

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Abruzzo, Vice Chair

MEETING DATE: Tuesday, January 15, 2013
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Reemployment Assistance: DOR-Reemployment Assistance Contributions for 2013 DEO-Presentation on effect of 2011 and 2012 legislative program changes; update on the report of the Reemployment Assistance Workgroup; and information about proposed legislative changes for 2013		Presented
2	Presentations on the Viva Florida 500 and the expectations for impacts on Florida tourism and economic development: Department of State Visit Florida		Presented
3	SB 90 Smith	State Contracts; Requiring all state contracts of more than a certain amount to require call-center services to be staffed by persons located within the United States, etc. CM 01/15/2013 Favorable GO AGG AP	Favorable Yeas 10 Nays 0
4	SB 100 Detert	Employment Practices; Prohibiting an employer from using a job applicant's credit report or credit history to make certain hiring, compensation, or other employment decisions; providing specific situations where an employer may use such information, etc. CM 01/15/2013 Fav/CS JU GO RC	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents



**Florida Senate
Commerce and Tourism
Committee
January 15, 2013**

**Presented by
Marshall Stranburg
Interim Executive Director
Florida Department of Revenue**

Reemployment Assistance Program

- The Department of Economic Opportunity is the agency responsible for administering Florida's reemployment assistance (formerly unemployment compensation) program.
- The Department of Economic Opportunity contracts with the Department of Revenue through an interagency agreement to perform the services of the tax collection service provider.

Reemployment Tax

Two components of Reemployment Tax:

- **State Tax** - collected to fund state benefits paid from the Unemployment Compensation Trust Fund.
- **Federal Tax** - imposed and paid directly to the Federal Government.

Reemployment Tax

- State Tax – two types of employers:
 - **Reimbursing Employers:**

Governmental entities, non-profits and Indian tribes can choose to reimburse the trust fund dollar for dollar based on benefits paid.
 - **Contributing Employers:**

All other employers are contributing employers and are assigned a tax rate to pay tax on wages.

Reemployment Tax

- Florida imposes the following contribution rates:
 - **New business** or initial rate of 2.7% (first 10 quarters of payroll).
 - **Experience-based rates:**
 - **Minimum** rate set each year through calculations imposed by statute.
 - **Maximum** rate of 5.4% (which also serves as the standard rate and the penalty rate).
 - **Earned** rates between the minimum and maximum rates.

Reemployment Tax

2013 Rate Calculation:

- The Department of Revenue determines the minimum rate and experience/earned rates each year through calculations imposed by statute.
- In November the Department of Revenue calculated the tax rates for the coming year.
- Taxable wage base is \$8000, same as 2012.
- Trust Fund trigger is engaged.

Reemployment Tax

2013 Rates:

- **Minimum rate employers** will pay **\$81.60** per employee ($\$8000 \times 1.02\%$).
- **New business or initial rate employers** will pay **\$216** per employee ($\$8000 \times 2.7\%$).
- **Maximum rate employers** will pay **\$432** per employee ($\$8000 \times 5.4\%$).
- **Earned rate employers** will pay between the minimum (**\$81.60**) and maximum (**\$432**) per employee.

Reemployment Tax

2013 Rate Calculation:

- Employers who earn the minimum rate will see a decrease in their tax rate for the first time in several years.
- Employers at the initial rate or the maximum rate will pay the same amount as they did in 2012.
- Employers between the maximum and the minimum rates may see a decrease, increase or no change, depending on their individual benefit charges.

Reemployment Tax

Minimum Rate

Year	Taxable Wage Base	Rate	Cost per employee
• 2008	\$7000	0.10%	\$ 7.00
• 2009	\$7000	0.12%	\$ 8.40
• 2010	\$7000	0.36%	\$ 25.20
• 2011	\$7000	1.03%	\$ 72.10
• 2012	\$8000	1.51%	\$ 120.80
• 2013	\$8000	1.02%	\$ 81.60

Current law returns the taxable wage base to \$7000 in 2015

Reemployment Tax

Federal Tax

- As of July 1, 2011, federal tax rate is 6.0%, paid on a wage base of \$7000.
- Employers in good standing receive 5.4% credit if the state has a federally compliant reemployment (unemployment) tax program and no outstanding federal loans.
- Florida had outstanding loans that were not repaid as of November 2011 and November 2012 so employers lost 0.3% of the credit for each year. Thus the credit is reduced to 4.8%.
- For 2012 federal taxes (paid in 2013) the tax rate for employers is 1.2% or \$84 per employee.
- The additional federal tax paid by employers due to the credit reduction is used to pay back the federal loans.

Reemployment Tax

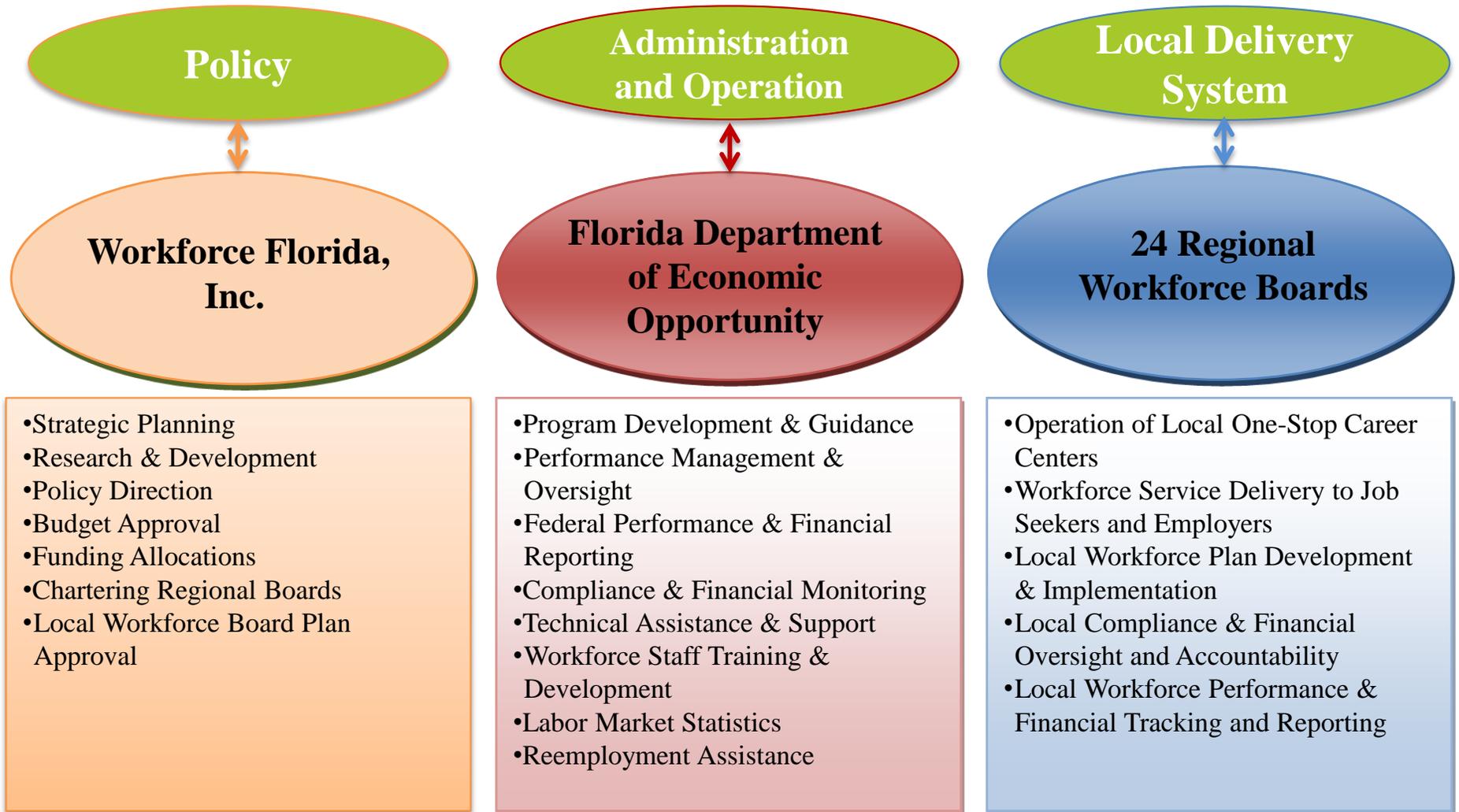
December 2012	2013 Annual Tax Rate Notices Mailed to all Contributing Employers
March 2013	2013 First Quarter Annual Tax Reports are Mailed
April 2013	2013 First Quarter Reemployment Tax and Reports due on April 1 st ; late after April 30 th



FLORIDA
DEPARTMENT *of*
ECONOMIC
OPPORTUNITY

Helping Floridians Return to Work
Reemployment Assistance Tax Workgroup
2013 Legislative Proposals

Florida's Workforce System



Getting Claimants Back to Work: Services Provided by RWBs

- Job Search, Referral and Placement Services
- Job Development Contacts
- Job Fairs
- Training and Retraining
- Basic Skills and Employability Skills Training
- Adult Education
- Assessment Services
- Interviewing Skills and Techniques
- Testing (e.g. aptitude and skills)
- Vocational Guidance
- Resume Assistance (Build and Post Resumes)
- Labor Market Information Unique to Job Seeker's experience and interests
- Support Services such as transportation and child care assistance
- Career Counseling and Educational Planning
- Employability Planning



Getting Claimants Back to Work: PREP and REA

- Two programs designed to provide in-person services to claimants at the One-Stop
 - Priority ReEmployment Program (PREP)
 - Claimants determined to be most likely to exhaust their benefits are prioritized for an in-person appointment about the One-Stop's services and how they can assist the claimant
 - Reemployment and Eligibility Assessment (REA) Program
 - Provides intensive one-on-one assessments, provision of labor market information, employability development plan, and placement services or referral to training for claimants to help them find employment



2011 Unemployment Compensation (UC) Reform Legislation

- Chapter 2011-235, Laws of Florida (HB 7005)
 - Mandated all initial and continued claims for UC benefits be filed electronically
 - Mandated the completion of online Initial Skills Review (ISR) for new claimants
 - Mandated evidence of five job contacts a week with employers or meeting with a One-Stop representative in lieu of making the five required job search contacts
 - This increased the number of claimants coming into the One-Stops requesting services
 - As a results, DEO initiated a series of on-site reviews to help determine ways to streamline and improve services to claimants



2011 Unemployment Compensation (UC) Reform Legislation

- Chapter 2011-235, Laws of Florida (HB 7005)
 - Amended the calculation of the maximum benefits available (MBA) on a claim
 - Beginning January 1, 2012 the calculation of the MBA is calibrated each year to the seasonally adjusted average total unemployment rate (SATUR) in Florida during the quarter ending September 30 of the prior year
 - When the SATUR is 5% or lower the MBA is 12 weeks
 - For each 0.5% increase in the SATUR an additional week is added to the MBA – up to a maximum of 23 weeks



Filing for Reemployment Assistance Benefits

- Individuals file for reemployment assistance benefits on-line using the Florida Internet Claims Filing System (FLUID)
- When claimants file for benefits, by automated transfer of basic information elements they are work-registered
- Claimant application information is transferred over night to the Employ Florida Marketplace (EFM) system for access by the One-Stop Career Centers
- EFM is Florida's job matching system to connect employers and job seekers
- EFM is a one-stop online resource for job listings, education and training opportunities and career building



Employ Florida Marketplace

www.employflorida.com



- Claimants have access to a complete set of employment tools in EFM
 - 1,242,290 job seekers accessed and received services via the EFM in 2011-12
 - 44,674 employers accessed and received services via EFM in 2011-12
- Job seekers requiring additional assistance with EFM can call the EFM Helpdesk for technical support and guidance
- To fully utilize EFM in getting the unemployed back to work a rule is in development to require a full registration in EFM
- The full registration in EFM will provide workers the ability to create an e-mail account for timely notification of available jobs and training opportunities

Getting Claimants Back to Work: Initial Skills Review

- All claimants are required to take an Internet-based Initial Skills Review when they file for reemployment assistance benefits
- The Initial Skills Review is designed to measure an individual's mastery level of workplace skills – applied mathematics, locating information, and reading for information
- The Regional Workforce Boards (RWBs) use the Initial Skills Review results to develop a plan for referring individuals to training, employment opportunities, or more intensive services

2012 Reemployment Assistance Legislation

- Chapter 2012-30, Laws of Florida (HB 7027)
 - Rebranded the UC Program the Reemployment Assistance (RA) Program
 - Exempted claimants who are job attached from completing the Initial Skills Review (ISR)
 - Mandated a score to establish minimal proficiency in workforce skills
 - Individuals not meeting minimum score are strongly encouraged to participate in suitable training at no cost to the claimant
 - Decreased from 5 to 3 the minimum number of weekly job contacts for individuals living in counties with less than 75,000 people



Fast Facts

- During CY 2012:
 - Florida's Workforce system assisted over 425,000 individuals who found employment
 - Florida's Workforce system assisted over 111,000 claimants who found employment
 - One-Stops work aggressively with claimants to provide them employment services unique to their needs to help them get back to work



Reemployment Assistance Tax Workgroup

- The purpose of the workgroup was to study the reemployment assistance contribution calculation that determines rates for employer taxes and make recommendations for trust fund solvency with equitable, minimal tax burdens on Florida employers
- Required DEO to convene a workgroup of 10 members
 - Four representing business appointed by joint agreement between the Executive Directors of DEO and its reemployment assistance tax collection service provider, the Department of Revenue (DOR), two of which represented small businesses
 - Two members each from DEO and DOR
 - One Senator and one Representative



Reemployment Assistance Tax Workgroup

- Six meetings were held from July through November 2012 in Tallahassee and Tampa
- Presentations for study were made by two consultants engaged by DEO for the project as well as presentations from DOR, Ms. Amy Baker, Office of Economic and Demographic Research, and Nicole Little, UI Tax Director, South Carolina Department of Employment and Workforce
- Presentations covered the federal requirements of unemployment insurance tax law needed to ensure conformity with federal law, Florida's current methodology, and other experience rating systems



Reemployment Assistance Tax Workgroup

- Among the alternative methodologies for determining rates the workgroup looked at was the Array system used in South Carolina
- A simulation of the Array on Florida rates was also presented for consideration by the workgroup
- Other presentations examined the impact of increasing the taxable wage base and of raising the ceiling on the maximum tax rate so that shared costs in the calculation can be minimized



Reemployment Assistance Tax Workgroup

- Two recommendations made by the workgroup were adopted without disagreement
- Florida should maintain its forward-funded approach to funding its system to help keep rates level over time
- In addition, Florida should maintain its current methodology for experience rating and not adopt alternatives such as the Array or the Reserve Ratio



Reemployment Assistance Tax Workgroup

- Two recommendations by the workgroup received dissenting opinions from stakeholders participating in the discussion
- The workgroup recommendation to maintain the taxable wage at its current level of \$8,000 was opposed with a view to allow the wage base to return to \$7,000 as it is scheduled to do in January 2015
- The workgroup also recommended increasing the maximum rate from its current level of 5.4 percent to 8.0 percent
- The dissenting stakeholder position was to let the maximum rate remain at 5.4 percent
- A report of the workgroup's activity was presented to the Legislature on December 28, 2012



2013 DEO, Division of Workforce Services Legislative Proposals

- Two federal enactments require Florida to amend state law to remain in conformity with federal requirements
- The Trade Adjustment Assistance Extension Act of 2011 (P.L. 112-40) requires states to impose a penalty of at least 15 percent on the amount of RA benefits that an individual receives fraudulently
- Penalties collected must be deposited in the benefit account of the state's Unemployment Compensation Trust Fund
- Failure to conform to this federal law will result in the state's loss of federal grants provided under the Social Security Act for state RA program administration



2013 DEO, Division of Workforce Services Legislative Proposals

- The Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96)
 - The act requires states that already have a Short-time Compensation (STC) Program (also known as Work-Share) to make changes to their law to conform to new federal requirements
 - STC plans must be allowed to prevent any layoff not just temporary layoffs as currently provided in law
 - Employers must certify that they will not diminish the health or retirement benefits based on STC participant
 - Failure to conform law to federal requirement will result loss of credit against federal unemployment tax for all state businesses



2013 DEO, Division of Workforce Services Legislative Proposals

- Extend to June 30, 2014, the date of the full deployment of the Reemployment Assistance Claims and Benefits Information System
- Correct a “glitch” to s. 443.1715, F.S., relating to the disclosure of confidential reemployment assistance information created by HB 7027 (2012)



FOR ADDITIONAL INFORMATION

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FLORIDA'S REEMPLOYMENT ASSISTANCE PROGRAM

Project Connect – Florida's new benefits system

Florida's existing 39 year old system has been struggling to meet demands and faces increasing risk of systematic failure. This is the same crisis that has caused systems to fail nationwide. In 2001, IBM was contracted to assess the health of the system and concluded "While IBM can recommend fixes to these problems, these are only short-term fixes that can aid in keeping the UC system running in the short-term." Due to these historic challenges, the Department of Labor is supporting a nation-wide effort to modernize the states' UC systems.

The Department contracted with Deloitte Consulting LLP to develop a modernized internet based system which was tentatively scheduled to be completed FY 12-13. The contract was amended and the scheduled completion date is now FY 13-14. The amended contract has strong language that ensures Deloitte delivers the complete project successfully. The Department has significant financial performance incentives for Deloitte to deliver the project on time and achieve stated operational improvements:

- \$4,312,076 in payments tied to successful User Acceptance Testing and Implementation.
- \$1,281,093 in holdbacks to ensure all remaining functionality is delivered on time at System Go Live.
- \$2,694,152 tied to the achievement of five Key Operation Performance Indicators (KPI) that will be measured (and paid if achieved) post-Go Live:
 - KPI 1 - Correspondence Generation \$293,134
 - KPI 2 - Adjudication of Issues \$1,386,929
 - KPI 3 - No Touch Claims \$574,463
 - KPI 4 - Overpayment \$227,617
 - KPI 5 - Appeals \$212,009

These will be awarded based upon the achievement of the significant operational improvements. The three incentives total \$8,287,321 in payments tied to a successful implementation and/or achievement of operational efficiencies.

Initial Skills Review (ISR)

The online initial skills review is designed to measure an individual's mastery level of workplace skills. Statute directs the regional workforce system to use the results for training and employment referrals. The Initial Skills Review will also yield new quantitative skills data about Florida's unemployed to support future education and workforce development policy. A score of 3 on each component indicates the jobseeker has the skills needed in today's labor market. For example, Applied Math Level 3, indicates a jobseeker has the skills to:

- Solve problems that require a single type of mathematics operation (addition, subtraction, multiplication, and division) using whole numbers
- Add or subtract negative numbers
- Change numbers from one form to another using whole numbers, fractions, decimals, or percentages
- Convert simple money and time units (e.g., hours to minutes)

The attachment provides a brief description of the components contained in the ISR.

The following ISR data is for fiscal year 2011-2012:

- 496,745 monetarily eligible claims filed
- 463,150 individuals completed the ISR
- 102,185 individuals were denied two or more weeks for failing to complete the ISR
- 10,472 individuals failed to complete the ISR

ISR – Other States

A survey of other states was done September, 2012. The States of Missouri, Nevada and Idaho have an automated online assessment tool which provides information that will enable staff to assist individuals with their skills development and job search.

One Stop Career Centers

There was one closure in July 2012. No future closures are planned.

Minimum Tax Rate for New Employers

The initial tax rate for new employers is .0270 (2.7%). Beginning January 1, 2012 and continuing through 2013, the first \$8,000 in wages paid to each employee during a calendar year is taxable. Any amount over \$8,000 for the year is excess wages and is not subject to tax. The federal government limits the minimum tax rate for new employers to one percent. Only three jurisdictions operating a program in the United States provide a tax rate of one percent for new employers. These are Oklahoma, Vermont, and the Virgin Islands. Of the larger states California and New York assign an initial rate of 3.40 percent while Texas matches Florida at 2.70 percent.

Unemployment Compensation Program Name Change

Reemployment assistance benefits provide temporary wage replacement benefits to qualified individuals who are out of work through no fault of their own. House Bill 7027 and Senate Bill 1416 renamed the Unemployment Compensation Program to the Reemployment Assistance Program to emphasize job search activities and reemployment services for those receiving benefits. The cost associated with changing the program's name was approximately \$92,000.

Seasonal Layoff/Part-time Employment

Individuals on seasonal layoffs or working part-time and earning less than his or her weekly benefit amount are eligible to receive RA benefits. Benefits are not payable to any individual based on service 90 percent or more of which consists of participating in sports or athletic events or training, or preparing to participate, for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the service in the first of those seasons, or similar periods, and there is a reasonable assurance that the individual will perform those services in the later of those seasons, or similar periods.

Dual Employment

Dual employment refers to a situation in which the claimant is working two jobs simultaneously, voluntarily quits one job, continues to work at the other job, and then becomes unemployed before earning seventeen (17) times the weekly benefit amount. The Third District Court has ruled that an unemployed individual will not be denied benefits under the following circumstances:

- The claimant was working a part-time and a full-time job concurrently and quit the part-time job while continuing to work the full-time job.
- The claimant was working two full-time jobs concurrently and quit one job while continuing to work at the other full-time job.
- The claimant was working two part-time jobs concurrently and quit one job in order to become a full-time employee at the other concurrently worked job.

FLORIDA INITIAL SKILLS REVIEW - OCCUPATION SEARCH

The purpose of this page is to assist jobseekers in finding a list of occupations they may qualify for based on the Initial Skills Review scores. If you have not taken the Initial Skills Review you cannot complete it from this page. Please proceed to: <https://www2.myflorida.com/fluid/> to complete the Initial Skills Review, file an unemployment compensation claim or claim weeks.

The Initial Skills Review may be used to develop a plan for referring jobseekers for training and employment opportunities.

SUMMARY OF SKILLS AND SCORES

Click the link below for a description of the skill area and scores:

- [Applied Mathematics](#)
- [Reading For Information](#)
- [Locating Information](#)

SEARCH OCCUPATIONS - BY SCORES

Enter the jobseeker's Initial Skills Review scores below to identify occupations for which the jobseeker may be qualified. N/S = No Score

SKILL AREA	ENTER SCORES
Applied Math	<input checked="" type="radio"/> N/S <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5
Locating Information	<input checked="" type="radio"/> N/S <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5
Reading For Information	<input checked="" type="radio"/> N/S <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5

ABOUT APPLIED MATHEMATICS

Applied Mathematics includes the mathematical reasoning, critical thinking and problem-solving techniques used to communicate work-related information and solve work-related problems.

SUMMARY OF SKILLS AND SCORES

Applied Mathematics focuses on the core foundational skills required for most jobs today from entry level to professional. There are three "levels" of questions – Levels 3, 4, 5. The complexity of questions and related skills increases at each level. Level 3 is the least complex, and Level 5 is the most complex. The levels build on each other, incorporating the skills at the previous levels. For example, at Level 5, the jobseeker must demonstrate the skills from Levels 3, 4 and 5.

There are 5 questions per level. The jobseeker must answer 4 out of 5 questions correctly (80 percent) to advance to the next level.

The jobseeker receives a "score" based on the highest level of questions completed correctly. The score indicates a general level of career readiness. The jobseeker may require additional evaluation and/or may require additional foundational skills training, occupational skills training, credentials and/or certification based on his/her career choice.

Applied Mathematics Scores

- Score 5 =**
 - Completed Levels 3-4-5
 - Indicates foundational career readiness skills for on average 90 percent of jobs
- Score 4 =**
 - Completed Levels 3-4
 - Indicates foundational career readiness skills for on average 60 percent of jobs
- Score 3 =**
 - Completed Level 3
 - Indicates foundational career readiness skills for on average 30 percent of jobs
- Score 0 =**
 - Completed Level 3 but did not answer 80 percent of questions correctly
 - Indicates potentially under skilled

Score 3	ISR Questions – Structure and Complexity <ul style="list-style-type: none"> • Translate easily from a word problem to a math equation • All needed information is presented in logical order • No extra information 	Skills <ul style="list-style-type: none"> • Solve problems that require a single type of mathematics operation (addition, subtraction, multiplication, and division) using whole numbers • Add or subtract negative numbers • Change numbers from one form to another using whole numbers, fractions, decimals, or percentages • Convert simple money and time units (e.g., hours to minutes)
Score 4	ISR Questions – Structure and Complexity <ul style="list-style-type: none"> • Information may be presented out of order • May include extra, unnecessary information • May include a simple chart, diagram, or graph 	Skills <ul style="list-style-type: none"> • Solve problems that require one or two operations • Multiply negative numbers • Calculate averages, simple ratios, simple proportions, or rates using whole numbers and decimals • Add commonly known fractions, decimals, or percentages (e.g., $\frac{1}{2}$, .75, 25%) • Add up to three fractions that share a common denominator • Multiply a mixed number by a whole number or decimal • Put the information in the right order before performing calculations
Score 5	ISR Questions – Structure and Complexity <ul style="list-style-type: none"> • Problems require several steps of logic and calculation (e.g., problem may involve completing an order form by totaling the order and then computing tax) 	Skills <ul style="list-style-type: none"> • Decide what information, calculations, or unit conversions to use to solve the problem • Look up a formula and perform single-step conversions within or between systems of measurement • Calculate using mixed units (e.g., 3.5 hours and 4 hours 30 minutes) • Divide negative numbers • Find the best deal using one- and two-step calculations and then comparing results • Calculate perimeters and areas of basic shapes (rectangles and circles) • Calculate percent discounts or markups

ABOUT READING FOR INFORMATION

Reading for Information includes the use of common workplace reading material including memos, directions, signs, policies and regulations and the related reasoning, critical thinking and problem-solving techniques used to communicate work-related information and solve work-related problems.

SUMMARY OF SKILLS AND SCORES

Reading for Information focuses on the core foundational skills required for most jobs today from entry level to professional. There are three "levels" of questions – Levels 3, 4, 5. The complexity of questions and related skills increases at each level. Level 3 is the least complex, and Level 5 is the most complex. The levels build on each other, incorporating the skills at the previous levels. For example, at Level 5, the jobseeker must demonstrate the skills from Levels 3, 4 and 5.

There are 5 questions per level. The jobseeker must answer 4 out of 5 questions correctly (80 percent) to advance to the next level.

The jobseeker receives a "score" based on the highest level of questions completed correctly. The score indicates a general level of career readiness. The jobseeker may require additional evaluation and/or may require additional foundational skills training, occupational skills training, credentials and/or certification based on his/her career choice.

Reading for Information Scores

- Score 5 =**
 - Completed Levels 3-4-5
 - Indicates foundational career readiness skills for on average 90 percent of jobs
- Score 4 =**
 - Completed Levels 3-4
 - Indicates foundational career readiness skills for on average 80 percent of jobs
- Score 3 =**
 - Completed Level 3
 - Indicates foundational career readiness skills for on average 30 percent of jobs
- Score 0 =**
 - Completed Level 3 but did not answer 80 percent of questions correctly
 - Indicates potentially under skilled

Score	ISR Questions – Structure and Complexity	Skills
3	<ul style="list-style-type: none"> • Reading materials include basic company policies, procedures, and announcements • Reading materials are short and simple, with no extra information • Reading materials tell readers what they should do • All needed information is stated clearly and directly • Items focus on the main points of the passages • Wording of the questions and answers is similar or identical to the wording used in the reading materials 	<ul style="list-style-type: none"> • Identify main ideas and clearly stated details • Choose the correct meaning of a word that is clearly defined in the reading • Choose the correct meaning of common, everyday workplace words • Choose when to perform each step in a short series of steps • Apply instructions to a situation that is the same as the one in the reading materials
4	<ul style="list-style-type: none"> • Reading materials include company policies, procedures, and notices • Reading materials are straightforward, but have longer sentences and contain a number of details • Reading materials use common words, but do have some harder words, too • Reading materials describe procedures that include several steps • When following the procedures, individuals must think about changing conditions that affect what they should do • Questions and answers are often paraphrased from the passage 	<ul style="list-style-type: none"> • Identify important details that may not be clearly stated • Use the reading material to figure out the meaning of words that are not defined • Apply instructions with several steps to a situation that is the same as the situation in the reading materials • Choose what to do when changing conditions call for a different action (follow directions that include "if-then" statements)
5	<ul style="list-style-type: none"> • Policies, procedures, and announcements include all of the information needed to finish a task • Information is stated clearly and directly, but the materials have many details • Materials also include jargon, technical terms, acronyms, or words that have several meanings • Application of information given in the passage to a situation that is not specifically described in the passage • There are several considerations to be taken into account in order to choose the correct actions 	<ul style="list-style-type: none"> • Figure out the correct meaning of a word based on how the word is used • Identify the correct meaning of an acronym that is defined in the document • Identify the paraphrased definition of a technical term or jargon that is defined in the document • Apply technical terms and jargon • Apply straightforward instructions to a new situation that is similar to the one described in the material • Apply complex instructions that include conditionals to situations described in the materials

[Back To Search](#)

ABOUT LOCATING INFORMATION

Locating Information includes the use of workplace graphs, charts, forms, instrument gauges and other graphics and the related reasoning, critical thinking and problem-solving techniques used to communicate work-related information and solve work-related problems.

SUMMARY OF SKILLS AND SCORES

Locating Information focuses on the core foundational skills required for most jobs today from entry level to professional. There are three "levels" of questions -- Levels 3, 4, 5. The complexity of questions and related skills increases at each level. Level 3 is the least complex, and Level 5 is the most complex. The levels build on each other, incorporating the skills at the previous levels. For example, at Level 5, the jobseeker must demonstrate the skills from Levels 3, 4 and 5.

There are 5 questions per level. The jobseeker must answer 4 out of 5 questions correctly (80 percent) to advance to the next level.

The jobseeker receives a "score" based on the highest level of questions completed correctly. The score indicates a general level of career readiness. The jobseeker may require additional evaluation and/or may require additional foundational skills training, occupational skills training, credentials and/or certification based on his/her career choice.

Locating Information Scores

- Score 5 =**
 - Completed Levels 3-4-5
 - Indicates foundational career readiness skills for on average 90 percent of jobs
- Score 4 =**
 - Completed Levels 3-4
 - Indicates foundational career readiness skills for on average 60 percent of jobs
- Score 3 =**
 - Completed Level 3
 - Indicates foundational career readiness skills for on average 30 percent of jobs
- Score 0 =**
 - Completed Level 3 but did not answer 80 percent of questions correctly
 - Indicates potentially under skilled

Score **ISR Questions – Structure and Complexity**

3

- Elementary workplace graphics such as simple order forms, bar graphs, tables, flowcharts, maps, instrument gauges, or floor plans
- One graphic used at a time

Skills

- Find one or two pieces of information in a graphic
- Fill in one or two pieces of information that are missing from a graphic

Score **ISR Questions – Structure and Complexity**

4

- Straightforward workplace graphics such as basic order forms, diagrams, line graphs, tables, flowcharts, instrument gauges, or maps
- One or two graphics are used at a time

Skills

- Find several pieces of information in one or two graphics
- Understand how graphics are related to each other
- Summarize information from one or two straightforward graphics
- Identify trends shown in one or two straightforward graphics
- Compare information and trends shown in one or two straightforward graphics

Score **ISR Questions – Structure and Complexity**

5

- Complicated workplace graphics, such as detailed forms, tables, graphs, diagrams, maps, or instrument gauges
- Graphics may have less common formats
- One or more graphics are used at a time

Skills

- Sort through distracting information
- Summarize information from one or more detailed graphics
- Identify trends shown in one or more detailed or complicated graphics
- Compare information and trends from one or more complicated graphics

[Back To Search](#)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13

Meeting Date

Topic Reemployment Assistance

Bill Number _____ (if applicable)

Name Tom Clendinning

Amendment Barcode _____ (if applicable)

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Speaking: For Against Information

Representing Department of Economic Opportunity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Reemployment

Bill Number Reemployment Assistance
(if applicable)

Name Karen Woodall

Amendment Barcode _____
(if applicable)

Job Title Director

Address 579 E. Call St.

Phone 850-321-9386

Street
Tallahassee FL 32301
City *State* *Zip*

E-mail fcfep@yahoo.com

Speaking: For Against Information

Representing Florida Center for Fiscal + Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

Viva Florida 500

Viva Florida 500

1513 - 2013

Florida's 500th Anniversary

Kerri Post, Deputy Secretary of State
Florida Department of State



VivaFlorida.org



Florida Secretary of State
Ken Detzner

What is Viva Florida 500?

- Statewide initiative led by Florida Dept. of State
- Viva Florida 500 in 2013 – Juan Ponce de León’s arrival in 1513.
- A “teachable moment” and marketing opportunity to highlight 500 years of history and cultural diversity – no other state can claim that.
- Series of important anniversaries marking the genesis of who we have become in Florida and the United States.
- Platform for Cultural, Heritage and Nature-based Activities/Tourism/Events.



VivaFlorida.org



Florida Secretary of State
Ken Detzner

Viva Florida 500

Department of State Strategic Goals

- Provide Leadership and facilitate collaboration
- Create and grow productive public and private Partnerships
- Expand outreach and Education
- VF500 events in all 67 counties
- Stimulate Cultural Heritage Tourism



VivaFlorida.org



Florida Secretary of State
Ken Detzner

Viva Florida 500 The Partnership

- VF500 is a grassroots initiative
- In 2010 = 5 Partners; 2013 = more than 1400 Partners (Many DMOs)
- More than 200 Events/Activities Planned Statewide



VivaFlorida.org



Florida Secretary of State
Ken Detzner

Viva Florida 500 Highlighted Events

- The Big Orange “La Gran Naranja” - Miami
- Expedition Florida 500 - statewide
- Broward Navy Days/Naio Galleon
- Ponce Landing Mock Trials – Palm Beach/DeLand
- Fiesta Medina & OLA FEST - Orlando
- Archaeology Fest - Sarasota
- Footsteps of 16th Century Explorers – Lady Lake
- Old Florida Festival – Naples



VivaFlorida.org



Florida Secretary of State
Ken Detzner

Leveraging State Partnerships

- VISIT FLORIDA
 - PSA's, advertising, content, public relations, social
- Florida Lottery
 - New scratch-off game and second-chance interactive
- Florida Department of Transportation
 - Welcome to Florida, historic sites, rest areas
- Florida Dept. Business Professional Regulation
 - VF500 logo on licenses, website and e-newsletter
- Florida Department of Agriculture
 - Culinary Ambassadors, exhibits, State Fair



Department of Transportation



VivaFlorida.org



Florida Secretary of State
Ken Detzner

Viva Florida 500

Statewide Resources / Partners

- The Florida Humanities Council
- España – Florida Foundation 500 Years
- Florida State Parks
- Florida Association of Museums
- FAAHPN, Arts/Cultural Councils, Historical Resources/FPAN and Libraries

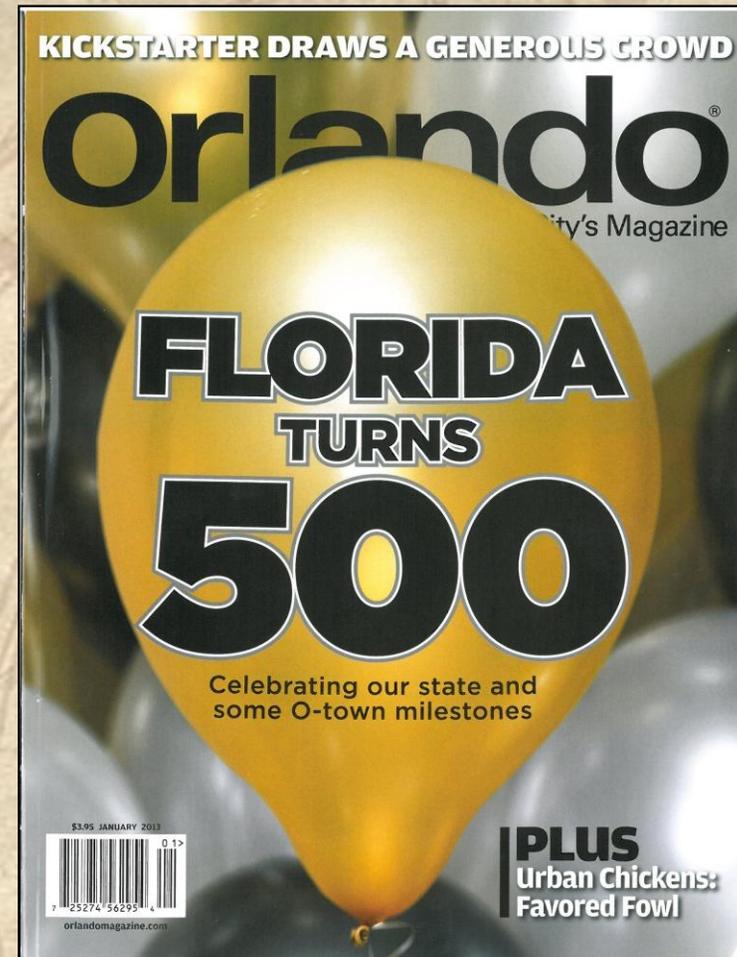
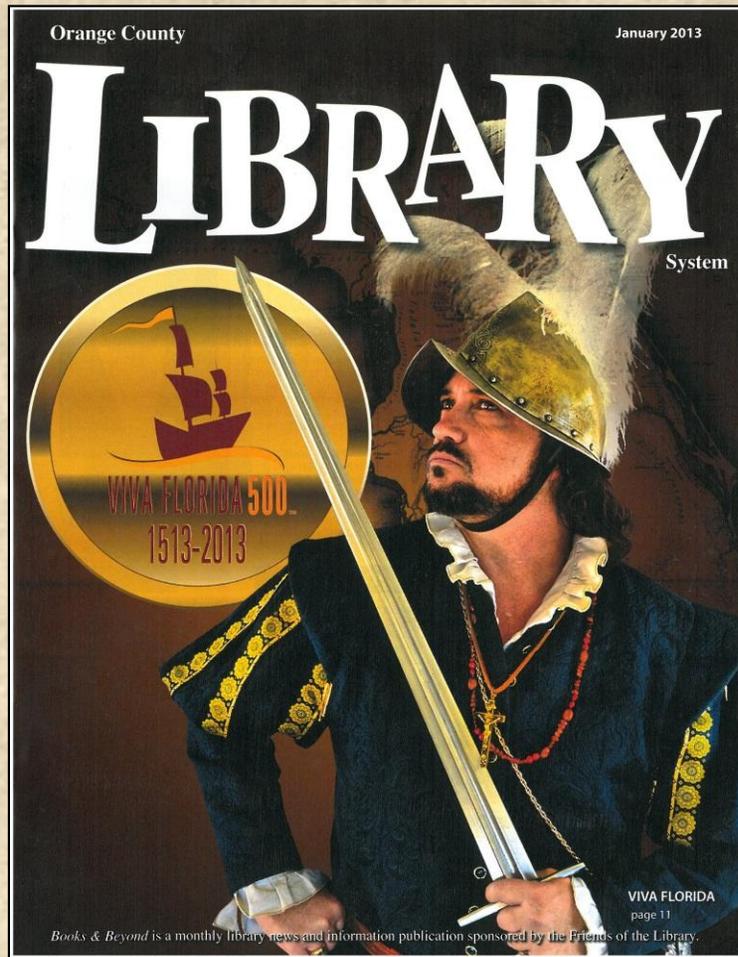


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Florida Secretary of State
Ken Detzner

Central Florida Involvement



VivaFlorida.org



Florida Secretary of State
Ken Detzner

Closing Thought

Florida is prominently promoting its history and cultural heritage.

It is up to us to recognize and act upon this opportunity now through 2015 and beyond to create jobs by promoting Florida as the best place to live, work, play and do business.

Thank you!

kerri.post@dos.myflorida.com



VivaFlorida.org



Florida Secretary of State
Ken Detzner

A woman in a white dress and hat is relaxing in a hammock. The hammock is strung between a stone fortification wall on the left and a palm tree on the right. The background shows a clear blue sky with some clouds and a turquoise ocean. The text 'VIVA Florida' is overlaid on the image, with 'VIVA' in yellow and 'Florida' in red. Below it, the dates '1513-2013' are written in white.

VIVA Florida

1513-2013

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& NOW

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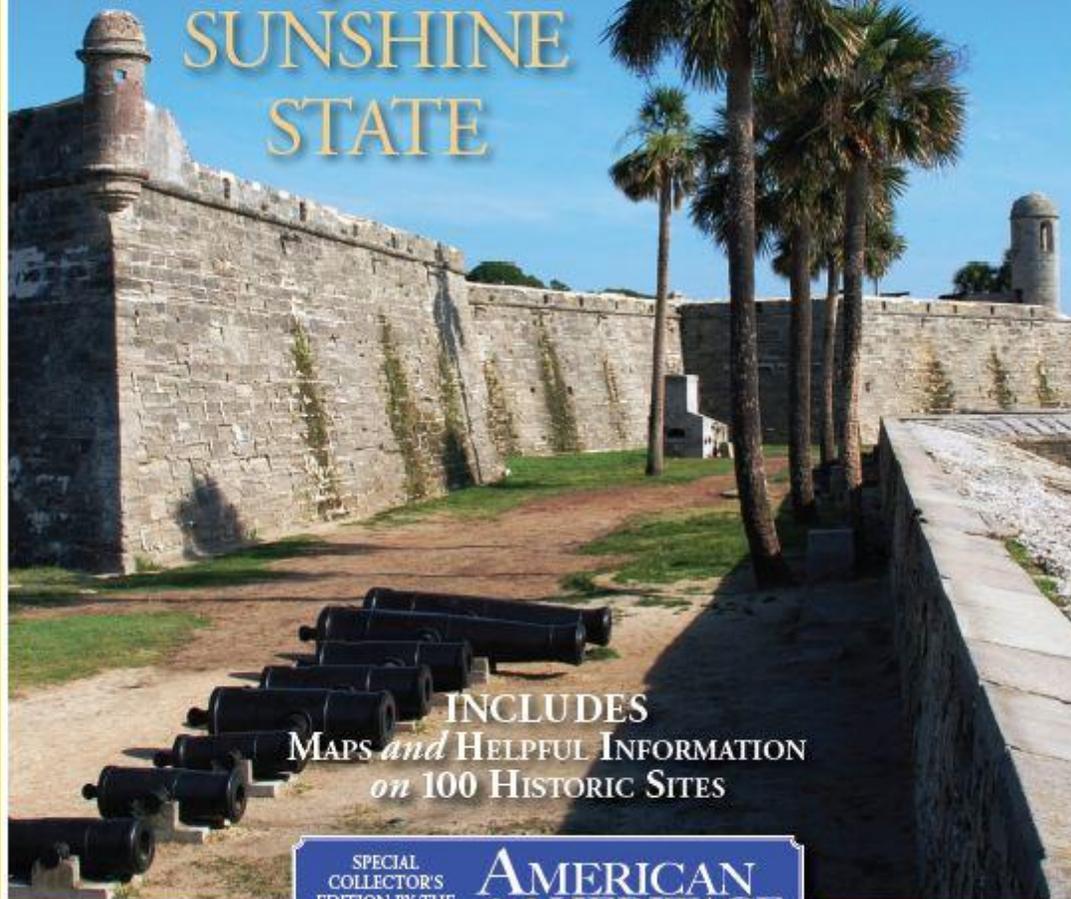
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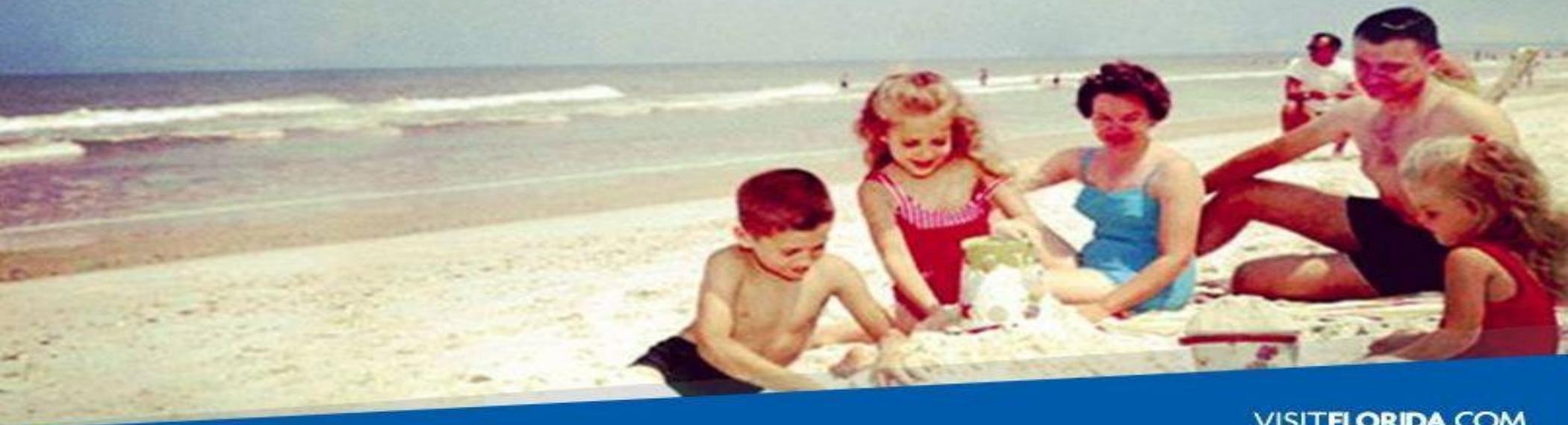
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Share Your Florida Story

We're commemorating 500 years of visitors, and want your photos, videos & stories to be a part of the Sunshine State's Timeline.

UPLOAD »



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Photo Credit: Florida Memory Project

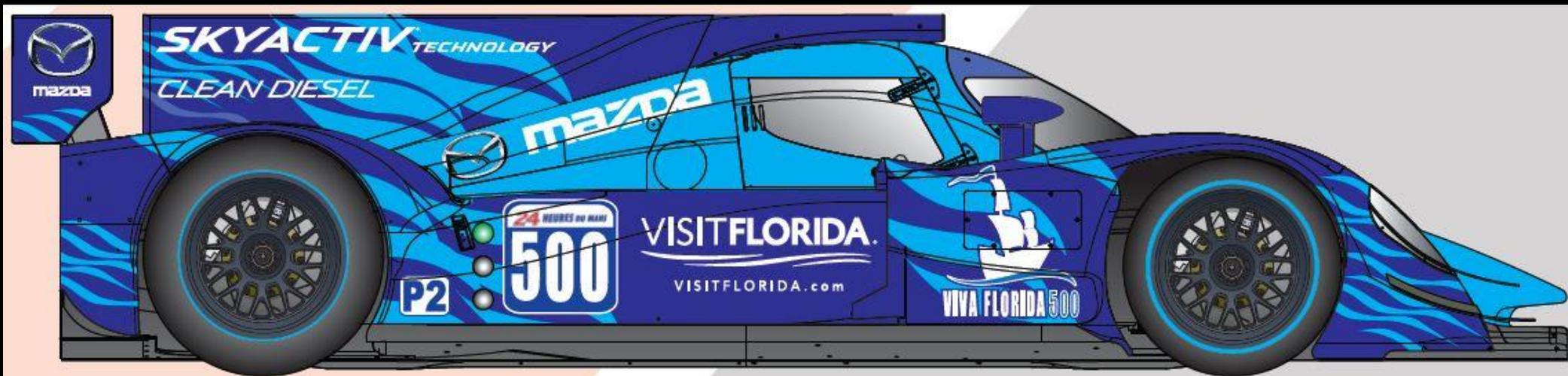
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VIVA

VIVA Episode premieres Sunday, January 20

FLORIDA



*Chef Emeril at Florida's oldest restaurant,
The Columbia, in Ybor City*



*Chef Emeril visits St. Augustine's famed restaurant
"The Tasting Room"*

Public Relations

MailOnline

From Florida Oranges to Big Apples, American tourism looks set for sweet 2013

By Sebastian Lander

PUBLISHED: 06:17 EST, 3 January 2013 | UPDATED: 06:17 EST, 3 January 2013

America could be in for a bumper year for tourism in 2013 as Florida kicks off its 500th anniversary celebrations and New York looks back on a record 52 million visitors last year.

Five centuries after Juan Ponce de Leon set foot on its golden shores in search of riches, the Sunshine State is celebrating its Spanish heritage with a series of events throughout the year which will highlight some of its lesser known attractions.

Although Florida's history dates back more than 12,000 years with Native Americans, the statewide campaign 'Viva Florida 500' will highlight the start of a new era with de Leon's adventurous voyage to the New World in 1513.



1,871,57

7

views

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ABC News

Viva Florida: Sunshine State celebrates its Spanish heritage throughout 2013

By Suzette Laboy, The Associated Press | Associated Press - Wed, Jan 2, 2013

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MIAMI - When Juan Ponce de Leon searched for riches in Florida, he unknowingly helped turn the Sunshine State into the first travel destination in the United States.

In April 1513, the Spanish monarchy contracted the explorer to find another island off of Cuba that was rumoured to have great riches. Instead he landed in Florida and named it "La Florida," after the "feast of the flowers" during Spain's Easter celebrations.

Five centuries later, the state is celebrating its Spanish heritage with a series of events throughout 2013.

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Florida celebrates its Spanish heritage in 2013



FILE - This Feb. 4, 2005 file photo shows visitors exploring the Castillo de San Marcos in St. Augustine, Fla. The nation's oldest fort was built by Spanish soldiers between 1672 and 1695 and used to fight off pirates, hostile natives, French, British, and South Carolinian troops. This year Florida is marking the 500th anniversary since the explorer Ponce de Leon landed in Florida in April 1513, with a series of events related to the state's Spanish heritage and other aspects of its history. (AP Photo/Amy Sancetta, file)

Suzette Laboy, Associated Press
POSTED: Wednesday, January 2, 2013, 4:02 PM

1,857,9

10



VIVA FLORIDA CONTENT

12 Videos (5 in Spanish)

6 Photo Slideshows

38 articles (13 in Spanish)
Already published

~

7 articles

15 videos

**2 half-hour shows to air on Infomas
(Spanish language channel for Bright House)**

16 Photo Slideshows

1 informational graphic (VIVA Timeline)

Planned for current year



Two Ships Two Initiatives The Nao & The Galleon

THE FLORIDA TOUR

- Nao : 85ft / Juan Ponce de Leon / 100 pax
- Galleon: 180ft / Predro Menendez de Aviles / 250 pax
- Depart Spain January 2013
- Florida: April & May
- Reaching 4 ports (Jan-April) with a follow up in New York

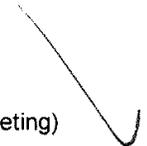


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THE FLORIDA SENATE
APPEARANCE RECORD

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01152013

Meeting Date

Topic VIVA Florida 500

Bill Number _____
(if applicable)

Name Kerri Post

Amendment Barcode _____
(if applicable)

Job Title Deputy Secretary Cultural, Historical & Libraries

Address 500 S. Bronough St.

Phone 8502456514

Street

Tallahassee

FL

32399

E-mail kerri.post@dos.myflorida.com

City

State

Zip

Speaking: For Against Information

Representing Florida Department of State

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 90

INTRODUCER: Senators Smith and Margolis

SUBJECT: State Contracts

DATE: January 15, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	BGA	_____
4.	_____	_____	BC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 90 requires that all state contracts exceeding \$35,000 include a provision requiring any call-center services to be staffed by persons located within the United States.

This bill substantially amends s. 287.058, F.S.

II. Present Situation:

Procurement laws govern the manner in which a government receives goods and services. In Florida, ch. 287, F.S., broadly, governs the public procurement of personal property and services. Section 287.058, F.S., outlines the minimum requirements that must be present in public procurement contracts that exceed the amount of \$35,000.¹

The federal government also has its own body of law regulating procurement activities. One of the most well known pieces of legislation regulating federal procurement is The Buy American Act, which restricts the federal government from purchasing nondomestic end products,² unless an enumerated exception provided in the statute is applicable.^{3,4}

¹ Section, 287.017, F.S., sets forth purchasing categories by the threshold amount. Procurement contracts that exceed \$35,000 are designated as a category two.

² “According to the Federal Acquisition Regulation (FAR), a domestic end product means an unmanufactured end product mined or produced in the United States, or an end product manufactured in the U.S. if the cost of its components that are mined, produced, or manufactured in the U.S. exceeds 50 percent of the cost of all its components.” United States Government Accountability Office, *Federal Procurement: International Agreements Result in Waivers of Some U.S. Restrictions* (January 2005), GAO-05-188, fn. 6, p. 3, available at <http://www.gao.gov/assets/250/245118.pdf> (last visited December 13, 2012).

The expansion of international trade between the United States and foreign governments has resulted in many agreements that contain mutually beneficial government procurement obligations. In the spirit of promoting trade relations, governments have agreed to require that each party's goods and service be given the same treatment as domestic goods and services. As such, a government is prohibited from arbitrarily giving preferential treatment to domestic goods at the expense of foreign goods originating from a country where there is an enforceable and standing trade agreement espousing mutually beneficial government procurement obligations.

Historically, international trade agreements have been treated as congressional-executive agreements (CEA), which require the majority of both houses in Congress to be implemented,⁵ as opposed to only a two-thirds vote of the Senate.⁶ One explanation for the use of CEAs in the context of international trade agreements stems from the view that participation by the House of Representatives is appropriate in light of its constitutional role in revenue raising.⁷ Moreover, congressional authorization has been deemed necessary as trade agreements have become much more elaborate through the regulation of a broader spectrum of subjects ranging from subsidies, government procurement, and product standards.⁸ To avoid constitutional challenges for an unlawful delegation of power, Congress enacted the Trade Act of 1974 and Trade Act of 2002, which provide the President with guidelines and authorization to engage in such trade negotiations.⁹

The most well-known examples of CEAs are the World Trade Organization Government Procurement Agreement (GPA), the North American Free Trade Agreement (NAFTA), and numerous other bilateral free trade agreements (FTA).¹⁰

World Trade Organization Government Procurement Agreement (GPA)

The agreement that established the World Trade Organization (WTO)¹¹ came as a result of the Uruguay Rounds of Multilateral Trade Negotiations, which also produced a series of other

³ 41 U.S.C. s. 8302 (2012).

⁴ *See supra*, note 2 (Exceptions include the following: “where the cost of the domestic end product would be unreasonable; where domestic end products are not reasonably available in sufficient commercial quantities of a satisfactory quality; where the agency head determines that a domestic preference would be inconsistent with the public interest; where the purchases are for use outside of the United States; where the purchases are less than the micro purchase threshold; and where the purchases are for commissary resale.”).

⁵ The Congressional Research Service, *Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather than Treaties* (July 28, 2004), available at http://assets.opencrs.com/rpts/97-896_20040728.pdf (last visited December 13, 2012).

⁶ *See* U.S. Const. art. 2, s. 2.

⁷ Restatement Third of Foreign Relations Law s. 303, note 9 (1987).

⁸ *See Supra* note 5.

⁹ *Id.*

¹⁰ A list of the federal government's current procurement obligations under international agreements is available at <http://www.ustr.gov/trade-topics/government-procurement>.

¹¹ In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement.

international agreements, including the GPA.¹² As enumerated in the preamble, the GPA's objective is the expansion of world trade through three primary measures:

- Prohibition on discrimination based on national origin;
- Establishment of clear, transparent laws, regulations, procedures, and practices regarding governmental procurement; and
- Application of competitive procedural requirements related to notification, tendering (bidding), contract award, tender (bid) protest, etc.¹³

With respect to discrimination on the basis of national origin, Article III of the agreement expressly forbids the application of less favorable treatment to the products, services, and suppliers of other foreign parties than that which would be accorded to domestic products, services, and suppliers.¹⁴ The agreement further provides that all parties will ensure that the laws, regulations, procedures, and practice regulating government procurement in their home state will be executed in a nondiscriminatory manner.¹⁵

Accordingly, procurement provisions stipulated in the Buy American Act will yield to nondiscriminatory provisions espoused in international trade agreements. The interplay between the act and international trade agreements is described below:

[T]he Trade Agreements Act of 1979 authorizes the President to waive any otherwise applicable "law, regulation or procedure regarding Government procurement" that would accord foreign products less favorable treatment than that given to domestic products. Article 1004 of The North American Free Trade Agreement (between the United States, Mexico, and Canada) disallows domestic protection legislation, such as the Buy-American Act, in government procurement. Other treaties and agreements also place limitations on the application of the act and must be considered when looking at any Buy American question.^{16, 17}

Presently, Florida's executive branch is covered under the GPA¹⁸ for purchases that exceed \$552,000 for commodities and services and \$7,777,000 for construction services.¹⁹ Florida was 1 of 37 states to agree to procure in accordance with the GPA.²⁰

¹² Signatory countries: Armenia, Canada, Austria Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia, Bulgaria, Romania, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, and Chinese Taipei.

¹³ 1994 Uruguay Round Agreement on Government Procurement, April 15, 1994, WTO Agreement, Annex 4(b) (hereinafter "GPA"), and see GPA Appendix I (United States), Annex 2 (discusses sub-central government entities, such as Florida), both available at http://www.wto.org/english/docs_e/legal_e/legal_e.htm (last visited December 13, 2012).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Congressional Research Service, *The Buy American Act: Requiring Government Procurements to Come from Domestic Sources*, (March 13, 2009), available at http://assets.opencrs.com/rpts/97-765_20080829.pdf (last visited December 13, 2012).

¹⁷ See 19 U.S.C. ss. 2511(a), 2532, and 2533 (2011); see also 48 C.F.R. 25.402 ; see also Exec. Order No. 12260, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=44462#axzz1jXJhYUyX> (last visited December 13, 2012).

¹⁸ See Annex 2 (Sub-Central Government Entities), *supra*, note 13.

¹⁹ 76 F.R. 76808-01, December 8, 2011.

²⁰ See *supra* note 11.

Free Trade Agreements

In addition to the GPA, the United States has also entered into several bilateral free trade agreements²¹ and two multilateral free trade agreement,²² with the most highly recognized being NAFTA. Similar to the GPA, all these agreements contain provisions that call for fair and non-discriminatory treatment of products, goods, and services by all state parties. When necessary, the United States has issued waivers to protect parties from discriminatory purchasing requirements found under existing law that would be contrary to the covenants embodied in such international agreements.²³

III. Effect of Proposed Changes:

Section 1 amends s. 287.058, F.S., to require that state agency contracts in excess of \$35,000 must include a provision specifying that all call center services provided by the contractor and all subcontractors must be staffed by persons located within the United States.

Section 2 provides that the bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²¹ The United States has entered bilateral free trade agreements with the following countries: Australia, Bahrain, Canada, Chile, Israel, Morocco, Oman, Peru, and Singapore. This information is available at <http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations> (last visited December 13, 2012).

²² NAFTA (member countries: United States, Mexico, and Canada) and DR-CAFTA (El Salvador, Dominican Republic, Guatemala, Honduras, Nicaragua, and Costa Rica). This information is available at <http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations> (last visited December 13, 2012).

²³ See *supra*, note 17.

D. Other Constitutional Issues:

The Federal Commerce Clause and Market Participant Exception

That Commerce Clause found in Article I, Section 8, Clause 3 provides that Congress shall have the power “to regulate commerce with foreign Nations, and among the several States.”²⁴ This clause speaks to Congress’ power to regulate both interstate and foreign commerce clause and acts as a negative constraint upon the states.²⁵

For this reason, courts review state action affecting the interstate and foreign commerce with heightened scrutiny.²⁶ The United States Supreme Court has explained the standard for the foreign commerce clause as follows: “It is a well-accepted rule that state restrictions burdening foreign commerce are subjected to a more rigorous and searching scrutiny. It is crucial to the efficient execution of the Nation’s foreign policy that the federal government . . . speak with one voice when regulating commercial relations with foreign governments.”²⁷

However, when state is acting as a “market participant,” the market participant exception to the Commerce Clause may be applicable. This doctrine provides that when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Interstate Commerce Clause.²⁸ A state is considered to be a “market participant” when it is acting as an economic actor, such as a purchaser of goods and services.²⁹

With respect to the Foreign Commerce Clause, the law is unsettled regarding the applicability of the market participant exception. In *Trojan Techs., Inc. v. Pennsylvania*, the United States Court of Appeals for the First Circuit upheld the validity of a Pennsylvania procurement statute that required suppliers contracting with a public agency for public works projects to provide products made of American steel.³⁰ The court there found that the market participant exception did extend to the Foreign Commerce Clause.³¹ Conversely, the United States Court of Appeals for the Third Circuit, in *National Foreign Trade Council v. Natsios*, refused to extend the market participant exception to the Foreign Commerce Clause.³²

To date, neither the United States Court of Appeals for the Eleventh Circuit nor the United States Supreme Court has ruled on the matter.³³

²⁴ U.S. Const. Art. I, s. 8.

²⁵ See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

²⁶ *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 446 (1970) (“When construing Congress’ power to ‘regulate commerce with foreign Nations,’ a more extensive constitutional inquiry is required.”).

²⁷ *South-Central Timber Develop., Inc. v. Wunnicke*, 467 U.S. 82, 100 (1984) (citing *Michelin Tire Corp. v. Wages*, 723 U.S. 276, 285 (1979)).

²⁸ See *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

²⁹ *Id.*

³⁰ *Trojan Techs., Inc. v. Pennsylvania*, 916 F.2d 903, 912 (3d Cir. 1990), *cert denied*, 501 U.S. 1212 (1991).

³¹ *Id.* at 910.

³² *National Foreign Trade Council v. Natsios*, 181 F.3d 38, 60 (1st Cir. 1999), *cert granted*, 528 U.S. 1018 (1999).

³³ See *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000) (declining to address the analysis of the United States Court of Appeals for the First Circuit on the applicability of the market exception to the Foreign Commerce Clause).

Federal Preemption

Several United States Supreme Court cases have declared state laws directed at foreign conduct, unconstitutional because they have been interpreted as conflicting with federal policy and intent. In *Crosby v. National Foreign Trade Council*, the United States Supreme Court concluded that a Massachusetts' law prohibiting its agencies from purchasing goods and services from companies that did business with Burma was unconstitutional.³⁴ At that time, the federal government was reassessing its foreign relations status with Burma in light of reports of human rights violations by the government. Congress enacted a statute that imposed a set of mandatory and conditional sanctions on Burma. This statute also authorized the President to impose these sanctions subject to the limitation that they would only limit Americans from conducting *new* business in Burma.³⁵ The existence of both the state and federal law created a direct conflict since the Massachusetts ban restricted *all* contracts between the state and companies doing business in Burma. This made the state law more overreaching than the prohibitions imposed by the President. For this reason, the United States Supreme Court struck down the law on federal preemption grounds.

SB 90 may implicate foreign relations by requiring that state agency contracts in excess of \$35,000 include a provision specifying that all call center services be staffed by persons located within the United States. To the extent that the state enters into such a contract for an amount that exceeds the threshold amounts covered by the GPA and other international agreements, it may be subject to a federal preemption challenge.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 90 could limit the number of private companies qualified to enter into procurement contracts with the state. The Department of Management Services in their agency analysis also stated that while SB 90 may create more American jobs, "large corporations providing worldwide call-center services could have substantial costs associated with requiring these corporations to alter their business models and provide these services within the United States."³⁶

³⁴*Id.* at 388.

³⁵*Id.* at 378-382; *See also, Id.* at 375 ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.").

³⁶ Department of Management Services, *Senate Bill 90 Fiscal Analysis* (December 2012) (on file with the Senate Committee on Commerce and Tourism).

C. Government Sector Impact:

SB 90 could have fiscal implications if the cost of domestic labor is higher than the cost of labor in foreign markets.

VI. Technical Deficiencies:

None.

VII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 100

INTRODUCER: Commerce and Tourism Committee and Senator Detert

SUBJECT: Employment Practices

DATE: January 15, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	Fav/CS
2.			JU	
3.			GO	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 100 prohibits the use of an applicant’s credit report or credit history for employment purposes except as provided by law. The employer may request and consider an applicant’s credit report or history if employer has a bona fide purpose for requesting the information that is substantially related to the job, notifies the applicant of the ability to request the information, and obtains permission from the applicant to request the information. The bill defines positions for which an employer has a bona fide purpose to request an applicant’s credit history or report.

The bill provides for exemptions to its provisions, including those employers who are expressly permitted or required to perform credit history background checks by state or federal law.

The bill creates a private right of action for an aggrieved person to seek declaratory relief that a practice violates the provisions of the bill and to seek to enjoin such practice. The prevailing party may recover actual damages, plus court costs. The bill provides that, upon a motion by a defendant that an action is frivolous or without merit, a court may require a plaintiff to post a bond to indemnify the defendant for any damages it may incur.

This bill creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Employment Practices

Under current law, employers are prohibited from discriminating against applicants or employees on the basis of disabilities, race or color, gender, national origin, religion, age, or genetic information.¹ These prohibitions can be found in the Americans with Disabilities Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Genetic Information Nondiscrimination Act of 2008.

Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. In some cases a job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Employers are not specifically prohibited from asking an employee or applicant his or her age or date of birth, race, national origin, gender, or status of pregnancy. In fact, it can be necessary for employers to track information about race for affirmative action purposes or applicant flow; the U.S. Equal Employment Opportunity Commission (EEOC) suggests the use of separate forms to keep information about race separate from the application. However, in general, with regard to interview questions, requests for certain information will be closely scrutinized to ensure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by a federal law. If the information is used in the selection decision and members of particular groups are excluded from employment, the inquiries can constitute evidence of discrimination. For example, unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions.

Additionally, the federal bankruptcy law makes it illegal for an employer to discriminate against an individual based on bankruptcy.²

Fair Credit Reporting Act – Employment

Under the Fair Credit Reporting Act (FCRA), employers are permitted to obtain consumer reports for employment purposes.³ The uses may include employment, promotion, reassignment or retention as an employee. The FCRA places a number of requirements on the employer regarding notification and disclosure about the use of the consumer reports and only applies to those reports obtained from a third party that are utilized to make an employment decision. Prior

¹ More information is available on the U.S. Equal Employment Opportunity Commission website, "Discrimination by Type," available at: <http://www.eeoc.gov/laws/types/index.cfm> (last visited 12/13/2012). Gender discrimination also includes issues related to pregnancy, childbirth, related medical conditions, sexual harassment, and equal pay.

² 11 U.S.C. s. 525.

³ A consumer report is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is issued or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance, employment, or any other authorized purpose. 15 U.S.C. s. 1681a(d)(1). An employment purpose is defined as "a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee." 15 U.S.C. s. 1681a(h).

to obtaining a consumer report, the employer must inform the applicant or employee that a consumer report may be used to make employment-related decisions. The notice must be written and conspicuous and cannot be part of the employment application.⁴ The employer must also receive written consent from the applicant or employee authorizing the employer to obtain a consumer report. Prior to providing a consumer report to an employer, the employer must certify to the consumer-reporting agency⁵ that:

- The report will be used for the stated, permissible purpose under the FCRA and it will not be used for any other purpose;
- It has provided the initial notice and disclosure to the employee or applicant;
- It will provide a copy of the summary of consumer rights if adverse action is to be taken based on information contained in the consumer report; and
- It will not violate any federal or state equal employment opportunity laws.

Prior to taking an adverse action⁶ against the employee or applicant based on information obtained from the consumer report, the employer must provide the applicant or employee a copy of the consumer report and a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.”

When the employer takes an adverse action against an applicant or employee that is based on information obtained from the consumer report, the employer must provide the individual with a notice of adverse action that includes:

- An explanation of the adverse action;
- The name, address, and telephone number of the consumer reporting agency that provided the report;
- A statement that the consumer reporting agency is unable to provide the individual with specific reasons for the adverse action;
- A statement that the individual may request a free copy of the report from the consumer reporting agency within 60 days of receipt of the notice; and
- A statement that the individual has the right to dispute, with the consumer-reporting agency, the accuracy or completeness of the information provided in the report.

Other States

Eight states have enacted legislation limiting employers’ use of credit report information and nineteen states have proposed legislation to restrict the use of credit reports in employment decisions.⁷ The laws of these states generally prohibit the use of credit reports in employment

⁴ If the applicant has applied by mail, telephone, computer or other similar means, the applicant must be advised by oral, written, or electronic means that a consumer report may be obtained for employment purposes and the applicant must consent orally, in writing, or electronically.

⁵ A consumer reporting agency is defined as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.” 15 U.S.C. s. 1681a(f).

⁶ Adverse action is defined as “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.” 15 U.S.C. s. 1681a(k)(1)(B)(ii).

⁷ Washington enacted legislation in 2007, Hawaii enacted legislation in 2009, Illinois and Oregon enacted legislation in 2010. California, Connecticut and Maryland enacted legislation in 2011. Vermont enacted its legislation in 2012. See National

decisions unless such inquiry is required by state or federal law, is a bona fide occupational qualification, is for a managerial or supervisory position, is for a law enforcement position, or the position is located at a financial institution.

Society for Human Resource Management

The Society for Human Resource Management conducted research in 2012 regarding the use of credit background checks. Of those surveyed, it found that slightly less than half (47 percent) conducted credit checks as part of their employment practices. The number of organizations conducting credit checks on potential employees has declined due to employers' increased awareness of scrutiny of this practice by both state and federal governments.⁸

Of those surveyed, the top reason for conducting credit checks, was to decrease or prevent theft and embezzlement and to reduce legal liability for negligent hiring. The majority of credit checks are requested after an offer for employment has been extended (58 percent) or after the interview has been conducted (33 percent). Most employers allow the applicant to provide an explanation of items contained in the credit history prior to making a hiring decision.

Although many organizations obtain credit histories as a part of the hiring process, only 14 percent of those surveyed viewed it as an important factor in making a final hiring decision. The most important factors include such attributes as previous work experience, possession of specific skills or expertise, and being perceived as a good fit with the job and organization.

Equal Employment Opportunity Commission

In October 2010, the Equal Employment Opportunity Commission (EEOC) invited public testimony regarding the use of credit histories in employment decisions. Consumer advocates indicated that use of credit histories might have a disparate impact on people of color, women, and individuals with disabilities. There was also testimony that credit reports may obtain incomplete information or errors and are poor predictors of job performance.

Employers expressed that although a credit history may be used in the hiring process, it is only one element of the employee selection process.⁹ The credit report is not usually an automatic bar to employment but opens the door to discussion of issues discovered. Testimony also indicated that it is used as a way to collect additional information about a prospective employee that would be relevant to the position being sought.

Conference of State Legislatures "Use of Credit Information in Employment 2012 Legislation," last updated 11/16/2012, available at: <http://www.ncsl.org/issues-research/banking/use-of-credit-info-in-employ-2012-legis.aspx> (last visited 12/14/2012).

⁸ For full survey results, please see:

<http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx> (last visited 12/17/2012).

⁹ See Meeting of October 20, 2010 – Employer Use of Credit History as a Screening Tool:

<http://www.eeoc.gov/eeoc/meetings/10-20-10/index.cfm> (last visited 12/17/2012).

The EEOC advises that inquiries regarding an employee or applicant's credit rating or economic status should generally be avoided due to the adverse effect it may have on females and minorities, unless the information is essential to the job in question.¹⁰

III. Effect of Proposed Changes:

Section 1 prohibits the use of an applicant's credit report or credit history for employment purposes except as provided by law. The employer may request and consider an applicant's credit report or history if the employer has a bona fide purpose for requesting the information that is substantially related to the job, notifies the applicant of the ability to request the information, and obtains permission from the applicant to request the information.

CS/SB 100 provides that a position, for which an employer has a bona fide purpose for requesting a credit report or credit history, include a position that:

- Is supervisory, defined as a position in which an individual has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or has the responsibility to direct employees, adjust their grievances, or recommend action in a manner that requires use of independent judgment;
- Is managerial, defined as a position in which the incumbent formulates and implements management policies;
- Accesses personal information of customers, employees and employers, except personal information customarily provided in a retail transaction;
- Has a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;
- Involves the use of an expense account or a corporate debit or credit card;
- Has access to non-public corporate information, including trade secrets or other information which is not generally known or ascertainable and by which a business can obtain economic advantage over competitors; or
- Involves public safety, such as law enforcement or other positions involving enforcement of state or federal crimes.

Employers that are expressly permitted or required, by state or federal law, to perform an inquiry into a person's credit history are exempt from the requirements of the bill. Also exempt are financial institutions and their affiliates or subsidiaries that accept federally insured deposits, credit unions or state-chartered banks registered with the Office of Financial Regulation, or an entities that are registered with the United States Security and Exchange Commission as investment advisories or their affiliates.

The bill provides that an aggrieved individual may seek declaratory relief that an act or practice violates the protections provided in the bill and to enjoin the continuance of such practice. The CS also provides a private right of action for a person who has suffered a loss under these provisions, and allows for the recovery of actual damages and court costs if the individual prevails. If the defendant alleges such suit is frivolous or without merit, the court may require the plaintiff to post a bond in an amount to indemnify the defendant for any damages incurred, upon

¹⁰For more information, please see: http://www.eeoc.gov/laws/practices/inquiries_credit.cfm (last visited 12/17/2012).

finding a reasonable necessity. However, this provision does not apply to an enforcement agency.

The relief provided under the provisions of this bill is in addition to any remedies allowed under the Fair Credit Reporting Act for failure to adhere to any of its requirements, including compliance with state laws governing the use of consumer reports or any other allowable remedies.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Employers may become subject to the provisions of the Fair Credit Reporting Act if they obtain credit history or credit reports under the provisions of this CS.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 15, 2013:

The committee substitute does the following:

- Specifies that a credit report may be requested when the information will be used for a permissible purpose; the employer has a bona fide reason related to the job for requesting the information; and the applicant was informed and consented to the request; and
- Clarifies that only a prevailing party can collect damages and court costs.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



770208

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/15/2013	.	
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	.	
	.	

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment

Delete lines 25 - 31
and insert:

(a) The information will be used for a purpose other than one prohibited by this section;

(b) The employer has a bona fide purpose for requesting or using information in the credit report or credit history which is substantially related to the job; and

(c) The ability to request such information was disclosed to the applicant and the employer obtained permission from the applicant to request the information.



151904

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/15/2013	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment

Delete lines 83 - 85
and insert:

(b) A person who has suffered a loss as a result of a violation of this section and prevails may recover actual damages, plus court costs.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15
Meeting Date

Topic SB 100 Employment Practices

Bill Number SB 100
(if applicable)

Name Jim Daughton

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Manroe St

Phone 205-9000

TALLI FL 32308
City State Zip

E-mail JIM.DAUGHTON@NETZILAW.COM

Speaking: For Against Information

Representing CONSUMER DATA INDUSTRY ASSN (CDIA)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7/15/13
Meeting Date

Topic Employment Practices

Bill Number SB 100
(if applicable)

Name Rich Templin

Amendment Barcode _____
(if applicable)

Job Title _____

Address 135 S. Monroe
Street

Phone 850 - 224 - 6926

Tallahassee FL 32303
City State Zip

E-mail rtemplin@flaflc.org

Speaking: For Against Information

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

January 9, 2013

Chairwoman Detert
416 Senate
404 S. Monroe Street
Tallahassee, FL 32399

RECEIVED

JAN 14 2013

COMMERCE

Dear Chairwoman Detert:

I am respectfully requesting permission to be excused from the January 15th, Commerce and Tourism Committee meeting. I will not be in town for committee week due to family reasons.

Thank you for this consideration in advance,

Sincerely,

Handwritten signature of Kelli Stargel in cursive.

Handwritten signature of Jenny Detert in cursive.

Kelli Stargel
Senator, District 15

Cc: Jennifer Hrdlicka/Staff Director
Patty Blackburn/AA

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Caption: Senate Commerce Committee

Case:

Judge:

Type:

Started: 1/15/2013 10:00:24 AM

Ends: 1/15/2013 11:56:10 AM

Length: 01:55:47

10:00:44 AM Roll call
10:02:01 AM Senator Smith
10:02:07 AM SB 90
10:05:14 AM Vote SB 90
10:05:35 AM Bill passes
10:05:43 AM Tab 1 - Reemployment Assistance
10:05:55 AM Marshall Stranberg Interim Executive Director, Department of Revenue
10:14:27 AM Sen Hays
10:22:01 AM Sen Abruzzo
10:23:24 AM Sen Simpson
10:25:55 AM Sen Bean
10:27:07 AM Mr. Stranberg concludes
10:27:23 AM Tom Clendenning, Director of the Division of Workforce Services, Department of Economic Opportunity
10:30:41 AM Sen Hays
10:36:39 AM Sen Ring
10:38:24 AM Sen Thompson
10:42:02 AM Sen Abruzzo
10:58:28 AM Sen Hays
11:02:13 AM Sen Bean
11:08:19 AM Mr. Clendenning concludes
11:08:35 AM Karen Woodall, Director, Florida Center for Fiscal & Economic Policy
11:13:03 AM Sen Margolis
11:14:17 AM Tab 2
11:14:30 AM Viva Florida 500
11:14:41 AM Kerri Post, Deputy Secretary Cultural, Historical & Libraries, Florida Department of State
11:23:27 AM Ms. Post concludes
11:24:17 AM Sen Thompson
11:26:05 AM Sen Hays
11:27:31 AM Sen Abruzzo Vice Chair
11:27:45 AM Sen Deter explains SB 100
11:29:28 AM Sen Deter explains amendments
11:31:38 AM Sen Bean
11:32:23 AM Amendments adopted
11:34:33 AM Rich Templin, Florida AFL-CIO
11:37:57 AM Jim Daughter, Consumer Data Industry Assn (CDIA) waive in support
11:38:36 AM Sen Deter waives close
11:38:49 AM Vote CS SB 100
11:39:21 AM Passes
11:39:32 AM Sen Deter resumes Chair
11:39:41 AM Will Seccombe, President and CEO, Visit Florida
11:47:48 AM Sen Richter
11:52:51 AM Sen Hays
11:55:44 AM Mr. Seccombe concludes.
11:55:56 AM Adjourn.