

FLORIDA BUSINESS INSIGHT

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The Magazine of Free Enterprise & Public Policy

Nelson Fairbanks And
U.S. Sugar Are Squeezing
The Profits Out Of Sugar
Cane And Oranges.

OH SUGAR

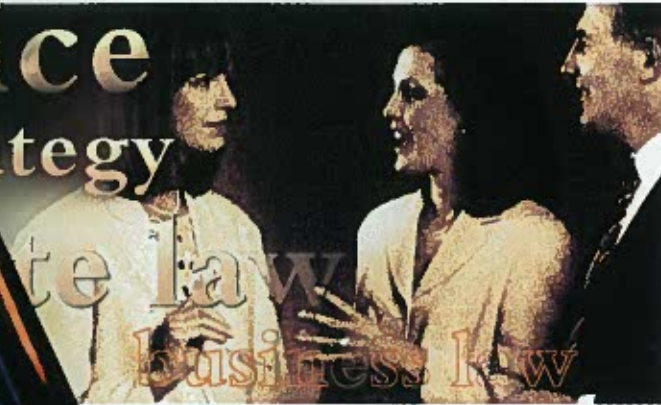
Revenue Limits:
A Modern Fairy Tale
Workers' Comp:
Another Year, Another
Reform Proposal

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January/February 1998

Volume 2, Issue 1

ON THE COVER:
Yes, life is sweet for
Clewiston-based
U.S. Sugar Corp.

Cover Photo: Doc Kokol

features

COVER STORY

Reaping New Harvests 10

Nelson Fairbanks is putting controversy behind him and moving ahead with plans to grow the company.

by jacquelyn horkan, editor

FINANCE & TAXATION

Revenue Limits:

A Modern Fairy Tale 26

Why efforts to limit the growth of state government aren't working out as planned.

by rep. rob wallace

WORKERS' COMP

Another Year, Another

Reform Proposal 30

Fraud, inflated attorneys' fees, and benefit abuse still plague the system.

by mary ann stiles, esq.

BUSINESS STRATEGIES

Becoming a Venture

Capitalist 34

Taking some of the risk out of venture capital investing.

by jerome s. osteryoung, pb.d.



page 26



page 30



page 34

columns

COMMON SENSE 4

Florida's tobacco settlement ends with investigations into wide-ranging charges of corruption.

by jon l. shebel, publisher

LINE ITEMS 6

Changes in the federal tax code, what they mean for you, and how to take advantage of them.

by david p. yon

THIRD WAVE 8

When guard dogs and security alarms aren't enough to protect your company's computers from outside invaders.

by robert d. mcrae

THE HUMAN SIDE 18

How to use documentation to improve employee performance and protect yourself against lawsuits.

by kathleen "kelly" bergeron

IN BOX 22

PURSUIT OF HAPPINESS 38

by jacquelyn horkan, editor

by jon l. shebel, publisher

The Masters of Hypocrisy

A few years ago, our state ran a tourism campaign with the slogan, "Florida: The rules are different here." Turns out, it's true.

With the settlement of Florida's much celebrated lawsuit against tobacco companies, the 11 private plaintiff attorneys hired by the state to litigate the suit were told that they would not receive the 25-percent contingency fee as outlined in their contract.

I never thought I'd feel sympathy for trial lawyers but there is one fact I cannot ignore: They belong to an unpopular group and top state officials are using that generalized dislike to justify the breaking of promises. It's a predicament all too familiar to business people.

In November, Palm Beach County Circuit Court Judge Harold J. Cohen ruled that the 25-percent contingency contract would result in unreasonable fees. Now, I happen to agree with him, but what's important is that "whoever" negotiated the contract on behalf of Gov. Lawton Chiles believed otherwise. They were willing to



sign a contract obligating the state to payment of that fee, and there are other "unusual" provisions in the contract.

The governor and attorney general recently filed a motion in Judge Cohen's court indicating they will conduct an investigation of the circumstances surrounding the negotiating of the contract. Good for them!

Florida Bar rules allow a judge to throw out a contingency fee contract if he decides the result is inordinately high fees. The rule sounds like a reasonable way to protect plaintiffs and defendants alike from greedy trial lawyers. The only problem is it undermines the inviolability of contracts, a pillar of the rule of law that has already taken damaging blows from our modern tort system.

The problem is with contingency fees in general. They often bear no relation to the severity of an

injury, the risk involved in suing, or the time involved in litigating the suit. Contingency fees establish a wholly arbitrary price schedule.

The private lawyers worked assiduously on the state's behalf to inflate the settlement by pursuing, among other things, racketeering charges against the tobacco companies, and even

threatened to "go after" the tobacco lawyers. Because they performed well, the state feels justified in breaking its contract with them.

Let me reiterate that I have no sympathy for the plaintiff lawyers. This episode has been disgusting from its beginning with the sneak passage of the Medicaid Third Party Liability Act, to its end with this unseemly scramble for cash.

Let me also issue a warning to all Florida businesses. There is a fight brewing with some, but not all, trial lawyers over the repeal of the law that enabled the suit. That goes a long way to explaining why only five of the 11 lawyers contested the state's breach of their contract. Six of those lawyers were willing to settle for a smaller (though still generous) slice of the pie, probably in the belief that more would be coming their way in future lawsuits under the third-party Medicaid law.

The events of the last four months have proven, yet again, that there is no honor among trial lawyers. In the midst of this public squabbling, it would be easy to indulge in the emotion Germans call *schadenfreude*, the pleasure felt at someone else's misfortune.

Doing so would be a false consolation. There is little joy in watching the other side fall prey to an unprincipled government that will pursue its narrow ends at any cost.

In Florida politics today, children have become the reasons for a number of ventures. Many have applauded themselves for pursuing the tobacco litigation for the sake of Florida's children. Then they said they were fighting the payment of the 25-percent contingency fee for the sake of the children.

For all our sakes, let us hope the children ignore the message lurking in this disgraceful affair: that deception, hypocrisy, and tyranny

are permissible if people can convince themselves that their motives are pure. Children should all be taught that the end does not justify the means.

Now as we approach the end of this mess where the governor and attorney general were doing what they thought was in the best interest of the state, while some of those around them were apparently planning on taking as many cookies out of the jar as possible for their own personal use, let us just be thankful that we have a Florida Department of Law Enforcement, a Federal Bureau of Investigation, a U.S. attorney, and a state attorney who have proven they will go after corruption.

Let's all wish them well and assist them in every way we can to determine the facts so they can prosecute the appropriate individuals to the fullest extent of the law.

As one high-ranking law enforcement official recently stated, "This investigation will go wide and deep and I will follow it all the way ... to wherever it leads."

Let us hope that in the end we can tell our children that their government keeps its word and those who do wrong pay the price.

Those are two of the most important things we can teach our children.

Jon L. Shebel is president & CEO of Associated Industries of Florida and affiliated corporations.

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Member, Florida Magazine Association

by david p. yon

The Taxpayer Relief Act Of 1997

The 1997 federal income tax legislation was officially titled the Taxpayer Relief Act of 1997. It should have been called the Tax Preparer Relief Act of 1997 since it adds layers of complexity for everyone.

There are many provisions in the act, including child tax credits, education credits, and home office deductions that will have a significant impact on businesses and individuals. The following is designed to give you a brief guide to some of the more important provisions that affect you and your business.

Changes For Businesses/Corporations

Capital Gains.

The 35-percent alternative tax rate and 12-month holding period still apply. Individuals, however, can roll over tax-free gain realized on the sale or exchange of qualified small business stock held for more than six months if the proceeds are used to purchase other qualified small business stock.

Estate Taxes. The exemption from estate taxes rises from \$600,000 to \$1.3 million in 1998 if the value of a business or farm included in the estate exceeds 50 percent of the

value of the estate and the heirs continue to manage it for five years.

Net Operating Loss Carryback. With some exceptions, the carryback period is shortened from three to two years but the carry-forward period is increased to 20 years from 15 years.



Changes For Individuals

Capital Gains. One of the most talked about provisions of the act was the reduction of the capital gains rates for individuals.

Here's a summary:

- Sales on or before May 6, 1997, have a top rate of 28 percent and a holding period of 12 months (old law).
- Sales between May 7 and July 28, 1997, (inclusive) have a top rate of 20 percent on assets held longer than 12 months.
- Sales on or after July 29, 1997, have a top rate of 20 percent for assets held longer than 18 months (formerly 12 months) and a top rate of 28 percent for assets held

longer than 12 months, but not longer than 18 months.

- Individuals in the 15 percent income tax bracket have a max capital gains rate of 10 percent.
- Installment sale proceeds qualify for the new rates for proceeds received after May 7, even if the sale occurred prior to that date.

Home Sales. The old law is scrapped. There is no age restriction on the one-time exclusion from capital gains on the sale of a home. More gain can be excluded: \$500,000 for couples and \$250,000 for singles. Generally, the taxpayer must have owned and lived in the home at least two of the five years before the sale. Vacation and rental homes may qualify if they are converted to a principal residence before sale.

Roth IRA. Of the three new IRAs created by the Act, the Roth IRA has generated the most interest. There will be no tax on payouts made after age 59½ and more than four years after the first contribution is made. However, no deduction is allowed for pay-ins, which are subject to a \$2,000 per year maximum. The tax benefits of the Roth IRA begin phasing out at certain income levels (\$95,000 for singles; \$150,000 for couples); taxpayers above certain income levels are ineligible (\$110,000 for singles; \$160,000 for couples).

Estate Taxes. In addition to the change in estate taxes mentioned previously, the unified credit has been replaced by an applicable credit amount that increases each year after 1997 from the current \$600,000 to \$1 million in 2006. The credit will be \$625,000 in 1998. The maximum annual nontaxable gift amount (currently \$10,000) will also be indexed annually for inflation.

David P. Yon is executive vice president and CFO for Associated Industries of Florida.

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by robert d. m-rae

Protecting Corporate Assets

It's 3 a.m. and someone is rifling through your company files, but neither your state-of-the-art alarm system nor the police will detect this thief. Your company has been invaded by a computer hacker.

The hacker's tools of entry are not the traditional screwdriver and pry bar, but a computer, modem, and telephone line. These techno-felons tend to be young and they view access restrictions as challenges to be conquered. Somehow, they have all the free time they need to continue to prod and poke at your system until they get in.

Hackers can cause tremendous damage to unprotected and under-protected systems. If your company is connected to the Internet, how do you stop computer hackers from penetrating your corporate database?

Your best defense is to disconnect your system from the outside world. That's not much of a solution, however, since many businesses rely on electronic communication between their systems and others. So, the only feasible alternative is to install adequate security measures to protect the data.

How do hackers break into your computer? One of the most prevalent ways is called IP (Internet Protocol) spoofing. The information transmitted between systems contains the address of the transmitting computer. Spoofing is the duplication of that

address by a third party who uses it to gain access to a system. Once in, various other tools can be brought to bear against the computer and the data stored in it.

As methods of protecting data have improved, so have hackers improved their skills. An

organization with a connection to the Internet may also provide electronic mail (e-mail) for their employees and customers.

Since e-mail systems require the flow of data in both directions from the corporate server, hackers have begun to use the socket (like a door into the computer system) to gain access. They then use software to

defeat the e-mail system and gain access to other areas of the system.

What You Can Do

Firewalls offer an excellent way of restricting access to corporate data. Essentially a firewall provides an electronic firebreak between the outside and your corporate data. Your Web server exists on the unprotected side of the firewall, your corporate information server on the protected side. The firewall allows only authorized access to information behind the firewall.

The most secure of these are application-level firewalls, which are hosts running proxy servers. They permit no traffic directly between networks, and they log and audit the traffic passing through them.

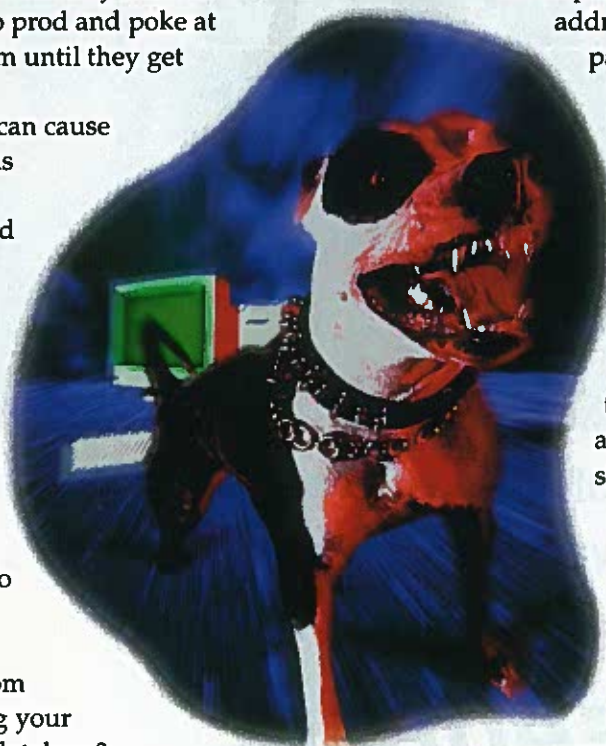
Ever-adaptable hackers can and have found other ways to attack systems. To fight back, make sure passwords are required for access to all non-public areas of your system.

All users should select passwords that can't be easily broken. Using birthdays or social security numbers, a spouse's name, or a street address won't do. Choosing such an obvious password is like putting out an open invitation to an intruder.

Have a computer security specialist review your system to determine its weak points and offer suggestions for improving the system.

While firewalls and passwords provide a measure of security and comfort, your information systems personnel must remain vigilant. Remember, when someone closes a door, a window is opened. And all the hacker needs is a slight crack in the window to gain access. ■

Robert D. McRae is senior vice president and information services director for Associated Industries of Florida.



Caren Snead **IS BUILDING A BETTER TOMORROW**



Doris Harrell, right, president of Positive Images, shows Caren Snead some of the clothing donations available for clients entering the workforce.



Caren Snead, associate counsel at JM Family Enterprises, frequently shares her time to benefit community organizations like the YMCA, Women in Distress and Florida Rural Legal Services. Recently, she helped Positive Images of Broward County, Inc. establish its by-laws. Because of her knowledge and expertise in the legal profession, Positive Images will continue to follow its mission to assist women in the transition from welfare to work by enhancing their image through professional dress and promoting personal and career skills development. Caren is preparing Florida for a brighter future. A part of Florida for 29 years, JM Family Enterprises, Inc. is a diversified automotive corporation. Beginning as a distributor of Toyota cars and trucks, we have grown to include vehicle distribution, finance, warranty and insurance services, and retail car sales. With nearly 3,000 associates, like Caren Snead, JM Family Enterprises is committed to building a better tomorrow.

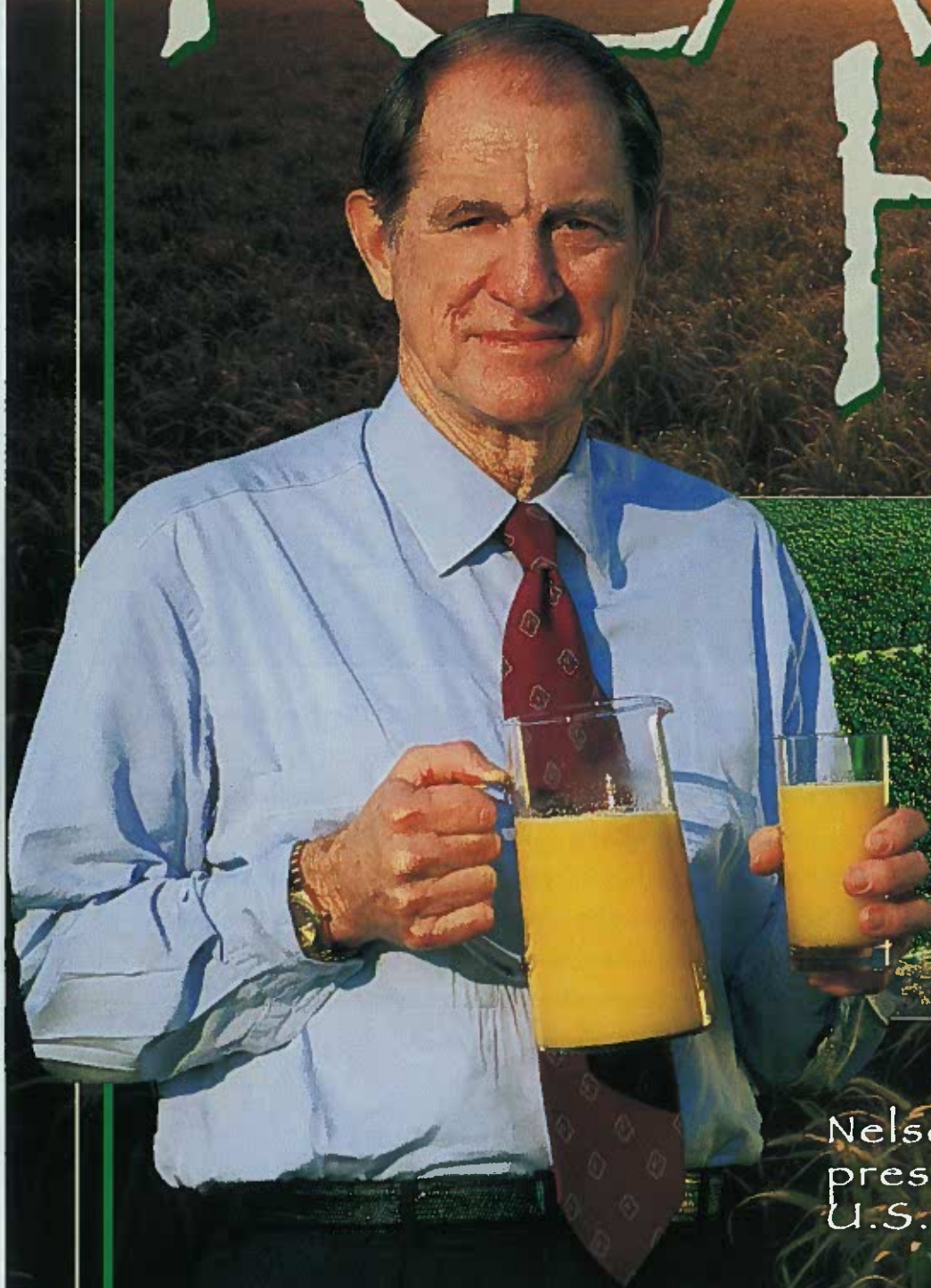


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REAPING HARVEST



Nelson Fairbanks,
president & CEO of
U.S. Sugar Corp.

photos by doc kokol & marc vaughn



G NEW RVESTS

by jacquelyn horkan, editor

Maybe the first 10 years are the hardest. If not, the future can't get much more turbulent than the past has been for Nelson Fairbanks.

The 62-year old president and CEO of U.S. Sugar Corp. joined the company in 1978, and took its helm nine years later. He's faced armies of critics and disarmed them. He's had to axe some struggling operations, taking on the burden of putting good, honest people out of work. And all this at a time when prices of the company's primary commodity flatlined.

But, then again, Fairbanks has led the Clewiston-based company to a position of strength and stability. He's overseen the creation of one of the nation's premier orange juice processing operations. And in a few months, U.S. Sugar will complete construction of a brand new refinery, making it one of the first U.S. cane sugar companies to take its product from field to table.

All in all, you could say life is sweet for the soft-spoken Louisiana native and the company he leads.



When completed, U.S. Sugar will own the nation's first new refinery built in more than 25 years.

BUILDING ON WHAT'S ALREADY THERE

It's the second day of the 1997-98 sugar cane harvest and Murray Brinson is not pleased. Sure, he just got a report that says the mill set a first-day production record, but that's no reason to relax. "Each crop is like a campaign," he growls. "It's like going to war."

If Brinson, U.S. Sugar's senior vice president for sugar processing, is a little on edge he's got good reason. The first couple of weeks of a harvest are the time to discover and fix all the problems with the mill machinery that laid hidden during the five months it spent in hibernation.

This year, matters are also complicated by the new processes being implemented in the mill. And then there's that hulking steel structure sitting a few hundred yards from Brinson's office. When completed, that structure will house U.S. Sugar's 200,000 square foot refinery.

Both the mill and the refinery fall under Brinson's purview. He speaks with a slow, precise intensity, and his manner leaves a new acquaintance wondering if he knows how funny he is. Like when you ask him whether he's worried about industrial espionage at the new refinery and he answers, "No. We'll just shoot them."

Nelson Fairbanks calls the refinery and the citrus processing plant his proudest accomplishments, for now anyway. A few years ago, that distinction fell to the creation of the company's employee stock ownership plan, formed when U.S. Sugar bought back a plurality of its outstanding shares. The company's employees are now its largest shareholder group. With the buy-back, the publicly held company went private, which, says Fairbanks, was one of the intended consequences.

"We didn't need to be public," he explains, "since we weren't accessing equity markets for capital."

In other words, U.S. Sugar was enjoying all of the encumbrances of Wall Street but none of the benefits. The shedding of one of those encumbrances, the filing of financial reports, means that the profitability of the company is a closely held secret.

If capital expenditures are any indication of financial health, however, it seems that U.S. Sugar is doing just fine, thank you. It spent \$40 million on the construction of the Southern Gardens Citrus orange juice processing plant, completed in 1994. The next year, the plant underwent a \$30 million expansion. A second expansion project is underway, scheduled for completion at about the same time the refinery opens.

When completed, U.S. Sugar will own the nation's first new refinery built in more than 25 years. A comparable span of time had passed between construction of orange juice processing plants when the Southern Gardens facility opened in 1994. The age gaps give advantages to both of U.S. Sugar's new operations and the company is pushing the possibilities as far as it can.

STRATEGIC FORCES

U.S. Sugar is implementing a series of innovations in its mill and refinery that will increase the profitability of its product. The new method of milling produces a purer form of raw sugar called feed stock. The production of feed stock adds cost to the milling process, but the savings it engenders in the refinery will more than make up for the increased front-end expenditure.

Murray Brinson and the rest of his crew at U.S. Sugar are close-mouthed about the new methods they've developed. Some are technological, others are process-oriented, and still others are simply refinements to the craft of milling cane. The last of these can't be patented, thus Brinson's comment about shooting spies sent by his competitors.

After the refinery is completed, it will undergo six to eight weeks of testing before it begins producing sugar for sale to consumers and food industry customers. During its first year, the refinery will produce 500,000 tons of sugar per year, with plenty of room to expand.

Planning ahead for efficient expansion is one of the advantages U.S. Sugar holds over older refineries and juice processing plants. At Southern Gardens, production capacity has increased from seven million boxes of oranges in the first year to 16 million boxes in 1997. When the current expansion project is completed, the plant will be at about half its planned capacity. Future expansions will be made without disrupting the carefully conceived layout of the plant.

Southern Gardens produces orange juice concentrate. The company is also the world's largest bulk supplier of the increasingly popular not-from-concentrate (NFC) orange juice. The company is banking on NFC as the future of the orange juice business; the product makes up about 40 percent of its current yield.

The plant incorporates the newest technology, allowing high processing yields with about half the traditional labor force. That technology also includes a sophisticated computer system that tracks every shipment of oranges from the time they are received until the juice is extracted. The data stored on the computer allows the precise blending of juice to a customer's specifications.

"With the technology we have out at our citrus plant," says Fairbanks, "we can give a consumer a very consistent-tasting juice all year round that would sell under any brand."

Right now, Southern Gardens is selling its product to wholesale juice packagers and has no plans in the immediate future to begin marketing its own brand.

"If we're compensated adequately at the wholesale level," says Fairbanks, "we'll stay there longer. But, in the long run, we won't rule out putting out our own brand, or partnering with other brands."

Instead, U.S. Sugar is using its mainstay crop to make its first foray into the world of retail marketing. In July of 1997, the company joined United Sugars Corporation, the marketing arm of three Midwestern

sugarbeet growers cooperatives. The alliance between them will make United Sugars the first nationwide producer/distributor of refined sugar. The product will be sold under the Pillsbury Best brand.

So the heat's back on Murray Brinson to get that refinery up and running. Is he nervous? Not really. After all, he's spent five or six years planning for this. It's just the waiting that gets to you. "There are good surprises and bad," says Brinson. "I wouldn't take either if I could have my choice."

That's one of his company's strengths: planning for surprises and controlling their effects. For farmers, one of the major source of surprises is, of course, Mother Nature.

AGGRESSIVE INNOVATION

David Hall is a platoon leader in the insect world, pitting his army of good bugs against the bad bugs. A U.S. Sugar entomologist, he is the sugar cane borer's worst nightmare. The sugar cane borer is one of the crop's deadliest enemies, with the potential to wreck a harvest. But there's good news in the bad news. Borers have their own enemies, a gnat-sized parasitic wasp with a rather nasty, but helpful, habit of laying its eggs inside a borer. Once the eggs hatch, the baby wasps eat their way out, killing the borer and saving the cane. Unfortunately, the wasps are not masters of good timing, often appearing too late to save the crop. That's where Hall and his team come in.

They were given the challenge to breed sufficient quantities of the wasp for release when the borers first appeared. The breakthrough came a few years ago when the wasp breeding program reached a point where it cost less than the spraying of chemical pesticides.

Since then it has been an unqualified success. Over the last four years, about three million wasps have been released, reducing the company's dependence on chemical pesticides. Since 1994, an average of 73 percent of U.S. Sugar's established cane fields have been pesticide-free.

This integrated pest management program is just one of the innovations to come out of U.S. Sugar's research lab. The lab, one of the world's largest private agricultural facilities, was established in the 1930s to breed new, improved varieties of sugar cane. That process continues today.

The lab has one purpose: making the work of growing crops cheaper and better. Some innovations are developed exclusively in the lab, others are improvements on discoveries made elsewhere.



Southern Gardens is the world's largest bulk supplier of not-from-concentrate orange juice.

One of the latter is the global positioning system (GPS) software that enables the company to fertilize its fields with precision, applying just what is needed in each spot in a field. The software plots the origin of soil samples taken from each field, then draws a map for the fertilizer truck based on analyses of the samples done in the lab.

"Before, we would take all the samples and put them together to decide how much fertilizer the field needed," explains Michael Gould, vice president of research. "There was so much variation among the samples that no one part of the field got the right amount."

Another technique implemented by the company is the use of laser-leveling to cut down on soil erosion. Before planting, a tractor planes the field, guided by a laser eye that signals the tractor when to raise or lower the level.



Area soils have naturally high concentrations of phosphorus, one of the nutrients blamed for Everglades degradation. Reducing soil erosion, however, is not just an environmental boon; it's an agricultural necessity.

"Soil and the fertilizer we buy are assets for our company," says Gould. "We have no interest in shipping it down to the Everglades. It doesn't do us any good down there."

Try telling that to the swarming hordes of self-proclaimed environmentalists who seem to believe that sugar farmers pollute the Everglades, not just deliberately, but gleefully.

PEACEMAKERS

Fairbanks and U.S. Sugar have faced down a troika of enemies over the last decade. In one case, the company met with its foes to resolve problems amicably. The other two situations, unfortunately, were not so amenable to friendly resolution.

"Soil and the fertilizer we buy are assets for our company," says Gould. "We have no interest in shipping it down to the Everglades. It doesn't do us any good down there."

All three evolved almost simultaneously. The first controversy involved ongoing disputes with labor activists over the working conditions of foreign cane cutters. The second began when acting U.S. Attorney Dexter Lehtinen filed his lawsuit charging the state with the failure to enforce water quality standards in the Everglades.

The third seems to have arisen from Lehtinen's lawsuit. In 1989, he raided one of U.S. Sugar's mills, sending in FBI agents in flak jackets bearing drawn weapons and EPA officials in protective clothing, as helicopters buzzed overhead.

Before the raid occurred, Fairbanks had decided his company needed a strategy to cope with its critics. This was the time of the great Alar scare, when a band of radical environmentalists launched a PR campaign to convince Americans that apple growers were poisoning the fruit with a deadly ripening agent. The claims were entirely bogus, but the ensuing panic bankrupted many Washington state growers.

Fairbanks turned to a Washington, D.C., consultant named Clark Judge to help him resolve the challenges before the company. Judge is the managing director of the White House Writers Group, a collection of former presidential word-smiths, who provide a service he describes as strategic thinking.

Fairbanks and Judge decided to tackle the labor issue first. The company was facing lawsuits and reams of bad press over the allegations made by the labor advocates, but Judge felt it was the easiest to resolve.

"If you're facing questions like that, you can't debate them," says Judge. "The only way to combat it is to transcend it."

The two men agreed that Florida's sugar business was perceived as secretive. They would transcend the perception with Open Harvest. In October of 1991, Fairbanks announced that every inch of U.S. Sugar property, every facet of its operations, and every one of its employees would be completely accessible to anyone who wanted to visit.

"With Open Harvest, I was looking for a chance for them to take a risk," says Judge. "If you're willing to be vulnerable it shows that you have confidence in what you're doing."

Fairbanks embraced the challenge as an opportunity. "I won't say I didn't have anxious moments," he explains, "but I believe if you do what you think is right and you're honest with yourself and with others, you shouldn't have to worry."

Open Harvest was a resounding success. It bolstered the public's perception of U.S. Sugar and helped build trust with the labor advocates. In September of 1992, they signed a labor peace treaty, resolving all of their differences.

Open Harvest also laid the groundwork for dealing with the aftershocks of Lehtinen's 1989 raid. Despite all the drama surrounding the event, Lehtinen and his forces



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came away empty-handed. He then subpoenaed reams of documents from the company. A review of the documents gave him the ammunition he needed.

U.S. Sugar was charged with eight counts of improper handling of hazardous waste. The charges essentially involved paperwork violations and resulted in no environmental harm. While the errors were minor, the penalties facing the company were enormous. Rather than embroiling the company and its employees in a lawsuit, U.S. Sugar pleaded guilty and agreed to pay a fine of \$3.75 million.

Fairbanks accepted the humiliation with grace, telling reporters, "When the U.S. attorney began his investigations, I would have bet my home and everything my wife and I own that U.S. Sugar was in total compliance with all environmental laws and regulations. I was wrong."

He promised to fix the problems by implementing a strict corporate regime of environmental oversight. Since then, environmental regulators have twice inspected the company but have found no hazardous waste violations.

The Everglades issue still lingers over the company, but the threat it embodies has diminished. In 1996, U.S. Sugar ran a successful campaign to defeat a constitutional amendment levying a penny-per-pound tax on Florida sugar.

While fighting off those dedicated to the eradication of sugar farms in the areas adjacent to the Everglades, those same sugar farmers are scoring the early successes in the effort to restore the great marsh. U.S. Sugar alone has already spent \$3 million on new farming and drainage practices to reduce phosphorus runoff. According to the South Florida Water Management District, the amount of phosphorus draining from the farms into the Everglades has dropped an average of 51 percent in each of the last three years.

Those expenditures are in addition to the special privilege tax farmers are paying to continue their operations in the Everglades Agricultural Area. The tax could generate up to \$320 million over the next 20 years. The money will be used to help pay for construction of special filtration marshes that will clean stormwater runoff from the farms and from developed areas.

While Everglades restoration is a complex issue, progress has been made, and that progress was made possible, in part, by Open Harvest and the resolution of the Lehtinen raid on the company's mill.

Clark Judge believes that confronting these problems was also crucial to the company's future. "Getting these issues behind them has made them less vulnerable so they could

pay more attention to business," he says. "They're facing a new world out there. Not everybody will be able to make the transition to a free market."

As for Fairbanks, the risks and rewards of playing the peacemaker just confirm the wisdom that comes from a higher source.

"One of the things I've learned by reading the scriptures," he explains, "is that God is in charge of everything. We're just his servants here, like little ants here on earth. But if you believe and you do the right thing, whatever happens you've got to figure it's going to turn out all right."

PERSISTENT VISION

Once upon a time, there lived a great Indian rajah who ordered his magician to create a heavenly paradise on earth. The magician worked his spells and created a place of wonder and beauty for his master.

As the rajah's days grew short, he ordered his servants to destroy the garden upon his death—with one exception. They were to leave standing the one creation of the magician that had brought the greatest joy. And that, according to legend, is where sugar cane comes from.

But legends can't survive in the rough and ready world of agri-business, where hard work and preparation have to take the place of mythical rajahs and their court magicians.

The 1996 farm bill made the domestic sugar business as close to a free market system as you can get while import tariffs and quotas remain. No longer will sugar farmers be

able to default on government loans by forfeiting their sugar if the price for their commodity drops below the guaranteed price. The bill also eliminated marketing allotments, which were essentially supply controls, freeing production capacity for sugar farmers.

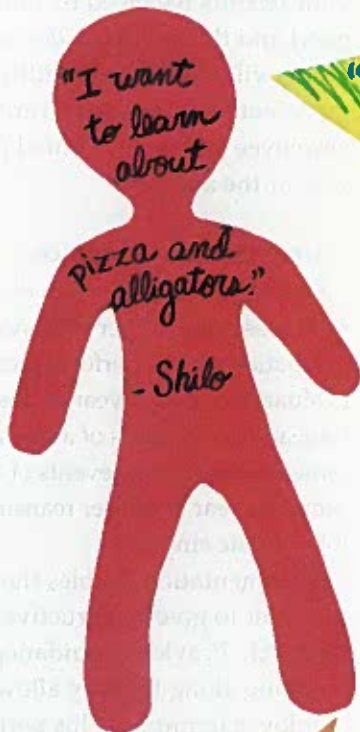
Thus, with added uncertainty comes increased opportunity. U.S. Sugar is strong enough to take advantage of those opportunities. Of course, doing so is a necessary hedge against the uncertainties.

If anything, the problems, changes, and challenges he has faced have motivated Fairbanks. "The competitive spirit," he remarks, "always says go do more."

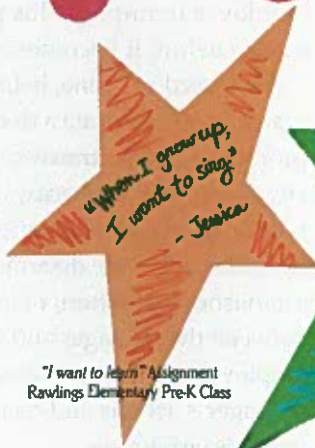
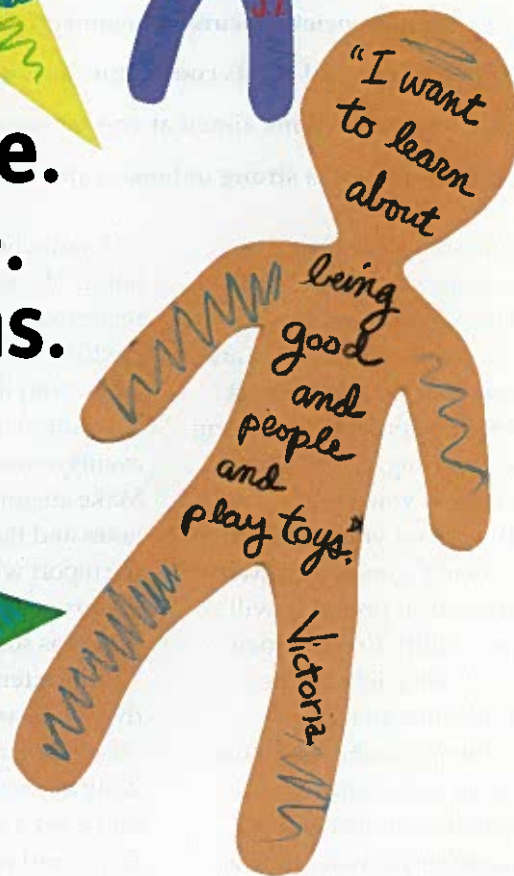
Fairbanks is a master at executing the decrees of his competitive spirit. After all, this is a man who once turned down his dream, a chance to play for the Boston Red Sox, so that he could finish his college studies.

Who can argue with that kind of determination? ■

If anything, the problems, changes, and challenges he has faced have motivated Fairbanks. "The competitive spirit," he remarks, "always says go do more."



Chance. Hope. Dreams.



"I want to learn" Assignment
Rawlings Elementary Pre-K Class

Every time you play the Florida Lottery, the children of Florida are given an opportunity to become winners.

In the first ten years, the Florida Lottery has raised nearly 8 billion dollars for public education. No other lottery in the history of the country has ever raised so much money in its first decade.

Some of the most popular and visible uses of Lottery dollars are the funding of the highly successful Pre-Kindergarten Program and the

new "Bright Futures" College Scholarship Program.

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In ten years, the Lottery has made more than five hundred people millionaires, and everyone in Florida richer.



When you play, we all win.

For more information, visit our website at www.flalottery.com.

by kathleen "kelly" bergeron

First Line Of Defense: Documentation

In today's litigious society, accurate documentation is one form of protection against civil rights complaints and wrongful discharge suits. These grievance actions aimed at employers are not only time-consuming, but, without a strong defense, can be financially fatal.

Documentation is the objective record of events, evidence if you will, that supports an employer's decision, and convinces a judge and jury to agree with that decision at trial. You must be proactive and arm yourself with strong, thorough documentation if you are to successfully defend yourself during litigation when it comes your way as, unfortunately, it probably will.

The responsibility for documentation doesn't fall solely on the organization's human resource manager; rather, it is shared among all supervisors and managers. All must be trained to understand that documentation serves two purposes: to improve or maintain good performance; and to support personnel decisions.

The first of these is the most productive. By encouraging and reinforcing good performance, valuable employees are retained and the potential for adverse actions is reduced. One should not take any personnel action without being able to support it through a documented history.

Documentation should be a daily habit. The sooner events are recorded, the more accurate and credible the representation of the facts. With the passage of time, there is a natural tendency to embellish on events or omit relevant information. Make an immediate record in rough notes and then go back to formalize the report when there is time. The important thing is that you record events as soon as they occur.

Computers can be a handy tool for this. You can keep an electronic "file" on each employee and make daily entries, just as you would in a diary. Set a certain time of day to sit down and record the events of the day in a stream of consciousness format that will allow you to extract the relevant portions for use at a later date.

Keep entries accurate and factual. Describe behavior and performance. Don't editorialize. And keep emotionalism out of your documentation. Write what you saw or heard, not what you think might have happened or why it might have happened. Speculation just

invites trouble. Remember to keep your records balanced by noting the good and the bad. Your documentation will have more validity if it represents a complete picture of the employee and is not slanted one way or the another.

Using Documentation

Keeping a daily record of events produces accurate performance evaluations. Most performance evaluations cover a year of observation, and the chances of a manager remembering all the events of the previous year is neither realistic nor is it fair to the employee.

Documentation enables the manager to give constructive feedback. Providing guidance and coaching along the way allows the employee to improve his performance before it becomes a problem.

The record of events helps a manager substantiate a decision to promote, demote, transfer, terminate, etc., to a higher authority, whether it's within an organization or during litigation. Also, the documentation establishes the pattern of interaction between the manager and his employees. It demonstrates the manager's actions and relationship with his employees.

Documentation also provides a record of the employee's training and development.

Protect yourself during potential litigation but, more importantly, develop a more effective work force: document, document, document. ■

Kathleen "Kelly" Bergeron is executive vice president and chief of staff of Associated Industries of Florida and affiliated corporations.



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At U.S. Sugar, We Bring

g a Lot to the Table.

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Speaking of firsts. As our refinery comes on line early next year, we will be combining forces with United Sugars, a marketing cooperative of leading midwest sugar beet farmers, to become the country's first nationwide producer and distributor of refined sugars. Our first project will be the introduction of America's first national brand of sugar — Pillsbury Best.

Orange juice anyone? The popular national brand of orange juice you enjoy each morning may very well come from U.S. Sugar groves. We're the country's largest producer of private label, not-from-concentrate orange juice. Our groves have nearly three million orange trees, and we operate the newest, most environmentally friendly citrus processing plant in Florida.

We care for the environment. We're working hard to keep Florida's environment safe and clean. We pioneered environmentally friendly farming techniques that are helping to restore Florida's Everglades.

We are employee-owned. We're among the country's top employee-owned companies, which gives everyone at U.S. Sugar an important stake in our future success.

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United States Sugar Corporation

A Family of Integrated Agribusiness Companies





compiled by jacquelyn horkan, editor

Mission Creep

A few days after the Florida Legislature unwittingly enacted the law allowing the state to sue manufacturers of products that may cause disease among Medicaid patients, Jon L Shebel, president & CEO of Associated Industries of Florida, warned, "This law puts at risk the manufacturers of every legal product used by Florida's Medicaid recipients."

Dexter Douglass, general counsel to Gov. Lawton Chiles, seemed to confirm that warning at the Feb. 21, 1995, press conference announcing the state's lawsuit against cigarette manufacturers. "We're only proceeding against tobacco" he told reporters. "You [sic] got to take them one at a time. I don't believe anyone in the world can handle all those industries at once."

Douglass has since repudiated that threat and has adopted the governor's party line that the bill will only be used against tobacco companies. What they and the rest of the anti-tobacco cohort don't realize is that they've unleashed a rhetorical devil.

By demonizing a legal product and absolving individuals for personal responsibility over their own health, the path has opened to apply that logic to almost any consumer product. If you need an illustration of this rhetorical shift, read on.

"Is Chocolate Too Good To Be Legal?" Title of an Aug. 21, 1996, Business Week online news flash about studies analyzing the "mind-altering" substances in chocolate.

"It's my opinion that the dairy industry is to blame. They push their dairy products without warning you of the hazards." Norman Mayo, a Washington state resident who is suing the dairy industry, claiming it is to blame for his clogged arteries and a minor stroke he suffered.



"We're talking about a product that results in the maiming and in the killing of people." Sen. Robert Byrd (D-W.Va.), June 1997 debate on a bill to eliminate tax deductions for alcoholic beverage advertisement and promotion. "[T]he Center for Science and the Public Interest in Washington, along with other liberal organizations, are pitching politicians this

proposal: Stamp coffee and other products containing caffeine with a surgeon general warning in the same way that cigarettes were labeled decades ago." Insight on the News, Nov. 10, 1997.

The battle against tobacco has spawned what those in the military call mission creep, and it proves yet again that attacking one unpopular industry quickly results in a rain of blows on the heads of other industries.

FORE!

The wonderful world of small print may be about to invade golf courses near you, depending on the outcome of a pending New Jersey lawsuit.

The lawsuit arose when a country club member was struck by lightning while golfing. At first, the trial court held that the club could not be held liable for acts of God, and dismissed the claim. The plaintiff appealed and a New Jersey appeals court reversed the decision,



sending the case back to the trial court.

According to the appellate court, "When a golf course has taken steps to protect golfers from lightning strikes, it owes golfers a duty of reasonable care to implement its safety precautions properly."

The appellate court seems to believe that a golf course with no safety precautions assumes no liability, while the

course with safety precautions does. If this logic spreads to other states, you might find evacuation plans posted on the links. Maybe safety training courses will be required before you head off for the course. Perhaps all golfers will have to sign releases, detailing the limits of the course's responsibility for their health and safety.

For thousands of dufers, hitting the links offers a much-needed respite from the pressures of the business world.

If you're one of them, enjoy your escape while you can, because the sinuous tentacles of our nation's tort system may be about to invade your oasis.

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Enviro-Hoax

Dihydrogen monoxide is a killer chemical that "accelerates the corrosion and rusting of many metals, ... is a major component of acid rain, (and) ... has been found in excised tumors of terminal cancer patients."

After reading those facts in a report on the substance, 50 Idaho high school students were asked whether dihydrogen monoxide should be banned. Forty-three said yes, six said no, and only one recognized that the chemical was H₂O. Water.

This is just the most recent demonstration of the scientific gullibility that has invaded our nation's environmental regulatory policies. We've got the Environmental Protection Agency and the Food and Drug Administration trying to outlaw inhalers used by asthmatics because the devices contain chlorofluorocarbons (CFCs). CFCs are banned in the United States because, supposedly, they destroy the ozone layer, a scientifically questionable assumption.

And then there's the issue of global warming. President Bill Clinton and other political leaders of developed countries shrieked a chorus of environmental catastrophe leading up to the December summit on global-warming in Kyoto, Japan. If a treaty results from the summit, however, it will fall far short of addressing their dire predictions because the situation simply doesn't warrant drastic action. Nevertheless, a Kyoto treaty will impose profound limits on carbon dioxide emissions in First World countries.

The fact is, land temperatures have risen in this century, but, then again, the earth's climate has fluctuated wildly throughout its history. According to ice cores extracted in Greenland, 10,000 years ago the temperature rose by more than 12 degrees over a 10-year

period. Some research suggests that changes in the sun's intensity are the most likely culprit for the 20th century increase in temperatures.

While politicians seek to score points with environmentalists, responsible scientists continue to review the data. And just remember: 20 years ago, many of the same global warming alarmists were claiming unanimous agreement on the threat of global cooling.

A Kyoto treaty will still have to pass muster with the U.S. Senate. Senators should give a polite but firm rejection to ratification of such a treaty. It's time for science to supersede public relations as the guidepost in the development of environmental policy.

If senators do reject a treaty, they'll take some heat, as it were, from the Clinton camp. When that happens we're recommending a glass of dihydrogen monoxide to cool them down. ■

On The Tax Front

The Internal Revenue Service's plan to make most employers file their employment taxes electronically has been delayed again. The deadline for compliance with the requirement is now July 1, 1998. As of November, however, the IRS was still publishing the old deadline on its Web page and in printed information.

The latest deadline postponement was enacted as part of the 1997 Taxpayer Relief Act. Some of the key provisions of the act are outlined in this magazine on page 6. There's one detail about the new act you won't find in that article, however. In the name of taxpayer relief, Congress enacted an 825-page bill, running about 225,000 words, adding 285 new sections to the tax code, and making 824 amendments.

Did someone say flat tax? ■

Regulatory Reform: Changing the Culture

There's an old Jewish proverb that warns, "Be careful what you pray for. You may just get it." Is that the case with the latest round in the ongoing battle to slay the red tape monster? Not really.

The 1997 Legislature ordered all state agencies and water management districts to submit lists of rules and regulations that lacked specific statutory authority. As expected, most of the rules recommended for repeal are the ones that limit government power in some way. For instance, the Department of Revenue's list contains almost 150 rules, almost all of which are friendly to taxpayers.

What may seem an end-run around the purpose of this exercise—limiting government's power grab—did not really surprise anyone. There are those who will point to the reaction of agencies as proof that the exercise did not work. There are others, including Associated Industries of Florida, who believe it just demonstrates that regulatory reform demands a cultural change among the governed and the government, and that is something that will not occur quickly.

This is just latest step in a continuing effort to find the ideal balance between retaining a necessary degree of flexibility in the promulgation of rules and preventing the abuse of power by agency officials.

The requirement to identify statutory authority for existing rules and regulations remains a powerful tool. Enforcing the requirement, however, will demand increased vigilance on the part of those who favor limited government.

The Department of Revenue's list of rules proposed for repeal can be found on the agency's web site (<http://sun6.dms.state.fl.us/dor/>). As of this date, not all state agencies have posted their lists of rules for proposed repeal on the Web. ■

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Revenue Limits:

A MODERN

Fa

When is
a limit
really not a limit?
When Floridians
try to limit
government
revenues,
that's
when.



ILLUSTRATION: GREGORY VOWELL

Money Tale



In November 1994, 59.4 percent of Florida voters decided to restrain the growth of state government by approving a constitutional amendment limiting the growth of state revenues. Although some were concerned about the method chosen for limiting growth, most believed any limit was better than none at all. Or so it seemed.

In that same election, the people of my district chose me as their representative to the Florida House. In the 1997 Session, my third as a lawmaker, the Legislature approved a \$2.6 billion increase over the previous year's appropriations. I thought we surely must have approached the constitutional limit with that 6.6 percent rate of growth. Not so. What I found was that we could have raised and spent another \$780.5 million and still have come in under the constitutional limit.

Three years of experience with the revenue limit has revealed deep flaws in its structure. What they are and how they got there are the substance of this tale.

CRAFTING A LIMIT

From 1983 to 1993, state government appropriations grew from \$11.9 billion per year to \$35.5 billion per year. This growth rate of 198 percent greatly outpaced Florida's concurrent increases in population (29

percent), personal income (119 percent), and inflation (45 percent).

Per capita spending skyrocketed from \$1,095 in 1983 to \$2,557 in 1993. Those who believed government growth was necessary for the happiness of all looked upon the burgeoning budgets and saw that it was good.

Others were concerned and argued that there should be controls placed on the growth of government. Not many citizens tripled their incomes from 1983 to 1993 as did Florida's government.

Citizen initiative groups embarked on petition drives. Florida TaxWatch, a government watchdog group, and other organizations deliberated the crafting of a constitutional limit on growth. "Enough is Enough!" was the cry.

The 1994 Legislature, responding to the pressure, took charge of the "less government" movement, something akin to putting John Dillinger in charge of bank security.

A joint resolution was passed by the 1994 Legislature, offering the people of Florida a choice: If you're tired of government growth, vote for this constitutional amendment. Government growth has seen its heyday, go back to your farms.

Voters approved the amendment, adding Article VII, Section 1(e) to the

Chart 1 - COMPARISON OF ECONOMIC INDICATORS

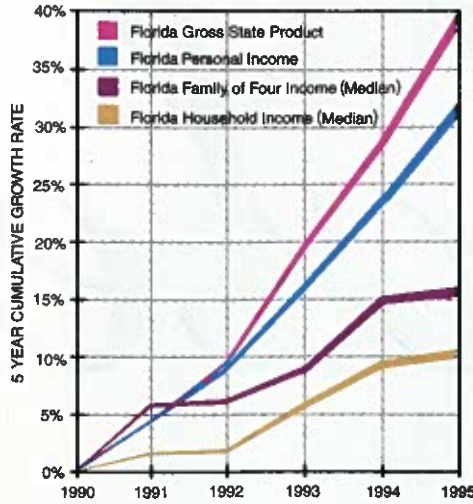


Chart 2 - LIMITING GROWTH?

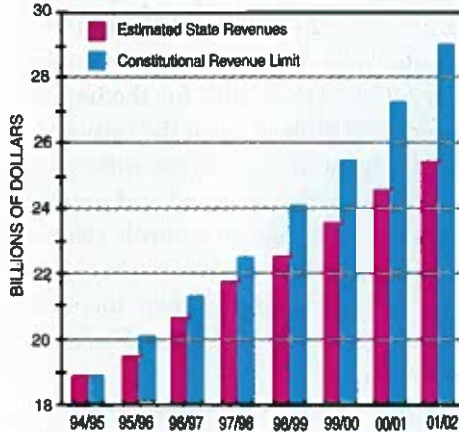
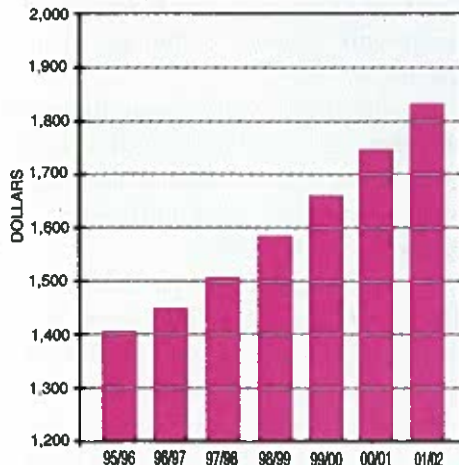


Chart 3 - CONSTITUTION LIMIT PER CAPITA



constitution. The growth of state revenues would now be limited to the rate of personal income growth in Florida. Henceforth, government could not grow any faster than personal income.

Starting with the 1994-95 fiscal year, growth in revenue was to be no more than the increase in Florida personal income, based upon the most recent 20 calendar quarters as quantified each Feb. 1 by the U.S. Department of Commerce.

Revenue collected in excess of the limit could only be appropriated by a vote of two-thirds of each house of the Legislature. Any excess funds not authorized by the Legislature would be routed to the budget stabilization fund. When that fund reached a maximum funding level, excess revenues would be refunded to taxpayers.

The reader is cautioned not to get excited, as such a refund is not ever likely to occur.

WHAT IS STATE REVENUE?

For the purposes of the limit, the term "state revenue" is given a unique definition. In fact, it is so unique that many portions of state revenue do not fall under its purview at all. Some exclusions make inherent sense, such as not counting lottery prize payouts as revenue, since they are not really the state's money. Other omissions are dubious.

Future limits in growth are based on the 1994-95 fiscal year, when \$38.6 billion was appropriated and spent. However, state revenues fitting the unique constitutional definition for the base year were only \$18.99 billion.

So the first intricacy of the revenue limitation is that fully one-half of the state's fundraising and spending power is off the table when it comes to controlling the growth of government. Thus, the revenue limit amendment only goes halfway toward achieving its objective.

THE GROWTH INDICATOR

The idea of using personal income as the standard for controlling government sounds enticing, does it not? After all, government should not grow faster than the people's ability to pay. A closer look reveals that personal income is generous to those who seek to dodge revenue limits.

From 1990 to 1995, personal income growth in Florida averaged 6.3 percent a year. The gross state product grew at an average of 7.8 percent each year. In contrast, household income grew at an average annual rate of 2.3 percent, while the average income for a family of four increased 3.2 percent per year. Using the Consumer Price Index to factor inflation, household income in Florida actually declined 0.9 percent per year in real dollars from 1990 to 1995.

In effect, the constitution now says government can grow at almost thrice the rate of household income, (see chart 1). The differential is actually greater, as you'll soon discover.

COMPOUND THE GROWTH

The next intricacy of the revenue limit amendment deals with the method by which we calculate growth. The amendment fixes revenue growth to the "amount equal to the average annual rate of growth in Florida personal income over the most recent twenty quarters times the state revenues *allowed under this subsection for the prior fiscal year*" (emphasis added).

In plain English, the revenue limit is comparable to compound interest. Each year, the accrued growth of earlier years allows for a higher rate of revenue expansion than would occur if a simple annual growth factor was used. The constitutional equation, naturally, works in the government's favor.

The net effect is that the revenue limit (now revealed as an oxymoron

Sources: U.S. Department of Commerce; Economic & Demographic Research Division.

WE HAVE CAST INTO THE IRONWORKS of the constitution a provision that state government can grow as fast as it can get its hands on people's money.

of the highest order) allowed for \$22.6 billion in state revenue expenditures for fiscal year 1997-98. In the three years since the amendment went into effect, the revenue limit has increased by \$3.6 billion.

According to projections for fiscal year 1998-99, state revenues will total \$22.6 billion, while the revenue limit for that year will be \$24.1 billion, a differential of \$1.5 billion. Translation: The Legislature could, not that it would, increase the statewide sales tax by a half-cent in the fourth year after the limit took effect and still come in under the limit. That's on top of \$3.6 billion of revenue growth since 1994-95. Is this what we call controlling the growth of government?

The situation only gets worse. The projection for the 2001-02 fiscal year allows for a limit of \$29 billion (see chart 2). That's \$10 billion, or 52.8 percent, of allowable increases in state revenue a mere seven years after the limit took effect. In that seven-year period, there will be a \$427 increase in each person's share of "limited" growth (see chart 3). And, remember, this represents only about half of the state's budget.

In short, the taxpayer was hornswoggled. The cunning and skillful wordsmithing of this constitutional amendment still astounds me, even after multiple readings. To its credit, Florida TaxWatch raised concerns in 1994 that the limit might be too generous. Sure enough.

Fiscal liberals in 1994, seeking to silence taxpayer yammering about

the cost of government turned the problem into an opportunity. As a result, we have cast into the ironworks of the constitution a provision that state government can grow as fast as it can get its hands on people's money.

The people can only hope that each Legislature voluntarily exercises fiscal restraint. The constitutional limit in its present form is of no help, and in fact may encourage the growth of government. How long will it be until government interests start using the difference between actual revenues and allowable revenues as proof of the need to raise taxes?

WHAT CAN BE DONE?

A limit with so many expansive elements needs to be changed if we, the people of Florida, really intend to control government growth through constitutional mandate.

First, we should reexamine the segregation of state revenue that allows for half of all appropriations to fall outside the limit. It simply makes no sense to hold such a large portion of state revenue as sacrosanct and unavailable for debate over limitation.

Second, linking state revenue growth to personal income allows government growth to just about keep pace with the growth of the gross state product. I doubt many economists would consider this healthy.

A less generous indicator must be found, and I tend to believe household income is the best gauge of Florida families' ability to pay for

government. For decades, we have been growing the government in the name of social progress to the detriment of our most precious social unit: the family. Government revenues should not grow faster than that of families, and government definitely should not usurp *all* of the income growth enjoyed by families.

Third, the current ability of the government to compound its growth when working people can't compound their income is unfair. This playing field needs to be leveled by going with a simple annual growth factor. The five-year averaging of the indicator already has a smoothing effect on economic variables.

The Constitutional Revision Commission should entertain debate over whether or not the state revenue limit is working as the people were led to believe it would work. That commission should include proposed changes to the state revenue limit in its 1998 report.

As citizens, we took a step in 1994 to bring the growth of state government under control. It was a step motivated by self-preservation of the taxpayers and working families who pay the freight of government. It can and must be corrected to provide true protection for the people from the excesses of government. ■

Rob Wallace is an engineer and small businessman who was elected in 1994 to House District 47, which is comprised of Northwest Hillsborough County and Tarpon Springs.

ANOTHER ANOTHER

Workers'
compensation
reform is and
always should be
an ongoing process.

Anyone who says otherwise
either isn't paying attention
or isn't telling the truth.

YEAR, REFORM PROPOSAL

The system underwent a complete overhaul in 1993 and is performing well according to the data coming in. Competition in the workers' comp insurance market is robust. As one might expect, however, the data also identify areas of abuse and inequity, and that is where attention must now be focused.

The most potentially costly flash-points are occurring in the areas of needless litigation and a proliferation of questionable determinations of permanent disability. With alarming frequency, attorneys are being paid fees that exceed the amount of the benefits awarded to the claimant. Fraud and manipulation of psychiatric benefits are also cost drivers that cannot be ignored.

While none has reached epic proportions yet, with the possible exception of fraud, employers cannot again afford to wait to engage the opposition in a reform effort. To do so would only return the market to the crisis conditions of the 1980s when policies were simply unavailable at any price for many Florida businesses.

Associated Industries of Florida (AIF) is working on a legislative proposal designed to thwart further deterioration in each of these problem areas.

FRAUD

According to estimates, workers' comp fraud adds half a billion dollars to the cost of the system each year. The Workers' Compensation

Oversight Board issued a report in the spring of 1997 analyzing claimant, employer, and provider fraud, and making specific recommendations to combat these practices. Additionally, Florida's statewide prosecutor convened the first-ever grand jury investigation into workers' comp fraud. Indictments have already been issued, focusing even more attention on this area.

One common example of fraud in the system involves the abuse of the construction exemption. Florida law allows independent contractors in the construction industry to avoid the purchase of workers' comp insurance if they file a request for exemption with the Department of Labor and Employment Security.

The fraud occurs when a worker who is not an independent contractor improperly files for the exemption. The problem is worsened when an improperly classified independent contractor brings employees of his own to the job. These "hidden" employees also have no workers' comp coverage.

The department lacks the power to deny an application for an exemption, even when it suspects fraud. This activity harms all honest contractors by placing them at a competitive disadvantage to those improperly receiving an exemption.

The worst aspect of this type of fraud is when a construction worker is seriously injured and has no recourse to workers' comp benefits because his employer has hidden his workers from the system. The burden then shifts to the general contractor or the welfare system. This does more than add costs to taxpayers and honest employers; it inflicts suffering on workers and their families.

AIF is proposing the complete elimination of the construction exemption. Only this drastic measure will ensure that Florida's construction tradesmen and general contractors are protected in the event of catastrophic injury.

Economic wisdom indicates that once all construction workers are insured against workplace injuries, the overall costs and premiums for these risks will decrease with the corresponding increase in the economies of scale. AIF actuaries have calculated a minimum 10 percent drop in rates for the construction industry once the entire industry becomes insured.

Eliminating the exemption will eliminate the disadvantage to honest contractors who purchase workers' comp insurance. If all contractors are incurring this cost, it will be reflected in all construction bids, thereby increasing competition and leveling the playing field.

ONE COMMON EXAMPLE OF FRAUD in the system involves the abuse of the construction exemption.

With the exception of the construction exemption, the law is otherwise sufficient to combat fraud. What must be augmented is the enforcement mechanism. Until more dollars are allocated to stop fraud, passage of tougher anti-fraud laws will accomplish nothing but an increase in the number of laws that aren't enforced.

THE WASTE OF ATTORNEYS' FEES

There's no difficulty in predicting the reaction of workers' comp claimant attorneys to efforts to reduce wasteful litigation because the argument is always the same: Any reduction in their fees will bring destitution and bankruptcy to all injured workers because claimants will be unable to afford representation.

Employers do not seek to eliminate the injured worker's right to legal representation. Rather, we seek a "reasonableness" factor in the calculation and payment of attorneys' fees. The incentive in the system for attorneys to inflate their billable hours has existed for some time now. The problem is now exacerbated by an inflation in the hourly rate paid to claimant attorneys.

In increasing numbers, South Florida claimant attorneys are being paid upwards of \$300 an hour for their time because they are considered workers' comp specialists. Common sense dictates that if one is a specialist, one should be more efficient and able to resolve cases quickly. However, this is not the case. The problem becomes greater as this rate becomes the standard in cases that present no

unique issues or complexity.

This is a flaw in the system. Furthermore, the allowance of hourly rates is not a legislative decision; it is a creature of judicial activism. The Legislature has the authority to reduce the incentive to inflate billable hours and hourly rates. Doing so will automatically produce a corresponding reduction in defense attorneys' fees.

The AIF proposal would replace hourly rates with a contingency fee, thereby eliminating the churning of a file by an attorney when the benefits involved are minimal. In other words, the payment for effort put into a particular matter will be commensurate with the severity of the injury.

The AIF proposal would also require a claimant's attorney to forward a copy of his client's request for assistance to the employer/carrier. Doing so would alert the employer/carrier to an impending problem, allowing them the opportunity to resolve the problem, thereby cutting costs and reducing unnecessary litigation.

Controlling litigation will make winners of injured workers. Increasing benefits to claimants can be accomplished with minimal financial impact to the system if the lawyers' hunt for money can be restrained. In fact, there's evidence to indicate that these changes (and others recommended by AIF) would actually save money for employers while increasing benefits for injured workers.

Claimant attorneys, however, show little if any interest in increasing the benefits to injured workers if the cost of such is to come out of their pockets.



PHOTO: ROGER LEE

PERMANENT TOTAL

Florida law contains a quirk whereby people who might qualify for Social Security disability benefits, even though they are not receiving these benefits, qualify for permanent and total disability. The end result is that Florida has the highest incidence of permanent total disabilities in the nation. Many people are being paid not to work even though they are fully capable of holding gainful employment, or are collecting benefits for problems unrelated to the on-the-job injury.

Permanent and total disability benefits must be reserved for those injured workers who are unable to work due to employment accidents. Paying benefits to persons who are capable of working, or who are unable to work because of a non-job-related injury, is loathsome and unfair to the honest people of Florida. Doing so raises insurance rates, which raises the cost of doing business, which raises the prices Floridians pay for goods and services.

The AIF proposal would address this problem by limiting the Social Security disability qualification to those injured workers who are actually receiving Social Security benefits. Furthermore, this would no longer be an exclusive factor to qualify a person as permanently and totally disabled.

PSYCHIATRIC BENEFITS

Psychiatric benefits are another area demanding attention. Under the current law, an injured worker may receive additional workers' comp benefits after exhausting all other benefits by claiming a psychiatric injury resulting from the workplace.

The difficulty with this is proving that a particular psychiatric condition is caused by or is attributable to a claimant's employment. Judges of compensation claims have returned inconsistent rulings in these cases, complicating the defense against these claims. Judges, however, seem to follow a general policy of giving the benefit of the doubt to the claimant when there is a question of whether or not a psychiatric condition is attributable to the injury.

Attorneys' fees and nothing else drive this phenomenon. Again, the system is paying benefits when they are not due.

The AIF proposal would not eliminate the recovery of psychiatric benefits because they are appropriate in certain situations. It does place a higher burden on the claimant to clearly demonstrate that the alleged psychological injury was, in fact, attributable to a workplace injury. It allows for treatment of a psychiatric injury but no payment

for any impairment after maximum medical improvement for psychiatric ratings. Predictions are that this proposal will greatly reduce the number of persons receiving psychiatric benefits and will return them to the work force.

EMPLOYEE LEGAL ASSISTANCE

One element of the AIF proposal likely to receive action by the Legislature is that of no-cost, state-employed attorneys to represent workers in claims involving contested medical benefits below a certain threshold, for example claims less than \$5,000.

Providing free legal assistance for the smaller medical cases could produce significant savings. When attorneys represent claimants on these nominal cases, the attorneys' fees are often much higher than the amount in benefits received by the claimants. Those savings alone would be more than sufficient to cover the costs of salaries for the government lawyers.

These are just some of the more significant proposals that AIF is considering to strengthen the Florida workers' comp insurance market, and make the system more equitable. For these recommendations to meet legislative muster, all interested persons must be willing to work together in a reasonable manner. If this can be done, all Floridians will benefit through reduced workers' comp premiums, increased benefits to injured workers, and enhanced economic efficiency. ■

Mary Ann Stiles, Esq., is the senior partner in the law firm Stiles, Taylor, Grace & Smith, PA, and is general counsel to Associated Industries of Florida. Stiles has over three decades of experience in workers' comp law.



BECOMING A VENTURE CAPITALIST

In a growing economy, making investment decisions can be difficult if only because there are so many options. If you haven't considered venture capital investments in the past, now might be the time to do so.

Small, privately held businesses and entrepreneurs are the driving force in our economy. These firms often need private funds to expand. That's where venture capitalists—or angels as they are sometimes called—come in.

Investing in entrepreneurial firms is exciting and often rewarding. The more you know about the entrepreneur, his idea, the marketplace, and your own risk tolerance, the more satisfying—and lucrative—the experience will be.

When investing in a private company, you should shoot for an average compound annual rate of return of 50 percent. This sounds very high but, remember, the average return for small, publicly traded stocks in the stock market has been around 20 percent. With publicly traded stocks, you have the liquidity of the stock market and, normally, the firm has been established for some time. In a young, private firm, there is no immediate liquidity and a company's youth is often the time of its most rapid growth.

You do not have to take majority control of the company to get this required return. In fact, you only need control if the entrepreneur does not deliver on his promises. That's why you should insert clauses in the agreement specifying that if the entrepreneur falls short of expectations, you gain control.

The threat of loss of control of the business is a powerful motivator for an entrepreneur. You just want to protect your investment and rate of return in a timely and low-risk fashion; whether it's with a minority or a controlling interest is beside the point.

Another important point you should consider is the time and

manner of the harvest; that is the point at which you get out of the business and take your earnings with you.

The entrepreneur should specify in his business plan the method he will use for getting your investment funds out of the business. Typically, an entrepreneur assumes that in five to seven years he will hold an initial public offering or merger to get the investor out. In evaluating deals, you need to verify that the harvest scenario is a reasonable one.

Another key factor you should consider is the make-up and experience of the entrepreneur's management team. An investor is betting on the jockey and not the horse; a great idea will never be more than that if it is not brought to market profitably. Some of the critical areas of experience are in marketing, channels of planned distribution, and financial controls. No matter how good the idea, if the entrepreneur does not have the relevant business experience, you should probably take a pass on the deal.

Two other basic criteria need to be considered when becoming a venture capitalist. First, does the product or service you are going to invest in have a market, and second, can this product or service produce a profit in its market?

The best way to evaluate the market and profitability of the product or service is to look at the prior history of the company and its competition.

For new ventures, however, this is not possible. In that case, you will have to rely on your own knowledge and expertise, the accuracy of the business plan, and the respective pro forma financial statements. It is amazing how many entrepreneurs in their business plans expect to

An investor is betting on the jockey and not the horse; a great idea will never be more than that if it is not brought to market profitably.

become millionaires in two or three years. If you think the pro forma statements are unrealistic, steer clear of the deal.

Once you find a deal that looks promising, here are some important elements that need to be built into the agreement between an investor and entrepreneur:

1 Performance goals and cost containment. If the entrepreneur does not meet his expectations, there should be a mechanism for you to gain additional control. You do not initially need control of the corporation as an investor; however, if the entrepreneur does not perform, you must have the right to control the business in order to protect your investment.

2 Management salary and perks. Management salary and perks must be limited while you are an investor.

3 Dividends. There must be a limit on dividends paid. If there is no limit, the entrepreneur could siphon the cash out of the business.

4 Check signing. The authority of the management to sign checks over a certain amount without your approval should be limited.

5 Audit. The firm should provide you with an annual audit of the business.

6 Expenditures. Any expenditures on investments over a certain limit must have your approval.

7 Employment. You should have approval power over the employment of members of the entrepreneur's family.

8 Monthly reports. You should receive monthly reports on the financial performance of the business.

Investing in a promising young company or startup is risky, but it doesn't have to be a high-stakes game of chance. With a little bit of effort, you can minimize the risk of your venture capital investments, thus protecting your stake and producing higher returns. ■

Jerry Osteryoung is the executive director of The Jim Moran Institute For Global Entrepreneurship at the College of Business, Florida State University.

When investing in a private company, you should shoot for an average compound annual rate of return of 50 percent.

matchmaking

If you've got some money in your pocket, there's always someone willing to take it. When it comes to venture capital, finding the right marriage between those who have the money and those who want it can be a little tricky. So, here's our matchmaking guide:

△ In many Florida cities, there are venture capital clubs that hold monthly meetings. Usually at these meetings, entrepreneurs present their business plans and venture capitalists get a chance to network. To find one in your area, contact Enterprise Florida at (407) 316-4646.

△ The mother of venture capital meetings is the Florida Venture Forum, Inc., which will take place on Jan. 21-22, 1998, at the Biltmore Hotel in Coral Gables. During this meeting, there is a full day scheduled for entrepreneurs to present their plans. To register for the forum, contact Jeanne Becker at (305) 446-5060.

△ A venture capital network can also be a valuable source of information. These networks give you an opportunity to review deals while remaining relatively anonymous until you find something that looks interesting.

The Jim Moran Institute offers this service free to both entrepreneurs and angels. For more information, call (800) 821-7515.

△ Enterprise Florida publishes the *Florida Venture Finance Directory*. In the directory, you can also find the names other venture capitalists in your area who may be a valuable source of information. To get this reference source, call Enterprise Florida at (407) 316-4646.

△ The drafting of agreements between entrepreneurs and investors is best left to an experienced attorney. The *Florida Venture Finance Directory* also includes a listing of attorneys who specialize in venture capital deals.

△ Another great source of deals or deal flow are attorneys and accountants. These folks are in the communications pipeline and usually know of some deals. ■



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"The post office is trying to curb youthful nonconformists ... in San Francisco who have been delivering mail barefooted."

Wall Street Journal, March 19, 1968



PHOTO: NATIONAL MUSEUM OF AMERICAN ART, SMITHSONIAN INSTITUTION; ILLUSTRATION: FROM THE GENERAL SERVICES ADMINISTRATION.

The Legend of James Edward Hamilton, Barefoot Mailman, by Stevan Dohanos, (1940)

1885. There are no roads, trains, or intracoastal waterways linking the frontier outposts of South Florida. The U.S. Post Office establishes a walking mail route from Palm Beach to Miami.

The new mailmen make their journey shoeless, hiking at the edge of the ocean where the sand is firmest. For \$600 a year, they make the six-day round trip every week, covering about 80 miles on foot and 56 miles in a rowboat.

1892. A road to Miami is completed and the barefoot mailmen walk their route no more.

Efforts to commemorate these sturdy postal workers with a postage stamp received a rather frosty rejection

as "highly inappropriate," for the reasons reported in the March 19, 1968, *Wall Street Journal*.

They did receive due recognition however in the 1943 novel, *The Barefoot Mailman*, by Theodore Pratt, and in a mural in the Summit Boulevard post office in West Palm Beach. The mural portrays in six panels the story of Ed Hamilton who disappeared on his route in 1887, an apparent victim of drowning or a hungry alligator.

Fortunately, the young San Franciscans had never heard of another barefoot mailman, H. J. Burkhardt. A firm believer in the curative powers of sunshine, Burkhardt walked his route naked, only donning his clothes when he approached civilization. ■

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\$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%	