

FLORIDA

# BUSINESS

# INSIGHT

MARCH  
APRIL  
1998

The Magazine Of Free Enterprise & Public Policy



## LEGISLATIVE OUTLOOK '98

**A Plague Of Carefulness**

**One At A Time**

**The Trouble With Polluter Pays**

**Workers' Comp And More**

*The Voice Of Florida Business*

A Publication Of Associated Industries Of Florida Service Corporation





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# FLORIDA BUSINESS INSIGHT

The Magazine of Free Enterprise & Public Policy

March/April 1998

Volume 2, Issue 2

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1998 Legislative Session.

Cover Photo: Miguel Salmeron

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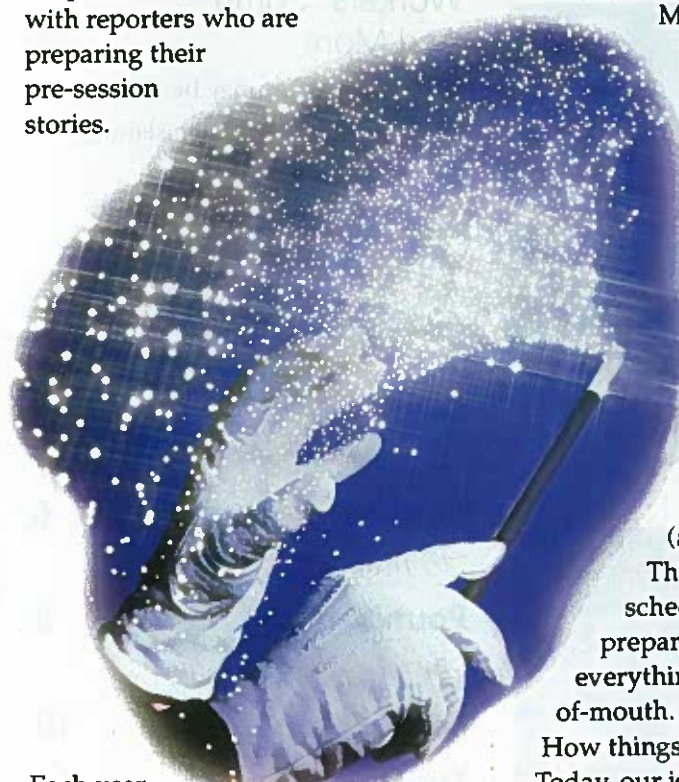


by jon l. shebel, publisher

# The Way We Do What We Do

**W**ith the 1998 Session of the Florida Legislature convening on March 3<sup>rd</sup>, the Capitol Press Corps in Tallahassee, which numbers over 100 reporters during the session, is busy calling around to find out the programs of all the special interest groups. This is an annual occurrence.

Here at Associated Industries of Florida, we spend hours on the telephone and attending meetings with reporters who are preparing their pre-session stories.



Each year, there are new reporters and they always ask, "How does Associated Industries go about doing its job?"

This caused me, a few days ago, to sit back and ponder how we have

changed the way we represent the business community since I first joined the association in March, 1969, the day prior to the session opening.

When I arrived, we had two lobbyists, an office manager, an assistant to the office manager, and me — the runner — who was charged with creating a schedule for all the business lobbyists in town (approximately six).

This was the first time a schedule had ever been prepared because formerly everything was done by word-of-mouth.

How things have changed! Today, our job at Associated Industries starts with elections. Our political department starts its job the day after each election, planning for the next election. The job of our political research arm, Florida Business United, is to brief

everybody and anybody in the business community interested in being participants in the elective process. The bottom line is that, in addition to the research which the department conducts, the political department is responsible for recommending the placement of over \$450,000 contributed by Associated Industries Companies and approximately \$7.2 million contributed by our member companies to legislative campaigns.

After the elections, our governmental affairs department, which has been conducting research on a year-round basis regarding proactive and defensive legislative positions, starts meeting with and briefing legislators. Our 16 lobbyists (see page 26) are definitely the top-of-the-line in Tallahassee and include a former speaker of the House, minority leader of the House, and executive director of the Florida Department of Revenue, as well as attorneys and experts who have been with us for up to 25 years. They stay in constant touch with legislators, not just during the legislative session, but in the legislator's home district on a year-round basis.

I believed years ago that "communications" would be the name of the game. Our whole orientation for the last 20 years has been to build up the most sophisticated communications system in the nation to keep business leaders advised as to how they can best petition their legislators on issues of interest to them.

Florida Business Network is the key to our communications system. It is a highly computerized reporting system that, on the intake



side, records every vote, campaign contribution, bill, media report, and just about any other data relating to issues and legislators. Our computer system enables us to reach every household and business in Florida and to break them down so we can contact people based on legislative and congressional districts and issues.

We integrate our Florida Business FaxNet (50,000 faxes in five minutes) with Florida Business Network, and we have the in-house capability to operate phone banks, which lets us contact people in a legislator's district and hook them up with their legislator's office to talk to them on particular issues.

Direct mail and television and radio commercials are also within our internal capabilities. We are able to unleash, at a moment's notice, mailings and television and radio spots within a legislator's district or on a statewide basis on issues of interest to business.

This is all in sharp contrast to the way we "stood in the rotunda" (the area between the House and Senate chambers) 29 years ago. In those days, that form of lobbying was very effective and there were very few lobbyists compared to today.

In today's environment, I cannot think of any interest in Florida that does not have a lobbyist. This is good because legislators need to hear from every interest in our state before making their decisions on matters of public policy. It is the goal of Associated Industries of Florida that they hear from the very best lobbyists from business a number of times and in a number of formats. That is why we have what has come to be known as the most

effective communications system in the nation.

No longer is lobbying simply standing in the rotunda and trying to nab legislators as they walk by. While this is still very important, and because an amendment can change an entire bill from a positive to a negative or vice versa on a moment's notice, we employ 16 of the finest lobbyists in Florida to circulate the halls and brief legislators as to the latest available information. But without a sophisticated communications system to reach back into the districts and approach legislators in a number of ways, an organization cannot truly say that it has a real lobbying effort in today's environment. Notwithstanding what many professional lobbyists will tell you, the most effective lobbyist is someone from "back home in the district."

This magazine is simply one of the tools we use to reach legislators and the public to advise them of the business interests in Florida and to convince them that the business interests are compatible with the interests of the people of Florida.

When the legislative session opens on March 3<sup>rd</sup>, we will have just completed our legislative reception the night before, which is normally attended by around 5,000 people. We will be geared up and ready to go at daylight to represent the true business interests before the Legislature. I guess that is why Associated Industries has been known over the years as "The Voice of Florida Business." ■

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

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Member, Florida Magazine Association

by frank t. white

# Reform Inside And Out

**W**orkers' compensation is designed as a self-executing system. That means the system operates automatically to provide for the needs of each injured worker. A set of previously agreed upon rules determine what benefits the injured worker receives. When disagreements arise over those benefits, there is a mechanism to settle quickly the disputed issues.

A self-executing system is supposed to benefit all parties to it equally. The system becomes warped when some try to bypass its automatic nature and manipulate it for the benefit of the few at the cost of the many. When that happens, groups such as Associated Industries of Florida (AIF) step in to seek reforms that circumvent efforts to manipulate the system.

During the 1998 Legislative Session, AIF will be pursuing much-needed reforms (see page 40). But session is not the only time that reform efforts take place. AIF's workers' comp insurance company, Associated Industries Insurance Company, is committed to helping employers conduct ongoing reforms of their own internal workers' comp procedures in the form of appropriate cost containment measures.

A recent survey of injured workers highlighted the significance of one of the least expensive cost containment measures: showing support and concern for the welfare of an injured worker. The survey found that doing so can indeed be a

major influence on the course that a claim may take and, ultimately, on the cost of that claim.

According to the survey, only 32 percent of the employees questioned said their employers had kept in touch with them during their recuperation period. Experience indicates that employers of the other 68 percent of the employees may have prolonged the recuperation period, thus increasing claim costs by not maintaining contact with the employees.

A definite correlation was detected between the quality and extent of the employer communication with injured employees and their likelihood of returning to work early. This is true even with less serious injuries. The study found that injured employees were twice as likely to be out of work longer than a month when return to work programs either did not exist or were not explained to the injured worker.

Another area of assistance that an employer can provide, especially under managed care, is the recommendation of doctors or

hospitals. Less than one-fifth of the employees surveyed said their employers had recommended doctors or hospitals. Of that minority, however, 76 percent of the injured employees viewed such recommendations as positive or neutral, and 90 percent followed the recommendations. If you don't have a list for medical referrals, contact your insurance company to get one to pass on to an injured employee. You'll be providing appreciated assistance and maintaining positive contact with the employee.

An employer should act as a conduit of information to the injured employee. The workers' compensation system can be complicated at times even though it is supposed to be self-executing. By aiding the employee in obtaining the necessary information, the employer actually takes on the role of advocate for the injured worker, building trust and reducing the potential for antagonism that sometimes drives the employee into the arms of an attorney.

The study found that becoming an active, caring participant with the injured worker does indeed promote good will and the desire on the part of the injured worker to return to employment. Those employees who showed dissatisfaction with their employers were more likely to hire an attorney.

Making workers' comp work for you and your employees can start in your own business, even before the Legislature takes its first vote on AIF's legislative proposal. ■

*Frank T. White is executive vice president and COO for Associated Industries Insurance Services, Inc.*





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by marian p. johnson

# Getting An Early Start

**T**he spring season is new and the legislative session may just be starting, but that doesn't mean it's too early to begin planning for autumn's elections. The job of guiding a pro-business agenda through the legislative maze is difficult enough, but it approaches the level of impossibility if lawmakers are unfamiliar with the menu of complex economic issues facing Florida today.

There are many factors influencing the economy; the state's statutory and regulatory regime ranks among the most important. Thus, promoting the candidacy of those who understand and advocate policies based on the principles of economic freedom is crucial to the business community's efforts to enact those policies.

That's one of the reasons the business community takes certain preparatory steps early in the election cycle. One of the first of these steps is the analysis of legislative districts because it is the foundation from which everything in an election plan is built. This analysis involves the compiling of demographics, current voter registration, and past election results. The data receive an in-depth review, precinct by precinct, of trends over the last several years.

The next step is usually a statistically sound survey of voters' thoughts and attitudes on a variety of issues, including candidate name identification. In some circumstances, a survey may include some test ballots.

Every piece of information is crucial to the attempt to predict election results. The answers sought include whether or not an



incumbent could be successfully challenged and how much money would be required to mount the campaign. Most election consultants firmly believe they can win any campaign in any district; the analysis helps them decide whether the odds for success justify the time and expense of the effort.

Once vulnerable or crucial seats are identified, the effort moves to

the next phase: candidate recruitment, screening, and education. In this phase, we seek candidates with the desired philosophical foundation. Just as importantly, however, is to determine whether the candidate has the requisite characteristics and aptitudes to both run a campaign and to perform well in the legislative arena.

Helping a pro-business candidate win office requires some good luck but is much more dependent on hours of analysis and days of exploration. And then the work is still not complete until the candidate is thoroughly briefed on all the issues — pro and con.

For many people, campaigns and elections are nothing more than a slightly unsavory game, one that is partly played out in the media and partly in secret. It seems little more than a contest of accusations and dirty tricks. Candidates proclaim their empty promises of, "Elect me and I will fix everything for you."

This perception is unfortunate and often incorrect. Far too often, however, candidates and voters alike do not take campaigns and elections seriously. Yes, the flavor of the campaign should be exciting and those working in the campaign should have fun. But that's not enough.

Since the political process affects so much of what we do, elections are rightly a vital part of the adventure of life. Like so many other important pursuits, preparations for the election cycle require time and care. As business people well know, getting a jump on the competition increases the chances for success.

*Marian P. Johnson is senior vice president of political operations for Associated Industries of Florida Service Corporation.*



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compiled by jacquelyn horkan, editor

### From Capitol Hill

#### The Good ...

Finally, Congress is catching up with reforms instituted long ago in the states. Rep. Lloyd Doggett (R-Texas) has introduced a bill that would impose a 10-year sunset provision on most federal programs. Instead of giving government programs eternal life, Congress would be forced to examine old ideas and throw out those that aren't working or have outlived their purpose.

In introducing his measure, Rep. Doggett told his colleagues, "Somewhere between the Potomac and the Rio Grande, some federal efforts that began as a bright shining idea get so



misdirected that many Americans only get a bad sunburn."

Will someone pass the SPF 50?

#### The Bad ...

In a development incomprehensible to those who thought Republicans controlled Congress, the House GOP leadership is refusing to bring the National Right-to-Work Act up for a vote. Right-to-work laws, such as the one in Florida, prohibit closed

shops where workers are forced to pay union dues as a condition of their employment.

Compulsory union dues have been a part of national labor policy since 1935. The National Right-to-Work Act would repeal these anti-freedom provisions in federal law. The bill has already

collected more than 100 sponsors. Now if only Speaker Newt Gingrich would double-check the party affiliation on his voter's registration card.

#### ...And The We-Can-Only-Hope News

Could it be that Congress is really getting serious about real tax reform? The House Republican Conference has set up a site on its web page to poll citizens about their opinions on the IRS and the federal tax code. Visitors to the page are also urged to recount harrowing experiences with the tax agency.

In case you get the urge to provide some ammunition to the cause of tax reform. The site's address is: <http://hillsource.house.gov>



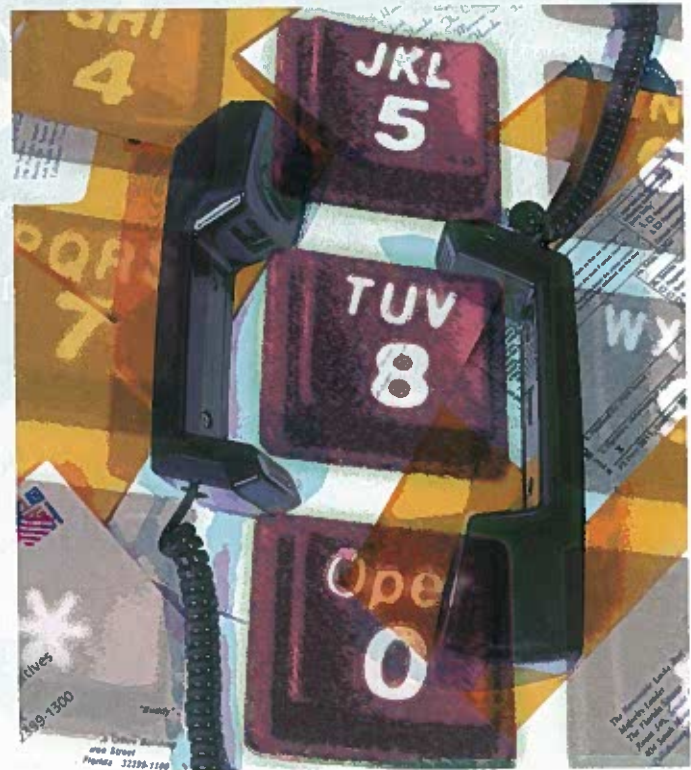
### Keep In Touch

Tallahassee is moving — to a new area code that is. In March, the Panhandle will complete the transition from the old 904 area code. If you need to get in touch with anyone in Northwest Florida, including assorted bureaucrats and lawmakers, you'll have to dial 850 first.

And the changes keep coming. Apparently the post office is having difficulties delivering mail addressed to the Capitol, House Office Building, and Senate Office Building. How they can miss the tallest building in the home of state government is hard to fathom. Nevertheless, authorities are recommending that you include the street address if you want to mail a letter to your legislator while he's in Tallahassee.

The street addresses are as follows:

- House of Representatives: 402 South Monroe Street
- Senate: 404 South Monroe Street



PHOTOS: DOC KOKOL



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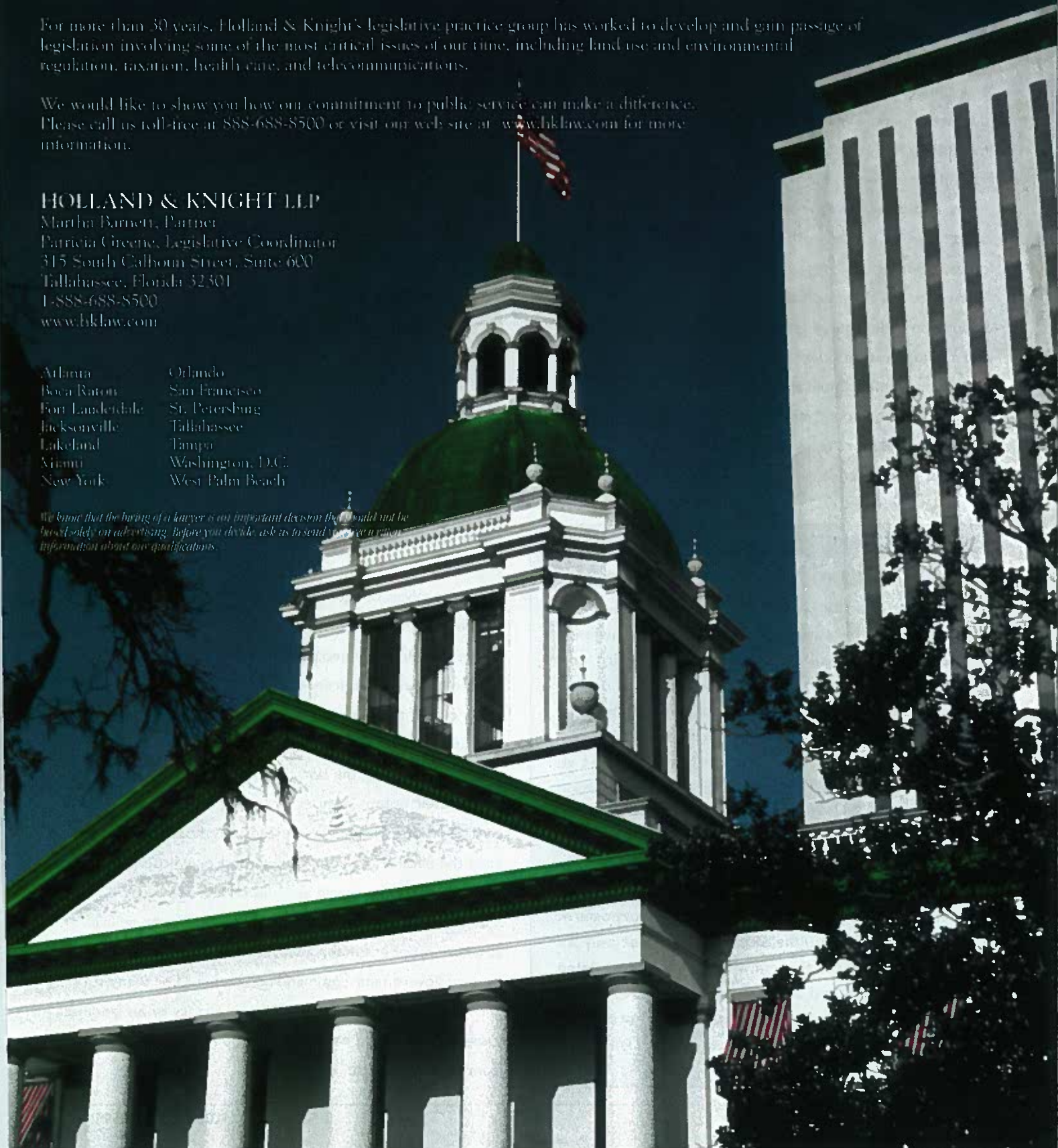
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## Take A Farmer To Lunch

**T**his year marks the 200<sup>th</sup> anniversary of the publication of *An Essay on the Principle of Population*, Thomas Malthus's shriek of alarm. According to Malthus, population grows exponentially while agricultural production increases by a simple arithmetic progression. Without controls, the number of people will soon outstrip the food supply, leading to catastrophes of starvation and misery.

Malthus was wrong. Today, England's population is three times as large as it was when Malthus predicted an impending crisis. Despite his error, Malthus continues to attract disciples, including UN apparatchiks and Vice President Al Gore. These modern day prophets of doom believe that overpopulation is the source of hunger, poverty, disease, warfare, and a whole host of other social ills.

If their arguments hold true, the evidence should indicate that high-income countries are those with low population densities while more crowded countries are those with low incomes. The evidence, however, refuses to cooperate.

### A Quote Worth Noting

**"T**hus, in the United States, the business corporation came into its independent own. Here were born the very first manufacturing corporations in the world. Here corporations ceased being based on state privilege, monopoly, trust, or grant and became inventions of civil society and independent citizens. The state retained a right to approve of applications and to register them for good legal order, but it did not create or convey its own power to the corporation or guarantee the latter's survival. The corporation, to survive, could no longer depend on its privileges; it could only survive if it met the needs of its customers and the purposes of its investors. It brought to civil society not only independence from the state but also unparalleled social flexibility and a zest for risk and dare."

*The Fire of Invention: Civil Society and the Future of the Corporation*, Michael Novak (Rowan & Littlefield Publishers, Inc., 1997)

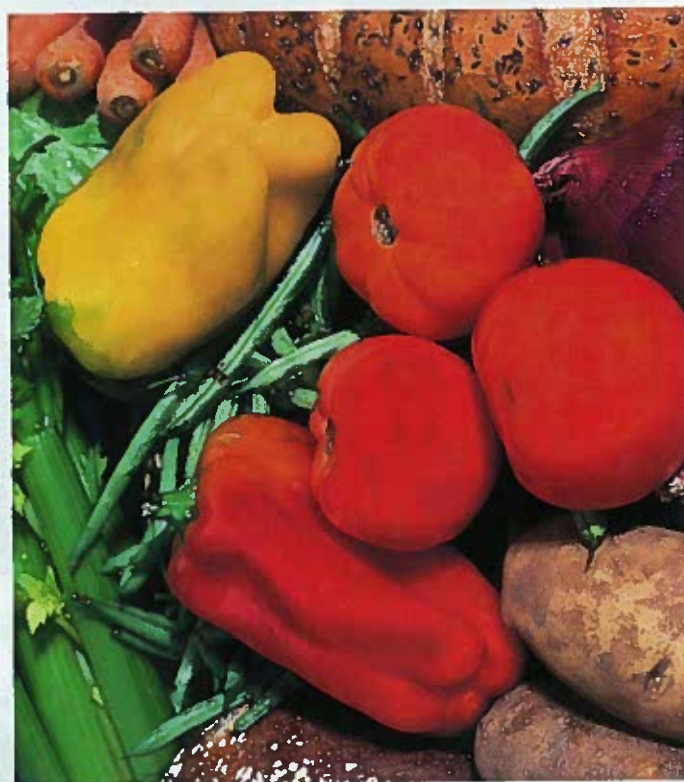


PHOTO: DOC KOKOL

Ethiopia and the United States have similar population densities, but Ethiopians average less than \$100 in annual per capita income. Similar contrasts exist between other wealthy and poor countries.

Close analysis of economic discrepancies reveals that the greatest determinant of a nation's prosperity is its level of market freedom, defined as personal choice, protection of private property, and freedom of exchange.

But even if there is no link between wealth and population, why are there people starving? Again, the blame must rest on governments. Over the last 35 years, the world's farmers have tripled their output without increasing their acreage significantly. Nations with hungry citizens are those whose policies keep the people too poor to buy food, or whose corrupt practices squander world agricultural aid.

Even though Thomas Malthus never got it right, he lives on as a false prophet for the advocates of environmental extremism and government command and control. For the rest of us, perhaps we could mark the 200<sup>th</sup> anniversary of his landmark essay by preparing a banquet of all the riches mankind reaps from the good earth.



# FLORIDA INSURANCE COUNCIL

## *Working for Insurance consumers and the professional insurance community.*

**I**ncreased competition in the automobile insurance community over the last two years has benefited Florida consumers through quality insurance protection and lower premiums. Consumers could see additional savings, however. The Council is proposing legislation during the 1998 session which reduces costs through optional managed care for Personal Injury Protection coverage and addresses other problems in the insurance system.

For information on the Council's auto insurance initiative, contact Cecil Pearce, President, Tallahassee, (850) 386-6668 or, on the Internet, [smiller@flains.org](mailto:smiller@flains.org)

The Council represents more than 250 insurance companies with over \$12 billion in premium volume each year. It is one of the largest and most effective insurance company trade associations in the country.



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or on the Internet, [smiller@flains.org](mailto:smiller@flains.org)

by kathleen "kelly" bergeron

# Does Sparing The Rod Enhance Performance?

**"N**o one enjoys addressing others' deficiencies. But failure to do so sends the message that people are on track when they really aren't. And that may be the greatest disservice a leader can do to someone else."

144 Ways to Walk the Talk by Eric Harvey & Alexander Lucia

Clearly defined rules for appropriate behavior and performance are critical to any organization's survival. Such rules establish the standards and are necessary for maintaining the right type of work environment. Besides, people generally work better in a structured, orderly atmosphere. They like to know what is expected of them. Conversely, people do not like uncertainty or chaos. If they break the rules, they want to know the consequences.

The two most common categories of rules address performance and behavior. Employees must be aware of these rules and understand what specific behaviors may lead to disciplinary action, up to and including termination.

A new employee should be informed of all the rules during your

- company's orientation presentation.
- Additionally, the rules should be spelled out in your employee handbook for future reference.
- Performance rules vary from employee to employee and are specified in an individual's job description. These standards define the level of expectation as it relates to knowledge of the job and satisfactory job performance.
- Performance rules refer to those capabilities that an employee must exhibit in order to perform the job in an acceptable manner.

Behavioral rules define appropriate or acceptable employee conduct. These are the standards established by management to ensure that the work environment remains safe, orderly, and conducive to productivity.

Employees must know what behavior is expected of them and others. They must be fully aware of the consequences of unacceptable behavior

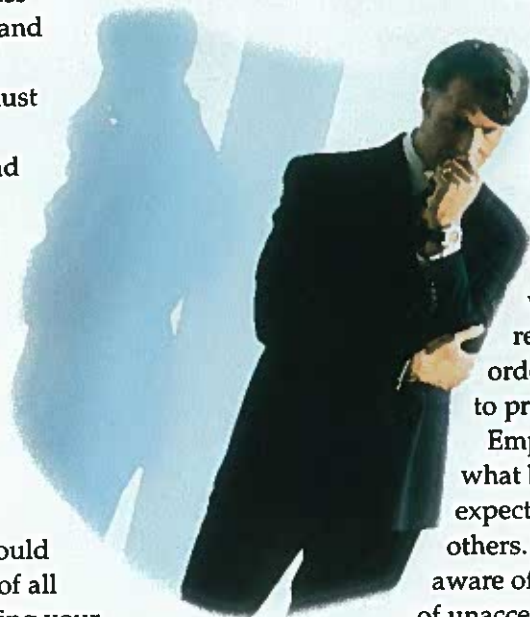
and they must understand that violators will be punished accordingly. In order for any system of rules to be effective, individuals must be held accountable for their behavior, collectively or individually, no matter how unpleasant the result.

Your supervisors and managers must be trained to apply fair and consistent disciplinary measures. They must understand the appropriate levels of discipline in order to correct the situation, while encouraging appropriate behavior and satisfactory performance. If an employee is not performing his job satisfactorily, or when a violation occurs of a written rule, the employee must be counseled immediately and a record of this counseling must be acknowledged by the employee and placed in his or her personnel file.

Although some offenses require immediate termination, most employees commit less severe violations of the rules. Therefore, except in severe cases, management should follow a progressive discipline procedure. Under a progressive discipline system, the consequences can range from verbal counseling, written counseling and warnings, to suspension or termination. In a future column, I will outline the specific steps in a progressive discipline procedure.

No one enjoys sitting across from someone and telling him his shortcomings; it is uncomfortable for all. But for management it is an obligation to the employee, other employees, and the organization as a whole.

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





# IN PRINCIPLE AND IN PARTNERSHIP...

## FLORIDA SUGAR FARMERS ARE COMMITTED TO EVERGLADES RESTORATION



**T**he 50th anniversary of Everglades National Park is a time for all of South Florida to celebrate the success of our collective efforts to restore the Everglades.

Since the passage of the Everglades Forever Act in 1994, tremendous progress has been made to clean water and improve its flow to the southern Everglades. Sugar farmers are playing a decisive role in leading these restoration efforts.

On-farm soil and water management practices have reduced phosphorus in our water more than 50 percent over the past three years, far more than was anticipated or required by the Act. Sugar farmers are paying 100 percent of the cost of cleaning the water leaving our farms in the Everglades Agricultural Area, through a special tax of up to \$322 million.

The first of six filter marshes constructed to continue water quality improvements went into operation in December and is proving to be even more effective than anticipated.

We support the federal government's purchase of Talisman Sugar for urban water storage and other restoration projects. Further, we have pledged our cooperation in achieving the most efficient use of this land.

While much remains to be done to achieve our mutual goal of Everglades restoration, we are committed to the principle of Everglades restoration and the partnership of the Everglades Forever Act. By working together, we can ensure a healthy Everglades and a healthy farm economy.

**United States Sugar Corporation**  
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# The Image Of Us

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THINKERS AND GET THEM IN ONE PLACE AT ONE TIME?

Out of their wisdom, our Founding Fathers crafted the U.S. Constitution, a document designed both to reflect and to help create the attributes necessary for a nation of free, self-governing citizens. The idea of how to become the people we should be continues to inform public policy to this day.

Perhaps the genius of those men who met in Philadelphia for the Constitutional Convention spoiled us. Never have we Americans managed to match that gathering of intellect. Fortunately, their enduring gift — the U.S. Constitution — has given us a great measure of protection against every misstep we've taken since then.

It is fashionable today to bemoan the mediocrity of our current crop of politicians. But to paraphrase one 20<sup>th</sup> century politician, we have met them and they are us. For better or worse, we get the government we deserve.

As the 1998 Legislative Session begins, now seems as good a time as any to look at the government we have chosen.

## HOW THINGS CHANGE

Cast your memory back 10 years and ask yourself the question: How would the Legislature respond to a crisis in state schools? By raising taxes of course.

Last November's special session on school overcrowding gives us a dramatic illustration of the self-correcting mechanism of self-government in America. In the months leading up to the special session, Gov. Lawton Chiles embarked on a blitz of soapbox oration and photo ops in order to build support for increased spending on public school construction.

Proposals developed in response to the crisis included a provision to give school districts the power to increase

*by jacquelyn horkan, editor*





PHOTO: BETH AVA

taxes without voter approval. The Legislature would have none of it, choosing instead to leverage lottery money through bond issues.

Whether you agree that a crisis even existed, much less whether borrowing money was the best answer, you can't help but marvel at this demonstration of the changes wrought in governing philosophy over the last five years.

Furious at ballooning state expenditures during the 1980s, voters forced lawmakers to place a revenue-limiting amendment on the 1994 ballot, even as they were electing people who promised to stop taking the easy way out of policy decisions by imposing new taxes. Rep. Rob Wallace (R-Tampa) has analyzed the revenue limit measure and found it insufficient (*Revenue Limits: A Modern Fairy Tale*, Jan.-Feb. 1998 *Florida Business Insight*). In fact, the limit mechanism has allowed the growth in the cap to outstrip the growth in revenues. Lawmakers could raise taxes without exceeding the limit, but they probably won't.

As it turns out, the constitutional amendment was the least effective method for voters to express their frustration with high taxes. Selecting anti-tax representatives has offered the greater protection.

The ease with which the constitution can be changed wrests from legislators their obligation to make difficult policy decisions. It also removes from citizens their duty to maintain vigilant watch over those decisions.

Amendments placed on the ballot usually couch complex issues in sound-bite terms. These amendments are justified — often incorrectly — as methods to circumvent political cowardice on important issues. They also reflect a general impatience with the slow-moving ship of state. But, we shouldn't forget, that slow pace protects us from the folly of the moment.

Of all the citizen initiatives placed before voters in the last two decades, only a few have been appropriate constitutional material, meaning that their purpose was to



# IT IS FASHIONABLE TODAY to bemoan the mediocrity of our current crop of politicians, but to paraphrase one 20<sup>th</sup> century politician, we have met them and they are us.

effect a change in the relationship between the government and the governed.

One of those is about to bring a revolution in Florida government.

## YOU'RE OUT

In 1992, Florida voters inserted into the constitution a provision that would limit legislators and Cabinet officials to eight years in office. As we draw closer to the 2000 elections, ground zero for term limits, a new strategic element will enter the mechanics of Florida politics.

Under term limits, a politician may only serve eight consecutive years in one office; after that time, he either leaves politics or runs for another office. Thus, over every eight-year span, Florida's governing class will be filled with newcomers. We could conceivably see some politicians cycling from House to Senate, perhaps to the Cabinet, and back again every eight years.

Under the old regime of unlimited terms, lawmakers steadily worked their way up the ranks until they grasped the brass ring of the offices of House Speaker or Senate President. Now, the progression will move much more quickly and competition for leadership roles will become more fierce. This is not necessarily a good nor a bad development, just a feature of the new system.

Based on its gross domestic product, Florida ranks as the world's 16<sup>th</sup> largest market economy, and the fifth largest in the Americas. Protecting and promoting that prosperity may be complicated somewhat by term limits.

What will be interesting is whether the real power in the Legislature will shift from the politicians to the full-time staff, as opponents of term limits allege. This could threaten the business community's advocacy of good economic policies since legislative staffers are not known for their grasp of business practices or challenges.

Today, business associations such as Associated Industries of Florida (AIF), must monitor the activities of the staffers as well as of the lawmakers. This role will become more vital to the job of protecting the business community from unwise incursions against principles of economic freedom.

Term limits also mean the market for candidates is about to blow wide open, as it were. Every eight years, we'll have to replace 168 politicians (120 in the House, 40 in the Senate, six in the Cabinet, and the governor and lieutenant governor who already are under term limits). You can subtract from that number those politicians simply moving on to the next office on their list of political ascendancy, and add a few for turnover in congressional offices, which are not subject to term limits. But any way you look at it, Florida will need to find a lot more politicians to take office.

AIF is preparing for that by expanding its candidate recruiting activities (see *Getting an Early Start*, page 8). We want to make sure that demand for candidates is met by a supply of people who understand what kind of public policies are necessary to create jobs and prosperity.

While the first repercussions of term limits are still two years away, the preparations must begin now. And of course, there is also the more immediate business of the 1998 Session requiring attention. In the following pages, you'll find the areas of law identified by AIF as requiring attention.

As the Founding Fathers demanded of us, AIF's proposals have been developed through consideration of the kind of people we want to be in Florida. Our answer is to reward the efforts of those who are industrious and innovative — the job creators, the wage payers, the producers of the goods and services we all need. ■



# RETAILING

Some People Aren't Picky.  
They'll Sue Whomever Has the Money.

## FLORIDA NEEDS TORT REFORM

**F**lorida's Civil Justice system determines economic development. Florida is losing jobs because of its reputation as a haven for frivolous lawsuits and ridiculously high awards—twice the national average. The potential threat of a frivolous lawsuit, and the plaintiff-friendly civil justice system, are scaring businesses away.

No one wants to prevent a harmed person from recovering just damages. But Florida's laws encourage plaintiffs to seek out and sue the persons who have the deepest pockets even if they played little or no part in causing harm to the plaintiff.



**YOU CAN BE FINANCIALLY LIABLE FOR THE ACTIONS OF OTHERS!**

**Example 1:** In Florida, when two or more persons are assigned fault in certain civil cases, the doctrine of "joint and several liability" applies if one or more of the persons at fault is unable to pay their share of the damages. It is, therefore, possible that an individual who is only 10 percent at fault may have to pay for 100 percent of the damages. **Is this fair or reasonable?**

**Example 2:** If an intoxicated person happened to fall in your store, through no fault of your own, he or she can sue you and collect. That's right—even if the intoxicated person is 98 percent at fault you may have to pay. **Is this fair or reasonable?**

**Example 3:** If a person is on your property, in your store, or in the parking lot outside, and commits an intentional

criminal act hurting someone, you can be held liable and made to pay for medical bills, lost wages, and even pain and suffering.

**Is this fair or reasonable?**

**Example 4:** If you sell and deliver a product in the manufacturer's unopened carton and someone gets hurt using the product, you the retailer, may be liable even though you never touched the product.

**Is this fair or reasonable?**

Other states have laws that better tailor the damages a person has to pay to the degree they were responsible for causing harm to another. Florida is way behind what other states are recognizing as fair and reasonable. More than 25 states have acted in the past five years to achieve a better balance between actual fault and potential liability. Why can't Florida make things fair and reasonable?

During 1998, the Florida Legislature has an opportunity to enact meaningful change to Florida's Civil Justice system—change that will protect retailers even if they have deep pockets. **Liability for damages should be assigned according to fault, not according to a person's bank balance.**

Now is the time to act. You could be held liable for the actions of others. Your phone call will make a difference—call your state legislators and ask them to make Florida's Civil Justice system fair and reasonable.



**Florida Retail Federation**  
"Florida Retailing's Champion"

A charter member of the Tort Reform United Effort (TRUE) coalition.



# A PLAGUE OF CARE- FUL- NESS

Fear and distrust of unpredictable litigation is promoting excessive caution in Florida.

The modern tort system welcomes equally all sufferers of hurts — real or imagined, serious or slight — that occur, either from the negligence of another or from the tumult of life, and promises victims and non-victims alike the chance to collect fistfuls of cash, with a goodly portion of it, naturally, transferred to the hands of the plaintiff lawyers. Even those plaintiffs who have victimized themselves through their own recklessness can seek and receive recompense at the doors of the courthouse.

As business people well know, the problem isn't an excess of carelessness. In a 1996 survey of owners of small businesses, only 18 percent of the respondents had been involved in a lawsuit as a defendant. More significantly, a full 75 percent had withheld products or services in order to limit their liability exposure.

There are those who might assume these business people were on the verge of engaging in negligent activities bordering on the criminal and only the tort system protected citizens against the incipient danger. Business people know better.

Excessive carefulness can be just as harmful as its antithesis. Taking risks is the essence of economic activity and innovation is the source of uncountable social benefits. Fear and distrust of unpredictable litigation is promoting excessive caution in Florida.

**S**t. *Pete Times* columnist Martin Dyckman closed his Dec. 4, 1997, column by announcing, "A complex modern society can't afford to let anyone be too careless."

Dyckman's comments appeared in the context of his denunciation of efforts to reform the state's civil justice system. As an unflagging cheerleader for the nanny state that promises a risk-free life, Dyckman's misgivings about carelessness should come as no surprise. The less fanciful among us realize that humans are often careless and sometimes there's nothing society can do to stop them. But assuming society could, does the civil justice system act as a meaningful deterrent to incautious behavior? Not in its present form.

by jodi l. chase

How? Under Florida law, an inebriated person can sue another for injuries caused by his own drunkenness. A property owner can be forced to pay damages to an intruder who is injured during the commission of a crime. A defendant can be forced to pay legal fees through pre-trial discovery, courtroom arguments, and appeals, only to have the plaintiff's case thrown out as patently ridiculous.

Associated Industries of Florida (AIF) and other representatives of the business community want to return our

state's civil justice system to its traditional principles. For that purpose, we have joined together in a coalition named TRUE (Tort Reform United Effort). In the 1998 Session, we will pursue a package of reforms that will guarantee protection for those citizens who are injured by the negligence of others, that will provide fair and just compensation to the attorneys who represent plaintiffs, and that will ensure defendants receive protection against frivolous causes of action.

The primary opponent of tort reform is the Academy of Florida Trial Lawyers, the association for lawyers who are enriched by the present system. The academy's lobbyists and their cohorts ferociously battle even the most incremental of changes. Nevertheless, progress is being made, thanks to the Republican leadership and the resolution of several key lawmakers.

#### OVERCOMING INERTIA

During the 1997 Legislative Session, the House Financial Services Committee approved a tort reform proposal dubbed the FAIR (Florida Accountability and Individual Responsibility) Act. FAIR was a modest, but important, piece of legislation. The measure stalled before it reached the House floor, while no action was taken in the Senate.

Despite the existing stalemate, House Speaker Dan Webster (R-Ocoee) remains a strong supporter of tort reform and is determined to keep the issue alive. He has vigorous allies in Reps. Dave Bitner (R-Port Charlotte) and Sandy Safley (R-Clearwater). These legislators believe in



PHOTO: VONDA HUSSEY



fairness and have pegged civil justice reform as one of their top priorities.

When the FAIR Act stalled, the three Republicans charged the business community and trial lawyers with a task: reaching consensus through negotiation. Throughout the summer both sides met without reaching a consensus. Business people and trial lawyers are unable to agree on whether a problem even exists, much less develop solutions. Still, Rep. Webster will not surrender.

He gave the House Civil Justice and Claims Committee permission to hold reform hearings. That committee dedicated virtually all of its allotted time during the interim to the issue of tort reform and will file legislation in 1998.

Senate President Toni Jennings (R-Orlando) is also concerned about the civil justice system. This summer she appointed a select committee on litigation reform and charged it with studying the issues. That committee conducted hearings throughout the summer and is expected to release a report before the Legislature convenes on March 3.

All this activity appears promising but any change confronts fierce organized opposition by the trial lawyers. As a result the progress made by the business community is slow and hard won. Even in the face of economic and anecdotal evidence, some members of the Senate committee remain unconvinced that frivolous lawsuits exist. Arguing

for common sense change before the House committee takes hours and the efforts of many.

### AVERTING CRISIS

The 1986 Session marked the last time the Legislature undertook significant tort reform. That success was spurred on by an insurance crisis created by an out-of-control civil justice system. No similar emergency exists now, giving some lawmakers a false sense of security. Tort reform advocates, on the other hand, would prefer to avoid a return to crisis conditions by taking action now.

According to a study commissioned by TRUE, Florida's per capita cost for liability ranks 12th in the nation. Florida's costs are 9 percent higher than the U.S. average of \$599 per person. That's one high rank in which we should take no pride.

Tort reform is no longer just an issue of justice; it is an economic development concern. When excessive carefulness checks the expansion of services and products, it also checks the creation of wealth and jobs for Floridians. With reform, Florida can return to a system that punishes the negligent without penalizing the innovators. ■

*Jodi L. Chase is a partner in the law firm of Broad and Cassel and legislative consultant to Associated Industries of Florida.*

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# The Elements of Reform

While the problems with Florida's tort reform system are legion, there are a few items that demand immediate attention.

## **Abolish Joint and Several Liability.**

Under this legal doctrine, all defendants are liable for the entirety of the plaintiff's damages; in other words, a defendant 1 percent at fault could end up paying 100 percent of the damages if other defendants are unable to pay their share. In Florida, joint and several liability applies in the following four circumstances:

- actions in which total damages do not exceed \$25,000;
- the payment of economic damages when a defendant's percentage of fault equals or exceeds the plaintiff's;
- intentional torts; and
- certain statutory causes of action.

It is unfair for a defendant to pay for harm caused by someone else, no matter what the circumstances.

**Retain The Fabre Decision.** Until 1993, defendants could be held liable for the portion of damages attributed to a non-defendant. In the Supreme Court's *Fabre* decision, the justices determined that fault should be apportioned among all responsible parties, whether they were involved in the lawsuit or not. Since that decision, trial lawyer advocates have tried to convince lawmakers to overturn *Fabre* by statute. So far they have been unsuccessful, but business people must guard against continued efforts.

## **Limit Attorney Contingency Fees To 10 Percent Of The Award.**

The Legislature has recognized that contingency fees create a conflict of interest in other areas, for instance in the hiring of a lobbyist. They are similarly problematic in litigation since they make the lawyer an investor in the lawsuit. Contingency fees, however, do serve the purpose of giving poor plaintiffs access to the courts. For that reason, AIF is supporting a 10-percent cap on contingency fees to maintain access for

citizens who cannot afford hourly legal fees. At the same time, the 10-percent cap will ensure a larger share of the recovery goes to the client, while protecting defendants against speculative lawsuits driven by the prospects of large contingency fees.

**Enact A Statute Of Repose.** Currently, a plaintiff can bring a product liability case decades after a product is sold, creating an unjust situation for the manufacturer. Witnesses to the design or manufacture of the product may no longer be available to testify; at the very least their memories of pertinent information will have faded with time. A statute of repose is a law that imposes a time limit on product liability causes of action. AIF is supporting the creation of a statute of repose that would not allow a lawsuit to be filed if more than 12 years have passed since the delivery of a completed product to its original purchaser.

## **Reform The Law On Punitive Damages.**

Punitive damages are designed as a punishment for tortious conduct that includes elements of malice, moral turpitude, or wanton disregard for the plaintiff's rights or welfare. Florida law on punitive damages requires some reform, however, to ensure that it is applied properly. AIF is proposing the following changes to the conditions for awarding punitive damages:

- raise the burden of proof from "reasonable basis" to "clear and convincing evidence" so that punitive damages are only applied to those cases involving gross or willful misconduct;
- enact a single punitive damage award provision so that a defendant is not punished over and over again for the same act;
- allow for a separate trial on the issue of liability for punitive damages so that juries can appropriately examine the relevant evidence regarding the issues of gross negligence and punitive damages; and

- prohibit punitive damages for vicarious liability to protect a defendant from paying for the gross negligence of another party.

## **Abolish Third-Party Action For Bad Faith.**

As a result of the Supreme Court's *Conquest* decision, a plaintiff may sue a defendant and then sue the defendant's insurance company for bad faith in refusing to settle the lawsuit. This situation creates a conflict of interest between the insurance company and its client since the insurance company may neglect the defendant's best interests in order to protect itself against a subsequent lawsuit. The threat against the insurance company makes it vulnerable to unwarranted settlement demands and coerced inflation of settlements. This was the situation in California when it experimented with third-party actions for bad faith. California has since rectified its mistake; Florida should do the same.

## **Enact A Government Rules**

**Defense.** Failure to comply with a government safety regulation or statute is conclusive proof of negligence in the courtroom. Proof of compliance should carry the same evidentiary weight.

## **Enact A Drug And Alcohol Defense.**

Under Florida law, a plaintiff may sue even if his injury was mostly the result of his own alcohol or drug impairment. A defendant should be allowed to use that impairment in his own defense. Doing so would force a plaintiff to take personal responsibility for his own abuse of alcohol or drugs.

## **Repeal of the 1994 Amendments To The Third-Party Liability Act.**

These are the amendments that stripped all companies of their traditional defenses in state lawsuits to recover Medicaid costs from third parties. The 1994 law was described as limited to tobacco, although no such restriction existed in the law. Gov. Lawton Chiles promised that he would only use the law against tobacco companies. Now that he has achieved his purpose, the law should be repealed before it is used as a cudgel against other industries. ■



# Plaintiff Lawyers

## Unmasked

**T**he business community's tort reform efforts will take place in the shadow of the August 1997 settlement of the state's tobacco lawsuit. For the most image-savvy of interest groups, the

squabbling over fees by the private lawyers representing the state has unleashed a public relations nightmare and dissolved the caulking that once sealed the trial bar into a cohesive unit.

Trial lawyers are now divided into two groups: those who defend the logic of contingency fees and those who realize that doing so unmasks their greed.

The president of the 60,000-member Association of Trial Lawyers of America, Richard D. Hailey, has even weighed

in on the issue, calling the 25-percent fee claimed by five of the state's lawyers "excessive and unreasonable." But Hailey admits that his concern does not arise from legality or ethics.

After expressing his sympathy for the five lawyers, Hailey avers, "I don't want tort reform [in Congress] to be about \$1 billion attorney fees."

The battle over fees has revealed the disconnect between principle and practice in the trial lawyer camp. Contingency fees are defended as the means for poor plaintiffs to receive justice. The contingency fee arrangement in the tobacco lawsuit, however, involved no poverty-stricken parties. It was negotiated under the supervision of Florida's governor and attorney general, both of whom are experienced lawyers.

A contingency fee arrangement was selected for two reasons. First, a contract based on hourly

fees would require a legislative appropriation, a prospect rife with uncertainty because of the controversy surrounding the lawsuit and the legislation that enabled it. Second, the promise of contingency fees was used to entice elite trial lawyers who could afford to finance the suit for the state.

With the \$11.3 billion settlement, the contingency fees became too rich for the politicians' blood. Why the state did not include a standard provision in the contract lowering the contingency percentage as the size of the award grew, is beyond anyone's guess. The state is trying to wriggle out of paying the contingency fees by using arguments generally applied to protect poor, unsophisticated clients, of which it is neither.

The politicians are also claiming that their actions are designed to protect the taxpayer by keeping lawyers from subtracting their fees from the settlement. There's an inconvenient fact here: The lawyers were hired on our behalf. Having done work for us, shouldn't they be paid by us?

As in the case with so many contingency fee arrangements, those opposing payment of the 25-percent fee are correct; it is excessive to the point of obscenity. Many plaintiffs know all too well the bitter experience of paying their attorneys more than they are worth; they just lack the power of the state to fight back.


Whereas the greed of trial lawyers is usually played out in front of small courtroom audiences, the tobacco lawsuit has brought their machinations and manipulation onto the stage of the crowded public theater. Most trial lawyers have recognized the terrible danger this poses to their way of life, and have thus tried to avert the public relations disaster.

The only question that remains is whether trial lawyers will, for opposing the contingency fee, demand payback in the form of opposition to tort reform. ■



PHOTO: ROB GOLDMAN





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Jon L. Shebel  
President & CEO  
Associated Industries of Florida



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## OFFICERS & LOBBYISTS



**Jon L. Shebel**—President & CEO of Associated Industries of Florida and affiliated corporations ... more than 27 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.



**Mary Ann Stiles, Esq.**—General counsel of Associated Industries of Florida ... senior partner in the law firm of Stiles, Taylor, Grace, & Smith, P.A. ... more than 24 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.



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## General Legislation

**Samuel J. Ard, Esq.**—Sole practitioner in the law firm of Samuel J. Ard, P.A. ... more than 11 years of lobbying and governmental affairs experience ... former director of governmental affairs for St. Joe Paper Company and Florida East Coast Industries ... undergraduate and law 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 20 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 11 years of legislative lobbying experience ... B.S. in government from Florida State University.



## 1998 AIF KEY BUSINESS ISSUES

### LITIGATION REFORM

- ▶ Cap contingency fees at 10 percent of the settlement to keep the doors of the courtroom open to poor plaintiffs while ensuring that they get most of any settlement.
- ▶ Abolish joint and several liability and keep the Fabre ruling intact.
- ▶ Recreate the statute of repose.
- ▶ Repeal the 1994 amendments to the Medicaid Third-Party Liability Act.

### WORKERS' COMPENSATION

- ▶ Eliminate exemptions from workers' compensation for workers' in the construction trades and provide coverage for all employees.
- ▶ Eliminate hourly attorney's fees for claimant attorneys.
- ▶ Provide no-cost attorneys to claimants with small medical claims or on issues relating to the average weekly wage.
- ▶ Adopt new criteria for determining eligibility for permanent total disability benefits.

### JOB CREATION & TAXATION

- ▶ Encourage sponsored research with state universities.
- ▶ Enact a sales tax exemption for commercial aircraft and parts.
- ▶ Remove sales tax on pollution control equipment.
- ▶ Remove anti-business provisions from intangible property tax.

### LABOR RELATIONS

- ▶ Require that state inmates work 40 hours per week, with compensation applied toward restitution, child support and alimony, correctional facility operations, or the Crimes Compensation Trust Fund.
- ▶ Oppose payment of workers' compensation to state inmates.
- ▶ Oppose attempts to implement a state minimum wage and mandated breaks and lunch periods.

### HEALTH CARE

- ▶ Oppose "any willing provider" provisions.



# O B B Y I N G T E A M

**Dale Patchett**—President of R. Dale Patchett Legislative Agency Consulting ... former Republican leader of the Florida House of Representatives (1984-1990) ... over 21 years of governmental experience, including the House as well as the executive branch, including the Department of Natural Resources, the Department of Environmental Protection and the Department of Agriculture & Consumer Services ... also experienced in small business ... B.S. in forestry from Southern Illinois University.



**Winn F. Peeples**—President of The Peeples Group, a public/private projects consulting firm ... more than 10 years of experience in state government with an emphasis on construction, codes, privatization, and procurement of public/private partnerships ... also served as executive assistant to the secretary and deputy secretary of the Florida Department of Corrections ... majored in building construction technology at Gulf Coast College.



**Jim Rathbun**—Governmental affairs consultant ... more than 9 years of experience representing individuals and entities before the Legislature, state agencies, and the Governor and Cabinet ... formerly worked with the Florida House of Representatives and served as staff director of the House Republican Office ... B.S. from Florida State University.



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**Arthur E. Teele Jr., Esq.**—Vice-chairman of the Miami City Commission ... former chairman of the Metro-Dade Commission ... former vice president & general counsel of AIF.. former administrator of the Urban Mass Transportation Agency under the Reagan administration ... also served on the President's Task Force on Urban Affairs ... B.S. from Florida A&M University and J.D. from Florida State University.



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## Insurance and Workers' Compensation

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**Keyna Cory**—President, Public Affairs Consultants, a public affairs and governmental relations consulting firm ... more than 13 years of experience representing a variety of clients, from small entrepreneurs to Fortune 500 companies, before the Florida Legislature ... majored in political science at the University of Florida.



## Taxation

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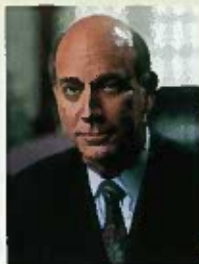
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**MARK C. HOLLIS, PRESIDENT (RETIRED)**  
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# *Caren Snead* **IS BUILDING A BETTER TOMORROW**



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.

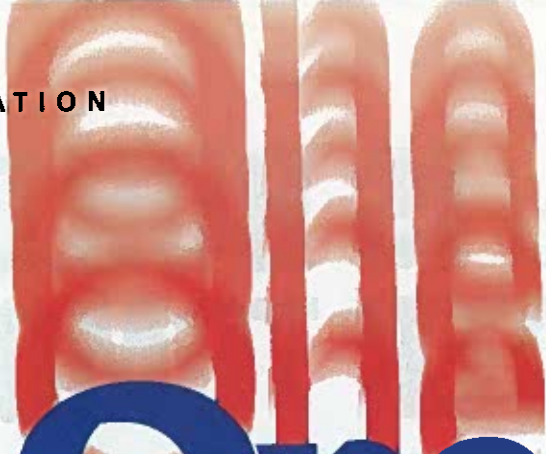


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Trains and train wrecks are an old legislative tradition.

Trains generally start late in the session when lawmakers begin coupling individual bills together in one major package.

It's a tactic used to gain passage of less popular proposals by attaching them to proposals that have a greater chance of passing into law.

# One At A Time

Sometimes the maneuver works, mostly when the benefits of some of the provisions outweigh the demerits of the others. Other times, however, trains become controversial and end in train wrecks when the governor vetoes the bill, killing the good with the bad.

That's just what happened last year to the Jobs Package of Associated Industries of Florida (AIF). This package of tax exemptions had gained the support of the governor and a majority of lawmakers. Its strength attracted a host of other weaker tax exemptions that were linked to it in the closing hours of the 1997 Session.

Although the train was approved by the Legislature, Gov. Lawton Chiles vetoed it, citing the bill's price tag and its undesirable features as his reason for doing so.

This year, AIF's proposal is back on the table and its chances for passage have been increased thanks to some procedural changes offered by Senate President Toni Jennings (R-Orlando). Sen. Jennings has asked her fellow senators to implement rules stipulating that each tax issue be submitted as a single bill. Different tax issues may not be merged unless they relate to the same subject.

In 1997, Speaker Dan Webster (R-Ocoee) instituted new rules of procedure in the House of Representatives that were designed, in part, to eliminate the creation of trains and other last-minute frenzies of amendment-making. For instance, the speaker and leadership possess certain powers to close off the ability to amend bills once they reach the floor of the House. That provision alone, if it is applied to tax bills, will result in single-issue tax bills coming from the House. Coupled with the Senate approach, this could prevent a repeat of last year's train wreck that killed AIF's Jobs Package.

These procedural changes by the Senate president and House speaker are a refreshing sign for advocates of good government. Those who create trains are using a clever tactic for achieving their purposes. The means to their end, however, bypasses the legislative function of determining issues based on their merits.

Legislative leaders have long held the power to reduce, if not eliminate, the potential for trains and the resulting wrecks; they merely lacked the will to do so. Sen. Jennings and Rep. Webster deserve our appreciation for the action they have taken.

by randy miller

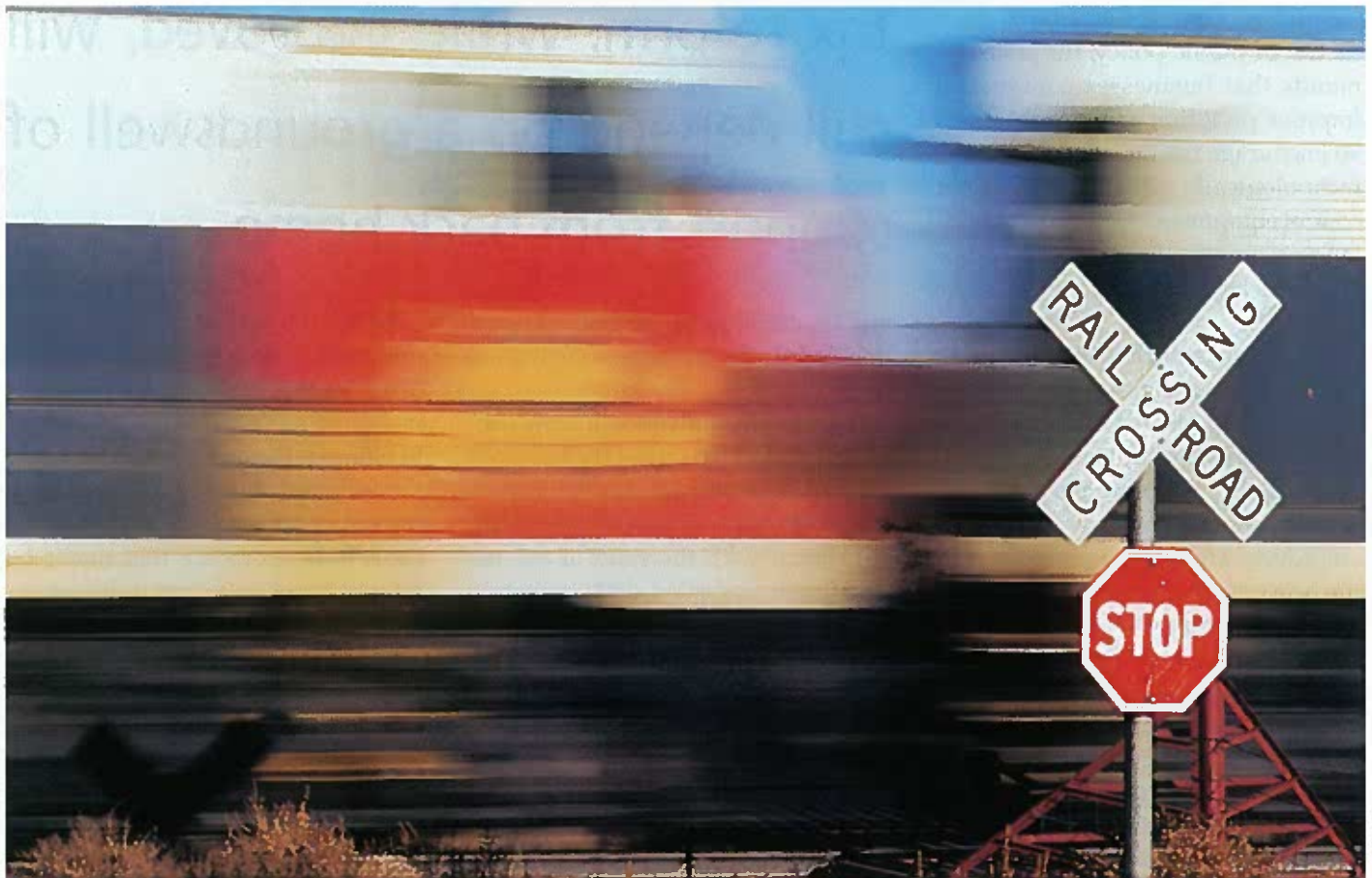


PHOTO: GRANT V. FAINT

At AIF, we are confident that the Jobs Package will pass legislative muster on its own merit. The procedural reforms will merely give it the opportunity to do so.

### **JOBS PACKAGE**

**T**he AIF Jobs Package consists of targeted tax exemptions intended to attract high-paying jobs to Florida. It was first proposed in 1995. The bill was defeated that year by an odd quirk in the state's revenue estimating methodology. According to the government number-crunchers, the Jobs Package would result in hundreds of millions of dollars in lost tax revenues.

Most of the estimated losses, however, were fictitious since they were based on economic activity that was not taking place because of the tax

code, but would take place if the exemptions were implemented. In other words, the state would not collect tax money either with or without the exemption but the existence of the exemption would be interpreted as a loss in revenue.

That misperception has now been overcome for the most part and, since the elements of the package met with approval last year, chances for passage this year are excellent.

*Clarification Of The Electrical Energy Exemption.* The only portion of the Jobs Package that has been enacted is a phase-out of the sales tax on electrical energy used in manufacturing. This provision was designed to stem the outflow of manufacturing jobs to other southeastern states, which, for the most part, do not levy such a tax.

In 1998, AIF will seek passage of a bill to overcome inconsistencies between statutory intent and the Department of Revenue's interpretation of certain provisions. The bill will also extend the exemption to steam-generated energy.

*Purchase Of Commercial Aircraft And Parts.* Currently, Florida imposes a sales tax on commercial aircraft used by common carriers if the aircraft is purchased or leased in the state. The same applies to parts and equipment used for commercial aircraft repair. While Florida's warm climate makes it an ideal site for large maintenance and repair facilities, common carriers select states with friendlier tax climates for their major facilities. Eliminating this sales tax provision will provide an incentive for carriers to



bring these facilities and the accompanying high-paying jobs to our state.

*Pollution Control Equipment.* As a matter of public policy, the state demands that businesses continually improve pollution control measures. To encourage the installation of new, technologically advanced pollution control equipment, AIF is recommending an exemption from sales and property taxes for such equipment.

*Sponsored Research.* This change to the tax code is designed to entice businesses into sponsored research agreements with state universities by exempting the corporate partner from certain property and payroll taxes on employees and property involved in the research. It also voids the issue of establishing a nexus for out-of-state companies that would subject them to Florida corporate income taxes. Providing this research and development incentive will promote the evolution of high-tech industries in the state, while providing private financial support to state universities.

### INTANGIBLE TAXES

Over the last year, a movement has sprung up to amend Florida's intangible property tax. This tax is levied against stocks, mutual funds, accounts receivable, and other obligations for payment. Although it is commonly called a tax on wealth, it is, in part, a tax on thrift since many of the items subject to the tax are investments purchased with money saved for that purpose.

Several lawmakers have filed bills on the intangible tax that range from piecemeal exemptions to wholesale repeal. The latter is unlikely to happen, and may not be a completely desirable occurrence for business people. The intangible tax brings in almost \$1 billion in state revenues every year. Individuals and businesses contribute approximately \$400

## THE PROSPECTS FOR intangible tax reform, while improved, will still depend on a groundswell of support from back home.

million each (an additional \$144 million derives from a non-recurring tax on mortgages).

County governments will hotly contest any efforts to repeal the tax since they receive 33 percent of the proceeds through a revenue-sharing agreement with the state. If the tax were totally repealed, \$800 million in new taxes on businesses would probably be imposed to make up the loss of both individual and corporate intangible tax payments.

While total elimination of the intangible tax will not happen any time soon, there are a few exemptions that may win approval this year. The one of most interest to business people is the repeal of the levy on accounts receivable. This provision amounts to a penalty on a company that is unable to collect on all of its outstanding billings during a calendar year. The annual revenues from the tax on accounts receivable total about \$70 to \$80 million. The relatively small amount of money involved means that this levy is a likely candidate for repeal. If that happens, lawmakers will probably either institute a new tax to replace the lost revenue or phase out the tax over a five-year period.

### ON THE HORIZON

As the 1998 Session progresses, the Constitution Revision Commission will be meeting to determine what, if any, constitutional amendments it will place on the November 1998 ballot.

For the last several months the commission has been engaged in general discussions on all manner of subjects, including some related to taxes. In all likelihood, the commission will limit the number of proposals it sends to the ballot to seven or eight. At this time, indications are that major tax reform is not expected to be among those issues.

The commission's report is due at the beginning of May, almost simultaneous with the adjournment of the Legislature. Whether the politics of the commission's business spills over into the politics of law-making remains to be seen. If it does, it will complicate a session already entangled in election-year politics.

Despite the politics involved, the employment-creation provisions of AIF's Jobs Package have an excellent chance of becoming law, especially with the procedural changes implemented by the Senate president and the House speaker. The prospects for intangible tax reform, while improved, will still depend on a groundswell of support from back home.

As is the case in any session, and maybe more so this year, business people will be best served by expressing their opinions on bills to their elected representatives. ■

*Randy Miller is a special consultant to the law firm of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., and tax consultant to Associated Industries of Florida.*



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# THE TROUBLE WITH



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# POLLUTER PAYS



by martha edenfield

**T**he campaign to restore the Everglades to some portion of its past glory began almost a decade ago with a lawsuit. Today, as new lawsuits continue to spring up, one thing is coming into clear focus: Controversy over the Everglades restoration seems destined to live on long after the massive replumbing of the marsh is completed.

One of the latest lawsuits is the spawn of a recent state Supreme Court ruling on the so-called "polluter pays" constitutional amendment approved by voters in 1996. Polluter pays, officially known by the moniker Amendment Five, was one of three citizen initiatives placed on the ballot by Save Our Everglades, a well-heeled environmental interest.

While Amendment Five dealt exclusively with pollution in the Everglades Agricultural Area and the Everglades Protection Area, it exposes Florida industries to a new threat that no business person can afford to ignore.

### EVERGLADES LAWSUITS FOREVER?

In 1994, after years of acrimony, the Florida Legislature enacted the Everglades Forever Act, a program designed as the first step to restoration of the River of Grass. Immediately upon passage of the act, it was attacked by some environmental groups, including Save Our Everglades, a group formed by millionaire Orlando developer George Barley.

The Everglades Forever project was to be funded through several sources, primarily by a special levy on homeowners in South Florida and an agricultural privilege tax imposed on farmers in the Everglades Agricultural Area. The tax on farmers could be reduced if they decreased the amount of nutrients in stormwater runoff from their farms.

Some environmental special interest lobbies objected to the plan because it violated one of their prime directives: the elimination of all sugar farming in the agricultural area. Save Our Everglades set out on an effort to enact a penny-per-pound tax on sugar farmers through a citizens' initiative drive to amend the constitution.

When George Barley died in a 1995 plane crash, his wife Mary picked up the gauntlet. She continued the citizen initiative drive and, in 1996, the group got three amendments placed on the ballot: the penny-per-pound tax; a provision setting up an Everglades trust fund; and polluter pays.

Sugar farmers countered the penny-per-pound proposal with their own campaign to persuade voters to reject the tax. Penny-per-pound fell to defeat, stunning the environmental contingent. Voters did, however, approve the other two uncontested measures.

Polluter pays inserts the following language in Article II, Section 7 of the Florida Constitution:

(b) Those in the Everglades Agricultural Area who

cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

This seemingly innocuous provision — who could argue with forcing polluters to pay for their pollution — inspired immediate controversy over just what the language in the amendment accomplished.

To clear up the confusion, Gov. Lawton Chiles requested an advisory opinion from the Florida Supreme Court.

### ANSWERING WITH MORE QUESTIONS

The state's dilemma over Amendment Five centered on the question of whether it was self-executing, whether it required legislative action, or whether the Everglades Forever Act of 1994 implemented the amendment. The governor also asked the justices to define the term "primarily responsible" as used in the amendment.

On Nov. 26, 1997, the Supreme Court issued its response to the governor's questions. The court specifically found that the Amendment Five is not self-executing and thus demands legislative implementation "because it fails to lay down a sufficient rule for accomplishing its purpose."

The court read the amendment in concert with subsection (a) of Article II, Section 7, which establishes the state's policy "to conserve and protect its natural resources," and directing the Legislature to provide by statute for "the abatement of air and water pollution."

The court also ruled that the Everglades Forever Act does not implement the amendment, determining that, in adopting Amendment Five, voters had voted to effect a change. Interestingly enough, the court found no conflict between the Everglades Forever Act and Amendment Five. The justices merely found that the voters had asked for a change.

According to the court, construing the existing act as implementing legislation would "effect no change, nullify the amendment, and frustrate the will of the people." Thus, to make Amendment Five effective, the Legislature must enact supplemental legislation to carry out its intended purposes, and define any rights intended to be determined, enjoyed, or protected.

As to the phrase "primarily responsible," the courts found that the phrase is recognition that no one person or entity is responsible for 100 percent of the pollution within the Everglades agricultural and protection areas. Those within the agricultural area who are judged responsible, however, must pay their share of the costs of abating that pollution.



Individual polluters would, thus, bear their share of the costs of abating the pollution found attributable to them, while not bearing the total burden. In a footnote to the opinion, the court recognized that not all pollution within the affected areas is caused by polluters within the agricultural area. "Therefore, while polluters within the [Everglades Agricultural Area] must pay for 100 percent of the costs to abate pollution they cause, Amendment Five does not require them to pay for the abatement of such portion of the pollution they do not cause."

## AT ISSUE NOW

With this opinion, the Florida Supreme Court has placed the issue squarely before the Legislature for determination as to how the amendment should be implemented.

Some of the key issues that may be addressed by the Legislature are stated in the Supreme Court's opinion, including:

- What constitutes "water pollution?" The amendment applies to "water pollution" of all types, not to phosphorous alone.
- How will one be judged a polluter? Agriculture is not alone in polluting the Everglades Agricultural Area. State, local, and federal agencies have also contributed to the problem.
- How will the cost of pollution abatement be assessed and by whom might such a claim be asserted? The answer to this should be based on science, but will likely be highly politicized.

The court specifically stated that the Everglades Forever Act was consistent with Amendment Five. Thus, the Legislature must determine how to reconcile the amendment with the existing Everglades Forever Act, which has separate provisions for how agriculture interests must pay for abatement of pollution in the Everglades Agricultural Area.

The Legislature may choose not to implement or to delay implementation of the amendment, which would maintain the status quo with the Everglades Forever Act provisions intact. However, Save Our Everglades has filed a suit in Orange County, Florida. The group wants the court to find the Everglades Forever assessment on South Florida taxpayers unconstitutional, based on the provisions of Amendment Five.

In all likelihood, the Legislature will take some action on implementation. The possible courses of action range from affirming the Everglades Forever Act as the implementing legislation, to amending the act's assessment formula, to creating a process for allocating costs in the next phase of the restoration project.

As with most complicated issues, the devil in this story can be found in details such as the definition of polluters and the apportionment of responsibility.

Beyond these questions, rests the bigger issue of what this episode portends for the business community at large.

## FOR THE SOCIAL GOOD

Identifying the sources of pollution in natural systems, such as the Everglades, is primarily a scientific question. Who pays to clean up or abate that pollution, however, is a policy question. In addition to weighing the scientific evidence, policymakers must consider the economic and social repercussions of their decisions.

Businesses engaged in activities that pollute the environment are expected to control and abate their impact on the environment. With the exception of these direct and localized activities, however, the costs of broad-based environmental programs are assigned to all citizens. The body politic has determined that environmental protection is of widespread social benefit, thus all taxpayers contribute to it.

Additionally, some polluting activities are of such great social benefit that taxpayers bear some of the costs of cleaning the pollution these activities cause. Forcing Florida industries to bear the entire cost of environmental abatement and cleanup would result in the loss of benefits we now enjoy. Industries would either pass the costs on to consumers, raising prices and making Florida products uncompetitive, or they would simply shut down or leave the state.

All of these are reasons why Florida's environmental protection programs have not been based on a strict polluter-pays methodology. What's more, the polluter-pays methodology assumes that scientists and policymakers can accurately determine who pollutes what and how much. This is a task of such breathtaking complexity that it is impractical, if not impossible, to rely on it as a substitute for political decisions.

In the end, the polluter pays methodology is a scorched-earth tactic that will just make the resolution of controversial environmental issues more difficult, leading to more protracted and messy stalemates. That's bad news for the environment and for the economy.

Unfortunately, the nonproductive nature of the polluter pays methodology will not deter some environmental interest groups that see it as a way to shift the costs of their programs onto business. And that's why every industry in Florida should be on guard. The next polluter pays amendment may be your own. ■

*Martha Edenfield is a partner in the law firm of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., and environmental consultant to Associated Industries of Florida.*



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# Environmental Miscellany

**W**hile implementation of Amendment Five will likely be one of the most closely watched and hotly debated issues of the 1998 Legislative Session, there are other environmental issues that have broad implications for the state that may be addressed by the Legislature this year.

## REGULATORY REFORM

**I**n 1996, the Legislature enacted the new Administrative Procedure Act (APA) providing, among other things, restrictions to agency latitude in rule-making.

Under the new APA, agencies can only adopt rules that implement specific laws enacted by the Legislature. Regulatory powers and functions are now limited to those explicitly set forth in state statutes. This limitation was necessary to thwart what many deemed a power grab by bureaucrats who were no longer content with merely executing the laws of the state, but who seemed to be usurping legislative authority to set policies.

The new APA will require a change in culture at state agencies, some of which are unwilling to accept the new regime. Even as the 1996 Legislature was working on the new APA, state agency personnel were working just as assiduously to protect their power. Those efforts have continued.

In November of 1997, an administrative law judge struck down some regulations of the St. John's River Water Management District, applying a strict interpretation to the APA stat-

ute. The ruling has been appealed by the district, and briefs have been filed by several agencies, the attorney general, and the governor's office. They argue that the Legislature did not intend to drastically hinder agency flexibility in implementing their regulatory responsibilities.

Under the guise of "clarification," state agencies are expected to attempt an end run around the new APA through legislation weakening the specific authority requirement. Lawmakers may counteract by strengthening the language imposing that requirement.

## BROWNFIELDS ECONOMIC INCENTIVE LEGISLATION

**B**rownfields are clusters of abandoned, vacant, or underutilized sites contaminated by hazardous materials, often released decades ago. Commonly located in older, poorer city neighborhoods, brownfields are often viable sites for redevelopment or reuse.

Unfortunately, stringent environmental regulations, development requirements, and impact fees had the unintended consequence of creating disincentives for private cleanup and investment in brownfield areas. Additional issues of legal liability for pollution thwarted redevelopment.

Last year the Legislature enacted the Brownfields Redevelopment Act, striking a balance between maintaining environmental protection while promoting development of these blighted areas. While the 1997 legislation establishes a framework for

redevelopment of brownfield areas, there is more that can be done to provide economic incentives and safeguards to bankers and business people who become partners in these efforts.

## COASTAL CONSTRUCTION

**C**oastal construction lines have been established and re-established in Florida's beach areas and now many of these lines are located landward of beach roads and highways. Where the coastal construction line is in place, significant restrictions exist in the redevelopment of the dilapidated and economically underutilized beach and coastal areas. In many cases, these restrictions render redevelopment impossible, frustrating the economic revitalization of a community.

In 1998, the Legislature will examine pilot projects to encourage redevelopment of these dilapidated coastal areas to promote economic growth. The incentives include technical assistance to expedite permitting, as well as exemptions from certain Department of Environmental Protection siting and design criteria for qualified coastal redevelopment projects

If this concept works in pilot project areas, its expansion could provide a boost to the economies of older coastal areas located throughout the state. ■

*Martha Edenfield is a partner in the law firm of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., and environmental consultant to Associated Industries of Florida.*

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# WORKERS' COMP And MORE



Cautious people do not try to predict what lawmakers will do, especially during election years. Typically, politicians avoid controversial or complicated issues as they try to position themselves for the upcoming campaigns. This year, however, the business community will ask the members of the Legislature to take action on some complex proposals, one of the most important of which is workers' compensation.

The workers' comp legislation favored by Associated Industries of Florida (see *Another Year, Another Reform Proposal*, Jan.-Feb. 1998 *Florida Business Insight*) is designed as a preemptive strike against some developing deformities in the state's system.

There are five basic elements to the proposal.

**Fraud.** A grand jury investigation launched by the statewide prosecutor in 1997 helped focus attention on fraudulent practices in the system. After analyzing the grand jury's findings and other evidence, the problem with fraud seems to arise from under-enforcement rather than a dearth of anti-fraud laws. For that reason, Associated Industries of Florida (AIF) is recommending increased funding for enforcement.

One anti-fraud statutory change deemed necessary is the elimination of the construction exemption for independent contractors. This provision

is widely abused and would be difficult to enforce. Without the exemption, employees who work for construction contractors would be assured of the protections of the workers' comp system. All construction companies would have to consider the cost of their insurance when providing bids, thus removing a competitive disadvantage for honest contractors. As an added benefit, the premium costs for the construction trades will drop through the economies of scale. AIF actuaries have estimated at least a 10-percent drop in construction insurance rates.

**Attorneys' Fees.** AIF's proposed changes to the provisions governing

attorneys' fees are designed to inject an element of predictability and reasonableness in the cost of fees for claimant legal representation. In ever greater numbers, claimant attorneys are charging and receiving hourly rates of up to \$300, which are paid by insurance carriers. They justify the high hourly rates by claiming special expertise in workers' comp law, but their alleged unique knowledge has not kept them from padding their hours on simple claims.

While claimant attorneys assure us that their services are essential to securing justice for injured workers, they have trouble explaining why



by jacquelyn horkan, editor



PHOTO: GARY BUSS

their fees sometimes exceed the amount of damages they win for their clients.

Attorney abuse of the system diverts money from claimants. By eliminating the motivation that drives the abuse — namely, inflated fees — benefits for the genuinely injured can be increased, a much more worthy use for the money now wasted in unnecessary litigation.

**Permanent Total.** Permanent total disability benefits should be reserved for those employees who are unable to work because of on-the-job injuries. Unfortunately, a loophole in the law

allows less seriously injured workers to allege that if they are eligible for Social Security disability, they are automatically eligible for permanent total disability benefits. The workers don't even have to be collecting Social Security; they can just claim eligibility.

This patently unfair situation is driving an increase in permanent total determinations; in fact, Florida now has the highest incidence of permanent total disabilities in the nation. As a result, the cost of insurance will increase. Politicians can artificially hold rates down, but eventually the discrepancy between the rates and the

cost will catch up with us, and Florida will be pushed back into a crisis.

AIF is recommending amendments that would limit the Social Security qualification only to those workers who are actually receiving Social Security disability benefits as a result of an injury suffered on the job. Furthermore, that qualification would no longer be an exclusive factor in making a determination of permanent total disability.

**Psychiatric Benefits.** Another developing trend in benefit abuse involves claims for psychiatric benefits. Once an employee has exhausted all benefits for an injury, he can become eligible for additional benefits by claiming a psychiatric injury resulting from the workplace. Complicating the problem are inconsistent rulings by judges of compensation claims, leaving insurers at a disadvantage in defending themselves against the claims.

The ability for a claimant to recover psychiatric benefits must be protected, but it must also be reserved for those who need the benefits, not for those with wily attorneys who know how to drive up their fees. The AIF proposal would place a higher burden on the claimant to clearly demonstrate that the alleged psychiatric injury was attributable to a workplace injury. It also allows for treatment of a psychiatric injury but no payment for any impairment once maximum medical improvement has been reached.

**Employee Legal Assistance.** AIF is recommending the creation of a staff of lawyers in the attorney general's office to represent workers in claims involving contested medical benefits below a certain threshold, perhaps \$5,000. Often disputes over medical



## SINCE 1990, managed care arrangements, such as HMOs and PPOs, have become popular alternatives to traditional fee-for-service insurance policies.

benefits end up with claimants hiring attorneys who then seek to inflate the cost of the claim. Giving these employees an alternative to fee-hungry private attorneys will help them get the treatment they need without driving up the costs of the system. The savings of this provision alone should be enough to cover the cost of salaries for the government lawyers.

In addition to workers' compensation, there are other issues that may pop up, requiring vigilance by the business community.

### HEALTH CARE

Since 1990, managed care arrangements, such as health maintenance organizations (HMOs) and preferred provider organizations (PPOs), have become popular alternatives to traditional fee-for-service insurance policies. Today, approximately 25 percent of all insured Floridians receive their treatment through managed care arrangements.

HMOs and PPOs have proven successful in controlling the cost of medical care, hence their popularity. The cost control measures implemented by managed care arrangements include quality assurance, methods to control overutilization, and gatekeepers who provide oversight and coordination of the patient's health care needs.

Among the most important cost control measures are the contractual agreements between health care providers and the managed care organization. Such contracts set qualifica-

tions for providers and stipulate expectations and fees. The provider receives a promise of increased patient volume which allows accompanying discounts in fees.

Provider contracts have come under attack through legislative proposals dubbed "any willing provider" or "patient choice." Any willing provider provisions would circumvent the cost and quality control measures embodied in provider contracts by allowing subscribers to managed care health plans to seek care from any provider, regardless of whether the selected provider is a member of the plan's network. This would void the negotiating power of the managed care organization because it would no longer be able to offer any exclusivity that would result in patient volume for the provider.

Any willing provider provisions have thus far failed to be enacted, but advocates continue to pursue their objectives in the Legislature and in the form of citizen initiatives to amend the constitution. But this is not the only form of attack on managed care.

During the 1997 Session, the Academy of Florida Trial Lawyers convinced lawmakers to give citizens a new cause of action against their HMOs. The bill allowed a subscriber to sue the HMO for compensatory and punitive damages, as well as attorneys' fees, any time the HMO

refused to authorize treatment prescribed by a physician.

Fortunately, Gov. Lawton Chiles vetoed the bill, noting that it "would encourage a return to the era of 'defensive medicine' that helped spur



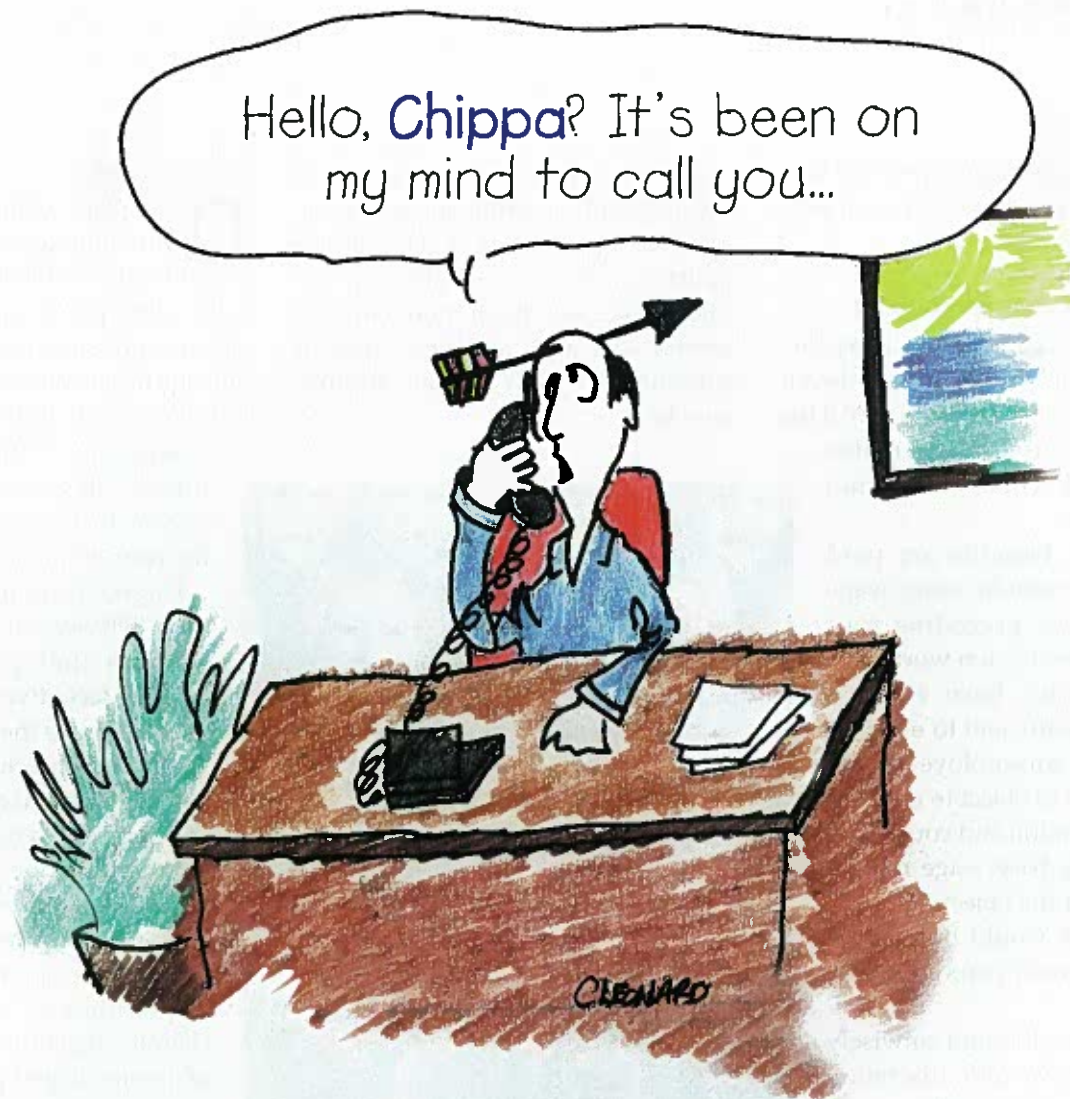
PHOTO: MASON MORET

sharp increases in health care costs during the 1980s."

The bill was also written so that HMOs would not receive the traditional statutory defenses available to fee-for-service insurers, making HMOs more vulnerable to litigation.

A process for resolving disputes among patients, providers and HMOs is already in existence. If it is insufficient, changes must be implemented, but available data seem to indicate that a problem does not exist. If it does exist, however, the trial lawyers are offering a perverse solution. Disputes





## Don't wait until it's too late!

Just because you are a small business person, doesn't mean you can't get affordable health insurance. Community Health Purchasing Alliance (**CHPA**, pronounced "chippa") makes it possible for smaller businesses to get benefits just like a big business. **CHPA** creates the buying power and passes the savings along to you.

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over health care require fast and efficient resolution; the courtroom provides none of that.

**UNEMPLOYMENT COMP**

The Florida Division of Unemployment Compensation has developed a proposal that would give it the discretion to use an alternative base period when calculating U.C. benefits.

Currently, benefits are paid based on a formula using wage data from the preceding four quarters. The division would use the alternative base when it lacked data sufficient to make its calculations. An employer would have 10 days to object to an alternative calculation and could supply quarterly base wage reports in support of the objection.

The change would become effective for benefit years after June 30, 1998.

This proposal would unwisely increase bureaucratic discretion over U.C. benefits, while increasing the paperwork burden on employers.

The proposal would also allow a claimant to keep benefits paid in excess of the amount due if the overpayment was not based on misrepresentations by the unemployed. In other words, claimants would profit from bureaucratic snafus.

**LABOR**

There is a mischievous proposal lurking behind the innocuous name "Florida Basic Wage Survival Act." This bill would impose a requirement that employers provide each employee with two 15-minute breaks and one 30-minute break in each eight-hour work period. It would also establish a statewide minimum wage of \$3.50 per hour.

This proposal represents an unne-

cessary governmental incursion into the nature of the employer-employee relationship, even as it sets Florida on its way to a wage-control regime. The market is a much more efficient arbiter of wages and employment conditions than any bureaucrat could ever be.



Another labor-related proposal would require all able-bodied prisoners in state minimum and medium security facilities to work 40 hours a week. Any compensation paid to them would be funneled toward victim restitution, child support, alimony, correction facility operation, or the Crimes Compensation Trust Fund. Prisoners enrolled in academic or vocational programs would be exempted.

Business people should support this idea, with one exception. The proposal would also direct workers' compensation benefits paid to prisoners toward the stated beneficiaries of the proposal. Under no condition should an inmate in a correctional facility be eligible for workers' comp benefits.

**ELECTIONS**

During Gov. Chiles's 1994 reelection campaign, some of his campaign workers authorized the use of misleading phone calls just prior to election day. Since then, this unsavory episode has inspired efforts to restrict telephone solicitations in political campaigns. While well-intentioned, these proposals venture beyond their stated objectives into the restriction of freedom.

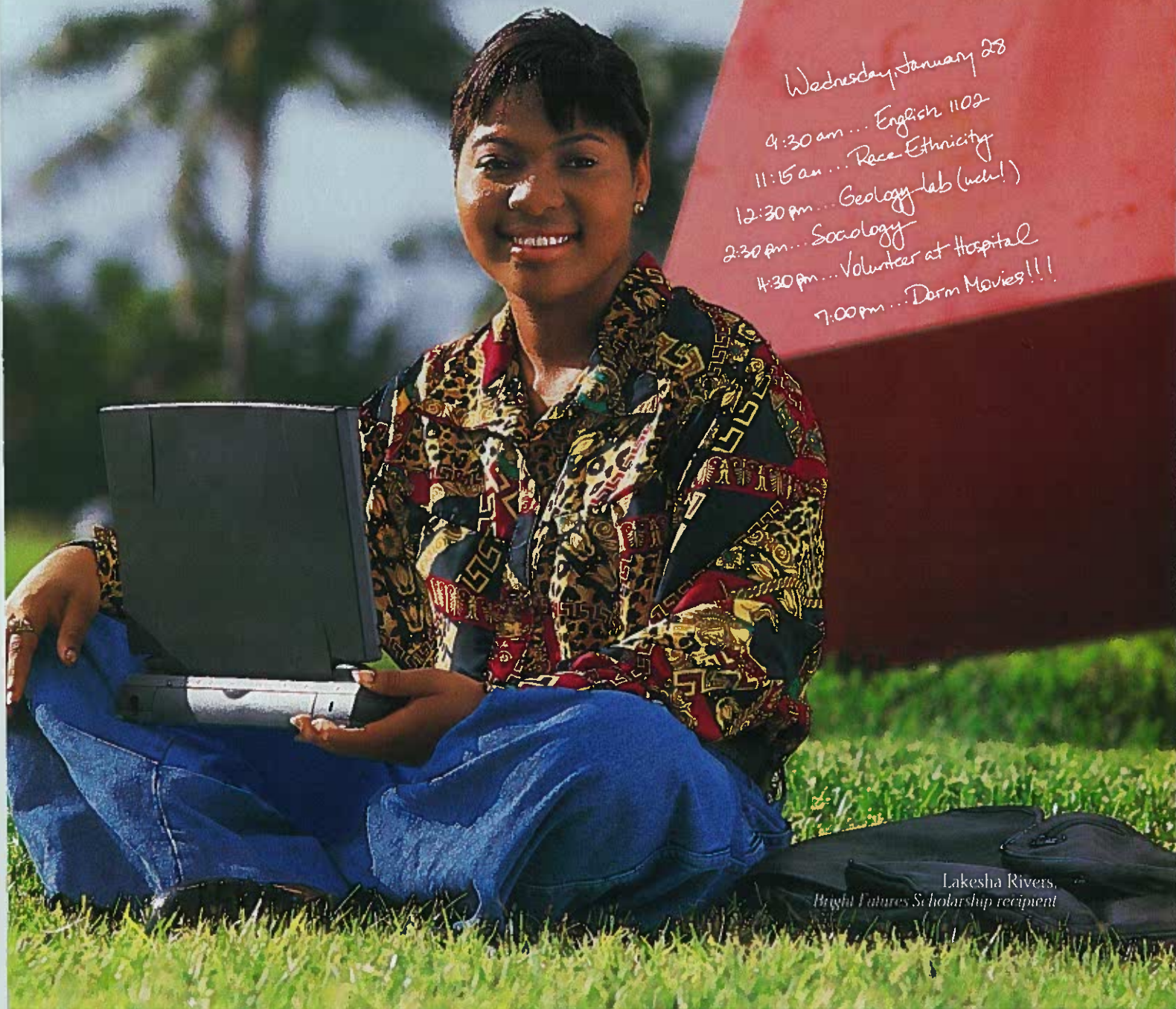
These efforts may continue in the 1998 Session. AIF supports statutes that protect citizens against deceptive campaign practices as long as they do not abridge freedom of speech. We believe that reform proponents can achieve their objectives by limiting action to: 1) prohibitions against a caller claiming to represent a particular person or entity unless he has been given written permission to do so; 2) prohibitions against a caller claiming that he is a representative of a non-existent person or entity.

To switch venues, the Constitutional Revision Commission has been deliberating some campaign finance reform measures. The rationale generally given for these measures centers on returning control over elections to the citizens. Oddly enough, most of these ideas propose to accomplish their purpose by taking from citizens their right to contribute to candidates of their choice.

One proposal before the commission would allow only natural citizens to make contributions to candidates. Another would prohibit any individual or entity other than an eligible registered voter from contributing to the campaigns of candidates for public office in Florida. Business people should oppose any effort to limit the ability of anyone to take part in the political process through campaign contributions.

PHOTO: GARY S. & VIVIAN CHAPMAN





Lakesha Rivers,  
Bright Futures Scholarship recipient

## Time Management 101.

Lakesha Rivers still schedules free time, but she's usually studying. Studying is nothing new to Lakesha.

Last spring, she was awarded one of the Florida Lottery's new Bright Futures Scholarships. Now, seventy-five percent of her tuition is paid for at Florida International University.

So there's a little extra time for Lakesha's other activities, like volunteering at North Shore Medical Center. There's even time for choir practice and an active dorm life.

The Bright Futures program is sending more

high-achieving Florida high school graduates to college or vocational school than ever before.

Over 42,000 freshmen entered Florida colleges last fall with full or partial scholarship funding.

It all comes from the Florida Lottery, meaning, it all comes from you.

The Lottery funds earmarked for education have reached an unprecedented \$820 million for education in our state. The Bright Futures Scholarship Program will receive \$75 million.

That's why Lakesha Rivers is still spending most of her time studying. She's made it into college.



**When you play, we all win.**

For more information, visit our website at [www.flalottery.com](http://www.flalottery.com).



# Pursuit of Happiness

Great contest follows, and much  
learned dust  
Involves the combatants.

William Cooper



PHOTO: BOB DUGHI

The garden of flowers blanketing the chambers on opening day of session. It's among the traditions of this day of ritual, one oft criticized by journalists who find evidence of sneaky special interest kowtowing in the bouquets, garlands, and trinkets showered on lawmakers. But it is from innocence that this tradition arises.

On April 7, 1903, a brilliant spring day, the Florida Legislature convened in its sparkling new quarters. A \$75,000 renovation to the 1845 Capitol had expanded the building, added a splendid dome to the roof, and completely refurbished the interior. All present were pleased with

the results, including Rep. Lambert M. Ware of Washington County, the Legislature's lone Republican.

There was one problem, however: a noticeably unpleasant odor wafting from the new linoleum flooring supplied, naturally, by the lowest bidder. To the rescue came the Women's Club of Tallahassee. They prepared large bouquets of fresh cut flowers for each legislator's desk, burying the smell of the linoleum with the heady perfume of roses.

And thus, thanks to the precedent they set, we can be sure that, for one day at least, the Legislature will be wrapped in a sweet odor. ■





## Our Workers' Comp Plan Has Some Great Things In Store For You — *Guaranteed!*

**O**ur Jumbo Retro Program gives you something you can bank on — results! Of all our initial Jumbo Retro accounts, 90 percent recently received a Return Premium check.

Not only that, but 95 percent of those insureds received the maximum return based on their individual premium size.

The Jumbo Retro Program, designed for small- to medium-size businesses, employs aggressive loss control and safety programs and rewards insureds with a *guaranteed* return of premium up to 20%.

Other companies can only offer dividend promises. Associated Industries Insurance Company is approved by the Department of Insurance to *guarantee* a return of premium.

If you're safe and you'd like money back for your efforts, your advantage is AIIC's Jumbo Retro Program. Discover the difference you can bank on!

| Workers' Compensation Insurance Return Premium Plan |                     |            |            |            |            |      |
|---|---------------------|------------|------------|------------|------------|------|
| 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%         |      |

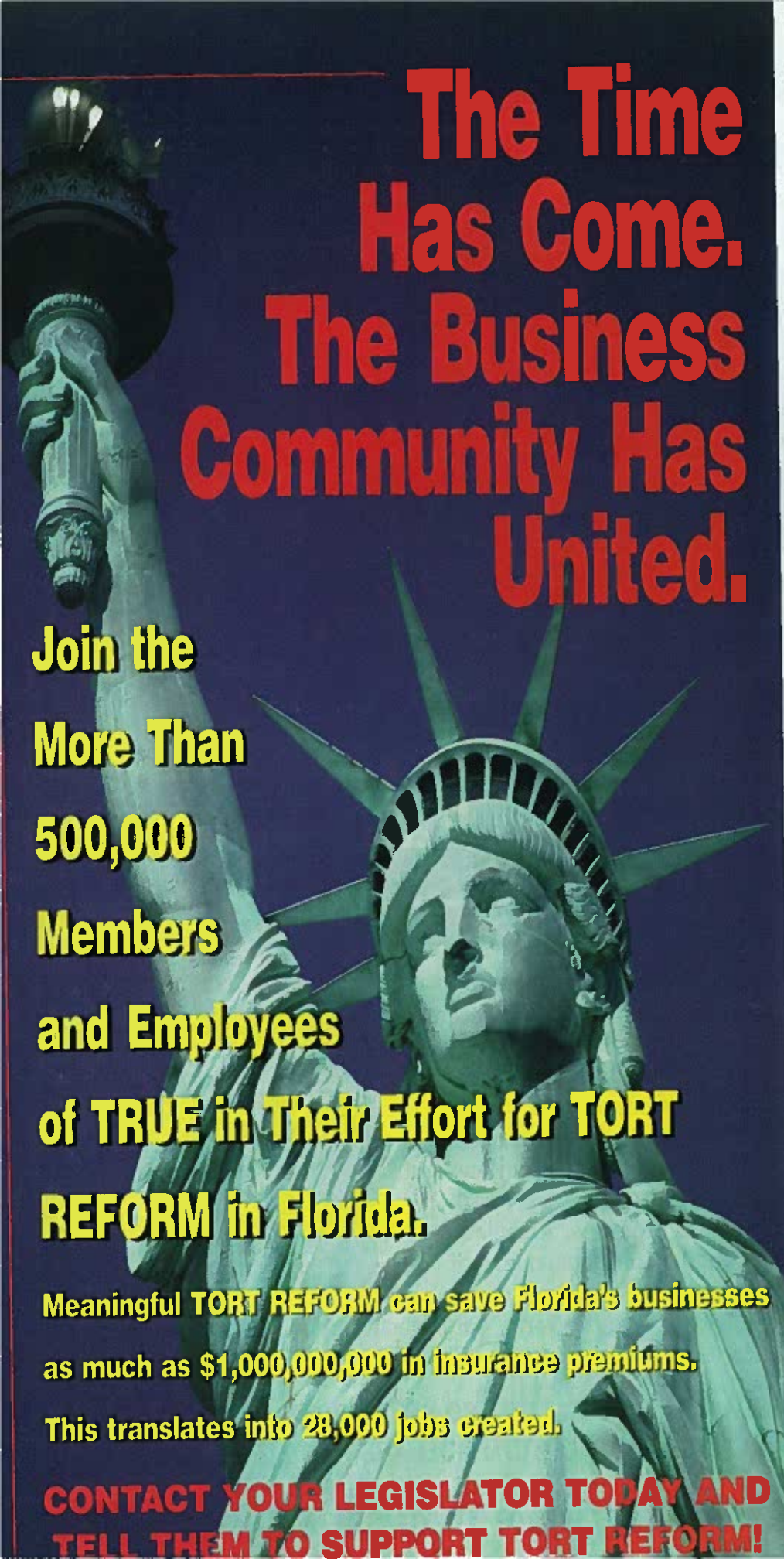
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Meaningful TORT REFORM can save Florida's businesses  
as much as \$1,000,000,000 in insurance premiums.

This translates into 28,000 jobs created.

**CONTACT YOUR LEGISLATOR TODAY AND  
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Drive Smart Florida, Inc.  
Florida Air Conditioning Contractors Association  
Florida Associated General Contractors Council  
Florida Association of the American Institute of Architects  
Florida Association of Counties  
Florida Association of Electrical Contractors  
Florida Association of HMOs  
Florida Association of Homes for the Aging  
Florida Association of Insurance Agents  
Florida Association of Plumbing, Heating and Cooling Contractors  
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Florida Health Care Association  
Florida Hospital Association  
Florida Hotel and Motel Association  
Florida Institute of Consulting Engineers  
Florida Insurance Council  
Florida League of Cities  
Florida League of Health Systems  
Florida Manufacturing and Chemical Council  
Florida Outdoor Advertising Association  
Florida Petroleum Council  
Florida Petroleum Marketers Association  
Florida Phosphate Council, Inc.  
Florida Pool and Spa Association  
Florida Poultry Federation, Inc.  
Florida Public Telecommunications Association  
Florida Restaurant Association  
Florida Roofing, Sheet Metal, & AC Contractors Association  
Florida School Board Association  
Florida Sheriffs Association  
Florida Statutory Teaching Hospital Council  
Florida Transportation Builders Association  
Florida Trucking Association  
Florida Wall and Ceiling Contractors Association  
Indoor Air Quality Association, Inc.  
Johnson & Johnson  
Merchant Association of Florida, Inc.  
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