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# **ECONOMIC AFFAIRS COMMITTEE**

## **MEETING PACKET**

**Thursday, October 8, 2015  
9:00 AM – 11:00 AM  
Webster Hall (212 Knott)**

**Steve Crisafulli  
Speaker**

**Jose Oliva  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Economic Affairs Committee

**Start Date and Time:** Thursday, October 08, 2015 09:00 am  
**End Date and Time:** Thursday, October 08, 2015 11:00 am  
**Location:** Webster Hall (212 Knott)  
**Duration:** 2.00 hrs

#### Presentations:

Economic Incentive Review - Amy Baker, The Office of Economic Demographic Research

Impacts of Economic Incentives and the Regulatory Environment to the State-Ari Bargil, Institute for Justice

**NOTICE FINALIZED on 10/01/2015 1:13PM by Manning.Karen**



# Florida's Financially-Based Economic Development Tools

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October 8, 2015

Presented by:

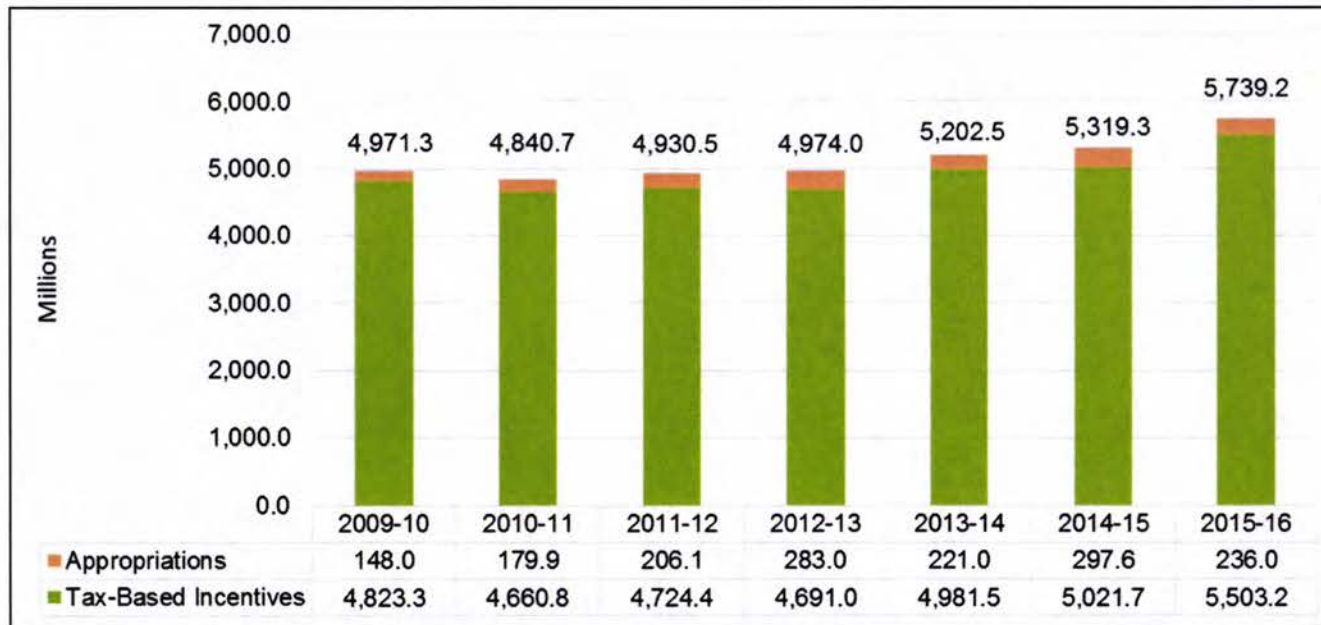


The Florida Legislature  
Office of Economic and  
Demographic Research  
850.487.1402  
<http://edr.state.fl.us>

# Economic Development Tools

- Definition... The active government pursuit of economic growth and improvements in terms of tax base, population, per capita income, investments, jobs, output, gross domestic product, and the overall well-being of citizens.
- The body of Florida-specific knowledge regarding the use of state public policy and resources as an instrument of economic development has increased fairly dramatically since 2010 when Chapter 2010-101 passed establishing the Statewide Model and 2013 when Chapter 2013-39 and 2013-42 passed requiring the calculation of returns-on-investment for selected state economic development incentive programs on a recurring schedule.
- In the broadest sense, Florida's economic growth is affected by nearly everything the Legislature does—from public school funding to road-building to the regulation of a specific industry.
- Essentially, the Legislature has three tools for economic development: financial incentives and investments, tax policies, and nonfinancial assistance.
- In this overview, the focus is narrowed to two of the three tools: the state's assistance primarily directed to businesses, whether through tax policy incentives or appropriations.

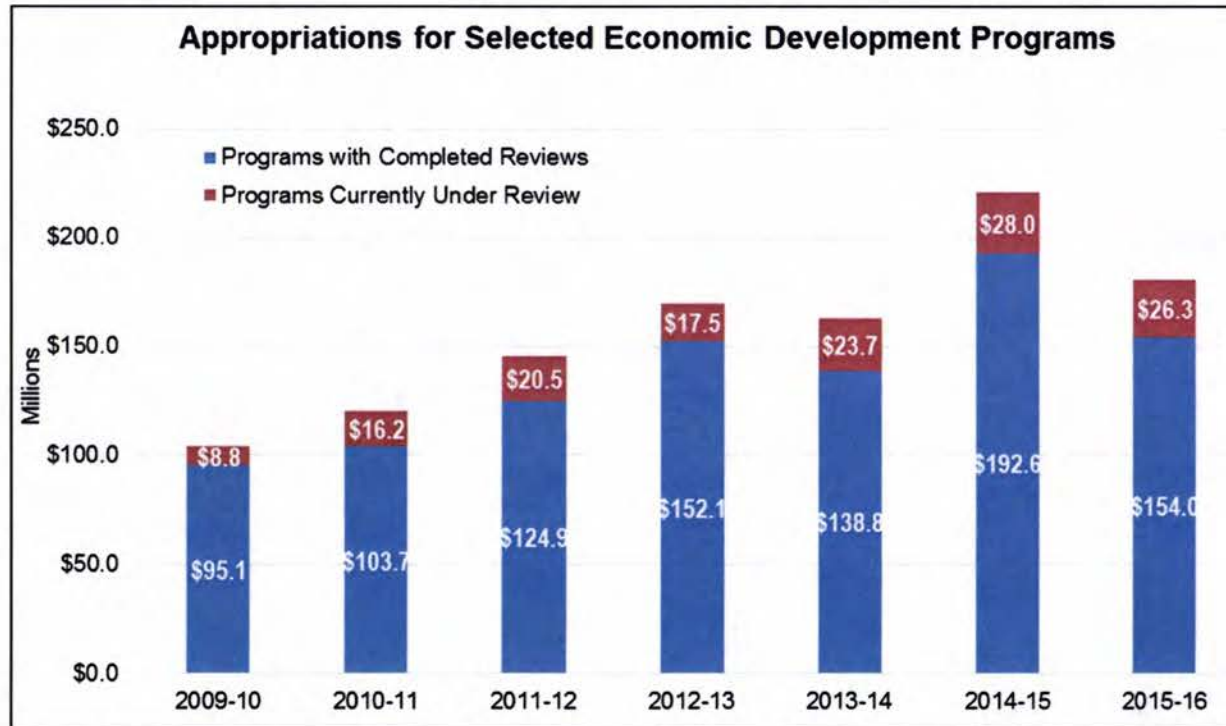
# Total Appropriations and Tax Incentives that Broadly Support Economic Development



- On average over this period, approximately 4.4% of the state's assistance was provided through appropriations whereas 95.6% was provided in the form of tax incentives.

Notes on the data: Appropriations reflect GAA and supplemental appropriations for all economic development programs and projects. Figures have been adjusted to remove salaries and benefits and other administrative expenses where identifiable in the GAA. Subsequent reversions and re-appropriations are not included. Tax-Based Incentives include all tax exemptions, credits, refunds, and deductions or allowances that do not specifically benefit individuals or households, government agencies, or non-profit organizations.

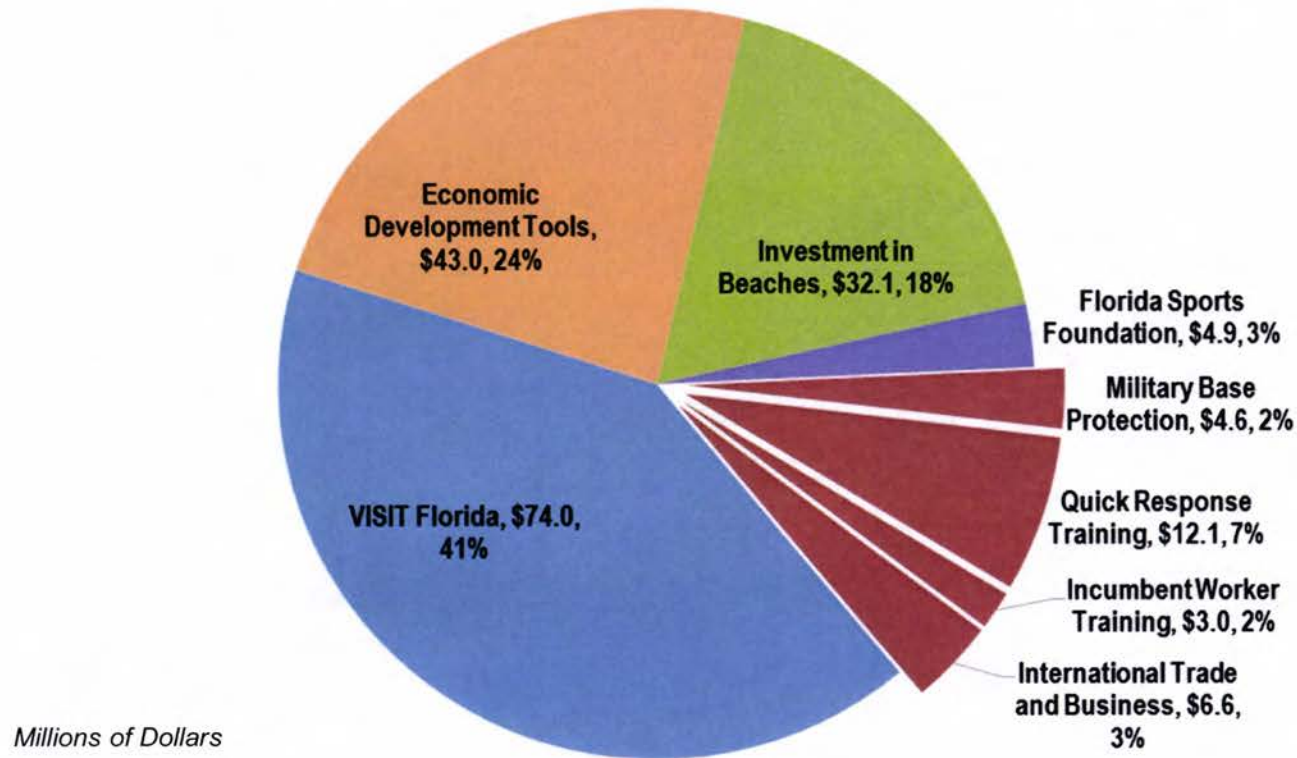
# State Appropriations



- Of the total \$236.0 million appropriation in FY 2015-16, the majority of the funds (76.4%) are for programs that are regularly reviewed by EDR through the analysis of returns-on-investment.
- Since 2009-10, the annual direct appropriations for the economic development programs under review by EDR have averaged \$137.3 million. In most years, the programs receiving the majority of the appropriations are within the lump sum for Economic Development Tools and Visit Florida.

# FY 2015-16 Appropriations

Allocation of 2015-16 Appropriations for Selected Economic Development Programs - Total Appropriations of \$180.3 Million



Economic Development Tools Include: Quick Action Closing Fund, Qualified Target Industry, Brownfield Redevelopment, High-Impact Business Performance, Qualified Defense Contractor & Space Flight, and Innovation Incentive Fund.



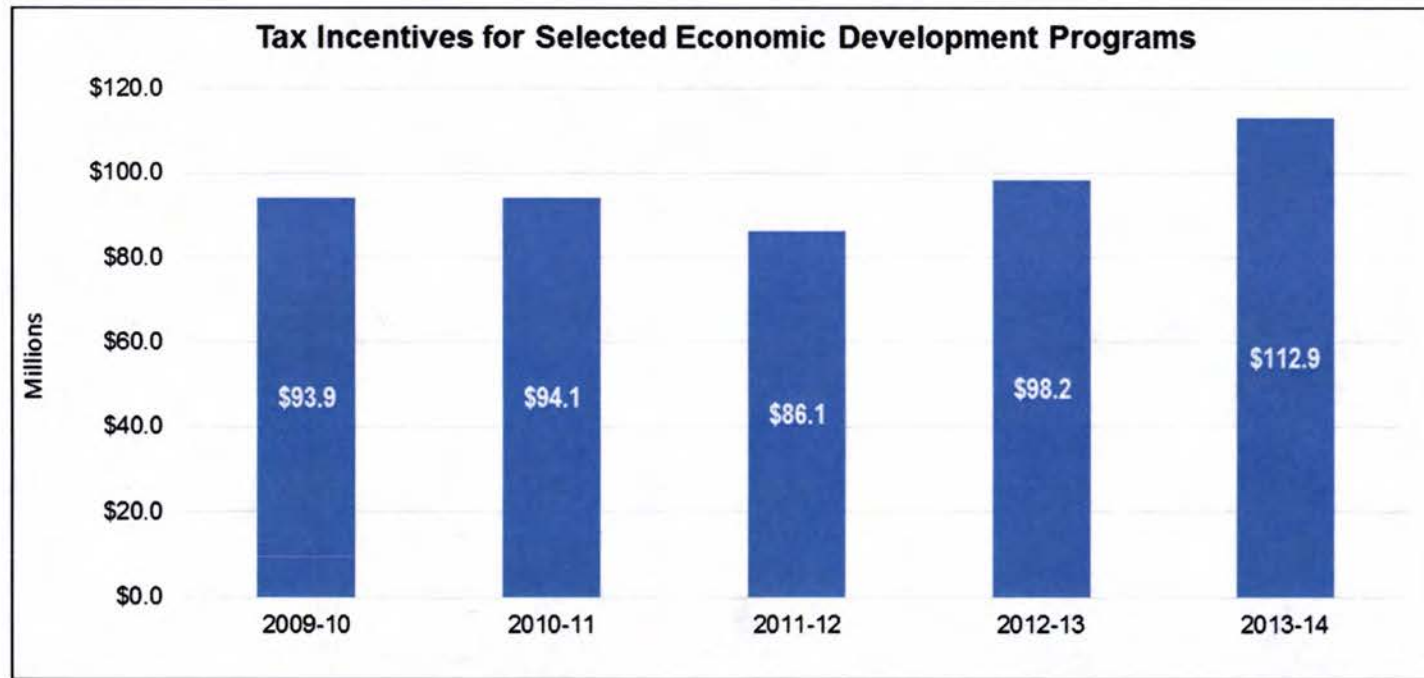
# Tax-Based Incentives Broadly Benefiting Economic Development...

## ESTIMATE of FISCAL YEAR 2015-16 STATE TAX INCENTIVES (in millions)

TAX	Summer 2015 REC's						TOTAL TAX INCENTIVES
	TOTAL COLLECTIONS	EXEMPTIONS	PREFERRED/ DIFFERENTIAL RATES	CREDITS	REFUNDS	DEDUCTIONS/ ALLOWANCES	
Beverage Tax	366.1					12.3	12.3
Cigarette and Other Tobacco Tax	1,172.2				1.4	3.8	5.2
Communications Services Tax	1,122.9	386.5				13.1	399.6
Corporate Income and Emergency Excise Tax	2,349.7	1,198.6		188.7		5.8	1,393.1
Documentary Stamp Tax	2,334.4	275.1	0.0			11.5	286.6
Gross Receipts Tax	1,183.6	193.3					193.3
Insurance Premium Tax	730.1	144.8		528.1		45.1	718.0
Lottery	5,686.1					312.7	312.7
Motor Fuel & Diesel Fuel Tax	2,620.8	3.4			11.8	4.0	19.2
Pollutant Taxes	257.3	1.0					1.0
Sales and Use Tax	24,674.3	2,089.9		7.0		65.3	2,162.2
<b>TOTAL</b>	<b>42,497.5</b>	<b>4,292.6</b>	<b>0.0</b>	<b>723.8</b>	<b>13.2</b>	<b>473.6</b>	<b>5,503.2</b>

Notes on the data: Amounts listed have been adjusted to remove items that specifically benefit individuals or households, government agencies, or non-profit organizations. The amounts listed for Sales and Use Tax do not include any exemptions associated with sales of services. Services are not exempt from the Sales Tax, instead, they are "excluded" because the sales tax generally applies to the sale of tangible personal property, not services.

# Reviewed Economic Development Tax Incentives...



Of the total tax incentives provided in FY 2013-14 (\$4.982 billion), just 2.3% of the incentives were to support economic development programs that are regularly reviewed by EDR.

Notes on the data: FY 2013-14 is the most recent year that complete data are available for all programs. The amounts shown do not include the two incentive programs currently under review. The Manufacturing and Spaceport Investment Incentive sunset July 1, 2013. For the Semiconductor, Defense, or Space Technology Sales Tax Exemption, EDR estimates the total amount was approximately \$50.8 million across the three-year review period (FY 2011-12, FY 2012-13, and FY 2013-14).

# FY 2013-14 Tax Incentives

<b>Incentive Program</b>	<b>Amount of Tax Credit/Exemption/ Distribution</b> (in millions)
Entertainment Industry Financial Incentives Pgm	\$51.5
Entertainment Industry Sales Tax Exemption	\$15.4
Professional Sports Franchise Incentive	\$16.0
Enterprise Zones	\$15.8
Capital Investment Tax Credit	\$5.3
Spring Training Baseball Franchise Incentive	\$4.7
Professional Golf Hall of Fame Facility Incentive	\$2.0
Urban High-Crime Area Job Tax Credit	\$1.6
Int'l Game Fish Association World Center Facility Incentive	\$0.7
<b>TOTAL</b>	<b>\$112.9</b>

Note: The Game Fish facility was paid off in FY 2014-15 and has relocated to Springfield, MO. While the Enterprise Zone Program sunsets December 31, 2015, some projects may be eligible to receive benefits through December 31, 2018.

# What to focus on?

Options...

- Weaknesses versus Strengths
- Areas of Decline versus Growth
- Relative Importance to the Economy versus Diversification & Balance
- Jobs versus Wages

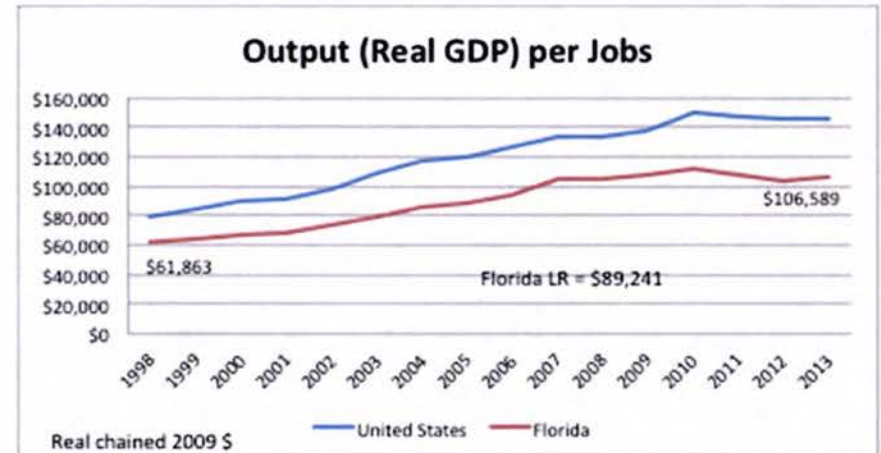
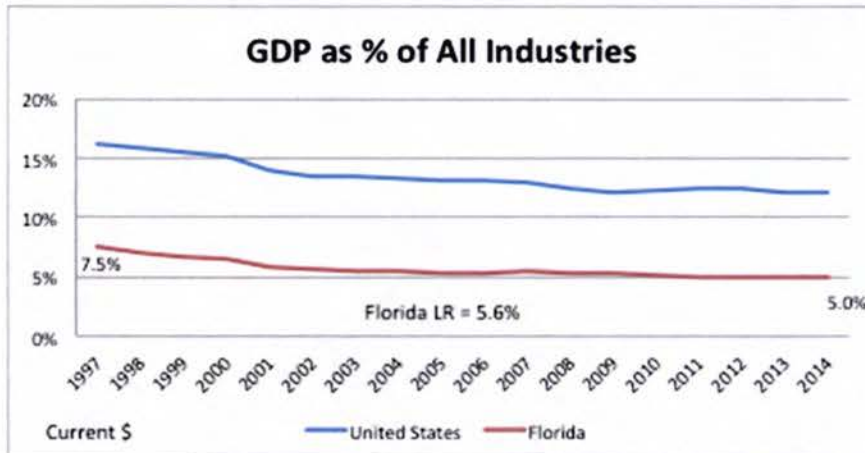
## Gross Domestic Product: 5 Year Analysis

	Florida (millions of current dollars)		Florida % of Total		Nation % of Total		2014 Percentage Point Difference (FL-US)
	2009	2014	2009	2014	2009	2014	
<b>All industry total</b>	\$722,825	\$839,944	100.0%	100.0%	100.0%	100.0%	
<b>Private industries</b>	\$623,925	\$735,785	86.3%	87.6%	86.2%	87.6%	
<b>Agriculture, forestry, fishing, and hunting</b>	\$5,439	\$6,759	0.8%	0.8%	1.0%	1.2%	-0.4%
<b>Mining</b>	\$1,276	\$1,607	0.2%	0.2%	2.0%	2.7%	-2.5%
<b>Utilities</b>	\$15,801	\$14,719	2.2%	1.8%	1.8%	1.7%	0.1%
<b>Construction</b>	\$35,632	\$37,402	4.9%	4.5%	4.0%	3.8%	0.7%
<b>Manufacturing</b>	\$38,293	\$41,597	5.3%	5.0%	12.0%	12.1%	-7.1%
<b>Wholesale trade</b>	\$47,050	\$58,579	6.5%	7.0%	5.7%	6.0%	1.0%
<b>Retail trade</b>	\$52,994	\$65,065	7.3%	7.7%	5.9%	5.9%	1.9%
<b>Transportation and warehousing</b>	\$20,930	\$26,184	2.9%	3.1%	2.8%	2.9%	0.2%
<b>Information</b>	\$30,441	\$32,214	4.2%	3.8%	4.9%	4.7%	-0.8%
<b>Finance and insurance</b>	\$36,074	\$50,443	5.0%	6.0%	6.8%	7.3%	-1.3%
<b>Real estate and rental and leasing</b>	\$125,800	\$139,529	17.4%	16.6%	13.3%	13.1%	3.5%
<b>Professional, scientific, and technical services</b>	\$46,950	\$57,697	6.5%	6.9%	7.0%	7.1%	-0.2%
<b>Management of companies and enterprises</b>	\$9,775	\$13,221	1.4%	1.6%	1.7%	2.0%	-0.4%
<b>Administrative and waste management services</b>	\$28,573	\$33,726	4.0%	4.0%	2.9%	3.1%	0.9%
<b>Educational services</b>	\$7,349	\$8,413	1.0%	1.0%	1.1%	1.1%	-0.1%
<b>Health care and social assistance</b>	\$60,551	\$72,002	8.4%	8.6%	7.3%	7.2%	1.4%
<b>Arts, entertainment, and recreation</b>	\$13,021	\$16,466	1.8%	2.0%	1.0%	1.0%	1.0%
<b>Accommodation and food services</b>	\$28,243	\$37,003	3.9%	4.4%	2.7%	2.8%	1.6%
<b>Other services, except government</b>	\$19,734	\$23,159	2.7%	2.8%	2.3%	2.2%	0.5%
<b>Government</b>	\$98,900	\$104,159	13.7%	12.4%	13.8%	12.4%	0.0%

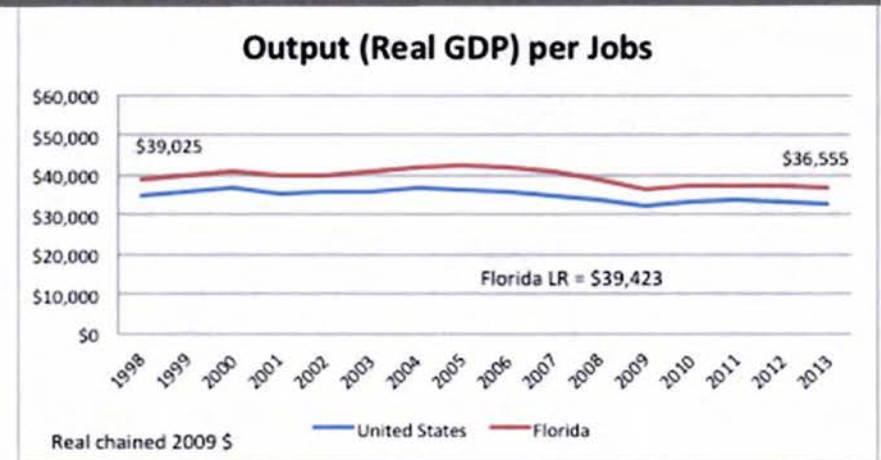
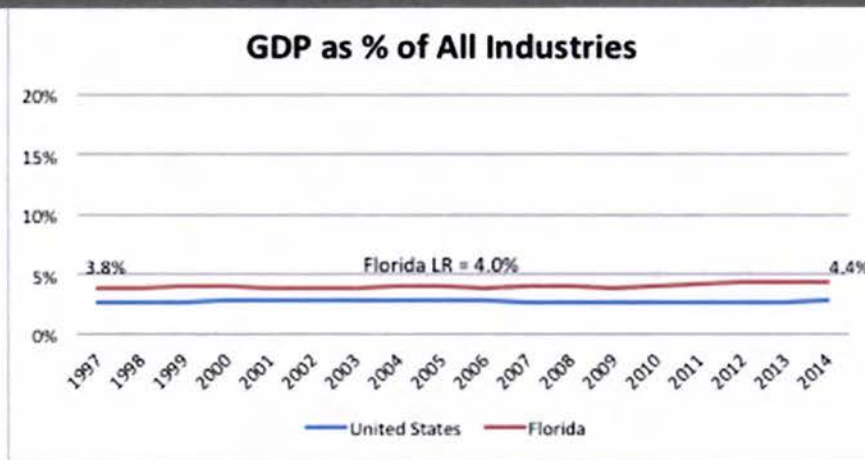
Source: Bureau of Economic Analysis, US Department of Commerce, June 10, 2015

# Examples of Two Industries...

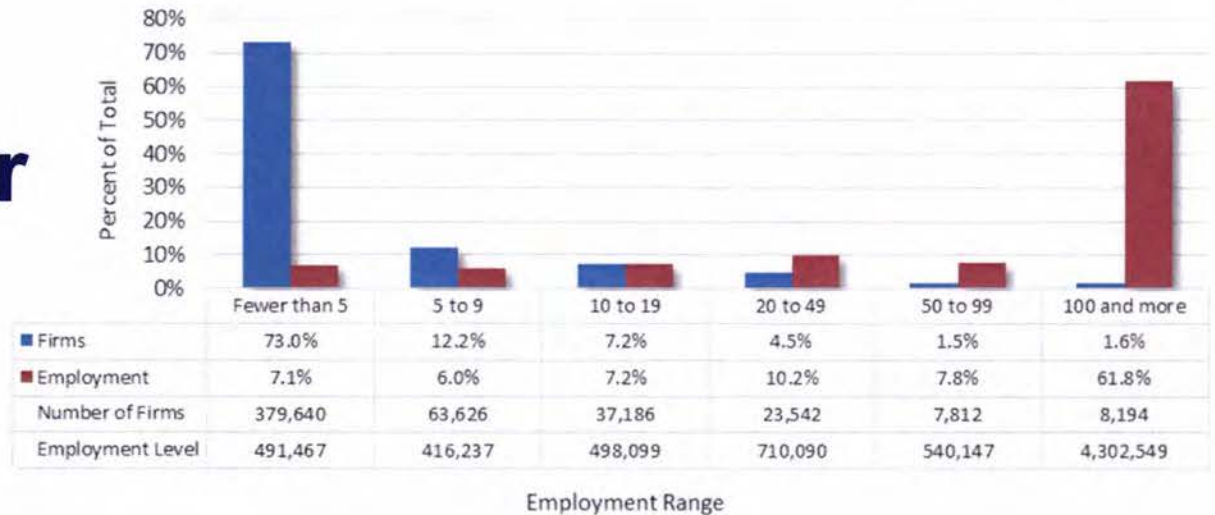
Manufacturing



Accommodations and Food Services



# Florida's Private Sector Firms and Employment



Employment Range	Firm		Employment	
	Percent of Total	Cumulative Percent	Percent of Total	Cumulative Percent
Fewer than 5	73.0%	73.0%	7.1%	7.1%
5 to 9	12.2%	85.2%	6.0%	13.0%
10 to 19	7.2%	92.4%	7.2%	20.2%
20 to 49	4.5%	96.9%	10.2%	30.4%
50 to 99	1.5%	98.4%	7.8%	38.2%
100 to 249	1.0%	99.4%	11.0%	49.2%
250 to 499	0.3%	99.7%	8.4%	57.5%
500 to 999	0.2%	99.9%	7.9%	65.4%
1,000 or more	0.1%	100.0%	34.6%	100.0%

Source: Florida Department of Economic Opportunity, Labor Market Statistics Center, received October 5, 2015. Data are for March 2015

The vast majority of Florida's 520,000 firms are small in terms of employees. The greatest number of employees—and share of the total—is associated with the 718 firms that individually have 1,000 or more employees. The dollar value of an incentive based simply on the existing number of employees (or the capacity to hire large numbers) would roughly follow this same distribution. The larger firms would also tend to have a multi—state presence.

# Wages and Jobs...

Average Annual Employment Percent by Major Industry, 2014			Average Annual Wages by Major Industry, 2014			
Industry	Florida	US	Industry	Florida	US	Florida as a percent of the US
Total, all industries			Total, all industries	\$ 44,803	\$ 51,364	87.2%
Natural resources and mining	1.1%	1.5%	Natural resources and mining	\$ 28,647	\$ 59,660	48.0%
Construction	5.1%	4.5%	Construction	\$ 43,690	\$ 55,037	79.4%
Manufacturing	4.3%	8.9%	Manufacturing	\$ 55,517	\$ 62,976	88.2%
Trade, transportation, and utilities	20.9%	19.1%	Trade, transportation, and utilities	\$ 40,107	\$ 42,987	93.3%
Information	1.8%	2.0%	Information	\$ 70,655	\$ 90,823	77.8%
Financial activities	6.6%	5.6%	Financial activities	\$ 66,176	\$ 85,267	77.6%
Professional and business services	15.0%	14.0%	Professional and business services	\$ 54,242	\$ 66,668	81.4%
Education and health services	14.8%	15.1%	Education and health services	\$ 46,573	\$ 45,950	101.4%
Leisure and hospitality	14.0%	10.7%	Leisure and hospitality	\$ 23,021	\$ 20,995	109.6%
Other services	3.2%	3.1%	Other services	\$ 32,245	\$ 33,936	95.0%
Government	13.2%	15.4%	Government	\$ 49,702	\$ 51,733	96.1%

Percentages may not add to 100% as some businesses are not classified in an industry.

Source: US Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages, [www.bls.gov](http://www.bls.gov), accessed October 2, 2015.

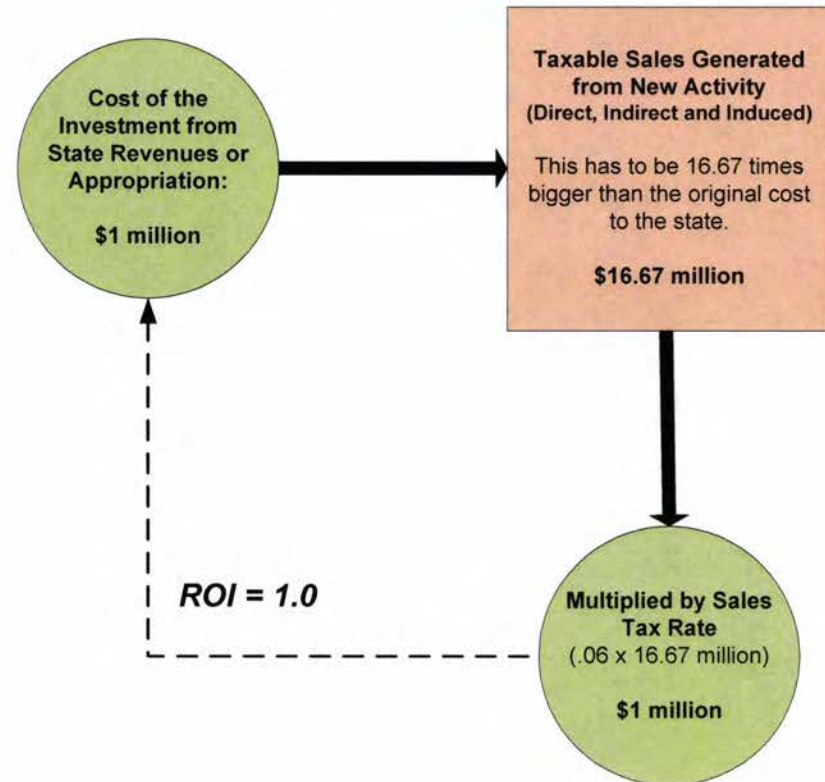
In part, the lower than average overall wage gain has to do with the mix of jobs that are growing the fastest in Florida. Not only is the Leisure & Hospitality employment sector large, it has seen some of the fastest growth. This sector is closely related to the health of Florida's tourism industry. Preliminary estimates indicate that 25.6 million visitors came to Florida during first quarter 2015 for an increase of 6.2 percent over the same period in 2014.

# Return on Investment (ROI)...

In EDR's work, the term "Return on Investment" is synonymous with the statutory term "economic benefits" which is defined in s. 288.005, Florida Statutes.

*"The direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives."*

## Sales Tax Example...





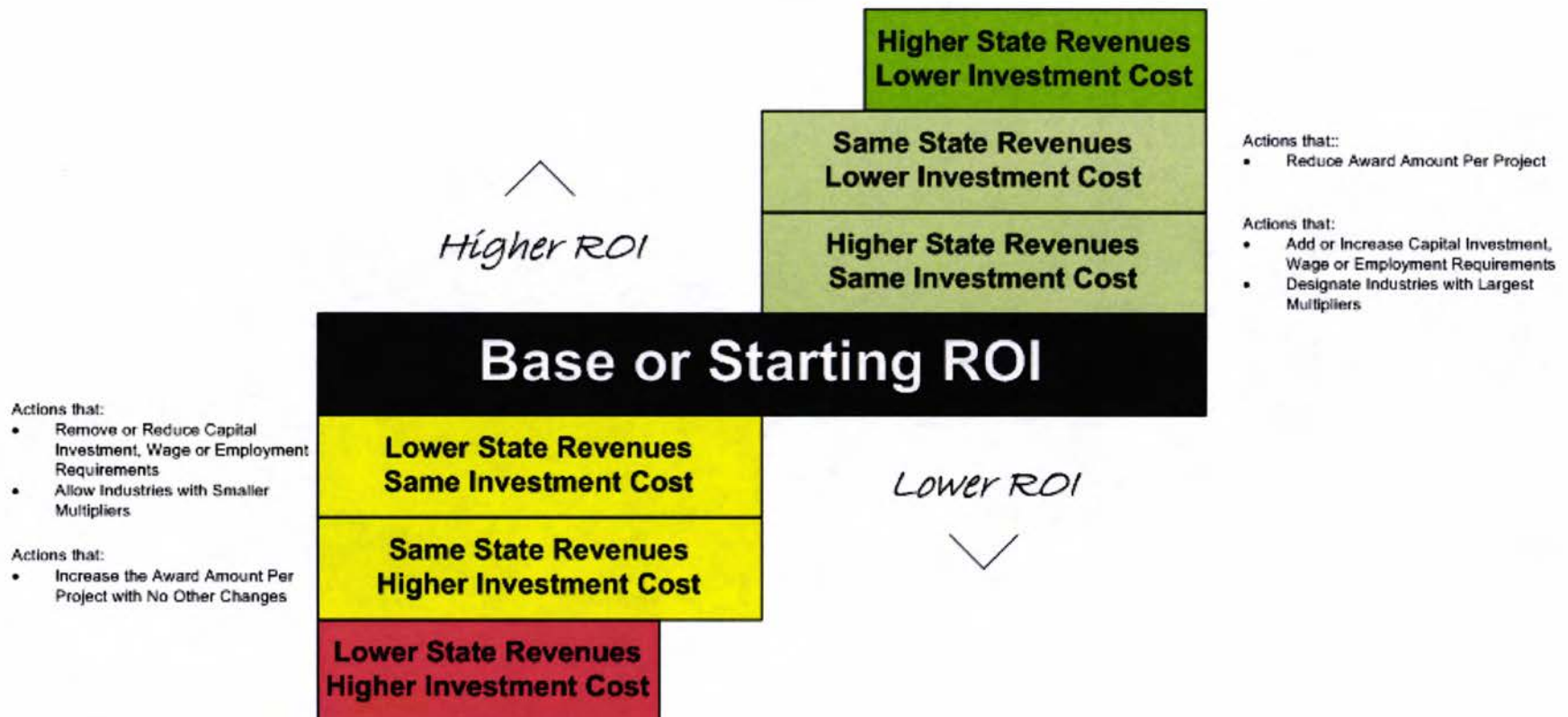
# Comparison of Reviewed Programs...

<b>Ranked Incentives and Investments</b>	<b>Type of State Support</b>	<b>ROI</b>	<b>STATUS</b>
Qualified Target Industry (QTI)	A	6.4	
Florida Sports Foundation Grant Program	A	5.6	
Economic Evaluation of Florida's Investment in Beaches	A	5.4	More than Breaks Even (State makes money from the investment)
VISIT FLORIDA Advertising	A	3.2	
Capital Investment Tax Credit (CITC)	T	2.3	
Brownfield	A	1.1	
Quick Action Closing Fund (QACF)	A	1.1	
High-Impact Sector Performance Grant (HIPI)	A	0.70	
Entertainment Industry Sales Tax Exemptions (STE)	T	0.54	
Entertainment Industry Financial Incentives Program (Tax Credit or FTC)	T	0.43	Does Not Break Even (however, the state recovers a portion of the cost)
Professional Sports Franchise Incentive	T	0.30	
Innovation Incentive Program (IIP)	A	0.20	
Spring Training Baseball Franchise Incentive	T	0.11	
Urban High-Crime Area Job Tax Credit	T	0.07	
Enterprise Zones	T	-0.05	State Loses All of Its Investment (plus incurs additional costs)
Professional Golf Hall of Fame Facility Incentive	T	-0.08	
International Game Fish Association World Center Facility Incentive	T	-0.09	

Types of State Support: A = Appropriation; T = Tax Incentive

The numerical ROI can be interpreted as return in tax revenues for each dollar spent by the state. For example, a ROI of 2.5 would mean that \$2.50 in tax revenues is received back from each dollar spent by the state.

# Changing the Reported ROI...



# Options for Improving the ROI...

## Specific Capital Investment Requirements

Capital investments (construction, machinery and equipment) have strong impacts. Benefits are localized, few leakages.

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- Capital investment in physical space has the strongest effect (i.e. construction) due to backward linkages to local suppliers. Machinery and equipment investments have smaller effects, since many of these purchases are tax-free and are often produced out of state. Although sales tax refunds are currently allowed for businesses and individuals who purchase taxable building materials and equipment, there is no requirement to undertake this activity.

## Specific New/Retained Job Requirement

New/retained jobs bring/keep additional income into an area, spending brings additional tax revenue.

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- New jobs should be new to the state (not new to the area) from a new business or a business relocating to Florida. Retained jobs should pass a “but for” test indicating that the company would have left Florida. A company that could easily leave Florida would have: locations in other states, not be market or resource dependent, and not be location-bound due to prior investments in Florida.

## High Wage Requirements

Higher wages linked to higher output and productivity, increase spending.

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- Higher wages lead to greater consumption. However, hiring underemployed and unemployed workers, even at a lower wage, may increase the ROI as it reduces public assistance dollars. Further, those employees spend more of their wages on consumption rather than savings.

# Options for Improving the ROI (continued)...

## Job Training Requirement

On the Job Training (OJT) and GED assistance improve chances of an employee's retention and promotion.

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- The average wage of a worker increases as his education level increases (leads to increased household spending).
- OJT and GED assistance have lasting benefits for the employee and privately funded initiatives defray state costs.

## Targeting Industries with High Multipliers

Industries with high multipliers produce greater returns to the state.

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- Industries with high multipliers typically have strong backward linkages to local suppliers. They also have high employment multipliers. Both result in greater indirect and induced benefits. There are few leakages to the rest of the world.
- Targeting industries with lower multipliers may be desirable in certain cases, but the trade-off is a lower ROI.
- From the perspective of the state's ROI, excluding certain retail and service-based industries generally leads to better results; however, this is part of the policy-goal decision facing the Legislature. For example, retail trade generally has lower output multipliers—but higher employment multipliers. These effects counteract each other in the overall analysis. In using the Statewide Model to calculate the state's ROI, the relationships between these multipliers, as well as differences in market dependence and product taxability, are all taken into account.

# Options for Improving the ROI (continued)...

## Targeting Businesses with High Export Volume or Federal Dollars

Businesses that bring in money from outside of the state grow and diversify the economy.

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- Options include targeting businesses with strong export capability or requiring that a minimum percentage of the products be exported.
- The state could also target industries that receive significant funding from federal contracts (space, military), although this would be subject to the annual federal budgeting process.

## Imposing a “But For” Requirement

Businesses that would not have located in the state “but for” the incentive improve the state’s ROI.

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- Businesses that would otherwise exist bring no additional dollars to the state as a result of the incentive. Essentially, the incentive is unnecessary.
- Similarly, incentives that are too small to induce new activity result in limited or no economic gain.
- Closely related to the determination of market or resource dependence.

# Options for Improving the ROI (continued)...

## Market or Resource Independence Requirement

Granting incentives to businesses that would have created or retained jobs regardless of incentives is a financial loss to the state.

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- Businesses that are dependent on Florida's population growth or resources may be technically qualified to receive incentives from a program, but there is generally no additional state revenue attributed to these businesses, as they (or a competitor) would have existed regardless of the state's investment.
- From an ROI perspective, the state's investment is a pure loss if the company would have otherwise chosen Florida. In some cases, even if that particular business did not come into existence, another business competitor would have satisfied the market demand.

## Limit State Investment

Limit state investment to no more than needed to accomplish goal.

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- Actions that reduce the state's cost improve the ROI, assuming the outcomes stay the same.
- Some form of local participation (incentives or required matches) should be considered in lieu of state investments for incentives that produce largely local, non-taxable or property tax-related results. The size of the state incentives should be linked or calibrated to the expected gain in state revenue.
- Local contributions towards a project may have an ambiguous effect on the state's ROI due to the apportioning process. The gain must be strong enough to produce a solid ROI for the state after apportioning

# Options for Improving Induced and Indirect Effects...

The literature suggests there are three ways to improve indirect and induced effects:

- Improve the direct effects on the front-end, primarily through the creation of more jobs, increased facilitation of new business establishments in targeted industries, enhanced promotion of higher salaries, or additional capital expenditures.
- Impose a requirement for backward linkages in the selection of firms for incentives.
  - Industries with strong backward linkages generate economic activity far beyond the nominal value of their products when they spend locally on inputs instead of purchasing those intermediate goods and services from outside the state.
  - Each dollar that remains in Florida reduces leakages and continues to boost local economic activity, employment, and ultimately tax revenue.
  - All else being equal, the stronger the linkage is, the greater the impact will be on the state's economy.
- Develop strong pools of local suppliers in key locations that can attract businesses which benefit from those relationships—essentially, the development of a portfolio of business assets.

# What Does This Look Like?

- A broadened focus that includes growing in-state businesses rather than a limited focus on recruiting businesses.
- A multi-faceted approach that is inclusive of other policy areas, rather than a limited focus on the traditional toolkit (examples include improving the quality of education; retaining graduates of higher education programs; and, developing different kinds of incentives and programs).
- Formally, this is a bottom-up theory of economic development that focuses government efforts on:
  - Helping local businesses find, expand, or create new markets for unique and innovative products (*technical assistance, infrastructure, distribution channels, financing and facilitation*),
  - Fostering entrepreneurs and new business development (also called *enterprise development*), and
  - Developing pools of local resources, including human capital, and access to technology (*agglomeration and clustering*).



# The Future of Economic Development: Fostering Entrepreneurship

Entrepreneurship focuses on business creation that is homegrown.

- Global economy increases competition, requiring business to be more nimble, innovative and flexible. Generally, this is best accomplished through smaller businesses.
- Innovations have stronger growth potential than established business activity—but the risk is greater.
- States need new tools that focus on the start-up and growth of new enterprises within the state, as well as a longer term vision.
- To be meaningful, economic development assistance should be through strategic and targeted interventions at key parts of the process.



# Securing the Fundamental Right to Earn a Living in Florida



Ari S. Bargil, Attorney  
**The Institute for Justice**

# **Florida Constitution**

## **Article I – Declaration of Rights**

### **Section 2: Basic Rights**

**“All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property...”**

# The Madisonian Explanation



Any government which imposes “arbitrary restrictions, exemptions, and monopolies [that] deny to part of its citizens [the] free use of their faculties, and free choice of their occupations” to favor the interests of one’s competitors, “is not a just government.”

James Madison, *Property* (1792), reprinted in DAVID N. MAYER, LIBERTY OF CONTRACT: REDISCOVERING A LOST CONSTITUTIONAL RIGHT 18 (Cato Institute 2011)

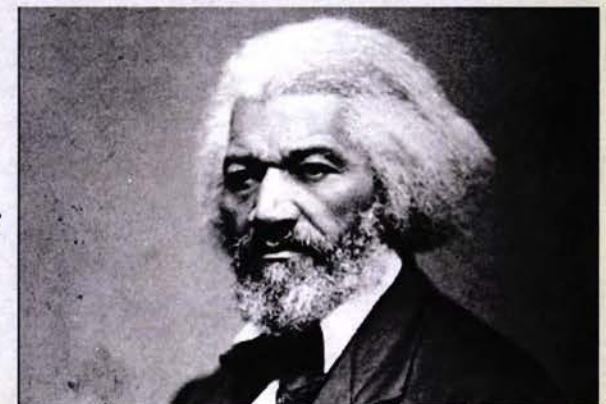


# But Frederick Douglass Said it Best:

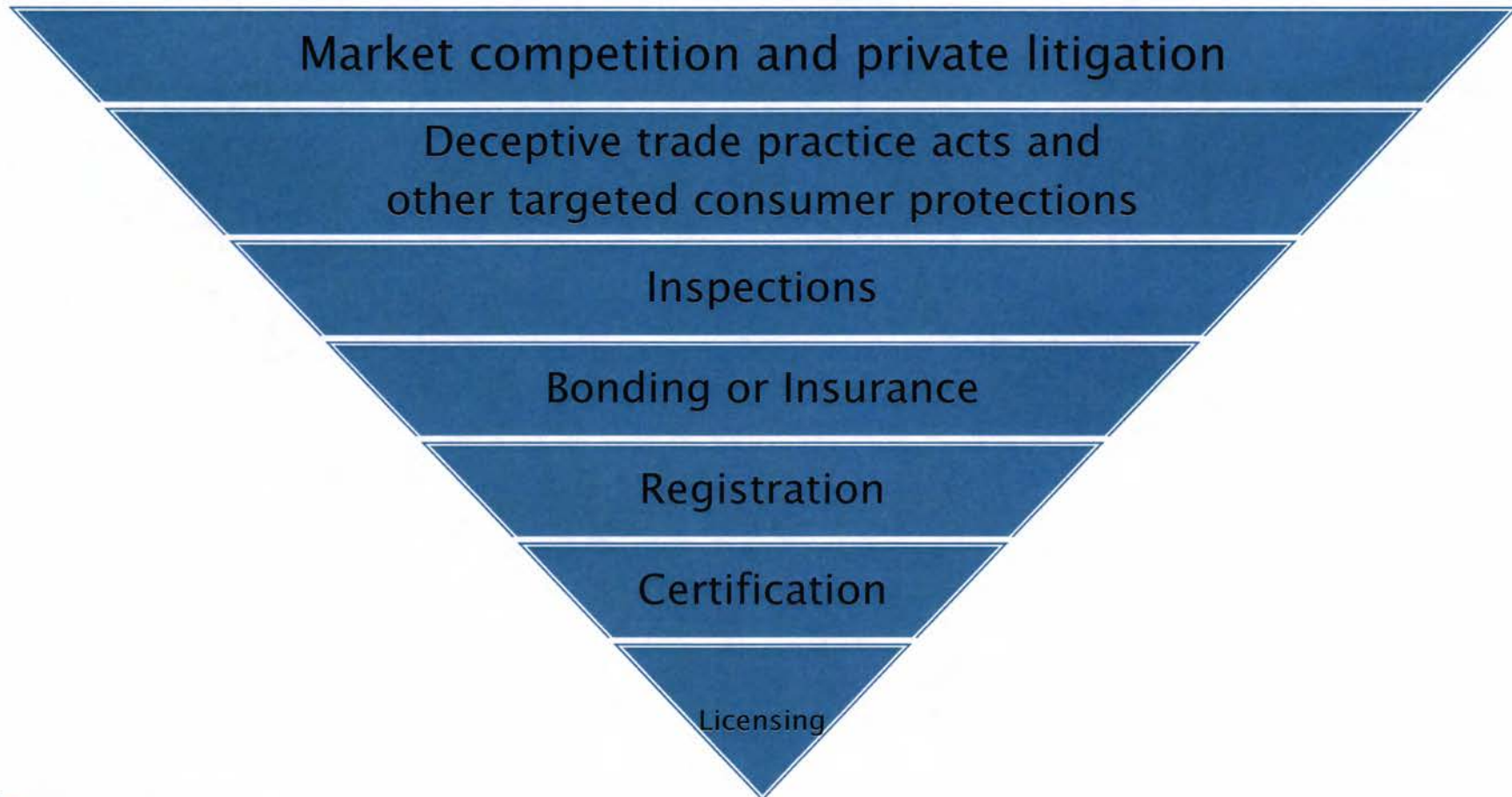


“To understand the emotion which swelled in my heart as I clasped this money, realizing that I had no master who could take it from me, -- that it was mine -- that my hands were my own, and could earn more of the precious coin, -- one must have been in some sense himself a slave.”

Frederick Douglass, *The Life and Times of Frederick Douglass* (1893), reprinted in Timothy Sandefur, *State “Competitor’s Veto” Laws and the Right to Earn a Living: Some Pathways to Federal Reform* 38 HARV. J. OF L. & PUB. POL’Y 1013 (Summer 2015).



# Use the *Least Restrictive* Form of Regulation



# Four Types of Laws That Directly Threaten Economic Liberty in Florida



Economic Protectionism and  
“Crony Capitalism”

- **Price Manipulation;**
- **Certificates of Public Convenience and Necessity (“Competitors’ Veto” Laws);**
- **Tax Breaks/Incentives (“Corporate Welfare”)**
  - **Occupational Licensing**



# Impacts on Consumers

- Slows Innovation;
- Decreases Options;
- Reduces Quality;
- Increases Prices; and
- Raises Taxes

# Some Examples of Real-World Impacts on Entrepreneurs

- Hillsborough Limousines
- Florida's Exclusive Franchise Laws
- African Hair Braiders
- Interior Designers

# Un-fare: Hillsborough's Ban on Offering Riders a Better Deal



Thomas Halsnik, Plaintiff in *Halsnik et. al. vs. Hillsborough PTC* (case pending on appeal)

# Foul Brew: Florida's Outdated Exclusive Franchise Laws



Florida's craft beer economy is growing, but it remains subject to one of America's most unjust regulatory systems.

# Florida's Misguided Regulation of African Hair Braiding



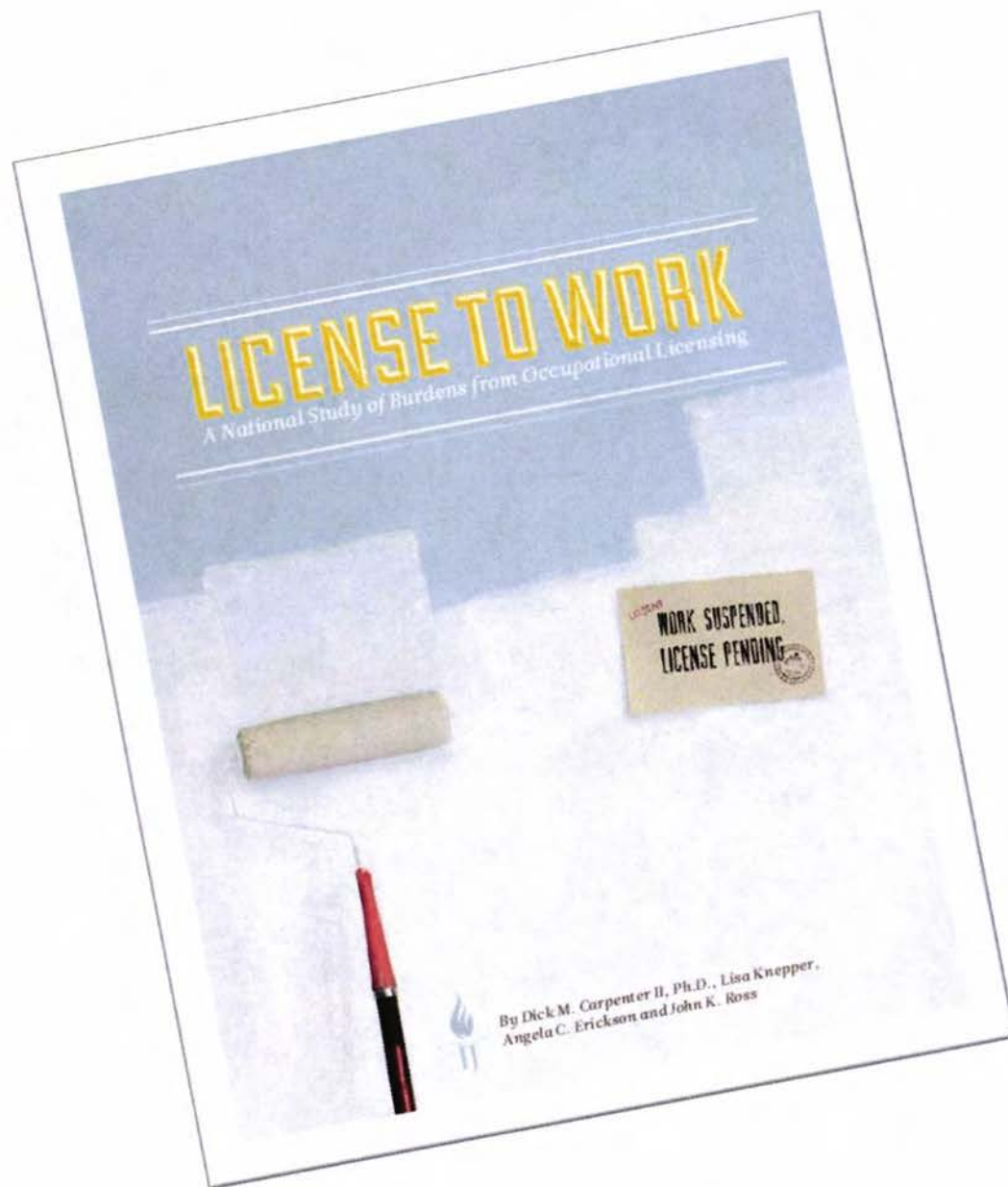
Successful IJ client Isis Brantley (Dallas, Texas) shown braiding a customer's hair. This harmless art form is illegal in Florida, even with a hair braiding license.

# Florida's Protectionist Regulation of Interior Designers



Florida is one of only four states in the U.S. to require interior designers to obtain a license. In 2009, in the case of *Locke v. Shore*, IJ clients Eva Locke and Pat Levenson (pictured above) took on the interior design lobby in federal court. The Court struck down the law's titling provision, but the onerous occupational licensing requirements remain in place today.

**MUSICAL THERAPISTS?**



Florida is fourth-worst in the nation according to *License to Work*, an IJ study examining the burdens of occupational licensing.



## In 2013, Integrity Florida Released a Report Criticizing Florida's Use of "Corporate Welfare."

- Enterprise Florida has failed to meet its job creation objective;
- Enterprise Florida has failed to obtain its required level of private sector support;
- Enterprise Florida has the appearance of pay-to-play;
- Enterprise Florida has apparent conflicts of interest; and
- Enterprise Florida is picking winners and losers.



**Enterprise Florida:**  
Economic Development or Corporate Welfare?

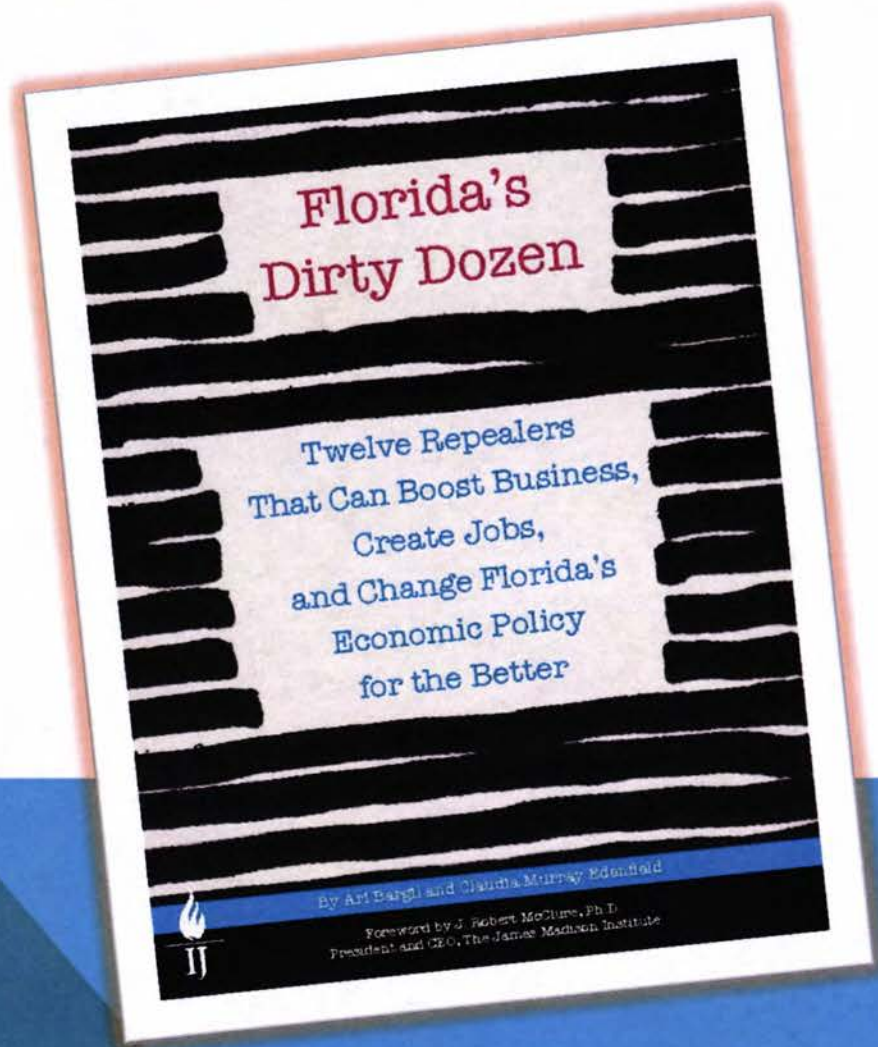
**What is the solution?**

REPEAL

or

REFORM

# TWELVE ACTUAL EXAMPLES OF OVERREGULATION IN FLORIDA AND WHAT TO DO ABOUT IT



# Florida's "Dirty Dozen"

- **Barbers**
- **Auctioneers**
- **Cosmetologists**
- **Short-term Rentals**
- **Travel Agents**
- **Midwives**
- **Funeral Directors**
- **Talent Agents**
- ~~**Growlers**~~
- **Movers**
- **Talent Agents**
- **Interior Designers**

# What to Repeal and Reform?

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- ▶ Scrap the stuff that stifles growth;
- ▶ Get rid of what goes unenforced or is duplicative;
- ▶ Rely on FDUTPA;
- ▶ Replace licenses with the least restrictive form of regulation; and
- ▶ Be vigilant of overzealous licensing boards.



# Licensing Boards Run Amok



In a nutshell, states should:

- Charge an independent “licensing ombudsman” with reviewing the actions of state licensing boards;
- Charge the licensing ombudsman with a mandate to promote economic competition;
- Make the ombudsman responsible for conducting periodic reviews to identify ways to reduce licensing burdens; and
- Eliminate licensing altogether for occupations where it is unnecessary.

## BOARDS BEHAVING BADLY

How States Can Prevent Licensing Boards From Restraining Competition, Harming Consumers, and Generating Legal Liability Under *North Carolina State Board of Dental Examiners v. FTC*

After the U.S. Supreme Court’s February 25 decision in *North Carolina State Board of Dental Examiners v. FTC* (“*Dental Examiners*”),<sup>1</sup> state governors and legislators can no longer afford to ignore the misbehavior of state licensing boards.

This bad behavior has been going on for decades. Licensing boards, composed of members of the very occupations they are supposed to regulate, have been adopting anticompetitive restrictions that harm consumers, stifle innovation, and yield no real public benefits. And when these restrictions inevitably are challenged in court, states have been left footing the bill to defend the boards.

In *Dental Examiners*, a dental board composed of practicing dentists sought to exclude non-dentist teeth whiteners from the market, not because the teeth whiteners posed a danger to consumers (they did not), but rather because they threatened dentists’ lucrative monopoly on teeth whitening services.<sup>2</sup> In other cases, states have been forced to defend attempts by funeral director boards to monopolize casket sales;<sup>3</sup> attempts by veterinary boards to monopolize animal massage<sup>4</sup> and attempts by cosmetology boards to monopolize the practice of traditional African hair braiding.<sup>5</sup>

*Dental Examiners* will magnify the cost of this misbehavior to the states. The Supreme Court, in its decision, held that North Carolina’s dental board was not immune from liability under federal antitrust law.<sup>6</sup> As a result, future monopolistic gambits by state licensing boards will generate significant legal exposure—including, potentially, treble damages and criminal penalties.<sup>7</sup>

Every state must revisit its licensing laws after *Dental Examiners*. States can no longer afford to allow the anti-competitive, monopolistic behavior of their boards to go unchecked.

*Dental Examiners*, moreover, calls for more than a fig leaf of bureaucratic supervision. Superficial reforms will leave states open to considerable legal uncertainty, as the Supreme Court has not clearly defined the level of “active supervision” that will suffice to confer immunity from federal antitrust law. States, instead, should seek to restrict the kind of underlying anticompetitive conduct that gets boards into trouble in the first place.

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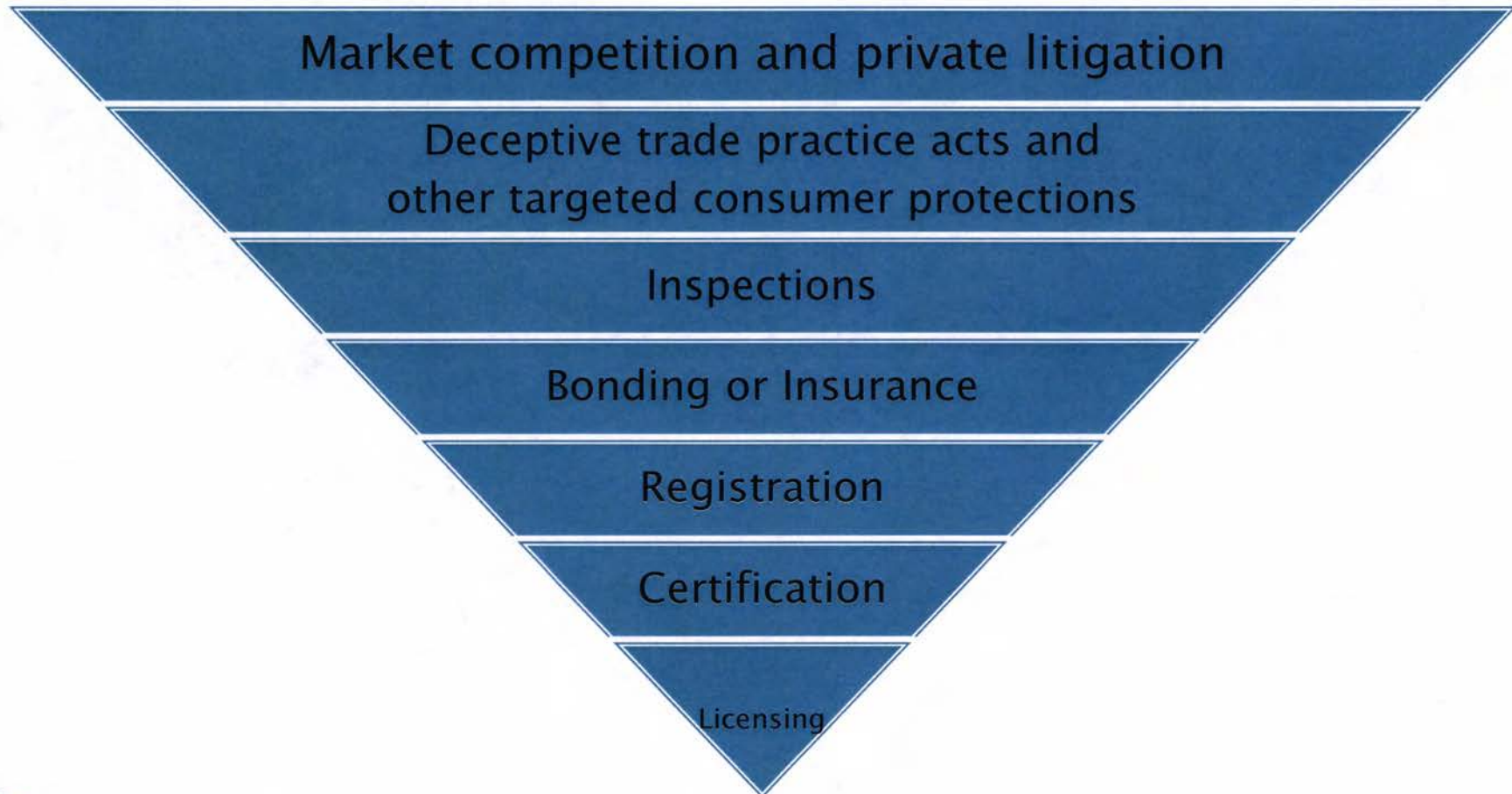
# It is up to the Legislature

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- ▶ A handful of judicial decisions have made it difficult for entrepreneurs to successfully seek redress from the courts
- ▶ Florida is one of few places where the courts have shown a tendency to be more receptive, but we still have a long way to go.
- ▶ This means it is especially important for our state legislators to take seriously their role in protecting the rights enumerated in the Florida Constitution.



# Use the *Least Restrictive* Form of Regulation







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