

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 Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations

BILL: CS/CS/SB 1416

INTRODUCER: Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Commerce and Tourism Committee; and Senators Bogdanoff and Benacquisto

SUBJECT: Unemployment Compensation

DATE: March 1, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Hrdlicka | Hrdlicka | CM | Fav/CS |
| 2. | Martin | Meyer, R. | BTA | Fav/CS |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1416 rebrands the state’s unemployment compensation program in ch. 443, F.S., as the reemployment assistance program.

The CS makes additional changes, including:

- Requiring the Department of Economic Opportunity (DEO) to establish a numeric score on the initial skills review which demonstrates a minimum proficiency in workforce skills. Individuals who fall below the minimum score may elect to take workforce skills training, and DEO is required to develop best practices, evaluate the training, and report findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013;
- Clarifying that individuals who are non-Florida residents, on temporary layoffs, union members, or participating in short-time compensation plans are not required to complete the initial skills review;
- Reducing the number of required work search contacts from 5 to 3 to individuals who live in small counties;

- Clarifying work search requirements for union members and individuals on temporary layoffs or participating in short-time compensation plans;
- Increasing the period of disqualification for making a fraudulent claim from the time that the fraudulent claim was made until 1 year after DEO discovers the fraud or until all fraudulent overpayments are repaid in full;
- Applying certain restrictions on the payment of benefits to an individual employed by an educational institution to an individual who provides services to an educational institution through a contract between the individual's employer and the institution (effective July 1, 2013);
- Extending the statute of limitations related to the collection of overpayments by providing that the commencement of collections must be initiated within 7 years after the redetermination or decision;
- Authorizing DEO to noncharge the accounts of employers that are forced to lay off workers due to a man-made disaster of national significance;
- Clarifying what constitutes prima facie evidence that a person claimed and received benefits; and
- Incorporating federal provisions relating to the release of confidential information.

The CS also allows employee leasing companies to make a one-time decision to change from reporting leased employees under their company account to reporting the employees under their respective clients' accounts, an option that could result in lower taxes for those companies choosing to change.

Related to unemployment compensation contributions, the CS provides tax relief to Florida employers. The CS lowers the wage base by \$500 from \$8,500 to \$8,000 for tax years 2012 through 2014. The CS also changes the recoupment period used in the calculation from 3 years to 5 years until tax year 2018. The CS also creates a work group to study the contribution tax calculation and provide recommendations for changes to the calculation that ensure the long-term solvency of the reemployment assistance program while promoting equitable, minimal tax burdens on Florida employers. The work group must report back to the Legislature with recommendations by December 31, 2012.

Further, the CS codifies the executive order extending the temporary state extended benefits program.

The CS provides budget authority for DOR to implement the provisions of the CS. DOR is allocated \$346,463 in FY 2011-12, and \$100,884 in FY 2012-13 from the federal administrative funds for the unemployment program.

This CS amends the following sections of the Florida Statutes: ss. 443.011, 443.012, 443.036, 443.051, 443.071, 443.091, 443.101, 443.111, 443.1113, 443.1116, 443.1215, 443.1216, 443.131, 443.1113, 443.131, 443.1312, 443.1313, 443.1315, 443.1316, 443.1317, 443.141, 443.151, 443.163, 443.171, 443.1715, 443.17161, 443.181, 443.191, 443.221, 20.60, 27.52, 40.24, 45.031, 55.204, 57.082, 61.046, 61.1824, 61.30, 69.041, 77.041, 110.205, 110.502, 120.80, 125.9502, 212.096, 213.053, 216.292, 220.03, 220.181, 220.191, 220.194, 222.15, 222.16, 225.20, 288.075, 288.1045, 288.106, 288.1081, 288.1089, 334.30, 408.809, 409.2563,

409.2576, 414.295, 435.06, 440.12, 440.15, 440.381, 440.42, 445.009, 445.016, 446.50, 448.110, 450.31, 450.33, 468.529, 553.791, 624.509, 679.4061, 679.4081, 895.02, 896.101, 921.0022, 946.513, 946.523, 985.618, 1003.496, 1008.39, and 1008.41, F.S.

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

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. 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.¹ The program is administered as a partnership of the federal government and the states.² The individual states collect unemployment compensation (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).³ 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.⁴

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.⁵ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's UC laws, primarily through its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.⁶

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.⁷ Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.⁸

¹USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 1/20/2012).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ FUTA is codified at 26 U.S.C. 3301-3311.

⁴ USDOL, ETA, Unemployment Insurance Tax Topic, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 1/20/2012).

⁵Chapter 18402, L.O.F.

⁶ Section 443.1316, F.S.

⁷ Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.

⁸ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. 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.

Determinations and Redeterminations

DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁹ Determinations and redeterminations are statements by the department regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account.

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by DEO that the individual:¹⁰

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Takes and completes the initial skills review;
- Is able to and available for work;¹¹
- Contacts at least 5 prospective employers each week or reports to the One-Stop Career Center for reemployment services;
- 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 DEO.

The law does not distinguish between part-time and full-time work with respect to benefits. With respect to the requirements of being able to work and available for work, Rule 60BB-3.021(2), F.A.C., provides that in order to be eligible for benefits an individual must be able to work and available for work during the major portion of the individual's customary work week. Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.

Initial Skills Review

Claimants are required to participate in an initial skills review. The administrator or operator of the online education or training program is required to report to DEO that the individual has taken the initial skills test for benefit eligibility purposes, and to the regional workforce board or One-Stop Career Center the results of the initial skills test for purposes of reemployment

⁹ Section 443.151(3), F.S.

¹⁰ Section 443.091(1), F.S.

¹¹ "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. See s. 443.036(1) and (6), F.S. Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work. See Rule 60BB-3.021, F.A.C.

services. The regional workforce board is required to develop a plan to use the initial skills review to refer individuals training and employment opportunities.¹²

An initial skills review is an online education or training program, like Florida Ready to Work,¹³ that is approved by DEO and designed to measure an individual's mastery of workplace skills.¹⁴

Florida Ready to Work is an employee credentialing program that is funded by the state.¹⁵ To participate, individuals must first go to a local assessment center to sign up for the program. Once signed up, an individual may take the initial skills review at the assessment center or online at any location with Internet access. The assessment measures general skills necessary for 90 percent of all jobs in three areas: locating information, reading, and applied math. All the questions are based on workplace scenarios. After taking the initial skills review, an individual may take additional course material to try to improve his or her skills. An individual who completes the entire program may receive a Florida Ready to Work Credential to use as a tool when applying for jobs. This program is provided to Floridians at no cost.

DEO has contracted with Worldwide Interactive Network (WIN), the contractor for Florida Ready to Work, to provide the initial skills review required by the unemployment statute.¹⁶ The Florida Ready to Work initial skills review is integrated into the process of applying for benefits to provide a streamlined process. The total cost of contracting with WIN for the initial skills review is \$10 million for FY 2011-12; however WIN provided DEO with an \$8 million discount, making the actual cost \$2 million.¹⁷ The Florida Ready to Work program was funded by \$3 million in General Revenue and \$2 million from the Workers' Compensation Administration Trust Fund in FY 2011-12.¹⁸

Reemployment

To maintain eligibility for benefits, an individual must be ready, willing, and able to work and must be actively seeking work. 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. DEO 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

¹² Section 443.091(1)(c), F.S.

¹³ Section 445.06, F.S.

¹⁴ Section 443.036(26), F.S.

¹⁵ Website available at <http://floridareadytowork.com/> (last visited 1/20/2012). The 2006 Florida Legislature created the Florida Ready to Work Certificate Program to enhance the workplace skills of Florida's students to better prepare them for successful employment in specific occupations. See s. 35, ch. 2006-74, L.O.F. A student who earns a Ready to Work Credential (credential) will be considered equipped with the skills to enter the workforce. Any Florida student or resident is eligible to earn the credential. Prior to FY 2011-12 the program was administered by the Florida Department of Education (DOE), Division of Workforce Education, in cooperation with Worldwide Interactive Network (WIN) and the nationally recognized ACT® WorkKeys program.

¹⁶ The 2011 Florida Legislature transferred the Ready to Work Certificate Program from the DOE to the newly created Department of Economic Opportunity (DEO). See ss. 5 and 476, ch. 2011-142, L.O.F.

¹⁷ Contract on file with the Senate Commerce and Tourism Committee. With other costs, such as additional training and certifications available, the total cost of the Florida Ready to Work Program under the contract is \$5 million.

¹⁸ See s. 2, Specific Appropriation 98, ch. 2011-69, L.O.F. Of these funds, \$2.3 million from the General Revenue Fund was provided from recurring funds, and the remainder of both funds was provided from nonrecurring funds.

other related services provided by One-Stop Career Centers operated by local regional workforce boards.¹⁹

DEO's website provides links to local, state, and national employment databases.²⁰ Claimants are automatically registered with their local One-Stop Career Center when their claims are filed and are required to report to the One-Stop Career Center as directed by the regional workforce board for reemployment services.²¹ 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.²² Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).²³

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;²⁴
- Failing to apply for available suitable work when directed by DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;²⁵
- Making false or fraudulent representations in filing for benefits;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work; and
- Discharge from employment due to drug use or rejection from a job offer for failing a drug test.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

¹⁹ Rule 60BB-3.011(12), F.A.C.

²⁰ For example, on www.fluidnow.com, where individuals can claim their weeks online.

²¹ Section 443.091(1)(b), F.S.

²² Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and DEO. It provides job-matching and workforce resources. <https://www.employflorida.com>.

²³ 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 REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

²⁴ An individual is not disqualified for voluntarily leaving temporary work to return to full time work or to relocate with his or her military spouse due to relocation orders. An individual who voluntarily quits work for a good *personal* cause not related to any of the conditions specified in the statute will be disqualified from receiving benefits.

²⁵ Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

Collection of Overpayments

Current law provides several options for the state to recoup overpaid unemployment benefits, including, but not limited to, wage garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency.²⁶ Any recovery or recoupment of benefits must be effected within 5 years of a redetermination or decision for cases involving fraud, and within 3 years for all other cases of overpayments.

Financing Unemployment Compensation

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 \$2 billion in federal advances in order to continue to fund unemployment compensation claims.²⁷

The decline in the balance of the trust fund, poor economic conditions, decrease in the number of employers and employees, and increasing unemployment rates have 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 its own taxable wage base and rate. The funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.²⁸ The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.²⁹ 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.³⁰ An employer's initial state tax rate is 2.7 percent.³¹ 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.³² The adjustment in the tax rate is determined by calculating several factors, including benefit charges associated with the employer, socialized costs,³³ and the balance of the UC Trust Fund.

²⁶ Section 443.151(6), F.S.

²⁷ 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_advactivitiesched.htm (last visited 2/28/2018).

²⁸ Section 443.191, F.S.

²⁹ 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.

³⁰ In 2015, the taxable wage base decreases to \$7,000. s. 443.1217(2), F.S.

³¹ Section 443.131(2)(a), F.S.

³² Section 443.131(2)(b) and (3)(d), F.S.

³³ Socialized costs include the noncharge ratio (benefits not attributable to any employer over the last 3 years, also called "overpayments"), the excess payments ratio (that portion of benefit charges which exceed the maximum rate of 5.4 percent), and the fund size factor (requires the trust fund maintain a certain balance, discussed below as "triggers"). 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 2/28/2012).

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 \$7,000 wage base to their employees in the first or second quarter of the year, making their total UC payments due early in the year. Employers are permitted to spread the payment of their quarterly state UC taxes in installments over the year for tax years through 2014.³⁴

State Unemployment Compensation Contribution – 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.³⁵

The basis for the adjustment factors is the level of the trust fund on September 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.

For tax years 2010 and 2011, the Legislature turned the trust fund trigger "off" to avoid a significant rate increase for employers.³⁶

Federal Unemployment Compensation Contributions and Advances

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6 percent on employees' annual wages.³⁷ 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 file an annual return with the Internal Revenue Service each January for taxes on the first \$7,000 of each employee's annual wages during the previous year.

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.

³⁴ Section 4, ch. 2010-1, L.O.F. Section 443.141(1)(e), F.S. 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.

³⁵ 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.

³⁶ Section 3, ch. 2010-1, L.O.F.

³⁷ 26 U.S.C. s. 3301 (2009).

However, Florida employers experienced a partial loss of the federal UC tax credit for wages paid in 2011, due to the existence of an outstanding federal advance. Florida employers had to pay an additional \$150 million to the federal government due to the 0.3 percent credit reduction. However, this extra money paid 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.

Because the credit reduction continues and escalates until such time as the loan is fully repaid, for 2012 employers face a 0.6 percent credit reduction. The Office of Economic and Demographic Research (EDR) estimated that Florida employers will have to pay an additional \$306.5 million for wages paid in 2012.³⁸ The forecast estimates that the federal advances will be completely repaid by May 2013.

Additionally, the federal advances accrue interest that must be paid to the federal government. The interest due on advances cannot be paid from funds from the UC Trust Fund. In order to repay the interest, in 2010, the Legislature implemented legislation to pay interest on federal advances through an additional employer assessment.³⁹ In 2011, a total of \$56.1 million was paid in interest. The Revenue Estimating Conference, charged with estimating the interest amount due, estimated that about \$43.4 million will be due for 2012. Under current law, at this time there is no interest forecasted to be due in 2013.

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 increase to the total federal tax of 6.2 percent because Florida employers would lose the entire FUTA tax credit (5.4 percent).⁴⁰

Employee Leasing Companies

An employee leasing company is “a form of business entity engaged in an arrangement whereby the entity assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.”⁴¹ The leasing company provides services for the client companies, such as handling the filing of UC taxes and workers’ compensation. Under current law, employee leasing companies are required to report leased employees under the leasing company’s UC tax account and contribution rate.⁴²

Temporary State Extended Benefits

In 2009, the Legislature enacted a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds.⁴³ Under this program, the federal government

³⁸ See EDR’s November 2011 Trust Fund Forecast available at <http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/November2011ForecastSummary.pdf> (last visited 2/28/2012).

³⁹ Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.

⁴⁰ Because the state UC program would not be certified, there would be no state UC tax in this situation.

⁴¹ Department of Business and Professional Regulation, Board of Employee Leasing Companies, definitions, available at <http://www.myfloridalicense.com/dbpr/pro/emplo/codes.html> (last visited 1/21/2012).

⁴² Section 443.1216, F.S.

⁴³ 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.

pays 100 percent of temporary state extended benefits to former private sector employees. The federal funds are paid from a separate federal general revenue account and do not affect the balance of Florida's UC Trust Fund. There is no cost to private employers; however, "reimbursable" employers like state and local governments are not covered by the federal government and must pay for the benefits themselves. These benefits are not charged to employers and have no effect on an employer's experience rating.

Since the implementation of the temporary state extended benefits program in the American Recovery and Reinvestment Act of 2009, the existence of the program has been extended several times by the federal government. Most recently, in February 2012, Congress extended the eligibility window for Emergency Unemployment Compensation (EUC) and for state extended benefits through January 5, 2013.⁴⁴

Florida already had an extended benefits program in statute,⁴⁵ but in order to participate in the federal program, Florida had to enact a temporary state extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR).⁴⁶ Florida's regular state extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). In the past, the program has generally been set forth in state statute, adopted by the Legislature or extended by the Governor by executive order. Most recently, on January 6, 2012, Governor Scott signed an executive order extending the program after the federal bill extending benefits in December 2011 was signed into law.⁴⁷

III. Effect of Proposed Changes:

CS/CS/SB 1416 rebrands the state's unemployment compensation program in ch. 443, F.S., as the reemployment assistance program.

To make the rebranding changes, the CS amends the following statutes: ss. 443.011 (**Section 1**), 443.012 (**Section 2**), 443.036 (**Section 3**), 443.051 (**Section 4**), 443.071 (**Section 5**), 443.091 (**Section 6**), 443.101 (**Section 7**), 443.111 (**Section 8**), 443.1113 (**Section 9**), 443.1116 (**Section 10**), 443.1215 (**Section 11**), 443.1216 (**Section 12**), 443.131 (**Section 15**), 443.1312 (**Section 16**), 443.1313 (**Section 17**), 443.1315 (**Section 18**), 443.1316 (**Section 19**), 443.1317 (**Section 20**), 443.141 (**Section 21**), 443.151 (**Section 22**), 443.163 (**Section 23**), 443.171 (**Section 24**), 443.1715 (**Section 25**), 443.17161 (**Section 26**), 443.181 (**Section 27**), 443.191 (**Section 28**), 443.221 (**Section 29**), 20.60 (**Section 30**), 27.52 (**Section 31**), 40.24 (**Section 32**), 45.031 (**Section 33**), 55.204 (**Section 34**), 57.082 (**Section 35**), 61.046 (**Section 36**), 61.1824 (**Section 37**), 61.30 (**Section 38**), 69.041 (**Section 39**), 77.041 (**Section 40**), 110.205 (**Section 41**), 110.502 (**Section 42**), 120.80 (**Section 43**), 125.9502 (**Section 44**), 212.096 (**Section 45**), 213.053 (**Section 46**), 216.292 (**Section 47**), 220.03 (**Section 48**), 220.181 (**Section 49**), 220.191 (**Section 50**), 220.194 (**Section 51**), 222.15 (**Section 52**), 222.16 (**Section 53**), 225.20 (**Section 54**), 288.075 (**Section 55**), 288.1045 (**Section 56**), 288.106 (**Section 57**), 288.1081 (**Section 58**), 288.1089 (**Section 59**), 334.30 (**Section 60**), 408.809 (**Section 61**), 409.2563 (**Section 62**), 409.2576 (**Section 63**), 414.295 (**Section 64**), 435.06 (**Section 65**), 440.12 (**Section 66**), 440.15

⁴⁴ Pub. L. No. 112-96. See also Pub. L. No. 112-78 (extension in December 2011).

⁴⁵ Section 443.1115, F.S.

⁴⁶ Section 443.1117, F.S., expired January 4, 2012.

⁴⁷ Executive Order No. 12-03.

(Section 67), 440.381 (Section 68), 440.42 (Section 69), 445.009 (Section 70), 445.016 (Section 71), 446.50 (Section 72), 448.110 (Section 73), 450.31 (Section 74), 450.33 (Section 75), 468.529 (Section 76), 553.791 (Section 77), 624.509 (Section 78), 679.4061 (Section 79), 679.4081 (Section 80), 895.02 (Section 81), 896.101 (Section 82), 921.0022 (Section 83), 946.513 (Section 84), 946.523 (Section 85), 985.618 (Section 86), 1003.496 (Section 87), 1008.39 (Section 88), and 1008.41 (Section 89).

Section 3 also amends s. 443.036, F.S., to define “reemployment assistance” to mean, in part, cash benefits payable to individuals due to their unemployment.

Evidence of Receipt of Benefits

Section 5 amends s. 443.071, F.S., to clarify what constitutes prima facie evidence that a person claimed and received benefits. Specifically a transaction history generated by a password or other identifying code used by DEO to establish that claim for a week of benefits was made, together with documentation that payment was made by a state warrant, direct deposit, or onto a department-issued debit card, constitutes prima facie evidence that the person received benefits from the state.

Section 6 amends provisions in s. 443.091, F.S., related to the initial skills review and work search requirements.

Initial Skills Review

The CS requires DEO to prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills. Any individual who falls below the minimal proficiency score will be offered training opportunities, at no cost to the individual, to improve his or her workforce skills. DEO is required to work with WFI, the regional workforce boards, and the One-Stop Career Centers to develop best practices for skills improvement to such individuals. Further, DEO is required to evaluate the use, effectiveness, and costs associated with the voluntary training offered, and report the department’s findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013.

Additionally, the CS specifies that individuals who are non-Florida residents, on temporary layoffs, union members, or participating in short-time compensation plans are not required to complete the initial skill review.

Work Search Requirements

Under current law, most individuals receiving unemployment benefits are required to contact at least five potential employers each week. Individuals may also meet the work search requirement by reporting to a local one-stop career center to meet with a representative of the center for reemployment services.

Under the CS, individuals who live in small counties are only required to contact three potential employers each week.⁴⁸ Further, union members who customarily obtain employment through a

⁴⁸ The term “small counties” is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

union hiring hall may satisfy the work search requirement by reporting to their union hall. Further, the work search requirements do not apply to individuals on temporary layoffs or participating in short-time compensation plans.

Leased Employees to Educational Institutions

The CS provides that certain restrictions on the payment of benefits to an individual employed by an educational institution also applies to an individual who provides services to an educational institution through a contract between the individual's employer and the institution (**Section 6**). The restrictions apply only if the individual's employer reported the wages attributable to the services in the employer's quarterly wage reports. Such restrictions include that benefits are not payable between terms, such as summer break. However, this provision does not take effect until July 1, 2013.

Disqualification

Section 7 amends s. 443.101, F.S., to increase the duration of disqualification from receiving benefits for making fraudulent representations. Under current law, an individual who makes false or fraudulent representations to obtain benefits is disqualified from receiving benefits for 1 year from the date of discovery of the fraud by DEO. Under the CS, such individual is disqualified from the week in which the false or fraudulent representation is made until 1 year from the date of discovery of the fraud by DEO and until any overpayment of benefits resulting from such fraud has been repaid in full.

Employee Leasing Companies

Under current law, employee leasing companies are required to report leased employees under the leasing company's UC tax account and contribution rate.

Section 12 amends s. 443.1216, F.S., to allow the employee leasing company to report leased employees under the accounts of its clients for unemployment tax purposes only. The CS allows a one-time election to change an employee leasing company's reporting and contribution method. The leasing company is required to notify DOR of such election by July 1, 2012, and provide certain information. If the leasing company does not make a selection by July 1, then the company will not be able to change its reporting method and will continue to report leased employees under the leasing company's UC tax account and contribution rate.

Contribution Tax Relief

The CS attempts to provide relief to businesses for the 2012 through 2017 tax years.

Section 13 amends s. 443.1217, F.S., to lower the wage base by \$500 from \$8,500 to \$8,000 for tax years 2012 through 2014. Under current law, the wage base will reduce to \$7,000 in 2015 if there are no outstanding federal advances remaining.

Under current law, the contribution tax rate includes a portion intended to raise the balance of the Trust Fund to a certain solvency level over a certain period of time.

Section 14 amends s. 443.131, F.S., to change that recoupment period from 3 years to 5 years. Additionally, this factor is applied to the contribution tax rate until the balance of the trust fund equals 4 percent of total taxable wages for the year; under current law, this factor applies until

the balance is 5 percent of total taxable wages. Like current law, the recoupment period changes to 4 years, but in 2018.

These provisions are effective upon becoming law, and retroactive back to June 29, 2011.

Man-made Disasters

Section 15 also amends s. 443.131, F.S., to provide tax relief to employers by noncharging benefits paid to individuals who separated from work as a direct result of an oil spill, terrorist attack, or other similar disaster of national significance not subject to a federal declaration of disaster.

Recovery of Benefits

Section 22 also amends s. 443.151, F.S., to extend the period of time that DEO may seek recovery of benefits wrongly or incorrectly paid. Under current law, DEO must collect the benefits within 5 years of the determination that the benefits were wrongly or incorrectly paid, either due to fraud or other reason. Under the CS, DEO's recovery efforts must be commenced within 7 years of the determination that the benefits were wrongly or incorrectly paid. After commencing recovery efforts, DEO has an unlimited time to recover the benefits.

Confidentiality

Section 24 also amends s. 443.171, F.S., and **Section 25** also amends s. 443.1715, F.S., to incorporate federal provisions related to the release of confidential information released to the unemployment compensation program.

Temporary State Extended Benefits Program

Due to the extension of the 100 percent federal funding for the temporary state extended benefits program, **Section 90** revives, readopts, and amends s. 443.1117, F.S., to reflect such extension. The section expired on January 4, 2012.

This section is effective retroactive to January 4, 2012, and expires on January 5, 2013. The section contains an expiration date, because under the federal program, after January 5, 2013, any extended benefits paid will only be reimbursed by the federal government at a rate of 50 percent for former private sector employees making new claims. The CS sets a sunset date in enacting the program in order to take the best advantage of the program.

Section 91 clarifies that the temporary extended benefits will be available to unemployed Floridians who establish entitlement to extended benefits between January 4, 2012, and January 5, 2013.

Section 92 creates a work group to study the contribution tax calculation and provide recommendations for changes to the calculation that ensure the long-term solvency of the reemployment assistance program while promoting equitable, minimal tax burdens on Florida employers. Recommendations are limited to changes to the calculation, and may not include changes to eligibility for benefits or other portions of the reemployment assistance program.

Membership of the work group includes members of the business community, representatives from DOR and DEO, and a representative from each chamber of the Legislature. Members serve

without compensation, but may be reimbursed for travel and per diem expenses. Additionally, other staff of DOR and DEO may be assigned to the work group, as well as Legislative staff, to provide technical guidance and assistance.

The work group must begin meeting by July 15, 2012, and report back to the Legislature with recommendations by December 31, 2012.

This section is repealed January 31, 2013.

Section 93 provides for severability for any provision of the act which is held invalid.

Section 94 provides that this act fulfills an important state interest.

Section 95 provides an appropriation from the federal administrative funds to administer the program to DOR to implement the provisions of the CS. Specifically, for FY 2011-12 \$346,463 and for FY 2012-13 \$100,884 is appropriated to DEO from the Employment Security Administrative Trust Fund to use to contract with DOR to implement the provisions of the CS. These amounts are appropriated to DOR from the Federal Grants Trust Fund to implement the provisions of the CS.

This section takes effect upon becoming law.

Section 96, which is effective upon becoming law, provides an effective date for the act of July 1, 2012, unless otherwise expressed in the CS.

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 from January 2012 to January 2013, the provisions of Section 18(a), 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 94** 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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under current law, employers at the minimum rate are expecting to pay \$171 per employee and at the maximum rate \$459 per employee. While the Revenue Estimating Conference has not yet determined the impact of this CS, preliminary estimates by the Office of Economic and Demographic Research indicate that the provisions should reduce the burden to an estimated \$121 per employee at the minimum rate and \$432 per employee at the maximum rate.⁴⁹

An employee leasing company is allowed, under the CS, to make a one-time election to change the way it reports for purposes of the UC tax, by reporting under the account of its clients. A company will likely decide to make this election only if it is financially advantageous to the company. However, while potentially lowering a leasing company’s UC taxes, such election may have a negative effect on the balance of the UC Trust Fund. By changing its reporting method, the taxes due to the UC Trust Fund are likely to be less than when the leasing company was reporting under its own tax account. Additionally such a change may result in an increase in socialized costs, and thus higher taxes to other employers. The Office of Economic and Demographic Research estimated for the next three years an additional \$10.2 million increase for other employers in 2013, \$2.5 million in 2014, and \$5.7 million in 2015.

B. Private Sector Impact:

Employers subject to the contribution tax will likely pass less for contributions due in the 2012 tax year. DOR stated that about 460,000 employers are currently subject to the contribution tax.

Individuals who fraudulently or mistakenly receive unemployment benefits will be liable to repay DEO to a longer period of time.

⁴⁹ Data on file with the Senate Commerce and Tourism Committee.

Participation in the temporary state extended benefits program is expected to bring an estimated \$134.5 million in additional benefits to Florida and benefit 106,000 Floridians.⁵⁰ Payment of these benefits comes 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, non-profits, and other reimbursable employers are not covered by federal funds (see explanation below related to Government Sector Impact for impact on public employers).

C. Government Sector Impact:

Related to the provisions of the CS that affect the tax, the Department of Revenue estimates the following costs to implement the employee leasing company reporting option: \$115,485 in FY 2011-12; and an impact of \$65,084 in FY 2012-13. These costs are eligible for federal funding under FUTA.

The total cost in FY 2011-12 includes:

- Related to the employee leasing changes: \$285 in nonrecurring costs for tax information publication printing and mailing; and \$115,200 in nonrecurring costs to modify the SUNTAX system.
- Related to the changes to the tax contributions: \$230,978 in nonrecurring costs for 462,000 new tax rate notices with a tax information publication to be printed and mailed, and changes to modify the SUNTAX system.

The total cost in FY 2011-12 is \$65,084 to hire 2 OPS positions to process the elections to change reporting methods related to the employee leasing changes.

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. 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 extension enacted on December 2011 is estimated to cost a total of \$1.65 million, approximately \$250,000 from state funds and \$1.4 million from local government funds; and the extension enacted on February 22, 2012 is estimated to cost a total of \$1.8 million, approximately \$300,000 from state funds and \$1.5 million from local government funds.⁵¹ The state funds required would be paid by the various state entities whose former employees qualify for benefits during the extension period, and such funds would likely be provided from a mixture of state General Revenue Fund, state trust funds, and federal trust funds, depending on how the salaries and benefits of the entity's employees are funded. Because this liability for state agencies would be spread over many entities and several funds, the fiscal impact on any one agency is not likely to be significant.

⁵⁰ Estimate from the Department of Economic Opportunity, on file with the Senate Commerce and Tourism Committee.

⁵¹ Estimates from the Department of Economic Opportunity, on file with the Senate Commerce and Tourism Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations on February 28, 2012:

The committee substitute does the following:

- Provides that the restrictions on benefits payable to employees leased by educational institutions apply only if the individual's employer reported the wages attributable to the services in its quarterly wage reports;
- Lowers the wage base from \$8,500 to \$8,000;
- Reduces the impact of the trust fund balance on the tax calculation by increasing the recoupment period from 3 years to 5 years, and lowers the solvency amount that must be met before the factor removed from the contribution calculation (from 5 percent of total taxable wages to 4 percent);
- Creates a work group to study Florida's reemployment assistance contribution calculation and provide recommendations for changes to the calculation that ensure the long-term solvency of the reemployment assistance program while promoting equitable, minimal tax burdens on Florida employers;
- Updates the dates for the Temporary State Extended Benefits Program to reflect the recent extension by Congress of the program through the end of the year (H.R. 3630 (112th Congress), Pub. L. 112-96); and
- Allocates funds to DOR to implement the changes made by the CS.

CS by Commerce and Tourism on January 26, 2012:

The committee substitute does the following:

- Clarifies what constitutes evidence that a person claimed and received benefits;
- Instructs DEO, WFI, the regional workforce boards, and One-Stop Career Centers to develop best practices for the optional additional training for individuals who score below the minimum established by DEO for the initial skills review;
- Subjects individuals who provide services for an educational institution while working for a private employer to certain benefit limitations;
- Allows employee leasing companies to make a one-time decision to change from reporting leased employees under their company account to reporting the employees under their respective clients' accounts, an option that could result in lower taxes for those companies choosing to change; and
- Codifies the executive order by Governor Scott which allowed for the extension of the temporary extended benefits program in Florida through March 2012.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
