

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

DEPARTMENT OF REVENUE

BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

STATE BOARD OF ADMINISTRATION

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Crist
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
October 27, 2009, commencing at 9:10 a.m.

Reported by:
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APPEARANCES:

Representing the Florida Cabinet:

CHARLIE CRIST
Governor

CHARLES H. BRONSON
Commissioner of Agriculture

BILL McCOLLUM
Attorney General

ALEX SINK
Chief Financial Officer

* * *

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P R O C E E D I N G S

* * *

(Commenced at 9:50 a.m.)

GOVERNOR CRIST: Each office has reviewed next year's Cabinet schedule. Is there a motion to approve the 2010 Cabinet calendar?

COMMISSIONER BRONSON: So moved.

ATTORNEY GENERAL McCOLLUM: Second.

GOVERNOR CRIST: Moved and seconded. Show it approved without objection.

Our next Cabinet meeting will be Tuesday, November the 17th.

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1 GOVERNOR CRIST: Department of Revenue. Lisa
2 Echeverri. Hi, Lisa.

3 MS. ECHEVERRI: Good morning.

4 GOVERNOR CRIST: Good morning.

5 MS. ECHEVERRI: We have three items on our
6 agenda. Item 1 is approval of the minutes from the
7 September 29th meeting. Recommend approval.

8 ATTORNEY GENERAL MCCOLLUM: I move approval.

9 COMMISSIONER BRONSON: Second.

10 GOVERNOR CRIST: Moved and seconded. Show the
11 minutes approved without objection.

12 MS. ECHEVERRI: Item 2 requests approval to
13 adopt and file Rule 12A-19.080. This rule
14 establishes procedures for adjusting communication
15 services tax distributions to local governments.
16 This is necessary in order to coordinate with local
17 governments to minimize disruptions to their local
18 budgeting process in making those adjustments.
19 Recommend approval.

20 COMMISSIONER BRONSON: So moved.

21 CFO SINK: Second.

22 GOVERNOR CRIST: Moved and seconded. Show it
23 approved without objection.

24 MS. ECHEVERRI: Item 3 is an issue for
25 discussion only. It is not for voting on today.

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1 This item was placed on the agenda at the request of
2 CFO Sink. It is related to the taxation of
3 transient rentals. This issue has been around for
4 quite some time, and we have had many discussions
5 with both CFO Sink's office and General McCollum's
6 office in recent months to discuss how the State
7 should move forward on this issue.

8 I want to just give you a little history and
9 maybe some numbers. Florida collects about \$632
10 million annually on the taxation of transient
11 rentals in the state of Florida. Local governments
12 receive an additional 513 million annually.

13 GOVERNOR CRIST: I have a question. What's a
14 transient rental? Is that like a hotel?

15 MS. ECHEVERRI: A transient rental is a -- it's
16 a hotel room. It could be a condominium. It's any
17 rental of a residential unit for less than six
18 months.

19 GOVERNOR CRIST: Thank you. Sorry.

20 MS. ECHEVERRI: In 2001 and 2003, the state and
21 local governments nationally started to notice a new
22 trend in the way that transient rentals or hotel
23 rooms were sold. It came with the development and
24 burgeoning industry on the Internet, and it was
25 known as the online travel company model.

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1 In this model about, today, about 30 percent of
2 hotel rooms are sold by brand name online sites --
3 that would be like your typical hotel having its own
4 online site -- and another 15 percent through online
5 travel intermediaries or companies.

6 There are a couple of models that travel
7 intermediaries use. One is known as the agent
8 model. This typically is in coordination with a
9 hotel where the travel agent sells the room.
10 Payment goes to the hotel, and a commission is paid
11 to that agency. That has been sort of the
12 traditional travel agent model and subject to
13 taxation on the full amount charged for the room.

14 Online travel companies also have developed
15 another model for selling hotel rooms called the
16 merchant model. In this model, typically there is
17 some relationship between the hotel and the online
18 company through contracts. The online company
19 offers rooms on the Internet. When it secures a
20 buyer for that room, it either has purchased rooms
21 in advance or it will purchase rooms from the hotel
22 at that point at a discounted amount. They sell
23 them to the end consumer at a marked-up amount, and
24 they pay the hotel for the amount of the hotel room
25 at that discounted amount, and they pay tax on that

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1 amount.

2 The issue in question is whether tax should
3 also be collected on the markup amount. And I'll
4 just give you a quick example. In some cases maybe
5 the arrangement is that they can buy the hotel room
6 from the hotel for \$80. They would turn around and
7 offer that on their Internet site to consumers for
8 \$100. They would collect tax, the hotel would
9 collect tax on the \$80 when it bills the online
10 company.

11 The online companies take the position that
12 their markup is a service charge for the reservation
13 service and not subject to tax. This issue caught
14 the attention of both state and local governments
15 early in 2001, 2003. A number of local governments
16 in Florida and across the country have filed
17 lawsuits, many of which are still pending.

18 The Department, when it looked at this issue,
19 because the statutes were written back in 1949,
20 started to look at whether imposition should be made
21 on that marked-up amount and determined that, like
22 other significant policy issues, we should place the
23 issue back before the Legislature to determine what
24 the legislative intent was with respect to this
25 transaction.

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1 Legislation has been filed or introduced in
2 2005, 2006, 2008 and 2009 with no result. With the
3 exception of 2008, the legislation that's been filed
4 has been to tax the increased portion, the marked-up
5 amount. In 2008 it was to clarify that it was not
6 taxable.

7 As I mentioned, there have also been a number
8 of lawsuits. The decision was made to try and get
9 legislative clarification for two reasons. That way
10 the determination could be prospective in nature and
11 there would -- it would allow for certainty. It's
12 pretty clear, at least from the local government
13 lawsuits, that taking the position that it's taxable
14 will be challenged in courts and the outcome will be
15 determined through the court system.

16 During this same time frame that I mentioned,
17 the counties in Florida that have filed lawsuits are
18 Orange County, Leon County -- that case has been
19 dismissed, it was in federal court -- the City of
20 Jacksonville, Duval County and Broward County. Many
21 of those actions were for declaratory relief. The
22 Broward County action is actually based on audits
23 done by Broward County.

24 More recently the online travel companies have
25 gone to the federal government, to Congress, and

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1 attempted to get amendments to legislation known as
2 the, I'm sorry, as the Federal Travel Promotion Act
3 of 2009, to get an exemption at the federal level or
4 a ban on states from taxing the sale of hotel rooms
5 through the Internet.

6 My understanding is the original intent was to
7 ban the taxation of just the markup amount, but the
8 language was written very broadly, and a number of
9 states became concerned that any sale of a hotel
10 room across the Internet would be completely exempt,
11 having a large fiscal impact on states.

12 The markup on the hotel rooms ranges, from what
13 we can tell, anywhere from about 25 to 45 percent.
14 And an additional issue worth noting -- I went back
15 and listened to a lot of the committee hearings that
16 we had here in Florida in the Legislature. And one
17 of the major concerns has been how the amounts are
18 portrayed on the invoices that are provided to
19 consumers. As we mentioned, there's an \$80 charge
20 from the hotel to the online intermediary. Assume
21 that the markup was \$20. What the end consumer sees
22 is a charge for the room for booking of \$100.

23 The online companies typically then show an
24 item called taxes and fees that if you click on that
25 or usually if you click on some icon near the taxes

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1 and fees figure, what you get is an explanation that
2 that is really reimbursement for taxes that they
3 will pay to the hotels and additional fees that they
4 charge.

5 So there is some concern that consumers are not
6 seeing the actual amount of taxes that are being
7 charged on the rooms and that they may believe that
8 taxes and fees are actually government impositions,
9 not as it's characterized when you read the
10 additional information, that it's reimbursement of
11 taxes and additional amounts. I know this is
12 something that General McCollum has been concerned
13 about from a consumer protection aspect.

14 We have a number of people who are here to
15 speak. We have two people representing the Internet
16 online companies and someone from the Florida
17 Association of Counties. All right. I'll go ahead
18 and introduce them. Our first speaker is Paul
19 Chronis from Duane Morris, or is our first speaker
20 Richard Leavy? Our first speaker is going to be
21 Richard Leavy from Mayer Brown. They represent
22 Orbitz as tax counsel.

23 MR. LEAVY: Thank you very much, Governor,
24 Cabinet. I'm going to try and limit my remarks to
25 the tax issues implicated. I'm a state and local

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1 tax attorney. I spend a lot of time looking at
2 sales and use tax laws as well as income tax nexus
3 issues and all kinds of local distribution issues
4 having to do with revenue brought in.

5 Before I address the Florida-specific statute
6 and its application to this business model, what I'd
7 like to do is touch very briefly upon the nature of
8 the business model. What we have here is really not
9 so much the purchase and resale of a room. The
10 online travel companies as a general proposition
11 don't have any inventory risk.

12 They don't own hotels. They don't manage
13 hotels. They don't have the ability to hand over
14 keys to a particular room. They're not in charge of
15 running the property, and they don't make any
16 decision whether or not the room reservation is
17 accepted or rejected.

18 In fact, there are many instances in which a
19 consumer or guest would like to stay in a room and
20 it's not available, not because the OTC doesn't
21 accept the reservation but because once that
22 reservation is forwarded on to the hotel and payment
23 is made available, the hotel says either we don't
24 have that room available or there's some other issue
25 that would cause them not to accept the booking.

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1 If you look at what the OTC does in the market,
2 it's really a consumer resource. The OTC is a
3 provider of comparison shopping and search type
4 services. Comparing it to pre-Internet days, what
5 they're really doing is providing a resource to say
6 these are the available options.

7 If a consumer is sitting in Pennsylvania or
8 Illinois or California and decides that he or she
9 would like to go and stay in a nice warm and sunny
10 place and go to the beach, then that person in the
11 old days would have asked a local travel agent or a
12 personal secretary or someone to research what was
13 available, find out what the prices are, the
14 availability and make the arrangements, not actually
15 accept the reservation but prepare correspondence
16 and send that forward to the appropriate hotel with
17 a request for the reservation.

18 That's exactly the role that the OTC takes.
19 The OTC acts as an intermediary. To the extent that
20 someone wants to stay in a hotel in Tallahassee or
21 Miami or Fort Lauderdale, that person is asking the
22 OTC to make the reservation for him or her. And
23 that reservation is then forwarded on to the hotel,
24 who decides to accept or not accept that reservation
25 booking.

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1 Shifting to the statute, the nature of the
2 Florida statute on transient occupancies is a
3 privilege tax. It's a tax on the occupation of
4 running a hotel, of running a condominium that is
5 open for, as was pointed out earlier, transient
6 occupancies, someone who is staying for less than
7 six months.

8 To be subject to the tax and to have your
9 revenue subject to the tax, you need to be the party
10 which is actually operating the hotel or condominium
11 or campground or whatever it happens to be or
12 someone who is acting as agent on behalf of that
13 operator. So there have been a number of rulings in
14 prior years that say it's not just a question of
15 whether or not you're an operator, but are you
16 acting as agent, are you accepting revenue which is
17 going to be attributed to the hotel.

18 And the Department of Revenue has regularly
19 looked at these issues and said, in appropriate
20 circumstances, to the extent that a hotel is
21 accepting revenue, that will be subject to tax. To
22 the extent that someone, such as a travel agent, is
23 accepting revenue on behalf of a hotel, that will
24 also be subject to tax. The difference here is that
25 the OTCs are not acting as agent on behalf of the

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1 hotel or the campground or whatever the facility
2 happens to be. The OTCs are acting as an
3 independent service provider who is ultimately
4 engaged and paid by the consumer. They are a
5 resource to the consumer. They are providing the
6 consumer with options to select facilities, to make
7 comparison pricing evaluations, to see what's
8 available and to make decisions based on that
9 information.

10 And while the economic model is such that there
11 is a total purchase price paid to the hotel, there
12 is an additional amount of money which goes to the
13 online travel company, and the online travel
14 company, as this independent actor, is not
15 responsible to report that amount to the hotel and
16 the hotel has no claim to it, and the hotel can't
17 demand services and has no right to an accounting.
18 It's just an independent market actor. And the
19 independent market actor is being paid for its
20 services.

21 Now, we're not saying that these services
22 couldn't be taxable, but if they're going to be
23 taxable, they should be taxable for what they are,
24 and that's a service. I know that there is a
25 history of attempts to tax services in Florida as

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1 there have been in many jurisdictions. But if you
2 evaluate what the transaction is, if you look at the
3 contracts, if you look at the arrangement which is
4 entered into by the consumer and the OTC and the
5 hotel, it's clear that this is a service.

6 And while Florida generally doesn't tax
7 services, it could, so long as the services are
8 appropriately taxed to the right jurisdiction,
9 meaning the consumer is properly located and meaning
10 that there is jurisdiction to tax that particular
11 transaction.

12 But what we have in a number of jurisdictions
13 which are trying to impose their occupancy taxes,
14 their privilege taxes on this model, is looking to
15 the wrong party. So, for example, you've got some
16 jurisdictions which are amending their statutes to
17 try and encompass these types of transactions.

18 And, again, we're not saying that that couldn't
19 be done. But the statute in Florida as written is a
20 privilege tax. It's a tax on the privilege of
21 running a business which provides transient
22 occupancies. And that's not what the OTCs do. The
23 OTCs are generally online companies that have
24 offices in places other than Florida. It's a bunch
25 of people sitting behind computer screens. They

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1 don't run hotels. They don't provide housekeeping.
2 They don't hand over the keys. They are not the
3 ones who make the decision as to whether or not
4 there is going to be a rental.

5 And as long as those distinctions and those
6 facts are recognized, I think it's clear under the
7 Florida statute that the tax as it currently exists
8 can and should not be imposed, not that it couldn't
9 be amended, but as it exists, it shouldn't be
10 imposed. Thank you.

11 MR. CHRONIS: Good morning. Thank you for
12 allowing me some brief time to speak. My name is
13 Paul Chronis, and I'm with Duane Morris. And while
14 I'm here on behalf of Orbitz Worldwide, I wanted to
15 talk about --

16 CFO SINK: Excuse me. I couldn't -- would you
17 repeat your name and your affiliation, please.

18 MR. CHRONIS: I sure will. It's Paul Chronis.
19 My last name is spelled C-H-R-O-N-I-S, and I'm with
20 the law firm of Duane Morris.

21 CFO SINK: And who are you representing,
22 please?

23 MR. CHRONIS: Orbitz Worldwide.

24 CFO SINK: Excuse me. I thought the previous
25 speaker was representing Orbitz.

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1 MR. CHRONIS: As well.

2 CFO SINK: So what's the difference between the
3 two of you?

4 MR. CHRONIS: An interesting question that I
5 could give you a lot of answers. Specifically to
6 this, though --

7 CFO SINK: Just give me the right answer.

8 MR. CHRONIS: The right answer is that I wanted
9 to talk more about the occupancy tax issues
10 generally. Richard focused more on the specific tax
11 and how the tax might apply. I want to talk a
12 little bit more about the background of the issue
13 and what it is that the online travel companies do.

14 CFO SINK: Okay.

15 MR. CHRONIS: And the reason that I want to do
16 that, the reason why Orbitz wants to do that is
17 because, you know, these companies know and care
18 about tourism, and there's no question that you know
19 and care about tourism. And it's important to
20 understand what they do in terms of generating tax
21 dollars for the State of Florida.

22 So they do two good things. They stimulate
23 travel. They generate tax revenues. And they do it
24 for all shapes and sizes of hotels and motels. They
25 do it for the large chains. They do it for the

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1 smaller businesses. Read that as the mom and pop
2 operations. As a fundamental proposition, what the
3 online travel companies do is they put heads in
4 beds. They bring people to the state of Florida
5 that otherwise might not have come if they couldn't
6 get the value that they got through the online
7 travel companies.

8 And there's a big benefit there. And it's not
9 just the generation of whatever occupancy taxes
10 might apply. When they get here, they go to
11 restaurants. When they get here, they go shopping.
12 When they get here, they go to shows. They do all
13 of that tax-generating activity that's important.
14 And it multiplies. It's not just a matter of the
15 occupation tax. It's all of those other collateral
16 taxes that will get paid when someone comes to visit
17 Florida. A simple proposition, it's self-evident,
18 but if they don't come, none of those other taxes
19 get paid.

20 How do they do that? How are they putting
21 heads in beds? Well, the online travel companies
22 spend a lot of money putting together some very
23 user-friendly, consumer-friendly websites. And on
24 those websites they advertise. They advertise
25 jurisdictions like Florida. And they do it in a way

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1 that is very easy for the consumers to use.

2 My father is 85 years old. He's never met a
3 computer that he likes, ever. But, but he likes
4 coming to Florida more. I'm from Chicago. He likes
5 coming to Florida more than he hates computers. And
6 even more than coming to Florida, he likes a good
7 value. And so he is, at 85 and a hater of
8 computers, a sophisticated user of online travel
9 company services.

10 I call my dad out only because it's a good
11 example of how broad, widespread the use of these
12 online travel companies are. And as I travel and
13 talk about these issues, I'm not surprised at all
14 when, even when someone might be an adversary, will
15 say, oh, sure, I use your company or one of the
16 others. And they do because they are a good value
17 and they are easy to use.

18 I mentioned before the mom and pop operations,
19 the smaller hotels. How exactly are the online
20 travel companies helping them? Well, if you are a
21 major hotel chain, your name is out there.
22 Advertising helps, but people already know who you
23 are.

24 If you're a mom and pop operation, you can go
25 on Orbitz, for example, or one of the other online

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1 travel companies and get national exposure. You can
2 bring in people to the state of Florida from all
3 around the country simply by putting your rooms,
4 making them available for a reservation on these
5 websites.

6 And so that is yet another way that the online
7 travel companies are bringing people into the state
8 of Florida so they can spend their hard-earned
9 dollars here.

10 A couple of other points just very briefly
11 before I conclude. There's been a lot of
12 misinformation out there about what the online
13 travel companies do and what they don't do. What's
14 absolutely clear is that they generate tax revenues.
15 What's absolutely clear is that they are good for
16 consumers because they do provide a very good value
17 or they wouldn't be used as much as they are.

18 What's not so clear is some of the things that
19 have been said about their business model and how
20 the business model operates. And I've heard
21 firsthand what they have -- what people have been
22 told about the workings of the business model. I
23 won't get into the details, but I can tell you that
24 what's been said is not always accurate. In fact,
25 many times it's quite far from being accurate.

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1 The last point that I would make is there are a
2 lot of jurisdictions that have looked at this issue.
3 When I say this issue, I'm referring to the
4 occupancy tax issue generally, should that markup or
5 service fee that the online travel companies charge
6 actually be subject to tax.

7 And a lot of those jurisdictions have pulled
8 out their ordinances, have analyzed them, have
9 looked at them and said, you know what? It doesn't
10 apply. And, frankly, while we would like to try to
11 get tourist revenues, we can't even push this act,
12 what the online travel companies do, to fit within
13 the confines of that occupancy tax ordinance.

14 So there was a mention of the fact that there
15 are suits out there. There are. But there's a lot
16 of cities, municipalities, counties and others that
17 have occupancy taxes that have chosen not to pursue
18 this because they know that the occupancy tax does
19 not apply to them.

20 My final point is I'd like to reserve, if I
21 could, to respond to anyone else who might address
22 these issues. Thank you.

23 MS. ECHEVERRI: The next speaker is Sarah
24 Blakely, representing the Florida Association of
25 Counties.

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1 MS. BLAKELY: Thank you, Governor, Cabinet.
2 I'm Sarah Blakely, representing the Florida
3 Association of Counties, whom I serve as special tax
4 counsel. We've been interested in this issue for
5 almost a decade now because it's very important to
6 Florida's counties.

7 Florida's counties get sales tax revenue from
8 hotel occupancy, the transient rental tax, both
9 through revenue-sharing dollars from the State, from
10 local option sales taxes that are imposed by the
11 voters in counties throughout the state, as well as
12 the tourist development tax, which in and of itself
13 applies only to these transient rentals, these hotel
14 rentals.

15 Listening to the last two speakers, my head is
16 kind of spinning about what the law is. Let me
17 assure you that from our standpoint, what the
18 tourist development tax says and what the state tax
19 says is that the tax is due on the total
20 consideration paid. The total consideration paid,
21 in the instance of every one of those taxes, is the
22 amount that the consumer pays for the hotel room.
23 And that is the so-called marked-up rate.

24 Now, there are probably lots of different
25 business models that the various online travel

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1 companies have. But the bottom line is, when the
2 consumer pays that hundred dollars plus their
3 markup, the service charges and fees and taxes that
4 the online travel companies also charge, the amount
5 of tax is due on the total amount and not the amount
6 that the online travel companies pay to the hotels.

7 It's a legal argument, to be sure, but it is
8 one that's very important. It's a legal argument
9 that's being made throughout this state. Orange
10 County has a lawsuit. They filed a declaratory
11 action against some of the online travel companies.
12 The trial court dismissed the action as a
13 declaratory action. They appealed to the Fifth
14 District Court of Appeal.

15 The Fifth District Court of Appeal said that a
16 declaratory action is an appropriate mechanism to
17 determine what is and what is not taxable. Broward
18 County, on the other hand, filed an audit and
19 audited the companies first. And after the audit
20 was completed, the online travel companies said,
21 doesn't matter what the audit says, it's not
22 taxable, and they filed a suit here in Leon County
23 circuit court.

24 An additional lawsuit has recently been filed
25 in the Southern District federal court in Florida by

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1 Monroe County. So there's a lot of action going on
2 in the courts because it is a legal issue. In
3 addition to that, I think that there are five or six
4 counties that are going to file a lawsuit in Leon
5 County Circuit Court coming up this week.

6 So it's an important issue. We've been
7 following it and pushing the issue not only in the
8 legislative process over the years but also in the
9 judicial process. From our standpoint, it's not
10 only a revenue issue, although that is very
11 important to us because, as they have pointed out,
12 the tourist development tax anyway is a tax that is
13 imposed and designed to encourage tourism as a big
14 part of our economic engine, both locally and
15 statewide.

16 It's also important because of the unfair
17 disadvantage suffered by our main street hoteliers.
18 The ones that don't advertise on these companies
19 pay -- their customers pay a higher tax right now
20 than those that do advertise. That's an unfair
21 disadvantage to our mom and pop hotels.

22 In addition to that, it's very deceptive what
23 the online travel companies do in not separately
24 stating the taxes that they pay and that are owed in
25 Florida. But the law is very clear. I think the

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1 memo that the Department of Revenue circulated on
2 the issue is very clear that in order to inform the
3 consumer what the tax is owed, you have to -- every
4 dealer, every sales tax dealer, every collector of
5 sales tax has to separately state those taxes so
6 that the consumer will know what the State is
7 charging and what the hotel is charging. So that is
8 a very important issue. And the way they do it now
9 seems to me deceptive.

10 We would urge you to take some action here.
11 We've tried legislatively. We've got stuff going in
12 the judicial branch. At this point you all have
13 several options before you. We would urge you to
14 consider and -- consider filing a dec action, a
15 declaratory action and getting the judicial branch
16 to determine what's taxable and what's not, or to do
17 an audit and then file a lawsuit.

18 We would encourage you, at this point, so much
19 money is at stake, it's been unresolved for so long,
20 it would be nice now for you all to take a
21 leadership role and make a determination that this
22 is an important issue and have it resolved. I'll be
23 glad to answer any questions.

24 GOVERNOR CRIST: CFO?

25 CFO SINK: Thank you, Governor. I don't have a

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1 question for you. I just want to make some general
2 comments. Thank you, Lisa.

3 Governor, the reason I asked the Department of
4 Revenue and Lisa to bring this up is because over
5 the course of the past year or so numerous private
6 law firms actually have come. Some of them are
7 in state, some are out of state, but they're
8 reputable law firms who have come and said that
9 there's a strong belief that these companies have,
10 in fact -- in the example that was given before, you
11 go online, you get a -- you, the consumer, get a
12 hotel room for \$100, but the online provider has
13 been only remitting to the state or the local
14 government the tax on the \$80 and that, in effect,
15 that they have been pocketing the difference between
16 the sales tax collected from the consumer and from
17 what they have been remitting on their wholesale --
18 on their wholesale value.

19 And, in fact, there are numerous lawsuits that
20 have been filed all around the country. And as
21 we've seen here, even Florida local governments
22 believe, in fact, that these companies have been
23 underreporting the dollars that are owed to the
24 State. And, in fact, some of the companies have in
25 fact disclosed this on their financial statements

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1 and have set up reserves of tens if not hundreds of
2 millions of dollars potentially.

3 So it certainly got the attention of me and the
4 lawyers in my department. And so we have been
5 working with Lisa and the Department of Revenue.
6 And the bottom line is that we've been in limbo, and
7 we've been in limbo for years and years and years
8 and years, and there have been various legislation
9 passed or not passed.

10 Well, now we're at a point where the local
11 governments have taken their own -- are taking their
12 own action, as we heard. The State could
13 potentially just join in one of their suits. We
14 could continue to do nothing and be in limbo. We
15 could probably do our own audit.

16 And I just wanted to bring it because I think
17 that we ought to do something. And I'm going to --
18 I'm not the lawyer in the crowd here. And I know,
19 General McCollum, that our staffs have been meeting,
20 and this is something that your legal staff has been
21 aware of for two or three years now. And I just
22 hope that our lawyers might get together and resolve
23 some action as opposed to just being in limbo and
24 guessing.

25 And, in fact, you know, we're in such dire

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1 straits here, this is obviously big money, over a
2 billion dollars collected in this kind of tax,
3 between the local governments and the state
4 government, and I'm just interested in fairness.
5 And I certainly am not interested in seeing the
6 online companies pocket our money, if that's the
7 case to be made.

8 So I just wanted, by way of explanation, to say
9 why I was interested in bringing it up to the
10 Cabinet, because Revenue is a Cabinet agency, and I
11 do believe that our lawyers ought to figure out a
12 plan of action.

13 GOVERNOR CRIST: Thank you. General.

14 ATTORNEY GENERAL McCOLLUM: Thank you very
15 much, Governor. Our team has been working with the
16 CFO's attorneys. We appreciate that cooperation.
17 We've spent quite a bit of time, as Lisa knows,
18 exploring this issue. We have actually had an
19 investigation of several of these companies ongoing
20 for some time now.

21 Could you explain to us, Lisa, what would be
22 involved if we went the audit trail? That is a
23 concern to some of the legal experts involved in
24 this, because of the potential delays,
25 administrative proceedings, et cetera, that are

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1 involved in your undertaking what is loosely termed
2 an audit. Could you explain that, as opposed to a
3 declaratory judgment action, which some of the
4 counties have been doing.

5 MS. ECHEVERRI: I guess the typical process for
6 an audit is we would notice taxpayers that we were
7 going to come in to audit. We have to give them 60
8 days to get their books and records in order.
9 Typically, we go in and, depending on the issues, an
10 audit can take anywhere from several weeks, months,
11 to much longer.

12 Once we go through the audit process, we issue
13 a notice of intent. They have some informal rights
14 to have informal conferences with us at that point.
15 Eventually it gets to the point where we've issued a
16 notice of assessment. Then they have 60 days to
17 file for an informal conference in our technical
18 section.

19 Once we've issued a notice of decision from our
20 technical section, they have an additional 60 days
21 to file in circuit court. That's the time line for
22 that process.

23 ATTORNEY GENERAL McCOLLUM: The discussion that
24 Lisa and I have had, that we've had with the
25 Department, just so everybody knows, is about the

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1 various possibilities that are out there to explore
2 how to resolve this. Obviously, the Legislature has
3 not done so. That's been what you've described, the
4 preferred course the Department has had in the past.

5 The second thing would be for your department
6 to do that audit. And then if you choose or I guess
7 we choose, or the body, either the Attorney
8 General's Office or some outside counsel could be
9 engaged to pursue litigation to collect presumably
10 what would be determined to be back revenues that
11 are not paid, assuming the statute were in fact
12 correct.

13 The third method would be what some of the
14 counties have done, and that would be for our office
15 or presumably the Department to file for a
16 declaratory judgment by a court to determine what
17 the law is, which of course is the least expensive
18 of these. What you're describing, I assume, would
19 incur considerable expense.

20 And if a lawsuit were filed in the interim
21 before the audit was completed or in other cases
22 maybe even with the pending lawsuits these counties
23 have, there could be an argument, my lawyers tell
24 me, that we would have not exhausted our
25 administrative remedies, or that they wouldn't have

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1 been exhausted, which is the legal term for saying
2 the judge couldn't make a decision, the cases would
3 be stayed.

4 And what's happening in a lot of the other
5 states, why the litigation has gone on so long is
6 there are those claims. And the travel services
7 that we've heard from this morning have very good
8 lawyers, two of whom are here this morning, and they
9 have delayed the decision-making in most of those
10 states for a long time, and they've been very
11 expensive lawsuits.

12 So I think that's the reason, if that explains
13 it for you, Governor and CFO Sink and Mr. Bronson,
14 why this has taken us a while to deliberate it. But
15 we have been spending a good deal of time with it
16 with Lisa, and we want to do what's right. And we
17 will -- we would all like to see the law clarified,
18 I think, in this process. And I'm sure that you're
19 going to see some more activity, as the counties
20 mentioned here and in the very, very near future,
21 several of them have joined together. I don't know
22 if I'm at liberty to talk about all of that. But
23 they will be filing, I think, another major lawsuit
24 very shortly, is my understanding.

25 Anyway, I wanted to clarify that as well.

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1 We're very engaged on the subject. And if the other
2 members of the Cabinet wish to engage in a
3 discussion this morning, that would be helpful, and
4 we would welcome it.

5 GOVERNOR CRIST: Thank you. Commissioner.

6 COMMISSIONER BRONSON: Thank you, Governor.
7 This discussion is going to have a pretty good bit
8 of impact on my consumer services division of the
9 Department of Agriculture and Consumer Service,
10 since we regulate sellers of travel in the state of
11 Florida.

12 I know that's going to shock a lot of people
13 because most people don't know that. But the point
14 is, the impact that's going to take place, whether
15 it becomes a lawsuit as to what the law really says
16 and what -- the availability of collecting that tax.
17 I know the counties are feeling a pinch right now
18 for a number of reasons.

19 I also am concerned that we get it right,
20 whatever that right is going to be. And it may take
21 a court to decide that. And I think the audit is
22 going to show how many nights have been sold in
23 Florida and what that difference is going to be
24 certainly and, in money, whether that money was a
25 true service or whether there was somehow a

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1 delineation of tax dollars that was held off.

2 And I also -- it looks to me like -- and I'm
3 not an attorney, but the decision as to whether that
4 person paid \$100 to the person giving the service or
5 paid their hotel bill at \$80 and that's what was
6 taxed, it seems to me that's what the real issue is
7 going to come down to.

8 I'm also concerned from another angle. Right
9 now we're in economic tough times. People will
10 travel or not travel depending on how much money
11 they've got to spend to go where they're wanting to
12 go. And we collect taxes on car rentals and we
13 collect taxes at both the local and state level
14 whenever you check into a hotel.

15 And I remember when the tax came in that said
16 if you live within the state, that we won't collect
17 this tax from you, but they always did collect that
18 tax. When you were in Miami and came to Tallahassee
19 or Jacksonville or wherever, that tax was collected
20 anyway. So those are all issues that I think some
21 of this may delineate over time.

22 It appears to me this thing is going to have to
23 go to a court as to what the real issue is and then
24 give us some idea of where we're going to have to
25 go.

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1 I certainly am not willing to take a vote today
2 on anything until I get a better picture of what
3 we've got here concerning this issue. If people are
4 selling travel to Florida and they can get people to
5 come down by doing ads that get people to come to
6 Florida, then more power to them, because we
7 certainly need the people here to help build our
8 economy up.

9 But as a statement to this Cabinet and the
10 Governor, I just wouldn't feel right making any kind
11 of vote today on this issue until we get a real
12 definition from a court or somebody as to what we're
13 dealing with here.

14 GOVERNOR CRIST: Thank you, Commissioner.

15 CFO SINK: Governor --

16 GOVERNOR CRIST: CFO. I think your microphone
17 is not on.

18 CFO SINK: Sorry. I think this was brought as
19 a discussion item at any rate. I'm just curious to
20 know, I'm just interested in knowing where we go
21 from here. What is the -- I think it obviously
22 should be in your court, General McCollum. Is this
23 something that you're going to come back in a month
24 or six months or a year or -- it's been in limbo for
25 years now, almost a decade.

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1 GOVERNOR CRIST: Excuse me. I just had a
2 couple of questions, if I might. Lisa, I think you
3 mentioned during your opening discussion that in
4 2008 there was a ruling or something that it was not
5 taxable? Is that what you said?

6 MS. ECHEVERRI: For a number of years --

7 GOVERNOR CRIST: A declaration or something?

8 MS. ECHEVERRI: For a number of years we have
9 sort of stood on the sidelines trying to get
10 legislative clarification of the issue, since it is
11 such a significant issue, similar to how we did with
12 Internet access and substitute systems for
13 communications services tax. And for a number of
14 years legislation has either been attempted or
15 amendments have been worked on.

16 Those years are 2005, 2006, 2008 and 2009.
17 2008 is significant in that that is the year that
18 the clarification that was filed in legislation was
19 to clarify that it was not taxable, that the markup
20 was not taxable. None of that legislation that's
21 been proposed or worked on has passed the
22 Legislature.

23 GOVERNOR CRIST: I see, okay. I appreciate
24 that. There's many ways of looking at this. And,
25 you know, I had some reputable law firms come to the

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1 Governor's Office with this issue, too. And my
2 feeling is, I guess, similar to the Commissioner's,
3 that to have an opportunity for more people to come
4 and visit our state and, as one of the presenters
5 mentioned, go to our restaurants and go to theme
6 parks perhaps in Central Florida, what have you, I
7 think it's a good thing. And it would concern me if
8 this panel moves in a direction of trying to add an
9 additional burden or tax on those who want to travel
10 to the Sunshine State and help provide jobs to
11 people throughout Florida.

12 And I heard the representative from the
13 Association of Counties, but I can tell you, there
14 are people in those counties who are a little
15 frustrated with the county governments. And, you
16 know, we have tried to reduce the property tax
17 burden on the people of Florida. And regrettably
18 some, not all, but some counties have then turned
19 around and raised the millage on the backs of those
20 people in the face of that. And it frustrates the
21 people, the home owners of our state.

22 And so to discuss another possible additional
23 revenue source for counties, instead of trying to
24 reduce the burden of taxation, I can't go along with
25 it.

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1 ATTORNEY GENERAL McCOLLUM: Governor, may I
2 make a clarification?

3 GOVERNOR CRIST: Of course, please.

4 ATTORNEY GENERAL McCOLLUM: I think it's
5 important, and Lisa can comment on this, but it's my
6 understanding, because we've looked at this so long,
7 that we're not talking here about whether there's a
8 new revenue source. The online services, these
9 Orbitz and Travelocity and those folks, collect
10 roughly the same amount from the consumer with or
11 without submitting a tax.

12 The question is whether they're collecting a
13 tax already and then keeping it. That's the issue.
14 If they are -- if we were going to add a tax, I
15 would be very much against it altogether, too. And
16 yet the question, I believe I'm right, is whether or
17 not we have them collecting and pocketing a tax or
18 are they collecting and pocketing what they say they
19 are, which is a service that isn't a tax. In other
20 words, are they collecting something that's already
21 owed to us, that if you bought that service directly
22 from the hotel, you would be paying, which the mom
23 and pops do pay. But that doesn't mean there would
24 be any additional cost.

25 I remember when Reubin Askew ran for governor a

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1 few years ago, remember when he had the shirt from
2 Georgia and the shirt from Florida and he bought it
3 at J.C. Penney's? I guess Governor Askew may be
4 watching this. He watches a lot of these. But I
5 remember this really well because his argument about
6 the sales tax on the shirts was, we didn't have one
7 at the time in Florida, and the price of the shirts
8 were exactly the same.

9 And I think that's what we have here. In his
10 case he actually was proposing a new tax. In our
11 case -- I believe I'm right, and I'd like Lisa to
12 clarify that -- the issue is whether they are not
13 paying a tax that's already owed, not a question of
14 an additional tax. Could you explain that? Am I
15 right?

16 MS. ECHEVERRI: Clearly tax on transient
17 rentals is not a new tax. I mean, it's been in the
18 law since 1949. It's an existing tax. The question
19 that's been raised is, you know, what is the tax
20 base, does it include the amounts of this markup.

21 One of the issues that I think has been of
22 great concern, both when I went back and listened to
23 the legislative committee meetings and talked to
24 both CFO Sink's office and your office, General
25 McCollum, is that the way that the online companies

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1 portray their charges on their websites is they show
2 a room rate. I'm just using that example that we
3 used earlier. Even though they may be paying \$80 to
4 the hotel for that room, they show the room rate as
5 \$100.

6 Then they have a separate line item that is
7 called taxes and fees. That amount typically is --
8 replicates about what the tax would be usually, a
9 little more. There's usually an icon next to it
10 where the words "taxes and fees" are highlighted.
11 If a consumer were inclined to click on that, they
12 would get a three- to six-page explanation that what
13 that taxes and fees charge really is is
14 reimbursement of taxes that the online company will
15 pay to the hotel on that room rate, the \$80,
16 although it never tells you the room rate, and
17 additional service fees.

18 The online company's position is that that
19 markup amount is a service charge, not the
20 collection of rental for the room. So I think there
21 is -- there has been a lot of concern that the way
22 that it's portrayed, it gives the impression that
23 that is a government imposition of taxes in that
24 amount and that when you're booking that room,
25 you're paying \$100 plus taxes, even though there is

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1 further explanation on the websites.

2 ATTORNEY GENERAL McCOLLUM: Thank you. I
3 appreciate that. I just wanted to clarify it,
4 Governor, because I think that is a concern we all
5 have that you've expressed. We don't want -- I
6 don't want to see new taxes, and I certainly don't
7 want -- I don't think any of us want to see a
8 discouragement of a policy, a company like online
9 travel services being able to do something like
10 this.

11 The question is, are they living up to our law.
12 I think that's really the issue, are they paying the
13 taxes they should or are they pocketing something
14 they shouldn't.

15 GOVERNOR CRIST: Lisa, did you say that there
16 are several lawsuits that are pending already from
17 different municipalities, counties, Orange County
18 among them?

19 MS. ECHEVERRI: Orange County has a lawsuit
20 pending, City of Jacksonville, Duval County.
21 Broward County has a lawsuit pending that's actually
22 based on audits that they performed, and I think I
23 heard an additional one this morning, Monroe County,
24 that I hadn't heard, that I didn't have in my list,
25 so --

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1 GOVERNOR CRIST: Is it fair or unfair to say
2 that those lawsuits or that litigation will have a
3 conclusion at some time that we might be able to
4 learn from, instead of spending more money to pursue
5 additional litigation?

6 MS. ECHEVERRI: Certainly the position the
7 Department has taken is to wait for guidance from
8 the courts through the decision in those lawsuits or
9 through legislation. The one thing that you should
10 be aware of is that there are different statutes
11 that we are talking about here. The state statute
12 that imposes tax on transient rentals uses the
13 phrase "total rental charged."

14 I think the local government statutes that
15 impose tax on the same tax base use the phrase
16 "total consideration charged." Those local
17 government statutes were enacted later, so there
18 could be an implication that those were a later
19 expression of the Legislature and that the terms
20 used were a little broader in terms of total
21 consideration charged. So we were looking to those
22 lawsuits for guidance, once decided, on this issue.

23 ATTORNEY GENERAL McCOLLUM: And that
24 distinction or other distinctions have been why
25 we've been in such lengthy discussions with the

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1 Department over what the right course for the State
2 would be, Governor.

3 GOVERNOR CRIST: Any other comments or
4 discussion? Thank you, Lisa.

5 MS. ECHEVERRI: Thank you.

6 GOVERNOR CRIST: It's a good discussion.

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1 GOVERNOR CRIST: Board of Trustees, Secretary
2 Sole.

3 MR. SOLE: Good morning, Governor, Cabinet
4 members. Item Number 1 is submittal of the minutes
5 for the September 15th, 2009 Cabinet meeting.

6 COMMISSIONER BRONSON: Motion to accept.

7 ATTORNEY GENERAL MCCOLLUM: Second.

8 GOVERNOR CRIST: Moved and seconded. Show the
9 minutes approved without objection.

10 MR. SOLE: Thank you. Item Number 2, this is
11 request approval for -- to publish proposed
12 revisions to Rule Chapter 18-24, Florida
13 Administrative Code. This is the Acquisition and
14 Restoration Council's Florida Forever land
15 acquisition and management rule.

16 As the Board may recall, in 2008 the
17 Legislature passed Senate Bill 542. This bill not
18 only extended the Florida Forever program for ten
19 years, it also provided some direction to the
20 Acquisition and Restoration Council to revise its
21 rule to better establish criteria for selection and
22 ranking of the Florida Forever projects.

23 The Board of Trustees probably recalls that
24 currently, when we present the Florida Forever list
25 to the Board, there is an A List, a B List, and

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1 within the A List a top 21. What the rule primarily
2 does -- and it reflects the statutory changes, but
3 one of the more substantive changes that the rule
4 goes into is it changes the Acquisition and
5 Restoration Council's prioritization protocols and
6 process.

7 And what we do now or what, if this rule is
8 passed, what you would see is Florida Forever
9 projects categorized into five different categories.
10 And those categories include critical natural lands,
11 partnerships or regional incentives, substantially
12 complete projects, climate change and less than fee.

13 So if this rule is approved, what would be
14 brought back to the Board of Trustees for final
15 consideration would be a Florida Forever list that
16 has projects ranked within these five categories.

17 I will tell you that the rule-making process
18 has been very robust. We've had some 11 days of
19 individual actual workshops. Input has been
20 tremendous from stakeholders, the Acquisition and
21 Restoration Council itself, individuals, program
22 managers within the Division of Forestry.

23 And at this time what we're again requesting is
24 permission to go ahead and publish this proposed
25 rule. If approved, we would then publish it within

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1 the Florida Administrative Weekly. It would give
2 the opportunity for additional public input. If a
3 hearing is requested, we would have a hearing. It
4 also will start the process working with the Joint
5 Administrative Procedures Committee to have them
6 begin to review the rule.

7 If all goes well and we get good feedback, we
8 would then come back to the Board of Trustees for
9 final approval of the rule by the Board. The goal
10 of this effort is, we also want to present this rule
11 to the Legislature and, by law, need to present this
12 rule to the Legislature by basically February of
13 2010. And with that, I'd be glad to answer any
14 questions on the rule.

15 GOVERNOR CRIST: General.

16 ATTORNEY GENERAL McCOLLUM: I just want a
17 clarification, Mike. Why do you feel it's important
18 to make the change? Why do we need the new
19 categories? I mean, Florida Forever has been there
20 and doing well. Why do we need to do this?

21 MR. SOLE: I think there's merit, General, in
22 looking at some of these categories that the
23 Legislature identified. It provides us a little
24 simplicity in what we're trying to target. When you
25 think of challenges that we have today, you have a

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1 list of 109 projects going 1 through 109 are on the
2 A List or B List.

3 Here you'll be able to see projects that are,
4 something that Commissioner Bronson likes to bring
5 up, less than fee. Here is a grouping of less than
6 fee projects that we want to prioritize. And you'll
7 see a priority in that less than fee. So it gives
8 better direction in these categories of where the
9 agency and the Division of State Lands and the Board
10 of Trustees can pursue some of the priorities that
11 we're trying to accomplish in Florida Forever.

12 ATTORNEY GENERAL MCCOLLUM: Thank you.
13 Commissioner Bronson.

14 COMMISSIONER BRONSON: I realize that this is
15 part of the makeup, I guess based on how the law was
16 passed on these issues, but I'm kind of concerned
17 about what does climate change, as a category, if
18 you -- it's like doctors and lawyers. You throw
19 them all in the same room and they're going to have
20 differences of opinion as to what any certain one
21 issue means. We just heard that.

22 I'm a little concerned about what implication
23 climate change has on the issue of acquisition. Do
24 you have any solid leads on this one?

25 MR. SOLE: I do, Commissioner. I think there's

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1 two scenarios in which -- that come to mind right
2 away. We may be looking at -- we talked previously
3 about carbon sequestration and how public lands
4 themselves present a beneficial carbon sequestration
5 opportunity to address climate change. So you may
6 see projects that are there to further expand that
7 carbon sequestration potential on public lands.

8 You also may see projects that relate to
9 adaptation and the changing landscape as a result of
10 climate change. If we have sea level rise and we
11 want to preserve certain critical habitats and allow
12 some adaptation to those habitats, it may be
13 worthwhile to buy some property which, I like to
14 call, is a little uphill, because uphill is sooner
15 or later going to get potentially wetter.

16 So we may begin to look in that forethought
17 process of what lands in the future do we need to
18 acquire to deal with adaptation associated with
19 climate change and whether it's increased range of
20 species that we're trying to protect or whether it's
21 dealing with sea level rise and other challenges of
22 climate change.

23 So I think it's a reasonable category. It will
24 be -- I will tell you unquestionably it will be
25 interesting in placing any individual Florida

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1 Forever project into one of these categories because
2 they all have -- or a lot of projects have multiple
3 benefits.

4 But I think that's something that will be done
5 very publicly. We will be working with the
6 Acquisition and Restoration Council. And as you
7 know, that will also come before the Board of
8 Trustees. So I expect there will be a little bit
9 more dialogue on why is this Florida Forever project
10 in this category versus this other. So I think it
11 will be a worthwhile process.

12 COMMISSIONER BRONSON: One more question, and
13 that question goes back to a question I asked quite
14 a few meetings ago. Do we have any figure on how
15 much land Florida needs to complete their Florida
16 Forever P2000 -- how much land that number is going
17 to be?

18 I'm still concerned that we're taking such
19 large amounts off, with no taxes being paid to the
20 local or anybody else, and the jobs and all of that
21 that goes with it and the gross domestic product
22 that we're not producing there anymore. And I
23 realize that doesn't bother a lot of people as much
24 as it bothers me.

25 But when I look at the economy of the state of

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1 Florida and how much land is off the tax roll, which
2 is substantial in this state, substantially more
3 than some people will give it credit, that it is
4 having an economic impact on the state as well. And
5 we've still got to keep it up. So we still have to
6 protect against invasive species of different types
7 and protect our own natural environment and our own
8 plant and animal species that are native to Florida.

9 And all of this is having quite an impact on
10 the total amount of money we're having to spend on
11 these issues and the total amount of tax dollars no
12 longer coming to local communities and the State of
13 Florida as well.

14 So I still need to know, does anybody have any
15 idea what that number is yet? We're over -- a third
16 or more of the state is in state and federal
17 environmentally protected lands, and that doesn't
18 count any of the other properties that are off the
19 tax roll. That's just those properties off the tax
20 roll.

21 So as we ask people to pay higher taxes at the
22 local level to make up for the taxes that we're not
23 collecting, that might have some emphasis on why
24 we're being asked to pay more money at the local
25 level, because they're losing. And that does have

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1 -- and I don't want people to take this lightly, and
2 I don't take it lightly.

3 It's not a matter of not wanting to protect
4 natural resources, because I love natural resources.
5 But there is going to be a break point as to the
6 economic viability of this state and each county in
7 this state based on some of these issues that
8 we're -- we all as voters of the state have voted to
9 do this, but we certainly need to know what that
10 number is before we get into a real economic problem
11 in this state. I'm hoping to hear that number at
12 some point in time.

13 MR. SOLE: I don't have a number.

14 COMMISSIONER BRONSON: I love -- he and I have
15 talked about this before. He knows this is one of
16 my hot button issues.

17 MR. SOLE: Let me tell you, Commissioner, this
18 is the good news. When you look at the changes that
19 were created in the statute and obviously that are
20 now implemented through this rule, it actually tries
21 to get at some of what you're talking about. For
22 example, this category of projects, by saying what
23 are the critical natural lands, there's this
24 category that says critical natural lands, these are
25 lands that currently do not have significant

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1 conservation acquisition, either from state, federal
2 or local government, and these are habitats that
3 unless we move forward, they truly could be lost.

4 So we have that category saying these are
5 really important habitats that we're under
6 -- basically we haven't established adequate
7 protections and we may be in fear of losing them
8 forever for the future of Florida.

9 We then have a partnership or regional
10 incentive. A lot of these are going to be our
11 military buffering projects. Clearly we've had a
12 great relationship with our Department of Defense
13 units here in the state of Florida in trying to
14 establish adequate military buffering but also
15 conservation lands, the greenway that goes in the
16 Panhandle of the state of Florida that allows for
17 continued basically air exercises in that region.

18 Substantially complete, these are projects that
19 we've started, that are almost complete, shouldn't
20 we finish them off. These are great goals to have,
21 to try to get to where we need to end up with. So I
22 think that largely the legislation and this rule is
23 trying to get at some of the issues that you're
24 raising. We're not just running out and throwing
25 projects on the list, because we're trying to focus

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1 our efforts, through the Florida Forever program, to
2 make sure we get those most critical lands in the
3 next ten years. And I think we're trying to look at
4 it in that light, too. But I don't have a single
5 number for you.

6 GOVERNOR CRIST: Is there a motion on Item 2?

7 ATTORNEY GENERAL McCOLLUM: So moved.

8 CFO SINK: Second.

9 GOVERNOR CRIST: Moved and seconded. Show it
10 approved without objection.

11 MR. SOLE: Thank you.

12 GOVERNOR CRIST: Thank you, Secretary.

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1 GOVERNOR CRIST: State Board of Administration,
2 Ash Williams. Morning, Ash.

3 MR. WILLIAMS: Good morning, Governor,
4 Trustees. Item 1, request approval of the minutes
5 of September 29.

6 ATTORNEY GENERAL McCOLLUM: So moved.

7 CFO SINK: Second.

8 GOVERNOR CRIST: Moved and seconded. Show the
9 minutes approved without objection.

10 MR. WILLIAMS: Item 2 has been withdrawn. Item
11 3 is the quarterly report of the Protecting
12 Florida's Investments Act. We report two companies
13 being removed from the Sudan scrutinized list, three
14 companies being added to the Sudan scrutinized list
15 and two companies being added to the Iran
16 scrutinized list.

17 I would also report that over the course of the
18 period, we did find two holdings through our
19 controls that should not have been in the portfolio
20 were added to the portfolio. They've since been
21 exited and fortunately, if not coincidentally, at a
22 profit. But I did want to make that known to you.
23 So we request action on that item.

24 ATTORNEY GENERAL McCOLLUM: I would move Item
25 3.

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1 CFO SINK: Second.

2 GOVERNOR CRIST: Show it approved without
3 objection.

4 ATTORNEY GENERAL McCOLLUM: May I interrupt,
5 Governor? I believe that we have to have a motion
6 on withdrawal. Even though you have said that you
7 are withdrawing it, Ash, I think we have to do that.
8 So I would move Item 2 be withdrawn.

9 GOVERNOR CRIST: Is there a second?

10 CFO SINK: Second.

11 GOVERNOR CRIST: Moved and seconded. Show it
12 withdrawn.

13 MR. WILLIAMS: Thank you. Item 4, request
14 approval of a draft letter to the Joint Legislative
15 Auditing Committee, affirming that the trustees have
16 reviewed and approved the monthly Local Government
17 Investment Pool/Florida Prime summary reports. And
18 I would note that there are no material issues on
19 any front relating to the Local Government Pool.

20 GOVERNOR CRIST: Is there a motion on Item 4?

21 CFO SINK: Move it.

22 ATTORNEY GENERAL McCOLLUM: Second.

23 GOVERNOR CRIST: Moved and seconded. Show it
24 approved without objection.

25 CFO SINK: Governor, I have some comments, if

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1 you don't mind.

2 GOVERNOR CRIST: CFO, of course.

3 CFO SINK: A couple of things, Ash. One is
4 that my staff brought to my attention that the -- on
5 the liability side of the funding ratio for the
6 retirement system, which is -- the liability side
7 meaning the consideration of the future payments
8 that are going to have to be made by the State to
9 the people who benefit from the retirement system,
10 that they have come back and, I guess, noticed us or
11 notified us that because of the impact of increasing
12 salaries, particularly in the local governments,
13 because life expectancies are increasing and because
14 of the impact of DROP, that our funding position is
15 not as good as we thought it had been, where it had
16 originally been reported.

17 And I think, if I'm right, as of December the
18 30th, we thought we were at about 93 percent
19 funding, and instead that projection has been
20 reduced to about 87 percent funding. So I don't
21 know if you have a sense of -- obviously, since June
22 the 30th, the market has improved, and you reported
23 at one of our last meetings that we thought we were
24 at 104 percent funding. But if you take into
25 account these projections of increased liabilities,

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1 then we're probably somewhat less than that.

2 Do you have a sense of where we might be right
3 now? I know it's a guesstimate.

4 MR. WILLIAMS: Yes. I think the correct
5 assessment is that this is in process. The numbers
6 that I report in my memo to the trustees of, I guess
7 it was, 16 October noted that these were the
8 preliminary findings of the annual actuarial
9 assumption estimating conference. Those are in
10 process. We're following them.

11 And you are quite correct. The analysis that
12 we did looked at the assets and held the liability
13 side constant. We made that clear at the time. And
14 the findings in Division of Retirement and through
15 the outside actuaries are exactly along the three
16 lines you've touched on. People are living longer.
17 DROP is costing a little bit more than people
18 thought.

19 And the way actuarial science commonly works is
20 one looks in the rearview mirror for a period of
21 years, takes that trend and projects it forward.
22 And coincidentally, if you look at the most recent
23 period of years, going back about five years, it
24 happens to capture the real estate bubble. And that
25 was a time of plentiful revenues at the local level,

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1 et cetera. I think it may have affected some
2 economic behavior at that level.

3 Again, the whole thing is preliminary at this
4 point. I spoke with the Division of Retirement
5 earlier today. There are a number of things that
6 are in flux. We've also been in touch with
7 legislative staff on this. I think it's a little
8 premature to say just where it ends up.

9 But I think it is safe to say that the funding
10 is not as strong as what our earlier estimates would
11 have led us to believe, and I think we probably will
12 end up, as of June 30, depending on what assumptions
13 are used and where this whole process works out,
14 somewhere from the high eighties to low to mid
15 nineties. And that would be as of June 30.

16 So, again, we're up a bit since then. Year to
17 date, the Florida Retirement System Trust Fund,
18 through last night's close, is up about 17.2 percent
19 year to date. That's around 40 basis points ahead
20 of target, leaves us just north of \$111.1 billion.
21 So we're in substantially better shape than we were
22 in at June 30.

23 But it remains to be seen. I think it's
24 something that bears watching. And this is the sort
25 of process that's complex. There are many

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1 assumptions, many time periods, et cetera. But the
2 general conclusion is that we are slightly less well
3 off than we perceived we could have been.

4 CFO SINK: Well, thank you. And I think this
5 is -- I'd like to request that this is something
6 that be put on the agenda of our quarterly board
7 meeting when we have a little bit more time perhaps
8 to bring in either the consultant or the people from
9 the DMS to kind of educate us a little bit more
10 about how the liability side of the calculations
11 work or, more importantly, from a bigger picture, do
12 we need to -- what do we see going forward over the
13 horizon in the next five to ten years in terms of
14 the impact of increased -- further increases in life
15 expectancies. We can't do anything about that.

16 But certainly the increases in the salaries
17 that we've seen at the local government level and
18 also the impact of the DROP program, how that
19 program is impacting our responsibilities and the
20 potential burden on the pension fund I think would
21 be helpful.

22 MR. WILLIAMS: Certainly.

23 CFO SINK: And, Governor, I just do have one
24 other comment to make. You know, there's been
25 continued writing. Here is a Wall Street Journal

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1 that says, "CalPERS Rocked by Pay to Play." And Ash
2 has been before us before to assure us that the
3 State Board has not previously engaged in pay to
4 play type of activity.

5 But I became aware -- and, Ash, I'm very glad
6 that you instituted a study by your inspector
7 general, is that correct, to look at all sorts of
8 ethics and pay to play and what's going on in other
9 states?

10 MR. WILLIAMS: What we did was when this item
11 first came up and the issue developed a profile
12 earlier this year when, I guess, the state of New
13 York had some issues there, we convened our staff
14 and began work on putting together a more clear
15 policy of our own on the pay to play subject.

16 You'll recall that I reported to you, when
17 General McCollum questioned me about it at the time,
18 that we have, between our side letters, our investor
19 protection principles and other documents that our
20 outside managers and service providers execute, that
21 we have a range of protections against pay to play.
22 And I don't perceive that we have any problem there.

23 However, we thought the better way to approach
24 that might be to consolidate those various
25 protections into a single, concise policy document.

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1 We were well down the path of drafting that document
2 when the SEC proposed an outright ban on third party
3 capital raising entities and effectively would have
4 mooted the value of any such policy. So we've
5 suspended our policy work pending an outcome on the
6 SEC rule.

7 They've been through the comment period, and
8 every indication is that the issue has been
9 thoroughly vetted. I think we'd like to see where
10 the SEC comes out on this. I'm not sure where that
11 will be at this point. But I am very comfortable
12 that we don't have any problem with pay to play.
13 And I'm glad you brought it up because I just can't
14 emphasize too strongly how important the right
15 ethical standards are in the exercise of
16 responsibility in an area like management of a large
17 public pension plan.

18 There is absolutely no room for that kind of
19 interference in our process. I'm proud to say that
20 not only in the current tour of duty I've had as
21 executive director of the State Board but during the
22 six years I was there during the nineties, I was
23 never once asked a question that would have in any
24 way compromised me, the State Board or any trustee
25 or representative of any trustee in a way that would

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1 have even remotely related to pay to play. That's
2 just not something we've had issues with.

3 GOVERNOR CRIST: General.

4 ATTORNEY GENERAL McCOLLUM: Ash, am I not
5 correct that New York, which has had a lot of this
6 bad publicity, has a very different system in terms
7 of having some intermediaries and they've had the
8 questions about pay to play, if you will, related
9 largely to those folks and certain players that were
10 influencing them? We don't have that system. Am I
11 right?

12 MR. WILLIAMS: That is correct. There have
13 been pay to play problems in a range of systems.
14 When I first moved to Connecticut, there was a major
15 pay to play scandal there that led to turnover in a
16 senior elected state official, led to a prison term
17 for a third party capital raiser. There are some
18 issues in California right now. There have been
19 problems, I believe, in New Mexico.

20 The truth of it is, it all comes down to the
21 standards of the people who are involved. And if
22 you have a great system with bad people in it, you
23 can have bad outcomes. And if you have a system
24 that's arguably on its surface less robust and well
25 considered but you have really strong people in it,

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1 it can work amazingly well.

2 ATTORNEY GENERAL McCOLLUM: Well, I wouldn't
3 want to suggest you couldn't have bad people at any
4 level. But in New York in particular, which has
5 gotten the most attention, and CalPERS has gotten
6 some in California, at least in New York I know they
7 have a system, you and I have talked about, that is
8 under scrutiny that has caused all kinds of problems
9 that Florida doesn't have.

10 MR. WILLIAMS: Right. The sole trustee
11 approach.

12 ATTORNEY GENERAL McCOLLUM: Right.

13 CFO SINK: Governor.

14 GOVERNOR CRIST: CFO.

15 CFO SINK: I'd like to have the inspector
16 general, our inspector general come and do a
17 presentation and share with us what the findings
18 were of the committee that you all put together, and
19 also before the -- before our board meeting in
20 December, if he could share with us any draft
21 working papers --

22 MR. WILLIAMS: Sure, happy to do that.

23 CFO SINK: -- or materials with our staff, I
24 think that would be helpful. It would enable us as
25 the trustees to have a more engaged conversation

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1 about the ethical issues, because as you say -- and
2 I agree with you -- we have the care of almost a
3 million beneficiaries looking at how we're managing
4 our retirement system, and the three of us have a
5 lot of fiduciary responsibility, and I'd just like
6 to hear directly from our inspector general as an
7 independent voice.

8 MR. WILLIAMS: Certainly. I think that's a
9 good idea, and I'll tell you now the approach that
10 we took on this was that, to borrow a phrase from
11 General Milligan, sunshine definitely is the best
12 disinfectant. And the approach that we took was to
13 have a very strong disclosure, set of disclosure
14 requirements to ensure, A, people know who is
15 involved in what and, B, that the State Board is not
16 paying any sort of placement agent fees.

17 There is a legitimate place, I believe, in the
18 industry for third party investor relations and
19 third party capital raising firms. They play a very
20 legitimate role, particularly as service providers
21 to smaller investment managers. They make it
22 possible for people to enter the industry who
23 couldn't otherwise do so. But they have to conduct
24 themselves in an ethical manner. So we don't have a
25 problem with people using them. We just don't want

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1 to pay for them.

2 CFO SINK: And we should also probably include
3 whatever disclosure requirements we require of the
4 members of the Investment Advisory Committee, since
5 they're more closely associated, I presume, with the
6 oversight and the selection of the investment
7 advisers as well.

8 MR. WILLIAMS: Well, they're really more of a
9 strategy level body. They don't really get into the
10 selection of individual managers, so I don't know
11 that there would be an issue there.

12 CFO SINK: We should have that clarified in
13 writing then. It may already be.

14 MR. WILLIAMS: Sure. Thank you. One other
15 thing I wanted to mention. The Florida Hurricane
16 Catastrophe Advisory Council met last week and
17 revised upward, on the strength of analysis done
18 with our financial services team, our debt issuance
19 capacity.

20 So it's moved up again from \$8 billion, by 3
21 billion, to 11 billion. This puts the Cat Fund's
22 capacity at \$19 billion. And keep in mind that
23 would be over and above the risk that the insurance
24 industry would retain. So this would position us to
25 basically cover a ground-up event of some \$27

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1 billion in magnitude. So I wanted to share that
2 progress with you.

3 ATTORNEY GENERAL McCOLLUM: Question, Ash.
4 Then that leaves us with unfunded liability
5 potentials of how much?

6 MR. WILLIAMS: In the Cat Fund.

7 ATTORNEY GENERAL McCOLLUM: Right.

8 MR. WILLIAMS: Well, coming into next year,
9 that would essentially cover the entire mandatory
10 layer. Where you would still potentially have a gap
11 would be in the so-called temporary increase in
12 coverage, or TICL, layer. Keep in mind, with the
13 legislation that was adopted last year, the TICL
14 layer is decreasing in size at a rate of \$2 billion
15 each year, and the cost of it is doubling each year,
16 or increasing dramatically each year.

17 We saw the impact of that in part this year by
18 the fact that the industry chose to take
19 substantially less of the TICL layer that was
20 available than they could have, which the available
21 layer was \$10 billion. I believe what the industry
22 actually took was 5.6, which was a reduction in our
23 liability exposure because people didn't buy the
24 coverage.

25 I would anticipate over time that as the amount

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1 of available TICL continues to trail off and the
2 price of it goes up, that phenomenon will likely
3 continue, which should speed us on the track to the
4 Cat Fund having full funding for the liabilities
5 that it holds. I think the real issues going
6 forward will be in that TICL layer.

7 ATTORNEY GENERAL McCOLLUM: Will we get to that
8 next year or not? I guess you don't have any way of
9 knowing, do you? It's 5 billion roughly now. It
10 depends on what they --

11 MR. WILLIAMS: If it drops by another 2 billion
12 and you assume people buy all that's available, no,
13 we would not get there next year. But if people buy
14 substantially less and we get through the remainder
15 of the current season -- keep in mind we took in a
16 billion and a half dollars premium. That money is
17 invested and compounding tax-free for us. So we
18 will actually come into the next season with more
19 cash than the Cat Fund has ever had and hopefully
20 continue to strengthen.

21 ATTORNEY GENERAL McCOLLUM: Thank you.

22 MR. WILLIAMS: Thank you very much.

23 GOVERNOR CRIST: Thank you, Ash.

24 (Whereupon, the meeting was concluded at 10:45
25 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

Reporter,

counsel

I, Jo Langston, Registered Professional

do hereby certify that the foregoing pages 4 through 67,
both inclusive, comprise a true and correct transcript of
the proceeding; that said proceeding was taken by me
stenographically and transcribed by me as it now appears;
that I am not a relative or employee or attorney or
of the parties, or a relative or employee of such attorney
or counsel, nor am I interested in this proceeding or its
outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 15th day of November 2009.

JO LANGSTON
Registered Professional Reporter

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