

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 790

INTRODUCER: Senator Lee

SUBJECT: State Lottery

DATE: February 1, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Caldwell	RI	<b>Pre-meeting</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 790 requires the Department of the Lottery (department) to adopt rules concerning the conduct of lottery games that limit:

- The number of scratch-off games available for sale at any one time to 20 or fewer; and
- The sales price of lottery tickets to five dollars or less.

The department offers for sale both draw games and scratch-off games. Draw games allow players to select from a range of numbers on a play slip. Draw game tickets are printed by terminals that are connected to the department's gaming system for a drawing at a later time. Scratch-off game tickets have a latex covering that players scratch off to determine instantly whether they have won a prize.

In its consideration of the bill, the Revenue Estimating Impact Conference estimated the reduction in funds to be transferred to the Educational Enhancement Trust Fund by the department would be reduced by \$263.6 million in Fiscal Year 2016-2017.

The bill provides for a July 1, 2016, effective date.

**II. Present Situation:**

**The Florida Lottery**

Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of the Florida Constitution<sup>1</sup> are prohibited in Florida by s. 7, Art. X of the State Constitution.

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<sup>1</sup> The Constitution of the State of Florida was revised in 1968 and ratified by the electorate on November 5, 1968. See Preamble to the Constitution of the State of Florida.

However, s. 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the state lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens,”<sup>2</sup> for the benefit of public education.<sup>3</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>4</sup> Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>5</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>6</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>7</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. There is a general prohibition against contracting with a retailer with a felony criminal history,<sup>8</sup> and the authority to act as a retailer for lottery sales may not be transferred.<sup>9</sup> Retailer contracts may be suspended or terminated for: (1) violating lottery laws and regulations; (2) committing any act that undermines public confidence in the lottery; (3) improper accounting for lottery tickets, revenues, or prizes; or (4) insufficient ticket sales. Every retailer contract must provide for a payment of liquidated damages for any contract breach by the retailer.<sup>10</sup>

Retailers may not extend credit or lend money to a person to purchase a lottery ticket, however, the prohibition does not include the use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods), provided that the lottery ticket purchase is in addition to the purchase of other goods and services with a cost of not less than \$20.<sup>11</sup>

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<sup>2</sup> See s. 24.104, F.S.

<sup>3</sup> See s. 24.121(2), F.S.

<sup>4</sup> See s. 24.105(17), F.S.

<sup>5</sup> See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> at page 2 (last accessed Jan. 31, 2016).

<sup>6</sup> See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Jan. 31, 2016), at page 1 (footnote 3).

<sup>7</sup> See Section 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>8</sup> Section 24.112(3)(c), F.S.

<sup>9</sup> Section 24.112(4), F.S.

<sup>10</sup> Section 24.112(10), F.S.

<sup>11</sup> Section 24.118(1), F.S.

Section 24.115, F.S., authorizes the department to establish by rule a system to verify and pay winning lottery tickets:<sup>12</sup>

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than \$600.<sup>13</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner;
- Only a lottery department office may redeem a winning ticket valued at \$600 or more.<sup>14</sup> Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>15</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

If a valid claim is not timely made, 80% of the unclaimed prize amount is deposited in the Educational Enhancement Trust Fund,<sup>16</sup> and the remainder may be used for future prizes or special prize promotions.<sup>17</sup>

Section 24.105(9)(a), F.S., authorizes the department to adopt rules governing the types of lottery games to be conducted, including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>18</sup>

The department introduced full service vending machines (FSVMs) in retail stores across the state in November 2013, and estimated that it earned more than \$29 million from the use of player-activated FSVMs in Fiscal Year 2012-2013.<sup>19</sup> In its most recent Financial Audit,<sup>20</sup> the department stated when 500 FSVMs were installed at its top scratch-off ticket sales locations,

<sup>12</sup> See Rule 53ER13-31, F.A.C.

<sup>13</sup> The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

<sup>14</sup> Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>15</sup> See s. 24.115(1)(f), F.S.

<sup>16</sup> Section 24.115(2)(a), F.S., provides that such funds may be used, subject to legislative appropriation, to match private contributions received under specified post-secondary matching grant programs.

<sup>17</sup> See s. 24.115(2)(b), F.S.

<sup>18</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, L.O.F., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>19</sup> *OPPAGA Report 14-06*, *supra* note 5, at 2.

<sup>20</sup> See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 Financial Audit) at [http://www.myflorida.com/audgen/pages/pdf\\_files/2015-092.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf) (last accessed Jan. 31, 2016).

allowing both terminal and scratch-off tickets to be sold, total FSVMs sales were over \$248 million.

### The Seminole Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a compact governing gambling (Gaming Compact) at the Tribe's seven tribal facilities in Florida.<sup>21</sup> The Gaming Compact authorizes the Tribe to conduct Class III gaming.<sup>22</sup> It was ratified by the Legislature, with an effective date of July 6, 2010.<sup>23</sup> The Gaming Compact has a 20-year term.

The Gaming Compact provides that in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven<sup>24</sup> casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12% for the first \$2 billion in annual net win, to 25% for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.<sup>25</sup>

The Gaming Compact specifically acknowledges operation by the Florida Lottery of the types of lottery games authorized under chapter 24, F.S., on February 1, 2010, and it specifically excludes from such authorized games any "player-activated or operated machine or device other than a Lottery Vending Machine."<sup>26</sup> The Gaming Compact also includes language about not using a

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<sup>21</sup> The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. See [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Jan. 31, 2016). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

<sup>22</sup> The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law. **Class III** includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

<sup>23</sup> See ch. 2010-29, L.O.F.

<sup>24</sup> See the executed Gaming Compact at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Jan. 31, 2016). The Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. A mediation process is being pursued by the Tribe and Governor Scott on this and other issues. See <http://miami.cbslocal.com/2015/08/25/state-seminoles-headed-into-mediation-over-blackjack/> (last accessed Jan. 31, 2016).

<sup>25</sup> See the Executive Summary and Conference results from the Revenue Estimating Conference (July 14, 2015 and August 11, 2015) at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last accessed Jan. 31, 2016).

<sup>26</sup> In particular, the Gaming Compact acknowledges: "operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, on February 1, 2010, but not including (i) any player-activated or operated machine or device other than a lottery vending machine or (ii) any banked or banking card or table game." The Gaming Compact further excludes: (iii) more than ten lottery vending machines at any facility or location or (iv) any lottery vending machine that dispenses electronic instant tickets at any licensed pari-mutuel location. See subparagraph 8 of paragraph B of Part XII of Gaming Compact at page 42. The Gaming Compact describes three types of lottery vending

lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.<sup>27</sup>

The Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Tribe of its obligations to make substantial revenue sharing payments.<sup>28</sup>

### **OPPAGA Recommendations to Enhance Lottery Earnings**

Section 24.123, F.S., requires the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an annual financial audit of the Department of the Lottery and provide recommendations to enhance the state lottery's earning capability and operational efficiency.<sup>29</sup> In the last two years, OPPAGA has issued Report No. 14-06, concerning options available to the department to enhance revenues,<sup>30</sup> and Report No. 15-03, concerning increases in lottery revenues, further enhancement options, and options to increase efficiency.<sup>31</sup>

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2013-2014, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.<sup>32</sup> In Fiscal Year 2014-2015, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.<sup>33</sup>

OPPAGA reported that the department enhanced its product mix by adding a second higher-priced (\$25) scratch-off game (100X the Cash) in September 2013, following the success of the Millionaire (\$25) scratch-off game. The department expanded the variety of ticket pricing offered for the Cash game, including \$1 (5X the Cash), \$2 (10X the Cash), \$5 (20X the Cash), and \$10 (50X the Cash) versions, and estimated these games resulted in approximately \$51.9 million in transfers to the Educational Enhancement Trust Fund for Fiscal Year 2013-2014.<sup>34</sup>

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machines, none of which may allow a player to redeem a ticket: (1) a machine to dispense pre-printed paper instant lottery tickets (e.g., scratch-off tickets); (2) a machine to dispense pre-determined electronic instant lottery tickets and reveal the outcome; or (3) a machine to dispense paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department. See paragraph R of Part III of Gaming Compact at page 10.

<sup>27</sup> Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket "may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket."

<sup>28</sup> See last sentence in paragraph B of Part XII of Gaming Compact at page 43.

<sup>29</sup> See <http://www.oppaga.state.fl.us/ReportsByAgency.aspx?agency=Lottery,%20Department%20of%20the> (last visited Jan. 31, 2016) for a list of OPPAGA reports related to the Department of the Lottery.

<sup>30</sup> See *OPPAGA Report 14-06*, at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed Nov. 2, 2015).

<sup>31</sup> See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Jan. 31, 2016).

<sup>32</sup> *Id.* at page 10.

<sup>33</sup> *Id.* at page 2.

<sup>34</sup> *Id.* In October 2013, the Multi-State Lottery Association also enhanced the Mega Millions draw game, with larger starting jackpots, faster growing jackpots, a million-dollar second prize, and better odds of winning any prize for a \$1 ticket; those

OPPAGA noted that the department attributes some of its sales increases to changes in how major corporate retailers re-stock scratch-off tickets. In 2014, Publix approved an automatic replenishment program for ordering scratch-off products in all its grocery stores replacing more cumbersome procedures.<sup>35</sup>

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.<sup>36</sup> In Fiscal Year 2013-2014, prizes totaled \$3.43 billion, and retailer commissions totaled \$297.3 million.<sup>37</sup>

### Scratch-off Games

The department's legislatively-approved performance standards are reported in its long-range program plan.<sup>38</sup> In that plan, the department noted that it set a new all-time sales record in Fiscal Year 2014-2015 with sales above \$5.58 billion, exceeding those in the prior year by more than \$215 million and resulting in a transfer of \$1.481 billion to the Educational Enhancement Trust Fund.

In its plan, the department noted:

The Florida Lottery's success was a result of the agency's continued efforts to expand and revise its roster of games. During FY 2014-15, the Scratch-Off sales-breaking year was driven by 40 new Scratch-Off games including our third \$25 game, \$10,000,000 Florida Cash; the Jackpot, Gold Rush, and Week for Life families of games; Loteria; and the Home Depot licensed property game. Three new terminal games were introduced including changing the MEGA MONEY game to LUCKY MONEY with EZmatch, the MONOPOLY MILLIONAIRES CLUB multi-state game, and the 1-OFF play type on PLAY 4 and CASH 3.

To attract new players and build loyalty with current players, the Lottery offered promotions such as FLORIDA LOTTO Cruise for Cash Collect & Win, FLORIDA LOTTO College Football promotion, Pro Football POWERBALL® promotion, POWERBALL Orlando Magic promotion and two EZmatch promotions for FANTASY 5 and LUCKY MONEY for Terminal games. Scratch-off games were supported with the \$50,000 Jackpot, Britto, Home Depot Dream Makeover, and Gold Rush Cash Mine second chance drawings for the Scratch-off games.<sup>39</sup>

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enhancements generated approximately \$6 million in transfers to the Educational Enhancement Trust Fund in Fiscal Year 2013-2014. See also <http://www.megamillions.com/faqs> (last visited Jan. 31, 2016).

<sup>35</sup>*Id.* Before the procedural change, the scratch-off ticket stocking process occurred when: (1) telemarketers from the department's scratch-off ticket vendor (Scientific Games) contacted each store by phone to inquire whether the store needed to re-stock; (2) the retailer called Scientific Games to place an order; or (3) a department representative noticed low inventory while on a sales call and called Scientific Games to place an order on behalf of the retailer.

<sup>36</sup> See s. 24.121(2) and (3), F.S.

<sup>37</sup> *Id.* at page 1.

<sup>38</sup> See <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13562&DocType=PDF> (last accessed Jan. 31, 2016).

<sup>39</sup> See *OPPAGA Report 15-03*

The department reported that multiple scratch-off games with ticket prices higher than \$20 continue to rank at the top in sales for all available scratch-off games.<sup>40</sup>

The department currently offers up to 75 different scratch-off games for sale, at prices ranging from \$1 to \$25.<sup>41</sup>

Scratch-off games have a finite lifecycle based on the number that are printed and how they sell; at the end of the lifecycle of a game, the department replaces it with more profitable games. Typically, 12 to 15 scratch-off games are closed each calendar quarter. The following criteria are used to determine when to end games:

- There are no remaining top prizes;
- There is no available inventory to order; and
- Factors such as current sales levels, low inventory levels, contract requirements, seasonality, unforeseen circumstances, changing market conditions or print defects.

### **III. Effect of Proposed Changes:**

The bill requires the Department of the Lottery (department) to adopt rules concerning the conduct of lottery games that limit:

- The number of scratch-off games available for sale at any one time to 20 or fewer; and
- The sales price of lottery tickets to five dollars or less.

The department offers for sale both draw games and scratch-off games. Draw games allow players to select from a range of numbers on a play slip. Draw game tickets are printed by terminals that are connected to the department's gaming system for a drawing at a later time. Scratch-off game tickets have a latex covering that players scratch off to determine instantly whether they have won a prize.

The bill provides for a July 1, 2016, effective date.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>40</sup> See <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13562&DocType=PDF> at 16 (last accessed Jan. 31, 2016).

<sup>41</sup> See <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page241-243.pdf> at 241 (last accessed Jan. 31, 2016).

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

None.

**B. Private Sector Impact:**

The bill will limit the number of scratch-off lottery games for which tickets may be sold to 20 or fewer. Retailers and vendors may have increased administrative costs associated with game ticket inventories that must be managed so that only 20 scratch-off games are offered for sale at any one time.

**C. Government Sector Impact:**

In its consideration of the bill, the Revenue Estimating Impact Conference estimated the reduction in funds to be transferred to the Educational Enhancement Trust Fund by the department would be reduced by \$263.6 million in Fiscal Year 2016-2017.<sup>42</sup> The department must adopt rules to limit the number of scratch-off games which may be available for sale at any one time to 20, and the price of lottery tickets to \$5 or less.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 24.105 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>42</sup> See <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page241-243.pdf> (last accessed Jan. 31, 2016).