

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Wednesday, December 8, 2010

TIME: 10:45 a.m.—12:45 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	Overview of Committee Jurisdiction		Discussed
2	Introduction of Committee Interim Project and Issue Briefs:		Discussed
	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		
	Issue Brief 2011-209: Overview of Economic Development Affiliates Administered by EFI		
	Issue Brief 2011-210: An Overview of Low-Profit Limited Liability Company (L3C) Concept		
3	Brief discussion of 2010 Committee Legislation		Discussed
4	Overview of the State Unemployment Compensation Program		Presented
5	Presentation by the Florida Department of Revenue on the Unemployment Compensation Program Employer Contribution Calculation		Presented
6	Presentation by the Agency for Workforce Innovation related to the Unemployment Compensation Program		Presented

Senate Commerce & Tourism Committee Jurisdiction

(11/29/10)

The jurisdiction of the Senate Commerce & Tourism Committee includes five general subject areas:

- Workforce Development / Unemployment Compensation;
- Business Organizations;
- Commercial Activity (includes Limits on Business Practices);
- Consumer Services; and
- Economic Development.

In addition, the committee may be second reference for selected issues relating to banking and insurance; regulated industries; taxation; telecommunications; tort reform; and transportation.

Workforce development includes programs overseen by Workforce Florida, Inc. (WFI), and administered by the Agency for Workforce Innovation (AWI) and the regional workforce boards. These programs include workforce services and the **Unemployment Compensation** Program. The committee may also consider matters related to the state minimum wage, employee leasing, migrant and contract labor, and “preference” for Florida workers and contractors in public contracts.

A Business Organization, or business legal structure, governs the formation, operation, merger, conversion and dissolution of businesses. Options include corporations, limited liability companies, not-for-profit corporations, limited partnerships, etc.

Issues addressing **Commercial Activities** include required filings with the Division of Corporations of the Florida Department of State, the requirements of the Uniform Commercial Code, commissioning of notary publics, and the protection of proprietary information. Limits on business practices include **consumer protection issues** related to advertising, sales, services, service contracts, civil rights and the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The committee may also be referenced legislation related to liability (relating to employees or public safety) and trespassing (relating to unauthorized commercial activity).

Other **Consumer Protection** issues under the jurisdiction of the committee include the non-agricultural programs administered by the Department of Agriculture and Consumer Services (DACs). This includes:

- The **Division of Consumer Services**, the programs they administer (to include the state’s clearinghouse for consumer complaints, the “Do-Not-Call” registry, and the “Lemon Law”) and the businesses they regulate (pawnbrokers; sellers of travel; game promotions; interstate movers; telemarketers; motor vehicle repair shops; business opportunities; charitable organizations; dance studios; and health studios.).
- The **Division of Standards** (LP and petroleum inspections, amusement ride inspections, weights and measures, and the Motor Fuel Marketing Practices Act); and
- The **Division of Licensing** (private investigative, private security, and repossession services security agents; and the concealed weapons license program).

Legislation addressing **economic development** includes programs and incentives related to tourism, business recruitment, trade, biotech research, technology, entertainment, sports, seaports, minority businesses, job creation, and enterprise zones. This includes agency oversight of the Governor’s Office of Tourism, Trade and Economic Development (OTTED, which houses the Office of Film and Entertainment, and the Florida Sports Foundation) and the state’s public/private partnerships promoting business and tourist development:

- Enterprise Florida, Inc.;
- The Florida Commission on Tourism and VISIT Florida; and
- The Black Business investment Board.

2010 PORTFOLIO OF STATE ECONOMIC DEVELOPMENT INCENTIVES

Compiled by staff of the Senate Commerce Committee, 11/10/10

TABLE 1
State Economic Development Incentives:
DIRECT FINANCIAL INCENTIVES

Through the Office of Tourism, Trade and Economic Development (unless otherwise indicated)

Program	Florida Statute	Appropriation: FY 2010/11
Black Business Loan Program (Adm. by Contract)	288.7102	\$ 2,250,000
Brownfield Redevelopment	288.107	\$ 2,480,000
Defense Infrastructure Grants	288.980	\$ 6,000,000
Economic Dev. Transportation Fund	288.063	\$ 20,000,000
Economic Gardening Business Loan Pilot Program (Administered by contract)	288.1081	(1)
FL Research Commercialization Grant Program (Inst. for the Commercialization of Public Research)	288.9552 288.9625	\$ 3,000,000
High Impact Performance Grant – HIPI	288.108	\$ 8,400,000
Incumbent Worker Training Program – WFI	445.003(3)(a)3.	\$ 2,000,000
Innovation Incentive Program	288.1089	\$ 75,000,000 (2)
Local Govt. Distressed Area Matching Grant Program	288.0659	\$ 3,000,000
Quick Action Closing Fund – QAC	288.1088	\$ 16,000,000
Qualified Target Industry Tax Refund Incentive – QTI	288.106	\$ 12,200,000 (3)
Qualified Defense & Space Flight Business Tax Refund – QDS	288.1045	
Quick Response Training Program (WFI, EFI, & DOE)	288.047	\$ 3,300,000
Rural Infrastructure Fund	288.0655	\$ 1,100,000
Scripps Florida Funding Corporation (SFFC)	288.955	(4)
		=====
		\$ 154,730,000

- (1) The FY 2008/09 Supplemental Appropriation, approved in 2/09, provided \$8.5 m for this program.
- (2) Section 73 of Ch. 2010-152, L.O.F., appropriated \$75m to IIP. Of this amount, \$50m was designated to fund “the development of a research institute focused on genetics and personalized medicine” meeting specified conditions. The program received \$450m in FYs 06/07 & 07/08.
- (3) The annual state budget combines the appropriation for QTI & QDS tax refund programs. Section 288.095(3)(a), F.S., caps the total tax credits QDS and QTI at \$35m annually, subject to an annual appropriation. For this reason, the QDS and QTI tax credit programs are categorized a “Direct Financial Incentive” in this Table.
- (4) In FY 03/04, the Scripps Florida Funding Corporation received \$310m in state funds. While similar to an Innovation Incentive Program award, it is not designated as such.

Status of Scripps Florida and Innovation Incentive Program (IIP) recipients -- As of August 2010

Entity	State Funding Committed	State Funding Released	Local/Other Match	Jobs Required by Agreement/Jobs Created
Scripps Florida*	\$310 m	\$272.227 m	>\$200 m	545/ 334 as of 9/09
Sanford-Burnham Medical Resrch Inst.	\$155.272 m	\$79.384 m	\$155.5 m	303/ 134 as of 3/10
Torrey Pines Inst. for Molecular Studies	\$24.728 m + \$7.272 from QACF	\$22.099 m	\$71.52 m	189/ 84 as of 6/10
SRI St. Petersburg	\$20 m	\$19.703 m	at least \$30 m	200/ 80 as of 5/10
UM Hussman Inst for Human Genomics	\$80 m	\$43.385 m	at least \$100 m (private)	296/ 166 as of 2/10
Max Planck Florida Institute	\$94.09 m	\$ 30 m	\$93.46 m	135/ 27 as of 6/10
VGTI-Florida	\$60 m	\$55 m	at least \$60 m	200/ 33 as of 3/10
Draper Laboratories	\$15 m	\$10 m	\$15.3 m	165/ 33 as of 6/10

TABLE 2
State Economic Development Incentives:
INDIRECT INCENTIVES TO SUPPORT BUSINESS INVESTMENT OR DEVELOPMENT

<u>Program</u>	<u>Florida Statute</u>	<u>Appropriation: FY 2010/11</u>
CURRENTLY STATE SUPPORTED		
Disney Entrepreneur Center	(ch. 2010-152, L.O.F.)	\$ 500,000
Economic Gardening Tech. Asst. Program	288.1082	\$ 1,000,000
Florida Export Finance Corporation	288.770	\$ 4,900,000 (1)
Florida Manufacturing Extension Partnership	(ch. 2010-152, L.O.F.)	\$ 500,000
Hispanic Business Initiative Fund Outreach Program	(ch. 2010-152, L.O.F.)	\$ 200,000
Inst. for the Commercialization of Public Research	288.9625	\$ 150,000 (2)
SBA/FRS – Technology and Growth Investments		(3)
Small Business Development Center Network	288.001	\$ 500,000
State University Research Commercialization Assistance Grant Program	1004.226(7)	\$ 2,000,000 (4)
WFI/AWI /RWDB “One-Stop” Services for Employers	445.007(5)	
Employ Florida Banner Centers		(5)
PUBLIC / PRIVATE PARTNERSHIPS		(6)
Black Business Investment Board	288.707	\$ 450,000
Enterprise Florida, Inc.	288.901	\$ 11,100,000
Florida Commission on Tourism	288.1223	\$ 26,647,961
Florida Sports Foundation	288.1229	\$ 2,500,000
Space Florida	ch. 331	\$ 20,839,943
PREVIOUSLY SUPPORTED / CAPITALIZED		(7)
Enterprise Florida, Inc. Opportunity Fund	288.9624	(8)
Florida Development Finance Corporation	288.9604	(9)
Florida First Capital Finance Corporation	288.7011	(10)
Florida Small Business Tech Growth Program	288.95155	(11)
MicroEnterprise Florida	288.9618	(12)

- (1) The FEFC, created in 1993, provides Florida businesses technical assistance on export opportunities, exporting techniques, and provides financial assistance through guarantees and direct loans in support of export transactions. From 1993 to 1997, the state provided \$5.6m in capital and \$1m in operating funds to the FEFC. In 2010/11, \$4.9m was appropriated to capitalize the loan fund, \$2m of which is contingent upon enactment of federal law which extends the enhanced Federal Medicaid Assistance Percentage rate, as provided under the American Reinvestment and Recovery Act (P.L. 111-5), from 12/10 through 5/11.
- (2) \$3m was appropriated in 2010/11 for grants through the Research Commercialization Grant Program. Up to 5% may be used for administration of the program. \$1m was appropriated in 2008/09, and \$600,000 was appropriated in 2009/10.
- (3) In 2008, the SBA was directed to invest up to 1.5 percent of the net asset value of the Florida Retirement System Trust Fund in technology and growth investments in businesses that are either domiciled in Florida, or whose principal address is in Florida.
- (4) \$2m was appropriated in 2010/11, and \$ 2m was appropriated in FY 2007/08 for the grants.
- (5) Since FY 06/07, WFI has allocated \$21.8m for the development of (now) 10 Employ Florida Banner Centers as a complement to the state’s workforce education efforts. (See Senate Issue Brief 2009-307) WFI reports that the development process is characterized as a “business-driven approach which facilitates the collaboration of industry, local economic development entities, regional workforce boards, and educational institutions to create relevant and rigorous new curricula aligned to industry standards.”
- (6) These statutorily created public/private partnerships, under contract with OTTED, promote business investment or development in Florida. They offer unique services, support and may offer financial incentives to their respective target businesses.
- (7) These programs or non-profit organizations were initially created (or provided significant state support) to provide investments in or provide specific services, technical assistance, or financial assistance to businesses in the state.
- (8) \$ 29m was appropriated to the program in FY08/09.
- (9) The FDFC, created in 1993, is a special development finance authority formed through inter-local agreement with counties in the state. The FDFC provides bonds, both taxable and tax-exempt, for Florida business development. FDFC’s Board of Directors is appointed by the governor, and its day to day operations are administered through Enterprise Florida Inc.
- (10) The FFCFC was founded by the state and, until 2002, under contract with the State Dept. of Commerce to promote and assist the growth and development of small businesses in the state.
- (11) Created in 1998, the FSBTGP is administered by EFI (through the Cap + program). In 1998, the program received \$1.5m.
- (12) In 1997, OTTED was authorized to contract with a third party to provided lending and assistance to microenterprises, and \$1m was appropriated for this purpose. (s. 1649, ch. 97-152, L.O.F.) OTTED contracted with EFI, and as of 7/1/98, 105 loans had been made.

Source: Compiled by staff of the Senate Commerce Committee, 11/10/10

TABLE 3
State Tax-Based Economic Development Incentives: TAX CREDITS

<u>Program</u>	<u>Florida Statute</u>	<u>Type Of Tax</u>	<u>\$ Cap FY 10/11</u>	
Certified Capital Company Act	288.99	IPTx		(1)
Capital Investment Tax Credit (CITC)	220.191	CITx	Uncapped	
Community Contribution Tax Credit	212.08(5)(p)	SUTx	\$14,000,000	(2)
	220.183	CITx		
	624.5105	IPTx		
Contaminated Site Rehabilitation Tax Credit	220.1845	CUTx	\$ 2,000,000	(3)
Entertainment Industry Financial Incentive (Office of Film & Entertainment, OTTED)	288.1254		\$53,500,000	(4)
Enterprise Zone Property Tax Credit	220.182	CITx	Uncapped	(5)
Enterprise Zone Jobs Tax Credit	212.096	SUTx	Uncapped	(6)
	220.181	CITx	Uncapped	(7)
Jobs for the Unemployed Tax Credit Program	220.1896	CITx	\$10,000,000	(8)
New Markets Development Tax Credit Program	288.991	IPTx & CITx		(9)
Renewable Energy Production Credit	220.193	CITx	\$ 5,000,000	(10)
Renewable Energy Technologies Investment	220.192	CITx	\$11,000,000	(11)
Rural Job Tax Credit Program	212.098	SUTx	\$ 5,000,000	(12)
	220.1895	CITx		
Urban High Crime Area Job Tax Credit Program	212.097	SUTx	\$ 5,000,000	(13)
	220.1895	CITx		

IPTx – Insurance Premium Tax
CITx – Corporate Income Tax
SUTx – Sales and Use Tax

- (1) Tax credits may be claimed for up to 100% of investments. Tax credits are provided to a passive investor, through a certified capital company (CAPCO), in targeted businesses or businesses in targeted geographical areas. \$150,000,000 was authorized from 1999 through 2009.
- (2) Tax credits may be claimed for up to 50% of contributions. The CCTC is capped at \$14m for all three authorized taxes.
- (3) Tax credits may be claimed for up to 50% of the costs of voluntary cleanup activity. The credit is capped at \$2,000,000 annually.
- (4) Tax credits may be claimed for 20 – 30% of qualified expenditures. If the recipient does not have a tax liability, the credits may be sold to entities with a tax liability. \$242m in tax credits have been authorized for FYs 2010-2015. However, all of the credits can be certified to eligible projects as applications are approved, pursuant to agency rule.
- (5) Tax credits may be claimed for up to 100% of property taxes paid, up to \$50,000 in any one year. Total credits to all qualified businesses are uncapped. \$1,910,708 in credits were approved in 2008/09.
- (6) Tax credits may be claimed for up to 45% of qualified wages. Total credits to all qualified businesses are uncapped. \$5,227,245 in credits were approved in 2008/09.
- (7) Tax credits may be claimed for up to 45% of qualified wages. Total credits to all qualified businesses are uncapped. \$5,072,555 in credits were approved in 2008/09.
- (8) For FY 2010/11 and FY 2011/12, a \$1,000-per-employee CIT credit is available for businesses representing the state’s target industry sectors that hire qualified persons. Total credits to all qualified businesses are capped at \$5,000,000 per year.
- (9) Tax credits may be claimed for up to 39% of investments, in addition to the 39% federal income tax credit allowed un the federal program. Tax credits are provided to a passive investor, through a certified third party, in targeted businesses or businesses in targeted geographical areas. \$96,500,000 in credits are authorized from 2012 - 2022
- (10) Between FYs 2007 and 2011, a credit of \$0.01 per each kilowatt-hour of electricity produced and sold is available to qualified taxpayers. Total credits to all qualified businesses are capped at \$5,000,000 per year.
- (11) Between FYs 2006 and 2010, a credit of 75% of all capital costs, operation and maintenance costs, and research and development costs is available to qualified taxpayers. Total credits to all qualified businesses are capped at \$11,000,000.
- (12) Tax credits of up to \$1,500 per employee may claimed by qualified businesses. The credit for both the sales and use tax and the corporate income tax is capped at \$5,000,000 annually.
- (13) Tax credits of up to \$3,000 per employee may claimed by qualified businesses. The credit for both the sales and use tax and the corporate income tax is capped at \$5,000,000 annually.

Source: Compiled by staff of the Senate Commerce Committee, 11/10/10

TABLE 4
State Tax-Based Economic Development Incentives: TAX REFUNDS

Program	Florida Statute	Type Of Tax(es)	Cap/Value FY 10/11	
Building Materials used in Rehabilitation of Property located in an Enterprise Zone	212.08(5)(g)	SUTx	Uncapped	(1)
Business Property Used in an Enterprise Zone	212.08(5)(h)	SUTx	Uncapped	(2)
Building Materials for Construction of Single Family Home in Enterprise Zone ,				
Empowerment Zone, or Front Porch Community	212.08(5)(n)	SUTx	Uncapped	(3)
Building Materials Use in Redevelopment Projects In Designated Areas	212.08(5)(o)	SUTx	Uncapped	
International Game Fish World Center	288.1169	SUTx	\$ 2,000,000	
Manufacturing & Spaceport Investment Incentive	288.1083	SUTx	\$ 19,000,000	
Qualified Defense & Space Flight Business Tax Refund Program (QDS)	288.1045	CITx & SUTx	---	(5)
Qualified Target Industry Tax Refund Incentive Program (QTI)	288.106	CITx & SUTx	---	(5)
Pro Golf Hall of Fame	288.1168	SUTx	\$ 2,000,000	
Pro Sports Franchise facility	288.1162	SUTx	\$ 16,000,000	(6)
Pro Spring Training facility	288.1162	SUTx	\$ 4,730,000	(7)

IPTx –Insurance Premium Tax
CITx – Corporate Income Tax
SUTx – Sales and Use Tax

- (1) \$30,994,860 in actual refunds for 08/09. \$28.9m of the \$30.1m was refunded for materials used in the construction of condominiums in Enterprise Zones.
- (2) \$1,139,066 in actual refunds for 08/09.
- (3) \$300,000 in actual refunds for 08/09.
- (4) \$400,000 in actual refunds for 08/09.
- (5) Section 288.095(3)(a), F.S., caps the total tax credits QDS and QTI at \$35m annually, subject to an annual appropriation. For this reason, the QDS and QTI tax credit programs are categorized a “Direct Financial Incentive” in Table 1.
- (6) To date, all eight pro sports teams in Florida have qualified for the refund.
- (7) To date, 10 of the 15 cities with major league baseball spring training facilities have qualified for the refund.

Source: Compiled by staff of the Senate Commerce Committee, 11/10/10

TABLE 5
State Tax-Based Economic Development Incentives: TAX EXEMPTIONS

Enact. Date	Florida Statute	Type of Exemption	FY 2010-11 (est. in \$ m)
1990	212.02(2)	Leasing of real property between certain corporations.	4.3
1979	212.02(10)(g)	Per diem and mileage charges paid to owners of railroad cars.	1.2
1995	212.02(10)(j)	Privilege, franchise and other fees paid to do business at airports	6.6
1949	212.02(14)(c)	Materials used for packaging.	21.9
1949	212.02(14)(c)	Components or ingredients of processed or manufactured goods.	insig.
1998	212.02(14)(c)	Parts incorporated into repair for resale	insig.
1998	212.02(16)	Federal excise taxes imposed on retailers	0.8
1998	212.02(20)	Automobiles loaned to driver education and safety programs	insig.
1998	212.02(28) & (29)	Fish breeding	0.1
2006	212.02(33)	Small private AIRCRAFT fleet of more than 25 planes	0.0
1969	212.031(1)(a)1.	Charges for renting property assessed as agricultural.	1.4
1985	212.031(1)(a)4.	Condominium recreational leases.	6.2
1987	212.031(1)(a)5.	Streets used by a utility for utility purposes.	46.4
1999	212.031(1)(a)5.	Cell phone towers & co-located equipment	2.6
2000	212.031(1)(a)5.	Cell phone towers	0.7
1987	212.031(1)(a)7.	Airport property used for landing, taxiing, or loading.	56.5
1987	212.031(1)(a)8.	Port property used for moving, loading or fueling of ships.	16.2
1997	212.031(1)(a)8.	Wharfage guarantees	0.3
1987	212.031(1)(a)9.	Leases/rentals of certain property used for MOVIE PRODUCTIONS	4.4
1983	212.031(1)(a)10.	Movie theater concession rent.	1.6
1999	212.031(1)(a)10.	Rents, subleases, or licenses in recr. or sports arenas, civic centers	0.5
2006	212.031(1)(a)12.	Rents, based on sales, from Souvenirs' leases in civic centers, 7-1-09	0.0
2000	212.031(1)(a)13.	Commercial Leases/ SPACE FLIGHT	0.6
2010	212.031(1)(a)14.	Rental of certain space at Convention Centers	
1998	212.031(1)(b)	Pro-rated exemption for for-profit homes for the aged	insig.
1977	212.031(5)	Convention hall subleases.	5.9
1978	212.031(6)	Leases by agricultural fair associations.	insig.
1998	212.031(8)	Certain lease termination payments	13.6
2000	212.031(10)	Entertainment Facilities; repeal 7-1-09	0.0
1998	212.04(1)(d)	Travel agent mark-up on taxed admissions or transient rentals	insig.
1963	212.04(2)(c), 212.02(20)	Pari-mutuel admissions tax imposed by s. 550.09.	insig.
1976	212.05(1)(a)2.	Sales of BOATS or AIRPLANES removed from the state.	77.9
1971	212.05(1)(c)	Long term vehicle leases if tax paid when purchased by lessor.	1.7
1998	212.05(1)(g)	Newspaper and magazine inserts	42.0
1994	212.05(1)(h)1.	2% rate abatement for coin-operated amusement machines	3.8
1993	212.05(1)(k)	Law enforcement officers' protection services.	3.3
1999	212.05(1)(k)	US legal coins and coins in excess of \$500	0.3
1998	212.05(1)(m)	When TPP prizes are awarded, operator can pay tax on 25% of receipts	0.2
2010	212.05(5)	Cap on sales of BOATS or AIRPLANES	11.3
1989	212.0506(3)	Certain service warranties relating to real property fixtures.	3.1
1989	212.0506(7)	Service warranties on which ins. prem. tax is due (homeowner warr.).	2.3
1998	212.0506(10)	Certain materials and supplies used in fulfillment of service warranty	44.1
1998	212.051(1)	Pollution control equipment used in manufacturing	10.6
1998	212.051(2)	Solid waste management equipment	3.0
1982/06	212.052	Items fabricated for use in RESEARCH & DEVELOPMENT (R&D) activities.	27.2
2010	212.0597	Cap on Fractional AIRCRAFT	0.3
1987	212.0598	Partial exemption for air carriers' maintenance bases.	insig.
1984	212.06(1)(b)	Partial exemption for production cost of cogenerated energy.	42.1
1984	212.06(1)(b)	Electricity consumed or dissipated in the transmission of electricity.	25.5
1969	212.06(1)(b)	Fabrication labor used in the prod. of qualified MOTION PICTURES .	7.7
1982	212.06(1)(b)	Portion of price of factory built building attributable to labor costs.	insig.
1988	212.06(1)(c)	Use tax on asphalt; special calculations.	insig.
1999	212.06(1)(c)	Partial exemption for asphalt sold to governments	1.5
1998	212.06(1)(d)	Cost price calculation for certain industries	insig.
1992	212.06(2)(d),5(c),212.0596(2)(c),(j)	Printing for out-of-state customer, when he provides the paper.	15.3
2000	212.06(3)(b)	Certain Printed Materials	0.3

TABLE 5
State Tax-Based Economic Development Incentives: TAX EXEMPTIONS

Enact. Date	Florida Statute	Type of Exemption	FY 2009-10 (est. in \$ m)
1949	212.06(5)(a)	<i>Tangible personal property imported or produced for export.</i>	3,726.4
1949	212.06(5)(a)	AIRCRAFT being exported outside the U.S.	24.1
1983	212.06(5)(b)	Non-resident dealers purchasing items for resale overseas.	2.9
1949	212.06(7)	Credit for tax paid to other states.	30.0
1969	212.06(8)	Imported items if used in another state for 6 months or more.	120.1
1992	212.06(11)	Certain magazine promotional materials, if exported.	3.7
1998	212.06(13)	1% tax rate/month for airplanes purchased for resale but used by dealer	1.2
1998	212.06(14)	Mobile home lot improvements	insig.
1998	212.06(15)	Contractors' use of rock, shell, fill dirt for own use	1.3
2000	212.06(15)(a)	Fill Dirt	insig.
1987	212.0601	Partial exemption from use tax for motor vehicle dealers.	0.7
1998	212.0601(3)	Vehicles loaned by car dealer at no charge: calc. based on IRS table	insig.
1998	212.0601(4)	Vehicles loaned by car dealer while repairs are made.	0.3
1949	212.07(5)	Sales of farm products sold directly by the producer.	1.5
1998	212.07(5)(b)	Horses sold at claiming races are taxed on first sale; then on mark-up	0.4
1949	212.07(6)	Agricultural products consumed on the farm.	insig.
1949	212.07(7)	<i>Purchases of ag. products for further processing for resale.</i>	450.2
1990	212.08(2)(a)	Contact lens molds cost in excess of \$100,000.	5.0
1998	212.08(2)(d)	Lithotrippers	0.3
1998	212.08(2)(e)	Human organs	insig.
1998	212.08(2)(f) & (h)	Veterinary medicines	9.5
1999	212.08(2)(f) & (h)	Non-retail pharmacies	72.9
63/98/05	212.08(3)	Farm equipment.	44.0
2005	212.08(3)	Agricultural diesel engines and irrigators.	2.3
1969	212.08(4)(a)2.	Purchases of fuel by public and private utilities.	511.4
1963	212.08(4)(a)2.	Fuel for vehicles and vessels in interstate commerce (partial).	2.7
1987	212.08(4)(a)3.	Wheeling or transmission of electricity.	3.6
1949	212.08(5)(a)	Purchase of commercial fishing nets.	insig.
1949/98	212.08(5)(a)	Purchase of agricultural items (pesticides, seeds, fertilizers, etc.)	80.4
1978	212.08(5)(a)	Fuels used to heat poultry structures.	0.1
1998	212.08(5)(a)	Poultry structure generators	0.2
1978	212.08(5)(b)1.	Purchases of MACHINERY & EQUIPMENT (M & E) by new businesses.	15.6
78/89/06	212.08(5)(b)2.a.	M&E purchased by expanding businesses or for spaceports	29.5
1998	212.08(5)(b)2.b.	M&E purchased by expanding printing facilities	0.0
1980	212.08(5)(c)1.	Certain M&E used to produce energy.	19.1
2000	212.08(5)(c)1. & 2.	Boiler Fuels	0.4
1983	212.08(5)(d)	Certain M&E purchased pursuant to federal contract.	insig.
1988	212.08(5)(e)1.	Butane and other gases (except natural) used for agricultural purposes.	0.8
1993	212.08(5)(e)1.	Natural gas used for agricultural purposes.	0.6
2006	212.08(5)(e)2.	Diesel fuel/electricity used in farming	insig.
1983	212.08(5)(f)	Certain MOTION PICTURE or recording equipment; refund.	2.3
2000	212.08(5)(f)	Additional MOTION PICTURE Exemptions	18.2
2000	212.08(5)(f)	MOTION PICTURE Video Equipment	4.2
1988	212.08(5)(i)	Certain AIRCRAFT modification services.	36.1
1997	212.08(5)(j)	M & E used in semiconductor, defense or space technology	2.2
2000	212.08(5)(j)	Semi-conductor clean rooms	0.1
2000	212.08(5)(j)	DEFENSE & SPACE M&E	1.9
1998	212.08(5)(k)	Paint color cards and samples	0.3
1998	212.08(5)(l)	Cattle growth enhancers	0.3
1999	212.08(5)(m)	Gold Seal child care facilities' purchases of educational materials	0.2
2000	212.08(5)(p)	Broad Band Technology, sunset on 6-30-05	0.0
2006	212.08(5)(q)	Community Contribution Credit	14.0
1987	212.08(6)	Services by radio and TV stations.	insig.
1978	212.08(7)(b)	Purchases of boiler fuels for use in industrial manufacturing.	58.0
1974	212.08(7)(c)	Purchases of crab bait by commercial fishermen.	0.4

TABLE 5
State Tax-Based Economic Development Incentives: TAX EXEMPTIONS

Enact. Date	Florida Statute	Type of Exemption	FY 2009-10 (est. in \$ m)
1949	212.08(7)(d)	Feed for poultry and livestock, including racehorses, and ostriches.	32.6
1949	212.08(7)(e)	Film rentals, when admissions are charged.	3.9
1970	212.08(7)(e)	License fee charges for films & tapes used by broadcasters.	insig.
1996	212.08(7)(j)	Purchases of power & heating fuels by licensed day care homes	0.3
1980	212.08(7)(j)	Utilities purchased for use in a residential model home.	0.2
1987	212.08(7)(s)	Alcoholic beverages used by businesses for tasting.	1.3
1986	212.08(7)(t)	BOATS temporarily docked in Florida.	3.8
1990	212.08(7)(w)	Free advertising publications.	13.0
1996	212.08(7)(w)	Subscription newspapers, newsletters & magazines delivered by mail	35.0
1987	212.08(7)(x)	Sporting equipment brought to Florida for certain events.	0.1
1988	212.08(7)(y)	Charter fishing boats.	11.5
1988	212.08(7)(aa)	Commercial trucks sold between commonly owned companies.	0.4
1992	212.08(7)(bb)	Community cemeteries.	0.1
1992/99	212.08(7)(cc)	Works of art provided to an educational institution.	6.0
1994	212.08(7)(dd)	Lease or license to use taxicab equipment	6.8
1994/98	212.08(7)(ee)	AIRCRAFT repair & maintenance labor charges for aircraft > 15,000 lbs	2.4
1998	212.08(7)(ee)	AIRCRAFT repair & maint. labor charges for helicopters > 10,000 lbs	0.2
1996	212.08(7)(ff)	Electricity used in Manufacturing	77.1
1996	212.08(7)(gg)	Leases to or by fair associations for real or tangible personal property	1.0
1997/05	212.08(7)(hh)	Solar energy systems	1.1
1997	212.08(7)(ii)	Nonprofit cooperative hospital laundries	0.1
1997	212.08(7)(jj)	Complimentary meals served by hotels & motels	3.3
1998	212.08(7)(mm)	Mobile home lot improvements	0.6
1998	212.08(7)(oo)	Complimentary food items	0.6
1998	212.08(7)(qq)	Racing dogs by breeders	0.1
1998	212.08(7)(rr)	Parts and labor used in certain AIRCRAFT maintenance or repair	2.4
1998	212.08(7)(ss)	AIRCRAFT leases & sales by common carriers, if in excess of 15,000 lbs	2.5
1999	212.08(7)(v v)	Certain advertising services	13.7
1999	212.08(7)(ww)	Gold, silver, platinum bullion in excess of \$500	insig.
1999/00	212.08(7)(xx)	Shipping and parts and labor for repair of certain machinery	14.1
1999	212.08(7)(yy)	FILM and printing supplies	5.9
2000	212.08(7)(zz)	People Mover Systems	0.3
2000	212.08(7)(bbb)	Railroad Bed Materials	0.6
2006	212.08(7)(ccc)	Energy Efficient Technology	insig.
2006	212.08(7)(ddd)	Advertising materials distributed free by mail in an envelope	insig.
1957	212.08(8)	Vessels, parts & related items used in interstate commerce (partial).	23.8
1957	212.08(9)	RR equip, MV & pts. used in interstate commerce (partial).	23.8
1978	212.08(11)	"Flyable AIRCRAFT " sold by a FL mfr. to out-of-state resident (partial).	6.4
1998	212.08(11)	AIRCRAFT temporarily located in Fla for repairs.	6.1
1984	212.08(12)	Master tapes, records, FILMS or video tapes (partial).	25.3
1984	212.08(15)	Certain electrical energy used in an enterprise zone.	0.3
1989	212.08(16)(a)1.	The sale or use of satellites or other SPACE vehicles.	62.0
1989	212.08(16)(a)2.	The sale or use of tangible personal property placed on SATELLITES.	insig.
1999	212.08(17)	Overhead items purchased by certain gov't contractors	8.2
2006	212.08(18)	M & E used for R&D at least 50%	23.6
1949	212.12(1), 212.04(5)	Collection allowance of 2.5% for the first \$1,200 of tax per return.	60.7
1998	376.75(1)	Tax on perchloroethylene	0.1
GRAND TOTAL			1,990.6m
BOLDED Boats/Aircraft Incentives			173.5
BOLDED Space Incentives			62.6
BOLDED Film Incentives			62.1
BOLDED M&E			91.9
BOLDED R&D			<u>27.2</u>
ALL BOLDED Business Incentives:			TOTAL 417.3m

(* Items shown in italics are NOT included in the grand total . Repeal of such items would substantially alter the character of the tax.

SOURCE: Source: Compiled by staff of the Senate Commerce Committee, 11/10/10, Adapted from the 2010 FLORIDA TAX HANDBOOK, pp. 150-153, and the 2010 Revenue Estimating Conference

PORTFOLIO OF STATE ECONOMIC DEVELOPMENT INCENTIVES

DEFINITION

State economic development incentives may be defined as those programs with budgeted or authorized public dollars that are directly or indirectly invested in activities of businesses.

CLASSIFICATION¹

State economic development incentives may be classified into three general categories:

- Direct financial incentives;
- Indirect incentives; and
- Tax-based incentives.

Direct financial incentives provide direct monetary assistance to a business from the state or through a state-funded organization. The assistance is provided through grants, loans, equity investments, loan insurance and guarantees. These programs generally address business financing needs but also may be invested in workforce training, market development, modernization, and technology commercialization activities. Cash grants provide the greatest flexibility and immediate benefit to the company by reducing capital outlays. However, loans, bonds, and equity financing are commonly used to make resources available with an expectation that the dollars will be returned for future investments. Another important category of direct financial incentives is in the area of training subsidies. Other forms of direct financial incentive include revolving loan funds, product development corporations, seed capital funds, and venture funds. These programs directly supplement market resources through public lending authorities and banks. *Direct financial incentives are typically discretionary.*

SEE TABLE 1

Indirect incentives include grants and loans to local governments, *non-profits*, and community organizations to support (*and promote*) business investment or development. The recipients include communities, financial institutions, universities, community colleges, training providers, venture capital investors, and childcare providers. In many cases, the funds are tied to one or more specific business location or expansion projects. Other programs are targeted toward addressing the general needs of the business community, including infrastructure, technical training, new and improved highway access, airport expansions and other facilities. Funds are provided to the intermediaries in the form of grants, loans, and loan guarantees. Indirect incentives may also be used to leverage private investment in economic development. For instance, linked deposit programs in which state funds are deposited in a financial institution in exchange for providing capital access or subsidized interest rates to qualified business borrowers. *Indirect financial incentives are typically discretionary.*

SEE TABLE 2

¹ Adapted from "Evaluating Business Development Incentives" Prepared for the U.S. Department of Commerce, Economic Development Administration, EDA Project #99-07-13794. Prepared by the National Association of State Development Agencies, W.E. Upjohn Institute for Employment Research, and The Urban Center, Cleveland State University. August 1999. Kenneth E. Poole, Project Director, NASDA
http://www.eda.gov/ImageCache/EDAPublic/documents/pdfdocs/1g3_5febdi_5freport_2epdf/v1/1g3_5febdi_5freportortr.pdf
ALSO SEE Poole: <http://www.c2er.org/about.asp>

Tax-based incentives² use the state’s tax code (or tax base) as the source of direct or indirect subsidy to qualified businesses. It is more stable and less visible than direct financial or indirect incentives because it does not typically require an annual appropriation. Tax-based incentives can be either discretionary or entitlements. While tax based incentives function like direct financial incentives, the ubiquitous use of these incentives justifies a separate categorization. Tax-based incentives can be further classified into five sub-categories:

- CREDITS, which provide a reduction in taxes due, after verification that statutory or contractual terms have been met. SEE TABLE 3
- REFUNDS, which provide a return on taxes paid, after verification that statutory or contractual terms have been met. SEE TABLE 4
- EXEMPTIONS, which provide freedom from payment of a variety of taxes normally applied to certain business activities. SEE TABLE 5
- LOCAL PROPERTY TAX ABATEMENTS or ASSESSMENT REDUCTIONS, which reduce or decrease the assessed valuation of *ad valorem* taxes, to include real property and personal property. Because the *ad valorem* tax is a local government revenue source, the cost of the incentive is borne by local governments.³

² While the description of the Tax-Based Incentives category is not identical to Poole’s definition, it is consistent with Poole’s definition. For purposes of this classification, the Tax-Based Incentives are incentives to qualified businesses, as opposed to individuals generally. Florida has a myriad of tax exemptions relieve exempt specific items from taxation, and are available to businesses and individuals alike.

³ In Florida, this includes:

Property Tax Exemption for Economic Development. Section 196.1995, F.S., authorizes counties and municipalities to establish a property tax exemption from their respective levies for economic development, subject to referendum approval, for new or expanding businesses for a ten year period.

Tax Increment Financing. Section 161.335, F.S., authorizes counties and municipalities to use tax increment financing to fund community redevelopment. Tax increment financing is a unique tool available to cities and counties for redevelopment activities. It is used to leverage public funds to promote private sector activity in the targeted area. The dollar value of all real property in the Community Redevelopment Area is determined as of a fixed date, also known as the “frozen value.” Taxing authorities that contribute to the tax increment, continue to receive property tax revenues based on the frozen value. These frozen value revenues are available for general government purposes. However, any tax revenues from increases in real property value, referred to as “increment,” are deposited into the Community Redevelopment Agency Trust Fund and dedicated to the redevelopment area.

The tax increment revenues can be used immediately, saved for a particular project, or can be bonded to maximize the funds available. Any funds received from a tax increment financing area must be used for specific redevelopment purposes within the targeted area, and not for general government purposes.

Industrial Development Authorities. Part III of ch. 159, F.S., authorizes counties to create Industrial Development Authorities (IDA) to foster the economic growth of a county, primarily through issuance of revenue bonds to develop industrial or commercial projects. These bonds are repayable solely from revenues derived from the sale, operation, or leasing of property to private interests. Industrial Development Authorities are county entities, as a creation of the counties through authority from the Florida Statutes. Counties are immune to taxation. Furthermore, s. 159.50, F.S., codifies that Industrial Development Authorities are not subject to taxation by any state or local authorities.

Should the IDA lease property for less than 100 years that it acquired without using its s. 159 F.S., bond authority, e.g. land donated to the IDA, a non-exempt lessee will be subject to taxation of the leasehold interest as intangible personal property. This would result in a significant decrease in the lessee’s tax obligation. However more commonly, as the IDA’s principle authority to acquire land is through bond financing, any non-exempt Leasehold interests in IDA property is taxed as real property if the under-lying property was funded through IDA bonds pursuant to s. 159 F.S.

DISCRETIONARY / NON-DISCRETIONARY DISTINCTION⁴

These programs can be either discretionary or nondiscretionary in nature. **Discretionary incentives** are those in which the executive branch has the ability to make an important policy decision about the investment – whether to make it and how much. In these cases, funding for a project is often based on a priority-setting process developed by the agency managing the program (*In Florida, by the Legislature through statute or the annual budget*). In some cases, the value of the incentive to be offered may be subject to negotiation between the company and the policy maker. Policy goals often serve as a guide to developing and using these programs.

Non-discretionary incentives (*entitlements*) are those provided based on statutory requirements developed by a state legislature. These statutory incentives are available through programs for which there is an identified and specific legislative authorization. These are generally available to all qualifying businesses in the state and the actual or in-kind value of the incentive is often fixed within the statute, providing limited or no discretion for the local executive branch as to whether it should provide the incentive to a company.

Using a broader definition, incentives also may be defined as economic development programs that assist businesses without providing direct financial assistance. For instance, tax policies of states, property valuation, accelerated depreciation, and interest rate subsidies are among these types of programs. Other forms of incentive assistance for businesses in this category include technical assistance, modernization services, access to research capacity and technology transfer assistance, subsidized higher education, and public infrastructure. These types of inducements may legitimately be viewed as incentives but they have been excluded from the working definition of incentives used in this study.

⁴ Virtually verbatim, from “Evaluating Business Development Incentives” Prepared for the U.S. Department of Commerce, Economic Development Administration, EDA Project #99-07-13794. Prepared by the National Association of State Development Agencies, W.E. Upjohn Institute for Employment Research, and The Urban Center, Cleveland State University. August 1999. Kenneth E. Poole, Project Director, NASDA http://www.eda.gov/ImageCache/EDAPublic/documents/pdfdocs/lg3_5febdi_5freport_2epdf/v1/lg3_5febdi_5frepo_rortrt.pdf *Italics indicate deviations from the source.* Also See **Poole’s** research at: <http://www.c2er.org/about.asp>



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 Repealed ¹⁰	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
<p>§255.551 - 255.563 <i>Asbestos in state owned buildings</i></p>	<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>
<p>§469.003(2)(b) <i>Certified asbestos surveyors prior to October 1, 1987</i></p>	<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
<p>§288.901(2) <i>Enterprise Florida, Inc. – employ/lease individuals from FDC</i></p>	<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
<p>§14.2015(8) <i>OTTED collection of visitor data</i></p>	<p>Delete the reference to FDC from the statute</p> <p>OTTED suggested deleting the reference because the methodology was updated in 2009</p>
<p>§288.035(1) <i>Economic development expenses that public utilities are permitted to recover</i></p>	<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>
<p>§288.1162(6)(a), (8) <i>Certification of professional sports franchise facilities</i></p>	<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

Issue Brief 2011-209

October 2010

Committee on Commerce

AN OVERVIEW OF THE ECONOMIC DEVELOPMENT AFFILIATES ADMINISTERED BY ENTERPRISE FLORIDA, INC.

Statement of the Issue

Enterprise Florida, Inc., (EFI) was created in 1992 by the Legislature as a nonprofit corporation with two duties: assist in the coordination of the state's economic development efforts and develop a strategic plan to improve the state's economic development. In succeeding years, the Legislature broadened EFI's responsibilities so that it is now Florida's principal economic development organization. EFI is the state's economic-development strategist, its business recruiter, and a facilitator of public-private investment in business ventures.

This issue brief reviews the history and structure of EFI and four affiliated programs that it oversees: the Florida Development Finance Corporation, the Florida Small Business Technology Growth Program, the Florida Opportunity Fund, and the Cypress Equity Fund.

Discussion

Creation of EFI

One of the early initiatives of Governor Lawton Chiles was the evaluation in 1991 of the executive agency governance structure. Chiles' transition task forces and "Government by the People Commission" developed a set of wide-ranging recommendations on agency mergers and realignment. One idea that grew from these discussions was creation of a lead entity, representing both the public and private sectors, to coordinate the state's economic development programs and policies. The idea coalesced as "Enterprise Florida," and a 1991 report drafted by the Florida Chamber of Commerce and the Florida Department of Commerce (DoC) detailed why such an entity was necessary and how it could be fully implemented within 3 years.¹ One of the key reasons for creating a new lead entity, according to the report, was "fragmentation" of the different state, local and private-sector entities charged with economic development:

"A disconnected approach to economic development cannot help but result in uncoordinated, inchoate, and wasteful use of resources."²

The report noted that Enterprise Florida would not duplicate the DoC, but that the department's units responsible for marketing, research, business assistance, and administrative functions would be transferred, over a 3-year-period, to Enterprise Florida. When fully implemented, this new "public-private partnership" was envisioned to act as a catalyst for economic development in Florida, a broker for recruiting new businesses and retaining existing ones, and a coordinator for specialized entities – such as bond financing for business infrastructure or investment in new technologies – that would be at the core of efforts to diversify Florida's economy.

Based in large part on the aforementioned report's recommendation, Enterprise Florida, Inc. (EFI), was created by the Legislature in 1992.³ The legislation references the economic challenges the state was facing, and concludes

¹ "Enterprise Florida: Partnership for a Competitive Economy." Prepared by the Florida Chamber of Commerce and the Florida Department of Commerce. Final Report, published October 31, 1991. On file with the Senate Commerce Committee.

² Ibid. p 16.

³ Sections 1-7, ch. 92-277, L.O.F. (HB 55-E).

that Florida “needs a mechanism to bring together Florida’s leadership and economic development resources, both public and private, to create enhanced economic development tools.”⁴ The legislation did not transfer any DoC responsibilities to EFI. The only two duties enumerated in the new law were assisting in the coordination of the state’s economic development efforts and developing a state strategic plan for economic development by December 1, 1993.⁵

EFI was to be governed by a 21-member board of directors, of which 12 were private citizens appointed by the Governor from a list submitted initially by the Enterprise Florida Nominating Council, and subsequently by the EFI board. These 12 members were subject to Senate confirmation. The other nine members were: the Governor, the Lieutenant Governor, the Commissioner of Education, the Chancellor of the State University System, the executive director of the State Community College System, the Secretary of Commerce, the Secretary of Labor and Employment Security, or their designees; a member of the Florida Senate; and a member of the Florida House of Representatives.

The only mention of funding for EFI was that its board of directors had the power to “secure funding for programs and activities from federal, state, local, and private sources and from fees charged for services and published materials and solicit, receive, hold, invest, and administer any grant, payment, or gift of funds or property....”⁶

Subsequent, significant legislative changes

At least three pieces of 1993 legislation that passed into law mentioned EFI, but the most significant one was SB 2382 (ch. 93-187, L.O.F.), which created the Enterprise Florida Innovation Partnership⁷ and the Enterprise Florida Capital Partnership⁸ to work with EFI. Briefly:

- The Innovation Partnership was focused on providing leadership and development of market-based tools to diversify Florida’s economy. It was authorized to create a “Florida Innovation Alliance” of providers of computer, telecommunications and other high-tech applications that would lend their expertise to assisting small and medium Florida firms needing to improve their market competitiveness. It also was directed to create the Florida Technology Research Investment Fund to invest in specified types of businesses. It later designated five “Innovation and Commercialization Centers” (ICCs)⁹ and created the “Florida Manufacturing Technology Center.”¹⁰
- The Capital Partnership was focused on ways to fund capital investment in Florida’s economy, in particular to address the long-term debt needs of small- and medium-sized businesses. Although not directly specified in the implementing statute, the partnership was to work with the Florida Development Finance Corporation (FDFC), which was created in the same legislation, to address long-term capital financing for Florida businesses.

In 1994, the Legislature created the Enterprise Florida Jobs and Education Partnership, a not-for-profit corporation, to address the issues of preparing Florida’s workforce for a global economy and developing a market-driven approach to plan for changes in the employment market.¹¹

The next major statutory changes for EFI occurred in 1996, with the passage of a 182-page bill that revamped Florida’s economic development governance structure.¹² The legislation abolished the DoC and the Florida

⁴ Ibid.

⁵ Ibid. s. 6.

⁶ Ibid. s. 5.

⁷ Sections 3-11, ch. 93-187, L.O.F.

⁸ Sections 35-41, ch. 93-187, L.O.F.

⁹ Only one of the ICCs still exists, as the Enterprise Development Corporation of South Florida. Website at <http://www.edc-tech.org/>. Last visited Sept. 22, 2010.

¹⁰ This evolved into the Florida Manufacturing Extension Partnership. Website at <http://www.floridamep.org/>. Last visited Sept. 22, 2010.

¹¹ Section 1, ch. 94-232, L.O.F.

¹² Chapter 96-320, L.O.F. Sections 80-86 specifically amended EFI’s sections of law. This extensive legislation also created a number of economic incentives, modified existing incentives, and created the Florida Commission on Tourism, Inc.

International Affairs Commission; formally recognized EFI as the state's lead economic development entity and broadened its responsibilities; and created the "Office of Tourism, Trade, and Economic Development" (OTTED) to perform what had been DoC's governance functions, such as providing contractual oversight of EFI and other public-private partnerships under contract.

EFI was charged with developing policies and implementing strategies to:

- Support Florida's existing businesses and recruit new businesses worldwide to Florida;
- Seek to bolster international trade opportunities;
- Develop a comprehensive approach to workforce development; and
- Promote economic opportunities for rural communities and small or minority businesses.

The Innovation, Capital Development, and Jobs and Education partnerships were renamed and redesignated as boards, and brought within EFI's corporate structure. Additionally, the International Trade and Economic Development Board was created to assist EFI in developing the state's overseas trade markets and promote business recruitment.

The newly created OTTED was directed to contract with EFI to "guide, stimulate, and promote the economic and trade development of the state."¹³ OTTED was given control of the "Economic Development Trust Fund," where the Legislature would deposit appropriations for the various incentive programs.¹⁴

The 1996 legislation also addressed funding for EFI.¹⁵ Consistent with the intent of creating a public-private partnership,¹⁶ operational funding would be shared with the private sector. Specifically, the law required an incremental increase in private funding to EFI operations, from 10 percent of state appropriations in FY 1996-1997 to 50 percent of state appropriations by FY 2000-2001. These funds would be released through a budget amendment, in accordance with ch. 216, F.S., if EFI provided sufficient documentation that it had received the same amount in private matching funds for the given fiscal year. If sufficient documentation was not provided by the end of a given fiscal year, the state funds were to revert to the state's General Revenue Fund.

The 1996 legislation also directed the Office of Program Policy and Government Accountability (OPPAGA) to review, prior to the 1999 legislative session:

- the amount and type of private contributions received by EFI; and
- the circumstances affecting EFI's ability to achieve the required matching private funds for the previous 3 years.¹⁷

In 1997, the Legislature passed another large economic development bill,¹⁸ part of which clarified OTTED's responsibilities and some of the incentive programs created the previous year. The legislation also clarified OTTED's relationship as "administrator" of its contract with EFI.¹⁹

¹³ Ibid, s. 2.

¹⁴ Ibid, s. 43.

¹⁵ Ibid. s. 114(1).

¹⁶ FN 1, pages 2 and 23-24.

¹⁷ Ibid. 12, at s. 114(2). The issue of EFI's private match requirement has been the subject of two OPPAGA reports and a 2001 audit of EFI by the Florida Comptroller's Office. OPPAGA Report No. 98-31: "Review of Private Sector Match Contributions by Enterprise Florida, Inc." raised a number of questions about how EFI was computing its private match. The report is available at: <http://www.oppaga.state.fl.us/Reports/pdf/9831rpt.pdf>. OPPAGA also addressed the private-match issue in 2001, in Report 01-62: "Concerns Over Enterprise Florida's Performance, Services to Distressed Areas Point to a Need to Consider Alternatives for Its Future Role." This report is available at <http://www.oppaga.state.fl.us/MonitorDOCs/Reports/pdf/0162rpt.pdf>. Both sites last visited Sept. 22, 2010. For additional review of this issue, see "An Audit of Enterprise Florida, Incorporated" by the Office of the Comptroller, Department of Banking and Finance, October 3, 2001, pp. 32-34. This report is on file with the Senate Commerce Committee.

¹⁸ Ch. 97-278, L.O.F.

¹⁹ Ibid. s. 3.

The Legislature in 1999 reiterated its requirement that state funding for EFI operations be matched by private funding, stating that it is “further the intent of the Legislature to maximize private-sector support in operating Enterprise Florida, Inc., as an endorsement of its value and as an enhancement of its efforts.”²⁰ The law specified what qualified as private-sector support, the various categories of required support, and the overall ratio or match of the support – no less than 100 percent of the state’s operating investment.

The same legislation abolished the Capital Development Board, the International Trade and Economic Development Board, and the Technology Development Board, and folded their assets and responsibilities into EFI as programs.²¹ Also, the Jobs and Education Partnership was renamed the Workforce Development Board, still under EFI’s oversight, and its responsibilities broadened.²²

The 1999 legislation also:

- Specified that EFI “fully comply with the performance measures, standards, and sanctions in its contracts” with OTTED.²³
- Required EFI to provide in its annual report to the Legislature information quantifying the public’s return on investment (ROI) from state funds supporting EFI’s activities and the results from customer-satisfaction surveys of businesses served and of each local economic-development organization in this state.²⁴ The ROI and customer satisfaction reports were to be developed and administered by a private accounting firm, after initial review by OPPAGA.²⁵
- Required EFI to “coordinate its operation with local economic-development organizations to maximize the state and local return on investment to create jobs for Floridians.”²⁶

At least three OPPAGA or Senate committee reports have reviewed the above activities over the years.²⁷

The latest significant legislative changes affecting EFI occurred in 2007, with creation of the Florida Opportunity Fund, and in 2010, when the FDFC program was amended to allow it to leverage federal funds to issue debt for specific energy-related projects. These changes are discussed below because they affect EFI’s affiliate entities.

EFI Today

EFI currently is governed by a 19-member board of directors. The Governor appoints six private-sector members to the board, and the Senate President and the Speaker of the House of Representatives appoint three each. The public-sector members are the Governor, the Commissioner of Education, the state’s Chief Financial Officer, the Secretary of State; the chair of the Workforce Florida, Inc. board of directors, or their designees; a member of the Florida Senate as ex officio; and a member of the Florida House of Representatives as an ex officio.

²⁰ Section 29(5), ch. 99-251, L.O.F. This was codified in statute as s. 288.90151, F.S.

²¹ Ibid, ss. 44 and 45.

²² Ibid, ss. 50-63. The following year, the Legislature recreated the board as a separate entity – Workforce Florida, Inc. – and moved it to a new chapter of law, ch. 445, F.S., with passage of ch. 2000-165, L.O.F.

²³ Ibid. s. 29(6). Also, s. 14.2015(2) and (7), F.S., in current law requires OTTED to contract with EFI, and that such contracts must include specific performance measures, standards, and sanctions.

²⁴ Ibid. s. 29(7).

²⁵ Ibid. s. 29(8).

²⁶ Ibid. s. 29(2).

²⁷ Relevant OPPAGA reports are: Report No. 01-62: “Concerns Over Enterprise Florida’s Performance, Services to Distressed Areas Point to a Need to Consider Several Alternatives for its Future Role,” available at <http://www.oppaga.state.fl.us/MonitorDOCs/Reports/pdf/0162rpt.pdf>; and Report No. 04-31: “Enterprise Florida Addresses Recommendations,” available at <http://www.oppaga.state.fl.us/Reports/pdf/0431rpt.pdf>. See also a 2003 interim project report by the Senate Committee on Commerce and Economic Opportunities, entitled “Optimizing Accountability Requirements for State Economic Development Public-Private Partnerships,” available at http://www.flsenate.gov/data/Publications/2003/Senate/reports/interim_reports/pdf/2003-114cm.pdf. Sites last visited Sept. 22, 2010.

For FY 2010-2011, EFI received \$11.1 million from the state, and expects to receive \$1.4 million in corporate contributions and \$1.68 million in anticipated revenues and fees from its activities, for a total \$13.68 million to pay its operating expenditures. (Table 1 below)

EFI has five organizational units tailored to its programs:

- Administration, which oversees its general operations as well as its affiliate entities involving public/private investments, meaning the Florida Opportunity Fund, the FDFC, the Cypress Fund, and the Florida Small Business Technology Fund.
- External Affairs and Investor Relations, which includes EFI's lobbying and local outreach efforts.
- Business Retention and Recruitment.
- International Trade and Business Development.
- Marketing and Strategic Development, which includes the research and strategic planning duties of EFI.

Table 1
FY 10-11 Budgetary Information about EFI's Organizational Units

EFI Unit	Full-time employees ²⁸	State Funds	Private Contributions	Revenue from Fees	Total Budget
Administration	13	\$2.55 million	\$47,117	\$172,000	
Ext. Affairs/Investor Relations	9	\$881,485	\$161,178	\$13,500	
Business Retention/Recruitment	11	\$1.4 million	\$235,516	\$150,000	
International Trade & Business Development	15	\$4.6 million	\$310,000	\$853,000	
Marketing/Strategic Intelligence	8	\$1.55 million	\$246,189	--	
TOTALS	56	\$11.1 million	\$1.4 million	\$1,688,500	\$13,688,500

Source: EFI – 9/14/10

Over the years EFI's reporting requirements have been modified to better reflect its responsibilities at the time. Currently, EFI produces:

- A quarterly economic bulletin.²⁹
- An annual "incentives report," pursuant to s. 288.095(3)(c), F.S., that is a snapshot of EFI's recruitment successes over a calendar year. The report includes explanations of the statutorily created economic development incentives (most of which are in ch. 288, F.S.), how they were used to recruit or retain businesses and create jobs, and a "payback ratio" that is intended to measure the state's return on investment. The information is reported in the aggregate, in order to protect the confidentiality of the individual recipients, but a sampling of case studies is included at the back of the report.³⁰
- An annual report on its activities during the previous fiscal year.³¹
- A 5-year strategic plan, currently called the "2010-2015 Roadmap to Florida's Future."³²

²⁸ EFI also has three leased employees who were former Florida Department of Commerce employees and as part of the transfer retained their eligibility in the Florida Retirement System. Additionally, EFI has four part-time interns this fiscal year.

²⁹ The most recent report (Florida Economic Bulletin, Summer 2010) is available at <http://www.eflorida.com/Knowledge.aspx?id=1672>. Last visited Sept. 22, 2010.

³⁰ The most recent report (2009 Incentives Report) is available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. Last visited Sept. 22, 2010.

³¹ The most recent report (2008-2009 Annual Report) is available at <http://www.eflorida.com/IntelligenceCenter/Reports/2009%20EFI%20Annual%20Report.pdf>. Last visited Sept. 22, 2010.

³² This report is available at http://www.eflorida.com/Floridas_Future.aspx?id=8186. Last visited Sept. 22, 2010.

- A business guide and checklist that provides basic information about federal, state, and local requirements for starting a business in Florida, pursuant to s. 288.9105(6), F.S. This information is included on EFI's website, under its "customized information search" pull-down tab.³³

EFI also administers three statutorily created, special-purpose economic development entities or affiliates:

- The FDFC, which historically operated through interlocal agreement with local governments to issue industrial revenue bonds for infrastructure projects, and which, with passage of 2010 legislation, can participate in a new federal loan program for energy projects.
- The Small Business Technology Growth Program, designed to provide loans or other forms of credit to businesses engaged in emerging technologies and which have fewer than 100 employees, but which in recent years has become inactive.
- The Florida Opportunity Fund (FOF), which invests with private partners in venture capital funds that include Florida-based businesses, or makes direct investments in Florida-based companies.

It also has general oversight of the Cypress Equity Fund, one of the state's earliest attempts to participate in venture capital investing.

FDFC

Synopsis

The FDFC was created in 1993 by the Legislature as a state-authorized issuer of industrial revenue bonds,³⁴ typically tax-exempt, private-activity bonds. Its original purpose was to help foster the growth of manufacturing and other strong job-creating businesses in Florida by brokering private-activity bond financing through interlocal agreements with counties, municipalities, and other local political subdivisions.³⁵ The FDFC's responsibilities were broadened during the 2010 legislative session to allow it to participate in a federal Department of Energy (DOE) guaranteed loan program for the development of renewable energy infrastructure projects, and related energy projects that may be eligible under federal law.³⁶

The FDFC has a 5-member, independent board of directors appointed by the Governor and confirmed by the Senate. The FDFC is staffed by EFI. Since 1997, the FDFC has facilitated bond issues totaling \$240,237,499 in support of 77 Florida businesses, including for-profit and not-for-profit companies.³⁷ As of September 1, 2010, the FDFC has not yet exercised its new financing authority for energy-related projects, but is evaluating proposals and may have an approved project by year's end.

*Governance*³⁸

As mentioned above, the Governor appoints the FDFC's five-member board of directors, subject to Senate confirmation. At least three of the board members must be bankers selected by the Governor from a list submitted by EFI, and one of the directors must be an economic development specialist. The chairperson of the Florida Black Business Investment Board serves as an ex officio member. Terms are for 4 years, and any vacancy occurring during a term is filled by the Governor for the remainder of that term. Board members³⁹ receive no compensation but are entitled to per diem and travel expenses.

Pursuant to s. 288.9605, F.S., the FDFC may:

³³ See <http://eflorida.com/>. Free registration may be required to obtain some of the information. Last visited Sept. 22, 2010.

³⁴ Sections 25-34, ch. 93-187, L.O.F., codified as ss. 288.9602-288.9610, F.S.

³⁵ Section 288.9602, F.S., generally expresses the legislative intent of the FDFC.

³⁶ Sections 2-10, ch. 2010-139, L.O.F.

³⁷ A list of the businesses that have received private-activity bonds through the FDFC is on file with the Senate Commerce Committee.

³⁸ Section 288.9604, F.S.

³⁹ Current FDFC board members are: chairman Pete Tesch, president of the Ocala/Marion County Economic Development Corporation; vice-chairman Jose Luis de la Rosa, vice president at Bank of America; Frank DiBello, president of Space Florida; William C. Jones, first vice president at SunTrust Bank; and Rebecca Reynolds, public funds director for Fifth Third Bank.

- Borrow money and accept any form of financial assistance from the federal government, the state, or local governmental entities, or from private sources;
- Enter into interlocal agreements with local governments as partners in issuing industrial development revenue bonds;
- Issue revenue bonds and other types of financial instruments for the purpose of financing and refinancing certain energy-related capital projects that promote economic development within Florida;
- Establish and manage a “guaranty fund,” which guarantees that the bonds will be repaid, and is funded in part through a premium paid by the business applying for FDFC assistance and by a property interest in the infrastructure to be built with the bond proceeds; and
- Invest bond proceeds held in reserve.

Bond-Issuance Process

Pursuant to s. 288.9606, F.S., the FDFC may issue bonds or other types of indebtedness for:

- Renewable energy projects that meet the statutory definitions in either s. 366.91 or s. 377.803, F.S.;⁴⁰
- Renewable energy and electric power transmission projects eligible for federal loan guarantees under the American Recovery and Reinvestment Act (ARRA) of 2009;⁴¹ and
- If permitted by federal law, energy efficiency improvements, installation of renewable-energy equipment, and wind-resistant improvements to structures pursuant to s. 163.08, F.S. These are commonly referred to as “Property-Assessed Clean Energy” or “PACE” projects.

One source of funding for these types of projects is expected to be \$5.9 billion in federal loan guarantees through ARRA. The federal funds guarantee 80 percent of a loan for an eligible project, with the “development finance organization” (DFO) underwriting the project to pledge 5 percent of the loan amount.

The Florida Finance Network⁴² is Florida’s DFO for this venture, with the FDFC taking the lead.

For all other types of capital projects, FDFC may issue industrial development revenue bonds only when authorized to do so by a public agency, through interlocal agreement. The interlocal agreement establishes the terms of bonds, which may not exceed 30 years, and which typically have been tax-exempt private-activity bonds available within the federal allocation pool.⁴³ Over the years under this program, bond recipients have included a power boat manufacturer, a glass manufacturer and customizer, a truss company, an engineering firm specializing in communications telemetry, a nursing home, and a juice manufacturer. FDFC is more accurately described as a conduit for these bonds, shepherding businesses through the application, approval, and bond validation processes. The FDFC is not directly liable for repaying the bonds in case the recipient business defaults, but it does require certain guarantees, collateral, security interests, or lines of credit from the bond recipients. Repayment of the indebtedness is the responsibility of the borrowing business.

The FDFC also must maintain what is now called the Energy, Technology, and Economic Development Guaranty Fund, which will hold state general revenue appropriations or other sources of funds that may be used to make debt service payments or pay insurance, maintenance, or other costs necessary to preserve the project. This

⁴⁰ Biomass energy, hydroelectric power, hydrogen produced from sources other than fossil fuels, geothermal power, ocean energy, solar energy, and wind energy are included in the two definitions.

⁴¹ Text of the federal law can be accessed at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf. Site last visited Sept. 22, 2010. Eligible projects include renewable energy systems that generate electrical or thermal energy, and facilities that manufacture system components; construction or upgrading of electric power transmission systems; and “leading edge” biofuel projects in the pilot or demonstration phase that the U.S. Energy Secretary determines are commercially viable and will produce fewer greenhouse gas emissions than other transportation fuels.

⁴² More information about the Florida Finance Network is available at <http://www.floridafinance.org/>. Last visited Sept. 22, 2010.

⁴³ According to the state Division of Bond Finance, Florida’s 2010 federal allocation of tax-exempt, private activity bonds is nearly \$1.67 billion, of which \$97.5 million is allocated to a “manufacturing pool” from which the FDFC typically draws its traditional bond financing.

guaranty fund includes \$5 million specifically earmarked as the FDFC's 5-percent match for any energy-related project it selects for the federal loan guarantee program. The \$5 million was reappropriated from the Florida Energy and Climate Commission to OTTED in the FY 2010-2011 General Appropriations Act.⁴⁴

Reporting requirements

The statute requires an annual report be submitted by December of each year to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader that includes any Auditor General's report as required under s. 11.45(3)(j), F.S.; the FDFC's operations and accomplishments over the last year, including the number of businesses assisted; and the FDFC's assets and liabilities for its most recently concluded fiscal year.

Based on its annual report for FY 08-09 – the most recent available – the FDFC facilitated the issuance of \$18.46 million in bonds to two entities: Out of Door Academy (\$13.5 million) in Siesta Key for construction of a performing arts center and development of athletic fields and for classroom renovations; and Sculptor Charter School (\$4.96 million) in Titusville to renovate classroom facilities and pay off the school's building lease. The FDFC earned \$64,793 in bond issuance fees that fiscal year, which helped defray its administrative expenditures.

OPPAGA has reviewed the FDFC program in the context of evaluating EFI or state business assistance programs in four reports published in 1995-1998, and its concerns about the design of the Florida Development Finance Corporation (FDFC) have been largely addressed as the FDFC has evolved.⁴⁵

Small Business Technology Growth Program⁴⁶

As mentioned above, the Legislature in 1993 created a number of committees and boards within EFI's umbrella to handle specific economic-development tasks. One of them was the Enterprise Florida Innovation Partnership (renamed the Technology Development Board in 1996, with minor amendments⁴⁷). It was directed to create market-driven, performance-based economic development incentives for innovative businesses that could diversify Florida's economy and provide high-wage employment; no examples were specified in statute. A key responsibility of this group was to advise and coordinate with EFI the state's economic development policies regarding technology development and expansion.

Created in 1998, the Small Business Technology Growth Program is intended to assist Florida businesses that had "high job growth and emerging technology potential" and fewer than 100 employees⁴⁸ in obtaining financing to expand. The types of financing were unspecified in statute. The program was originally managed by the Technology Development Board but, by 1999, the board was abolished and EFI was given direct oversight responsibility.

The Legislature appropriated \$1.5 million for the program in FY 98-99, and nothing since then. The funds were initially used as loan guarantees. Seven banks participated in the program, dispensing at least \$3.8 million in loans to 14 businesses over the next 2 years.⁴⁹ Because the participating banks, and not EFI, did the loan underwriting,

⁴⁴ Sections 136-138, ch. 2010-152, L.O.F.

⁴⁵ The reports which included significant discussion of the FDFC are: Report No. 95-09: "Review of the Enterprise Florida Capital Partnership," available at <http://www.oppaga.state.fl.us/Reports/pdf/9509rpt.pdf>; Report No. 96-19: "Review of State-Supported Business Loan Programs," available at <http://www.oppaga.state.fl.us/Reports/pdf/9619rpt.pdf>; Report No. 97-29: "Follow-Up Report on the Enterprise Florida Capital Partnership," available at <http://www.oppaga.state.fl.us/Monitordocs/Reports/pdf/9729rpt.pdf>; and Report No. 98-32: "Review of the Capital Development Board of Enterprise Florida, Inc.," available at <http://www.oppaga.state.fl.us/Reports/pdf/9832rpt.pdf>. Sites last visited Sept. 22, 2010.

⁴⁶ Section 288.95155, F.S. (Created in s. 37, ch. 98-59, L.O.F.)

⁴⁷ Sections 288.9512-288.9514, F.S., which had specified the board's makeup and responsibilities, were repealed by ch. 99-251, L.O.F.

⁴⁸ Section 288.95155(1), F.S.

⁴⁹ Information compiled by EFI and on file with the Senate Commerce Committee.

there is incomplete data available on the recipients and whether they are still in business in Florida and how many jobs the loans actually helped create.⁵⁰

In early 2009, EFI wrote off the last loan, leaving \$1,681,380 million in the account for the year that ended June 30, 2009. During the 2009 legislative session, \$600,000 from the account was earmarked to be advanced by EFI to the Center for the Commercialization of Public Research (center)⁵¹ for its operations. Per an agreement between the two entities, the funds are advanced to the center as needed; for the year that ended June 30, 2010, EFI advanced \$150,000 to the center for its operations. This left \$1.53 million in the account.

Currently, EFI is considering awarding \$50,000 grants to two small Florida-based technology companies that have been identified by the center as having the potential for growth. EFI staff has commented that while the loan program is defunct, the growth fund remains a useful tool EFI can use to assist small technology-based businesses with high-growth potential.

EFI is directed to prepare and include in its annual incentives report,⁵² due by December 31 of each year, a discussion on the financial status of the technology grant program, including:

- Specifying the grant program's assets and liabilities within the current fiscal year and
- Listing all of the businesses assisted, the private dollars leveraged by each business assisted, and the growth in sales and in employment of each business assisted.

Prior to being amended in 2010, s. 288.95155(5), F.S., required EFI to submit a stand-alone report on the technology grant program by January 1 of each year to its board of directors and to the substantive and appropriations committees of the Legislature with oversight of economic development programs. In recent years, EFI responded that it did not submit formal reports because the program was inactive, and instead supplied legislative staff with summary information.

Florida Opportunity Fund

Created by the Legislature in 2007, the Florida Opportunity Fund (FOF)⁵³ was intended to attract venture capital investment into targeted Florida industries by providing a state match.⁵⁴ The FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., with a 5-member board of directors selected by an EFI appointments committee.⁵⁵ The FOF's administrative staff is provided by EFI, and has a separate investment manager, Florida First Partners, comprised of Florida-based MILCOM Venture Partners and the Credit Suisse Customized Fund Investment Group.⁵⁶ The Legislature appropriated \$29.5 million for investment funds in FY 2007-2008.⁵⁷

⁵⁰ Information compiled by EFI indicates that the 14 companies receiving the loans promised to create or retain a total of 498 jobs, per their submitted loan applications.

⁵¹ The center was created by the Legislature in 2007 to facilitate investment in young companies so they can perfect and market their inventions, services, or products. More information about the center is available at its website, <http://www.florida-institute.com>. Site last visited Sept. 22, 2010.

⁵² The "incentives report" is required pursuant to s. 288.095(3)(c), F.S.

⁵³ Chapter 2007-189, L.O.F.

⁵⁴ The State Board of Administration (SBA) has, for many years, invested in so-called "alternative investments" that included Florida-based businesses, and in 2009, pursuant to ch. 2008-31, L.O.F., created the \$250 million Florida Growth Fund for venture-capital private-equity and direct investments within Florida. More information is available at <http://www.floridagrowthfund.com/>. These SBA programs are separate from the Florida Opportunity Fund. Site last visited Sept. 22, 2010.

⁵⁵ The current FOF board members are: chairman Kenneth Wright, partner with Baker Hostetler; vice chairman Andrew Hyltin, president of CNL Private Equity Corporation; Thomas Cornish, president and CEO of Seitlin Insurance and Advisory Services; Brian Nicholas, executive with the Acquired Asset Group of BB&T; and Pedro Pizarro, chairman and CEO of eLandia Group.

⁵⁶ The FOF website is <http://floridaopportunityfund.com>. Site last visited Sept. 22, 2010.

⁵⁷ That same fiscal year, the Legislature also appropriated \$500,000 to EFI pay the costs associated with implementing the FOF.

Original directive

The FOF was established as a fund-of-funds program, meaning that it could only invest in investment funds, not directly in individual businesses; additionally, the investment funds had to match the state \$2 for every \$1 it invested. The emphasis was on “seed” and early-stage investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing. Targeted industries for the FOF investments included, but were not limited to, life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense. To be eligible for state participation, an investment fund had to have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.

The FOF invested in its first fund in FY 08-09: \$594,000 in Element Partners II, according to FOF’s financial statements.⁵⁸ Currently, the FOF has six investment fund partners and as of June 30, 2010, had invested just over \$3 million.⁵⁹

Expansion of investment authority

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make direct investments, including loans, in individual businesses and infrastructure projects; to form or operate other entities; and to accept funds from other public and private sources for use as investments.⁶⁰ These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida and operate in technology sectors that are strategic to Florida, including the original list of industry types. The FOF may not use its original appropriation of \$29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the Florida Energy and Climate Commission (commission), a nine-member board housed administratively in the Governor’s Office that is the lead entity for state energy and climate-change programs and policies.⁶¹ This new FOF fund is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF will have access to \$36 million initially in federal funds to make investments in qualifying businesses. Fund investments are restricted by statute to be used for facility and equipment improvement with EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes. No investments have been made as of September 1, 2010.

Reporting Requirements

The FOF is required by statute to submit an annual report by December of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes, at a minimum, an accounting of the amount of investments disbursed by the FOF fund; the progress of the FOF in accomplishing its responsibilities; a description of the benefits to the state resulting from the FOF, including the number of businesses and jobs created, the number of associated industries started, and the growth of related research projects; and independently audited financial statements for the FOF that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operating costs.

⁵⁸ The auditor described the \$594,000 investment as a payment of a \$4 million commitment to Element Partners II, which specializes in investments in “cleantech” companies. See <http://www.elementpartners.com>. Site last visited Sept. 22, 2010.

⁵⁹ The FOF’s financial statements are on file with the Senate Commerce Committee.

⁶⁰ Sections 25-26, ch. 2009-51, L.O.F.

⁶¹ More information about the commission is available at http://www.myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission). Site last visited Sept. 22, 2010.

The Cypress Equity Fund⁶²

One of Florida's earliest experiments in encouraging venture capital investment in this state was the Cypress Equity Fund (Cypress), which was the creation of the now-defunct Enterprise Florida Capital Partnership. Cypress was not created in statute, but its startup expenses were funded in part through a \$1.45 million state appropriation in FY 95-96.⁶³ The purpose of the Cypress Equity Fund was to facilitate venture capital investments by Florida private financial institutions and institutional investors, thus encouraging national venture capital managers to consider investment opportunities in this state.

The Cypress Equity Fund was designed as a "fund of funds" that would invest in national private venture capital funds which, in turn, would invest in companies with high potential for growth, with the hope that those companies would be located in Florida. However, there was no requirement that the investments be made in Florida-based businesses. In order to obtain the State Board of Administration's participation as an investor, the fund had to be designed to meet certain conditions, such as having no geographic restrictions on its investments.

Cypress obtained \$20.5 million in total commitments from five private financial institutions and \$15 million from the one public institutional investor, the Florida State Board of Administration. As of February 29, 2009, more than \$32.5 million has been invested, with a payout over the years of nearly \$54.5 million in distributions and realized gains to investors.⁶⁴ The Cypress Equity Fund's net compound annual internal rate of return, since the program's creation, was calculated at 21.87 percent, as of February 2009.⁶⁵ The fair-market valuation of the 16 current funds total \$4.39 million, as of July 31, 2010.⁶⁶ The fund is self-supporting.

As the Legislature has abolished the Enterprise Florida Capital Partnership and its successor, the Capital Development Board, EFI now has the overarching responsibility for the Cypress Equity Fund. EFI has maintained the long-standing contract with Abbott Capital Management, a private equity manager, to invest Cypress' assets with national venture capital firms for a 1-percent management fee.

OPPAGA's aforementioned report⁶⁷ concluded that the Cypress Equity Fund:

“achieved its limited goal of initiating venture capital investments by Florida private financial Institutions and public institutional investors. However, the fund was not designed to target in-state investments. As a result, it has not contributed to the achievement of its more important goal of improving Florida businesses' access to venture capital. However, it would not benefit the state to discontinue the fund. Given the fund's contracts, commitments and investments made to the fund by the SBA and Florida private institutional investors could not be readily transferred to other investment media that would target investments to Florida companies.”

Cypress likely will be dissolved when its currently uninvested funds are disbursed, which may occur in the next two years, according to EFI.⁶⁸

⁶² Much of this background is based on OPPAGA Report No. 98-33: “Review of the Enterprise Florida, Inc. Capital Development Board's Cypress Equity Fund,” available at <http://www.oppaga.state.fl.us/Reports/pdf/9833rpt.pdf>. Site last visited Sept. 22, 2010.

⁶³ Line-item 1680Y, ch. 95-429, L.O.F Also, OPPAGA's Report No. 95-09: “Review of the Enterprise Florida Capital Partnership” noted that the partnership spent \$1.1 million total in state funds to start up Cypress.

⁶⁴ Information provided by EFI. On file with the Senate Commerce Committee.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Conversation with Louis Laubscher, EFI senior vice president and COO, on Aug. 11, 2010.



The Florida Senate

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Committee on Commerce

AN OVERVIEW OF LOW-PROFIT LIMITED LIABILITY COMPANIES (L3Cs)

Statement of the Issue

A Low-profit Limited Liability Company (L3C) is a new type of business entity, recognized by law in only 7 states.¹ A L3C is a hybrid of existing nonprofit and for-profit corporations, designed to attract both private and philanthropic capital in a unique manner by allowing “investments” rather than only “donations.” Profits earned from such investments may be distributed to owners or investors. However, unlike a standard limited liability company (LLC), the L3C must have an explicit primary charitable mission and only a secondary profit concern.

Conceptually, L3Cs are formed to create a vehicle to bring together government, for-profit, nonprofit (mainly private foundations), individuals, and corporations to facilitate and expand investments in charitable enterprises and to eliminate the need for costly and time-consuming letter rulings from the Internal Revenue Service (IRS), which recognize contributions or investments as “program-related investments” (PRI).

Under s. 4944 of the Internal Revenue Code (IRC), private foundations are allowed to make “program-related investments” that meet three criteria:

- The investment’s primary purpose must be to advance the foundation’s charitable objectives.
- Neither the production of income nor appreciation of property can be a significant purpose.
- The funds cannot be used directly or indirectly to lobby or for political purposes.

To date, the IRS has not formally recognized L3Cs and therefore, some foundations may, but are not required to, seek a private letter ruling from the IRS prior to investing in a L3C to determine if such investment would meet the requirements under s. 4944 of the IRC. Consequently, it is not apparent whether businesses have benefited from forming as L3Cs or whether states that have enacted legislation to recognize L3Cs have benefited from such legislation.

Discussion

Business Organizations

Various forms of business organizations are established under state law. Business organizations vary according to:

- The level of control owners have.
- The type of administrative structure.
- The business or owner’s vulnerability to lawsuits or liability.
- Tax implications.
- Expected profits or losses.
- Type of investment needed in the business.

¹ L3Cs are recognized in Illinois (805 ILCS 180/1-26), Maine (31 M.R.S.A. § 1611, effective July 1, 2011), Michigan (MCL §450.4204), North Carolina (Ch. SL 2010-187), Utah (Utah Code §48-2c-412), Vermont (11 V.S.A. §§3001-3184), and Wyoming (Wyo. Stat. §§17-29-101 through 17-29-1105). In addition, the Crow Nation (§§ 18-5-102, 18-5-108(a), and 18-5-705(a) of the Crow Law and Order Code) and Oglala Sioux Tribe (citation not available, *but see* Americans for Community Development; *laws*; available at <http://www.americansforcommunitydevelopment.org/laws.php> (last visited 9/20/2010)) recognize L3Cs.

- Accessibility to business assets.²

The most common forms of business organizations are the sole proprietorship, general partnership, Limited Liability Company (LLC), C Corporation, and S Corporation.³ Examples of some special business structures recognized in some states are the Limited Liability Partnership (LLP), Professional Service Corporation (PS), Limited Partnership (LP), and nonprofit corporation.⁴

Sole Proprietorship

A sole proprietorship is a simple, informal business structure that is inexpensive to form and is usually used by a single person or marital community. The owner operates the business, is personally liable for all of the business' debts, and owns all of the business' assets and profits. Additionally, the proprietor may freely transfer all or part of the business and can report a profit or loss on personal income tax returns.⁵

General Partnership

Partnerships are formed when two or more individuals or entities enter into an agreement and jointly own and operate a business. Similar to a proprietorship, the law does not distinguish between the business and its owners. Profits, losses, and managerial duties are shared among the partners, and each partner is personally liable for partnership debts. Individual partners report their share of profits and losses on their personal tax returns.⁶

Limited Liability Company (LLC)

The LLC is a hybrid business structure that provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership. However, formation is more complex and formal than that of a general partnership. Profits and losses may be passed through the company to its members and can be reported on the members' personal income tax returns, or the LLC can elect to be taxed like a corporation.⁷ Owners of a LLC are called "members" and those members, or appointed managers, manage the LLC. LLCs do not have stock and are not required to observe corporate formalities.⁸

C Corporation

The C Corporation is a complex business structure and is considered a separate legal entity from its owners, who own shares of stock in the company. A corporation may be taxed, sued, and can enter into contractual agreements. A corporation's profits are taxed both at the corporate level and again when distributed to shareholders. Shareholders are not personally liable for corporate obligations, unless corporate formalities, which provide evidence that the corporation is a separate legal entity from its shareholders, have not been observed. Corporate formalities include the following:

- Issuing stock certificates.
- Holding annual meetings.
- Recording the minutes of meetings.
- Electing directors or ratifying the status of existing directors.⁹

² U.S. Small Business Administration (SBA), *Small Business Planner: Choose a Structure: Basic Structures*; available at http://www.sba.gov/smallbusinessplanner/start/choosestructure/START_FORMS_OWNERSHIP.html (last visited 9/20/2010).

³ IRS.gov; *Business Structures*; available at <http://www.irs.gov/businesses/small/article/0,,id=98359,00.html> (last visited 9/20/2010).

⁴ U.S. Small Business Administration (SBA); *Small Business Planner: Choose a Structure: Special Structures*; available at http://www.sba.gov/smallbusinessplanner/start/choosestructure/START_SPECIAL_STRUC.html (last visited 9/20/2010).

All of these special business structures are recognized by statute under Florida law.

⁵ *Supra* fn. 2.

⁶ *Id.*

⁷ The federal government does not recognize an LLC as a classification for federal tax purposes and therefore, an LLC must file as a corporation, partnership, or sole proprietorship. See IRS.gov; *Limited Liability Company (LLC)*; available at <http://www.irs.gov/businesses/small/article/0,,id=98277,00.html> (last visited 9/20/2010).

⁸ *Supra* fn. 2.

⁹ *Id.*

S Corporation

The S Corporation structure is identical to the C Corporation, except it offers avoidance of double taxation. If a corporation qualifies as an S Corporation with the IRS, it is taxed like a partnership — the income flows through to the shareholders who report the income on their individual returns.¹⁰

Limited Liability Partnership (LLP)

Limited Liability Partnerships (LLPs) are organized to protect individual partners from personal liability for the negligent acts of employees or other partners that are not under their direct control. Some states that recognize LLPs only permit organizations that provide certain licensed professional services, such as legal, medical, or accounting services, to organize as a LLP.¹¹ Partners of a LLP report their share of profits and losses on their personal tax returns.¹²

Professional Service Corporation (PS)

The Professional Service Corporation (PS) provides limited personal liability for shareholders, who are licensed to perform certain professional services. Essentially, the owners of the business are also the employees of the business. A PS is incorporated and is recognized as a taxable entity separate from its shareholders.¹³ Section 621.03, F.S., provides the following examples of service professionals permitted to form a PS:

- Certified public accountants.
- Public accountants.
- Chiropractic physicians.
- Dentists.
- Osteopathic physicians.
- Physicians and surgeons.
- Doctors of medicine.
- Doctors of dentistry.
- Podiatric physicians.
- Chiroprodists.
- Architects.
- Veterinarians.
- Attorneys at law.
- Life insurance agents.

Limited Partnership (LP)

Limited Partnerships (LPs) are complex organizations, requiring at least one general partner who is fully responsible for partnership obligations and normal business operations and requiring at least one limited partner who is not involved in everyday operations and is shielded from liability for partnership obligations beyond the amount of his or her investment. Partners of a LP report their share of profits and losses on their personal returns and the LP files an informational return to the IRS.¹⁴

Nonprofit Organizations

Under the Internal Revenue Code (IRC) there are several types of tax-exempt organizations.¹⁵ However, the most common form of a tax-exempt organization is an organization recognized under §501(c)(3) of the IRC, often referred to as a 501(c)(3) company. These are nonprofit organizations that are organized for religious, charitable, scientific, literary, or educational purposes.¹⁶ Additionally, groups that test for public safety, foster national or

¹⁰ *Id.*

¹¹ Florida law does not limit LLPs to certain licensed professional services, but does require specific qualifications under s. 620.9001, F.S. In addition, those wanting to be recognized as a LLP must register as a General Partnership and file a Statement of Qualification with the Department of State's Division of Corporations. See http://form.sunbiz.org/cor_gp.html (last visited 9/20/2010).

¹² *Supra* fn. 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ IRS.gov; *Types of Tax-Exempt Organizations*; available at <http://www.irs.gov/charities/content/0,,id=96931,00.html> (last visited 9/20/2010). A list is provided on this webpage that includes: charitable organizations, social welfare organizations, agricultural or horticultural organizations, labor organizations, business leagues or trade associations, social clubs, fraternal societies, employee benefit associations or funds, veterans organizations, political organizations, and miscellaneous tax-exempt organizations.

¹⁶ IRS.gov; *Publication 557 (06/2008), Tax-Exempt Status for Your Organization*; revised 06/2008; available at <http://www.irs.gov/publications/p557/ch03.html#d0e3190> (last visited 9/20/2010).

international amateur sports competition, or organize to prevent cruelty to children or animals may qualify as a 501(c)(3).¹⁷

The IRC subdivides 501(c)(3) organizations into two categories; private foundations and public charities.¹⁸ All 501(c)(3) nonprofits are presumed to be private foundations, unless they are designated otherwise under federal law.¹⁹ The IRS provides that “excluded categories are generally those that either have broad public support or actively function in a supporting relationship to those organizations.”

Annually, private foundations must make eligible charitable expenditures, including “qualifying distributions,” that equal or exceed approximately 5 percent of the value of its endowment.²⁰ The purpose behind the 5 percent payout requirement is to prevent foundations from simply receiving gifts, investing the assets, and never spending any funds on charitable purposes.²¹ “Qualifying distributions” include:

- Grants to charities and non-charities for charitable purposes.
- All reasonable administrative expenses necessary for the conduct of the charitable activities of the foundation.
- Costs of all direct charitable activities.
- Amounts paid to acquire assets used directly in carrying out charitable purposes (computers, office furniture, a building to house the foundation).
- Set-asides (require advance approval by IRS to fund a project over multiple years).
- Program-related investments (PRIs).²²

Philanthropy and Business Organizations²³

Traditionally, nonprofits have served philanthropic purposes; their mission serves to “give back,” not make a profit. However, with a recent movement of “social entrepreneurship,” socially-conscious purposes are being carried out in more non-traditional ways. For example, more for-profit corporations are making philanthropic commitments, operating under socially conscious missions, and downplaying their primary goal of maximizing profits for shareholders. Additionally, there are new corporate structures emerging that are hybrid business organizations, which are primarily socially-minded, but also seek to profit to encourage investment and broaden the organization’s philanthropic impact.

For-profit Corporations

For-profit corporations generally serve social needs by “corporate philanthropy” or by “corporate social responsibility.”²⁴ Corporate philanthropy usually involves a parent business corporation establishing a controlled charitable entity, sustaining the entity through grants.²⁵ Therefore, the controlled charitable entity is a vehicle for corporate managers to use corporate funds to fund projects. Corporate social responsibility, often referred to as “CSR,” allows corporate managers to look beyond the interests of its shareholders and use corporate assets to respond directly to society’s needs.²⁶

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* The IRS states, “Every organization that qualifies for tax exemption as an organization described in section 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term (referred to in section 509(a)(1), 509(a)(2), 509(a)(3), or 509(a)(4)). In effect, the definition divides these organizations into two classes, namely private foundations and public charities.”

²⁰ Council on Foundations; *The Five Percent Minimum Payout Requirement*; available at http://www.abagmd.org/usr_doc/The_Five_Percent_Minimum_Payout_Requirement_for_ABAG_members.pdf (last visited 9/20/2010).

²¹ *Id.*

²² *Id.*

²³ This section of the Issue Brief is adapted from: Kelley, Thomas; *Law and Choice of Entity on the Social Enterprise Frontier*; 84 Tul. L. Rev. 337 (2009); available at http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=thomas_kelley (last visited 9/20/2010).

²⁴ *Id.* at 12-13.

²⁵ *Id.* at 12.

²⁶ *Id.* at 14.

Corporations that practice “corporate philanthropy” or “corporate social responsibility” are still responsible for, and must maintain the primary goal of, maximizing profits. Consequently, it may not be possible for corporations practicing corporate philanthropy or corporate social responsibility to be truly altruistic.

Hybrid Organizations

In contrast to a for-profit corporation, which acknowledges that its core value is to maximize profits, a hybrid organization’s preeminent motivation is some form of philanthropy.²⁷ A for-profit corporation’s commitment to philanthropy may be reevaluated if its bottom-line is affected, while a hybrid organization has a permanent commitment to its philanthropic mission. There are several hybrid organization business structures, some of which are discussed here.

Some hybrids are referred to as “not-for-loss” social enterprises because they may operate with low-profits and may operate by fees for a service. The main goal of such a business is to derive enough profit to continue and expand its philanthropic purpose. Typically, these types of hybrids usually have a dedicated source of funding and do not need to rely on outside investments. With a dedicated income, the hybrid may form as a nonprofit, but may forego its federal tax exempt status under § 501(c)(3) of the IRC and still profit, allowing the organization to keep intact its status as a philanthropic organization. However, not many organizations have a dedicated income source large enough to outweigh the benefits of the federal tax exemptions under § 501(c)(3).²⁸

In some instances, a for-profit and a nonprofit may be simultaneously created by persons wanting to use the for-profit to generate funds to invest in the nonprofit, which would carry out the intended philanthropic mission. The nonprofit can preserve its exempt status and attract donations, while the for-profit entity can seek venture capital, financing, and other investments. However, this is a complex strategy to fulfill a philanthropic purpose and it is expensive to organize and administratively burdensome to maintain.²⁹

For-profit corporations that seek to be branded as putting philanthropy before profit-making may seek designation from an independent certification company as “B Corporations,” meaning for social benefit. In addition, some corporations seek the brand of a “Socially Responsible Business Corporation” or “SRC.” These corporations use such branding to assure investors of their long-term commitment to their socially beneficial missions.³⁰ However, such self-branding or independent certification does not carry the same merit as state or federal recognition of philanthropic purposes that a nonprofit carries and therefore, investors may still shy from these types of corporations.³¹

Another type of hybrid organization that is primarily mission-based, but seeks multiple facets of investment to continue and expand its philanthropic purpose, uses the limited liability company (LLC) business structure to accomplish its mission. LLCs are beneficial in that they offer limited liability for their members and offer immense organizational flexibility through the drafting of a membership agreement. This structure allows the members to write an agreement that dedicates the company to philanthropy and meanwhile can reward for-profit investors with larger shares of profit than those investors that invest for social benefit. However, LLCs organized in such a manner do not resolve the issue that investors cannot be guaranteed that the philanthropic mission of the organization will subside if profit-making becomes more important to the members, without some federal or state oversight or designation of the entity as mission-based.

²⁷ *Id.* at 16.

²⁸ *Id.* at 32.

²⁹ *Id.* at 33.

³⁰ *Id.* at 35-36.

³¹ The United Kingdom created a new hybrid in 2004, called a “Community Interest Company” (CIC), which is a for-profit entity with a social mission and is structured to encourage financial investment to further the company’s social mission. *See* Brakman Reiser, Dana; *Governing and Financing Blended Enterprise*; 85 Chi.-Kent L. Rev. 619, 630 (2010); available at <http://www.cklawreview.com/wp-content/uploads/vol85no2/Brakman.pdf> (last visited 9/20/2010).

There is a relatively new hybrid organization that may resolve some of the problems associated with other hybrids, such as branding as mission-based, capital investments, and organization flexibility.³² This new hybrid is called a “low-profit limited liability company” or “L3C.”

Low-profit Limited Liability Companies (L3Cs)

Robert Lang, Jr., CEO of the Mary Elizabeth & Gordon B. Mannweiler Foundation, is credited with creating the concept of a Low-profit Limited Liability Company (L3C), often encapsulated as a “for-profit with a nonprofit soul.”³³ L3Cs use the same business structure as a LLC, meaning that it has organizational flexibility, limited liability for members, and has single or “pass through” taxation. However, the integral element of a L3C is that the company must meet the federal requirements for qualifying as a “program-related investment” (PRI) under the Internal Revenue Code (IRC).³⁴ The reason the L3C model is designed to “dovetail” with the federal IRS regulations pertaining to PRIs is to encourage and facilitate foundations to make such investments, because currently approximately only 5 percent of foundations make PRIs.³⁵

PRIs are investments made by tax-exempt private foundations. These types of investments are beneficial to a foundation in that they garner two forms of special treatment by the federal government. First, the IRS permits foundations to count PRIs toward their federally required, minimum 5 percent annual payout of net assets.³⁶ Second, a PRI is sheltered from designation as a “jeopardizing investment,” if it meets the PRI requirements under the IRC, thereby allowing the foundation to avoid costly excise tax penalties.³⁷ PRIs include loans, loan guarantees, real estate mortgages, and stock purchases, among other types of instruments.³⁸ Although not necessary, some foundations will seek a private letter ruling from the IRS to determine, prior to investment, whether the investment would qualify as a PRI to avoid the heavy excise tax penalties.³⁹

To be specific, the requirements of qualifying as a program-related investment, under §4944(c) of the IRC, include the following:

- The primary purpose of the investment is the accomplishment of one or more charitable or educational purposes described in s. 170(c)(2)(b) of the IRC, and would not have been formed except to accomplish those charitable or educational purposes.
- The production of income or appreciation of property is not a significant purpose of the investment.
- The purpose of the investment does not include accomplishing or influencing one or more political or legislative objectives described in s. 170(c)(2)(d) of the IRC.⁴⁰

³² The first law recognizing low-profit limited liability companies was passed in Vermont in 2008. *See* Vermont Secretary of State; *Low-Profit Limited Liability Company*; available at http://www.sec.state.vt.us/corps/dobiz/llc/llc_13c.htm (last visited 9/20/2010).

³³ Americans for Community Development; *FAQs: What is the L3C?*; available at <http://www.americansforcommunitydevelopment.org/faqs.php> (last visited 9/20/2010). *See also* Coren, Carol and Robert M. Lang, Jr.; *The L3C: The For-Profit with the Nonprofit Soul*; Bridges; Winter 2009-2010; available at <http://stlouisfed.org/publications/br/articles/?id=1848> (last visited 9/20/2010) and Davis, Steve and Sue Woodrow; *The L3C: A new business model for socially responsible investing*; Community Dividend, Ninth Federal Reserve District; Nov. 2009; available at http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=4305 (last visited 9/20/2010).

³⁴ I.R.C. §4944(c). *See also* IRS.gov; *Program-related Investments*; available at <http://www.irs.gov/charities/foundations/article/0,,id=137793,00.html> (last visited 9/20/2010).

³⁵ Americans for Community Development LLC; *What is the L3C? Basic Explanation*; available at <http://www.americansforcommunitydevelopment.org/downloads/WhatIsTheL3C.pdf> (last visited 9/20/2010). *See also* Davis, Steve and Sue Woodrow; *The L3C: A new business model for socially responsible investing*; Community Dividend, Ninth Federal Reserve District; Nov. 2009; available at http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=4305 (last visited 9/20/2010).

³⁶ *Supra* fn. 20.

³⁷ Brakman Reiser; 85 Chi.-Kent L. Rev. at 622. *See also* IRS.gov; *Taxes on Jeopardizing Investments*; available at <http://www.irs.gov/charities/foundations/article/0,,id=137787,00.html> (last visited 9/20/2010).

³⁸ Baxter, Christie I.; *A Basic Guide to Program-Related Investments*; The Grantsmanship Center; Fall 1997; available at http://www.community-wealth.org/_pdfs/articles-publications/pris/article-baxter.pdf (last visited 9/20/2010).

³⁹ Interview with Holly Paz, representative of IRS Division of Exempt Organizations, on August 2, 2010.

⁴⁰ *See* IRS.gov, *Program-related investments*, for a description of PRIs; available at <http://www.irs.gov/charities/foundations/article/0,,id=137793,00.html> (last visited 9/20/2010).

However, if an investment incidentally produces significant income or capital appreciation, such income or appreciation is not conclusive evidence that the significant purpose of the investment is the production of income or the appreciation of property.⁴¹

It is important to note that should a foundation make an investment, it is only “program-related” if it significantly furthers the foundation’s exempt activities.⁴² In other words, not only are foundations limited to making investments to those L3Cs with a related mission, but also the investment must ensure that the foundation’s mission is considerably advanced.

Overall, the key purpose of the L3C business structure is to attract and facilitate investments from foundations to aid L3Cs in carrying out their philanthropic purposes.

Mr. Lang’s model for L3Cs was intended to fit easily into various states’ LLC acts to create homogeneity among the various state enactments.⁴³ Therefore, each adopting jurisdiction has amended its LLC act to define an L3C as organized for business purposes and operated to satisfy the requirements for a PRI under §4944(c) of the IRC.⁴⁴ Because the L3C definition and designation is provided for within each of the states’ LLC acts, this new business model automatically assumes all of the other characteristics and regulations of a LLC.

Although only seven states⁴⁵ have enacted legislation to formally recognize L3Cs, every state in the U.S. must recognize L3Cs formed in other states by giving them full faith and credit under the U.S. Constitution’s Full Faith and Credit Clause.⁴⁶ The Full Faith and Credit Clause states, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. . . .”⁴⁷

Examples

Perhaps the best way to understand L3Cs is to examine those that are currently in operation. However, because the L3C is a new type of business entity, there are only a few examples of reportedly successful L3C entities. One such entity is **Maine’s Own Organic Milk Company L3C** (MOOMilkCo L3C or MOOMilk).⁴⁸ Ten dairy farmers formed MOOMilk in 2009 after their contracts were not renewed by their large milk distributor H.P. Hood LLC, due to surplus supply and a decrease in demand for organic milk, which stemmed from the recession.⁴⁹ Without a major distributor, the farmers were faced with selling their livestock, going out of business,

⁴¹ *Id.*

⁴² *Id.*

⁴³ Brakman Reiser; 85 Chi.-Kent L. Rev. at 622.

⁴⁴ *Id.* at 621.

⁴⁵ L3Cs are recognized in Illinois (805 ILCS 180/1-26), Maine (31 M.R.S.A. § 1611, effective July 1, 2011), Michigan (MCL §450.4204), North Carolina (Ch. SL 2010-187), Utah (Utah Code §48-2c-412), Vermont (11 V.S.A. §§3001-3184), and Wyoming (Wyo. Stat. §§17-29-101 through 17-29-1105). In addition, the Crow Nation (§§18-5-102, 18-5-108(a), and 18-5-705(a) of the Crow Law and Order Code) and Oglala Sioux Tribe (citation not available, *but see* Americans for Community Development; *laws*; available at <http://www.americansforcommunitydevelopment.org/laws.php> (last visited 9/20/2010)) recognize L3Cs.

⁴⁶ U.S. Const. art. IV, s. 1, *See also* Collins, Bruce D.; *Low-Profits: L3C designation allows foundations to support businesses working for the public good*; Inside Counsel; January 2, 2008; available at <http://www.insidecounsel.com/Issues/2008/January%202008/Pages/LowProfits.aspx> (last visited 9/20/2010).

⁴⁷ *Id.*

⁴⁸ *See* Schmidt, Elizabeth; *Vermont’s Social Hybrid Pioneers: Early Observations and Questions to Ponder*; August 10, 2010; VERMONT LAW SCHOOL LEGAL STUDIES RESEARCH PAPER SERIES Research Paper No. 10-49; available at http://www.americansforcommunitydevelopment.org/downloads/VermontsSocialHybridPioneers8_22_10.pdf (last visited 9/20/2010).

⁴⁹ CNNMoney.com; *For L3C companies, profit isn’t the point*; February 9, 2010; available at http://money.cnn.com/2010/02/08/smallbusiness/l3c_low_profit_companies/ (last visited 9/20/2010). *See also* Maine’s Own Organic Milk Company, L3C; *Our Story*; available at <http://moomilkco.com/moo-milk-our-story> (last visited 9/20/2010) and Bangor Daily News; *Organic milk boom in Maine going bust*; March 1, 2009; available at <http://www.bangordailynews.com/detail/100620.html> (last visited 9/20/2010).

or going back to conventional dairying.⁵⁰ However, with ingenuity, and with the help of the Maine Farm Bureau, the Maine Organic Farmers and Gardeners Association (MOFGA), and the Maine Department of Agriculture, the farmers set up their own distributorship by forming an L3C in Vermont and kept the organic farmers in business.

Demonstrating the benefits of membership and governance flexibility of the L3C business structure, MOOMilk claims that the 10 farmers collectively own 45 percent of the voting units of the company and the farmers are to elect three of the seven board members that will govern the L3C, while investors will elect three board members.⁵¹ Currently, Agricultural Consultant Bill Eldridge is the Chairman of the board. Another 45 percent of the L3C will be owned by investors being sought to provide \$0.5 million in equity. Exemplifying that various types of organizations and persons may invest in an L3C, the Maine Farm Bureau and MOFGA, both of whom helped MOOMilk in its formation, each own one half of one percent; 4 percent will be owned by a three-person team, all Farm Bureau members, who formulated and executed the company's development plan;⁵² and the last 5 percent is being withheld for future employee performance incentives.

MOOMilk's mission is "to educate the consuming public on the value and intrinsic worth of preserving the local family farm while developing a line of premium quality milk products that support this mission."⁵³ This mission is in-keeping with the IRC and Vermont's L3C statute, which require the company to significantly further the accomplishment of a charitable or educational purpose, not be significantly purposed for profit, and not seek to accomplish one or more political or legislative purposes.⁵⁴

The **North Carolina furniture industry** also has a vision and a use for the L3C business structure. Mr. Lang, credited as the founder of L3Cs, has promoted L3Cs as a way for North Carolina to rescue its flailing furniture industry. Within 5 years, North Carolina lost approximately 60,000 manufacturing jobs due to competition from China in the form of low labor costs, looser environmental and labor laws, and subsidized buildings and equipment.⁵⁵ Outsourcing furniture manufacturing to China is making what was once a profession passed on from generation to generation a dying trade; consequently, communities are dying along with it.⁵⁶

Lang proposes that L3Cs be created to buy factories to house furniture manufacturing plants, which would be furnished with the greenest and most efficient cutting edge equipment possible.⁵⁷ The L3Cs can charge furniture manufacturing companies lower rent and equipment lease rates, which in turn reduces costs for the manufacturers and puts them in a stronger position to compete and thrive. The social benefit is saving jobs, a culture, and promoting community economic development.⁵⁸

The increasing frequency of people using the Internet as a news source, the collapsing advertising-supported model of journalism, and the economic downturn has created a "perfect storm" for **newspapers**, causing many of them to shut down.⁵⁹ In response, newspapers have been looking for alternative means to revive the languishing industry. Many are promoting the L3C as the way forward for some newspapers.⁶⁰

⁵⁰ *Id.*

⁵¹ Maine's Own Organic Milk Company, L3C; *Our Story*; available at <http://moomilkco.com/moo-milk-our-story> (last visited 9/20/2010). See also Maine's Own Organic Milk Company, L3C; *Vision/Mission Statement*; available at <http://moomilkco.com/moo-milk-our-company> (last visited 9/20/2010).

⁵² The three-person development team who put the project together is Agricultural Consultant Bill Eldridge of Bar Harbor, Farm Bureau Aroostook County staffer Rommy Haines, and David Bright, a member of the Farm Bureau Marketing Committee. Maine's Own Organic Milk Company, L3C; *Vision/Mission Statement*; available at <http://moomilkco.com/moo-milk-our-company> (last visited 9/20/2010).

⁵³ Maine's Own Organic Milk Company, L3C; *Vision/Mission Statement*; available at <http://moomilkco.com/moo-milk-our-company> (last visited 9/20/2010).

⁵⁴ See I.R.C. §4944(c) and 11 V.S.A. §§3001-3184.

⁵⁵ The Mary Elizabeth & Gordon B. Mannweiler Foundation, Inc.; *The L3C: The for profit with a nonprofit soul*; Presentation; July 5-7, 2007; available at <http://www.americansforcommunitydevelopment.org/downloads/L3CUBSPresentation.pdf> (last visited 9/20/2010).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Pickard, Victor, et al.; *Saving the News: Toward a National Journalism Strategy*; pg. 7; Free Press; May 12, 2009;

The first newspaper to organize as a L3C is the “Point Reyes Light,” which was formed under Vermont L3C laws, but operates out of California.⁶¹ Many newspapers are watching this paper to determine if it will be a feasible model for the newspaper industry. However, there is some speculation as to whether the L3C will be appropriate for some newspapers as traditionally, the IRS has refused to recognize reporting the news as a kind of social or educational benefit that would qualify as exempt activities under the IRC. As discussed previously, a company only qualifies as a PRI under the IRC if its purpose meets one or more charitable or educational purposes described in s. 170(c)(2)(b) of the IRC. According to the Point Reyes Light Editor Tess Elliot, the L3C’s mission is to encourage “village journalism.”⁶² The L3C business model may offer little recourse to some papers that have traditionally taken sides on the political matters, because such activities could conflict with the federal rules forbidding PRIs to be used to accomplish or influence one or more political or legislative objectives described in s. 170(c)(2)(d) of the IRC.

A few reports that have tracked L3C start-ups suggest that L3Cs are formed in a **variety of other industries**; all having unique social missions.⁶³ Some fields of industry under which L3Cs have formed, or those industries possibly well-suited for L3Cs, include:

- Farming and agriculture.
- Real estate and housing.
- Environmental services.
- Healthcare.
- Low-income assistance.
- Journalism and publishing.
- Sports and recreation.
- Entertainment.
- Food.
- Socially responsible consulting.
- Education.
- Marketing and event planning.
- Construction services.
- Arts and preservation.
- Financial and legal services.
- Travel and tourism.⁶⁴
- Carbon trading.
- Alternative energy.
- Job creation.
- Economic development.
- Medical research.⁶⁵
- Biotech.⁶⁶

available at http://www.americansforcommunitydevelopment.org/downloads/saving_the_news-1.pdf (last visited 9/20/2010).

⁶⁰ See *id.* at 16-17. See also Mitchell, Bill; *L3Cs a “Low Profit” Business Model for News*; March 2, 2009; available at <http://www.poynter.org/column.asp?id=131&aid=159320> (last visited 9/20/2010) and Duros, Sally; *How to Save Newspapers*; February 9, 2009; available at http://www.huffingtonpost.com/sally-duros/how-to-save-newspapers_b_164849.html (last visited 9/20/2010).

⁶¹ Downs Rachlin Martin; *Pulitzer Prize-winning weekly first in US saved by Vermont L3C formation*; June 29, 2010; available at <http://www.vermontbiz.com/news/june/pulitzer-prize-winning-weekly-first-us-saved-vermont-l3c-formation> (last visited 9/20/2010).

⁶² Fitzgerald, Mark; *Point Reyes Shines ‘Light’ on L3C Ownership*; Editor & Publisher; August 12, 2010; available at <http://www.editorandpublisher.com/printarticle.aspx?ArticleID=62269> (last visited 9/20/2010).

⁶³ See Capriccioso, Caryn, et al.; *Who is the L3C Entrepreneur?: The pioneers of social enterprise’s revolutionary new suffix*; interSector Partners, L3C; May 2010; available at <http://www.americansforcommunitydevelopment.org/downloads/WhoistheL3CEntrepreneur.pdf> (last visited 9/20/2010); providing a detailed list and analysis of a variety of L3Cs operating throughout the United States. See also *supra* fn. 48.

⁶⁴ The above-listed industries are referred to in Capriccioso et al., interSector Partners, L3C: *Who is the L3C Entrepreneur?: The pioneers of social enterprise’s revolutionary new suffix*; May 2010; pg. 6; available at <http://www.americansforcommunitydevelopment.org/downloads/WhoistheL3CEntrepreneur.pdf> (last visited 9/20/2010).

⁶⁵ See Witkin, Jim; *The L3C: A More Creative Capitalism*; January 15, 2009; available at <http://www.triplepundit.com/2009/01/the-l3c-a-more-creative-capitalism/> (last visited 9/20/2010), providing the examples of carbon trading, alternative energy, job creation, economic development, and medical research, in addition to some examples already cited above.

⁶⁶ See Larson, Chris; American Chemical Society, San Diego Section; *L3C-The Next Generation of Small Biotech?*; October 15, 2008; available at <http://www.americansforcommunitydevelopment.org/downloads/ChrisLarsonNextGenBiotech.pdf> (last visited 9/20/2010).

Benefits for Businesses

Compared to nonprofit and for-profit corporations or other types of hybrids, the L3C business structure may have several unique benefits allowing businesses to be more sustainable and better able to expand their charitable purposes. These benefits include:

- Greater flexibility in its operation.
- Option to use a tiered investment strategy.
- Unique branding to promote its mission.

The business structure of a LLC allows for greater flexibility in its operation.⁶⁷ A LLC is typically governed either by all members or by a managing member. Under an operating agreement, members of the LLC may agree on how the LLC is to be managed, as well as other operations, including the withdrawal of members, transferability of membership interests, the allocation of distributions, and dissolution of the LLC.

The most important facet of this flexibility for an L3C is that the members can allocate a larger distribution of profits to one member over another, meaning the L3C may have tiered membership and therefore, tiered investors.⁶⁸ Membership rights do not need to be equal in nature, and management rights do not need to equate to financial contributions.⁶⁹

This flexibility allows for, and it encourages, diverse investments. Ideally, the structure of an L3C allows for three tranches of investment; the equity tranche, the mezzanine tranche, and the senior tranche.⁷⁰

The first level of investment, the equity tranche or junior tranche, consists of investors that seek little or no returns on their contribution. For L3Cs, equity tranche investors are likely to be private foundations making program-related investments (PRIs) as they are prohibited by federal regulations from contemplating a financial return as their motive for investment.⁷¹ Once this initial equity investment is made in the L3C, it absorbs most of the financial investment risk, making the L3C a more attractive investment for the mezzanine tranche of investors. In return for its risky investment, the equity tranche of investors may be granted significant voting power and management rights.⁷²

The mezzanine tranche, or intermediate tier, consists of socially-conscious investors who are willing to forego market-rate financial returns for the sake of community or social welfare. Investors in this tranche may consist of individuals wanting to contribute to a cause, but with small or average returns. This tranche of investment, coupled with the equity tranche of investment, makes the L3C ripe for senior tranche investments.⁷³

Senior tranche, or third tier, investments are provided by investors that seek market-rate returns. These types of investors are likely to make investments with guaranteed returns or returns that are keyed to the L3C's profits, which is possible given that the equity tranche and mezzanine tranche of investments take on most of the financial risk. Institutional investors, such as banks, pension funds, or investment banks are examples of those investors potentially interested in L3Cs that have established tranches of investment.⁷⁴ For illustration purposes, the chart below demonstrates a potential tiered investment strategy for an L3C.⁷⁵

⁶⁷ Kleinberger, Daniel S., *The Snare and Delusion of the L3C* retitled *A Myth Deconstructed: The 'Emperor's New Clothes' on the Low Profit Limited Liability Company*; William Mitchell Legal Studies Research Paper No. 2010-03; available at http://meetings.abanet.org/webupload/commupload/RP519000/relatedresources/Kleinberger-L3C_Snare_and_Delusion-2-16-10.pdf (last visited 9/20/2010).

⁶⁸ Brakman Reiser; 85 Chi.-Kent L. Rev. at 625-628.

⁶⁹ *Id.* at 627.

⁷⁰ *Id.* at 628. See also Dinning, B. Ray; *Using the L3C to Structure Social Ventures*; December 7, 2009; available at <http://lawpartners.wordpress.com/2009/12/07/using-the-l3c-to-structure-social-ventures-by-ray-dinning-jd-llm/> (last visited 9/20/2010).

⁷¹ *Id.*

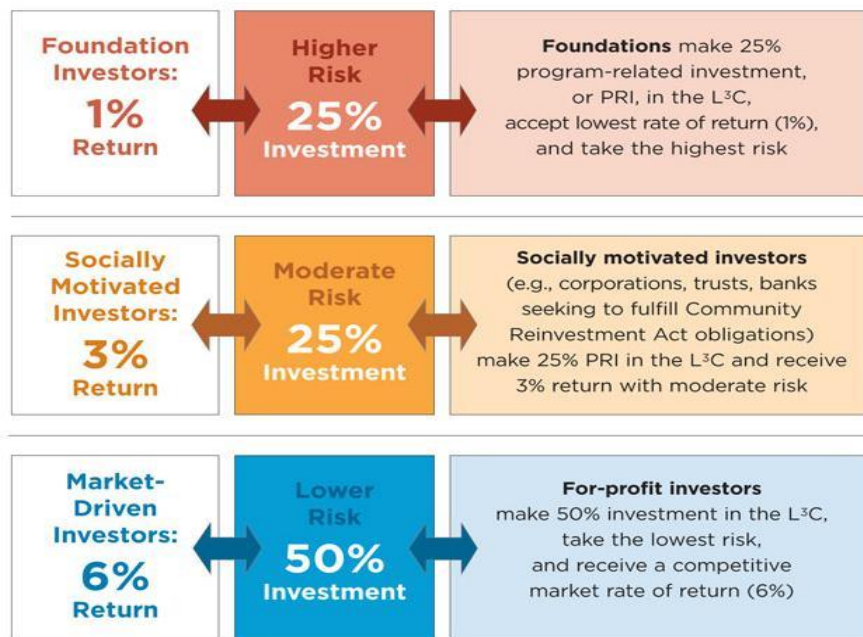
⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ This chart is used with the written permission of Steven Davis, the drafter of the chart.

The L³C's Layered Investment Strategy*



*The percentages listed here are provided for illustration purposes and represent just one of many possible risk-return arrangements for L³Cs.

One of the most salient and promising features of the L3C concept is its “branding” feature. As discussed earlier, branding is a problem for other forms of hybrids or companies having blended social and for-profit missions.⁷⁶ Specifically, the problem inheres to for-profit businesses that have traditionally sought primarily profits, especially corporations having to answer to shareholders. Without a formal, independent agency that recognizes and enforces an organization to be primarily mission-based, it is challenging to gain foundations and other investors’ confidence that an organization is truly mission-based.

Entrepreneurs electing to form L3Cs have reported that they chose this business structure for its “halo” effect, meaning that the L3C offered a specific branding advantage, giving entrepreneurs an opportunity to project their business values to customers and investors.⁷⁷ As one L3C owner explained, “[t]here are millions of LLCs out there. How can you tell, just from their name, that they have a social mission?”⁷⁸ However, until the L3C business model becomes well-known and synonymous with being a socially mission-based, the branding benefit may not be realized by L3Cs for some time.⁷⁹

Benefits for the State

While the option to organize under the L3C structure may have unique benefits to businesses, there may also be some economic benefits to the State of Florida, should these organizations be recognized by law. These benefits include:

- Attracting entrepreneurs to the state.
- Encouraging out-of-state and in-state capital investing in Florida L3Cs.
- Direct and indirect increases in state and local tax collections, including corporate income taxes, should L3Cs file as corporations on their federal income tax returns.

⁷⁶ Brakman Reiser; 85 Chi.-Kent L. Rev. at 623.

⁷⁷ *Supra* fn. 48 at pg. 20.

⁷⁸ *Id.* Quote was from author’s interview with Rick Zwetsch of intersector Partners L3C.

⁷⁹ *Supra* fn. 48 at pg. 24.

First, it may be a useful strategy in attracting entrepreneurs seeking to form as an L3C to establish businesses in Florida. As only seven states⁸⁰ now allow businesses the option to form as an L3C, Florida could be an attractive destination for businesses with an explicit primary charitable mission and secondary profit goal.

Second, the presence of L3Cs in the state may encourage out-of-state and in-state capital investing in Florida L3Cs. In 2007, there were approximately 75,187 grantmaking foundations in the U.S.;⁸¹ approximately 4,000 of them were based in Florida.⁸² Despite Florida being ranked as the fourth most populated state⁸³ and having the fourth largest Gross Domestic Product (GDP) out of the ten most populous states,⁸⁴ it does not rank as one of the top ten states that received foundation grant dollars.⁸⁵ Some may argue that the adoption of L3C laws in Florida would encourage out-of-state and in-state foundations to direct their grant money to mission-related L3Cs formed in Florida, making PRIs instead of grants.

Attracting entrepreneurs to, and encouraging capital investing in, Florida is likely to result in economic development and new job opportunities for Floridians.

LLCs are not recognized federally as a business structure and therefore, they must file their federal tax returns as a sole proprietor, partnership, or corporation.⁸⁶ Florida law requires those entities filing as corporations to pay corporate income tax.⁸⁷ To the extent that a start-up business chooses to become a L3C instead of a nonprofit and files as a corporation with the IRS, the state would experience an increase in corporate tax revenue.

Criticisms and Consequences

The L3C concept has not been without criticism or controversy.⁸⁸ The chief complaints about the L3C business model are that it is:

- Unnecessary.
- Misleading.

⁸⁰ *Supra* fn. 45.

⁸¹ The Foundation Center; *FC Stats: The Foundation Center's Statistical Information Service: Number of Grantmaking Foundations, 1975 to 2007*; available at http://foundationcenter.org/findfunders/statistics/pdf/02_found_growth/2007/03_07.pdf (last visited 9/20/2010). This number includes both private and community foundations.

⁸² The Foundation Center; *FC Stats: The Foundation Center's Statistical Information Service: Fiscal Data of Grantmaking by Region and State, 2007*; available at http://foundationcenter.org/findfunders/statistics/pdf/01_found_fin_data/2007/01_07.pdf (last visited 9/20/2010).

⁸³ U.S. Census Bureau; United States—States: GCT-T1-R. Population Estimates (2009); available at http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=01000US&-box_head_nbr=GCT-T1-R&-ds_name=PEP_2009_EST&-format=US-40S (last visited 9/20/2010).

⁸⁴ Enterprise Florida, Inc.; *Gross Domestic Product & Income: Gross Domestic Product of the Ten Most Populous States, 2008*; available at <http://www.eflorida.com/ContentSubpage.aspx?id=1898> (last visited 9/20/2010).

⁸⁵ The Foundation Center; *FC Stats: The Foundation Center's Statistical Information Service: Top Ten States by Foundation Grant Dollars Received, 2008*; available at http://foundationcenter.org/findfunders/statistics/pdf/03_fund_geo/2008/17_08.pdf (last visited 9/20/2010).

⁸⁶ IRS.gov; *Limited Liability Company (LLC)*; available at <http://www.irs.gov/businesses/small/article/0,,id=98277,00.html> (last visited 9/20/2010).

⁸⁷ See s. 220.02(1), F.S., stating, "It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within this state. This code is not intended to tax, and shall not be construed so as to tax, any natural person who engages in a trade, business, or profession in this state under his or her own or any fictitious name, whether individually as a proprietorship or in partnership with others, or as a member or a manager of a limited liability company classified as a partnership for federal income tax purposes...."

⁸⁸ See *supra* fn. 67. See also CNNMoney.com; *For L3C companies, profit isn't the point*; February 9, 2010; available at http://money.cnn.com/2010/02/08/smallbusiness/l3c_low_profit_companies/ (last visited 9/20/2010); Cohen, Rick; *Updates on Some Sacred Cows*; June 20, 2010; available at <http://www.blueav.org/category/topic/nonprofits-government?page=1> (last visited 9/20/2010); and Davis, Steve and Sue Woodrow; *The L3C: A new business model for socially responsible investing*; Community Dividend, Ninth Federal Reserve District; Nov. 2009; available at http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=4305 (last visited 9/20/2010).

- Void of an enforcement mechanism to make sure the L3C meets, and continues to meet, statutory requirements.

In addition, some believe that nonprofit corporations could be adversely affected should the L3C concept gain momentum.

Although states have enacted legislation allowing L3Cs to form if the companies have a primarily social-based mission and mimic the federal PRI requirements, nothing currently prevents a LLC from being primarily mission-based, adhering to PRI requirements, and seeking different levels of investors.⁸⁹ Therefore, it has been argued that it is unnecessary to create an entity that only does what can already be done under state law as an LLC.⁹⁰ However, in response, proponents of L3Cs have argued that they still believe that formation as an L3C, rather than an LLC, offers an important “branding” mechanism.⁹¹ Nevertheless, the proponents’ branding argument has also been countered by foundations, suggesting that the lack of PRIs is more of a cultural phenomenon and not based on a lack of knowledge or ability to overcome administration or other hurdles associated with PRIs.⁹²

Although the concept of the L3C was created to coincide with the federal requirements over PRIs, the IRS has not acted, nor does it intend to act in the near future, to formally or automatically recognize L3Cs as PRIs.⁹³ Furthermore, there is no indication that the U.S. Congress is willing to take up any legislation to amend the IRC to formally recognize L3Cs as PRIs.⁹⁴ If states enact legislation recognizing L3Cs, it may be misleading for some unsophisticated entrepreneurs who rely on the state sanctioning this type of entity. Consequently, some L3C owners may be surprised when the IRS audits the company and the investment in the company does not meet the strict federal requirements for a PRI, the foundation investing in the company becomes subject to steep tax penalties and the company loses its investor.

In addition, some may assume that because the L3C is based on the LLC business model that it is a relatively simple business to organize and run. To the contrary, the L3C may need a well-drafted and thought-out operating agreement in contemplation of the complex business relations formed between foundations, intermediary investors, and market-rate investors.⁹⁵

For investors, the legitimacy of L3Cs may rely on enforcement mechanisms to ensure that the L3C has, and keeps, a truly philanthropic purpose.⁹⁶ Moreover, foundations that are making the initial investments and assuming most of the risk will want to be assured that the L3C adheres to the state, and thus federal, PRI requirements. Currently, because the IRS only audits PRIs after they have been made, it is up to the foundations to thoroughly scrutinize a company prior to making an investment.⁹⁷ Almost all of the states that have enacted legislation recognizing L3Cs have not expressly provided provisions for enforcing the specific mission requirements of an L3C.⁹⁸ Indirectly, the state statutes offer some incentive for L3Cs to not stray from their

⁸⁹ *Supra* fn. 67 at 21-22.

⁹⁰ *Id.*

⁹¹ See Capriccioso, *supra* fn. 63 at pg. 9.

⁹² Bradfield, Jason, et al.; *The Low-Profit Limited Liability Company (L3C)*; The Tuck School of Business at Dartmouth College; 2009; available at <http://www.scribd.com/doc/16583284/L3C-Report-from-the-Tuck-School-of-Business-at-Dartmouth-2009> (last visited 9/20/2010).

⁹³ Interview with Holly Paz, representative of IRS, Division of Exempt Organizations, on August 2, 2010.

⁹⁴ See Letter from Max Baucus, Chairman of the U.S. Senate Committee on Finance, and Charles Grassley, Ranking Member of the U.S. Senate Committee on Finance, dated March 20, 2009, to the National Association of State Charity Officials. A copy of the letter is on file with Senate Commerce Committee staff.

⁹⁵ *Supra* fn. 67 at pgs. 23-24, discussing fiduciary responsibilities and conflicts of interest between members with differing investment purposes. Other complexities addressed by Kleinberger include securities law questions and member “exit rights.”

⁹⁶ Brakman Reiser; 85 Chi.-Kent L. Rev. at 650.

⁹⁷ *Supra* fn. 39.

⁹⁸ Michigan’s law is the exception for it permits the Attorney General to bring an action to dissolve a L3C if the L3C has ceased to meet any of the statutory requirements and has failed, after 60 days of ceasing to meet such requirements, to file a certificate to amend its name to conform to a LLC. See MCL §450.4803. Wyoming’s law contains a similar measure that requires a L3C to be automatically deemed “transacting business without authority” in the state if the L3C ceases to meet statutory requirements and does not amend its articles of organization with the Secretary of State within 30 days of ceasing

purpose as they generally require L3Cs to automatically convert to a LLC should they abandon their philanthropic mission or depart from the specific requirements of a PRI.⁹⁹ Ideally, states would have an independent state agency reviewing L3Cs operating agreements and perform audits to determine whether the L3Cs are abiding by their missions and meeting statutory requirements. However, this may require resources beyond most states' means, especially considering the current fiscal condition of many states.

Finally, the proliferation of L3Cs may have an adverse impact on donations to nonprofits. According to a survey conducted in 2010 by Guidestar®, a 501(c)(3) nonprofit organization that performs philanthropic research, 2010 "has been, and continues to be, a difficult financial environment for nonprofits."¹⁰⁰ Specifically, 40 percent of survey respondents saw declines in contributions than the previous year.¹⁰¹ Considering that nonprofits are vying for what resources they can to survive, it is likely that nonprofits, who are not interested in converting to a L3C, would be concerned about L3Cs competing for donations.

Summary

Proponents envision the L3C business model as an innovative answer to foundations' lack of PRI participation, while opponents suggest that the L3C is unnecessary and may cause confusion for not only the businesses running them, but also potential investors. Although the L3C is controversial, the trend seems to indicate that states (seven in 2 years) are interested enough to enact legislation and recognize them, hoping that these new entities will encourage economic development. However, states may discover that economic development stemming from the L3C may be hindered until some type of enforcement mechanism or IRS approval of L3Cs is forthcoming.

such requirements. *See* Wyo. Stat. §17-29-705(e).

⁹⁹ Brakman Reiser; 85 Chi.-Kent L. Rev. at 650-651.

¹⁰⁰ Guidestar®; *The Effect of the Economy On the Nonprofit Sector*; June 2010; available at <http://www2.guidestar.org/ViewCmsFile.aspx?ContentID=2963> (last visited 9/20/2010).

¹⁰¹ *Id.* at pg. 2.

CS/CS/CS/1ST ENG 2330 Dept. of State/Government Accountability Act
by Transportation and Economic Development Appropriations; Governmental Oversight and
Accountability; Commerce (Similar to HB 7185, which died in Economic Development & Community
Affairs Policy Council)

This bill was the result of an agency sunset review of the Department of State conducted by the Senate Committees on Commerce; Ethics and Elections; Governmental Oversight and Accountability; and Transportation and Economic Development Appropriations.

This bill reenacts s. 20.10, F.S., which reinstates the Department of State (department), to allow the department to continue to perform its current functions and responsibilities required under law.

This bill also transfers the current notary administration responsibilities of the Executive Office of the Governor (EOG) that relate to the education and investigation of notaries public to the department under a type two transfer, as defined in s. 20.06(2), F.S. In addition, the bill:

- Transfers the 3-hour notary education requirement from s. 668.50, F.S., to s. 117.01, F.S.
- Revises notary application requirements.
- Reiterates current law under s. 817.155, F.S., by providing that an applicant who submits an application that he or she knows to contain any false, fictitious, or fraudulent statement commits a felony of the third degree.
- Requires the department to provide conspicuous notice to applicants on the notary public application form that, if an applicant misrepresents information on the application, he or she commits a felony of the third degree pursuant to s. 817.155, F.S.
- Requires any entity issuing bonds for notaries public to submit an annual report to the department as to whether any claims were paid and the circumstances under which those claims were paid.
- Requires the department to inform the EOG of its findings related to any investigation of complaints made against notary publics.
- Makes stylistic changes and deletes two obsolete provisions concerning an increase in the required bond amount on January 1, 1999, and the required use of rubber stamps after January 1, 1992.

To fund these transferred responsibilities, the bill allocates \$1.20 from the \$4 notary public application surcharge to be deposited in the department's Operating Trust Fund.

In addition, this bill makes the following changes to the Division of Library and Information Services:

- Creates definitions for “depository library,” “state agency,” and “state publication,” and deletes a definition for “public document.”
- Renames the “State Library Council” to the “Library Information Services Council”; specifies duties of the council; and amends provisions relating to council membership, terms, and actions.
- Revises specifications relating to state entities’ maintenance and provision of publications to the division and revises duties of the division relating to publications.
- Requires state agencies to furnish the Library of Congress with three copies of certain documents.

This bill also makes the following changes to the Division of Historical Resources:

- Consolidates the functions of the State Historical Marker Council within the Florida Historical Commission; and specifies relevant duties of the commission.
- Abolishes the Grove Advisory Council and requires the division to undertake the council’s responsibilities; provides that the division may support the establishment and operation of a citizen support organization for The Grove; and deletes a provision regarding reversion of unused items in The Grove.
- Requires the division to make folklife apprenticeship programs available throughout Florida; and requires the Florida Folklife Council to provide assistance, advice, and recommendations to the division in evaluating applications for such programs.
- Excludes from the definition of the term “unmarked human burial” those portions of human remains that are shed naturally by living persons.

This bill reenacts s. 20.10, F.S., and substantially amends the following sections of the Florida Statutes: 117.01, 117.021, 117.05, 117.103, 117.107, 257.015, 257.02, 257.031, 257.05, 257.105, 267.0612, 267.075, 267.16, 267.161, 283.31, 286.001, 668.50, and 872.05.

This bill repeals s. 267.0743, F.S.

UNEMPLOYMENT COMPENSATION BENEFITS

AWI evaluates claimants for eligibility for unemployment compensation (UC) benefits

- Claimants must meet monetary requirements (\$ earned over time period) and non-monetary requirements (manner in which lost employment)
- Determinations on these requirements may be appealed
- Claims may be filed by telephone, paper application, or over the internet

About \$518.9 million in UC benefit payments were paid in October 2010; this was 10% less than paid in October 2009	About 1.1 million Floridians are out of work (September Unemployment Rate 11.9%)	About 25% of unemployed receiving regular UC; about 57% are receiving some form of UC	Estimated 20,000 - 25,000 individuals per month exhaust their regular (state) benefits and federal EUC and EB
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Regular State Benefits

- State law provides up to 26 weeks of benefits
- Funded by Florida employers' state UC taxes

Federally Funded Benefits

Emergency Unemployment Compensation (EUC):

- Provides 4 tiers of EUC that total 53 weeks of benefits
 - Tier 1 – 20 weeks
 - Tier 2 – 14 weeks
 - Tier 3 – 13 weeks
 - Tier 4 – 6 weeks
- Eligibility must be established by November 30, 2010 – on that date individuals receiving EUC are locked-in to the current tier of benefits they are receiving, and may collect any remaining benefits in that tier until April 30, 2011

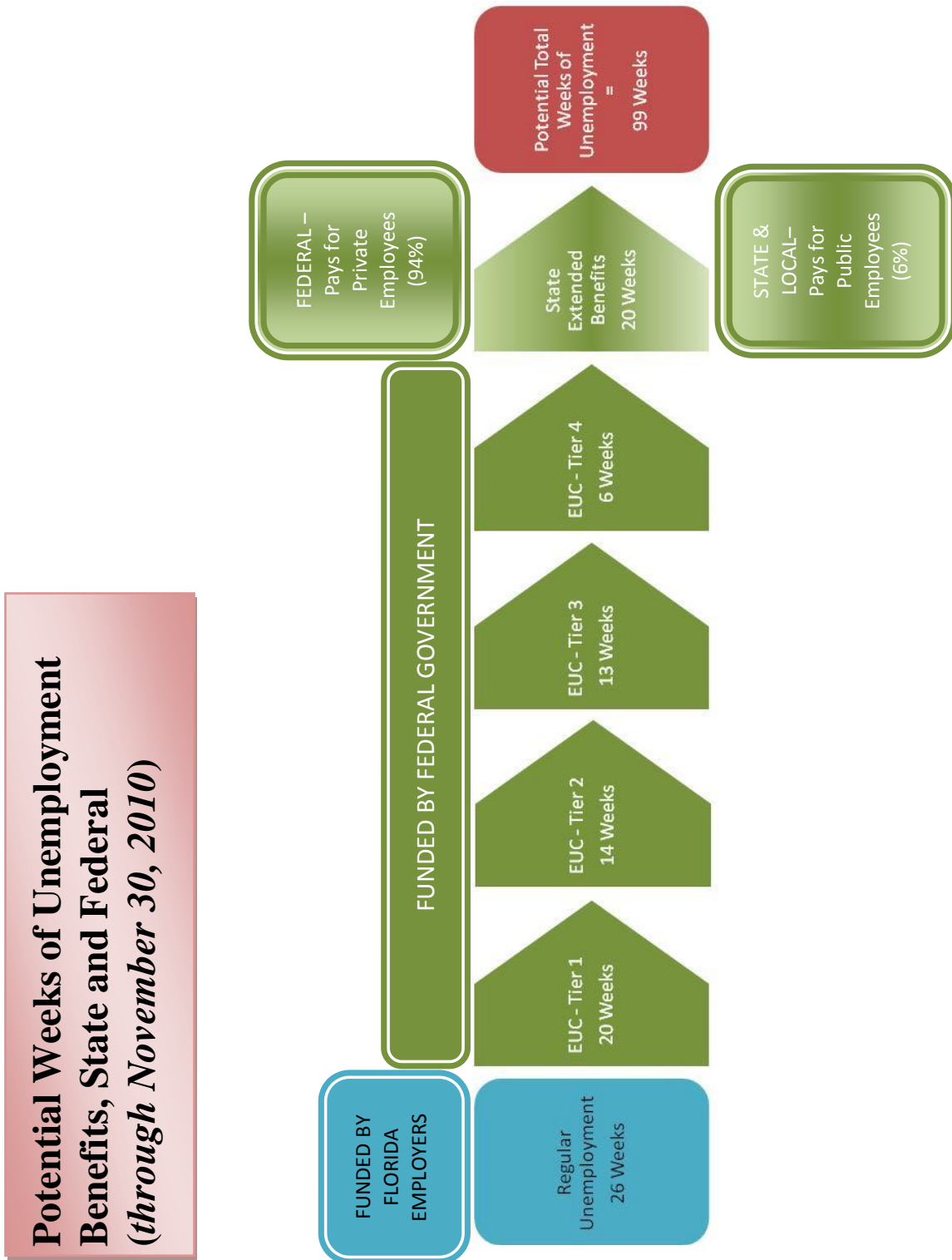
Temporary State Extended Benefits (EB):

- Provides up to 20 weeks of 100% federally-funded benefits for former private-sector employees through December 1, 2010
- Cost of benefits to former public-sector employees must be borne by the government

The eligibility window for EUC and for EB ends in November 2010 (see chart, next page for potential benefits available)

- Congress may consider an additional extension during the lame-duck session this winter
- When the extension expires, individuals receiving EUC are locked into the current tier of benefits they are in, and may collect any remaining benefits in that tier until April 2011
- When the extension expires, individuals receiving state EB will not continue to receive benefits

Total weeks an individual could receive in unemployment compensation is 99 weeks, through November 30, 2010; after that date, individuals are only able to receive the 26 weeks of regular state benefits, or the tier the individual was currently in on that date:



UNEMPLOYMENT COMPENSATION “MODERNIZATION”

“Modernization” – options to expand UC benefits, with stimulus funding to entice states to participate

- Available until September 30, 2011
- \$444.3 Million – Florida’s maximum share

Statutory Change Required - Funding is contingent upon the state expanding unemployment compensation eligibility through a change in statute:

- **Requirement 1 – Alternative Base – State of Florida would receive \$148.1 million**
 - Requires the state to implement through statute an alternative base period that includes the wages for the current or preceding quarter to determine eligibility (at this time, the wages for the four quarters prior to the beginning of the most recent completed quarter are used)
 - **Estimated cost to state trust fund - \$51.3 million annually**
- **If Requirement 1 is implemented along with 2 Additional Provisions – State of Florida would receive an additional \$296.2 million (for a total of \$444.3 million)**
 - Requires the state to implement alternative base period (Requirement 1) and two of the following four provisions:
 - 1. Part-time Workers**
 - Payment based on part-time employment & seeking part-time employment
 - **Estimated cost to state trust fund - \$0 (already implemented)**
 - 2. Compelling Family Reasons**
 - Permit quitting job due to compelling family reasons – domestic violence/ sexual assault (one or the other or both), illness of family member or to relocate with a spouse
 - **Estimated cost to state trust fund - \$22.4 million annually**
 - 3. Dependents’ Allowances**
 - Payment of Dependents’ Allowances of at least \$15 per dependent per week (state shall determine maximum cumulative allowance not to be less than \$50 per week)
 - **Estimated cost to state trust fund - \$175.6 million annually**
 - 4. Benefits for Training**
 - Continuation of benefits for up to 26 weeks for beneficiaries satisfactorily attending state-approved training
 - **Estimated cost to state trust fund - \$49.7 million annually**

Other Estimated costs of Modernization

- Use of the alternative base period shortens the period required for a new employer to establish chargeability for benefits, possibly resulting in a net reduction in tax receivables from new employers.
 - **Estimated cost to state trust fund - \$8 million annually**
- Public employers (state and local governments) generally do not pay UC taxes based on their payroll. Rather they reimburse the trust fund on a dollar-for-dollar basis for benefit payments. Public employers will experience increased reimbursements to the trust fund.
 - **Estimated cost to state and local governments - \$4.4 million annually (90% local and 10% state)**
- Additional administrative costs to AWI and DOR of \$2.1 million in recurring federal UC administrative funds

Timeframe for Implementation -

- Enact conforming legislation by 2011 Regular Legislative Session
- Submit application to the US Department of Labor by August 22, 2011
- Statutory changes cannot include sunset provisions
- Other states – As of November 2010, 32 states have received their full entitlement of modernization funds and 7 states have been approved for a one-third share by adopting an alternative base period.

Unemployment Compensation Taxes

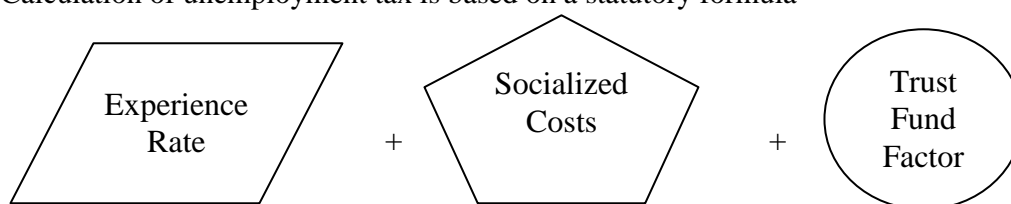
Unemployment Compensation (UC) is an employer funded insurance program for job loss, which is regulated by the federal government and administered by the states. In September 2010, Florida's unemployment rate was 11.9%, which represents about 1.1 million unemployed out of a workforce of about 9.2 million.

The Agency for Workforce Innovation (AWI) administers Florida's UC program, and contracts with the Florida Department of Revenue to provide tax collection services.

The Commerce Committee published a report, Issue Brief 2009-306: Emerging Issues Related to Florida's UC Program, which detailed the UC program in Florida, the impacts of the American Recovery and Reinvestment Act of 2009 (the Recovery Act), and state legislation passed in 2009. Significant changes were made to the UC laws in the 2010 Session, in part to provide short-term relief to Florida businesses paying unemployment tax and to extend eligibility windows for the temporary state extended benefits program.

UC Taxes: Florida employers pay a state UC tax which funds the state UC Trust Fund to pay benefits

- Calculation of unemployment tax is based on a statutory formula



- Each individual employer's tax rate is based in part on the employer's employment experience; employers with more former employees collecting unemployment pay a higher tax rate. The state UC tax rate is capped at 5.4%.
- Costs that can't be attributed to any one employer's account are socialized across all employers, for example for costs attributable to employers who have gone out of business.
- The calculation also takes into account the balance of the UC Trust Fund as of September 30th each year.
 - When the trust fund falls below a certain threshold, Florida law annually adjusts the unemployment tax rates on businesses to replenish the balance of the trust fund.
 - However, legislation passed in the 2010 Session delays the calculation of any automatic increase due to the "low trigger" until 2012.
 - The amount of wages subject to the UC tax is \$7,000, until 2012, when it increases to \$8,500 (*the wage base will drop back down to \$7,000 in 2015, but only if there are no federal advances outstanding*). This change will affect employers at the maximum tax rate.

	2009 Taxes (\$7,000 wage base)		Pre-Session 2010 Taxes (\$8,500 wage base + recoupment provisions)		2010 Taxes (ch. 2010-1) (\$7,000 wage base + no tax trigger)		2011 Taxes (\$7,000 wage base + no tax trigger)	
Minimum rate	0.12%	\$8.40	1.18%	\$100.30	0.36%	\$25.20	1.03%	\$72.10
Maximum rate	5.4%	\$378	5.4%	\$459	5.4%	\$378	5.4%	\$378

- The increase in the minimum tax rate from 2010 to 2011 is due to a large increase in socialized costs, mostly attributable to costs associated with employers whose tax rate doesn't generate enough money to pay for all the benefits charged to their accounts due to the statutory maximum rate (excess payments).

UC Trust Fund:

- Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The federal government allows for advances to be made to state UC Trust Funds to pay UC benefits.
- On August 24, 2009, the Florida UC Trust Fund balance fell to \$0 and federal advance monies were drawn down. As of November 12, 2010, about \$1.7 billion have been drawn down.

Federal Borrowing	
Ending Federal Advances Balance	
(in millions)	Current Law
FY 2009-2010	\$ 1,612.5
FY 2010-2011	\$ 2,184.6
FY 2011-2012	\$ 2,115.0
FY 2012-2013	\$ 1,267.1
FY 2013-2014	\$ 59.8
Fully Repaid	Jan 2015

Emerging Issues for 2011

Significantly Higher Tax Rates in 2012

Due in part to the short term relief provided to employers by legislation passed in the 2010 Session, employers will be faced with a significant jump in tax rates beginning in 2012. Other facts effecting employer taxes in 2012 include the calculation of the trust fund factor and the increase in the wage base to \$8,500 (effect of the increase in the wage base shown in black).

	Minimum State Tax Rate	State Per Employee Cost	Federal Tax Rate	Total Minimum Tax Rate
2009	0.12%	\$8.40	0.80%	0.92%
2010	0.36%	\$25.20	0.80%	1.16%
2011	1.03%	\$72.10	1.10%	2.13%
2012	1.75%	\$148.75	1.40%	3.15%
2013	1.56%	\$132.60	1.70%	3.26%
2014	1.36%	\$115.60	2.00%	3.36%
2015	0.92%	\$78.20	0.60%	1.52%
2016	0.49%	\$34.30	0.60%	1.09%
2017	0.42%	\$29.40	0.60%	1.02%

Loss of Federal Credit

- The federal UC tax rate is 6.2%, but Florida employers are eligible for a 5.4% credit, making the net federal tax rate 0.8% (\$56 per employee on the first \$7,000 of taxable wages).
 - In June 2011, the federal UC tax rate will drop to 6.0%, making the next federal tax rate 0.6% (\$42 per employee on the first \$7,000 of taxable wages).
- Unless the federal advances are repaid prior to November 10, 2011, Florida employers will most likely lose a portion of their federal UC tax credit in 2011.
 - Employers lose 0.3% of the credit for each year the loan has been outstanding (illustrated in above tax rate chart in bold).
 - Loss of the credit goes to repay the outstanding loan balance.
- Under current law, the federal borrowing is fully repaid in 2015.

Interest Payments and Repayments Due to Federal Credit Loss

(in millions)	Current Law	
	Interest	Credit Loss
FY 2011-2012	\$ 61.40	\$ 137.30
FY 2012-2013	\$ 127.50	\$ 286.70
FY 2013-2014	\$ 92.00	\$ 452.00
FY 2014-2015	\$ 36.20	\$ 623.80
FY 2015-2016	\$ 1.60	-
Totals	\$ 318.70	\$ 1,499.80

Interest Payments

- Through the Recovery Act, no interest is charged against federal advances through December 31, 2010.
- In order to repay interest coming due in September 2011, employers will be assessed a fee in 2011, separate from their unemployment taxes. This fee will be \$9.51 per employee.
 - The Revenue Estimating Conference is charged with estimating the amount of interest to be paid to the federal government each year.
 - If the interest is not paid when due, the federal government will not certify the state program and can withhold all administrative funding. The federal government could take control of Florida's UC program and employer tax rates would jump to the total federal tax (there would be no state UC tax).

CS/CS/SB 1736 — Unemployment Compensation

by Policy & Steering Committee on Ways and Means; Commerce Committee; and Senators Garcia and Wilson

The bill makes several changes to laws related to unemployment compensation.

Temporary State Extended Unemployment Compensation Benefits

The bill provides for an extension of the temporary state extended benefits program, effective February 27, 2010, through June 2, 2010. The extension will cover up to 14 additional weeks of temporary state extended benefits for claimants. The temporary state extended benefits for former private sector employees are 100 percent federally funded (approximately \$128.1 million). About 107,000 Floridians will be eligible to receive additional weeks through this extension.

Extended benefits for former state and local government employees do not qualify for federal funding and must be paid by the governmental entity. The cost is estimated to total \$3.6 million; approximately \$1.1 million from state funds and \$2.6 million from local government funds.

Reemployment of Unemployment Compensation Claimants

The bill amends Unemployment Compensation (UC) law to require that registration with the workforce information system (Employ Florida Marketplace) be incorporated into the process for filing a claim. Also, claimants are required to report to their local one-stop center. The purpose is to better link claimants with the state's job bank system and available job opportunities.

Employer Response to Notice of Claim

When a claim is first filed, employers receive a notice of claim and monetary determination. If the Agency for Workforce Innovation receives information that may result in a denial of benefits, the agency is required to investigate the claim and provide employers with a nonmonetary determination, as applicable. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits under a monetary determination. The bill requires employers to timely respond to the notice of claim within 20 days. Failure to do so will result in those benefits being charged to the employer's account. Such efforts will reduce overpayments to unemployed individuals, and in turn, this will reduce the burden of socialized costs on all employers' UC tax rates; however, a claimant would not be required to repay any overpayments due to the employer's failure to respond, so long as there is no fraud involved.

Unemployment Compensation Trust Fund Trigger

The bill changes the trust fund balance date for trigger calculation from June 30 to September 30, which is closer to the beginning of the year to which the tax calculation applies.

Unemployment Compensation Tax Administration

This bill includes several statutory changes that will reduce the burden of socialized costs on Florida employers, improve tax administration by increasing efficiency and reducing related costs, and improve enforcement of UC tax laws by the Department of Revenue. The bill:

- Specifies the duration for tax liens for unemployment compensation taxes as 10 years;
- Authorizes the department to reduce a tax refund or credit owing to a taxpayer to the extent of liability for unemployment compensation taxes;
- Conforms cross-references in unemployment compensation statutes;
- Provides for the treatment of a single-member limited liability company as the employer for purposes of unemployment compensation law, consistent with Internal Revenue Service regulations; and
- Increases penalties for erroneous, incomplete, or insufficient reports submitted by employers to the Department of Revenue for unemployment compensation tax purposes.

If approved by the Governor, these provisions take effect upon becoming law, unless otherwise specifically stated in the act.

Vote: Senate 34-0; House 113-2

CS/HB 7033 — Unemployment Compensation

by Finance & Tax Council; Economic Development & Community Affairs Policy Council; and Reps. Murzin, Carroll, and others (CS/CS/SB 1666 by Policy and Steering Committee on Ways and Means; Commerce Committee; and Senators Garcia; Atwater; Alexander; Altman; Aronberg; Baker; Bennett; Bullard; Constantine; Crist; Detert; Deutch; Diaz de la Portilla; Dockery; Fasano; Gaetz; Gardiner; Gelber; Haridopolos; Hill; Jones; Joyner; Justice; Lawson; Lynn; Negron; Oelrich; Peaden; Rich; Richter; Ring; Siplin; Smith; Sobel; Storms; Thrasher; Villalobos; Wilson; Wise; and Dean)

Unemployment compensation (UC) benefits are financed by a tax on employers' payrolls. Tax rates are set by a formula that considers the balance of the trust fund in the previous year, the "experience rate" of individual employers, and the "socialized" costs distributed among all employers.

In short, the state's sustained high level of unemployment has depleted the trust fund, requiring tax rates to be increased to meet the current and projected obligations to Florida's unemployed. In addition, the "costs" of borrowing from the federal government to meet current obligations also impact the tax rate (state and federal).

Chapter 2010-1, L.O.F., provides short-term relief to businesses by reducing the UC tax in 2010 and 2011 below current law requirements. The unemployment compensation statutes related to calculation of the employer's tax rates and Unemployment Compensation Trust Fund solvency are amended to:

- Reduce the taxable wage base from \$8,500 to \$7,000 for 2 years and return it to \$8,500 in 2012. The wage base sunsets back to \$7,000 in 2015 (consistent with current law), unless federal advances are still due for repayment to the federal government. Until all federal advances are repaid, the wage base remains at \$8,500.
- Suspend the positive adjustment factor for the next 2 years. Regardless of the balance in the Unemployment Compensation Trust Fund, no rate increase will be "triggered" since the positive adjustment factor will not be applied. The positive adjustment factor is effective again beginning January 1, 2012, with a 3-year recoupment period and then returns to a 4-year recoupment period under current law provisions on January 1, 2015.
- Allow employers, for an administrative fee of up to \$5, to spread payments for quarterly UC taxes due in 2010 and 2011 across the remaining quarters in the respective year without interest or penalties as long as the employer makes the quarterly filing and payment according to the new schedule ("installment payments").
- Provide for payment of interest on federal advances through an additional employer assessment.

The law also provides for an extension of the temporary state extended benefits program, effective January 2, 2010, through February 27, 2010. The extension will cover up to 8 additional weeks of temporary state extended benefits for claimants. The temporary state extended benefits for former private sector employees are 100 percent federally funded (approximately \$28 million). About 20,000 Floridians will be eligible to receive additional weeks through this extension. Extended benefits for former state and local government

employees do not qualify for federal funding, and must be paid by the governmental entity. The cost is estimated to total \$612,633; approximately \$180,000 from state funds and \$433,000 from local government funds.

Businesses are provided with short-term tax relief in 2010 and 2011 due to the provisions in this law that reduce tax rates. However, assuming the current economic and revenue forecasts are correct, the unemployment compensation tax will revert back to the projected high rates in 2012 through 2014, and higher than projected rates in 2015 and beyond (compared to current law). According to data from EDR (February 19, 2010), assuming that 80 percent of the employers will elect to pay their taxes in quarterly installments, total taxes collected and deposited into the Unemployment Compensation Trust Fund will be reduced \$941.6 million in FY 2009-2010 and \$934.4 million in FY 2010-2011.

Further, this law will result in greater borrowing from the federal government to pay benefits, and more interest due to the federal government on that borrowing than under current law. The interest costs forecasted by EDR (February 19, 2010) totals \$657.2 million over 5 years from FY 2011-2012 through FY 2015-2016. The provision in the law for payment of interest on federal advances through an additional employer assessment eliminates any impact on general revenue forecasted in the *State of Florida Long-Range Financial Outlook Fiscal Year 2010-2011 through 2012-2013* to pay interest accrued.

This law substantially amends the following sections of the Florida Statutes: 443.1117, 443.1217, 443.131, and 443.141.

These provisions take effect at different times. The temporary state extended benefits program is effective upon becoming a law, but is retroactively effective dating back to January 2, 2010, and expires February 27, 2010. The provisions related to installment payments take effect upon becoming a law, but are retroactively effective to January 1, 2010. All other provisions take effect upon becoming a law, and operate retroactively to June 29, 2009.

Vote: Senate 39-0; House 117-0



The Florida Senate

Issue Brief 2010-306

October 2009

Committee on Commerce

EMERGING ISSUES RELATED TO FLORIDA'S UNEMPLOYMENT COMPENSATION PROGRAM

Statement of the Issue

Unemployment compensation is a joint federal and state administered program that provides 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. Individual states collect unemployment compensation 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, used to provide grants to the states to fund administration of their unemployment compensation programs. The Agency for Workforce Innovation (AWI) is the agency responsible for administering Florida's unemployment compensation laws.

The American Recovery and Reinvestment Act of 2009 was signed into law in February 2009 as a strategic national effort to stimulate the economy. This act, in part, provides funding for different unemployment compensation program components. Some of the funding required states to change their laws in order to qualify for the funding; other provisions provided additional unemployment compensation benefits to individuals without major state participation. In total, the stimulus funding provided needed support to both unemployment compensation recipients and AWI for administration of the program.

Unfortunately, due to the increasing unemployment rate in Florida, the Unemployment Compensation Trust Fund has recently been paying out more funds than it has been collecting. The trust fund fell into deficit in August 2009, and the state requested a federal advance in order to continue to fund unemployment compensation claims. The Legislature passed legislation during the 2009 regular session to increase employer contribution rates with the goal of easing the strain put upon the trust fund by the current economic climate.

This issue brief will provide an overview of the Florida's Unemployment Compensation program and identify changes made by the federal American Recovery and Reinvestment Act and state legislation enacted in 2009. These changes affect the administration of the program by AWI, program benefits, and employer contributions.

In addition, it will provide an update on the solvency status of the Unemployment Compensation Trust Fund and profile "modernization" options to expand benefits and related federal funding incentives.

This issue brief is intended to be a resource for understanding the Florida's Unemployment Compensation program and related emerging issues.

Discussion

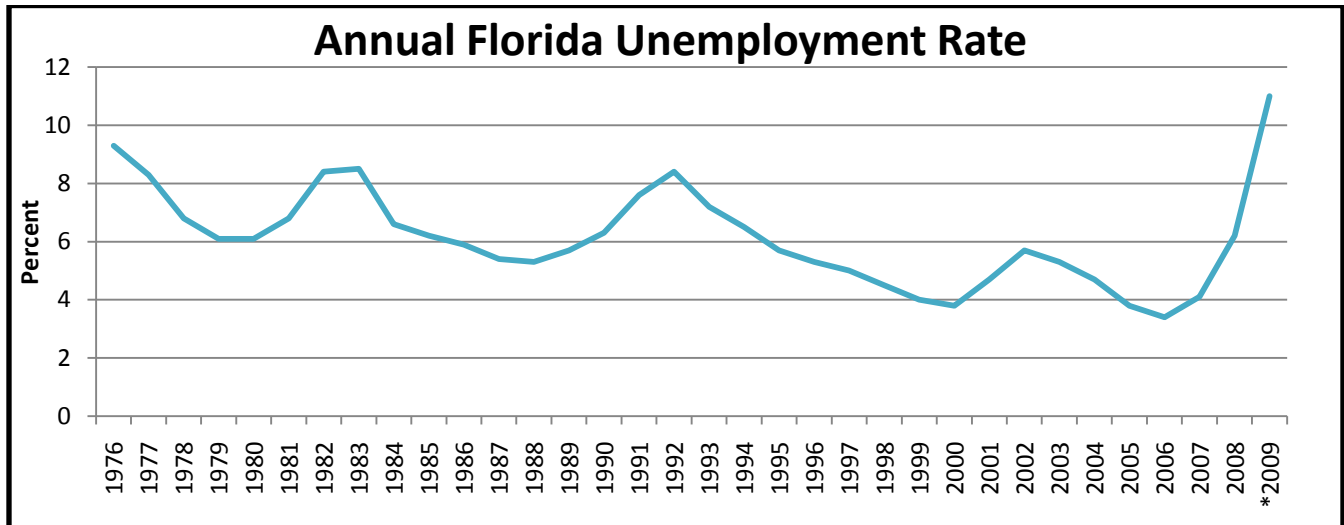
Unemployment Compensation Program Overview

According to the United States 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.¹ The program is administered as a partnership of the federal government and the states. There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

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).² 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.³ States are permitted to set eligibility conditions for UC benefit recipients, the amount and duration of benefits, and the state tax structure so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937 as part of the national unemployment insurance system.⁴ Florida's UC system is funded solely by employers who pay federal and state UC taxes, and is provided at no cost to the workers who receive the benefits.⁵

The national unemployment system was established as a direct result of the high unemployment experienced during the Great Depression of the 1930s. It was authorized by both the Social Security Act of 1935 and the Wagner-Peyser Act, and is currently governed by the FUTA, originally passed in 1939 and later amended. The unemployment insurance system's primary objectives are: (1) to give workers temporary and partial insurance against income loss resulting from unemployment; and (2) to assist the countercyclical stabilization of the economy during recessions by maintaining workers' purchasing power.⁶ This supports economic stability for employers who depend on consumer spending to stay in business; it is estimated that every \$1 in UC benefits generates \$1.63 in economic activity.⁷



Information obtained from the Florida Research and Economic Database, Labor Market Statistics, Local Area Unemployment Statistics Program, at <http://fred.labormarketinfo.com/default.asp> (last visited 10/16/2009).

*The seasonally adjusted unemployment rate for Florida in September 2009 was 11.0 percent.

¹ USDOL, State Unemployment Insurance Benefits, at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 10/20/2009).

² FUTA is codified at 26 U.S.C. 3301-3311.

³ USDOL, Unemployment Insurance Tax Topic, at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 10/20/2009).

⁴ Chapter 18402, L.O.F.

⁵ In addition to employer taxes, some states levy an unemployment tax on employees as a means to finance their UC programs (currently Alaska, New Jersey, and Pennsylvania).

⁶ Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001), at http://www.flsenate.gov/data/Publications/2002/Senate/reports/interim_reports/pdf/2002-122cm.pdf (last visited 10/20/2009).

⁷ Information from AWI, on file with the Senate Commerce Committee.

Administration of the Unemployment Compensation Program in Florida

The Agency for Workforce Innovation (AWI) is the current agency responsible for administering Florida's UC laws.⁸ Prior to October 1, 2000, the state's UC program was administered by the Division of Unemployment Compensation of the former Department of Labor and Employment Security.⁹ The Workforce Innovation Act of 2000 transferred the administration of the UC program from the department to AWI. Further, this legislation required AWI to contract with the Department of Revenue to provide unemployment tax collections services.¹⁰

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. To determine each state's share of the administrative resource grants, USDOL uses the Resource Justification Model (a budget formulation and allocation system based on state workload and program cost) to annually allocate to each state a base grant for the federal fiscal year, plus a state may earn contingency grants throughout the year. Florida received a base grant of \$73.9 million for federal FY 2008 and \$77.8 million for federal FY 2009. The USDOL 2010 unemployment insurance state allocations planning budget estimates that Florida's base grant for federal FY 2010 is \$81.1 million.¹¹ These funds finance the processing of claims for benefits by AWI, state unemployment tax collections performed by the Department of Revenue, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

AWI administers Florida's UC laws through its Office of Unemployment Compensation Services.¹² The Office of Unemployment Compensation Services consists of the Unemployment Compensation Benefits Section, the Benefits Payment Control Section, and the Office of Appeals. The Unemployment Compensation Benefits Section handles initial claims, questions about unemployment benefits, and other related issues.¹³ The Benefits Payment Control Section monitors the payment of unemployment benefits in an effort to detect and deter overpayment and to prevent fraud.¹⁴ The Office of Appeals holds hearings and issues decisions to resolve disputed issues related to eligibility and claims for unemployment compensation and the payment and collection of unemployment compensation taxes. The Office of Unemployment Compensation Services also administers special unemployment compensation programs, such as disaster unemployment assistance, trade adjustment assistance, and UC for ex-service members and federal civilian employees. AWI provides services in English, Spanish, and Haitian Kreyól.¹⁵

The Unemployment Appeals Commission is administratively housed in the AWI, but is a quasi-judicial administrative appellate body independent of AWI.¹⁶ The commission consists of a three member panel that is

⁸ Sections 20.50 and 443.171, F.S. All Florida statutes cited are 2009, unless otherwise indicated.

⁹ Section 11(4)(f), ch. 2000-165, L.O.F. The Department of Labor and Employment Security was abolished by the Legislature in 2002. Ch. 2002-194, L.O.F. Statutory "clean-up" was done by ch. 2003-36, L.O.F., to correct references and clarify duties of both AWI and the Department of Revenue.

¹⁰ The contract requirement and the duties of DOR were clarified by ch. 2003-36, L.O.F.

¹¹ In addition to the base grant amounts, states earn additional funds each quarter for actual UC claims workload above the base. Information obtained from UDSOL website on the UI Budget at <http://www.workforcesecurity.doleta.gov/unemploy/budget.asp#tfloans> (last visited 10/20/2009). The base grant amount includes allocation for postage. The federal fiscal year runs from October 1 to September 30 of the next year.

¹² Section 20.50(2)(c)1., F.S.

¹³ AWI operates call centers for initial UC claims and questions about continuing claims. These centers are located in Tallahassee, Orlando, and Fort Lauderdale. AWI contracted with a third party to open an additional call center in Orlando to handle overflow calls (approved by the Legislative Budget Commission on February 18, 2009, to handle additional UC workload); this call center began taking calls ahead of schedule in June 2009 in order to take calls related to state extended benefits, and became a fully operational call center in August 2009, taking all types of UC related calls.

¹⁴ Unemployment compensation fraud is a third-degree felony and is subject to prosecution by the State Attorney. Section 443.071, F.S. A third-degree felony is a crime punishable by a maximum penalty of \$5,000 and up to five years in prison.

¹⁵ Information found at <http://www.floridajobs.org/unemployment/index.html> (last visited 10/20/2009).

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." The Unemployment Appeals Commission is 100 percent federally funded.

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

Federal Legislation - The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) was signed into law by President Obama in February 2009.¹⁸ In part, this act allocates funding to UC programs at the state and federal level.

Administrative Funding

The Recovery Act granted the states additional funds for UC and workforce support services administration at the state level.¹⁹ AWI is eligible to receive an estimated \$31.7 million for administration from the federal government.²⁰ AWI was appropriated \$15,000 in FY 2008-2009, and \$60,000 in FY 2009-2010, but has not yet expended these funds. AWI is estimated to receive \$15 million in FY 2010-2011.²¹ These funds may be used for improvement of UC benefit and tax operations; staff-assisted reemployment services to unemployed claimants; and the implementation and administration of state law that qualifies the state for incentive payments under the Recovery Act.²² A portion of Florida's share of the Recovery Act administrative funds could be expended to create and implement the Unemployment Compensation Claims and Benefits Information System, discussed below. The \$15,000 was earmarked to be used for legal services; the \$60,000 was intended for activities by the Office of the Inspector General.

State Legislation in 2009 Related to UC Administration

AWI received 150 additional full-time employment positions for the Office of Unemployment Compensation Services in the FY 2009-2010 budget.²³ These positions were allocated to areas of the UC program that provide direct service to Floridians. A review process of the program was completed to determine the best use of the positions in light of the increased workload for AWI. The positions were distributed as follows:

- 35 positions to initial claims - these positions process initial UC claims that are received by AWI via the Internet, telephonically through the Interactive Voice Response System (IVR), or by mail and fax;
- 24 positions to continued claim activities – these positions handle calls for general information relating to specific claims, and also assist in resolving claim discrepancies that do not need to be elevated to the adjudication process;
- 17 positions to the adjudication process - these individuals conduct fact-finding interviews with claimants and employers and make initial non-monetary determinations with respect to the eligibility provisions of ss. 443.091, 443.101, and 443.131(3)(a), F.S.;
- 35 positions to appeals activities - this includes 3 positions for translation services primarily provided during hearings, 6 for creating and processing documentation relating to appeals hearings, 2 for intake of initial appeals filings, and 24 positions for new hearing officers;

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

¹⁸ Public L. No. 111-5.

¹⁹ Section 2003, Public L. No. 111-5.

²⁰ The funds are held in the administrative account of the UC Trust Fund. The states draw down the funds needed to meet their operational needs in accordance with the Cash Management Improvement Act and the regulations of the Financial Management Service of the U.S. Department of the Treasury.

Benefits are paid from the UC Trust Fund; the program operates with funds in the Employment Security Administration Trust Fund, which is the administrative account of the UC Trust Fund. All money in the administrative account remains part of the UC Trust Fund, pursuant to s. 443.211, F.S. See also, s. 443.191(5)(c), F.S.

²¹ Appropriated funds are held by the federal government until AWI draws down the funds to pay for the expenditures. Information from AWI, on file with the Senate Commerce Committee.

²² USDOL Unemployment Insurance Program Letter (UIPL) 14-09, at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2715 (last visited 10/20/2009).

²³ See s. 6, ln. 2133, ch. 2009-81, L.O.F. (Salaries and Benefits Positions 587.00); and s. 6, ln. 2209, ch. 2008-152, L.O.F. (Salaries and Benefits Positions 437.00). Detail provided by AWI, on file with the Senate Commerce Committee.

- 21 positions to central benefits processing - this includes handling of returned and forged benefit checks; resolution of issues relating to electronic funds transfer between Wachovia and the claimant's bank;²⁴ reconsideration of monetary determinations, which includes initiating and disposing of blocked claims investigations in conjunction with the Department of Revenue; employer protests to benefit charging; and special UC programs;
- 10 positions to the Benefit Payment Control Section – these positions are primarily for the resolution of issues relating to the reporting of new hires from the State and National Directories of New Hires administered by the Florida Department of Revenue and the U.S. Department of Health and Human Services; and
- 8 positions to the Benefit, Timeliness, and Quality Control (BTQ) and Benefit Accuracy Measurement (BAM) units.

Unemployment Compensation Claims and Benefits Information System

The 2007 Florida Legislature directed AWI to evaluate the replacement of the 30-year old mainframe system used to process UC benefit claims and appeals.²⁵ A feasibility study was conducted by a third-party vendor, which recommended that AWI implement a new system.²⁶ The study also concluded that a cost savings of up to \$43.1 million annually could be expected due to enhanced efficiencies in program operations. Benefits of a new UC information system include:

- Enhanced call center operations resulting in decreased caller wait times, reduced call duration, and increased customer satisfaction;
- Improved efficiency of adjudication and appeals activities;
- Reduced errors, fraud and overpayments; and
- Implementation of a simplified, robust technical infrastructure.

The Unemployment Compensation Claims and Benefits Information System is a replacement project for the existing UC Claims and Benefits technology system and supporting systems. The implementation time frame is over a 4-year period at a total project implementation cost of \$68.25 million.²⁷ The agency anticipates that the project costs for the entire system will be funded from federal funds.

The current technology system has been strained under the current economic climate, due in part to increased customer demand and an aging and inflexible technology system. AWI's UC services rely heavily on paper-based processes and legacy technology centered on its current mainframe application. Because of this, it is difficult for AWI to effectively adapt its existing system to changes in program law, such as federal extensions of benefits. The system struggled to accommodate the recent surge in unemployment claims, which resulted in poor system response times and the online systems becoming inaccessible during peak transaction loads. Many short-term fixes have been implemented, including fine-tuning the mainframe application system, creating separate applications to meet short falls of that system, and increasing call-center staff. However, these reactive solutions have not addressed the underlying need for a more efficient information system that can help to automate and streamline programmatic workload. Plans for the new system indicate that AWI intends to eliminate paper-based processes where feasible and provide the public with automated, self-service access to UC program services.

In Phase 2 (Requirements Definition and Procurement Support) of AWI's plan to replace its current automated support systems, AWI will develop detailed requirements specifications and analyze and develop detailed business process requirements which would subsequently be included in a competitive procurement process that evaluates both commercial-off-the-shelf applications and systems implemented in other states.

²⁴ Electronic funds transfer of benefits payments through Wachovia is discussed in *Benefit Payments* infra.

²⁵ Adapted from Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1782 (April 6, 2009).

²⁶ The feasibility study was Phase 1 of the project.

²⁷ AWI's Legislative Budget Request for Fiscal Year 2009-2010, issue #36315C0, as revised (after February 25, 2009).

For FY 2009-2010, AWI requested, and the legislature funded, \$2 million from nonrecurring federal UC administrative funds for Phase 2 of the project.²⁸ Further ch. 2009-73, L.O.F., creates s. 443.1113, F.S., to authorize the Unemployment Compensation Claims and Benefits Information System. In compliance with s. 216.023, F.S., s. 443.1113, F.S., also defines the plan scope, provides time frames for implementation and a governance structure for the project, and outlines and defines the main business objectives that must be achieved.

Specific phases for the project are outlined in s. 443.1113(4), F.S. The business re-engineering analysis and documentation of both the detailed system requirements and overall system architecture are to be completed by the end of FY 2009-2010. The Unemployment Claims and Benefits Internet portal is required to be deployed to full operational status no later than the end of FY 2010-2011.²⁹ By the end of FY 2011-2012, the new Call Center Interactive Voice Response System and the Benefit Overpayment Screening System are to be fully operational. Lastly, the project should be completed by the end of FY 2012-2013 with the full deployment of the Internet and Intranet Appeals System and the Claims and Benefits Mainframe System.

The project's governance structure is composed of an executive steering committee with voting powers; the executive director of AWI is designated as the project sponsor. The membership and responsibilities of the executive steering committee are specified within the statute, and include providing direction and support to the project management team; reviewing and approving or denying any changes to the project's scope, schedule, and costs; and reviewing and approving or denying major project deliverables. The project management team is responsible for the day-to-day oversight and management of the project, and must submit certain information to the executive steering committee as specified within the statute.

Unemployment Compensation Program Benefits

Qualified claimants may receive UC benefits equal to 25 percent of their wages, not to exceed \$7,150 in a benefit year.³⁰ Benefits range from a minimum of \$32 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.³¹

To receive UC benefits, claimants must meet certain monetary and non-monetary eligibility requirements.³² 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.

Monetary Eligibility

Pursuant to s. 443.111(2), F.S., in order to establish a benefit year from which UC benefits can be paid, an individual must:³³

- Have been paid wages in two or more calendar quarters in the base period; *and*
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

²⁸ See s. 6, ln. 2139B, ch. 2009-81, L.O.F.

²⁹ Replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems.

³⁰ Section 443.111(5), F.S.

³¹ Section 443.111(3), F.S. A claim week begins on Sunday and ends on Saturday.

³² Section 443.091(1), F.S., provides an unemployed individual is eligible to receive benefits for a week of unemployment when AWI finds that the individual:

- Has filed a claim for benefits;
- Is registered to work with and report to AWI;
- 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.

³³ This is the monetary determination.

The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.³⁴ The following chart provided by AWI, illustrates the relationship between the filing date of an initial claim and the corresponding base period:³⁵

Base Period Chart										
Year Preceding Prior year		Prior Year				Current Year				
July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	
		Base Period (Oct. 1 – Sept. 30)			Lag quarter	Claim Filed				
		Base Period (Jan. 1 – Dec. 31)				Lag quarter	Claim Filed			
		Base Period (Apr. 1 – Mar. 31)				Lag quarter	Claim Filed			
		Base Period (July 1 – June 30)				Lag quarter	Claim Filed			

The most recent quarter of work (the “lag quarter” or fifth completed calendar quarter) is not used to determine monetary eligibility and cannot be credited toward the two-quarter requirement or the \$3,400 requirement. For example, an employee who has only worked during the two quarters immediately before filing a claim would not qualify for benefits even if he or she earned more than \$3,400. Consequently, some seasonal workers and short-term members of the labor market may not be able to establish monetary eligibility for benefits calculated using the base period in current law.

Wage records used in determining the amount of benefits that may be paid to an unemployed worker are provided through reports furnished by employers on a quarterly basis to the Department of Revenue. Employers have until the last day of the month following the end of a calendar quarter to submit their quarterly wage and tax reports.³⁶ The reports provide the wage data for each employee’s base period, which is used to determine the amount of benefits that are paid to an individual worker. According to AWI, the Department of Revenue generally requires 2 months to process approximately 500,000 employer reports and enter the wage information into its database in preparation for claims that will be filed during the next quarter. Thus, under current law, the lag quarter is not used to determine monetary eligibility for unemployment compensation because the agency lacks the necessary wage data at the time a claim is filed. The data is not available to the agency under the normal employer wage reporting requirements.

Determinations of Eligibility

AWI makes statements called determinations and redeterminations regarding the application of law to an individual’s eligibility for benefits or the effect of the benefits on an employer’s tax account.³⁷ Determinations are made on the monetary eligibility requirements, as discussed above, and on the non-monetary eligibility requirements, as discussed below, to receive UC benefits. Based upon information provided with filed claims for benefits, AWI makes an initial determination on entitlement to benefits. If AWI finds an error or new evidence or information pertinent to the determination, the agency may issue a redetermination. A determination becomes final after 20 days have expired. A party who believes a determination is inaccurate may request reconsideration

³⁴ Section 443.036(7), F.S.

³⁵ See AWI’s Bill Analysis of SB 516 (2009), on file with the Senate Commerce Committee.

³⁶ Rules 60BB-2.025 and 2.027, F.A.C.

³⁷ Section 443.151(3), F.S., outlines the process used by AWI to make UC benefit determinations and redeterminations.

within 20 days from the mailing of the determination or notice thereof. The applicant or employer may request an administrative hearing before an appeals referee in the Office of Appeals.³⁸

The process for determining eligibility for UC benefits can be very complex; determinations on the monetary eligibility requirements and on the non-monetary eligibility requirements are made separately and can end up being reconsidered and appealed separately. However, before a non-monetary determination can be issued there must be some monetary eligibility for benefits established.

Following the submission of an initial application for benefits, AWI determines the monetary award of the claim, and sends the applicant a Wage Transcript and Determination for review.³⁹ The claimant can request reconsideration for staff to review the determination and locate additional wages that may not have been included in the initial determination or investigate errors. In the event that AWI cannot confirm the additional employment, the claimant may request an appeals hearing.⁴⁰ Further, during this process, if AWI cannot identify the employer or there is an allegation that the claimant was an independent contractor, an investigation is made of the employer's liability. This may result in the employer filing a liability appeal which is heard by an agency special deputy.

While agency staff reviews the monetary eligibility of a claimant, review for the non-monetary determination may begin for a claimant who has sufficient wage credits to establish monetary eligibility. The adjudication process is undertaken when the claimant indicates the most recent job separation occurred for reasons other than lack of work. After an initial non-monetary determination is mailed to the parties, the party adversely affected by the determination can request a hearing.

Disqualification from Benefits (non-monetary determinations)

The state's UC laws contemplate that a claimant was employed in the capacity of an employee, and not an independent contractor.⁴¹ A claimant must be unemployed due to layoffs or otherwise through no fault of their own to be eligible for benefit payments.

An individual may be disqualified from receiving UC benefits for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work. 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 to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months. Additionally, an individual is not disqualified 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 cause not related to any of the conditions specified in statute will be disqualified from receiving benefits.⁴²

³⁸ Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Appeals of appeals referee decisions are reviewed by the Unemployment Appeals Commission; appeals of commission decisions may only be reviewed by appeal to a Florida district court of appeal.

³⁹ Typically the Wage Transcript and Determination is received by the claimant 7 to 10 working days after filing a claim. The Wage Transcript and Determination provides information to the claimant on how the individual's benefit amount was determined, the weekly benefit amount, available credits (the maximum amount of UC benefits available to a claimant per benefit year), and the individual's benefit year end date.

⁴⁰ Throughout the reconsideration and appeals processes, the claimant must continue to report to AWI every two weeks to claim unemployment benefits (unless the claimant decides not to continue the process to obtain UC benefits).

⁴¹ See General Tax Administration of the Department of Revenue, Florida Unemployment Compensation Employer Handbook, pp. 5 - 8, last revised April 2008. When a claimant's classification is at issue, the Department of Revenue investigates and makes a determination on the claimant's employment.

⁴² Section 443.101, F.S. Quitting work for a cause which is personally good, but not identified in the statute as a "good cause," may result in an individual's disqualification.

Other circumstances under which an individual would be disqualified from receiving unemployment compensation benefits include:⁴³

- 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 remuneration in the form of wages, 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;
- 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.

Individuals who attend training approved by AWI, or approved under s. 236(a)(1) of the Trade Act of 1974, may not be denied benefits for any week in which he or she was in training, provided that the claimant satisfies eligibility conditions set in rule.⁴⁴

Further, Florida's UC law provides no definition of part-time and full-time work and makes no distinction between the two with respect to monetary eligibility or disqualification for 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 also be ready, willing, and able to work and actively seeking work.⁴⁵ An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, 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.⁴⁶

AWI's website provides links to local, state, and national employment databases.⁴⁷ Claimants are automatically registered with their local One-Stop Career Center when their claims are filed.⁴⁸ The One-Stops provide job

⁴³ Section 443.101, F.S. The statute specifies the duration of the disqualification depending on the reason for the disqualification.

⁴⁴ Rule 60BB-3.022, F.A.C.

⁴⁵ Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" 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 in Rule 60BB-3.021, F.A.C.

⁴⁶ Rule 60BB-3.011(12), F.A.C.

⁴⁷ For example, on www.fluidnow.com, where individuals can claim their weeks online.

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.⁴⁹ Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).⁵⁰

State Extended Benefits

State extended benefits are extra benefits that can be paid to unemployed individuals after an individual's regular benefits have run out.⁵¹ These benefits are only available under certain conditions; the extended benefit period is not always available. Typically, under Florida law a state extended benefits period is only triggered "on" when the rate of insured unemployment (individual unemployment rate, or IUR), not seasonally adjusted, over the preceding 13 week period equals or exceeds 5 percent and 120 percent of the average for the period.⁵² When a state extended benefit period triggers "on," eligible individuals may receive another 13 weeks of unemployment benefits.

Individuals currently claiming benefits when the extended benefits period begins automatically receive extended benefits when they exhaust all available regular benefits. Individuals who are not in continuous reporting status or who have had intervening employment since last receiving benefits, have to apply for extended benefits so that their eligibility can be determined based on the requirements of ss. 443.091 and 443.101, F.S. Generally, eligible individuals are those persons who still meet criteria to receive regular benefits. However, different from the eligibility for regular benefits, individuals may be disqualified from receiving extended benefits if:

- The individual failed to apply for or accept suitable work; or
- The individual failed to furnish evidence that he or she is actively engaged in a systematic and sustained effort to find work.

Individuals receive weekly benefit amounts equal to the average benefit amounts the individual was receiving in the regular benefit period. An individual may receive a total amount of extended benefits equal to the lesser of:

- 50 percent of the total regular benefits payable in his or her benefit year; or
- 13 times the individual's benefit amount for one week in his or her benefit year.

Federal law provides that when state extended benefits trigger "on" the federal government will share 50 percent of the benefit cost for all insured employers; essentially the federal government will pay 50 percent of extended benefit costs to private employers. The state and local governments in Florida are self-insured and are not eligible for federal sharing.⁵³ This state extended benefits program is not currently available; AWI does not anticipate that the state extended benefits program will trigger "on" in the near future.⁵⁴

⁴⁸ AWI's Office of Workforce Services is responsible for providing One-Stop Program Support services to the Regional Workforce Boards.

⁴⁹ Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. <https://www.employflorida.com>

⁵⁰ 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.

⁵¹ Section 443.1115, F.S.

⁵² But see State Legislation in 2009 Related to UC Benefits infra. In this document the Recovery Act and 2009 legislative changes associated with state extended benefits are referred to as "temporary state extended benefits," which are discussed in detail below.

⁵³ Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; 20 C.F.R. s. 615.14 (2006).

⁵⁴ See State Legislation in 2009 Related to UC Benefits infra.

Special UC Benefits Programs

AWI also administers several special programs that involve unemployment compensation.⁵⁵ The programs encompass disaster unemployment assistance, short-time compensation, trade readjustment allowance, and UC for ex-servicemembers and federal civilian employees.

Disaster unemployment assistance is available to individuals working or residing in an officially declared disaster area who become unemployed as a direct result of the disaster. It is a federally funded program. The assistance must be requested by the Governor and approved by the President. Individuals have 30 days from the date of the announcement of availability of the funds to apply. Such individuals must have exhausted all regular state benefits and emergency unemployment compensation claims to receive the funds; additionally, some individuals who are disqualified from receiving regular unemployment may be entitled to disaster unemployment assistance. Benefits are available for 26 weeks from the date of the disaster.⁵⁶ During FY 2008-2009, AWI processed 1,380 claims for disaster unemployment assistance and paid benefits totaling \$132,101.⁵⁷

Short-time compensation is a special claims program that pays partial benefits to groups of employees working reduced hours.⁵⁸ Employers may voluntarily participate in this program to retain employees by reducing hours for an entire group of employees instead of resorting to temporary layoffs. At least 10 percent (not less than 2 employees), but no more than 40 percent, of the employees in the total staff or in a particular department must work reduced hours. Employees who are named by the employer as an employee participating in the program will receive a partial unemployment check to supplement their reduced paycheck. Employees participating must have been full-time employees, must work or receive paid leave for all hours scheduled by the employer, and must report the reduced hours, through their employers, to AWI every 2 weeks. The situation must be a temporary situation, which replaces a temporary layoff. Currently, there are 335 approved short-time compensation plans, which cover a total of 13,710 employees. During FY 2008-2009, out of the total number of employees covered, 7,426 participants were paid a total of \$3,375,738 in benefits.⁵⁹

The Trade Adjustment Assistance program provides assistance to workers who have been totally or partially separated from their jobs because of increased foreign imports. The USDOL certifies groups of workers as eligible for assistance as of a certain “impact date.” The Trade Adjustment Assistance program can provide benefits associated with training, job search, relocation allowances, and other reemployment services. Trade Readjustment Allowances can provide weekly cash benefits (income support) to affected individuals who have exhausted the UC benefits. The weekly amount of an individual’s Trade Readjustment Allowances will generally be the same as the amount of the state UC benefits that the individual was receiving, and is reduced by any additional income received, such as earnings, federal training allowances, and extended unemployment received.⁶⁰ During FY 2008-2009 there were 258 recipients of basic Trade Readjustment Allowances receiving \$199,241 in benefits, and 124 recipients of additional Trade Readjustment Allowances that received benefits totaling \$135,872.⁶¹

Federal law provides for the payment of UC for former members of the Armed Forces (ex-service members), referred to as UCX claims.⁶² It also provides for the payment of unemployment compensation to federal civilian

⁵⁵ Information from AWI’s website at http://www.floridajobs.org/unemployment/uc_spec_prog.html (last visited 10/20/2009).

⁵⁶ See also USDOL, Disaster Unemployment Insurance, at <http://www.workforcesecurity.doleta.gov/unemploy/disaster.asp> (last visited 10/20/2009).

⁵⁷ Information from AWI, on file with the Senate Commerce Committee.

⁵⁸ Section 443.1116, F.S.

⁵⁹ Information from AWI, on file with the Senate Commerce Committee.

⁶⁰ Information also from USDOL, Trade Act Program: TAA for Workers, at <http://www.doleta.gov/tradeact/> (last visited 10/20/2009); and USDOL, Trade Readjustment Allowances, at <http://www.workforcesecurity.doleta.gov/unemploy/tra.asp> (last visited 10/20/2009).

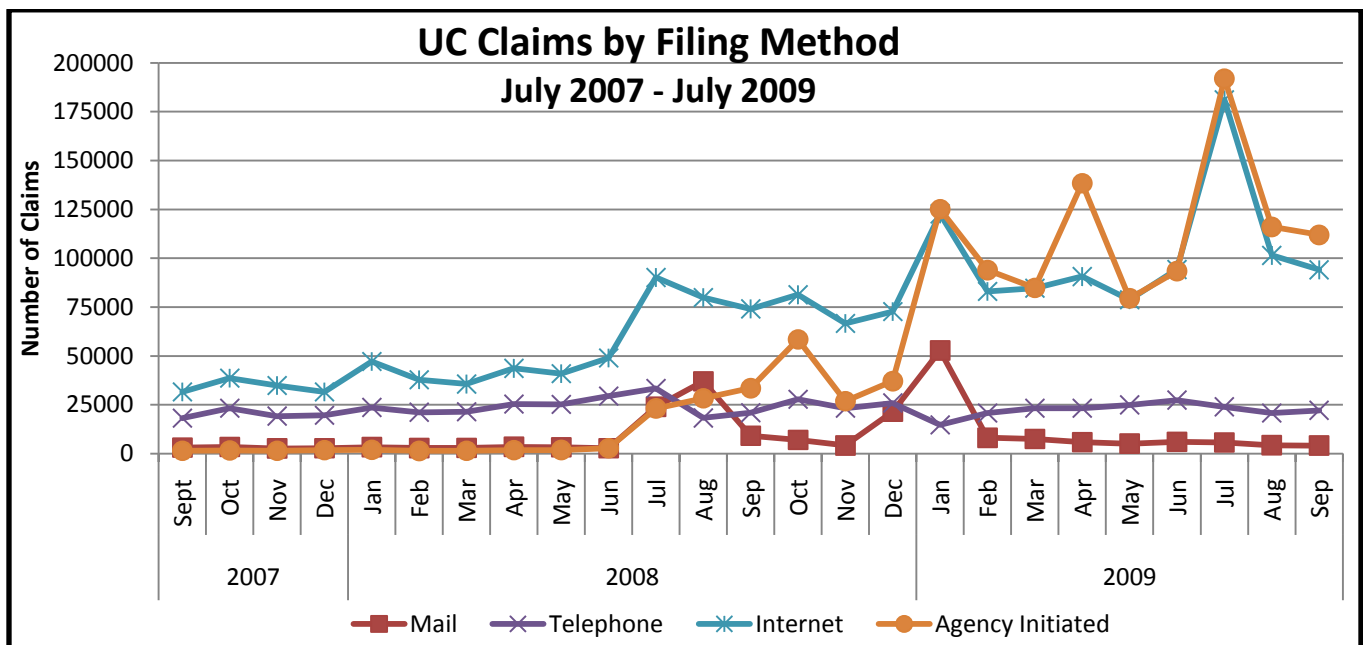
⁶¹ Information from AWI, on file with the Senate Commerce Committee.

⁶² 5 U.S.C. 8521, et seq. 20 C.F.R. 614.1, et seq. See also USDOL, Unemployment Compensation for Ex-servicemembers, at <http://www.workforcesecurity.doleta.gov/unemploy/ucx.asp> (last visited 10/20/2009).

employees who are unemployed, referred to as UCFE claims.⁶³ The law covers all civilian employees of the United States or instrumentalities wholly or partially owned by the United States, with certain specified exceptions. Both UC programs are maintained by the state UC agency in accordance with agreements with the USDOL. Claims are processed under the state's UC laws, and ex-service members and federal civilian service and wages are treated as though they were included under that state's unemployment compensation law. Benefits paid are financed through Federal Employees Compensation Account of the federal Unemployment Trust Fund. Funds needed to pay benefits on UCX and UCFE claims are transferred daily to Florida's account. During FY 2008-2009 the agency processed 7,030 UCX claims and paid benefits totaling \$16,119,049. During the same period, AWI processed 3,791 UCFE claims and paid a total of \$5,042,791 in benefits.⁶⁴

Claiming Benefits⁶⁵

An unemployed individual may file a claim for UC benefits by telephone, paper application, or over the internet.⁶⁶ A claim is effective the Sunday prior to the date that it is filed or postmarked. Credit cannot be given for any weeks of unemployment prior to the effective date of the claim.



Information obtained from AWI.

The date that an individual completes the application for UC benefits determines the date that benefits begin. An individual must wait for one week before receiving UC benefits.⁶⁷ This waiting period allows AWI, in beginning the determination process as to the validity of the claim, to give employers time to respond to a claim prior to the payment of benefits. Individuals determined to be eligible for UC benefits should receive their first benefit payment 3 to 4 weeks after a valid claim has been filed.

⁶³ 5 U.S.C. 8501, et. seq. 20 C.F.R. 609.1, et. seq. See also USDOL, Unemployment Compensation for Federal Employees, at <http://www.workforcesecurity.doleta.gov/unemploy/unemcomp.asp> (last visited 10/20/2009).

⁶⁴ Information from AWI, on file with the Senate Commerce Committee. UCX and UCFE claims are paid with federal funds.

⁶⁵ Information obtained from AWI, Benefits Rights Information, at http://www.floridajobs.org/unemployment/uc_bri.html (last visited 10/20/2009); and AWI, UC Claims Services Claim Book, at http://www.floridajobs.org/unemployment/uc_claimbooklet.html (last visited 10/20/2009).

⁶⁶ The paper application may be mailed or faxed to AWI.

⁶⁷ Section 443.091(1)(e), F.S. Typically the waiting week is the first week that an individual claims. Individuals are not paid benefits for the required 1 week waiting period.

Valid claims for benefits last for 1 year; no additional entitlement may be established until that first claim expires if all benefits are used prior to the expiration of the year.⁶⁸ An individual may establish another benefit year only after the termination of the preceding year. If an individual is in continuous reporting, in other words currently receiving UC benefits, when his or her benefit year ends, then AWI’s computer system automatically calculates the individual’s monetary eligibility for a new benefit year for the week that crosses the benefit year end date.⁶⁹ If the individual is not eligible for a new benefit year, benefit payments continue on the individual’s extended claim applicable to the prior benefit year.

For an individual who is monetary eligible, a new claim can be established if the individual also meets a requalifying requirement.⁷⁰ Also referred to as the double dip, the state UC law provides that, to receive benefits during a new benefit year, an individual must have worked and earned at least 3 times the weekly benefit amount of his or her new claim during the preceding benefit year. If the requalifying requirement has not been met, the claimant is issued a determination holding her or him ineligible on the new claim and payment resumes on the extended program available on the prior claim.⁷¹ As soon as the individual earns enough to satisfy the requalifying requirement, the ineligibility can be removed and benefits paid on the new claim.

Requalifying Chart													
Prior Year				Current Year				Next Year					
Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	
Base Period (Jan. 1 – Dec. 31)				Lag Quarter	Claim Filed								
				Benefit Year (Apr. 1 – Mar. 31)									
				Eligible for regular state benefits, EUC, and temporary state extended benefits (2008 – 2010)									
				Base Period (Jan. 1 – Dec. 31)			Lag Quarter	New Claim Filed					
								Benefit Year (Apr. 1 – Mar. 31) (if qualify)					

Information compiled by the Senate Commerce Committee.

Individuals must report to AWI every two weeks to claim benefits. Claimants receive an “information notice” within 18 days of filing their claims, which advises them of the date when they are required to claim weeks.⁷² Benefits can only be paid for weeks that were properly claimed; otherwise benefits will be delayed and possibly denied. Benefits are paid every two weeks.

In addition to reporting to AWI to claim weeks and certifying reemployment efforts, claimants must also report any income earned during each week. This is required for any compensated work, including paid attendance at training or job orientation.

⁶⁸ Section 443.036(9), F.S.

⁶⁹ This is known as an agency initiated claim.

⁷⁰ Section 443.091(2), F.S. This new claim could result in benefits received beyond the currently expected 79 weeks for some individuals.

⁷¹ This same process is replayed when the calendar quarters change because a new base period would be applicable to a claim established during any subsequent quarter.

⁷² Claimants are also given certain days of the week to claim benefits. For social security numbers ending with an even number, these individuals are scheduled to claim on Mondays. For social security numbers ending with an odd number, claims are made on Tuesdays.

Benefit Payments

Individuals eligible for UC benefits may choose to receive their benefit payments by a check, delivered by mail, or by an electronic funds transfer to a bank account. The method of payment is not a permanent election and may be changed by the individual by contacting AWI.⁷³

Checks are mailed the day after they are issued, and the claimant's place of residence dictates the length of time it takes to receive the payment. The costs associated with issuing checks are low; mainly the costs are the postage and the administrative activities associated with returned and forged checks.

The option of electronic funds transfers became available in 2003. The funds are transferred by the Department of Financial Services to Wachovia, who then disperses the payments to the individuals' financial institutions, who in turn transfer the funds to the individual accounts. From the date the warrant is issued, the individual receives the payment by the third day.

An innovation that AWI is implementing in this area is benefit payments to debit cards.⁷⁴ Chapter 2008-167, L.O.F., authorized AWI to develop a system for the payment of UC benefits by electronic payment cards or debit cards. AWI recently selected a vendor, through a competitive solicitation process, to assist with implementation of this endeavor. It is expected that the program will be implemented in early 2010.

The program will provide an electronic card to the claimant which will operate similarly to a debit card one might have with a bank or credit union. The card will be branded so that it can be used at virtually any outlet that accepts electronic payments. When funds are approved on a claim, the Department of Financial Services will transfer the funds to the vendor who will transfer the funds to the account assigned to the card. The claimant will be able to contact the vendor to determine available balances on the card and make purchases. Claimants will likely receive their funds in the same time frame as an electronic funds transfer, which is also an Automated Clearing House (ACH) Network transaction. There would be no cost to recipients for debit card usage within the vendor network or at any retail location, but it is not known at this time what costs might be incurred outside the network.

AWI anticipates that the cost for this innovation in payments will be minimal. The largest cost will be for computer programming, similar to what AWI incurred with implementing the electronic funds transfers in 2003.⁷⁵ AWI estimates it could save \$317,000 annually using an electronic card for benefit payments versus mailing checks.⁷⁶ This program will be funded through federal UC administrative funds.

UC Benefit Figures

About \$647 million in UC benefit payments were paid in September 2009. This is a 147% increase from September 2008, due in part to the additional UC benefits provided by the state and federal government. Of the total September 2009 payments, about \$285 million was paid for regular state UC claims.⁷⁷

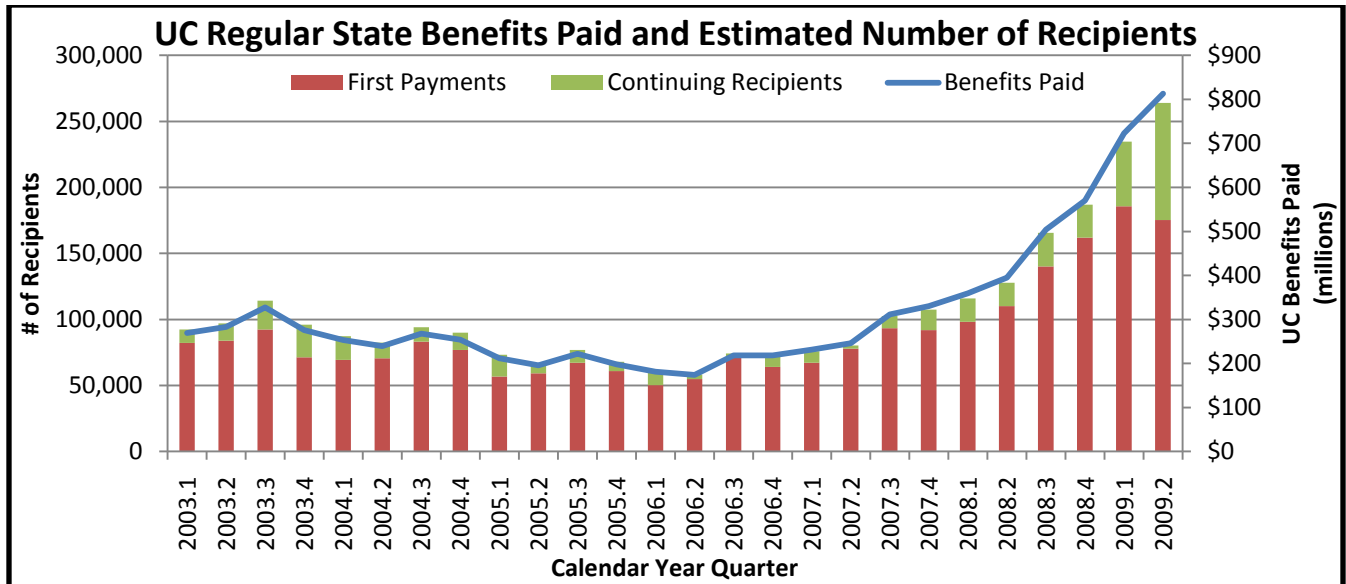
⁷³ See AWI, Unemployment Compensation Frequently Asked Questions, p. 9, available at <http://www.floridajobs.org/unemployment/Frequently%20Asked%20Questions.doc> (last visited 10/20/2009).

⁷⁴ Currently, about 31 states offer the use of debit cards. USDOL Unemployment Insurance Program Letter (UIPL) No. 34-09, at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2795 (last visited 10/20/2009).

⁷⁵ The cost to implement the electronic funds transfer was \$200,000. The estimated cost to implement the debit card program was \$300,000. See Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1026 (March 16, 2008).

⁷⁶ See Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1026 (March 16, 2008). The analysis states that AWI calculated the cost of postage for checks as \$370,000 per year (1 million checks at \$.37 for postage). Because a claimant would maintain one debit card, the cost for postage was estimated to be \$52,910 annually (143,000 cards at \$.37 for postage). Currently the postage rate is \$.44 per letter.

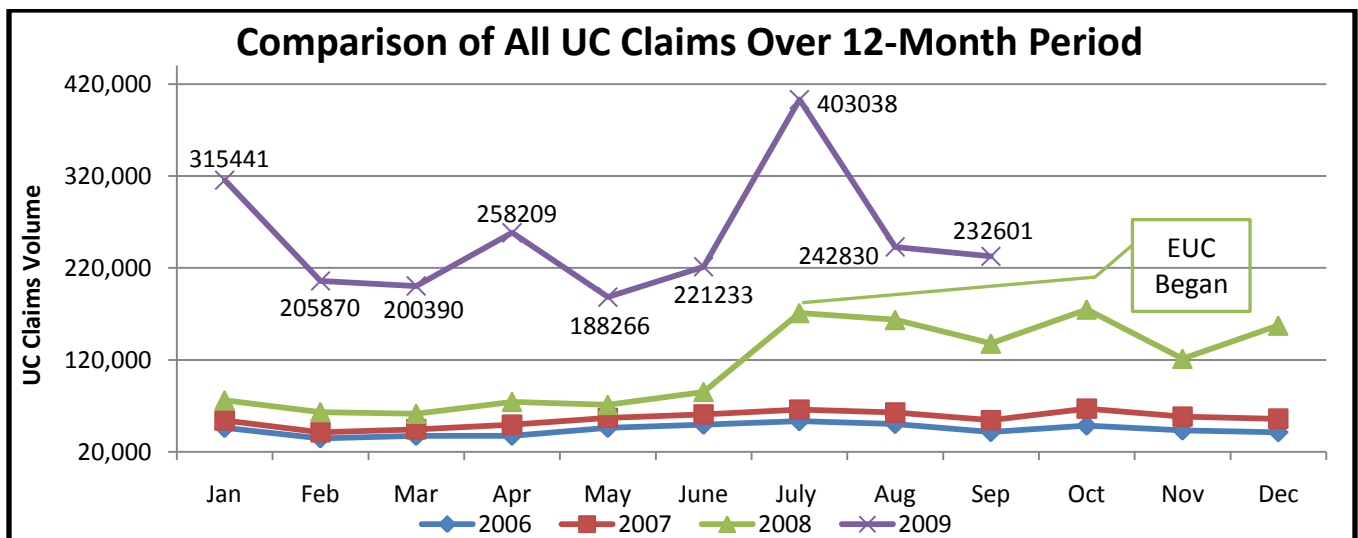
⁷⁷ Information from AWI, on file with the Senate Commerce Committee.



Information compiled from the USDOL Unemployment Insurance Data Summary website available at <http://www.workforcesecurity.doleta.gov/unemploy/content/data.asp> (last visited 10/16/2009).

AWI paid beneficiaries about \$4.2 billion in benefits in FY 2008-2009; this includes \$2.6 billion in regular state benefits, \$1.4 billion in federal emergency UC, \$177.8 million in federal additional UC, and \$131,690 in disaster unemployment assistance. A total of \$72.1 million, or 1.7 percent, was determined overpaid. Determinations for fraud accounted for \$6.2 million.⁷⁸ The remainder of the overpayments was principally the result of the non-monetary process – either from lack of timely information from employers or reversals from the appeals process.⁷⁹

For October 2009, AWI predicts a 23 percent increase in daily UC claims compared to September 2008. For the second quarter of 2009, about 33% of unemployed were receiving regular UC benefits; about 46 percent of unemployed were receiving some form of UC benefits.⁸⁰ It is estimated that between 20,000 - 25,000 individuals per month will exhaust their regular (state) and federal emergency unemployment compensation benefits.⁸¹



Information obtained from AWI. Includes claims for regular state benefits, emergency unemployment compensation (EUC), temporary state extended benefits, and disaster unemployment assistance.

⁷⁸ Determinations for fraud are made based upon the findings of investigations and audits. See s. 443.071, F.S.

⁷⁹ Information from AWI, on file with the Senate Commerce Committee.

⁸⁰ USDOL Unemployment Insurance Data Summary website available at <http://www.workforcesecurity.doleta.gov/unemploy/content/data.asp> (last visited 10/19/2009).

⁸¹ Information from AWI, on file with the Senate Commerce Committee.

Federal Legislation - The American Recovery and Reinvestment Act of 2009

The Recovery Act contains provisions for funding of additional UC benefits, increased time for eligibility for emergency unemployment compensation, and temporary state extended benefits.

Federal Additional UC Benefits Payments

The Recovery Act provides an additional \$25 per week in benefits to UC recipients for unemployment compensation claims established between February 22, 2009, and December 26, 2009.⁸² Eligible UC benefit claimants are those individuals making regular state claims, federal civilian employee claims, ex-servicemembers claims, emergency unemployment compensation claims, state extended benefit claims, or seeking trade readjustment allowances, disaster unemployment assistance, and short-time compensation.

UC claimants began receiving the federally funded \$25 increase per week claimed in mid-March and will be available for weeks claimed until July 3, 2010.⁸³ Payments are issued bi-weekly in a payment separate from the regular UC benefits, as these payments are made from a federal account rather than Florida's trust fund. Through October 10, 2009, Floridian UC claimants had received a total of \$388.4 in extra payments (for 912,375 claims).⁸⁴

Eligibility for Emergency Unemployment Compensation (Federal)

Emergency unemployment compensation (EUC) is specially extended benefits available to individuals who have exhausted all rights to regular state benefits. Signed into law on June 30, 2008, EUC became payable for the week ending July 12, 2008, pursuant to Public L. No. 110-252. First-tier EUC benefits are automatically established when individuals exhaust their regular state benefits.

The Unemployment Compensation Extension Act of 2008, Public L. No. 110-449, extended the eligibility period (to the week ending March 28, 2009; payable until August 29, 2009) and expanded the amount of benefits that could be paid under the EUC program from up to 13 weeks to 20 weeks of benefits.⁸⁵ In addition, the law created a second tier of benefit eligibility for up to an additional 13 weeks of benefits in states with a total unemployment rate of 6 percent or higher. At the time of passage, Florida had a 7.4 percent unemployment rate.⁸⁶

The Recovery Act extended the ability for individuals to apply to receive EUC benefits to December 26, 2009.⁸⁷ Individuals who exhaust their first-tier EUC benefits prior to December 26, 2009, will automatically have their second-tier EUC benefits established. Any EUC benefits may be claimed up to June 5, 2010.⁸⁸ Extension of these benefits is entirely federally funded. Florida's estimated share for the continuance of the EUC is \$1.04 billion.⁸⁹ In FY 2008-2009, \$212.4 million in EUC payments were made to Florida recipients as a result of the Recovery Act.

⁸² Section 2002, Public L. No. 111-5. Governor Crist signed a letter of agreement with the U.S. Department of Labor to allow payment of these funds on February 20, 2009.

⁸³ A bill was filed in the United States House of Representatives on July 30, 2009, which would extend the extra \$25 payment for weeks claimed until June 30, 2011 (eligibility established by January 1, 2011). See H.R. 3404, S. 1647 (111th Congress, 2009).

⁸⁴ Information from AWI, on file with the Senate Commerce Committee.

⁸⁵ Signed into law November 21, 2008.

⁸⁶ November 2008 unemployment rate, from Florida Research and Economic Database, Labor Market Statistics, Local Area Unemployment Statistics Program.

⁸⁷ Section 2001, Public L. No. 111-5. The state of Florida entered into an agreement with the U.S. Department of Labor to allow payment of EUC in June 2008. Governor Crist signed a letter of agreement with the U.S. Department of Labor to allow payment of these funds pursuant to the Recovery Act on March 18, 2009.

⁸⁸ A bill was filed in the United States House of Representatives on September 10, 2009, which would create a third tier of EUC benefits for 13 weeks. This bill was approved by the House on September 22, 2009, and sent to United States Senate for consideration. See H.R. 3548 (111th Congress, 2009). Another bill was filed in July 2009 that would extend eligibility for both EUC tiers until December 31, 2010 (payable until May 31, 2011), and also included the same creation of a third tier of EUC benefits. See H.R. 3404, S. 1647 (111th Congress, 2009).

⁸⁹ The total amount of EUC paid in Florida for FY 2008-2009 was a little over \$1.415 billion. This number includes EUC paid prior to the extensions in November 2008 and February 2009.

It is estimated that Floridians will receive about \$814.38 million in FY 2009-2010 before the program terminates.⁹⁰ Recipients of EUC benefits will receive up to \$275 per week claimed. As of October 10, 2009, Floridian UC claimants had received a total of \$843.5 million in EUC benefits as a result of the Recovery Act (for 773,439 claims).⁹¹

Suspension of Federal Income Tax

The Recovery Act also suspended federal income tax assessed against the first \$2,400 of UC benefits an individual receives in the 2009 tax year.⁹²

Trade Adjustment Expanded Income Support

The Recovery Act extends the federal Trade Adjustment Assistance program in several ways. Relevant to UC benefits, under the expanded program, workers may receive up to 130 weeks of income support if enrolled in full-time training, and up to 156 weeks of income support if enrolled in remedial training. Income support includes both UC benefits and trade readjustment allowances (payable when UC benefits are exhausted). Workers eligible for the program who filed petitions after May 18, 2009, became eligible for the expanded program income support provisions under the Recovery Act.⁹³

Alternative Trigger for Regular State Extended Benefits

When a state enters an extended benefits period, the Recovery Act provides that the federal government will pay 100 percent of payments to former private sector employees through May 29, 2010 (for claimants that qualify by December 26, 2009).⁹⁴ States may elect to participate in an alternate extended benefits trigger rate; such action will increase the likelihood that a state's extended benefits period would trigger "on." After December 26, 2009, any extended benefits paid are only reimbursed by the federal government at a rate of 50 percent for former private sector employees making new claims. A participating state may set a sunset date in enacting the alternate trigger. Florida has elected to participate in the alternative state extended benefits trigger, discussed below as temporary state extended benefits.

State Legislation in 2009 Related to UC Benefits

Temporary State Extended UC Benefits

Chapter 2009-99, F.S., in part, authorizes and creates a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds under the Recovery Act.⁹⁵ Florida's temporary state extended benefits program is effective between February 1, 2009, and January 2, 2010.⁹⁶ Temporary state extended benefits triggered "on" on February 1, 2009, and will trigger "off" on December 12, 2009.

⁹⁰ Information from the Florida Office of Economic Recovery at <http://flarecovery.com/about/state-and-local-projects/safety-net/unemployment-compensation-emergency-extended-benefits> (last visited 10/20/2009). AWI stated that this estimate had not been adjusted as of August 10, 2009.

⁹¹ Information from AWI, on file with the Senate Commerce Committee.

⁹² Section 1007, Public L. No. 111-5. UC benefits are subject to the federal income tax (since 1878). Claimants may voluntarily elect for AWI to deduct and withhold federal income tax due (s. 443.151(1)(b), F.S.; Public L. No. 103-465). A Form 1099-G is furnished to claimants at the end of January each year, which reports benefits paid and taxes withheld during the prior year. The same information is sent to the Internal Revenue Service.

⁹³ AWI Press Release, AWI Announces Recovery Act-Expanded Worker Retraining Program, May 18, 2009. For claims filed before May 18, 2009, benefits last up to 104 weeks for workers enrolled in full-time training and up to 130 weeks of payments if the worker was also enrolled in remedial training. See s. 1828, Public L. No. 111-5.

⁹⁴ Section 2005, Public L. No. 111-5. A bill was filed in the United States House of Representatives on July 30, 2009, which would extend full federal funding for state extended benefits established by January 1, 2011 (payable until the end of May 2011). See H.R. 3404, S. 1647 (111th Congress, 2009). Florida law would need to be amended in order to take advantage of the extension. See State Legislation in 2009 Related to UC Benefits, below.

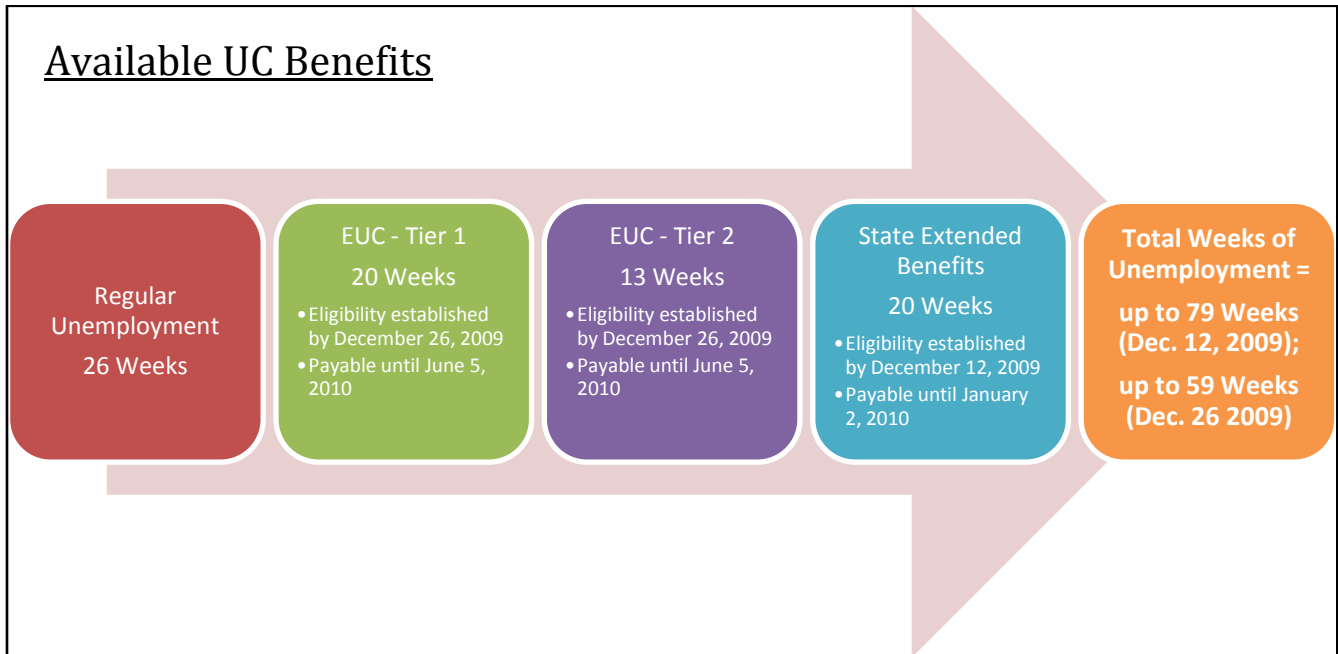
⁹⁵ Section 443.1117, F.S. See ss. 4, 5, and 7, ch. 2009-99, L.O.F.

⁹⁶ The temporary state extended benefits were to be available for 13 to 20 weeks, depending on the average total rate of unemployment. Because of Florida's high unemployment rate, temporary state extended benefits were available for the 20

Individuals who have exhausted regular benefits and emergency federal extended benefits between February 22, 2009, and December 12, 2009, will be eligible for temporary state extended benefits to be paid for up to 20 weeks until January 2, 2010.⁹⁷ By implementing a temporary state extended benefits period based upon the average total unemployment rate (TUR), Florida will qualify for 100 percent funding, also known as federal sharing, for the state extended benefits for private employers (approximately \$418 million in stimulus funds). The related Recovery Act funds are paid from a separate federal general revenue account and do not affect the balance of Florida’s UC Trust Fund.

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 cost is estimated to total \$24.4 million, approximately \$2.4 million from state funds and \$22 million from local government funds. 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.

Applicants can apply for temporary state extended benefits online or by mailing in an application. As with the state extended benefits program under s. 443.1115, F.S., applicants must meet the heightened requirements for searching for work. AWI began payments for extended benefits on July 2, 2009. It is estimated that about 250,000 Floridians will be eligible for funds over the temporary time period. By October 10, 2009, a total of \$384.5 million had been paid in state extended benefits (for 114,554 claims).⁹⁸ Additionally, individuals receiving temporary state extended benefits are still eligible to receive the separate \$25 additional benefits payment for the duration of their extended benefits period.



The availability of UC benefits is particular to each individual; for individual claims, consult AWI for specific information.

AWI estimates that the Recovery Act has resulted in a positive impact of \$1.5 billion to Florida’s economy. The Recovery Act funding for the additional UC benefits totaled approximately \$944.5 million through August 21, 2009, paid to 753,377 Floridians.⁹⁹

week time period. AWI does not anticipate that the regular state extended benefits program will trigger “on” during this period.

⁹⁷ Benefits were made available retroactive to the date SB 810 was signed into law.

⁹⁸ This total does not include any payments made for the \$25 additional benefit payments. Information from AWI, on file with the Senate Commerce Committee.

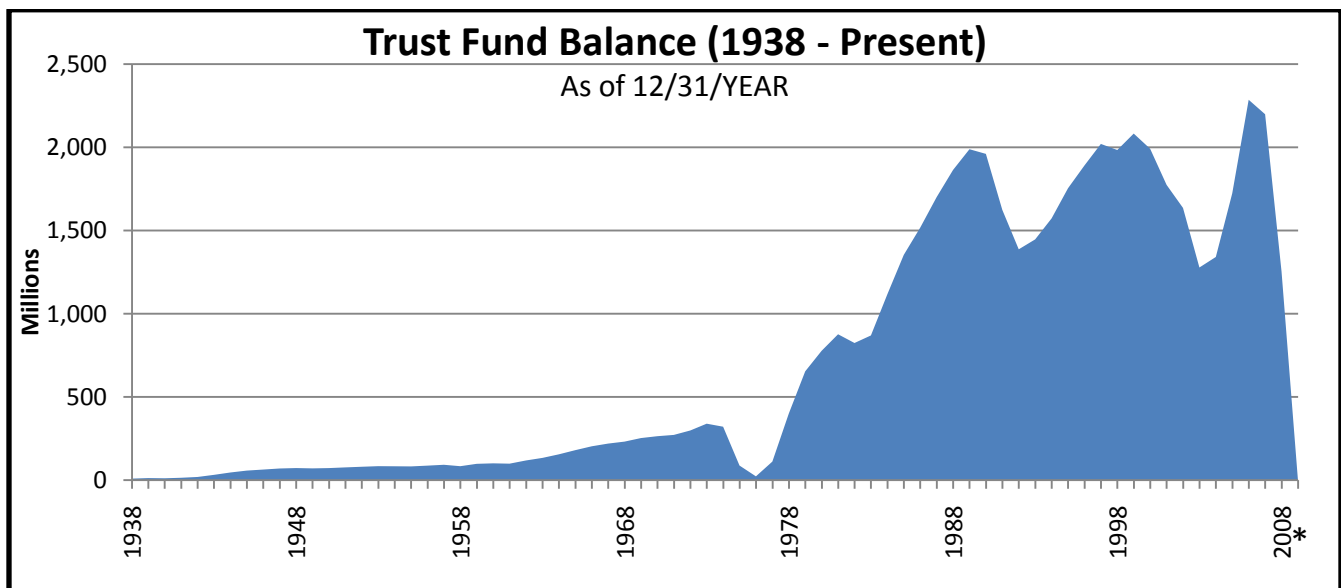
⁹⁹ AWI Press Release, Florida’s July Employment Figures Released, (August 21, 2009).

Clarification of Disqualification for Benefits

Provisions were added to s. 443.101, F.S., related to disqualification for benefits for two situations when an employee separates from employment.¹⁰⁰ One provision ensures that if an individual gives notice that he or she is going to quit, and the employer fires that individual, without misconduct, before his or her end date, then the individual will be eligible for unemployment benefits until the effective date of his or her notice. Conversely, the second provision states that when an employer gives an individual notice that he or she will be discharged and that individual quits work before that date without good cause, then the individual is not available for work and not eligible for unemployment benefits until the effective date of the employer's discharge.

Unemployment Compensation Trust Fund

Florida sets the state tax structure for the taxable wage base and rate, and funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.¹⁰¹ At the end of the 4th quarter of 2008, Florida had a UC Trust Fund balance of over \$1.3 billion.¹⁰² As of June 30, 2009, the balance was just under \$450 million.¹⁰³ The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.¹⁰⁴



Information obtained from the Florida Department of Revenue.

*As of August 24, 2009, the UC Trust Fund balance fell to \$0 and federal advance monies were drawn down.

Pursuant to s. 443.1316, F.S., unemployment taxes are collected by the Department of Revenue (DOR) under contract with AWI.¹⁰⁵ UC tax collection services have been integrated into the administrative structure of the General Tax Administration program at DOR. DOR registers all liable employers for payment of state

¹⁰⁰ Section 6, ch. 2009-99, L.O.F.

¹⁰¹ Section 443.191, F.S.

¹⁰² Based on information from the Bureau of the Public Debt and U.S. Department of Labor, compiled by the National Conference of State Legislatures as of January 27, 2009, at <http://www.ncsl.org/standcomm/sclaborecon/UIDec2008.htm#StateUnempRatesandBalances> (last visited 10/20/2009).

¹⁰³ Based on information from the Bureau of the Public Debt, compiled monthly by the National Conference of State Legislatures, at <http://www.ncsl.org/default.aspx?tabid=17835> (last visited 10/20/2009).

¹⁰⁴ 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 in August 2009 that based on the most recent data available there were 473,213 contributing employers and 3,253 reimbursing employers in Florida.

¹⁰⁵ DOR receives a monthly reimbursement for its costs incurred under the contract.

unemployment compensation taxes and conducts audits to ensure that employers are properly reporting wages for all employees. Unemployment compensation tax is based upon federal and Florida law that defines employers to be taxed and the amount to be collected from each employer. Twenty five field tax offices throughout the state are available to assist employers with filing unemployment compensation taxes.

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 percent on employees' annual wages.¹⁰⁶ 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.¹⁰⁷ To receive the maximum federal tax credit, Florida has established a taxable wage base for state UC taxes at least equal to the federal taxable wage base – currently \$7,000.¹⁰⁸ Employers pay quarterly taxes on the first \$7,000 of each employee's annual wages for both the Federal and Florida UC taxes.¹⁰⁹

An employer's initial state tax rate is 2.7 percent.¹¹⁰ 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.¹¹¹ The adjustment in the tax rate is determined by calculating several factors.

The "benefit ratio" is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding 3 years by the amount of the employer's payroll during the same 3-year period.¹¹² This is often referred to as "experience rating"; in other words, an employer's tax rate is based on its experience in laying off workers. 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.¹¹³ In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

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, during the previous 3 years, had benefit experience. These variable adjustment factors include the noncharge factor (benefits not

¹⁰⁶ The Federal Unemployment Tax Act (FUTA) is set to be reduced by 0.2 percent for 2010. A bill in Congress which creates a third tier of federal EUC benefits also delays the scheduled reduction in the surtax to 6.0 percent until 2011. See H.R. 3548 (111th Congress, 2009).

¹⁰⁷ At this rate, the cost is \$56 per employee on the first \$7,000 of taxable wages.

¹⁰⁸ Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

This discussion of Florida UC taxes focuses on taxes for the current year, 2009, which is based upon the law prior to the 2009 legislative changes. The 2009 legislative changes affected the taxable wage base and the fund size factor (tax triggers).

¹⁰⁹ Section 443.1217(2)(a), F.S. (2008).

¹¹⁰ Section 443.131(2)(a), F.S. At this rate, the cost is \$189 per employee on the first \$7,000 of taxable wages.

¹¹¹ 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."

At the rate of 5.4 percent, the cost is \$378 per employee on the first \$7,000 of taxable wages; and at a tax rate of 0.1 percent, the cost is \$7 per employee. About 74 percent of Florida employers were taxed at the lowest experience factor (average tax rate 0.12 percent) in 2009; at this rate, the cost is \$8.40 per employee on the first \$7,000 of taxable wages.

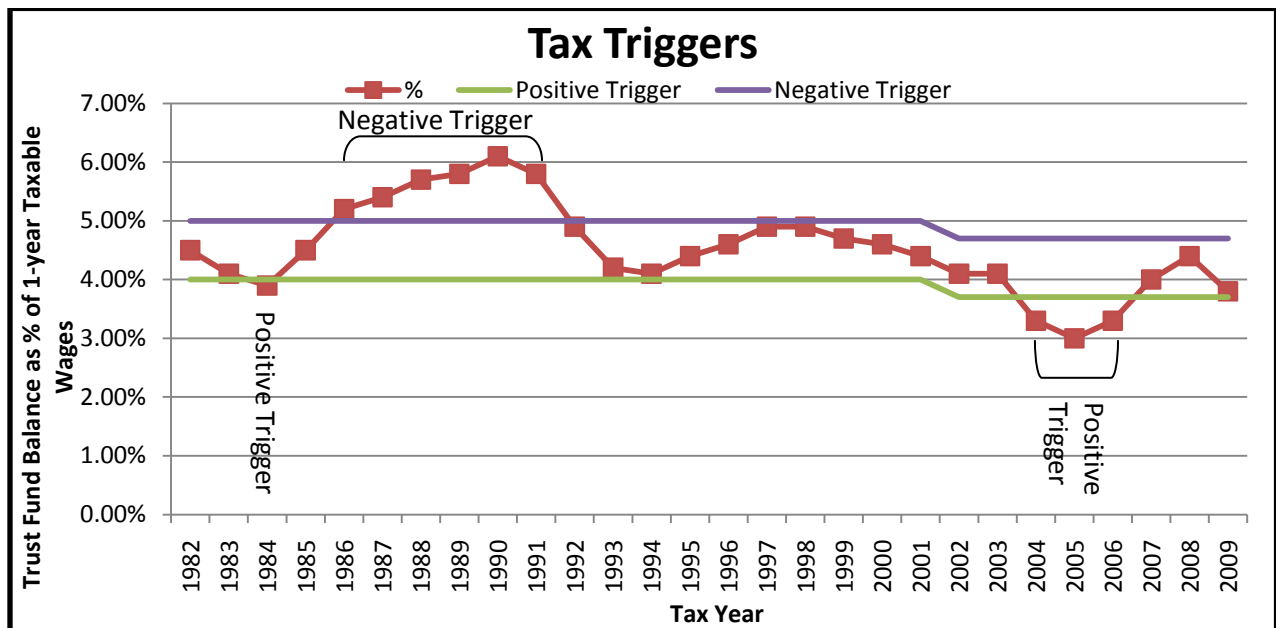
¹¹² Section 443.131(3)(b), F.S.

¹¹³ Section 443.131(3)(a), F.S.

attributable to any employer over the last 3 years), the excess payments factor (that portion of benefit charges which exceed the maximum rate of 5.4 percent), and the fund size factor (requires the trust fund maintain a certain balance, discussed below as “triggers”; currently, if the trust fund size is between 3.7 percent and 4.7 percent of one year’s taxable payroll, the factor will be zero).¹¹⁴

The “final adjustment ratio” is another factor in determining an employer’s tax rate. It spreads costs not obtained by the other factors to all employers who are not at initial or maximum rates. This factor is also applied to employers who have no benefit charges in the preceding 3 years. As a result, this factor determines what the minimum rate for the tax year will be.¹¹⁵

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.¹¹⁶



Information obtained from the Florida Department of Revenue.

The Legislature established the tax triggers in 1957.¹¹⁷ The 1957 law imposed an automatic tax increase on all employers if the trust fund’s balance fell below 4 percent of taxable payrolls on December 31 of each year (also known as the positive fund balance adjustment factor). Conversely, if the trust fund’s balance grew beyond 5 percent of taxable payrolls, the law granted an automatic tax reduction for all employers (also known as the negative fund balance adjustment factor).¹¹⁸ In 1994, the Legislature amended the tax trigger to be calculated using the trust fund’s balance on June 30 of each year.¹¹⁹ From 2003 through the 2009 tax year, the positive fund

¹¹⁴ Section 443.131(3)(e), F.S. (2008). See also DOR, *Tax Rate Methodology*, at <http://dor.myflorida.com/dor/uc/taxratemeth.html> (last visited 10/20/2009).

¹¹⁵ DOR, *Tax Rate Methodology*, at <http://dor.myflorida.com/dor/uc/taxratemeth.html> (last visited 10/20/2009).

¹¹⁶ *Solvency of the Unemployment Compensation Trust Fund and the Tax “Trigger”*, The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

¹¹⁷ Chapter 57-247, L.O.F.

¹¹⁸ Because legislative records from this period are limited, there is no definitive record of the Legislature’s reasoning behind establishing the tax trigger as a range between 4 and 5 percent of taxable payrolls.

¹¹⁹ The data for the 1-year taxable payrolls for the year ending June 30 is required to be reported to DOR by September 30. Whether or not an adjustment will trigger “on” is not known until all information is collected. Section 443.131(3)(e)1., F.S.

balance adjustment factor was 3.7 percent, and the negative fund balance adjustment factor was 4.7 percent.¹²⁰ Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage.

The federal UC system originally operated on the basis that benefits would be forward funded.¹²¹ That is, tax rates and benefit levels were established with the intention that the system would accumulate reserves during economic expansions and, thereby, have sufficient reserves to pay benefits during economic recessions. According to the U.S. General Accounting Office (GAO), this approach was used during the first 30 years of the unemployment insurance system. However, GAO observed that, throughout the most recent three decades, many states have gradually eroded the forward-funding principle by relying on federal loans to pay benefits during recessions due to inadequate trust fund reserves.

In contrast to forward funding, 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. The federal law requires a state’s governor to request the loan from the U.S. Secretary of Labor.¹²²

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. 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. In the current economic climate, states are increasingly requesting federal advances. Twenty-three states currently have requested federal advances.¹²³ In the first quarter of 2009, 14 states had outstanding loans from the Federal Unemployment Account.

Trust Fund Loans¹²⁴	
Outstanding Loans from the Federal Unemployment Account.	
Balances as of October 16, 2009 are:	
Alabama	\$46,966,608
Arkansas	\$128,287,891
California	\$4,465,070,083
Connecticut	\$28,089,827
Florida	\$464,900,000
Idaho	\$73,249,625
Illinois	\$589,391,835
Indiana	\$1,273,612,909
Kentucky	\$467,500,000
Michigan	\$2,766,860,000
Minnesota	\$141,664,220
Missouri	\$325,906,100
New Jersey	\$687,821,333
New York	\$1,582,444,530
North Carolina	\$1,277,171,727
Ohio	\$1,425,237,799

¹²⁰ Section 443.131(3)(e), F.S. (2008). The low and high triggers were adjusted to their current amounts in 2002 by ch. 2002-218, L.O.F., from the amounts they had been since 1957. See State Legislation in 2009 Related to the UC Trust Fund infra.

¹²¹ Information adapted from Solvency of the Unemployment Compensation Trust Fund and the Tax “Trigger”, The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

¹²² 42 U.S.C. s. 1321 (2009).

¹²³ Virginia and Nevada made advance requests to USDOL, but as of October 16, 2009, had not yet drawn down any funds.

¹²⁴ Information obtained from UDSOL website on the UI Budget at <http://www.workforcesecurity.doleta.gov/unemploy/budget.asp#tloans> (last visited 10/20/2009).

Pennsylvania	\$1,302,862,397
Rhode Island	\$100,773,429
South Carolina	\$564,138,430
South Dakota	\$307,762
Texas	\$694,587,660
Virgin Islands	\$4,130,904
Wisconsin	\$675,535,736
Total	\$19,086,510,806

Before 1982, the USDOL provided interest-free loans to pay UC benefits in states with insolvent trust funds. However, under the Omnibus Budget Reconciliation Act of 1981, the U.S. Congress mandated that loans to state UC trust funds after March 1982 carried interest charges with an annual interest rate of up to 10 percent. Interest is due on the last day of the federal fiscal year in which the loans were made (September 30). 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).¹²⁵ 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.

Federal Legislation - The American Recovery and Reinvestment Act of 2009

The Recovery Act essentially provides for a waiver period for interest charges to any advances made to a state.¹²⁶ Any interest due between February 17, 2009, and December 31, 2010, on advances to a state is "deemed to have been paid by the state." Further, the Recovery Act provides that no interest will accrue on any advances made during this period. Thus, on any advance from the USDOL to Florida to pay UC benefits, interest would not accrue on the loan through December 31, 2010; after that date interest would accrue on the outstanding amount of the loan.¹²⁷

State Legislation in 2009 Related to the UC Trust Fund

Chapter 2009-99, L.O.F., amended portions of the unemployment compensation statutes in ch. 443, F.S., related to calculation of employers' tax rates and Unemployment Compensation (UC) Trust Fund solvency. The effect is to replenish the UC Trust Fund sooner than under the parameters in current law for recoupment.

Employer Contributions Based on Wages Increased¹²⁸

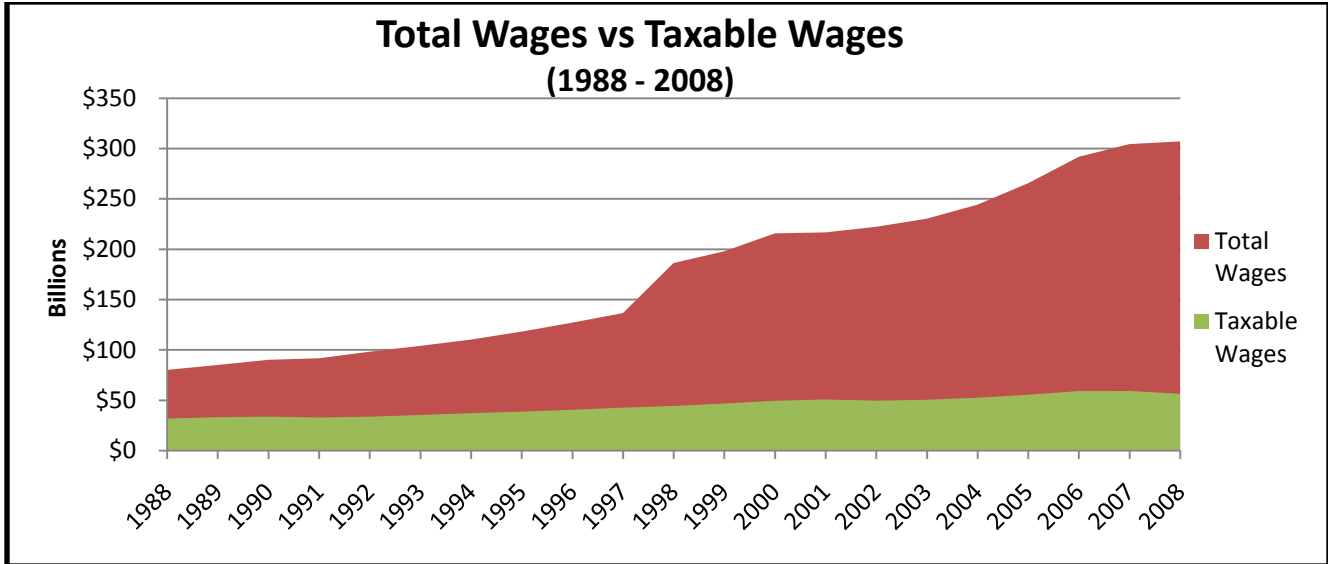
Effective January 1, 2010, the portion of an individual's wages exempt from determining an employer's contributions is decreased from the excess of \$7,000 to the excess of \$8,500. After January 1, 2015, the portion is increased back to wages in excess of \$7,000. In other words, employers will be taxed on an additional \$1,500 per employee for the next 5 years.

¹²⁵ 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.

¹²⁶ Section 2004, Public L. No. 111-5.

¹²⁷ However there is debate on whether or not the federal government will decide to extend the interest waiver beyond 2010.

¹²⁸ Section 1, ch. 2009-99, L.O.F. See s. 443.1217(2)(a), F.S.



Information obtained from the Florida Department of Revenue.

Fund Balance Triggers Adjusted to Recoup More Funds¹²⁹

For the calculation of employers’ contributions rates effective January 1, 2010, the positive fund balance adjustment factor (low trigger) is increased from 3.7 percent of taxable payrolls to 4 percent, imposing the automatic tax increase earlier due to current economic conditions. The positive adjustment factor remains in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year; this will effectively leave the tax rate at a higher level for longer, resulting in the recoupment of more funds. This will revert to 4 percent on January 1, 2015. Additionally, the time to recapture the funds is shortened from 4 years to 3 years. This will artificially increase the tax rate by shortening the time to reach a higher trust fund balance used in calculating the higher tax rates. The recapture time period is restored to 4 years on January 1, 2015.

The law increased the negative fund balance adjustment factor (high trigger) from 4.7 percent of taxable payrolls to 5 percent. It delays the annual computation of the negative adjustment factor until January 1, 2015; in essence the employer contribution tax rates will not be lowered for 5 years. Thereafter, the negative adjustment factor will remain in effect until the balance of the UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. However, the negative adjustment factor is suspended in any calendar year in which an advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

Requests and Repayment of Federal Advances¹³⁰

Chapter 2009-99, L.O.F, clarified that the Governor, or his designee, is specifically authorized to request advances from the federal government to finance the UC Trust Fund.¹³¹ Further, the use of moneys in the trust fund to repay advances is specifically authorized.

Governor Crist officially notified USDOL by letter that effective in June 2009, Cynthia R. Lorenzo, Director of AWI, was his designee authorized to act on his behalf in all matters related to advances from the federal unemployment account.

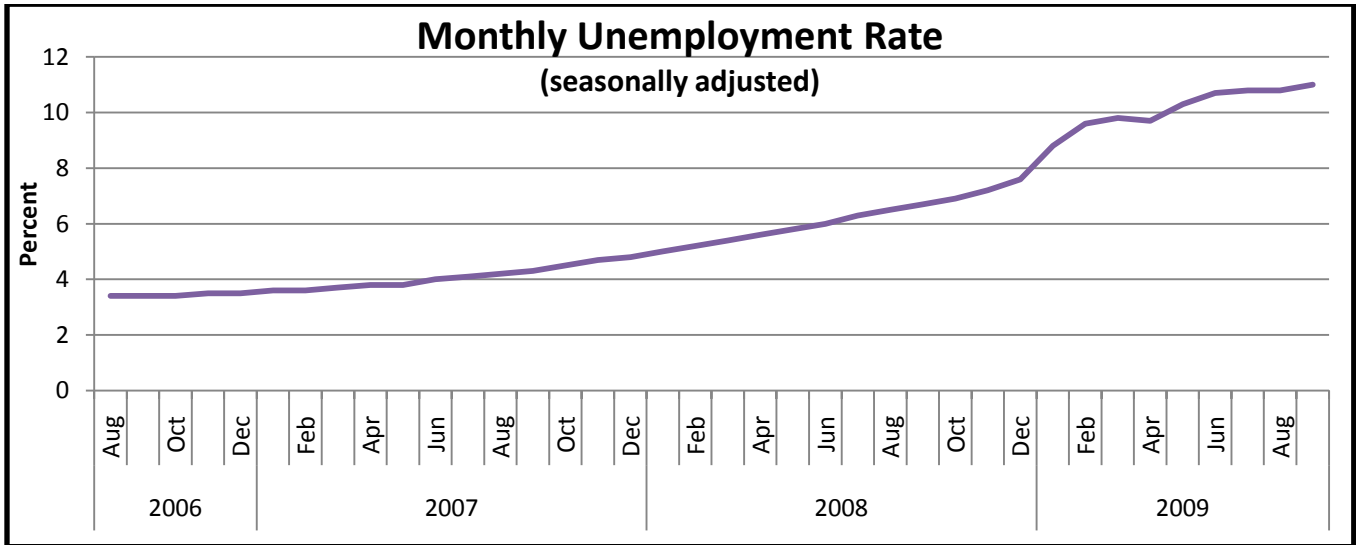
¹²⁹ Section 2, ch. 2009-99, L.O.F. See s. 443.131(3)(e), F.S.

¹³⁰ Section 3, ch. 2009-99, L.O.F. See s. 443.191(1) and (3), F.S.

¹³¹ USDOL Unemployment Insurance Program Letter (UIPL) 22-02, states that “the Governor may delegate the authority to request [advances] and make voluntary repayments to another state official, if permitted by state law.” Available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1382 (last visited 10/20/2009).

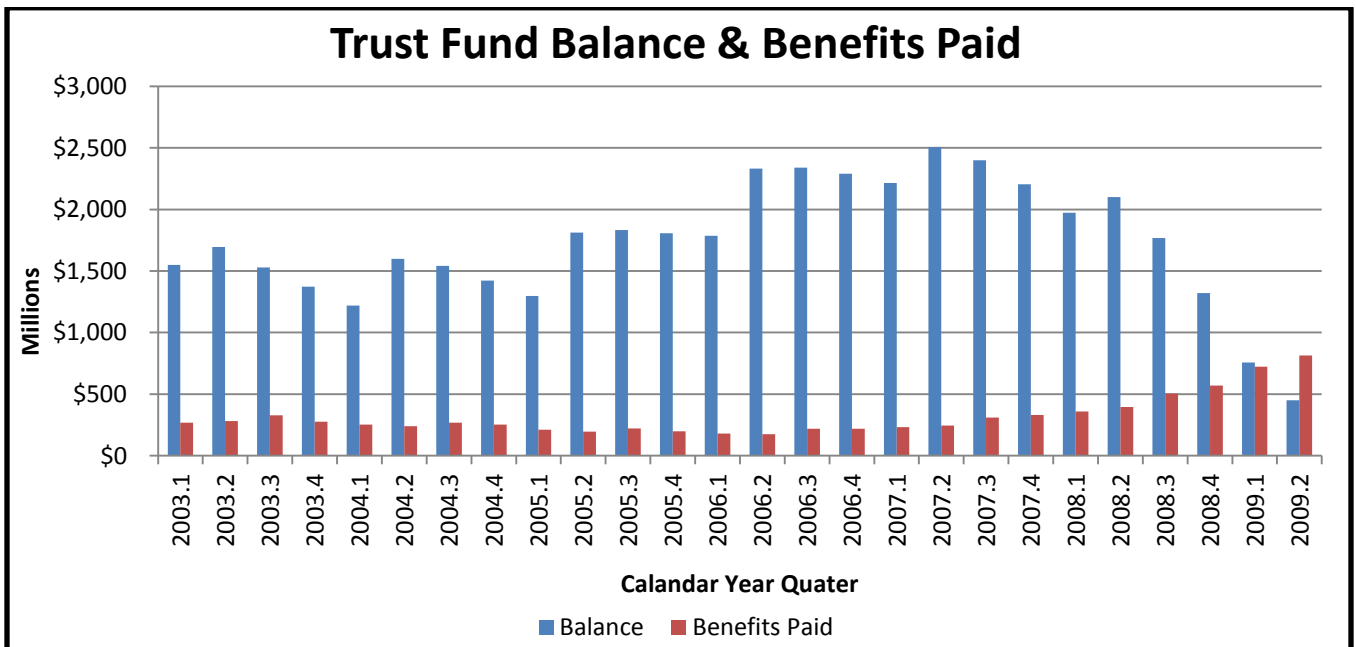
UC Trust Fund Solvency

Florida’s seasonally adjusted unemployment rate for September 2009 was 11 percent. This represents about 1 million jobless out of a labor force of 9,193,000. The unemployment rate is up 0.2 percent from the revised August rate of 10.8 percent and is up 4.3 percentage points from the September 2008 rate. The state’s September unemployment rate is 1.2 percentage points higher than the national unemployment rate of 9.8 percent. The last time the unemployment rate was as high as the September rate was October 1975 when it was also 11.0 percent.¹³²



Information obtained from the Florida Research and Economic Database, Labor Market Statistics, Local Area Unemployment Statistics Program, at <http://fred.labormarketinfo.com/default.asp> (last visited 10/19/2009).

The unemployment payments have greatly increased as tax collections decreased. This has resulted in a significant cash decline, and under the state’s current tax structure the balance in the trust fund fell to a hard deficit in August. On August 24, 2009, the balance of the trust fund fell to zero and federal advance monies began to be drawn down to pay UC benefits.



Information obtained from the USDOL Unemployment Insurance Data Summary website available at <http://www.workforcesecurity.doleta.gov/unemploy/content/data.asp> (last visited 10/19/2009).

¹³² AWI Press Release, Florida’s September Employment Figures Released, (October 16, 2009).

During the history of Florida's tax trigger, the UC Trust Fund has never become insolvent. 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 only a few to avoid serious and chronic problems with trust fund insolvency.¹³³

However, due to the current economic climate and increased demand on the UC Trust Fund, AWI predicted that the UC Trust Fund would fall 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. The state made a formal request for an advance from the Federal government in order to make benefit payments in August 2009. Advances are requested prior to the quarter in which they are needed and for 3-month periods at a time. Florida's July 2009 advance request, estimated to USDOL that in order to pay UC compensation under Florida law, the state would need:

Amount Not to Exceed	Month of Transfer
\$ 0	July 2009
\$ 300 million	August 2009
\$ 310 million	September 2009

The USDOL evaluates the state's request and sends a confirmation letter that provides the authorized amount that Florida 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. 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. Florida sent another advance request in September 2009 for the fourth quarter of 2009 that requested \$300 million for October, November, and December each. The state drew down \$464.9 million through October 16, 2009.¹³⁴

The state may make repayments voluntarily by notifying USDOL by letter of the amount and effective repayment date. Repayments are made on a last made, first repaid basis. The Recovery Act effectively waives interest accrued on advances until December 31, 2010. Beginning January 1, 2011, interest will begin to accrue on any loans that Florida has not yet repaid. Interest accrues on a federal fiscal year basis (October to September), and is due no later than September 30 each year. States may apply to USDOL for deferrals of interest for loans in certain situations; these include the delay of interest payments for interest accrued from May to September, and the deferral of interest payments if the individual unemployment rate (IUR) equals or exceeds 7.5 percent for the first 6 months of the last calendar year or if the total unemployment rate (TUR) equals or exceeds 13.5 percent or higher for the most recent 12 months. Interest continues to accrue even if a state receives a deferral to pay it.

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. Interest rates for past years have been:

4 th Quarter Year	Year Applied	Rate
2008	(2009)	4.64%
2007	2008	4.81%
2006	2007	4.66%
2005	2006	4.63%

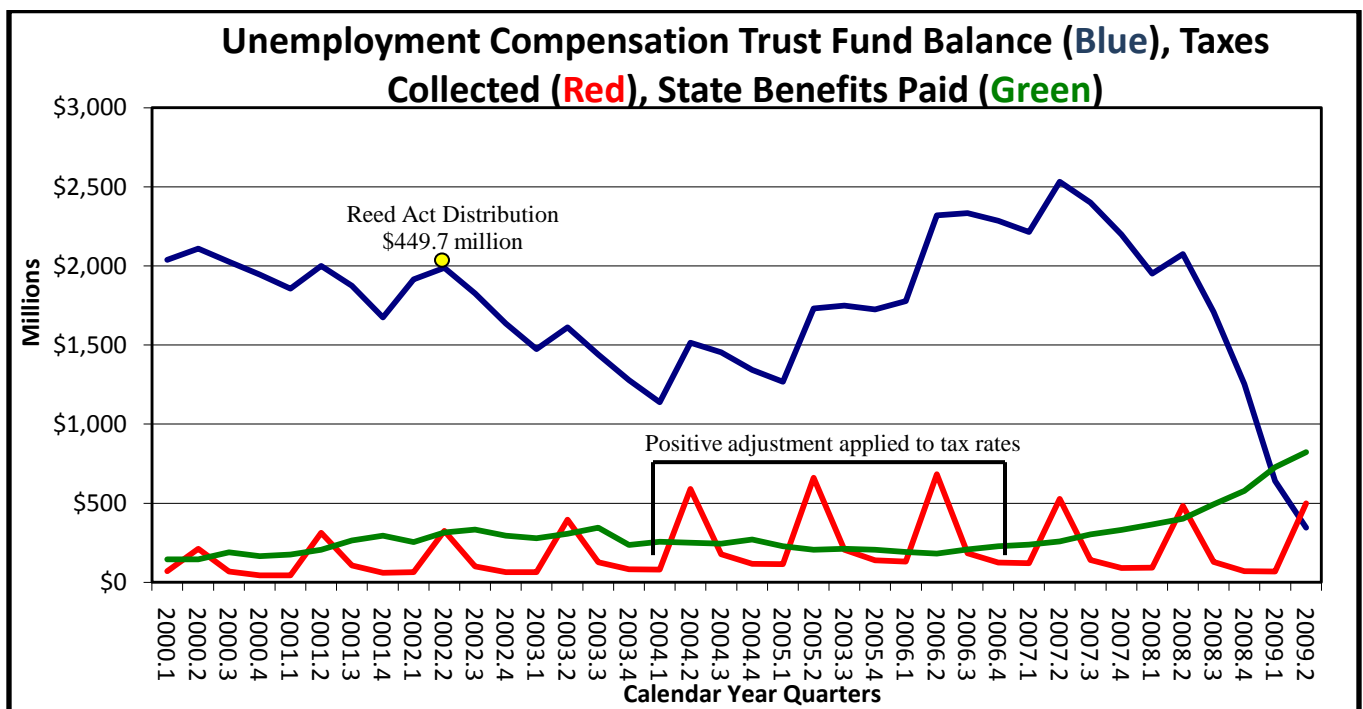
¹³³ Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

¹³⁴ Information from AWI, on file with the Senate Commerce Committee. See also 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_advactivitiesched.htm (last visited 10/20/2009).

Repayment of the principal amount of the advance will be made from a portion of state UC taxes collected from employers. However, 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.¹³⁵ The State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, includes payments from the General Revenue Fund of \$126.9 million in FY 2011-2012 and \$199.4 million in FY 2012-2013 to cover the interest costs as a “Critical Need.”¹³⁶

Florida employers will most likely experience a partial loss of the federal UC tax credit beginning on January 1, 2012, due to the existence of an outstanding federal advance; however, the value of the lost credit (essentially, of the increased federal taxes by 0.3 percent per year) offsets the outstanding loan balance. The credit reduction continues and escalates until such time as the loan is fully repaid.¹³⁷ The Office of Economic and Demographic Research (EDR) estimated that the first repayment to the federal government through the loss of the federal credit would be \$168 million in January 2012 and \$346 million in January 2013.¹³⁸

Since the tax trigger was established in 1957, a negative fund balance adjustment factor has been applied during 15-tax years, automatically reducing employer taxes in each of those years. During this same period, a positive fund balance adjustment factor has automatically increased UC taxes 12 times. The tax trigger cut taxes each year from 1986 to 1991. The most recent instance the tax trigger raised taxes was each year from 2004 to 2006. Since 2006, tax rates have not been adjusted because the UC Trust Fund balance has not triggered a rate change.¹³⁹



Information obtained from AWI. The second quarter spikes in revenue result because taxes collected on first quarter wages generally reach the limit of the taxable age base of \$7,000 and are paid in the second quarter.

¹³⁵ It does not appear that the option of issuing bonds to repay the interest is available to Florida. See Art. VII, s. 11, Fla. Const.

¹³⁶ State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, adopted 9/15/2009 by the Legislative Budget Commission, pp. 10, 62, 108, available at <http://www.flsenate.gov/data/publications/2009/Senate/reports/Long-RangeFinancialOutlook2010-2013.pdf> (last visited 10/20/2009).

¹³⁷ USDOL Webinar on Title XII Advances, August 10, 2009 (slides on file with the Senate Commerce Committee). See also State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, p 108.

¹³⁸ Unemployment Compensation Trust Fund (monthly 2009 – 2013), Office of Economic and Demographic Research, July 2009, on file with the Senate Commerce Committee.

¹³⁹ Information from DOR, on file with the Senate Commerce Committee.

The tax rates for 2010 will begin to be calculated around mid-October 2009, and released in December 2009. At that time, the balance of the trust fund as of June 30, 2009, will be used to determine if a tax increase will be triggered.¹⁴⁰ The positive adjustment factor will trigger a tax increase for 2010 taxes if the balance of the trust fund is less than 4.0 percent of the 1-year taxable wages as of June 30, 2009. Taxes will continue to be higher until the balance of the trust fund equals or exceeds 5.0 percent of the previous year's taxable wages as of June 30 of that year, or, beginning in 2015, until the trust fund equals or exceeds 4.0 percent of the 1-year taxable wages. Further, in an effort to repay any advances taken, there will be no negative adjustment factor in any calendar year in which an advance from the federal government is still in repayment for the principal amount of the loan.

Additionally, taxes calculated for 2010 will increase because of the 2009 changes to the taxable wages. An additional \$1,500 of each employee's wages will be subject to UC taxes.¹⁴¹

The 2009 changes to the tax structure are predicted to infuse significant cash into the UC Trust Fund; however, it is estimated that the fund will continue in deficit over the next 5 years, thereby requiring more advances from the federal government to maintain the solvency of the trust fund. In April 2009, the Revenue Estimating Conference projected that the deficit in the second quarter of 2014 would improve from \$3.7 billion under the 2008 law to \$997.3 million under the 2009 law.¹⁴² However, in July 2009, the Office of Economic and Demographic Research (EDR) forecast for the trust fund shows that even with the 2009 changes to the tax structure, the trust fund will operate with a large deficit.¹⁴³ With increasing UC benefits costs, and principal and interest payments due on the advances, the trust fund is predicted to fall into a deficit over \$4 billion by the end of 2011. By the EDR forecast, benefits payments are much greater than tax revenues for the next few years. Despite the 2009 changes to the tax structure, the increased cash flow into the trust fund will not be enough to prevent a growing deficit in the UC Trust Fund.

Federal Legislation - The American Recovery and Reinvestment Act of 2009's Modernization Funding

The Recovery Act includes incentive payments to "modernize" state UC systems. If Florida were to implement all the required components of the Unemployment Insurance Modernization Act (UIMA),¹⁴⁴ the state would be entitled to about \$444.3 million in total. These incentive funds will be available until September 30, 2011, and states must apply to receive the funds.¹⁴⁵ Depending on the modernization options that a state chooses, the incentive monies are expected to cover the benefit payments for 2 to 6 years.¹⁴⁶

¹⁴⁰ For calculation of the 2009 tax rates, the trust fund balance was 3.8 percent of the 1-year taxable wages as of June 30, 2008. It was only 0.10 percent above the positive adjustment factor.

¹⁴¹ For example:

<u>Tax Rate</u>	<u>Wage Base - \$7,000</u>	<u>Wage Base - \$8,500</u>
0.1 %	\$7.00	\$8.50
0.12 %	\$8.40	\$10.20
0.80 %	\$56.00	\$68.00
2.7 %	\$189.00	\$229.50
5.4 %	\$378.00	\$459.00

¹⁴² See Unemployment Compensation Tax, Revenue Estimating Conference, April 16, 2009.

¹⁴³ Unemployment Compensation Trust Fund (monthly 2009 – 2013), Office of Economic and Demographic Research, July 2009, on file with the Senate Commerce Committee.

¹⁴⁴ The UIMA was adopted into federal UC law as part of the Recovery Act. Section 2003, Public L. No. 111-5.

¹⁴⁵ USDOL has 30 days to approve the application and direct the U.S. Secretary of the Treasury to distribute funds to the eligible state's unemployment trust fund.

¹⁴⁶ The entire amount of the stimulus money is deposited into the state's UC trust fund, and use of the money is not limited to the specific benefit of persons eligible due to the expansion of the state UC program. The money could be used to pay any current benefit claims.

UIMA Base Period Provision

In order to receive one-third of the modernization money available under the Recovery Act, or associated with UIMA, Florida would have to implement the alternative base period.¹⁴⁷ Under the alternative base period, claimants must meet the same rules as current law base period claimants but they can use a more recent four-quarter period to do so.

Base Period Chart Showing Alternative Base Period										
Year Preceding Prior year		Prior Year				Current Year				
July	Oct.	Jan.	April	July	Oct.	Jan.	April	July	Oct.	
Aug.	Nov.	Feb.	May	Aug.	Nov.	Feb.	May	Aug.	Nov.	
Sept.	Dec.	March	June	Sept.	Dec.	March	June	Sept.	Dec.	
		Base Period (Oct. 1 – Sept. 30)			Lag quarter	Claim Filed				
		Alternative Base Period (January 1 – December 31)				Claim Filed				
		Base Period (Jan. 1 – Dec. 31)			Lag quarter	Claim Filed				
		Alternative Base Period (April 1 – March 31)				Claim Filed				
		Base Period (Apr. 1 – Mar. 31)			Lag quarter	Claim Filed				
		Alternative Base Period (July 1 – June 30)				Claim Filed				
		Base Period (July 1 – June 30)			Lag quarter	Claim Filed				
		Alternative Base Period (October 1 – September 30)				Claim Filed				

The alternative base period would eliminate the “lag quarter” and would allow individuals to supply their own wage information, as opposed to the current use of employer wage reports. Information supplied by individuals would be verified for the last quarter when employers issued the wage reports and after benefit payments had begun to be made; any overpayments or inconsistent information would need to be investigated by AWI. Florida’s share for implementation of the alternative base period would be \$148.1 million.

The National Employment Law Project (NELP) estimates that about 27,229 workers would benefit from this change to Florida’s UC laws, resulting in an annual payment of about \$45.2 million in benefits.¹⁴⁸ In November 1997, the Florida Department of Labor and Employment Security conducted a study for the USDOL to determine the benefits to claimants and the impact on employers of using an alternative base period to calculate unemployment compensation.¹⁴⁹ The study found that the Florida Department of Labor and Employment Security (now AWI) would have to expend \$150,000 for initial programming plus \$45,000 per year for an additional staff person in the monetary reconsideration unit. Based upon the number of claims filed in 2008, it is possible that the alternative base period could result in benefit eligibility for 14,030 individuals. The 1997 findings are most likely still generally accurate today.¹⁵⁰

¹⁴⁷ In the alternative, Florida could also qualify by implementing a regular base period that includes the most recently completed calendar quarter before the start of the benefit year.

¹⁴⁸ See National Employment Law Project (NELP), Implementing the Model Provisions of the Unemployment Insurance Modernization Act in the States, (February 2009), at http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bprp.pdf (last visited 10/20/2009).

¹⁴⁹ Florida Department of Labor and Employment Security, Division of Unemployment Compensation, Monetary Eligibility Study: Variable Base Period, Final Report, (June 1997).

¹⁵⁰ See AWI’s Bill Analysis of SB 516 (2009), on file with the Senate Commerce Committee.

Thirty-four other states and the District of Columbia currently have enacted alternative base period legislation. Fifteen of these states changed their state laws in 2009 to adopt the alternative base period to receive Recovery Act funding.¹⁵¹

UIMA Incentive Options Provision

If a state qualifies for the one-third Recovery Act funding associated with implementing the alternative base period, it may qualify for the remaining two-thirds by expanding benefits to at least two of four areas.¹⁵² The four areas involve part-time workers; workers with dependents; workers who leave work for compelling family reasons; and permanently laid-off workers who require benefits to participate in training. The claims of individuals who have left employment for reasons not attributable to the employer, for example due to specific compelling family reasons, workers in training, and workers with dependents, are not charged to employer's account. However, because specific employers' accounts would not be charged for such claims, the costs for these non-charged benefits would be shared by all employers. Florida's share of the Recovery Act funds, if it were to implement two of the four areas, would be about \$296.2 million.

1. Part-time workers: One in 6 U.S. employees works a part-time schedule.¹⁵³ Employers pay UC for part-time workers, and those workers' wages are also taxed for the same purposes. To receive the incentive option, a state must modernize its UC program so that part-time workers who are unemployed may be eligible for UC benefits while they seek other part-time employment.¹⁵⁴

Current Florida law does not distinguish between full-time and part-time employment, as discussed above; thus Florida may already be in compliance with this requirement, although not specifically stated in the Florida Statutes. Consequently, there would be an insignificant or no increase in benefit costs to implement this provision.

NELP predicts that about 6,294 workers would benefit from this change to Florida UC law, resulting in about \$8 million in benefits paid out annually.¹⁵⁵

Seven states enacted new measures and four altered their state laws in 2009 to qualify for Recovery Act funding under this incentive option. In total, 27 states should qualify for Recovery Act funding.¹⁵⁶

2. Compelling Family Reasons: Another area that a state can implement to obtain the two-thirds of the Recovery Act funding associated with UIMA deals with individuals who leave work for certain compelling family reasons. Such circumstances must include:¹⁵⁷
 - Domestic violence – If an individual reasonably believes that, due to the violence, the individual's continued employment would jeopardize the safety of the individual or any member of the individual's immediate family, then this would be a compelling reason to leave work.
 - "Trailing spouse" – UIMA requires that the individual had to accompany his or her spouse to a place where it is impractical for the individual to commute and due to a change in location of the spouse's employment.

¹⁵¹ See NELP, Federal Stimulus Funding Produces Unprecedented Wave of State Unemployment Insurance Reforms, (June 16, 2009), at <http://www.nelp.org/page/-/UI/UIMA.Roundup.June.09.pdf?nocdn=1> (last visited 10/20/2009). See also USDOL DOL - ETA Information Related to the American Recovery and Reinvestment Act of 2009, for a list of states qualified for Recovery Act funding, available at <http://www.doleta.gov/recovery/#PressReleases> (last visited 10/20/2009).

¹⁵² A state may elect to just implement alternative base and receive one-third of the incentive payments; or a state may elect to do both parts and receive 100 percent of the available funds.

¹⁵³ Andrew Stettner, NELP, What is UI Modernization and Why is it Important?, (May 2008), at http://nelp.3cdn.net/9a398fa5e086804cea_obm6yhxp.pdf (last visited 10/20/2009).

¹⁵⁴ USDOL Unemployment Insurance Program Letter (UIPL) 14-09.

¹⁵⁵ NELP, Implementing the Model Provisions.

¹⁵⁶ NELP, Federal Stimulus Funding.

¹⁵⁷ USDOL Unemployment Insurance Program Letter (UIPL) 14-09. At a minimum, a state's definition of "immediate family member" must include spouses, parents, and minor children under the age of 18.

- Sick family member – Individuals may leave work due to the illness or disability of a member of the individual's immediate family. "Illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise). Similarly, "disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

Individuals must continue to meet UC requirements, such as for the ability and availability to work. NELP predicts that about 6,393 workers would benefit from this particular change to Florida UC law, resulting in a pay-out of about \$18.3 million in benefits annually.¹⁵⁸

Thirteen states enacted new measures or altered their state laws in 2009 to qualify for Recovery Act funding under this incentive option. In total, 17 states should qualify for Recovery Act funding.¹⁵⁹

3. Extended Benefits While Training: Unemployed individuals who have exhausted their UC benefits may receive extended UC benefits while enrolled in approved training and making satisfactory progress. Benefits are provided for 26 weeks beyond the normal duration of benefits. Approved training may be limited to programs that prepare an individual for entry into a high-demand occupation if the individual has been separated from a declining occupation or involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the place of employment.¹⁶⁰

Eight states enacted new measures and three altered their state laws in 2009 to qualify for Recovery Act funding under this incentive option. In total, 12 states should qualify for Recovery Act funding.

4. Weekly Dependent Allowance: States may pay weekly supplemental allowances to unemployed individuals that have dependents in their families. Such unemployed individuals receive a regular weekly dependent or children's allowance as part of a UC check. The Recovery Act and UIMA require a minimum payment of \$15 per dependent for stimulus funding.¹⁶¹

Fourteen states, plus the District of Columbia, pay a regular weekly dependent or children's allowance as part of a UC check. Currently, all but six of the states implementing these supplemental allowances provide less than the required \$15 per dependent. In total, 6 states should qualify for Recovery Act funding.¹⁶²

Modernization Costs and Benefits

Under a proposed bill in 2009 to modernize Florida's UC system, recurring costs of the annual benefits for the eligibility enhancements was estimated at \$73.7 million.¹⁶³ The bill proposed to implement the alternative base period and benefits for part-time workers and those with specific compelling family reasons. Alternative base benefit payments were estimated to total \$51.3 million annually; incentive options to provide benefits for part-time workers and those who leave work for compelling family reasons were expected to result in \$22.4 million in benefits payments annually.

The receipt of the Recovery Act funding of \$444.3 million would offset the cost to private employers (\$69.3 million annually) for approximately 6 years. However, public employers (state and local governments) are not assessed UC taxes. Federal regulation exempts public employers from the tax and considers them as being "self-

¹⁵⁸ NELP, Implementing the Model Provisions.

¹⁵⁹ NELP, Federal Stimulus Funding.

¹⁶⁰ USDOL Unemployment Insurance Program Letter (UIPL) 14-09.

¹⁶¹ May be capped at \$50 per week or 50 percent of the weekly benefit amount for the benefit year, whichever is less. USDOL Unemployment Insurance Program Letter (UIPL) 14-09.

¹⁶² In 2009, Illinois increased its benefits to comply with the \$15 weekly minimum benefit that qualifies for incentive funding. Tennessee was the only state to adopt a new state law to provide a weekly dependent allowance. NELP, Federal Stimulus Funding.

¹⁶³ S.B. 516 (2009).

insured” for UC claims. It was estimated that the eligibility enhancements from the modernization would result in an immediate recurring cost of \$4.4 million to state and local governments, approximately 90 percent local and 10 percent state. AWI and DOR estimated they would need to expend an additional \$2.1 million in recurring federal UC administrative funds to administer modernization.

Also, use of the alternative base period shortens the period required for a new employer to establish chargeability for benefits, possibly resulting in a net reduction in tax receivables from new employers. AWI estimated that this would result in an \$8 million revenue reduction to the UC Trust Fund.

The bill died in the Senate Policy & Steering Committee on Ways and Means.

Conclusion

This Issue Brief is intended to be an overview of Florida’s Unemployment Compensation program and the changes resulting from the federal and state laws enacted in 2009. This includes:

- The extension of state and federal benefits to the unemployed;
- The requirements of AWI due to the increased workload and new services;
- The development of the new Unemployment Claims and Benefits Information System;
- The clarification of the authority to borrow (and repay) significant funds from the federal government to maintain the solvency of the Unemployment Compensation Trust Fund; and
- The increase in employer contributions to restore the Unemployment Compensation Trust Fund to solvency and repay the loans from the federal government.

Given the projected high level of unemployment for many months to come, the state and federal governments are likely to readdress these issues. To date, legislation has been filed in Congress to extend federal EUC benefits for a third time period, and to extend the eligibility period for the first two tiers of EUC and temporary state extended benefits. Legislative action would be necessary to take advantage of the extension of the temporary state extended benefits funding. Further, the state has the option of drawing down additional federal stimulus funds if Congress expands eligibility for state benefits.

As indicated in this report, the 2009 increase in the employer contribution rate may be inadequate if the goal is to timely repay the federal loans, plus interest, and restore the trust fund to solvency.

Any legislative action will have to take into account the combination of new federal initiatives and the impact on business community.

Unemployment Compensation Tax Rate



Senate Commerce and Tourism Committee

December 8, 2010



Lisa Vickers

Executive Director

Department of Revenue

Unemployment Compensation

- The unemployment compensation program is a federal/state partnership based upon federal law.
 - administered by state employees under state law.
 - designed to provide a temporary partial wage replacement to those employees who lose their jobs through no fault of their own.
 - financed by separate state and federal payroll taxes.
 - states electing to administer unemployment compensation must follow certain federal requirements.

Unemployment Compensation

- The federal tax rate is 6.2% with a credit of 5.4% to employers in good standing if their state has a federally compliant unemployment tax program and carries no delinquent federal UT loans.
- This credit reduces the amount employers pay directly to the federal unemployment compensation trust fund to .8% of taxable payroll.
- The .8% is imposed on the first \$7,000 of wages and equates to \$56 per employee.

Unemployment Compensation

- The .8% that employers pay to the federal UC fund supports:
 - Unemployment compensation administrative expenses of the state
 - Federal share of extended benefits
 - Loans or advances to state trust funds
 - Benefits under supplemental/emergency programs

Unemployment Compensation

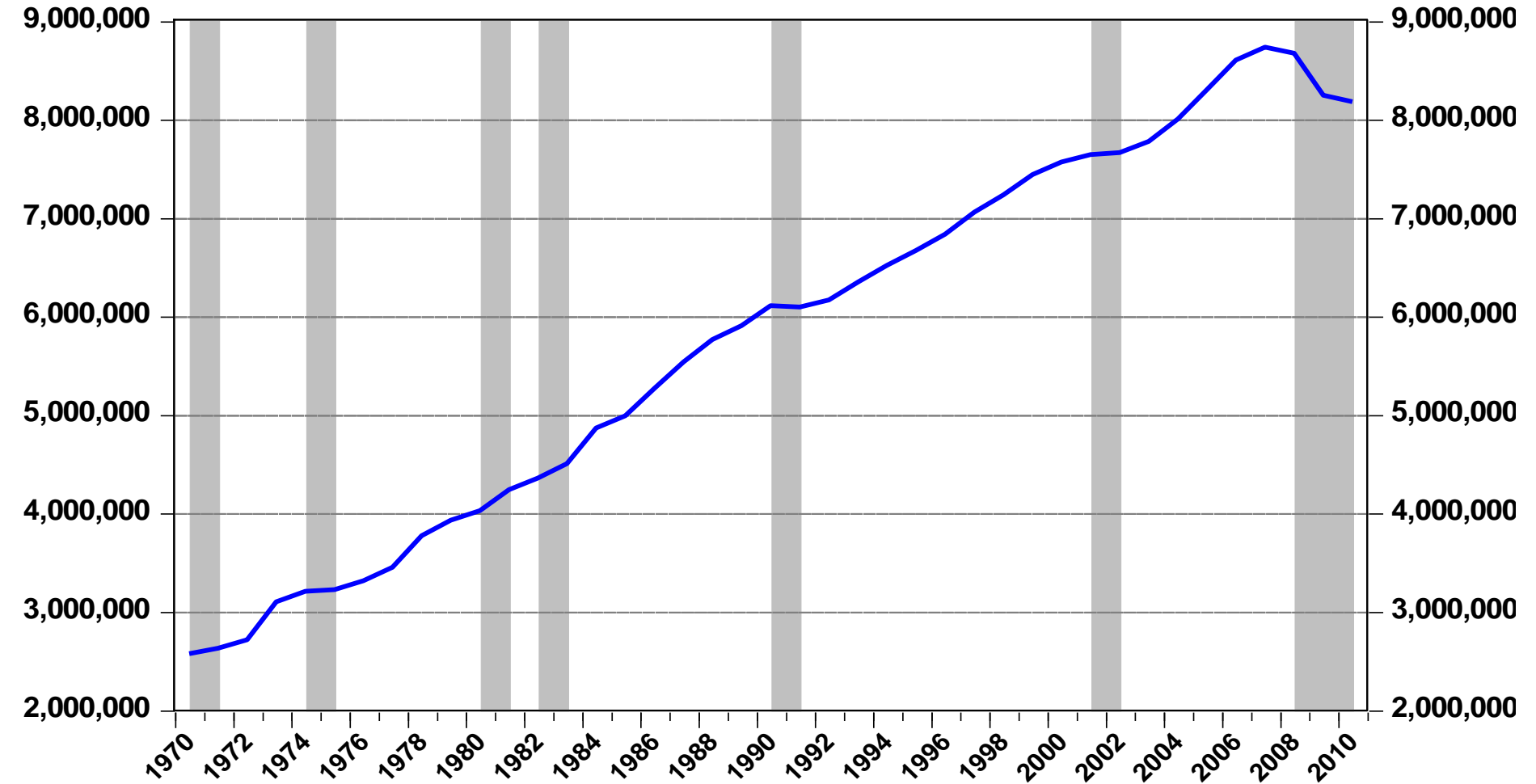
- The two types of employers are contributing and reimbursable.
 - Governmental entities, Non-profits and Indian Tribes can choose whether they are contributing or reimbursable.
- States take different approaches for taxing contributing employers.
- Florida imposes a system of four categories of rates:
 - New business or initial rate of 2.7% (first 10 quarters of payroll)
 - Minimum rate set each year through calculations imposed by statute
 - Experience or earned rates between the minimum and maximum rates set each year through calculations imposed by statute and dependent on the employer's actual benefit charge experience
 - Maximum rate of 5.4% (which also serves as the standard rate and the penalty rate)

Unemployment Compensation

- Initial rate employers will pay \$189 per employee.
- Employers at the minimum rate will see an increase from \$25.20 to \$72.10 per employee.
- Employers already at the maximum tax rate will see no increase, but continue to pay \$378 per employee.
- About 11.7% of employers will have a rate somewhere between the minimum and maximum rate based on their actual experience.

What's Happening in Florida?

STATEWIDE EMPLOYMENT*



* June

Note: Shaded areas represent recessions

Unemployment Compensation

- Florida has been facing high unemployment for the past three years.

Unemployment rate

2007-08	4.9%
2008-09	8.4%
2009-10	11.6%
October 2010	11.9%

Recent Employer and Employee Changes

	FY 2007-08	FY 2008-09	FY 2009-10
# of Employers Filing UT Returns	506,597	491,684	472,812
# of Wage Items	9,019,682	8,421,665	7,764,093

Unemployment Compensation

- High unemployment resulting in extensive benefit claims has depleted the state's unemployment tax reserves.
- The state resorted to borrowing funds from the federal government in 2009 to meet Florida's benefit payment obligation.

Unemployment Tax Collections vs. State Benefits

Year	Unemployment Tax Collections	State Unemployment Benefits	Fund Balance
2005-06	\$1.24 B	\$750 M	\$1.812 B
2006-07	\$1.034 B	\$1.1 B	\$2.332 B
2007-08	\$886 M	\$1.5 B	\$2.534 B
2008-09	\$901 M	\$2.5 B	\$2.099 B
2009-10	\$1.18 B	\$2.7 B	\$449 M
2010-11	\$1.48 B _e	\$2.1 B _e	\$118 M _e

Federal Advances began August 2009

Cumulative Federal Advances - \$1.86 B as of November 2010

Unemployment Compensation

- Last year the Legislature enacted a number of measures to prevent a large unemployment tax increase in 2010.
- The minimum rate for 2010 was scheduled to go from \$8.40 to \$100.30*.
- Through legislative efforts, the minimum rate in 2010 was \$25.20.

Unemployment Compensation

- These measures included:
 - Suppressing the trust fund balance trigger
 - Delaying changes until 2012 to
 - The fund size trigger
 - Fund recoupment period
 - Delaying the wage base increase from \$7,000 to \$8,500 until 2012
 - Providing an installment payment option

Trust Fund Balances

	<u>Trust Fund Balance</u>	<u>Trigger Status</u>
June 2005	\$1,812,803,500	Trigger On
June 2006	\$2,332,069,916	Trigger Off
June 2007	\$2,534,318,249	Trigger Off
June 2008	\$2,099,552,017	Trigger Off
June 2009	\$449,475,280	Trigger Disengaged
August 29, 2009	\$0	
September 30, 2010	\$118,941,270.18	Trigger Disengaged

Unemployment Compensation

- Last year the main driver of the rate increase was the insolvency of the trust fund engaging the fund size trigger provision, but even with the trigger suppressed again for 2011, other factors are continuing to drive rate increases.

Unemployment Compensation

- Excess Payments and Noncharge Benefits that are spread to employers through the Variable Adjustment Factor and the Constant (Final) Adjustment Factor. These factors reassign obligation for
 - benefits paid to eligible claimants who worked for employers whose taxes were less than the benefits that were paid
 - and benefit payments which are nonchargeable to any employer's account.

Unemployment Compensation

- This happens when:
 - Most employers paying at the 5.4% maximum incur more benefit charges against the trust fund than their tax rate will cover. This imbalance is known as Excess Payments.
 - Due to meeting certain statutory criteria, the benefit charge is not charged back to any employer. These are known as Noncharge Benefits.

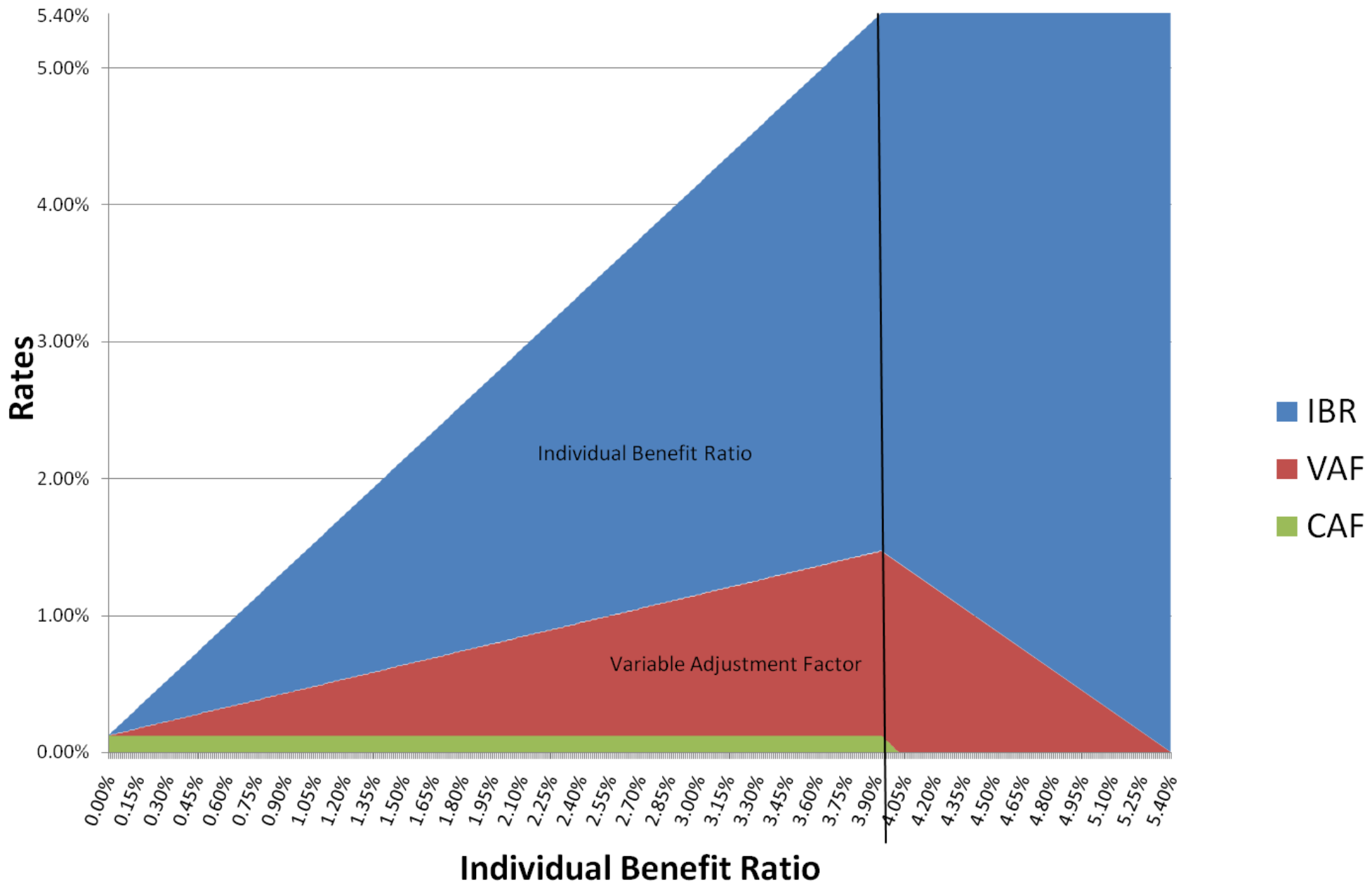
Unemployment Compensation

- When economic conditions result in abnormally high unemployment accompanied by high benefit charges, there is a drain on the trust fund.
- The effect is an increase in these two adjustment factors, which in turn increases tax rates for employers whose own experience would otherwise allow them to have rates below the maximum rate.

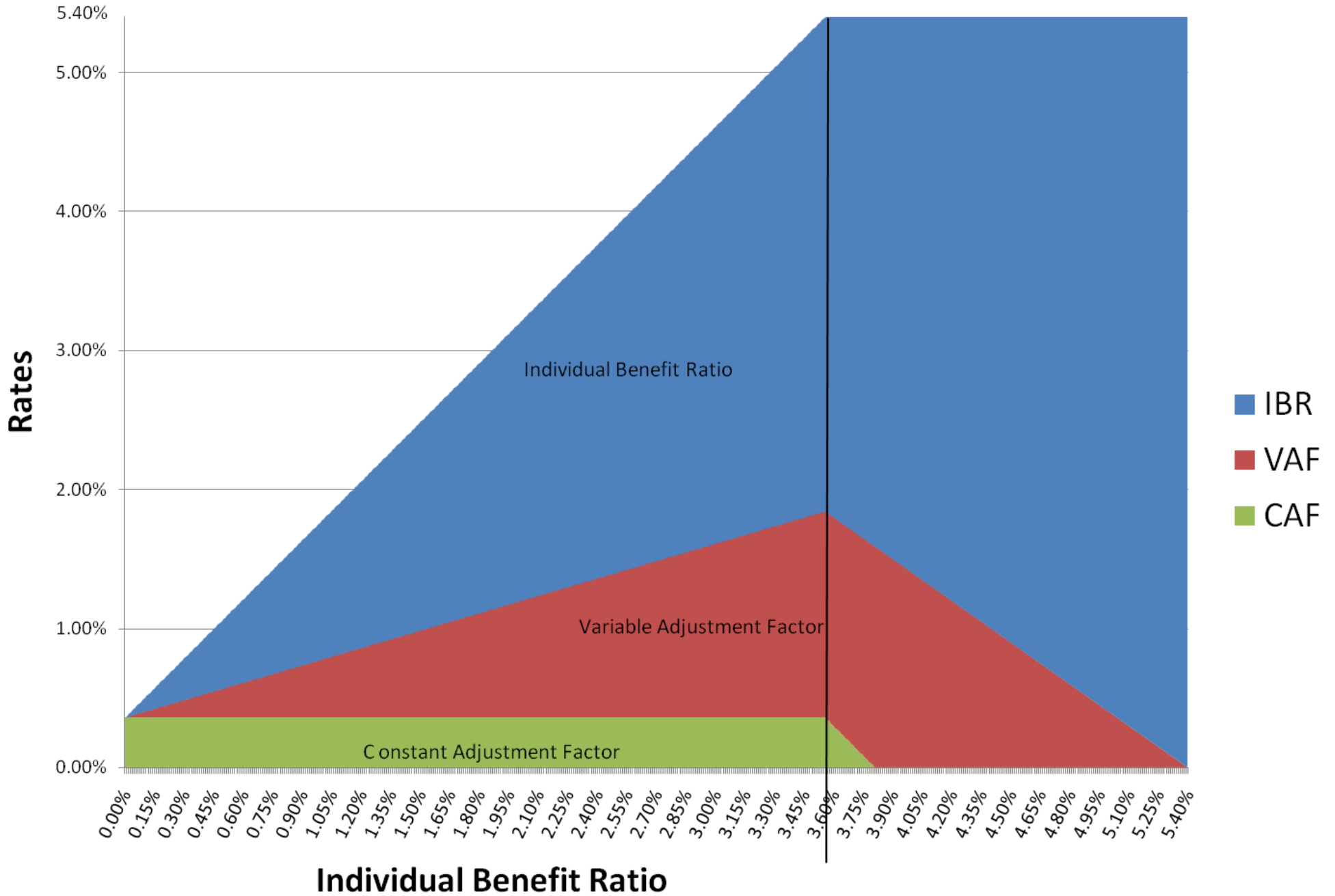
Unemployment Compensation

- The Variable Adjustment Factor and the Constant Adjustment Factor have a greater impact on employers with better experience ratings.
- Employers whose own benefit experience already places them at the maximum tax rate are not impacted by these factors.

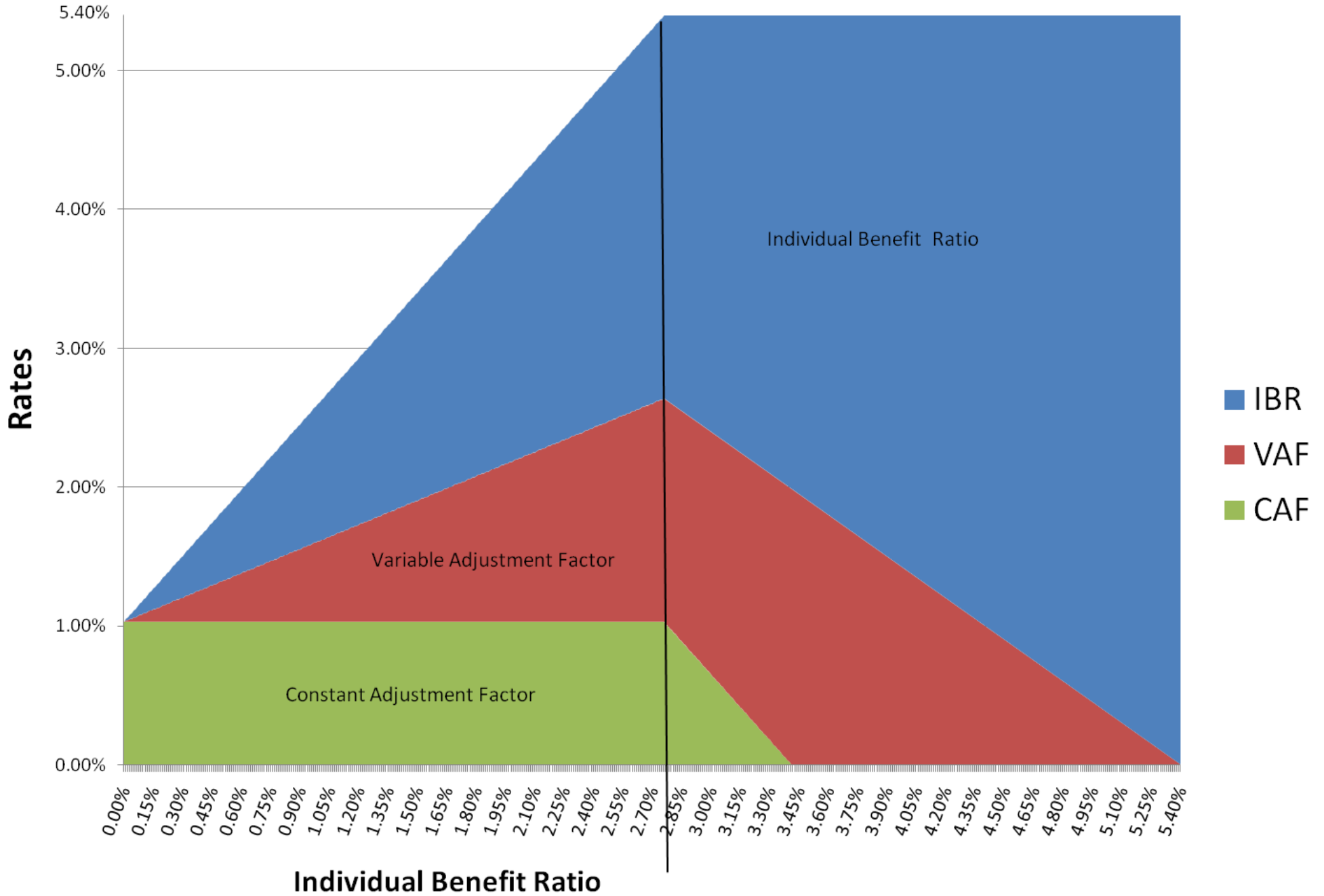
2009 Rate Composition



2010 Rate Composition



2011 Rate Composition



Individual Benefit Ratio

- The portion of an employer's tax rate that is specific to the employer is called the Individual Benefit Ratio. It is derived by dividing the previous three years of benefit charges for that employer by the taxable payroll reported for the same three-year period by that employer.

Individual Benefit Ratio

- Individual Benefits Ratio (IBR) for Firm i -

$$IBR(i) = \frac{\sum_{t-14}^{t-2} ChargeableBenefits(i)}{\sum_{t-14}^{t-2} TaxableWages(i)}$$

Where t (time) = the first quarter of the year for which the rate is calculated. The $t-2$ to $t-14$ time frame represents 12 quarters of experience.

(i) is the set of employers eligible for experience based rates.

Variable Adjustment Factor

- The Variable Adjustment Factor is calculated by taking the last three years of benefits that were not attributable to any employer (Noncharge Benefits), payments that were made that cannot be recovered from employers due to the maximum tax rate (Excess Payments) and the Fund Size Factor (which for Florida is zero since the trigger is off) and spreading it across employers based on the employers Individual Benefit Ratio.
- This factor is only spread against employers who had benefit charges

Variable Adjustment Factor

Noncharge Benefit Factor $\frac{\sum_{t-14}^{t-2} \text{Noncharge Benefits}}{\sum_{j=1}^n \sum_{t-14}^{t-2} \text{Taxable Wages}(j)}$

Excess Payment Factor $\frac{\sum_{i=1}^n \text{Excess Payments}(i)}{\sum_{j=1}^n \sum_{t-14}^{t-2} \text{Taxable Wages}(j)}$

Where Excess Payments=

$$\sum_{i=1}^n \left(\sum_{t-14}^{t-2} \text{Chargeable Benefits}(i) - 5.4\% \times \sum_{t-14}^{t-2} \text{Taxable Wages}(i) \right)$$

and (i) is the set of all employers eligible for an earned rate and (j) is the set of all employers eligible for an earned rate and whose Individual Benefit Ratio is less than 5.4%

Variable Adjustment Factor

- Fund Size Factor – application delayed until 2012
- Gross Benefit Ratio (GBR)

$$GBR = \frac{\sum_{i=1}^n \sum_{t=14}^{t-2} \text{Benefits}(i) - \sum_{i=1}^n \sum_{t=14}^{t-2} \text{ExcessPayments}(i)}{\sum_{i=1}^n \sum_{t=14}^{t-2} \text{TaxableWages}(i)}$$

where Excess Payments has the same calculation as in the Excess Payments Factor.

Variable Adjustment Factor

- Calculation of the Variable Adjustment Factor

$$VAF(i) = \frac{NC + EP + FF}{GBR} \times IBR(i)$$

Where:

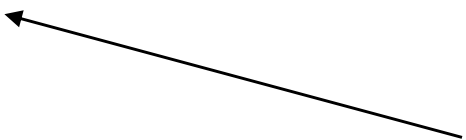
NC= Noncharge Factor

EP= Excess Payment Factor

FF = Fund Size Factor (does not apply until 2012)

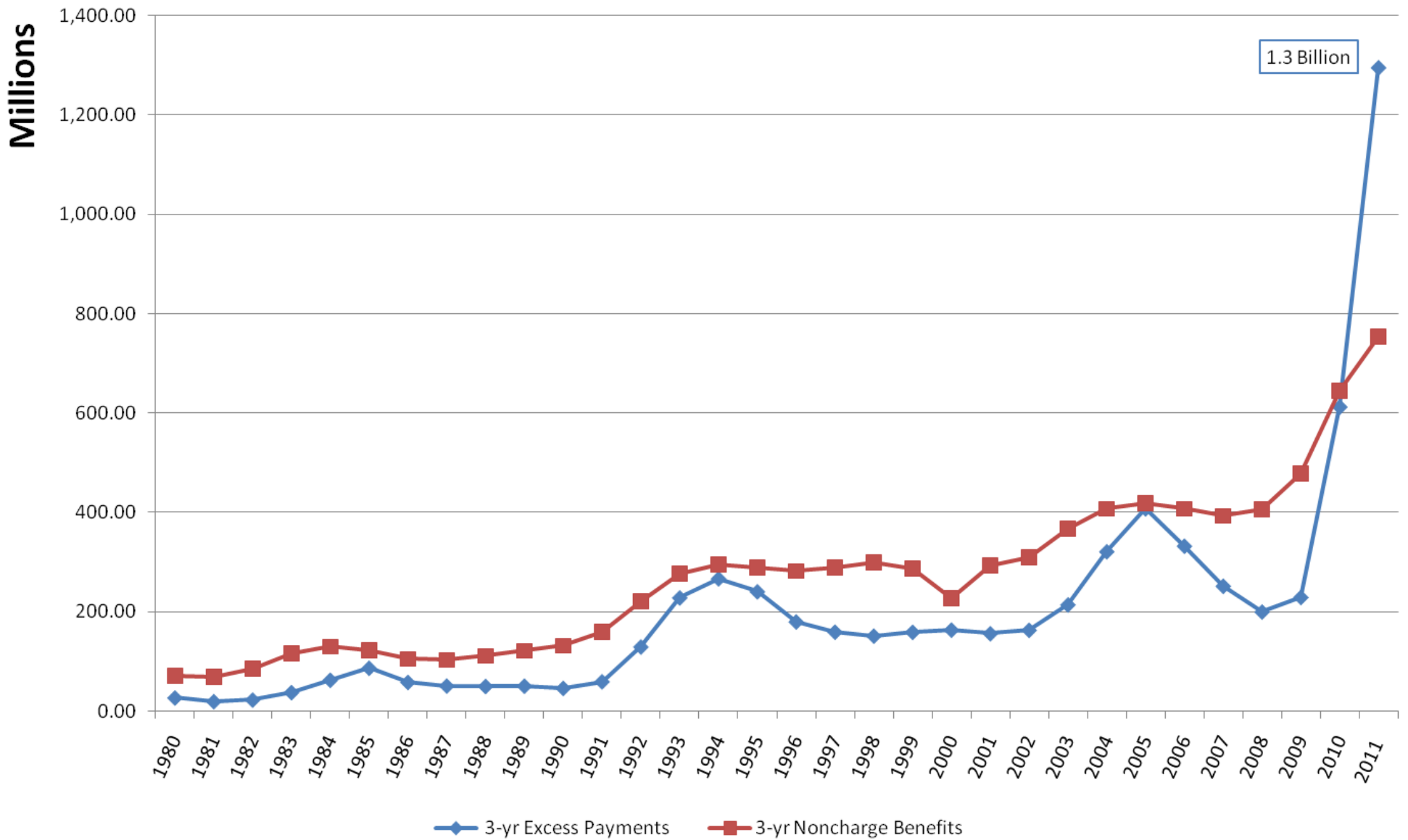
And GBR = Gross Benefit Ratio

This term is known as the "Multiplier"



Historic Excess Payments and Noncharge Benefits

Shared Costs spread across employers through the Variable Adjustment Factor and the Constant Adjustment Factor



Constant Adjustment Factor

- After spreading the Noncharge Benefits and the Excess Payments across employers according to their Individual Benefit Ratio, any additional unassigned benefits are spread through the Constant Adjustment Factor across all employers except:
 - Initial Rate employers
 - Those employers at the maximum rate from either the Individual Benefit Ratio alone or the combination of the Individual Benefit Ratio and the Variable Adjustment Factor

Unemployment Compensation

Calculation of Constant Adjustment Factor

$$CAF = (NC + EP + FF) - \frac{\sum_{j=1}^n CAF(j) \times \sum_{t-14}^{t-2} TaxableWages(j)}{\sum_{i=1}^n \sum_{t-14}^{t-2} TaxableWages(i)}$$

Where:

NC= Noncharge Factor

EP= Excess Payment Factor

FF = Fund Size Factor (does not apply until 2012)

and (*i*) is the set of all employers eligible for an earned rate and (*j*) is the set of all employers eligible for an earned rate and whose Individual Benefit Ratio is less than 5.4%

This term is known as the
"Sum of the Products"

2011 UT Rates

- The Multiplier used in the variable adjustment factor for 2011 is .5833 compared to the Multiplier for 2010 of .4171
- The Constant Adjustment Factor for 2011 is .0103 compared to the factor for 2010 of .0036

2011 UT Rates

- If I am an employer with no benefit charges, I am not impacted by the Variable Adjustment Factor but will receive the full effect of the Constant Adjustment Factor in my final rate.
 - Individual Benefit Ratio: .0000
 - Variable Adjustment Factor: + .0000
 - Constant Adjustment Factor: + .0103
 - Tax Rate: .0103

2011 UT Rates

- If I am an employer with some benefit charges, I will receive the full effect of the two adjustment factors in my final rate if the combination of the three factors is less than the maximum tax rate.
 - Individual Benefit Ratio: .0266
(IBR times Multiplier equals VAF: $.0266 \times .5833 = .0155$)
 - Variable Adjustment Factor: + .0155
 - Constant Adjustment Factor: + .0103
 - Tax Rate: .0524

2011 UT Rates

- If I am an employer with more benefit charges, I will receive the effect of only some portion of the two adjustment factors in my final tax rate due to the maximum tax rate.

– Individual Benefit Ratio: .0420

(IBR times Multiplier equals VAF: $.0420 \times .5833 = .0245$; Max rate limits VAF to .0120)

– Variable Adjustment Factor: + .0120

– Constant Adjustment Factor: + .0000

– Tax Rate: .0540

2011 UT Rates

- If I am an employer whose own benefit charges alone result in the maximum tax rate, these two factors will have no effect on my final rate and I do not contribute towards the shared costs.

– Individual Benefit Ratio:	.0730
– Variable Adjustment Factor:	+ .0000
– Constant Adjustment Factor:	+ <u>.0000</u>
– Tax Rate:	.0540

2011 UT Rates

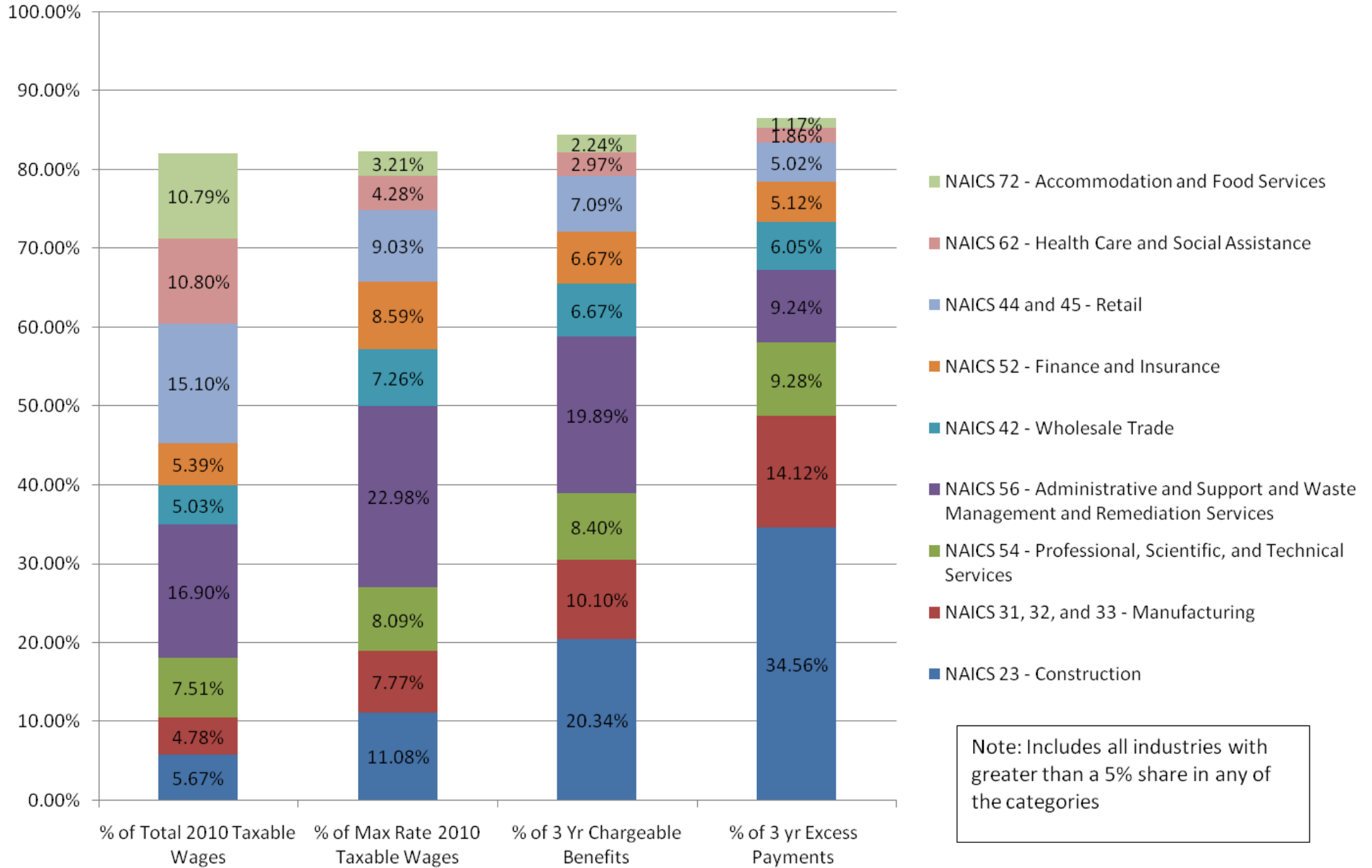
	Employers	Taxes	IBR	VAF	CAF	ER Benefit Charges
Minimum rate employers (ER)	219,935	\$45,635,636			\$45,635,636	-\$649,841
Employers above minimum and below maximum (ER)	54,281	\$707,607,947	\$291,948,023	\$170,293,282	\$245,366,642	\$446,612,530
Maximum - IBR < 5.4% (ER)	26,760	\$469,601,951	\$335,267,254	\$116,380,623	\$17,954,074	512,826,048
Maximum - IBR >= 5.4% (ER)	51,681	\$314,010,335	\$314,010,335			\$961,233,108
Penalty	9,296	\$20,572,603				\$25,920,564
STC (ER)	490	\$53,378,833	\$43,649,231	\$8,804,777	\$924,825	\$80,552,587
Other	136	\$1,881,720				\$1,379,219
Unrated	101,958	\$79,839,764				\$17,930,197
Total - All Employers	464,537	\$1,692,528,788	\$984,874,843	\$295,478,682	\$309,881,177	\$2,045,804,412
Total - All Employers at Maximum Rate	78,441	\$783,672,634	\$649,277,589	\$116,380,623	\$17,954,074	\$1,474,059,028
Total - All Experience Rated Employers	353,147	\$1,590,295,050	\$984,874,843	\$295,478,682	\$309,881,177	\$2,000,574,304

Note 1 : Taxes calculated using this year rate and last year wages

Note 2 - Additional analysis necessary to determine what amount of tax for Maximum rate employers are attributable to IBR, VAF, or CAF

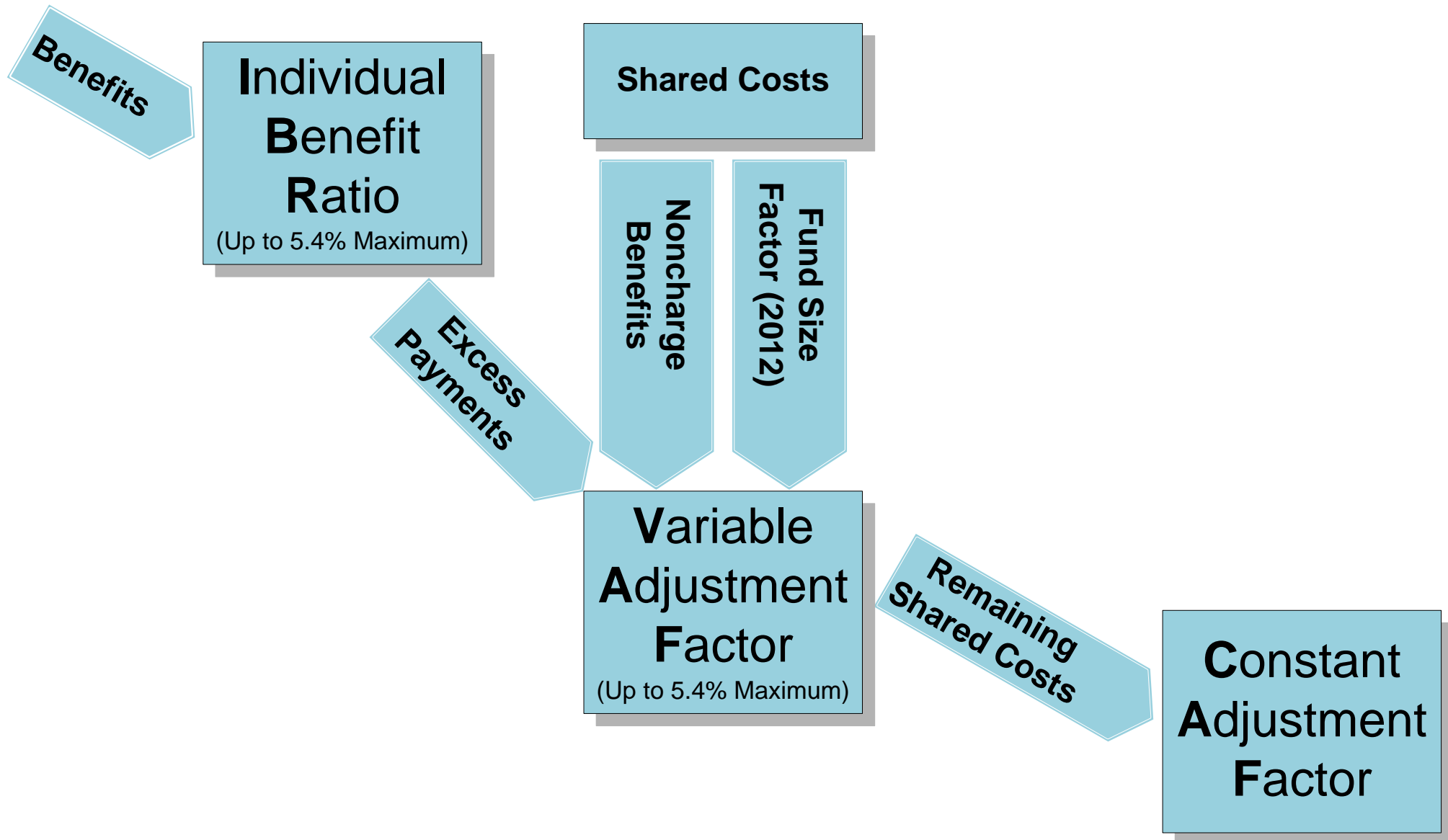
Note 3: (ER) indicates Experience Rated Employers

Comparison By Industry of Share of Total Wages, Wages for Employers at the Maximum Rate, Chargeable Benefits and Excess Payments



Experience Based Rate Setting Process

Florida Unemployment Tax



Additional Rate for Interest on Federal Advances

- In addition to the tax rates this year, Florida employers will also be subject to an additional rate which will be assessed to pay the interest that has accrued on the federal advances.

Additional Rate for Interest on Federal Advances

The rate is determined by dividing the estimated amount of interest by 95% of taxable wages for the previous fiscal year.

- Estimated Federal Interest Payment Due: \$ 61,400,000
- One year taxable payroll ending 06/30/2010: \$47,792,311,830

$\$61,400,000 \text{ interest} / 95\% (\$47,792,311,830) = .0014$ rate applied to each employer's one-year taxable payroll

- Estimated calculation at the employee level:
\$7,000 taxable wages X .0014 = \$9.51 per employee

Repayment of Federal Advances

- If Florida does not pay back the federal loans as of November 2011, employers will be subject to a loss of .3 of their federal credit for each year the loans remain unpaid.
- This would result in the amount of federal tax due to increase from .8% to 1.1% of taxable payroll.

Unemployment Tax

- States can pay interest on federal loans for employers but not from the Unemployment Compensation Trust Fund
- Some states choose to spread more of the shared costs on the employers who are at the maximum rates by:
 - increasing taxable wages
 - Increasing maximum rates
- Some states use an array system that is designed to generate a specific amount of funding needed across groups of employers (South Carolina)
 - Eliminates Excess Payments by allowing for a floating maximum rate dependent upon the funding needs
 - Distributes funding burden fully on the basis of experience
- Other states require Employee contributions in addition to Employer contributions (Alaska, New Jersey, Pennsylvania)

Notifications to Employers

Timeline

- | | |
|-------------------|--|
| December 14, 2010 | Begin mailing Individual Tax Rate Notices |
| February 1, 2011 | Mail Additional Rate Notice for Interest on Federal Advances |
| March 2011 | Begin mailing Individual Tax Returns |

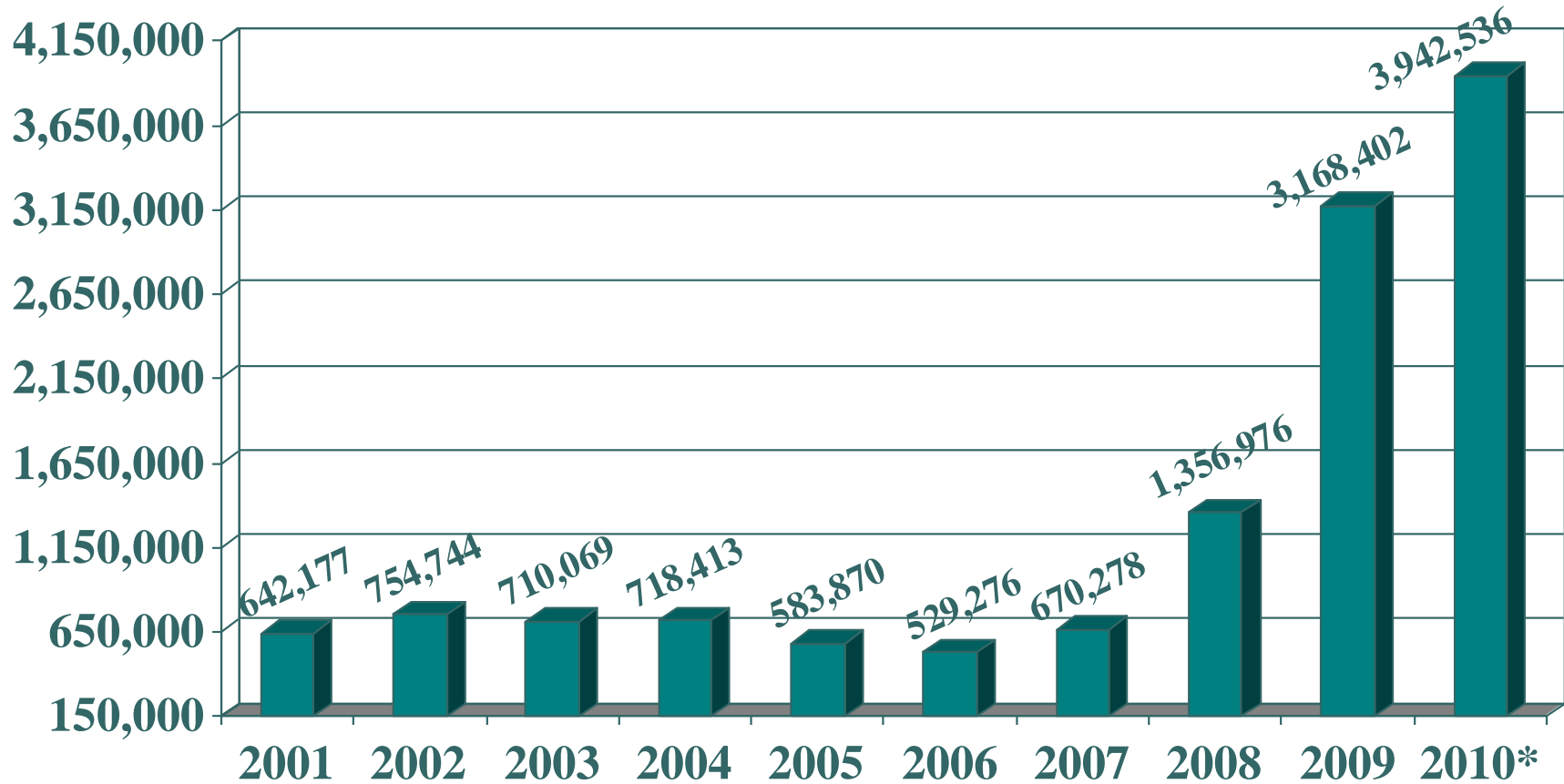
Questions???



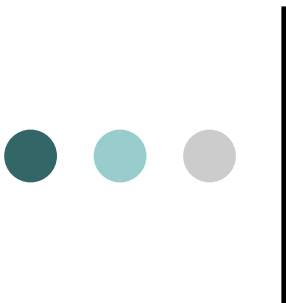
Unemployment Compensation

December 8, 2010

Total UC Claims



*Through November 30, 2010



UC – Then and Now

	<u>2007</u>	<u>Now</u>
Unemployment rate	4.7% (Dec 2007)	11.9% (Oct 2010)
Customers	587,956	1.3 million (YTD Nov 2010)
Benefits paid	\$1.1 billion	\$6.7 billion (YTD Nov 2010)
Calls to Call Center	137,000	543,000
Total employees	535	1,630
Total phone lines	736	2,093
Call Center hrs/wk	40 hours	75.5 hours



Agency Response

- **Added overflow call center**
 - Orlando-based
 - Assists 10,000+ customers daily for a total of 25,000 customers assisted daily
- **Extended hours**
 - Added 28 hours per week to toll-free UC Hotline operations
 - 6:30 AM – 7:30 PM Monday through Friday and 8 AM – 4 PM on Saturday
- **Added Customer Support Unit**
 - Assists up to 1000 customers daily with specific UC concerns
- **Additional enhancements**
 - Internet applications
 - Automated phone system
 - 4 ● Debit card



Federal & State Extensions

Emergency Unemployment Compensation (EUC)

- Adds additional federally-funded weeks of benefits
- Extended 6 times since July 2008
- Only Congress can extend program

Extended Benefits (EB)

- Adds up to 20 weeks of benefits for those who exhaust EUC
- EB period ended December 4, 2010 due to federal funding limitations

Federal Additional Compensation (FAC)

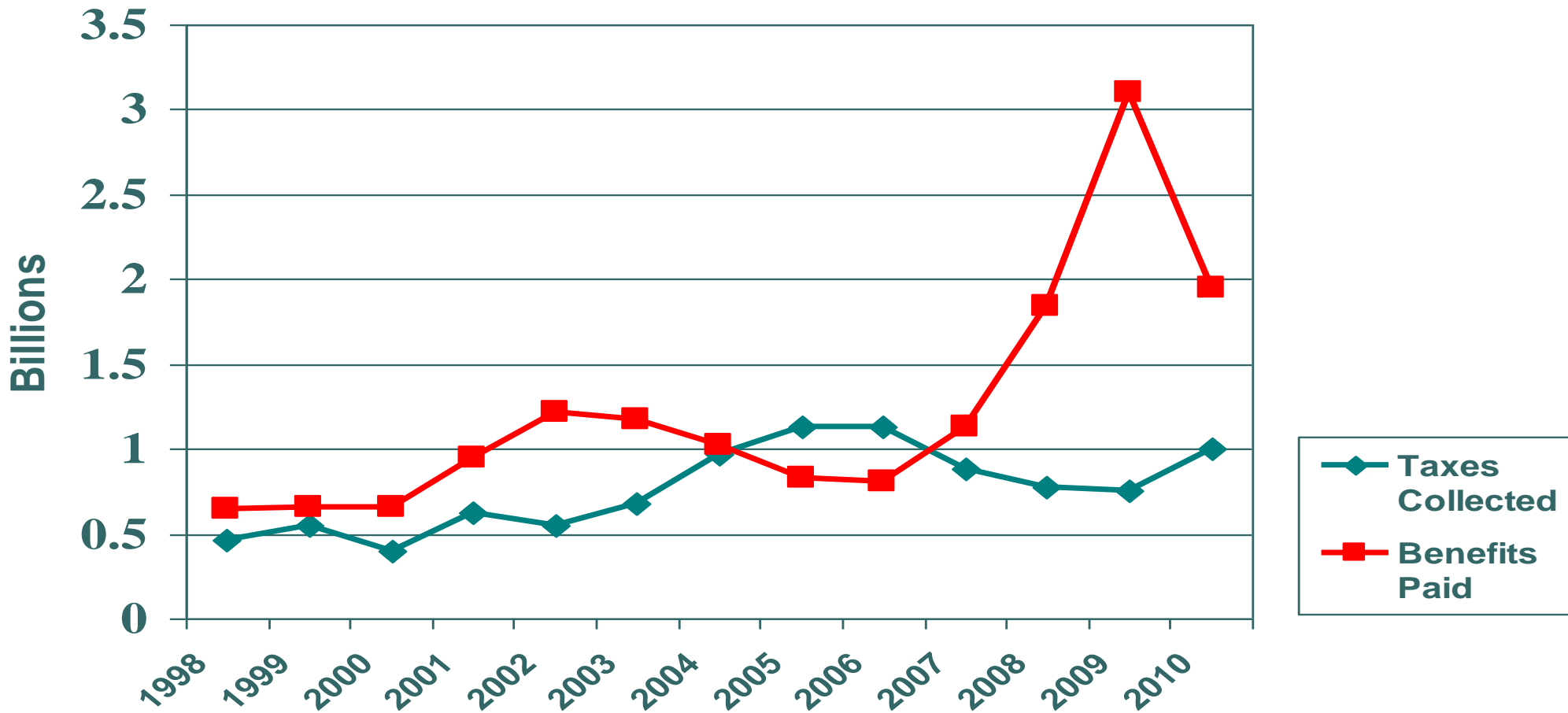
- Additional \$25 weekly in Recovery Act-funded UC benefits
- FAC ends December 11, 2010



UC Trust Fund

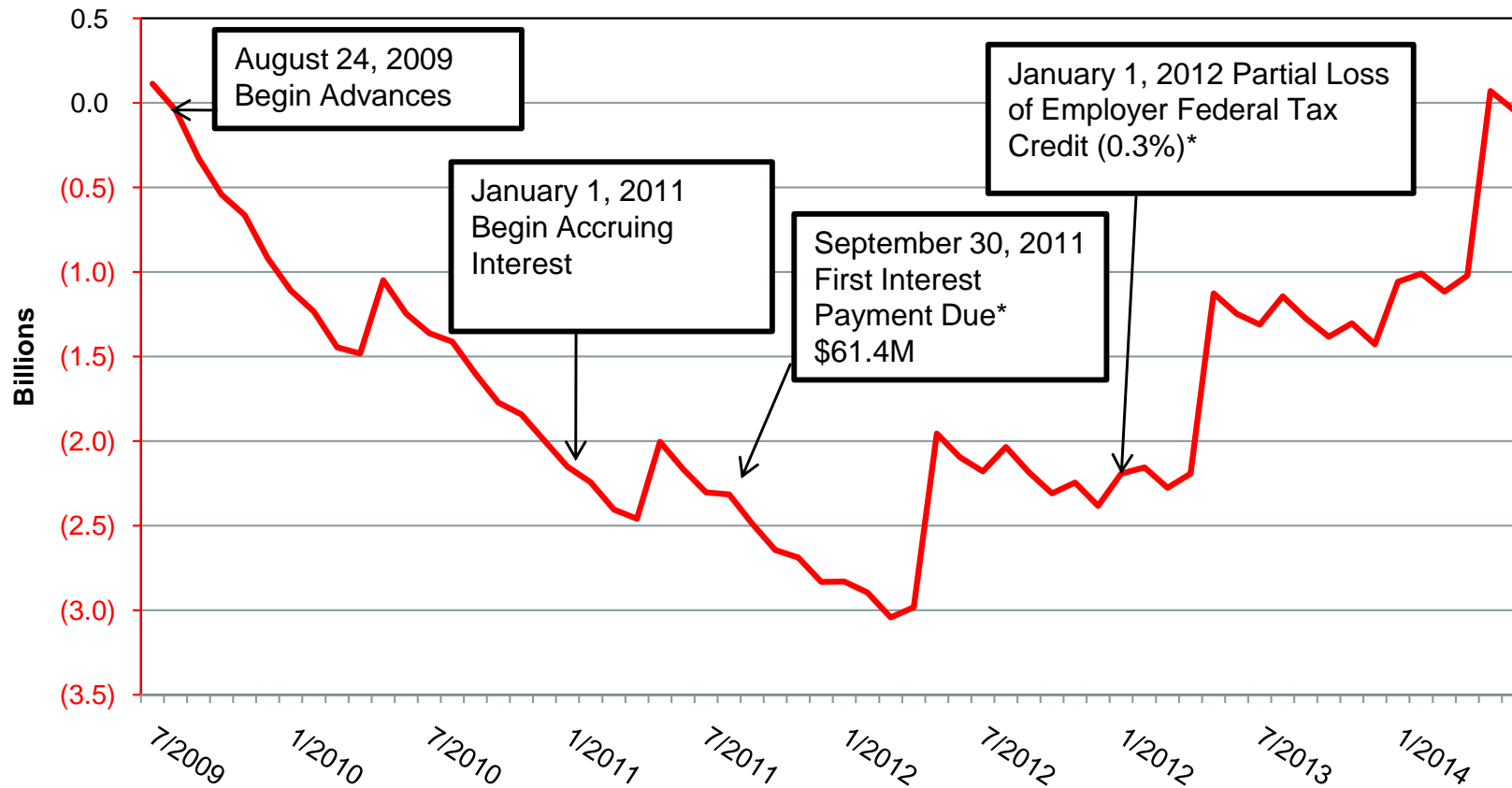
- **Florida UC Trust Fund Balance**
 - UC trust fund depleted
 - Began receiving advances from USDOL in August 2009
- **Total Florida Advances to Date**
 - \$1.8 billion received from Federal Unemployment Account
- **National Picture**
 - 36 states have requested advances for total of \$41.2 billion

UC Trust Fund



Through October 31, 2010, there were \$1.953 billion in State Benefits Paid and \$997.4 million in Taxes Collected.

UC Trust Fund Projections



Source: Office of Economic & Demographic Research
*Based on Federal Law



UC System Replacement

- **To expedite claims processing/benefits payments**
 - Current system developed more than 30 years ago
 - \$26.6 million federal funds appropriated in FY 2010-11 for design and implementation
 - Anticipated completion in 2013
 - \$43.1 million annual projected savings



UC Debit Card

- UC customers receive payments faster with additional safety and security measures.
- Debit cards may be used at no cost to the customer at more than 1,800 ATMs statewide.
- Statewide implementation planned for January 2011.
- UC customers may continue to receive payments via EFT or paper check if they prefer.



Unemployment Compensation

Tom Clendenning, Assistant Director

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