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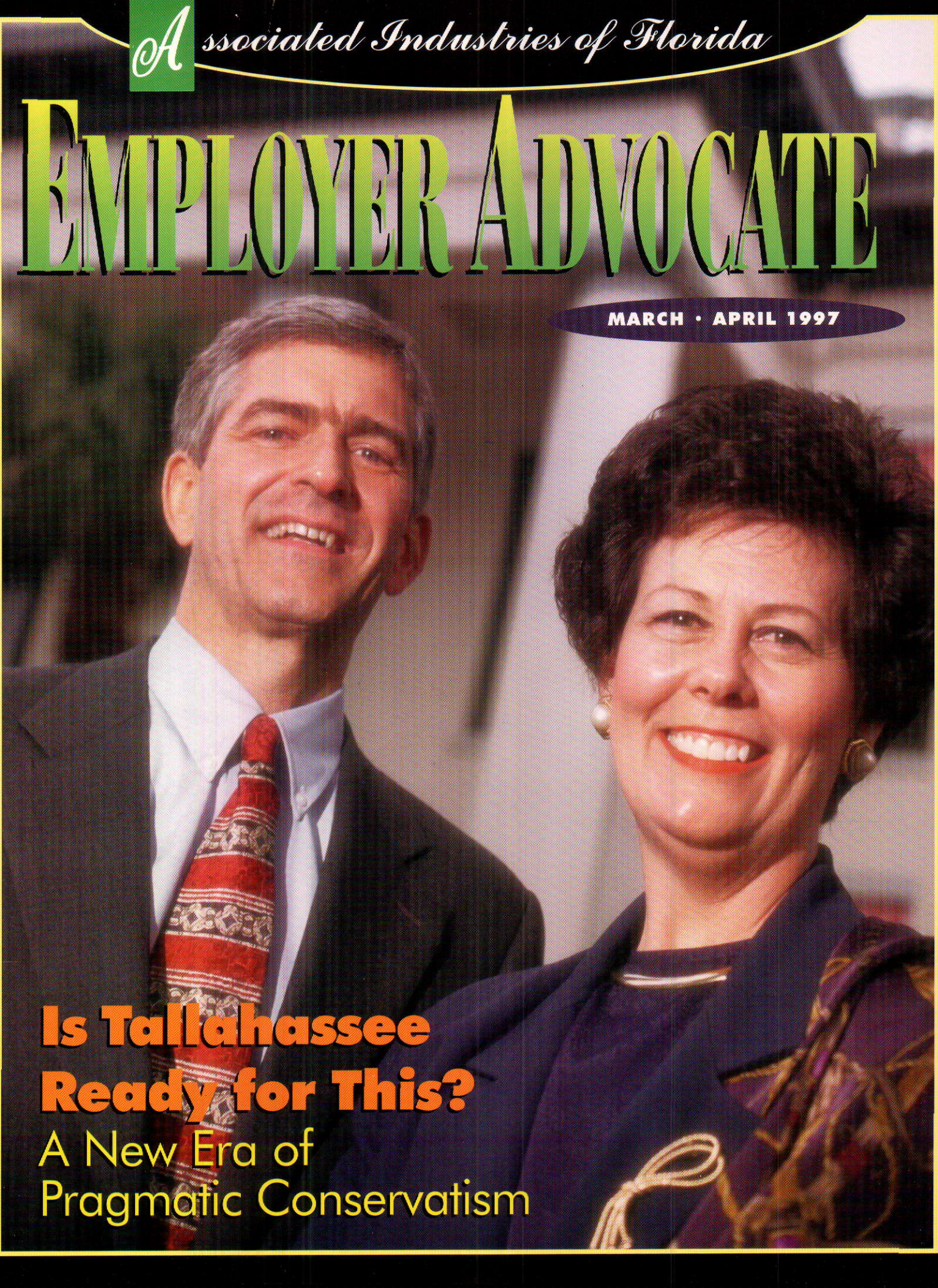
EMPLOYER ADVOCATE

MARCH · APRIL 1997



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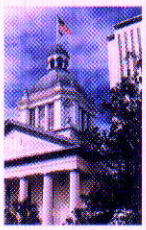

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EMPLOYER ADVOCATE

MARCH • APRIL 1997

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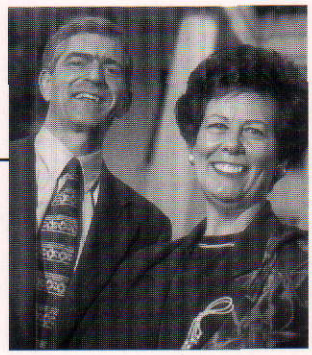
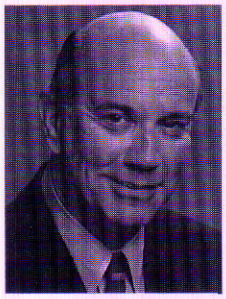


What New Spirit Is This?



by Jon L. Shebel,

President & CEO

You've probably heard the old joke about the committee that got together to design a horse and ended up with a camel.

I don't know that I've ever heard anyone profess to enjoy working on committees, but surely some people must, and the groups must serve some purpose, if only because there are so many of them. In fact, the Florida Legislature is nothing but one big committee divided into two large committees, a lot of smaller committees, and some more, even smaller, subcommittees (except for the House, which is now one large committee with a few councils and a bunch of committees).

Committees are a curse that follow the blessing of democracy where many must combine their different ideas into one proposal satisfactory to all or, at least, to the majority. Which brings us to the current political fad of bipartisanship.

In capitol buildings across the nation, leaders of the two political parties are promising to work together in a "spirit of bipartisanship." As is so often the case, the politicians are promising something they can't deliver.

The reason we have more than one party is because people disagree on the nature of problems and solutions alike. In America, we only have two major parties because, thankfully, our political tradition has disdained the chaos of multi-party systems where multitudes of warring minorities divvy up the spoils.

Partisanship exists because of the diversity of beliefs. The two parties are formed of people who agree with each other more than they disagree. In elections, they try to capitalize on their differences with the other party so that they can gain power. Once they have that power, they use those differences so that they may retain it.

The desire for power is the unmoveable object and partisanship is the irresistible force of politics.

This is not to suggest that bipartisanship is impossible or undesirable. It is rare, however, and can be both a good and an evil. It can result in meaningful and workable compromises; it can also be a method to avoid the discomfort of confronting unpopular issues, as both sides use sugar-coated platitudes to avoid their obligations.

There are two issues currently before the Legislature that are being touted as the objects of bipartisan accord: education and unemployment compensation. If you look closely, however, what may be operating here is a new model of partisanship, similar to the one fabricated by President Bill Clinton in the welfare debate.

The Republican Congress crafted a plan to end welfare as an *entitlement*. The president apparently only signed the welfare bill because polls revealed overwhelming support for the measure. He then took credit for this amazing achievement, although he offered little, if any, leadership during the development of the plan.

In Florida, Republicans and Democrats are working together to increase school spending and cut employers' unemployment compensation taxes. In the months leading up to the session, leaders of both parties engaged in a friendly competition of one-upsmanship. Both sides agreed on the objectives, but tried to outdo each other on the terms of their generosity. You might say we're seeing a display of free-market competition in the political arena.

They may call their method bipartisan but it is not because both sides will try to gain all or most of the political capital attached to their successes. The immediate future will be interesting, however, as we watch how long the friendliness lasts. As the days hurtle toward the 1998 elections, the desire to share credit will diminish. The so-called bipartisan spirit will probably become a casualty to the goal of political power.

And that's fine — as long as the end result sets Florida on an intelligent and sustainable path.

AIF Mourns Passing of Friend

John D. "Bud" Williamson lived the way he wanted to live, died the way he wanted to die, and was buried the way he wanted to be buried — in starched blue jeans and a polo shirt.

Mr. Williamson was a regional vice president of CSX Transportation Co., where he'd been in charge of legislative affairs for almost 25 years. In the adversarial world of lobbying, he is remembered for his quick and ready sense of humor.

He combined that humor with a keen mind and an absolute dedication to honesty to make himself a highly effective advocate for his employer and the business community.

"He had the kind of reputation everyone strives for," says Sam Ard, a fellow lobbyist and past contributor to Employer Advocate.

Although not a lawyer himself, Williamson was one of Tallahassee's most formidable opponents of trial lawyers because of his thorough understanding of the harm perpetrated by the current tort system on customers, employees, and stockholders, in addition to business owners.

Mr. Williamson enjoyed simple pleasures and conducted his life according to his own rules. A member of a Tallahassee country club, he avoided the club's main dining room in favor of the humble fare served in the snack bar.

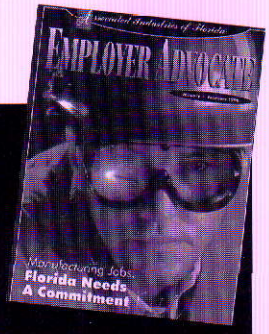
Bud Williamson
1935 - 1996

After attending Florida State University on a combined baseball-basketball scholarship, Mr. Williamson continued his lifelong love of sports, excelling at golf and hunting. He was proud of his good health, and his sudden death at age 61 came as a shock to all who knew and loved him.

His friends at the Capitol will remember Bud Williamson as he wished — as a man devoted to his wife and children and grandchildren, as a loyal friend, and as a companion who was enjoyed and admired.

Mr. Williamson is survived by his wife Anne, three children, and three grandchildren. ■

In Box



Say Goodbye to *Employer Advocate* Magazine

(But Watch Out for the New, Improved Version)

Six years ago, AIF inaugurated a four-page newsletter to keep members informed on issues pertinent to the business community. Two years ago, that newsletter was expanded into a 40-plus-page magazine format.

Well, we're at it again. In the months ahead, the magazine staff will be working on an editorial and graphic design overhaul, all in an effort to make the magazine more informative and attractive. We'll also begin accepting display advertising.

To achieve our goals, though, we're taking a hiatus on publishing *Employer Advocate* until we roll out the new and improved version mid-summer.

We hope you'll miss reading *Employer Advocate* in the interim. We know you'll appreciate receiving it when we resume publication this summer.

Thanks for you patience and please don't hesitate to call or write us if you have any comments. ■

Exterminating the Millennium Bug

As you've no doubt heard, there's a nasty little pest lurking in computers everywhere called the millennium bug. When the earliest computers were developed, memory was limited and costly so programmers only allowed enough space to enter the last two digits of a year. Without fixing the problem, today's computers will register Jan. 1, 2000, as Jan 1, 1900, throwing chaos into every transaction in our computer-dependent lives.

Correcting the problem in computers in the United States alone could cost up to $75 billion. Recent reports indicate that Florida will have to spend $140 million to prepare state agency computers for the year 2000, and you can expect that figure to rise.

Experts warn computer users against waiting for a "silver bullet" solution to the millennium bug. Every piece of software — whether customized for in-house use or bought off the shelf — will have to undergo its own conversion.

Now is the time to begin the conversion if you haven't already started. The longer you wait, the longer it will take to complete the conversion, and the risk of running out of time to correct errors will grow. For instance, the Social Security Administration plans to have its conversion completed next year so that 1999 can be devoted to testing and error-checking.

Contact the manufacturers of all of your software applications. The conversion should be covered under your maintenance agreement if you have one. If not, ask the manufacturer about your options.

If you are using customized software developed specifically for your operations, the program will need rewriting. The author of the software should be able to help you. If not, there are consultants available.

Information specialists are finding many executives resistant to spending money on correcting this problem. Unfortunately, it won't go away.

If you'd like more information on the year 2000 conversion, visit the web site of the Information Technology Association of America at *http://www.itaa.org*. Or call Bob McRae, AIF's senior vice president & MIS director, at (904) 224-7173. ■

Remember This . . .

The din is rising at the Capitol as the annual 60-day meeting of the board of directors of the State of Florida begins. Lawmakers toil under the watchful eye of lobbyists and citizens who press their case for every cause conceivable (and, in some cases, inconceivable), which makes this a good time to mention some statistics.

According to the painstaking research of British economist Angus Maddison, per capita world output in the year 1500 was $565. Three centuries later, in 1820, world wealth per person had only climbed to $651. Then, things really took off as capitalism took hold; in 1992, per capita output across the globe had soared to $5,145. (All figures measured in 1990 dollars.)

The increase in wealth was greatest in the Western nations where dead, white, European males endowed us with a legacy of freedom, private property rights, and the rule of law.

For a good part of this century, politicians and bureaucrats have tinkered with notions of centralized economic planning, from five-year plans in the former Soviet Union to Keynesian fine-tuning here at home. As the 20th century draws to a close, the elite are rediscovering the simple truth that economic freedom breeds economic abundance. Nevertheless, at times the philosophical fervor for free enterprise outpaces its practical application.

So next time you hear someone floating plans for controlling the economy and redistributing wealth, just repeat those numbers, $565, $651, and $5,145.

Enough said. ■

Where Politicians Come to Meet Florida Business

It was a dark and stormy night, but that didn't stop more than 100 guests from dropping by AIF headquarters on Jan. 6, 1997. They came to socialize and meet Steve Forbes, publisher of *Forbes* magazine and former presidential candidate.

Forbes was in Tallahassee to make the keynote address at a legislative forum sponsored by the Foundation for Florida's Future and the James Madison Institute, two Florida-based, conservative think tanks.

Elizabeth Dole chats with Jon Shebel at AIF Headquarters.

Quayle speaks at AIF function.

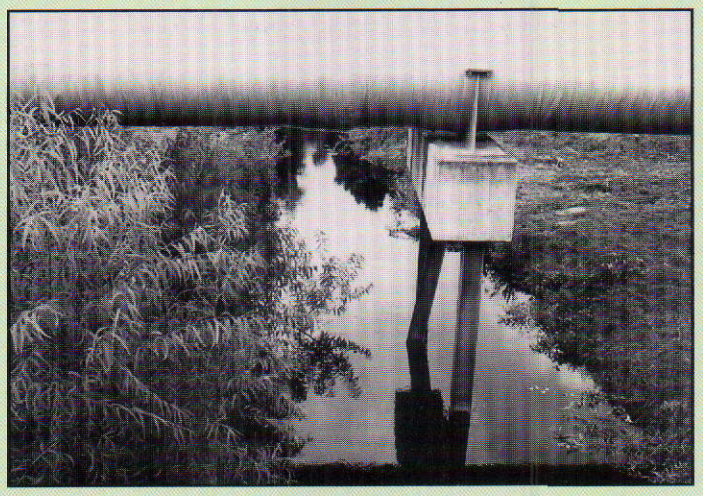
Forbes was not the first prominent national luminary to stop off at AIF. During the last two years, *your* association has hosted such notable guests as Dan Quayle, Elizabeth Dole, and Lamar Alexander. ■

Fish Stories

In mid-January of this year, Julie Hauserman of the St. Pete Times wrote an article about scientific studies revealing that three species of female fish in the Fenholloway River were undergoing genetic mutations that were transforming girls into boys. The story blamed Buckeye Florida, a cellulose mill in rural North Florida, for the damage.

Newswires picked up the story and broadcast it across the country. Deejays and broadcasters in distant cities had a field day with stories of transsexual fish in Florida.

There's just one problem. The report is more than 10 years old. The first time Julie Hauserman covered it was in 1985 as a reporter for the Tallahassee Democrat. She didn't get her facts straight then and, more than a decade later, she still isn't telling the whole story.



The gene pool in the Fenholloway isn't undergoing drastic alterations. Some female fish are developing fins shaped like those on males, but they are still female fish in every way. And the males don't appear put off by the changes.

Furthermore, there is no evidence that links the altered fins to the mill's wastewater discharges.

As we reported in the Sept./Oct. 1995 edition, Buckeye Florida has been the target of a smear campaign conducted by environmentalists who want to put the mill out of business. Blaming the deformed fins on the mill was just one ingredient in the misinformation campaign.

The latest round in the fish story comes just as the State of Florida is preparing to grant permits to allow Buckeye Florida to construct a pipeline that will lessen its environmental impact on the river. As required, the company published notice of the impending approval on Friday, Jan. 10, giving the public an opportunity to challenge the permit. Hauserman's article appeared on Sunday, Jan. 12.

With their devotion to recycling, is it any surprise that environmentalists trot out the same old stories over and over again? What still needs explaining is why journalists keep treating stale news as fresh. ■

Compiled by Jacquelyn Horkan, Employer Advocate *Editor*

Is Tallahassee

by Diane Wagner Carr, Vice President & Assistant General Counsel

Maybe the turning point came in 1928, when Florida voters overcame almost three generations of antipathy to help send GOP candidate Herbert Hoover to the White House. Hoover's popularity also gave the leg up to two Republicans seeking seats in the Legislature.

The end of the post-Civil War Reconstruction era in 1876 spelled the demise of the Republican party as a political force in the Sunshine State. The 1928 election was hardly an auspicious rebirth: one GOP lawmaker died before his term ended and the other lost his next election; both were replaced by Democrats. Nevertheless, the 1928 election was an anomaly only in a temporary sense; 68 years later, the GOP savored the sweet taste of numerical supremacy in the Legislature.

The celebration ended quickly as the work — and the questions — began. Would a Legislature formed in the image of the GOP operate any differently from those under Democratic leadership? Would Republicans lord their newfound power over the vanquished Democrats? Would a change in party leadership translate into a change in the style and substance of governance? And, having gained power, could the Republicans keep it?

So far, GOP leaders are responding to the challenge of power with an evident desire for bipartisanship. Partnership with the Democrats is a necessity since the margins in both chambers are so close (61 to 59 in the House and 23 to 17 in the Senate). The pre-session activities of the newly elected leaders of both chambers seem to reflect an even broader desire to restore public confidence in the Legislature.

Pyramids and Sunshine

In the days following November's elections, the new leaders made clear their intention to revamp their respective chambers' style of conducting business. Recent legislative sessions have ended in a marathon of chaos. Lawmakers toiled late into the night to get major legislation passed, tacking on amendments that few read or understood. Senate President Toni Jennings (R-Orlando) and Speaker Dan Webster (R-Ocoee) want to make a break with that sullied past.

As seasoned lawmakers, Jennings and Webster take on their new leadership roles with track records that show them to be deliberative, methodical consensus-builders when that method of operation is possible. Both, however, are quite capable of bolder action when required.

And both, somewhat characteristically, marked the beginning of their terms as president and speaker by expressing a desire to distinguish the next two years as a time of openness in the legislative process. After her election as Senate president, Jennings announced, "Accountability for the Florida Senate means we will not work in the dark."

Sen. Jennings has also assured her colleagues that they can go ahead and make reservations at their favorite restaurants on the final day of the 1997 Session because "we will be done by dinner time."

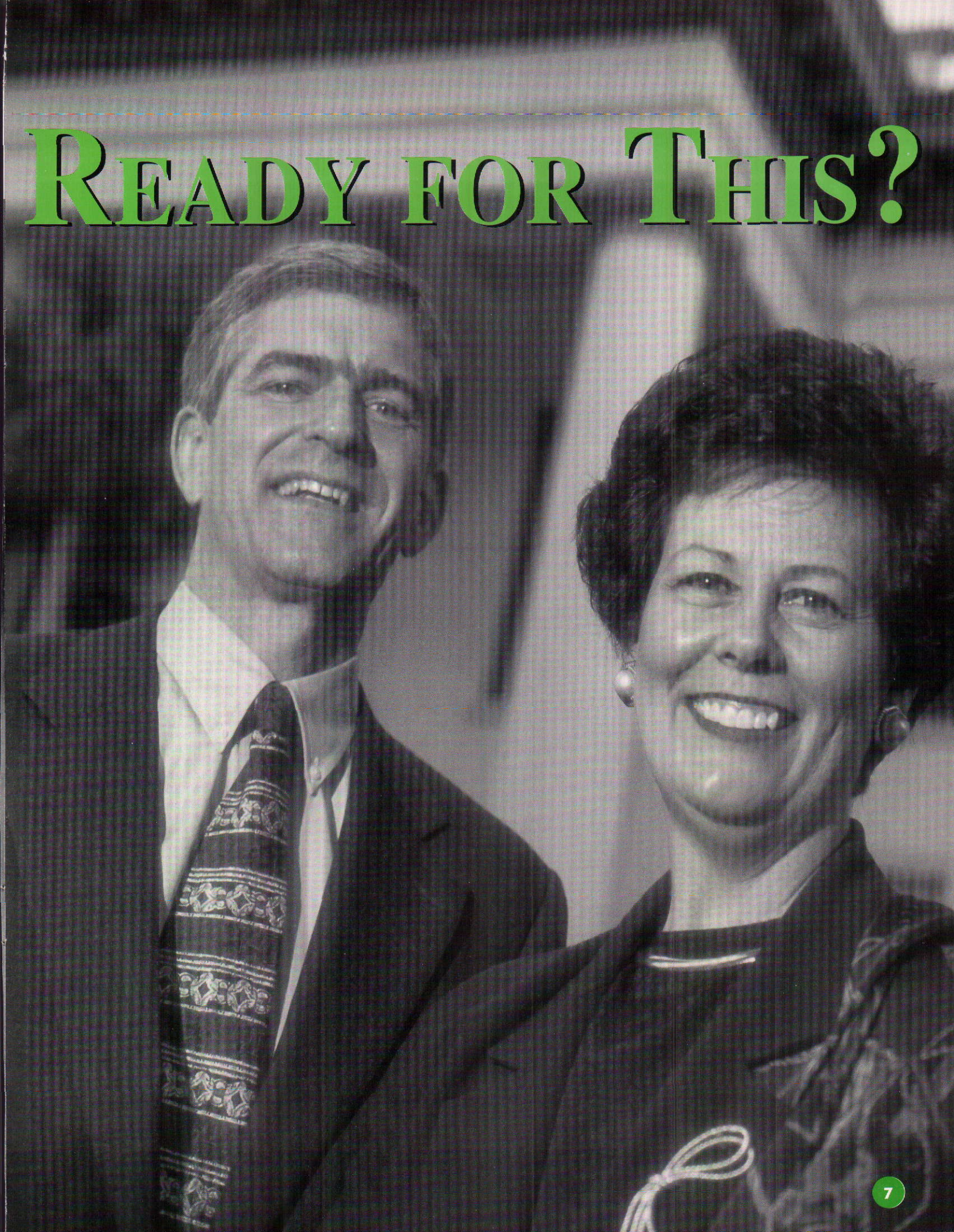
Jennings can draw on her past experiences as the architect of compromise on controversial issues such as workers' compensation and welfare reform. On both these issues, she convinced her colleagues and affected interest groups that taking the longer view — and a longer time to gather facts needed for informed decision-making — was the way to go.

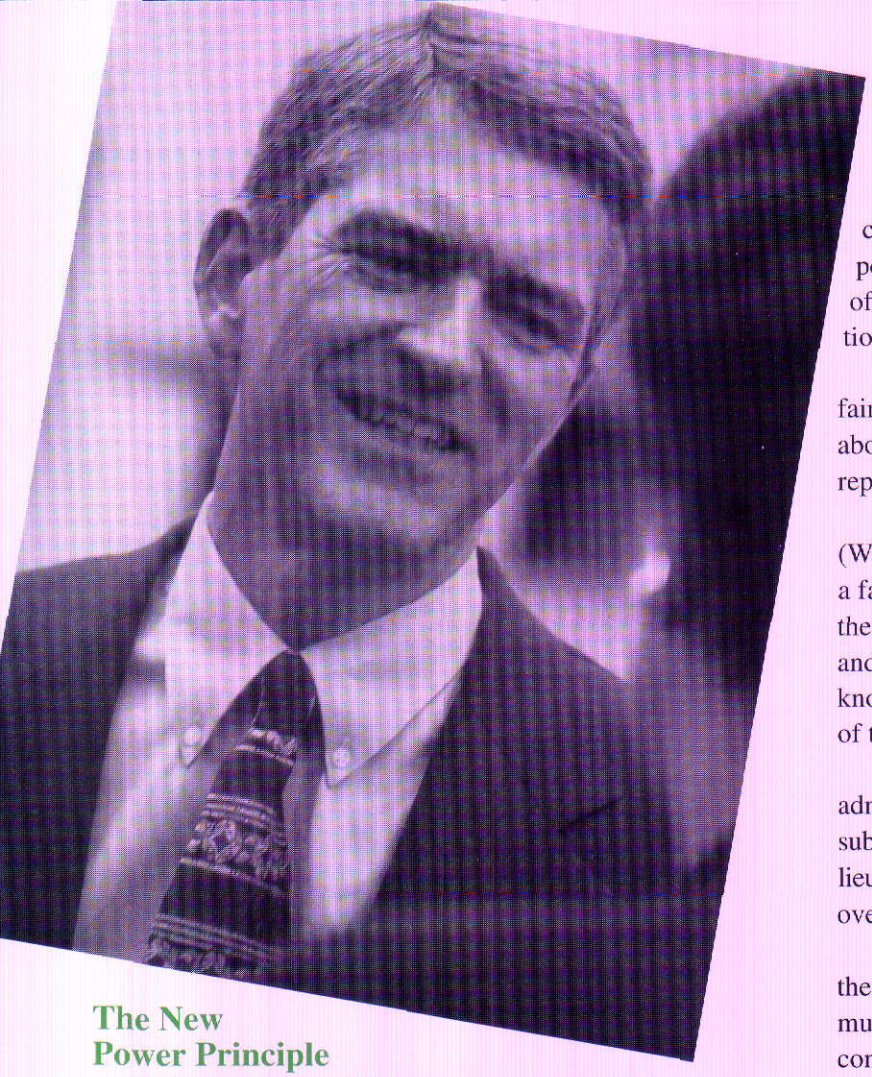
Her style of inclusion rather than exclusion often entails the holding of public hearings around the state and has served her well in crafting and enacting comprehensive legislation when others might have settled for less ambitious solutions.

No doubt, her promise to stop the trains (referring to the late-session practice of stringing multiple bills together to facilitate their passage) and to end committee meetings at 9 p.m. will go a long way to helping her deliver on her promise of openness. She reasons that putting an end to meetings that run late into the night should curtail the crescendo to craziness that occurs toward the end of a legislative session, allowing more bills to pass out of committee and have a greater chance of becoming law.

While Jennings signals a signicant shift in leadership philosophy, changes in the House are even more dramatic. Webster promises, with a certain metaphorical flair, to flatten the pyramid of power in the House, opening the process to all members rather than an elite few.

READY FOR THIS?





The New Power Principle

Webster's new model for House operations is based on principle instead of power. He wants to give all members an equal opportunity to have their bills considered. He also wants to make sure that bills advance through the legislative process because they embody a good idea or principle, not because they are sponsored by a particular representative.

The personnel and procedural changes made by Webster in the House reflect his dedication to fundamentally reconfiguring the institution to coincide with his vision of a political body in which power is shared rather than consolidated. The extent of his overhaul of the House has even surprised some members of his own party. Despite their surprise, they have praised him for his ability to follow through with actions that are consistent with what he has promised. He has also come in for criticism because the process of implementing his power-sharing plan has been unwieldy and painful for some lawmakers and others who are resistant to the changes.

Whether intended or not, Webster's plan may result in a House that looks and acts more Republican than the actual numbers of those in the majority would suggest. He has eliminated bill-filing deadlines and has given bills a two-year life span. Those bills that do not pass by session's end do not die but are available for action during the next session.

He has also limited the number of bills that a legislator can have in play in the process to four at a time. Webster's personal history in the House has been marked by a theme of less is more with respect to the substance of his legislation, as well as the number of bills he has filed.

He seems personally dedicated to the Republican laissez-faire tradition in his approach to his work and is not shy about characterizing his favorite legislation as that which repeals laws and regulations already on the books.

As owners and operators of their own businesses (Webster is an air conditioning contractor and Jennings runs a family-owned construction company) both leaders bring to their new roles the experience of having survived the waxing and waning of numerous business cycles. They combine that knowledge with an inclination toward hands-on management of the House and Senate.

Both have eliminated the position of chief of staff in their administrations, preferring instead to delegate significant substantive and procedural authority to several high-level staff lieutenants while retaining for themselves significant control over the day-to-day operations of the House and Senate.

So while openness and power-sharing may be the twin themes by which the two chambers operate, the more mundane aspects of lawmaking are likely to be more tightly controlled, with everything from the renewal of printing contracts to the staffing of public information desks receiving more scrutiny than has ever been the case.

The Lessons of Newt

Both in Tallahassee and in Washington, D.C., the last two years have witnessed a repudiation of Democratic control of legislative bodies. Unlike Congress however, GOP lawmakers in Florida have carefully avoided any hint of the radical symbolism attached to Newt Gingrich's so-called Republican Revolution.

Following his election in 1994 as speaker of the U.S. House, Gingrich gained early and momentous victories in his quest to enact the 10 points of the Contract with America. Political commentators marveled at the speaker's energy and enthusiasm and often applauded the verve with which he approached his project, even when they disagreed with the substance of what he was proposing.

Gingrich was not, however, able to sustain his initial popularity and stellar poll ratings as his two-year tenure wore on. Greater numbers of critics labeled him as too abrasive and brash to build consensus on important issues with House Democrats and, in some cases, with a Senate controlled by a more moderate breed of Republicans.

This criticism, coupled with Gingrich's unrepentant

attitude, led some GOP House members to distance themselves from the speaker during the elections of 1996. An even greater challenge to his effectiveness arose from the charges of ethical violations related to the commingling of political funds in his own not-for-profit entity.

Though neither Toni Jennings nor Daniel Webster approach their leadership roles with the bravado of Newt Gingrich — each is described by members of both parties as inherently likable and eminently competent — they cannot have overlooked the decline of the fortunes of Gingrich. He has been re-elected to a second term as speaker, although not by a unanimous vote of the members of his own party.

If anything, the Beltway scenario that has played out for Speaker Gingrich would seem to affirm the natural tendencies of Jennings and Webster toward moderation in their leadership styles and a realization that dramatic substantive changes in the law cannot be had without building consensus and including members of both parties when the margins between Republicans and Democrats are so close. In Washington and in Tallahassee, it seems that brashness is out and civility is in.

The Road Ahead

The themes of openness and power-sharing that have thus far marked the terms of Jennings and Webster raise some interesting questions. Can one hold onto political power if it is shared? Where does one draw the line between sharing power and ceding it?

Certainly, the tone of the current Senate and House administrations runs counter to those of the past that have followed more traditional models based on the consolidation of power in the hands of a few. While consolidation makes for greater efficiency in the legislative process (in that fewer members control the course of action) it comes at the cost of fairness since efficiency and fairness are inversely proportionate in the legislative process. As you have more of one, you have less of the other.

Thus there is a certain paradox at work as Republicans have taken hold of the Florida Legislature: They were elected in greater numbers because they represented a change, but may, as a result of their power-sharing, have slowed the pace of the legislative process such that they may actually find it more difficult to enact the substantive changes they need to accomplish their goals.

As veterans of the legislative process, Toni Jennings and Daniel Webster are, no doubt, keenly aware of this phenomenon, which will prompt them to balance their expressed intentions of a more open process with the practical problems of passing bills. After all, what good does it do you to attain the majority if you no longer have the power to implement your plans?

Over the next two years, legislators, lobbyists, and the electorate will be watching the work of Jennings and Webster to determine the full extent of their impact on the Florida Legislature. As they try to fulfill policy objectives, they will be tempted to return to the ways of the past in order to pass a bill, please a constituent, or satisfy a public relations need.

The entreaties for a return to the old ways will come from Republicans and Democrats alike. For legislators who have measured their success by the number of bills they have managed to get passed, a new score card may be in order. To be sure, legislators of all political persuasions who find the slower-paced, more deliberative process too labor-intensive will likely complain privately, if not publicly.

With the approach of the 1998 elections and the gubernatorial campaign, attacks on the operation of the House and Senate will likely intensify as Democrats work hard to retain leadership in the executive branch and gain back some of what they have lost in the Legislature.

As trailblazers in the business of reconfiguring the House and Senate, Webster and Jennings cannot yet gauge the level of support or opposition they will encounter as they work to make the Legislature more open and accessible. What they do know is that they are just beginning the test. ■

What Lies Ahead

by Jodi L. Chase,

Executive

Vice President &

General Counsel

Every legislative session is unique. The pace is different. Priorities are changed. So what will be the timbre of the 1997 Session?

Much will be new. For the first time in more than 100 years, Republicans are in control of the House and Senate. The House committee structure is completely new as are the House rules. Structural changes, however, are superficial. The most striking difference is the sense of unity of purpose.

At the beginning of each session, the Senate president and House speaker set the priorities and their respective chambers follow that lead. The 1997 president and speaker both have set economic development and job creation as their top priorities.

Passage of state and federal welfare reform is pressuring government to foster the conditions that are necessary for the creation of jobs. Approximately 100,000 welfare recipients will move from welfare to work in Florida. Unfortunately, jobs are not created in response to political necessity. Rather, jobs are created when the economy favors growth. Creating the right economic climate is difficult. Although government does not hold the keys to the economy, its actions can have a salutary or a weakening effect. Thus, job creation will not happen without the sincere commitment of government leaders.

Consider the story of Atlantic Marine outlined in the Aug./Sept. 1993 edition *of Employer Advocate*. Atlantic Marine, a Jacksonville shipbuilding and repair operation, was a profitable company poised for expansion. It was ready to grow and add jobs, but company officials spent years mired in the muck of environmental permitting. As a result, the company could not grow in Florida. Atlantic Marine was forced to take its jobs elsewhere. A commitment to create jobs should include a commitment to speed up the denial or assistance of permits.

Consider our universities, both public and private. Florida certainly has some premier academic institutions. If properly positioned, they could attract outside capital and create private sector jobs by partnering with major worldwide companies to conduct research and development. Due to Florida law, however, any partnership activity is taxable to the corporation contracting for research.

Potential is strangled as companies opt out of partnering with Florida institutions. Universities are stymied in their quest to become major research centers. In turn, Florida is not a magnet for research, and high-paying research jobs are shipped off to other states. A commitment to job creation should include a commitment to removing taxes on partnerships between universities and companies.

Consider the secret amendments to the Medicaid third-party liability law and Florida's attack on cigarette makers. Gov. Lawton Chiles and Attorney General Bob Butterworth admit to plotting to circumvent the normal process of public debate in order to secretly enact a law removing legal defenses for any company. They claim they only want to make cigarette companies defenseless, but the Florida Supreme Court points out that their net traps every company. Even if they did manage to limit their attack to cigarette makers, they send the message that if the leaders of Florida government don't approve of your business, they will take away rights and make a fair fight impossible. A commitment to job creation should include a commitment to changing that message by repealing the secret amendments.

Consider the Florida Department of Revenue, which unilaterally announced it would begin to tax access to the Internet, instantly slamming the door to the location of high-tech employers in Florida. A commitment to job creation should include a commitment on behalf of the Legislature and governor to give the Department of Revenue a clear "no way" on Internet taxes.

1997 Legislative PREVIEW

Consider the hundreds of small business owners who do not make hiring decisions each year because they are afraid of lawsuits. Or the story of a Florida bowling alley that was forced by a trial lawyer to pay a bowler $10,000 because she slipped while wearing bowling shoes. A commitment to job creation should include a commitment to civil justice reform.

Contrast Florida to states, such as Indiana and North Carolina, that are successful at creating high-paying jobs. Those states have governments willing to hear the concerns of employers and change laws to accommodate those con-cerns.

Job creation and economic development are not simple tasks. This year, a commitment to that effort is coming from leadership on both sides of the aisles in both chambers. We have heard that commitment in the past and have been disappointed. This year we are hopeful because this year something is different. The level and depth of commitment is greater than it has been in recent memory.

In the House, eight committees with jurisdiction over commerce have replaced the previous single committee. In fact, 17 committees in the House will address issues that directly impact business. Add the education committees to that and the House will assign 22 committees to issues important to business.

The Senate shows the same commitment. Shortly after the elections, Senate President Toni Jennings (R-Orlando) held a planning retreat with all senators. They spoke about their personal legislative priorities and those of the Senate as a whole. Every senator included an issue important to business.

The desire to boost the economic growth is evident. Ideas are abundant. The next two years offer business a rare opportunity to participate in the legislative process to make our state a better place for employers, employees, and consumers. Only time will tell if the ideas and commitment can be joined to create true change. ■

Unfortunately, jobs are not created in response to political necessity. Rather, jobs are created when the economy favors growth.

The Beginning Of Reform

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

"The liability revolution may have been based on pro-plaintiff principles, but in practice it is merely pro-litigation. Will we choose to continue sustaining an unsustainable system for the benefit of a few citizens who happen to practice personal injury law? That is a public policy question AIF intends to ask the Florida Legislature to answer in the upcoming session."

The *Seduction of Justice*, published in the Jan./Feb. 1997 issue of this magazine, ended with the question I begin with here.

As it is in this case, sometimes the end is merely a signal of the beginning. And so the long effort to recreate an evenhanded civil justice system now begins.

The opening gavel of the 1997 Legislative Session will bang on March 4. Civil justice reform will be an issue. It might not be the immediate topic of hearings or numerous bills, but it will be a major issue.

In recent legislative history, all major pieces of reform legislation proposed by AIF became law, but not a single one became law in one legislative session.

The Administrative Procedures Act was completely overhauled in 1996. It was a four-year odyssey that ended with comprehensive reforms to the process of litigation between citizens and the state.

The Bert J. Harris, Jr., Private Property Rights Protection Act was another major reform. It also evolved through years of debate and discussion.

Efforts to reform the workers' compensation system have never been achieved in a single year.

The list goes on and you can be sure that it will include tort reform.

The legislative process works best when members of the Legislature first reach consensus on a goal and then craft legislation in conformity to that goal. A majority of the members of the Legislature want to reform the civil justice system. However, the Legislature is unsure of precisely what reforming the civil justice system should entail. As soon as the Legislature can reach consensus on how comprehensive this effort should be, it can begin to enact the reform legislation. If the Legislature can decide on the parameters of reform quickly it can begin passing legislation quickly.

AIF staff and members of the TRUE (Tort Reform United Effort) coalition have been working since the summer of 1996 to develop consensus for change from within the business community. Numerous meetings and brainstorming sessions have been held. A research team spent hundreds of hours combing the laws of other states and the minds of experts for ideas. Legal teams from large companies and small municipalities engaged in self-examination to identify problems and solutions. Model legislation was drafted and redrafted.

AIF and the TRUE coalition have identified four major areas in need of reform: attorney fees; damages; substantive law; and alternative dispute resolution. But the process is not over. Now we move to the next step. Now we engage the members of the Legislature.

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The Legislature will be on a sort of fact-finding mission early in the session. Legislative committees will engage in a process much like the one employed by the TRUE coalition. As part of this process, the Legislature will need to learn how the civil justice system affects employers.

AIF staff will provide the Legislature with all sorts of information, from statistics, to results of studies, to opinions of scholars and experts. That is not enough. Members of the Legislature need to hear how employers living in their districts feel about the system. Ultimately it will be your suggestions that will pass into law.

If you have an opinion about the civil justice system, please give your local legislator the benefit of your opinion. You can learn who your legislator is and how to contact him from AIF. Or, you can provide your opinion to AIF staff and we will pass it on. Simply e-mail the legislative department at jchase@aif.com, call us at (904) 224-7173, or write us at P.O. Box 784, Tallahassee, FL 32302.

Major reform is never easy. Meaningful reform of a system as firmly entrenched as the civil justice system will be very difficult. It will also be a long process.

To paraphrase Yogi Berra, it doesn't begin until it begins. And the catalysts for beginning tort reform are you, Florida's employers and business owners. ■

BUSINESS CLIM

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

1997 Legislative PREVIEW

The business climate in Florida stands a good chance for drastic improvement if the Florida Senate and House of Representatives continue on the course set during interim committee meetings prior to the start of the session.

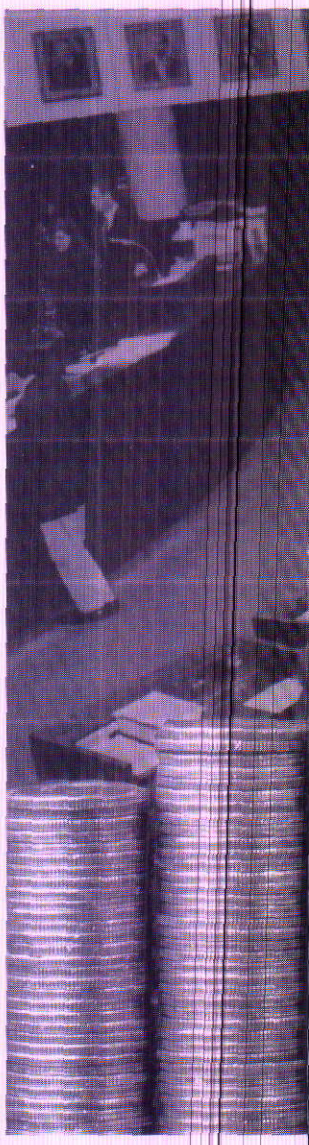
The Finance and Tax Subcommittee of the Senate Ways and Means Committee held hearings in Tallahassee to allow various organizations and industry representatives to discuss their particular impressions or concerns with the current tax policy and tax administration. Some of the speakers were more specific than others, but most of the testimony indicated some adjustment of the statutes or administrative rules would be in order to solve identified problems.

During the meeting, it became apparent that the senators in attendance agreed that the Florida Legislature must maintain a stable tax climate to stimulate future economic growth. Florida's checkered history in its tax policy over the last 15 years has given the state a poor reputation among members of the national business community.

We are still trying to overcome our flirtation with the unitary corporate tax and our ill-fated experiment with a sales tax on services. Our latest faux pas was seriously considering the taxation of computer technology, a proposal that actually passed the House of Representatives. All of these have put Florida low on the list when companies consider future business expansion.

Given this history, it is indeed welcome news to hear that our legislators realize that Florida cannot tinker with its tax policy in a "willy-nilly" fashion. Any change in policy must be thoroughly discussed and fully debated before being thrust upon the taxpayers of the state. We have seen the governor's office become more involved in the facilitation of the discussion and debate through the creation of several citizen/legislative advisory councils to deal with very complicated issues related to the taxation of Internet access services, taxation of telecommunication services in general, and ad valorem tax issues.

All of this discussion, debate, and disclosure makes the process more open and deliberative when considering the proper tax policy to adopt for our state, and will go a long way toward erasing our undesirable reputation of having an unstable tax climate.



The new climate will concentrate on being business-friendly and will concentrate on how we can target new industry and new job formation. From the tax side of the equation, it appears that those taxes that may be a deterrent to attracting businesses to the state will be examined and modified or repealed, if necessary, to make the tax less of a deterrent for the business community.

Also, new tax exemption proposals will be evaluated differently. Currently, tax exemptions are evaluated on the basis of lost revenue to the state even if the exemption involves taxes on activities that are currently not undertaken in the state. For example, AIF is proposing a tax exemption for sponsored research, something that is not conducted in our state because of disincentives in the tax code. In the past, revenue estimators would consider this exemption a revenue loss even though there is no

ATE IMPROVING

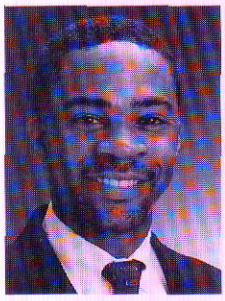
Taxes that may be a deterrent to attracting businesses to the state will be examined and modified or repealed, if necessary, to make the tax less of a deterrent for the business community.

revenue gained from it now. Under the new evaluation procedures, this will not be considered a loss in revenue.

This new approach will allow the state to offer incentives to industries that are not currently operating in Florida to come and conduct business here. This, in turn, will expand our economy through new job creation without causing any real revenue loss. We will just not be collecting something we were not collecting anyway.

Through coordinated efforts of the business community, the Legislature, and Enterprise Florida, many new ideas and efforts will surface to enhance the overall business and tax climate here. Sunny days are ahead for businesses in the Sunshine State. ■

Lower Taxes on The Horizon



by Kevin R. Neal, Assistant Vice President, Governmental Affairs

Unemployment taxes appear to be headed downward under a tax cut proposal first announced this summer by the Foundation for Florida's Future. The Miami-based foundation, headed by former gubernatorial candidate Jeb Bush, is calling on lawmakers to give businesses a break by reducing the state taxes they pay to support unemployed workers.

The one-year tax cut proposal is estimated to save employers $150 million. Based on early reaction to the proposal, it appears likely to pass. The proposal has already drawn bipartisan support in both chambers of the Legislature with Sens. John McKay (R-Bradenton) and Charles Williams (D-Live Oak) and Reps. Bob Starks (R-Casselberry), David Bitner (R-Port Charlotte), and Fred Lippman (D-Hollywood) agreeing to sponsor legislation.

Florida employers pay state unemployment taxes on the first $7,000 of wages paid to each employee. New employers pay taxes at an initial rate of 2.7 percent for a maximum of $189 per employee. Once a business is in existence for at least two years, a variable tax rate is computed on an annual basis and is based, in part, on the amount of unemployment benefits collected by former employees. An experience-rated employer's tax rate may vary from a minimum of 0.1 percent ($7 per employee) up to a maximum of 5.4 percent ($378 per employee).

The tax cut proposal and the benefits increase are expected to have a combined fiscal impact of $200 million.

The latest draft of the proposal would lower the initial tax rate for new employers from 2.7 percent to 2.0 percent, impose a one-year moratorium for employers currently at the minimum tax rate of 0.1 percent, and cut taxes by 25 percent for everyone in between — except for those employers who have been at the maximum rate for the previous three years. Excluding the latter employers is necessary to avoid losing federal credits under the Federal Unemployment Tax Act (FUTA).

The estimated $150 million savings that will result from implementing the one-year tax cut plan may prove helpful in the state's effort to stimulate private sector job growth. With newly enacted welfare reform laws at both the federal and state level, the countdown has begun for scores of welfare recipients to find jobs. Efforts, such as the tax cut proposal, that pump money back into the economy may motivate employers to expand their personnel.

The foundation's proposal not only benefits employers, but workers as well. The proposal provides for a $25 increase in the maximum weekly benefit amount paid to eligible unemployed claimants. The current maximum weekly benefits that may be drawn by unemployed workers is $250, which was last increased in 1992.

Unemployment taxes paid by Florida employers are held in a trust fund controlled by the federal government. The trust fund balances from all the states are used to offset the federal deficit, making it appear less than it actually is. The trust fund is used solely to pay benefits to those eligible to receive unemployment benefits. Florida's trust fund balance is approximately $2 billion.

The tax cut proposal and the benefits increase are expected to have a combined fiscal impact of $200 million. While no one can say with certainty what the long-term effects of the $200 million hit on the trust fund will mean, the short-term effects should be negligible provided the economy remains healthy. ■

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Education Poised to Take Center Stage

by Diane Wagner Carr, Vice President & Assistant General Counsel

Education is shaping up as a top priority of both Senate President Toni Jennings (R-Orlando) and House Speaker Dan Webster (R-Ocoee). Commissioner of Education Frank Brogan hopes to capitalize on this synchronization and has asked the Legislature to increase education funding for fiscal year 1997-98 to a level of $11.1 billion dollars, an increase of $635 million over what he requested in 1996.

A myriad of education proposals abound this year. They include shrinking the size of school districts in order to increase parental involvement and to decrease the unwieldy nature of district administration since districts are as large as the counties they serve. Another proposal would allow the issuance of school vouchers to parents of school-age children so that they could use the money to pay for education at any facility — public or private — that they felt best suited the needs of their children.

At AIF, we plan to pick up where we left off last year. AIF has become increasingly concerned about reports from business leaders that high school graduates joining the work force lack the necessary basic reading, writing, and math skills to perform entry-level jobs. Consequently, AIF got behind the charter school concept as a means of injecting greater regulatory freedom and accountability into the school system.

Although the charter school bill was enacted just last year, six charter schools are already up and running and many more charter school applications are pending approval with school boards around the state. AIF hopes to build on the charter school concept by working with education leaders and lawmakers to pass legislation to take care of some glitches in the 1996 charter school bill, especially those that work to hold up the approval process of proposed school charters.

In 1997, AIF is determined to continue its work to enact legislation to improve Florida's schools for the sake of the students and families dependent upon them for an education, as well as for the sake of fostering economic development, which is inextricably bound up with the availability of an educated work force. Of particular interest is a proposal that would raise the grade point average required for high school graduation from 1.5 to 2.0.

Such a provision was included in a bill developed by the House Education Committee in 1996. The Legislature enacted the bill after it was amended to include a school prayer provision. Gov. Lawton Chiles vetoed the bill because he objected to the provision. The many supporters of the bill plan to rally forces for its passage again this year. AIF will be among them, working hard to ensure that Florida's students and Florida's business community continue to work together for the mutual benefit of all. ■

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Welfare-to-Work: Realistic or Rhetoric?

by Jonathan K. Hage, President, Integrated Strategies Group

Last year's enactment of welfare reform was a resounding disavowal of the failed policies of the War on Poverty. Changing the law was but a first step, and the success of the reform effort depends less on the words in the law books than it does on a vital boost in private sector job creation.

The questions the business community should be asking now are: Where are the jobs coming from and how do we incorporate a mostly unskilled work force?

The sad reality is that we have at least a generation — and often several generations — of unemployed and underemployed labor with little or no job skills to apply to an ever-increasing demand for high-tech skills. The forces of global competition, high immigration, and free trade have created an economy where low-skill jobs are increasingly filled by low-wage laborers, domestic and foreign. Even those welfare recipients willing to compete for low-wage, low-skilled jobs are finding the market is saturated and their opportunity for earning a living wage — and thus avoiding future welfare dependence — is slim.

The problem is that the clock is ticking. On Oct. 1, 1996, the two-year time limit on welfare benefits began. Local districts charged in Florida with implementing the new WAGES (Work And Gain Economic Self-sufficiency) law have yet to put in place a public-assistance-to-private-work road map. WAGES is entrusted with moving able-bodied welfare recipients into the private sector, with help from the Florida Department of Labor and Employment Security and local work-force-development boards. The concept is to streamline services into one-stop centers, target able-bodied recipients, and train them for jobs in the private sector (and, to a lesser extent, the public sector).

Local administrators say Tallahassee has yet to give any direction as to how to undertake this enormous task. Meanwhile, we grow closer to the day when thousands in Florida will be off public assistance and either on a payroll or on the streets. These former recipients must find income from somewhere, either legitimate or not. The need for a strong public/private work-force-development plan is more critical than ever.

Private industry is the one factor being left out of this equation. Most local districts have not brought the business community to the table even to discuss the details of welfare reform or to incorporate their suggestions about how to train and employ welfare recipients. According to one state official, "We don't know what to tell them because we don't know what we're doing yet." There is talk of greater incentives to provide stimuli for private business to take on former welfare recipients. Eventually though, business only succeeds with a skilled work force. So, where will the jobs come from?

The newly elected Republican-controlled Legislature in Florida is preparing to put its fingerprint on this problem. Though plans are still under development, the objective is clear: stimulate the economy and focus on training.

Funding for such programs will certainly be debated, while proven methods of work force development are tenuous at best. In states that have more experience with welfare reform, like Wisconsin or Virginia, there is leadership by the governor with support of private business underpinning their efforts.

In Florida, Gov. Lawton Chiles fought against many of the federal reforms we now must grapple with. Some business leaders fear that politics will replace true efforts for reform, with the intent being to undermine reform and pin the failure on the political majority that brought it to bear.

Regardless of the political

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battle lying ahead, the reality is that private business is being told it must prepare to incorporate thousands of welfare recipients without a clear understanding of who pays, who trains, who hires, and for what. There is some good news, however.

During the first month WAGES was in effect, welfare caseloads dropped by 8 percent. In addition, analysts agree that there will be many teachable and somewhat educated workers coming off of the welfare roles. Half of the recipients, for instance, have a high school diploma. This, unfortunately, does not guarantee competence, but it is a start.

To meet the diverse demands of such a population, experts suggest a triage system where limited resources are invested in those with the best chance of succeeding. Training must begin immediately and continue during any employment. The real-world application of such training is imperative, thus placing emphasis on the private sector to provide this training. Public investment in real-world training has had positive results in other states and should be encouraged in Florida. Ultimately, the strongest indicator of a productive worker is personal development (i.e., interpersonal skills, hygiene, attitude). Only the discipline of a job can provide these.

The challenge is not only to get current welfare recipients back to work, but to keep new ones off the roles. "The first-chance system must work," says Mike Switzer, vice president for programs at the Jobs and Education Partnership, a division of Enterprise Florida. That first chance comes while future workers are still in school.

Education must again become the priority, keeping potential recipients in the work force and off public assistance. Education Commissioner Frank Brogan has set the stage by introducing higher standards and creative solutions to our beleaguered public education system. The business community's continued support of such reforms is necessary in order to avoid more expensive training or aid later.

Ultimately, our economy will find a place for welfare recipients if they are the best employees for the job. This means overcoming a mindset of entitlement and dependency. It means reasserting that work pays, ownership works, and handouts do not. The incentive for work must be greater than the incentive for failure.

The welfare reform law has given us a chance to prove this. If we don't begin addressing welfare-to-work now, we'll be sitting here 10 years from now with a crisis much larger than before, but with our chance for reform spent. ■

Editor's Note: Hage serves on the economic services committee of the Broward County WAGES Board.

It means reasserting that work pays, ownership works, and handouts do not. The incentive for work must be greater than the incentive for failure.

FLORIDA: Y

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Associated Industries Insurance Company, Inc. (AIIC), a fully capitalized non-assessable insurance company, worked very hard with our actuaries and insurance professionals to design a plan for you and your clients.

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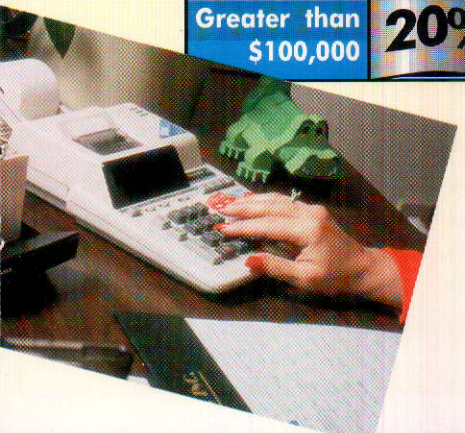
ou Asked For It!

Jumbo Retro Rating Plan

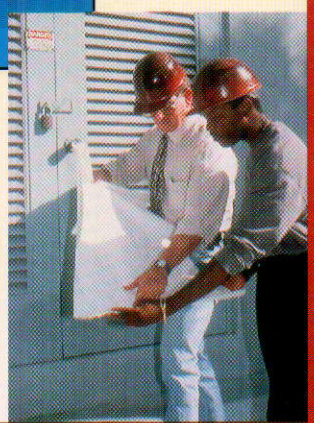
Return Premium Table

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.

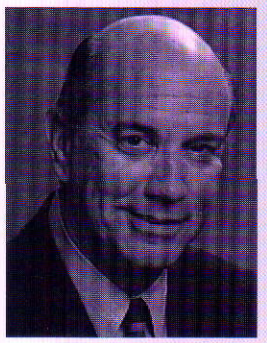


The retro return percentage shown in the table are for premium sizes and loss ratios at the mid-point of the range. Actual retro returns will be calculated by interpolation using both actual premium and loss as weights. The Jumbo Retro Plan provides a policyholder with an opportunity to earn a return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



nsurance Company, Inc.

AIF STAFF LOBBYISTS



Jon L. Shebel

President & CEO of Associated Industries of Florida and affiliated corporations ... more than 26 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.

Executive 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.

Kevin R. Neal

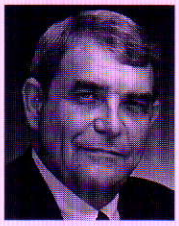
Assistant vice president of governmental affairs ... formerly with the Florida House of Representatives and the Agency for Health Care Administration ... B.S., Florida A&M University and law degree from Florida State University.

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

Lance Ringhaver
President,
Ringhaver Equipment Company

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.

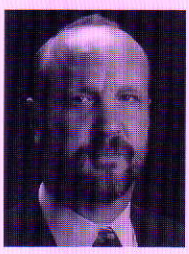
ENVIRONMENTAL LAW

Martha Edenfield, Esq.— Partner in Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A. ... areas of expertise include environmental and administrative law ... more than 10 years of lobbying experience before the Legislature and other branches of government ... graduate of Florida State University and Florida State University College of Law.

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 ... more than 23 years of legislative and lobbying expertise before the Legislature and other branches of government with an emphasis on workers' compensation ... graduate of Florida State University and Antioch Law School.

INSURANCE AND WORKERS' COMP.



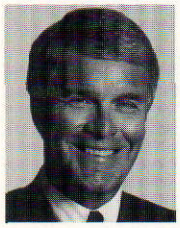
Ron Book, Esq.—Principal shareholder of Ronald L. Book, P.A. ... formerly special counsel in cabinet and legislative affairs for Bob Graham ... areas of expertise include legislative and governmental affairs with an emphasis on sports, health care, appropriations, insurance and taxation ... graduate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

Keyna Cory—President, Public Affairs Consultants, a public affairs and governmental relations consulting firm representing a variety of clients, from small entrepreneurs to Fortune 500 companies, before the Florida Legislature for more than 12 years ... majored in political science at the University of Florida.

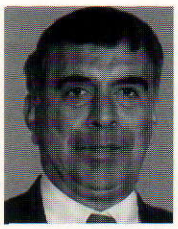
OBBYING TEAM

GENERAL LEGISLATION

Samual J. Ard, Esq.—Member of the law firm of Oertel, Hoffman, Fernandez & Cole, P.A. ... more than 10 years of lobbying experience ... formerly director of government affairs for St. Joe Paper Company and Florida East Coast Industries ... undergraduate and legal degrees from Florida State University.



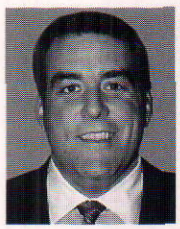
Ralph Haben Jr., Esq.—Partner in the law firm of Haben & Richmond, P.A. ... former speaker of the Florida House of Representatives (1981-1982) ... as a member of the House from 1972 to 1982, served on every major committee and received numerous awards in recognition of his legislative accomplishments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



Oscar Juarez—President of Juarez Associates...more than 19 years of experience representing clients before federal, state, and local governments ... formerly served as special assistant to President Gerald Ford and as chief of staff to Congressman Lou Frey ... graduate of Stetson University.

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

Dale Patchett—President of R. Dale Patchett Legislative Agency Consulting ... former Republican leader of the Florida House of Representatives (1984-1990) ... more than 20 years of governmental experience, including the House (14 years), executive branch (three years), and Department of Agriculture & Consumer Services (three years) ... also experienced in small business ... B.S. in forestry from Southern Illinois University.



Jim Rathbun—Governmental affairs consultant for Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. ... represents individuals and entities before the Legislature, state agencies, and the governor and Cabinet ... formerly worked with the Florida House of Representatives (1980-1984), served as staff director of the House Republican Office (1985-1989), and has extensive campaign and fundraising coordination experience ... B.S. from Florida State University.

Damon Smith—Partner in the public and governmental relations firm of Mirabella, Smith & McKinnon ... more than 12 years of legislative lobbying experience ... B.S. in journalism from the University of Florida.

1997 AIF 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 will be involved with during the 1997 Legislative Session.

LITIGATION REFORM

- Promote comprehensive reforms of the civil justice system
- Repeal Florida's "no defense for business law"

JOB CREATION

- Encourage growth in research and development by giving it favorable tax treatment
- Provide for a better educated work force by requiring that high school students obtain a C average to graduate

TAXATION

- Make it easier for taxpayers to challenge their ad valorem tax assessments
- Oppose taxation of computer/ communications technology
- Support tax exemptions for airplanes and parts
- Oppose partial year ad valorem tax assessments

LABOR RELATIONS

- Support a temporary unemployment compensation tax rate reduction that does not adversely affect the Unemployment Compensation Trust Fund
- Oppose the creation of a state minimum wage
- Fine tune the workers' compensation law in order to keep premiums low

HEALTH CARE

- Preserve Florida's managed care networks

We Speak Business

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King

DEMOCRATIC LEADER-
Ritchie

MAJORITY COUNCIL LIAISON-
Feeney

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Chair-Littlefield
(Group 1)

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C-Lacasa; VC-Brennan

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C-Albright; VC-Peaden

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C-Jones; VC-Dawson-White

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Chair-Wise
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Dept./Agency: *Education; Board of Trustees of Community Colleges; Postsecondary Education Planning Council*

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C-Melvin; VC-Arnold

Dept./Agency: *Education; School Boards; School for the Deaf/ Blind; Laboratory Schools; State University System; Board of Regents; Board of Trustees of Community Colleges; Postsecondary Education Planning Council*

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C-Safley; VC-Lawson

Dept./Agency: *Banking & Finance*

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Dept./Agency: *Business & Pro. Reg.*

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UCTURE

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Dept./Agency: *Juvenile Justice; Children & Family Services*

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Dept./Agency: *Law Enforcement; Criminal Justice Standards & Training Comm.; Attorney General; Office of the Statewide Prosecutor; State Courts Administrator; State Attorneys; Public Defenders; Clerks of Circuit Courts; Sheriffs; Police Chiefs*

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Dept./Agency: *Environmental Protection; Game & Fresh Water Fish Commission; Marine Fisheries Comm.; Water Management Districts*

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Dept./Agency: Education; Community Colleges; University System

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(Group 7)

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VC-Saunders 1998

JOINT ADMINISTRATIVE PROCEDURES

C-Burroughs 1998
VC-Burroughs 1997

JOINT LEGISLATIVE AUDITING

C-Rodriquez-Chomat 1998
VC-Rodriquez-Chomat 1997

JOINT INFORMATION TECHNOLOGY RESOURCE

C-Culp 1998
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JOINT LEGISLATIVE MANAGEMENT

C-Livingston 1997
VC-Livingston 1998

REAPPORTIONMENT

C-Feeney

RULES, RESOLUTIONS & ETHICS

CO-Thrasher
CO-Crady

Taking Action to Avoid Future Crises

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

1997 Legislative PREVIEW

When the 1997 Session begins, you can expect that, once again, workers' compensation will come to the forefront.

Gov. Lawton Chiles has publicly stated that the 1994 revisions to the workers' compensation law have not been in force long enough to justify major legislative revisions. Nevertheless, while no crisis presently exists, certain issues that arose during the past year require legislative attention.

Attorneys' Fees

One of the most significant issues regarding claimants' attorneys' fees developed under the 1993 rewrite of the Florida workers' compensation law. Currently, claimants' attorneys' fees are calculated by an hourly rate with no maximum cap. The fees in some cases (usually the ones resolved at settlement) are based on a statutory formula that defines the percentage of the contingency fee based on the amount of the award.

Initial reports in Florida indicate that claimants' attorneys are often receiving more money in fees than the claimants are receiving in indemnity benefits. Overall figures demonstrate that attorneys, especially those in South Florida, are receiving up to $350 an hour. It is not unusual for a claimant's attorney to put 100 hours into a case and to receive a $30,000 fee when the injured employee receives only $10,000. If the claimant's attorney only had 50 hours in the case and received $250 an hour, the fee would be $12,500, an amount still greater than the benefits he won for his client.

These cases have become the norm rather than the exception, resulting in higher-than-necessary workers' compensation premiums paid by employers. Other parts of the state have now joined the $300-an-hour-or-more club.

It has been argued in the past that to prohibit the hourly rate for attorneys' fees and only allow contingent fees would result in the inability of some employees able to hire an attorney. That argument is moot today since that the employee assistance office can assist claimants in getting benefits and in preparing petitions, if they are unrepresented. Prior to 1994, such assistance did not exist.

Clearly, the workers' compensation system is intended to help injured workers; however, it has indirectly resulted in a windfall for claimants' attorneys.

Threats of Insolvency

Another problem that has recently come to light is the insolvency of several workers' compensation self-insurance funds. In 1993, the Florida Legislature implemented a system that would reduce the harm suffered by injured workers should their employers' insurance carrier become insolvent.

The mechanism set in place provides for the costs of these benefits to be spread among all the solvent self-insurance funds, and a maximum cap was implemented to moderate the effect of insolvency on otherwise solvent carriers. It is now becoming apparent that this guaranty mechanism is significantly overtaxed and may not be sufficient to pay benefits *(see related article on page 29)*.

Interestingly, the insolvency mechanism does not allow for the payment of attorneys' fees. We have witnessed attorneys simply abandoning injured workers in the middle of their cases.

Other attorneys are attempting to sue the employer directly. At least one judge of compensation claims in West Palm Beach has allowed a lawsuit to go forward against an employer even though that employer satisfied statutory requirements by purchasing workers' compensation coverage. It was through no fault of the employer that his insurer was declared insolvent.

Presently, there are approximately 600 employees who have

no coverage because their employers were insured by funds that have become insolvent. These employees are receiving absolutely no benefits because the guaranty association only covers claims that occur on or after Jan. 1, 1994.

Associated Industries fought hard to get this protection for injured workers. Claimants' attorneys, who allegedly support legislation helpful to injured workers, lent no assistance in this fight. One West Palm Beach attorney recently revealed that she "didn't even know about the issue or the problem until my client had no coverage."

A legislative remedy must be found to resolve this serious problem. Injured workers should not be denied benefits when their employers' carrier becomes insolvent. Insurance Commissioner Bill Nelson must step forward and take the lead to resolve this crisis. The governor must also lend his office's resources to urge assistance for these uncovered injured workers.

If the crisis is not resolved, not only will these workers suffer, but other employees will also suffer when additional self-insurance funds are declared insolvent. Also, employers of this state are the ones who will have to step forward and pay higher premiums to make sure these employees and others are covered. The insurance commissioner must ensure that carriers and self-insurance funds are *and* remain solvent. Associated Industries called on leaders in November of 1996 to call a special session to find a legislative solution to assist these injured workers. So far, AIF has been a lone voice on this issue.

All this news of insolvency leads naturally into a discussion of the Special Disability Trust Fund, which, over time, has become a very expensive tool to reimburse (theoretically at least) employers for the hiring of a person with an existing permanent impairment. It is estimated that there is currently $4.7 billion dollars in liability incurred by the fund. Florida currently has an annual 4.52 percent assessment against workers' compensation premiums intended to repay the Special Disability Trust Fund. According to current estimates, it will take approximately 30 years to pay off today's unfunded liability — *if the fund stopped taking new claims today.*

Those who do recover from the Special Disability Trust Fund wait years to receive their reimbursements. While it is in theory an excellent scheme, the Special Disability Trust Fund simply does not work. It has become too costly for the employers of this state.

Additionally, some workers' compensation insurers are including tens of millions of dollars in expected recoveries from the Special Disability Trust Fund as assets on their balance sheets. This is true even though it is unknown when or even if such payments to the insurer will be made. The result is a skewed picture of the financial stability of these workers' compensation insurers.

In light of the recent rash of self-insured funds declaring insolvency in the Florida workers' compensation market, it is imperative that the solvency of an insurer be accurately measured so that corrective steps can be taken before a crisis develops. This is another area that the insurance commissioner must take the lead in resolving.

Benefit Disputes

Currently, Florida law does not require the employee to notify the employer or the carrier when a request for assistance is filed with the employee assistance office. Florida law requires that the request for assistance be submitted at least 30 days prior to the filing of a petition for benefits. The volume of requests, however, has created a backlog in the processing of requests for assistance and the Division Workers' Compensation is often unable to provide timely notice to the employer/carrier.

The purpose of the 30-day period between the filing of a request for assistance and the filing of a petition for benefits was to curtail litigation by allowing carriers and employers to work out their differences with injured workers informally. However, the current system effectively eliminates that objective.

The first time that many employers or their insurance carriers find out about the request for assistance is when a petition is filed. Attorney's fees automatically attach if the employee's attorney is successful in

A legislative remedy must be found to resolve this serious problem. Injured workers should not be denied benefits when their employers' carrier becomes insolvent.

getting any benefits under that petition, further driving up the costs of workers' compensation insurance.

Another problem that has become apparent is in determining that an injured worker is permanently and totally disabled. In 1993, the Legislature implemented strict criteria to eliminate the inflated numbers of technical permanent total disability cases in Florida. Research demonstrated that Florida had the highest percentage of permanent total cases in the nation.

This problem has not been resolved due, in large part, to the adoption in 1993 of Social Security criteria for determining permanent total disability. In other words, the statute states that if an employee qualifies for Social Security disability, he is entitled to permanent total disability. Some judges of compensation claims have read that language to mean that even if the person has not filed for Social Security disability, or is on Social Security disability for reasons other than the workers' compensation injury, the fact that they may qualify or have qualified to receive Social Security disability income benefits is sufficient by itself to declare the worker permanently and totally disabled. Other judges of compensation claims have refused to adopt such a tortured reading of the statute.

Legislators must ensure that the basis for permanent total disability benefits is the employee's compensable injury and not other medical problems unrelated to that injury.

The granting or denying of Social Security disability could reasonably be considered by a judge in determining whether the compensable injury is a catastrophic injury, and therefore a permanent total disability, but it should be only one of several factors in that decision. The Legislature must ensure that the basis for permanent total disability benefits is the employee's compensable injury and not other medical problems unrelated to that injury.

Another problem that has come to light since 1994 is the shortage of workers' compensation mediators. Currently, Florida law mandates that a mediation conference be held within 21 days after a petition for benefits is filed. On average, and especially in South Florida, it is taking anywhere between six to eight months just to schedule the conference.

Many attorneys admit that mediation does work and helps bring early resolution to cases. During the time spent waiting for mediation, however, claimants' attorneys' fees continue to accumulate. Clearly, the sooner a workers' compensation case is resolved, the lower the associated expenses. Additional mediators, especially in South Florida, would benefit all who are involved in workers' compensation cases.

While these are not all the issues that will likely be addressed by the Florida Legislature, they are ones that AIF intends to raise with your elected officials. Clearly, all these systemic stresses, if not addressed, will result in increased workers' compensation premiums for Florida employers. AIF is committed to doing its part to correct these inequities, lower the costs of workers' compensation insurance, and see that injured workers are given a fair chance for rehabilitation and continued employment.

We agree that the statute should not be totally rewritten. Nevertheless, the Legislature has a responsibility, on a yearly basis, to address problems that result during the year to ensure that crises such as those that occurred in 1979, 1990, and 1993 do not occur again.

Also contributing to this article was Alan Leifer of Stiles, Taylor & Metzler, P.A.

1997 Legislative PREVIEW

A Billion Here, A Billion There...

by Frank T. White,

AIIC Executive Vice

President & COO

It seems that whenever I put pen to paper (or fingers to keyboard) for this column, it is usually to advise you of impending storms in workers' compensation. This column, unfortunately, is no different since it contemplates an estimated $1 billion problem that Florida employers will ultimately have to solve.

The storm brewing on the horizon has been in the making for many years and relates to the lack of adequate solvency regulation of group self-insurance funds under the aegis of the Department of Labor and Employment Security (DLES). As the workers' compensation market soured in the 1970s and 1980s, the group self-insurance funds exploded in number and in covered employees. By the mid-1990s, group self-insurance funds had captured a majority of the workers' compensation market with over $1.7 billion in annual premiums.

While the group self-insurance funds were growing and functioning more and more like insurance companies, the solvency regulation of these funds did not keep pace. Remember, insurance companies only sell you a piece of paper promising to pay in the event of an accident. The regulator's job is to ensure that the insurance company can deliver on that promise; in the case of workers' compensation, that promise encompasses payments for many years into the future.

Solvency regulation of the group fund market under DLES was ineffectual at best due to limited statutory authority and staffing. As the problem grew, bureaucrats and legislators finally recognized that these entities were operating as insurance companies and, therefore, should be regulated as insurance companies by the Department of Insurance.

The switch was made in 1994; we are just now beginning to see the fallout. Two have already fallen: USEC for an estimated deficit of $37 million and FESA with one estimate of a deficit as high as $47 million. These two funds are relatively new on the scene (started in the early 1990s) and comparatively small. Informed sources say more funds, including much larger funds, are under close scrutiny and may collapse in the near future.

So how does this affect you, especially if you never purchased insurance from one of these entities? Theoretically, the former employers who purchased insurance through one of these funds are assessed additional premiums until the deficit is funded. In practice, however, it appears this mechanism will not be sufficient to fund the deficits, that it will be fraught with litigation, and that it will take years to resolve. In the meantime, injured workers who are counting upon that group self-insurance fund for their weekly benefits and medical treatment go unpaid and untreated.

The Legislature did attempt to put a safety net in place for workers injured after 1993, but it turns out that the safety net is made of nothing more than a few strands. Due to the current rapid shift from self-insurance funds to standard insurance companies — who do not participate in that safety net — there is a dwindling base that can be called upon to provided the necessary support for the safety net.

With no protection for workers injured before 1994, and an inadequate protection mechanism for those injured after 1994, it is a safe bet that this issue will be revisited by the Legislature. Ultimately, it will be the employers in this state, through higher workers' compensation premiums, that will bear the cost of funding the deficits of the failed funds that can't be covered by assessments against the past policyholders. It is estimated that the magnitude of these deficits will easily reach $1 billion and may go even higher.

While the Department of Insurance has been examining shaky self-insurance funds, action has been somewhat slow in coming. Even though swifter action would result in more insolvency, continuing to let insolvent companies operate only makes the deficits larger. AIF will be working closely with the Legislature to develop an equitable solution to this problem while ensuring that those responsible for creating it are not allowed to shrug off their obligations. ■

1997 Legislative PREVIEW

Brownfields: Joining Economic and Environmental Objectives

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

1997 Legislative PREVIEW

As the 1997 session begins, environmental issues are still very much in the forefront. There is, however, a newly strengthened emphasis on providing the private sector with meaningful economic incentives designed to achieve desired environmental results. This year, key decision-makers realize that strict environmental regulations often create disincentives to activities that are socially and economically desirable.

One of the most interesting examples of this is the brownfield issue. The term "brownfield" refers to abandoned or idle property that is contaminated or suspected of being contaminated by hazardous material released during its prior usage, and which is viable for redevelopment or reuse. Often brownfield sites are located in older, poorer parts of a town, and have been abandoned for decades.

Brownfield sites represent relatively low risk to the public health and do not include sites under federal or state regulatory enforcement actions, such as Superfund or consent orders. Nevertheless, brownfield cleanups are generally not economically feasible under current regulatory and legal standards.

State environmental regulations have historically created a disincentive for private cleanups of old industrial or contaminated sites. Laws sometimes imposed full responsibility for site cleanup on new owners, even when they had no involvement in contaminating the property. Prospective purchasers, developers, and end-users face unknown and unlimited risk due to the Superfund provision for strict, joint, several, and retroactive liability for contamination.

Since they face millions of dollars in cleanup costs, developers will not risk acquiring brownfields and lenders fear financing redevelopment of the sites. The advantage of developing an old, abandoned, industrial site — such as location and the availability of electricity, water, and sewer hookups — are completely negated by the risk of huge, unknown cleanup costs and liability. No wonder developers contribute to urban sprawl by choosing undeveloped properties (called greenfields) as alternatives to old industrial sites.

As a result of the negative incentives, cleanup of these properties just is not done. The properties remain unproductive and dirty embarrassments to communities.

Fortunately, policymakers are recognizing this punitive approach to environmental regulation and policy discourages private firms, lending institutions, and even public redevelopment authorities from getting involved in the reuse of old industrial sites. Instead, the Legislature will be working to create incentives to attract developers to brownfields.

Using this approach, legislators will be taking a comprehensive look at several issues. Meaningful incentives include setting standards for cleanup of these sites pursuant to risk-based corrective action (RBCA). Generic — and economically unfeasible — standards often are unnecessarily stringent given the nature and location of the property and how the land will be used in the future. Rather than assuming the highest level of cleanup is necessary, RBCA provides site-based standards for cleanup based on the characteristics of the specific property.

Liability issues must also be addressed comprehensively by legislation. Specifically, innocent purchasers and owners must be protected from liability. By demonstrating that he was not responsible for the contamination, an existing owner or prospective purchaser, devel-

oper, or end-user may be shielded through a statutory exemption. Liability protection for lenders must also be addressed in legislation.

Further incentives for cleanup and redevelopment of brownfields that may be addressed by legislation include permit fee reduction, streamlining of permitting, reduction of impact fees, and tax set-offs.

Sen. Jack Latvala (R-Palm Harbor), chairman of the Senate Natural Resources Committee, envisions brownfield legislation as a valuable tool for economic and job development in Florida. Latvala points out, "Many of Florida's cities have industrial buildings and land standing vacant as a result of contamination of years past. Brownfield legislation will allow us to clean up all or most of the contamination, put these properties in use and back on the tax rolls, and provide jobs in areas where they are needed the most."

The potential benefits of brownfield legislation are numerous:

- Jobs for inner-city residents
- Reduction in the number of unproductive and derelict properties
- Increased tax revenue to cities
- Reduced social and environmental risks to inner-city residents
- Environmental cleanup of contaminated properties to appropriate standards
- Conservation of open rural greenfields and reduction of urban sprawl
- Reduction of crime and urban decay
- Reduced pollution and transportation infrastructure costs
- Improved urban aesthetics
- Increased sustainable development

Through enacting brownfield legislation, the Florida Legislature has an opportunity to work in a positive manner with the business community to solve environmental problems. A successful brownfield program in Florida may lead to recognition by the regulatory and environmental community that, in many instances, meaningful incentives produce more desired positive results than punitive regulations do. This is a win-win situation for the economy, the public, and the environment — making Florida and our communities the real winners. ■

State environmental regulations have historically created a disincentive for private cleanups. No wonder developers contribute to urban sprawl by choosing undeveloped properties as alternatives to old industrial sites.

Election Law Reform: A Reprise of the Recent Past

by Diane Wagner Carr, Vice President & Assistant General Counsel

1997 Legislative PREVIEW

Election law reforms are shaping up as a significant topic. A comprehensive reform package will be sponsored by Secretary of State Sandra Mortham and will likely be accompanied by bills from the Senate Committee on Executive Business, Ethics & Elections; the House Committee on Election Reform; and Gov. Lawton Chiles. Each package will include ideas discussed in the past as well as new issues that came to the forefront in the recent election cycle.

AIF will once again concentrate on protecting the right to freedom of political expression, as well as opposing proposals that do little more than inject chaos into the political process. For example, AIF strongly opposed a proposal promoted by the secretary of state that would have allowed the use of the citizens' initiative process to amend statutes. Her proposal paralleled the process for direct amendment of the Florida Constitution, using a signature-gathering method in an exercise of direct democracy.

AIF's opposition was based on its belief that such a method of amending Florida law would have the effect of binding the hands of the state's elected officials and ensuring that issues would be decided by public relations instead of deliberation.

Simultaneously, AIF supported the idea of ratification of proposed amendments to the Florida Constitution by a supermajority of the electors who actually vote on amendments. Currently, constitutional amendments have only to be approved by a simple majority of voters before being incorporated in the constitution. AIF reasoned that the ease and frequency with which the Florida Constitution can be amended exacerbates what many feel is an unstable and unfriendly business environment. The supermajority requirement for amendments helps ensure that a greater number of voters have a voice in amending the contract between citizens and their government.

By far, the most controversial election issue in which AIF has been involved in recent years relates to telephone calls made during political campaigns. Bills sponsored during the 1995 and 1996 Legislative Sessions were overly broad attempts to regulate every possible kind of call associated with the political process. Although the bills differed in their approaches to regulating political calls, they all contained disclaimer requirements mandating that callers disclose the identities of the individuals and entities paying for the calls.

These unwieldy disclaimer requirements would have been difficult to enforce and would have resulted in unintended consequences. For example, the bills would have eliminated polling as an objective means of measuring public opinion and would have abridged an individual's right to anonymous dissent, which has long allowed Americans to express their displeasure with government officials without fear of reprisal.

During the 1997 Legislative Session, AIF will once again turn its attention to protecting the access of its members to the political process. It will scrutinize election reform bills provision by provision as the Legislature undertakes its most recent exercise in election reform. Our guiding principles will be to provide lawmakers with the information needed to ensure that problems identified are based in fact; to determine which problems are susceptible to legislative solutions; and to tailor proposed solutions to specific problems so that they are not overly broad in nature, thereby causing more harm than good. ■

Making True Budget Reform Possible

by David P. Yon, Executive Vice President & CFO

Imagine a process that, when implemented, would ensure that every tax dollar is spent in the most profitable manner. Imagine that there are no wasted tax dollars. Imagine that all government programs are run efficiently and effectively.

Maybe we'll never see the total eradication of government waste, but there's always room for improvement. Government, with the help of citizens and business, can make itself more efficient and more responsive to the needs of its citizens and businesses by developing and implementing performance-based program budgeting (PBPB).

PBPB represents a dramatic change in budget decision-making because it is based on results. Today, state government programs are funded based on formulas that have nothing to do with whether a program is working or not. That would all change with PBPB.

Implementing PBPB requires the setting of performance goals for programs. This, in itself, is a rigorous process that entails determining what an organization (such as government) should be doing, defining criteria to measure success, and monitoring the achievements of the organization.

The Government Performance and Accountability Act, passed by the 1994 Legislature and signed by Gov. Lawton Chiles, requires that all state agencies, as well as offices of the legislative and judicial branches, develop performance-based program budgets.

The Florida Commission on Government Accountability to the People (GAP Commission), created by the governor in 1992, was statutorily established by the Legislature with the passage of the Government Performance and Accountability Act. The commission has the responsibility for tracking the impact of state agency actions upon the well-being of Florida citizens. The commission is composed of 15 members, nine from the private sector and six from the public sector. Members are appointed by the governor and confirmed by the Senate.

One of the most essential parts of PBPB is the establishment of benchmarks. To this end, the GAP Commission published *The Florida Benchmarks Report* in 1996, which measures the state's progress from 1980 to the present in the following seven major areas:

- families and communities
- economy
- safety
- environment
- learning
- government
- health

The commission has also been tracking the impact of agency actions by reviewing various agency strategic plans as they relate to the benchmarks. The commission has also reviewed the best practices submitted by 16 agencies.

Implementation Problems

Budget reform requires the active support of the leadership in the legislative and executive branches on a long-term basis. The magnitude and complexity of budget reform is not something that can be accomplished in a few short years. Since Florida changes its legislative leadership every two years, the likelihood that the long-term commitment needed will materialize is jeopardized.

Another problem with the Government Performance and Accountability Act is the lack of detailed implementation guidelines. There is no formal mechanism to eliminate impasses on output and outcome measures. Agencies must resist the temptation to set measures and goals that can be easily achieved and, in doing so, subvert the ability to analyze program effectiveness. The Legislature has not made PBPB part of its decision-making process. Until it does, budget reform will not occur.

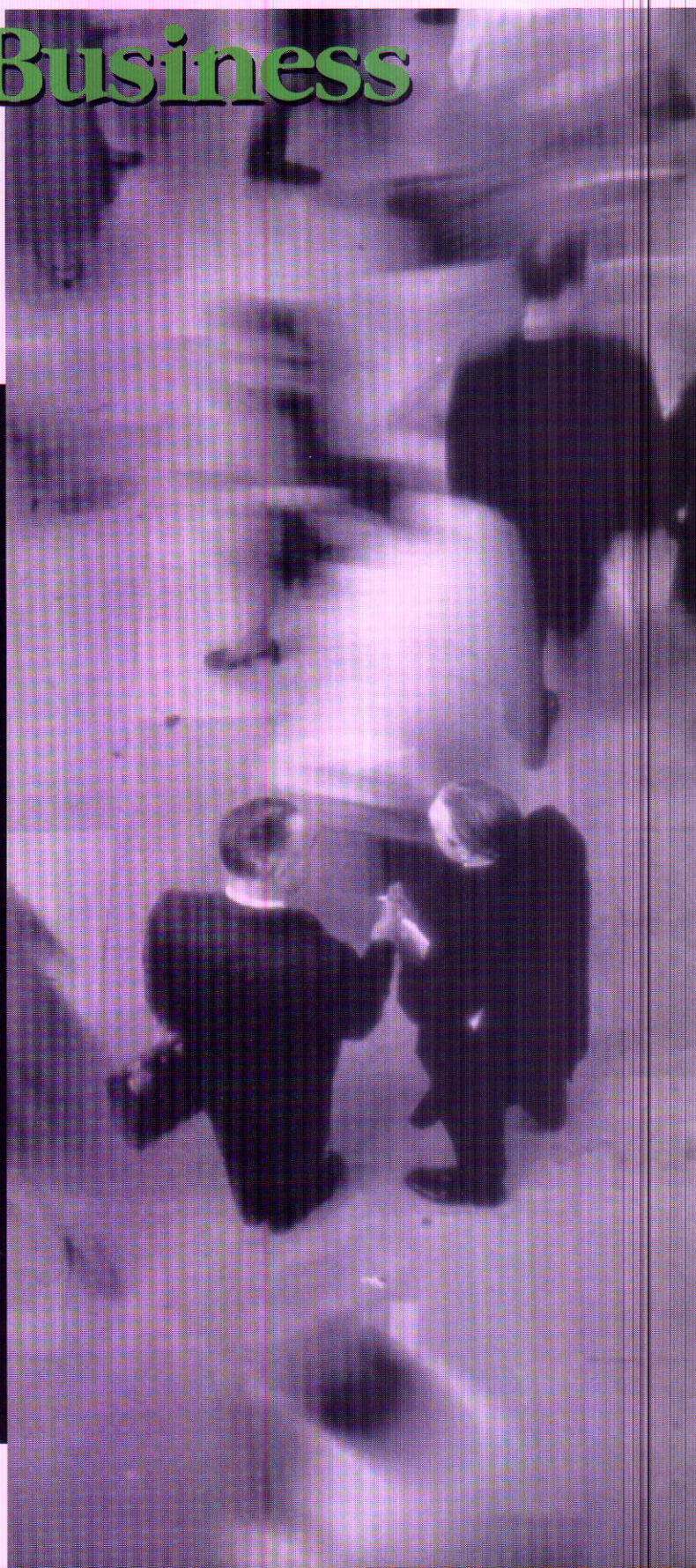
The Government Performance and Accountability Act is the mechanism whereby a revolutionary change can be implemented in state government. It provides a unique opportunity for the state of Florida to determine whether tax dollars are being spent effectively and on desired results.

It needs the support of citizens who, in turn, will support elected officials who champion the concept of performance-based program budgeting. This is the time to enhance the Government Performance and Accountability Act so that it can fulfill its promise. With budget dollars becoming ever more scarce, Florida cannot ignore this opportunity. ■

1997 Legislative PREVIEW

Practical Politics Must Become the Business of Business

by Professor James Witt, Department of Government, College of Arts & Sciences, University of West Florida



A number of years ago, George M. Humphrey, treasury secretary during President Eisenhower's first term, admonished business people to "get active in politics if you want to stay active in business." Humphrey understood the symbiotic relationship between politics and business.

The recent passage into law of the Medicaid Third-Party Liability Act, with its staggering possible ramifications, should alert Florida's business community to its precarious position in state politics. Business should not be propitiated by disclaimers that the law will only apply to tobacco. Other potentially harmful products, such as alcoholic beverages and high-fat foods, among others, easily could be caught in the web of this legislation.

Eventually, it is possible that shareholders in businesses accused of dispersing harmful products could become defendants in litigation that results from the application of this law.

Finally, considering the manner by which this legislation was passed, surreptitious techniques could become the future means for the passage of ubiquitous anti-business legislation germane to SLAPP suits, enterprise liability, universal health care, fair employment practices, prejudgment interest, and minimum wage increases, among others.

Until the 1960s, public confidence in business was high. In fact, business virtually dictated the political agenda in this country. Consequently, adverse action by government or public interest groups was not a major cause of concern for business. Working primarily through their associations and lobbyists, the business community was able to exert a strong influence on state and national legislative agendas.

The 1960s and 1970s, however, ushered in an era of anti-business feeling. With government shifting its emphasis to the "have-nots" at the expense of the "haves," the nation became inundated with government-generated social programs. Also, environmentalists and other single-cause interest groups became a force to be reckoned with in American politics. Except for its stockholders, business had few allies in the electorate. Therefore, its fortunes have been largely at the mercy of policymakers and regulators.

The excessive delegation of power to unelected federal and state regulators has become repressive to business interests. In 1992, for example, there were 122,406 regulators in some 60 agencies employed by the federal government alone. The Center for the Study of American Business estimates the total annual costs of regulations to be $1.8 trillion — $1.27 trillion in output loss and $600 billion in compliance costs. Therefore, action needs to be taken to stem the excessive legislative delegation of lawmaking powers to federal and state agencies.

The ascent of single-cause interest groups has given rise to single issue politics and thrust into the political arena what Peter Drucker has dubbed "the tyranny of the small minority." These groups pose the greatest single threat to representative democracy generally and the interests of business particularly. It is in the interest of business, therefore, to moderate single-cause interest group power.

In Florida, there are some 2,700 distinct causes being promoted by over 2,300 private lobbyists. These are the forces that generate most of the costly regulations and restrictive requirements that stifle the growth of business and profits by reducing investment capital.

In order to assure their role in defining Florida's legislative agenda and being able to sidetrack poorly devised laws, business people will have to restructure their thinking about politics. The first step toward this end should be the formation of a business alliance. By any criteria, Florida's business community is not a homogeneous entity. Business political strategy needs to be more collectively focused and not a precept for protecting individual or separate group interests.

Regardless of size and function, all business people share a common political interest, i.e., to avert unwarranted taxes and expensive, repressive government regulations. Therefore, an alliance of business should be a natural one.

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Second, in most mundane pursuits, political influence is the key to success. Ultimately, it is politicians through their policymaking powers who set the ground rules by which we all must play the daily game of life. In order to be a star player in this game, business people must become actively and directly involved in politics. Considering the formidable forces massed against it, business cannot expect to play by favorable ground rules without taking a direct hand in selecting those who make the rules.

This, of course, means assuring the election of policymakers who will be sympathetic to business interests. This cannot be achieved by attempting to align itself with one or other of the political parties. The Democratic Party's alignment with labor precludes any such affiliation. Due to its diverse nature, the Republican Party can ill-afford to become closely associated with business. The most business can hope for is a leaning by the Republican Party toward it. Business, therefore, should assume the role of a pseudo-party by selecting its own candidates and supporting them through the business alliance, which should make for formidable candidates.

Taking the cue from the large law firms, candidates could be selected from young or middle-aged public affairs types, who would serve a couple of terms, and either stay or be replaced by other candidates. Another method would be to run independent political campaigns for business-disposed candidates. In any event, business people must become direct players in the game of politics.

The third way by which business can indurate its political position is through education of its employees. Employees should be made and kept aware of the symbiotic relationship between the good fortunes of their employers and their livelihood. They should be educated in matters of public affairs that relate to business and be encouraged to register and vote for candidates that support their interests.

Finally, there must be a concerted effort directed at rebuilding confidence in business. In his book, *The New Realities,* Peter Drucker offers a concept that affords such a possibility, i.e., a program of "political responsibility" for business. This concept is the notion that business decisions should be based on what is best for the common good. Practically, this means that business decisions should be made on the basis of what is good for Florida, not business.

Then, business should seek its own interest based upon how it serves the common good. By learning to ask what the community requires, Drucker believes that business eventually would regain public confidence and support.

One of the leading business associations in the state, Associated Industries of Florida, annually accords state lawmakers a high rating on legislation supported by AIF. However, in light of the passage of the anti-tobacco bill, the growing political influence of single-cause interest groups, the power of the state's trial lawyers, and the proliferation of government regulation and taxes, the position of Florida's business community might not be as secure as AIF's figures would seem to indicate.

The fluid composition of Florida's Legislature is a factor that also should be given serious consideration. Usually, 10 to 15 percent of our state legislators are elected by 5 percent of the vote or less. Considering that an organized single-cause interest group usually can marshall 3 to 5 percent of the vote for a candidate, it is not inconceivable that the legislative picture could change dramatically and become anti-business.

If properly utilized, business financial resources could place it in a politically advantageous position. Business people also have at their command one of the best computerized governmental information systems in the state, the Florida Business Network. Florida's business community, therefore, holds its destiny in its own hands.

Winston Churchill once remarked that, "Some see private enterprise as a predatory target to be shot, others as a cow to be milked, but few are those who see it as a sturdy horse pulling the wagon." Taking cognizance of these words of wisdom should warrant that politics in Florida become the business of business. ■

Can You? Should You? Will You?

Many of us did not feel that we would make it through the 1996 campaign cycle, but we did survive. Then, from sheer election exhaustion, we struggled through the holidays. Never thought of it before, but elections and holidays have a lot in common. For example, both are hectic and require the ability to react spontaneously to frenzied situations. Both take a chunk of change out of your wallet and your savings account. And, best of all, both have a definite end.

Everyone (supposedly) has now had a few weeks of reprieve. Onward we go, marching to the next beat of the drum. Now comes the task of bargaining with those elected officials.

Too many times this task is neglected by the group that wields much of the political power — the citizens back home in the district. Most people do not hesitate to call their legislator's district office during the year. For some reason, however, they don't seem to want to contact their legislator when he is in Tallahassee during the session.

Maybe they feel the legislators are too busy to deal with them. Yes, it is a busy time, *but it is just the right time to contact them* because, my friends, those legislators are not in Tallahassee just to go to meetings and parties. They are in Tallahassee to vote on bills that affect every single one of us and they need to know what the folks back home want them to do.

Some might say, "That's why we belong to Associated Industries, so that they can take care of our interests." I say, "Yes, but there are many times when the legislators need to hear directly from you."

Not only do legislators have to face a myriad of issues, they are also expected to *understand* these issues. Talk about heighth and depth! Lobbyists are knowledgeable in the issues they bring before the legislators. Lobbyists are experienced in dealing with legislators. Thank goodness we have lobbyists. We need them. They monitor the system, not only to get the good bills passed, but also to find those really bad bills and try to kill them. Sometimes they succeed and sometimes they do not.

In spite of this fact, there are issues that have such an affect on all of us that constituent mobilization is the best tactic to implement. The legislator needs to know that it is not just the opinion of the lobbyists that some bill will adversely affect people. They need to hear it from Joe and Jill Citizen, 567 ABC Street, Back Home, FL. (123) 555-7777.

Who really has the influence with the legislators? Yes, of course, the lobbyists do. But so do the citizens back home. Those citizens are constituents. Those constituents are voters. Those voters put a legislator into office and can take him right back out. You have the power if you choose to exercise it.

So ask yourself —

Can you? Yes, you can! It's relatively easy and quite painless. A phone call, a fax, a letter, or an e-mail is all it takes.

Should you? Absolutely! If it's important to you, it should be important to them.

So the question really is, *will you?*

As your "Voice of Business," we hope you will. ■

Yes, it is a busy time, but it is just the right time to contact your legislators in Tallahassee.

by Marian P. Johnson,

Senior Vice President,

Political Operations

Making Movies: Part Deux

by Irv B. "Doc" Kokol, Vice President, Video Productions & COO, White Hawk Pictures

In my last column (Nov./Dec. 1996), we discussed how to select a production company for your video production needs. This column will elaborate on the steps necessary to bring your product or information to the screen.

Your production company will assign your project a producer. Get to know this person. He is responsible for everything involved in sheperding your project through to its completion. Your producer is also responsible for keeping your project on time and on budget. To avoid confusion, the producer should be your single point of contact with the production group.

The production process is divided into three sections: pre-production, production, and post-production. This column will deal with pre-production — the things that have to get done before the camera rolls.

If your contract did not include a timetable, now is the time to ask for one. The timetable should list those benchmarks that require your approval and when you can expect to have the finished product. The first item you should see on your timetable is the script.

The script is the single most important item you will be presented with and requires your undivided attention. The script is like the blueprint used to build your house. It should have all the information necessary in it for the various craftsmen to know exactly what the production will end up looking like.

You should expect to spend time with the scriptwriter, producer, and perhaps your director, to let them know what you want this product to accomplish. Their job is to make your product effective, but no one knows your business as well as you do.

Writing for television is not the same as writing a business letter. Since the words are spoken the style is more informal. I advise all my clients to read the script out loud. It really does make a difference.

You should expect a chance to make comments on the preliminary script, and see them incorporated into the final script. If you can avoid it, try not to have the script approved by a committee. The dynamics of the committee process often leads to everyone feeling that they are not doing their jobs if they do not make a critical comment. It's just not an effective method of review. Of course, you'll probably want to get other people's opinions, but only one person should make the decision as to what changes should and should not be made.

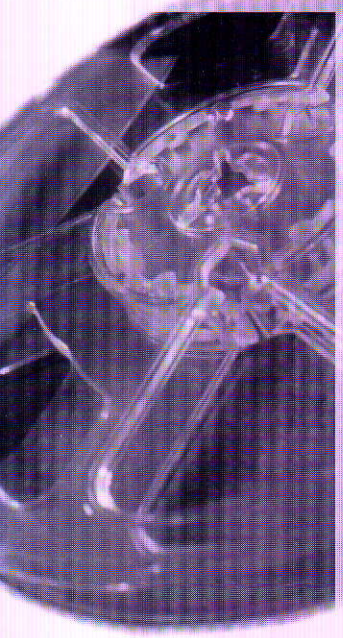
You can expect two reviews of the script, at the preliminary stage, and when you receive the final version.

Pre-production will also include location selections and talent auditions. Locations need to be scouted prior to bringing cameras into the field. Your producer will look for things like the requirement for shooting permits, permission from the property owner, parking, power, and, if you are going to be recording sound, ambient noise.

Talent is a generic term that includes anyone who will appear on-camera during your production. This also includes voice-over or narration talent. Your producer will be responsible for securing talent releases from everyone who will be seen or heard. This is a written document that gives you permission to use someone's likeness or voice. If you don't see talent and location releases in your package, ask for them.

Once the planning and paperwork of pre-production is complete, the production stage begins, and so does the third installment of this column. In the production stage you will get to meet individuals known as grips, gaffers, and will finally learn just what a "best boy" really is.

Until then, if you are considering a film or video production, or are in the middle of one now, give me a call or drop me a line, if I may be of any service. ■



Fear of Firing:
Terminating the Disabled Worker

Increasingly, federal laws, regulations, and rules are being passed to protect the disabled. Certainly, no one would argue that discrimination against the disabled, in all aspects of life including the work environment, should be eliminated. That was one of the laudable goals of the Americans with Disabilities Act (ADA). The question becomes: Did the ADA do more than provide disabled workers with much-needed protection? Or did it also erect a shield for malingerers?

Statistics from the Equal Employment Opportunity Commission (EEOC) indicate that the number one disability complaint filed under the Americans with Disabilities Act is back injury; the second most prevalent is mental stress.

According to an article that appeared in the *Wall Street Journal*, since 1970, there has been a 14-fold increase in the number of payments paid out to injured workers in America.

The article was written by Professor Richard Vetter, an adjunct fellow of the Center for the Study of American Business and a professor of economics at Ohio University. Vetter reveals that in 1970, "American workers injured on the job received $3 billion in workers' compensation payments. Less than a generation later, in 1993, the payments had grown to almost $43 billion."

According to Professor Vetter, sick leave payments doubled between 1980 and 1992; in fact, government workers collected more sick pay in 1992 "than the entire private sector, which had five times as many employees."

He also notes that Social Security disability payments increased by a multiple of 14 between 1970 and 1993.

Professor Vetter dismisses the idea that the aging baby boom population is more prone to sickness and disability, citing statistics that indicate the number of disabled students in public schools has dramatically risen as well. The reason could be, according to Professor Vetter, that the special education benefits a disabled student receives are greater than those bestowed upon the regular student population and that some disabled workers are living off the system rather than continuing to work.

How, then, does an employer deal with the disabled employee in the workplace? Is it possible to terminate someone with a disability? What laws apply? If the worker suffers a work-related disability, three laws — and potentially a fourth — could kick in.

Clearly, the worker would be protected under the workers' compensation system. If the disability is permanent, the worker may also be covered by the Americans with Disabilities Act or be eligible for time off under the Family and Medical Leave Act. If some safety violation was involved in the worker's injury, the Occupational Safety and Health Administration likewise may be involved.

What if the worker cannot return to his former position? Will placing the employee in a light-duty job affect the employer's liability under the Americans with Disabilities Act for someone who is not injured on the job; for example, an employee who suffers a disabling injury while off duty, but seeks a light-duty job as a reasonable accommodation to return to the work force?

The regulations are confusing and overlapping since all the laws and regulations cited here are administered by totally separate agencies. Workers' compensation, of course, is a state-run system. The Americans with Disabilities Act is regulated by EEOC. The Family and Medical Leave Act is enforced by the Wage and Hour Division

by William E. Curphey, Stiles, Taylor & Metzler, P.A.

Disability is not an excuse for poor performance. Reasonable, objective job criteria and reasonable, objective work performance criteria, consistently and uniformly applied, will most often protect an employer from charges of unlawful termination or discrimination.

of the U.S. Department of Labor, totally separate and apart from the EEOC. OSHA is enforced by the Occupational Safety and Health Administration, another branch of the U.S. Department of Labor.

Regulations are created in a vacuum by each agency with little understanding of the effect such regulations could and do have on an employer who must comply with all of the various laws. Is it possible to terminate the disabled worker when an employer is faced with all these seemingly conflicting regulations?

Taking the Proper Course of Action

The answer, of course, depends on the case. A disability is never an excuse for poor job performance. If someone is not performing the essential functions of his job, it is permissible to terminate him. Essential job functions should be clearly spelled out to employees so that they understand what is expected.

Too often, job descriptions are generic in nature. They need to include, for example, the starting and stopping times. If the requirement is 8 a.m. to 5 p.m., five days a week, with some overtime, that should be clearly stated. If the employee's disability interferes with his ability to regularly attend the job, that may be grounds for termination and should be treated like any other work-performance problem.

Progressive discipline should be utilized, including an oral warning, a written warning, and eventual termination if the employee is not performing his duties.

Several federal courts have already held that under the Americans with Disabilities Act regular attendance on the job is an essential function of all jobs. If the employee's disability prohibits him from regular attendance on the job, that may be grounds for termination and should be treated like all other job-performance disciplinary problems.

Be careful, however, if the employee is eligible for family and medical leave. An employer has an affirmative obligation to advise employees of their rights under the Family and Medical Leave Act. If an employee who is otherwise eligible for family and medical leave is missing work, the employer may have an obligation to inform that employee that he can take time off under the law. Note, however, that you can and should require medical certification of the need for the time off.

Even though an employer may provide light-duty jobs under workers' compensation in an effort to get the injured worker back in the workplace, there is no requirement to do so under the Americans with Disabilities Act. In fact, the EEOC technical assistance manual clearly indicates that a light-duty job is, by its very nature, different from the job that was held at the time of the injury and that there is no obligation to provide a light-duty job as a reasonable accommodation for someone who is under a disability pursuant to the Americans with Disabilities Act. If the employee cannot perform the essential functions of the job, he is not "disabled" under the ADA.

For example, in one recent federal court case, an employee injured his back and was unable to lift more then 30 pounds. The job required lifting up to 100 pounds. There was no reasonable accommodation that was going to enable the employee to lift 100 pounds. The court determined that the employee was not, therefore, "disabled" since he was not able to perform the essential functions of the job, i.e., lifting up to 100 pounds.

That case even involved a workers' compensation injury. The employee injured his back at work. When the employer refused to return him to his job, he sued under the ADA and lost for the aforementioned reasons.

It is, therefore, possible to terminate the disabled employee as long as the employer is aware of all the various obligations and rules pertaining to a disabled worker. Disability, as previously stated, however, is not an excuse for poor performance. Reasonable, objective job criteria and reasonable, objective work performance criteria, consistently and uniformly applied to all employees, will most often protect an employer from charges of unlawful termination or discrimination. Legal counsel should be consulted for further information. ■

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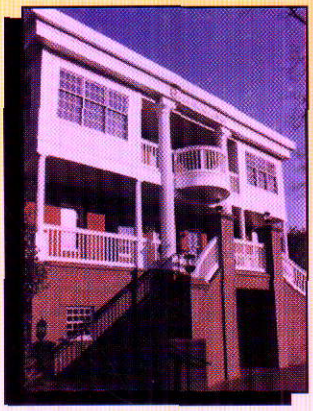
When Tomorrow's Too Late



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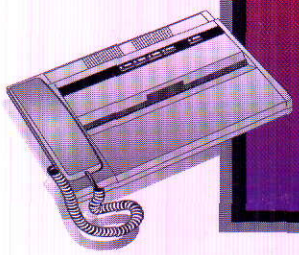

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