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 Commerce Committee

BILL: CS/SB 1666

INTRODUCER: Commerce Committee and Senator Garcia

SUBJECT: Unemployment Compensation

DATE: February 16, 2010 REVISED:

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

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

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

CS/SB 1666 amends portions of the unemployment compensation statutes related to calculation of the employer's tax rates and Unemployment Compensation Trust Fund solvency. The CS makes the following changes:

- Reduces the taxable wage base from $8,500 to $7,000 for 2 years and returns to $8,500 in 2012. The wage base sunsets back to $7,000 in 2015 (consistent with current law), unless federal advances are still due for repayment to the federal government. Until all federal advances are repaid, the wage base remains at $8,500.

- Suspends the positive adjustment factor for the next 2 years. Regardless of the balance in the Unemployment Compensation Trust Fund, no rate increase will be "triggered" since the positive adjustment factor will not be applied. The positive adjustment factor is effective again beginning January 1, 2012, with a 3-year recoupment period and then returns to a 4-year recoupment period under current law provisions on January 1, 2015.
- For an administrative fee of up to $5, employers are allowed to spread payments for quarterly UC taxes due in 2010 and 2011 across the remaining quarters in the respective year without interest or penalties as long as the employer makes the quarterly filing and payment according to the new schedule.
- Provides for payment of interest on federal advances through an additional employer assessment.

The CS also provides for an extension of the temporary state extended benefits program, effective January 2, 2010, through February 27, 2010. The extension will cover up to 8 additional weeks of temporary state extended benefits for claimants. The temporary state extended benefits for former private sector employees are 100 percent federally funded (approximately $22 million). About 15,000 Floridians will be eligible to receive additional weeks through this extension. Extended benefits for former state and local government employees do not qualify for federal funding, and must be paid by the governmental entity. The cost is estimated to total $612,633; approximately $180,000 from state funds and $433,000 from local government funds.

The fiscal impact on the Department of Revenue for implementing the unemployment compensation tax change is estimated to be $903,462 in FY 2009-2010, $1.2 million in FY 2010-2011, $677,130 in FY 2011-2012, and a recurring impact of $387,700. For FY 2009-2010, these costs will be paid in portion from unemployment compensation administrative resource grants received from the federal government through the Agency for Workforce Innovation (FY 2009-2010: $643,862); the administrative fee of up to $5 is anticipated to fund the remaining costs (approximately FY 2009-2010: $259,600).

The CS provides short term relief to businesses by reducing the UC tax in 2010 and 2011 below current law requirements. However, assuming the current economic and revenue forecasts are correct, the unemployment compensation tax will revert back to the projected high rates in 2012 through 2014, and higher than projected rates in 2015 and beyond (compared to current law). According to data from the Office of Economic and Demographic Research (2/16 2010), these changes result in reduced unemployment compensation taxes collected and deposited into the Unemployment Compensation Trust Fund as follows: FY 2009-2010, $490.9 million; FY 2010-2011, $853.9 million; FY 2011-2012, $447.7 million; FY 2012-2013, $213.2 million; and FY 2013-2014, $242.9 million (see Table 2c).

Further, this CS will result in greater borrowing from the federal government to pay benefits, and more interest due to the federal government on that borrowing than under current law. The interest costs forecasted by the Office of Economic and Demographic Research (2/16/2010) are: FY 2011-2012, $132.8 million; FY 2012-2013, $192.8 million; FY 2013-2014, $163.7 million; FY 2014-2015, $114.7 million; and FY 2015-2016, $56.8 million (see Table 2b). The provision in the CS for payment of interest on federal advances through an additional employer assessment eliminates any impact on general revenue forecasted in the State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13 to pay interest accrued.

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

II. Present Situation:

Unemployment Compensation Overview[1]

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.[2] The program is administered as a partnership of the federal government and the states.[3] 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).[4] 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.[5]

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.[6] 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.[7]

Financing Unemployment Compensation

Unfortunately, due to the increasing unemployment rate in Florida, the Unemployment Compensation Trust Fund has been paying out more funds than it has been collecting. The trust fund fell into deficit in August 2009, and since that time the state has requested over $1.2 billion in federal advances in order to continue to fund unemployment compensation claims.[8]

The Legislature passed legislation during the 2009 regular session to increase employer contribution rates with the goal of easing the strain put upon the trust fund by the current economic climate. These changes, in conjunction with the decline in the balance of the trust

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[1] 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 (last visited 2/1/2010).

[2] USDOL, State Unemployment Insurance Benefits, at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited 2/10/2010).

[3] There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

[4] FUTA is codified at 26 U.S.C. 3301-3311.

[5] USDOL, Unemployment Insurance Tax Topic, at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited 2/10/2010).

[6] Chapter 18402, L.O.F.

[7] Section 443.1316, F.S.

[8] As of February 4, 2010. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 2/8/2010).

fund, poor economic conditions, decrease in the number of employers and employees, and increasing unemployment rates, led to large increases in employer UC tax rates. Some employers face greater increases because their experience rates have increased due to laid-off employees making UC claims credited against the employers' accounts.

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.[9] The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.[10] Employers' state UC taxes are used solely to pay UC benefits to unemployed Floridians.

Currently, an employer pays taxes on the first $8,500 of an employee's wages.[11] An employer's initial state tax rate is 2.7 percent.[12] 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.[13] The adjustment in the tax rate is determined by calculating several factors.

The "benefit ratio" is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding 3 years by the amount of the employer's payroll during the same 3-year period.[14] This is often referred to as "experience rating"; in other words, an employer's tax rate is based on its experience in laying off workers. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

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 years),[15] the excess payments ratio (that portion of benefit charges which exceed the maximum

[9] Section 443.191, F.S.

[10] 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.

[11] Prior to 2010, the taxable wage base was $7,000. See ch. 2009-99, L.O.F.

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

[13] 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."

[14] Section 443.131(3)(b), F.S.

[15] For example, these socialized costs include charges against employers who have gone out of business.

rate of 5.4 percent),[16] and the fund size factor (requires the trust fund maintain a certain balance, discussed below as “triggers”).[17]
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.[18] 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.[19]

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.[20]

The positive fund balance adjustment factor is an automatic tax increase on all employers if the trust fund’s balance falls below 4 percent of taxable payrolls on June 30 of each year. The positive adjustment factor remains in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year; the recoupment threshold will decrease to 4 percent on January 1, 2015. Additionally, the time to recapture the funds is 3 years. The recapture time period is restored to 4 years on January 1, 2015.[21]

The negative fund balance adjustment factor applies if the trust fund’s balance grows beyond 5 percent of taxable payrolls, and triggers an automatic tax reduction for all employers. However, calculation of the negative fund balance adjustment factor is delayed until January 1, 2015; in essence the employer contribution tax rates will not be lowered for 5 years. Thereafter, the negative adjustment factor will remain in effect until the balance of the UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. However, the negative adjustment factor is suspended in any calendar year in which an advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage. From 2003 through the 2009 tax year, the positive fund

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[16] 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.
[17] 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 (last visited 2/10/2010).
[18] If the combined factors exceed the maximum rate, the employer is assigned the maximum rate of 5.4 percent.
[19] DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated.
[20] Emerging Issues Related to Florida’s Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009).
[21] Section 443.131(3)(e), F.S. (2009). See ch. 2009-99, L.O.F.

balance adjustment factor was 3.7 percent, and the negative fund balance adjustment factor was 4.7 percent.[22]

2010 State Unemployment Compensation Contributions
For the calculation of the 2010 taxes, the UC Trust Fund balance was about .89 percent of the previous 1-year taxable payrolls. Thus, the "low trigger" turned "on."

The rates have been calculated for each Florida business that pays UC tax. The figures show that a business paying the minimum tax rate, which is the majority of Florida businesses (about 265,000), will see a tax rate increase from 0.12 percent to 1.18 percent. This means that a business that paid $8.40 per employee under the previous rate will pay $100.30 per employee in 2010. Those businesses at the maximum rate will see an increase from $378 to $459 per employee. Since most employers will have paid the $8,500 wage base to their employees in the first or second quarter of the year, these businesses will have paid their annual UC tax bill in the first or second quarter of 2010.

	2009 Taxes ($7,000 wage base)		**2010 Taxes** ($8,500 wage base + recoupment provisions)	
Minimum Rate	0.12%	$8.40	1.18%	$100.30
Maximum rate	5.4%	$378	5.4%	$459

In addition to the economic conditions which attributed to the increase in the contribution rate, the numbers of employers and employees have significantly decreased over the past year. Because there are fewer employers paying UC taxes on fewer employees to fund the UC Trust Fund, existing employers have to contribute more than they otherwise would have had to contribute in good economic times in order to reduce the current trust fund debt.

Federal Unemployment Compensation Contributions
The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 percent on employees' annual wages.[23] 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.

Federal Advances
States may borrow money from the federal government through the USDOL to pay benefit claims whenever the state lacks funds to pay claims due in any month. Such loans are referred to as "advances." The state's trust fund balance must be zero in order to receive an advance.

Many states have experienced chronic problems with UC trust fund insolvency, causing them to borrow from the federal government to pay benefits and resulting in increased federal taxes to repay the loans. In response, these states have restricted eligibility to UC benefits to reduce

[22] Section 443.131(3)(e), F.S. (2008). The low and high triggers were adjusted in 2002 by ch. 2002-218, L.O.F., from the amounts they had been since 1957 (4 percent for the low trigger, and 5 percent for the high trigger).
[23] 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).

benefit costs, thereby reducing the number of workers who are eligible to receive benefits and, consequently, jeopardizing the value of their UC programs as economic stabilizers. In the current economic climate, states are increasingly requesting federal advances. Thirty-two states, including the Virgin Islands, currently have requested federal advances.[24] In the first quarter of 2009, 14 states had outstanding loans from the Federal Unemployment Account.

Prior to August 2009, Florida's UC Trust Fund had never become insolvent during the history of the tax trigger. In the aftermath of the 1973-1975 recession, the state anticipated the UC Trust Fund's reserves were insufficient to pay benefits. Consequently, the state twice borrowed funds from the federal government – $10 million in 1976 and $32 million in 1977. However, Florida's trust fund remained solvent and the loans were never drawn down. With the exceptions of 1976 and 1977, Florida had never sought a federal loan, making this state one of only a few to avoid serious and chronic problems with trust fund insolvency.[25]

However, due to the current economic climate and increased demand on the UC Trust Fund, the trust fund fell into deficit in August 2009. AWI began the request process in July for an advance from the federal government in order to maintain the solvency of the trust fund. As of February 12, 2010, the state has requested over $1.2 billion in federal advances in order to continue to fund unemployment compensation claims.[26]

Advances are requested prior to the quarter in which they are needed and for 3-month periods at a time. The USDOL evaluates the state's request and sends a confirmation letter that provides the authorized amount that Florida may borrow and the authorization period. The state may not borrow more funds than the authorized amount. The state will only draw down, or borrow, funds as needed to pay UC benefits.

Advance monies may only be used to pay UC benefits. For example, if an employer is due a credit for overpayment of UC taxes, the employer cannot be repaid until the trust fund is replenished with funds other than advance monies.

The state may make repayments of the principal amount of the advance voluntarily by notifying USDOL by letter of the amount and effective repayment date. Repayments are made on a last made, first repaid basis.

Federal Advance – FUTA Credit Loss

After a state UC trust fund borrows from the USDOL, if the loan becomes delinquent, the federal tax credit for the state's employers is reduced until the loan is repaid (reduced by 0.3 percent for each year).[27] This serves as a sort of automatic loan repayment – the taxes collected due to the credit reduction go towards repayment of the principal amount of the state's advances. Thus,

[24] U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 2/8/2010).
[25] Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009).
[26] See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 2/8/2010).
[27] If a state has an outstanding loan balance on January 1 for 2 consecutive years, then the entire loan must be repaid before November 10 of the second year or the credit reduction will begin.

employers in states with insolvent trust funds are faced with multiple tax increases: increased state UC taxes to restore solvency of the state UC trust fund, and increased federal taxes to repay federal loans. In addition, any grants related to the costs of administration held in the UC trust fund do not earn interest.

It is anticipated that Florida employers will experience a partial loss of the federal UC tax credit beginning on January 1, 2012, due to the existence of an outstanding federal advance. The credit reduction continues and escalates until such time as the loan is fully repaid.[28] The Office of Economic and Demographic Research (EDR) estimated that the first repayment to the federal government through the loss of the federal credit would be $149.3 million in January 2012, $311.3 million in January 2013, and $486.4 million in January 2014 (see Table 2a).[29]

States with outstanding loans may seek relief from the loss of the federal UC tax credit. If specific requirements are met, then a cap (or limit) on the credit reduction may be put in place. These requirements are:

- The state did not take any action in the prior year that would diminish the solvency of the state fund;
- The state did not take any action in the prior year that would decrease the state's unemployment tax effort;
- The average tax rate for the taxable year exceeds the 5-year average benefit cost rate; and
- The state's outstanding loan balance as of September 30 of the tax year is not greater than that for the third preceding September 30.[30]

Federal Advance – Interest

Loans to state UC trust funds accrue interest charges with an annual interest rate of up to 10 percent. Interest accrues on a federal fiscal year basis (October to September), and is due no later than September 30 each year. The interest rate charged is equal to the fourth calendar quarter yield on the Unemployment Trust Fund for the previous year, capped at 10 percent. Interest rates for past years have been:[31]

4th Quarter Year	**Year Applied**[32]	**Rate**
2009	(*2010*)	4.36%
2008	(*2009*)	4.64%
2007	2008	4.81%
2006	2007	4.66%

The interest due on advances cannot be paid from funds from the UC Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose a surcharge on employers.[33]

[28] USDOL Webinar on Title XII Advances, August 10, 2009 (slides on file with the Senate Commerce Committee).
[29] Unemployment Compensation Trust Fund, Current Law Forecast, Office of Economic and Demographic Research, Revised February 16, 2010, on file with the Senate Commerce Committee.
[30] Unemployment Compensation: Federal-State Partnership, page 7, available at http://ows.doleta.gov/unemploy/pdf/partnership.pdf (last visited 2/10/2010).
[31] U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Unemployment Trust Funds Quarterly Yields, available at http://www.treasurydirect.gov/govt/rates/rates_tfr.htm (last visited 2/8/2010).
[32] Interest was not charged in 2009 and will not be charged in 2010.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) effectively waives interest accrued on advances until December 31, 2010.[34] Beginning January 1, 2011, interest will begin to accrue on any loans that Florida has not yet repaid.[35] The EDR estimated that interest payments will be $77.8 million in FY 2011-2012, $96.2 million in FY 2012-2013, and $46.7 million in FY 2013-2014.[36]

States may apply to USDOL for deferrals of interest for loans in certain situations. These include:[37]

- Interest may be deferred, to December 31 of the following calendar year, for loans made in the last 5 months of the federal fiscal year (May-September). Interest accrues on the delayed interest payment.
- States with an average total unemployment rate (TUR) of 13.5 percent or greater for the most recent 12-month period for which data are available may delay payment of interest for a grace period not to exceed 9 months. Interest does not accrue on the delayed interest payment.
- States with an average insured unemployment rate (IUR) of 7.5 percent or greater during the first 6 months of the preceding calendar year may pay interest in four annual installments of 25 percent per year. Interest does not accrue on the deferred interest payments.

If the interest is not paid when due, the federal government will not certify the state program and can withhold all administrative funding. Additionally, employer tax rates would jump to the total federal tax of 6.2 percent because Florida employers would lose the entire FUTA tax credit (5.4 percent).[38]

Temporary State Extended Benefits

Chapter 2009-99, F.S., in part, authorized and created a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds under the Recovery Act.[39] Florida's temporary state extended benefits program was effective between February 1, 2009, and January 2, 2010.[40] Temporary state extended benefits triggered "on" on February 1, 2009, and triggered "off" on December 12, 2009. The related Recovery Act 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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[33] It does not appear that the option of issuing bonds to repay the interest is available to Florida. See Art. VII, s. 11, Fla. Const.
[34] Section 2004, Public L. No. 111-5.
[35] However there is debate on whether or not the federal government will decide to extend the interest waiver beyond 2010.
[36] Assumes an interest rate of 5 percent. Unemployment Compensation Trust Fund, Current Law Forecast, Office of Economic and Demographic Research, Revised February 3, 2010, on file with the Senate Commerce Committee.
[37] Unemployment Compensation: Federal-State Partnership, page 8, available at http://ows.doleta.gov/unemploy/pdf/partnership.pdf (last visited 2/10/2010).
[38] Id. Because the state UC program would not be certified, there would be no state UC tax in this situation.
[39] Section 443.1117, F.S. See ss. 4, 5, and 7, ch. 2009-99, L.O.F.
[40] 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.

The Recovery Act provided that the federal government would pay 100 percent of payments to former private sector employees through May 29, 2010 (for claimants that qualified by December 26, 2009).[41] Florida already had an extended benefits program in statute,[42] but in order to participate in the Recovery Act 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).

Under the Recovery Act program, after December 26, 2009, 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 January 2, 2010.

As with the state extended benefits program under s. 443.1115, F.S., applicants must have met the heightened requirements for searching for work. Additionally, individuals receiving temporary state extended benefits were still eligible to receive the separate $25 additional benefits payment for the duration of their extended benefits period.

In December, Congress extended, from January 1 to February 28, the time that the federal government would fund 100 percent of state extended benefits for former private sector employees.[43]

III. Effect of Proposed Changes:

Temporary Extended Benefits Program

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 January 2, 2010, and the CS revives this section through February 27, 2010, in order for Floridians to be eligible for 100 percent federal funding for an additional 8 weeks of temporary extended benefits for former private sector employees.

In December, Congress extended from January 2, 2010, to February 27, 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 8 weeks for claimants. These benefits are not charged to employers and have no effect on an employer's experience rating. Approximately 15,000 Floridians would benefit from this change to Florida law.

Section 1 is effective upon becoming a law, retroactive to January 2, 2010, and expires on February 27, 2010.

[41] Section 2005, Public L. No. 111-5.
[42] Section 443.1115, F.S.
[43] Pub. L. No. 111-118.

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 February 27, 2010.

Unemployment Compensation Tax Rates

Unemployment compensation benefits are financed by a tax on employers' payrolls. Employers will be subject to lower rates of taxation for UC benefits for the next 2 years because the CS, in ss. 3 and 4, lowers the taxable wage base to $7,000 and suspends calculation of the positive adjustment factor for 2 years (2010 – 2011).

For 2012 – 2014, employers will be subject to higher rates of taxation for UC benefits (back to projected rates required by current law):

- Employers will be taxed on an additional $1,500 for contributions;
- The positive adjustment will be calculated, and if triggered "on" (as forecasted), will remain in effect until the fund balance equals or is in excess of 5 percent. Further, the recoupment period will be 3 years instead of 4 years; and
- The rate on taxable payroll will not be negatively adjusted until January 1, 2015, provided there are no outstanding federal advances.

In 2015, providing that all federal advances have been repaid, employers will experience a decrease in UC tax rates, but less of a decrease than forecasted under current law. Current law provides for certain changes to the way employers taxes are calculated, including:

- Lowering the taxable wage base to $7,000 (unless federal advances are outstanding, in which case the taxable wage base remains at $8,500 until the advances are repaid);
- Increasing the recoupment period for the positive adjustment factor to 4 years; and
- Providing for the calculation of the negative adjustment factor if the balance of the trust fund equals or exceeds 5 percent of the previous years' taxable wages.

Specifically, Section 3 amends s. 443.1217, F.S., to reduce the taxable wage base from $8,500 to $7,000 for 2 years. This section provides for an increase in the taxable wage base back up to $8,500 in 2012. These changes will have the effect of reducing employer's unemployment compensation taxes for 2010 and 2011.

Under current law provisions, the wage base returns back to $7,000 in 2015. However, the CS limits this decrease in the wage base: in any year in which there are federal advances outstanding, the wage base is $8,500, consistent with the wage base used in 2012 through 2014.

Other changes to s. 443.1217, F.S., are made to make the section easier to read.

Section 4 amends s. 443.131, F.S., in part, to suspend the Unemployment Compensation Trust Fund positive adjustment factor for the next 2 years. Regardless of the balance in the Unemployment Compensation Trust Fund, no rate increase will be triggered since the positive adjustment factor will not be applied. The factor is effective again beginning January 1, 2012, with a 3-year recoupment period and then returns to a 4-year recoupment period under current law provisions, on January 1, 2015. These changes will have the effect of reducing employer's unemployment compensation taxes for 2010 and 2011.

The CS amends the definition of "taxable payroll" to mean the wage base as set in s. 443.1217, F.S., beginning in 2012. Additionally, the CS provides direction to DOR for calculating employer rates for 2012 and 2013.

This section also provides for payment of interest on federal advances through an additional employer assessment. The Revenue Estimating Conference is charged with estimating the interest amount by December 1 of the year prior to the due date for the interest payment. The Department of Revenue must make the assessment prior to February 1 of the year the interest is due based upon a formula. To determine the additional rate for the assessment, the formula divides the estimated amount of interest owed by 95 percent of total wages paid by employers for the previous year ending June 30. To determine an employer's payment, the formula multiplies an employer's taxable wages by the additional rate. An employer has 5 months to pay the assessment, by June 30, and the assessment may not be paid by installment ("installment" discussed below in s. 5).

The first interest payment to the federal government will be due by September 30, 2011; the Governor or his designee directs DOR to make the interest payment. If the federal government postpones or forgives the interest due on the advances, the employer assessment is eliminated for that year. An assessment already paid will be credited to the employer's account in the UC Trust Fund. Further, if any provision interferes with the ability of the state to receive interest relief or prevents employers from qualifying for the FUTA tax credit, then that provision is invalid.

Assessments in the Audit and Warrant Clearing Trust Fund may earn interest and any interest earned will be part of the balance available to pay the interest to the federal government. Further, if there are any assessment funds left over after the federal advances have been repaid and the last interest payment to the federal government has been made, then such leftover money will be credited to employers who paid the assessment in that last year (via formula of employer's payment as a total of all payments times the amount of excess money).

Unemployment Compensation Payment Schedule

Currently, employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the $8,500 wage base to their employees in the first or second quarter of the year, making their annual UC payment due early in the year. The CS provides an alternative payment plan to employers who pay an administrative fee of up to $5 to participate in the new schedule.

Specifically, <u>Section 5</u> amends 443.141, F.S., to allow employers to spread payments for quarterly UC taxes due in 2010 and 2011 across the remaining quarters in the respective year. For example, the quarterly payment due for the first quarter of 2010 may be spread into four equal installments, payable in each remaining quarter in 2010 (due by April 30, July 31, October 31, and December 31). However, UC taxes due for the fourth quarters of 2010 and 2011 are due as normally incurred in order for Florida employers to retain their eligibility for the FUTA tax credit for their federal UC taxes. An employer may participate in the payment plan if the employer pays an administrative fee of up to $5 with the first installment payment.

Interest and penalties do not accrue so long as the employer complies with the statutory provisions. However, any penalties, interest, or fees that were due prior to this new schedule will continue to accrue as well as on any missed filings under the new schedule.

Section 6 provides budget authority to the Agency for Workforce Innovation and the Department of Revenue to implement the changes made in the CS.

Section 7 states that the Legislature finds that this act fulfills an important state interest.

Section 8 provides that this act shall take effect upon becoming a law and retroactive to June 29, 2010, unless otherwise specifically stated in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the 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 CS requires cities and counties to expend funds to pay state extended benefits for eligible former employees for an additional 8 weeks, the provisions of Section 18(a) of Article VII of the State 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 7 of the CS) 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 CS would impact "all persons similarly situated," this exception appears to apply.

Further, s. 18(d), Article VII of the 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 2009/10), are exempt. The additional 8 weeks of temporary state extended benefits provided in the CS are estimated to cost local governments $432,956. Consequently, it is 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 CS suspends the statutorily required tax increase on Florida's employers for 2 years, and spreads the costs associated with this suspension of tax rates into future years. (See Section III, Effect of Proposed Changes for details.)

Table 1a shows the tax rates required under current law. **Table 1b** shows the tax rates proposed by this CS.

Table 2a shows the projected trust fund balance, advances from the federal government necessary to meet the projected obligations to Florida's unemployed, and the cost of these advances to Florida employers if current law is unchanged. **Table 2b** shows the projected trust fund balance, advances from the federal government necessary to meet the projected obligations to Florida's unemployed, and the cost of these advances to Florida employers if the tax rates proposed by this CS are imposed, and all employers choose to pay in installments. **Table 2c** shows the projected trust fund balance, advances from the federal government necessary to meet the projected obligations to Florida's unemployed, and the cost of these advances to Florida employers if the tax rates proposed by this CS are imposed, and no employers choose to pay in installments.

Table 1a: UC Rates, Current Law

	State Tax			
	Minimum Tax Rate	Taxable Wage Base	Per Employee @ Minimum Rate	Per Employee @ Maximum Rate
2009	0.12%	$7,000	$ 8.40	$ 378.00
2010	1.18%	$8,500	**$ 100.30**	**$ 459.00**
2011	1.85%	$8,500	**$ 157.25**	**$ 459.00**
2012	2.27%	$8,500	$ 192.95	$ 459.00
2013	2.29%	$8,500	$ 194.65	$ 459.00
2014	1.99%	$8,500	$ 169.15	$ 459.00
2015	1.17%	$7,000	$ 81.90	$ 378.00
2016	0.87%	$7,000	$ 60.90	$ 378.00
2017	0.75%	$7,000	$ 52.50	$ 378.00
2018	0.70%	$7,000	$ 49.00	$ 378.00
2019	0.64%	$7,000	$ 44.80	$ 378.00

Estimates produced by the Office of Economic and Demographic Research (2/16/2010)

Table 1b: UC Rates, Proposed Bill

	State Tax			
	Minimum Tax Rate	Taxable Wage Base	Per Employee @ Minimum Rate	Per Employee @ Maximum Rate
2009	0.12%	$7,000	$ 8.40	$ 378.00
2010	0.36%	$7,000	**$ 25.20**	**$ 378.00**
2011	0.72%	$7,000	**$ 50.40**	**$ 378.00**
2012	1.93%	$8,500	$ 164.05	$ 459.00
2013	1.84%	$8,500	$ 156.40	$ 459.00
2014	1.59%	$8,500	$ 132.15	$ 459.00
2015	1.09%	$7,000	$ 92.65	$ 378.00
2016	0.96%	$7,000	$ 81.60	$ 378.00
2017	0.86%	$7,000	$ 60.20	$ 378.00
2018	0.75%	$7,000	$ 52.50	$ 378.00
2019	0.68%	$7,000	$ 47.60	$ 378.00

Estimates produced by the Office of Economic and Demographic Research (2/16/2010)

Table 2a: UC Trust Fund, Current Law						
(in millions)						
FY	**Taxes**	**Benefits**	**Ending UC Trust Fund Balance**	**Ending Federal Advances Balance**	**Additional Federal Tax Paid (due to credit loss)**	**Interest Due**
2009-10	$1,595.7	$2,958.4	-	$1,028.3	-	-
2010-11	$2,215.9	$2,906.8	-	$1,719.2	-	-
2011-12	$2,475.2	$2,506.7	-	$1,601.4	$149.3	$76.3
2012-13	$2,631.9	$2,051.2	-	$709.4	$311.3	$103.6
2013-14	$2,641.2	$1,841.8	$596.4	-	$486.4	$67.6
2014-15	$2,184.8	$1,767.3	$1,013.9	-	-	-
2015-16	$1,844.4	$1,729.0	$1,133.2	-	-	-
2016-17	$1,783.4	$1,698.7	$1,225.2	-	-	-
2017-18	$1,768.1	$1,646.4	$1,358.9	-	-	-
2018-19	$1,759.8	$1,554.3	$1,584.3	-	-	-
Totals	-	-	-	-	$947.0	$247.5
Estimates produced by the Office of Economic and Demographic Research (2/16/2010)						

Table 2b: UC Trust Fund, Proposed Bill - Installment Payments						
(in millions)						
FY	**Taxes**	**Benefits**	**Ending UC Trust Fund Balance**	**Ending Federal Advances Balance**	**Additional Federal Tax Paid (due to credit loss)**	**Interest Due**
2009-10	$541.4	$2,958.4	-	$2,082.6	-	-
2010-11	$1,261.4	$2,906.8	-	$3,728.0	-	-
2011-12	$2,691.5	$2,506.7	-	$3,393.9	$149.3	$132.8
2012-13	$2,418.7	$2,051.2	-	$2,715.0	$311.3	$192.8
2013-14	$2,398.3	$1,841.8	-	$1,672.2	$486.4	$163.7
2014-15	$2,241.3	$1,767.3	-	$533.1	**$665.1**	$114.7
2015-16	$2,148.1	$1,729.0	$752.2	-	**$846.2**	$56.8
2016-17	$1,960.0	$1,698.7	$1,013.5	-	-	-
2017-18	$1,819.5	$1,646.4	$1,186.6	-	-	-
2018-19	$1,793.7	$1,554.3	$1,426.0	-	-	-
Totals	-	-	-	-	$2,458.3	$660.8
Estimates produced by the Office of Economic and Demographic Research (1/2010)						
Assumes all employers elect to pay in installments.						

Table 2c: UC Trust Fund, Proposed Bill - No Installment Payments						
(in millions)						
FY	Taxes	Benefits	Ending UC Trust Fund Balance	Ending Federal Advances Balance	Additional Federal Tax Paid (due to credit loss)	Interest Due
2009-10	$1,104.8	$2,958.4	-	$1,519.2	-	-
2010-11	$1,362.0	$2,906.8	-	$3,064.0	-	-
2011-12	$2,027.5	$2,506.7	-	$3,393.9	$149.3	$119.1
2012-13	$2,418.7	$2,051.2	-	$2,715.0	$311.3	$188.7
2013-14	$2,398.3	$1,841.8	-	$1,672.2	$486.4	$163.7
2014-15	$2,241.3	$1,767.3	$871.5	$533.1	**$665.1**	$114.7
2015-16	$2,148.1	$1,729.0	$752.2	-	$846.2	$56.8
2016-17	$1,960.0	$1,698.7	$1,013.5	-	-	-
2017-18	$1,819.5	$1,646.4	$1,186.6	-	-	-
2018-19	$1,793.7	$1,554.3	$1,426.0	-	-	-
Totals	-	-	-	-	$2,458.3	$643.0
Estimates produced by the Office of Economic and Demographic Research (2/16/2010)						
Assumes no employers elect to pay in installments.						

Again, the CS provides short term relief to employers which will result in higher total tax rates in the future, greater borrowing from the federal government to pay projected benefits, and more interest due to the federal government on that borrowing than under current law. Delaying restoration of a positive fund balance increases the fund's vulnerability to further shortfalls should another national or state economic recession occur within the next several years.

The CS also imposes an additional assessment on employers to pay the interest due on federal advances. The first interest payment to the federal government will be due in September 2011. Under current law, the first interest payment to be made totals $76.3 million; the additional assessment on employers, as a per employee average, would be about $10.44 per employee to pay the interest due.[44] Under the proposed CS, the first interest payment to be made increases to $132.8 million; the additional assessment on employers, as a per employee average, would be about $16.68 per employee to pay the interest due.[45]

B. Private Sector Impact:

See Tax/Fee Issues.

[44] Office of Economic and Demographic Research estimate, 2/16/ 2010.
[45] Office of Economic and Demographic Research estimate, 2/16/ 2010.

According to data from the Office of Economic and Demographic Research (2/16/2010), the changes proposed by the CS will result in reduced unemployment compensation taxes collected and deposited into the Unemployment Compensation Trust Fund as follows: FY 2009-2010, $490.9 million; FY 2010-2011, $853.9 million; FY 2011-2012, $447.7 million; FY 2012-2013, $213.2 million; and FY 2013-2014, $242.9 million (see Table 2c).

The CS also imposes an additional assessment on employers to pay the interest due to the federal government. The greater amount of borrowing from the federal government due to the proposed changes in the CS results in increased interest costs, as forecasted by the Office of Economic and Demographic Research (2/16/2010), of: $132.8 million in FY 2011-2012; $192.8 million in FY 2012-2013; $163.7 million in FY 2013-2014; $114.7 million in FY 2014-2015; and $56.8 million in FY 2015-2016 (see Table 1b).

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 8 additional weeks of state unemployment benefits. This will come at no cost to private employers and will not affect their contribution rates. The cost will be covered 100 percent by the Federal stimulus funds and is estimated at $22 million.

C. Government Sector Impact:

Related to the tax changes, the Department of Revenue estimates the following costs to implement the unemployment compensation tax changes: $903,462 in FY 2009-2010; $1.2 million in FY 2010-2011; $677,130 in FY 2011-2012; and a recurring impact of $387,700. For FY 2009-2010, these costs will be paid in portion from unemployment compensation administrative resource grants received from the federal government through the Agency for Workforce Innovation (FY 2009-2010, $643,862); the administrative fee of up to $5 is anticipated to fund the remaining costs (approximately FY 2009-2010 $259,600).

The total cost in FY 2009-2010 includes:

- Related to recalculation of rate and disregard of the tax trigger:
  - $188,527 in nonrecurring costs for tax information publication printing and mailing;
  - $287,752 in nonrecurring costs for the redesign of 12 unemployment tax forms;
  - $9,600 in nonrecurring costs related to calculation of the tax rates;
- Related to payments for UC taxes described in section 5 of the CS:
  - $259,600 in nonrecurring costs for coupon books for the payments;
  - $108.000 in nonrecurring costs to modify the SUNTAX system;
  - $12,000 in nonrecurring costs related to processing payments; and
  - $37,983 in nonrecurring costs related to taxpayer services.

The total cost in FY 2010-2011 includes:

- Related to the interest assessment:
  - $222,500 in recurring costs for assessment forms;
  - $165,200 in recurring costs related to processing the payments; and
  - $74,000 in nonrecurring costs to modify the SUNTAX system;
- Related to payments for UC taxes described in section 5 of the CS:
  - $259,600 in nonrecurring costs for coupon books for the payments;
  - $289,430 in nonrecurring costs related to processing payments; and
  - $189,917 in nonrecurring costs related to taxpayer services.

The nonrecurring cost included in the FY 2011-2012 implementation estimate by DOR is $289,430 related to processing payments for UC taxes described in section 5 of the CS.

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 $612.633, approximately $180,000 from state funds and $433,000 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.

The State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, included payments from the General Revenue Fund of $126.9 million in FY 2011-2012 and $199.4 million in FY 2012-2013 to cover the interest due from federal advances as a "Critical Need."[46] The additional employer assessment to pay the federal advance interest eliminates this as a "Critical Need" in the long range outlook, and thus no payment from the General Revenue Fund is required. The estimated interest costs due to changes made by the CS are: $132.8 million in FY 2011-2012; $192.8 million in FY 2012-2013; $163.7 million in FY 2013-2014; $114.7 million in FY 2014-2015; and $56.8 million in FY 2015-2016 (see Table 2b).

VI. Technical Deficiencies:

None.

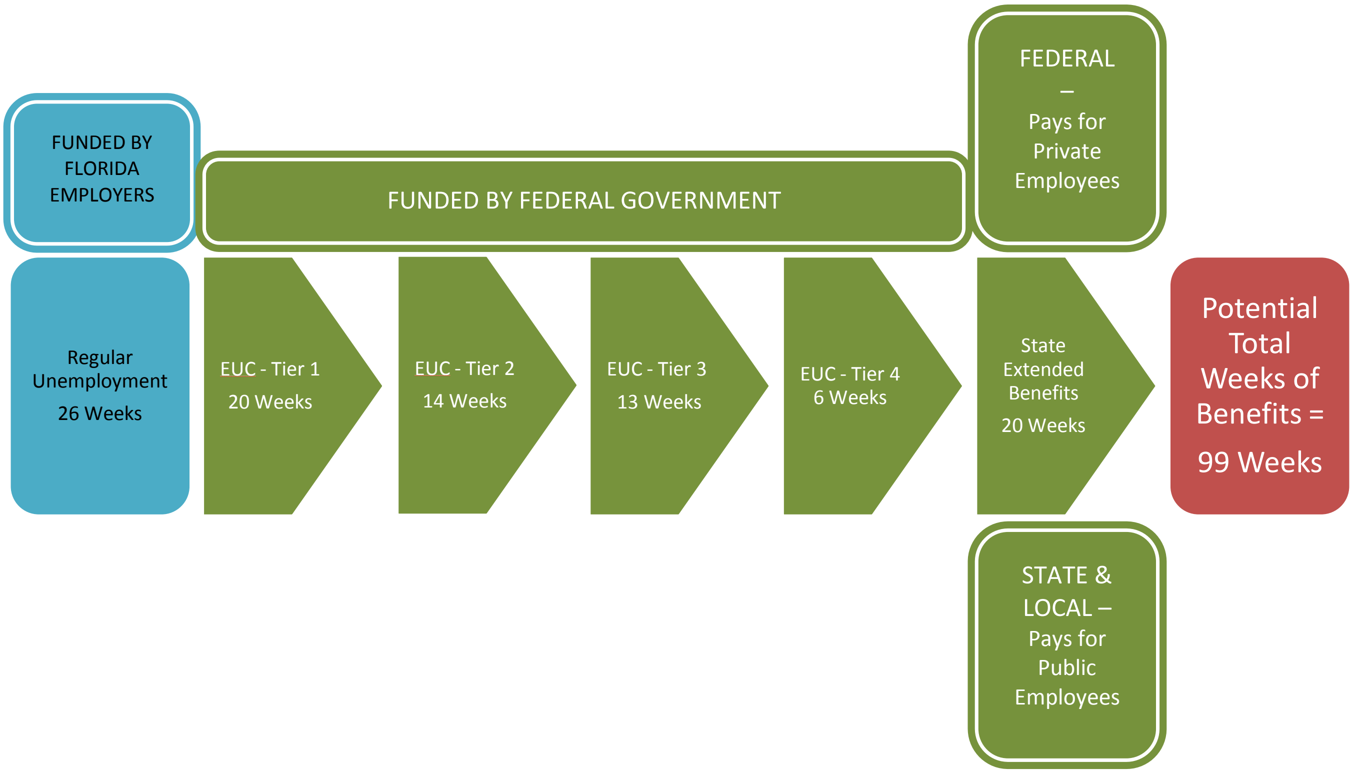
VII. Related Issues:

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 February 28, 2010. Individuals establishing benefit entitlement as of that date can continue to collect EUC through July 31, 2010.

[46] State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, adopted 9/15/2009 by the Legislative Budget Commission, pp. 10, 62, 108, available at http://www.flsenate.gov/data/publications/2009/Senate/reports/Long-RangeFinancialOutlook2010-2013.pdf (last visited 2/11/2010). These costs were updated by the Office of Economic and Demographic Research (2/16/2010, see Table 2a) to $76.3 million in FY 2011-2012; $103.6 million in FY 2012-2013; and $67.6 million in FY 2013-2014.

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."[47] EUC was first established in 2008, expanded in November 2008, extended in February 2009 (Recovery Act), further expanded in November 2009, and most recently extended in December 2009. There is currently a bill under consideration in Congress which could extend these federally funded programs, including temporary state extended benefits, an additional time.[48]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce Committee on February 16, 2010:

The CS differs from the bill as filed in the following ways:

- Limits the decrease in the taxable wage base in 2015 to $8,500 if there are federal advances outstanding;

[47] USDOL, Emergency Unemployment Compensation 2008 (EUC) Program, available at http://ows.doleta.gov/unemploy/pdf/euc08.pdf (last visited 2/8/2010).

[48] H.R. 2847 (111th Congress). This is often referred to as the Jobs for Main Street Act, 2010.

- Defines “taxable payroll” beginning January 1, 2012;
- Provides direction to DOR for the rate-calculations in 2012 and 2013;
- Clarifies that s. 443.141(1)(d) and (e), F.S., do not apply to the separately collected assessment to pay the federal interest on advances;
- Clarifies that the Governor or the Governor’s designee directs DOR to make the interest payment to the federal government;
- Provides for assessments in the Audit and Warrant Clearing Trust Fund may earn interest and any interest earned will be part of the balance available to pay the interest to the federal government;
- Clarifies that after all interest has been paid and there are no more federal advances due, any money left over from the additional assessment is to be credited to the accounts of employers who paid the assessment that year
- Requires employers who elect to pay by installment payments to pay an administrative fee of up to $5 to participate; and
- Decreases the appropriation to DOR and from AWI.

B. Amendments:

None.