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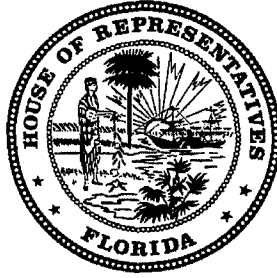
# **ECONOMIC DEVELOPMENT & COMMUNITY AFFAIRS POLICY COUNCIL**

## **Meeting Packet**

**Wednesday, November 4, 2009  
10:00 A.M. – NOON  
404 HOB**

**LARRY CRETUL**  
Speaker

**DAVE MURZIN**  
Chair



**The Florida House of Representatives**  
**Economic Development & Community Affairs Policy Council**

**Larry Cretul**  
**Speaker**

**Dave Murzin**  
**Chair**

**AGENDA**

November 4, 2009  
404 House Office Building  
10:00 a.m. – Noon

- I. CALL TO ORDER**
- II. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 – IMPLEMENTATION UPDATE**  
Don Winstead, Director, Florida Office of Economic Recovery
- III. OPPORTUNITIES AND CHALLENGES FOR FLORIDA'S ECONOMY AND BUSINESSES**  
Sena Black, Senior Vice President for Marketing and Strategic Intelligence, Enterprise Florida, Inc.  
Jose Gonzalez, Vice President for Governmental Affairs, Associated Industries of Florida  
Allen Douglas, Legislative Director, National Federation of Independent Businesses/Florida
- IV. LEGAL BRIEFING ON BROWARD COALITION OF CONDOMINIUMS V. BROWNING, 2009 WL 1457972 (N.D. FLA. MAY 22, 2009) AND FLORIDA HOMETOWN DEMOCRACY, INC. PAC V. BROWNING, 980 SO.2D 547 (FLA. 1ST DCA 2008), AFF'D, 13 SO. 3D 57 (FLA. JUN 17, 2009)**  
Lynn Hearn, General Counsel, Department of State
- V. ELECTIONS ISSUES**  
Bill Cowles, Chair, Federal/State Legislative Committee, Florida State Association of Supervisors of Elections



***Charlie Crist, Governor***  
***Don Winstead, Special Advisor***

**The American Recovery and  
Reinvestment Act of 2009**  
***Implementation Update***  
***Economic Development &  
Community Affairs Policy Council***

**November 4, 2009**

# **The American Recovery and Reinvestment Act of 2009**

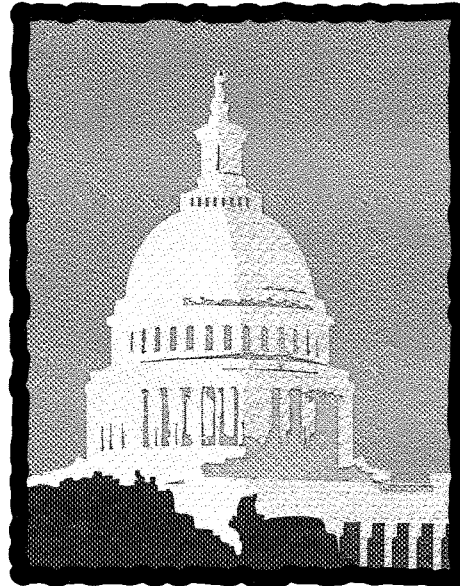
## **Purposes**

- (1) To preserve and create jobs and promote economic recovery.**
- (2) To assist those most impacted by the recession.**
- (3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.**
- (4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.**
- (5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.**

## Overview of the Act

**Division A**  
**Appropriation Provisions**

House and  
Senate  
Appropriations  
Committees



**Division B**  
**Tax, Unemployment, Health, State Fiscal  
Relief, and Other Provisions**

House Ways and  
Means Committee

House Energy and  
Commerce  
Committee

Senate Finance  
Committee

## **Division A**

### **Appropriation Provisions**

- TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
- TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
- TITLE III—DEPARTMENT OF DEFENSE
- TITLE IV—ENERGY AND WATER DEVELOPMENT
- TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT
- TITLE VI—DEPARTMENT OF HOMELAND SECURITY
- TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
- TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES
- TITLE IX—LEGISLATIVE BRANCH
- TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES
- TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

- TITLE XII—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES
- TITLE XIII—HEALTH INFORMATION TECHNOLOGY
- TITLE XIV—STATE FISCAL STABILIZATION FUND
- TITLE XV—ACCOUNTABILITY AND TRANSPARENCY
- TITLE XVI—GENERAL PROVISIONS—THIS ACT

### **Division B Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions**

- TITLE I—TAX PROVISIONS
- TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES
- TITLE III—PREMIUM ASSISTANCE FOR COBRA BENEFITS
- TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS
- TITLE V—STATE FISCAL RELIEF
- TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM
- TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

## **Division A Appropriation Provisions**

- TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
- TITLE III—DEPARTMENT OF DEFENSE
- TITLE IV—ENERGY AND WATER DEVELOPMENT
- TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT
- TITLE VI—DEPARTMENT OF HOMELAND SECURITY
- TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
- TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES
- TITLE IX—LEGISLATIVE BRANCH
- TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES
- TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

- TITLE XII—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES
- TITLE XIII—HEALTH INFORMATION TECHNOLOGY
- TITLE XIV—STATE FISCAL STABILIZATION FUND
- TITLE XV—ACCOUNTABILITY AND TRANSPARENCY
- TITLE XVI—GENERAL PROVISIONS—THIS ACT

## **Division B Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions**

- TITLE I—TAX PROVISIONS
- TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES
- TITLE III—PREMIUM ASSISTANCE FOR COBRA BENEFITS
- TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS
- TITLE V—STATE FISCAL RELIEF
- TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM
- TITLE VII—LIMITS ON EXECUTIVE COMPENSATION



# Reporting Categories

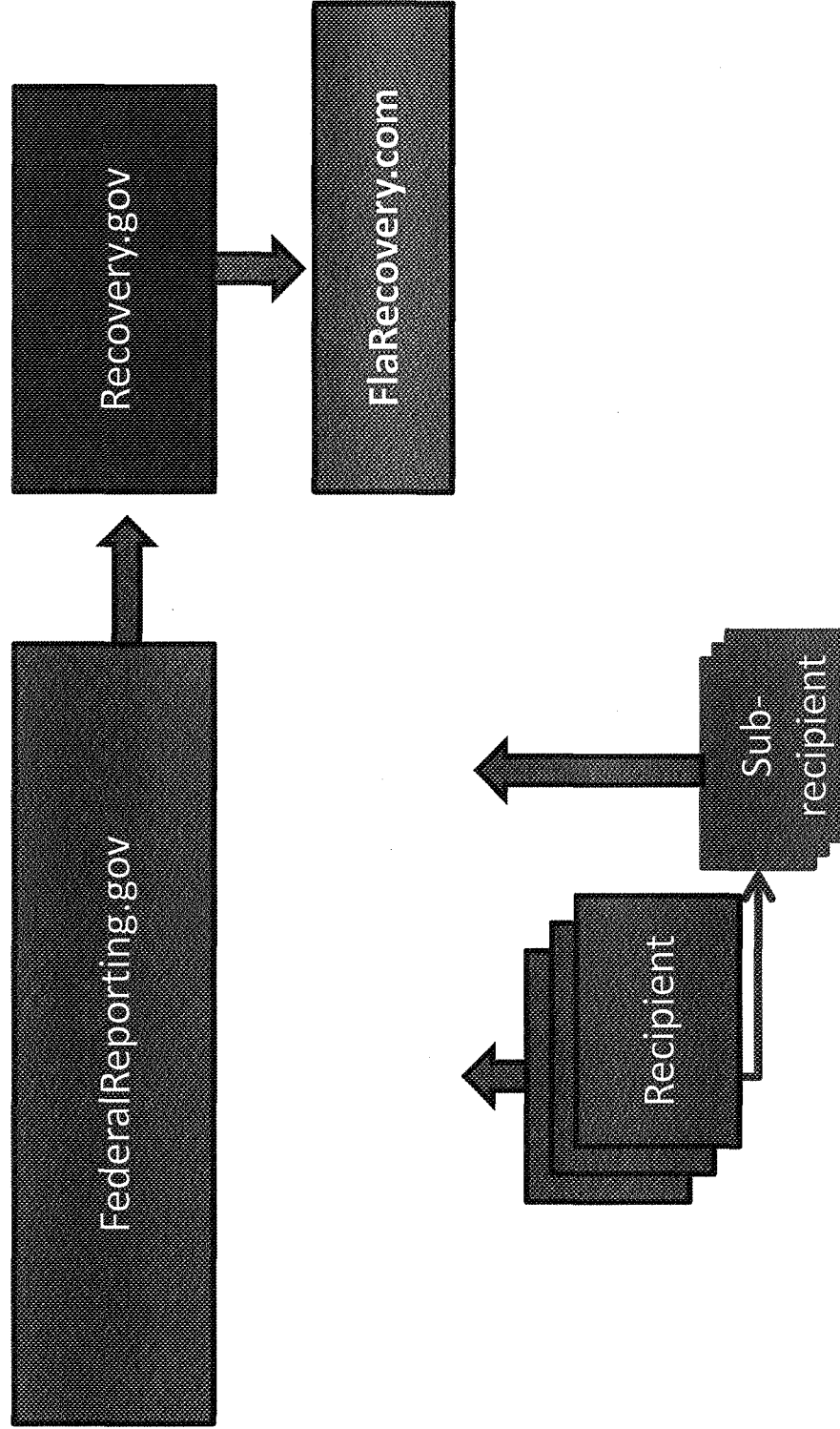
- **Subject to Section 1512 Reporting**  
(Federal Appropriations – Primarily in Division A)
  - **Grants**
    - **By or Through State Agencies**
    - **Local Government and Other Entities**
  - **Federal Contracts**
  - **Federal Loans**
- **Not Subject to Section 1512 Reporting**
  - **Payments to Individuals (Primarily in Division B)**
  - **Tax Relief**

# Reporting Requirements

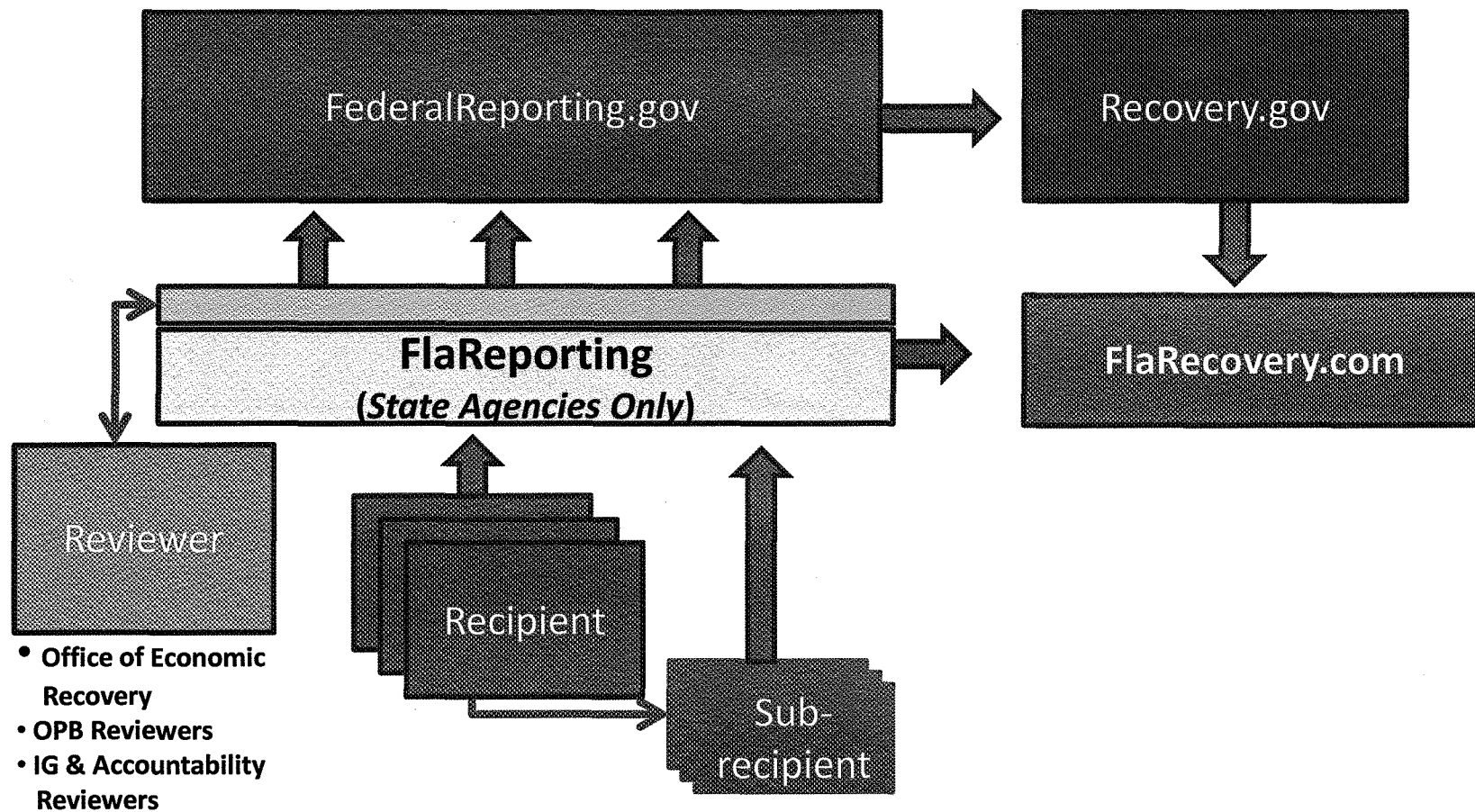
**RECIPIENT REPORTS.**—Not later than **10 days** after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

- (1) the total amount of recovery funds received from that agency;**
- (2) the amount of recovery funds received that were expended or obligated to projects or activities; and**
- (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—**
  - (A) the name of the project or activity;
  - (B) a description of the project or activity;
  - (C) an evaluation of the completion status of the project or activity;
  - (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
  - (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 .**

# Federal Reporting Process



# Florida's Reporting Process



# FlaReporting System

## Review and Work Flow Controls

Home

Organizations

Administration

Help | Sign Out

### Award Detail

Award: State Fiscal Stabilization Fund - Education Fund

Recipient: Department of Education

Actions:  Agency Review  OPB Review  Report Submitted  Report Accepted Status: Final Submission Complete

Award

Recipient

Sub Awards

Sub Recipients

Vendor Payments

Actions

Edit

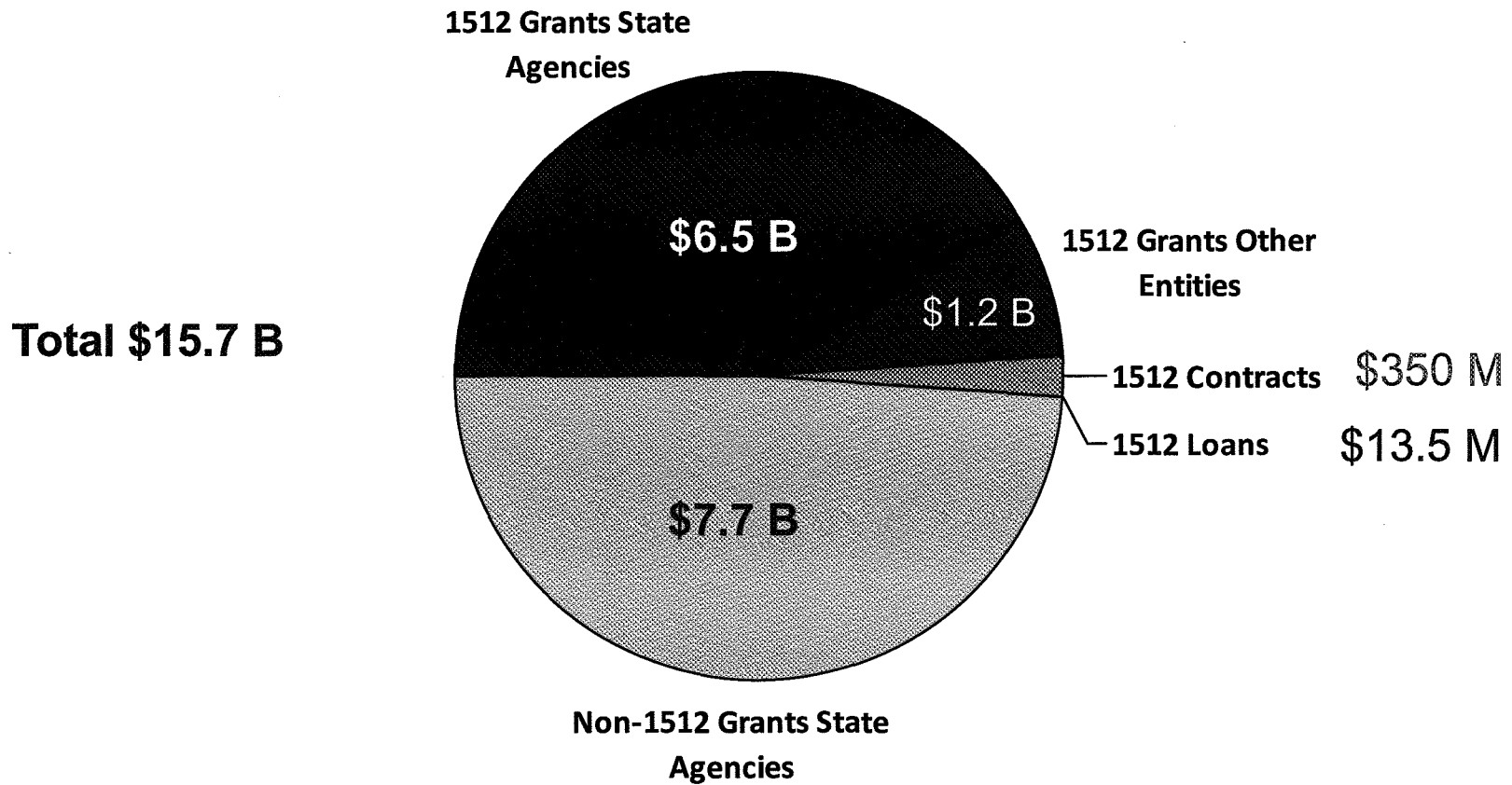
Add Vendor Payment

### Award Information

# Award and Expenditure Summary

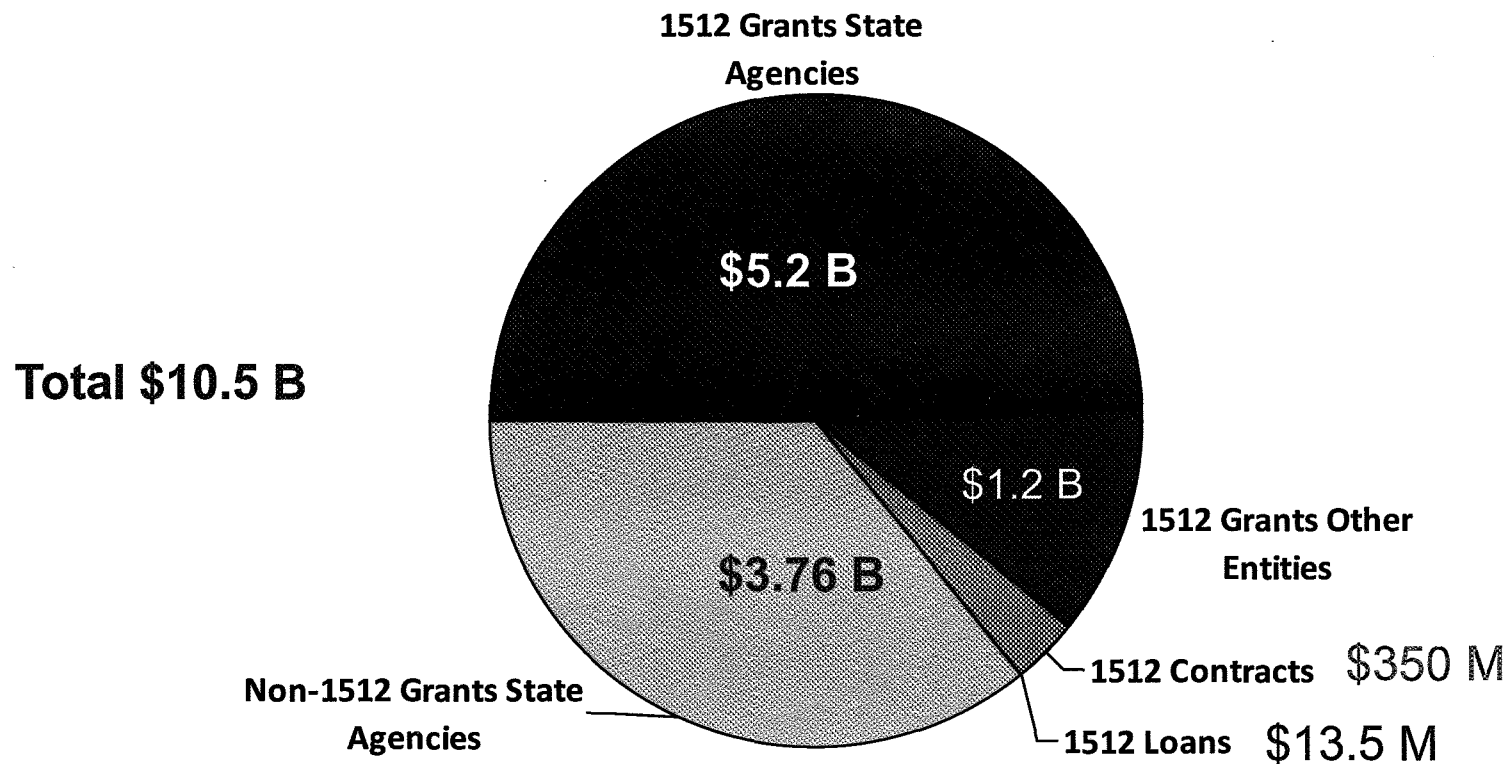
	Number of Awards or Contracts	Announced or Expected	Awarded	Expended	Received/ Invoiced
1512 Grants State Agencies	488	6,501,343,267	5,221,543,176	363,366,089	277,367,714
1512 Grants Other Entities	1,313	1,194,318,684	1,194,318,684	79,607,068	80,290,400
<b>1512 Grants Subtotal</b>	<b>1,801</b>	<b>7,695,661,951</b>	<b>6,415,861,860</b>	<b>442,973,157</b>	<b>357,658,113</b>
1512 Contracts	256	349,815,470	349,815,470	44,310,191	44,310,191
1512 Loans	10	13,484,722	13,484,722	333,000	333,000
<b>Subtotal 1512</b>	<b>2,067</b>	<b>8,058,962,143</b>	<b>6,779,162,052</b>	<b>487,616,348</b>	<b>402,301,304</b>
Non-1512 Grants	13	7,678,080,924	3,764,980,841	3,645,025,497	
<b>Total</b>	<b>2,080</b>	<b>15,737,043,067</b>	<b>10,544,142,894</b>	<b>4,132,641,845</b>	

# Announced or Expected Total Recovery Act Funds



# Awarded

## Total Recovery Act Funds



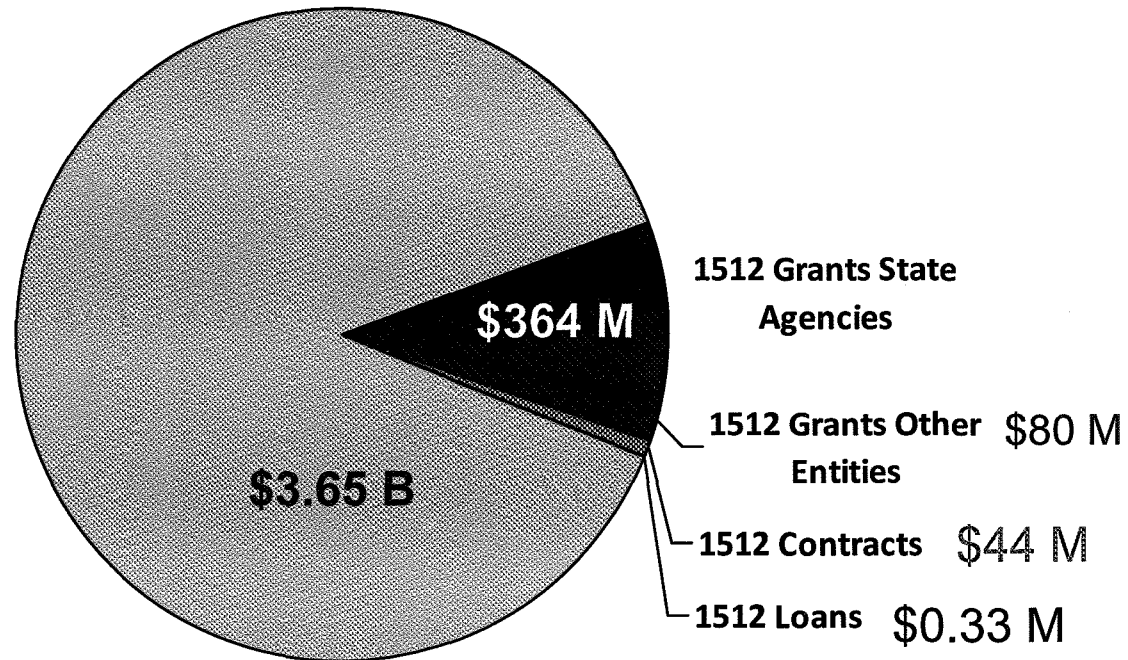


# Expended

## Total Recovery Act Funds

**Total \$4.1 B**

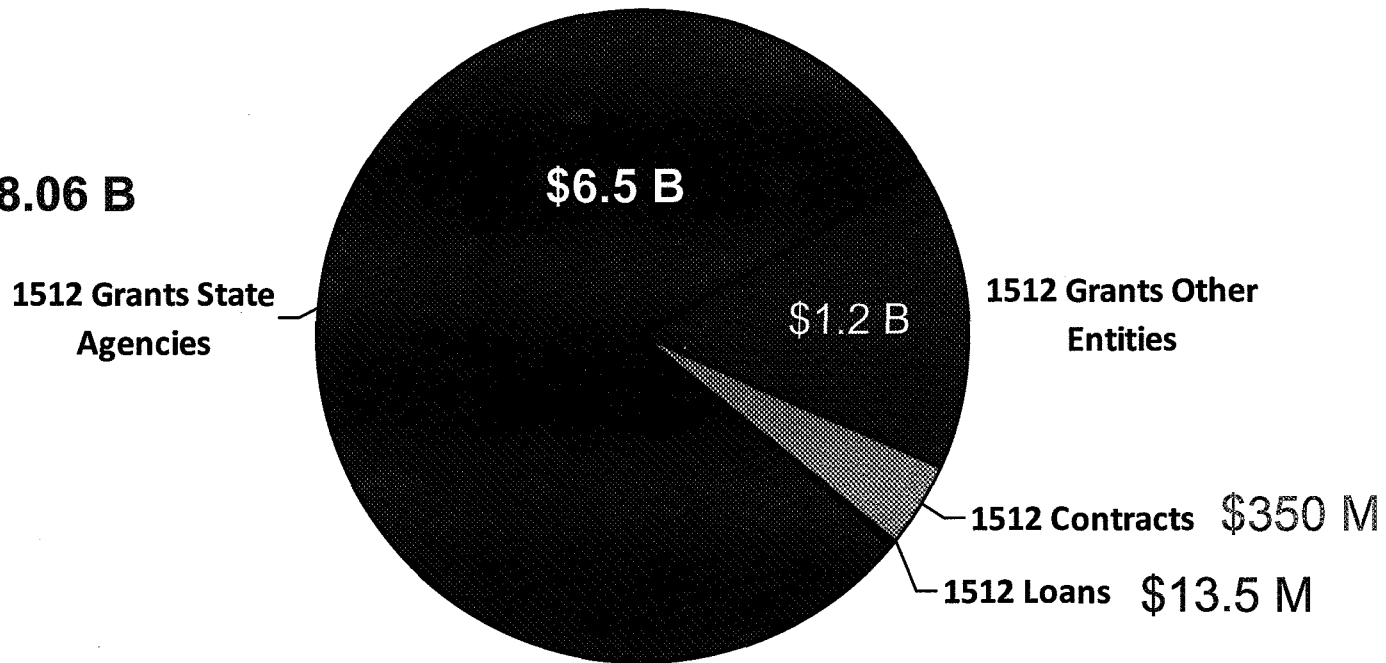
**Non-1512 Grants State  
Agencies**



# Announced or Expected

## Section 1512 Reporting Only

**Total \$8.06 B**



# Awarded

## Section 1512 Reporting Only

**Total \$6.8 B**

1512 Grants State  
Agencies

**\$5.2 B**

**\$1.2 B**

1512 Grants Other  
Entities

1512 Contracts \$350 M

1512 Loans \$13.5 M

# Expended

## Section 1512 Reporting Only

**Total \$487.6**

**1512 Grants State  
Agencies**

**\$364 M**

**1512 Grants Other  
Entities**

**\$80 M**

**\$44 M**

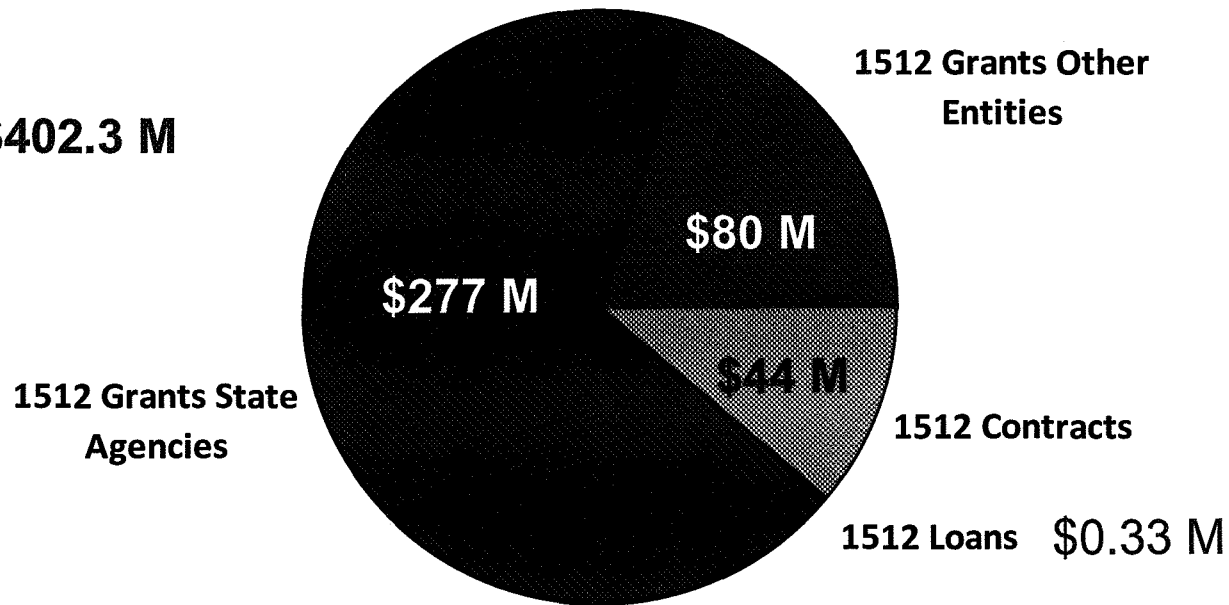
**1512 Contracts**

**1512 Loans \$0.33 M**

# Received/Invoiced

## Section 1512 Reporting Only

**Total \$402.3 M**





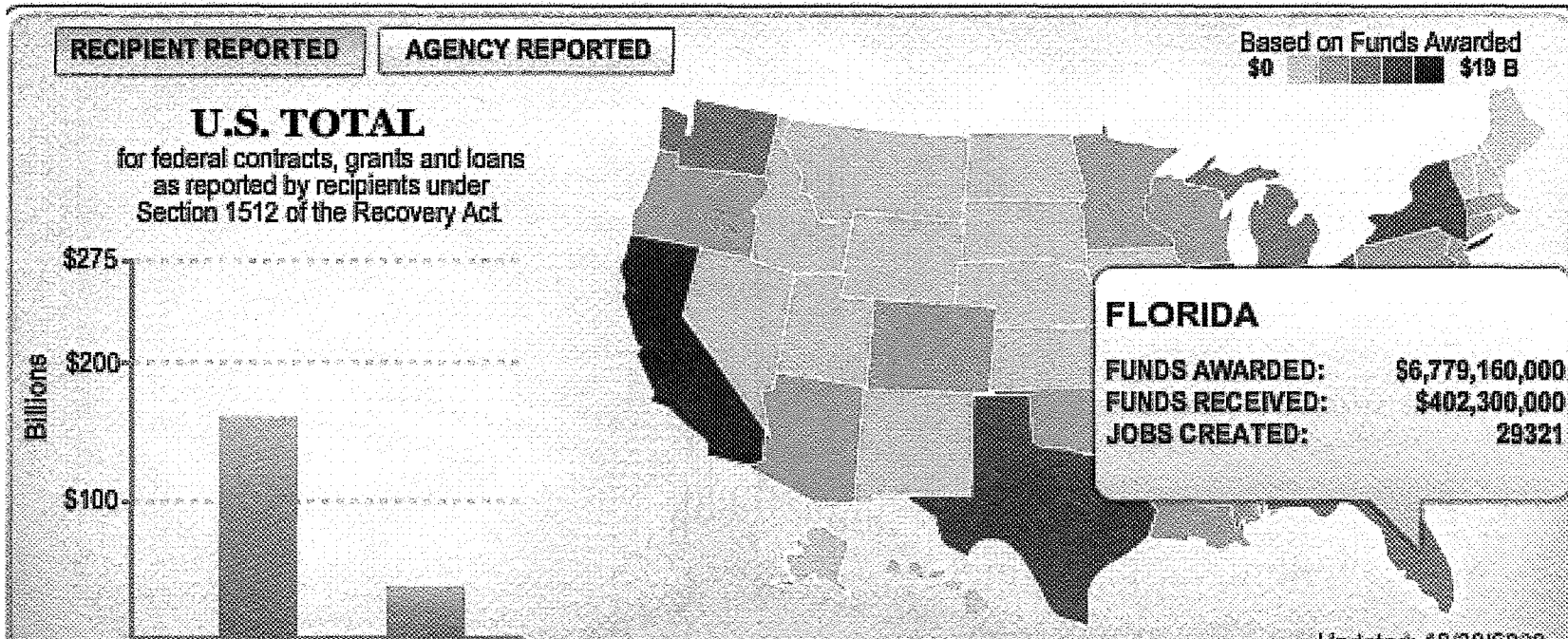
# RECOVERY.GOV

## TRACK THE MONEY

Recovery.gov is the U.S. government's official website providing easy access to data related to Recovery Act spending and allows for the reporting of potential fraud, waste, and abuse.

All of Recov

- HOME
- ABOUT
- ACCOUNTABILITY
- WHERE IS THE MONEY GOING?
- OPPORTUNITIES
- NEWS
- FAQS & RESOURCES



# Award and Expenditure Summary

	Number of Awards or Contracts	Announced or Expected	Awarded	Expended	Received/ Invoiced	Jobs (FTE)
1512 Grants State Agencies	488	6,501,343,267	5,221,543,176	363,366,089	277,367,714	23,944.47
1512 Grants Other Entities	1,313	1,194,318,684	1,194,318,684	79,607,068	80,290,400	3,727.35
<b>1512 Grants Subtotal</b>	<b>1,801</b>	<b>7,695,661,951</b>	<b>6,415,861,860</b>	<b>442,973,157</b>	<b>357,658,113</b>	<b>27,671.82</b>
1512 Contracts	256	349,815,470	349,815,470	44,310,191	44,310,191	1,623.96
1512 Loans	10	13,484,722	13,484,722	333,000	333,000	25.00
<b>Subtotal 1512</b>	<b>2,067</b>	<b>8,058,962,143</b>	<b>6,779,162,052</b>	<b>487,616,348</b>	<b>402,301,304</b>	<b>29,320.78</b>
Non-1512 Grants	13	7,678,080,924	3,764,980,841	3,645,025,497		
<b>Total</b>	<b>2,080</b>	<b>15,737,043,067</b>	<b>10,544,142,894</b>	<b>4,132,641,845</b>		

# Recovery Act

## Section 1512 Jobs Reports

Division A – Appropriations\*

Division B – Benefits to Individuals  
and Tax Provisions

State Agencies	Local & Other Agencies	Tax Provisions	Mandatory payments (Unemployment, Food Stamps, Medicaid Etc.)
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<b>Direct Jobs</b> (created or retained shown in FTEs)	<b>Direct Jobs (FTE) reported by State under section 1512</b> <b>23,944.47</b>		
	<b>Indirect Jobs</b> (employment impact on suppliers)		
	<b>Induced Jobs</b> (impact on community through purchases of goods or services)		

\* Subject to section 1512 reporting requirements



# Recovery Act

## Section 1512 Jobs Reports

Division A – Appropriations\*

Division B – Benefits to Individuals  
and Tax Provisions

State Agencies	Local & Other Agencies	Tax Provisions	Mandatory payments (Unemployment, Food Stamps, Medicaid Etc.)
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### Direct Jobs

(created or retained shown in FTEs)

<b>Total Direct Jobs (FTE)</b> reported for Florida for Section 1512 Grants, Loans & Contracts <b>29,320.78</b>			
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### Indirect Jobs

(employment impact on suppliers)

### Induced Jobs

(impact on community through purchases of goods or services)

\* Subject to section 1512 reporting requirements

# Recovery Act

## Actual Workers Represented in Section 1512 Jobs Reports

	Division A – Appropriations*		Division B – Benefits to Individuals and Tax Provisions	
	State Agencies	Local & Other Agencies	Tax Provisions	Mandatory payments (Unemployment, Food Stamps, Medicaid Etc.)
<b>Direct Jobs</b> (created or retained shown in FTEs)	<b>Actual Workers</b> Represented by 23,944.47 FTE <b>47,069</b>			
<b>Indirect Jobs</b> (employment impact on suppliers)				
<b>Induced Jobs</b> (impact on community through purchases of goods or services)				

\* Subject to section 1512 reporting requirements

# Recovery Act

## Total Jobs Estimated by Economists

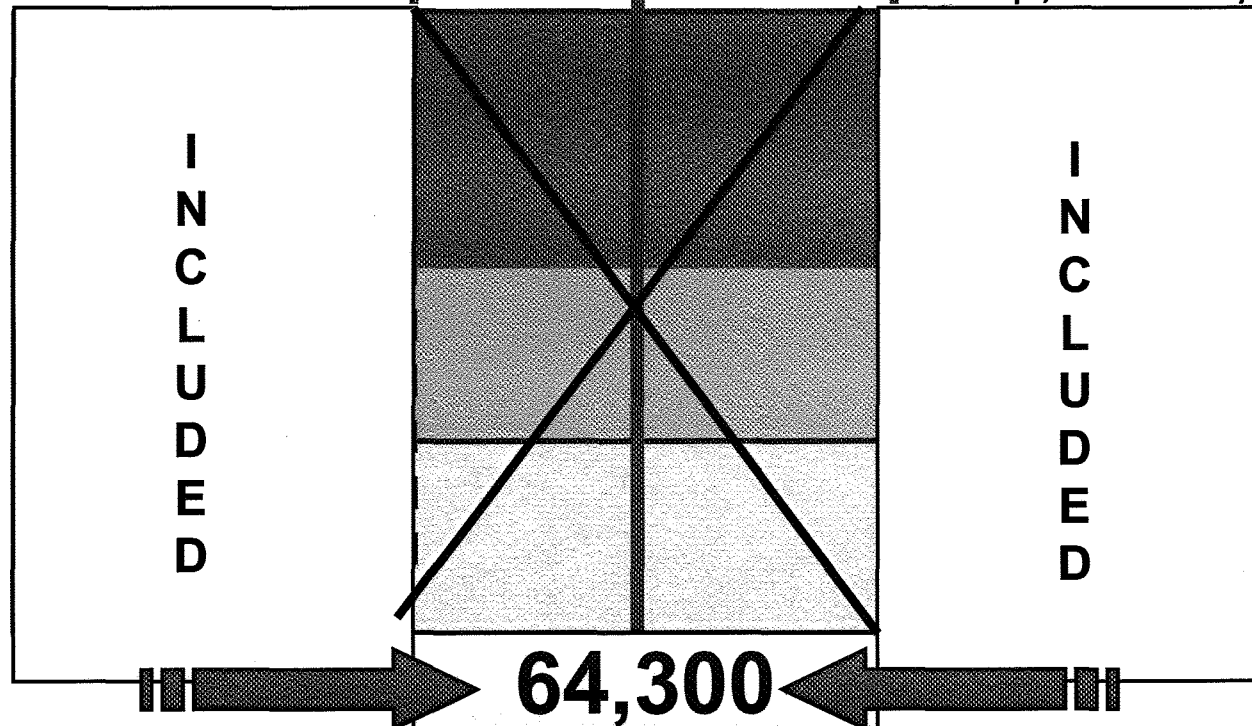
Division A – Appropriations\*      Division B – Benefits to Individuals and Tax Provisions

State Agencies	Local & Other Agencies	Tax Provisions	Mandatory payments (Unemployment, Food Stamps, Medicaid Etc.)
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**Direct Jobs**  
(created or retained shown in FTEs)

**Indirect Jobs**  
(employment impact on suppliers)

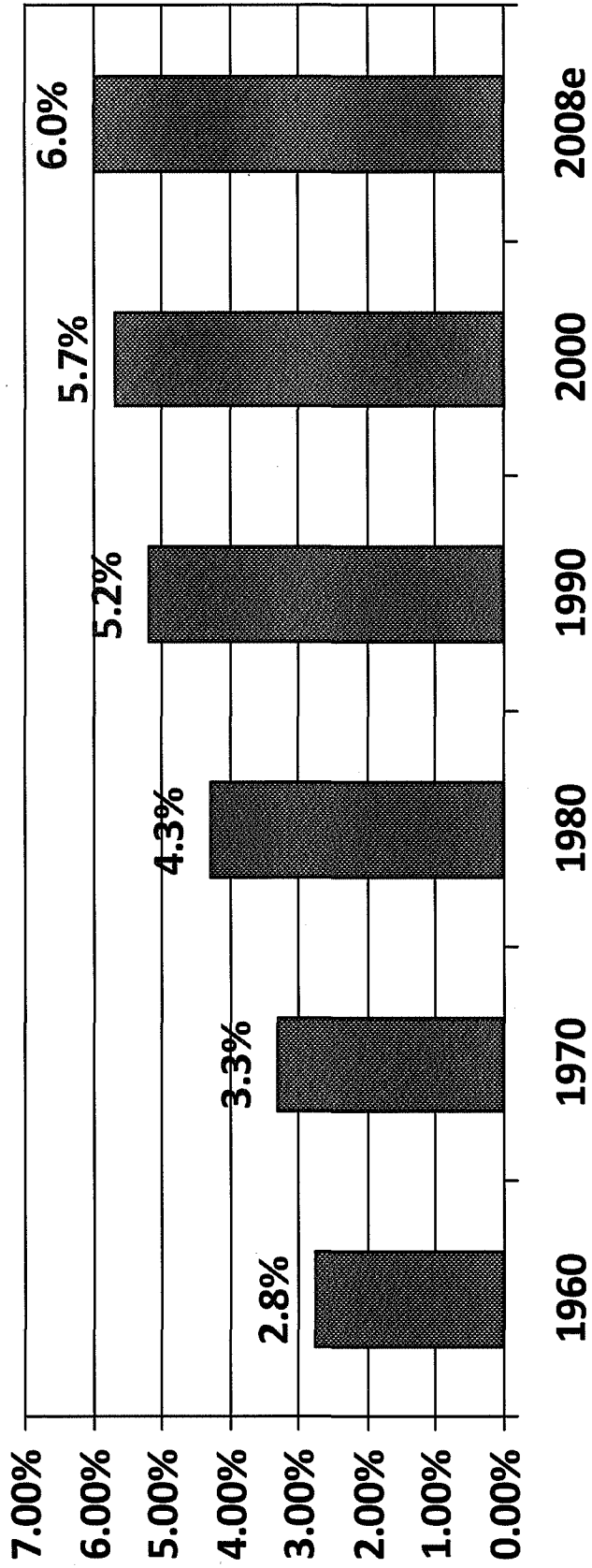
**Induced Jobs**  
(impact on community through purchases of goods or services)



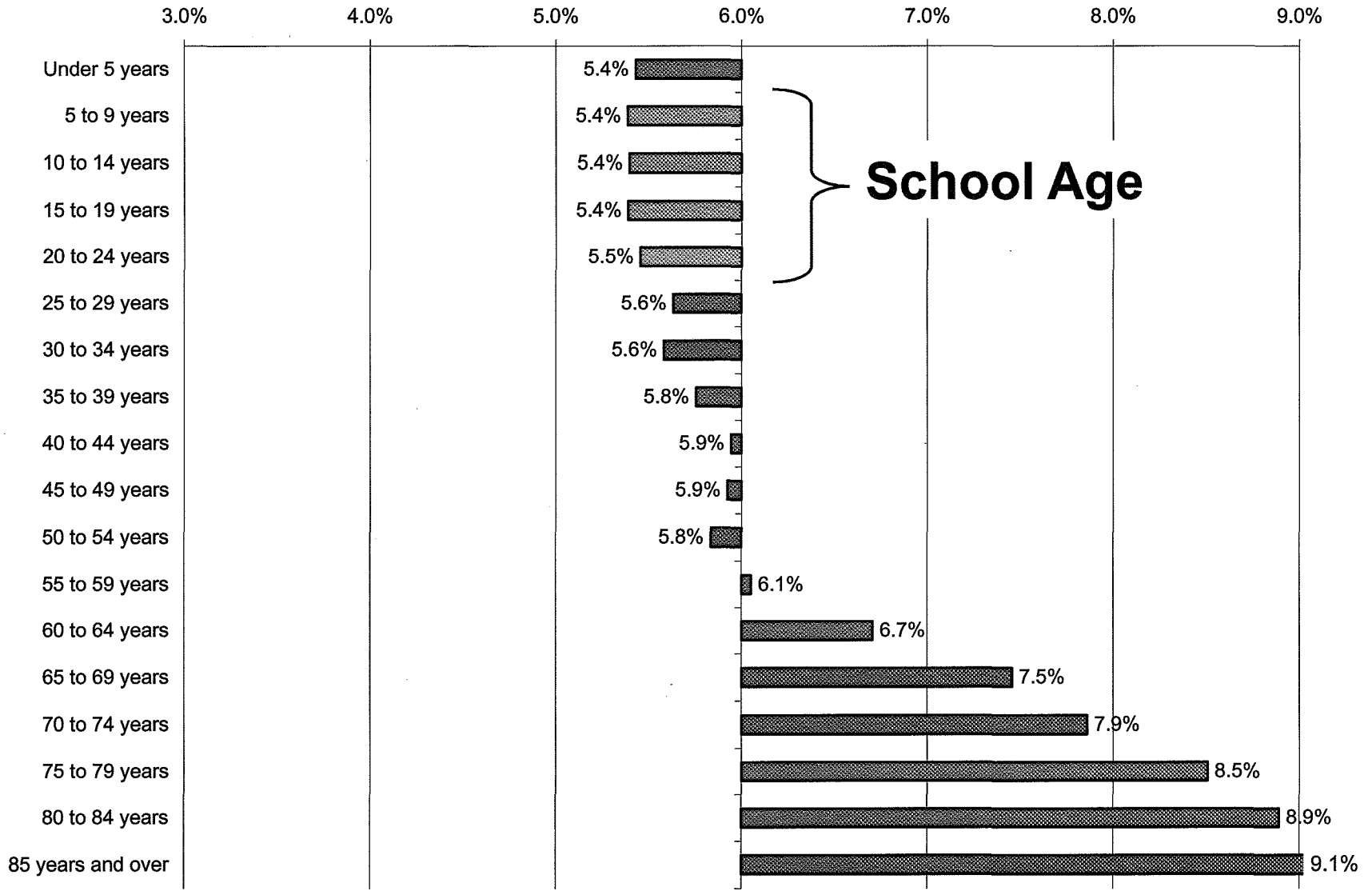
# Jobs Summary

	Jobs (FTE)	Actual Workers	Total Estimated Jobs Direct and Indirect (State Agency Funds both 1512 and non-1512)
1512 Grants State Agencies	23,944.47	<b>47,069</b>	included below
1512 Grants Other Entities	3,727.35		
<b>1512 Grants Subtotal</b>	<b>27,671.82</b>		
1512 Contracts	1,623.96		
1512 Loans	25.00		
<b>Subtotal 1512</b>	<b>29,320.78</b>		
Non-1512 Grants			included below
<b>Total</b>			<b>64,300</b>

# Florida as Percent of U.S.



# FL as Percent of U.S. by Age Cohort



# **Energy Efficiency & Conservation Block Grant Allocation Formula (partial)**



For  
funding  
out to:

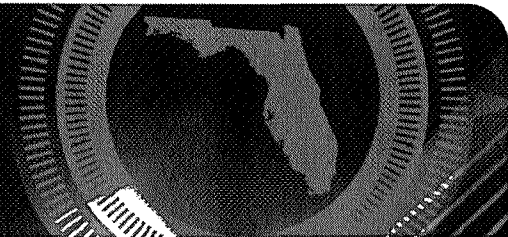
[www.FlaRecovery.com](http://www.FlaRecovery.com)



**Recovery Act Summary**  
**Data as of September 30, 2009**  
**Updated October 30, 2009**

	Number of Awards or Contracts	Announced or Expected	Awarded	Expended	Received/ Invoiced	Jobs (FTE)	Actual Workers	Total Estimated Jobs Direct and Indirect (State Agency Funds both 1512 and non-1512)
1512 Grants State Agencies	488	6,501,343,267	5,221,543,176	363,366,089	277,367,714	23,944.47	<b>47,069</b>	included below
1512 Grants Other Entities	1,313	1,194,318,684	1,194,318,684	79,607,068	80,290,400	3,727.35		
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<b>Total</b>	<b>2,080</b>	<b>15,737,043,067</b>	<b>10,544,142,894</b>	<b>4,132,641,845</b>				<b>64,300</b>





**Excerpt from: 2010-15 Statewide Strategic Plan for Economic Development**

***DRAFT – SUBJECT TO CHANGE***

**Roadmap Strategic Priority:  
Business Climate for the Innovation Economy  
*Florida's Incentive Toolkit***

**DRAFT**

**Background**

Florida's incentive toolkit is used both to help stimulate job creation in the near term and support long-term economic growth in Florida's targeted industries and areas of special need. It has a long and successful track record of generating significant returns in the form of business investment, high wage job creation, tax base growth, and more. The current downturn, however, has brought to the fore several competitive weaknesses in Florida's existing toolkit. Structural changes taking place at the macroeconomic level nationally have caused competitor states to adopt a more aggressive posture with incentives. This environment, coupled with changes in Florida's own economic structure, make it both a necessary and ideal time to re-evaluate Florida's existing incentive programs to make adjustments and fill gaps.

**For Florida's incentive toolkit to remain competitive in a changing environment, 4 key strategic challenges must be addressed:**

- **Job creation for economic recovery**— Florida is struggling to emerge from a two year recession that has significantly impacted businesses and led to an unemployment rate approaching 11%. Florida must focus on creating economic opportunities today and into the future through programs that help businesses of all sizes retain and build operations and provide access to needed capital. Business retention and expansion must be a core focus for near term job creation, particularly in a slow growth environment.
- **Productivity enhancements** — Productivity (the value of output of goods and services produced per worker) is the best measure of a state's average standard of living—the more workers produce, the more income they receive. Florida has long lagged in productivity, standing at only 92% of the national average, and well below leading states. To make gains in productivity, Florida must encourage companies to move up the value chain and invest in innovative new technologies, facilities, equipment, and workers.

- **Expansion of corporate R&D**—R&D is the source of the discoveries and ideas that fuel innovation and technological change—and is thus ultimately a key driver of economic growth, competitiveness, and prosperity. As a result, Florida must ensure that it has a robust R&D base that is aligned with industry needs. According to the most recent data, Florida—the nation’s 4<sup>th</sup> most populous state—ranks 16<sup>th</sup> among states in total R&D spending, 17<sup>th</sup> in total corporate R&D performed, 36<sup>th</sup> in terms of overall corporate R&D intensity (R&D as a share of GDP).
- **Expansion of Corporate Headquarters** —Corporate headquarters are valuable from an economic development standpoint thanks to their high wage and high-skill employment, visibility/prestige, corporate citizenship, stability, spin-off potential, and more. Regrettably, Florida is currently home to a disproportionately low share of the nation’s corporate headquarters given its size. Other states—including Tennessee, Georgia, Texas —have been especially aggressive in this area.

**In order to respond to these strategic challenges, adjustments should be made to Florida’s incentive toolkit following 3 broad principles:**

- **Maintain the value of Florida’s incentive toolkit—especially in light of significantly higher investment by national and regional competitors.** Florida’s incentive toolkit has long been appreciably smaller than those of its key competitor states. [ For example, Georgia’s new Quality Jobs Tax Credit is five times the per job value of Florida’s Qualified Target Industry (QTI) Tax Refund, may be used to offset the company’s payroll withholding, and may be carried forward ten years.] Given the intensity of competition Florida faces from other states and nations, the proven track record of its incentive toolkit, and the need posed by the economic downturn, the ability to retain and attract new jobs and investment remains a priority.
- **Fine-tune some existing incentives so that they can be more effectively deployed for immediate and emerging needs.** Florida has time-tested, performance based programs with demonstrated success. Where possible, existing programs should be fine-tuned—enhanced and/or streamlined—to improve the state’s ability to address emerging opportunities and strategic challenges.
- **Develop new tools to address gaps / respond to changing economic drivers.** The current economic climate, Roadmap planning process, and analysis have brought to light several important gaps in Florida’s incentive toolkit—especially with regard to small and medium sized business needs, innovation and other strategic drivers of long term economic growth. New tools are needed to address Florida’s strategic challenges.

**Recommendations:**

**Strategic Challenge #1: Accelerate job creation for economic recovery**

It is important to accelerate Florida job creation in the near term while ensuring that the state’s incentive programs are well designed for use throughout recovery and future growth. Adjustments to several of Florida’s existing tools—including workhorse Qualified Target Industry (QTI) and underutilized Capital Investment Tax Credit (CITC)—can provide opportunities to address strategic challenges today and into the future, especially in increasing focus on the retention and expansion of Florida businesses. New programs are also needed to address a lack of available capital hindering the day-to-day operation Florida’s small and medium sized businesses now, and that have long posed a challenge to high growth innovative start-ups.

1. **Modify QTI to jump start job creation and encourage business retention and expansion.** QTI is an effective incentive, successful in inducing new job creation. Modifications to this existing tool can further strengthen Florida's ability to attract and retain targeted businesses and address the aforementioned strategic challenges.
  - Increase per job award for projects in high impact sectors (corporate HQ, clean energy, transportation equipment manufacturing, life sciences, financial services, information technology and semiconductors).
  - Offer additional QTI state incentive dollars for higher than required local financial contribution. For example, offer a \$1,000 per job bonus for a 50:50 state/local match.
  - Remove QTI \$5 million lifetime business unit cap, as this is a disincentive for existing Florida businesses contemplating additional growth in this State.
  - Explore incorporating existing, underutilized rural and urban incentives into QTI in an effort to enhance the ability of these programs to drive economic diversification in Florida's target opportunity areas.
2. **Lower the investment threshold for High Impact Performance Incentives (HIPI) in order to enhance availability of this attractive, yet fiscally conservative incentive.** Lowering the new job creation and capital investment requirements for HIPI to 50 new jobs and \$50 million investment (25 jobs and \$25 million for R&D projects) can help to spur activity in high impact sectors. The performance-based HIPI grants would provide critical cash infusion at strategic points in a project's timeline.
3. **Fund the Quick Action Closing Fund.** The Quick Action Closing Fund appropriation was reduced from \$46.4 million in FY 2008-09 to \$13.46 million in FY 2009-10. While the precise impacts of this decline will not be known for several months, this change drastically inhibits Florida's ability to compete for important economic development projects—all at a time when other states are increasing their economic development efforts. For example, the Texas Enterprise Fund discretionary cash grant was initially funded at \$290 million in 2003 and has been maintained at a balance of \$190 million as of August 2009. Georgia, North Carolina, New York, Pennsylvania and Virginia also have similar discretionary deal closing funds ranging from \$15 million to \$45 million.
4. **Expand Florida's financial toolkit for small and medium businesses—which have been particularly hard hit by the credit crunch**
  - a. **Establish a low interest loan fund coordinated at the state level but implemented through a bank consortium.** The pool of loan capital would be established from individual banks willing to commit funds and share risk with the State. The monies would be deployed in support of growth businesses and innovation based companies with the full expectation of repayment. Bank underwriting standards would be used, and the state would help build reserves for losses and underwrite the cost to maintain the lending consortium as a means of supporting innovation based business in Florida. While banking has endured a period of declining asset values and excessive loan losses, and bank lending, in general, has a reduced appetite for risk, banks remain the most effective originators and servicers of loans.
  - b. **Enable Florida Development Finance Corporation to have statewide authority.** The Florida Development Finance Corporation operates through inter-local agreements with counties and cities. There is no statewide lending authority for business and industrial finance, and borrowers must navigate applications and procedures that are different in every locality. Multi-jurisdictional bond issues have unnecessary complexity. Florida Development Finance

Corporation should be given statewide authority. Such action will allow economic development projects to have clear, timely responses on bond financing needs regardless of where the project is located. Bonds authorized by federal stimulus likely will have better utilization with a statewide bond issuing entity, and borrowers will not have financing delayed due to land use issues which are correctly handled through zoning and site plan reviews, not financing approvals. Providing statewide authority to Florida Development Finance Corporation does not curtail any bond issuance powers of local government and does better assure competitive pricing for bond issuance projects.

## **Strategic Challenge #2: Promote productivity through capital investment**

Capital investment in new facilities and equipment is crucial to manufacturers who must continually improve their products and manufacturing processes to keep costs down and remain competitive in global markets, and is key to increased productivity and efficiency. In today's environment of business consolidation and the need to redistribute production volumes, Florida has an opportunity to capture new capital investment, which leads to preservation of existing jobs as well as downstream new job creation. Unfortunately, Florida ranks poorly—36<sup>th</sup> among states and 16% below the national average—in average investment per employee in manufacturing machinery and equipment.<sup>1</sup> As a result, Florida needs incentives to more aggressively promote the adoption of innovative technologies and production methods, or at the very least, to remove disincentives for such investment.

In addition to enhancing productivity and competitiveness, additional capital investment also leads to new direct and indirect revenue streams at both the State and local levels. The additional investment, much of which is taxable will enhance State sales and use tax as well as corporate income tax. This investment will also increase local ad valorem tax revenue by increasing the value of personal property on the tax rolls.

1. **Eliminate the 10% expansion requirement for Florida's Manufacturing Machinery and Equipment (MME) exemption**—Florida's MME exemption is available for new and expanding businesses increasing productive output by at least 10%, but is not available for replacing existing equipment if the expansion threshold is not met. In contrast, many of Florida's key competitors—including Georgia, Virginia, New York, North Carolina, and Texas—offer complete exemptions (including replacement equipment).

Florida's partial exemption presents a long term competitiveness weakness in promoting productivity growth, as well as an immediate challenge. In the current economic climate Florida's 10% output expansion requirement climate serves as a disincentive for capital investment decisions. Some Florida manufacturers are deferring investment in capital equipment because the market cannot presently bear a 10% output expansion and sales tax exemptions are important to the investment decision. This disincentive keeps companies from making investment now that will improve their competitiveness through economic recovery and into the future (and also defers much needed increases in the tax base).

Elimination of the 10% expansion requirement could also mean the removal of the Semiconductor, Defense and Space Technology (SDST) sales tax exemption, which already exempts replacement equipment from sales tax for businesses in these sectors.

2. **Adjust the Capital Investment Tax Credit (CITC) program to expand its impact in encouraging capital investment and effectiveness in supporting the growth of companies in Florida** – CITC is designed to attract and grow capital intensive industries in Florida. However, its large thresholds and

<sup>1</sup> Reference: U.S. Census Bureau Annual Survey of Manufacturers, and Florida TaxWatch  
<http://www.floridatxwatch.org/resources/pdf/03172009EconomicImpactAnalysisFloridasManufacturingSector.pdf>

industry restrictions often limits its applicability to projects. Expanding eligibility and providing more flexible is important to promoting greater capital investment.

- Reduce the job creation requirement to 50 new jobs in order to encourage investment in new technology and ensure Florida businesses remain competitive.
- Expand CITC to all target industries (currently restricted to semiconductor manufacturing, transportation equipment, information technology, life sciences, financial services, corporate headquarters, and clean energy).
- Allow the transferability of tax credits, providing a revenue stream to innovative businesses. Small businesses that do not have State corporate income tax liability can still be induced to invest capital and create jobs. The transferability of tax credits will provide essential, predictable cash flow, which can be reinvested in the business to further advance productivity enhancements and new job creation.

### **Strategic Challenge #3: Expand Florida's Corporate R&D Base**

Florida's poor/under-performance in corporate R&D is a long standing strategic challenge that has yet to be sufficiently addressed through the state's incentive toolkit. Fortunately, proven policy options are available. Expanding Florida's R&D base is vital for Florida's long term economic diversification and growth in an increasingly knowledge-based and innovation-driven global economy.

1. **Enact a state R&D tax credit**—Research convincingly shows that the federal R&D tax credit is an effective tool for stimulating corporate R&D investment, which in turn stimulates faster economic growth. Building on this success, more than 30 states have created state-level R&D tax credit programs. These state-level programs have also been shown to increase corporate R&D investment and the number of high technology establishments within a state.<sup>2</sup>
  - Include transferability of credits to provide a revenue stream for innovative young companies that often cannot secure traditional financing and face capital gaps
2. **Establish an expanded Florida Innovation Fund**—To date, the Innovation Incentive has played a leading role in attracting leading research institutes and companies that have expanded innovation-based economic activity both in their own right and through spin-off generation. In addition, these high profile projects have improved the state's standing as an innovation state. Over a cumulative 20 years, this investment is expected to create an estimated \$22.1 billion impact.

Now may be an opportune time to re-conceptualize this incentive into an Innovation Fund with expanded goals and a more flexible set of eligibility criteria. The new Innovation Fund should be a composite of three initiatives:

- As an *innovation incentive* for the attraction of corporate R&D facilities and non-profit research institutes with capital investments (example: threshold of \$25 million) and the creation of high wage jobs (example: at least 25 jobs at 150 percent of the state average).
- As a *matching fund* to enable Florida universities to attract federal R&D centers and labs. The Fund would subsidize half the match required to compete nationally. (Note: R&D funding is

<sup>2</sup> Yonghong Wu. 2005. The effects of state R&D tax credits in stimulating private R&D expenditure: a cross-state empirical analysis." Journal of Policy Analysis and Management, 24(4), 785-802; and Yonghong Wu. 2008. "State R&D tax credits and high-technology establishments." Economic Development Quarterly. 22(2), 136-48; and

increasing at the federal level. At the same time, most federal agencies are now requiring mandatory matches).

- As an *equity partnership investment* in major R&D facilities (corporate, non-profit) to help fund start-up costs in return for a portion of royalties. The potential revenue stream generated would be returned to the Fund and/or used to help subsidize technology commercialization grants to continue to enhance Florida's innovation economy.

This Florida Innovation Fund should be funded at a significant level – such as \$250 million over 5 years – to help diversify Florida's economy for innovation, new technologies and emerging industries.

- 3. Retain and promote the University match component of the SDST exemption, and broaden it to all manufacturers under MME.** The SDST sales tax exemption currently allows applicants to contribute the exempted value of the sales tax to specific University research and development efforts, if matched by the University. This program leads to a unique partnership between businesses and educational institutions for the advancement of collaborative research efforts. Retaining this match component and broadening it for all manufacturers will expand business and university cooperation statewide in sectors beyond semiconductor, defense and space.
- 4. Support the SBIR Matching Grant Program**  
Legislation has been proposed for a Phase 2 SBIR matching grant program to accelerate the success of commercialization of technologies and enable start-up entrepreneurship. This legislation will also leverage the federal SBIR program of over \$1.9 billion which provides competitive awards. Matching funds are required and a state matching grant program of \$5 million annually can have significant impact in commercialization and business formation.

#### **Strategic Challenge #4: Expand number of corporate headquarters in Florida.**

Corporate headquarters are very attractive targets to complement a targeted economic development strategy, and Florida's attractive quality of life, number of large and middle market cities, transportation and telecommunication infrastructure, and tax climate are important helpful location advantages. However, Florida trails other states for headquarters locations. Adjustments to Florida's existing incentives are needed to improve their competitiveness relative to other states, many of which have already refined their programs to target headquarters projects. For example, Tennessee offers refundable tax credits to offset qualified relocation expenses incurred in the establishment of a headquarters facility, addressing one of the most significant hurdles in recruiting a new company—the costs associated with relocating the business and certain employees to a new state. States such as Georgia and Texas not only aggressively market their incentives, but also have other attractive characteristics such as major international airports, strategic location making it easy to access to any point in the country, and an existing base of corporate headquarters.

- 1. Reduce investment and job creation threshold for HIPI and the job creation threshold for CITC to encourage corporate headquarters relocations (suggested in Strategic Challenges #1 and 2)**—The prevalence of existing, high-quality, low-cost office space makes the current economic climate a good opportunity to recruit corporate headquarters.
- 2. Increase the per job award for high impact sectors, including corporate headquarters under QTI (suggested in Strategic Challenge #1).** A higher per job award places additional emphasis on the importance of generating job creation in the sectors that provide the greatest economic impacts.



## Summary

Strategic Challenge	Specific Recommendations:
<b>Job Creation for economic recovery</b>	<ul style="list-style-type: none"> <li>• Refine QTI</li> <li>• Lower HIPI job and investment thresholds</li> <li>• Fund Quick Action Closing Fund</li> <li>• Low-interest loans for small business through bank consortium</li> <li>• Give Florida Development Finance Corporation statewide authority</li> </ul>
<b>Productivity</b>	<ul style="list-style-type: none"> <li>• Eliminate 10% expansion requirement for MME exemption</li> <li>• Reduce job creation requirements for CITC</li> <li>• Expand CITC to all target industries</li> <li>• Allow the transferability of CITC tax credits</li> </ul>
<b>R&amp;D</b>	<ul style="list-style-type: none"> <li>• Enact R&amp;D Tax Credit with transferability</li> <li>• Fund Innovation Fund with expanded goals and eligibility</li> <li>• Retain and promote the University match component of the SDST exemption and broaden it to all manufacturers under MME</li> <li>• SBIR Matching Grant Program</li> </ul>
<b>Corporate HQ</b>	<ul style="list-style-type: none"> <li>• Reduce HIPI and CITC thresholds</li> <li>• Increase QTI benefits for strategic sectors including HQ</li> </ul>

# Opportunities and Challenges

*for Florida's Economy*

House Economic Development & Community Affairs Council



ASSOCIATED INDUSTRIES OF FLORIDA

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Jose L. Gonzalez

*Vice-President Governmental Affairs*

# Who We Are...

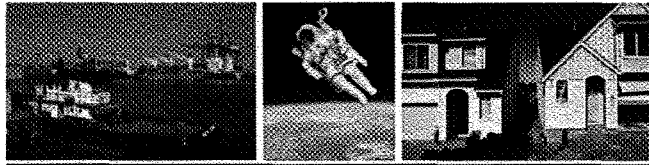
- Member-driven, Business Association
- 10,000 Members Across the State of Florida
- Membership Consists Of:
  - Manufacturers – State affiliate for 
  - Agriculture
  - Phosphate Companies
  - Utilities
  - Telecommunication Companies
  - Insurance Companies
  - Retailers
  - Over 40 Business and Trade Associations
  - *“And Everything-in-Between”*



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# Economic Stimulus Package (ESP)

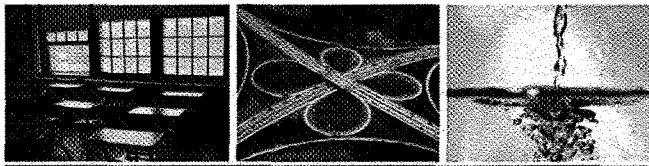
## Previous Proposals from AIF and its Business Community Partners



### Economic Stimulus Package

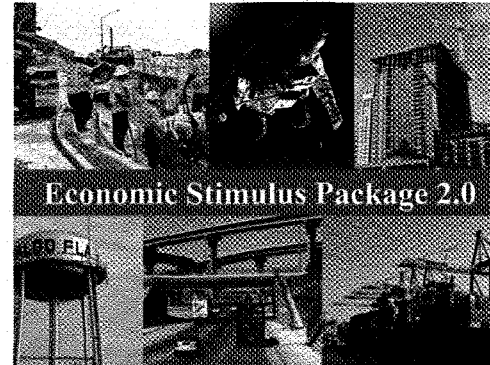
Presented to the  
Senate Transportation & Economic Development Appropriations Committee  
by Florida's Business Leaders

Thursday, February 7, 2008



### ECONOMIC STIMULUS: *Florida Needs it Now*

With the nation and perhaps Florida slipping into an economic slowdown, Florida's business community recommends an Economic Stimulus Package of incentives, economic development, and public works jobs that would help place our state in the correct posture to survive this economic downturn in the best possible condition. Some of these recommendations were ideas proffered by Governor Charlie Crist this past summer, but were not taken up in the special session. The others originate from conversations with representatives from various industry associations and other stakeholders interested in jump starting Florida's economy. The majority of these recommendations are for infrastructure improvements, capital projects that will have permanent economic benefits to the state and our citizens.



### Economic Stimulus Package 2.0

There is no longer any doubt that Florida and the nation are experiencing the worst economic downturn since the Great Depression. Job losses in our state and across the country continue to grow as companies face the daunting challenge of a severe credit crunch and reduced consumer spending. Florida's revenue, which is highly dependent on sales tax receipts, has seen record decreases for an unprecedented three years in a row. Yet, these difficult times can also produce significant opportunities for policy makers and business leaders. Short-term, targeted investments in infrastructure can go a long way in stimulating Florida's ailing economy. This package is designed to present lawmakers with a list of options and recommendations, from the private sector, for investments in Florida's future.

The recommendations found in this package originate from discussions with representatives from various industry associations and other interested parties who are deeply concerned with the future of Florida. They are mainly focused on infrastructure investments with a high return on investment (ROI), but given the bleak budget picture in Tallahassee we have also included some important regulatory recommendations that can stimulate the economy without a big price tag. This package is meant to be perceived as a potential guide for positioning Florida in such a way that it can bounce back from this recession faster and in a more sustainable way.

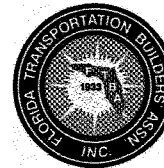
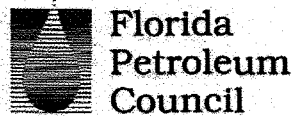
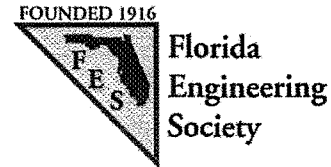
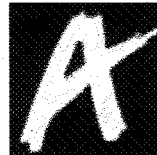
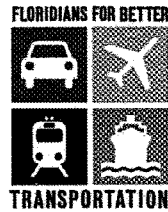
Recognizing the direct link between investments in infrastructure and jobs, Governor Crist unveiled his "Accelerate Florida" program directing state agencies to immediately begin work on projects that have been funded by the Legislature and to remove any obstacles that may be in the way of these projects. In addition, Florida needs to position the state for revenue allocations to Florida from President Barack Obama's federal stimulus program on infrastructure improvements, which could help complement the recommendations included in this package.

For more information on this package, contact Jose L. Gonzalez at 850.224.7173 or email at [jgonzalez@aif.com](mailto:jgonzalez@aif.com)



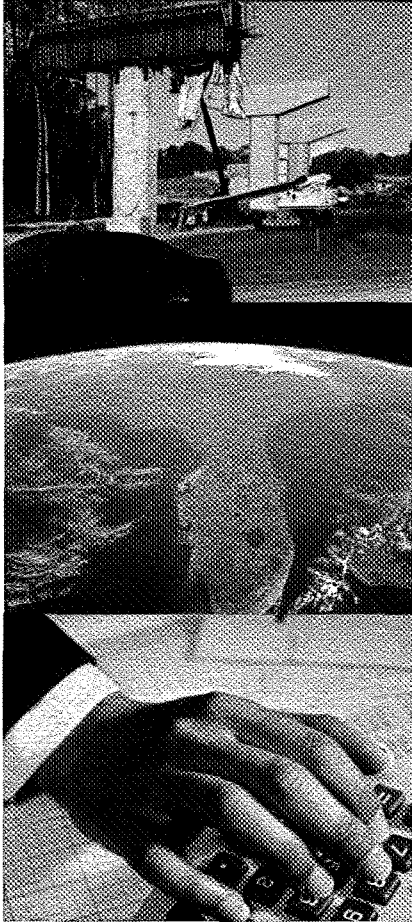
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# AIF Partner Associations



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# AIF Continues to Focus on 4 Major Areas ...



Central Theme

**New  
vs.  
Now**

## **Infrastructure**

- Transportation
- Ports
- Growth Management
- Housing

## **Economic Development**

- Energy Economy
- Space
- Water Quality

## **Business Climate**

- Taxes
- Unemployment Compensation

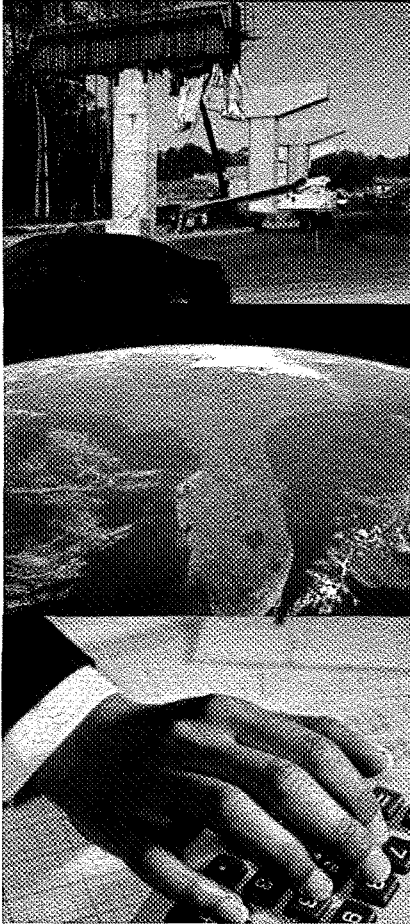
## **Regulatory Relief**

- Permitting



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# Florida's Infrastructure Needs



## Transportation

- Trust Fund vs. Stimulus Dollars
- Increased Tag and Title Fees

## Port Issues

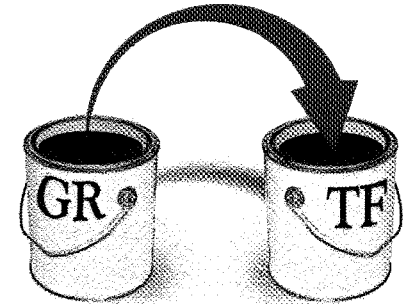
- Exports the bright spot in Florida
- Expansion of Panama Canal

## Growth Management

- Revisit SB 360?
- Hometown Democracy

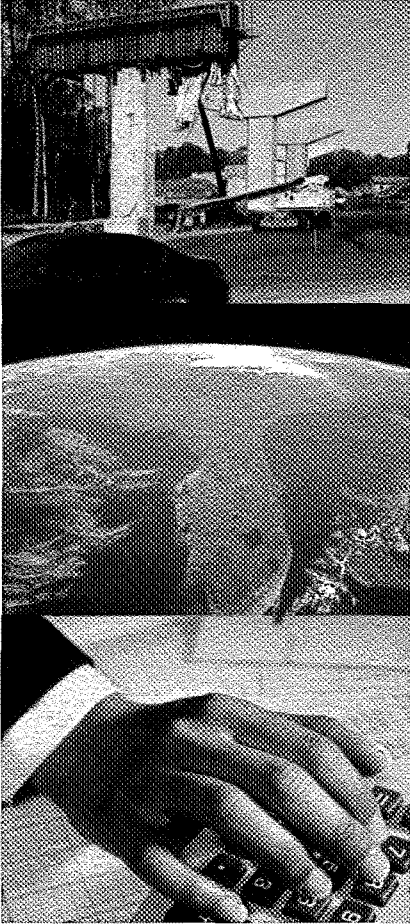
## Affordable Housing

- Repeal the CAP
- Fund Existing Programs (SHIP & SAIL)



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# Economic Development



**Continued Support for our existing economic development  
“Tool Kit” is essential:**

- Quick Action Closing Fund, QTI, etc.
- Road Fund
- Workforce Training = QRT, IWT

**But we must also look at new proposals such as:**

- Dynamic modeling legislation (HB 93 by Crisafulli & Hudson)



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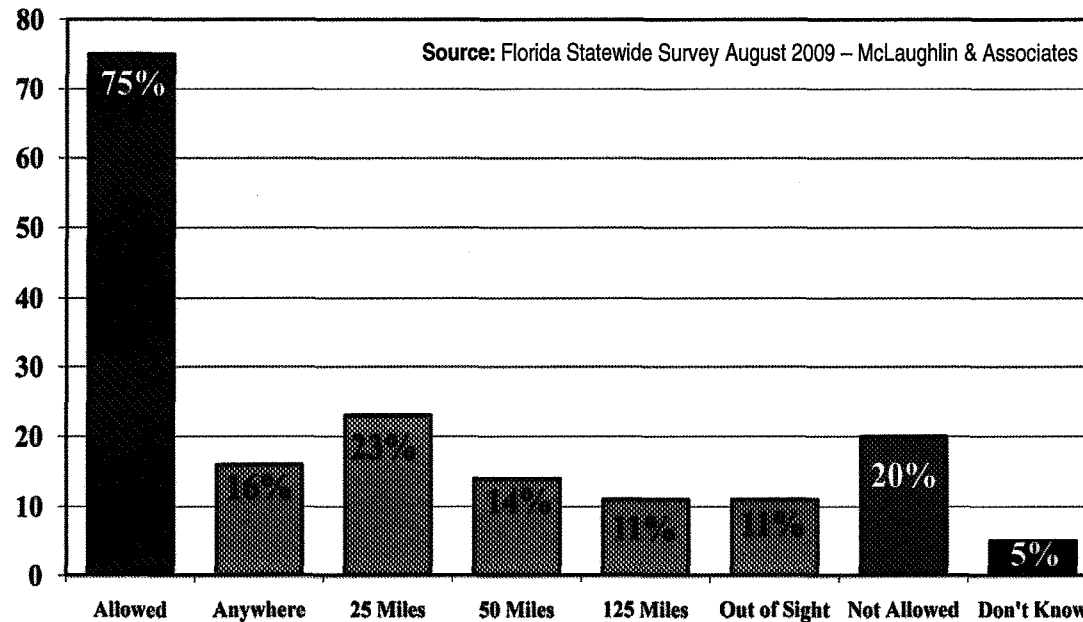


# Economic Development

## Oil and Natural Gas Exploration

*Drilling in Florida Waters* – AIF has played a major role in the proposal to open up Florida waters (3 to 10 miles) for oil & natural gas exploration.

- Public support for drilling continues to grow
- Opportunities for additional state revenues
- Dedicated Revenue Source for Economic Development?



**APPROVED**



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# Economic Development Oil and Natural Gas Exploration

## *Energy Economy*

In addition to the additional state revenue that will be generated by the application and leasing process, Florida stands to gain from a number of multiplier effects as a result of this proposal.

- Coastal Drilling = High-wage/High-skill JOBS
- Coastal Drilling = Fuel for renewable energy R&D
- Coastal Communities preparing for new energy economy

*At the lowest estimate of offshore reserves, Florida's economy would enjoy an impact of more than \$7 billion a year, employing nearly 20,000 workers in direct energy sector jobs and more than 40,000 workers overall.*

Source: Fishkind & Associates, 2009



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# Economic Development - Water Quality

**Water Quality Issues will be a Top Agenda Item during the 2010 Session & will have a dramatic effect on Florida's business climate.**

## **Numeric Nutrient Content:**

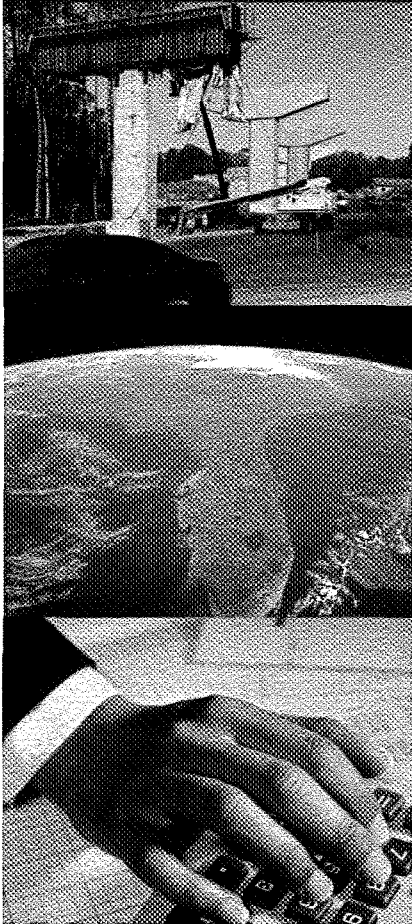
- USEPA and DEP proposal to establish new stringent water quality standards
- Result of litigation; *not science*
- Florida is the only state affected
- Economically unattainable creating major hardships for every sector of Florida's economy & local governments
- Example of Economic impacts:
  - Palm Beach County \$125 million to store its reclaimed water
  - Panhandle utilities estimate cost of increased wastewater treatment could range from \$4-8/gallon

**Why It Matters:** Developed areas & discharges from commercial, agricultural & public water utilities could not replicate absolutely pristine conditions



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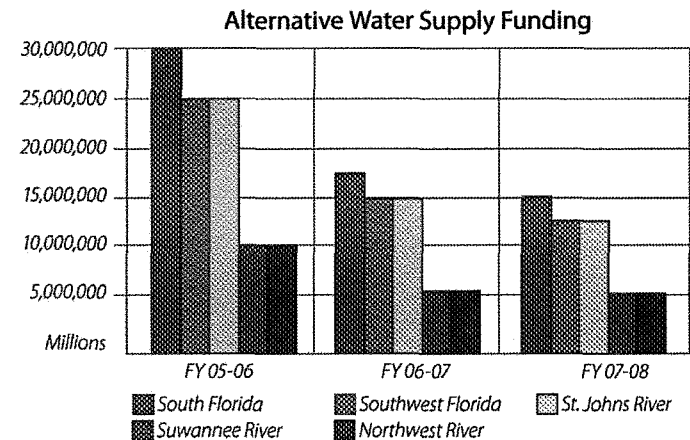
# Economic Development - Water Quality



**“Springs” legislation returns** – the business community fought off legislation in 2009 that would have established costly requirements for protecting Florida’s springs

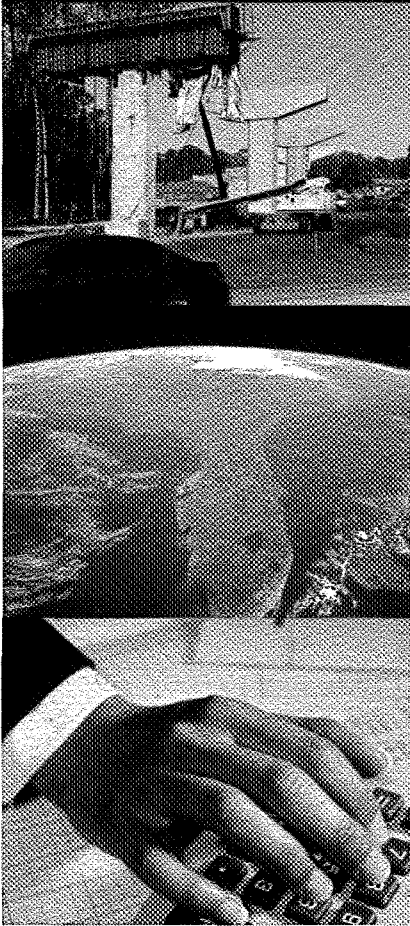
- Again findings not based on science
- Costly regulatory policies will affected Florida’s ability to attract new investment & hurt existing businesses/consumers

**Alternative Water Supply Funding** – without water there is no development , no growth, no environmental protection, no economic rebound for the state



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# Economic Development - Space



**Shutdown of the Space Shuttle Program poses serious threat to Florida's supremacy in space and aerospace industry:**

- Loss of workforce (high-skilled/high-wage)
- Virginia, Colorado, New Mexico all vying to take over

**Opportunities exist to leverage existing infrastructure at the Cape to lure commercial space companies to Florida:**

- Commercial Launch Zone (CLZ)
- Aerospace Worker Tax Credit
- R&D Incentives



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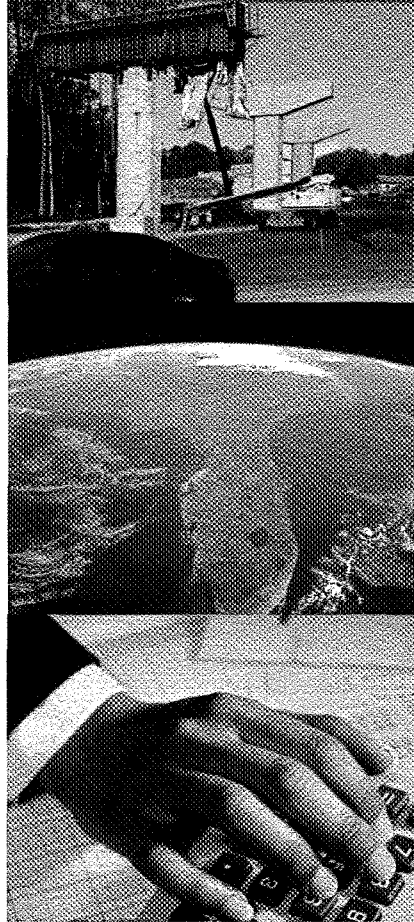
# Business Climate - Taxation

**Florida's difficult fiscal situation creates an environment for potential changes to Florida's corporate income tax structure, which can lead to higher taxes for the business community:**

- Corporate Income Tax "Loophole" and Combined Reporting legislation – was resoundly defeated by the business community in 2009

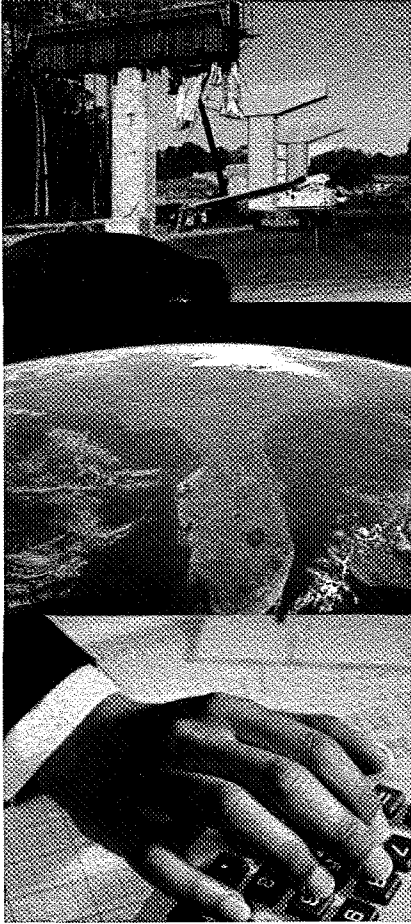
**Still opportunities exist to attract future investment to Florida by looking at our tax structure:**

- House and Senate Finance and Tax Committees looking at a way to enact an "optional" election of a **Single Sales Factor (SSF)** formula for manufacturers
  - Must not harm existing businesses
  - Must not hurt state treasury– **initial research by Senate staff identified the fiscal hit of this proposal @ \$200 million**



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# Business Climate - Taxation



## Elective v. Mandatory Use of SSF:

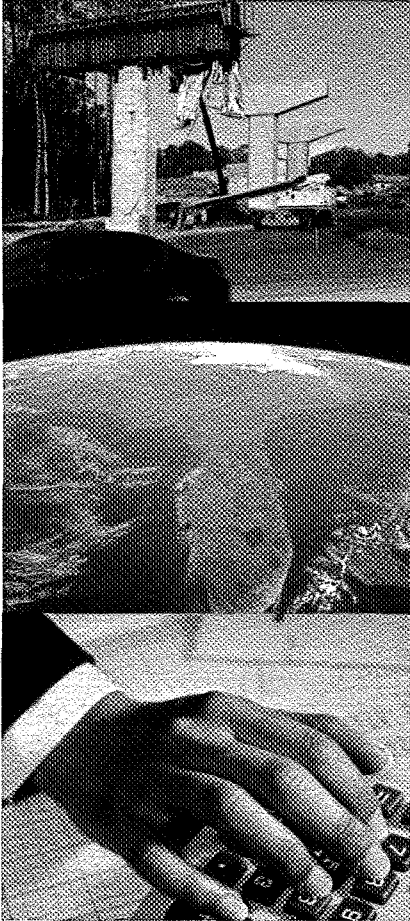
By giving manufacturers the opportunity to choose between formulas, it is only logical that they will select formula under which they owe the state fewer income taxes.

- This; however, must be weighed against the real potential for increased investment and capital flow into the state.
- Florida would be playing “catch-up” to the other states and this type of change in tax policy must be accompanied by other incentives to stay ahead of the game:
  - Additional tax incentives for manufacturing
  - “Shovel ready” zones (expedited permitting)
  - Access to “workforce” training dollars



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# Business Climate - Unemployment Compensation



## Florida's unemployment compensation system is under incredible stress

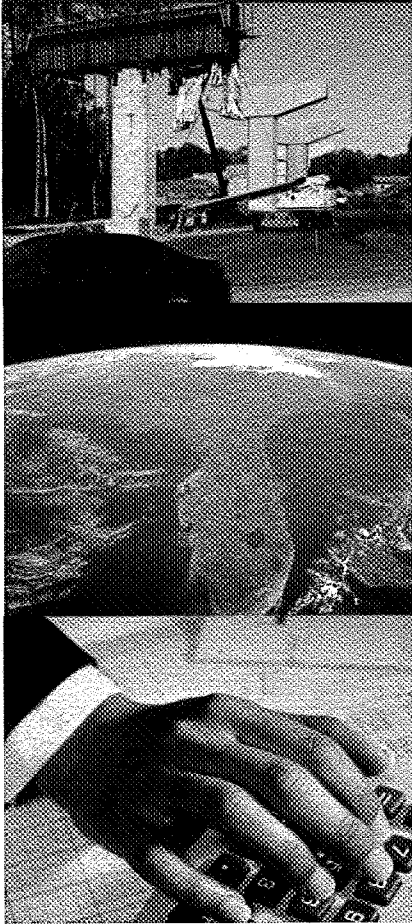
- Business community wants to be a part of the solution (SB 810) but was it enough?
- Pressure to accept additional stimulus funds or expand benefits



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# Regulatory Relief



## Opportunities abound to make permitting process in Florida leaner & meaner:

- Expedited Permitting
  - Continue momentum from last session (HB 73 -Targeted Industries)
  - Re-write of original expedited permitting statute?
- State Inventory of “Shovel-Ready” Zones



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Slip Copy, 2009 WL 1457972 (N.D.Fla.)  
(Cite as: 2009 WL 1457972 (N.D.Fla.))

**H**Only the Westlaw citation is currently available.

United States District Court, N.D. Florida,  
Tallahassee Division.

The **BROWARD COALITION OF CONDOMINIUMS, HOMEOWNERS ASSOCIATIONS AND COMMUNITY ORGANIZATIONS INC.**, Charlotte Greenberg, University of Florida College Libertarians, Neal Conner, National Taxpayers Union, National Taxpayers Union Foundation, and Duane Parde,  
Plaintiffs,

v.

Kurt S. BROWNING, in his official capacity as Florida Secretary of State, Jorge L. Cruz-Bustillo, in his official capacity as Chair of the Florida Elections Commission; and Donald W. Rhodes, Karen H. Unger, Jose Luis Rodriguez, Thomas E. Rossin, Gregory King, Julie B. Kane, Beleria F. Floyd, and William H. Hollimon, in his official capacities as members of the Florida Elections Commission, Defendants.

No. 4:08cv445-SPM/WCS.

May 22, 2009.

West KeySummary  
Constitutional Law 92 ↪ 1688

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92k1688 k. Elections, Voting, or Ballot Access in General. Most Cited Cases

Elections 144 ↪ 311

144 Elections

144XI Violations of Election Laws

144k311 k. Constitutional and Statutory Provisions. Most Cited Cases

The state of Florida failed to meet its burden of demonstrating a compelling interest for regulating most of the speech that was captured by its electioneering communication laws. The regulation could not be justified by the government's interest in preventing political corruption because the communication that

was swept up in the regulation was issue advocacy speech, not express advocacy. Nonprofit groups sought a permanent injunction against Florida's ability to enforce electioneering communications laws as complying meant that the nonprofits would be subject to registration and disclosure nearly identical to those that political committees must follow. U.S.C.A. Const.Amend. 1; West's F.S.A. §§ 106.011(18)(a), 106.011(19).

Darren Alter Schwartz, Rumberger Kirk & Caldwell PA, Tallahassee, FL, Paul Michael Sherman, Robert W. Gall, William H. Mellor, Arlington, VA, for Plaintiffs.

Jonathan Alan Glogau, Tallahassee, FL, for Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

STEPHAN P. MICKLE, District Judge.

\*1 This cause comes before the Court on Plaintiffs' Motion for Summary Judgment (doc. 54), Defendants' response in opposition (doc. 65), and Plaintiffs' reply (doc. 67). Plaintiffs have requested oral argument on their motion. However, the Court finds that with the extensive legal motions filed by the parties and the benefit of oral argument on the preliminary injunction motion, the Court can review the parties' respective positions and make a finding without the aid of additional oral argument.

**FACTUAL BACKGROUND**

Plaintiffs are four groups and their respective leaders. The **Broward Coalition** is an all-volunteer, not-for-profit 501(c)(4) corporation that has been serving the Broward County, Florida, community for over 25 years. A coalition of condominium associations, homeowners associations, and community organizations, the Coalition is dedicated to helping its members as well as the larger community make decisions about issues that affect them-locally, statewide, and nationally. Charlotte Greenberg serves as the

Slip Copy, 2009 WL 1457972 (N.D.Fla.)  
 (Cite as: 2009 WL 1457972 (N.D.Fla.))

group's president. The University of Florida College Libertarians is a student-run campus club that seeks to spread the ideals of liberty and self-ownership. Neal Conner serves as the club's president. The National Taxpayers Union (NTU) is a 501(c) (4) nonprofit, nonpartisan organization founded almost 40 years ago to promote lower taxes and smaller government at all political levels. The National Taxpayers Union Foundation (NTUF) is NTU's 501(c)(3) affiliate. Duane Parde is the president of both NTU and NTUF.

Before the election on November 4, 2008, Plaintiffs published communications that (as the parties agree) would have required them to be regulated pursuant to Florida's electioneering communications laws. For example, the **Broward Coalition** published a page in its November newsletter about pending statewide ballot issues. The newsletter was distributed to members and non-members and posted on the Internet. Because of the electioneering communications law, the Coalition removed old newsletters and donor lists from their website in order to ensure that more than 1,000 would not view it. The Coalition also removed from its website references to candidates for fear that failing to do so would subject them to regulation. For the same reason, but for this Court's preliminary injunction, the University of Florida College Libertarians would have had to refrain from putting out fliers on campus advertising events at which they want to host candidates. NTU collected and drafted information regarding several of Florida's ballot issues. However, because of concerns that it would violate the electioneering communication laws, it did not include that information in this year's ballot guide. Like the other Plaintiffs, but for this Court's preliminary injunction, NTU and NTUF would have had to refrain from speaking because of concerns that the State's electioneering communications laws will be applied to its speech and force it to submit to burdensome registration, reporting, and disclosure requirements for electioneering communications organizations.

\*2 Plaintiffs state that complying with these requirements would consume a considerable amount of their time and resources and would hinder their groups' ability to pursue their respective missions. NTU is particularly concerned about being compelled to reveal the identity of its donors, some who prefer to remain anonymous because they are concerned about retaliation from the government should their identities

become known.

None of the above-mentioned publications contain express advocacy (that is, phrases such as "vote for" or "vote against"), which is regulated by Florida's laws concerning political committees. But because the publications are "electioneering communications," they require that Plaintiff must first register with the state and comply with rules that are nearly identical to those that political committees must follow. Failing to do so will subject them to fines and even criminal prosecution. They seek a permanent injunction against the state's ability to enforce these laws so that Plaintiffs may continue to issue their publications without being subject to the "electioneering communication" laws. Those laws are described below.

#### FLORIDA'S ELECTIONEERING COMMUNICATIONS LAWS

Under Florida law, an "electioneering communication" includes "a paid expression in any communications media" other than the spoken word in direct conversation that "[r]efers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue." Fla. Stat. § 106.011(18)(a). Certain narrow exceptions apply; excluded from the definition are statements or depictions in a pre-existing organization's newsletter that is distributed only to members of that organization; statements in various news media; and communications that constitute a public debate or forum that include at least two opposing candidates or one advocate and one opponent of an issue. Fla. Stat. § 106.011(18)(b). Moreover, for speech about candidates, the communication must be targeted to reach the relevant electorate—that is, to reach 1,000 or more people in the geographic area the candidate would represent if elected—to be captured by the law. Fla. Stat. § 106.011(18)(a)2. "Communications media" means "broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies." § 106.011(13).

Under the statutory scheme, all "electioneering communications" in Florida, by both groups and individuals (except those for which an individual spends

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less than \$100), are regulated. *See Fla. Stat. §§ 106.011(1)(b)3 & 106.071.*

A group that makes an electioneering communication must register as an “electioneering communications organization” (“ECO”). An ECO is any group not otherwise registered under Florida’s campaign financing law “whose activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications.” § 106.011(19). The Secretary of State-through the Division of Elections-interprets this provision to include any group whose election-related activities are limited to electioneering communications. This reading makes sense, given that the definition is found within Chapter 106, which regulates only election-related activities.

\*3 Electioneering communications organizations are “required to register with and report expenditures and contributions ... to the Division of Elections in the same manner, at the same time, and subject to the same penalties as a political committee supporting or opposing an issue or a legislative candidate, except as otherwise specifically provided in [Chapter 106].” § 106.011(1)(b) 3. Thus, any group that is an electioneering communications organization is subject to a wide array of requirements, including:

- Registering with the government within 24 hours of its organization or receiving information that causes it to anticipate receiving or expending funds for an electioneering communication, *Fla. Stat. § 106.03(1)(b)*
- Appointing a campaign treasurer (or custodian of the books), *§ 106.03(2)(d)*
- Designating a depository, *§ 106.03(2)(k)*
- Making regular reports, *§ 106.07(1)*
- Recording expenditures, *§ 106.07(4)(a)*
- Disclosing all donors-even those who never intended their gift to go Towards political speech, *§ 106.07(4)(a)1 and Gall Decl., Ex. A at 3*
- Restricting expenditures and contributions, including

not spending money raised in the five days before the election, refusing contributions by 527s or 501(c)(4)s that are not-themselves-registered, and refusing all cash contributions over \$50, *§ 106.08(4)(b), § 106.08(5)(d), & § 106.09*

- Including a prominent “disclaimer” on each communication that reads “Paid electioneering communication paid for by (Name and address of person paying for communication).” *§ 106.1439*
- Allowing random audits by the government, *§ 106.22(10).*

According to the Commission, there are almost 100 separate violations possible under the campaign finance code. *See Florida Elections Commission, Jurisdiction, <http://www.fec.state.fl.us/juris/index.html>.* The Secretary of State and “any person” may file a sworn complaint with the Florida Elections Commission. *Fla. Stat. § 106.26(1).* All violations are subject to civil penalties, *Fla. Stat. §§ 106.265(1) & 106.07(8)*, and many are subject to additional criminal penalties and jail time. *See, e.g., §§ 106.08(7), 106.09(2), 106.19, & 106.1439(2).* Information from reports filed with the Secretary is made available on the Secretary’s website. *See Fla. Stat. § 106.0706.*

Under *§ 106.071*, “each individual who makes an expenditure for an electioneering communication which is not otherwise reported pursuant to [Chapter 106]”-i.e., is not reported by a group that is an ECO, a political committee, or a committee of continuous existence-and spends \$100 or more to do so has to “file periodic reports of such expenditures in the same manner, at the same time, subject to the same penalties, and with the same officer as a political committee supporting or opposing such candidate or issue.” Thus, the only way that an electioneering communication does not have to be regulated is (1) if it is made by an individual and (2) the individual spends less than \$100 on the communication.

#### STANDARD FOR SUMMARY JUDGMENT

\*4 Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material

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fact and that the moving party is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c). An issue is “material” if it might affect the outcome of the case under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). An issue is “genuine” if the record taken as a whole could lead a rational trier of fact to find for the nonmoving party. *Id.* The basic inquiry by the court is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251.

In this case, both parties agree that this is a purely legal matter and it may be resolved on summary judgment, without the need for submission to a jury. This Court previously granted a preliminary injunction for the Plaintiffs because they had met their burden that they were likely to succeed on the merits of their case. The burden at the summary judgment stage is even higher because Plaintiffs must demonstrate that “as a matter of law,” final judgment in the case should be entered in their favor. However, because the challenged law has not changed since the order granting the preliminary injunction, and the materials submitted by the parties in support of their positions on summary judgment have not highlighted any factual disputes, the legal analysis here will be very similar to that prior order. This Court’s interpretation of the Defendants’ electioneering communication laws has not changed and Defendants have failed to convince this Court that its prior interpretation of the facts and application of the law were otherwise incorrect.

## ANALYSIS

The first step in this analysis is to determine the standard that should be applied to Defendants’ regulation. The First Amendment protects political speech, political association, and political expression. Morse v. Frederick, 551 U.S. 393, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007); Buckley v. Valeo, 424 U.S. 1, 15, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The state regulation in question applies to groups that are primarily engaged in political speech about issues that their respective organizations support. The challenged law subjects these organizations to significant reporting and disclosure requirements which add significantly to the organizations’ expenditures and time commitment. Plaintiffs argue that because the regulation burdens

political speech, it is subject to strict scrutiny. Defendants argue that the regulation consists only of reporting and disclosure requirements and it does not burden political speech, therefore, the regulation should be subject to intermediate scrutiny. Defendants’ argument is misplaced.

The reporting and disclosure requirements are applied as a result of the organization’s mere mention of a candidate or ballot measure in that organization’s communication. Because the regulation applies to certain communication and not other, it is content-based. Burk v. Augusta-Richmond County, 365 F.3d 1247, 1251 (11th Cir.2004) (finding an ordinance that applies only to “public demonstration” that displays “support for, or protest of, any person, issue, political or other cause or action” is regulation that targets only political speech and is therefore content-based). Additionally, because this regulation allows for the communication to be burdened by the disclosure and reporting requirements in advance of the act of communicating their message, it constitutes a prior restraint. DA Mortg., Inc. v. City of Miami Beach, 486 F.3d 1254, 1269 (11th Cir.2007). Any type of prior restraint comes before a court “with a ‘heavy presumption’ against its constitutional validity.” Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 29 L.Ed.2d 1 (1971), quoting Carroll v. Princess Anne, 393 U.S. 175, 181, 89 S.Ct. 347, 21 L.Ed.2d 325 (1968)). Contrary to Defendants’ protestations, the burden placed on Plaintiffs and similar organizations by this regulation is so significant that it inevitably results in prohibiting the political speech of the organizations. Accordingly, it is subject to strict scrutiny. Burk, 365 F.3d at 1251 (content-based prior restraints “are presumptively unconstitutional and face strict scrutiny”). Therefore, the regulation is constitutional “ ‘only if it constitutes the least restrictive means of advancing a compelling government interest.’ ” KH Outdoor, LLC v. Trussville, 458 F.3d 1261, 1268 (11th Cir.2006) (quoting Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1254 (11th Cir.2005)).

\*5 Defendants argue that this Court should instead apply a heightened form of intermediate scrutiny that the Supreme Court has applied to “organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The Supreme

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Court, however, has never applied this lesser standard to such a broad regulation of core political speech by grassroots groups like Plaintiffs. First, in regard to ballot-issue speech, in every case the Supreme Court has dealt with a law that burdened speech in that context, it has applied strict scrutiny and struck down the law. See Buckley v. Am. Const. Law Found., 525 U.S. 182, 204, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999); Meyer v. Grant, 486 U.S. 414, 420, 428, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988); McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 345-47, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995); Citizens Against Rent Control/Coalition for Fair Hous. v. Berkeley, 454 U.S. 290, 294, 300, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 786, 795, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). Second, in regard to speech about candidates, the Court has always applied strict scrutiny where the speech at issue was by groups that did not have the major purpose of influencing elections, see Fed. Election Comm'n v. Massachusetts Citizens for Life, Inc. (MCFL), 479 U.S. 238, 256, 263, 107 S.Ct. 616, 93 L.Ed.2d 539, or where the speech at issue was not the functional equivalent of express advocacy. See Fed. Election Comm'n v. Wisc. Right to Life (WRTL II), 127 S.Ct. 2657, 2664.

Even if this Court were to apply scrutiny that is less than strict, the outcome would be no different. No matter what level of scrutiny applies, when First Amendment rights are at stake, the government has the burden of proving the constitutionality of the challenged law. See Watchtower Bible & Tract Soc'y of New York City v. Vill. of Stratton, 536 U.S. 150, 170, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.”) (Breyer, J., concurring) (quoting United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 816, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000)). Furthermore, if the State lacks the power to regulate Plaintiffs' speech, it simply cannot regulate it, even under a reduced level of scrutiny. See Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. Herbert, 581 F.Supp.2d 1132, 1146 (D.Utah Sept.8, 2008) (“[B]efore applying exacting scrutiny ... the court must first determine whether the activities being regulated are unambiguously campaign related [and therefore potentially subject to regulation.]”); see also N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 281 (4th Cir. 2008) (“[O]nly unambiguously campaign

related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable.”).

As this Court made clear in its order granting preliminary injunction, and as the Supreme Court made clear in its decision on campaign finance law, Buckley v. Valeo, governments may regulate only those narrow categories of political speech that are “unambiguously related to the campaign of a particular ... candidate.” 424 U.S. at 80. There are only two narrow categories that fall within that exception. The first of these categories includes “communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office, “also referred to as express advocacy. Buckley, 424 at 44. The second category includes communications that constitute “the functional equivalent of express advocacy.” McConnell v. Fed. Election Comm'n, 540 U.S. 93, 206, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). In order to fall into this very narrowly drawn second category, speech must satisfy two requirements. Leake, 525 F.3d at 282. First, the speech must be “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” Id. (quoting WRTL II, 127 S.Ct. at 2667). Second, because the Court has never held that the regulation of “electioneering communications” beyond how that term is defined in the Bipartisan Campaign Reform Act of 2002 (“BCRA”) is permissible, the outer limit of regulation tracks BCRA's definition: a “broadcast, cable, or satellite communication that refers to a clearly identified candidate within sixty days of a general election or thirty days of a primary election.” Leake, 525 F.3d at 282 (citing WRTL II, 127 S.Ct. at 2669 n. 7). As the Court noted in WRTL II, it “has never recognized a compelling interest in regulating ads ... that are neither express advocacy nor its functional equivalent.” 127 S.Ct. at 2671. Similarly, this Court also declines to do so now. Defendants argue that Buckley and McConnell allow states to require disclosure for the full range of electioneering communications. But the “entire range” to which McConnell referred was speech that met the narrow definition of “electioneering communication” in BCRA. No broader definition was before that court. Therefore, this Court declines to read Buckley or McConnell as sanctioning the regulation of all the speech encompassed within Florida's expansive and much broader definition of “electioneering communication.” Furthermore, WRTL II held that there is a

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line between speech that is the functional equivalent of express advocacy and the vast majority of political speech falling outside that category and that line is constitutionally compelled. 127 S.Ct. at 2670-74.

\*6 As described above, Plaintiffs' speech is not express advocacy. Indeed, that is one of the reasons that the Plaintiffs' speech qualifies as "electioneering communications." If Plaintiffs' speech *were* express advocacy, the plaintiff groups would be regulated as "political committees" rather than as "electioneering communications organizations." Fla. Stat. § 106.011(1)(a) 1. Nor is it the functional equivalent of express advocacy because, for several reasons, the Plaintiffs' speech does not satisfy the two-pronged test from *WRTL II*, discussed earlier. First, none of the Plaintiffs are issuing a communication via broadcast, cable, or satellite, as was the case in BCRA's definition (which establishes the outer bounds of permissible regulation). Second, all of the speech at issue here is susceptible of a reasonable interpretation *other than* as an appeal to vote for or against that candidate. Third, Plaintiffs' speech relating to ballot issues cannot, by definition, be express advocacy because it has nothing to do with advocating for a particular candidate.

The Supreme Court has never equated advocacy of particular ballot issues to express advocacy for or against a candidate; indeed, it has repeatedly recognized that advocacy of ballot issues enjoys even stronger protection than express advocacy for candidates because it raises absolutely no danger of corruption or the appearance of corruption. See *McIntyre*, 514 U.S. at 356 ("Not only is the Ohio statute's infringement on [ballot-issue related] speech more intrusive than the *Buckley* disclosure requirement, but it rests on different and less powerful state interests."); *Bellotti*, 435 U.S. at 790 ("The risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue."); *Citizens Against Rent Control*, 454 U.S. at 297-98 (same).

Defendants' arguments that the Plaintiffs' ballot issue speech can be the functional equivalent of express advocacy—once again, a term developed in and confined to the candidate context, simply find no basis in *Buckley*, *McConnell*, *WRTL II*, or any other case from the Supreme Court. If expressing an opinion about

ballot issues could constitute the functional equivalent of express advocacy, then the State would be able to regulate virtually all speech about ballot issues. This would mean that political, ballot issue speech and communication would receive less, not more, protection than speech about candidates. That would be an untenable outcome, one certainly not anticipated or intended by the Supreme Court or the founders of this democracy. See *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 405, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (KENNEDY, J., dissenting) ("Political speech in the course of elections [is] the speech upon which democracy depends").

While it is true that the legislature has the power to regulate elections, it does not have the power to regulate purely political discussions about elections. Furthermore, this legislation cannot be justified by the government's interest in preventing political corruption because the communication that is swept up in this legislation is issue advocacy speech, pure political speech. Accordingly, Defendants have not met their burden of demonstrating a compelling interest for regulating most of the speech that captured by its electioneering communications laws.

\*7 Furthermore, because Plaintiffs' speech cannot be regulated, it necessarily follows that the State has no interest in requiring Plaintiffs to submit to a prior restraint on their speech; to restructure their organizations and comply with registration, reporting, and disclosure requirements requiring, among other things, information regarding all of their donors; to surrender their ability to speak and associate anonymously; and to accept restrictions on Plaintiffs' right to make expenditures five days before an election. If disclosure requirements are part of a broader regulatory regime that is unconstitutional, then the disclosure requirements are unconstitutional. See *Davis v. Fed. Election Comm'n*, --- U.S. ---, ---, 128 S.Ct. 2759, 2775, 171 L.Ed.2d 737 (2008) (striking down disclosure requirements that were part of the asymmetrical contribution limits for the so-called Millionaires' Amendment).

With regard to facial validity, the only way for this regulation to be valid on its face is if it regulates the functional equivalent of express advocacy in a way that is neither overbroad or vague. "[A] law may be overturned as impermissibly overbroad because a



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'substantial number' of its applications are unconstitutional, 'judged in relation to the statute's plainly legitimate sweep.' " *Wash. State Grange v. Wash. State Republican Party*, ---U.S. ---, --- n. 6, 128 S.Ct. 1184, 1190 n. 6, 170 L.Ed.2d 151 (2008) (citations and internal quotations omitted). To survive a vagueness challenge, a regulation must "clearly set forth the confines within which potential party speakers must act in order to avoid triggering the provision." *McConnell*, 540 U.S. at 170 n. 64. In order to avoid repetition, with regard to the overbroad and vagueness arguments, this Court adopts without amendment, its reasoning in the order granting Plaintiffs' motion for preliminary injunction.

Furthermore, contrary to Defendants' suggestion, the state regulation is not susceptible to a narrowing construction. Nothing in the plain language of the definition of "electioneering communication" (or the way in which Defendants interpreted it before this litigation) even hints that it only applies to the functional equivalent of express advocacy as delineated by *WRTL II*. In fact, the plain language makes clear that it applies to any reference to a candidate or ballot issue that is not express advocacy. Fla. Stat. § 106.011(18)(a) 1 ("Refers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue."). The statute does not lend itself to an easy omission or deletion of the offending language. A narrowing construction of this state statute would result in this Court's entire rewriting of the statute. Writing a statute that is constitutionally sound is a task best suited for the elected legislature, not the judicial branch of government. *Dimmitt v. Clearwater*, 985 F.2d 1565, 1572 (11th Cir.1993) (The task of drafting a constitutionally permissible [regulation] must be left to the [state].). Additionally, forcing potential violators of this law to pursue their legal challenges in a federal court on a case-by-case, as-applied basis is not a model for judicial efficiency, nor is it cost-efficient for potential plaintiffs. Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

\*8 1. Plaintiffs' motion for summary judgment (doc. 54) is **granted**.

2. The Clerk shall enter judgment for the Plaintiffs.

3. The following portions of Chapter 106 are unconstitutional on their face and as applied to Plaintiffs and therefore should be stricken from Defendants' regulations:

a. All references to "electioneering communication(s)" in sections 106.011(3), 106.011(4)(a), 106.022(1), 106.04(5), 106.0705(2)(b), 106.071(1), 106.08(7), 106.1437, 106.147(1)(a), and 106.17; and

b. Sections 106.011(1)(b)3, 106.011(4)(b), 106.011(18), 106.011(19), 106.03(1)(b), 106.0703, 106.08(4)(b), 106.08(5)(d), 106.1439, and 106.147(1)(e) in their entirety.

4. Defendants, and their officers, agents, servants, employees, and attorneys, as well as those persons in active concert or participation with them are permanently enjoined from enforcing Florida's electioneering communications laws of Chapter 106, as listed above.

5. This injunction does not affect any other provisions of Chapter 106, including its regulation of political committees and committees of continuous existence, regulations of the expenditures of candidates and other lawful campaign finance regulations.

6. All pending motions are hereby denied as moot.

DONE AND ORDERED.

N.D.Fla., 2009.

Broward Coalition of Condominiums, Homeowners Associations and Community Organizations Inc. v. Browning  
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980 So.2d 547, 33 Fla. L. Weekly D1099  
(Cite as: 980 So.2d 547)

**H**

District Court of Appeal of Florida,  
First District.

FLORIDA HOMETOWN DEMOCRACY, INC.  
PAC and Lesley G. Blackner, Appellants,

v.

Kurt S. BROWNING, in his capacity as the Secretary  
of State and head of the Department of State; the State  
of Florida, Department of State, Division of Elections;  
and Save Our Constitution, Inc., Appellees.

No. 1D07-6024.

April 23, 2008.

**Background:** Political action committee (PAC) brought action against Secretary of State and Department of State, Division of Elections, alleging that statute and rules adopted thereunder establishing petition signature revocation procedures for initiative-generated constitutional amendments were unconstitutional. The Circuit Court for Leon County, Charles A. Francis, J., granted the State summary judgment, and PAC appealed.

**Holding:** The District Court of Appeal, Allen, J., held that statute and regulations establishing petition signature revocation procedures for constitutional amendments proposed by citizen initiative violated citizen initiative provision of the Florida Constitution and were unconstitutional, as they were not necessary to ensure ballot integrity.

Reversed and remanded with directions.

West Headnotes

**[1] Constitutional Law 92**  547

92 Constitutional Law

92III Amendment and Revision of Constitutions

92III(C) State Constitutions

92III(C)4 Submission to Popular Vote;

Initiative

92k543 Petitions

92k547 k. Signatures and Signers.

Most Cited Cases

Statute and implementing regulations adopted thereunder, establishing petition signature revocation procedures for constitutional amendments proposed by citizen initiative, violated citizen initiative provision of the Florida Constitution and were thus unconstitutional, as signature revocation was not referenced in the citizen initiative provision of the Constitution, signature revocation was not necessary for the orderly presentation of initiative-generated constitutional amendment proposals on general election ballots, and the petition signature revocation procedures instead served to burden the initiative process with requirements that were not prescribed by the Constitution. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 100.371.

**[2] Constitutional Law 92**  540

92 Constitutional Law

92III Amendment and Revision of Constitutions

92III(C) State Constitutions

92III(C)4 Submission to Popular Vote;

Initiative

92k540 k. In General. Most Cited Cases

The two methods in the Florida Constitution for proposing constitutional amendments at a general election, one for amendments proposed by the legislature and the other for amendments proposed by citizen initiative, are delicately balanced to reflect the power of the people to propose amendments through the initiative process and the power of the legislature to propose amendments by its legislative action without executive check, and this important balance is threatened when legislative or executive action unnecessarily intrudes into the initiative power specifically reserved to the people of Florida. West's F.S.A. Const. Art. 11, §§ 1, 3.

**[3] Constitutional Law 92**  540

92 Constitutional Law

92III Amendment and Revision of Constitutions

92III(C) State Constitutions

92III(C)4 Submission to Popular Vote;

Initiative

92k540 k. In General. Most Cited Cases

Legislative enactments and administrative rules re-

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gulating the citizen initiative process for constitutional amendments are constitutionally permissible only when necessary to ensure ballot integrity. West's F.S.A. Const. Art. 11, § 3.

#### [4] Constitutional Law 92 ↪ 540

##### 92 Constitutional Law

##### 92III Amendment and Revision of Constitutions

##### 92III(C) State Constitutions

##### 92III(C)4 Submission to Popular Vote; Initiative

92k540 k. In General. Most Cited Cases  
Legislative enactments and administrative rules regulating the citizen initiative process for constitutional amendments ensure ballot integrity, and are thus constitutional, when they specify requirements that are necessary for the orderly presentation of initiative-generated constitutional amendment proposals on general election ballots, but legislative enactments and administrative rules burdening the initiative process with requirements that are neither prescribed by the constitution nor necessary for the orderly presentation of these proposals are unconstitutional. West's F.S.A. Const. Art. 11, § 3.

##### West Codenotes

Held Unconstitutional West's F.S.A. § 100.371 \*548  
Mark Herron and Albert T. Gimbel of Messer, Caparello & Self, Tallahassee, and Ross Stafford Burnaman, Tallahassee, for Appellants.

Bill McCollum, Attorney General, Scott D. Makar, Solicitor General, Craig D. Feiser and Courtney Brewer, Deputy Solicitors General, and Blaine H. Winship, Assistant Attorney General, Tallahassee, and Lynn C. Hearn, General Counsel, Florida Department of State, Tallahassee, for Appellees Kurt S. Browning, and the State of Florida, Department of State, Division of Elections.

John French, Tallahassee, for Appellee Save Our Constitution, Inc.

ALLEN, J.

[1] The appellants challenge an order by which the trial court entered final summary judgment for the appellees and denied the appellants' motion for summary judgment in the appellants' action for declaratory

judgment and injunctive relief. The appellants contend that section 25 of chapter 2007-30, Laws of Florida, and emergency implementing rules 1SER07-1 and 1SER07-2 of the Florida Department of State, all asserting regulatory authority over the citizen initiative process authorized by article XI, section 3 of the Florida Constitution, violate the citizen initiative provisions of the state constitution. Because the challenged legislation and rules are not necessary to ensure ballot integrity, they violate the citizen initiative provisions and are thus unconstitutional.

Article XI, section 3 of the Florida Constitution provides:

**Initiative.**-The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

[2] The constitution provides four methods through which constitutional amendments might be proposed, but only two of these, amendments proposed by the legislature pursuant to article XI, section 1, and amendments proposed by citizen initiative pursuant to article XI, section 3, may produce constitutional amendment proposals at each general election. These two methods for proposing constitutional amendments "are delicately balanced to reflect the power of the people to propose amendments through the initiative process and the power of the legislature to propose amendments by its legislative action without executive check." State ex rel. Citizens Proposition for Tax Relief v. Firestone, 386 So.2d 561, 566 (Fla.1980). This important balance is threatened when legislative or executive action unnecessarily intrudes into the initiative power specifically reserved to the people of Florida. Id.

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(Cite as: 980 So.2d 547)

\*549 [3] Although the citizen initiative provisions of the constitution are self-executing in that they clearly establish the right of the people to propose constitutional amendments through a petition procedure that may be fully implemented without the aid of any legislative enactment, the Florida Supreme Court has recognized that the legislature and the secretary of state nevertheless have the right and the duty to “ensure ballot integrity” in the initiative process. *Id.* But legislative enactments and administrative rules regulating the citizen initiative process are constitutionally permissible “only when necessary to ensure ballot integrity.” *Id.* The Florida Supreme Court has not provided a definition for the term “ballot integrity,” but two of the Court’s decisions provide guidance as to the meaning of “ballot integrity.”

In *Firestone*, the Court held that portions of a legislative enactment and implementing rules of the secretary of state prescribing citizen initiative signature verification procedures were valid because verification that the constitutionally required number of qualified electors has signed an initiative petition is “essential to ballot integrity.” 386 So.2d at 567. The controlling principle in *Firestone* is that legislative enactments and administrative rules regulating the citizen initiative process ensure ballot integrity when they serve to confirm compliance with constitutionally-specified requirements for submission of proposed amendments through citizen initiative.

In *Smith v. Coalition to Reduce Class Size*, 827 So.2d 959 (Fla.2002), the Court invalidated a legislative enactment that would have required the recitation of a separate “analysis and fiscal impact statement” following the summary of the proposed amendment on the general election ballot for any constitutional amendment proposed through the initiative process. In doing so, the Court made the following observations:

Article XI does not contain any language, either explicit or implicit, regarding the fiscal impact of initiatives. Article XI, section 3 grants Floridians the power to amend the constitution by initiative. The requirements for exercising this power are set forth in article XI, section 3. If these requirements are met, then the sponsor of an initiative has the right to place the initiative on the ballot. However, with the passage of chapter 2002-390, an initiative’s appearance on the ballot will be substantially altered,

due to the addition of the fiscal impact statement. The effect of chapter 2002-390 would be to weaken the power of the initiative process. Hence, we are unable to conclude that chapter 2002-390 is necessary to ensure ballot integrity.

The appellants and the House of Representatives, as amicus, argue that the fiscal impact statement is necessary for the electorate to be informed. While we do not in any way diminish the importance of an informed electorate, we find that the fiscal impact statement does not go to the ballot integrity which is a prerequisite for any legislative involvement in the initiative process.

...

[4] [T]he proper way to impose a fiscal impact requirement would be to amend article XI...

827 So.2d at 963-64 (internal citations and quotations omitted). The controlling principle in *Smith* is that legislative enactments and administrative rules regulating the citizen initiative process ensure ballot integrity when they specify requirements that are *necessary* for the orderly presentation of initiative-generated constitutional amendment proposals on general election ballots, but legislative enactments and administrative rules burdening the initiative process with requirements that are neither \*550 prescribed by the constitution nor *necessary* for the orderly presentation of these proposals are unconstitutional.

The legislation and implementing rules at issue here assert regulatory authority over the citizen initiative process by interjecting the concept of petition signature revocation. Among other things, they prescribe procedures through which an elector’s signature on a citizen initiative petition form may be revoked, they provide that revocation forms shall be furnished to the public at all offices of county supervisors of elections, they provide that an elector who has revoked his signature on a petition form may not thereafter sign a new petition in support of the same initiative, and they provide that signatures that have been revoked will not be counted when the secretary of state determines whether the requisite number of verified signatures has been provided for submission of a proposed constitutional amendment to the electorate.

980 So.2d 547, 33 Fla. L. Weekly D1099  
(Cite as: 980 So.2d 547)

In light of the controlling principles in *Firestone* and *Smith*, the legislation and implementing rules here are unconstitutional because they do not ensure ballot integrity. They do not serve to confirm compliance with constitutionally-specified requirements for submission of proposed amendments through the initiative process, as did the legislation and rules involved in *Firestone*. Indeed, signature revocation is not even referenced in the citizen initiative provisions of the constitution. And they are not necessary for the orderly presentation of initiative-generated constitutional amendment proposals on general election ballots. Instead, they serve to burden the initiative process with requirements that are not prescribed by the constitution, as did the fiscal impact statement mandated by the legislation successfully challenged in *Smith*.

In support of the challenged legislation and rules, the appellees espouse the virtues and benefits of signature revocation procedures. When advocates for the legislation involved in *Smith* made similar arguments, the Florida Supreme Court responded by observing that modification of the initiative process through measures which are not necessary to ensure ballot integrity must be accomplished through amendment of article XI of the constitution. The modification that would have been afforded by the legislation held unconstitutional in *Smith* later became a part of the state constitution through the constitutional amendment process. See Art. XI, § 5(c), Fla. Const. The constitutional amendment process is likewise the proper method for any imposition of the modifications proposed by the legislation and rules involved in this case.

The appealed order is reversed and this case is remanded with directions that judgment be entered for the appellants.

KAHN, and WEBSTER, JJ., concur.  
Fla.App. 1 Dist.,2008.  
Florida Hometown Democracy, Inc. PAC v. Browning  
980 So.2d 547, 33 Fla. L. Weekly D1099

END OF DOCUMENT

13 So.3d 57, 2009 WL 1712908 (Fla.)  
(Table, Text in WESTLAW), Unpublished Disposition  
(Cite as: 13 So.3d 57, 2009 WL 1712908 (Fla.))

**H**Only the Westlaw citation is currently available.

Browning v. Florida Hometown Democracy, Inc.  
13 So.3d 57, 2009 WL 1712908 (Fla.)

NOTICE: THIS OPINION HAS NOT BEEN RE-  
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END OF DOCUMENT

Supreme Court of Florida.  
Kurt S. BROWNING, Etc., et al., Appellant(s)  
v.  
FLORIDA HOMETOWN DEMOCRACY, INC.  
PAC, et al., Appellee(s).  
No. SC08-884.

June 17, 2009.

\*1 This case is before the Court pursuant to article V, section 3(b)(1) of the Florida Constitution. Due to the impending, exceptional time issues associated with the potential verification and certification of the initiative proposal, we issue this order at this time. We affirm the decision of the First District Court of Appeal below with our full opinion to follow at a later date. See Fla. Hometown Democracy, Inc. v. Browning, 980 So.2d 547, 548-50 (Fla. 1st DCA 2008). Accordingly, the signature-revocation provisions provided in section 100.371, Florida Statutes, and Florida Administrative Code Rules 1 S-2.0091 and 1 S-2.0095 violate the Florida Constitution and are void, unenforceable, and without effect. See art. XI, §§ 3, 5, Fla. Const.

There shall be no motion for rehearing from this order. Any motion for rehearing may follow the issuance of the Court's written opinion. The automatic stay is hereby vacated.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, and LA-BARGA, JJ., concur.  
CANADY and POLSTON, JJ., dissent.  
PERRY, J., did not participate.

Fla., 2009.





## **FLORIDA STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS**

PO Box 350 | Tallahassee, FL 32302 | Telephone: (850) 599-9120 | Facsimile: (850) 561-6834

### **M E M O R A N D U M**

TO: FSASE  
FROM: Ron Labasky  
DATE: January 21, 2009  
RE: Voting Equipment Survey

**Executive Committee  
2008 - 2009**

President  
Jennifer J. Edwards

President-Elect  
Mark Andersen

Vice-President  
Gwen Chandler

Secretary  
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Ann McFall  
Brian Corley  
Bob Sweat  
Kay Clem  
Sharon Harrington

**General Counsel**

Ronald Labasky, Esq.

**Executive Assistant**

Nanci Watkins

During the 2007 legislative session, the Legislature created Section 101.56075, Florida Statutes. That statute requires that all counties will provide voting equipment for persons with disabilities, which meets HAVA requirements by 2012. Susan Gill has undertaken a survey and determined estimated costs of implementation of this section in respective counties throughout the State. (A copy is attached as Exhibit "A"). At the most recent FSASE Business Meeting, it was determined that we would undertake another survey asking counties to advise of the utilization of their current disability voting equipment, primarily touch screens, during the 2008 Primary and General Elections. (A copy is attached as Exhibit "B").

As the implementation of this statute will begin in the not to distant future, FSASE contacted the Florida Association of Counties ("FAC") to discuss this issue. We advised the FAC staff of the cost that would be associated with the implementation of this statute. The FAC has recently adopted a position, as part of their 2009 legislative program, suggesting delaying implementation of the provisions of Section 101.56075, Florida Statutes.

The Executive Committee suggests that you advise not only your legislative delegation concerning this issue, but also advise your County Commissioners that FAC has been informed, since the County will have to pay for the equipment.

Attachments



**FSASE VOTING EQUIPMENT SURVEY  
COST OF REPLACING TOUCH SCREEN**

COUNTY	PURCHASE PRICE OF TOUCH SCREEN	GRANTS FOR PURCHASE OF		OUTSTANDING DEBT TOUCH SCREEN	PRICE OF OPTICAL SCAN	GRANTS FOR PURCHASE OF OPTICAL SCAN	OUTSTANDING DEBT OPTICAL SCAN	INCLUDED PAPER BASED YES/NO	IF NOT, COST TO COMPLY BY 2012
		TOUCH SCREEN	ADA TOUCH SCREEN						
Broward	22,500,000	1,158,750	0	8,300,000	6,595,050	5,080,183	1,000,000	No	TBD
Charlotte	1,800,000	0	0	0	1,500,000	600,000	0	No	500,000
Collier	4,200,000	360,000	370,261	3,200,000	1,200,000	686,494	513,506	No	687,500
Hillsborough	12,000,000	0	0	0	5,756,200	2,522,518	0	Yes	N/A
Indian River	2,000,000	400,000	0	0	680,000	380,000	0	No	500,000
Lake	3,051,825	322,500	0	0	1,062,600	722,686	0	No	1,087,500
Lee	5,800,000	500,000	0	0	2,126,613	1,181,613	945,000	No	1,250,000
Martin	2,577,049	371,254	0	900,000	490,875	306,075	N/A	No	505,500
Miami-Dade	22,456,600	2,524,097	0	13,105,000	16,232,020	4,620,000	6,500,000	No	6,965,000
Nassau	964,415	256,838	0	310,000	210,980	167,414	0	No	175,000
Palm Beach	17,400,000	1,896,460	0	4,800,000	6,981,000	4,902,260	0	No	TBD
Pasco	5,181,950	495,000	1,140,699	0	1,097,250	883,575	0	No	1,200,000
Pinellas	13,967,815	1,293,750	0	N/A	6,074,308	2,152,000	4,730,957	Yes	N/A
Sarasota	4,471,000	1,137,000	0	0	2,985,000	900,900	0	yes	N/A
Sumter	693,930	139,977	0	0	663,515	225,225	0	No	589,500
<b>TOTALS</b>	<b>\$96,564,584</b>	<b>\$9,696,876</b>	<b>\$1,510,960</b>	<b>\$22,315,000</b>	<b>\$47,060,361</b>	<b>\$20,250,760</b>	<b>\$12,689,463</b>		<b>\$13,460,000</b>

EXHIBIT "A"

**FSASE VOTING EQUIPMENT SURVEY  
COST OF COMPLIANT EQUIPMENT BY 2012**

<b>COUNTY</b>	<b>COST OF COMPLIANT EQUIPMENT</b>
Alachua	522,127
Baker	91,632
Bay	430,000
Bradford	120,000
Brevard	846,000
Calhoun	113,439
Citrus	471,783
Clay	520,500
Columbia	471,000
DeSoto	131,129
Dixie	100,827
Duval	1,900,000
Escambia	655,500
Flagler	324,309
Franklin	70,000
Gadsden	250,000
Gilchrist	101,600
Glades	114,053
Gulf	72,000
Hamilton	60,000
Hardee	90,000
Hendry	205,500
Hernando	523,012
Highlands	241,000
Holmes	97,500
Jackson	180,000

<b>COUNTY</b>	<b>COST OF COMPLIANT EQUIPMENT</b>
Jefferson	125,500
Lafayette	50,000
Leon	1,350,000
Levy	275,000
Liberty	70,550
Madison	120,000
Manatee	950,000
Marion	1,500,000
Monroe	253,462
Okaloosa	420,148
Okeechobee	150,971
Orange	1,825,500
Osceola	532,461
Polk	1,400,000
Putnam	405,575
Santa Rosa	400,000
Seminole	754,853
St. Johns	1,250,000
St. Lucie	722,200
Suwannee	124,725
Taylor	116,797
Union	66,000
Volusia	1,126,400
Wakulla	90,000
Walton	315,000
Washington	226,503

<b>TOTAL</b>	<b>\$23,324,556</b>
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**UNOFFICIAL  
DISABILITY EQUIPMENT VOTER SURVEY**

COUNTY	PRIMARY	GENERAL
<b>1/16/2009</b>		
Alachua	30	72
Baker	25	10
Bay	168	320
Bradford	0	1
Brevard	17	32
Broward	332	1062
Calhoun	34	137
Charlotte	6	8
Citrus	7	13
Clay	4	48
Collier	2	4
Columbia	3	9
Desoto	0	1
Dixie	2	1
Duval	1512	5345
Escambia	68	75
Flagler	1	10
Franklin	0	0
Gadsden	0	28
Gilchrist	0	1
Glades	0	0
Gulf	0	0
Hamilton	0	0
Hardee	0	4
Hendry	0	0
Hernando	0	0
Highlands	1	3
Hillsborough	Automark-Unknown	
Holmes	0	0
Indian River	3	6
Jackson	4	8
Jefferson	0	0
Lafayette	0	0
Lake	20	47
Lee	26	38
Leon	91	352
Levy	3	4
Liberty	1	1
Madison	0	0
Manatee	3	23
Marion	24	67
Martin	8	16
Miami-Dade	1024	1842
Monroe	13	18
Nassau	4	44
Okaloosa	47	82
Okeechobee	1	2
Orange	286	731
Osceola	90	293
Palm Beach	9	45

**EXHIBIT "B"**

Pasco	1	22
Pinellas	89	356
Polk	8	25
Putnam	6	14
Saint Johns	5	11
Saint Lucie	5	16
Santa Rosa	122	212
Sarasota	Automark-Unknown	
Seminole	96	341
Sumter	5	6
Suwannee	0	0
Taylor	16	18
Union	2	1
Volusia	29	144
Wakulla	6	29
Walton	500	776
Washington	1	5
<b>TOTAL</b>	<b>4705</b>	<b>12697</b>