

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

**BILL:** CS/CS/SB 1736

**INTRODUCER:** Policy and Steering Committee on Ways and Means, Commerce Committee and Senator Garcia

**SUBJECT:** Unemployment Compensation

**DATE:** April 15, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Fav/CS
2.	Belcher	Coburn	WPSC	Fav/CS
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

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

The bill provides for an extension of the temporary state extended benefits program, effective February 27, 2010, through April 5, 2010. The extension will cover up to 5 additional weeks of temporary state extended benefits for claimants. The temporary state extended benefits for former private sector employees are 100 percent federally funded (approximately \$30 million). About 42,000 Floridians will be eligible to receive additional weeks through this extension. Extended benefits for former state and local government employees do not qualify for federal funding and must be paid by the governmental entity. The cost is estimated to total \$849,000; approximately \$249,000 from state funds and \$600,000 from local government funds.

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

This bill requires employers to timely respond to a notice of claim within 20 days. Failure to do so will result in those benefits charged to the employer's account. Such efforts will reduce overpayments to unemployed individuals, and in turn, this will reduce the burden of socialized costs on all employers' UC tax rates.

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

Finally, this bill includes several statutory changes to reduce the socialized costs to all Florida employers, improve tax administration by increasing efficiency and reducing related costs, and improve enforcement of tax laws.

This bill amends the following sections of the Florida Statutes: 55.204, 95.091, 213.25, 443.036, 443.091, 443.1215, 443.131, 443.141, 443.151, 443.163, 443.1715, and 443.101.

This bill revives, readopts, and amends s. 443.1117, F.S.

## II. Present Situation:

### Unemployment Compensation Overview<sup>1</sup>

According to the United States Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.<sup>2</sup> The program is administered as a partnership of the federal government and the states.<sup>3</sup> The individual states collect UC payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).<sup>4</sup> FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.<sup>5</sup>

States are permitted to set eligibility conditions for UC benefit recipients so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.<sup>6</sup> The Agency for Workforce Innovation (AWI) is the current agency responsible for administering Florida's UC laws. AWI contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.<sup>7</sup>

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<sup>1</sup> For a comprehensive overview of Florida's unemployment compensation system, see Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009), at [http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-306cm.pdf](http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-306cm.pdf) (last visited 4/1/2010).

<sup>2</sup> USDOL, State Unemployment Insurance Benefits, at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 4/2/2010).

<sup>3</sup> There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

<sup>4</sup> FUTA is codified at 26 U.S.C. 3301-3311.

<sup>5</sup> USDOL, Unemployment Insurance Tax Topic, at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 4/2/2010).

<sup>6</sup> Chapter 18402, L.O.F.

<sup>7</sup> Section 443.1316, F.S.

Regular State Benefits

A qualified claimant may receive UC benefits equal to 25 percent of his or her wages, not to exceed \$7,150 in a benefit year.<sup>8</sup> Benefits range from a minimum of \$32 to a maximum weekly benefit amount of \$275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.<sup>9</sup>

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements.<sup>10</sup> Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

State Unemployment Compensation Contributions

Florida sets the state tax structure for the taxable wage base and rate, and funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.<sup>11</sup> The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.<sup>12</sup> Employers' state UC taxes are used solely to pay UC benefits to unemployed Floridians.

Currently, an employer pays taxes on the first \$7,000 of an employee's wages.<sup>13</sup> An employer's initial state tax rate is 2.7 percent.<sup>14</sup> After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.<sup>15</sup> The adjustment in the tax rate is determined by calculating several factors.

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<sup>8</sup> Section 443.111(5), F.S.

<sup>9</sup> Section 443.111(3), F.S. A claim week begins on Sunday and ends on Saturday.

<sup>10</sup> Section 443.091(1), F.S., provides an unemployed individual is eligible to receive benefits for a week of unemployment when AWI finds that the individual:

- Has filed a claim for benefits;
- Is registered to work with and report to AWI;
- Is able to and available for work;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period; and
- Has submitted a valid social security number to AWI.

<sup>11</sup> Section 443.191, F.S.

<sup>12</sup> Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers; DOR advised that based on the most recent data available (from December 2009) there were 460,932 contributing employers and 3,258 reimbursing employers in Florida.

<sup>13</sup> In 2012, the taxable wage base increases to \$8,500. See ch. 2010-1, L.O.F.

<sup>14</sup> Section 443.131(2)(a), F.S.

<sup>15</sup> Section 443.131(2)(b), F.S. Because of the definition of base period, at least 10 quarters must have elapsed before a new employer can be considered chargeable for 8 quarters of benefits. See also, s. 443.131(3)(d), F.S. An employer is only eligible for variation of the standard rate if its employment record was chargeable for benefits for 12 consecutive quarters ending on June 30 of the preceding calendar year. These employers are referred to as "rated employers."

### State Unemployment Compensation Contributions - Benefit Charges

In the unemployment tax calculation, the most significant factor in determining an employer's tax rate is the "benefit ratio."<sup>16</sup> This is the factor over which the employer has control. Often referred to as "experience rating," this factor takes into account an employer's experience in laying off workers. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual \$100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual. However, an employer can obtain relief from benefit charges by responding to notification of a claim with information concerning the reason for the individual's separation from work or refusal to work.<sup>17</sup>

AWI is required to send notice to each employer who may be liable for benefits paid to an individual.<sup>18</sup> Based upon information provided with filed claims for benefits and employer responses, if provided, AWI makes an initial determination on entitlement to benefits. An employer has an incentive to respond to AWI if the employer should not be liable for benefits; an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account. However, AWI reports that many employers do not respond to the notice in a timely manner.

There is no time established in statute for requiring employers to respond to the notice of claim. Thus, an employer may respond after benefits have already begun to be paid to the claimant.<sup>19</sup> This is considered new evidence pertinent to the initial determination, and the agency may consider it and issue a redetermination on the claim up to 1 year from the last date of the claimant's benefit year.<sup>20</sup>

If the employer successfully contests the claim, the benefits are not charged to its account. Instead, the benefits paid are considered "overpayments." Overpayments are compensation that cannot be charged against any employer's account. These costs are recovered through a noncharge factor that socializes the cost of the overpayments among all contributory employers who had benefit experience over the previous 3 years (discussed below).

### State Unemployment Compensation Contribution Calculation – Socialized Costs

Compensation that cannot be charged against any employer's account is recovered through "variable adjustment factors" that socialize the cost of this compensation among all contributory employers who, during the previous 3 years, had benefit experience. An employer's variable adjustment factor includes a portion of the following socialized costs, based upon the employer's experience rate: the noncharge ratio (benefits not attributable to any employer over the last 3

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<sup>16</sup> Section 443.131(3)(b), F.S.

<sup>17</sup> Section 443.131(3)(a), F.S.

<sup>18</sup> Section 443.151(3)(2), F.S. These are generally employers who paid at least \$100 in wages during the base period of the individual's claim.

<sup>19</sup> Section 443.151(5)(a), F.S., requires AWI to promptly pay benefits once a determination has been made.

<sup>20</sup> Section 443.151(3)(c), F.S. A redetermination may be made up to 2 years after the initial determination if fraud is involved.

years),<sup>21</sup> the excess payments ratio (that portion of benefit charges which exceed the maximum rate of 5.4 percent),<sup>22</sup> and the fund size factor (requires the trust fund maintain a certain balance, discussed below as “triggers”).<sup>23</sup>

The “final adjustment factor” is another factor in determining an employer’s tax rate. It is a constant factor that applies to every employer regardless of experience rating.<sup>24</sup> The “final adjustment factor” takes into account socialized costs, described above. This factor is also applied to employers who have no benefit charges in the preceding 3 years; as a result, this factor determines what the minimum rate for the tax year will be.<sup>25</sup>

In FY 2008-2009, about \$72.1 million was determined to be overpaid. Determinations for fraud accounted for \$6.2 million; in 2009, AWI was able to recover about 45 percent of UC benefits paid due to fraud.<sup>26</sup> The remainder of the overpayments was either from lack of timely information from employers or reversals from the appeals process (non-monetary overpayments).<sup>27</sup> AWI attempts to recover the overpayments from claimants, but the agency estimated that it is successful in recovery of funds in 2009 in about 20 percent of these cases.<sup>28</sup>

### Trust Fund Triggers

Florida’s tax calculation method, especially due to the benefit ratio, is closer to a “pay as you go” approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment is low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.<sup>29</sup>

The basis for the adjustment factors is the level of the trust fund on June 30 of each calendar year compared to the taxable payrolls for the previous year. Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage.

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<sup>21</sup> For example, these socialized costs include charges against employers who have gone out of business and overpayments.

<sup>22</sup> Employers who have an experience rating that, if translated to a tax rate, would exceed the maximum rate get a break and any costs of unemployment benefits that exceed that 5.4 percent maximum tax rate are socialized to all other employers.

<sup>23</sup> Section 443.131(3)(e), F.S. See also DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated, at [http://dor.myflorida.com/dor/taxes/unemploy\\_comp\\_law.html#how](http://dor.myflorida.com/dor/taxes/unemploy_comp_law.html#how) (last visited 4/2/2010).

<sup>24</sup> If the combined factors exceed the maximum rate, the employer is assigned the maximum rate of 5.4 percent.

<sup>25</sup> DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated.

<sup>26</sup> Determinations for fraud are made based upon the findings of investigations and audits. See s. 443.071, F.S.

<sup>27</sup> Emerging Issues Related to Florida’s Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009).

<sup>28</sup> Information on file with the Commerce Committee. Other overpayments result from non-fraudulent activity, such as inaccurate reporting of earned income while receiving benefits. AWI’s recovery rate was about 64 percent in 2009. Such claimants are more likely to make cash repayments or the agency can recover funds by offsetting from future claims for UC.

<sup>29</sup> Emerging Issues Related to Florida’s Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009). Currently, the negative adjustment factor is not available until January 1, 2015, and then not in any calendar year in which a federal advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

### Federal Unemployment Compensation Contributions

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 percent on employees' annual wages.<sup>30</sup> If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net federal tax rate 0.8 percent. Employers pay quarterly taxes on the first \$7,000 of each employee's annual wages for the FUTA tax.

The USDOL provides AWI with administrative resource grants from the taxes collected from employers pursuant to FUTA. These grants are used to fund the operations of the state's UC program, including the processing of claims for benefits by AWI, state unemployment tax collections performed by DOR, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

### Reemployment

To maintain eligibility for benefits, an individual must be ready, willing, and able to work and must be actively seeking work.<sup>31</sup> An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available. AWI defines reemployment services as: job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.<sup>32</sup>

AWI's website provides links to local, state, and national employment databases.<sup>33</sup> Claimants are automatically registered with their local One-Stop Career Center when their claims are filed.<sup>34</sup> The One-Stops provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from Employ Florida Marketplace with information about employment services or available jobs.<sup>35</sup> Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).<sup>36</sup>

<sup>30</sup> The Federal Unemployment Tax Act (FUTA) is set to be reduced by 0.2 percent in June 2011. 26 U.S.C. s. 3301 (2009).

<sup>31</sup> Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" as:

- "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought.
- "Available for work" means actively seeking and being ready and willing to accept suitable employment.

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work in Rule 60BB-3.021, F.A.C.

<sup>32</sup> Rule 60BB-3.011(12), F.A.C.

<sup>33</sup> For example, on [www.fluidnow.com](http://www.fluidnow.com), where individuals can claim their weeks online.

<sup>34</sup> AWI's Office of Workforce Services is responsible for providing One-Stop Program Support services to the Regional Workforce Boards.

<sup>35</sup> Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. <https://www.employflorida.com>.

<sup>36</sup> REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Research has shown that interviewing claimants for the above purposes reduces UC duration and saves UC trust fund resources by helping claimants find jobs faster and eliminating payments to ineligible individuals. Florida administers the

### Unemployment Compensation Claims and Benefits Information System

The 2007 Florida Legislature directed AWI to evaluate the replacement of the 30-year old mainframe system used to process UC benefit claims and appeals.<sup>37</sup> A feasibility study was conducted by a third-party vendor, which recommended that AWI implement a new system. The study also concluded that a cost savings of up to \$43.1 million annually could be expected due to enhanced efficiencies in program operations. Benefits of a new UC information system include:

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

The Unemployment Compensation Claims and Benefits Information System is a replacement project for the existing UC Claims and Benefits technology system and supporting systems.<sup>38</sup> The implementation time frame is over a 4-year period at a total project implementation cost of \$68.25 million.<sup>39</sup> The agency anticipates that the project costs for the entire system will be funded from federal funds.

The current technology system has been strained under the current economic climate, due in part to increased customer demand and an aging and inflexible technology system. Plans for the new system indicate that AWI intends to eliminate paper-based processes where feasible and provide the public with automated, self-service access to UC program services.

### Temporary State Extended Benefits

The Legislature enacted, in 2009, a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds.<sup>40</sup> Under this program, the federal government pays 100 percent of temporary state extended benefits to former private sector employees.

Florida already had an extended benefits program in statute,<sup>41</sup> but in order to participate in the federal program, Florida was able to enact a temporary state extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR). Florida's regular state extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). The federal funds were paid from a separate federal general revenue account and did not affect the balance of Florida's UC Trust Fund.

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REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., further sets forth information on reemployment services and requirements for participation.

<sup>37</sup> Adapted from Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1782 (April 6, 2009).

<sup>38</sup> See s. 443.1113, F.S.

<sup>39</sup> AWI's Legislative Budget Request for Fiscal Year 2009-2010, issue #36315C0, as revised (after February 25, 2009).

<sup>40</sup> Chapter 2009-99, L.O.F. Temporary extended benefits was originally created and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 2005, Public L. No. 111-5.

<sup>41</sup> Section 443.1115, F.S.

Florida's temporary state extended benefits program was effective between February 1, 2009, and February 27, 2010.<sup>42</sup> The original program was effective until January 2, 2010; however, the Legislature took advantage of an extension of funding by the federal government through February 27, 2010.<sup>43</sup>

Under the federal program, after February 27, 2010, any extended benefits paid were only reimbursed by the federal government at a rate of 50 percent for former private sector employees making new claims. Florida was able to set a sunset date in enacting the alternate trigger in order to take the best advantage of the program. The temporary state extended benefits program expired on February 27, 2010.

In March, Congress extended, from February 27 to April 5, the time that the federal government would fund 100 percent of state extended benefits for former private sector employees.<sup>44</sup> Because of the expiration of the temporary state extended benefits program, Florida has not been able to take advantage of this further extension.

### III. Effect of Proposed Changes:

#### **Temporary State Extended Benefits Extension**

In March, Congress extended from February 27, 2010, to April 5, 2010, the time that the federal government would fund 100 percent of state extended benefits for former private sector employees. There is no cost to private employers; however, like the original extended benefits provision, "reimbursable" employers like state and local governments are not covered by the federal government and must pay for the benefits themselves. Temporary state extended benefits will be available for up to 5 weeks for claimants. These benefits are not charged to employers and have no effect on an employer's experience rating. Approximately 42,000 Floridians will benefit from this change to Florida law.

Section 1 revives, readopts, and amends s. 443.1117, F.S., to extend the duration of the temporary state extended benefits program. The section expired on February 27, 2010, and the bill revives this section through April 5, 2010, in order for Floridians to be eligible for 100 percent federal funding for an additional 5 weeks of temporary extended benefits for former private sector employees.

This section is effective upon becoming a law, retroactive to February 27, 2010, and expires on April 5, 2010.

Section 2 clarifies that the temporary extended benefits will be available to unemployed Floridians who establish entitlement to extended benefits between February 22, 2009, and April 5, 2010.

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<sup>42</sup> The temporary state extended benefits were to be available for 13 to 20 weeks, depending on the average total rate of unemployment. Because of Florida's high unemployment rate, temporary state extended benefits were available for the 20 week time period.

<sup>43</sup> Chapter 2010-1, L.O.F. See also Pub. L. No. 111-118 (111<sup>th</sup> Congress, 2009).

<sup>44</sup> Pub. L. No. 111-144 (111<sup>th</sup> Congress, 2010).



**Unemployment Compensation Tax Administration**

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

Section 3 amends s. 55.204, F.S., to conform to changes made in section 10 of the bill, by providing that liens securing the payment of unemployment tax obligations lapse 10 years after the date of the original filing of notice of lien. This mirrors federal unemployment compensation tax liens.

Section 4 amends s. 95.091, F.S., to include the changes made in section 10 of the bill to provide that the duration of liens securing the payment of unemployment taxes is 10 years. This mirrors federal unemployment compensation tax liens. Currently, s. 95.091(1)(a), F.S., provides that except in certain enumerated situations, tax liens expire 5 years after the later of the date the tax was assessed or the date the tax became delinquent.

Section 5 amends s. 213.25, F.S., related to refunds and credits. Currently, s. 213.25, F.S., permits DOR to reduce a taxpayer's refund or credit by the amount of other taxes that the taxpayer owes. In 2007, this offset authority was added to ch. 443, F.S. This section clarifies that DOR's authority to reduce a taxpayer's refunds or credits by the amount of any other taxes owed applies to UC tax due and is not subject to protest under ch. 443, F.S. This section is effective July 1, 2010.

Section 6 amends s. 443.036, F.S., by updating cross-references due to other changes made by the bill, and to specify that a single member limited liability companies (LLC) shall be treated as the employer for state unemployment tax purposes, consistent with Internal Revenue Service (IRS) regulations.

Under current law, for state UC tax purposes, LLCs are treated as they are classified for federal income tax purposes. A single member LLC may designate either the LLC or the owner as the employer. New IRS regulations change how single member LLCs report for federal employment tax purposes and require the LLC to be treated as the employer.

Section 8 amends s. 443.1215, F.S., to correct a cross-reference. When ch. 443, F.S., was rewritten in 2002, a reference dealing with agricultural employers was incorrectly cited. Section 443.1215(2)(b), F.S., refers to "subsection (1)" when the correct reference should be "paragraph (1)(a)." The current reference allows agricultural employers to be automatically considered domestic employers when they have not met the necessary criteria.

Section 10 amends s. 443.141, F.S., related to employer reporting requirements. Under current law, employers are required to file quarterly wage reports with DOR. If these reports are not correct and complete, this may result in a delay of payment of UC benefits to unemployed workers, as well as the completion of certain federal administration requirements. Further, incorrect and incomplete reports impair the efforts of numerous agencies, such as the U.S. Department of Homeland Security, Immigration and Customs Enforcement, the Social Security Administration, and Florida's child support enforcement program, that use information in the database to conduct their respective duties. DOR frequently receives erroneous, incorrect or

insufficient reports, and efforts to enforce the reporting requirements have been unsuccessful. There is currently no penalty for filing erroneous, incomplete, or insufficient tax and wage reports.

This section of the bill amends s. 443.141, F.S., to impose a penalty of \$50 or 10 percent of the tax due, not to exceed \$300, for erroneous, incomplete, or insufficient tax/wage reports (the term “erroneous, incomplete, or insufficient report” is defined for purposes of the subsection). DOR would waive the penalty if an accurate and complete report is filed within 30 days of the penalty notice. An automatic penalty waiver would be permitted once during a 12-month period or, as with other penalties imposed under ch. 443, F.S., waived if imposition is inequitable. Employers would not be penalized for erroneous information supplied by employees if the employer was not aware of the inaccuracy.

This section also clarifies that unemployment tax liens are in effect for 10 years, which mirrors federal unemployment tax liens and provides additional time for collection activities. Currently, Florida does not specifically identify the statute of limitations period for unemployment tax liens. Historically, the state has asserted that the lien is valid for 10 years, but taxpayers have recently challenged that position. These taxpayers have argued that the lien is only effective for 5 years. Enforcement of these liens often occurs when the property is sold, and thus, 5 years is not sufficient time to ensure proper enforcement.

As recommended by the Division of Statutory Revision, this bill also amends s. 443.141(5), F.S., to update a reference to federal bankruptcy law.

Section 12 amends s. 443.163(2), F.S., related to employer reporting requirements and is effective July 1, 2010.

Currently, s. 443.163(2), F.S., requires certain employers and preparers to file quarterly wage reports electronically, and allows a minimal penalty of \$10 to be assessed for noncompliance. This has not proven to be a deterrent to noncompliance, and critical wage information is unavailable for administering the unemployment program unless DOR uses its limited resources to manually key in the returns and wage information. Manual entry of such information can delay the processing of UC benefits to unemployed workers. Under current law employers may obtain a waiver from the electronic filing requirement if they are unable to comply despite good faith efforts.

This bill increases the penalty to \$50 per report and \$1 per employee when the required data is not submitted in the approved electronic manner. Section 12 is effective July 1, 2010.

Section 13 amends s. 443.163(3), F.S., and deletes an obsolete reference to telefile, which no longer exists for UC taxes.

Section 14 amends s. 443.1715, F.S., as recommended by the Division of Statutory Revision, to provide that certain information may be requested from AWI.

### **Improving Reemployment of UC Claimants**

UC claimants are automatically registered with their local one-stop center when they file a claim.

Section 7 amends s. 443.091, F.S., to require claimants to register for work with AWI (current law) and subsequently report to their local One-Stop Career Center as directed by the regional workforce board for reemployment services. This will better link claimants with the state's job bank system and available job opportunities.

However, the requirements would not apply to persons who are:

- Nonresidents;
- Collecting unemployment due to a temporary layoff;<sup>45</sup>
- Union members who customarily obtain employment through a union hiring hall; or
- Claiming benefits under an approved short-time compensation plan.<sup>46</sup>

Section 11 amends s. 443.151, F.S., to require that registration for work with the workforce information system, also known as Employ Florida Marketplace, must be incorporated into the process for filing a claim, as part of the Unemployment Compensation Claims and Benefits Information System when it becomes fully operational.<sup>47</sup> No claim for benefits shall be processed until the work registration requirement is satisfied.

Section 15 amends s. 443.101, F.S., to update a cross reference related to these changes.

### **Employer Response**

When employers do not timely respond to a notice of claim for UC benefits, this can result in overpayments to unemployed individuals. This creates socialized costs which can increase all employers' tax rates, because these benefits that were paid out are no longer attributable to a specific employer's account. Further, there is hardship upon the unemployed individual to repay the benefits; AWI has stated that they are only able to recover about 19 percent of overpayments made.

According to AWI, nearly all 53 other state unemployment programs require employers to respond to a notice of claim within a certain period of time. Required response times range between 2 and 15 days, with most states requiring a response within 7 or 10 days.<sup>48</sup>

Section 11 amends s. 443.151, F.S., related to determinations of eligibility for UC benefits.

When a claim is first filed, employers receive a notice of claim and a monetary determination. If the agency receives information that may result in a denial of benefits, the agency is required to investigate the claim and provide employers with a nonmonetary determination, as applicable. A notice of claim is sent to a claimant's most recent employer and all employers whose

<sup>45</sup> "Temporary layoff" means a job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date. Section 443.036(42), F.S.

<sup>46</sup> See s. 443.1116, F.S.

<sup>47</sup> Section 443.1113(4), F.S., sets forth the timeframe for the completion of the project. The Unemployment Claims and Benefits Internet portal is required to be deployed by the end of FY 2010-2011, and the Claims and Benefits Mainframe System is required to be completed by the end of FY 2012-2013 (as is the entire project).

<sup>48</sup> Information on file with the Senate Commerce Committee.

employment records are liable for benefits under a monetary determination. The bill requires employers to timely respond to the notice of claim within 20 days. Failure to do so will result in those benefits being charged to the employer's account; however, a claimant would not be required to repay any overpayments due to the employer's failure to respond, so long as there is no fraud involved.

An individual claiming UC benefits must be determined to be monetarily and nonmonetarily eligible for UC benefits. Wage records used in determining the amount of benefits that may be paid to an unemployed worker are provided through reports furnished by employers on a quarterly basis to DOR. The reports provide the wage data for each employee's base period, which is used to determine the amount of benefits that are paid to an individual worker. The bill provides that the monetary determination made will be final after 20 days if there is no appeal or written request for reconsideration (consistent with current law).

For nonmonetary eligibility, a claimant must be unemployed due to layoffs or otherwise, through no fault of their own, to be eligible for UC benefits. The bill requires AWI to provide the notice of nonmonetary eligibility to the claimant and his or her past employers, as applicable (consistent with current law). The notice of claim will provide the employer with information related to the nonmonetary determination, including the reason for the determination and whether the unemployment tax account of the employer will be charged for benefits on the claim. The bill provides that the nonmonetary determination made will be final after 20 days if there is no appeal or written request for reconsideration (consistent with current law).

Section 9 amends s. 443.131, F.S., to include a cross reference to the changes made in s. 443.151, F.S., and to delete a provision related to employer response that is no longer necessary due to the changes made by the bill.

#### **Trust Fund Balance Date for Trigger Calculation**

Section 9 amends s. 443.131, F.S., by changing the date that the UC Trust Fund balance is used for the trigger calculation. This bill changes the date from June 30 to September 30, closer to the beginning of the year to which the tax calculation applies.

Section 16 states that the Legislature finds that this act fulfills an important state interest.

Section 17 provides that this act shall take effect upon becoming a law, unless otherwise specifically stated in the act.

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

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

Article VII, s. 18, Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees for an additional 5 weeks, the provisions of

art. VII, s. 18(a), Florida Constitution, may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (see section 16 of the bill) and one of the following relevant exceptions:

- a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- c. The expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments; or
- d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

“Similarly situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities. Because the bill will impact “all persons similarly situated,” this exception appears to apply.

Further, art. VII, s. 18(d), Florida Constitution, provides an additional exemption from the prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2010-2011), are exempt. The additional 5 weeks of temporary state extended benefits provided in the bill are estimated to cost local governments \$600,000. Consequently, it may be exempt from the mandates restriction due to its insignificant fiscal impact.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

This bill reduces the UC tax burden on employers by correcting an erroneous statutory citation and reducing socialized costs (such as overpayments).<sup>49</sup>

Increased penalties will be billed to employers that do not timely and accurately report their employees’ wages or do not report electronically when obligated.

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<sup>49</sup> See Present Situation above, State Unemployment Compensation Contribution Calculation – Socialized Costs.

**B. Private Sector Impact:**

Many unemployed individuals in Florida who have exhausted regular benefits and the federal emergency UC benefits, or did not receive the full 20 weeks of temporary state extended benefits, may be eligible for 5 additional weeks of state unemployment benefits. The additional benefits, estimated to total \$30 million, will be covered 100 percent from federal funds. There will be no cost to private employers and there will be no effect on their contribution rates. (Benefits paid by public employers are not covered by federal funds. See explanation below related to Government Sector Impact.)

Employers that do not timely and accurately report their employees' wages or do not report electronically when obligated, will be billed for increased penalties. However, the penalties can be waived if the employer timely cooperates in correcting the errors. Also, employers who do not respond timely to notices of unemployment compensation claims will be liable for increased benefits. Increase in benefit charges will result in a higher individual benefit ratio in the tax rate calculation and could raise an employer's tax rate depending on other factors.

In addition, reduced noncharges for benefit overpayments could lower the variable adjustment factor for employers that timely and more responsibly participate in the UC claims process.

**C. Government Sector Impact:**

Extended benefits for former state and local employees do not qualify for federal funding due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The temporary extended benefits for these former employees must be paid by the governmental entity. The cost is estimated to total \$849,000, approximately \$249,000 from state funds and \$600,000 from local government funds. In order to participate in federal sharing, the temporary state extended benefits program had to encompass unemployed individuals of both the private and public sectors.

As a result of the increased penalty for failing to electronically report when obligated and the new penalty for delinquent, incomplete, or insufficient reports, additional revenues will likely be deposited into the state's Special Employment Security Administration Fund, which is the fund in which penalties and interest related to unemployment tax are deposited. However, the amount is contingent on employers' level of compliance with the requirements of the law.

An increase in revenue to the Unemployment Compensation Trust Fund may be seen from increased tax rates on employers that fail to respond timely to a claim. AWI estimates that \$20 million per year in fewer noncharged benefits will result from the bill. The reduction will reduce the variable adjustment factor in the tax rate calculation and increase the individual benefit ratio of employers that respond late to claims.

**VI. Technical Deficiencies:**

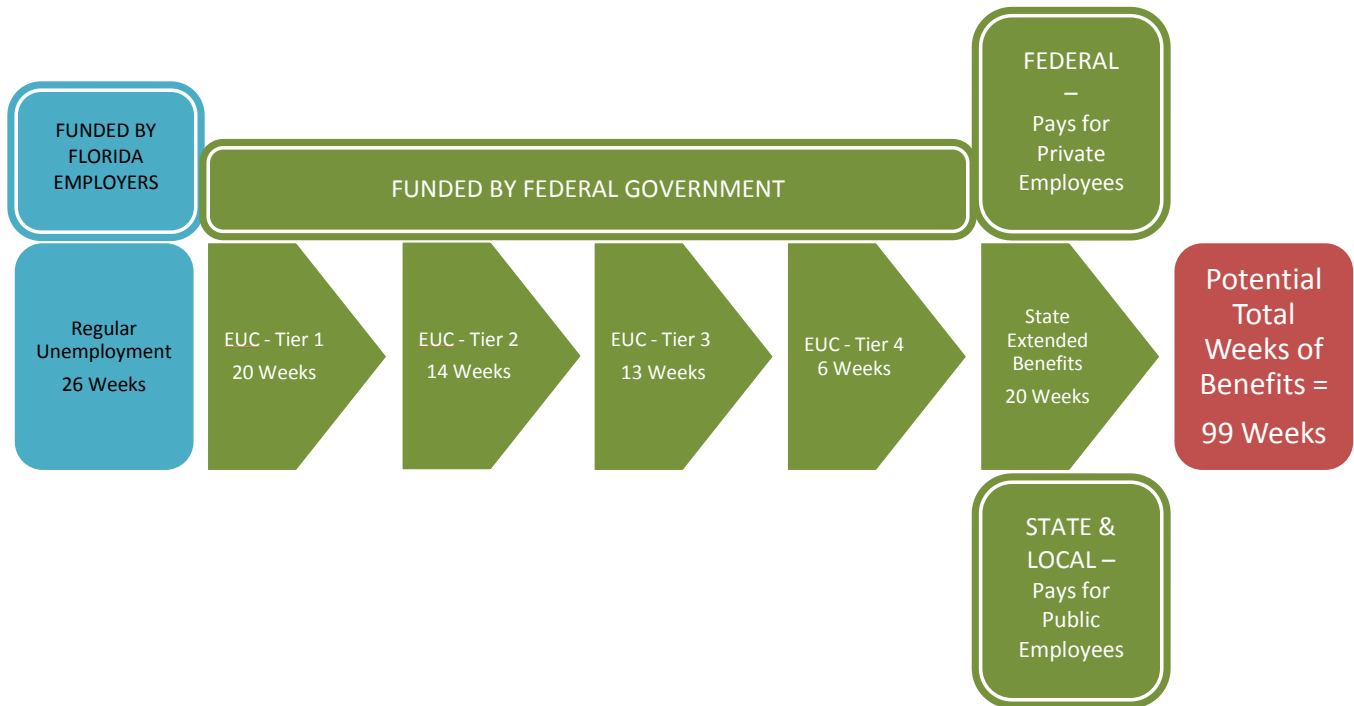
None.

**VII. Related Issues:**

In addition to extending temporary state extended benefits, Congress also extended eligibility for the Emergency Unemployment Compensation (EUC) tiers. EUC benefits are available for weeks of unemployment that begin before April 5, 2010. Individuals establishing benefit entitlement as of that date can continue to collect EUC through October 5, 2010.

The following illustration shows the various weeks of unemployment compensation available, the funding sources for such weeks, and the potential total number of weeks an unemployed individual may collect.

**Illustration 1 - Potential Weeks of Unemployment Benefits, State and Federal**



As noted by the USDOL, the “EUC law makes eligible all individuals whose benefit year ending date is on or after May 1, 2007. Practically speaking, this means some individuals receiving EUC may have become unemployed as early as May 2006.”<sup>50</sup> EUC was first established in 2008, expanded in November 2008, extended in February 2009 (Recovery Act), further expanded in November 2009, extended in December 2009, and most recently extended in March 2010. There are currently two bills under consideration in Congress which could extend these federally funded programs, including temporary state extended benefits, an additional time: one bill is intended to be a gap-filler and would extend benefits potentially though June 5, 2010;<sup>51</sup> the other bill is considered to be a more permanent action, and would extend benefits through the end of the year.<sup>52</sup>

<sup>50</sup> USDOL, Emergency Unemployment Compensation 2008 (EUC) Program, available at <http://ows.doleta.gov/unemploy/pdf/euc08.pdf> (last visited 3/31/2010).

<sup>51</sup> H.R. 4851 (111<sup>th</sup> Congress). This is referred to as the Continuing Extension Act of 2010. It is currently being debated in the U.S. Senate.

<sup>52</sup> H.R. 4213 (111<sup>th</sup> Congress). This is referred to as the American Workers, State, and Business Relief Act of 2010.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Committee Substitute by Ways and Means on April 15, 2010:**

This CS clarifies that employers are required to respond to the notice of claim within 20 days. Additionally, the CS makes these provisions effective July 1, 2010, to allow AWI to inform employers of the change in the law.

**Committee Substitute by Commerce on April 7, 2010:**

This CS differs from the bill in the following ways:

- Provides for an extension of the temporary state extended benefits program, effective February 27, 2010, through April 5, 2010. The extension will cover up to 5 additional weeks of temporary state extended benefits for claimants.
- Improves reemployment efforts by requiring claimants to register with the workforce information system (Employ Florida Marketplace), and for registration to be incorporated into the process for filing a claim; and requiring claimants to report to their local one-stop center.
- Requires employers to timely respond to a notice of claim on a nonmonetary determination within 20 days. Failure to do so will result in those benefits being charged to the employer's account.
- Limits collection of overpayments from a claimant due to the employer's failure to respond to the notice of claim on a nonmonetary determination, provided no fraud was involved.
- Changes the trust fund balance date for trigger calculation from June 30 to September 30, which is closer to the beginning of the year to which the tax calculation applies.
- Confirms Florida's UC tax lien provisions to federal law.
- Increases penalties on businesses that submit erroneous, incorrect, or incomplete quarterly reports to DOR, or that fail to comply with the current law to submit the information in the required format.
- Makes other changes related to UC tax laws that were recommended by DOR and AWI, including updating cross-references and deleting obsolete references.

The CS also includes two provisions recommended by the Division of Statutory Revision, which were in the bill as filed. Section 443.141, F.S., is amended to update a reference to federal bankruptcy act, and section 443.1715, F.S., replaces a reference to the former Florida Department of Labor and Employment Security.

- B. **Amendments:**

None.