FLORIDA BUSINESS INSIGHT

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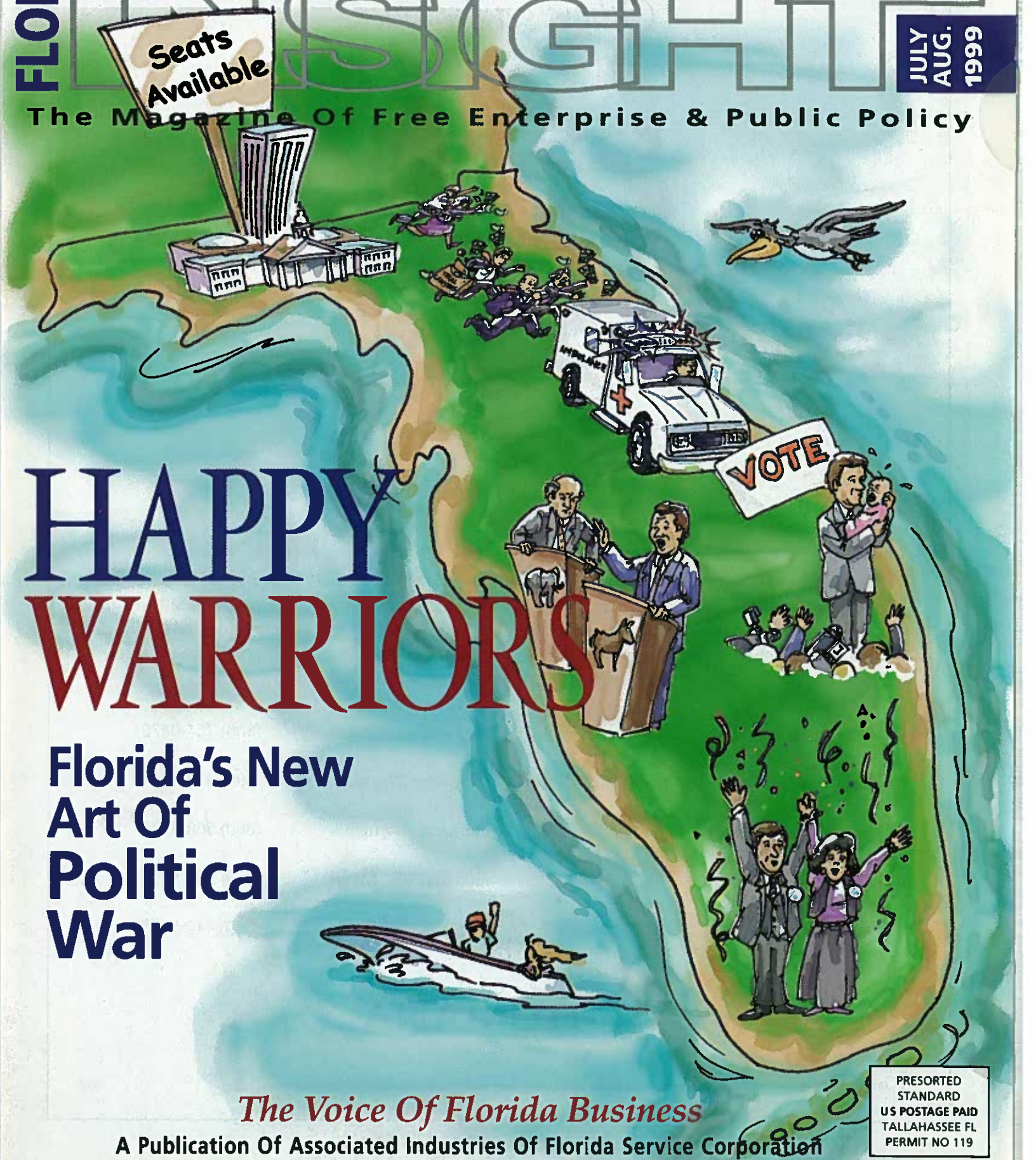

HAPPY WARRIORS

Florida's New Art Of Political War

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

July/August 1999
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by jon l. shebel, publisher

Breast Implant Revisionists

On June 22 the prestigious Institute of Medicine released the latest in a string of scientific studies declaring that no evidence exists to link silicone breast implants to serious disease.

In the June 21 story scooping the findings, New York Times writer Gina Kolata identified the most immediate impact of the study: "It is expected to be influential in ... encouraging women to accept settlements from implant makers rather than take their cases to court." Thus, the best that implant makers can hope for is to pay lower damages for injuries they did not cause.

Supporters of personal-injury attorneys immediately activated the campaign to rewrite the history and legacy of this sorry jurisprudential episode. They concluded that the breast implant litigation was an unfortunate mistake attributable to an earlier dearth of scientific data, the inability of juries to sort out complicated scientific testimony, and a need to accommodate the demands of justice before all the evidence was in. These rationalizations would be hard to swallow if they were true, but true they are not.

Yes, at the time the litigation began, there was a lack of scientific research on the effects of silicone breast implants on the health of women. Trial lawyers first made the claim that the devices caused cancer, then switched their accusation to connective-tissue disease when studies showed the cancer scare to be unfounded. It was on the claim of a link between connective-tissue diseases and the implants that they based their litigation.

The effort turned into a serious money maker in 1992 when the personal injury lawyers convinced Food and Drug Administration Commissioner David Kessler to ban silicone breast implants. There was little evidence to support or refute Kessler's decision but it had the immediate effect of stamping an official seal of approval on the claims of the plaintiffs.

Kessler's decision was a regulatory breakdown attributable to bureaucratic empire-building and the desire for ego-boosting headlines. The judicial fracture occurred in the courtroom when the plaintiffs' lawyers were allowed to supplant science with anecdote and speculation repeated by oft-used and well-reimbursed plaintiffs' consultants masquerading as disinterested experts.

Some of the breast implant litigants were genuinely and desperately ill (the rest merely anticipated illness). The jurors couldn't help but sympathize with the sick women. But the fault for the incorrect verdicts doesn't rest with jurors. They were manipulated by junk science that allowed them to assuage their sympathy by forcing large corporations to shell out $7 billion in damages and settlements.

In 1996 Dr. Marcia Angell, executive editor of the New England Journal of Medicine and a self-described liberal feminist, published *Science on Trial*, a critique of the breast implant litigation. Her conclusion? "If it were not for the nearly total lack of scientific standards in the breast implant cases, even a badly flawed legal system could not have worked such mischief."

But the tort system is badly flawed. The ability to introduce shaky scientific evidence is just part of the scheme to use civil courtrooms to transfer money from those who have it to those who want it. Questions of fault or liability become unimportant details.

The Institute of Medicine's breast implant report is the latest flashlight beam directed at the cracks in that crackpot scheme. Protecting that scheme against the growing demand for reform is what drives the revisionists of breast implant history, not any concern for accuracy or justice. ■

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ILLUSTRATION: ALBERTO RUGGIERI

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by frank t. white

Quick, Easy, Cheap – & Safe

Have you ever washed your car, then plugged in the vacuum cleaner and dragged the electrical cord through the puddle of water surrounding the vehicle?

Chances are you realized right away that you were risking electrocution. So how did you respond? Did you build a special platform for vacuuming or did you simply change the way you clean your car?

While this is an example of safety at home, it perfectly illustrates a new approach to workplace safety. Sometimes the quickest, easiest, and cheapest path to safer operations is a change of habits, or behavior modification as the experts like to call it.

To a certain degree, the entire workers' compensation system is an exercise in behavioral modification: What changes are made as a result of an incident causing injury or property damage? Why weren't the changes made prior to the incident? An injury is often at the root of a change in the workplace.

Bringing new insight into this relationship are recent studies by two workers' compensation providers, one in Rhode Island and one in British Columbia, that involved a sampling of soft-tissue/lost-time injuries. The study comprised more than 800 post-injury assessments that resulted in over 4,400 recommendations, or an average of just over five per incident.

The study divided the recommendations into three categories:

- workplace design, such as modifying workstations or tools
- operating procedures, such as job rotation or stretching or work breaks
- work style, such as posture or methods of lifting or gripping

The findings might surprise you. Fewer than one out of four recommendations were directed at the more expensive option of workstation redesign. Most of the recommendations were directed toward modifications in worker behavior.

Take the example of an employee who operates a saw. Waiting until the last minute to change the saw blade might seem to save time and money, but it doesn't. A new blade not only gives you a cleaner, quicker cut; it saves your fingers. The cost of changing the blade is minimal in terms of body parts and operating costs.

For some safety professionals, loss prevention is a matter of ergonomics and physical hazards, which result in costlier solutions. As the Rhode Island and British Columbia studies reveal, however, most of solutions are personal. The studies found that with back injuries, 75 percent of the solutions involved work-style changes. Making sure that employees keep their backs straight while lifting objects might take a little more attention on the part of your supervisors, but it is probably more effective — and certainly cheaper — than reducing the weight of objects employees may lift or buying equipment to lift the objects for them.

Workplace modifications and changes in procedures can be valuable and necessary tools in the prevention of accidents, but they aren't always the only, or even the best, options. Giving a worker one-on-one coaching in safer work habits can net higher results at a lower cost.

And after all, the measure of success in a safety program isn't how much you spend but how well you protect your employees. ■

Frank T. White is executive vice president and COO for Associated Industries Insurance Service, Inc., (e-mail: fwhite@aif.com*).*

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$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%	
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by kathleen "kelly" bergeron

Can Personality Impact Productivity?

The way individuals work together — or don't — can either maximize productivity or sabotage it.

How you interact with others depends on your personality type. In the book, Type Talk At Work, Otto Kroeger and Janet Thuesen present the principles of "type-watching" in the workplace and explain the impact of personality on successful team-building.

In his 1923 book, *Psychological Types*, Carl Jung suggested that human behavior was predictable, not random. And if behavior was predictable, it was also classifiable. Katherine Briggs, a student of Jung's, became dedicated to validating his theories of behavior and making them more fathomable to the non-scientist. She and her daughter, Isabel Briggs Myers, after years of gathering empirical data, developed a psychological instrument to measure personality preferences that, in turn, could be used to predict behavior. This instrument is known as the Myers-Briggs Type Indicator. The results can be used to promote team building by understanding individual differences and using them constructively to maximize your team's potential.

There are four personality preference pairs (*extraversion* or *introversion*, *sensing* or *intuition*, *thinking* or *feeling*, *judging* or *perceiving*) and 16 possible personality types based on combinations of one element from each of the four pairs. The way an individual answers a series of questions determines his four-trait personality type.

Extraverts tend to shoot from the hip. They throw out ideas and see what sticks, while introverts will reflect and remain aloof, keeping their ideas and thoughts to themselves.

Sensors deal in the here and now. They rely on data, remain focused, and make no decision before its time. Their opposite, intuitives, have a tendency to visualize endless possibilities. They experience the world around them but do not attempt to interpret any specific meaning from it.

Thinkers are objective and make their decisions based on the logical solution. They tend not to consider others in their conclusions. Feelers on the other hand want everyone to live in harmony; they spend a lot of time trying to satisfy everyone.

Judgers want organization and clearly defined rules and objectives. They prefer schedules and tend not to be flexible, while perceivers will have many things going at the same time. They don't see the importance of pursuing a specific direction but rather leave themselves open to new input.

You can see from this brief explanation how different personality preferences could act upon your management team's ability to work together successfully. During a business meeting, for example, your extraverts will have a tendency to dominate the discussion while your introverts will remain quiet and process information internally. Your sensors will not make decisions until they have sufficient data to support their positions. They will stick to the facts. Your intuitives will travel down every unexplored path; they are your visionaries.

You need all types for balance. By using the results of the Myers-Briggs Type Indicator, you will be able develop your management team, complement their differences, and maximize productivity.

For more information on the Myers-Briggs Type Indicator, contact Otto Kroeger Associates at 3605-C Chain Bridge Road, Department B, Fairfax, Virginia 22030, (703) 591-MBTI (6284). ■

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ILLUSTRATION: GARY KAEMMER

compiled by jacquelyn horkan, editor

A Grim New Fairy Tale

Once upon a time, the Suwannee County Commission happily approved Suwannee American Cement Company's plan for construction of an 80-employee, $130 million cement plant in the tiny northeast Florida town of Branford.

The cement plant would not discharge any water into the environment. It would need a permit to cover air emissions, but those would be roughly equivalent to the output of a car's exhaust system. This nice clean operation would also recycle old automobile tires by using them in the manufacture of cement.

For a county where per-capita personal income runs $7,000 below the state average, and most of the high-paying jobs are a 45-minute commute away, Suwannee American was a fairy godmother. And then the plant drew the attention of the ever-vigilant cadre of environmental dragons who want to place a "Do Not Touch" sign over every area that remains undeveloped.

Nevertheless, approval of the cement plant seemed a certainty until the activists found a willing co-conspirator in the form of David Struhs, secretary of the Florida Department of Environmental Protection (DEP). On June 21, 1999, Struhs's agency announced that it had denied Suwannee American's permit application.

To justify the decision, the agency reached deep into the recesses of the Florida Administrative Code to activate an obscure provision requiring it to consider the environmental record of a permit applicant. While Suwannee American is a new company and does not possess an environmental record, it does possess an owner by the name of Joe Anderson, Jr.

Until 1997, Anderson was the chairman of the board of a road-building firm by the name of Anderson Columbia. According to the reasoning of DEP bureaucrats, the environmental record of any company with a past or present connection to Anderson automatically becomes the environmental record of any company in which he is involved.

Scouring their files, the regulators discovered that over a 13-year period Anderson Columbia and six of its affiliates had amassed a record of (gasp!) 15 environmental violations. Thus, DEP boldly proclaimed that these despoilers of nature must be stopped.

So how bad is Anderson Columbia, et al.'s environmental record? Eight of the violations were minor in nature, resulting in

fines ranging from zero to $6,500. One violation arose after DEP ordered Anderson Columbia to operate a rock crusher to dispose of debris from Hurricane Opal. DEP sued the company claiming that it had continued to operate the crusher after the emergency had passed; Anderson Columbia paid a $20,000 fine.

A tenth violation involved a DEP suit against another Anderson company for failure to clean up contaminated property. The company was granted summary judgment by the court, a decision that DEP is appealing. The remaining five violations are the subject of other court battles between DEP and Anderson Columbia.

In other words, Anderson Columbia's environmental record looks pretty similar to that of any well-meaning company operating under a permit monitored by bureaucratic nitpickers in an age of bewildering environmental regulations.

Florida now imports 50 percent of the cement used in state. The proposed cement plant would mean that more of the money spent elsewhere on the purchase of cement would stay here. But the DEP decision ignored that fact. It also overlooked the reality of overzealous regulation that treats as dastardly every innocent mistake or difference of opinion.

And so, for no good purpose, the desperately needed economic progress of a tiny corner of Florida is being held hostage.

Which raises the question: Just when does that new age of common sense environmental regulation dawn? ■

Take This Job And ...

On June 22, 1999, the U.S. Supreme Court handed down decisions in three cases involving the Americans with Disabilities Act (see "Something for Everyone", May/June *Florida Business Insight*). While the rulings will go a long way toward limiting coverage of that law to people who really need its help, some work remains to be done on the ADA and the Equal Employment Opportunity Commission's application of the law.

When the captain of the Exxon Valdez was found to have been intoxicated on the night of the ship's oil spill, for example, Exxon Corp. instituted a policy that barred employees with a history of drug and alcohol problems from certain positions. The EEOC has challenged that policy, claiming that Exxon has violated the rights of employees who are "disabled" by their addictions. Instead, the EEOC wants Exxon to prove that each recovering alcoholic or drug abuser poses a "direct threat" to the safety of others before denying that person employment in a prohibited position.

The EEOC seems merely to be following the direction set by the anti-employer Clinton Administration. In June, the White House began circulating a proposed rule that would give bureaucrats the power to deny government contracts to companies that have been accused of violating labor, antitrust, health, consumer, or environmental laws. The action can be taken on the basis of allegations, before the employer has had its day in court.

The President also directed the secretary of the Department of Labor to propose rules that would allow states to tap into unemployment insurance trust funds as a means to support parents who take leave following the birth of a child.

Neither proposal is expected to go anywhere. Instead most insiders are describing them as sops to the labor unions, designed to boost support for Vice President Gore's presidential bid. ■

A Quote Worth Noting

"Environmentalism is above all an ideology that implicitly or explicitly sees the world as infinitely complex and interdependent. However, this is an a priori statement, not a serious analytical insight. Its supporters are victims of an old doctrine which is based on the wrong conclusion that the more complex the world is, the more government intervention, regulation, and control it requires. It was rejected by Hayek, who argued exactly in the opposite way: The more complex the society is, the more it needs the market."

Vaclav Klaus (prime minister of the Czech Republic from 1992 to 1997) in a lecture on "Liberty and the Rule of Law" for the Heritage Foundation, Philadelphia, April 22, 1999

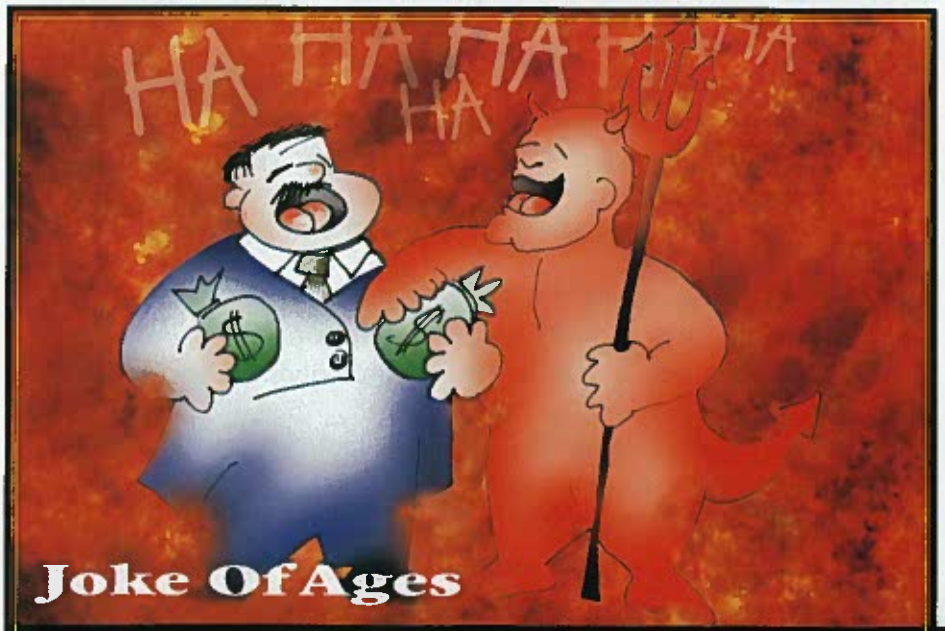
Taming The Risks: Officers And Directors Liability

The Washington Legal Foundation, a D.C.-based think tank, has just published a monograph entitled, *Officers and Directors: Liability Exposure Under Civil and Criminal Law.*

The monograph examines the metastasizing concepts of civil and criminal liability that have put corporate officers and directors at ever greater levels of personal financial exposure in lawsuits against the corporations they serve. It explains the basic principles of liability and the personal exposures business executives and officers face, with an emphasis on how-to prevention and defense. It also uses the pending Y2K computer bug as a case study in legal duties and standards of liability.

The 71-page booklet, written by lawyers for laymen, is a quick, easy, and essential read for diligent corporate executives.

Copies of the monograph are available from the Washington Legal Foundation publications department, (202) 588-0302.



An engineer dies and reports to the pearly gates. St. Peter checks his dossier and says, "Ah, you're an engineer — you're in the wrong place." So the engineer reports to the gates of hell and is let in.

Pretty soon the engineer gets dissatisfied with the level of comfort in hell and starts designing and building improvements. After a while, they've got air conditioning and flush toilets and escalators, and the engineer is a pretty popular guy.

One day God calls Satan up on the telephone and says with a sneer, "So, how's it going down there in hell?" Satan replies, "Hey, things are going great. We've got air conditioning and flush toilets and escalators, and there's no telling what this engineer is going to come up with next."

God replies, "What??? You've got an engineer? That's a mistake! He should never have gotten down there; send him up here."

Satan says, "No way. I like having an engineer on the staff, and I'm keeping him."

God says, "Send him back up here or I'll sue."

Satan laughs uproariously and answers, "Yeah, right. And just where are YOU going to get a lawyer?"

Official State Nonsense

Florida lawmakers may have rebuffed efforts to supplant the mockingbird as the state's official bird with the scrub jay, but elsewhere the important business of approving honorary designations proceeded apace.

- As of the beginning of July, South Carolina has an official state amphibian: the spotted salamander.
- The Hula — once denounced by missionaries as a "heathen practice — is now the official state dance of Hawaii.
- In honor of its predilection for chili sauces, New Mexico has made "Red or Green?" its official state question.

Nobody designated the naming of official state anythings the official state waste of time.

ILLUSTRATION: GREGORY VOWELL

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Shelley B. Green—Formerly served as executive assistant to the chairman of the Republican Party of Florida ... responsible for special events, played a key role in the GOP's successful 1995 Presidency III straw poll convention and the 1996 Republican National Convention.

David Johnson—More than 20 years of experience in political campaigns in Tennessee, Oklahoma and Florida ... former deputy executive director of the Republican Party of Florida, congressional liaison and deputy finance director ... coordinated Republican statewide and federal races during the 1996 and 1998 campaign cycles.

Tom Slade—President ... more than 40 years of experience in politics and government ... served as state chairman of the Republican Party of Florida from 1993-1999 ... former state representative and state senator ... served as vice-chairman of the Florida Taxation and Budget Reform Commission in 1990.

John Wehrung—More than 10 years of experience in political and governmental affairs ... former political director at the Republican Party of Florida ... engineered the 1996 GOP takeover of the Florida House ... served as chief of staff for the General Counsel's Office at the Republican National Committee from 1991-93.

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by marian p. johnson

To Heed The Call

Term limits are about to bring many a long political career to an end in Florida, which got me thinking: What would a classified ad for potential candidates look like?

Wanted: Candidate for office; male or female — young enough to enjoy intrigue, old enough to exhibit wisdom. Full-time-plus position; part-time pay; requires person to surrender all privacy and spend many hours away from family, jobs, and friends. Applicant must be able to jump through hoops, eradicate red tape, and make something from nothing; ready to be loved by some and despised by others; able to find humor in all situations, including mud-slinging headlines; must be willing to toil through long hours of campaigning; otherwise, do not apply.

It kind of makes you wonder why anyone would ever run for office. That's why "help wanted" ads are of no use in candidate recruitment. Instead, it's a task best done on a one-on-one, district-by-district, need-by-need basis. Term limits will certainly demand a steady supply of good pro-business candidates. And that's where you can help, even if you don't want to run for office yourself.

There are some people the voters hold to a higher standard: It's usually everybody but themselves, but preachers and politicians are certainly the two groups most subject to unforgiving scrutiny.

So it stands to reason that one of the first things to consider in recruiting someone to run for office is his character, civic involvement, and the public's perception of him.

- Is he well known in the community? Why?
- Is he well liked by most?
- Is he involved in the community? How?
- How long has he been involved?

Because so much of the person's private life becomes public, and so much time is taken away from the family, it is important that the entire family be made aware of this and that the family is overwhelmingly supportive of the candidacy.

Next, you really need to assess the person's commitment to the campaign.

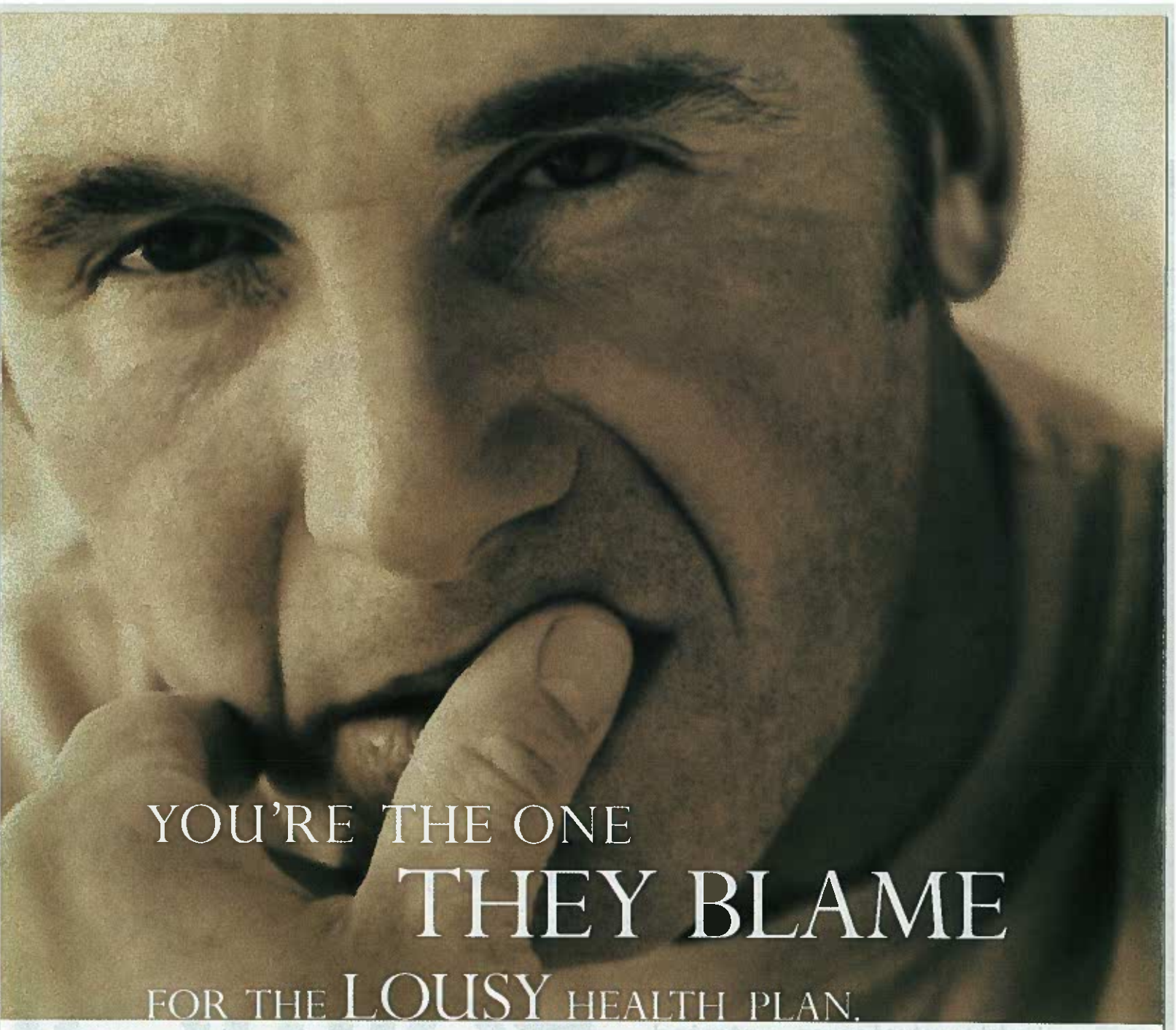
- Can he raise money?
- Is he willing to ask people for money?
- Is he willing to be at a breakfast at 7 a.m., a radio talk show until 11:30 a.m., a luncheon at noon, an editorial-board interview at 2:00 p.m., to walk the precincts until 7:00 p.m., and then debate his opponent at 8:00 p.m.?

This is just the beginning. But the demand for quality candidates is here. You might know just the right person. He does not have to be someone who has held elective office before. He might the coach of the Little League team, the friendly banker or barber, or someone who works with you.

The point is that the best place to find pro-business candidates is within the business community. You have an idea of someone? Call us. We've researched each district to identify what type of person can win there. We'll do the legwork. And we'll find the answers to the hard questions that have to be answered about each candidate.

Look around you. Who knows? You may be sitting next to the future president of the Florida Senate. ■

Marian P. Johnson is senior vice president of political operations for Associated Industries of Florida Service Corporation (e-mail: mjohnson@aif.com*).*



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HAPPY WARRIORS

Florida's New Breed of Political

The last legislative session may just have been the best ever for the business community. Victories abounded—tort reform, tax cuts, education reform. But Jon Shebel, president and CEO of Associated Industries of Florida (AIF), is not satisfied.

"We're going out there as if we're losing," he says.

"There" is the 2000 election battleground, a minefield of hidden strategies, untested campaign reforms, and trigger-happy partisans. In fact, next year's campaigns may provide political junkies with the most titillating election season ever.

by Jacquelyn Horkan, Editor

da's Art War

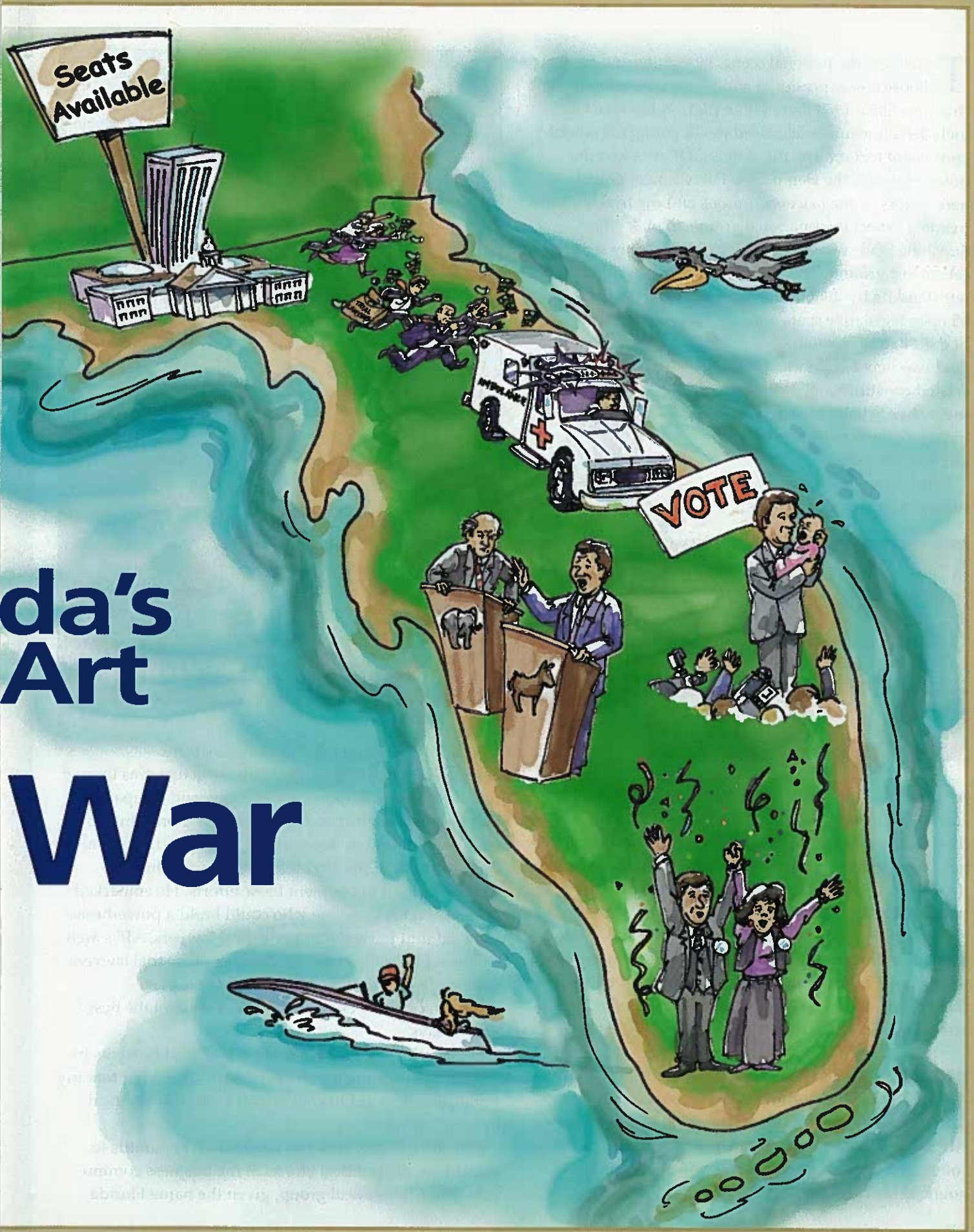
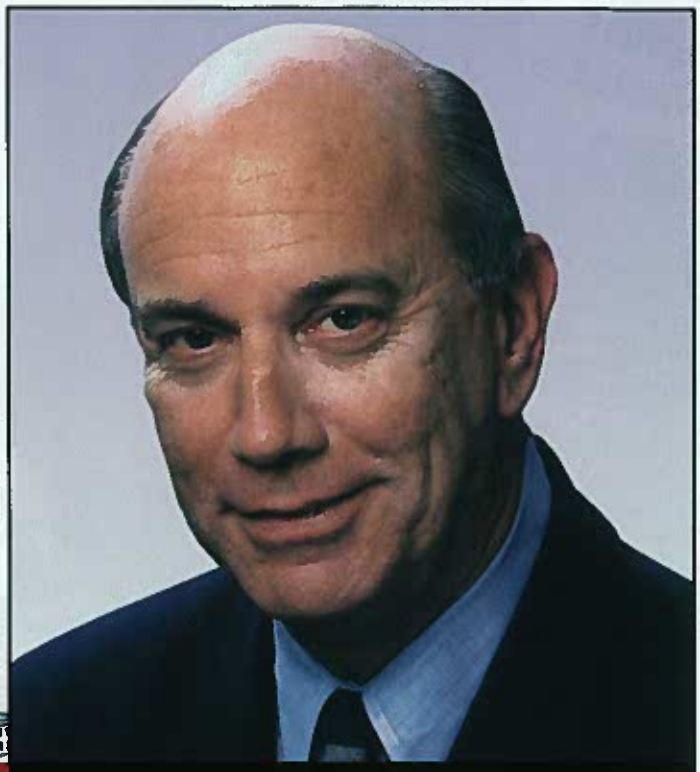


ILLUSTRATION: DALE FRIENDS

To wit: On the national scene, Floridians will have to choose a new president and a new U.S. senator, the first time since 1968 that neither high stakes race has included an incumbent candidate. In voting for school choice and tort reform, the state's GOP tweaked the noses of two of the Democratic Party's most potent benefactors — the teachers' unions and the trial lawyers. Insiders expect their national groups to make the Sunshine State a theater of war in 2000 as they seek to retake lost ground. The 1992 term-limits amendment, if left standing by the Florida Supreme Court, will create 65 open legislative seats out of the 140 up for re-election. And two new election-related constitutional amendments (see article on page 24) have redefined traditional election strategies.

To the happy warriors of the political armies all of this produces an adrenaline surge, a sugar high, a caffeine rush — fill in your own analogy. To the rest of us, though, it may seem about as exciting as watching Jell-O gel. But whether you sign the paychecks or simply deposit them, Shebel has a warning: ignore politics at your own risk.



Jon L. Shebel, president and CEO of Associated Industries of Florida.

But whether you sign the paychecks or simply deposit them, Shebel has a warning: ignore politics at your own risk.

"Now more than ever," he cautions, "business people can't afford to ignore elections. We've got a bigger opportunity to make an impact, but the potential is also there for people to get elected who will send our economy back to the dark ages."

BUILDING THE ARSENAL

Every weekday morning, Marian Johnson drives from her home in Cairo, Georgia, to her office at AIF's Tallahassee headquarters, pours herself a cup of coffee, and checks out whether anyone new has announced his candidacy.

Before 1994, when Johnson joined AIF, the association's existing political infrastructure was limited to political contributions, fundraising, and campaign services such as the production of television commercials for candidates. Recognizing the potential risks and opportunities of the 1992 term-limits amendment, Shebel decided to augment those efforts. He embarked on a search for someone who could build a powerhouse political unit to rival that of the trial lawyers, AIF's arch-enemies. He finally chose the designer of the trial lawyers' machine — Marian Johnson — to build his own.

"We wanted the best. We went out and got the best," Shebel says.

Johnson left the Florida Academy of Trial Lawyers in 1992 after spending seven years there. "I just felt that my political beliefs didn't correspond with their political beliefs," she says.

Johnson's task was to put together an apparatus to coordinate the political efforts of the business community. The AIF political group, given the name Florida

Shebel finally chose the designer of the trial lawyers' machine — Marian Johnson — to build his own.

Marian Johnson, AIF's senior vice president of political operations.

Business United (FBU), was anchored by the contributions and input of the association's most politically active members. Although she joined AIF midway through the 1994 election cycle, she quickly put together a program to identify and support pro-business candidates. She prepared a 20-page issue questionnaire and mailed it to potential candidates. She then organized a six-city swing of candidate interviews that gave AIF members an opportunity to interview 237 of the 313 legislative hopefuls.

FBU's questionnaires and the interviews helped the association and its members select the candidates to support. The combined contributions from AIF's political action committee, prosaically named AIFPAC, and AIF's affiliated companies that year totaled $249,274; 92 percent of the supported candidates won their races. In 1998 the record had improved to $821,125 and 95 percent.

Johnson also organized a high-profile polling program. During the six weeks leading up to the November elections in 1994, AIF released weekly polls of public opinion surrounding the election. Unlike other statewide polls, AIF's showed that Jeb Bush presented a significant challenge to then-incumbent Gov. Lawton Chiles. Some in the Chiles camp later admitted that the AIF poll results were a shock that sent the campaign staff into high gear. The reliability of Johnson's polling data gave instant credibility to the fledgling FBU.

Each year Johnson expanded on the previous year's successes, all in preparation for the big challenge of 2000.

FILLING THE VACUUM

Two of the primary foes of the free-enterprise system — trial lawyers and unions — lack the sheer size and financial muscle of the business community, but they make up for that disadvantage with qualities that are more important in the political arena: cohesion and a limited agenda. Both groups rely on government to supply their financial and political power; thus, they have a greater motivation to make sure that they get their supporters elected. If anything, FBU was created to fill the vacuum that existed in opposition to those two groups.

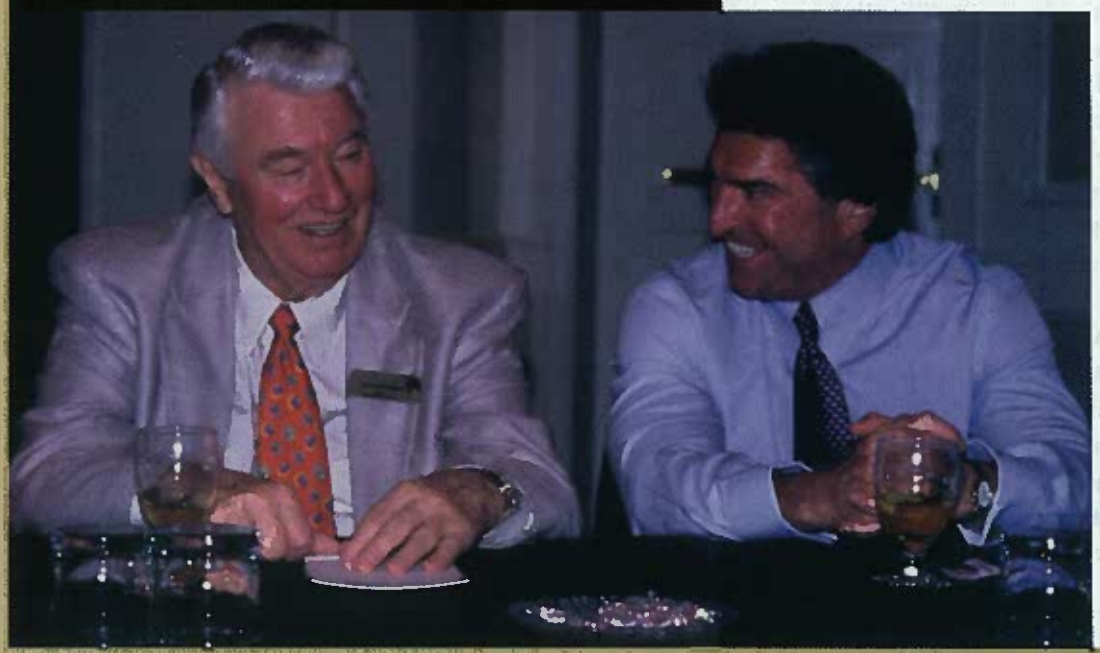
The purpose of any group's political program is to turn the balance of power in its favor. The threat of term limits is the loss of reliable pro-business votes. The opportunity is the loss of reliable anti-business votes. The challenge of term limits is to find a stream of candidates to feed the constant turnover.

Through FBU, the business community is seeking to consolidate its hold on its existing favorable tilt in the balance of legislative power, an advantage that is tenuous at best.

"If the court overturns term limits," says Johnson, "we'll just have to take a more aggressive approach for the legislators we want out."

Above: Marian Johnson shares details of her latest candidate research at Florida Business United's Corporate Lobbyist Group Educational Conference in Panama City, Florida, June 2-4 1999.

Below: Charlie Whitehead (left), chairman of the Florida Democratic Party, and Al Cardenas, chairman of the Florida Republican Party, put on a show of bipartisanship during a working luncheon at the educational conference.



With or without term limits, Johnson has spent the last several years developing the tools she'll need to fight her battles wisely. One of those tools is a proprietary voter database compiled from several different public information databases. The database, nicknamed TVE (for Total View Equation), gives Johnson a household-by-household snapshot of every voting precinct in the state. By studying the TVE data, Johnson has been able to target those districts that will become the major battlegrounds in 2000, along with an image of the kinds of candidates who can win there.

For example, House District 7 encompasses four complete counties and parts of four others. While Democrats control party registration 70 percent to 30 percent, voters there prefer conservatives; Jeb Bush won the district in his losing campaign against Lawton Chiles in 1994. Johnson says the perfect candidate for District 7 would be a popular conservative businessman living in Jackson County, where the highest percentage of voters resides.

Some of the data reveal surprises. "There are some districts that year after year elect Democratic representatives by a wide margin," says Johnson. "But if you look more closely, you'll find that year after year they elect Republican sheriffs because the Republican party represents law and order. That tells me that we could pull off an upset with the right Republican candidate and the right message."

After picking the districts to target and finding the right candidates to run in those races, AIF's political team is ready with the kind of support and resources to help those candidates win. Sometimes it's as simple as a word of advice.

Shebel remembers a frantic phone call in the closing days of a campaign a few years ago. It was a candidate desperate for four $5,000 contributions so that he could put a phone bank in place to remind his supporters to vote. Shebel asked Johnson what she thought about the request.

"Right away I could tell that he was asking for too much money," recalls Johnson. "He couldn't have spent $20,000 calling

Trial lawyers and unions lack the sheer size and financial muscle of the business community, but they make up for that disadvantage with qualities that are more important in the political area: cohesion and a limited agenda.

Barney Bishop, president & CEO of the Windsor Group and former executive director of the Florida Democratic Party.

every Republican in his district twice."

Then she checked her campaign database. The candidate had already paid for a phone bank. Shebel called back and advised the candidate that he was a victim of overspending campaign consultants.

"There are a lot of consultants out there who pad their expenses with the campaign contributions we make," says Shebel. "That's why we want to help the people we support keep from wasting their money and ours."

With more than 30 years of experience as a campaign manager and political consultant, Johnson knows all the tricks of the trade, and how to spot them.

"An experienced campaign professional can usually look at the expenditure reports and tell you the outcome of an election," she says. "The amount of contributions really doesn't matter as much as how the money is spent."

POLITICAL SPEECH

While the elections are still a year away, Shebel has begun amassing a war chest to keep control of the Legislature in conservative hands.

"If we don't do this," he says, "we're abandoning the field to the people who favor the kind of tax and regulatory policies that strangle prosperity."

Shebel's goal is to exceed the $6.1 million spent by AIF and its member companies in 1998.

"As we get closer to the term limit-elections, a lot of people are finally waking up to the challenge and that means we're competing for business dollars," says Shebel. "But we've got an advantage because we've spent five years preparing for this and they're just getting started."

Shebel and Johnson are building a field team of party operatives to provide top-notch and cost-effective campaign services to selected candidates in crucial races. Coordinating the Democratic forces is Barney Bishop, a former Florida Democratic Party executive director, now the president and CEO of the Windsor Group. On the Republican side is Tom Slade, past-chairman of the Florida GOP who last year formed the Tallahassee power-house consulting firm of Tidewater Consulting, Inc.

"The political parties are going to be spending most of their energy on the presidential and U.S. Senate races,"

says Johnson. "We're planning to fill the void that will exist with so many legislative races at stake."

Shebel acknowledges that while the two national races have a higher profile, the business community has more at stake in the state campaigns. "When it comes to putting food on the table and paying the bills," he says, "I'm more interested in the legislative races."

He also plans to get AIF more involved in issue advocacy during and after the 2000 session. "We'll run T.V., radio, and newspaper ads letting voters know how their lawmakers voted on key economic issues."

While money is a key ingredient in his plans, Shebel also hopes to increase the political involvement of business owners and managers. "My advice is: if you're involved now, get more involved. If you're not involved, now is the time to get started because the stakes are high."

Tom Slade, president of Tidewater Consulting and past-chairman of the Republican Party of Florida.

After finding the right candidates, AIF's political team is ready with the kind of support and resources to help those candidates win. Sometimes it's as simple as a word of advice.

A SPECIAL INTEREST IN ECONOMIC LIBERTY

Johnson, a deeply religious woman, says she came close to abandoning the world of politics a few years ago because it seemed overpopulated with unsavory characters. "Then I thought, if I get out, I'm leaving something important to people who don't deserve the responsibility."

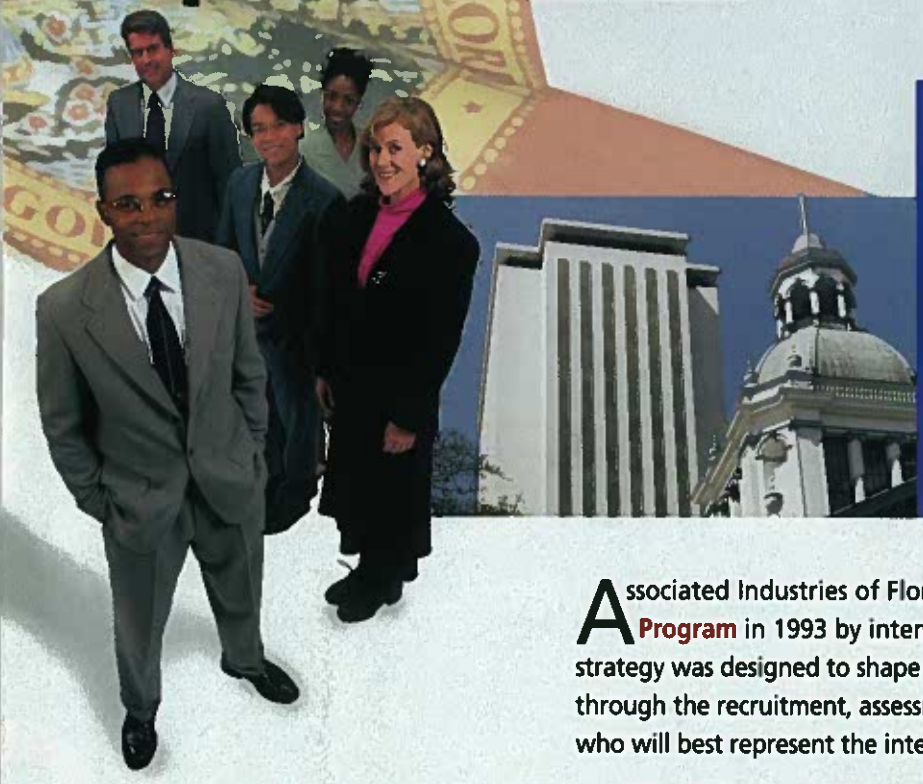
So she stayed, one of the happy warriors of politics, that special breed of cheerful combatants who savor the minutae, the fighting, and the purpose of campaigning.

From the more Machiavellian aspects of the political battleground can spring a cynicism about the process. But that cynicism merely throws a thin cloak over the battle of ideas waged during campaigns — the battles over how to secure our economic and political liberties.

Although speaking in a different context, Vaclav Klaus, prime minister of the Czech Republic from 1992 to 1997, perhaps best summed up the importance of political involvement. During his lecture on Liberty and the Rule of Law for the Heritage Foundation, Klaus spoke of the European Unification process, the major beneficiaries of which are rent-seeking bureaucrats. He noted that the majority of Europeans, "who live in a nirvana of unconsciousness ... who maximize the pleasures coming from a relatively easy life," are unaware of the "strong rivals and competitors" to liberty.

In the face of that threat Klaus cautions, "There is no need for pessimism, but there is also no room for passivity and inactivity. We have to continue the endless fight for liberty and the rule of law, and I am sure we will do it." ■

Because Political Action Is More Important Now Than Ever Before



Associated Industries of Florida (AIF) began expanding its **Political Operations Program** in 1993 by intensifying its involvement in election campaigns. This strategy was designed to shape the direction and philosophy of the Florida Legislature through the recruitment, assessment, and financial support of only those candidates who will best represent the interests and concerns of Florida's business community.

The result: since 1994, **contributions** made by the AIFPAC and AIF affiliated companies to pro-business candidates have totaled more than **$1.5 million,** including $249,274 in 1994; $449,126 in 1996; and $B21,125 in 1998. Additionally, members of AIF's Florida Business United contributed more than **$6 million** during the 1998 election cycle. Our **success ratio** has been equally impressive since 1994 — more than **93 percent** of the candidates supported by AIF **have won election,** including 92 percent in 1994; 92 percent in 1996; and 95 percent in 1998.

But now, our efforts are more important than ever before due to **eight-year term limits.** Beginning with the 2000 election cycle, there will be **65 open seats** because of term limits, which means many experienced, pro-business lawmakers will be replaced by less experienced legislators.

We encourage you to join our efforts today to help ensure that when the 2000 election rolls around, Florida's business community is represented by **pro-business legislators** who understand and advocate public policies that promote economic freedom and prosperity.

For more information on AIF's Political Operations, Florida Business United, or the AIFPAC, contact Marian Johnson, senior vice president - political operations, at (850) 224-7173, or e-mail her at mjohnson@aif.com.

AIF POLITICAL ACTIVITIES

Political operations at AIF is not just an election-year effort; rather, it's a full-time, year-round continuing operation with the purpose of electing pro-business candidates.

Political Operations

- Electoral district analysis
- Candidate recruitment and assessment
- Campaign evaluation and technical assistance
- Polling and get out the vote phone banks
- Campaign expenditure analysis

Florida Business United

FBU, a membership-based group comprised of Florida business people, keeps its members current on the state's political environment through extensive research and analysis.

AIF Political Action Committee

AIFPAC financially supports those candidates who understand and embrace our free-enterprise system. Contributions to candidates are determined by a board of directors, with input from AIFPAC members.

Associated Industries of Florida

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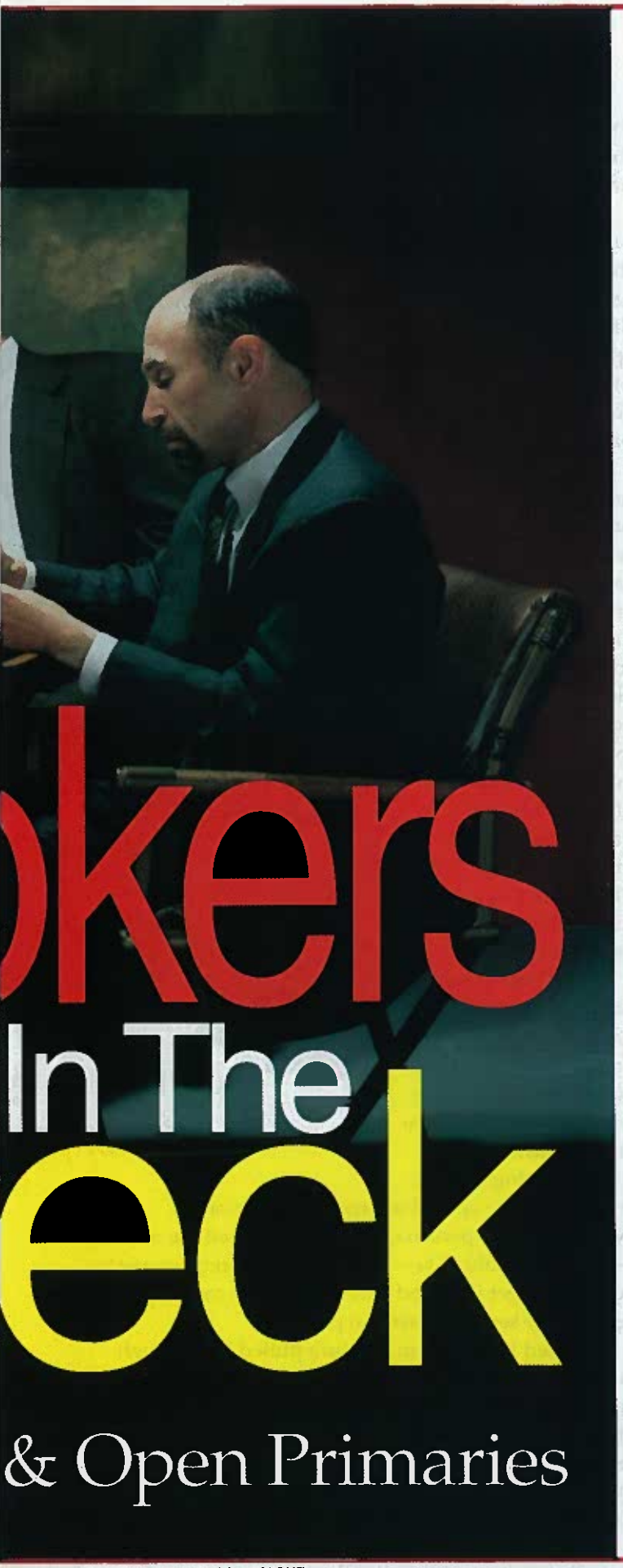
The 1998 Constitution Revision Commission put forth nine recommendations for the public's consideration, including Amendment 11 to Article VI, Sections 1 & 5 of the Florida Constitution. Among other election-law tinkering, Amendment 11, which passed with 64 percent of the vote, contained two dramatic and far-reaching changes, the impact of which may not be fully realized for at least two election cycles.

The Impact Of Third-Party Candidates



by john wehrung

The first change reduced ballot-access requirements for independent and minor-party candidates. Amendment 11's second major revision changed the primary-election-voting rules to allow all voters — regardless of party registration — to vote in any party's primary election if the winner of that election faces no opposition in the general election.

On the surface, both changes sound refreshing — more candidates, more choices, more voter participation. Some of these candidates, however, could be jokers in the deck who wind up tilting elections toward unintended results. Others could be the shadow candidates of special interests using the open-primary laws to their tactical advantage.

BELLY UP TO THE LOWER BAR

Amendment 11 lowered the ballot requirements for third-party candidates, aligning them with those for candidates of the two major parties, thus increasing the likelihood of a greater number of candidates representing more parties on the ballot. From now on, to place his name on the ballot a candidate simply has to obtain signed petitions from one percent of all registered voters in his district (or three percent of the registered voters of the largest political party in the district), or he can pay a qualifying fee of about $1,600.

Florida currently has 13 political parties in addition to the Republicans and Democrats. On the political spectrum, these third parties range from the well-intentioned to the misguided all the way to the lunatic fringe.

There is the philosophically pure and rarely successful Libertarian Party; the platform-challenged Independent Party; the Green Party (whose name says it all); and, my personal favorite, the Socialist Party of Florida, whose 87 members are convinced that Joseph Stalin was "misunderstood" and that communism was never given a "fair chance to work."

Third parties are not a new phenomenon — remember Teddy Roosevelt and the Bull Moose Party of 1912? Despite their longevity, third parties have enjoyed little success in Florida and, until recently, little or no publicity. Thanks to the 1998 Constitution Revision Commission, the lackluster record of third parties is about to improve, especially in the area of notoriety.

Sunshine State voters are not likely to begin forcing the formation of coalition governments similar to those found in parliamentary democracies such as Great Britain, Italy, and Canada, where no political party

receives a majority of the votes. Nevertheless, third-party candidates are likely to gain their 15 minutes of fame by playing the role of spoiler.

Intentionally or not, third-party candidates historically end up pulling votes on election day away from either the Republican or the Democrat candidate. For example, in a three-way election, a Libertarian candidate who stresses less government intrusion could sink a vulnerable Republican. Or a viable Green Party candidate, advocating environmental protection no matter the costs, could pull votes away from a Democrat.

Third-party candidates can hurt either party, especially if they are just spoiler candidates inspired by revenge, which many are. One who gets on the ballot and mounts a campaign — not necessarily to promote his own candidacy, but to tear down another's — could tip the scales in any election. He may not enjoy the thrill of victory, but he can assure that someone will experience the agony of defeat.

The motives of most spoiler candidates are usually personal and almost always vindictive. They are frequently ex-Republicans or ex-Democrats who have been shunned or rejected by their respective parties and would enjoy nothing better than to cost their former comrades an election.

THIRD PARTY STEEL CAGE MATCH

One simply has to examine the role of Ross Perot in the last two Presidential elections to imagine the turmoil a third-party candidate can create in an election. A disgruntled billionaire with a bad haircut and the ultimate Napoleon complex, Perot single-handedly destroyed the re-election hopes of George Bush, Sr., in 1992. In 1996, with the help of the media doubts about Bob Dole's chances for victory, Perot and his allies helped smash the Dole/Kemp ticket.

While some may say Bill Clinton won on his ability, charm, integrity(?), in neither election did the Clinton/Gore ticket receive a majority of votes from Americans. Rather, they received a plurality — less than 50 percent. In fact, a close look at precinct results from 1992 reveals a startling (and disturbing) electoral fact.

Bill Clinton won with 43 percent of the total votes cast, while George Bush received 38 percent and Ross Perot received 19 percent. Thus, Bush and Perot combined for 57 percent of the vote, meaning almost 60 percent of America voted against the candidate who took up residence at 1600 Pennsylvania Avenue. A reverse of those results could just as easily happen to the Democrats in the future if, for example, a well-financed Jerry Brown mounted a third-party campaign against Al Gore.

This is not to say that all third-party candidates intend to play the role of spoiler. Most just run for office under the party label (or lack thereof) that best fits them. They have a right to run and they have a right to be heard.

While a successful third-party campaign is extremely rare, some third-party candidates can catch on and tip the scales far enough to win an election outright. In the cases where third-party candidates do win, it's because they avoid the spoiler label and pull votes almost equally from both parties.

Jesse "The Governor" Ventura is the prime example. Here was a plainspoken former pro-wrestler and Navy SEAL who towered over his two sniping opponents. He told the people he was going to give them a billion-dollar tax rebate and stay out of their bedrooms. Ventura positioned himself perfectly for Minnesota voters: a fiscal conservative and a social liberal.

Ventura ran a classic populist-style campaign against the two party nominees. As an outsider he claimed he was beholden to no one and he blasted both sides for being bought and paid for by special interests. Because of his "wrestling star" persona, Ventura energized the masses — young and old alike — not just to register, not just to vote, but to get involved and work on his campaign, a sight rarely seen in American politics.

Instead of accountability, the impact

It worked like a charm. Ventura pulled just enough votes from both parties based on the issues and garnered the significant independent swing vote. More importantly for political watchers, Ventura received the overwhelming majority of votes from the newly registered voters that he inspired.

Could something like that happen here in Florida

at the state or local level? In theory, yes. Is it likely to happen? Probably not, especially not on any grand scale. But if there were a yet unforeseen political uprising that caused a groundswell of third-party candidates, Florida's move to lower the bar for minor-party qualifying will have been like opening the flood gates.

Imagine the hand-wringing in Democrat Bill Nelson's U.S. Senate campaign meetings provoked by the possibility of Willie Logan mounting a challenge outside the Democratic Primary. If Logan — a well-respected, independent-minded, black legislator — can peel off enough votes from disenchanted Democrats and excite the swing voters, he will be a powerful force.

OPENING PANDORA'S PRIMARY BOX

A more vexing problem from the election strategist's standpoint is the second major revision of Amendment 11, allowing crossover voting in the party primaries. Crossover voting is less troublesome for the two major parties than it is for those who care about particular issues rather than party labels.

Previously, Florida was one of 18 states with a "closed" primary, allowing primary votes to be cast only by voters having the same party affiliation as the candidate. This was a practical and longstanding mechanism used by the parties to put forth the candidates who best represented the views of the majority of the party members. These candidates were the crowned standard bearers of the parties who carried the message to the people and did battle against all foes in the war of ideas.

providing greater openness and Revision 11 may actually increase of special interests on elections.

Backers of the open primary felt that it was necessary because election performance has remained relatively constant at the district level. In certain districts elected officials invariably won their seats in a primary, gaining office without a challenge from the other party. In 1998, 88 senators and representatives won election in their primary races (63 of them were unopposed in the primary). In 1996, 69 won, 63 of them unopposed. Thus, in 63 percent of the 1998 races and 49 percent of 1996 races, voters from other parties were never given the opportunity to choose between candidates; in 12 percent of the 1998 races, no one cast a vote for a legislative candidate.

The result, according to pro-Revision 11 forces, is a lack of interest in elections, a cynical electorate, and lower voter turnout. Their solution was to open up the primary by placing on the ballot, under the separate heading of "universal primary," those candidates without other-party opposition. Registered voters of all parties would be allowed to vote in the universal primary (known also as the "ubiquitous brawl"). The cure, however, may do more harm than the disease.

The open-primary "solution" to voter apathy will allow Republicans to vote in some Democratic primaries and vice versa, creating a potential for mischievous operatives in either party to wreak havoc on the other come the first Tuesday in September of every election year.

Term limits, however, take effect in 2000 (assuming the courts don't overturn that constitutional amendment) and will create a record number of vacancies — 55 of 120 in the state house and 11 of 40 in the state senate. This means that Florida's Republican and Democratic parties will be scrambling to fill the vacancies. They will need to concentrate their efforts and resources on holding their current numbers and winning the open seats, leaving little time to "play" in the other party's primary.

The same is likely to happen in the next election cycle. In 2002, term limits will again play a major role, adding more open seats. But an even bigger predicament will be redrawing the district lines following the 2000 Census. The parties will again have to concentrate their energy and resources on the seats they have to hold, leaving little time for anything else.

Partisan primary mischief doesn't have to be limited to actions by the parties, however. Just because one party may not venture into the other's elections doesn't mean there won't be political shenanigans.

STIRRING THE PRIMARY BREW

The 2000 primary season has all the makings of an all-out special-interest war, rather than a typical fight between philosophical labels (liberal v. conservative). Special-interest groups could take advantage of these new laws to elect politicians who support their causes. This would most likely be attempted in the seats where one political party is a dominant force and the seat rarely changes partisan hands.

Take the House seats in Broward County for instance, where Democrats have a stranglehold on the ballot box. Democrats tend to elect the most liberal from their party, knowing they won't have to contend with general-election opposition. Even when the Republicans do field candidates in these seats, they are usually sacrificial lambs almost assured of political slaughter.

A good example is House District 97, currently represented by Debbie Wasserman-Schultz, who is likely to run for the state senate in 2000. District 97 will become an open seat in a district where Democrats outnumber Republicans 55 percent to 35 percent (the remaining 10 percent are Independents and others).

Democrats dominate all the races in District 97 on election day. In the last four election cycles only one statewide Republican — U.S. Sen. Connie Mack in 1994 — garnered over 50 percent of the vote. Wasserman-Schultz has been contested by a Republican in every election cycle this decade and she has consistently won with over 60 percent of the vote.

Because the district is so Democratic and perceived as extremely liberal, the successful Democratic candidate will rarely deviate from the wishes of the Democratic Party's base supporters, as evidenced by the voting record of Wasserman-Schultz. Not that her voting record is underhanded or dishonest in any way. It's just liberal, like her district. It's simply natural for Wasserman-Schultz to support the people who got her elected.

Among her main supporters — and among the Democrats' biggest backers — are the trial lawyers, who pump millions of dollars into the coffers of the Democratic Party and its candidates. Democrats in turn vote accordingly. In 1999, 41 out of 63 Democrats in the Legislature voted against tort reform (three Democrats did not cast a vote; one pro-reform Democrat, Rudy Bradley of St. Petersburg, has since switched parties). Leading the charge was Debbie Wasserman-Schultz.

The open House District 97 seat presents a quandary for trial lawyers who must replace Wasserman-Schultz's reliable pro-trial lawyer vote with a new one. In turn, there is an opportunity for the business community to impact the election and maybe even pick up a vote for business.

What would happen if the business community were to recruit a qualified pro-business candidate who fits the district demographic profile and then backed that candidate with resources and manpower in the Democratic primary? If there were no general election opposition, Republicans (35 percent of the electorate) would be allowed to vote in the primary and they could likely be persuaded to vote for the pro-business (more moderate) Democrat.

Theoretically, that candidate would need only 16 percent of the Democratic primary vote (plus all 35% of GOP votes to claim victory). There is no guarantee of success, but it is an interesting proposition to say the least.

So it would be foolish for anyone to deny the ability of a traditionally liberal or historically pro-trial-lawyer district to elect a pro-business candidate. All it takes is the right candidate, a well-run campaign, and maybe a little help from some primary crossover friends.

Conversely, the same situation is true for the Republican primary. In House District 13 in Jacksonville, where Republicans have conquered the Democrats in 29 of 30 statewide elections in the last 14 years, Republican member Steve Wise must vacate the seat because of term limits. If the trial lawyers were to field a GOP candidate and there were no general-election opposition, the Democrats would be able to vote in the GOP primary and could easily decide the election, because the Democrats make up over 40 percent of registered voters.

HOW ABOUT THOSE WACKY WRITE-INS?

An unanswered question remains: Does a write-in candidate constitute general-election opposition? In the 1999 session, the Florida House approved implementing language (C.S./H.B. 1465) for Amendment 11 that answered that question in the affirmative. The Florida Senate disagreed. The two sides could not reconcile their differences before session's end. Unless the issue is resolved in next year's legislative session, or if a challenge arises before then, the decision will be left in the hands of Florida's enigmatic courts.

Whatever the answer, any group with a stake in legislative decisions must be prepared to file candidates right up until the last minute of qualifying. A last-minute filing of a third party candidate, a write-in, or, worse yet, a general-election opposition candidate who withdraws could spell disaster for one side while being a godsend to the other.

Take, for example, Steve Wise's District 13 seat. If a conservative business candidate ran against a trial-lawyer candidate in the Republican primary and there were Democratic opposition in the general election, the primary would be closed and only registered Republicans could vote in it. In a typical closed Republican primary — if both campaigns are relatively equal — the odds favor the more conservative, business-friendly candidate.

But if the announced Democrat doesn't qualify, or withdraws from the race entirely and the vacancy is not filled, Democrats will be allowed to vote in the open primary, increasing the odds of victory for the trial-lawyer candidate.

Take the same scenario back down to Broward County. In Wasserman-Schultz's District 97, if there were only a Democratic primary, everyone would be counting on Republicans being able to cross over and vote for the more moderate, business friendly-Democrat against a liberal trial-lawyer candidate.

Realizing this, the trial lawyers could recruit a last-second third-party candidate who would qualify as general election opposition. The primary would then be closed, allowing only Democrats to vote and thus virtually assuring the election of the more liberal trial lawyer candidate.

THE LAW OF UNINTENDED CONSEQUENCES

Like the Rubik's Cube, there are a million combinations and scenarios created by Amendment 11 that probably never even entered the minds of its creators.

Instead of providing greater openness and accountability, Revision 11 may actually increase the impact of special interests on elections. In turn, candidates will be forced to rely more heavily on these same special interests, making them less accountable to the people, which is the polar opposite of what the proponents of Revision 11 envisioned.

Like most laws, Amendment 11 is cloaked in good intentions, but look behind the curtain and it is a step toward political chaos. By allowing crossover primary voting, Amendment 11 blurs the political lines by nullifying the concept of the parties nominating their own candidates. It also stands to further ignite special interest wars within the two major parties.

Neither result would probably upset the cynical opinion leaders who advocated this amendment, because they find party-bashing to be highly fashionable (and just plain fun). They choose to ignore the salutary effect of America's two-party system. The two parties are the primary promoters of citizen participation in our democratic process (providing issue information, voter-registration drives, campaign volunteers etc.). Unlike the multi-party systems in Europe that balkanize the voting public, having two major parties also contributes to government order and stability. Nevertheless, the two parties are under constant assault by the "trendier than thou" in society, who see them as competition in the arena of shaping public opinion.

Regardless of the consequences, these self-appointed "leaders" consistently advocate limiting the parties' ability to organize, educate, and turn out voters (as if the parties should be washing cars instead). Amendment 11 is just the latest salvo in the ongoing battle against the two parties and American-style political organization.

Like the Rubik's Cube, there are a million combinations and scenarios created by Amendment 11 that probably never even entered the minds of its creators.

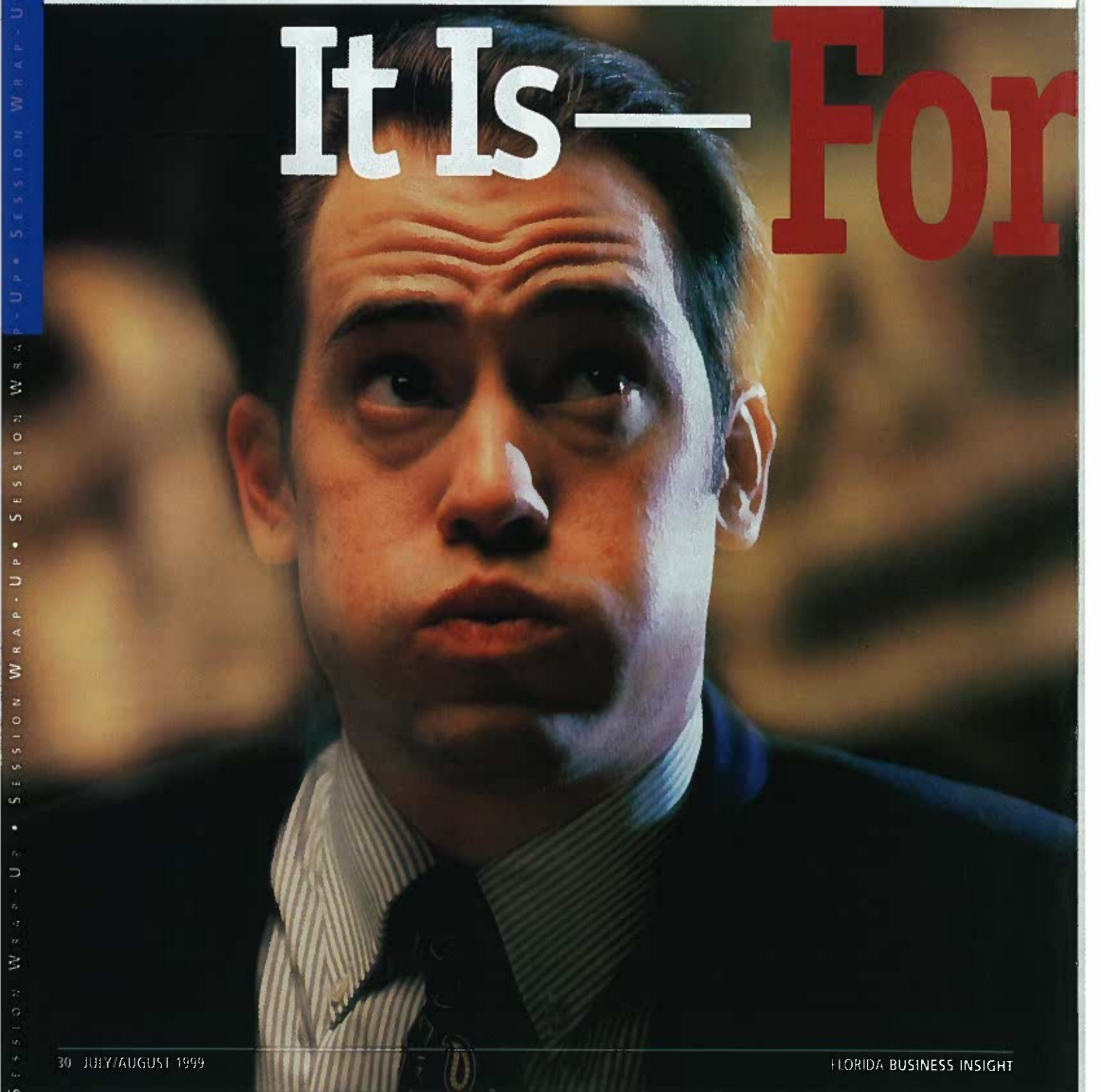
For now, though, it seems that elections will continue to be defined in terms of Republican versus Democrat and conservative versus liberal. But there will be a twist; not so much in terms of third parties clashing with the two major parties as much as special interest versus special interest. The battleground will be in the district primaries.

When the postmortem of the 2000 campaigns is complete, the side that does the best job of calculating the new election-law changes into their plans, that recruits the right candidates, and that unites behind those candidates will come out on top. ■

John Wehrung, former political director of the Republican Party of Florida, is now with Tidewater Consulting, Inc., headquartered in Tallahassee (e-mail: jwehrung@tidewaterinc.com*).*

Oh What A Rel

It Is— For



by jacquelyn horkan, editor

ief Now!

When the morning of the final day of the 1999 session dawned, tort reform looked to be dead in the water. Supporters of the effort could count on only 20 votes, one fewer than they needed to send the bill to the governor's desk. Alex Cardenas and Tom Slade, the current and former GOP chairmen, visited Sen. Mario Diaz-Balart (R-Miami) to plead the case for the reform legislation. Their arguments proved persuasive and Diaz-Balart made a last-minute switch to the pro-reform side. Once Diaz-Balart converted, four other Republicans followed suit, giving tort reformers a 25-14 victory.

Slade, now president and partner of Tidewater Consulting and a consultant to Associated Industries of Florida (AIF), says of the vote, "The final count doesn't show what a close call it was. From the inside it was as close as two crows on a matchstick. "

Tort reform was only the centerpiece of a legislative session chock-full of triumph for the business community. As the story about the vote on tort reform suggests, none of the victories was easily won and each will demand an attentive and energetic defense.

"Trial lawyers picked apart the civil justice system bit by bit in the courtroom," cautions AIF president and CEO Jon L. Shebel. "We had to put it back together with one sweeping package. Now the trial lawyers will start trying to disassemble it piece by piece again."

The first step in that process will be convincing a judge to throw out the new law. At this writing, a challenge to the law has not been filed, but one is expected any day. The trial lawyers will seek to continue a string of courtroom successes whereby judges undid the work of the duly elected representatives of the people. By one count, state courts have nullified 73 tort reform laws over the past decade.

The energy and time devoted by Florida employers to getting this law passed must now be diverted to defending it against constitutional challenge.

"If Florida is anything like other states," says Bill Weber of the Michigan law firm Daniels & Kaplan, P.C., and special counsel to General Motors, "you can expect to spend up to a million dollars defending the constitutionality of the new law."

According to Weber, resolution of the constitutional challenge could take three to five years. In the meantime, employers will have to continue to defend the reform of the civil justice system both legislatively and politically.

"Our polling shows us that voters generally support tort reform," says Shebel, "but they're a little fuzzy on the details. That's why we have to fight an ongoing political and public relations war with the trial lawyers who want to convince the general public that the tort reform the people want is not the tort reform they got."

But, despite the hard work ahead, now is a good time to savor the gains made.

Florida's 1999 Civil Justice Reforms (HB775)

- Applies a 12-year statute of repose for products other than airplanes, trains, and ships, which are subject to a 20-year statute of repose. A statute of repose limits the amount of time in which a product liability suit may be brought; in the case of Florida law the clock begins ticking when the completed product is delivered to the original purchaser or lessee. The repose period does not apply during any time that the manufacturer knew the product was defective and tried to conceal the defect.
- Creates a state-of-the-art defense that allows a defendant to introduce evidence that a product was not defective if it was made according to the state of the art of scientific and technical knowledge in existence at the time the product was manufactured.
- Allows a manufacturer or seller to defend itself by introducing evidence that the product complied with government regulations. This defense is available only if the rules are relevant to the event causing the injury, they are designed to prevent the type of harm that occurred, and compliance with those rules is required as a condition for selling the product. The defense does not apply to drugs that are ordered off the market or seized by the Food and Drug Administration.
- Creates a rebuttable presumption of immunity from liability for negligent hiring of employees if the employer conducts a pre-employment criminal background check that does not reveal any information that demonstrates unsuitability for the work to be performed.
- Creates a presumption against liability for damages occurring on the premises of a convenience store if the convenience store follows statutory requirements for safety measures.
- Prohibits an intoxicated trespasser from collecting damages.
- Modifies liability for discovered and undiscovered trespassers.
- Immunizes a property owner against liability for negligence that results in the death of or injury or damage to a person who is committing or attempting to commit a felony on the property.
- Raises the burden of proof necessary to recover punitive damages from "preponderance of evidence" to "clear and convincing evidence."
- Creates a three-tier cap on punitive damages, together with an exception under which there would be no caps on punitive damages. The first tier provides that punitive damages may not exceed the greater of three times compensatory damages or the sum of $500,000. The second tier quadruples the cap to $2 million or four times compensatory damages, whichever is greater, if the wrongful conduct is both knowing and substantially egregious. The third tier eliminates caps if the defendant specifically intended to harm the claimant and did so.
- Limits the ability to hold an employer vicariously liable for punitive damages arising from the conduct of an employee or agent of the employer.
- Limits multiple awards of punitive damages for injuries arising from the same act or conduct. Subsequent punitive damage awards may be imposed if the court finds that the amount of prior awards was insufficient to punish the defendant.
- Imposes new limits on joint-and-several liability. The following limits on joint-and-several liability will apply in any case where the plaintiff is found to share fault (the caps are doubled when the plaintiff is found to be without fault):
  - No joint-and-several liability if the defendant is 10 percent or less at fault in a case
  - Joint-and-several liability up to $200,000 in economic damages if the defendant's fault is more than 10 percent but less than 25 percent
  - Joint-and-several liability up to $500,000 in economic damages if the defendant's fault is at least 25 percent but no more than 50 percent
  - Joint-and-several liability up to $1 million in economic damages if the defendant's fault is more than 50 percent
- Modifies vicarious liability for auto owners and limits their liability to $100,000 per person and $300,000 per occurrence for bodily injury, and $50,000 for property damage.
- Permits jurors to take notes in trials that are likely to exceed five days, allows jurors to submit written questions directed to witnesses (subject to approval by the court).
- Deters frivolous lawsuits by allowing the court to award attorneys' fees to the prevailing party if the losing party or his attorney knew that the claim was not supported by the facts or by the application of existing law to the facts of the case

Effective date: statute of repose and motor-vehicle vicarious liability take effect on July 1, 1999, and the remaining provisions on October 1, 1999
House vote: 84-33
Senate vote: 25-14
Final action: signed by the governor, May 26, 1999 ■

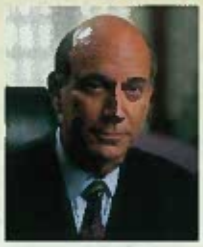
It's Your BUSINESS

An Invitation

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

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

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



Jon L. Shebel
President & CEO

Membership Benefits

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

Testimonials

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

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

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

Travis Bowden, President
Gulf Power Co.

Associated Industries of Florida

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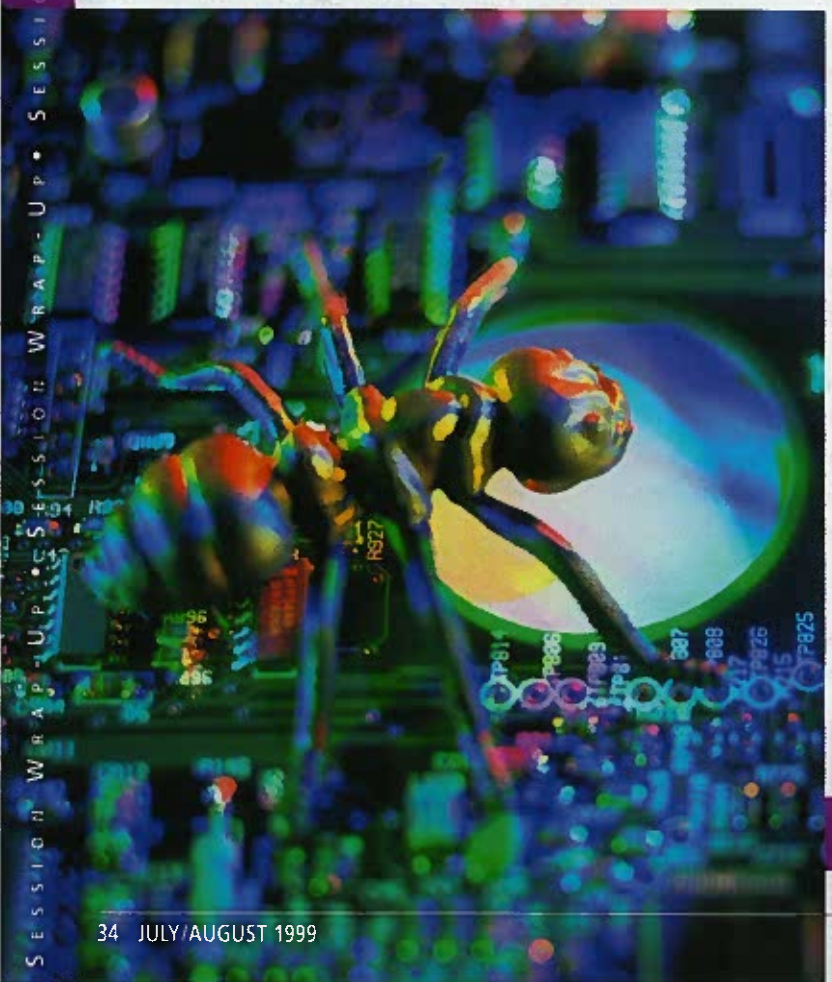
Taming The Y2K Bug

With all the attention given to the major tort reform package during the 1999 session, one smaller but significant reform package escaped the attention of many.

The Commerce Protection Act of 1999 grants protection from an expected avalanche of lawsuits against businesses whose Y2K fixes fail. The new law limits the damages a business must pay to the direct economic damages caused by the failure.

While the act failed to garner much publicity, it is an important piece of legislation to virtually any business operating in the state. Even if the computers at your business are date-compliant, if you miss a shipment to one of your customers because of a vendor's computer failure, you could find yourself a defendant in a lawsuit. Lloyds of London has estimated that total Y2K litigation costs could exceed $1 trillion, or $2 to $3 for every $1 spent fixing the problem. The March 26, 1999, Kiplinger Washington Letter reports that plaintiffs' lawyers are "expecting [Y2K] legal fees to exceed asbestos, breast implants, Superfund, and tobacco fees COMBINED" (emphasis in original).



by jacquelyn horkan, editor

"The goal was to find a solution that would treat people fairly while keeping plaintiffs' attorneys from wreaking economic havoc," says Mary Ann Stiles, general counsel for Associated Industries of Florida (AIF) and founding partner of the law firm of Stiles, Taylor, & Grace, P.A.

According to Randy Miller, AIF's senior executive vice president and COO, some business associations did not support the Commerce Protection Act. "Some thought that there were already adequate protections on the books," says Miller. "Others told us to let the Feds take care of it. But with the potential of one trillion dollars in lawsuit costs, we decided not to leave anything to chance."

The Florida legislation was the brainchild of Sen. John Grant (R-Tampa). With the help of Rep. Chris Hart (R-Tampa), sponsor of the House companion bill, and AIF lobbyists and members, Sen. Grant polished his bill into a final product that is considered by some to be a model for Y2K-lawsuit legislation.

"This was a complex — and to some degree, uncharted — area of legislating," said Mary Ann Stiles. "Nobody has ever had to deal with a Y2K computer bug before."

According to Stiles, long months of work were necessary to explore all possible scenarios under the legislation. "We had to make sure that we were giving businesses workable safe harbors," she explains. "We had to make sure we covered all the bases. And we had to make sure we didn't leave the kind of loopholes that personal injury lawyers love to wriggle through."

"I think we reached the right balance," says Jodi Chase, an AIF consultant who practices in the Tallahassee office of the law firm of Broad and Cassel. "We've got a law that encourages businesses to bring their computers into compliance. At the same time, the bill protects them against the kind of open-ended liability that could drive a business into bankruptcy."

In addition to limiting damages, the new law sets forth safe harbors for business and for officers and directors (see the following). It prohibits class action suits based on Y2K computer failures unless each member of the class can claim in excess of $50,000 in economic damages. It allows a jury to apportion fault among other parties and requires plaintiffs to take actions to avoid or mitigate damages. It encourages the use of arbitration and mediation rather than court hearings.

AVOIDING Y2K LITIGATION

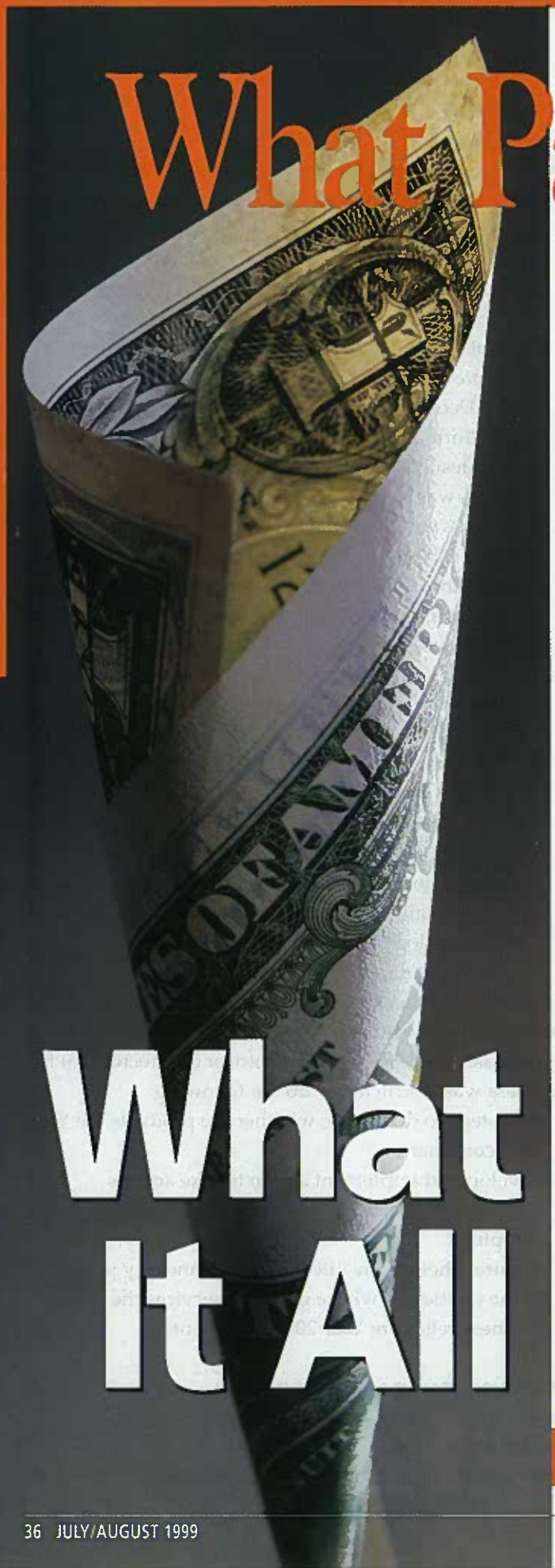
Under the Commerce Protection Act of 1999 (CS/CS/CS/SB 80), a business is not liable for economic damages if one of the following circumstances applies:

1. It secured an on-site assessment by a Year 2000 compliance expert to determine the actions necessary to make its information technology products compliant, and, based on that assessment, held before December 1, 1999, a reasonable good-faith belief that those products were compliant
2. Before December 1, 1999, it conducted a date-data test of its information technology products and as a result of such test had a reasonable good-faith belief that the business was Year 2000 compliant
3. A business with five or fewer employees and a net worth of $100,000 or less made reasonable efforts to assess the Year 2000 compliance of the entities on whose goods or services it relies and with whom it has contracts and, with respect to each such entity, either:
   a) Held before December 1, 1999, a reasonable good-faith belief, based on the responses to the inquiries, that the entity had provided computer products that were Year 2000 compliant or;
   b) Disclosed in writing to the other party before December 1, 1999, that based on responses to inquiries, the business was making reasonable good-faith efforts to make its information technology products become Year 2000 compliant

Officers and directors will gain personal immunity if the officer or director either instructed the business or received written assurance from another officer or director that the business was instructed to do the following:

- take steps to determine whether the products are Year 2000 compliant
- develop and implement a plan to take actions necessary to make those products Year 2000 compliant
- inquire whether the information technology products of the entities on whose goods or services the business relies are Year 2000 compliant

Effective date: upon becoming law
House vote: 116-0
Senate vote: 40-0
Final action: signed by the governor, June 4, 1999 ■



What Passed And What It All Means

Before the session began Gov. Jeb Bush asked for the largest tax cut in the history of Florida and, by session's end, lawmakers obliged.

While the tax-cut proposals of the governor, the House, and the Senate differed in some details, they were consistent in others, such as offering some relief from school-property, intangibles, and unemployment compensation taxes. Each side compromised a little, with the final tally adding up to $1.008 billion in tax relief.

FINANCE AND TAXATION

Intangibles Tax — CS/SB 318

With CS/SB 318, the Florida Legislature came through on a promise made last year to continue the phase-out of the intangibles tax on accounts receivable, bringing the total exemption to two-thirds.

The bill also includes provisions to reduce the tax rate for intangible personal property from 2 mills to 1.5 mills (or $1.50 of tax for every $1,000 of property subject to the tax), and it allows limited-liability companies to file consolidated intangibles tax returns as members of an affiliated group.

Effective date: January 1, 2000
House vote: 117 to 0
Senate vote: 36 to 1
Final action: signed by the governor, June 8, 1999

by todd sterzoy, aif legislative coordinator

Taxpayer Fairness, Tax Reduction — CS/SB 172

As its name suggests, this bill changes the balance of power in some of the unfair situations wherein government met its revenue needs at the expense of a few taxpayers.

The first involved an accounting maneuver devised by the state in the early 1980s to boost tax collections without increasing taxes. All businesses that collected sales taxes were required to advance 66 2/3 percent of their average monthly sales tax collections (and actual collections for the last ten days of the previous month) by the 20th day of each current month. While this sales tax speedup solved the immediate fiscal crunch, it created problems for many businesses that had to borrow funds to cover their tax bills during those months when sales tax collections were lower than the advanced payment that was due. This "temporary" provision was extended in 1990 when, once again, the state faced a revenue shortfall.

CS/SB 172 reduces the amount of estimated tax payments to 60 percent of the monthly sales tax liability. It also raises the threshold from $100,000 in sales tax payments in the previous year to $200,000, freeing about 6,000 of the 12,000 businesses now required to make advance payments.

The bill also reduces by one-third the alcoholic beverage surcharge enacted by the 1990 legislature that imposed a per-drink tax on establishments licensed to serve alcohol by the drink. The surcharge is now imposed at the rate of 6.67 cents per ounce of liquor or four ounces of wine, 4 cents on twelve ounces of cider, and 2.67 cents on twelve ounces of beer sold at retail for consumption on the vendor's premises.

In the case of both the surcharge and the sales tax speedup, AIF supported total repeal. The legislature, however, was concerned about the fiscal impact of fully repealing both provisions; the total repeal of the advanced-payment program alone would result in a $600 million loss of revenue for the state. AIF was willing to accept partial repeal if it were part of a phase-out of both provisions, similar to the compromise it made last year on the intangibles tax on accounts receivable.

The bill also revises the Taxpayer Bill of Rights by shortening the statute of limitations on taxpayer audits from five to three years and adjusting the interest rate on late payments from 12 percent to prime. Taxpayers will also now receive interest on refunds if the state takes longer than 90 days to process the refund.

This bill also includes the following provisions:

- requires the property appraiser to grant a 30-day extension for filing of tangible personal property tax returns and allows for an additional 15-day extension
- implements various provisions to prevent misuse of resale certificates, including annual verification of resale certificates
- places a moratorium on new or increased school-impact fees, and creates the Florida School Construction Finance Commission to study the use of school-impact fees and alternative methods of funding school construction

Effective date: July 1, 1999
House vote: 119 to 0
Senate vote: 37 to 1
Final action: signed by the governor, June 8, 1999

Sales Tax Exemption on Repair Parts and Labor — CS/HB 397

In 1996 the legislature exempted from sales tax the purchase of manufacturing machines and equipment in an effort to expand the state's manufacturing base. This year AIF suggested an exemption from sales tax for repair parts and labor used to keep those machines and equipment running as a logical extension of the economic development effort. CS/HB 397 is the result.

The bill provides for a four-year phase-out of the sales tax on manufacturing parts and labor, beginning July 1, 1999, when 25 percent of such charges will be exempt. An additional 25-percent exemption will be added each July 1 until it is completely phased out on July 1, 2002.

Effective date: July 1, 1999
House vote: 113-2
Senate vote: 40-0
Final action: signed by the governor, June 17, 1999

LEGAL & JUDICIAL

Administrative Procedures Act — CS/HB 107

CS/HB 107 reaffirms the constitutional doctrine of separation of powers as it is embodied in the 1996 amendments of the Administrative Procedures Act (APA), the statute that governs how bureaucrats create rules and regulations. The 1996 reform was designed to correct an imbalance in power between state agencies and citizens in the rulemaking process. CS/HB 107 clarifies the intent of the legislature in enacting the 1996 reforms by specifying that an agency may adopt only those rules that implement or interpret the specific powers and duties granted to it by the enabling legislation. It makes clear that the Legislature is solely responsible for public policy formulation.

A citizen who objects to a rule must first go through a rule-challenge proceeding, but the agency has the burden to prove by a preponderance of evidence that the proposed rule is not an invalid exercise of delegated legislative authority.

Effective date: July 1, 1999
House vote: 113-5
Senate vote: 39-1
Final action: signed by the governor, June 18, 1999

Eminent Domain - HB 591

Eminent domain is the process by which the state or condemning authority takes ownership of private property for public use. HB 591 provides that the condemning authority must attempt to negotiate in good faith with the owner of the parcel to be acquired. It must provide the owner with a written offer and a copy of the appraisal upon which the offer is based, if requested.

The condemning authority will have to pay a business owner's reasonable costs and attorney's fees during the presuit negotiation process on right-of-way condemnation proceedings. It allows a business to claim business damages if it has been established for more than four years (previous statute required 5 years).

Effective date: upon becoming law
House vote: 116-0
Senate vote: 39-0
Final action: signed by the governor, June 18, 1999

ENVIRONMENTAL ISSUES

One Stop Permitting — CS/CS/SB 662

CS/CS/SB 662 represents an attempt to reduce the time and difficulty of applying for and getting a decision on environmental permits.

The bill establishes a one-stop Internet permitting system to provide the private sector with information concerning development permits, including guidance on permit requirements and lists of contacts in various agencies. The ultimate plan is to allow submissions of permit applications via the Internet. Initial participating state agencies will include the departments of environmental protection, community affairs, and transportation, along with the water management districts.

Certain permit fees will be waived for applicants who use the Internet permitting system during the first six months that the permit is on-line. The bill also expands the expedited permitting process in counties where the ratio between the number of jobs created and the number of welfare-to-work clients is low, and outlines when those counties may be delegated the authority to certify projects as eligible for expedited permitting.

The bill further creates a quick-permitting program for counties using permitting best-management practices. Those counties may become eligible for grant money of up to $50,000 per county to connect to the one-stop Internet permitting system.

Responsibility for creating the one-stop permitting system is given to the Department of Management Services, which is supposed to have the initial site ready by January 1, 2000.

Effective date: July 1, 1999
House vote: 114-0
Senate vote: 39-0
Final action: signed by the governor, June 8, 1999

LABOR & EMPLOYMENT

Reorganization of the Department of Labor and Employment Security — CS/CS/SB 230

CS/CS/SB 230 decentralizes the Department of Labor and Employment Security by creating five field offices under the direction of a new assistant secretary for field operations. The bill also creates two other new assistant-secretary positions, one for finance and administration, the other for programs. Each of the three assistant secretaries will be appointed by and serve at the will of the secretary of the department.

The bill provides for six divisions within the central office under the supervision of the assistant secretary for programs:

- blind services
- safety
- unemployment compensation
- vocational rehabilitation
- workers' compensation
- workforce and employment opportunities

The bill limits the authority of the Division of Safety to cover public-sector workplaces and requires the department to develop a proposal to reauthorize the division before it is abolished on July 1, 2000.

AIF particularly supports the abolition of the Division of Safety. In the five years since it was elevated to division status it has quadrupled in size, yet it has been ineffective, coming under criticism by the Office of Policy Performance and Government Accountability. Furthermore, many of its services are duplicated by federal agencies, making it redundant.

Effective date: October 1, 1999
House vote: 84-34
Senate vote: 28-10
Final action: signed by the governor, June 8, 1999 ■

Delta Air Lines

ON TOP OF THE WORLD™

Delta presents the last news today's hardened business executives would expect to hear from a company. "We're upsizing."

We started with your feet. And legs. And back. And we intend to improve your state of mind as well. With fine dining designed by Food & Wine® Magazine's best new chefs. A laptop battery-saving EmPower™ system. A choice of movies for your Sony® Video Walkman®. Superior wines. In fact, all the enhancements on our smoke-free Transatlantic Business Class are centered around you.

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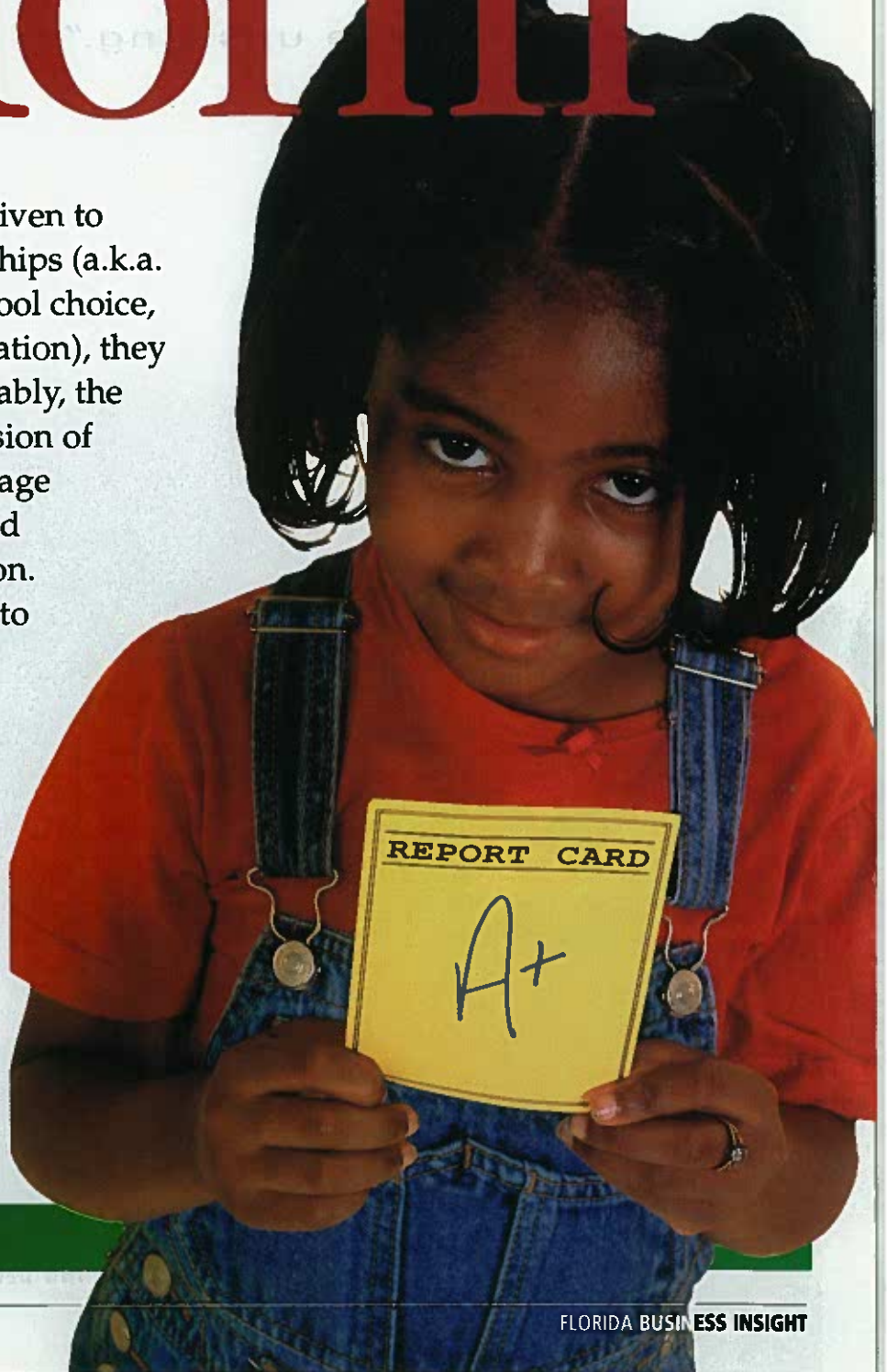
ANNOUNCING DELTA'S *Enhanced* BUSINESS CLASS.

Lessons In Reform

For all the attention given to opportunity scholarships (a.k.a. school vouchers, school choice, death of public education), they were just a small — and, arguably, the least reform-minded — provision of the school-improvement package proposed by Gov. Jeb Bush and enacted during the 1999 session.

Vouchers rededicate Florida to two principles: 1) that public education is a program devoted to children, not institutions; and 2) parents are best suited to controlling their children's schooling. While making an important policy statement, that re-emphasis will probably also have a salutary impact on the quality of public education in this state.



by jacquelyn horkan, editor

The debate over opportunity scholarships — and indeed over all facets of education reform — revolves around accountability as the device to ensuring better-educated students. More precisely, the issue is who is accountable to whom, to what degree and by what measurement.

According to the teachers' unions and their allies, the ladder of accountability should end at the rungs on which perch government bureaucrats and members of local school boards. Higher expectations cannot be met until society devotes ever-increasing amounts of support to the public schools. Better test scores, so the argument goes, are a function of funding levels, not accountability.

Yet numerous studies lay that argument to waste. One of the latest, the American Legislative Exchange Council's "Report Card on American Education," correlates per-pupil expenditures and class size to academic performance, specifically standardized tests including the SAT college entrance exam. The report found that New Jersey, with the highest per-pupil expenditure ($10,241) and the second-smallest pupil-to-teacher ratio, ranked only 39th on the 1998 SAT. Minnesota students, on the other hand, scored the highest SAT ranking while spending only $5,826 on each child (27th among the states).

The report also shows that, since 1978, Florida students' SAT scores have grown faster than those in any other state. At the same time, Florida falls into the middle to bottom ranks when it comes to increases in per-pupil expenditures (35th), average teacher salaries (14th), and pupils-per-teacher ratios (19).

The other money argument against vouchers is that the scholarships will drain funds from the schools that need them the most. This objection, however, ignores the financial benefits of the scholarships to the failing schools. Opportunity scholarships in the amount of $3,400 for grades K through 3 and $3,200 for grades 4 through 8 will be available to the students at two Escambia County elementary schools for the 1999-2000 school year. According to Sister Mary Caplice, superintendent of Catholic schools for the Diocese of Pensacola-Tallahassee, annual tuition at Pensacola's four Catholic elementary schools averages about $2,100. Thus, a failing school retains $1,100 of the money that would have been spent educating a fifth-grade opportunity scholarship student who transfers to one of the Catholic schools. Among the four Catholic schools there are 58 slots available for students with opportunity scholarships (four more slots are available at a Pensacola Montessori school but tuition there is higher than the amount of the opportunity scholarships). Since the failing schools retain the difference between tuition and scholarship, in a certain sense the vouchers represent a windfall of between $63,800 and $75,400 for the students who remain at the two failing elementary schools.

As a corollary to both of these arguments, voucher opponents claim that opportunity scholarships mean that the state is repudiating its obligation to give greater support to failing schools that need it most. They ignore, however, other sections of the education reform package whereby failing schools are eligible for increased funds and technical support from the state Department of Education.

A final oft-repeated criticism of Florida's new voucher program returns to the issue of accountability, namely the accountability of private schools that are not exempt from the testing and grading that public schools must undergo. But this argument ignores the elegance of the voucher solution: dissatisfied parents may simply remove their children from a dismal school. The captive audience of the monopolist public school system has no such power, thus testing and grading become the only methods to force the schools to come up to snuff.

A final word on the issue of accountability: The governor's education package institutes a school report cards that grade each school on the traditional A to F scale. The education establishment decries this system as unfairly stigmatizing schools. If the criticism sounds familiar, that's because it is.

In 1995 Florida began using standardized test scores to rank schools, an idea promoted by then-Commissioner of Education, now-Lt. Gov. Frank Brogan. That first year, 158 schools made the critically low-performing list. The next year the number dropped to 71; by 1998 only four of the original 158 were still on the list. In June Education Commissioner Tom Gallagher announced that only two critically low-performing schools remained in Florida. Unless an injunction against the law is issued, students at those two remaining schools are the ones who will receive the opportunity scholarships.

For the education establishment, opposition to vouchers comes down to retaining control over education. Supporters of vouchers see the issue in the terms declared by Rep. Alex Diaz de la Portilla (R-Miami) during floor debate on the education bill: "If you educate children, there will be no opportunity scholarships. If you do not educate children, we will have to respond. It will be our moral obligation to give those children an alternative to the schools in which they are failing."

Effective date: upon becoming law (with some exceptions)
House vote: 70-48
Senate vote: 25-15
Final action: signed by the governor, June 21,1999 ■

Last Chance For The Ever

The Central And Southern Florida Comprehensive Review Study

On July 1 the U.S. Army Corps of Engineers presented to Congress its final plan for the Comprehensive Review Study of the Central and Southern Florida Project. The plan, which has become known as the Re-Study, represents the culmination of more than six years of work by the Corps and other government agencies at both the federal and state level, in particular the South Florida Water Management District.

The Re-Study is one part of a multi-year, multi-billion-dollar effort by a number of different agencies to reverse environmental damage caused by past efforts to tame the Everglades. Under its auspices, the Corps proposes to undo some of its past work.

The Corps's plan, however, has recently faced criticism for its skyrocketing open-ended costs, its critical uncertainties, and its failure to promise measurable environmental benefits.

A PRICEY FIX

After severe floods in 1947 (according to some reports, you could have paddled a canoe from Miami to Orlando), Congress authorized the Army Corps of Engineers to construct a system that would provide flood protection, drainage, and a safe and reliable source of fresh water for the people of South Florida. The resulting Central and Southern Florida Project reengineered South Florida's hydrology through a series of canals, dikes, and water-control structures that equalized the supply of water between rainy and dry seasons. The drainage project now serves close to six million people in a 16-county region.

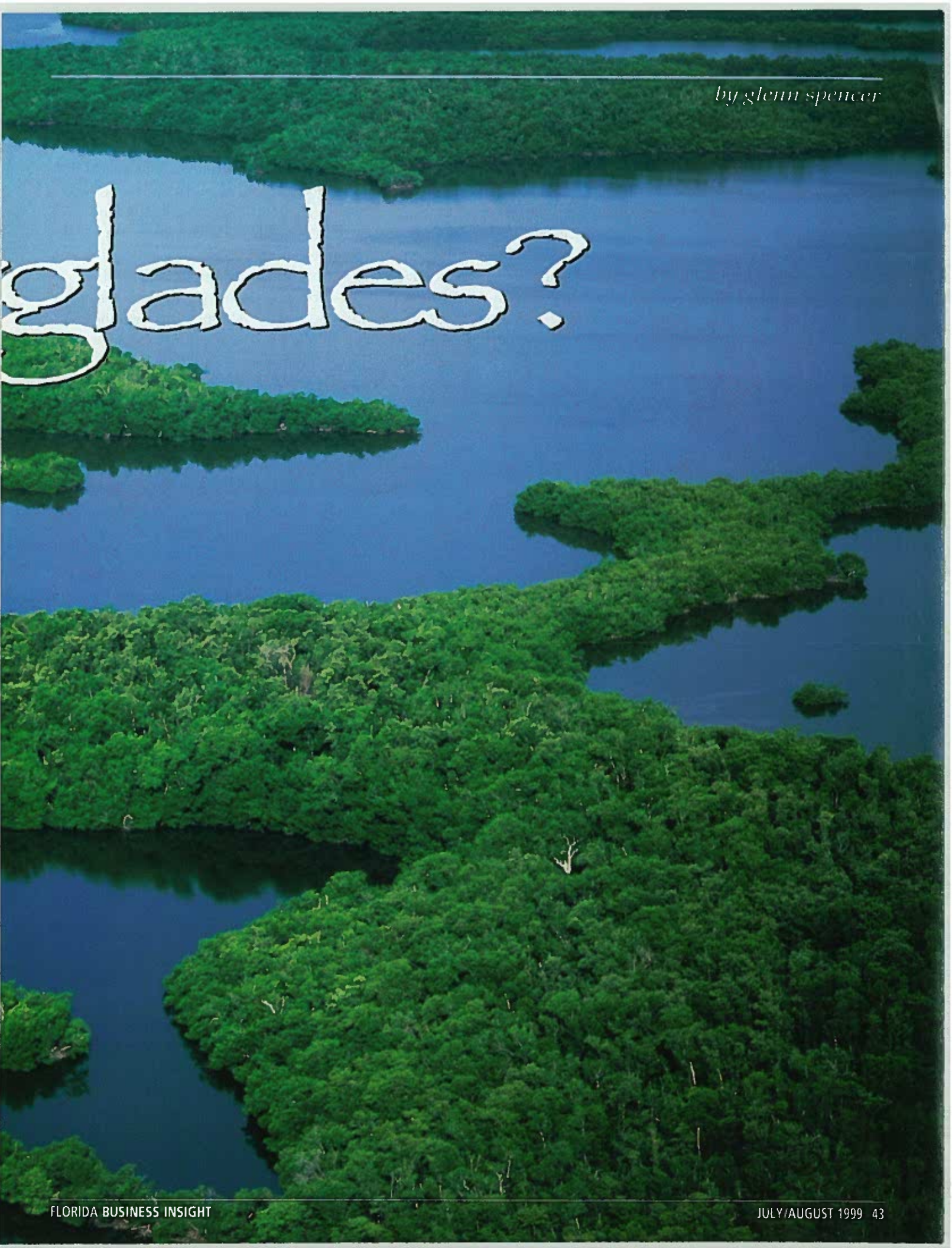
In 1992, responding to dual pressures for the restoration of the Everglades and growing demand on freshwater resources in South Florida (where the population is expected to double by 2050), Congress instructed the Corps to study changes to the earlier flood-control project. The Corps's Re-Study proposes a number of alterations to the original project that would take place over the next 20 to 30 years. These include the filling in of canals, the creation of several hundred underground wells, and a new series of complex pumps and water-control structures intended to create a more natural flow of water into the Everglades. In total the Re-Study consists of over 60 individual features.

The price tag for the Re-Study is to be split 50-50 between the federal government and the taxpayers of Florida. When first proposed, the project cost was estimated at $1 billion. As planning continued, the estimates rose rapidly, first to $3 billion, then to $5 billion, and finally to the current $7.8 billion price tag. But even $7.8 billion must be viewed merely as a starting point. Ongoing restoration projects, which the Corps intends to fold into the Re-Study, will cost an additional $2 billion to complete according to the U.S. General Accounting Office. There has also been talk of dredging Lake Okeechobee, which will cost an additional $1 billion. Thus the real cost of the Re-Study might be more accurately set at nearly $11 billion.

Even this may not be the final figure, however. Based on the GAO report, Rep. Ralph Regula (R-Ohio), a leading member of the U.S. House of Representatives' Appropriations Committee, has concluded that the price tag for the Re-Study may double over time.

by glenn spencer

glades?



The Corps itself has indicated that there are no fixed costs. A Corps report issued in April noted that the agency viewed "ecosystem restoration in south Florida much more as an open-ended process than as a specific set of targets. In that same report, the Corps also claimed that the bulk of Everglades restoration would be completed by 2010. But just two months earlier, the Corps's head of ecosystem restoration, Stuart Appelbaum, stated emphatically that "even with all the money in the world" the Corps could not finish this restoration before 2017. It is difficult to justify that discrepancy in deadlines without concluding that the cost of the Re-Study is only headed higher.

WATER, WATER EVERYWHERE

The Corps has given repeated assurances that the Re-Study will be able to provide an increased supply of water for urban and agricultural needs. Yet it also admits that critical questions about this objective remain unanswered.

To provide the men, women, and children of South Florida with the water they will need, the Re-Study relies on a nascent technology called aquifer storage and recovery (ASR) wells to capture the nearly 1.6 billion gallons of fresh water that are currently flushed into the ocean each day. The Corps plans to pump this water 1,000 feet underground into the Floridan Aquifer for storage and then bring the water back to the surface when it is needed. The Corps admits that ASRs have never been tested on the large scale contemplated in the Re-Study, particularly in the unique geological conditions of South Florida. The Corps admits that there are "substantial unique uncertainties" related to ASR, including the relative youth of a 30-year old technology that "has no long-term track record."

Thus the Corps poses the questions: "Will ASRs be able to provide the quality and quantity of water required at the times they are needed and wanted? Are there likely to be any unintended consequences of this technology? What will it cost?"

In the search for answers to these pressing questions, the Corps plans a series of ASR pilot projects. These, however, will not be completed until 2011, well after implementation of the Re-Study is in full swing. In other words, the Re-Study depends on technology that the Corps itself admits may be faulty, but which it intends to implement well before its own tests are complete. The Corps has not clearly addressed the implications for success or failure of the plan should the pilot projects not work as expected.

A further uncertainty left unaddressed by the Corps is the potential threat to ASRs posed by Class 1 injection wells, which are used for underground disposal of waste products. Florida is the only state in the union that allows the use of these wells to inject municipally treated sewage underground. Every day 400 million gallons of this waste are injected under the Floridan Aquifer. Studies show that this waste is migrating up into the Floridan Aquifer in the same counties where ASRs are planned. There is no program in place, however, to determine if this waste could threaten water supplies should the Re-Study be implemented. Environmentalists have been virtually silent on this issue, perhaps for fear of delaying the Re-Study.

EVERGLADES RESTORATION? MAYBE

Yet the safety of the water supply is not the only critical uncertainty in the Re-Study. There have been many doubts expressed about the plan's ability to deliver the promised environmental benefits. In February a host of scientists and environmentalists blasted the Corps' plans. For example, Dr. Stuart Pimm of the University of Tennessee said, "It's not that there are gaping holes in this plan. It's that we scientists are having trouble finding even a thread of restoration upon it."

Shannon Estonez of the World Wildlife Fund complained that "Congress isn't going to go for this. We can't be 10 years and $3 billion down the road and see almost no improvements in the natural system."

The Sierra Club wrote that, "Overall, the plan does little to restore the Everglades and a lot to exacerbate the region's ecological problems."

And in the most scathing criticism, scientists at Everglades National Park wrote, "[There is] insufficient evidence to substantiate claims that the Re-Study will result in the recovery of a healthy, sustainable ecosystem. Rather, we find substantial, credible, and compelling evidence to the contrary."

In a report issued in April, the Corps attempted to address these concerns. The Corps stated emphatically that "implementation of the [Re-Study] will result in the recovery of healthy, sustainable ecosystems throughout South Florida. ... There are many reasons for having confidence that it will be successful."

Yet a closer reading shows that the Corps still harbors serious doubts. For example, the Corps confesses its inability to predict what effect the Re-Study will actually have on the environment: "There is very real and, to a great extent, unresolvable uncertainty about what the

It is critical that the plan be more carefully thought out and able to demonstrate a higher probability of success.

new ecosystem will look like. Because no one knows for sure what the ecosystem will look like, no one knows for sure what the hydropattern required to produce it will look like. This is, in our view, the greatest uncertainty in the entire study. Moreover, we do not know with certainty what the linkages between hydropatterns and the ecosystem are."

Of course the Re-Study has never been about restoring all of the original Everglades ecosystem. Half of the great marsh has been built on, paved over, or drained beyond all recognition. The Corps, and almost everyone else, agrees that the "new" Everglades that might result from the Re-Study would look — and behave — differently from any version that has existed before. A less charitable assessment might conclude that the Corps plans to turn the "managed" system created by the earlier drainage project into a micro-managed system under the Re-Study. The question remains: will the Corps's micro-management actually do anything to improve the Everglades?

Many environmental groups, and the Corps itself, have stated that the Re-Study is the last opportunity to save the Everglades. Congress may disagree. Even before the final plan was presented there were grumblings on Capitol Hill that the $11 billion cost of the Re-Study had risen out of control, that the Corps had no clearly defined strategy, and that there existed no means to measure the plan's success — or failure. These criticisms were enough for the Florida Legislature to enact legislation giving the state greater oversight of the Re-Study. Congress might go a step further and actually put the brakes on the plan.

This may not be the disaster for the Everglades and South Florida that many will portray it to be. If, in fact, the Re-Study is the last chance for the Everglades, it is critical that the plan be more carefully thought out and able to demonstrate a higher probability of success.

Twenty to 30 years down the road will be too late for the Corps to decide that the Re-Study cannot do the job. That eventuality, rather than a year or two of delay, would be the real disaster for South Florida. ■

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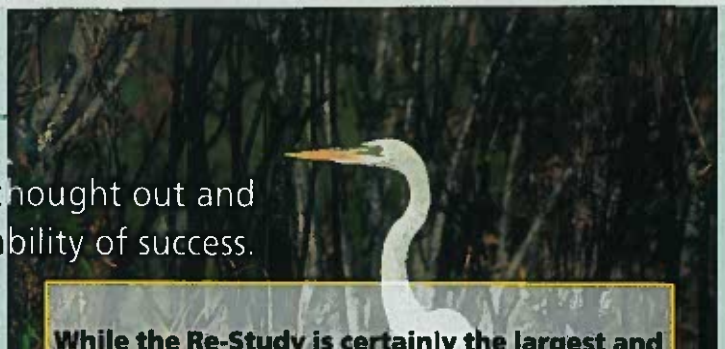

While the Re-Study is certainly the largest and most expensive part of the overall South Florida restoration effort, it is not the only component. A number of other projects are already ongoing. Among these are the following:

Modified Water Deliveries: This project was authorized under the 1989 Everglades Park Protection and Expansion Act. It is intended to add 107,000 acres to Everglades National Park and restore natural water flows into Shark River Slough and the park. The project has been held up by legal wrangling over a government buyout of homes in what is called the 8.5 Square Mile Area.
Cost: At least $132 million
Completion date: 2003

The Everglades Construction Project: Authorized by the 1994 Everglades Forever Act, this project is intended to reduce the flow of phosphorus into the Everglades from about 200 parts per billion to as low as 10 parts per billion. This will be accomplished through a series of artificial filtration marshes and a change in agricultural practices.
Cost: An estimated $3 billion
Completion date: 2006

C-111 Project: The C-111 Project is intended to restore natural water flows into Taylor Slough and Everglades National Park. The completion of this project has been held up due to disputes between Everglades National Park and local residents and farmers.
Cost: At least $121 million
Completion date: 2003

Kissimmee River Restoration: In the 1960s the Corps hemmed in the winding Kissimmee river, filled in most of the surrounding marshes, and created a series of dams. The result has been an environmental disaster. The Corps is now seeking to recreate the original flow of the river.
Cost: An estimated $500 million
Completion date: 2010

Ten Mile Creek Project: This project will create a reservoir and marsh to store and filter storm water before it is released into the St. Lucie River, which eventually joins the Indian River Lagoon.
Cost: An estimated $34 million
Beginning date: 2001

by jacquelyn horkan, editor

Pursuit of Happiness

"There is no flattery in the process — the features are too correctly given."

Advertisement for H. Whittemore's traveling daguerreotype studio in the February 22, 1845, *Apalachicola Commercial Advertiser*

In 1839 American inventor Samuel B.F. Morse traveled to Paris to demonstrate his electric telegraph. When he returned to America he brought with him another new invention, the daguerreotype photographic technique devised by the French painter Louis Daguerre.

By the late 1840s, elegant daguerreotype galleries had sprouted up in cities and towns across the United States. Residents of Florida's tiny hamlets, where custom was slim, were served by traveling daguerrean artists.

Having rebelled against the superstitions and sophistry of Old World beliefs, Americans were easily infatuated by the unmitigated naturalism of photography. One Philadelphia dageurreotypist described the purpose of his profession: "to transcribe the matchless pencillings of the Divine Proto-Artist."

For some, though, the allure of the camera rose from a simpler passion: to secure a permanent likeness of a beloved face, such as the one pictured in one of the oldest images in the Florida Photographic Collection.

The face belongs to "Mauma" Mollie, a slave belonging to the Partridges of Jefferson County and nanny to the family's children. A few years before her death, a daguerrean camera recorded the substance of Mauma's being: Enslaved by the error of man, the evil of her station could not quench the spirit of wisdom and dignity with which she was endowed by her Creator.

PHOTO: FLORIDA STATE ARCHIVES

Are businesses asking the right questions?

1. **What is WAGES?**
2. **What is Medicaid?**
3. **What is a Drug Formulary?**

During the course of the 1999 legislative session, proposed budget reductions would have required the legislature to severely restrict the Medicaid prescription drug program through a "formulary". The proposed reductions would have ultimately enforced a very restrictive drug formulary for welfare recipients. Such restrictions would have severely limited the capability of Medicaid recipients to obtain necessary medications to improve their health so that they can lead more productive lives.

Fortunately, the wisdom of legislators prevailed and alternative cost-savings programs, such as combating fraud and abuse, were chosen as ways to reduce the budget. Legislators realized that Medicaid patients and their treating physicians must have access to the appropriate prescribed medications for Florida's most vulnerable citizens to have a chance to lead productive, healthy lives.

Does your business know the answers?

The Florida Coalition For Access To Quality Medicine

Reach Your Full Business Potential

Whether it's assisting with a new business venture or representing clients before state government, our multi-disciplined law practice is experienced in developing strategies that help our clients achieve their objectives.

By basing our services on the principles of knowledge, commitment, dedication and skill, we keep the focus of our efforts on our clients and provide them with comprehensive support through aggressive representation and plain hard work.

For more information on how we can help you achieve your full business potential, contact our primary office in Tampa or one of our other offices throughout Florida.

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