

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, February 22, 2011
TIME: 1:00 —3:00 p.m.
PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Gaetz, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Consideration of proposed committee bill (Interim Project 2011-107 - Identification, Review, and Recommendations Relating to Obsolete Statutory References to the Former Florida Departments of Labor and Employment Security, and Commerce):		
	SPB 7052	Obsolete References and Programs; Removes an obsolete reference to the Department of Commerce. Updates a reference to the Department of Commerce to refer instead to the Office of Tourism, Trade, and Economic Development. Removes an obsolete reference to the Department of Labor and Employment Security. Repeals provisions relating to agreements of the Department of Labor and Employment Security with county tax collectors. Updates references to the Workforce Development Board of Enterprise Florida, Inc., etc.	
2	SB 728 Detert (Compare CS/H 7005, S 1058)	Unemployment Compensation; Increases the number of employer payroll service providers who qualify for access to unemployment tax information by filing a memorandum of understanding. Requires that an applicant for benefits complete an initial skills review. Revises provisions relating to the effect of criminal acts on eligibility for benefits. Requires an employer to pay a fee for paying contributions on a quarterly schedule. Provides for repayment of benefits in cases of agency error, etc.	
		CM 02/07/2011 Temporarily Postponed CM 02/22/2011 JU BC	

3 Facilitating Economic Development in Florida: Assessments and Strategies Related to Tourism:

Chris Thompson, President & Ceo, VISIT FLORIDA

Robert Skrob, Executive Director, FL Association of Convention and Visitor Bureaus

Carol Dover, President & CEO, Florida Restaurant & Lodging Association

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 22, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Sharon Long, President, Florida Cultural Alliance		
	John McKay, former Senate President, discussing the impact of arts and culture in Sarasota and Manatee Counties		



The Florida Senate

Interim Report 2011-107

October 2010

Committee on Commerce

IDENTIFICATION, REVIEW, AND RECOMMENDATIONS RELATING TO OBSOLETE STATUTORY REFERENCES TO THE FORMER FLORIDA DEPARTMENTS OF LABOR AND EMPLOYMENT SECURITY, AND COMMERCE

Issue Description

The Division of Statutory Revision of the Office of Legislative Services reviews Florida Statutes, in part, to remove inconsistencies and otherwise improve their clarity and facilitate their correct and proper interpretation. Any revision the division makes to a statute, either complete, partial, or topical, is accompanied by revision and history notes relating to the same, showing the changes made therein and the reason for such recommended change.

The Division of Statutory Revision maintains an informal list of statute issues, which may include notes and recommendations to clarify and remove inconsistencies in Florida Statutes. Several issues related to references in statutes to the former Department of Labor and Employment Security or the former Florida Department of Commerce still exist in the Florida Statutes.

The Department of Labor and Employment Security was abolished by the Legislature in 2002.¹ Chapter 96-320, L.O.F., provided for the dissolution of the Florida Department of Commerce, effective December 31, 1996.

This interim report will explore the structure of these former departments and how their structures were ultimately dismantled and redistributed to other areas of Florida government. This framework is intended to serve as a resource for use in the examination of current references to the former Department of Labor and Employment Security or the former Florida Department of Commerce in Florida Statutes and assist in determining potential solutions to update such references.

Background

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.² It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.³

The process for the abolishment of DLES began in the 1999 Legislative Session,⁴ and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

¹ Chapter 2002-194, L.O.F.

² Chapter 78-201, L.O.F.

³ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 230, dated April 19, 1999.

⁴ Chapter 99-240, L.O.F.

Division of DLES	Purpose	Transferred or Repealed⁵	Chapter Law
Division of Administrative Services	Provided support services through four functional units: (a) Human Resource Management; (b) Administrative Support; (c) Management Information Systems; and (d) the Office of Training and Development.	<ul style="list-style-type: none"> • Transferred administration of labor organizations, migrant and farm labor registration, and other workplace regulation functions to the Department of Business and Professional Regulation • Transferred the Office of Information Systems to the State Technology Office • Other support services were transferred as appropriate 	Ch. 2002-194, L.O.F.
Division of Blind Services	Provided rehabilitation, job placement, and follow-up services designed to find employment for Florida's blind residents.	<ul style="list-style-type: none"> • Transferred to the Department of Education 	Ch. 99-240, L.O.F. Ch. 2002-22, L.O.F.
Division of Jobs and Benefits	Helped workers find jobs and assisted employers with recruitment of qualified applicants. The division administered a number of programs, including the following: Job Training Partnership Act; Apprenticeship; Child Labor; Labor Market Information; Professional Placement Network; WAGES/WORKPay\$; and School-to-Work.	<ul style="list-style-type: none"> • Transferred to the Agency for Workforce Innovation, Workforce Florida, Inc., and the Department of Children and Family Services, as appropriate. • Transferred apprenticeship training to the Department of Education • Transferred administration of labor organizations, and migrant, farm worker, and child labor laws to the Department of Business and Professional Regulation 	Ch. 2000-165, L.O.F. Ch. 2002-194, L.O.F.
Division of Safety	Performed worksite inspections, and educated employers, employees, and the public about workplace safety issues.	<ul style="list-style-type: none"> • Repealed July 1, 2000 	Ch. 99-240, L.O.F.
Division of Unemployment Compensation	Administered the federally-mandated insurance program that pays wage-replacement benefits to unemployed workers.	<ul style="list-style-type: none"> • Transferred to the Agency for Workforce Innovation (and required the agency to contract with the Department of Revenue for tax collection services) 	Ch. 2000-165, L.O.F.

⁵ These are not necessarily the current locations for such programs or authority.

<p>Division of Vocational Rehabilitation (including the Office of Disability Determinations)</p>	<p>Assisted persons with physical or mental impairment gain employment. The Office of Disability Determinations was a federally funded program which was responsible for determining medical eligibility for Social Service Disability Insurance and Supplemental Security Income Benefits. The office also made appropriate referrals to the Division of Vocational Rehabilitation and programs within the Department of Health to assist claimants in obtaining necessary health care and regaining employment security.</p>	<ul style="list-style-type: none"> • Effective January 1, 2000, the brain and spinal cord injury program and the Office of Disability Determinations were transferred to the Department of Health. • Transferred to Department of Education 	<p>Ch. 99-240, L.O.F. Ch. 2002-22, L.O.F.</p>
<p>Division of Workers' Compensation</p>	<p>Assisted in the delivery of benefit payments and provided rehabilitative and support services to injured workers to facilitate their reemployment.</p>	<ul style="list-style-type: none"> • Transferred to the Department of Insurance; • Also transferred workers' compensation medical services to the Agency for Health Care Administration; and • Workers' compensation rehabilitation and reemployment services to the Department of Education 	<p>Ch. 2002-194, L.O.F. Ch. 2002-262, L.O.F.</p>
<p>Office of the Judges of Compensation Claims</p>	<p>Adjudicated disputed facts and resolved disputed issues regarding workers' compensation claims.</p>	<ul style="list-style-type: none"> • Transferred to the Division of Administrative Hearings 	<p>Ch. 2002-194, L.O.F.</p>
<p>Public Employees Relations Commission</p>	<p>Responsible for enforcement of constitutional and statutory provisions giving public employees rights in bargaining with their employer.</p>	<ul style="list-style-type: none"> • Transferred to the Department of Management Services 	<p>Ch. 2001-43, L.O.F.</p>
<p>Unemployment Appeals Commission</p>	<p>Responsible for deciding contested appeals for Unemployment Compensation.</p>	<ul style="list-style-type: none"> • Transferred to the Agency for Workforce Innovation 	<p>Ch. 2002-194, L.O.F.</p>
<p>Workers' Compensation Oversight Board</p>	<p>Formulated proposed workers' compensation and held hearings.</p>	<ul style="list-style-type: none"> • Repealed July 1, 2002 	<p>Ch. 2002-194, L.O.F.</p>
<p>Minority Business Advocacy and Assistance Office</p>	<p>Oversees the state's minority business enterprise program, including certifying participants in the program</p>	<ul style="list-style-type: none"> • Renamed the Office of Supplier Diversity and transferred to the Department of Management Services 	<p>Ch. 2000-286, L.O.F.</p>
<p>Florida Advisory Council on Small and Minority Business Development</p>	<p>Advised and assisted the secretary of DLES in carrying out duties related to minority businesses and economic and business development</p>	<ul style="list-style-type: none"> • Neither: the council still statutorily resides with DLES; however, it currently operates within the Department of Management Services 	<p>Ch. 2000-286, L.O.F.</p>

Florida Department of Commerce

The Florida Department of Commerce (FDC) was created in 1969.⁶ It consisted of three divisions and administratively housed or staffed a number of independent entities. It was “the state agency with the primary responsibility for promoting and developing the general business, trade, and tourism components of the state economy.”⁷

FDC was abolished in 1996 in a reorganization of Florida’s economic development structure.⁸ The department’s functions were either repealed or transferred to various other agencies. In general, the reorganization transferred economic development functions to Enterprise Florida, Inc. (EFI); tourism development and marketing functions to the Florida Commission on Tourism, Inc.; and all other functions that were considered to be “governmental in nature and [could not] effectively be transferred to public private partnerships” to the Office of Tourism, Trade, and Economic Development (OTTED).⁹

Division of FDC	Purpose	Transferred or Repealed¹⁰	Chapter Law
Division of Economic Development (included the Florida State Rural Development Council, and the Bureau of Business Assistance)	Responsible for economic development in Florida, including the promotion of Florida businesses and goods, assisting businesses locating or relocating in Florida, and creating high-wage employment opportunities for Floridians Responsibilities included: assisting small and minority businesses; oversight and promotion of the solar energy industry in Florida; the Quick-Response Training Program; the Economic Development Transportation Fund; qualified target industry businesses; enterprise zones; and the Jobs Siting Act	<ul style="list-style-type: none"> • Transferred to the Office of Tourism, Trade, and Economic Development • Transferred the Quick Response Training Program to Enterprise Florida, Inc. • Transferred solar energy responsibilities to Enterprise Florida, Inc., and the Department of Community Affairs • Created a rules ombudsman within the Executive Office of the Governor to monitor for adverse impacts on business and job creation 	Ch. 96-320, L.O.F.
Division of Tourism	Operated advertising and promotional programs for promoting Florida including the agricultural, industrial, and tourism advantages of the state	<ul style="list-style-type: none"> • Transferred to the Florida Commission on Tourism, Inc., administratively housed in the Executive Office of the Governor 	Ch. 96-320, L.O.F.
Division of International Trade and Development	Responsible for promoting Florida tourism and economic development, gathering information on trade data and opportunities in foreign countries, and assisting foreign firms to invest in Florida Responsibilities included: foreign international trade offices; coordination with the Florida Export Finance Corporation; participation in the	<ul style="list-style-type: none"> • Transferred to the Office of Tourism, Trade, and Economic Development • Transferred coordination with the Florida Export Finance Commission and participation in the International Trade Data Resource and Research Center to Enterprise Florida, Inc. 	Ch. 96-320, L.O.F.

⁶ Section 17, ch. 69-106, L.O.F.

⁷ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.

⁸ Chapter 96-320, L.O.F.

⁹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.

¹⁰ These are not necessarily the current locations for such programs or authority.

	International Trade Data Resource and Research Center; and outreach activities in Latin America and the Caribbean Basin	<ul style="list-style-type: none"> Created the International Trade and Economic Development Board within Enterprise Florida, Inc., to assist and advise in the development of Florida's domestic and international economic development policy 	
Florida Entertainment Commission (Direct Support Organization)	Assisted FDC in the promotion and development of the motion picture, television, video, recording, and related entertainment industries	<ul style="list-style-type: none"> Transferred to the Office of Tourism, Trade, and Economic Development The Commission reorganized itself as the Florida Entertainment Industry Council, Inc. 	Ch. 96-320, L.O.F.
Florida Sports Foundation (Direct Support Organization)	Assisted FDC in improving the economic presence of sports related industries in Florida	<ul style="list-style-type: none"> Transferred to the Office of Tourism, Trade, and Economic Development 	Ch. 96-320, L.O.F.
Economic Development Advisory Council	Made recommendations on economic development in Florida, including future growth, impact of government on doing business in the state, and education	<ul style="list-style-type: none"> Repealed (Enterprise Florida, Inc., had been performing similar functions since it was created in 1992) 	Ch. 96-320, L.O.F.
Commission on Minority Economic and Business Development (included the Minority Business Advocacy and Assistance Office and the Florida Council on Small and Minority Business Development)	Central oversight body for minority business enterprise development efforts, including certification of minority business enterprises	<ul style="list-style-type: none"> Repealed; the Minority Business Advocacy and Assistance Office was transferred to the Department of Labor and Employment Security (see above chart) Renamed the Florida Council on Small and Minority Business Development as the Florida Advisory Council on Small and Minority Business Development and transferred to DLES (see above chart) 	Ch. 96-320, L.O.F.
Black Business Investment Board	Assisted in the development and expansion of black business enterprises	<ul style="list-style-type: none"> Transferred to the Office of Tourism, Trade, and Economic Development 	Ch. 96-320, L.O.F.
Enterprise Zone Interagency Coordinating Council	Advised and assisted in the management and development of enterprise zones	<ul style="list-style-type: none"> Transferred to the Office of Tourism, Trade, and Economic Development 	Ch. 96-320, L.O.F.
Florida Film and Television Investment Board	Promoted and developed the film and television industry in Florida	<ul style="list-style-type: none"> Transferred to the Office of Tourism, Trade, and Economic Development 	Ch. 96-320, L.O.F.

Florida Commission on Tourism (included the Florida Tourism Industry Marketing Corporation, a direct-support organization)	Advisory body of industry representatives to promote and enhance Florida tourism	<ul style="list-style-type: none"> • Transferred to the Florida Commission on Tourism, Inc. • Required establishment of the Florida Tourism Industry Marketing Corporation (VISIT FLORIDA) 	Ch. 96-320, L.O.F.
Recycling Markets Advisory Committee	Coordinated policy and overall strategic planning for recovered materials among state agencies and the private sector	<ul style="list-style-type: none"> • Transferred to the Office of Tourism, Trade, and Economic Development 	Ch. 96-320, L.O.F.
Florida Defense Conversion and Transition Commission	Advised the Governor and Legislature in the development and implementation of military base reuse and transition policy	<ul style="list-style-type: none"> • Transferred to the Office of Tourism, Trade, and Economic Development 	Ch. 96-320, L.O.F.

Findings and/or Conclusions

Methodology

The professional staff of the Senate Commerce Committee searched Florida Statutes for terms related to the former Department of Labor and Employment Security and the former Department of Commerce. Staff also utilized the Division of Statutory Revision's informal list of statute issues to identify obsolete references.

Upon creating a list of obsolete references, staff prepared a spreadsheet listing each provision, potential agencies that may currently have jurisdiction over the statute, any historical information about the purpose of the statute or reference, and possible recommendations related to updating the statute. This information was provided to relevant agencies to seek guidance and information about the obsolete references and potential recommended solutions for updating the statute in question.

Findings

Staff found that, despite the decentralization and abolishment of the departments, references to the former Department of Labor and Employment Security and former Department of Commerce still exist in current Florida Statutes.

Further, staff found references in the Florida Statutes to obsolete programs or entities that were transferred to one of the two former departments. The Florida State Employment Service and Florida Council for the Blind both pre-date the former Department of Labor and Employment Security, however, it appears that their responsibilities were transferred or merged into the department. Because the responsibilities of these programs were eventually part of the Department of Labor and Employment Security, staff proceeded to research the vitality of the provisions which still reference these programs.

Additionally, staff discovered references to workforce programs that were formerly housed in Enterprise Florida, Inc., including the Workforce Development Board and its predecessor, the Enterprise Florida Jobs and Education Partnership. Although not specifically within the former Department of Commerce, these programs were also amended at the time that the Legislature was remodeling its economic development policies.¹¹

Some obsolete references also required staff to look into the purpose of entire programs, such as the Trench Safety Act¹² and the asbestos management program in public-buildings owned by state agencies.¹³

¹¹ Chapter 96-320, L.O.F.

¹² Part III, ch. 553, F.S.

¹³ Sections 255.551 - 255.563, F.S.

Options and/or Recommendations

In total, there are 35 references to the former Department of Labor and Employment Security, or one of its former programs, and there are 10 references to the Florida Department of Commerce still remaining in Florida Statutes. The professional staff of the Senate Commerce Committee found that some references are still necessary in statute, while others should be repealed or amended to reference the current agency or program.¹⁴

Department of Labor and Employment Security

Retain Reference in Statute

Statute	Recommended Change
§122.02(4)(a) <i>Determination of years of service in the State and County Officers and Employees' Retirement System (SCOERS)</i>	The reference is to the Florida State Employment Service (merged into DLES in 1983) This reference should remain in statute DMS administers ch. 122, F.S. SCOERS was closed to new members in 1970. The agency indicated that leaving the reference may aid individuals who are still active under SCOERS; but also suggested that if the reference was changed, then a footnote should be added to identify the former reference However, AWI suggested the reference be changed to "Public Employment Service"
§122.20(1) <i>Permits certain "blind or partially sighted persons" to participate in SCOERS</i>	This reference is to the Council for the Blind (merged into DLES Division of Blind Services) This reference should remain in statute DMS administers ch. 122, F.S. SCOERS was closed to new members in 1970. The agency indicated that leaving the reference will aid individuals who are still eligible for SCOERS through this statute
§440.60(3) <i>Application of Law for a particular time period for acts of the former Division of Workers' Compensation</i>	This reference should remain in statute DFS affirmed
§443.141(3)(f) <i>Reproductions of documents for collection proceedings for unemployment taxes</i>	This reference should remain in statute AWI affirmed

Delete the Reference or Repeal the Statute/Provision

Statute	Recommended Change
§45.031(7)(a) <i>Judicial sales procedure where agency was named defendant (unemployment tax)</i>	Delete the reference to DLES from the statute DOR recommended deleting the reference – stated that it would not affect any cases However, AWI recommended revisiting the issue in 2023, 20 years after the DLES was abolished

¹⁴ A detailed analysis is on file with the Senate Commerce Committee.

Statute	Recommended Change
§69.041(4)(a) <i>DOR rights to pursue certain liens</i>	Delete the reference to DLES from the statute DOR recommended deleting the reference – stated that it would not affect any cases However, AWI recommended revisiting the issue in 2023, 20 years after the DLES was abolished
§252.87(7) <i>Supplemental state reporting requirements of Emergency Planning and Community Right-to-Know Act (EPCRA)</i>	Delete the reference to DLES from the statute DCA had no comment
§252.937(2) <i>Coordination of state agencies for implementation of the Accidental Release Prevention Program (Clean Air Act)</i>	Delete the reference to DLES from the statute DCA had no comment
§287.09451(4)(h), (o)2. <i>Office of Supplier Diversity</i>	Delete the references to DLES from the statute DMS recommended that no change be made to the statute at this time, or that the reference to DLES be removed
§288.038 <i>Allows DLES to enter into an agreement with county tax collectors to accept applications for licensure or registration¹⁵</i>	Repeal this statute AWI and OTTED affirmed
§440.49(9)(b)2. <i>Assessments for the Special Disability Trust Fund</i>	Repeal the provisions referencing DLES from the statute DFS affirmed
§446.60 <i>Assistance for displaced local exchange telecommunications company workers</i>	Repeal this statute WFI indicated that they do not perform this function AWI agreed that the provision may be outdated and beyond the timeline intended by the Legislature
§553.62 <i>State standard for trench safety</i>	Delete the reference to DLES and rulemaking authority from the statute DOT affirmed

¹⁵ Similar language appears in ss. 288.037, 455.213(1), and 456.013(1)(a), F.S., for different state agencies.

Statute	Recommended Change
§597.006(1) <i>Aquaculture Interagency Coordinating Council</i>	Delete the reference to DLES from the statute

Update Reference to Appropriate Agency

Statute	Recommended Change
§252.85(1) <i>EPCRA fee based on number of employees</i>	Change the reference to DLES to “AWI or its tax collection service provider” AWI and DOR affirmed DCA had no comment
§287.09431 Introduction, Art. II (2) – (4) <i>Statewide and interlocal agreement on certification of business concerns for the status of minority business enterprise</i>	Change the references to DLES to DMS DMS recommended that no change be made to the statute at this time
§287.0947(1) <i>Florida Advisory Council on Small and Minority Business Development</i>	Update the statute to reflect current status of the program, and delete references to DLES as appropriate The council is administratively housed within DMS DMS recommended that no change be made to the statute at this time, or that the reference to DLES be removed
§288.021(1) <i>Agency economic development liaisons</i>	Change the references to DLES to AWI AWI and OTTED affirmed
§409.2576(1), (3)(b), (8) <i>State Directory of New Hires</i>	There are 3 references to the DLES in the statute The first 2 are unnecessary at this time, since the date specified has passed, and could be deleted For the third, change the reference to DLES to “AWI or its tax collection service provider” AWI and DOR affirmed
§414.24 <i>Integrated welfare reform and child welfare services</i>	Change the references to DLES to AWI DCF affirmed
§414.40(2)(d) <i>Stop Inmate Fraud Program – agency coordination</i>	Change the reference to DLES to AWI AWI and FDLE affirmed

Statute	Recommended Change
§440.385(5) <i>Florida Self-Insurers Guaranty Association – plan of operation</i>	Change reference to DLES to DFS, and repeal obsolete language as appropriate DFS affirmed
§450.161 Introduction <i>Chapter on child labor not to affect apprentices</i>	Change reference to the Division of Jobs and Benefits to DOE DOE affirmed
§489.1455(1)(b) <i>Construction contracting journeymen reciprocity standards</i>	Change the reference to DLES to “the registration agency defined in 29 C.F.R. 29.2” – or “DOE, state apprenticeship agency, or USDOL” DOE recommended changing the reference to DOE; or to “registration agency defined in 29 C.F.R. 29.2” – or “DOE, state apprenticeship agency, or USDOL” because it is a national program with reciprocity DBPR stated that it does not have jurisdiction over this provision
§489.5335(1)(b) <i>Electrical and alarm system contracting journeymen reciprocity standards</i>	Change the reference to DLES to “the registration agency defined in 29 C.F.R. 29.2” – or “DOE, state apprenticeship agency, or USDOL” DOE recommended changing the reference to DOE; or to “registration agency defined in 29 C.F.R. 29.2” – or “DOE, state apprenticeship agency, or USDOL” because it is a national program with reciprocity DBPR stated that it does not have jurisdiction over this provision
§944.012(5) <i>Legislative intent for the state correctional system & calls for coordination of agency efforts</i>	The reference is to the Florida State Employment Service (merged into DLES in 1983) Change the reference to “public employment service” AWI, DOC, and DMS affirmed

No Recommendation

Statute	Recommended Change
§112.044(2)(d), (5) <i>Florida’s age discrimination statutes, requiring each [public] employer, employment agency [procuring public employees], and labor organization to post a certain notice</i>	Neither DMS’s Division of Human Resource Management, AWI’s Office of Civil Rights, nor the Florida Commission on Human Relations currently perform this function AWI indicated that age discrimination in employment as addressed in Florida statutes is more comprehensive and the protections available to individuals are broader than those available under Federal regulations The DMS Division of Human Resource Management agrees with the recommendation to repeal the reference to DLES and instead refer to the United States Department of Labor and the Equal Employment Opportunity Commission for the required notice to be posted However, if the Legislature determined that a different notice was necessary to be posted by employers, then another state agency would need to be designated to fulfill this purpose

Statute	Recommended Change
§255.551 - 255.563 <i>Asbestos in state owned buildings</i>	<p>It appears that no state agency currently performs the functions required by this part</p> <p>DMS concurs with the removal of ss. 255.552, 255.555, and 255.563, F.S.</p> <p>DMS strongly recommends retaining the technical content of ss. 255.551, 255.553, 255.5535, and 255.556-562, F.S., but moving them to be managed by a regulator in the environmental arena.</p> <p>Currently, EPA, state (DEP), and local air program inspectors inspect renovation and demolition sites to determine compliance with the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP)</p>
§469.003(2)(b) <i>Certified asbestos surveyors prior to October 1, 1987</i>	<p>DBPR and DMS indicated that repeal of this provision would be OK with them</p> <p>Another idea raised by professional staff of the Senate Regulated Industries Committee is to just eliminate any reference to DLES – “any person engaged in the business of asbestos surveys prior to October 1, 1987... who has complied with the training...” etc.</p>

Florida Department of Commerce

Retain Reference in Statute

Statute	Recommended Change
§288.901(2) <i>Enterprise Florida, Inc. – employ/lease individuals from FDC</i>	<p>This reference should remain in statute</p> <p>EFI and DMS indicated that there are still 3 individuals employed under this provision; the reference is necessary until they retire</p> <p>This provision also references the “Workforce Development Board established under s. 288.9620” which was transferred to s. 445.004, F.S., which created Workforce Florida, Inc., and designated it as the state’s Workforce Investment Board (ch. 2000-165, L.O.F.)¹⁶</p>

Delete the Reference or Repeal the Statute/Provision

Statute	Recommended Change
§14.2015(8) <i>OTTED collection of visitor data</i>	<p>Delete the reference to FDC from the statute</p> <p>OTTED suggested deleting the reference because the methodology was updated in 2009</p>
§288.035(1) <i>Economic development expenses that public utilities are permitted to recover</i>	<p>Delete the reference to FDC from the statute, and update the statute as necessary</p> <p>OTTED affirmed</p> <p>See SB 1696 (2010)</p>
§288.1162(6)(a), (8) <i>Certification of professional sports franchise facilities</i>	<p>Repeal this statute, and update the associated revenue statute (s. 212.20, F.S.)</p> <p>OTTED stated that eligibility for the program is closed; they recommend repealing the statute, as long as it doesn’t impact funds still flowing to the certified applicants</p> <p>See SB 1696 (2010)</p>

¹⁶ Section 331.369, F.S., also references “the Workforce Development Board of Enterprise Florida, Inc.,” in subsections (2), (4), and (5). These obsolete references should be updated to reflect the current workforce entity, Workforce Florida, Inc.

Statute	Recommended Change
§288.1168(1), (2) <i>Professional golf hall of fame facility</i>	<p>Repeal this statute, and update the associated revenue statute (s. 212.20, F.S.)</p> <p>OTTED is required to annually review the facility’s generic Florida advertising but there are no financial penalties involved; they recommend repealing the statute, as long as it doesn’t impact funds still flowing to the certified facility.</p> <p>See SB 1696 (2010)</p>
§288.1229(7) <i>OTTED contract with sports-related DSO</i>	<p>Delete the reference to FDC from the statute</p> <p>OTTED recommended repealing the reference and related obsolete language</p>
§446.60 <i>Assistance for displaced local exchange telecommunications company workers</i>	<p>Repeal this statute</p> <p>WFI indicated that they do not perform this function</p> <p>AWI agreed that the provision may be outdated and beyond the timeline intended by the Legislature</p> <p>This provision also references the “the Enterprise Florida Jobs and Education Partnership” which was transferred to EFI and renamed the Workforce Development Board (s. 112, ch. 96-320, L.O.F.), and was subsequently transferred to s. 445.004, F.S., which created Workforce Florida, Inc., and designated it as the state’s Workforce Investment Board (ch. 2000-165, L.O.F.)¹⁷</p>

Update Reference to Appropriate Agency

Statute	Recommended Change
§20.18(4)(b) <i>Directs Department of Community Affairs to work with FDC to develop employment opportunities</i>	<p>Change the reference to FDC to OTTED</p> <p>DCA affirmed</p>
§288.1169 <i>International Game Fish Association World Center facility</i>	<p>Update the statute to reflect current status of the program, and delete FDC as appropriate</p> <p>OTTED is required to complete the required 10-year recertification in 2011; they recommended waiting until at least 2012 to repeal the statute</p> <p>See SB 1696 (2010)</p>
§377.711(5)(h) <i>Recommendations of the Southern States Energy Compact</i>	<p>Change the reference to FDC to the standard language of the compact, as other states involved have implemented in their state laws: <u>Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.</u></p> <p>Section 377.712(3), F.S., deals with state agencies cooperation with the Southern States Energy Board, and references “the department,” which may be referencing FDC; this reference could be changed permit <u>any</u> department to cooperate with the Board, so long as it has approval of either the Governor or the Department of Health</p>

¹⁷ Section 464.203(1)(d), F.S., references the Enterprise Florida Jobs and Education Partnership Grant. This obsolete reference should be updated to reflect the current practice.

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: SPB 7052
INTRODUCER: Commerce and Tourism Committee
SUBJECT: Obsolete References and Programs
DATE: February 21, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SPB 7052 is the result of a review of obsolete references in Florida Statutes to the former Departments of Labor and Employment Security, and Commerce.

There are 35 references to the former Department of Labor and Employment Security, or one of its former programs, and there are 10 references to the Florida Department of Commerce still remaining in Florida Statutes. Additionally, other statutes have been identified that relate to programs related to or within a department that were obsolete prior to department abolishment.

This proposed committee bill amends the following sections of the Florida Statutes: 14.2015, 20.18, 45.031, 69.041, 112.044, 212.20, 252.85, 252.87, 252.937, 287.09431, 287.09451, 287.0947, 288.021, 288.035, 288.1229, 288.1169, 331.369, 377.711, 377.712, 409.2576, 414.24, 414.40, 440.385, 440.49, 450.161, 464.203, 489.1455, 489.5335, 553.62, 597.006, 944.012, and 944.708.

This proposed committee bill repeals the following sections of the Florida Statutes: 288.038, 288.1162, 288.1168, 446.60, 255.551-255.563, and 469.003(2)(b).

II. Present Situation:

Senate Interim Report 2011-107, Identification, Review, and Recommendations Relating to Obsolete Statutory References to the former Florida Departments of Labor and Employment Security, and Commerce:¹

- Reviewed the abolishment of the programs and divisions of the former departments;
- Identified current Florida Statutes that referenced these past programs, divisions, or departments;
- Reviewed the obsolete statutory references identified, researched the underlying legislative history of each reference, and worked with appropriate state agencies and other Senate committees to develop recommendations to resolve the obsolete references; and
- Recommended that the references be either retained in statute, deleted or repealed from the statute or provision, or updated to reference the appropriate agency or current practice.

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.² It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.³

The process for the abolishment of DLES began in the 1999 Legislative Session,⁴ and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

Senate Interim Report 2011-107 sets forth a detailed chart of the divisions and programs of the former DLES and whether they were transferred or repealed (including the chapter law numbers).

Florida Department of Commerce

The Florida Department of Commerce (FDC) was created in 1969.⁵ It consisted of three divisions and administratively housed or staffed a number of independent entities. It was “the state agency with the primary responsibility for promoting and developing the general business, trade, and tourism components of the state economy.”⁶

FDC was abolished in 1996 in a reorganization of Florida’s economic development structure.⁷ The department’s functions were either repealed or transferred to various other agencies. In

¹ Identification, Review, and Recommendations Relating to Obsolete Statutory References to the Former Florida Departments of Labor and Employment Security, and Commerce. The Florida Senate Committee on Commerce. Interim Report 2011-107 (October 2010). Available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-107cm.pdf> (last visited 2/15/2011).

² Chapter 78-201, L.O.F.

³ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 230, dated April 19, 1999.

⁴ Chapter 99-240, L.O.F.

⁵ Section 17, ch. 69-106, L.O.F.

⁶ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.

⁷ Chapter 96-320, L.O.F.

general, the reorganization transferred economic development functions to Enterprise Florida, Inc. (EFI); tourism development and marketing functions to the Florida Commission on Tourism, Inc.; and all other functions that were considered to be “governmental in nature and [could not] effectively be transferred to public private partnerships” to the Office of Tourism, Trade, and Economic Development (OTTED).⁸

Senate Interim Report 2011-107 sets forth a detailed chart of the divisions and programs of the former FDC and whether they were transferred or repealed (including the chapter law numbers).

III. Effect of Proposed Changes:

Senate Interim Report 2011-107 sets forth recommendations that some references are still necessary in statute, while others should be repealed or amended to reference the current agency or program.⁹ These recommendations are implemented in this bill in the following manner:

Delete the Reference

Statutes where a reference to DLES or FDC is deleted are:

- s. 14.2015(8), F.S. (Section 1);
- s. 45.031(7)(a), F.S. (Section 3);
- s. 69.041(4)(a), F.S. (Section 4);
- s. 112.044(2)(d), F.S. (Section 5);
- s. 252.87(7), F.S. (Section 8);
- s. 252.937(2), F.S. (Section 9);
- s. 287.09451(4), F.S. (Section 11);
- s. 288.035(1), F.S. (Section 14);
- s. 288.1229(7), F.S. (Section 18);
- s. 409.2576(1) and (3)(b), F.S. (Section 23);
- s. 440.49(9)(b), F.S. (Section 27);
- s. 553.62, F.S. (Section 33); and
- s. 597.006(1), F.S. (Section 34).

Repeal the Statute or Provision

Statutes where a statute or provision is repealed are:

- s. 288.031, F.S. (Section 15);
- s. 288.1162, F.S. (Section 16);
- s. 288.1168, F.S. (Section 17);
- s. 446.60, F.S. (Section 28);
- s. 255.551, F.S. (Section 37);
- s. 255.552, F.S. (Section 37);
- s. 255.553, F.S. (Section 37);
- s. 255.5535, F.S. (Section 37);
- s. 255.555, F.S. (Section 37);
- s. 255.556, F.S. (Section 37);

⁸ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.

⁹ A detailed analysis is on file with the Senate Commerce and Tourism Committee.

- s. 255.557, F.S. (Section 37);
- s. 255.5576, F.S. (Section 37);
- s. 255.558, F.S. (Section 37);
- s. 255.559, F.S. (Section 37);
- s. 255.56, F.S. (Section 37);
- s. 255.561, F.S. (Section 37);
- s. 255.562, F.S. (Section 37);
- s. 255.563, F.S. (Section 37); and
- s. 469.003(2)(b), F.S. (Section 38).

Update to the Appropriate Agency or Current Practice

Statutes where a reference to DLES or FDC is updated to the current agency or practice are:

- s. 20.10(4)(b), F.S. (Section 2);
- s. 112.044(5), F.S. (Section 5);
- s. 252.85(1), F.S. (Section 7);
- s. 287.09431, F.S. (Section 10);
- s. 287.0947(1), F.S. (Section 12);
- s. 288.021(1), F.S. (Section 13);
- s. 288.1169, F.S. (Section 19);
- s. 331.369(2), (4), and (5), F.S. (Section 20);
- s. 377.711(5)(h), F.S. (Section 21);
- s. 377.712(3), F.S. (Section 22);
- s. 409.2576(8), F.S. (Section 23);
- s. 414.24, F.S. (Section 24);
- s. 414.40(2)(d), F.S. (Section 25);
- s. 440.385(5), F.S. (Section 26);
- s. 450.161, F.S. (Section 29);
- s. 464.203(1)(d), F.S. (Section 30);
- s. 489.1455(1)(b), F.S. (Section 31);
- s. 489.5335(1)(b), F.S. (Section 32); and
- s. 944.012(5), F.S. (Section 35).

Section 6 amends 212.20, F.S., to conform cross-references to changes made by the proposed committee bill.

Section 25 amends s. 414.40(1) and (2), F.S., to update this statute to reflect the transfer of the authority to investigate public assistance fraud from the Department of Law Enforcement to the Department of Financial Services.¹⁰

Section 36 amends s. 944.708, F.S., to remove a reference to the Agency for Workforce Innovation. Chapter 2010-117, L.O.F., amended this section to replace a reference to DLES to the agency.¹¹ However, because the Agency for Workforce Innovation does not implement any

¹⁰ Chapter 2010-144, L.O.F.

¹¹ Section 41, ch. 2010-117, L.O.F.

of the provisions of ss. 944.701-944.707, F.S., the rulemaking authority for the agency is unnecessary.

Section 39 provides an effective date of July 1, 2011.

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. The changes made by the bill are simply statutory cleanup. Based upon the research collected for Interim Report 2011-107, the agencies contacted indicated that the provisions which are repealed in the bill were either programs which had expired or provisions which were not currently implemented or necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be other obsolete references in the Florida Statutes that could be included in the proposed committee bill.

VIII. 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: SB 728

INTRODUCER: Senator Detert

SUBJECT: Unemployment Compensation

DATE: February 4, 2011

REVISED: 2/19/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

Florida’s unemployment rate for January 2009 was 8.7 percent and by January 2010 it was 12 percent. The latest unemployment rate reported, for December 2010, was 12 percent, which represents 1.1 million Floridians out of work. Due to the duration of high unemployment, the Unemployment Compensation Trust Fund became insolvent in August 2009 and has continued to borrow funds from the federal government since that time.

SB 728 amends the unemployment compensation statutes to revise benefit eligibility criteria and unemployment tax provisions.

The bill changes the criteria by which claimants are disqualified from receiving benefits by:

- Changing the standard to show misconduct from “willful” (a high standard) to “conscious” (a lower standard);
- Adding a disqualification for “gross misconduct,” which is defined by specific acts by an employee;
- Adding a disqualification for any weeks in which an individual receives severance pay from an employer;
- Expanding disqualification to include being fired for all crimes committed in connection with work (rather than only those punishable by imprisonment) and being fired for violating a criminal law which affects an employee’s ability to do his or her job; and
- Adding a specific disqualification for individuals who are incarcerated or imprisoned regardless whether the crime was in connection with their work.

The bill changes qualifying requirements by:

- Requiring claimants to complete an initial skills review using an online education or training program, like Florida Ready to Work, within 14 days of making a new claim for benefits;
- Requiring claimants to provide proof of their activities in seeking work;
- Redefining “suitable work” to require:
 - For the first 12 weeks of unemployment, claimants to seek work that pays at least 80 percent of what they had previously made; and
 - For 13 weeks of unemployment and beyond, claimants to seek work that pays at least equal to the weekly unemployment benefits they are receiving; and
- Requiring claimants to file continuing claims by Internet or mail, rather than by phone (in order to collect data on work search activities, similar to state extended benefits program).

The bill codifies the executive order extending the temporary state extended benefits program and amends the program to conform to new federal law.

Related to unemployment taxes, the bill:

- Raises the maximum tax rate to 6.4 percent (from 5.4 percent), retroactive to January 1, 2011;
- Allows employers to continue to have the option to pay their taxes in installments over in 2012, 2013, and 2014;
- Allows employee leasing companies to make a one-time decision to change from reporting leased employees under their company account to reporting the employees under their respective clients’ accounts, an option that could result in lower taxes for those companies choosing to change; and
- Increases the number of employee leasing companies who may obtain tax information for their clients by filing a memorandum of understanding, instead of filing a power of attorney for each client, with the Department of Revenue.

The bill eliminates the statutory presumption in favor of paying benefits to claimants by explicitly providing that ch. 443, F.S., should not be construed to favor or disfavor a claimant. It also provides specific language to allow appeals of orders by the Unemployment Appeals Commission to be filed in district courts of appeal where the claimant resides or where the job was located. The bill limits the amount of overpayments that can be collected from a claimant when the Agency for Workforce Innovation does not issue a nonmonetary determination within 30 days of the filing of a new claim.

The U.S. Department of Labor may find various provisions of this bill to be out of conformity with federal law. If the U.S. Department of Labor made such a finding, then it could result in a withholding of all administrative funding and a significant increase in employer’s UC tax rates.

This bill amends the following sections of the Florida Statutes: 213.053, 443.031, 443.036, 443.091, 443.101, 443.1115, 443.1216, 443.131, 443.141, and 443.151.

This bill revives, readopts, and amends s. 443.1117, F.S.

SB 728 takes effect July 1, 2011.

II. Present Situation:

Unemployment Compensation Overview¹

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.² The program is administered as a partnership of the federal government and the states.³ The individual states collect unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).⁴ FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁵

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.⁶ The Agency for Workforce Innovation (AWI) is the current agency responsible for administering Florida's UC laws. AWI contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.⁷

Statutory Construction

Generally, states construe their unemployment statutes in favor of claimants. Courts have held that the unemployment laws are remedial in nature, and thus should be liberally and broadly construed.⁸ Section 443.031, F.S., specifically states that ch. 443, F.S., "shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own."⁹

For statutory construction purposes generally, remedial statutes are liberally construed. Remedial statutes are those that provide a remedy or improve or facilitate remedies already existing for the

¹ For a comprehensive overview of Florida's unemployment compensation system, see Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009), at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-306cm.pdf (last visited 1/31/2011).

² USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 2/2/2011).

³ There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

⁴ FUTA is codified at 26 U.S.C. 3301-3311.

⁵ USDOL, ETA, Unemployment Insurance Tax Topic, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 2/2/2011).

⁶ Chapter 18402, L.O.F.

⁷ Section 443.1316, F.S.

⁸ See J.W. Williams v. State of Florida, Department of Commerce, 260 So.2d 233 (1st DCA, 1972); and Williams v. Florida Industrial Commission, 135 So.2d 435 (3rd DCA, 1961). Other states do not specify how their statutes are to be construed; instead they rely upon the interpretation of their courts to make the determination.

⁹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 1448 (2003), for a discussion of this section. Other states' laws contain a public purpose section, but this was removed from Florida Statutes in 2003, while preserving the standard for liberal construction.

enforcement of rights and the redress of injuries. Florida courts have held that the unemployment statutes are “remedial, humanitarian legislation.”

“[A] statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent.”¹⁰

Unemployment benefits are available as a matter of right to unemployed workers who have demonstrated their attachment to the labor force by a specified amount of recent work and/or earnings in covered employment. The purpose of the unemployment program is to benefit those unemployed through no fault of their own.¹¹

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed \$7,150 in a benefit year.¹² Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 26 weeks, depending on the claimant’s length of prior employment and wages earned.¹³

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant’s earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant’s efforts to find new employment.

Determinations and Redeterminations

AWI issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.¹⁴ Determinations and redeterminations are statements by the agency regarding the application of law to an individual’s eligibility for benefits or the effect of the benefits on an employer’s tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days from the mailing date of the determination. The agency must review the information on which the request is based and issue a redetermination.

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in AWI’s Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.¹⁵

A decision by an appeals referee can be appealed to the Unemployment Appeals Commission. The Unemployment Appeals Commission is administratively housed in AWI, but is a quasi-

¹⁰ City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971).

¹¹ USDOL, ETA, State Unemployment Insurance Benefits.

¹² Section 443.111(5), F.S.

¹³ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

¹⁴ Section 443.151(3), F.S.

¹⁵ Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S.

judicial administrative appellate body independent of AWI.¹⁶ The commission is 100 percent federally funded and consists of a three member panel that is appointed by the Governor. It is the highest level for administrative review of contested unemployment cases decided by the Office of Appeals referees. The Unemployment Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings. A party to the appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.¹⁷

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by AWI that the individual:¹⁸

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Is able to and available for work;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period; and
- Has submitted a valid social security number to AWI.

Section 443.036(1) and (6), F.S., provide the meaning of the phrases “able to work” and “available for work,” respectively, as:

- “Able to work” means physically and mentally capable of performing the duties of the occupation in which work is being sought.
- “Available for work” means actively seeking and being ready and willing to accept suitable employment.

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work.¹⁹

The law does not distinguish between part-time and full-time work with respect to benefits. With respect to the requirements of being able to work and available for work, Rule 60BB-3.021(2), F.A.C., provides that in order to be eligible for benefits an individual must be able to work and available for work during the major portion of the individual's customary work week.

Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.

Reemployment

To maintain eligibility for benefits, an individual must be ready, willing, and able to work and must be actively seeking work. An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals,

¹⁶ Section 20.50(2)(d), F.S. “The Unemployment Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that is required for the performance of its duties.”

¹⁷ Section 443.151(4)(c), (d), and (e), F.S.

¹⁸ Section 443.091(1), F.S.

¹⁹ Rule 60BB-3.021, F.A.C.

free reemployment services and assistance are available. AWI defines reemployment services as: job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.²⁰

AWI's website provides links to local, state, and national employment databases.²¹ Claimants are automatically registered with their local One-Stop Career Center when their claims are filed and are required to report to the One-Stop Career Center as directed by the regional workforce board for reemployment services.²² The One-Stops provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from Employ Florida Marketplace with information about employment services or available jobs.²³ Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).²⁴

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;
- Failing to apply for available suitable work when directed by AWI or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving wages in lieu of notice or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Involvement in an active labor dispute which is responsible for the individual's unemployment;
- Receiving unemployment compensation from another state;
- Making false or fraudulent representations in filing for benefits;
- Illegal immigration status;
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;

²⁰ Rule 60BB-3.011(12), F.A.C.

²¹ For example, on www.fluidnow.com, where individuals can claim their weeks online.

²² AWI's Office of Workforce Services is responsible for providing One-Stop Program Support services to the Regional Workforce Boards. See s. 443.091(1)(b), F.S.

²³ Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. <https://www.employflorida.com>.

²⁴ REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Research has shown that interviewing claimants for the above purposes reduces UC duration and saves UC trust fund resources by helping claimants find jobs faster and eliminating payments to ineligible individuals. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., further sets forth information on reemployment services and requirements for participation.

- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm if the individual fails to contact the temporary help or employee-leasing firm for reassignment; and
- Discharge from employment due to drug use or rejection from a job offer for failing a drug test.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

As used in s. 443.101(1), F.S., the term "good cause" includes only that cause attributable to the employer or which consists of illness or disability of the individual requiring separation from work. An individual is not disqualified for voluntarily leaving temporary work to return immediately when called back to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months or for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. An individual who voluntarily quits work for a good *personal* cause not related to any of the conditions specified in the statute will be disqualified from receiving benefits.

In determining "suitable work," the agency is directed by statute to consider several factors, including:

- Duration of an individual's unemployment;
- Proposed wages for available work, except in the 26th week of unemployment, when suitable work is a job that pays minimum wage and is 120 percent of the individual's weekly benefit amount;
- The degree of risk involved to the individual's health, safety, and morals;
- The individual's physical fitness and prior training;
- The individual's experience and prior earnings;
- The individual's length of unemployment and prospects for securing local work in his or her customary occupation; and
- The distance of the available work from the individual's residence.²⁵

Financing Unemployment Compensation

Unfortunately, due to the increasing unemployment rate in Florida, the Unemployment Compensation Trust Fund has been paying out more funds than it has been collecting. The trust fund fell into deficit in August 2009, and since that time the state has requested over \$2 billion in federal advances in order to continue to fund unemployment compensation claims.²⁶

The decline in the balance of the trust fund, poor economic conditions, decrease in the number of employers and employees, and increasing unemployment rates have led to large increases in employer UC tax rates. Some employers face greater increases because their experience rates

²⁵ Section 443.101(2), F.S.

²⁶ As of January 31, 2011. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 2/1/2011).

have increased due to laid-off employees making UC claims credited against the employers’ accounts.

State Unemployment Compensation Contributions

Florida sets its own taxable wage base and rate. The funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.²⁷ The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.²⁸ Employers’ state UC taxes are used solely to pay UC benefits to unemployed Floridians.

Currently, an employer pays taxes on the first \$7,000 of an employee’s wages.²⁹ An employer’s initial state tax rate is 2.7 percent.³⁰ After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.³¹ The adjustment in the tax rate is determined by calculating several factors.

Employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the \$7,000 wage base to their employees in the first or second quarter of the year, making their total UC payments due early in the year.

In 2010, legislation was enacted that permitted employers to spread the payment of their quarterly state UC taxes in installments over the year.³²

	Due April 30	Due July 31	Due October 31	Due December 31	Due January 31
1 st Quarter Payment	¼	¼	¼	¼	-
2 nd Quarter Payment	-	⅓	⅓	⅓	-
3 rd Quarter Payment	-	-	½	½	-
4 th Quarter Payment	-	-	-	-	Full

²⁷ Section 443.191, F.S.

²⁸ Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers; DOR advised that based on the most recent data available (from January 1, 2011) there were 453,800 contributing employers and 3,256 reimbursing employers in Florida.

²⁹ In 2012, the taxable wage base increases to \$8,500. See s. 3, ch. 2010-1, L.O.F.

³⁰ Section 443.131(2)(a), F.S.

³¹ Section 443.131(2)(b), F.S. Because of the definition of base period, at least 10 quarters must have elapsed before a new employer can be considered chargeable for 8 quarters of benefits. See also, s. 443.131(3)(d), F.S. An employer is only eligible for variation of the standard rate if its employment record was chargeable for benefits for 12 consecutive quarters ending on June 30 of the preceding calendar year. These employers are referred to as “rated employers.”

³² Section 4, ch. 2010-1, L.O.F. Section 443.141(1)(e), F.S.

For example, the quarterly payment due for the first quarter of 2010 may be spread into four equal installments, payable in each remaining quarter in 2010 (due by April 30, July 31, October 31, and December 31). However, UC taxes due for the fourth quarters of 2010 and 2011 are due as normally incurred in order for Florida employers to retain their eligibility for the FUTA tax credit for their federal UC taxes. An employer may participate in the payment plan if the employer pays an administrative fee of up to \$5 with the first installment payment. Interest and penalties do not accrue so long as the employer complies with the statutory provisions.

State Unemployment Compensation Contributions - Benefit Charges

In the unemployment tax calculation, the most significant factor in determining an employer's tax rate is the "benefit ratio."³³ This is the factor over which the employer has control. Often referred to as "experience rating," this factor takes into account an employer's experience with the UC Trust Fund by the impact of the employer's laid off workers on the trust fund. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual \$100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual. However, an employer can obtain relief from benefit charges by responding to notification of a claim with information concerning the reason for the individual's separation from work or refusal to work.³⁴ An employer will not obtain relief from the benefit charges for failure to respond to the notice of claim within 20 days.³⁵

State Unemployment Compensation Contribution – Socialized Costs

Compensation that cannot be charged against any employer's account is recovered through "variable adjustment factors" that socialize the cost of this compensation among all contributory employers who had benefit experience during the previous 3 years. An employer's variable adjustment factor includes a portion of the following socialized costs, based upon the employer's experience rate: the noncharge ratio (benefits not attributable to any employer over the last 3 years, also called "overpayments"),³⁶ the excess payments ratio (that portion of benefit charges

³³ Section 443.131(3)(b), F.S.

³⁴ Section 443.131(3)(a), F.S.

³⁵ Section 443.151(3)(a), F.S. AWI is required to send notice to each employer who may be liable for benefits paid to an individual. Based upon information provided with filed claims for benefits and employer responses, if provided, AWI makes an initial determination on entitlement to benefits. An employer has an incentive to respond to AWI if the employer should not be liable for benefits; an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account. A claimant is not required to repay any overpayments due to the employer's failure to respond, so long as there is no fraud involved.

³⁶ For example, these socialized costs include overpayments.

which exceed the maximum rate of 5.4 percent),³⁷ and the fund size factor (requires the trust fund maintain a certain balance, discussed below as “triggers”).³⁸

The “final adjustment factor” is another factor in determining an employer’s tax rate. It is a constant factor that applies to every employer regardless of experience rating.³⁹ The “final adjustment factor” takes into account socialized costs, described above. This factor is also applied to employers who have no benefit charges in the preceding 3 years; as a result, this factor determines the minimum rate for the year.⁴⁰

State Unemployment Compensation Contribution – Trust Fund Triggers

Florida’s tax calculation method, especially due to the benefit ratio, is closer to a “pay as you go” approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment is low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.⁴¹

The basis for the adjustment factors is the level of the trust fund on September 30 of each calendar year compared to the taxable payrolls for the previous year. Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage.

State Unemployment Compensation Contribution – 2011 Rates and Forecasts

In 2010, the Legislature turned the trust fund triggers “off” to avoid a significant rate increase for employers.⁴² However, taxes still significantly increased from 2010 to 2011. This was due to a large increase in socialized costs, mostly attributable to costs associated with employers whose tax rate does not generate enough money to pay for all the benefits charged to their accounts due to the statutory maximum rate (or “maximum cap”).

The rates have been calculated for each Florida business that pays UC tax. The figures show that a business paying the minimum tax rate, which is the majority of Florida businesses (about 220,000), will see a tax rate increase from 0.36 percent to 1.03 percent. This means that a business that paid \$25.20 per employee under the previous rate will pay \$72.10 per employee in 2011. Those businesses at the maximum rate will still pay a per employee rate of \$378 due to the maximum cap. Since most employers will have paid the \$7,000 wage base to their employees in

³⁷ Employers who have an experience rating that, if translated to a tax rate, would exceed the maximum rate get a break and any costs of unemployment benefits that exceed that 5.4 percent maximum tax rate are socialized to all other employers.

³⁸ Section 443.131(3)(e), F.S. See also DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated, at http://dor.myflorida.com/dor/taxes/unemploy_comp_law.html#how (last visited 2/2/2011).

³⁹ If the combined factors exceed the maximum rate, the employer is assigned the maximum rate of 5.4 percent.

⁴⁰ DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated.

⁴¹ Emerging Issues Related to Florida’s Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009). Currently, the negative adjustment factor is not available until January 1, 2015, and then not in any calendar year in which a federal advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

⁴² Section 3, ch. 2010-1, L.O.F.

the first or second quarter of the year, these businesses will have paid their annual UC tax bill in the first or second quarter of 2011.

	2010 Taxes		2011 Taxes	
Minimum Rate	0.36%	\$25.20	1.03%	\$72.10
Maximum Rate	5.4%	\$378	5.4%	\$378

Further, due in part to the short term relief provided to employers by legislation passed in the 2010 Regular Session, employers will be faced with a significant jump in tax rates beginning in 2012. Other facts affecting employer taxes in 2012 include the calculation of the trust fund factor and the scheduled increase in the wage base to \$8,500.⁴³

	2011 Taxes (\$7,000 wage base + tax trigger off)		2012 Taxes ⁴⁴ (\$8,500 wage base + tax trigger on)		2013 Taxes (\$8,500 wage base + tax trigger on)		2014 Taxes (\$8,500 wage base + tax trigger on)	
Minimum Rate	1.03%	\$72.10	2.43%	\$206.55	2.07%	175.95	1.73%	147.05
Maximum Rate	5.4%	\$378	5.4%	\$459	5.4%	\$459	5.4%	\$459

In addition to the economic conditions which attributed to the increase in the contribution rate, the number of employers and employees have significantly decreased over the past year. Because there are fewer employers paying UC taxes on fewer employees to fund the UC Trust Fund, with the positive fund balance adjustment factor triggering “on” in 2012, existing employers will have to contribute more than they otherwise would have had to contribute in good economic times in order to reduce the current trust fund debt.

Federal Unemployment Compensation Contributions

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 percent on employees’ annual wages.⁴⁵ If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net federal tax rate 0.8 percent. Employers file an annual return with the Internal Revenue Service each January for taxes on the first \$7,000 of each employee’s annual wages during the previous year.

The USDOL provides AWI with administrative resource grants from the taxes collected from employers pursuant to FUTA. These grants are used to fund the operations of the state’s UC program, including the processing of claims for benefits by AWI, state unemployment tax collections performed by DOR, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

⁴³ Chapter 2009-99, L.O.F., increased the wage based to \$8,500 beginning in 2010; ch. 2010-1, L.O.F., delayed this increased until 2012.

⁴⁴ Unemployment Compensation Trust Fund Forecast dated February 2011, by the Office of Economic and Demographic Research, on file with the Senate Commerce and Tourism Committee.

⁴⁵ The Federal Unemployment Tax Act (FUTA) is set to be reduced by 0.2 percent in June 2011 (considered a 0.2 percent surtax). 26 U.S.C. s. 3301 (2009). However, since the tax was increased to 6.2 percent in the mid-1980s, each year that the tax has been set to be reduced, Congress has enacted legislation that maintains the surtax.

Federal Advances

States may borrow money from the federal government through the USDOL to pay benefit claims whenever the state lacks funds to pay claims due in any month. Such loans are referred to as “advances.” The state’s trust fund balance must be zero in order to receive an advance.

Many states have experienced chronic problems with UC trust fund insolvency, causing them to borrow from the federal government to pay benefits and resulting in increased federal taxes to repay the loans (see below *Federal Advance – FUTA Credit Loss*). In response, these states have restricted eligibility to UC benefits to reduce benefit costs, thereby reducing the number of workers who are eligible to receive benefits and, consequently, jeopardizing the value of their UC programs as economic stabilizers.⁴⁶ In the current economic climate, states are increasingly requesting federal advances. Thirty-three states, including the Virgin Islands, currently have requested federal advances.⁴⁷ Six states have paid off their federal advances, including Texas, Tennessee, and Maryland.⁴⁸

Prior to August 2009, Florida’s UC Trust Fund had never become insolvent during the history of the tax trigger. In the aftermath of the 1973-1975 recession, the state anticipated the UC Trust Fund’s reserves were insufficient to pay benefits. Consequently, the state twice borrowed funds from the federal government – \$10 million in 1976 and \$32 million in 1977. However, Florida’s trust fund remained solvent and the loans were never drawn down. With the exceptions of 1976 and 1977, Florida had never sought a federal loan, making this state one of the few to avoid serious and chronic problems with trust fund insolvency.⁴⁹

However, due to the current economic climate and increased demand on the UC Trust Fund, the trust fund fell into deficit in August 2009. AWI began the request process in July for an advance from the federal government in order to maintain the solvency of the trust fund. As of January 31, 2011, the state has requested over \$2 billion in federal advances in order to continue to fund unemployment compensation claims.⁵⁰

Advances are requested for 3-month periods at a time, prior to the quarter in which they are needed. The USDOL evaluates the state’s request and sends a confirmation letter that provides the authorized amount that the state may borrow and the authorization period. The state may not borrow more funds than the authorized amount. The state will only draw down, or borrow, funds as needed to pay UC benefits.

⁴⁶ Vroman, Wayne, The Role of Unemployment Insurance as an Automatic Stabilizer During a Recession, The Urban Institute, IMPAQ International, LLC, and USDOL, ETA, July 2010, available at http://wdr.doleta.gov/research/FullText_Documents/ETAOP2010-10.pdf (last visited 2/1/2011).

⁴⁷ U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct’s Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 2/1/2011).

⁴⁸ Some of these states only took out short term advances from USDOL. Other states took steps to increase their taxes to repay the federal advances. Texas issued bonds to repay their debt, and employers in that state will incur a new assessment in addition to state UC taxes to pay the debt service due on the bonds.

⁴⁹ Emerging Issues Related to Florida’s Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009).

⁵⁰ See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct’s Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 2/1/2011).

Advance monies may only be used to pay UC benefits. For example, if an employer is due a credit for overpayment of UC taxes, the employer cannot be repaid until the trust fund is replenished with funds other than advance monies.

The state may make repayments of the principal amount of the advance voluntarily by notifying USDOL by letter of the amount and effective repayment date. Repayments are made on a last made, first repaid basis.

Federal Advance – FUTA Credit Loss

After a state UC trust fund borrows from the USDOL, if the loan becomes delinquent, the federal tax credit for the state's employers is reduced until the loan is repaid (reduced by 0.3 percent for each year).⁵¹ This serves as a sort of automatic loan repayment – the taxes collected due to the credit reduction go towards repayment of the principal amount of the state's advances. Thus, employers in states with insolvent trust funds are faced with multiple tax increases: increased state UC taxes to restore solvency of the state UC trust fund, and increased federal taxes to repay federal loans. In addition, any grants related to the costs of administration held in the UC trust fund do not earn interest.

It is anticipated that Florida employers will experience a partial loss of the federal UC tax credit for wages paid in 2011, due to the existence of an outstanding federal advance. The credit reduction continues and escalates until such time as the loan is fully repaid.⁵² The Office of Economic and Demographic Research (EDR) estimated that the first repayment to the federal government through the loss of the federal credit will be \$139.8 million in January 2012, \$290.4 million in January 2013, and \$451.8 million in January 2014, for a total of \$882 million.⁵³ The forecast estimates that the federal advances will be completely repaid by April 2014.

States with outstanding loans may seek relief from the loss of the federal UC tax credit. If specific requirements are met, then a cap (or limit) on the credit reduction may be put in place. These requirements are:

- The state did not take any action in the prior year that would diminish the solvency of the state fund;
- The state did not take any action in the prior year that would decrease the state's unemployment tax effort;
- The average tax rate for the taxable year exceeds the 5-year average benefit cost rate; and
- The state's outstanding loan balance as of September 30 of the tax year is not greater than that for the third preceding September 30.⁵⁴

Federal Advance – Interest

Federal advances accrue interest at an annual interest rate of up to 10 percent. Interest accrues on a federal fiscal year basis (October to September), and is due no later than September 30 each

⁵¹ If a state has an outstanding loan balance on January 1 for 2 consecutive years, then the entire loan must be repaid before November 10 of the second year or the credit reduction will begin.

⁵² USDOL Webinar on Title XII Advances, August 10, 2009 (slides on file with the Senate Commerce Committee).

⁵³ Unemployment Compensation Trust Fund Forecast dated February 2011, Office of Economic and Demographic Research, on file with the Senate Commerce and Tourism Committee.

⁵⁴ USDOL, Unemployment Compensation: Federal-State Partnership, page 7, available at <http://ows.doleta.gov/unemploy/pdf/partnership.pdf> (last visited 2/2/2011).

year. The interest rate charged is equal to the fourth calendar quarter yield on the Unemployment Trust Fund for the previous year, capped at 10 percent. The interest rate for 2011 is 4.0869 percent. Through December 2010, federal advances did not accrue interest due to a provision in the American Recovery and Reinvestment Act of 2009.

The interest due on advances cannot be paid from funds from the UC Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose a surcharge on employers.⁵⁵ In 2010, the Legislature implemented legislation to pay interest on federal advances through an additional employer assessment.⁵⁶

The Revenue Estimating Conference is charged with estimating the interest amount by December 1 of the year prior to the due date for the interest payment. DOR must make the assessment prior to February 1 of the year. The interest is due based upon a formula. To determine the additional rate for the assessment, the formula divides the estimated amount of interest owed by 95 percent of total wages paid by employers for the previous year ending June 30. To determine an employer's payment, the formula multiplies an employer's taxable wages by the additional rate. An employer has 5 months to pay the assessment, by June 30, and the assessment may not be paid by installment.

The first interest payment to the federal government will be due by September 30, 2011; the Governor or his designee directs DOR to make the interest payment. The Revenue Estimating Conference estimated a payment of \$61.4 million due in 2011; calculated as a per employee rate, the assessment is about \$9.51 per employee.⁵⁷

The assessments are paid into the Audit and Warrant Clearing Trust Fund and may earn interest; any interest earned will be part of the balance available to pay the interest to the federal government. If the federal government postpones or forgives the interest due on the advances, the employer assessment is eliminated for that year. An assessment already paid will be credited to the employer's account in the UC Trust Fund.

States may apply to USDOL for deferrals of interest for loans in certain situations. These include:⁵⁸

- Interest may be deferred, to December 31 of the following calendar year, for loans made in the last 5 months of the federal fiscal year (May-September). Interest accrues on the delayed interest payment.
- States with an average total unemployment rate (TUR) of 13.5 percent or greater for the most recent 12-month period for which data are available may delay payment of interest for a grace period not to exceed 9 months. Interest does not accrue on the delayed interest payment.

⁵⁵ The option of issuing bonds to repay the interest may be unavailable to Florida. See Art. VII, s. 11, Fla. Const.

⁵⁶ Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.

⁵⁷ Revenue Estimating Conference forecast from November 30, 2010, available at <http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/index.cfm> (last visited 2/1/2011).

⁵⁸ USDOL, Unemployment Compensation: Federal-State Partnership, page 8. Currently, Florida does not qualify for a deferral.

- States with an average insured unemployment rate (IUR) of 7.5 percent or greater during the first 6 months of the preceding calendar year may pay interest in four annual installments of 25 percent per year. Interest does not accrue on the deferred interest payments.

If the interest is not paid when due, the federal government will not certify the state program and can withhold all administrative funding. Additionally, employer tax rates would increase to the total federal tax of 6.2 percent because Florida employers would lose the entire FUTA tax credit (5.4 percent).⁵⁹

Temporary State Extended Benefits

In 1990, the Legislature enacted a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds.⁶⁰ Under this program, the federal government pays 100 percent of temporary state extended benefits to former private sector employees. The federal funds are paid from a separate federal general revenue account and did not affect the balance of Florida's UC Trust Fund.

Since the implementation of the temporary state extended benefits program in the American Recovery and Reinvestment Act of 2009, the existence of the program has been extended several times by the federal government. Most recently, in December 2010, Congress extended the eligibility window for Emergency Unemployment Compensation (EUC) and for state extended benefits through January 4, 2012.

Florida already had an extended benefits program in statute,⁶¹ but in order to participate in the federal program, Florida had to enact a temporary state extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR). Florida's regular state extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). In the past, the program has generally been set forth in state statute, adopted by the Legislature. However, when Congress extended this program in July 2010, because the Legislature was not in session, Governor Crist signed an executive order implementing the program.⁶² On December 17, 2010, Governor Crist signed an additional executive order extending the program after the federal bill was signed into law.⁶³ However, the most recent extension put into law enacts a new "trigger" to keep the program "on" due to the continued high unemployment rates that many states are experiencing.

III. Effect of Proposed Changes:

Section 1 amends s. 213.053(4), F.S., to allow payroll service providers (like employee leasing companies) to file a memorandum of understanding if they provide services for 100 or more employers.

⁵⁹ Id. Because the state UC program would not be certified, there would be no state UC tax in this situation.

⁶⁰ Chapter 2009-99, L.O.F. Temporary extended benefits was originally created and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 2005, Public L. No. 111-5.

⁶¹ Section 443.1115, F.S.

⁶² Executive Order No. 10-170.

⁶³ Executive Order No. 10-276.

Under current law, providers that represent clients on UC tax matters before DOR must file a power of attorney for each of their clients. If the provider provides services for at least 500 clients, the law permits the provider to file a single memorandum of understanding with DOR in lieu of the 500 individual powers of attorney. For providers that have fewer than 500 clients, completing individual powers of attorney is very burdensome. This change would reduce the burden on providers and reduce administrative burdens on DOR.

Statutory Construction

Section 2 amends s. 443.031, F.S., to change the current rule of statutory construction from “liberally” construed in favor of a claimant, to “neutrally” construed between claimants and employers. The bill changes the historical interpretation of the unemployment statutes, as discussed above in the Present Situation. This section also defines the phrase “through no fault of his or her own.”

USDOL may find this provision causes the state to be out of conformity with federal law.

State Unemployment Compensation Benefit Eligibility

The bill makes several changes to UC benefit eligibility, including changing the qualifying criteria and circumstances that automatically disqualify claimants from receiving benefits.

Qualifying Criteria

Initial Skills Review

Section 4, amends s. 443.091(1), F.S., to create a new paragraph to require claimants to complete an initial skills review within 14 days of making a new claim for benefits. The initial skills review must be administered by an online education or training program, like Florida Ready to Work,⁶⁴ that is approved by AWI and designed to measure an individual’s mastery of workplace skills.

However, the requirements would not apply to persons who are:

- Nonresidents;
- Collecting unemployment due to a temporary layoff;⁶⁵
- Union members who customarily obtain employment through a union hiring hall; or
- Claiming benefits under an approved short-time compensation plan.⁶⁶

The administrator or operator of the online education or training program is required to report to AWI that the individual has taken the initial skills test for benefit eligibility purposes, and to the regional workforce board or One-Stop Career Center the results of the initial skills test for purposes of reemployment services.

⁶⁴ Section 1004.99, F.S.

⁶⁵ “Temporary layoff” means a job separation due to lack of work which does not exceed 8-consecutive weeks and which has a fixed or approximate return-to-work date. Section 443.036(42), F.S.

⁶⁶ See s. 443.1116, F.S.

Florida Ready to Work is an employee credentialing program that is funded by the state.⁶⁷ To participate, individuals must first go to a local assessment center to sign up for the program. Once signed up, an individual may take the initial skills review at the assessment center or online at any location with Internet access. The assessment measures general skills necessary for 90 percent of all jobs in 3 areas: locating information, reading, and applied math. All the questions are based on workplace scenarios. After taking the initial skills review, an individual may take additional course material to try to improve his or her skills. An individual who completes the entire program may receive a Florida Ready to Work Credential to use as a tool when applying for jobs. This program is provided to Floridians at no cost.

USDOL may find this provision causes the state to be out of conformity with federal law. In general, a state may not condition entitlement to UC benefits on any factor that is not related to the individual's unemployment.

Work Search Requirements

Section 4 of the bill also amends s. 443.091(1)(e), F.S., to specify that as part of being available for work, a claimant must be actively seeking work. A claimant is required to make a reasonable and diligent effort to contact multiple employers each week to find reemployment. The claimant is required to provide evidence of work search activities to AWI or the One-Stop Career Center as directed by AWI.

Section 12 amends s. 443.151(2)(a), F.S., to require claimants making continuing claims to file by mail or by Internet. Claimants receiving temporary state extended benefits are required to meet heightened work search requirements, including the requirement to “furnish tangible evidence that she or he actively engaged in a systematic and sustained effort to find work.”⁶⁸ These claimants are required to file their claims by mail or Internet. By imposing the same type of work search requirements on all claimants, restricting filing methods for continuing claims to mail or Internet will allow AWI to collect the work search evidence required by s. 443.091(1)(e), F.S., as amended by the bill.

Suitable Work

An individual is required to search for “suitable work” to be eligible for benefits under current law. Additionally, if an individual is found to not be searching for suitable work, she or he may be disqualified for benefits. As it relates to the wages paid by suitable work, under current law, specifically for the 26th week of benefits, “suitable work” is defined as “a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.”⁶⁹

⁶⁷ Website available at <http://floridareadytowork.com/> (last visited 2/2/2011).

⁶⁸ Section 443.1115(3)(c)1.b., F.S.

⁶⁹ Section 443.101(2), F.S.

Section 5 of the bill amends s. 443.101(2), F.S., (renumbered in the bill as s. 443.101(3), F.S.), to change the wage criteria for suitable work to require:

- For the first 12 weeks of unemployment, search for work that pays at least 80 percent of what a claimant had previously made
- For 13 weeks of unemployment and beyond, search for work that pays at least equal to the weekly UC benefit amount a claimant is collecting.

USDOL may find this provision causes the state to be out of conformity with federal law.

Amendments made in Section 5 of the bill do not change the other current law criteria that AWI considers when determining if work is suitable or not. These include the degree of risk to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of available work from the individual's residence.

The bill also amends s. 443.036(6), F.S., in Section 3, to provide consistency throughout the chapter to use the term "suitable work."

Disqualifications

Voluntarily Quitting

Under current law, an individual who voluntarily quits work without good cause attributable to his or her employer is disqualified from receiving UC benefits. Section 5 of the bill amends s. 443.101(1)(a)1., F.S., to codify case law which states that "good cause" is that which would compel a reasonable individual to cease working.⁷⁰

Misconduct

Section 3 amends s. 443.036(29), F.S., to change the definition of "misconduct."

Under current law, a claimant may be disqualified from receiving benefits for being fired for misconduct associated with work. The current law definition of "misconduct" requires showing:

- Willful or wanton disregard of an employer's interests and is found to be deliberate, or
- Careless or negligent behavior that manifests culpability, wrongful intent, or evil design or was intentional or substantial disregard.

The bill reduces the standard to show misconduct to behavior that is a "conscious" disregard of an employer's interests or that is careless or negligent behavior that shows an intentional and substantial disregard of an employer's interests. Further, behavior that is a "conscious" disregard may be a violation of reasonable standards that an employer expects, including those lawfully set forth in an employer's written rules of conduct.

USDOL may find this provision causes the state to be out of conformity with federal law.

⁷⁰ See e.g. Thomas v. Peoplease Corp., 877 So.2d 45(3rd DCA, 2004).

Gross Misconduct

Section 5, amends 443.101, F.S., to create a new disqualification for benefits for specific acts of “gross misconduct” by an employee that led to her or his termination from work. Some of the specific acts included are:

- Willful or reckless damage to an employer’s property that results in damage of more than \$50;
- Theft of employer, customer, or invitee property;
- Violation of drug and alcohol policies, testing, or use of such substances while on the job or on duty;
- Criminal assault or battery of another employee, customer, or invitee;
- Abuse of a patient, resident, disabled person, elderly person, or child in the employee’s professional care;
- Insubordination (willful failure to comply with written employer rule or job description or reasonable order of a supervisor);
- Willful neglect of duty as described in a written employer rule or job description; and
- Failure to maintain a license, registration, or certification required by law for the employee to perform her or his job.

The disqualification for gross misconduct continues until an individual becomes reemployed and earns income of at least 17 times his or her weekly benefit amount that would have otherwise been available.

Severance Pay

Section 5 of the bill creates a disqualification in s. 443.101(3), F.S., (renumbered in the bill as s. 443.101(4), F.S.) for any week in which an individual receives severance pay. Severance pay is often granted to employees upon termination of employment, and is usually based on length of employment (matter of agreement between an employer and an employee). The bill provides for a calculation for the duration of disqualification, beginning from the date an individual became unemployed.

Criminal Acts and Incarceration or Imprisonment

Currently, under s. 443.101(9), F.S., an individual who is terminated from employment for violation of a criminal law punishable by imprisonment (either by conviction or entrance of a plea of guilty or nolo contendere) in connection with work is disqualified for benefits. This includes a violation of a criminal law under any jurisdiction.

The bill amends this disqualification in Section 5 of the bill by expanding the disqualification to a violation of any criminal law, not just those punishable by imprisonment, and includes being fired for violating a crime which affects an employee’s ability to do his or her job.

Further, Section 5 creates a new disqualification for being unavailable for work due to incarceration or imprisonment, regardless of whether the offense was committed in connection with work.

USDOL may find this provision causes the state to be out of conformity with federal law.

State Unemployment Compensation Contributions

Maximum Rate

Section 10 amends s. 443.131(3), F.S., to raise the maximum rate from 5.4 percent to 6.4 percent (see Fiscal Impact Statement: Tax/Fee Issues below). This provision is effective upon becoming law and retroactive to January 1, 2011.

Quarterly Contributions – Installment Payments

As discussed in the Present Situation, employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the \$7,000 wage base to their employees in the first or second quarter of the year, making their annual UC payment due early in the year. Under current law, for 2011, employers may choose to participate in an alternative payment plan for an administrative fee of up to \$5 to participate.

Section 11 amends 443.141, F.S., to allow this option for UC taxes due in 2012, 2013, and 2014.

Temporary State Extended Benefits Program

In December, Congress extended the time that the federal government would fund 100 percent of state extended benefits for former private sector employers through January 4, 2012.⁷¹ There is no cost to private employers; however, “reimbursable” employers like state and local governments are not covered by the federal government and must pay for the benefits themselves. These benefits are not charged to employers and have no effect on an employer’s experience rating.

Section 7 revives, readopts, and amends s. 443.1117, F.S., to extend the duration of the temporary state extended benefits program. The section expired on April 5, 2010. When Congress extended the program in December 2010, Governor Crist signed Executive Order No. 10-276 extending the program. This bill codifies that executive order and revives the statute through January 4, 2012, in order for Floridians to be eligible for 100 percent federal funding for benefits for former private sector employees. Additionally, the bill conforms s. 443.1117, F.S., to federal law by putting into place the new “trigger” permitted.

This section is effective retroactive to December 17, 2010, and expires on January 4, 2012. The section contains an expiration date, because under the federal program, after January 4, 2012, any extended benefits paid will only be reimbursed by the federal government at a rate of 50

⁷¹ Pub. L. No. 111-312.

percent for former private sector employees making new claims. The bill sets a sunset date in enacting the program in order to take the best advantage of the program.

Section 8 clarifies that the temporary extended benefits will be available to unemployed Floridians who establish entitlement to extended benefits between December 17, 2010, and January 4, 2012.

Employee Leasing Companies

An employee leasing company is “a form of business entity engaged in an arrangement whereby the entity assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.”⁷² The leasing company provides services for the client companies, such as handling the filing of UC taxes and workers’ compensation.

Under current law, employee leasing companies are required to report leased employees under the leasing company’s UC tax account and contribution rate.

Section 9 amends s. 443.1216(1)(a), F.S., to allow the employee leasing company to report leased employees under the accounts of its clients for unemployment tax purposes only. The bill allows a one-time election to change an employee leasing company’s reporting and contribution method. The leasing company is required to notify AWI or the tax collection service provider of such election. The election is binding on all clients of the leasing company, as well.

USDOL may find this provision causes the state to be out of conformity with federal law.

Appeals

Section 12 amends s. 443.151(4)(e), F.S., relating to appeals of decisions by the Unemployment Appeals Commission.

Generally, if an appellant files a notice of appeal with the commission, the commission files the appeal with the appropriate district court of appeal. The decision of where to file is based upon where the appeals referee was located and the decision was mailed.⁷³ An appeal must be filed within 30 days of the issuance of the commission’s order.

The bill provides that if one of the parties to the commission decision wants to appeal the decision, the party may file the appeal in the appellate district where the claimant lives or where the job was located. If the party files the notice of appeal with the commission, then the commission will file the appeal where the order was issued in order to timely file the appeal.

⁷² Department of Business and Professional Regulation, definitions, available at <http://www.myfloridalicense.com/dbpr/pro/emplo/codes.html> (last visited 2/2/2011).

⁷³ See Unemployment Appeals Commission, Appealing a UAC Order to a District Court of Appeal, available at <http://www.uac.fl.gov/HowTo02.html> (last visited 2/2/2011).

Overpayments

Overpayments are UC benefits that cannot be charged against any employer's account. These costs are recovered through a noncharge factor that socializes the cost of the overpayments among all contributory employers who had benefit experience over the previous 3 years (discussed above in the Present Situation).

Section 12 amends s. 443.151(6), F.S., to create a provision which limits the amount of overpayments that AWI can attempt to collect from a claimant who receives benefits that she or he was not eligible to receive in a situation where notice of nonmonetary determination was not provided within 30 days of filing a new claim. The agency is limited to recollect of up to 5 weeks of benefits.

Other

Various sections of the bill also include changes correcting cross-references. Specifically, Section 6, amending s. 443.1115, F.S., is included for purposes of correcting a cross-reference.

Section 13 states that the Legislature finds that this act fulfills an important state interest.

Section 14 provides that this act shall take effect July 1, 2011.

Other Potential Implications:

USDOL has broad oversight for the UC program, including determining whether a state law conforms to federal UC law and whether a state's administration of the UC program substantially complies with processes and procedures approved by USDOL. States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. When a state's UC law conforms to the requirements of the Social Security Act, the state is eligible to receive federal administrative grants to operate the state's UC program. When a state's UC law conforms to the requirements of the FUTA, employers in the state may receive a credit of up to 5.4 percent against the federal unemployment tax rate of 6.2 percent.

The Secretary of USDOL is responsible for determining if a state's UC law meets the requirements of federal law. Under FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment tax.

USDOL may find various provisions of this bill to be out of conformity with federal law. If USDOL made such a finding, then it would not certify the state's UC program and could withhold all administrative funding or cause the employer federal tax rates to increase to the total 6.2 percent because of loss of the entire FUTA tax credit.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees through the end of 2011, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (see Section 13 of the bill) and one of the following relevant exceptions:

- a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- c. The expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments; or
- d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

“Similarly situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities. Because the bill would impact “all persons similarly situated,” this exception appears to apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Currently, the statutory cap on unemployment tax rates is 5.4 percent. If an employer at the maximum rate has benefits charges in excess of what the maximum tax rate would cover, these costs are spread back across all other employers with lower tax rates (called excess payments). Essentially employers at the maximum rate create additional costs on employers with lesser benefit histories, because these excess benefits charges become the responsibility of all other employers.

An employer at the maximum tax rate is generally only affected by an increase in the wage base – application of the trigger (to replenish the UC Trust Fund) or socialized costs do not affect these employers. In 2011, about 17 percent of employers paying UC tax are at the statutory cap of 5.4 percent; 66 percent of those employers have an experience rating at or above the statutory maximum (the other 34 percent of employers are picking up some portion of socialized costs which push them up to the statutory maximum).

An increase in the statutory cap would cause those employers who aren't generating enough at their tax rate to pay for all their benefits charged to them to pay an amount closer to the costs they impose on the system. It would lower the amount of excess payments, and this would decrease the amount of socialized costs that other employers have to absorb. Further, raising the maximum rate would lower the minimum tax rate. About 79 percent of employers would experience a reduction in their 2011 taxes (about 279,358), and 21 percent would see an increase (73,423); about 5,000 employers at the maximum rate currently would receive a decrease in their 2011 tax rates.⁷⁴ This provision does not decrease or increase total taxes to the UC Trust Fund.

	2011 Taxes – Current Law		Estimated 2011 Taxes with Higher Max Rate		Difference
Minimum Rate	1.03%	\$72.10	0.75%	\$52.50	\$19.90 Less
Maximum Rate	5.4%	\$378	6.4%	\$448	\$70 More

The \$5 administrative fee to participate in the installment payment program for UC taxes is a per year fee. The amount of money generated from the fee depends on the number of businesses electing to participate. In 2010, out of 450,000 employers, only about 10,342 elected to participate in this option (representing a total of \$127 million in UC taxes).⁷⁵ However, due to the expected significant increases in the UC tax in future years, more employers may elect to participate in the installment option.

An employee leasing company is allowed, under the bill, to make a one-time election to change the way it reports for purposes of the UC tax, by reporting under the account of its clients. A company will likely decide to make this election only if it is financially advantageous to the company. However, while potentially lowering a leasing company's UC taxes, such election may have a negative effect on the balance of the UC Trust Fund. By changing its reporting method, the taxes due to the UC Trust Fund are likely to be less than when the leasing company was reporting under its own tax account. Additionally such a change may result in an increase in socialized costs.

Limiting the amount that AWI can attempt to recover in the event of an overpayment will increase socialized costs that all employers incur and may have a negative impact on the UC Trust Fund. Until an individual completely repays the amount of overpayment due, these costs will be recovered through the trust fund factor, which will increase employers' UC taxes.

⁷⁴ Data from Department of Revenue, on file with the Senate Commerce and Tourism Committee.

⁷⁵ Data from Department of Revenue, on file with the Senate Commerce and Tourism Committee.

B. Private Sector Impact:

Participation in the temporary state extended benefits program is expected to bring an estimated \$650 million in additional benefits to Florida.⁷⁶ Payment of these benefits comes 100 percent from federal funds. There will be no cost to private employers and there will be no effect on their contribution rates. Benefits paid by public employers, non-profits, and other reimbursable employers are not covered by federal funds (see explanation below related to Government Sector Impact for impact on public employers).

Changes to the qualification and disqualification criteria for UC benefits may reduce the amount of benefits paid from the UC Trust Fund to unemployed individuals, which may reduce the amount of federal advances drawn down. Additionally, these changes may reduce the amount of federal emergency and federally funded temporary state extended benefits to such individuals.

C. Government Sector Impact:

To the extent that provisions of the bill impact the conformity of Florida's UC law with federal requirements, the federal funding provided to administer the UC program could be jeopardized.

The costs to implement the requirement to review and verify tangible evidence that a claimant is actively seeking work will be proportionate to the extent of the verification services, which could be extensive. AWI has preliminarily estimated that the cost to implement this provision could cost as much as \$334 million, mostly due to the need to add additional positions to verify each claimant's information. Furthermore, because AWI has a limited amount of administrative resources from USDOL, allocation of funds to implement this requirement would reduce funds for other services. AWI indicated that computer programming that would be required as a result of changes made by the bill could be funded by currently available federal grants.

The Florida Ready to Work program was funded by \$5.3 million in nonrecurring general revenue in FY 2010-11.⁷⁷ Increasing the use of the program may result in additional costs to the state. Currently, the Department of Education contracts with a private company to use their skills assessment, training, and credentialing program. State funding allows for a certain number of assessments and credentials under the contract. To the extent that another online education or training program must be developed, reviewed, approved, and implemented to address non-English speaking claimants, there may be a fiscal impact to the state.

Additionally, currently to participate in the Florida Ready to Work program an individual must visit an assessment center in order to register with the program; not every county in Florida has an assessment center designated in it, and some assessment centers are not open to the public. Also, many regional workforce boards or One-Stop Career Centers are not Florida Ready to Work assessment centers. There may be additional costs incurred to

⁷⁶ Estimate from the Agency for Workforce Innovation, on file with the Senate Commerce and Tourism Committee.

⁷⁷ See s. 2, ln. 111, ch. 2010-152, L.O.F.

create new assessment centers in counties or localities that do not currently have one, and to designate the regional workforce boards and One-Stop Centers as assessment centers in order to provide access to the program to UC claimants. The amount of such costs had not been determined at this time.

Related to the tax changes, the Department of Revenue estimates the following costs to implement the change in the maximum rate and the language related to the employee leasing company reporting option: \$474,631 in FY 2010-2011; and a recurring impact of \$198,676.

The total cost in FY 2010-2011 includes:

- Related to recalculation of the UC tax rates:
 - \$17,117 in nonrecurring costs for tax information publication printing and mailing; and
 - \$230,174 in nonrecurring costs for the redesign of 12 unemployment tax forms;
 - DOR estimates that the necessary changes to modify the SUNTAX system can be done in-house with existing resources;
- Related to the provisions which an employee leasing company to make a one-time election to change the way it reports:
 - \$280 in nonrecurring costs for tax information publication printing and mailing;
 - \$98,400 in nonrecurring costs to modify the SUNTAX system;
 - \$113,152 in recurring and \$15,508 in nonrecurring costs to hire 4 new revenue specialists III due to a predicted significant workload increase to process the reporting changes;
- DOR estimates that the necessary changes to modify the SUNTAX system to extend the installment payment program for UC taxes for 2012, 2013, and 2014 could be done in-house with existing resources.

The recurring cost of \$198,676 is for the 4 new positions to process the employee leasing company elections.

The Unemployment Appeals Commission has indicated that the commission may incur increased costs due to changes made in the bill related to where appeals may be filed. Courts have held that the Unemployment Appeals Commission is prohibited from charging claimants for provision of transcript or copy of record of agency hearing in their unemployment cases, under s. 443.041(2)(a), F.S.⁷⁸ Thus, to the extent that appeals are filed in district courts of appeal which require or request a transcript automatically when a case is filed, the Unemployment Appeals Commission may incur additional costs. In 2010, the commission spent over \$51,000 to prepare transcripts for appeals filed in district courts of appeal. Also, to the extent that employees of the commission are required to make personal appearances in court, the commission may incur additional expenses related to travel.

⁷⁸ Gretz v. Florida Unemployment Appeals Commission, 572 So.2d 1384 (Fla. 1991).

Extended benefits for former state and local employees do not qualify for federal funding due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The temporary extended benefits for these former employees must be paid by the governmental entity. The extension enacted on December 17, 2010, is estimated to cost a total of \$18.4 million, approximately \$5.4 million from state funds and \$13 million from local government funds.⁷⁹ In order to participate in federal sharing, the temporary state extended benefits program had to encompass unemployed individuals of both the private and public sectors.

VI. Technical Deficiencies:

The definition of the term “through no fault of his or her own” in Section 2 of the bill does not encompass all eligible claimants.

In setting wage criteria for “suitable work” in Section 5, the bill does not address whether the weeks begin from the end of the individual’s last period of employment or from the effective date of the new claim. Some individuals believe they will find work soon after losing a job and delay filing for benefits. An individual that waits for a calendar quarter to file a claim, which might be a necessity when computing base period employment, would already be in his or her 13th week of unemployment when the claim is established. This individual would be immediately subject to the lower standard of suitability than if the weeks are counted from the date the claim was established.

Additionally, administering the wage criteria for “suitable work” in conjunction with other criteria for suitable work, such as the wages cannot be substantially less favorable than those prevailing for similar work in the locality (a federal requirement codified in state law), may raise challenges in reading the criteria together to administer the law.

The calculation of the duration of “severance pay” in Section 5 of the bill does not take into account whether the individual received the severance pay from his or her most recent employer.

The specific acts set forth in the definition of “gross misconduct,” in Section 5 of the bill, do not include violation of an employer’s written policy disallowing any drug use whatsoever, including the use of drugs while off the job or off duty. Further, while a disqualification for simple misconduct carries a penalty measured in weeks as well as an earnings requirement, disqualifications for gross misconduct only impose an earnings requirement.

The new disqualification for being unavailable for work due to incarceration or imprisonment raises due process concerns related to individuals who are incarcerated or imprisoned due to mistaken identity, for example.

The potential USDOL conformity issue raised by the requirement of an initial skills review for benefit eligibility may be alleviated if the initial skills review were made a part of the registration and reporting requirement in s. 443.091(1)(b), F.S. As a registration and reporting requirement, the review would not be a condition of an individual’s eligibility for benefits. However, if the

⁷⁹ Estimates from the Agency for Workforce Innovation, on file with the Senate Commerce and Tourism Committee.

initial skills review was a condition of registration and reporting, AWI would be required to direct the individual to complete the review and provide a means to complete the requirement.

Additionally, the potential USDOL conformity issue raised by allowing an employee leasing company a one-time election to change the way it reports may be alleviated by providing more specificity in the provision. For example, USDOL raised concerns related to the transfer of experience between reporting leased employees under the employee leasing company and the account of its clients; by providing more specificity as to how this transfer occurs, the issues raised by USDOL may be alleviated.

VII. Related Issues:

None.

VIII. 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.



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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 213.053, Florida Statutes, as amended by chapter 2010-280, Laws of Florida, is amended to read:

213.053 Confidentiality and information sharing.—

(4) The department, while providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316, may release unemployment tax rate information to the



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13 agent of an employer, which agent provides payroll services for
14 more than 100 ~~500~~ employers, pursuant to the terms of a
15 memorandum of understanding. The memorandum of understanding
16 must state that the agent affirms, subject to the criminal
17 penalties contained in ss. 443.171 and 443.1715, that the agent
18 will retain the confidentiality of the information, that the
19 agent has in effect a power of attorney from the employer which
20 permits the agent to obtain unemployment tax rate information,
21 and that the agent shall provide the department with a copy of
22 the employer's power of attorney upon request.

23 Section 2. Effective July 1, 2011, present subsections (26)
24 through (45) of section 443.036, Florida Statutes, are
25 redesignated as subsection (27) through (46) respectively, new
26 subsection (26) is added to that section, and present
27 subsections (6), (9), (16), (29), and (43) of that section are
28 amended, to read:

29 443.036 Definitions.—As used in this chapter, the term:

30 (6) "Available for work" means actively seeking and being
31 ready and willing to accept suitable work ~~employment~~.

32 (9) "Benefit year" means, for an individual, the 1-year
33 period beginning with the first day of the first week for which
34 the individual first files a valid claim for benefits and,
35 thereafter, the 1-year period beginning with the first day of
36 the first week for which the individual next files a valid claim
37 for benefits after the termination of his or her last preceding
38 benefit year. Each claim for benefits made in accordance with s.
39 443.151(2) is a valid claim ~~under this subsection~~ if the
40 individual was paid wages for insured work in accordance with s.
41 443.091(1)(g) and is unemployed ~~as defined in subsection (43)~~ at



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42 the time of filing the claim. However, the Agency for Workforce
43 Innovation may adopt rules providing for the establishment of a
44 uniform benefit year for all workers in one or more groups or
45 classes of service or within a particular industry if the agency
46 determines, after notice to the industry and to the workers in
47 the industry and an opportunity to be heard in the matter, that
48 those groups or classes of workers in a particular industry
49 periodically experience unemployment resulting from layoffs or
50 shutdowns for limited periods of time.

51 (16) "Earned income" means gross remuneration derived from
52 work, professional service, or self-employment. The term
53 includes commissions, bonuses, back pay awards or back pay
54 settlements, front pay or front wages, and the cash value of all
55 remuneration paid in a medium other than cash. The term does not
56 include income derived from invested capital or ownership of
57 property.

58 (26) "Initial skills review" means an online education or
59 training program, such as that established under s. 1004.99,
60 which is approved by the Agency for Workforce Innovation and
61 designed to measure an individual's mastery level of workplace
62 skills.

63 (30)~~(29)~~ "Misconduct" includes, but is not limited to, the
64 following, which may not be construed in pari materia with each
65 other:

66 (a) Conduct demonstrating conscious willful or wanton
67 disregard of an employer's interests and found to be a
68 deliberate violation or disregard of reasonable ~~the~~ standards of
69 behavior which the employer has a right to expect of his or her
70 employee, including standards lawfully set forth in the



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71 employer's written rules of conduct; or

72 (b) Carelessness or negligence to a degree or recurrence
73 that manifests culpability or, wrongful intent, ~~or evil design~~
74 or shows an intentional and substantial disregard of the
75 employer's interests or of the employee's duties and obligations
76 to his or her employer.

77 (44)-(43) "Unemployment" or "unemployed" means:

78 (a) An individual is "totally unemployed" in any week
79 during which he or she does not perform any services and for
80 which earned income is not payable to him or her. An individual
81 is "partially unemployed" in any week of less than full-time
82 work if the earned income payable to him or her for that week is
83 less than his or her weekly benefit amount. The Agency for
84 Workforce Innovation may adopt rules prescribing distinctions in
85 the procedures for unemployed individuals based on total
86 unemployment, part-time unemployment, partial unemployment of
87 individuals attached to their regular jobs, and other forms of
88 short-time work.

89 (b) An individual's week of unemployment commences only
90 after ~~his or her~~ registration with the Agency for Workforce
91 Innovation as required in s. 443.091, ~~except as the agency may~~
92 ~~otherwise prescribe by rule.~~

93 Section 3. Effective July 1, 2011, paragraphs (b), (c),
94 (d), and (f) of subsection (1) of section 443.091, Florida
95 Statutes, are amended to read:

96 443.091 Benefit eligibility conditions.—

97 (1) An unemployed individual is eligible to receive
98 benefits for any week only if the Agency for Workforce
99 Innovation finds that:



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100 (b) She or he has registered with the agency for work and
101 subsequently reports to the one-stop career center as directed
102 by the regional workforce board for reemployment services. This
103 requirement does not apply to persons who are:

- 104 1. Non-Florida residents;
105 2. On a temporary layoff, ~~as defined in s. 443.036(42)~~;
106 3. Union members who customarily obtain employment through
107 a union hiring hall; or
108 4. Claiming benefits under an approved short-time
109 compensation plan as provided in s. 443.1116.

110 (c) To make continued claims for benefits, she or he is
111 reporting to the Agency for Workforce Innovation in accordance
112 with this paragraph and agency its rules, and participating in
113 an initial skills review as directed by the agency. Agency These
114 rules may not conflict with s. 443.111(1)(b), which requires
115 including the requirement that each claimant continue to report
116 regardless of any pending appeal relating to her or his
117 eligibility or disqualification for benefits.

118 1. For each week of unemployment claimed, each report must,
119 at a minimum, include the name, address, and telephone number of
120 each prospective employer contacted pursuant to paragraph (d).

121 2. The administrator or operator of the initial skills
122 review shall notify the agency when the individual completes the
123 initial skills review and report the results of the review to
124 the regional workforce board or the one-stop career center as
125 directed by the workforce board. The workforce board shall use
126 the initial skills review to develop a plan for referring
127 individuals to training and employment opportunities. The
128 failure of the individual to comply with this requirement will



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129 result in the individual being determined ineligible for
130 benefits for the week in which the noncompliance occurred and
131 for any subsequent week of unemployment until the requirement is
132 satisfied. However, this requirement does not apply if the
133 individual is able to affirmatively attest to being unable to
134 complete such review due to illiteracy or a language impediment.

135 (d) She or he is able to work and is available for work. In
136 order to assess eligibility for a claimed week of unemployment,
137 the agency shall develop criteria to determine a claimant's
138 ability to work and availability for work. A claimant must be
139 actively seeking work in order to be considered available for
140 work. This means engaging in systematic and sustained efforts to
141 find work, including contacting at least five prospective
142 employers for each week of unemployment claimed. The agency may
143 require the claimant to provide proof of such efforts to the
144 one-stop career center as part of reemployment services. The
145 agency shall conduct random reviews of work search information
146 provided by claimants. However:

147 1. Notwithstanding any other provision of this paragraph or
148 paragraphs (b) and (e), an otherwise eligible individual may not
149 be denied benefits for any week because she or he is in training
150 with the approval of the agency, or by reason of s. 443.101(3)
151 ~~443.101(2)~~ relating to failure to apply for, or refusal to
152 accept, suitable work. Training may be approved by the agency in
153 accordance with criteria prescribed by rule. A claimant's
154 eligibility during approved training is contingent upon
155 satisfying eligibility conditions prescribed by rule.

156 2. Notwithstanding any other provision of this chapter, an
157 otherwise eligible individual who is in training approved under



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158 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
159 determined ineligible or disqualified for benefits due to ~~her or~~
160 ~~his~~ enrollment in such training or because of leaving work that
161 is not suitable employment to enter such training. As used in
162 this subparagraph, the term "suitable employment" means work of
163 a substantially equal or higher skill level than the worker's
164 past adversely affected employment, as defined for purposes of
165 the Trade Act of 1974, as amended, the wages for which are at
166 least 80 percent of the worker's average weekly wage as
167 determined for purposes of the Trade Act of 1974, as amended.

168 3. Notwithstanding any other provision of this section, an
169 otherwise eligible individual may not be denied benefits for any
170 week because she or he is before any state or federal court
171 pursuant to a lawfully issued summons to appear for jury duty.

172 (f) She or he has been unemployed for a waiting period of 1
173 week. A week may not be counted as a week of unemployment under
174 this subsection unless:

175 1. ~~Unless~~ It occurs within the benefit year that includes
176 the week for which she or he claims payment of benefits.

177 2. ~~If~~ Benefits have been paid for that week.

178 3. ~~Unless~~ The individual was eligible for benefits for that
179 week as provided in this section and s. 443.101, except for the
180 requirements of this subsection and ~~of~~ s. 443.101(6) ~~443.101(5)~~.

181 Section 4. Effective July 1, 2011, paragraph (a) of
182 subsection (1) and present subsections (2), (3), (9), and (11)
183 of section 443.101, Florida Statutes, are amended, present
184 subsections (2) through (11) of that section are redesignated as
185 subsections (3) through (13), respectively, and new subsections
186 (2) and (12) are added to that section, to read:



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187 443.101 Disqualification for benefits.—An individual shall
188 be disqualified for benefits:

189 (1) (a) For the week in which he or she has voluntarily left
190 work without good cause attributable to his or her employing
191 unit or ~~in which the individual~~ has been discharged by the
192 employing unit for misconduct connected with his or her work,
193 based on a finding by the Agency for Workforce Innovation. As
194 used in this paragraph, the term “work” means any work, whether
195 full-time, part-time, or temporary.

196 1. Disqualification for voluntarily quitting continues for
197 the full period of unemployment next ensuing after the
198 individual has left his or her full-time, part-time, or
199 temporary work voluntarily without good cause and until the
200 individual has earned income equal to or greater than ~~in excess~~
201 ~~of~~ 17 times his or her weekly benefit amount. As used in this
202 subsection, the term “good cause” includes only that cause
203 attributable to the employing unit which would compel a
204 reasonable individual to cease working or attributable to which
205 ~~consists of~~ the individual’s illness or disability requiring
206 separation from his or her work. Any other disqualification may
207 not be imposed. An individual is not disqualified ~~under this~~
208 ~~subsection~~ for voluntarily leaving temporary work to return
209 immediately when called to work by the permanent employing unit
210 that temporarily terminated his or her work within the previous
211 6 calendar months, or. ~~An individual is not disqualified under~~
212 ~~this subsection~~ for voluntarily leaving work to relocate as a
213 result of his or her military-connected spouse’s permanent
214 change of station orders, activation orders, or unit deployment
215 orders.



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216 2. Disqualification for being discharged for misconduct
217 connected with his or her work continues for the full period of
218 unemployment next ensuing after having been discharged and until
219 the individual is reemployed and has earned income of at least
220 17 times his or her weekly benefit amount and for not more than
221 52 weeks ~~that~~ immediately following ~~follow~~ that week, as
222 determined by the agency in each case according to the
223 circumstances ~~in each case~~ or the seriousness of the misconduct,
224 under the agency's rules adopted for determining ~~determinations~~
225 ~~of~~ disqualification for benefits for misconduct.

226 3. If an individual has provided notification to the
227 employing unit of his or her intent to voluntarily leave work
228 and the employing unit discharges the individual for reasons
229 other than misconduct before the date the voluntary quit was to
230 take effect, the individual, if otherwise entitled, shall
231 receive benefits from the date of the employer's discharge until
232 the effective date of his or her voluntary quit.

233 4. If an individual is notified by the employing unit of
234 the employer's intent to discharge the individual for reasons
235 other than misconduct and the individual quits without good
236 cause, ~~as defined in this section,~~ before the date the discharge
237 was to take effect, the claimant is ineligible for benefits
238 pursuant to s. 443.091(1)(d) for failing to be available for
239 work for the week or weeks of unemployment occurring before the
240 effective date of the discharge.

241 (2) For the week the individual has been discharged by the
242 employing unit for gross misconduct, based on a finding by the
243 Agency for Workforce Innovation. Disqualification for being
244 discharged for gross misconduct continues for the full period of



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245 unemployment next ensuing after having been discharged and until
246 the individual is reemployed and has earned income of at least
247 17 times his or her weekly benefit amount. As used in this
248 subsection, the term "gross misconduct" means any of the
249 following:

250 (a) Willful or reckless damage to an employer's property
251 which results in damage of more than \$50.

252 (b) Theft of the property of an employer, a customer, or an
253 invitee of the employer.

254 (c) Violation of an employer's policy relating to the
255 consumption of alcohol or drugs on the employer property, being
256 under the influence of alcohol or drugs on employer property, or
257 using alcohol or drugs while on the job or on duty. As used in
258 this paragraph, the term "alcohol or drugs" has the same meaning
259 as in s. 440.102(1)(c).

260 (d) Failure to comply with an employer's drug and alcohol
261 testing and use policies while on the job or on duty.

262 (e) Failure to comply with applicable state or federal drug
263 and alcohol testing and use regulations, including, but not
264 limited to, 49 C.F.R. part 40 and part 382 of the Federal Motor
265 Carrier Safety Regulations, while on the job or on duty, and
266 regulations applicable to employees performing transportation
267 and other safety-sensitive job functions as defined by the
268 Federal Government.

269 (f) Criminal assault or battery of another employee or of a
270 customer or invitee of the employer.

271 (g) Abuse of a patient, resident, disabled person, elderly
272 person, or child in her or his professional care.

273 (h) Insubordination, which is defined as the willful



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274 failure to comply with a lawful, reasonable order of a
275 supervisor which is directly related to the employee's
276 employment as described in an applicable written job
277 description, the written rules of conduct, or other lawful
278 directive of the employer. The employee must have received at
279 least one written warning from the employer before being
280 discharged from employment.

281 (i) Willful neglect of duty directly related to the
282 employee's employment as described in an applicable written job
283 description or written rules of conduct. The employee must have
284 received at least one written warning from the employer before
285 being discharged from employment.

286 (j) Failure to maintain a license, registration, or
287 certification required by law in order for the employee to
288 perform her or his assigned job duties as described in an
289 written job description.

290 (3)(2) If the Agency for Workforce Innovation finds that
291 the individual has failed without good cause to apply for
292 available suitable work ~~when directed by the agency or the one-~~
293 ~~stop career center,~~ to accept suitable work when offered to him
294 or her, or to return to the individual's customary self-
295 employment when directed by the agency, the disqualification
296 continues for the full period of unemployment next ensuing after
297 he or she failed without good cause to apply for available
298 suitable work, to accept suitable work, or to return to his or
299 her customary self-employment, ~~under this subsection,~~ and until
300 the individual has earned income of at least 17 times his or her
301 weekly benefit amount. The Agency for Workforce Innovation shall
302 by rule adopt criteria for determining the "suitability of



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303 work," as used in this section. ~~The agency for Workforce~~
304 ~~Innovation~~ In developing these rules, the agency shall consider
305 the duration of a claimant's unemployment in determining the
306 suitability of work and the suitability of proposed rates of
307 compensation for available work. Further, after an individual
308 has received 19 ~~25~~ weeks of benefits in a single year, suitable
309 work is a job that pays the minimum wage and is 120 percent or
310 more of the weekly benefit amount the individual is drawing.

311 (a) In determining whether or not any work is suitable for
312 an individual, the agency ~~for Workforce Innovation~~ shall
313 consider the degree of risk ~~involved~~ to the individual's ~~his or~~
314 ~~her~~ health, safety, and morals; the individual's ~~his or her~~
315 physical fitness, and prior training, ~~the individual's~~
316 experience, and prior earnings, ~~his or her~~ length of
317 unemployment, and prospects for securing local work in his or
318 her customary occupation; and the distance of the available work
319 from his or her residence.

320 (b) Notwithstanding any other provisions of this chapter,
321 work is not deemed suitable and benefits may not be denied ~~under~~
322 ~~this chapter~~ to any otherwise eligible individual for refusing
323 to accept new work under any of the following conditions:

324 1. ~~If~~ The position offered is vacant due directly to a
325 strike, lockout, or other labor dispute.

326 2. ~~If~~ The wages, hours, or other conditions of the work
327 offered are substantially less favorable to the individual than
328 those prevailing for similar work in the locality.

329 3. ~~If~~ As a condition of being employed, the individual is
330 ~~would be~~ required to join a company union or to resign from or
331 refrain from joining any bona fide labor organization.



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332 (c) If the agency ~~for Workforce Innovation~~ finds that an
333 individual was rejected for offered employment as the direct
334 result of a positive, confirmed drug test required as a
335 condition of employment, the individual is disqualified for
336 refusing to accept an offer of suitable work.

337 ~~(4)~~⁽³⁾ For any week with respect to which he or she is
338 receiving or has received remuneration in the form of:

339 (a) Wages in lieu of notice.

340 (b) Severance pay. The number of weeks that an individual's
341 severance pay disqualifies the individual is equal to the amount
342 of the severance pay divided by the individual's average weekly
343 wage received from the employer that paid the severance pay,
344 rounded down to the nearest whole number, beginning with the
345 week the individual separated from that employer.

346 ~~(c)~~^(b)~~1.~~ Compensation for temporary total disability or
347 permanent total disability under the workers' compensation law
348 of any state or under a similar law of the United States.

349
350 ~~2.~~ However, if the remuneration referred to in paragraphs (a),
351 ~~and~~ (b), and (c) is less than the benefits that would otherwise
352 be due under this chapter, an individual who is otherwise
353 eligible ~~he or she~~ is entitled to receive for that week, ~~if~~
354 ~~otherwise eligible,~~ benefits reduced by the amount of the
355 remuneration.

356 ~~(10)~~⁽⁹⁾ If the individual was terminated from ~~his or her~~
357 work ~~for violation of any criminal law punishable by~~
358 ~~imprisonment, or for any dishonest act, in connection with his~~
359 ~~or her work,~~ as follows:

360 (a) If the Agency for Workforce Innovation or the



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361 Unemployment Appeals Commission finds that the individual was
362 terminated from ~~his or her~~ work for violation of any criminal
363 law, under any jurisdiction, which was punishable by
364 ~~imprisonment~~ in connection with his or her work or affected his
365 or her ability to perform work, and the individual was
366 convicted, or entered a plea of guilty or nolo contendere found
367 ~~guilty of the offense, made an admission of guilt in a court of~~
368 ~~law, or entered a plea of no contest~~, the individual is not
369 entitled to unemployment benefits for up to 52 weeks, pursuant
370 to ~~under~~ rules adopted by the agency ~~for Workforce Innovation~~,
371 and until he or she has earned income of at least 17 times his
372 or her weekly benefit amount. If, before an adjudication of
373 guilt, an admission of guilt, or a plea of nolo contendere ~~no~~
374 ~~contest~~, the employer proves by competent, substantial evidence
375 to shows the agency ~~for Workforce Innovation~~ that the arrest was
376 due to a crime against the employer or the employer's business,
377 customers, or invitees and, ~~after considering all the evidence,~~
378 ~~the Agency for Workforce Innovation finds misconduct in~~
379 ~~connection with the individual's work~~, the individual is not
380 entitled to unemployment benefits.

381 (b) If the Agency for Workforce Innovation or the
382 Unemployment Appeals Commission finds that the individual was
383 terminated from work for any dishonest act in connection with
384 his or her work, the individual is not entitled to unemployment
385 benefits for up to 52 weeks, pursuant to ~~under~~ rules adopted by
386 the agency ~~for Workforce Innovation~~, and until he or she has
387 earned income of at least 17 times his or her weekly benefit
388 amount. ~~In addition,~~ If the employer terminates an individual as
389 a result of a dishonest act in connection with his or her work



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390 and the agency ~~for Workforce Innovation~~ finds misconduct in
391 connection with his or her work, the individual is not entitled
392 to unemployment benefits.

393
394 If ~~With respect to~~ an individual is disqualified for benefits,
395 the account of the terminating employer, if the employer is in
396 the base period, is noncharged at the time the disqualification
397 is imposed.

398 (12) For any week in which the individual is unavailable
399 for work due to incarceration or imprisonment.

400 (13) ~~(11)~~ If an individual is discharged from employment for
401 drug use as evidenced by a positive, confirmed drug test as
402 provided in paragraph (1) (d), or is rejected for offered
403 employment because of a positive, confirmed drug test as
404 provided in paragraph (3) (c) ~~(2) (e)~~, test results and chain of
405 custody documentation provided to the employer by a licensed and
406 approved drug-testing laboratory is self-authenticating and
407 admissible in unemployment compensation hearings, and such
408 evidence creates a rebuttable presumption that the individual
409 used, or was using, controlled substances, subject to the
410 following conditions:

411 (a) To qualify for the presumption ~~described in this~~
412 ~~subsection~~, an employer must have implemented a drug-free
413 workplace program under ss. 440.101 and 440.102, ~~and must~~ submit
414 proof that the employer has qualified for the insurance
415 discounts provided under s. 627.0915, as certified by the
416 insurance carrier or self-insurance unit. In lieu of these
417 requirements, an employer who does not fit the definition of
418 "employer" in s. 440.102 may qualify for the presumption if the



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419 employer is in compliance with equivalent or more stringent
420 drug-testing standards established by federal law or regulation.

421 (b) Only laboratories licensed and approved as provided in
422 s. 440.102(9), or as provided by equivalent or more stringent
423 licensing requirements established by federal law or regulation
424 may perform the drug tests.

425 (c) Disclosure of drug test results and other information
426 pertaining to drug testing of individuals who claim or receive
427 compensation under this chapter is ~~shall be~~ governed by s.
428 443.1715.

429 Section 5. Effective July 1, 2011, paragraph (b) of
430 subsection (1) of section 443.111, Florida Statutes, is amended
431 to read:

432 443.111 Payment of benefits.—

433 (1) MANNER OF PAYMENT.—Benefits are payable from the fund
434 in accordance with rules adopted by the Agency for Workforce
435 Innovation, subject to the following requirements:

436 (b) As required under s. 443.091(1), each claimant must
437 ~~report in the manner prescribed by the agency for Workforce~~
438 ~~Innovation to certify for benefits that are paid and must~~
439 ~~continue to report~~ at least biweekly to receive unemployment
440 benefits and to attest to the fact that she or he is able and
441 available for work, has not refused suitable work, is seeking
442 work and has contacted at least five prospective employers for
443 each week of unemployment claimed, and, if she or he has worked,
444 to report earnings from that work. Each claimant must continue
445 to report regardless of any appeal or pending appeal relating to
446 her or his eligibility or disqualification for benefits.

447 Section 6. Effective July 1, 2011, paragraph (c) of



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448 subsection (3) of section 443.1115, Florida Statutes, is amended
449 to read:

450 443.1115 Extended benefits.—

451 (3) ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS.—

452 (c)1. An individual is disqualified from receiving extended
453 benefits if the Agency for Workforce Innovation finds that,
454 during any week of unemployment in her or his eligibility
455 period:

456 a. She or he failed to apply for suitable work or, if
457 offered, failed to accept suitable work, unless the individual
458 can furnish to the agency satisfactory evidence that her or his
459 prospects for obtaining work in her or his customary occupation
460 within a reasonably short period are good. If this evidence is
461 deemed satisfactory ~~for this purpose~~, the determination of
462 whether any work is suitable for the individual shall be made in
463 accordance with the definition of suitable work in s. 443.101(3)
464 ~~443.101(2)~~. This disqualification begins with the week the
465 failure occurred and continues until she or he is employed for
466 at least 4 weeks and receives earned income of at least 17 times
467 her or his weekly benefit amount.

468 b. She or he failed to furnish tangible evidence that she
469 or he actively engaged in a systematic and sustained effort to
470 find work. This disqualification begins with the week the
471 failure occurred and continues until she or he is employed for
472 at least 4 weeks and receives earned income of at least 4 times
473 her or his weekly benefit amount.

474 2. Except as otherwise provided in sub-subparagraph 1.a.,
475 as used in this paragraph, the term "suitable work" means any
476 work within the individual's capabilities to perform, if:



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477 a. The gross average weekly remuneration payable for the
478 work exceeds the sum of the individual's weekly benefit amount
479 plus the amount, if any, of supplemental unemployment benefits,
480 as defined in s. 501(c)(17)(D) of the Internal Revenue Code of
481 1954, as amended, payable to the individual for that week;

482 b. The wages payable for the work equal the higher of the
483 minimum wages provided by s. 6(a)(1) of the Fair Labor Standards
484 Act of 1938, without regard to any exemption, or the state or
485 local minimum wage; and

486 c. The work otherwise meets the definition of suitable work
487 in s. 443.101(3) ~~443.101(2)~~ to the extent that the criteria for
488 suitability are not inconsistent with this paragraph.

489 Section 7. Notwithstanding the expiration date contained in
490 section 1 of chapter 2010-90, Laws of Florida, operating
491 retroactive to December 17, 2010, and expiring January 4, 2012,
492 section 443.1117, Florida Statutes, is revived, readopted, and
493 amended to read:

494 443.1117 Temporary extended benefits.—

495 (1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except if
496 the result is inconsistent with ~~the~~ other provisions of this
497 section, s. 443.1115(2), (3), (4), (6), and (7) apply to all
498 claims covered by this section.

499 (2) DEFINITIONS.—As used in ~~For the purposes of~~ this
500 section, the term:

501 (a) "Regular benefits" and "extended benefits" have the
502 same meaning as in s. 443.1115.

503 (b) "Eligibility period" means the weeks in an individual's
504 benefit year or emergency benefit period which begin in an
505 extended benefit period and, if the benefit year or emergency



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506 benefit period ends within that extended benefit period, any
507 subsequent weeks beginning in that period.

508 (c) "Emergency benefits" means Emergency Unemployment
509 Compensation paid pursuant to Pub. L. No. 110-252, Pub. L. No.
510 110-449, Pub. L. No. 111-5, Pub. L. No. 111-92, ~~and~~ Pub. L. No.
511 111-118, Pub. L. No. 111-144, ~~and~~ Pub. L. No. 111-157, Pub. L.
512 No. 111-205, and Pub. L. No. 111-312.

513 (d) "Extended benefit period" means a period that:

514 1. Begins with the third week after a week for which there
515 is a state "on" indicator; and

516 2. Ends with any of the following weeks, whichever occurs
517 later:

518 a. The third week after the first week for which there is a
519 state "off" indicator;

520 b. The 13th consecutive week of that period.

521

522 However, an extended benefit period may not begin by reason of a
523 state "on" indicator before the 14th week after the end of a
524 prior extended benefit period that was in effect for this state.

525 (e) "Emergency benefit period" means the period during
526 which an individual receives emergency benefits ~~as defined in~~
527 ~~paragraph (c).~~

528 (f) "Exhaustee" means an individual who, for any week of
529 unemployment in her or his eligibility period:

530 1. Has received, before that week, all of the regular
531 benefits and emergency benefits, if any, available under this
532 chapter or any other law, including dependents' allowances and
533 benefits payable to federal civilian employees and ex-
534 servicemembers under 5 U.S.C. ss. 8501-8525, in the current



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535 benefit year or emergency benefit period that includes that
536 week. For the purposes of this subparagraph, an individual has
537 received all of the regular benefits and emergency benefits, if
538 any, available even if ~~although~~, as a result of a pending appeal
539 for wages paid for insured work which were not considered in the
540 original monetary determination in the benefit year, she or he
541 may subsequently be determined to be entitled to added regular
542 benefits;

543 2. Had a benefit year that ~~which~~ expired before that week,
544 and was paid no, or insufficient, wages for insured work on the
545 basis of which she or he could establish a new benefit year that
546 includes that week; and

547 3.a. Has no right to unemployment benefits or allowances
548 under the Railroad Unemployment Insurance Act or other federal
549 laws as specified in regulations issued by the United States
550 Secretary of Labor; and

551 b. Has not received and is not seeking unemployment
552 benefits under the unemployment compensation law of Canada; but
553 if an individual is seeking those benefits and the appropriate
554 agency finally determines that she or he is not entitled to
555 benefits under that law, she or he is considered an exhaustee.

556 (g) "State 'on' indicator" means, with respect to weeks of
557 unemployment ~~beginning on or after February 1, 2009, and ending~~
558 on or before December 10, 2011 ~~May 8, 2010~~, the occurrence of a
559 week in which the average total unemployment rate, seasonally
560 adjusted, as determined by the United States Secretary of Labor,
561 for the most recent 3 months for which data for all states are
562 published by the United States Department of Labor:

563 1. Equals or exceeds 110 percent of the average of those



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564 rates for the corresponding 3-month period ending in any or all
565 ~~each~~ of the preceding 3 ~~2~~ calendar years; and

566 2. Equals or exceeds 6.5 percent.

567 (h) "High unemployment period" means, with respect to weeks
568 of unemployment ~~beginning on or after February 1, 2009, and~~
569 ending on or before December 10, 2011 ~~May 8, 2010~~, any week in
570 which the average total unemployment rate, seasonally adjusted,
571 as determined by the United States Secretary of Labor, for the
572 most recent 3 months for which data for all states are published
573 by the United States Department of Labor:

574 1. Equals or exceeds 110 percent of the average of those
575 rates for the corresponding 3-month period ending in any or all
576 ~~each~~ of the preceding 3 ~~2~~ calendar years; and

577 2. Equals or exceeds 8 percent.

578 (i) "State 'off' indicator" means the occurrence of a week
579 in which there is no state "on" indicator or which does not
580 constitute a high unemployment period.

581 (3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in
582 subsection (4):

583 (a) For any week for which there is an "on" indicator
584 pursuant to paragraph (2)(g), the total extended benefit amount
585 payable to an eligible individual for her or his applicable
586 benefit year is the lesser of:

587 1. Fifty percent of the total regular benefits payable
588 under this chapter in the applicable benefit year; or

589 2. Thirteen times the weekly benefit amount payable under
590 this chapter for a week of total unemployment in the applicable
591 benefit year.

592 (b) For any high unemployment period, the total extended



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593 benefit amount payable to an eligible individual for her or his
594 applicable benefit year is the lesser of:

595 1. Eighty percent of the total regular benefits payable
596 under this chapter in the applicable benefit year; or

597 2. Twenty times the weekly benefit amount payable under
598 this chapter for a week of total unemployment in the applicable
599 benefit year.

600 (4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any other
601 provision of this chapter, if the benefit year of an individual
602 ends within an extended benefit period, the number of weeks of
603 extended benefits the individual is entitled to receive in that
604 extended benefit period for weeks of unemployment beginning
605 after the end of the benefit year, except as provided in this
606 section, is reduced, but not to below zero, by the number of
607 weeks for which the individual received, within that benefit
608 year, trade readjustment allowances under the Trade Act of 1974,
609 as amended.

610 Section 8. The provisions of s. 443.1117, Florida Statutes,
611 as revived, readopted, and amended by this act, apply only to
612 claims for weeks of unemployment in which an exhaustee
613 establishes entitlement to extended benefits pursuant to that
614 section which are established for the period between December
615 17, 2010, and January 4, 2012.

616 Section 9. Effective July 1, 2011, paragraph (a) of
617 subsection (1) and paragraph (f) of subsection (13) of section
618 443.1216, Florida Statutes, are amended to read:

619 443.1216 Employment.—Employment, as defined in s. 443.036,
620 is subject to this chapter under the following conditions:

621 (1) (a) The employment ~~subject to this chapter~~ includes a



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622 service performed, including a service performed in interstate
623 commerce, by:

624 1. An officer of a corporation.

625 2. An individual who, under the usual common-law rules
626 applicable in determining the employer-employee relationship, is
627 an employee. However, if whenever a client, as defined in s.
628 443.036(18), which would otherwise be designated as an employing
629 unit, has contracted with an employee leasing company to supply
630 it with workers, those workers are considered employees of the
631 employee leasing company and must be reported under the leasing
632 company's tax identification number and contribution rate for
633 work performed for the leasing company.

634 a. However, except for the internal employees of an
635 employee leasing company, a leasing company may make a one-time
636 election to report and pay contributions for all leased
637 employees under the respective unemployment account of each
638 client of the leasing company. This election applies only to
639 contributions for unemployment.

640 (I) The election applies to all of the leasing company's
641 current and future clients.

642 (II) The leasing company must notify the Agency for
643 Workforce Innovation or the tax collection service provider of
644 its election by August 1, and such election applies to reports
645 and contributions for the first quarter of the following
646 calendar year. The notification must include:

647 (A) A list of each client company and its unemployment
648 account number;

649 (B) A list of each client company's current and previous
650 employees and their respective social security numbers for the



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651 prior 3 state fiscal years;

652 (C) All wage data and benefit charges for the prior 3 state
653 fiscal years.

654 (III) Subsequent to such election, the employee leasing
655 company may not change its reporting method.

656 (IV) The employee leasing company must file a Florida
657 Department of Revenue Employer's Quarterly Report (UCT-6) for
658 each client company and pay all contributions by approved
659 electronic means.

660 (V) For the purposes of calculating experience rates, the
661 election is treated like a total or partial succession,
662 depending on the percentage of employees leased. If the client
663 company leases only a portion of its employees from the leasing
664 company, the client company shall continue to report the
665 nonleased employees under its tax rate based on the experience
666 of the nonleased employees.

667 (VI) This sub-subparagraph applies to all employee leasing
668 companies, including each leasing company that is a group member
669 or group leader of an employee leasing company group licensed
670 pursuant to chapter 468. The election is binding on all employee
671 leasing companies and their related enterprises, subsidiaries,
672 or other entities that share common ownership, management, or
673 control with the leasing company. The election is also binding
674 on all clients of the leasing company for as long as a written
675 agreement is in effect between the client and the leasing
676 company pursuant to s. 468.525(3)(a). If the relationship
677 between the leasing company and the client terminates, the
678 client retains the wage and benefit history experienced under
679 the leasing company.



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680 b. An employee leasing company may lease corporate officers
681 of the client to the client and other workers to the client,
682 except as prohibited by regulations of the Internal Revenue
683 Service. ~~Employees of an employee leasing company must be~~
684 ~~reported under the employee leasing company's tax identification~~
685 ~~number and contribution rate for work performed for the employee~~
686 ~~leasing company.~~

687 c.a. In addition to any other report required to be filed
688 by law, an employee leasing company shall submit a report to the
689 Labor Market Statistics Center within the Agency for Workforce
690 Innovation which includes each client establishment and each
691 establishment of the ~~employee~~ leasing company, or as otherwise
692 directed by the agency. The report must include the following
693 information for each establishment:

- 694 (I) The trade or establishment name;
- 695 (II) The former unemployment compensation account number,
696 if available;
- 697 (III) The former federal employer's identification number
698 (FEIN), if available;
- 699 (IV) The industry code recognized and published by the
700 United States Office of Management and Budget, if available;
- 701 (V) A description of the client's primary business activity
702 in order to verify or assign an industry code;
- 703 (VI) The address of the physical location;
- 704 (VII) The number of full-time and part-time employees who
705 worked during, or received pay that was subject to unemployment
706 compensation taxes for, the pay period including the 12th of the
707 month for each month of the quarter;
- 708 (VIII) The total wages subject to unemployment compensation



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709 taxes paid during the calendar quarter;

710 (IX) An internal identification code to uniquely identify
711 each establishment of each client;

712 (X) The month and year that the client entered into the
713 contract for services; and

714 (XI) The month and year that the client terminated the
715 contract for services.

716 ~~d.d.~~ The report shall be submitted electronically or in a
717 manner otherwise prescribed by the Agency for Workforce
718 Innovation in the format specified by the Bureau of Labor
719 Statistics of the United States Department of Labor for its
720 Multiple Worksite Report for Professional Employer
721 Organizations. The report must be provided quarterly to the
722 Labor Market Statistics Center within the agency ~~for Workforce~~
723 ~~Innovation~~, or as otherwise directed by the agency, and must be
724 filed by the last day of the month immediately following the end
725 of the calendar quarter. The information required in sub-sub-
726 subparagraphs c.(X) and (XI) ~~a.(X) and (XI)~~ need be provided
727 only in the quarter in which the contract to which it relates
728 was entered into or terminated. The sum of the employment data
729 and the sum of the wage data in this report must match the
730 employment and wages reported in the unemployment compensation
731 quarterly tax and wage report. A report is not required for any
732 calendar quarter preceding the third calendar quarter of 2010.

733 ~~e.e.~~ The Agency for Workforce Innovation shall adopt rules
734 as necessary to administer this subparagraph, and may
735 administer, collect, enforce, and waive the penalty imposed by
736 s. 443.141(1)(b) for the report required by this subparagraph.

737 ~~f.f.~~ For the purposes of this subparagraph, the term



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738 "establishment" means any location where business is conducted
739 or where services or industrial operations are performed.

740 3. An individual other than an individual who is an
741 employee under subparagraph 1. or subparagraph 2., who performs
742 services for remuneration for any person:

743 a. As an agent-driver or commission-driver engaged in
744 distributing meat products, vegetable products, fruit products,
745 bakery products, beverages other than milk, or laundry or
746 drycleaning services for his or her principal.

747 b. As a traveling or city salesperson engaged on a full-
748 time basis in the solicitation on behalf of, and the
749 transmission to, his or her principal of orders from
750 wholesalers, retailers, contractors, or operators of hotels,
751 restaurants, or other similar establishments for merchandise for
752 resale or supplies for use in their business operations. This
753 sub-subparagraph does not apply to an agent-driver or a
754 commission-driver and does not apply to sideline sales
755 activities performed on behalf of a person other than the
756 salesperson's principal.

757 4. The services described in subparagraph 3. are employment
758 subject to this chapter only if:

759 a. The contract of service contemplates that substantially
760 all of the services are to be performed personally by the
761 individual;

762 b. The individual does not have a substantial investment in
763 facilities used in connection with the services, other than
764 facilities used for transportation; and

765 c. The services are not in the nature of a single
766 transaction that is not part of a continuing relationship with



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767 the person for whom the services are performed.

768 (13) The following are exempt from coverage under this
769 chapter:

770 (f) Service performed in the employ of a public employer as
771 defined in s. 443.036, except as provided in subsection (2), and
772 service performed in the employ of an instrumentality of a
773 public employer as described in s. 443.036(36)(b) ~~443.036(35)(b)~~
774 or (c), to the extent that the instrumentality is immune under
775 the United States Constitution from the tax imposed by s. 3301
776 of the Internal Revenue Code for that service.

777 Section 10. Effective upon this act becoming a law and
778 operating retroactively to January 1, 2011, paragraphs (c) and
779 (e) of subsection (3) of section 443.131, Florida Statutes, are
780 amended to read:

781 443.131 Contributions.—

782 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
783 EXPERIENCE.—

784 (c) *Standard rate.*—The standard rate of contributions
785 payable by each employer shall be 6.4 ~~5.4~~ percent.

786 (e) *Assignment of variations from the standard rate.*—For
787 the calculation of contribution rates effective January 1, 2010,
788 and thereafter:

789 1. The tax collection service provider shall assign a
790 variation from the standard rate of contributions for each
791 calendar year to each eligible employer. In determining the
792 contribution rate, varying from the standard rate to be assigned
793 each employer, adjustment factors computed under sub-
794 subparagraphs a.-d. are added to the benefit ratio. This
795 addition shall be accomplished in two steps by adding a variable



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796 adjustment factor and a final adjustment factor. The sum of
797 these adjustment factors computed under sub-subparagraphs a.-d.
798 shall first be algebraically summed. The sum of these adjustment
799 factors shall next be divided by a gross benefit ratio
800 determined as follows: Total benefit payments for the 3-year
801 period described in subparagraph (b)2. are charged to employers
802 eligible for a variation from the standard rate, minus excess
803 payments for the same period, divided by taxable payroll
804 entering into the computation of individual benefit ratios for
805 the calendar year for which the contribution rate is being
806 computed. The ratio of the sum of the adjustment factors
807 computed under sub-subparagraphs a.-d. to the gross benefit
808 ratio is multiplied by each individual benefit ratio that is
809 less than the maximum contribution rate to obtain variable
810 adjustment factors; except that if the sum of an employer's
811 individual benefit ratio and variable adjustment factor exceeds
812 the maximum contribution rate, the variable adjustment factor is
813 reduced in order for the sum to equal the maximum contribution
814 rate. The variable adjustment factor for each of these employers
815 is multiplied by his or her taxable payroll entering into the
816 computation of his or her benefit ratio. The sum of these
817 products is divided by the taxable payroll of the employers who
818 entered into the computation of their benefit ratios. The
819 resulting ratio is subtracted from the sum of the adjustment
820 factors computed under sub-subparagraphs a.-d. to obtain the
821 final adjustment factor. The variable adjustment factors and the
822 final adjustment factor must be computed to five decimal places
823 and rounded to the fourth decimal place. This final adjustment
824 factor is added to the variable adjustment factor and benefit



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825 ratio of each employer to obtain each employer's contribution
826 rate. An employer's contribution rate may not, however, be
827 rounded to less than 0.1 percent.

828 a. An adjustment factor for noncharge benefits is computed
829 to the fifth decimal place and rounded to the fourth decimal
830 place by dividing the amount of noncharge benefits during the 3-
831 year period described in subparagraph (b)2. by the taxable
832 payroll of employers eligible for a variation from the standard
833 rate who have a benefit ratio for the current year which is less
834 than the maximum contribution rate. For purposes of computing
835 this adjustment factor, the taxable payroll of these employers
836 is the taxable payrolls for the 3 years ending June 30 of the
837 current calendar year as reported to the tax collection service
838 provider by September 30 of the same calendar year. As used in
839 this sub-subparagraph, the term "noncharge benefits" means
840 benefits paid to an individual from the Unemployment
841 Compensation Trust Fund, but which were not charged to the
842 employment record of any employer.

843 b. An adjustment factor for excess payments is computed to
844 the fifth decimal place, and rounded to the fourth decimal place
845 by dividing the total excess payments during the 3-year period
846 described in subparagraph (b)2. by the taxable payroll of
847 employers eligible for a variation from the standard rate who
848 have a benefit ratio for the current year which is less than the
849 maximum contribution rate. For purposes of computing this
850 adjustment factor, the taxable payroll of these employers is the
851 same figure used to compute the adjustment factor for noncharge
852 benefits under sub-subparagraph a. As used in this sub-
853 subparagraph, the term "excess payments" means the amount of



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854 benefits charged to the employment record of an employer during
855 the 3-year period described in subparagraph (b)2., less the
856 product of the maximum contribution rate and the employer's
857 taxable payroll for the 3 years ending June 30 of the current
858 calendar year as reported to the tax collection service provider
859 by September 30 of the same calendar year. As used in this sub-
860 subparagraph, the term "total excess payments" means the sum of
861 the individual employer excess payments for those employers that
862 were eligible for assignment of a contribution rate different
863 from the standard rate.

864 c. With respect to computing a positive adjustment factor:

865 (I) Beginning January 1, 2012, if the balance of the
866 Unemployment Compensation Trust Fund on September 30 of the
867 calendar year immediately preceding the calendar year for which
868 the contribution rate is being computed is less than 4 percent
869 of the taxable payrolls for the year ending June 30 as reported
870 to the tax collection service provider by September 30 of that
871 calendar year, a positive adjustment factor shall be computed.
872 The positive adjustment factor is computed annually to the fifth
873 decimal place and rounded to the fourth decimal place by
874 dividing the sum of the total taxable payrolls for the year
875 ending June 30 of the current calendar year as reported to the
876 tax collection service provider by September 30 of that calendar
877 year into a sum equal to one-third of the difference between the
878 balance of the fund as of September 30 of that calendar year and
879 the sum of 5 percent of the total taxable payrolls for that
880 year. The positive adjustment factor remains in effect for
881 subsequent years until the balance of the Unemployment
882 Compensation Trust Fund as of September 30 of the year



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883 immediately preceding the effective date of the contribution
884 rate equals or exceeds 5 percent of the taxable payrolls for the
885 year ending June 30 of the current calendar year as reported to
886 the tax collection service provider by September 30 of that
887 calendar year.

888 (II) Beginning January 1, 2015, and for each year
889 thereafter, the positive adjustment shall be computed by
890 dividing the sum of the total taxable payrolls for the year
891 ending June 30 of the current calendar year as reported to the
892 tax collection service provider by September 30 of that calendar
893 year into a sum equal to one-fourth of the difference between
894 the balance of the fund as of September 30 of that calendar year
895 and the sum of 5 percent of the total taxable payrolls for that
896 year. The positive adjustment factor remains in effect for
897 subsequent years until the balance of the Unemployment
898 Compensation Trust Fund as of September 30 of the year
899 immediately preceding the effective date of the contribution
900 rate equals or exceeds 4 percent of the taxable payrolls for the
901 year ending June 30 of the current calendar year as reported to
902 the tax collection service provider by September 30 of that
903 calendar year.

904 d. If, beginning January 1, 2015, and each year thereafter,
905 the balance of the Unemployment Compensation Trust Fund as of
906 September 30 of the year immediately preceding the calendar year
907 for which the contribution rate is being computed exceeds 5
908 percent of the taxable payrolls for the year ending June 30 of
909 the current calendar year as reported to the tax collection
910 service provider by September 30 of that calendar year, a
911 negative adjustment factor must be computed. The negative



912 adjustment factor shall be computed annually beginning on
913 January 1, 2015, and each year thereafter, to the fifth decimal
914 place and rounded to the fourth decimal place by dividing the
915 sum of the total taxable payrolls for the year ending June 30 of
916 the current calendar year as reported to the tax collection
917 service provider by September 30 of the calendar year into a sum
918 equal to one-fourth of the difference between the balance of the
919 fund as of September 30 of the current calendar year and 5
920 percent of the total taxable payrolls of that year. The negative
921 adjustment factor remains in effect for subsequent years until
922 the balance of the Unemployment Compensation Trust Fund as of
923 September 30 of the year immediately preceding the effective
924 date of the contribution rate is less than 5 percent, but more
925 than 4 percent of the taxable payrolls for the year ending June
926 30 of the current calendar year as reported to the tax
927 collection service provider by September 30 of that calendar
928 year. The negative adjustment authorized by this section is
929 suspended in any calendar year in which repayment of the
930 principal amount of an advance received from the federal
931 Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is
932 due to the Federal Government.

933 e. The maximum contribution rate that may be assigned to an
934 employer is 6.4 ~~5.4~~ percent, except employers participating in
935 an approved short-time compensation plan may be assigned a
936 maximum contribution rate that is 1 percent greater than the
937 maximum contribution rate for other employers in any calendar
938 year in which short-time compensation benefits are charged to
939 the employer's employment record.

940 f. As used in this subsection, "taxable payroll" shall be



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941 determined by excluding any part of the remuneration paid to an
942 individual by an employer for employment during a calendar year
943 in excess of the first \$7,000. Beginning January 1, 2012,
944 "taxable payroll" shall be determined by excluding any part of
945 the remuneration paid to an individual by an employer for
946 employment during a calendar year as described in s.
947 443.1217(2). For the purposes of the employer rate calculation
948 that will take effect in January 1, 2012, and in January 1,
949 2013, the tax collection service provider shall use the data
950 available for taxable payroll from 2009 based on excluding any
951 part of the remuneration paid to an individual by an employer
952 for employment during a calendar year in excess of the first
953 \$7,000, and from 2010 and 2011, the data available for taxable
954 payroll based on excluding any part of the remuneration paid to
955 an individual by an employer for employment during a calendar
956 year in excess of the first \$8,500.

957 2. If the transfer of an employer's employment record to an
958 employing unit under paragraph (f) which, before the transfer,
959 was an employer, the tax collection service provider shall
960 recompute a benefit ratio for the successor employer based on
961 the combined employment records and reassign an appropriate
962 contribution rate to the successor employer effective on the
963 first day of the calendar quarter immediately after the
964 effective date of the transfer.

965 Section 11. Present paragraph (f) of subsection (1) of
966 section 443.141, Florida Statutes, is redesignated as paragraph
967 (g), and a new paragraph (f) is added to that subsection, to
968 read:

969 443.141 Collection of contributions and reimbursements.—



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970 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
971 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

972 (f) Payments for 2012, 2013, and 2014 Contributions.—For an
973 annual administrative fee not to exceed \$5, a contributing
974 employer may pay its quarterly contributions due for wages paid
975 in the first three quarters of 2012, 2013, and 2014 in equal
976 installments if those contributions are paid as follows:

977 1. For contributions due for wages paid in the first
978 quarter of each year, one-fourth of the contributions due must
979 be paid on or before April 30, one-fourth must be paid on or
980 before July 31, one-fourth must be paid on or before October 31,
981 and one-fourth must be paid on or before December 31.

982 2. In addition to the payments specified in subparagraph
983 1., for contributions due for wages paid in the second quarter
984 of each year, one-third of the contributions due must be paid on
985 or before July 31, one-third must be paid on or before October
986 31, and one-third must be paid on or before December 31.

987 3. In addition to the payments specified in subparagraphs
988 1. and 2., for contributions due for wages paid in the third
989 quarter of each year, one-half of the contributions due must be
990 paid on or before October 31, and one-half must be paid on or
991 before December 31.

992 4. The annual administrative fee assessed for electing to
993 pay under the installment method shall be collected at the time
994 the employer makes the first installment payment each year. The
995 fee shall be segregated from the payment and deposited into the
996 Operating Trust Fund of the Department of Revenue.

997 5. Interest does not accrue on any contribution that
998 becomes due for wages paid in the first three quarters of each



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999 year if the employer pays the contribution in accordance with
1000 subparagraphs 1.-4. Interest and fees continue to accrue on
1001 prior delinquent contributions and commence accruing on all
1002 contributions due for wages paid in the first three quarters of
1003 each year which are not paid in accordance with subparagraphs
1004 1.-3. Penalties may be assessed in accordance with this chapter.
1005 The contributions due for wages paid in the fourth quarter of
1006 2012, 2013, and 2014 are not affected by this paragraph and are
1007 due and payable in accordance with this chapter.

1008 Section 12. Effective July 1, 2011, paragraph (a) of
1009 subsection (2), paragraphs (d) and (e) of subsection (3), and
1010 paragraphs (b) and (e) of subsection (4) of section 443.151,
1011 Florida Statutes, are amended, present paragraphs (c) through
1012 (f) of subsection (6) of that section are redesignated as
1013 paragraphs (d) through (g), respectively, and a new paragraph
1014 (c) is added to that subsection, to read:

1015 443.151 Procedure concerning claims.—

1016 (2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF
1017 CLAIMANTS AND EMPLOYERS.—

1018 (a) *In general.*—Initial and continued claims for benefits
1019 must be made by approved electronic means and in accordance with
1020 ~~the~~ rules adopted by the Agency for Workforce Innovation. The
1021 agency must notify claimants and employers regarding monetary
1022 and nonmonetary determinations of eligibility. Investigations of
1023 issues raised in connection with a claimant which may affect a
1024 claimant's eligibility for benefits or charges to an employer's
1025 employment record shall be conducted by the agency through
1026 written, telephonic, or electronic means as prescribed by rule.

1027 (3) DETERMINATION OF ELIGIBILITY.—



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1028 (d) *Determinations in labor dispute cases.*—~~If a~~ ~~Whenever~~
1029 ~~any~~ claim involves a labor dispute described in s. 443.101(5)
1030 ~~443.101(4)~~, the Agency for Workforce Innovation shall promptly
1031 assign the claim to a special examiner who shall make a
1032 determination on the issues involving unemployment due to the
1033 labor dispute. The special examiner shall make the determination
1034 after an investigation, as necessary. The claimant or another
1035 party entitled to notice of the determination may appeal a
1036 determination under subsection (4).

1037 (e) *Redeterminations.*—

1038 1. The Agency for Workforce Innovation may reconsider a
1039 determination if it finds an error or if new evidence or
1040 information pertinent to the determination is discovered after a
1041 prior determination or redetermination. A redetermination may
1042 not be made more than 1 year after the last day of the benefit
1043 year unless the disqualification for making a false or
1044 fraudulent representation under s. 443.101(7) ~~443.101(6)~~ is
1045 applicable, in which case the redetermination may be made within
1046 2 years after the false or fraudulent representation. The agency
1047 must promptly give notice of redetermination to the claimant and
1048 to any employers entitled to notice in the manner prescribed in
1049 this section for the notice of an initial determination.

1050 2. If the amount of benefits is increased by the
1051 redetermination, an appeal of the redetermination based solely
1052 on the increase may be filed as provided in subsection (4). If
1053 the amount of benefits is decreased by the redetermination, the
1054 redetermination may be appealed by the claimant if a subsequent
1055 claim for benefits is affected in amount or duration by the
1056 redetermination. If the final decision on the determination or



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1057 redetermination to be reconsidered was made by an appeals
1058 referee, the commission, or a court, the Agency for Workforce
1059 Innovation may apply for a revised decision from the body or
1060 court that made the final decision.

1061 3. If an appeal of an original determination is pending
1062 when a redetermination is issued, the appeal, unless withdrawn,
1063 is treated as an appeal from the redetermination.

1064 (4) APPEALS.—

1065 (b) *Filing and hearing.*—

1066 1. The claimant or any other party entitled to notice of a
1067 determination may appeal an adverse determination to an appeals
1068 referee within 20 days after the date of mailing ~~of~~ the notice
1069 to her or his last known address or, if the notice is not
1070 mailed, within 20 days after the date of delivering ~~delivery of~~
1071 the notice.

1072 2. Unless the appeal is untimely or withdrawn, or review is
1073 initiated by the commission, the appeals referee, after mailing
1074 all parties and attorneys of record a notice of hearing at least
1075 10 days before the date of hearing, notwithstanding the 14-day
1076 notice requirement in s. 120.569(2)(b), may only affirm, modify,
1077 or reverse the determination. An appeal may not be withdrawn
1078 without the permission of the appeals referee.

1079 3. However, if ~~when~~ an appeal appears to have been filed
1080 after the permissible time limit, the Office of Appeals may
1081 issue an order to show cause to the appellant which requires,
1082 ~~requiring~~ the appellant to show why the appeal should not be
1083 dismissed as untimely. If ~~the appellant does not,~~ within 15 days
1084 after the mailing date of the order to show cause, the appellant
1085 does not provide written evidence of timely filing or good cause



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1086 for failure to appeal timely, the appeal shall be dismissed.

1087 4. ~~If~~ When an appeal involves a question of whether
1088 services were performed by a claimant in employment or for an
1089 employer, the referee must give special notice of the question
1090 and of the pendency of the appeal to the employing unit and to
1091 the Agency for Workforce Innovation, both of which become
1092 parties to the proceeding.

1093 5. Any part of the evidence may be received in written
1094 form, and all testimony of parties and witnesses must be made
1095 under oath.

1096 a. Irrelevant, immaterial, or unduly repetitious evidence
1097 shall be excluded, but all other evidence of a type commonly
1098 relied upon by reasonably prudent persons in the conduct of
1099 their affairs is admissible, whether or not such evidence would
1100 be admissible in a trial in state court.

1101 b. Hearsay evidence may be used for the purpose of
1102 supplementing or explaining other evidence, or to support a
1103 finding if it would be admissible over objection in civil
1104 actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may
1105 support a finding of fact if:

1106 (I) The party against whom it is offered has a reasonable
1107 opportunity to review it before the hearing; and

1108 (II) The appeals referee or special deputy determines,
1109 after considering all relevant facts and circumstances, that the
1110 evidence is trustworthy and probative and that the interests of
1111 justice are best served by its admission into evidence.

1112 ~~6.5.~~ The parties must be notified promptly of the referee's
1113 decision. The referee's decision is final unless further review
1114 is initiated under paragraph (c) within 20 days after the date



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1115 of mailing notice of the decision to the party's last known
1116 address or, in lieu of mailing, within 20 days after the
1117 delivery of the notice.

1118 (e) *Judicial review.*—Orders of the commission entered under
1119 paragraph (c) are subject to review only by notice of appeal in
1120 the district court of appeal ~~in the appellate district in which~~
1121 ~~the issues involved were decided by an appeals referee.~~ If the
1122 notice of appeal is filed by the claimant, it must be filed in
1123 the appellate district in which the claimant resides. If the
1124 notice of appeal is filed by the employer, it must be filed in
1125 the appellate district in which the business is located.

1126 However, if the claimant does not reside in this state or the
1127 business is not located in this state, the notice of appeal must
1128 be filed in the appellate district in which the order was
1129 issued. Notwithstanding chapter 120, the commission is a party
1130 respondent to every such proceeding. The Agency for Workforce
1131 Innovation may initiate judicial review of orders in the same
1132 manner and to the same extent as any other party.

1133 (6) RECOVERY AND RECOUPMENT.—

1134 (c) Any person who, by reason other than fraud, receives
1135 benefits under this chapter for which she or he is not entitled
1136 due to the failure of the Agency for Workforce Innovation to
1137 make and provide notice of a nonmonetary determination under
1138 paragraph (3) (c) within 30 days after filing a new claim, is
1139 liable for repaying up to 5 weeks of benefits received to the
1140 agency on behalf of the trust fund or may have those benefits
1141 deducted from any future benefits payable to her or him under
1142 this chapter.

1143 Section 13. Subsection (10) is added to section 443.171,



1144 Florida Statutes, to read:
1145 443.171 Agency for Workforce Innovation and commission;
1146 powers and duties; records and reports; proceedings; state-
1147 federal cooperation.—
1148 (10) EVIDENCE OF MAILING.—A mailing date on any notice,
1149 determination, decision, order, or other document mailed by the
1150 Agency for Workforce Innovation or its tax collection service
1151 provider pursuant to this chapter creates a rebuttable
1152 presumption that such notice, determination, order, or other
1153 document was mailed on the date indicated.
1154 Section 14. The Legislature finds that this act fulfills an
1155 important state interest.
1156 Section 15. Except as otherwise expressly provided in this
1157 act, this act shall take effect upon becoming a law.
1158
1159 ===== T I T L E A M E N D M E N T =====
1160 And the title is amended as follows:
1161 Delete everything before the enacting clause
1162 and insert:
1163 A bill to be entitled
1164 An act relating to unemployment compensation; amending
1165 s. 213.053, F.S.; increasing the number of employer
1166 payroll service providers who qualify for access to
1167 unemployment tax information by filing a memorandum of
1168 understanding; amending s. 443.036, F.S.; revising the
1169 definitions for "available for work," "earned income,"
1170 "misconduct," and "unemployment"; adding a definition
1171 for "initial skills review"; amending s. 443.091,
1172 F.S.; revising requirements for making continued



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1173 claims for benefits; requiring that an individual
1174 claiming benefits report certain information and
1175 participate in an initial skills review; providing an
1176 exception; specifying criteria for determining an
1177 applicant's availability for work; amending s.
1178 443.101, F.S.; clarifying "good cause" for voluntarily
1179 leaving employment; specifying acts that are "gross
1180 misconduct" for purposes of discharging an employee
1181 and disqualifying him or her for benefits; revising
1182 the criteria for determining suitable work to reduce
1183 the number of weeks a person may receive benefits
1184 before having to accept a job that pays a certain
1185 amount; disqualifying a person for benefits due to the
1186 receipt of severance pay; revising provisions relating
1187 to the effect of criminal acts on eligibility for
1188 benefits; disqualifying an individual for benefits for
1189 any week he or she is incarcerated; amending s.
1190 443.111, F.S.; conforming provisions to changes made
1191 by the act; amending s. 443.1115, F.S.; conforming
1192 cross-references; reviving, readopting, and amending
1193 s. 443.1117, F.S., relating to temporary extended
1194 benefits; providing for retroactive application;
1195 providing for applicability relating to extended
1196 benefits for certain weeks and for periods of high
1197 unemployment; providing for applicability; amending s.
1198 443.1216, F.S.; providing that employee leasing
1199 companies may make a one-time election to report
1200 leased employees under the respective unemployment
1201 account of each leasing company client; providing



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1202 procedures and application for such election;
1203 conforming a cross-reference; amending s. 443.131,
1204 F.S.; increasing the employer's standard rate of
1205 contributions; providing for retroactive application;
1206 amending s. 443.141, F.S.; providing an employer
1207 payment schedule for 2012, 2013, and 2014
1208 contributions; requiring an employer to pay a fee for
1209 paying contributions on a quarterly schedule;
1210 providing penalties, interest, and fees on delinquent
1211 contributions; amending s. 443.151, F.S.; requiring
1212 claims to be submitted by electronic means; conforming
1213 cross-references; specifying the allowable forms of
1214 evidence in an appeal hearing; specifying the judicial
1215 venue for filing a notice of appeal; providing for
1216 repayment of benefits in cases of agency error;
1217 amending s. 443.171, F.S.; specifying that evidence of
1218 mailing an agency document creates a rebuttable
1219 presumption; providing that the act fulfills an
1220 important state interest; providing effective dates.

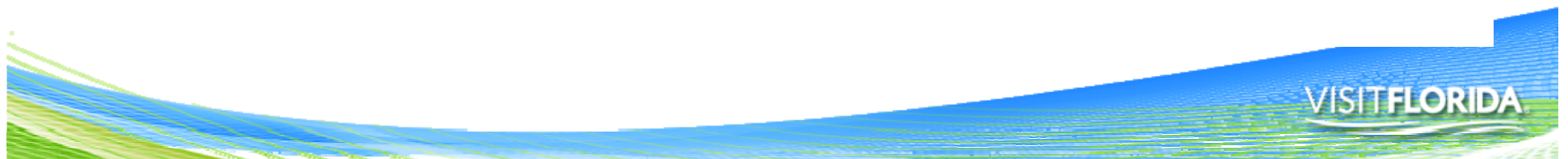
Facilitating Economic Development in Florida: Assessments and Strategies Related to Tourism

Senate Commerce and Tourism Committee
February 22, 2011



Florida Tourism by the Numbers (CY2010)

- 82.6 million visitors – up 2.1%
 - Domestic up 0.5%
 - Overseas up 13.6%
 - Canada up 16.2%
- \$60.9 billion in travel spending - flat
- \$3.7 billion in sales tax collections - flat
- 961,600 Floridians employed - **down 0.7%**



International Visitors

2009 Top Overseas Countries

1. United Kingdom	1,238,000	-12%
2. Brazil	712,000	29%
3. Venezuela	401,000	-11%
4. Germany	280,000	-04%
5. Mexico	275,000	-14%
6. France	227,000	-06%
7. Spain	218,000	-08%
8. Colombia	199,000	01%
9. Argentina	190,000	30%
10. Bahamas	176,000	10%

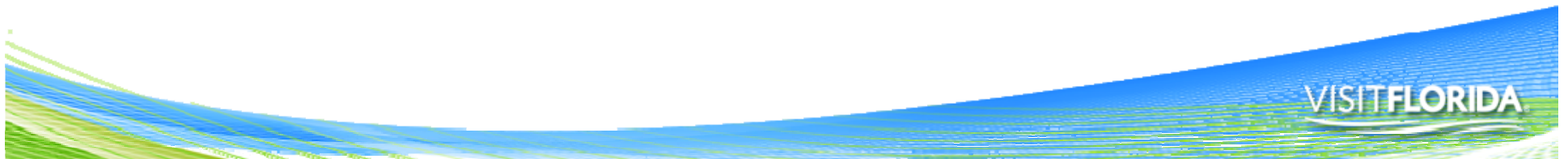
Based on VisaVue Travel Data



VISITFLORIDA

Competition

- VISIT FLORIDA budget represents little more than 5% of State Tourism Office Marketing budgets
- Florida is the No. 1 destination among domestic vacation travelers in the U.S.
- Florida is the No. 2 international travel destination market in the U.S., trailing only New York



Competitive Tourism Office Budgets

<u>State</u>	<u>Budget (in millions)*</u>
Hawaii	\$71.8
California	\$50.0
Illinois	\$48.9
Texas	\$34.3
Florida	\$29.4
Michigan	\$18.7
Colorado	\$18.3
New Mexico	\$17.4
Missouri	\$16.7
Louisiana	\$15.9
50 states collectively invest \$663 million per year in destination marketing	
*U.S. Travel Association Survey of U.S. State & Territory Tourism Office Budgets	

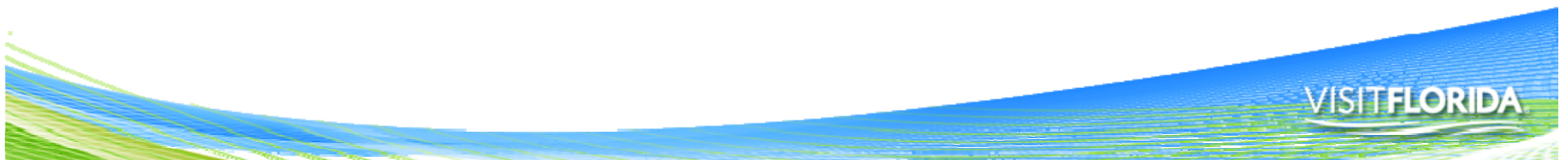
<u>Country</u>	<u>Budget (in millions)*</u>
Australia	\$106.7
Austria	\$ 72.8
Bahamas	\$ 79.4
Belgium	\$ 89.3
Brazil	\$ 72.0
Canada	\$ 65.3
Cyprus	\$142.3
France	\$113.3
Greece	\$138.1
Ireland	\$111.6
Korea	\$ 82.9
Malaysia	\$113.5
Portugal	\$ 69.7
Romania	\$128.9
South Africa	\$100.0
Spain	\$121.3
Switzerland	\$ 74.4
UK	\$135.7
57 countries from Argentina to Yemen invest \$2.6 billion per year in destination marketing	
*World Tourism Organization	

VISIT FLORIDA® History

- Private/public partnership created in 1996
- Statutorily created as “The Official Tourism Marketing Corporation for the State of Florida”
- Contracted with the state through the Florida Commission On Tourism & Office of Tourism, Trade & Economic Development (OTTED)
- Florida Commission on Tourism - 35 members
 - Governor as Chair, Senate and House Appointees (3)
 - Appointed members (32)
 - All industries represented and balanced geographically
- Florida Tourism Industry Marketing Corporation d.b.a. VISIT FLORIDA – 32 board of directors members
- 99 Employees
- 8300+ statewide industry involvement
- Statutory required 1-to-1 match

VISIT FLORIDA® Funding

- \$66.7 million budget
 - \$26.3 million in public funding (39%)
 - Tourism Promotional Trust Fund
 - 15.75% of \$2/day rental car surcharge
 - \$17.8 million in recurring appropriation
 - General revenue
 - \$8.5 million in non-recurring appropriation
 - \$40.4 million in private match (61%)



VISIT FLORIDA®

2009-13 Strategic Plan

- **MISSION**

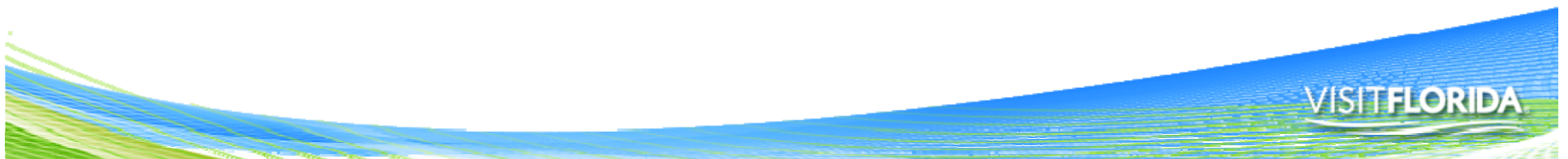
To promote travel and drive visitation to and within Florida

- **VISION**

VISIT FLORIDA® establishes Florida as the Number 1 travel destination in the world

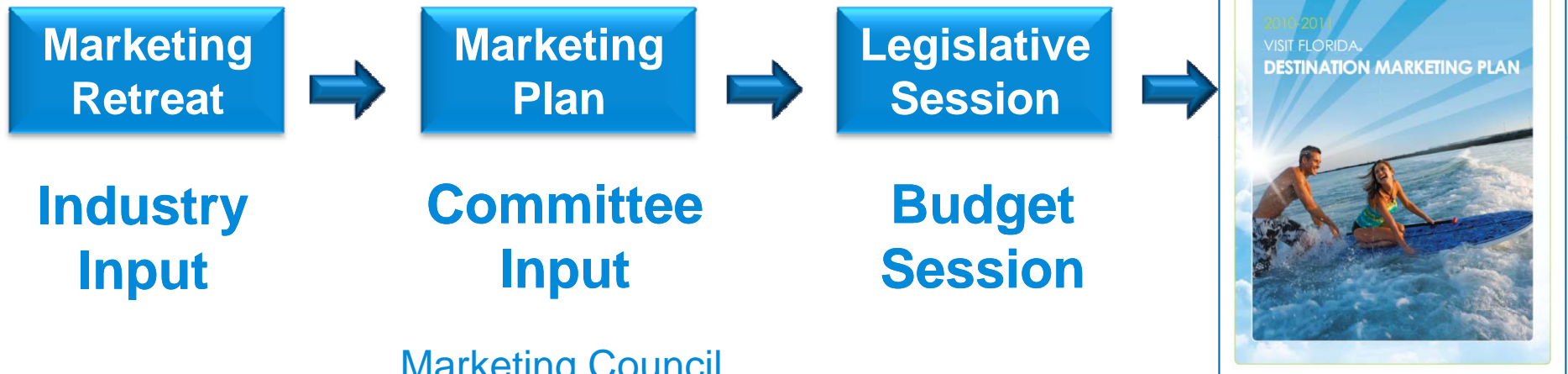
- **5 GOALS**

- **8 OBJECTIVES**



VISIT FLORIDA®

Marketing Planning Process

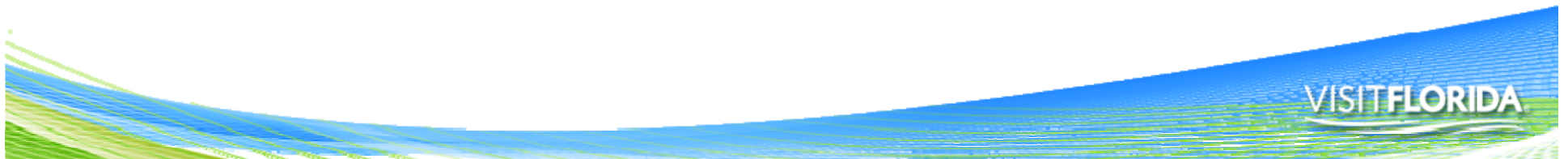


Marketing Council

- Advertising/Internet
- Promotions
- Public Relations
- Sales
- Cultural/Heritage/Rural/Nature
- Visitor Services
- Industry Relations

VISIT FLORIDA[®] Marketing Principles

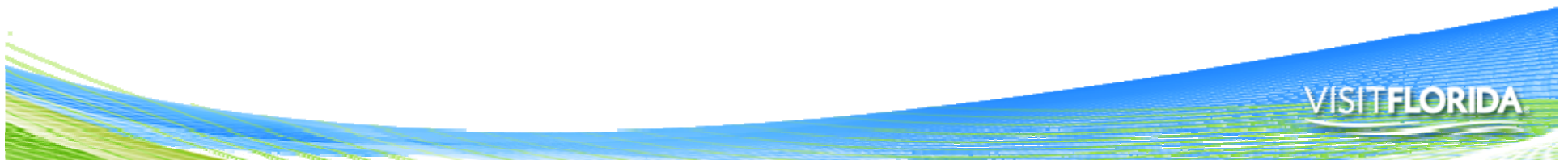
- With Scarcity Comes Clarity
- Create Value & Add Value
- Something for Everyone, But Not Everything for Everyone
- Quality vs. Quantity
- If It's Worth Doing, It's Worth Doing Right
- Everything Is Connected
- Everything Is Co-op-able
- Best in Class Partnerships



VISIT FLORIDA®

2011-12 Marketing Platforms

- Business to Business
- “Your Florida Side” – Integrated Domestic Marketing
- International Marketing Co-op
- Destination Matters – Meetings & Incentives
- Share a Little Sunshine – In-State Advocacy



Domestic Target Markets

Key Feeder Markets

Based on market size, market share and rank, drive distance from Florida, air access, historical performance and high concentration of target consumers, several markets will merit special attention from our advertising, public relations and promotion efforts. These include:



"Super 7"

- Atlanta, GA
- Boston, MA
- Chicago, IL
- New York, NY
- Philadelphia, PA
- Toronto, ON
- Washington, DC

Additional Key Feeder Markets

- Baltimore, MD
- Cleveland, OH
- Dallas, TX
- Detroit, MI
- Houston, TX
- Los Angeles, CA
- Minneapolis/St. Paul, MN
- Nashville, TN
- Pittsburgh, PA
- Raleigh/Durham, NC
- St. Louis, MO

Integrated Campaigns

- Fully integrated campaigns targeting 7 most important feeder markets
 - Atlanta, Boston, Chicago, New York City, Philadelphia, Washington D.C./Baltimore and Toronto
- Customized campaigns in each market utilizing advertising, co-op marketing, public relations, promotions, sales, internet marketing
- If it's worth doing, it's worth doing right!

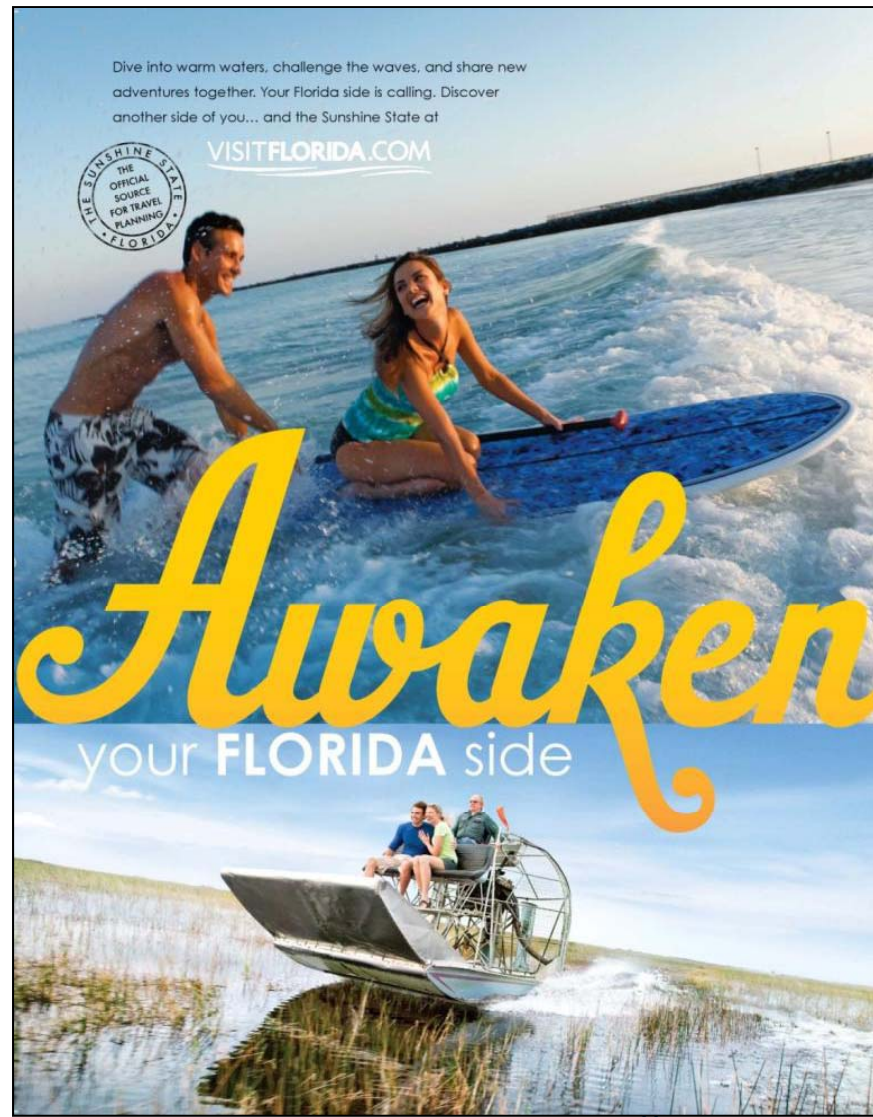
“Your Florida Side” Campaign

Dive into warm waters, challenge the waves, and share new adventures together. Your Florida side is calling. Discover another side of you... and the Sunshine State at

VISITFLORIDA.COM

THE SUNSHINE STATE
THE OFFICIAL SOURCE FOR TRAVEL PLANNING
FLORIDA

Awaken
your **FLORIDA** side



“Your Florida Side” Campaign



VISITFLORIDA

“Your Florida Side” Campaign



VISITFLORIDA

International Target Markets

- Maintain market share in Traditional Core Markets
 - Canada, UK, Germany, France, Spain, Ireland, Belgium, Holland
- Increase share in Growth Markets
 - Brazil, Venezuela, Columbia, Argentina, Chile
- Build awareness in Development Markets
 - China, India, South Korea

“The Lost Decade”

According to analysis of international travel figures, the failure of the United States to simply keep pace with the growth in international long-haul travel worldwide has cost our economy:

- 68.3 million lost visitors, each of whom on average spend well over \$4,000 dollars
- \$509 billion in lost spending, including \$214 billion in direct spending and \$295 billion in downstream spending at restaurants, retailers and scores of other small businesses
- 441,000 lost jobs, direct and indirect, in all regions of the country
- \$32 billion in lost tax revenue at the federal, state and local levels
- \$270 billion in lost trade surplus, as international travel to the U.S. is our largest service export

U.S. Travel Association

VISITFLORIDA

Travel Promotion Act – 03.04.10



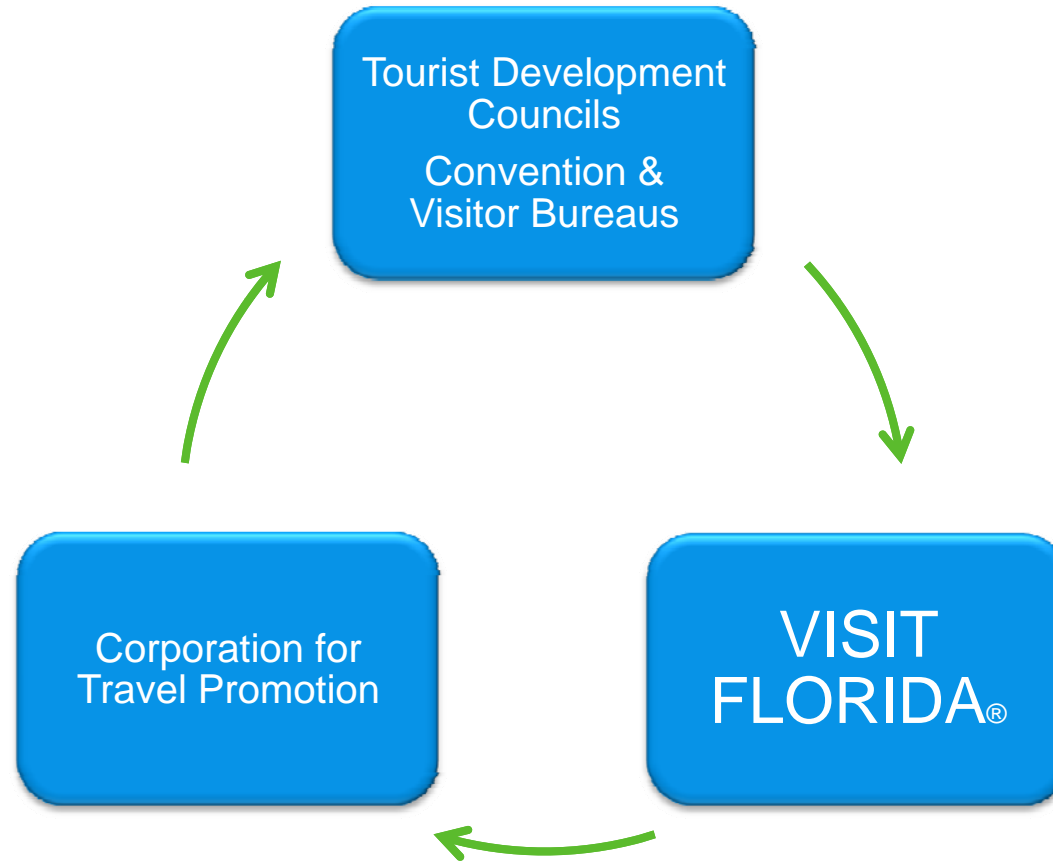
Official White House Photo by Lawrence Jackson

VISITFLORIDA

Expected to Yield:

- 20:1 ROI
- 1.6M new international visitors annually
- \$4B in new visitor spending annually
- 40,000 U.S. jobs
- \$321M in new federal tax revenue annually
- Reduction of federal budget deficit by \$425 M over 10 years

Destination Marketing Partnerships



“Destination Matters”

- Meetings.VISITFLORIDA.com
- Strategic Partnerships
- Co-Op Advertising
- Cover Your Event Insurance
- Citywide Meetings Grant



Destination matters.
meetings.VISITFLORIDA.com

It's good business to do business in Florida.
We have everything to make your meetings thrive. Find out why the Sunshine State has long been America's favorite destination:

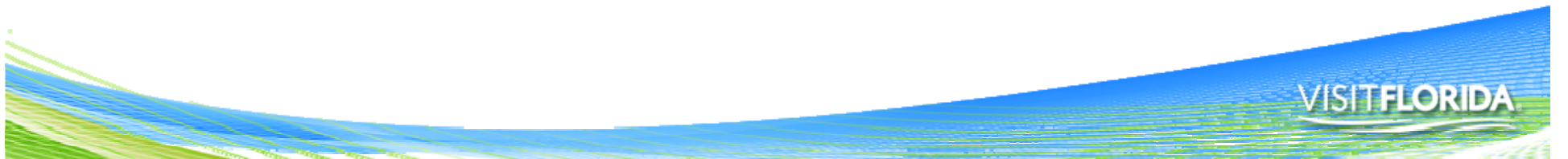
- Outstanding Value
- Convenient Accessibility
- First-Class Customer Service
- Unparalleled Accommodations & Facilities

For outstanding performance, choose the stand-out destination.

VISITFLORIDA.

VISITFLORIDA

ShareALittleSunshine.org



VISITFLORIDA

Tourism Marketing Works

- Every 85 visitors to the Sunshine State support 1 Florida job
- VISIT FLORIDA® generates \$147 in tourism spending and over \$9 in new state sales tax collections within 60 days of campaign completion for every \$1 in tourism advertising
- VISIT FLORIDA® marketing efforts significantly influenced 26.7% of all Florida visitors
- The Florida Tourism Industry has invested over \$2 in VISIT FLORIDA® cooperative marketing programs for every \$1 in state funding since 1996
- VISIT FLORIDA® is a \$1,125 billion destination marketing cooperative matching \$350 million of public investment by the state of Florida with \$776 million of private investment by thousands of Florida tourism businesses and strategic partners since 1996



VISITFLORIDA®

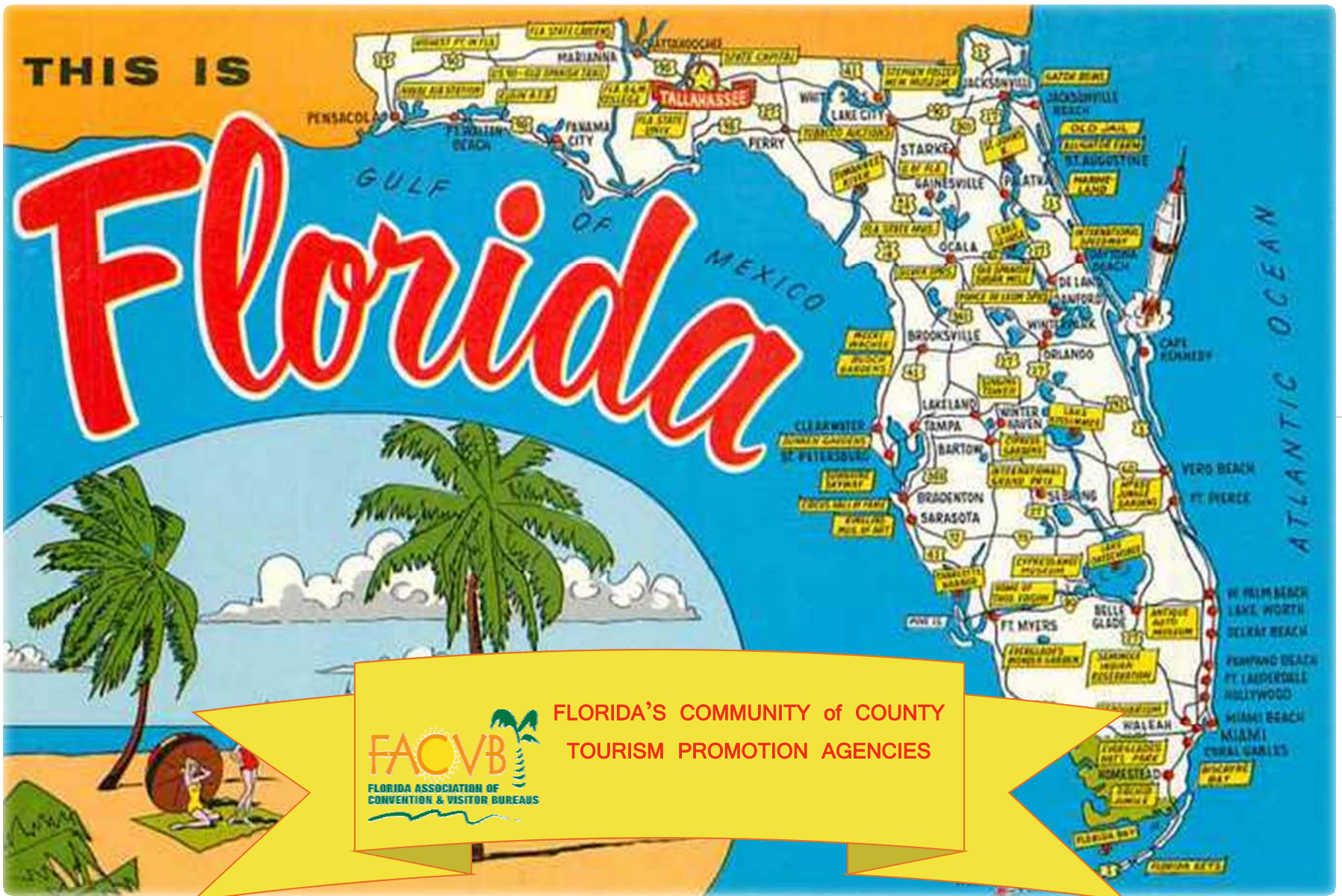
A blue wavy line graphic consisting of two parallel, slightly curved lines that sweep across the width of the text above.

2540 W. Executive Center Circle, Suite 200
Tallahassee, FL 32301
(850) 488-5607

www.VISITFLORIDA.org

THIS IS

Florida



FLORIDA'S COMMUNITY of COUNTY
TOURISM PROMOTION AGENCIES

Tourism Trends and Expectations for 2011

Tourism Trends and Expectations for 2011



- Community of county tourism promotion agencies.
- Provide education to attract more customers to member communities.
- Foster communications within tourism industry and the throughout the business community.

Tourism Trends Around Florida



- Most communities are reporting an increase in visitors.
- Pinellas, Orange, Miami-Dade, Broward, Monroe, Volusia all reporting the number of visitors is up within their communities.
- Advance bookings for Spring and Summer are on track.



Tourism Trends Around Florida



- Consumers are searching for deals and using rate as a differentiator.
- Hotel room rates are flat or down across Florida even as tourism spending has increased.
- Must spur demand for Florida travel.



Tourism Trends Around Florida



- Corporate meetings are down in St. Johns county.
- Pinellas and Hillsborough meetings leads are picking-up again.
- Meeting planners and corporations are driving for lower rates before booking.

Tourism Trends Around Florida

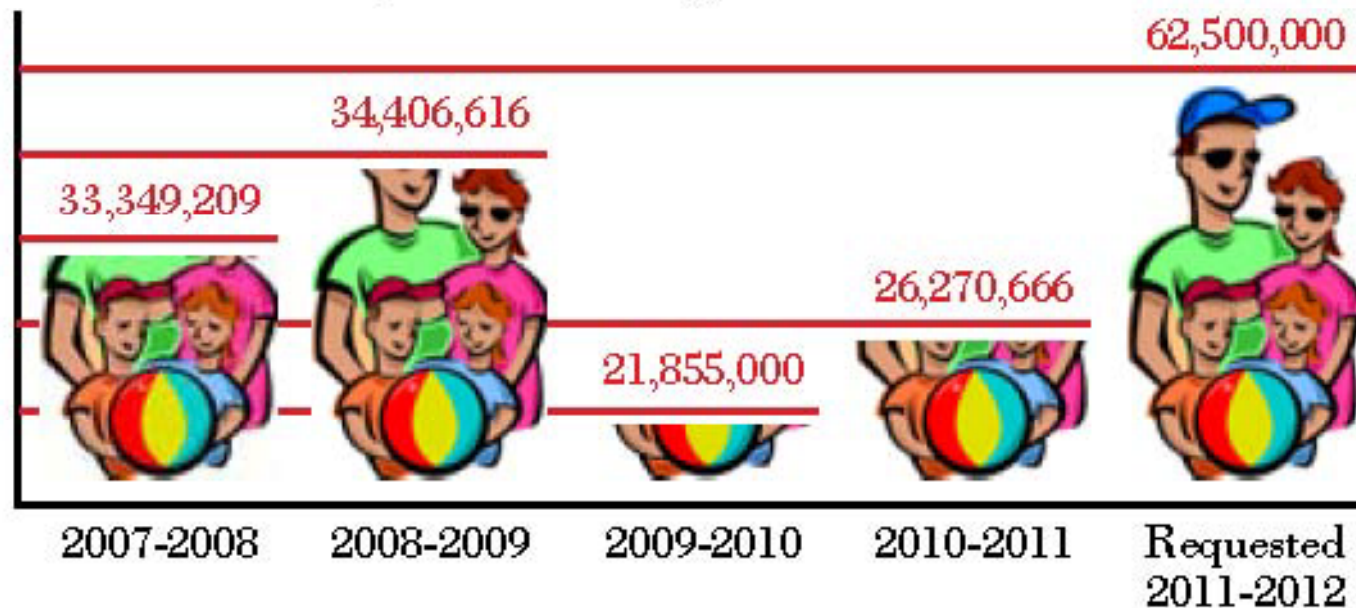


- North Florida still recovering from negative press coverage and misperceptions.
- Hotel industry in Okaloosa County alone lost \$30.7 million in 2010. Equivalent to all business between Nov. and Mar.
- BP sponsored marketing efforts ended this Fall.

VISITFLORIDA®



Generating Customers for Florida's Businesses; Creating Jobs for Floridians



Tourist Development Taxes



EXPRESS CHILDHOOD.

MIAMI
EXPRESS YOURSELF.

Every activity. Every splash. Every embrace. No place inspires the moment like Miami.
Explore MiamiExpressions.com or call 888.76.MIAMI for a free Vacation Planner.

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Sides of Pensacola

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PENSACOLA
Pensacola Beach • Perdido Key
(904) 874-1234 • VisitPensacola.com

Naples
Marco Island
Everglades
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SPORTS COUNCIL
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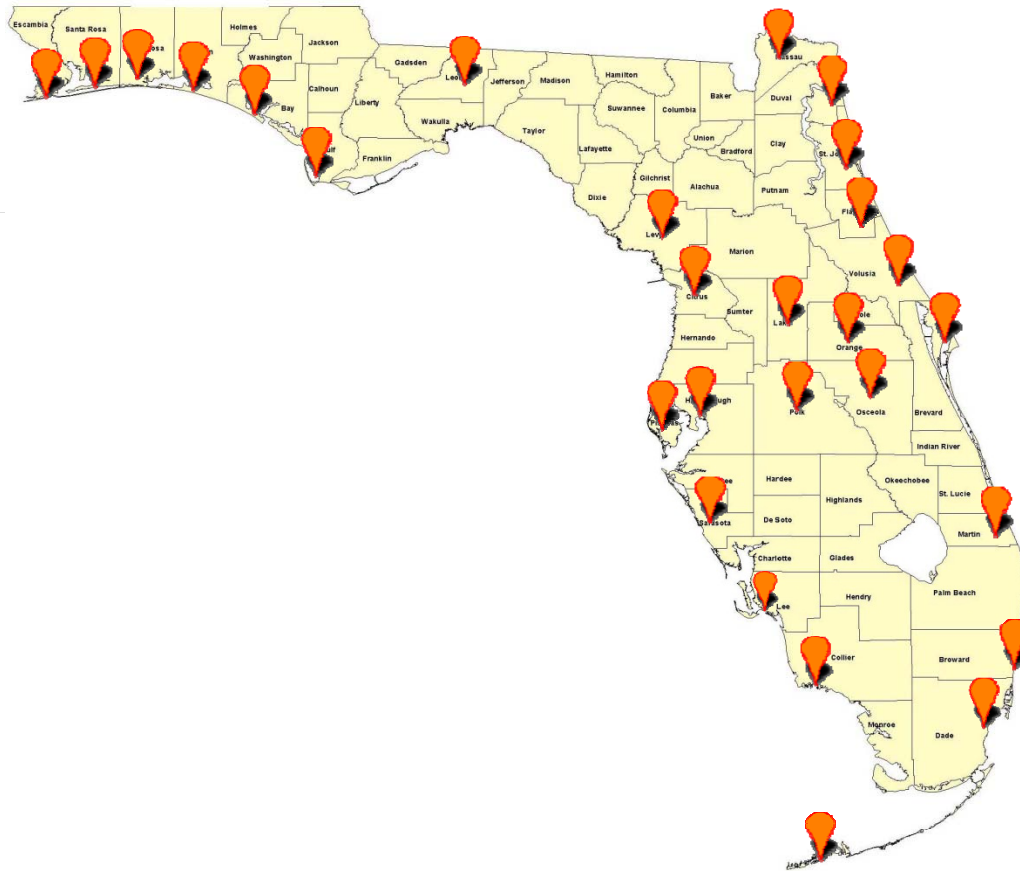
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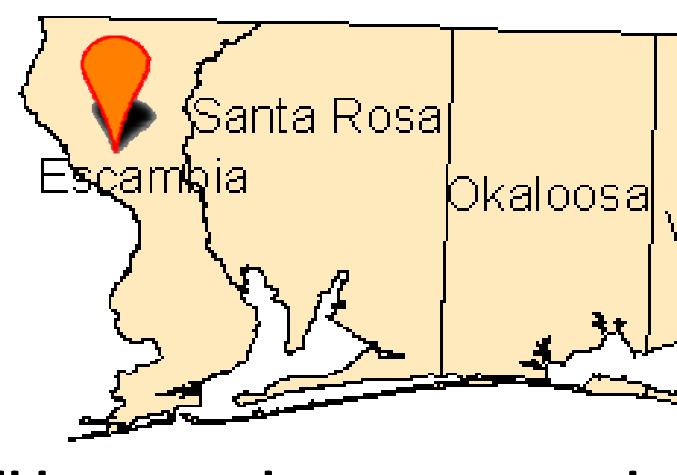
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Tourism Trends Around Florida

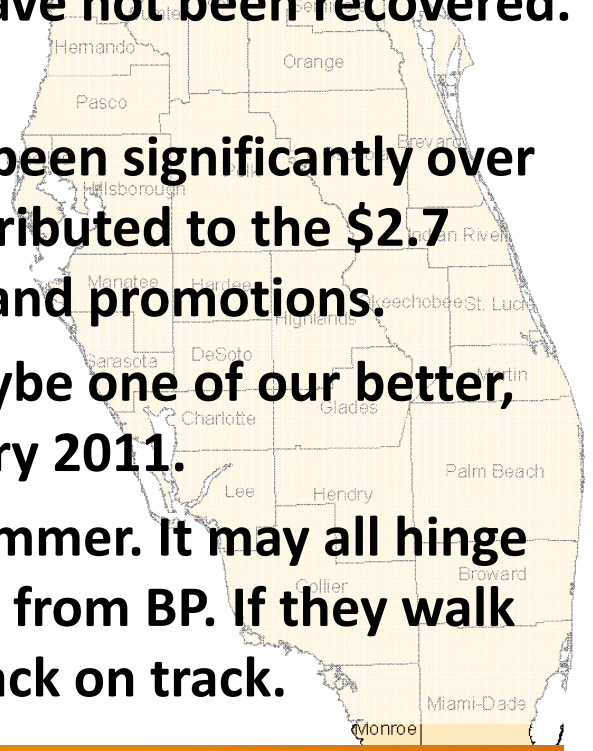




Escambia



Santa Rosa
Escambia
Okaloosa

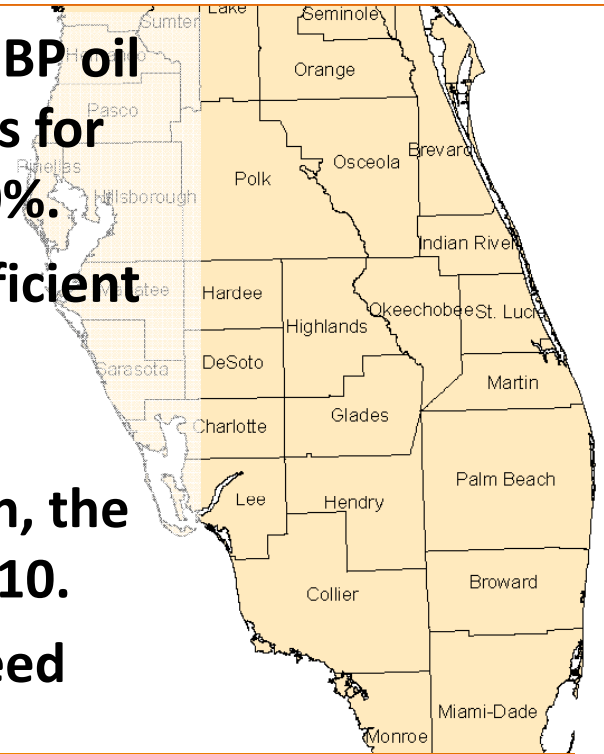
- **Tourism revenues lost during the BP oil spill have not been recovered. BP has not acted on Escambia County's claim.**
 - **Tourism revenues since September 2010 have been significantly over 2009 comparisons. Much of that is directly attributed to the \$2.7 million BP granted our county for advertising and promotions.**
 - **We're enjoying a robust snowbird season, maybe one of our better, but we won't know for sure until after February 2011.**
 - **We are cautiously optimistic for spring and summer. It may all hinge on another round of tourism marketing grants from BP. If they walk away, it may be another year before we get back on track.**
- 



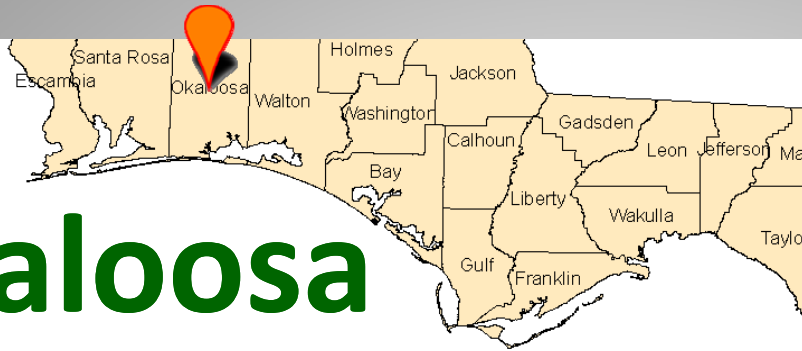
Santa Rosa



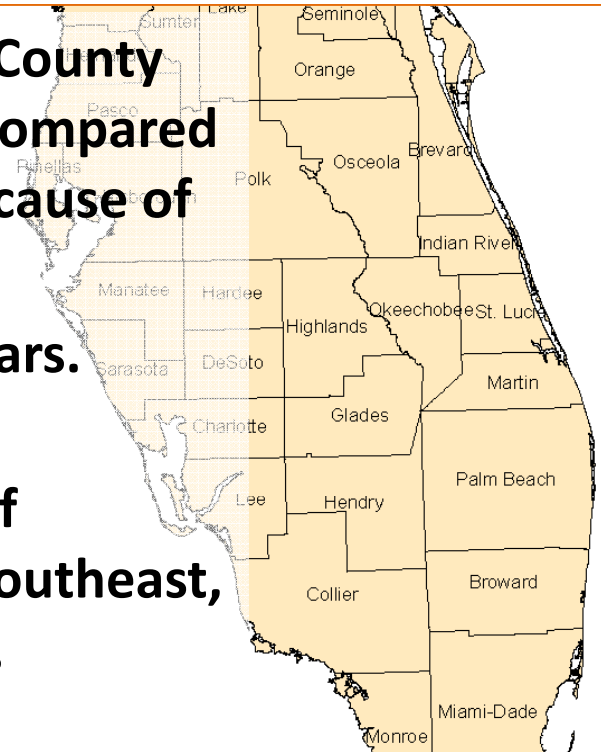
- **Navarre Beach was impacted directly by the BP oil spill; our Tourist Development Tax collections for July 2010 (our busiest month) were down 50%.**
- **This leaves us in a position of not having sufficient funds to market for our season—spring and summer.**
- **Although BP did provide funds for promotion, the money had to be spent by September 30, 2010.**
- **Navarre Beach is better than ever, but we need money to get the word out.**



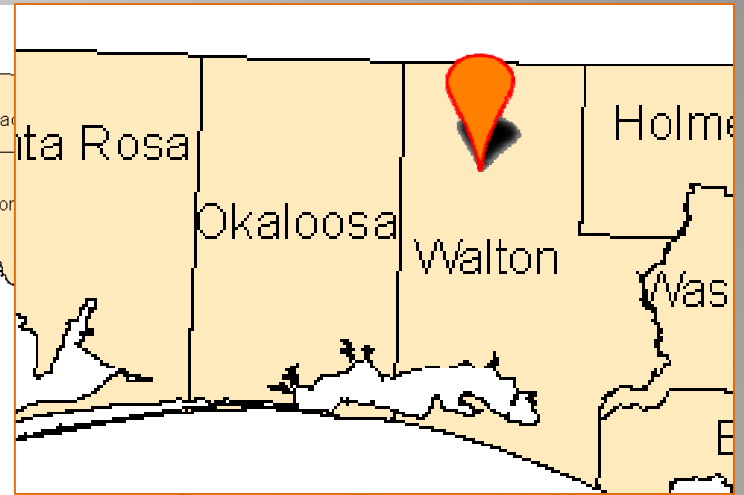
Okaloosa



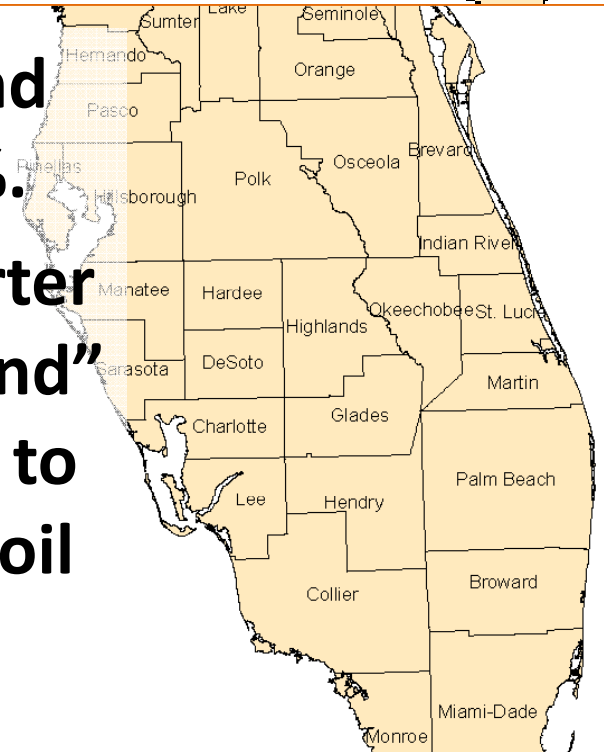
- **The hotel and lodging industry in Okaloosa County and Destin was down \$32,611,400 in 2010 compared to 2009, mostly from June to September because of the Deepwater Horizon oil spill.**
- **2011 looks good so far compared to past years.**
- **Returning to 2009's numbers will require reservations to pour in from the residents of Birmingham, Nashville and the rest of the Southeast, eager for some sunshine after a cold winter.**



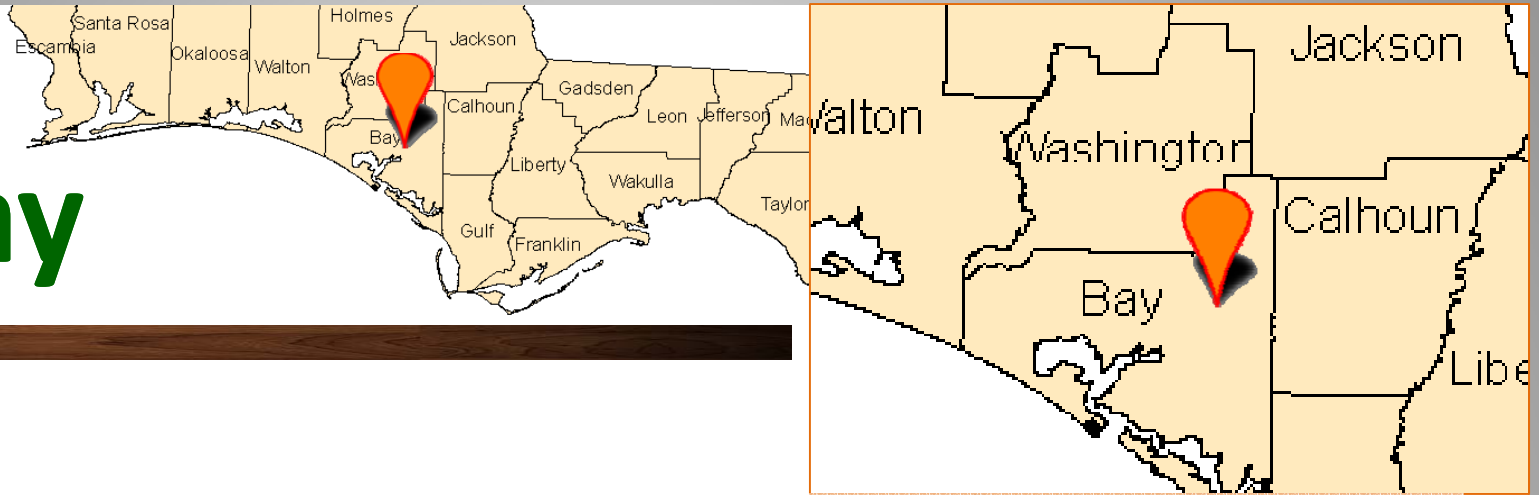
Walton



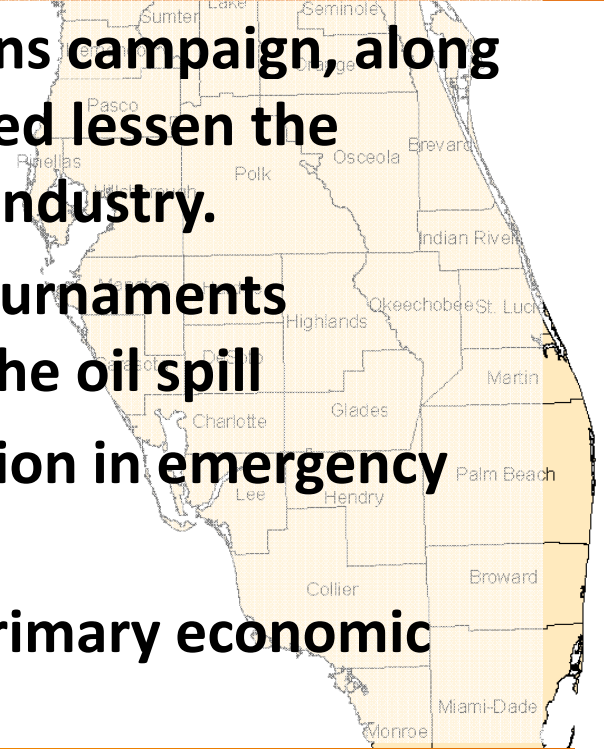
- **October 2010 was down 2.85%, and November 2010 was down 10.76%.**
- **As far as the outlook for First Quarter 2011, we are implementing a “brand” evolution to do everything we can to make things rebound after the BP oil spill.**



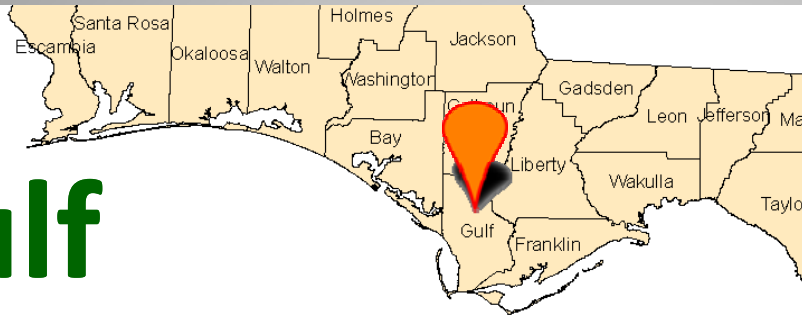
Bay



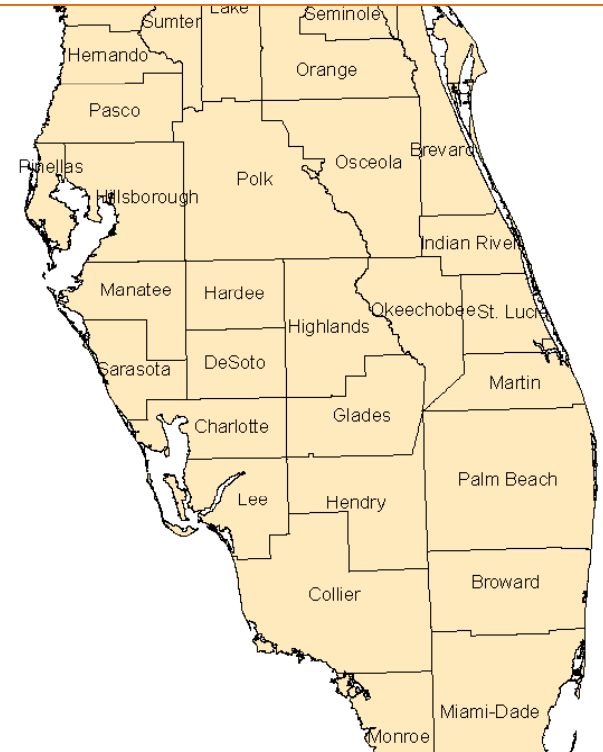
- **An aggressive marketing & public relations campaign, along with a diversified tourism economy helped lessen the impacts to Panama City Beach's lodging industry.**
 - **Youth baseball & fast pitch softball tournaments attracted strong numbers in spite of the oil spill**
 - **Panama City Beach received \$3.6 million in emergency marketing grants**
- **The residual impacts from the spill are primary economic due to the consumer misperception**



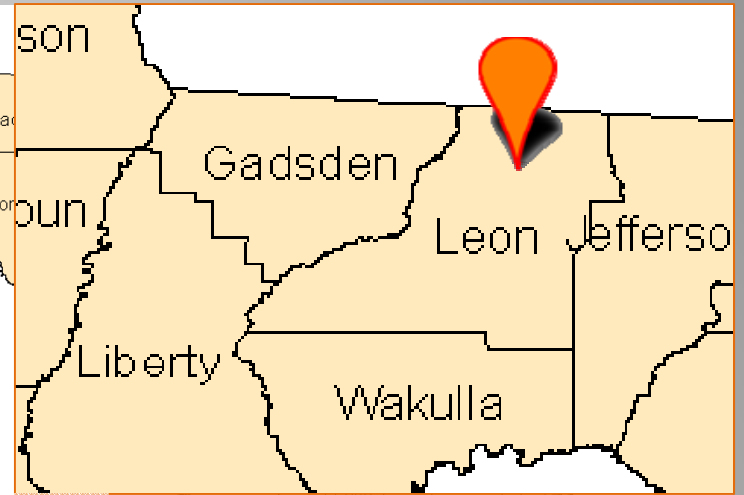
Gulf



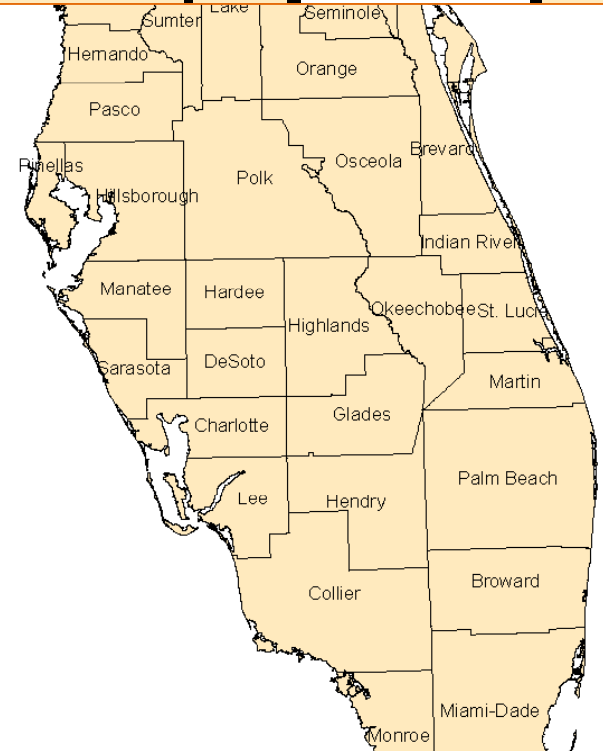
- From early spring 2010 reservations, we expected to be up 15%.
- Tourist Development Tax revenues in Gulf County indicate a 5% loss from 2008-2009 to 2009-2010.
- Down another 5% year-to-date in 2011 compared to last year.
- Beginning to receive positive responses for current reservations.



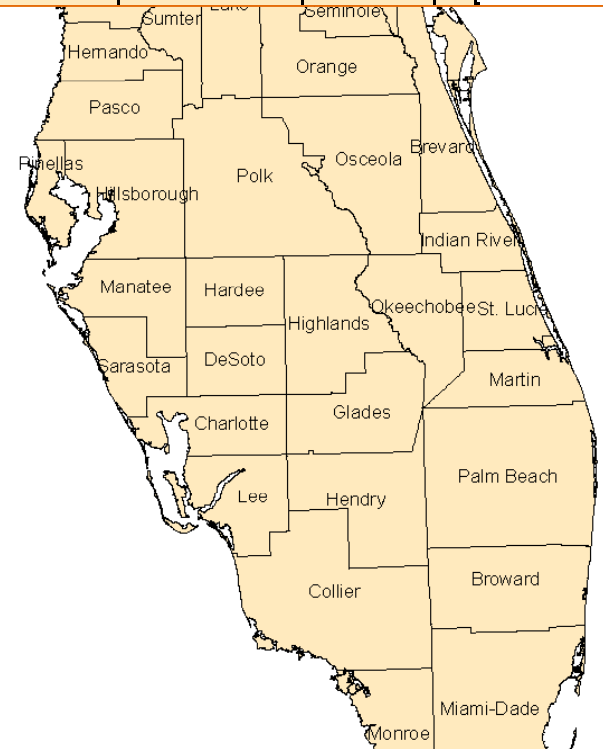
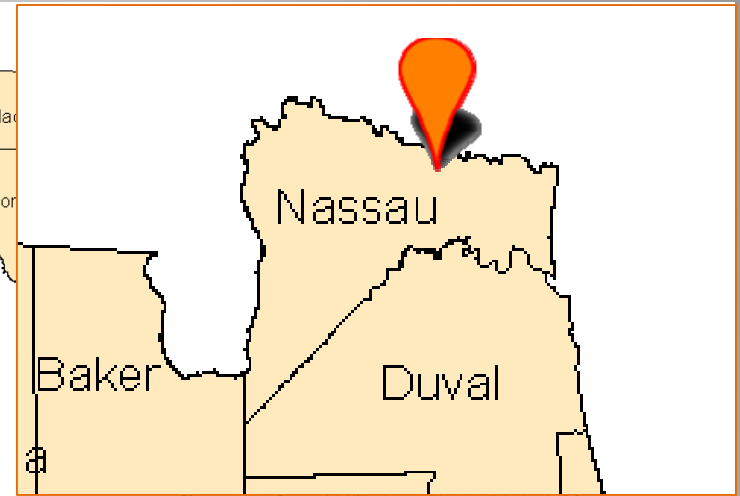
Leon



- **Leon County has seen seven consecutive months of increased hotel occupancy as well as increased Tourist Development Tax collections in six of the last seven months.**
- **After a weak beginning to 2010, the year finished strong.**
- **Occupancy was up 5.9%, hotel revenue was up 4.5% and demand was up 7.1%, but rate was off 2%.**

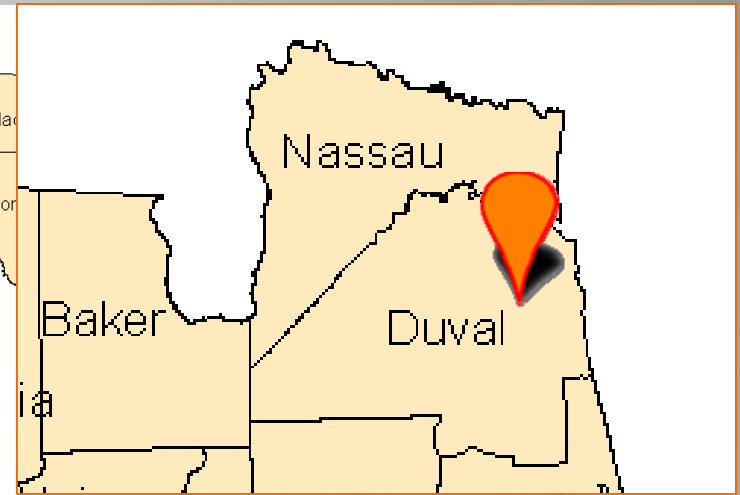


Nassau

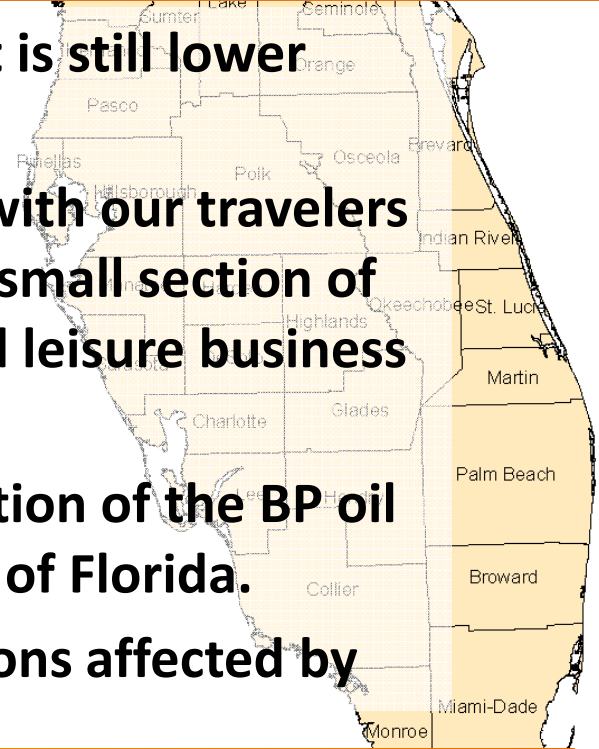


- **Fourth Quarter 2010 was flat compared to the previous year.**
- **First Quarter 2011 will be down.**

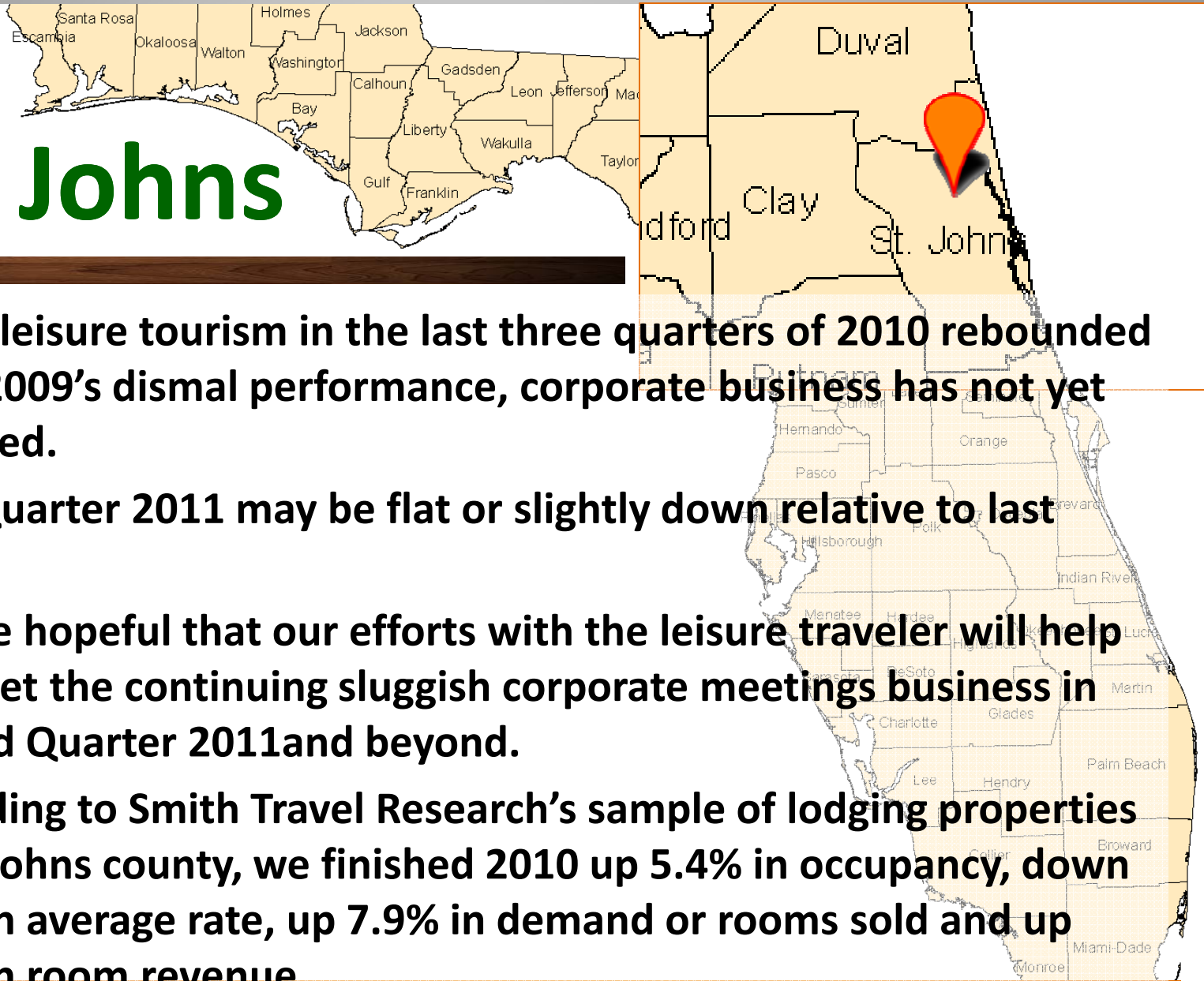
Duval



- **Increased pace of meetings booking, but it is still lower rated business.**
- **Seeing some return to advance planning, with our travelers starting to book a bit further out. This is a small section of our business, however. Most meetings and leisure business is booking in a very short window.**
- **Still being affected by the negative perception of the BP oil spill even though we are on the east coast of Florida.**
- **Jacksonville was in the top three destinations affected by the oil spill according to consumers.**

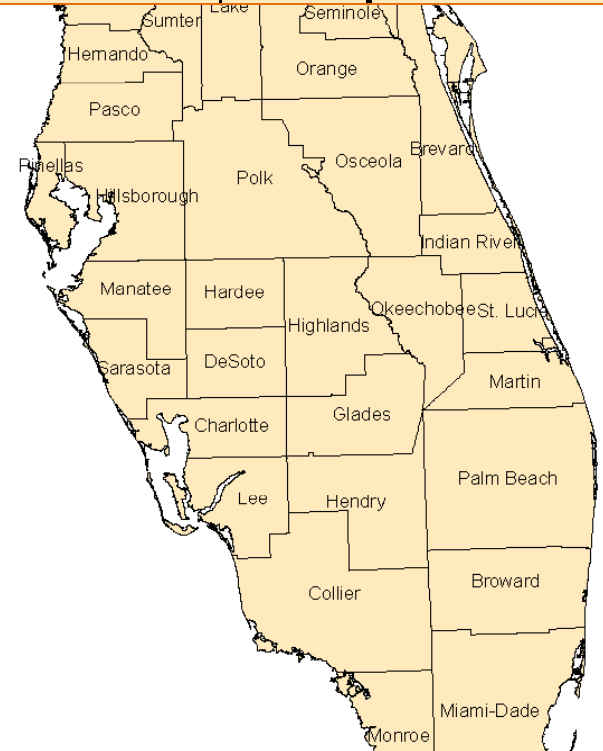
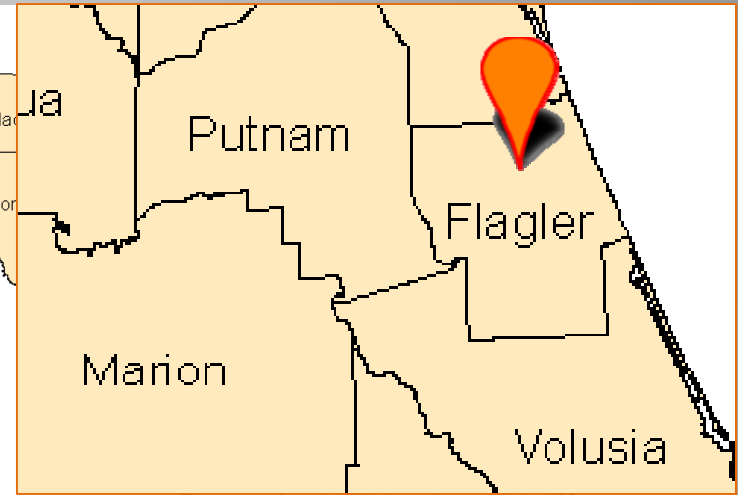


St. Johns



- While leisure tourism in the last three quarters of 2010 rebounded from 2009's dismal performance, corporate business has not yet returned.
- First Quarter 2011 may be flat or slightly down relative to last year.
- We are hopeful that our efforts with the leisure traveler will help to offset the continuing sluggish corporate meetings business in Second Quarter 2011 and beyond.
- According to Smith Travel Research's sample of lodging properties in St. Johns county, we finished 2010 up 5.4% in occupancy, down 4.2% in average rate, up 7.9% in demand or rooms sold and up 3.4% in room revenue.

Flager

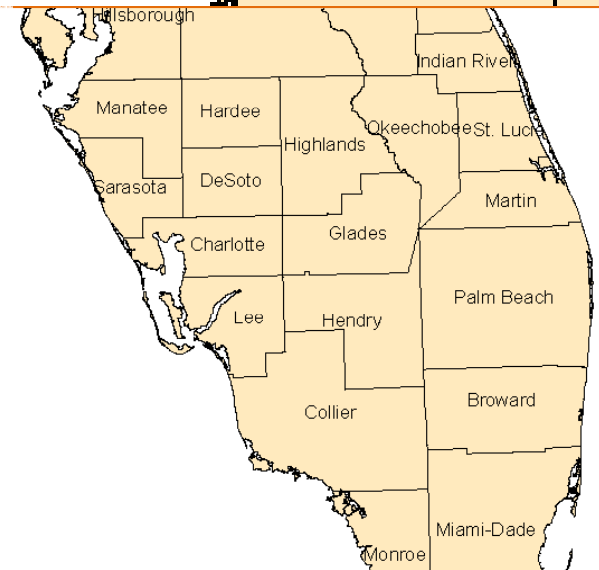
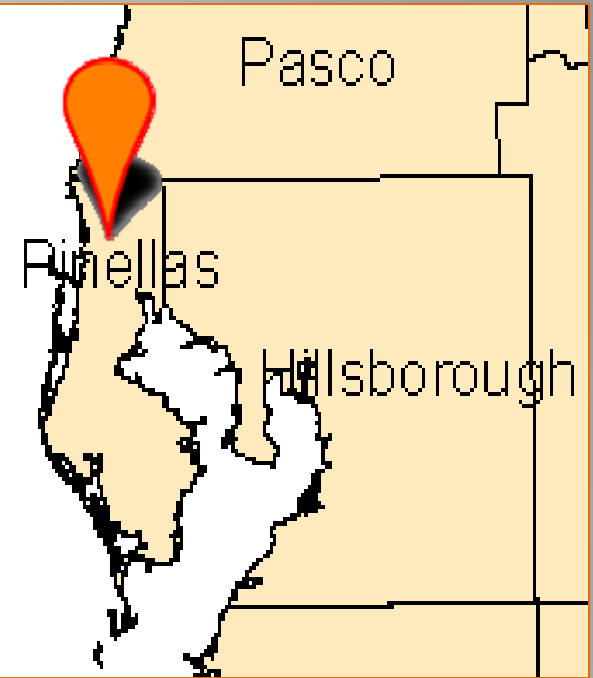


- **October continued to show increases in occupancy and collections.**
- **November 2010 was the first month in the last two years with a decrease in revenue compared with the previous year.**
- **December 2010 is looking flat.**
- **January 2011 is showing a bit flat, but February and March should show slight increases over 2010.**

Pinellas



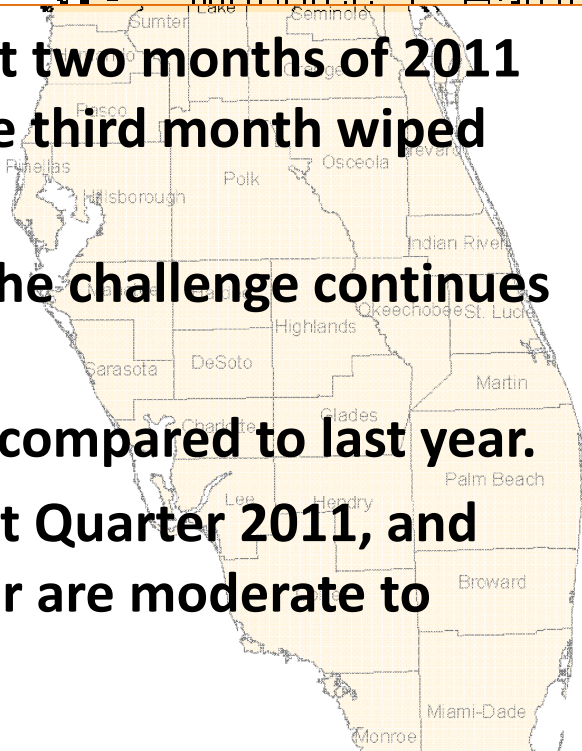
- **Better than expected, with tax collections up.**
- **Leisure bookings are slow coming in; group and meetings looks good and is ahead of pace.**
- **Overall, First Quarter 2011 should be healthy as long as the leisure bookings pick up.**



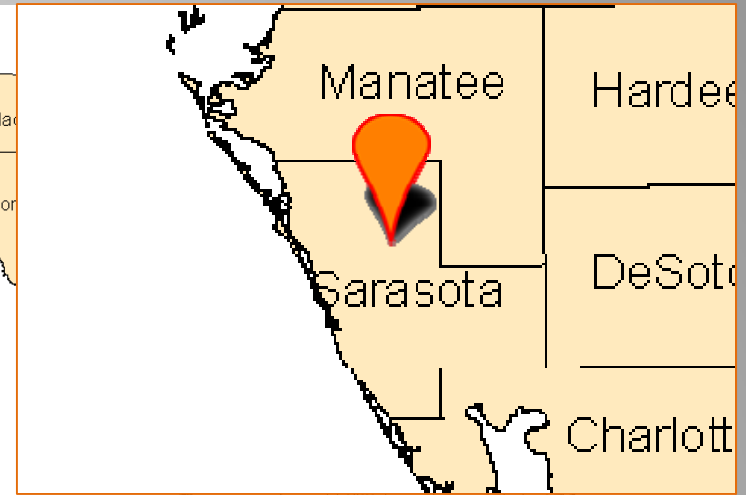


Hillsborough

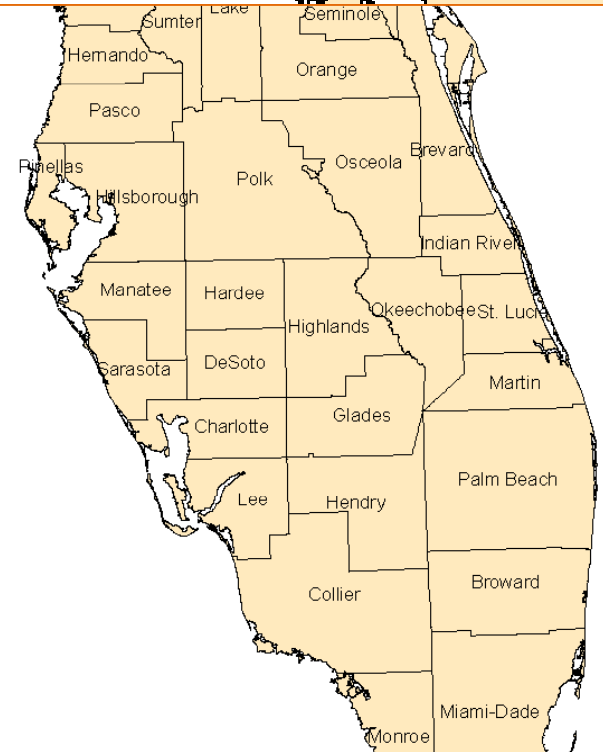


- **On the revenue side, we were up for the first two months of 2011 (October and November 2010); however, the third month wiped out those increases.**
 - **Occupancy has shown very steady growth; the challenge continues to be the rate.**
 - **Overall visitor spending is remaining steady compared to last year.**
 - **Our convention/group business is up for First Quarter 2011, and leads for single hotel bookings in this quarter are moderate to strong.**
- 

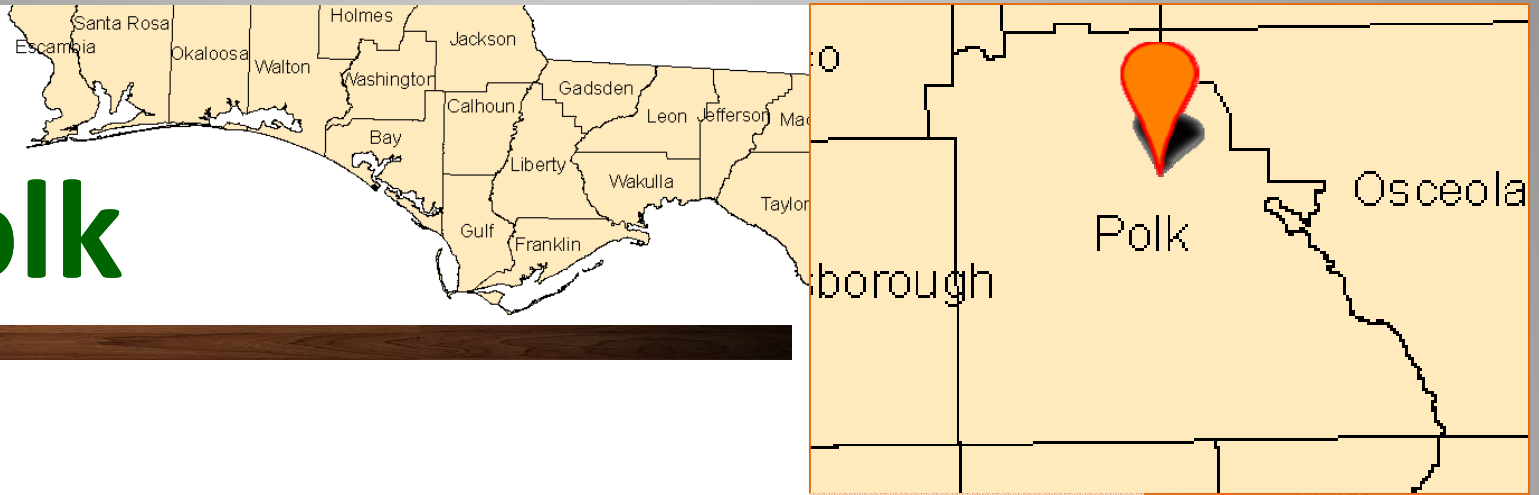
Sarasota



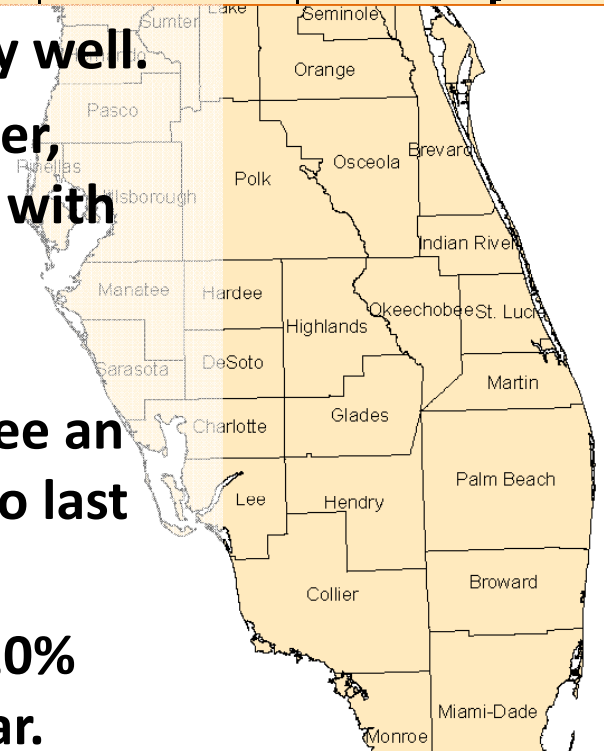
- **A 2% increase from fourth quarter 2010 compared with 2009.**
- **Outlook from industry survey is split, with about half looking at better business and half looking at flat or worse.**
- **Upscale market is doing much better than the rest.**



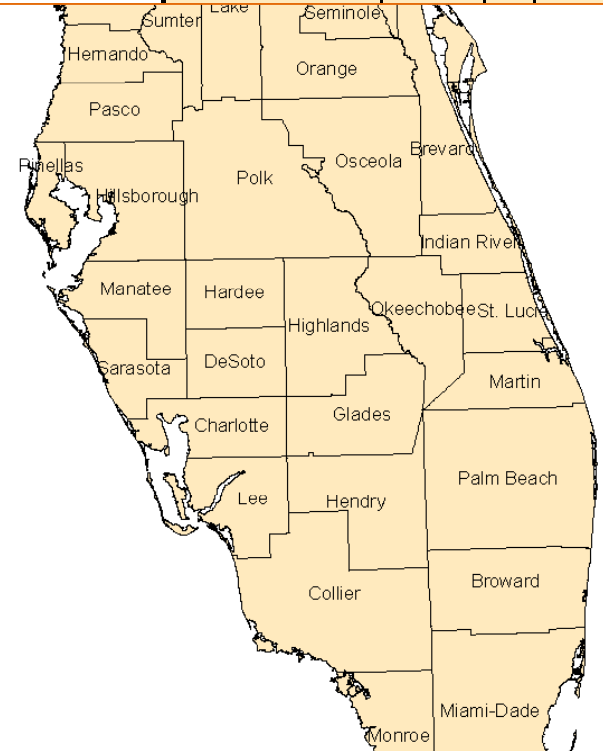
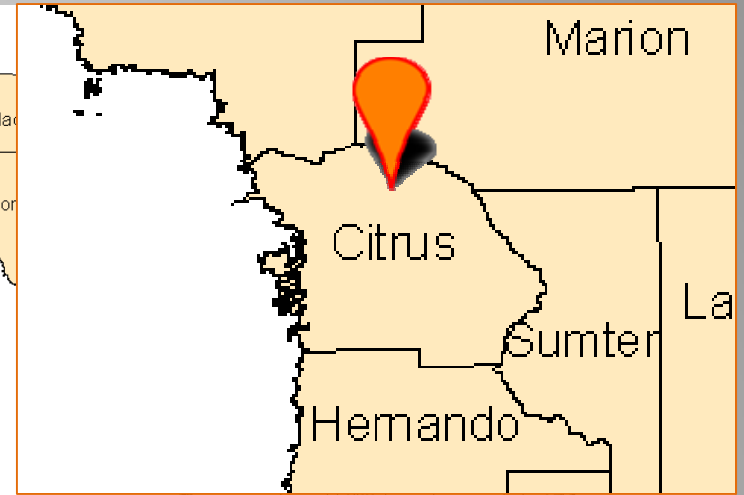
Polk



- **Fourth Quarter 2010 turned out remarkably well.**
- **Total tax collections were up 14.3%; however, demand has increased approximately 18%, with average daily rate hovering around -4%.**
- **From all indications, and some anecdotal information, Polk County will continue to see an increase in total tax collections compared to last year.**
- **Our best preliminary data indicates a 5 to 10% increase over the same time period last year.**

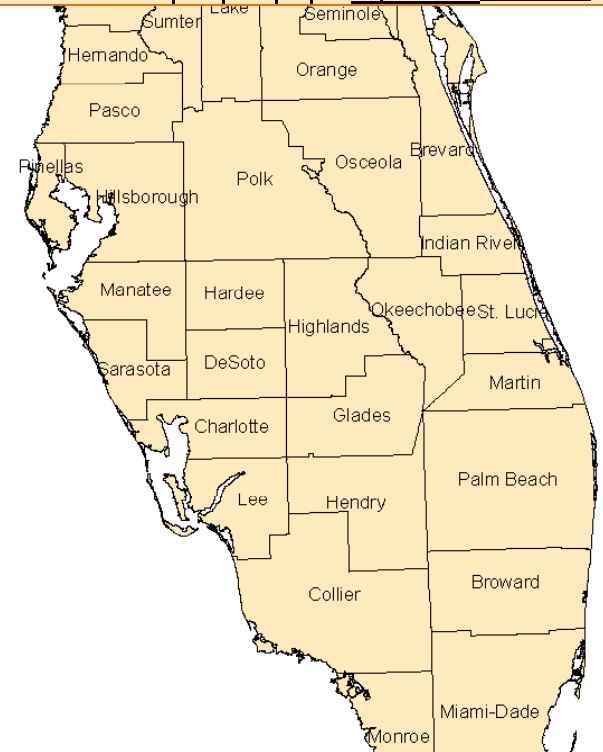
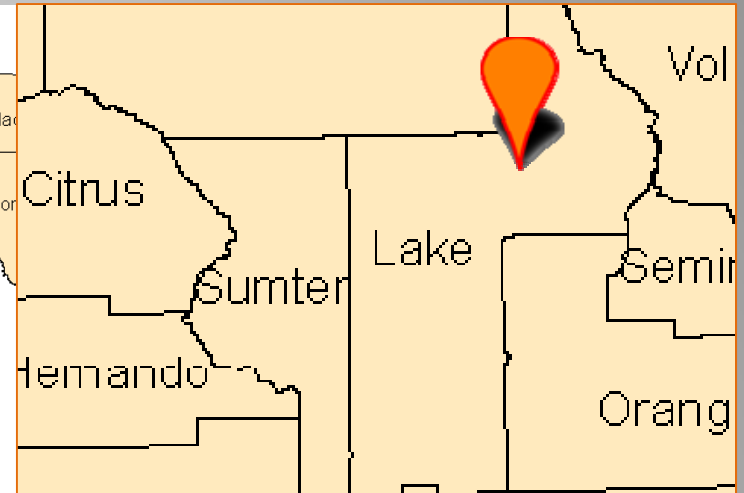


Citrus



- **A cold December led to a 50% drop in Tourist Development Tax revenues in Fourth Quarter 2010.**
- **Expect First Quarter 2011 to be better but not stellar.**
- **Pent-up interest reflected in phone inquiries, website traffic with hotels and tour operators as well as the visitors bureau.**

Lake



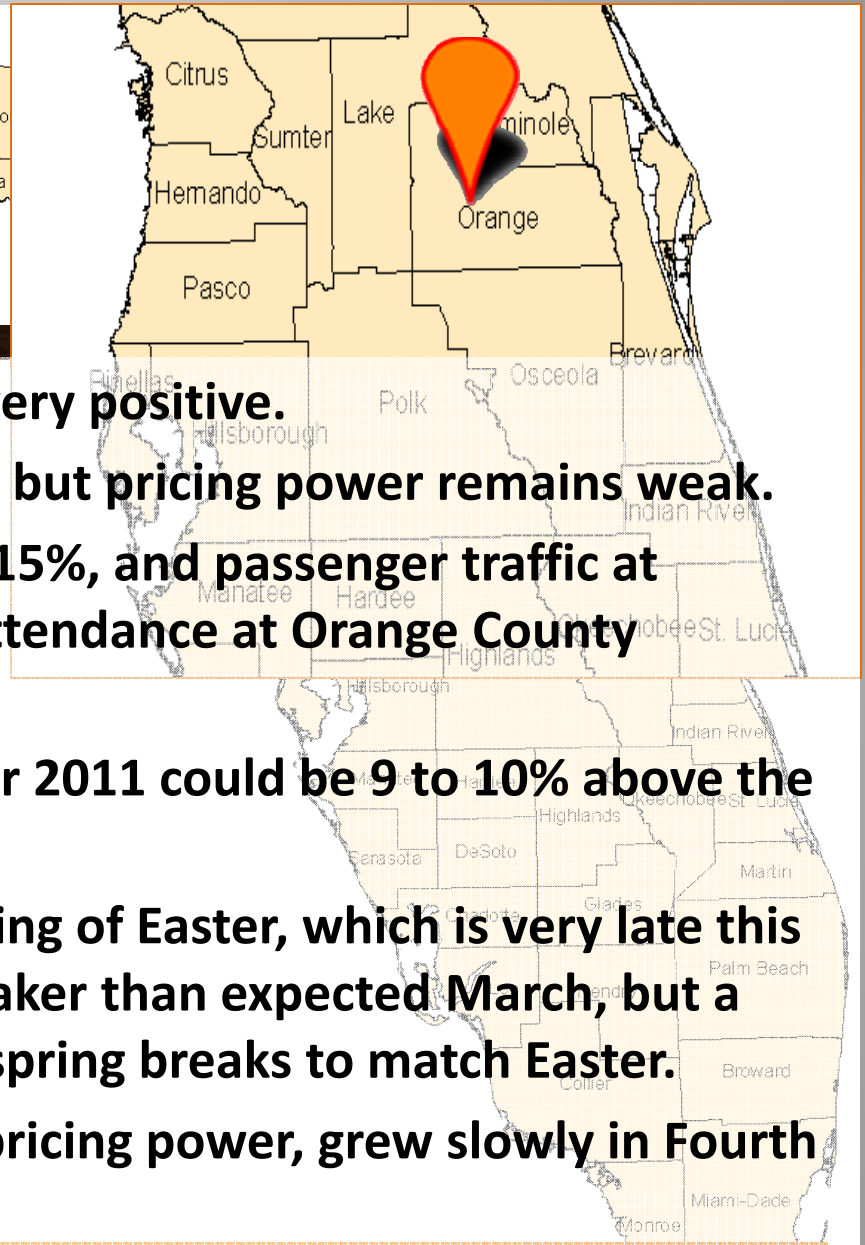
- **Revenues were up 8%, very positive comments from hoteliers.**
- **Expect 2011 to continue the positive, upward trend.**

Osceola



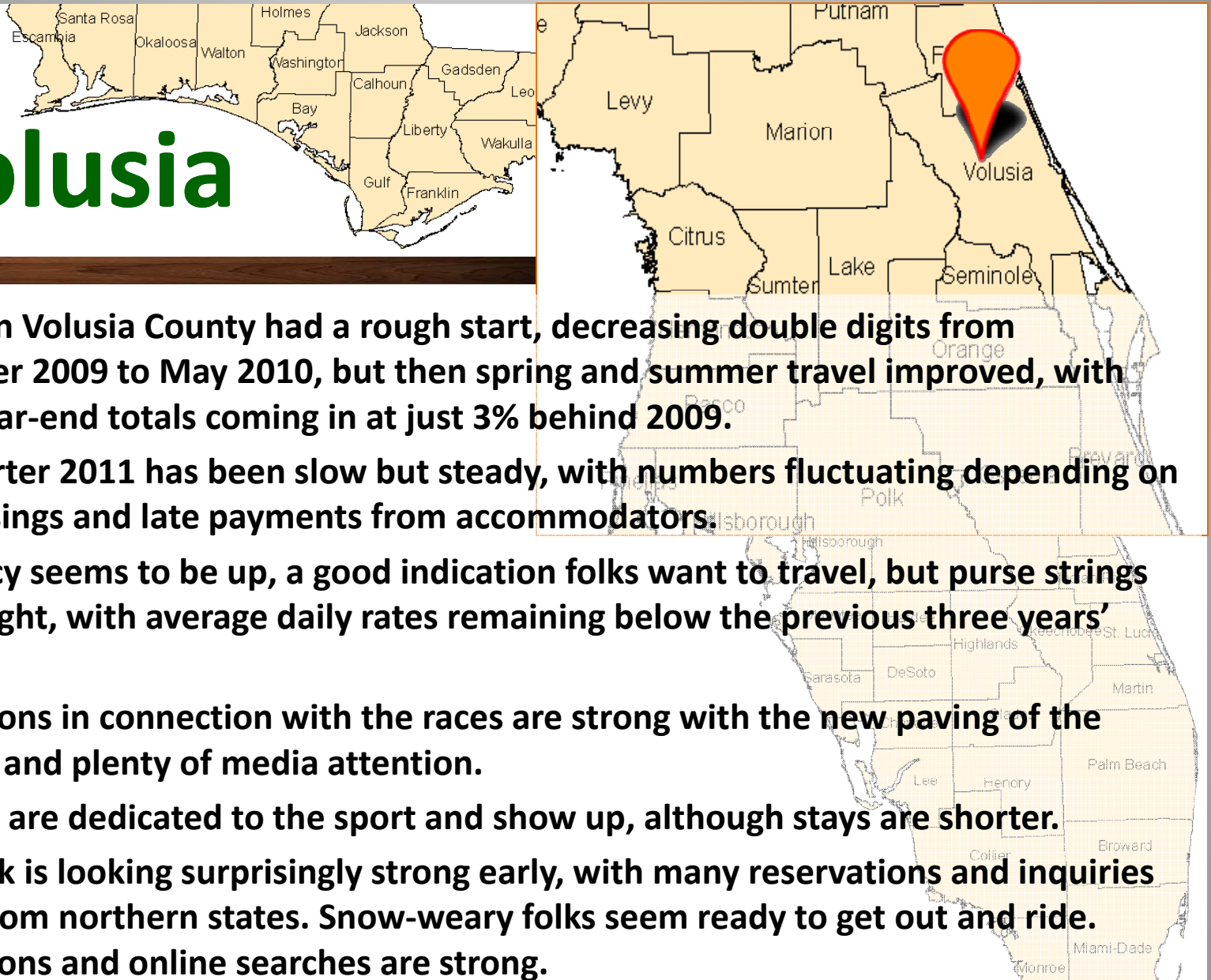
- **Up slightly for 2010 over 2009.**
- **January 2011 appears to be up again slightly.**
- **Hoping for a good March, but February is a question mark.**

Orange



- **Preliminary indicators for 2010 are very positive.**
- **Business activity is picking up nicely, but pricing power remains weak.**
- **Hotel demand was up around 13 to 15%, and passenger traffic at Orlando International Airport and attendance at Orange County Convention Center were both up.**
- **projected attendance in First Quarter 2011 could be 9 to 10% above the prior year's levels.**
- **One thing to keep in mind is the timing of Easter, which is very late this year (Sunday, April 24). Expect a weaker than expected March, but a stronger April as schools push back spring breaks to match Easter.**
- **Average daily rates, an indicator of pricing power, grew slowly in Fourth Quarter 2010 (1 to 2%).**

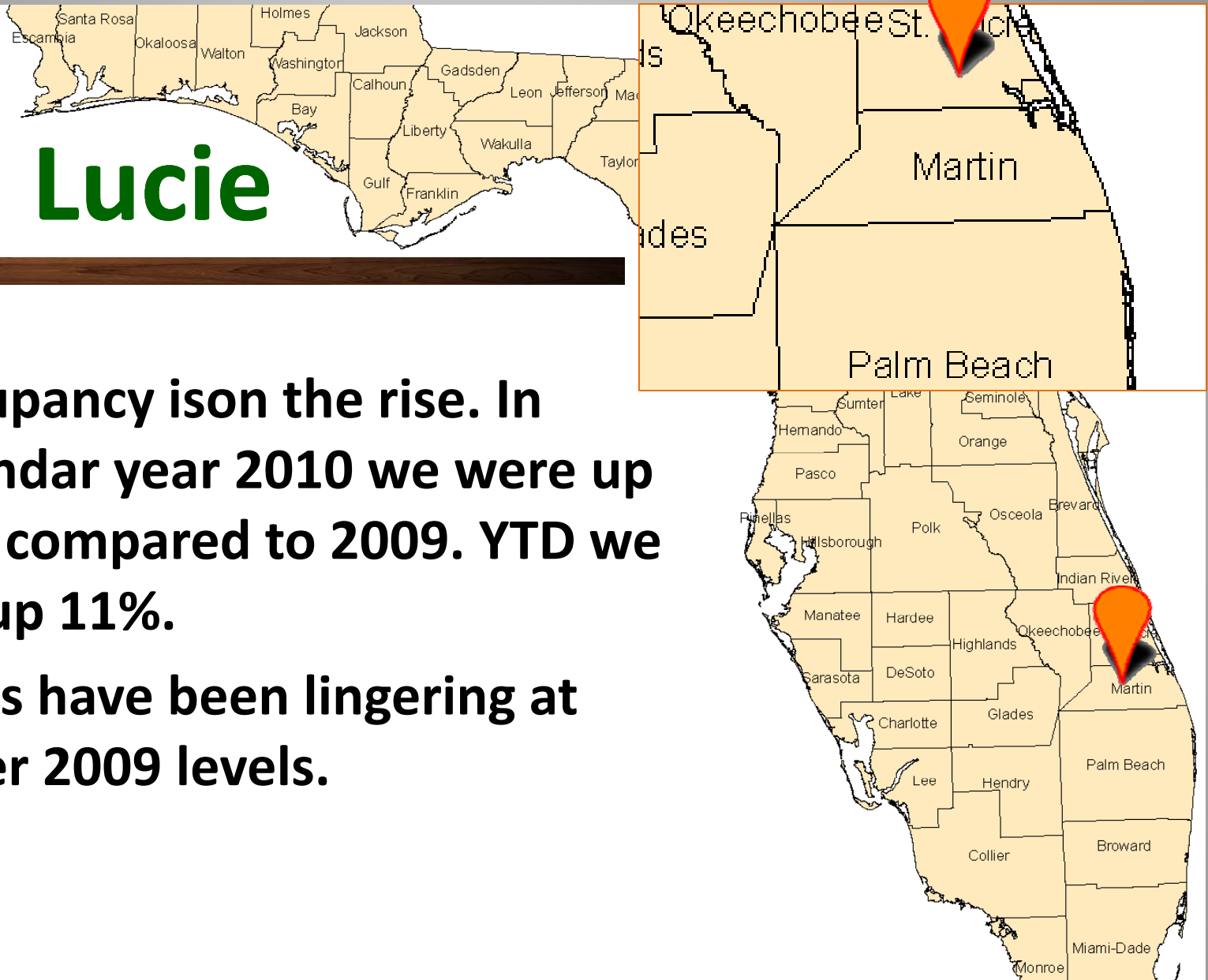
Volusia



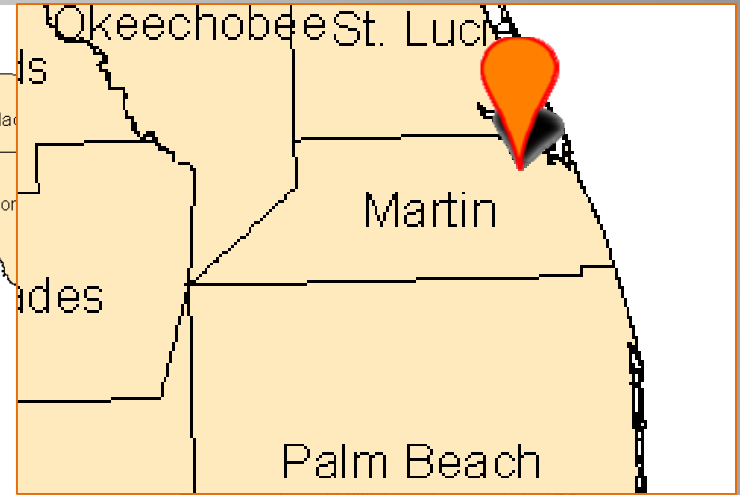
- **Tourism in Volusia County had a rough start, decreasing double digits from September 2009 to May 2010, but then spring and summer travel improved, with 2010's year-end totals coming in at just 3% behind 2009.**
- **First Quarter 2011 has been slow but steady, with numbers fluctuating depending on hotel closings and late payments from accommodators.**
- **Occupancy seems to be up, a good indication folks want to travel, but purse strings are still tight, with average daily rates remaining below the previous three years' levels.**
- **Reservations in connection with the races are strong with the new paving of the racetrack and plenty of media attention.**
- **Race fans are dedicated to the sport and show up, although stays are shorter.**
- **Bike Week is looking surprisingly strong early, with many reservations and inquiries coming from northern states. Snow-weary folks seem ready to get out and ride. Reservations and online searches are strong.**

St. Lucie

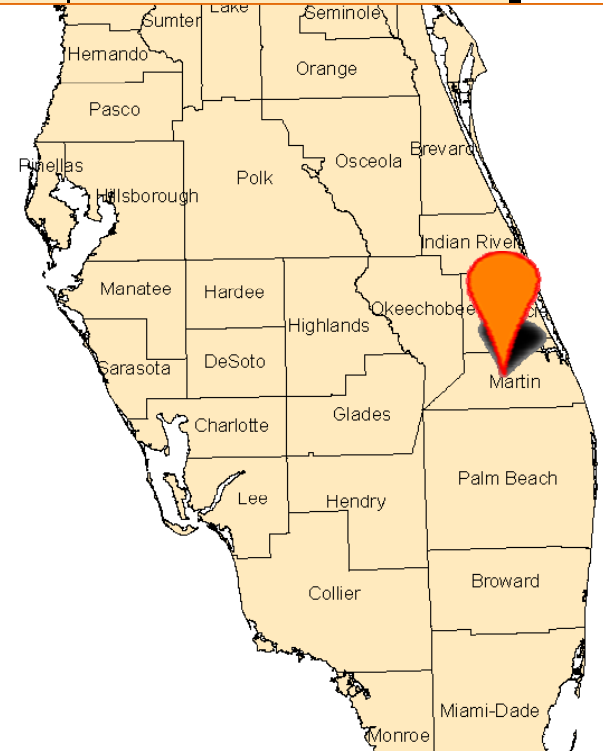
- **Occupancy is on the rise. In calendar year 2010 we were up 24% compared to 2009. YTD we are up 11%.**
- **Rates have been lingering at lower 2009 levels.**



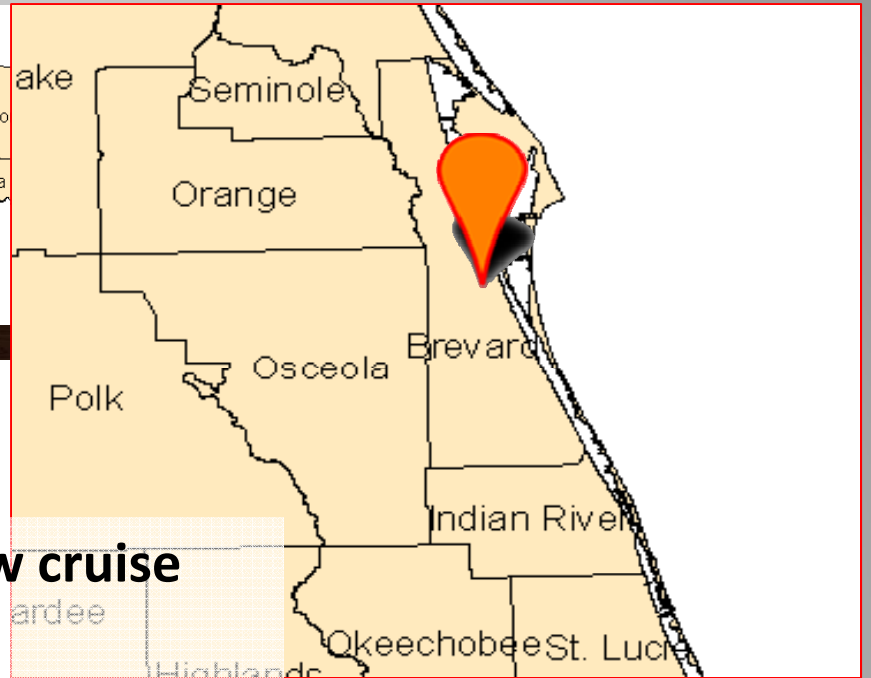
Martin



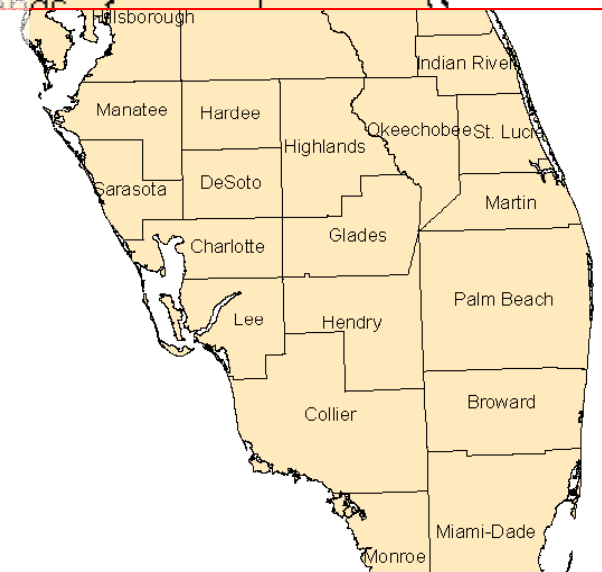
- **2010 was better than 2009 (20% increase).**
- **Outlook is positive with a very good January 2011.**



Brevard

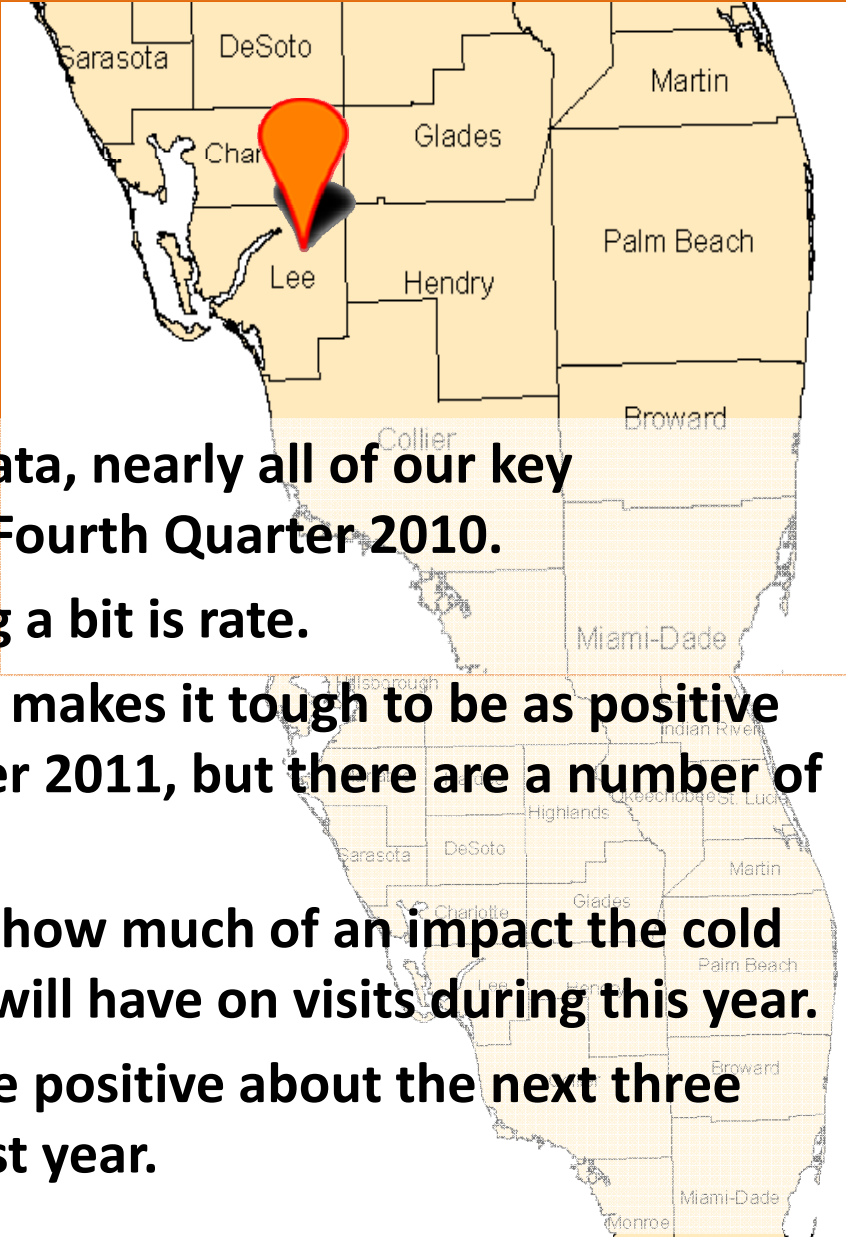


- **Trending up slightly. Disney's new cruise ship is helping.**
- **We are concerned about 2012 when the Space Shuttle program is over.**
- **Hoping new commercial launch business will offset some losses.**
- **Hoping the state continues to support space exploration economic development.**





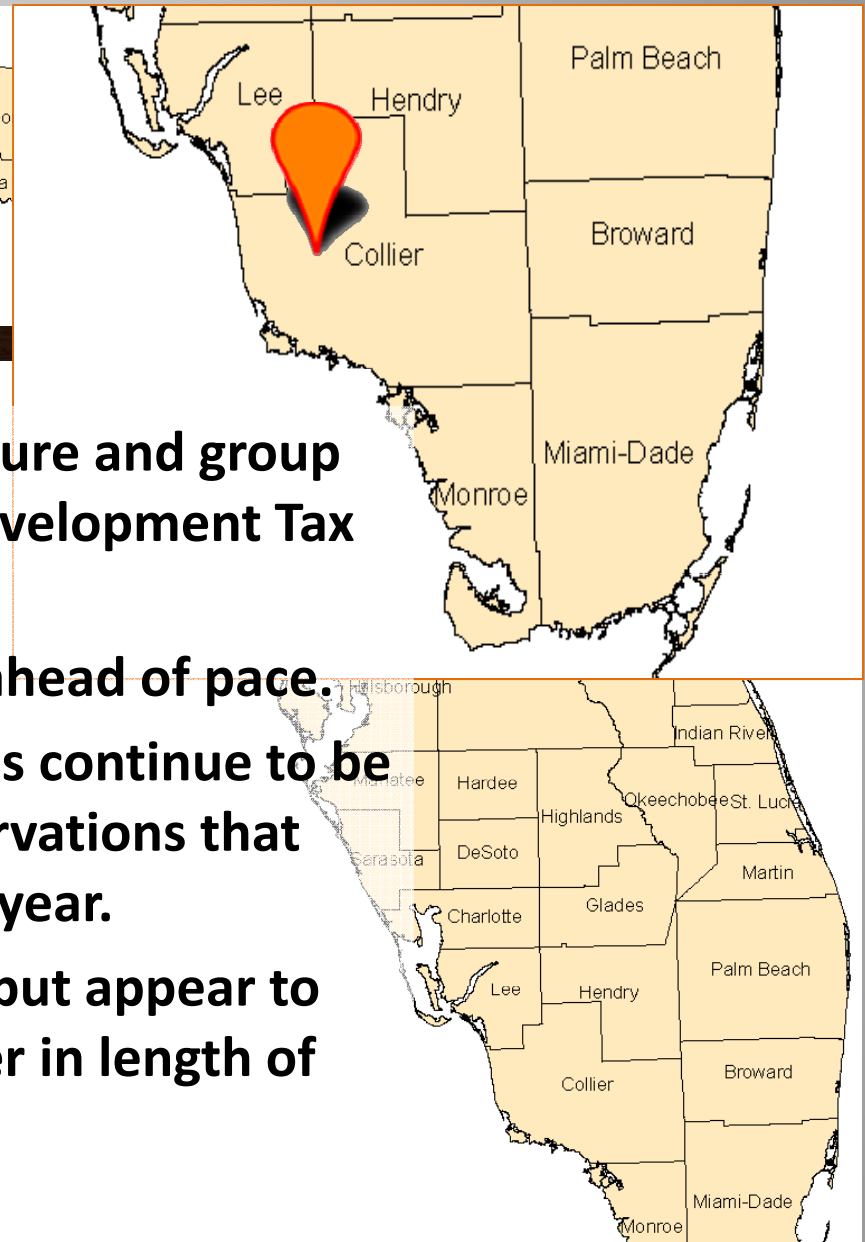
Lee

- 
- **Based on October and November data, nearly all of our key measurement metrics will be up in Fourth Quarter 2010.**
 - **The one metric that continues to lag a bit is rate.**
 - **The ever shrinking booking window makes it tough to be as positive as we'd like to be about First Quarter 2011, but there are a number of positive signs.**
 - **The one area of concern we have is how much of an impact the cold weather last January and February will have on visits during this year.**
 - **Overall, hoteliers are generally more positive about the next three months than they were this time last year.**



Collier

- **Fourth Quarter 2010 was up in leisure and group visitation, spending and Tourist Development Tax revenue for all three months.**
- **Advanced group reservations are ahead of pace.**
- **The majority of leisure reservations continue to be short term, but the advanced reservations that have been made are ahead of last year.**
- **Corporate meetings are returning but appear to be smaller in attendees and shorter in length of stay.**



Broward



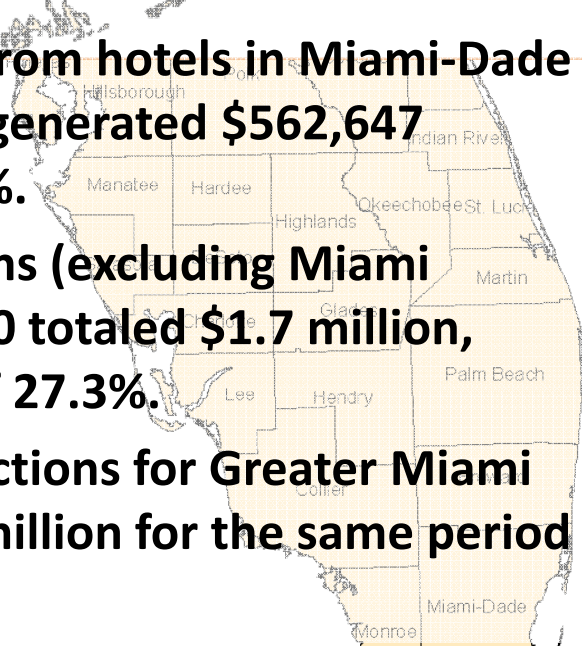
- **Our occupancy is gaining well.**
- **Average daily rates are recovering at a much slower pace.**
- **Much of our success is because of our advertising budget being bolstered by participation with VISIT FLORIDA co-op programs.**



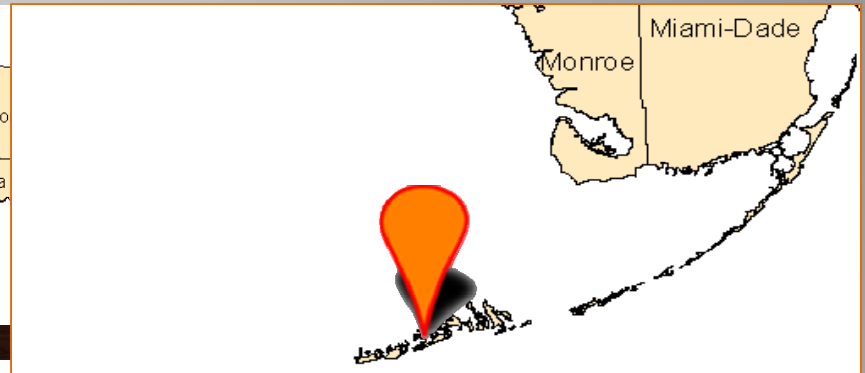


Miami-Dade

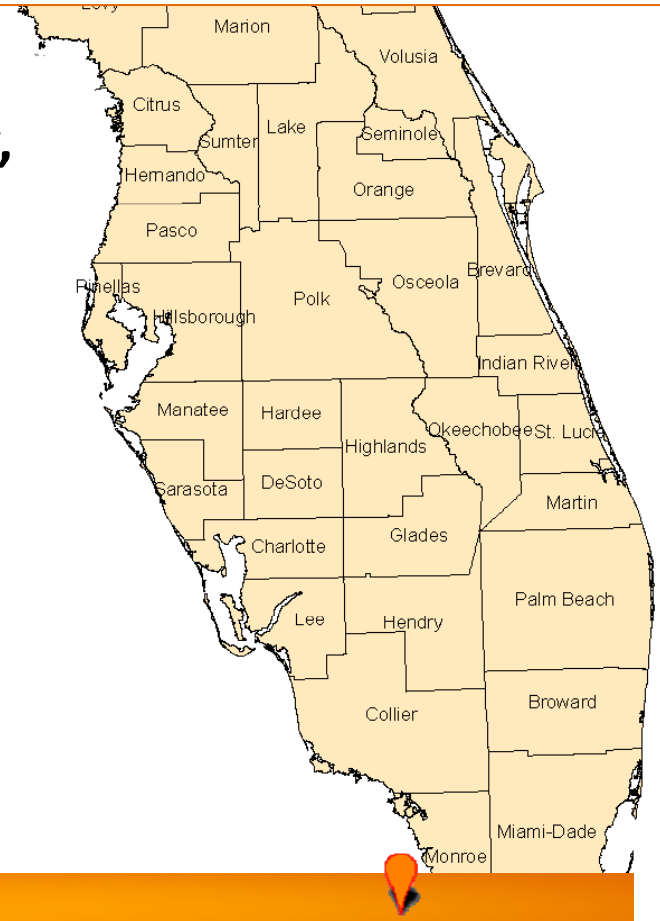


- Demand for travel to greater Miami and the beaches remains strong. Greater Miami's tourist-related tax collections increased in December 2010
 - December 2010 food and beverage tax collections from hotels in Miami-Dade (excluding Miami Beach, BalHarbour and Surfside) generated **\$562,647** compared to \$427,024 in 2009, an increase of 31.8%.
 - The Miami-Dade Tourist Development Tax collections (excluding Miami Beach, BalHarbour and Surfside) for December 2010 totaled **\$1.7 million**, compared to \$1.3 million in 2009, for an increase of 27.3%.
 - December 2010 Convention Development Tax collections for Greater Miami and the Beaches of **\$4.8 million** compared to \$4.1 million for the same period last year represented an 18.3% increase.
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Monroe



- **Fourth Quarter 2010 gained in occupancy, but ended up flat in rate, mostly due to large increases in occupancy in October (+7%) and moderate loss of rate in December (-3%).**
- **Overall, up 3% in occupancy and down 0.5% in rate.**
- **January 2011 seems to be off to a good start for the year.**



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