
Logan	73 %
Lynn	80 %
Mackenzie	80 %
Mackey	75 %
Martinez	72 %
Maygarden	78 %
Meek	78 %
Melvin	83 %
Merchant	79 %
Miller	75 %
Minton	82 %
Morroni	73 %
Morse	74 %
Ogles	80 %
Peaden	75 %
Peeples	77 %
Posey	76 %
Prewitt	66 %
Pruitt	76 %
Rayson	74 %
Reddick	75 %
Ritchie	76 %
Roberts-Burke	74 %
Rodriguez-Chomat	71 %
Rojas	74 %
Safley	79 %
Sanderson	77 %
Saunders, Burt	74 %
Saunders, Dean	77 %
Schultz	78 %
Sembler	73 %
Sindler	69 %
Smith	78 %
Spivey	68 %
Stabins	78 %
Stafford	77 %
Starks	75 %
Sublette	70 %
Tedder	81 %
Thrasher	82 %
Tobin	82 %
Trammell	79 %
Trovillion	78 %
Turnbull	72 %
Upchurch	75 %
Valdes	73 %
Villalobos	70 %
Wallace, Peter	80 %
Wallace, Rob	78 %
Warner	82 %
Webster	77 %
Wise	72 %
Ziebarth	76 %

Total Votes with AIF = 76%

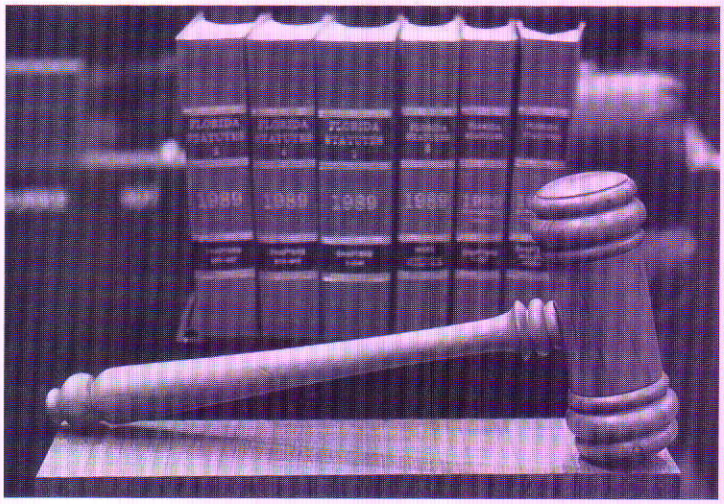
1996 Legislative WRAP-UP

by Diane Wagner Carr,
Vice President &
Assistant General
Counsel

Battles Fought on All Fronts

AIF fights its battles on three fronts. Lawmakers may enact a law so hostile in nature that it becomes unconstitutional. Executive agencies may overstep their boundaries by insisting on implementing rules that are inimical to the business community. In these cases, AIF shifts its attention to the third front by filing legal challenges that strike at the heart of the wrong being perpetrated on Florida business.

As the legal challenge moves through the courts, it is not uncommon for a subsequent Legislature to address the subject of the challenge before a final ruling on constitutionality is handed down. In this way, attention to a particular issue can shift back and forth, from the Legislature to the courts and back to the Legislature. No matter where it goes, AIF follows the issues. We persist in our efforts to ultimately persuade lawmakers, bureaucrats, and judges alike to fashion the law, implement it, and interpret it in a way that is consistent with the interests of Florida business.



The two most recent examples of this kind of simultaneous defense involve AIF's work in the legislative and judicial branches on the Medicaid Third-Party Liability Law, enacted in 1994, and on a significant rewrite of the laws governing the reporting of lobbyists' expenditures, enacted in 1993.

Medicaid Third-Party Liability

In 1994, Gov. Lawton Chiles succeeded in secretly amending Florida's Medicaid Third-Party Liability Law so that any company can be sued by the state to recover Medicaid funds expended in treating an injury or illness that may have been caused by a particular product. The law targets all Florida products and businesses, and it strips defendant companies of their ability to raise defenses on their own behalf when sued by the state.

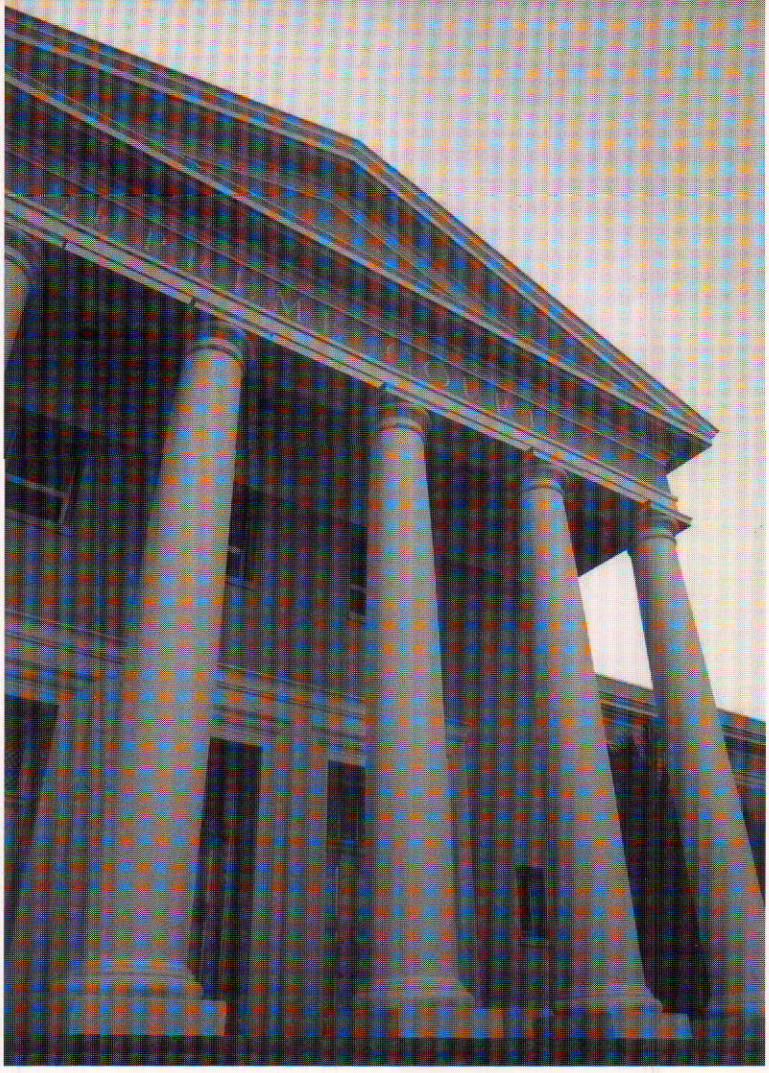
Because the ramifications of the law were so onerous, AIF and others chose first to challenge the constitutionality of the secret amendments as embodied in the 1994 act. The trial judge ruled that the law's application is not limited to tobacco products — despite the governor's protestations to the contrary — and that the Legislature may, indeed, strip defendants of their ability to raise defenses as long as it does so across the board and no defendants are singled out or treated specially.

During the 1995 Session, AIF and others mounted a campaign to repeal the secret amendments. Senate Bill 42, the bill drafted to repeal the 1994 amendments, overwhelmingly passed both chambers of the Legislature as most senators and representatives acknowledged that they had not known what they were voting on when the 1994 amendments were enacted.

Unfortunately, the governor vetoed the bill as soon as it hit his desk.

In late 1995, AIF again turned its attention to judicial branch action. The constitutional challenge, begun the year before, was finally before the Florida Supreme Court. Opponents of the secret amendments argued that, among other things, defendants sued under the 1994 law would be denied their rights of access to courts and due process as guaranteed by the U.S. and Florida constitutions.

As the 1996 Legislature convened, AIF focused again on work remaining in the Legislature and stepped up its efforts to persuade members of both chambers to override the governor's



AIF follows the issues wherever they go, from the Legislature to the Executive Branch to the Supreme Court.

veto of the repealer bill that passed the year before. The attempt to override the governor's veto failed when some senators, who had pledged their votes to AIF, changed their minds and went against their word when called upon to act.

As the session wore on, the Senate turned its attention to a more narrowly drawn bill, SB 12, sponsored by Sen. Buddy Dyer (D-Orlando), that specifically targeted the tobacco industry. Though touted by its supporters as an improvement over the secret amendments of 1994, which it would have superseded, AIF opposed the bill because it contained many of the same flaws of the original legislation.

The Senate bill significantly hindered a defendant company's ability to raise affirmative defenses, and allowed the state to contract with private attorneys to file the law suits. The inclusion of this last provision would have the effect of greatly reducing the funds from the suit that would reimburse taxpayers for Medicaid expenditures since considerable sums would be diverted to pay the attorneys bringing the suits.

AIF continued its work to amend and improve SB 12 while defeating a similar measure in the House. AIF then proposed a compromise that, if enacted, would have meant a win for all involved. The compromise came in the form of an 18-cents per pack tax on cigarettes that would have generated $500 million annually for Medicaid revenues, cancer research, and anti-smoking advertising directed at children.

This tax was proposed in tandem with a repeal of the 1994 secret amendments. AIF would, in turn, give up any attempt to override the governor's veto of SB 42, and would drop the lawsuit challenging the constitutionality of the secret amendments.

Unfortunately, the idea of the 18-cents per pack tax was not well received by Senate President Jim Scott (R-Ft. Lauderdale), given his aversion to new taxes of any kind. The 1996 Session ended with no override of the governor's veto and no compromise legislation enacted.

Even so, the work goes on. The Florida Supreme Court will probably not let the year end without handing down a decision on the original question of the constitutionality of the 1994 secret amendments, which remain the law of the land. The decision of the court will be a key factor considered by AIF in determining what legal and legislative action to take next.

1996 Legislative WRAP-UP

Lobbyist Expenditure Reporting

In 1993, the Legislature completely overhauled the law governing the reporting of lobbyist expenditures. As a result, lobbyists had to report infinitely more information regarding the kinds of expenditures made. They also had to report the information four times more often than had previously been required.

So radical was the rewrite of the law, that many lobbyists felt it would actually interfere with their ability to represent their clients before the legislative and judicial branches.

AIF assessed the situation, then joined with concerned lobbyists of the Florida League of Professional Lobbyists to explore strategies for bettering the bill by legal and legislative means.

Years earlier, AIF joined with other concerned lobbyists to form the league in order to develop standards of conduct for the lobbying profession. AIF personnel serves as league staff and officers.

The league subsequently challenged the 1993 rewrite of the law as being so onerous as to be in violation of the free speech rights of the league and its members.

The challenge was brought in federal court where the trial judge ruled against the league. The case is now on appeal before the 11th U.S. Circuit Court of Appeals.

As the legal battle against the 1993 lobbyist reporting law continued, AIF took every opportunity to ameliorate the bad effects of the law through continued work in the legislative process. The most promising chance for improvement presented itself in time for the 1996 Session in the form of companion bills: HB 411 by Rep. Burt Saunders (R-Naples) and SB 2774 by Sen. Ken Jenne (D-Ft. Lauderdale). The latter was the vehicle for the law that was ultimately enacted.

The bill was originally crafted as an enforcement mechanism and included penalty provisions. It was reworked so that it significantly modified the cumbersome designated-lobbyist requirement, which makes a single lobbyist responsible for reporting the expenditures of every lobbyist involved in a coalition or group-lobbying effort. The bill also replaces the quarterly reporting requirements with more workable semi-annual reporting.

Here again, the story is not yet completely told. As the 1996 Session was beginning, the constitutional challenge to the 1993 rewrite of the underlying law was argued orally before the 11th Circuit. When handed down, AIF will take careful stock of the court's decision in the case as a guide to where it next concentrates its efforts.

Thus the "back-and-forthing" continues for AIF as it uses the appropriate means in the appropriate forum to protect the interests of its members. No matter how protracted the battles may be, one thing is for sure, the tenacity with which AIF will continue its work on these and other projects will be as enduring as it always has been. ■

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The Paper Chase

by Jacquelyn Horkan, Employer Advocate *Editor*

Do you need information on the filing status of a Florida corporation? How about the progress on cleaning up a leaky underground tank? Or maybe you just want to know about the nutritional value of a grasshopper.

With the help of Image API, you won't have to wait long for the answer to your question.

Image API is a Tallahassee-based electronic document management consultant that provides clients with the specialized knowledge necessary to automate their document management processes.

The benefits of an insect diet is a new venture for Image API, taking it somewhat off the traditional path, if anything can be called traditional in the novel and burgeoning world of electronic data management.

Automating Efficiency

You might say St. Anthony of Padua is a fitting symbol for electronic data management. The 13th century Franciscan is the patron saint of lost objects, helping supplicants find what they've misplaced. Electronic data management, or EDM, makes sure the objects just never get lost.

EDM applies new technology to the old problem of sorting, managing, and accessing massive quantities of paper. It's an endeavor that whisks away many of the inefficiencies associated with recordkeeping, such as misplaced documents, lost files, and paper cuts.

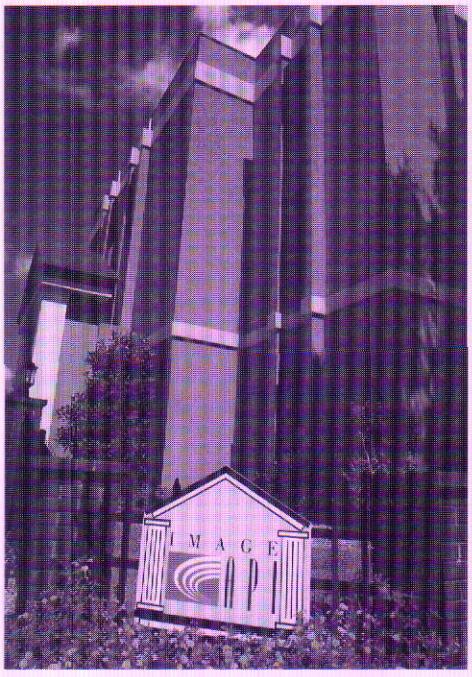


Image API: taming paper with technology.

It's based on a simple assumption. If people who are trained to make decisions on documents have difficulty *finding* the documents, they're squandering a precious commodity: time.

As Rick Griffith, president of Image API, explains, "Let engineers do their work, lawyers do their work, accountants do their work. Let information management people worry about where the records are."

Image API helps its clients in the public and private sectors control the long and winding paper trails flowing through their doors. Documents are electronically scanned, then organized into files. But these files are vastly different from the familiar, tattered cardboard dossiers crammed into metal drawers.

Each document in the electronic file is indexed, managed, and controlled for easy access. Fumbling through a stack of papers to find the one record you need is the old way of doing business. A list at the front of an electronic file leads you directly to the document you seek.

Also gone is the risk that someone else has taken what you need from the file. Everyone working on a project can access an electronic image simultaneously.

The goal is more than supporting the transfer of paper to computer. In-house computer documents such as spreadsheets can be linked to the file. Incoming faxes and electronic mail go straight into the electronic folder. The pieces of the paper puzzle are instantly and easily accessible.

It's all done through the development of specialized software that organizes, indexes, and links corresponding records.

"We can show benefits right

away, from the day we turn it on," says Griffith.

A New Generation in Document Management

Griffith organized Image API in November of 1993 as a Florida corporation, but the company was born several years earlier in another state. Its parent belonged to the earlier generation of document management.

Griffith's family owns Alpha Systems, a Pennsylvania microfilming business. Alpha Systems was started by Rick Griffith's father in the family basement. Rick and his siblings formed the core of the workforce, performing every task from cleaning the bathrooms to microfilming to processing to data entry to selling.

"It grew from the basement to the garage," remembers Griffith, "and from there to a little part of an industrial building to the whole building and from there to four buildings. They now have about 120,000 square feet and about 400 employees."

Today, Alpha Systems is the largest microfilming company in the nation.

The predecessor of Image API was a division of Alpha Systems formed to address state, federal, and local government applications. That division entered into a contract with the Florida Department of Environmental Protection (DEP) to automate document management for the state's underground tank cleanup project.

Rick Griffith came to Tallahassee to consult with DEP staff on the automation project, saw opportunity there, and decided to stay.

"I had a desire to branch out into high technology," he says. "Alpha Systems wanted to stay focussed on what they do well, which is microfilming and document management."

Griffith bought the division from his siblings and Image API was born.

His arrival in Tallahassee coincided with a growing interest in privatization as a means to increase government efficiency.

The application he developed for DEP demonstrates the efficiency potential of electronic data management. Each tank project file consisted of anywhere from hundreds to thousands of pages. Engineers, the knowledge workers, were performing clerical and library tasks rather than knowledge tasks.

"The application automates the process," says Griffith. "Now, they are capturing information and reviewing information instead of looking for information."

Image API is delivering that same benefit to the Division of Corporations in its processing of corporate annual reports. Every January, the division sends a report to every corporation registered in Florida. Companies have to return the reports by August or the state dissolves the corporation.

Rick Griffith, Image API president and owner, holds a disc containing all the documents in the boxes and filing cabinet behind him.

In the past, the annual influx of paper swamped the 12 state workers assigned to the project. Temporary workers had to be brought in to process the reports at a cost of half a million dollars a year. Even so, the labor-intensive mechanism of processing the reports, returning those with errors, and updating the records was unwieldy and backlogs were an ingrained routine.

In February, the operation was privatized and Image API took over responsibility for automating and performing the process. The 12 full-time positions have been eliminated and the state is realizing an overall savings of $130,000. Backlogs have been eliminated. Now, the records are updated on the same day the report is received.

Dave Mann, director of the Division of Corporations, expects the advantages to continue. The state did not have to invest in

equipment to implement the savings. Down the road, government won't have to pay for new technology and upgrades to keep up with a growing workload.

"That's not our worry anymore," Mann says. "That's the concern of the private contractor, the guy that got the job. And the state reaps the benefits."

The benefits to Image API clients extend beyond the potential for saving time and money. When designing a software application for a customer, Image API's consultants use a process they call iterative development.

Under the traditional model of developing an application, the client met with the consultant, told him what they needed, then sent him off to work wonders.

Griffith calls it the waterfall approach. "You literally jump off with [the design document] in your hand and say this is what we're building no matter what."

Interative development involves an evolutionary scheme where the design concepts are presented to the client who has the opportunity to identify problems. The problems are fixed and the concepts are presented again and again until the client is satisfied.

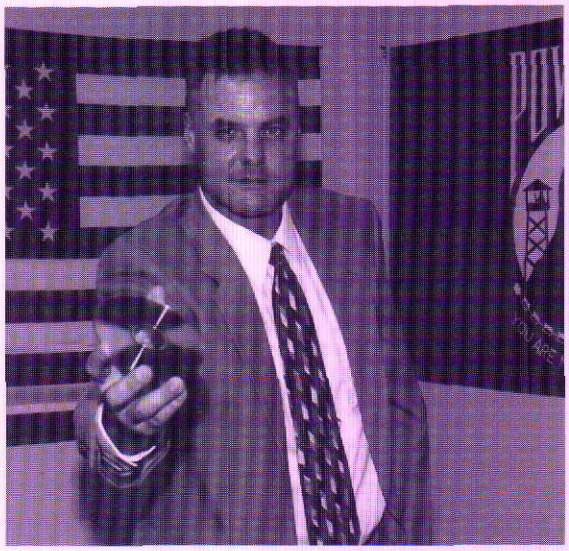
It's an innovation in the design process that is necessitated by the complex nature of the applications that Image API constructs. As an added benefit, it forces a client to think through their own procedures, often resulting in a re-engineering that improves the efficiency of the overall operation.

Nowhere to Go but Ahead

Although it is less than three years old, Image API has established a pattern of success that Griffith is determined to keep alive. In 1995, sales were $1.5 million; it's on pace to do $5 million to $7 million this year. Griffith is now preparing to introduce national niche markets to several of the information management applications developed

Surviving With Technology

by Jacquelyn Horkan, Employer Advocate *Editor*



Jeff Minder, Director of Application Development, Image API.

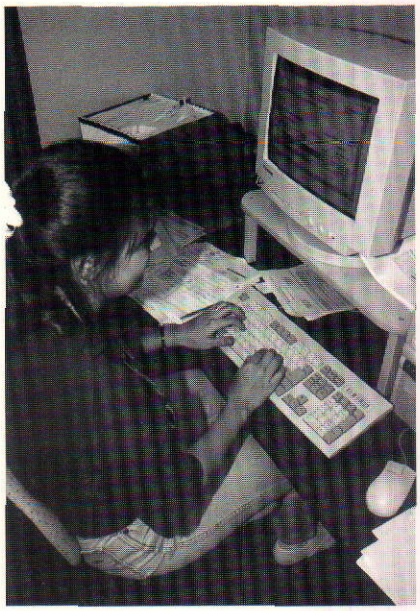
A parachute injury ended Jeff Minder's military career. He got a computer degree, worked as a consultant with the Florida Legislature, then opened his own business, Minder's Computer Services. Six months ago, Minder became the director of application development for Image API.

Nevertheless, after 11 years, you might leave the Air Force, but that doesn't mean the Air Force leaves you. Minder taught survival training while he was in uniform; today he is combining that experience with his computer skills to develop an interactive survival training program for the military.

The idea sprouted two years ago. In June of 1995, Air Force Captain Scott O'Grady, one of Minder's former students, was shot down over Bosnia, giving Minder an added sense of urgency to complete what he had begun.

"Very few people would have been able to do what [O'Grady] did for the sole fact that the military doesn't have enough people to do the training," explains Minder.

His survival training program is called CRISP, which stands for Comprehensive, Responsive Interactive SERE Program; SERE stands for Survival, Evasion, Resistance, and Escape. Although saddled with a double acronym



by Image API.

"People think of growth as a line going from the lower left to the upper right," says Griffith. "I think it goes in steps. Every time you come up against a riser, it's a real challenge."

To tackle those challenges, Griffith and his staff meet them head-on. They apply the same iterative approach they use on projects to their own operation, constantly reworking and questioning what they're doing. Satisfaction is not part of the mix.

"One of the things that's bad in software development is when people pretend like they're building a factory," says Griffith. "You have this application that you build and it's going to be with you forever. In reality, if that's what you think, I don't think you're going to be in the software business for very long."

Griffith sets clear expectations for every employee at every level. Chronic absenteeism is not tolerated. Every member of the organization has certain benchmarks they must meet, such as capturing a certain number of images each day and each hour. And all must pass a quality inspection.

"If they don't do those three things," promises Griffith, "they're not working here."

Electronic data management, like any other arena of opportunity, beckons increasing competition. There are no guarantees of success; just the recognition that the future demands resources of energy and determination.

"We go out to dinner when something's finished and we pat ourselves on the back," says Griffith. "Then the next day we go back and hit it." ■

for a name, the CD-ROM-based program proposes the ultimate advantage of technology: broadening the scope of a labor-intensive exercise so that it can save more lives.

Minder is the nexus between the forces that can bring the project to reality. As a consultant to Image API, Minder mentioned his idea for interactive survival training to Rick Griffith.

"I asked him to do a business plan, which usually no one does," says Griffith, "but Jeff did. Then I threw another roadblock in his way and asked him to get an appointment with the decision-makers."

Survival trainers are a closed and close cadre. Minder was able to get his idea in front of the right people. They liked the idea and asked him to develop a prototype. In March, he gave a successful demonstration of the prototype to commanders of the bases where survival training takes place. Contract negotiations and the necessary security clearances are now underway to continue work on finalizing the program.

After two years, Minder estimates that he has 18 months of work left before CRISP is ready to go on-line. When it is completed, a serviceman will be able to sit in front of a computer and learn the techniques he'll need to survive anywhere in the world. In a sense, it's a video survival game that teaches, tests, and evaluates a user's ability to navigate his way through unfriendly territory.

For instance, you'll learn what insects are and are not edible in Panama. Grasshoppers are a tasty treat as long as you remove the wings and legs and roast them over a match to kill any harmful parasites.

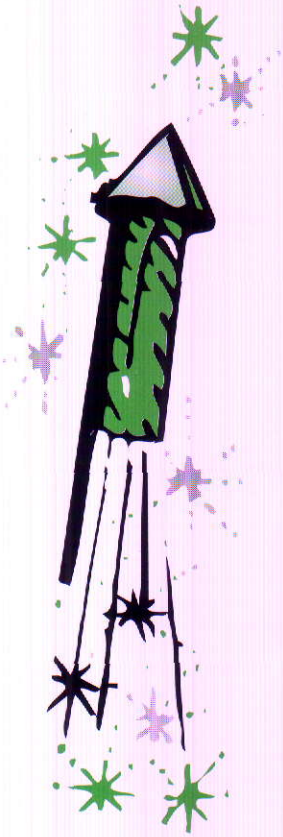
After reviewing the contents of a section, the user is tested. A brief, inspirational speech is delivered to those who pass the exam. Anyone who fails is treated to the mournful measures of "Taps."

Upon CRISP's completion, Image API plans to license the program to the military, with spinoff applications for groups such as the Boy Scouts, minus the more sensitive levels of information.

Presumably, the guide to insect dining will not be considered sensitive material, but that's a matter of opinion to be settled by parents and their children. ■

The Time Has Arrived

by Marian P. Johnson, Senior Vice President, Political Operations



It's hot. It's July. It's our country's birthday. But the heat and the fireworks are just beginning.

The sun won't bring the heat and the fireworks won't be controlled by professional fireworks experts because this is the official beginning of campaign season.

All those characters who have been talking about running for office to make things better have to put their names on the dotted line. The candidates get their chance to participate in the system and they give us the vehicle to take part in the same system by exercising the precious freedom we enjoy — the privilege and right to vote.

Running for elective office is no Fourth of July picnic. Like many of you, I subjected myself to those ordeals when I was in high school. In my sophomore year, I served as class treasurer; my junior year, vice president; my senior year, student government.

I would not replicate those experiences now. Then, I was much too young to realize what being a candidate actually meant. Thank goodness my opponents were also too young. We did not have to file financial disclosures. Our parents, sibling, cousins, grandparents, etc., were not subjected to public scrutiny of their lives. We did not say bad things about each other. We simply made a few signs, talked to fellow students, made a few promises, passed out a bio sheet which included our platform, and debated each other in class assembly.

There were only 139 voters in my class. With three of us running each time, I only needed 50 votes. On election day, my campaign manager (best friend) and I arrived at school early, grabbed as many of our friends as we could, and made sure they voted. Mostly, we held our breath and prayed.

But that was a different place in a different time. A few years back, any campaign would have followed our basic strategy. But times and campaign techniques have changed.

Public debates are rare, having been replaced by direct mail and media. Nevertheless, a candidate must still make public appearances, smiling throughout, trying to convince all that they should vote for him.

That's hard work. As a spectator at one of these meetings, I get tired. But don't forget: we only have to attend one meeting; the candidate may have five other events that day!

A candidate's whole life, as well as the lives of his family, are exposed to the public. No more privacy. Where a candidate spends vacations, how much money he has, how much property he owns — it's all grist for the media mill.

Besides the public exposure, running for office is hard work, from July until November. Walking those precincts in the hot sun drains you. Studying the issues requires time. Preparing the speeches is laborious.

We sometimes have a tendency to mutter unkind words about candidates. We grumble about receiving direct mail pieces. We hang up on campaign phone calls. Some even gripe about having to drive to the polling place to vote.

Have we forgotten that every aspect of our lives is impacted by the decisions of elected officials? Have we taken our freedom to vote for granted? Have we let apathy replace our need to know the candidate's positions on issues? Do we no longer appreciate the sacrifices a person makes to run for office?

This year, there are elections at every level — national, state and local. Perhaps we can give our government and ourselves a gift this Fourth of July by showing our appreciation for our democracy and the candidates who chose to make a commitment to it. We can listen to the candidates, read their materials, contribute funds to their campaigns (if we like them). But most of all, we can make sure we are registered to vote — and we can vote. ■

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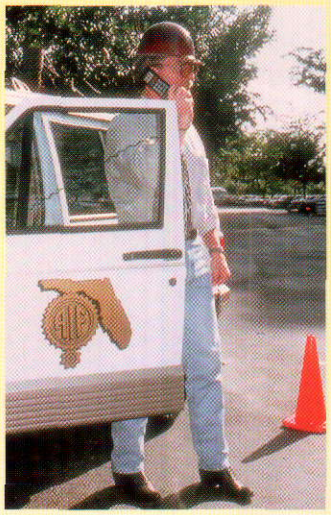

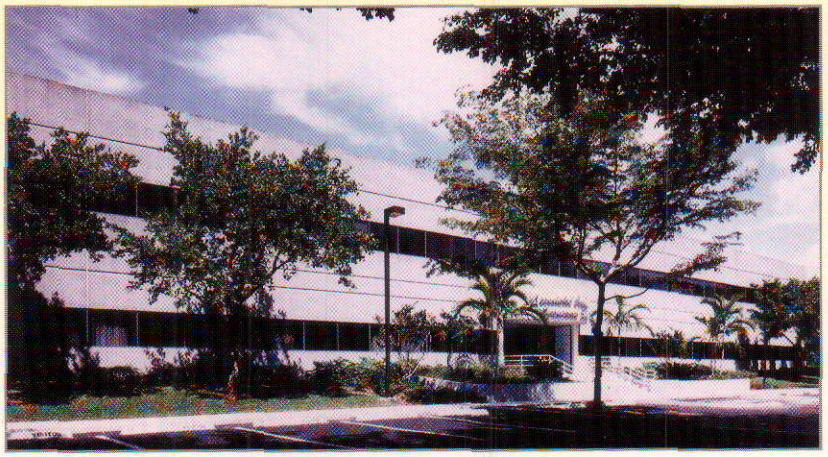

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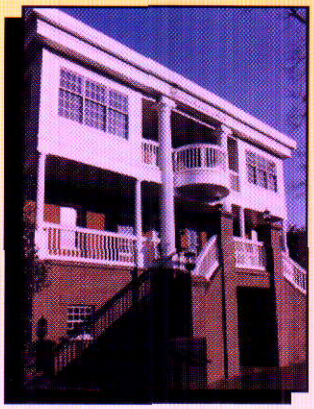

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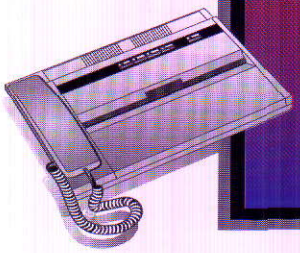

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