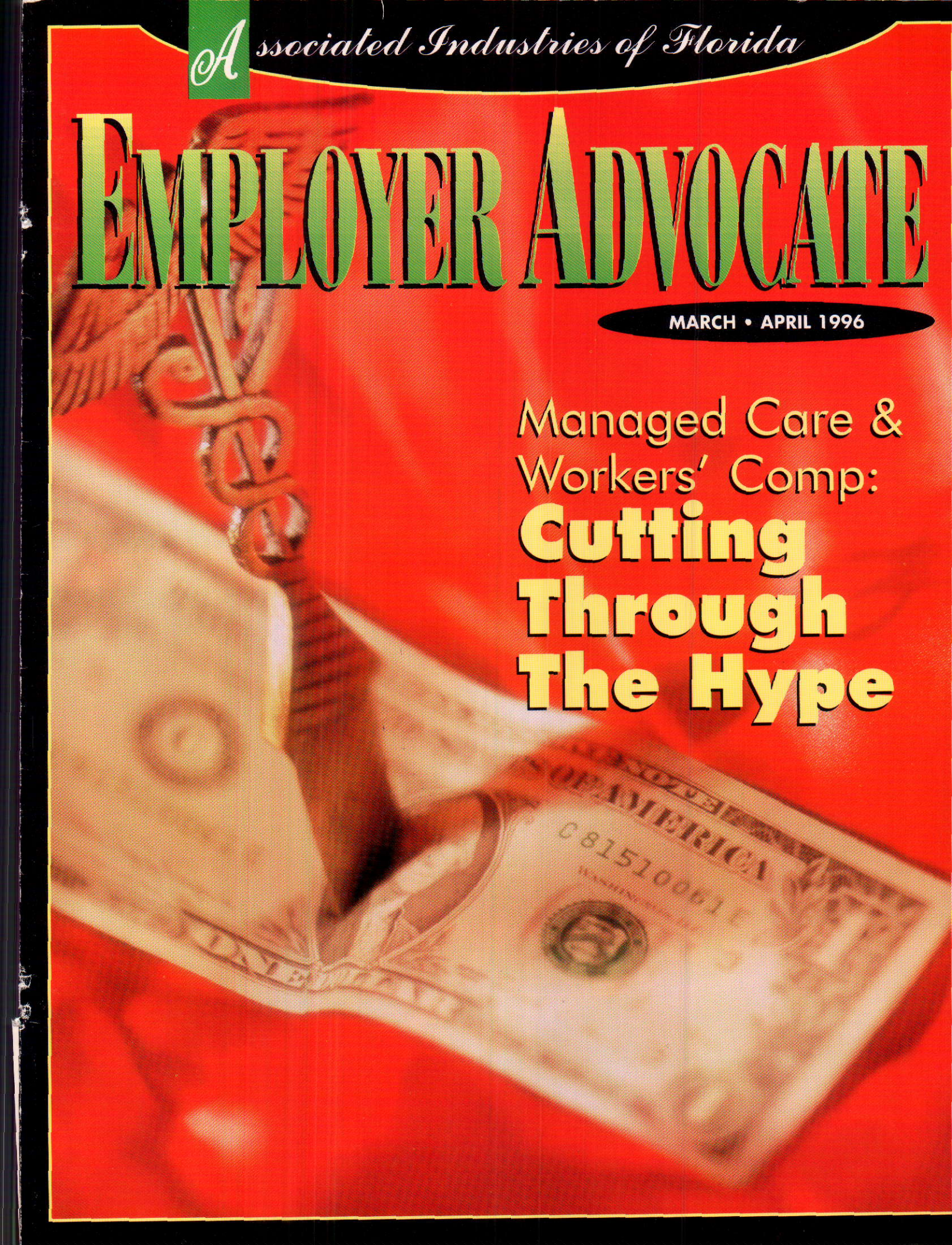
Associated Industries of Florida

EMPLOYER ADVOCATE

MARCH • APRIL 1996

Managed Care & Workers' Comp: Cutting Through The Hype



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. ■

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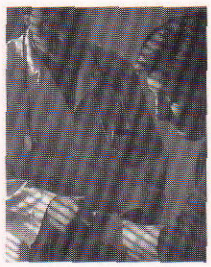
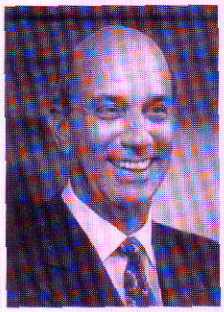


Significance in Action



by Jon L. Shebel,
President
and CEO

Right after his election in 1948, former Gov. Fuller Warren wrote, "I believe I know why people get more intensely interested in politics than they do in any other hobby or recreation. ... I think the key word is significance."

As March begins, Tallahassee awakens to its annual festival of political significance when the legislative session convenes.

Politics has been described as the art (or science) of turning philosophy into policy. At Associated Industries of Florida (AIF), we champion a philosophy based on the idea that economic liberty, as practiced through capitalism, is the natural spouse of political liberty.

Over the last few decades, the nation's faith in that philosophy seemed to falter. As prosperity became associated with greed in the popular lexicon, the idea of individual success through hard work lost favor. Advocating policies based on the principles of economic liberty became difficult, but at AIF we never gave up on the battle.

Today, we are watching the turning of the tide. In some cases, the anti-business rhetoric has gone underground, but the sentiment remains. Many politicians, however, have come to realize that government cannot replace business as the engine of prosperity.

If the economy is to grow, however, politicians and bureaucrats will need to relinquish their need for significance. Prosperity won't come through government programs and gimmicks.

Instead, economic development is dependent on a partnership where private enterprise is allowed to flourish and government delivers on its promise to provide the basics: infrastructure, education, public safety. Most importantly, government has to prove itself willing to cooperate with business.

Your function in politics doesn't begin and end in the voting booth.

Last year, AIF asked the Legislature to help plug the drain on state manufacturing jobs. The large package of amendments to the state's tax code proved too controversial, so we scaled it back and asked lawmakers to repeal the tax on electricity used in manufacturing. Even that one revision could not gain legislative approval.

This year, we are back with the same recommendation and the outlook is sunnier. Gov. Lawton Chiles has included the repeal in his budget recommendations. Key senators and representatives promise to make it a priority.

This is just one item of legislation that we will be pursuing during the 1996 Session. When we're not taking the offensive, we'll be fighting against all the anti-business proposals that are sure to spring up.

During the legislative session, we'll help you make sure to keep lawmakers on track. Participants in *AIF FaxNet* will receive immediate notice when action is needed to protect business interests. *Legislative Letter* subscribers will get the inside story on the week's events in the Capitol — the information you won't find in newspapers.

Both of these services are free. To sign up, just call AIF's subscriptions department at (904) 224-7173.

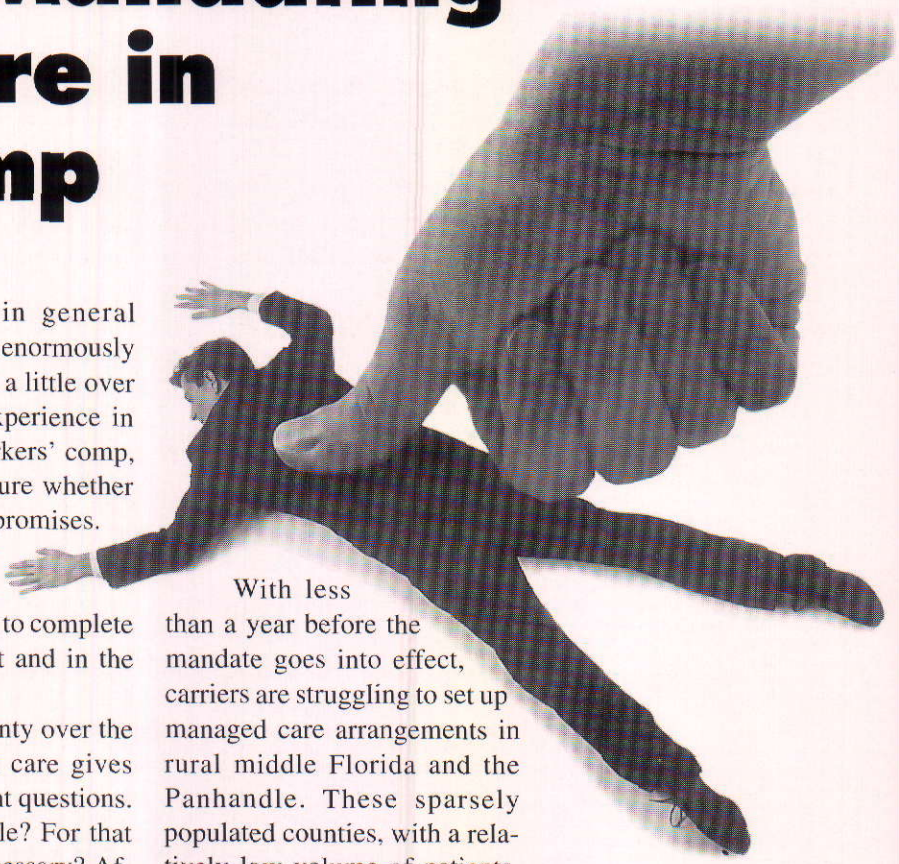
If you'd like minute-by-minute coverage of political happenings, contact the *Florida Business Network*, AIF's on-line government information system, to find out how to subscribe.

Your function in politics doesn't begin and end in the voting booth. No matter what cynics say, your opinions are important to your elected officials.

At AIF, we want to help you take your part in the decision-making that goes on in Tallahassee. After all, significance isn't just for the politicians.

The Rush to Mandating Managed Care in Workers' Comp

by Jacquelyn Horkan, Employer Advocate *Editor*



It was called the Ramsey Report. You don't hear much about it now — you didn't hear much about it then. But three years ago, some bureaucrats and politicians latched onto it like medieval alchemists grasping for the philosophers' stone.

The Ramsey Report contained the results of a two-year pilot project, sponsored by the Department of Insurance (DOI), that used managed care in the delivery of medical services to a small group of injured workers.

Seduced by the glowing outcomes described in the report, former Insurance Commissioner Tom Gallagher led a headlong charge to authorize managed care arrangements for workers' compensation policies.

Gallagher's managed care proposal became a part of the Florida Legislature's massive 1993 rewrite of the state's workers' compensation law.

The arguments for managed care apparently convinced lawmakers that they had found the silver bullet for workers' compensation, and so they enacted a mandate. Beginning Jan. 1, 1997, employers *must* provide their injured workers with care through managed care arrangements.

Managed care in general health care has been enormously successful. With just a little over a year's worth of experience in managed care in workers' comp, no one can say for sure whether it will live up to its promises. While it is a matter for guarded optimism, managed care has yet to complete its test in the market and in the courtroom.

The lack of certainty over the success of managed care gives rise to some important questions. Is a mandate desirable? For that matter, is it even necessary? After all, if workers' comp managed care arrangements are effective, employers will run right over mandates to save money through the networks.

A Senseless Mandate

Why anyone thought a mandate was necessary in the first place cannot be answered because no one really knows how it got in there — except, of course, for the people who engineered its passage, and they aren't talking.

But the problem with this mandate goes beyond the question of whether or not it is intelligent policy.

With less than a year before the mandate goes into effect, carriers are struggling to set up managed care arrangements in rural middle Florida and the Panhandle. These sparsely populated counties, with a relatively low volume of patients, are served by a small community of doctors and one or two or no hospitals. With lower patient volume than you'd find in high population areas, the health care providers lack a market incentive to enter into networks.

Conceivably, a few workers' comp carriers — through means sinister or innocent — may be able to erect a virtual monopoly in a few small counties. The law says employers *shall* provide care through the arrangements. Will employers be forced to purchase policies from those companies and no one else?

What if 1997 rolls around and there remain areas of the

The bureaucrats engineered a rigid model for workers' comp managed care arrangements giving little credence to the ability of the marketplace to improve on their ideas.

Managed care is supposed to contain medical costs by setting up an orderly structure for the delivery of treatment and services to injured workers.

state where workers' compensation networks are simply unavailable? Obviously, employers will have to provide coverage somehow but they will be in violation of the statute.

We can only hope that state officials will choose not to enforce a law if compliance is impossible. Even if they do try to enforce it, there are no sanctions in the law against an employer who provides care outside of a network, so the matter is problematic indeed.

Which brings up the question: Why institute a mandate that can't be enforced?

Added to these objections are the concerns of self-insured employers who will also be required to enter into networks.

Archie Clark, director of safety and insurance for Florida Mining and Materials, is in charge of making sure medical care and indemnity benefits are provided to the corporation's 1,300 employees in Florida and California. He and three other company adjusters take the care of their fellow employees very seriously.

"We select for them the absolute best medical attention that can possibly be given," says Clark, "because we found out a long time ago that under workers' compensation the best is also the cheapest."

It's a common refrain among those who are effective at controlling workers' compensation costs. Cutting corners on medical care may be penny-wise, but it's pound-foolish.

Clark worries that if he is forced into a network, he will lose access to the providers that he trusts. He is also concerned about losing the control over quality that he enjoys now.

He says, "The thing that really irritates me about the mandate is that it will take the medical care of our people out of the hands of our adjusters who work for our company and have the interest of those people more at heart than a gatekeeper would."

Clark wonders why he will be forced to fix something that isn't broken. And, along with the other critics of the mandate, he wants to see proof that managed care will make a difference in workers' comp.

Forging Cooperation

Managed care in general health insurance has been around for a couple of decades. Its most common manifestations are health maintenance organizations (HMOs) and preferred provider organizations (PPOs). It is relatively new to workers' compensation.

Managed care is supposed to contain medical costs by setting up an orderly structure for the delivery of treatment and services to injured workers. It is also intended to foster a greater spirit of cooperation among employers, employees, insurance companies, and health care providers.

That atmosphere of cooperation is essential to controlling the costs of workers' comp by helping the employee return to health and work as quickly as possible. It has been sorely lacking for the last two decades. If managed care can bridge that gap, it will go a long way to curing some of the long-lived sources of friction in the system.

Evidence to gauge the concept's impact on costs is still incomplete; the flaws, however, are quickly becoming more apparent. Most importantly, however, all managed care arrangements are not the same and the state may be favoring those that cannot produce the results it wants.

After reading the Ramsey Report, DOI bureaucrats, under Gallagher's directive, designed the rules to encourage an HMO model for workers' comp. Their inexperience with operating insurance companies or managing workers' compensation claims is evident in the plans they devised. Their dogged preoccupation with HMOs ignored reality in favor of theory.

"I think the managed care system has a lot of flaws," says Mary Ann Stiles, a Tampa attorney who specializes in workers' comp. "Some of the bureaucrats started putting together concepts without talking to experienced people in the field."

Those bureaucrats engineered a rigid model for workers' comp managed care arrangements (MCAs) giving little credence to the ability of the marketplace to improve on their ideas.

Stifling Innovation

Frank White, executive vice president and CEO for Associated

Industries of Florida Property and Casualty Trust (AIFPCT), considers the bureaucratic dependence on the HMO model troublesome. "I was a little bit concerned about what other carriers were putting out there, what they were holding out as managed care," says White. "Would it really be an effective program?"

For example, HMO doctors accept deep discounts on their fees in exchange for increased patient volume. In general health care, fees are set by the market. Under workers' comp, however, doctors are reimbursed according to a fee schedule set by the state, a schedule that is about 50 percent below non-regulated fees.

The 1993 reforms gave carriers the ability to negotiate discounts on fees that many believed were already low. Since the bargaining margin in workers' comp is much smaller than it is in general health, White worries that deep discounts will undermine the quality of care while neglecting the more important principles of claims management and return to work.

The issue of medical costs goes beyond mere reimbursement for treatment of the patient. An injured employee who cannot work receives indemnity benefits to compensate him for the wages he is not getting while he cannot work.

The doctor has the responsibility for getting the employee back to work. That means the doctor has a great deal of control over how much indemnity the employee receives and how long he receives it.

Medical providers who do not treat an injury aggressively and competently, who are slow to make diagnoses and prescribe the appropriate treatment, end up costing employers more than medical fees. They increase the indemnity benefits paid to the employee.

As White explains, "The true savings in workers' comp don't come from reimbursing your health care providers at well below the fee schedule. It comes in terms of return-to-work incentives."

The existence of those incentives in managed care arrangements is cause for optimism among those who express caution about the concept in general.

Room for Hope

In West Palm Beach, Sandra Bucklew just opened a new clinic devoted to treating workers with industrial injuries. Bucklew is an R.N. with years of experience in managing workers' comp treatment centers.

Her Coach Comp America clinic is built on the two complementary principles of workers' compensation: restoring the employee to the greatest degree of physical health as quickly as possible and then getting that employee back on the job.

Bucklew and the clinic's chief physician, Dr. Paul Winkle, aggressively pursue pathways back to work for their patients. "You can put as many modifiers as you want on work conditions," says Winkle. "No bending, no lifting, no pushing, no stooping, no climbing. But the key is to get them back to work in some capacity until they're ready to return to full duty."

For workers' comp to operate effectively, health care providers will have to adopt Bucklew and Winkle's support of the system's return to work philosophy. Managed care may just help keep the health care community on that track.

The managed care networks institute a much-needed process to ensure provider compliance with the return to work principle. Each provider takes a five-hour course on the objectives and procedures ruling Florida's workers' comp system.

Each injured employee is assigned to a primary physician, called a managed care coordinator, who directs and controls the

"The true savings in workers' comp don't come from reimbursing your health care providers at well below the fee schedule," says Frank White. "It comes in terms of return-to-work incentives."

employee's medical care. The idea of a managed care coordinator is copied from the gatekeeper physicians used in HMOs. Gatekeeper physicians are instructed and trained in their responsibility for making sure the injury is treated with the ultimate purpose of returning the employee to work.

Buying into the return to work philosophy, however, requires a cultural change among providers. AIFPCT claims analyst Karen Landis is observing that change on a daily basis.

Anyone with her experience in workers' comp knows that some doctors expect insurers to pay the bills and not ask any questions. Many doctors also believe that focusing on the employee's return to work demonstrates a lack of compassion. They might prefer a longer period of conservative treatment before referring the employee to a specialist who can more accurately pinpoint the problem.

Joining a managed care arrangement enforces a rearrangement in priorities. Providers are given a stake in the process and their success in the network depends on that.

"A lot of times, the doctors don't know what it means to be in a network." says Landis. "Now, they're all figuring it out and they're either getting out of it or they're learning to deal with it."

That educational process helps distill the list of network providers to those who are willing to cooperate with the carrier, employer, and employee in helping the employee to return to work. It allows carriers to avoid those doctors who won't cooperate in that effort.

Participating in a managed care network turns health care providers into allies in the effort to control costs.

It also turns health care providers into allies in the effort to control costs.

Once again, however, there is a negative aspect to the design. The rigid, HMO-style edict of the legislation stifles the ability of the carrier to develop alternatives to the statutory requirements for managed care coordinators.

Cutting Out the Middle Man

The most serious and most costly of workers' comp injuries require treatment by specialists such as microsurgeons or neurosurgeons. Since the gatekeeper cannot be a specialist, he often is not providing any sort of treatment to the patient with a catastrophic injury. He is acting in an administrative capacity.

"You're taking the management decisions away from the treating physician," says Stiles. "You're turning them over to someone who is trying to coordinate everything, but doesn't have the expertise or medical background to do so."

In these instances, the HMO concept injects an unnecessary middle man into the process. While the situation is not harmful to the injured worker, it can be inefficient. Shirley McCanney, head of the AIFPCT's claims department, would like the authority to designate the specialist as the gatekeeper in such situations. As the law is written, she cannot do so now without leaving the managed care system and losing the protection it offers.

By dictating the process for implementing managed care, the Legislature and the Department of Insurance (DOI) constrained the market's ability to make a good idea better. In free enterprise, he who builds a better mousetrap captures the market.

For now, lawmakers have forced carriers and employers to stick indefinitely with the 1993 model mousetrap.

Nevertheless, gatekeepers can help control the cost of claims. Before managed care, a claims analyst had to send a file off for independent peer review if he thought a doctor was overprescribing treatment or not pursuing the right course of treatment. Now, he can call the gatekeeper and get an immediate answer to his questions.

The system is still new and, as with all change, it has yet to function smoothly. Some gatekeepers take a lax approach to their role as managed care coordinators. Although referrals must be made to specialists in the network, providers forget this requirement and send patients to non-network doctors.

The adjustment will take time, but Karen Landis is a believer.

"I really do think managed care is a good idea," she says. "We just need to keep everybody informed, including the doctors and employers, because the lawyers are still going to be out there looking for ways to get around managed care."

If there's one constant in workers' comp, it's the concern about what the lawyers will do next to undermine the system.

Attacking the Foundation

Workers' comp claimant lawyers are a bit like termites. Unless you're careful, you won't detect termites nibbling away at the foundation of your home until you get to the point where you'll have to shell out big bucks to repair the damage.

Fortunately for home owners — and unfortunately for workers' comp carriers — termites are easier to get rid of than claimants' attorneys.

Lawyers for claimants have a win-lose mentality; there are no win-win situations in the courtroom. Anything good for the employer or carrier must necessarily be bad for them.

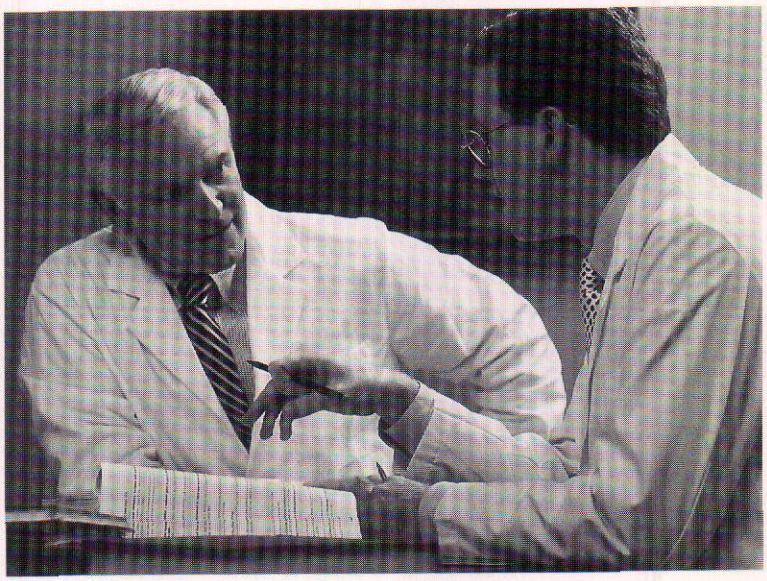
Managed care best serves those employees who wish to recover from their injuries quickly and get back to work. For workers who want to manipulate the system for their greatest monetary advantage, managed care is an annoyance and an obstacle. These workers are the ones claimants' attorneys seek.

The managed care portion of the law has yet to be tested in the courtroom. Mary Ann Stiles hasn't personally handled a case involving an attack on managed care, but she's heard that grievances are pending.

Observers foresee the attack coming in the form of a complaint concerning a network's inability to provide the kind of care an employee says he needs. For a network to receive certification, it must demonstrate that it has a sufficient number of providers in each medical discipline in a specific geographic area. But, ultimately, sufficiency is a subjective determination.

According to Frank White, "Lawyers are just waiting for a network provider to screw up, to deny compensability or force a worker back to work before he says he's ready. They'll use that one provider mistake to attack managed care and give the employee the choice to go outside the network."

White's prediction of the legal strategy is probably accurate. After all, claimants' attorneys are



For all its flaws, managed care has the potential to lower the costs of workers' comp.

the only players in the system who suffer when the employee returns to his job. To make money off workers' comp, the lawyer has to keep the claimant out of work.

The managed care portion of the statute keeps an attorney from shopping around for a doctor until he finds one who will agree that the claimant needs more treatment. The practice of doctor-shopping allows the lawyer to prolong a case until the carrier denies benefits. That gives the lawyer the opening he needs to sue the carrier and collect a fee on the benefits he wins for his client.

If managed care is to make a significant impact on workers' comp, the First District Court of Appeal must uphold the strict interpretation of the law to prevent the tactic of doctor shopping. If the past is any indication of the future, that is a risky assumption to make.

Claimants' attorneys are the only players in the system who suffer when the employee returns to his job.

Waiting for Answers

The doubts about the effectiveness of managed care and concerns over trial lawyer attacks on the system are putting employers on the horns of a dilemma.

For all its flaws, managed care has the potential to lower the costs of workers' comp, although it probably won't match the 40-percent savings promised in the Ramsey Report.

After all, the cost control concepts of managed care are not new to workers' comp. In some operations, such as the AIFPCT, claims adjusters have long been aggressively controlling the costs of the cases they handle. Managed care arrangements will only enhance what they were already doing by getting the providers to cooperate with their return-to-work initiatives.

In fact, those carriers *who are doing* a poor job of loss control are the ones who will realize the greatest savings in the short-term.

The oldest managed care arrangements on the books are just completing their first year and a half of operation. The greatest potential for savings, however, doesn't come with injuries that close out within one year. The most expensive cases are those that last for two years or more. Whether managed care will help reduce the cost of those injuries remains to be seen.

"As those losses mature and get closed out," says Frank White, "I expect them to close out costing less than those in the non-managed care network, but it's just too early to say for sure. I just have my doubts about *whether* managed care will succeed in keeping the legal profession out of directing medical treatment."

The courtroom is not the only place where trial lawyers will attack workers' comp. When the 1996 Legislature convenes, business people will face a tough choice. Should we try to get the mandate repealed? And should we go even further and try to fix the inefficiencies in the managed care portion of the law?

Taking any action on workers' comp is rife with danger. One bill to amend the statute opens the door to all sorts of changes, particularly those that would erode the hard-won reforms of 1993. Pursuing amendments to managed care may result in a Pyrrhic victory.

"The comp statute is so volatile," explains Stiles, "to open up the entire statute again will be very scary. I think it will depend on the leadership of the House and Senate; whether they are willing to do the mandate repeal and not allow any other changes."

Can AIF and its members get the mandate repealed and come out with the statute intact? As with every other question surrounding managed care, there's just one answer: only time will tell.

A Partnership for Cost Containment

by Jacquelyn Horkan, Employer Advocate *Editor*

All workers' comp managed care arrangements are not the same.

When carriers first began selling managed care policies in the middle of 1994, the pickings were slim. Many of the networks were merely repackaged group health PPOs and HMOs. Some lacked sufficient numbers of the providers most commonly used to treat workers' comp injuries. Others relied on deep discounts to reduce medical costs. Most had no experience with the return to work initiatives of workers' comp.

For Associated Industries of Florida Property & Casualty Trust (AIFPCT), quality and financial stability were the primary concerns in selecting a managed care network. It had to provide more than a short-term reduction in costs. It had to offer policyholders the potential for lasting savings over a long term.

AIFPCT found what it was seeking with a company called Conservco. For 15 years, Conservco had specialized in disability management services for workers' comp.

Its philosophy matched that of AIFPCT: Quality health care and aggressive control of claims are what save money in workers' comp. Shirley McCanney, head of AIFPCT's claims department, was impressed by Conservco's list of network providers. It closely matched her own list of doctors that she preferred.

Conservco's parent company was recently sold to another firm and it was renamed Metracomp. With the same management team, Metracomp promises to continue the high level of service that PCT policyholders expect.

Carol D'Alessandro, Metracomp's regional director for the Southeast, supervises efforts to build workers' comp managed care networks. "I'm not looking to put together a yellow page directory of providers when I'm putting together a network," she explains. "I want to be able to really foster that managed care environment. If I have too many providers, it's really hit or miss."

D'Alessandro is selective when it comes to adding doctors to the networks. They have to meet the highest professional standards. Just as importantly, they must make a commitment to cooperate with insurers and employers in managing costs.

While conservative when it comes to selecting doctors, D'Alessandro and Metracomp are aggressive when it comes to controlling costs. "It's not enough to just control the medical," she explains. "You have got to also control indemnity. Medical ultimately affects indemnity."

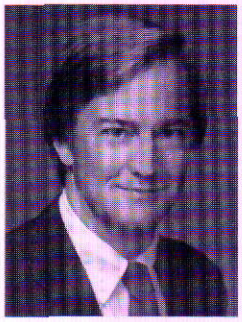
Metracomp and AIFPCT work on an overall structure to reduce claims severity through education — including education of providers, employers, and employees — combined with a true return-to-work program.

D'Alessandro believes that fostering cooperation is more productive than trying to force it. She is particularly skeptical of the managed care mandate. "Anytime you have these mandates that force anybody to do anything, it's like a shotgun wedding."

She is confident that, ultimately, managed care will play out to the benefit of everyone involved in the system. "Managed care gives the opportunity for everybody to look at the culture that has grown within the system and say, 'If we really want to stay in business here and make Florida prosperous, then we'd all better start talking to each other.' Managed care allows a forum for that to develop." ■

For AIFPCT, a managed care network had to offer policyholders the potential for lasting savings over a long term.

Economic Development: **Making Florida Business-Friendly**



by the Honorable Peter Wallace, Speaker of the Florida House of Representatives (D-St. Petersburg)

When I think about economic development in Florida, I imagine a young Bill Gates tinkering around in his garage, bending over a primitive computer with a soldering iron, or scratching out some lines of code on a notepad.

And when I give a university commencement speech, I look out over the crowd and wonder if another Bill Gates is out there: the next bright young leader with the talent, daring, and drive to stake the future on a new idea.

We Democrats are committed to making Florida a viable place for such new ideas and businesses.

In fact, our business potential is just beginning to awaken. For instance, we have had double-digit increases in total international trade for three of the last four years. We need to take advantage of that potential now, or see it slip away.

We have begun to move in the direction of making government a catalyst to business creativity. Our permit streamlining legislation and our quick response job training act, to name just a few initiatives, have been early steps toward that goal.

But we have a long way to go. Any effective plan for making Florida more "business friendly" should include:

- **Preparing Floridians for Work.** That means raising educational standards and sharpening curricula so that young Floridians come out of our high schools ready for a career or college, and that they leave college ready to contribute to Florida's productivity.
- **Putting Floridians to Work.** That means following through on welfare reform, giving Floridians the tools for independence and pulling away the incentives for long-term dependence.
- **Creating Incentives for Business.** That means maximizing the rewards to businesses that expand or relocate, creating new jobs for Floridians. That includes using tax policy as a way to promote job creation.
- **Creating a Strong Business Environment.** That means tempering regulation with reason. It also means encouraging health care and insurance marketplaces that are responsive to business needs.

Of course, it all starts with education.

Preparing Floridians for Work

Florida has been working hard in the past few years to achieve educational excellence. We need to keep our public school system strong. One tactic has been to make schools more accountable. Another is to improve performance for students attending low-achieving schools.

More needs to be done to respond to citizens' concerns about education. For example, Floridians have been critical of how lottery dollars are used. The 1996 Legislature will consider proposals that earmark lottery dollars to enhance education, not just maintain the status quo.

Last year, the Legislature listened to public concerns about elementary education and dedicated funding to reduce class size to 20 children or less in the all-important first three years of school. This year, we need to follow up to make sure schools use that money in the way it was intended.

We are also looking at raising education standards in our public schools, including rais-

ing the graduation grade point average from 1.5 to 2.0 on a 4.0 scale. We want to require students to take more high level academic courses, including algebra, because we agree that mastering mathematics is critical to higher learning.

The second key to a business-friendly Florida is effective welfare reform.

Putting Floridians to Work

Welfare reform has been tried in other states and the jury is out on many efforts. Here in Florida, we're starting to see success with working welfare reform pilot programs that were started in 1993.

The Family Transition Program in Alachua and Escambia counties is the first operational, time-limited, welfare reform demonstration project in the nation. There is an up-front expectation that welfare is intended for a limited time, that participants should be encouraged to earn a paycheck, not a welfare check.

Initial indications are promising, with over two-thirds of those enrolled in these programs now employed. Last year, the Legislature provided for the expansion of this program to six more counties.

We need to stay the course on approaches that include time limits on welfare eligibility, but also offer child care and job training necessary to break the welfare habit. We want citizens to be productive, tax-paying, family-supporting individuals who are a real asset to the businesses that hire them.

Creating Incentives for Business

A plan for a business-friendly Florida will have to include incentives for businesses that create jobs. Growing businesses are the crucible of competitiveness in the American economy. But at some stages, businesses may also be fragile. We must not suffocate small businesses under a constantly spiraling burden of taxes.

We should ensure tax stability for businesses and offer tax incentives as well. Our tax policy should work to help businesses at critical phases of development and help them create new jobs. It should encourage businesses to expand and to remain in Florida.

Creating a Strong Business Environment

We need to create a strong business environment. Last year, the Florida House of Representatives passed legislation aimed at binding regulation with the restraints of common sense. Unfortunately, much of what we passed did not end up becoming law. But good ideas are hard to kill and they will be back.

We need to use the tools of government to create a level playing field for small business. Two of the areas where that is important are health care and insurance.

We know we can do it because we've done it before.

Three years ago, Gov. Lawton Chiles and the Florida Legislature, working together, took on workers' compensation reform. When we were finished, rates went down more than 10 percent and have remained stable. We also helped 80 percent of the businesses in the government-run risk pool get back into the private market.

Interestingly, our efforts to create purchasing alliances for small businesses have had a much broader benefit in the marketplace than expected.

Almost overnight, an industry that had long shunned small business has now started creating flexible and affordable health care plans to serve small companies. As a result, almost 400,000 Floridians, most of whom previously had no insurance, have been able to obtain health care benefits.

Now we need to make sure we keep the health care and insurance marketplaces open and functioning well, and not wait for crisis to force us to act.

Building Florida's businesses is building its future. It's something that takes consistency over time, and unity among its leaders. We can't make it a fulcrum for political advantage. We'll get there together, or not at all. But if we have the wisdom and the will to work together, we can give Florida the rich future that all of us will be proud of. ■

We want citizens to be productive, tax-paying, family-supporting individuals who are a real asset to the businesses that hire them.

House Republicans Lead the Way in Creating Jobs for Florida

by the Honorable Daniel Webster, Republican Leader, Florida House of Representaives (R-Ocoee)

As many who regularly observe Florida politics have duly noted, the 1995 Legislative Session was a dramatic departure from years past. Both in the mechanics of crafting legislation and in philosophical direction, the Florida Legislature followed a significantly different course last year. A more common sense, conservative agenda was advanced to shift power away from bureaucrats and government agencies and return freedom to the citizens and businesses of Florida where it belongs. If 1995 is any indication of what the future will be like with Republicans in charge of the Florida House, look out competition: Florida means business.

For far too long, decisions in our 120-member state House have been made by just a handful of people at the top. The left-of-center elements in the Democratic Caucus have consistently prevailed with their agenda of more taxes for more government and more anti-business rules and regulations. This philosophy was taking Florida down the wrong path and producing detrimental long-term consequences for our state.

Anti-business tax and regulatory policies not only stifled new companies' plans to relocate to Florida; these job-killing policies also forced existing Florida businesses to relocate or expand their operations in other states — and even other countries! When Florida-based companies left the Sunshine State, they didn't just take their company signs with them. They took high-wage jobs, stable families, and good Florida citizens.

The aftermath of this downward spiral was undermining Florida's ability to compete economically with states like Georgia, Alabama, and South Carolina. Worse yet, a cloud of hopelessness hovered over Florida as people found good jobs more scarce and they became increasingly uncertain about their economic future. This only added to our already voluminous slate of social problems as evidenced by skyrocketing crime rates and plummeting graduation rates.

But that was then and this is now. The 1994 elections produced historic gains for the Republicans in Florida government that have fundamentally changed the way Florida approaches its governing responsibility.

Working with the Republican-controlled Senate and statewide elected officials, the 57 House Republicans (known as the *Business Caucus*) were able to forge alliances with moderate Democrats and work to remove the decision-making power from the top of the Democrats' liberal power structure. The upshot of this was a government process that, for the first time in recent memory, added no new taxes to our already over-taxed citizens and business community and started Florida's journey to economic prosperity.

The House Republicans were proud to occupy 15 of the top 20 spots in Associated Industries of Florida's 1995 legislative rankings, and 31 of the top 50.

On the other hand, House Democrats held only 19 of the top 50 spots while holding 15 of the bottom 20.

The collective efforts of the House Republicans and the moderate Democrats was a key to stopping the job-killing policies of big government bureaucrats, liberal trade unions, and anti-business trial lawyers. Coalitions were formed to pass, among other things, new laws to protect private property rights (the

foundation of economic liberty) and repeal the now infamous tobacco liability law.

One of the main focuses was the effort to streamline government's rulemaking powers through the Administrative Procedure Act. This was the cornerstone of last year's bipartisan climate in the House. Everyone, including Gov. Lawton Chiles, agreed that liberating business from burdensome government restrictions, while keeping good rules in place to rein in overzealous regulators, was a great idea. In the end, unfortunately, Gov. Chiles let bad politics get in the way of good policy by vetoing the "Red Tape Reduction Act." The subject will no doubt be revisited this session.

In addition to economic issues, some of the most innovative solutions to the serious problems facing our state were also developed. From enacting the toughest welfare reform in the country, to building enough prisons to protect the public from violent criminals, House members were able to roll up their sleeves and provide genuine results for Florida. These are just some of the many examples of the cooperative spirit that existed in the House to bring about real change in 1995. Let's hope that spirit continues through this year.

As the 1996 Legislative Session approaches, we are looking forward to working in conjunction with the Senate and Cabinet to continue our focus on assigning proper roles for government authority and expanding opportunity through private sector initiatives.

Educational reforms will be at the top of our agenda as we strive for academic excellence in Florida's schools. Charter schools, raising the bar on graduation standards, and ensuring that budget dollars go to the classroom (instead of the bureaucratic abyss) will be the priority of Republicans. Ultimately, Florida's education system will be judged successful only when we adequately prepare our students for global challenges and future opportunities. In order for these goals to be met, the current system must change.

As for reform of the much-talked about Medicaid program, this will also be in the forefront as we review Tallahassee's role in providing taxpayer-subsidized health care to our citizens. The bipartisan subcommittee on welfare innovations has already taken steps to prepare for the overdue changes in the 30-year old Washington-based program. We are determined to create a better health care delivery system based on free market competition that preserves quality while reducing costs and, ultimately, providing access to affordable health insurance for those who can't afford it.

Although tangible progress in any democratic society requires patience, the fundamental shift in focus by the Legislature last year has brightened the outlook for 1996 and beyond. In order to seize the most of our historic opportunity, we must remove the obstacles to economic progress.

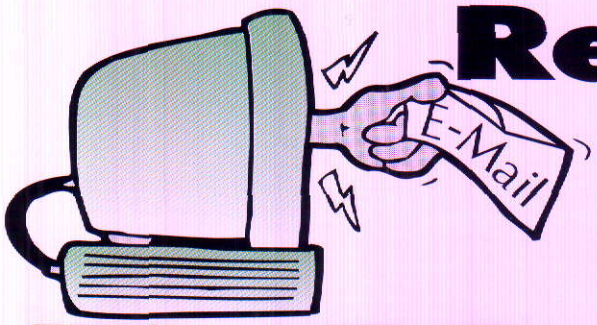
In order to seize the most of our historic opportunity, we must remove the obstacles to economic progress.

This past summer, the House Republicans initiated a series of regional economic development meetings around the state where companies, both large and small, voiced their opinions about what the Legislature can do to improve Florida's economic climate. These meetings were unprecedented and the testimonials we heard were truly invaluable. The real people who are working in the trenches every day to create jobs, while trying to keep government off their backs, were finally able to get their stories told.

From these real-life experiences and with a renewed sense of purpose, we can craft common sense economic development policies so Florida can once again be a desirable place to run a business. This new course will unleash our constricted entrepreneurial energy and allow it to flourish, translating to more high-wage jobs for Florida and a better quality of life for all Floridians.

The main focus of this new direction must be to reformulate government's role to reduce bu-

(Continued on page 14)



Reach out and E-Mail Someone

As the association committed to serving you, the employer, Associated Industries of Florida (AIF) wants to make sure you can reach us when you need us. Now, we've made communication between you and your association even easier. If you use the Internet, AIF is just an E-Mail away from your office.

Internet E-Mail Addresses

aif@aif.com	for general information on legislative issues and AIF member services.
aiis@aif.com	for general information on insurance services.
claims@aif.com	for questions and information on AIF Property & Casualty Trust workers' comp claims.

If you've got questions about the services available to members, if you want to know more about our insurance products, or if you need information on a business issue, let your message ride through the byways of the Internet. We promise you'll get a prompt response.

And if you'd prefer a more traditional style of communication, our doors, phone lines, and mail room are still open to you.

While you're browsing the Internet, visit AIF's Web site
http://aif.com

(Continued from page 13)

reaucratic disincentives to economic growth. For example, if the corporate filing fee is a roadblock for new companies to start up and new jobs to be created, the fee should be lowered.

If the sales tax on utilities for manufacturing businesses is impeding job growth, the tax should be repealed.

A good faith effort to remove these types of barriers and level the playing field will enliven Florida's economy, allowing existing Florida companies to thrive and expand while attracting new firms from other states.

Florida has always had the ability and competitive drive to be number one in the emerging market place. Now, we have the infrastructure and service economy base for companies to develop, manufacture, and distribute their products worldwide.

As we move into the 21st century, the House Republicans are committed to working to make Florida one of the most competitive states for business by taking advantage of Florida's strategic and geographic location so that we can firmly establish Florida as a leader in the global economy.

All we need is a set of fair rules to play by and Florida will turn the corner and make it happen. ■

NOTE: If you would like to learn more about the House Republican efforts to improve Florida's future, contact John Wehrung at the Republican Party of Florida at (904) 222-7920.

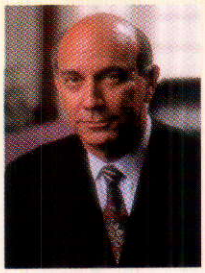
It's Your

An Invitation

I welcome the opportunity to invite you into the membership of Associated Industries of Florida (AIF).

For most of this century, AIF has represented the interests of Florida's private sector before all three branches of government.

Our mission is to protect and promote the business community so that Floridians may enjoy the jobs it creates, and the goods and services it provides. Florida's employers are the very base of our economy. AIF works to keep that foundation strong. Join us and become a partner in our "Action Team."



Jon L. Shebel
President and CEO

Membership Benefits

- Over a dozen of the state's top lobbyists working for your business interests.
- Direct access to Florida's senior policy-makers.
- Nation's best on-line legislative tracking service.
- Complete insurance services, including workers' compensation.
- Training seminars and polling research tailored to your needs.
- Award-winning video production services.
- Research assistance to help untangle complicated legislation that affects your business.
- Ability to network with other association members.
- Publications such as the *Employer Advocate* magazine, *Legislative Letter, Voting Records* and *Know Your Legislators* pocket handbook.
- Opportunity to participate in the "Politics of Business" — AIFPAC and Florida Business United.

Testimonials

If business leaders fail to speak up in our legislative halls, Florida business will be but one short step away from economic chaos. There must be a strong, effective voice for Florida business in Tallahassee. Associated Industries of Florida provides that voice.

Mark C. Hollis, President (Retired)
Publix Super Markets, Inc.

AIF does a great job of representing the business perspective before the Legislature. We also rely heavily on AIF's legislative tracking system to help us keep up with the 2,000 or so bills that are filed each year.

Douglas L. McCrary, President (Retired)
Gulf Power Co.

The AIF staff is extremely competent and highly respected as one of the best lobbying groups in Tallahassee, and, as a result, very effective in representing business interests. I wholeheartedly endorse and support AIF's past efforts and successes.

Lance Ringhaver, President
Ringhaver Equipment Company

Associated Industries of Florida

516 NORTH ADAMS STREET • P.O. BOX 784 • TALLAHASSEE, FL 32302-0784
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AIF LOBB

1996

Staff Lobbyists

Jon L. Shebel
President & CEO of Associated Industries of Florida and affiliated corporations ... over 25 years as a lobbyist for AIF ... directs AIF's legislative efforts based on AIF Board of Directors' positions ... graduated from The Citadel and attended Stetson University College of Law.

Jodi L. Chase, Esq.
Senior Vice President and General Counsel ... supervises AIF Legislative Department and leads the association's legislative efforts under the direction of the president ... undergraduate and law degrees from Florida State University, both with honors.

Diane Wagner Carr, Esq.
Vice President and Assistant General Counsel ... former vice president of government relations for the Florida Bankers Association and Counsel to the House Commerce Committee ... experience in representing various business interests before the Legislature ... undergraduate and law degrees from Florida State University.

Kevin R. Neal
Assistant Vice President for Governmental Affairs ... formerly with the Florida House of Representatives and the Agency for Health Care Administration ... B.S., Florida A&M University and law degree from Florida State University.

Legislative Consultants

Taxation

Randy Miller
Special consultant to Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A. ... former executive director of the Florida Department of Revenue ... expertise in state and local tax issues including consulting, lobbying, and government agency liaison ... B.S., Florida State University.

Environmental Law

Martha Edenfield, Esq.
Of counsel to Akerman, Senterfitt & Eidson, P.A. ... areas of expertise include environmental and administrative law ... graduate of Florida State University College of Law.

Key Business Issues

Lobbying for the business community means pursuing constructive solutions, repealing anti-business laws, and fighting off proposals that constrict the free market.

Here's a list of some of the key issues Associated Industries of Florida (AIF) will be involved with during the 1996 Legislative Session.

Taxation

- Repeal the sales tax on energy used for manufacturing and mining.
- Lower corporate filing fees for every Florida corporation.
- Encourage growth in research and development conducted in-state by giving it favorable tax treatment.
- Provide property owners with a fair chance to challenge property tax assessments.

Regulation

- Pass a law to control state agency rulemaking.
- Repeal unnecessary and duplicative laws.

Labor Relations

- Preserve Florida's employment-at-will doctrine.
- Protect the unemployment compensation trust fund.
- Prevent creation of a state minimum wage law.

Legal and Judicial

- Override the governor's veto and finally repeal Florida's "no defense for business" law.
- Maintain the Florida Supreme Court's limitation on joint and several liability.

Environmental

- Pursue voluntary, incentive-based programs for environmental protection.

YING TEAM

Workers' Compensation

Mary Ann Stiles, Esq. Senior partner in the law firm of Stiles, Taylor & Metzler, P.A. ... former vice president and general counsel of AIF ... over 21 years' lobbying expertise before the Legislature and other branches of government ... graduate of Florida State University and Antioch Law School.

Insurance and Workers' Compensation

Don Reed, Esq. Former minority leader, House of Representatives ... over 19 years' lobbying experience before the legislative and executive branches of government ... graduate of Ohio State University and University of Florida College of Law.

William D. Rubin President, The Rubin Group, Inc. ...formally Florida's assistant insurance commissioner and treasurer (chief of staff) ... extensive governmental and political experience ... B.S. in journalism from the University of Florida.

Ron Book, Esq., Principal shareholder of Ronald L. Book, P.A. ... formally special counsel in cabinet and legislative affairs for Bob Graham ... areas of expertise include legislative and governmental affairs with an emphasis in sports, health care, appropriations, insurance and taxation...graduate of the University of Florida, Florida International University, and Tulane Law School.

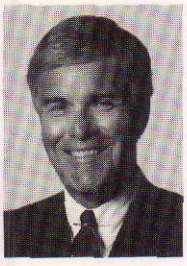
Keyna Cory President, Public Affairs Consultants, a public affairs and governmental relations consulting firm representing a variety of clients, from small entrepreneurs to Fortune 500 companies, before the Florida Legislature ... chair of the 1995 Carquest Bowl, the first woman to be named to that position ... majored in political science at the University of Florida.

General Legislation

Frank Mirabella Partner in Mirabella, Smith & McKinnon ... more than six years of legislative lobbying experience ... B.S. in government from Florida State University.

Samual J. Ard, Esq. Member of the law firm of Oertel, Hoffman, Fernandez & Cole, P.A. ... formerly director of government affairs for St. Joe Paper Company and Florida East Coast Industries ... chairman of AIF's Property Rights Committee ... undergraduate and legal degrees from Florida State University.

Damon Smith Partner in the public and governmental relations firm of Mirabella, Smith & McKinnon ... more than 10 years of legislative lobbying experience ... B.S. in journalism from the University of Florida.



Ralph Haben Jr., Esq. Partner in the law firm of Haben & Richmond, P.A. ... former speaker of the Florida House of Representatives (1981-1982) ... as a member of the House from 1972 to 1982, served on every major committee and received numerous awards in recognition of his legislative accomplishments ... B.A. from the University of Florida and J.D. from Cumberland College of Law.

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A Premium Plan For The Future

Associated Industries of Florida Property & Casualty Trust worked very hard with our actuaries and insurance professionals to design a plan for Florida employers.

We wanted a plan that would reward safety-conscious employers. A plan that was actuarially sound. A plan that was financially secure. A plan that rewards AIFPCT by having employers as happy clients, who will stay with us. It is a plan for the 90's.

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Internet Address: http://aif.com

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D.O.I. APPROVED

Features of the Jumbo Retro

- Plan is available to all size employers.
- Premium discount is guaranteed and provided up front.
- No upside exposure (i.e. maximum is discounted premium).
- Opportunity to earn a return premium of up to 20%.
- Return premium is based upon losses calculated six (6) months after expiration and payable shortly thereafter.
- Return premiums are **NOT** subject to Board of Trustees' declaration.
- Return premiums are **NOT** subject to the DOI's approval as program is *already* approved.

"If the losses are not there, a return premium check is!"

Associated Industries of Florida

OU ASKED FOR IT!

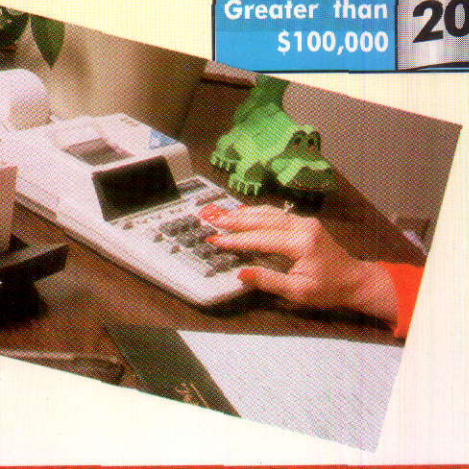
GUARANTEED RETURN PREMIUM

JUMBO RETRO RATING PLAN

RETURN PREMIUM TABLE

Premium Range	Incurred Loss Ratio: Less Than 10%	10% to 19%	20% to 29%	30% to 39%	40% to 49%	50%+
	Percentage of Return Premium					
Less than $5,000	5%	3%	3%			
$5,000 to $10,000	6%	5%	3%	3%		
$10,000 to $20,000	8%	6%	5%	3%		
$20,000 to $30,000	10%	8%	6%	5%	3%	
$30,000 to $50,000	12%	9%	7%	5%	3%	
$50,000 to $75,000	15%	12%	9%	6%	3%	
$75,000 to $100,000	17%	13%	10%	6%	3%	
Greater than $100,000	20%	15%	10%	6%	3%	

Our safety team is "on *the road*" showing employers how to keep their businesses safe.



The retro return percentage shown in the table are for premium sizes and loss ratios at the mid-point of the range. Actual retro returns will be calculated by interpolation using both actual premium and loss as weights. The Jumbo Retro Plan provides a policyholder with an opportunity to earn a return premium based upon its loss experience developed during the policy period.

la Property & Casualty Trust

Getting Out of First Place

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

Florida enjoys all kinds of number one rankings. We have the world's best beaches, the most livable cities, and the best college football teams. Not all number one rankings are so gratifying, however.

Last year, the Sunshine State won the dubious honor of handing out the nation's largest jury award. This $500 million award forced a Tampa business, William Recht Company, to shut its doors and go out of business.

According to *Lawyers Weekly USA*, medical malpractice produces the highest jury awards, followed by product liability. In Florida, lawsuits against employers for alleged improper firing, alleged harassment, and the like are on the rise. Our state's legal system puts every business person's hard work and success in a precarious position. One multi-million dollar award, such as the one against McDonalds for brewing its coffee too hot, is all it takes.

Why does this predicament exist? Trial lawyers who represent plaintiffs are the primary culprits. They are incredibly strong and well-represented in the Florida Legislature. By framing their proposals as compassionate and fair to the little guy, they have managed to pass laws that tilt the playing field in their favor.

The success of the trial lawyers' legislative agenda is due in no small part to their successful public relations campaign. Business lobbyists have a hard time battling emotion with logic and reason.

The tide is beginning to turn. Many have begun to realize that they've let the trial lawyers go too far, but business still faces a formidable opponent. Major revisions to the state's legal and judicial system, while necessary, remain out of reach. There are some important issues, however, that must be addressed. In 1996, Associated Industries of Florida (AIF) will seek changes to the laws governing punitive damages and bad faith.

Many have begun to realize that they've let the trial lawyers go too far, but business still faces a formidable opponent.

Since 1985, the Florida Statutes have required that a percentage of a punitive damages award be deposited into a state trust fund to help pay for indigent health care. The plaintiff forfeits that portion of the award.

Plaintiff lawyers, aware that some of a punitive damages award is lost, are encouraged to settle the case. When they settle, they can allocate damages in any manner and avoid paying the state. This law worked very well in the past; the amount of punitive damages deposited in the trust is less than $1 million.

The law was scheduled to sunset in 1995; last year, lawmakers just never got around to re-enacting it. AIF wants to make sure the law gets back in the books this year without any further changes to the provisions addressing punitive damages.

The other change AIF seeks

is to bring bad faith law back to where it was before the summer of 1995. Prior to that time, if a plaintiff sued someone for an injury and the defendant maintained a liability insurance policy, the insurance company would handle the case for the defendant. The insured could sue the insurance company for bad faith in the handling of the case if the plaintiff was awarded a judgment that exceeded the policy amount.

Last summer, the Florida Supreme Court ruled that the plaintiff could also sue the insurance company for bad faith. This puts the insured defendant at a disadvantage. The insurance company is no longer acting just on his behalf. It also has to worry about protecting itself against plaintiffs.

In essence, an insurer is confronted with a potential conflict of interest between its traditional obligation to the insured defendant and its obligation to defend itself against a lawsuit independent of the action against its policyholder.

The California Supreme Court reached a similar decision in 1978 and, 10 years later, reversed itself, after realizing the chaos it had created. In overturning the 1978 decision, the California justices observed:

> "It encouraged two lawsuits by the injured claimant: an initial suit against the insured, followed by a second suit against the insurer for bad faith refusal to settle. It increased unwarranted settlement demands by claimants and coerced inflated settlements by insurers who were seeking to avoid the cost of a second lawsuit and exposure to a bad faith action. It created a drain on judicial resources. Costs of insurance rose because of inflated settlements and costly litigation. The decision created a conflict of interest for the insurer, who not only had to protect the interests of its insured, but also had to safeguard its own interests from the adverse claims of the third-party claimant."

AIF wants to make sure Florida doesn't take 10 years to learn from California's mistake.

None of these changes are radical. Bad faith and punitive damages simply return the law to where it was less than a year ago. Nevertheless, business might not be able to pass even these two simple measures. The trial lawyers have the power to stop almost any bill in the House or Senate Judiciary Committees.

The Legislature is slowly changing, however. This session, two traditional trial lawyers' supporters are sponsoring the punitive damages bill for business.

Make no mistake about it; tort reform is ultimately an economic development issue. When corporate resources are redirected toward defending profits from predatory trial lawyers, business expansion suffers.

Trial lawyers gamble with corporate resources and business expansion suffers.

These proposed changes are minor. While today's Legislature is more sympathetic to business than it has been in decades, further changes in the state's political climate are necessary before meaningful and comprehensive reform of the state's legal and judicial system can occur.

Every business person can help bring about those changes by making sure his or her opinions are heard in legislative offices and the voting booth. ■

1996 Legislative PREVIEW

LET FBN PUT YOU IN THE DRIVER'S SEAT

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Facing the SDTF Crisis

In the July/August 1995 issue of *Employer Advocate*, I wrote about the looming financial crisis threatening the state-run Special Disability Trust Fund (SDTF). Every employer in the state, including local government, pays into the SDTF through higher workers' compensation premiums.

Last year, the state agency overseeing the SDTF delivered its annual budget projections to the Legislature. Those projections called for a significant increase in the level of contributions required to fund the SDTF in 1995 and foretold of skyrocketing increases in the coming years.

The Legislature called for a time-out by freezing the level of employer contributions at the existing rate (close to five cents of every workers' compensation premium dollar) and requested the state agency to return in a year with a full report.

We urged the state to retain an experienced actuarial firm to assess not only the extent of the problem, but also alternative solutions. The report is in (although not officially released for public scrutiny at the time of this writing) and, as we suspected, the numbers are staggering.

At the time of the study, the existing deficit that employers will eventually be asked to fund is estimated at *$4.7 billion*. That estimate represents only the liability for claims through today and, thus, for every day the SDTF continues to cover claims, the deficit continues to increase. To put this deficit in perspective, one only has to reflect on the fact that total annual workers' compensation premiums paid in the state are $3.5 billion.

What initially started out as, perhaps, a reasonable sounding program to encourage employers to rehire injured workers has turned into a nightmare. As with any program where future liabilities are assumed but only current payouts are funded, the true costs of the program are hidden and the formula for financial disaster is set forth.

The SDTF proved to be no different except that the true costs were buried long enough that the financial disaster became enormous and now the costs of even truly funding current payouts is painful.

In wrestling with this dilemma, the 1996 Legislature most definitely has a tiger by the tail (perhaps a runaway elephant would be the more apt metaphor).

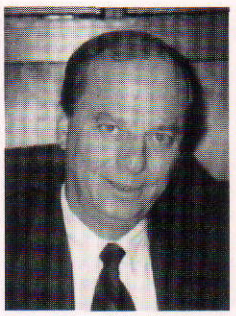
Associated Industries of Florida (AIF), on behalf of the business community, is lobbying hard for, at the very least, shutting the flood gates on future claims. While you would think that no one in his right mind would oppose that as a first step, there are a few lobbyists representing a domestic insurance company or two who vehemently argue for maintaining the status quo. That position puts the interest of the insurance company ahead of the interests of its customers who ultimately have to pay the costs of the SDTF.

The fight will be noisy. If AIF is successful in this debate, the SDTF will no longer cover future accidents. Wrestling with the issue of funding the existing debt will be more problematic. Given the size of the debt, limited options exist.

When the dust finally settles, the Legislature will probably opt to leave the funding at its current level of 4.5 percent. At this rate, it could take up to 30 years to fund the SDTF deficit.

AIF is asking the Legislature to allow some self-insured companies and funds to opt out of the SDTF. Those that do opt out would leave the fund, taking their liabilities with them. In return, these employers would receive a 4.5 percent premium reduction.

We can only hope that a lesson has been learned. Before implementing any program, the full costs need to be identified and funded at the onset of the program. In this way, informed decisions can be made relative to the cost/benefit of the program. ■



by Frank T. White,

AIFPCT Executive Vice President & CEO

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What's on the Menu for 1996?

by Samual J. Ard, Oertel, Hoffman, Fernandez & Cole, P.A. & AIF Consultant

The 1995 Legislative Session saw the efforts of thousands of property rights supporters across the state of Florida come to fruition with the passage of the "Bert J. Harris Jr. Private Property Rights Act," with only one dissenting Senate vote. Surrounded by aides, agency heads, legislators, and concerned citizens, Gov. Lawton Chiles signed the bill into law on May 18, 1995, in a tree-covered pasture in Polk County. The ceremony was supposed to signal the end of the property rights revolt, and the beginning of a more responsible, common-sense-based government.

While no court decisions have been reached to define the law's impact, all has not been quiet since its heralded beginnings. The Florida Association of Counties, in conjunction with the Department of Community Affairs, has held seminars across the state to educate county attorneys as to government's interpretation of what the law does and does not accomplish.

Interested trade associations have scheduled speakers or seminars on the subject to advise their membership on the law's shortcomings and strengths.

Palm Beach County has backed away from an agricultural reserve project, citing the act as the source of their concerns about the price of the project.

St. Johns County petitioned Attorney General Bob Butterworth on the scope of the act. The attorney general has responded that it is limited only to land directly affected by governmental action.

All of this activity has filled the pot full of ideas for the 1996 Session. Will the 1996 Legislature take any additional action on property rights? No one knows for sure. Since legislative membership has not changed, and the committee structure and assignments are essentially the same as last year, don't expect any major movements.

Last year's bill was a compromise reached after both sides made peace without a whole lot of bloodshed. Proponents decided, "Half a loaf is better than no loaf at all," while opponents were saying, "Half a loaf is better than giving them the whole darn thing."

Compromise measures tend to get lopsided votes around here. A bill that makes radical or contentious change reflects its controversy with its vote sheet; a close vote is a sure sign that the bill was controversial.

In short, neither side has weakened enough to give the other confidence in winning what will be a major battle sometime in the future. However, the issues that brought about pressure to enact this law are still alive and well and being fueled by an active petition drive to get a comprehensive property rights measure on the 1998 ballot.

Application of the Act to Existing Laws

The new legal remedies created by the Harris Act apply only to all future laws, rules, and regulations. Last year, Rep. John Thrasher (R-Orange Park) offered an amendment that would have applied the act to future applications of existing laws. He later withdrew the amendment at the request of the bill's sponsors, but made a speech on the floor of the House vowing to keep fighting for that provision. It is at the crux of the battle to protect property rights. When it does surface again, it will be a litmus test to identify those who are truly advocates of property rights.

Protection of Non-Speculative Reasonably Foreseeable Uses

The most controversial amendment added to the act protects reasonably foreseeable uses of property so long as they are not speculative in nature, are suitable for the property, are compatible with adjacent land uses,

and have created a fair market value in the property that is greater than the fair market value of the actual present use or activity.

This section has drawn the ire of the national and Florida chapters of the American Planning Association, as well as a small band of fringe environmental groups. Again, this is a crux issue for any one who believes in real estate as an investment.

"Windfalls" Due to Governmental Action

Three years ago, before the governor appointed his Property Rights Advisory Commission, opponents of the property rights movement began to argue that if it is right for society to pay individual property owners for devaluations due to governmental infringement, then individual property owners should have to repay the government if their property goes up in value due to governmental action.

This storm may not yet be a hurricane, but its winds are picking up force as planning associations and environmental groups push for one of the most radical of all anti-property rights measures. This one should give every homeowner who has realized a profit on the sale of his home a real case of heartburn.

Conclusion

Property rights activists were disappointed that the 1995 act did not encompass existing laws, rules, and regulations. Just as disappointing was the fact that there was never a controversial vote taken that would have separated the sheep from the goats — every member of the Legislature running for re-election can claim to be a property rights proponent. Insiders know that a true litmus test would reveal about a 50/50 split in the Legislature, as opposed to the 159 to 1 vote on last year's bill.

Private property rights advocates seek to make sure all citizens enjoy the benefits, as well as the responsibilities, of ownership.

It is highly unlikely such a vote will occur in an election year, but that cloud has a silver lining. It is also highly unlikely that the act will be successfully attacked. In short, when the smoke clears, we may have the same statute we started with.

The battles on the judicial front are not so predictable. This law will only be as strong as court decisions that determine its application. It is imperative that an allied, cooperative effort be maintained that will alert others when such skirmishes occur.

The governor's signing ceremony was not the end of the revolt; it merely marked the beginning of a more responsible government. One thing is for sure: This issue will be around for many years to come. ■

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Self-Audits: An Incentive for Environmental Partnership

by Martha Edenfield, Akerman, Senterfitt & Eidson, P.A. & AIF Environmental Consultant

It comes as no surprise to most people that environmental regulation has undergone a recent paradigm shift. Regulators have begun to realize that command and control regulation has gone as far as it can go and that increased environmental protection must be achieved through other means and must involve the cooperation of both the regulated and the regulator.

The need for this shift in philosophy has been compounded as the budgets for regulatory agencies have been cut while the duties and responsibilities remain the same. The responsibility for environmental compliance is being shifted to the private sector through incentive-based programs, with government involving the private sector in finding solutions to problems and in obtaining the most "bang" for the taxpayer's buck.

Nowhere is this win/win situation of increased environmental protection through positive incentives more evident than in the area of the environmental self-audit privilege. This privilege encourages the regulated community to conduct voluntary self-audits that will ensure compliance with environmental laws, result in more rapid remediation of problems revealed, and identify pollution prevention opportunities without fear of regulatory backlash.

Realizing that enforcers cannot be everywhere and know everything, environmental self-audits, with a limited privilege, are a positive way to get industry motivated to audit for compliance with environmental regulation.

Under the current law, there is a disincentive to regulated industries to perform a self-audit because information gathered in a self-audit by a company may be used against it in an enforcement proceeding. This amounts to a disincentive for greater compliance and environmental protection.

At least 14 states have passed laws creating some form of environmental self-audit privilege. During the 1995 Legislative Session, a bill creating an environmental self-audit privilege in Florida was halted before it even received a full committee hearing. An alliance, including the Office of the Attorney General, the statewide prosecutor, the Florida Academy of Trial Lawyers, the Consumer Action Network, and extreme environmental interests, opposed the bill.

This alliance waged a media campaign, making serious charges regarding the impact of the legislation. Some of the claims were based on inaccurate information as it related to the Florida bill.

Another bill to establish an environmental self-audit privilege in Florida will be proposed during the upcoming 1996 Legislative Session. Again, it is expected that opponents of the bill will use distortions to create fears about the self-audit privilege.

Florida's environmental self-audit privilege proposal institutes a limited privilege to refuse to disclose self-audit results and to prevent any other person from disclosing those results.

Under the proposal, the person who claims the privilege has the burden of proving that the report is a protected environmental self-audit report as defined in the law. Furthermore, that person must prove that timely efforts have been made to correct any items in non-compliance that are disclosed through the self-audit.

The person seeking disclosure of a self-audit report shall have the burden of proving exception to or waiver of the privilege.

The self-audit legislation proposed in Florida does not allow violators to avoid cleanup of vio-

lations. The bill does not relieve anyone from an obligation to comply with environmental laws. In fact the benefits of the legislation can only be claimed if the violation is remediated in a timely and appropriate manner and pursued with reasonable diligence. An entity that fails to remediate cannot claim the benefits of the privilege.

The legislation does not eliminate any duty to disclose report information leading to damage to the environment or a threat to the public health that must be disclosed pursuant to other law. The legislation creates a privilege for communications relating to the environmental self-audit. It does not create a "shield" that may be used to hide information without limitation.

The privilege does not apply if a person wilfully and knowingly commits an act in violation of the statutes or if a person acts in bad faith or if the privilege is asserted for fraudulent purpose. Again, the privilege may be claimed only if the noncompliance is remediated.

The environmental self-audit privilege will result in increased regulatory compliance. The purpose of the environmental self-audit bill is to create a meaningful incentive for regulated parties to seek out and expose their own violations. The privilege and voluntary disclosure provisions allow such critical self-analysis to occur.

Despite the naysayers' propaganda about this proposal, self-audit legislation establishes incentives that result in more careful scrutiny of practices by a regulated entity and in the voluntary remediation of noncompliance. The end result will be improvement of environmental protection.

Incentives for regulated interests to perform environmental self-audits will result in the use of private resources for increased environmental protection.

The environmental self-audit privilege is a true common-sense approach to environmental regulation. Common sense dictates that incentives for regulated interests to perform environmental self-audits will result in the use of private resources for increased environmental protection.

When the true goal is environmental protection, the legislative proposal is a very positive initiative that should receive widespread support. As with many issues, however, when listening to the debate about the environmental self-audit privilege, pay close attention not only to *what* is being said, but also to *who* is saying it. Not all groups or persons opposing this bill do so from a concern for the environment. ■

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Workforce Development: **Finding a Better Way**

by Jacquelyn Horkan, Employer Advocate *Editor*

Business people should watch this process carefully because it may end with a back-door tax increase on employers.

With $1.6 billion to spend on one objective, you'd think much could be accomplished.

When it comes to workforce development (the newest buzzword for job training programs), no one can say for sure what an annual budget of $1.6 billion has accomplished. Actually, no one can say for sure that the annual budget even *is* $1.6 billion.

The total comes from a recent inventory of employment education programs prepared by Florida's Human Resource Development Council. Some insist, with convincing arguments, that the inventory includes programs that don't belong there.

Nevertheless, Gov. Lawton Chiles recently issued an executive order using that figure as the basis for his plan to redesign Florida's system for delivering job training.

Without a doubt, there is plenty of room for improvement in job training. Inefficiency and duplication permeate the present system. In some cases, that is inherent to the nature of such programs and, believe it or not, can be desirable. No one can determine the degree of waste or inefficiency, however, because there is no procedure to measure success.

Currently, job training programs are evaluated based on the number of people served. As Kevin Neal, Associated Industries of Florida (AIF) assistant vice president for governmental affairs observes, "What did that service produce? How many of those people got jobs? Were they in the job for two weeks or two years? No one knows that. No one has that type of data."

The Chiles administration is taking steps to address these shortcomings. The impetus behind the design for structural change is the long-awaited Congressional proposal to deliver federal workforce development funds in a block grant.

It's an effort filled with promise — and pitfalls. Business people should watch this process carefully because it may end with a back-door tax increase on employers.

Protecting Unemployment Comp

Heading the effort is the Jobs and Education Partnership of Enterprise Florida (JEP). The Legislature created Enterprise Florida in 1992 as the vehicle to reach the Commerce Department's goal of creating 200,000 high-paying jobs by 2005. In turn, Enterprise Florida asked the Legislature to set up JEP in 1994. The partnership would take the lead in restructuring the job training system.

Working closely with Lt. Gov. Buddy MacKay, JEP has developed recommendations to mend what it perceives as a tattered crazy quilt of programs. They have also set their sights on a $1.6 billion pot of money to use in remaking the quilt.

Hidden in the list of programs that make up that total is $65 million from unemployment compensation. In its workforce development proposal, JEP announces that it will explore methods to use unemployment comp money in the development of training and job placement programs.

This is a dangerous encroachment on unemployment insurance and all employers should watch this carefully.

Florida's low unemployment tax rate is made possible by careful management of the benefit trust fund and a conservative approach to eligibility for benefits. The trust fund balance is built up during times of growth so that it can match increased demand for benefits during recessions.

Every once in awhile, someone tries to zero in on the benefit trust fund as the funding source for a pet program. Those efforts quickly die because the trust fund

is inviolable; it cannot legally be used for any other purpose but payment of benefits.

It's not the only unemployment fund out there, however. Florida employers pay an additional .8 percent tax that goes into various federal trust funds. Presumably, these are the ones JEP wants to tap. They will also have a difficult time doing that.

The alternative becomes a supplement to the state unemployment tax. The money would be collected by the state unemployment comp agency, but it would be used by JEP.

This too is a tried-and-failed tactic. Just last year, word reached the Senate that the Department of Community Affairs was considering a supplementary tax. Sen. John MacKay (R-Bradenton) squelched that idea before it even got on the drawing board.

Oddly enough, Lanny Larson, president of JEP, now denies that his organization ever had any intention of dipping into unemployment comp to fund workforce development programs. Nevertheless, that objective remains a clearly stated component of his organization's strategic plan.

Proponents of the idea argue that workforce development programs will increase employment, thus, using unemployment comp money for that purpose only makes sense. In the next breath, they criticize the current system for its lack of data to measure success at increasing employment.

Even if they could point to objective evidence to support their argument, they are ignoring the purpose of unemployment comp. It is a system of insurance to protect employees if they lose their jobs through no fault of their own. A workforce development system with breathtaking success will still not eradicate economic downturns and the necessity for the safety net of unemployment comp.

There are so many hands stirring the pot, that it's hard to tell what's going in or coming out.

JEP will face stiff opposition to any plans it has to consume unemployment comp dollars. That's just one of the many obstacles reality is erecting in the partnership's path to its grand designs.

A New Funding Channel

What most people think of as the core of the job training system is the federal Job Training Partnership Act or JTPA.

Florida receives about $494 million in job training dollars from the federal government; JTPA provides about $165 million of that total. In JEP's broad definition of training programs, JTPA plays a minor role. Nevertheless, it is at the heart of the partnership's plans.

While Congress has not yet enacted the workforce development block grant, observers know it will take certain forms. Almost certainly, JTPA funds will constitute the nucleus of the block grant. Whether other dollars are included in the mix has not yet been decided.

According to Chiles's executive order, JEP will receive the federal block grant dollars for distribution. JEP also wants to take over control of all the money spent in Florida on workforce development, using the federal dollars as an incentive for service providers to implement JEP's goals in their local programs.

Today, all of that money, federal and state, is distributed through other sources. JTPA funds, for instance, are funneled through the Florida Department of Labor and Employment Security to private industry councils (PICs) in 25 service delivery areas (SDAs).

There are many who consider the system of PICs and SDAs wasteful because it boosts administrative costs, channeling money away from programs. JEP officials and the lieutenant governor's staff favor a streamlined system for distributing dollars while eliminating duplication of efforts.

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JEP also wants to use the federal dollars as an incentive for service providers to implement JEP's goals in their local programs.

To some degree, their scheme may achieve the opposite results: diminishing service while reducing accountability.

Efficiencies of Scale

Many of the inefficiencies in the job training system arise from the manner in which money has been directed to the states. Most programs are divided into smaller projects designed to service particular groups, such as the disabled, displaced homemakers, and the economically disadvantaged. Funds from different programs can't be pooled without drawing the ire of federal auditors.

JEP's Larson uses a job training computer lab in Jacksonville to illustrate this point. Each computer bears a colored sticker. "There's one color for Project Independence computers, another color for JTPA Title II, and a third color for Title III. You can't use a Title III computer if you're a participant in Project Independence. I hope we'll get away from all of that."

Those barriers are common in government-funded programs. They often arise because an advocacy group decides that its clients are not receiving the attention they deserve. Every time a complaint comes up, it is solved with another program and another set of imperatives. Sometimes, these complaints are addressed with the formation of an advisory council.

The result is an overlap in funding, clients, and goals. Today, there are 18 oversight groups that advise 10 state agencies that manage about 40 employment programs. Thirteen other groups also lend their input on occasion. Some interest groups, displaced homemakers for example, are eligible for services from eight different state and federal programs.

There are so many hands stirring the pot, that it's hard to tell what's going in or coming out. As a recent report from the Human Resource Development Council, one of the 18 oversight groups, observes, "Some programs are a revolving door for Floridians who circle through the agencies without end."

Larson believes some of the problem is attitudinal. "There's been a lack of balance," he explains. "Interest is focused on students — high enrollment — and not on business — did that student get a high-wage job."

Larson wants to inject that balance through a system of incentives and outcome measures. The present fragmented network of private industry councils, community colleges, tech centers, and so on would be replaced with a streamlined system of workforce development boards.

Under JEP's plan, those boards would make local decisions about how money should be spent. The local boards would be judged by *what* they did, not *how* they did it. Federal dollars would provide the incentive for local boards to deliver effective services. The better they did, the more money they would get.

Local officials applauded the plans — until they realized the catch. The funding for the workforce development boards is not new money. It would be taken out of the budgets for school districts, community colleges, and vocational schools. While they might, eventually, get it back from JEP, no one wants to take that chance.

The reaction to this dollar swap strategy proposed by Larson and the lieutenant governor has forced JEP to scale back its plans.

They are also undergoing a reality check administered by other government officials who are experienced in the day-to-day administration of these programs.

The State of Efficiency

Mike Switzer is the executive director of the State Job Training Coordinating Council, the agency formed to manage Florida's JTPA programs. The governor's executive order placed Switzer's group under the direction of JEP. He is now helping the partnership flesh out its designs with details.

He is lending his experience to assist JEP in establishing guidelines that balance flexibility with the fiduciary responsibility for spending taxpayer dollars. "We're favoring greater flexibility, but let's not kid ourselves that [Congress] is going to pass that money down with absolutely no accountability. Plus, I don't think we want that."

After all, without some federal guidelines on how to spend the money, JEP will eventually find itself embroiled in a contro-

versy over mishandling of tax dollars.

That problem, however, is easily resolved compared to a brewing conflict over who will lose and who will gain in JEP's plan to redistribute education money through workforce development boards.

While getting rid of wasteful programs and players is laudable, pitting people against each other to protect their share of the pie creates an unsavory atmosphere in politics. It also makes change difficult for politicians who rarely want to wade into that kind of controversy.

Criticizing this system as wasteful may play well in the newspapers, but it ignores some of the realities of the process and renders debate simplistic, to the point that it almost becomes dishonest.

Workforce development programs serve people who are not exactly highly functioning members of the economy. Usually, their participation is voluntary, so easy access to the programs is a key component of success.

JEP is beginning to realize that it can't convert community colleges into the center of vocational training. In some areas, any workforce development programs that exist are delivered through the school districts. In other areas, multiple locations offering the same service actually improve efficiency.

Additionally, the community colleges have little or no experience in job-placement or case-management, a process that Switzer calls reality therapy, a "combination of hand-holding, problem-solving, and butt-kicking." Administering reality therapy has been the job of the private industry councils.

Inefficiency in state programs will always exist in varying degrees, because that's what happens when someone spends someone else's money.

As JEP is discovering, progress is never as easy as you want it to be.

Waiting for Results

Florida has gotten a good start on implementing what will almost certainly be a new formula for spending federal dollars. The question is when that will occur and what the details will be. More than likely, unemployment comp will not be included in the block grant.

Whether JEP will ask the Legislature to take any action on privatizing state employment education funding through the partnership is unclear at this time.

JEP is looking at workforce development as an economic development issue first, instead of a social services issue. While that shift in rhetoric is healthy, as long as state dollars are spent on job training, social services will remain part of the mix.

No one person or group can ever be completely satisfied with the way government spends its money because so many competing voices take part in the budget debate. For its part, AIF will carefully monitor progress on JEP's workforce development plans to ensure that unemployment comp stays out of the equation.

Inefficiency in state programs will always exist in varying degrees, because that's what happens when someone spends someone else's money. We will also make sure that in financing these job training programs, Florida doesn't swap efficiency for fiduciary responsibility for taxpayer dollars.

Government does not spend money it earns. It's spending money you earned, usually on someone else. And there's no profit motive guiding government programs; accountability for use of tax dollars is the closest thing and it usually involves satisfying groups with dissimilar purposes.

Implementing grand designs with efficiency is a task best done with private dollars. JEP is learning that government is not private enterprise. ■

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Charter Schools: **Mapping a Course to Success**

by Diane Wagner Carr, Vice President & Assistant General Counsel

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For the last 10 years, Associated Industries of Florida (AIF) has not taken part in educational reform efforts in the Legislature. This hiatus was due, in part, to frustrations of AIF members and principals who felt that too many of those involved in education feared change and would resist it to such a degree that true reform was impossible.

That pessimism played out. Efforts in the early 1980s to reform the K-12 component of the state education system ended in lackluster implementation that produced little in the way of tangible results.

Despite the frustrations of the past, AIF recently decided to re-evaluate whether it should again become involved in legislative efforts to improve Florida's public schools. As more members of AIF began to talk in various forums about the link between education and economic development, AIF's principals and staff looked more closely at methods to cultivate a competent, educated work force.

AIF believes that the state's ability to retain and create stable, high-paying jobs for its citizens is one of the best indicators of economic health. For the last three years, the association has closely monitored Florida's loss of 55,000 high-paying manufacturing jobs as a result of an unfriendly regulatory and tax structure.

As this monitoring process has continued, Florida employers have expressed their concerns that the problems resulting from those jobs already lost will be greatly exacerbated if even more employers take their jobs to other states because huge numbers of high-school students do not graduate with sufficient skills to either take a job or continue their education.

Consequently, AIF was convinced that it should re-enter the arena of educational reform and joined in sponsoring Commissioner Frank Brogan's Education Summit held in Orlando in December. The summit proved an opportune setting for members of the business community and education establishment to interact on the need for general and specific changes long overdue in the way Florida educates its young people.

As a second step to becoming active again in promoting educational reform, AIF intends to lend its full support to efforts to enact charter school legislation during the 1996 Legislative Session. Charter schools are public schools that are created and operated under a contract or charter. Unlike other public schools, charter schools operate on a performance-based contract, focusing on achieving outcomes and results as enunciated in the charter.

In return for agreeing to achieve certain results, the charter school organizers are allowed to operate free of many of the burdensome regulations applicable to other public schools.

Charter school legislation was introduced in 1995 as part of Commissioner Brogan's agenda. Both the House and Senate passed their own versions of charter school bills, but never ironed out the differences between the two measures and so it failed to pass. This year as last, Rep. Joe Tedder (D-Lakeland) and Sen. Don Sullivan (R-Seminole) have filed charter school bills to be considered by the 1996 Legislature.

For its part, AIF will actively promote passage of these bills as a means to both improving the skill levels of Florida high-school graduates and producing a competent work force capable of fulfilling the needs of Florida employers. ■

Water Management District Review Commission: **A Trickle of Change**

by Martha Edenfield, Akerman, Senterfitt & Eidson, P.A. & AIF Environmental Consultant

In 1972, the Florida Legislature enacted the Water Resources Act, which established the policy and directives for Florida's water resource regulation and created the five water management districts.

The districts divide the state along hydrologic boundaries and are headed by governing boards appointed by the governor and confirmed by the Senate. The districts regulate water quality and quantity through a permitting system and are funded primarily with ad valorem taxes, permit fees, and legislative appropriations.

In 1994, amidst complaints against the districts of "taxation without representation" and a lack of budgetary accountability, the Legislature created the Water Management District Review Commission and charged it with performing a comprehensive review of Florida's water management districts and systems of regional water management.

Some feared the results of the commission's work; others eagerly hoped for drastic change. Critics of the water management district system wanted members of the governing boards to be elected instead of appointed. Many believed this would eliminate the perceived government-by-fiat attitude of the districts.

In January of 1996, the Water Management District Review Commission released its report to the Legislature and the public. The document is titled, *Bridge Over Troubled Water: Recommendations of the Water Management District Review Commission.* Chairman Phil Lewis, when presenting the report to the Senate Water Policy Committee, indicated that the title was somewhat hyperbolic.

The recommendations maintain the status quo as far as the make-up and structure of the boards are concerned. The report does make some substantive recommendations that may actually serve to protect the rights of property-owners and taxpayers against the sometimes overzealous water management district boards and staffs.

Will the changes in process actually work without accompanying changes in form? No one knows.

The following are highlights of the recommendations made by the commission. This is by no means an exhaustive analysis. If you would like more information on the commission's report, please call Associated Industries of Florida's governmental affairs department at (904) 224-7173.

District Governance Oversight, Financial Structure, and Budgeting

• ***Governing Boards.*** Attorneys employed by the districts should be hired by and held accountable to the governing boards, as opposed to hired by and accountable to the executive directors or staff. Furthermore, a district ombudsman should be established to respond to inquiries from applicants and interested parties.

The commission rejected election of governing boards and the creation of nominating committees or councils, and instead recommended that the appointment process remain unchanged. It also recommended that current provisions for election of the governing chair of the board by the board members should not be changed.

•***Executive Oversight of Districts.*** The governor should approve or reject the annual budget of each water management district, and his staff should undertake review of the financial and programmatic accounts of Florida's five water management districts.

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The commission specifically found that unfunded mandates or delegations by DEP should be exempt from requirements for district implementation of new or expanded programs.

• ***Legislative Adoption of Water Policy and Plan.*** The Department of Environmental Protection (DEP) and the five water management districts should, together, draft the state water policy and the state water plan and present those to the Legislature for adoption, amendment or rejection.

• ***Legislative Oversight and Funding of Districts.*** The commission finds that current oversight capabilities within the authority of the Legislature are not effectively used to guide or constrain the districts in budget and operation priorities.

The commission recommends creation of standing committees on water resources. Also, the general government subcommittees of the Senate Ways and Means Committee and the House Appropriations Committee should annually review the districts' proposed budgets and provide specific comments.

The commission specifically noted that this recommendation should serve as a reminder that the Legislature currently has the statutory authority to reduce district ad valorem millage.

The commission also recommends that the Legislature provide a permanent and adequate source of state funding for the implementation of the surface water improvement and management (SWIM) program.

Recommendations include equalization of ad valorem taxation authority among all the districts, an action that would require a constitutional amendment to raise the taxing authority in the Northwest Florida Water Management District. Furthermore, an alternative funding source should be provided by statute for the Suwannee River and Northwest Florida water management districts in recognition of their limited ad valorem tax bases.

Alternative funding sources for statewide water resource programs implemented by the water management districts should be developed. The commission recommends that this task be assigned to a legislative committee or to a legislatively created nine-member commission which would submit proposals for consideration in 1997.

• ***Financial Accountability and Budgeting.*** The commission recommends providing the governing boards of water management districts with the prerogative and the responsibility to determine the priority by which local funding is appropriated to accommodate state-mandated programs.

The Legislature should affirm the programs and policies of the state by providing state funding or another source of revenue. The commission specifically found that unfunded mandates or delegations by DEP shall be exempt from requirements for district implementation of new or expanded programs.

Each district should provide a copy of its proposed budget, last year's expenditures, and its annual in-house financial audit to the governor, Senate president, and House speaker. The governing body of each county in which the district has jurisdiction, as well as all legislative committees and subcommittees with substantive or appropriations jurisdiction over water management districts and the DEP secretary, should also receive copies of these documents. The district shall respond in writing to all comments and furnish copies of the comments to all listed entities.

Other recommendations include more accurate notice of district taxes, expanded notice requirements of budget workshops and hearings, and standardized budget reporting formats, policies, and procedures. Furthermore, where possible, the district should develop uniform permit application fees and forms for statewide use, with exceptions for geographic differences.

District Land Acquisition, Planning and Management

•***Land Acquisition Programs and Restriction on Use of Maps.*** The commission recommends the prohibition of land acquisition programs that subject landowners to increased regulatory requirements and requests the Legislature to enact statutory requirements that maps, inventories, or any related geographic information prepared by an agency, water management district, or regional planning council should only be used for the expressed purposes for which it was statutorily authorized and should not be used or incorporated by reference into any regu-

latory rules or programs.

• ***Data Base For Public Lands.*** The commission requests that the Legislature require DEP to establish data exchange procedures between water management districts and local governments and to create regional and state repositories for conservation land data for public and private access.

• ***Continuation of P-2000 Funds.*** The commission further recommends that the Legislature continue funding Preservation 2000 for the program's duration and direct agencies to make necessary amendments to efficiently implement land acquisition programs to utilize available funds and eliminate the existing backlog of money.

• ***Notice to Property Owners.*** The commission directs DEP, the Department of Community Affairs, and the water management districts to perform an economic analysis of the relative costs and benefits of public conservation programs as compared to development in accordance with approved local government comprehensive plans. To the greatest extent possible, districts are to notify property owners of identification of property in an existing acquisition program.

For new acquisition proposals, the commission suggests that notification to an owner be required prior to including the land in the program. Except for those land acquisition programs or projects that are within eminent domain power, if the owner of the property does not consent to inclusion of the property in the acquisition program, the land shall not be included.

• ***Voluntary, Incentive-Based Acquisition Programs.*** The commission recommends directing water management districts, in coordination with DEP and the Department of Agriculture and Consumer Services, to meet with representatives from agricultural, forestry, and conservation interests and regulated industries to identify and develop non-regulatory, voluntary, incentive-based programs to encourage participation in state land acquisition programs.

Water management districts are further directed, in coordination with DEP, to evaluate existing tax law to identify existing incentives and develop and seek implementation of alternative state and local tax incentives for landowners participating in state land acquisition programs.

• ***Land Management.*** The commission recommends that the Legislature maintain funding for land management activities. Prior to final acquisition, it is recommended that water management districts be required to complete management plans to address eradication of exotic plants, restoration, long-term management costs, and projected funding. By March 1, 1997, the state land management agency shall complete and submit a report on the long-term management costs of currently-owned land.

• ***Mitigation.*** By March 1, 1997, water management districts and DEP, in coordination with local governments, should identify public lands that would be eligible for establishing mitigation projects or mitigation banks by public, private, or not-for-profit entities. The purpose is to provide advance notice of areas that have existing or potential resource values for offsetting the loss of wetland functions.

The water management districts and DEP shall establish procedures to assist permit applicants in meeting mitigation requirements for proposed wetland impact, with an expediting mechanism to increase certainty for applicants. Water management districts and DEP are also directed to cooperate with private and not-for-profit entities, local government, and other state agencies for the establishment of mitigation projects and banks on district or state land, where possible, and voluntarily on private lands when appropriate.

District Responsibilities and Operations

• ***Land Use Planning.*** The commission expressed serious concerns that local governments do not adequately consider the availability of water supply and the impact that future growth will have on water resources when forming or modifying future land use plans.

The commission recommends that the statutes governing the minimum criteria for local governments' comprehensive plans be amended to require local governments to consider

The commission recommends that the statutes effectively provide for responsible participation in the enforcement of environmental laws, while precluding misuse for purposes of monetary gain or delay.

ground and surface water resources and the present and future availability of water supply.

• ***Aquatic Plant Control***. The commission determined that the invasion of Florida's waters by non-native aquatic plant species has caused serious water resource problems. It believes that the current level of funding for aquatic plant control is inadequate and recommends higher allocations from the Fuel Tax Collection Trust Fund and other sources.

• ***Water Supply***. The commission finds that the Florida Legislature should emphasize regional water supply planning, regulation, research, and resource development as the primary mission of the water management districts.

• ***Rulemaking***. The commission recommends that the statutory authority of governing boards to adopt regulations be amended to provide that all substantive rules shall represent the lowest cost alternative while accomplishing the goals of the statute and taking into consideration the benefit to the public at large and the cost to the regulated community.

The commission recommends that the Legislature modify the standard applied in rule challenges to remove the presumption of validity in favor of the agency by putting the agency's interpretation of the statute and the challenger's interpretation of the statute on a level playing field.

• ***Concept of "Local Sources First."*** The commission recommends a statutory amendment to address use of local sources first, prior to approval of the use of water from other distant sources, when issuing consumptive use permits.

• ***Environmental Protection Act***. The commission recommends that the Legislature review the law which allows any citizen to file a legal action to compel an environmental agency to enforce any environmental rule or regulation and to enjoin the violation of environmental laws and intervene in proceedings.

The commission specifically recommends review by the Legislature to ensure that the statutes effectively provide for responsible participation in the enforcement of environmental laws, while precluding misuse for purposes of monetary gain or delay.

• ***Priority Among Competing Uses***. The commission recommends another statutory change to provide that in the case of competing consumptive use permits, which are otherwise equal and in compliance with requirements of the law, the governing board or DEP should give substantial weight to an applicant seeking renewal of a permit.

• ***Issuance of Permits by District Staff***. The commission recommends that, in order to make the permitting process more efficient, the district executive director, or a designee of the executive director, should have the authority to issue all permits, except in those cases where the district has received a written request that the permit be considered by the governing board. The commission states specifically that this recommendation shall not be interpreted to reduce current statutory noticing provisions.

What Next?

Lawmakers are beginning to work out how they will adopt the recommendations. The final results are totally unpredictable at this time. Whatever the ultimate outcome, however, the commission has already benefited the state of Florida. Subjecting these issues to review by a responsible, responsive, and respected deliberative body has helped remind the Legislature of the importance of these issues.

Yet, of all the important work accomplished by the commission during its existence, one of the most compelling achievements is not even contained in the report. That is, during the 18 months of the commission's existence, the water management district's governing boards and staff, while under extensive review, were exceptionally attentive and responsive to the public. Maybe that remarkable change, when all is said and done, is the most important observation for the Legislature to make. ■

1996 Legislative PREVIEW

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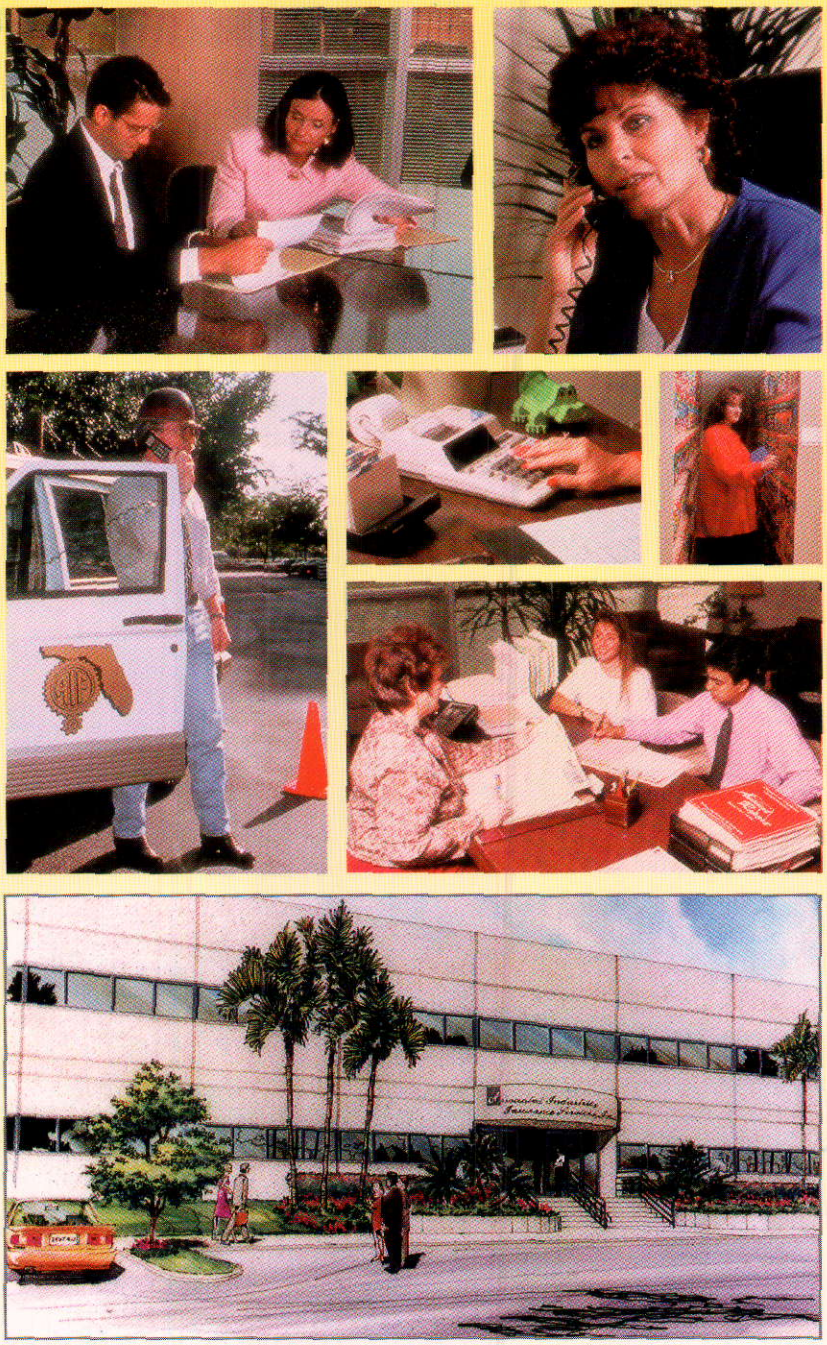

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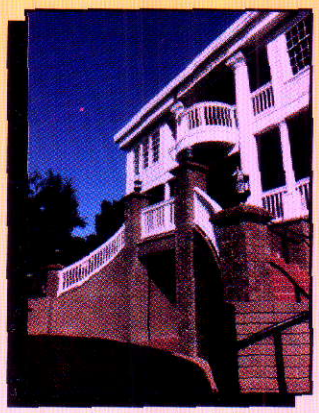

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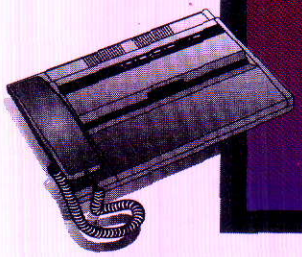

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