The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Monday, February 7, 2011
TIME: 10:15 a.m.—12:15 p.m.
PLACE: *James E. "Jim" King, Jr., Committee Room,* 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Gaetz, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 142** Richter (Similar H 201)	Negligence; Defines the terms "negligence action" and "products liability action." Requires the trier of fact to consider the fault of all persons who contributed to an accident when apportioning damages in a products liability action alleging an additional or enhanced injury. Provides legislative intent to overrule a judicial opinion. Provides a legislative finding that fault should be apportioned among all responsible persons in a products liability action, etc. JU 01/11/2011 Fav/1 Amendment CM 02/07/2011 BC	
2	**SB 728** Detert	Unemployment Compensation; Increases the number of employer payroll service providers who qualify for access to unemployment tax information by filing a memorandum of understanding. Requires that an applicant for benefits complete an initial skills review. Revises provisions relating to the effect of criminal acts on eligibility for benefits. Requires an employer to pay a fee for paying contributions on a quarterly schedule. Provides for repayment of benefits in cases of agency error, etc. CM 02/07/2011 JU BC	
3	Presentation by Dr. Lars Hafner, President, State College of Florida		
4	Presentation by Dr. Larry Thompson, President, Ringling College of Arts and Design		
5	**Interim Project 2011-107** (Identification, Review, and Recommendations Relating to Obsolete Statutory References to the Former Florida Departments of Labor and Employment Security, and Commerce) Presentation		

422372

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Ring) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 72 - 77
4 and insert:
5 (b) In a products liability action alleging that injuries
6 received by a claimant in an accident were greater than the
7 injuries the claimant would have received but for a defective
8 product, the trier of fact shall consider the fault of all
9 persons who contributed to the accident when apportioning fault
10 between or among them for the injuries that would have occurred
11 but for the defective product. With respect to apportioning
12 fault for the injuries that occurred solely as a result of the

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13 defective product, the trier of fact shall consider the fault of
14 those persons who were responsible for the defective product and
15 in addition the fault of any plaintiff who contributed to the
16 accident and who at the time of the injury was under the
17 influence of any alcoholic beverage or drug as defined in s.
18 768.36 to the extent that the plaintiff's normal faculties were
19 impaired or who had a blood or breath alcohol level of 0.08
20 percent or higher. However, if the trier of fact finds that as a
21 result of the influence of such alcoholic beverage or drug the
22 plaintiff was more than 50 percent at fault for his or her own
23 harm, the plaintiff may not recover any damages.
24
25 ================ T I T L E A M E N D M E N T ================
26 And the title is amended as follows:
27 Delete lines 4 - 15
28 and insert:
29 "product liability action"; specifying how the trier of
30 fact is to apportion damages in products liability actions where
31 an enhanced injury is alleged; providing an exception if a
32 plaintiff is impaired by alcohol or drugs; barring recovery by
33 an impaired plaintiff who is more than 50 percent at fault for
34 his or her own harm; providing an effective date.

156664

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/02/2011	.	
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The Committee on Judiciary (Richter) recommended the following:

1 **Senate Amendment**
2
3 Delete line 93
4 and insert:
5 403, chapter 498, chapter 517, chapter 542, or chapter 895.

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 and Tourism Committee

BILL: SB 142

INTRODUCER: Senators Richter and Gaetz

SUBJECT: Negligence

DATE: February 4, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	**Fav/1 amendment**
2.	Hrdlicka	Cooper	CM	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill changes the apportionment of damages in products liability cases in which a plaintiff alleges an additional or enhanced injury (e.g., crashworthiness cases). More specifically, the fact finder in these cases must consider the fault of all persons who contributed to the accident when apportioning fault among the parties who contributed to the accident.

The bill reorganizes the comparative fault statute by moving the definition of "negligence action" to the definitions subsection in the current comparative fault statute and also includes a definition of "products liability action."

The bill contains intent language and legislative findings that the provisions in the bill are intended to be applied retroactively and overrule *D'Amario v. Ford Motor Co.*

This bill substantially amends section 768.81, Florida Statutes.

II. Present Situation:

Crashworthiness Doctrine

Prior to 1968, courts in the United States did not allow those injured in automobile accidents to hold automobile manufacturers liable for injuries sustained where the negligence of the driver or a third party caused the accident, including scenarios in which an automobile defect contributed to the injuries sustained. However, this practice changed with the Eighth Circuit's decision in *Larsen v. General Motors Corp*.[1] In *Larsen*, the plaintiff was injured after a head-on collision that caused the steering mechanism to strike the plaintiff in the head. The federal court held that, because automobile accidents involving collisions are often inevitable and foreseeable, manufacturers have a duty to exercise reasonable care in designing vehicles for the safety of users.[2]

Most state courts adopted the *Larsen* rationale in some form, which led to the inception of "crashworthiness" or "second collision" cases. In crashworthiness cases, if a defective product causes enhanced injuries during an automobile accident, the product manufacturer may be liable for the enhanced portion of those injuries.[3] For example, if an airbag fails to deploy during an initial collision and the driver subsequently collides with the windshield, the manufacturer may be liable for damages attributable to the second collision caused by the defective airbag.[4]

When faced with the practical application of the crashworthiness doctrine, many jurisdictions continue to grapple with whether a defendant automobile manufacturer may introduce evidence of, or assert as a defense, the comparative fault or contributory negligence of the driver or a third party in causing the initial collision.[5] Some state courts have concluded that "introduction of principles of negligence into what would otherwise be a straightforward product liability case is not allowed."[6] Conversely, a majority of courts have allowed defendants to introduce evidence of the driver's or third party's negligence in causing the initial collision.[7]

Majority View

A majority of states have adopted the view that a manufacturer's fault in causing additional or enhanced injuries may be reduced by the fault of a plaintiff or third party who caused or contributed to the primary collision.[8] For example, in a Delaware crashworthiness case, the plaintiff's automobile was struck by another vehicle when the plaintiff allegedly failed to stop at

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[1] *Larsen v. General Motors Corp*., 391 F.2d 495 (8th Cir. 1968).
[2] *Id*. at 502.
[3] Ellen M. Bublick, *The Tort-Proof Plaintiff: The Drunk in the Automobile, Crashworthiness Claims, and the Restatement (Third) of Torts*, 74 BROOK L. REV. 707, 707 (Spring 2009).
[4] *Id.*
[5] Mary E. Murphy, Annotation, *Comparative Negligence of Driver as Defense to Enhanced Injury, Crashworthiness, or Second Collision Claim,* 69 A.L.R. 5TH 625, 625 (1999).
[6] *Id.*
[7] *Id.*
[8] Edward M. Ricci et al., *The Minority Gets It Right: The Florida Supreme Court Reinvigorates the Crashworthiness Doctrine in D'Amario v. Ford*, 78 FLA. B.J. 14, 14 (June 2004). Some of the states recognizing the majority view include: Alaska, Arkansas, California, Colorado, Delaware, Louisiana, Indiana, North Carolina, North Dakota, Oregon, Tennessee, Washington, Wyoming, and Iowa.

a stop sign.[9] As a result, the automobile's airbag deployed, crushing the plaintiff's fingers. The defendant automobile manufacturer argued that the plaintiff's recovery should be reduced by his comparative fault in failing to stop at the stop sign and causing the initial collision. The court concluded that the cause of the initial collision is a proximate cause of the subsequent collision and the resulting enhanced injuries to the plaintiff's fingers. The court further opined that:

> [i]t is obvious that the negligence of a plaintiff who causes the initial collision is one of the proximate causes of all of the injuries he sustained, whether limited to those the original collision would have produced or including those enhanced by a defective product in the second collision.[10]

Some courts following the majority position have reasoned that, in crashworthiness cases, the person causing the initial collision may be liable for the subsequent negligence of the automobile manufacturer because any enhanced injuries resulting from the second collision are foreseeable consequences of the first collision.[11] For example, in an Alaska crashworthiness case, the court allowed the automobile manufacturer to assert that its liability for a defective seatbelt system should be reduced because the initial head-on collision was caused by a third party. The court sided with the manufacturer, citing that "[a]n original tortfeasor is considered a proximate cause, as a matter of law, of injuries caused by subsequent negligen[ce]" of the manufacturer of the defective product.[12]

Other courts holding the majority view have also stated that "general fairness and public policy considerations require that the fault of the original tortfeasor be considered in apportioning liability for enhanced injuries."[13] Courts have also recognized that the application of comparative fault in crashworthiness cases enhances the public's interest in deterring drivers from driving negligently.[14]

Minority View

A minority of courts have adopted the theory that, because an automobile manufacturer is solely responsible for any product defects, the manufacturer is also solely liable for the enhanced injuries caused by those defects. The minority position results from "a stricter construction of the crashworthiness doctrine that treats each collision as a separate event with independent legal causes and injuries."[15] Further reasoning behind the minority view is that a manufacturer maintains a duty to anticipate foreseeable negligence of users of the automobile, as well as the negligence of third parties.[16]

One federal court applied the minority view in a crashworthiness case and determined that:

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[9] *Meekins v. Ford Motor Co.,* 699 A.2d 339 (Del. Super. Ct. 1997).
[10] *Id.* at 346.
[11] Ricci, *supra* note 8, at 18.
[12] *General Motors Corp. v. Farnsworth*, 965 P.2d 1209, 1217-18 (Alaska 1998).
[13] Ricci, *supra* note 8, at 18 (citing W*hitehead v. Toyota Motor Corp.*, 897 S.W.2d 684, 695 (Tenn. 1995)).
[14] *Moore v. Chrysler Corp.*, 596 So. 2d 225, 238 (La. Ct. App. 1992).
[15] Ricci, *supra* note 8, at 18.
[16] Victor E. Schwartz, *Fairly Allocating Fault Between a Plaintiff Whose Wrongful Conduct Caused a Car Accident and a Automobile Manufacturer Whose Product Allegedly "Enhanced" the Plaintiff's Injuries*, 10 (2010) (on file with the Senate Committee on Judiciary).

> Because a collision is presumed, and enhanced injury is foreseeable as a result of the design defect, the triggering factor of the accident is simply irrelevant. . . . Further, the alleged negligence causing the collision is legally remote from, and thus not the legal cause of, the enhanced injury caused by a defective part that was supposed to be designed to protect in case of a collision.[17]

A federal district court in Ohio excluded evidence of a driver's intoxication at the time of the accident in a products liability action against the automobile manufacturer.[18] In addition to ruling that the probative value of the evidence of intoxication was outweighed by the danger that the jury could misuse the information, the court reasoned that it was foreseeable that front-end collisions occur and that an automobile manufacturer is under an obligation under Ohio law to use reasonable care in designing vehicles that do not expose a user to unreasonable risks.[19]

The rationale underlying the minority view may also flow from a public policy belief that permitting manufacturers to avoid or reduce their liability through application of comparative fault will reduce the manufacturer's incentive to design a safe automobile for consumer use.[20] One court opined that "'[a] major policy behind holding manufacturers strictly liable for failing to produce crashworthy vehicles is to encourage them to do all they reasonably can do to design a vehicle which will protect a driver in an accident.'"[21]

Restatement (Third) of Torts

The Florida Supreme Court adopted strict liability in the defective products context, which follows the Restatement (Second) of Torts on Products Liability.[22] However, the Restatement (Second) did not articulate the burden of proof in enhanced injury cases. In the Restatement (Third) of Torts, the American Law Institute attempted to establish a uniform burden of proof in these types of cases.[23] The Restatement (Third) provides:

> When a product is defective at the time of commercial sale or other distribution and the defect is a substantial factor in increasing the plaintiff's harm beyond that which would have resulted from other causes, the product seller is subject to liability for the increased harm.[24]

Under the Restatement (Third), a plaintiff must prove that the defect in the automobile was a "substantial factor" for the "increased harm." In the event the increased harm could not be separated from other causes contributing to the accident, such as an intoxicated driver, the automobile manufacturer would be liable for all damages flowing from both the defect and other

[17] *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 566 (D.S.C. 1999), *reversed in part and vacated*, 269 F.3d 439 (4th Cir. 2001).
[18] *Mercurio v. Nissan Motor Corp.*, 81 F. Supp. 2d 859 (N.D. Ohio 2000).
[19] *Id.* at 861.
[20] Ricci, *supra* note 8, at 18-20.
[21] *Id.* at 20 (quoting *Andrews v. Harley Davidson, Inc.*, 769 P.2d 1092, 1095 (Nev. 1990)).
[22] Larry M. Roth, *The Burden of Proof Conundrum in Motor Vehicle Crashworthiness Cases*, 80 FLA. B.J. 10, 14 (Feb. 2006).
[23] *Id.*
[24] RESTATEMENT (THIRD) OF TORTS: Prod. Liab. s. 16 (1998).

causes.[25] The Restatement (Third) appears to support the majority position by suggesting the application of comparative fault in crashworthiness or other enhanced-injury cases. With regard to apportionment, the Restatement (Third) provides that:

> [a] plaintiff's recovery of damages for harm caused by a product defect may be reduced if the conduct of the plaintiff combines with the product defect to cause the harm and the plaintiff's conduct fails to conform to generally applicable rules establishing appropriate standards of care.[26]

Therefore, a plaintiff's or third party's misuse of the product, alteration of the product, or modification of the product is relevant to the determination of the issues of defect, causation, and comparative responsibility.[27]

Comparative Fault in Florida

The Florida Supreme Court, in 1973, retreated from the application of contributory negligence and adopted pure comparative negligence.[28] The court reasoned that:

> . . . the most equitable result that can ever be reached by a court is the equation of liability with fault. Comparative negligence does this more completely than contributory negligence, and we would be shirking our duty if we did not adopt the better doctrine.[29]

The doctrine of comparative negligence is now codified in Florida law. The law provides that "any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery."[30] Current law explicitly states that the comparative fault principles apply in products liability actions.[31]

Following the culmination of additional reforms to the application of joint and several liability, in 2006 the Legislature generally repealed the application of joint and several liability for negligence actions.[32] It amended s. 768.81, F.S., to provide, subject to limited exceptions, for apportionment of damages in negligence cases according to each party's percentage of fault, rather than under joint and several liability.[33]

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[25] Roth, *supra* note 22, at 14; *see also* RESTATEMENT (THIRD) OF TORTS: Prod. Liab. s. 16, cmt. a (1998).
[26] RESTATEMENT (THIRD) OF TORTS: Prod. Liab. s. 17 (1998).
[27] *Id.* at cmt. c.
[28] *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).
[29] *Id*. at 438.
[30] Section 768.81(2), F.S.
[31] Section 768.81(4)(a), F.S.
[32] Chapter 2006-6, s. 1, L.O.F.
[33] Section 768.81(3), F.S.

Crashworthiness in Florida

Prior to 2001, Florida courts generally applied comparative fault principles in crashworthiness cases where the injury was caused by the initial collision or was an enhanced injury caused by a subsequent collision.[34] For example, in *Kidron, Inc. v. Carmona*, a mother and child brought a wrongful death action for the death of the father in a collision with a truck that had stalled, as well as an action against the manufacturer of the truck alleging strict liability for the manufacturer's design of the rear under-ride guard.[35] The court held that "principles of comparative negligence should be applied in the same manner in a strict liability suit, regardless of whether the injury at issue has resulted from the primary or secondary collision."[36] The court further recognized that:

> . . . fairness and good reason require that the fault of the defendant and of the plaintiff should be compared with each other with respect to all damages and injuries for which the conduct of each party is a cause in fact and a proximate cause.[37]

As a result, the court concluded that the decedent's negligence in failing to avoid the collision should be considered along with the manufacturer's liability in the design of the truck, as well as any other entity or person who contributed to the accident regardless of whether that entity was joined as a party.[38]

In 2001, the Florida Supreme Court retreated from the application of comparative fault and the holding in *Kidron, Inc.*, and adopted the minority view in crashworthiness cases. The seminal decision in *D'Amario v. Ford Motor Company* precludes fact finders from apportioning fault to a party contributing to the cause of the initial collision when considering liability for enhanced injuries resulting from a second collision.[39] In *D'Amario*, the court reviewed consolidated crashworthiness cases. The following is a brief synopsis of the facts and final disposition in both cases under review in *D'Amario*:

- ***D'Amario***–In the first case, Clifford Harris, a minor, was injured when the automobile in which he was riding as a passenger collided with a tree and burst into flames. The driver of the car was allegedly intoxicated and traveling at a high rate of speed at the time of the collision. Harris was severely burned and lost three limbs. Harris' mother sued Ford alleging that a defective relay switch caused his injuries. After a ruling allowing Ford to submit evidence of the driver's intoxication and high rate of speed as a cause of the initial collision to the jury, the parties stipulated to these facts. The jury returned a verdict in favor of Ford.[40]

[34] Schwartz, *supra* note 16, at 6.
[35] *Kidron, Inc. v. Carmona*, 665 So. 2d 289 (Fla. 3d DCA 1995).
[36] *Id.* at 292.
[37] *Id.*
[38] *Id.* at 293.
[39] *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001).
[40] *Ford Motor Co. v. D'Amario*, 732 So. 2d 1143 (Fla. 2d DCA 1999).

- ***Nash***–In the second case, Maria Nash was driving her two children to church when an approaching car crossed the center line and struck her vehicle. Nash's head collided with the metal post separating her windshield from the driver's door, and she died as a result of these injuries. The driver of the car that collided with Nash was intoxicated at the time of the accident. Nash's estate filed a strict liability suit against General Motors alleging that the vehicle's seatbelt failed. The trial court allowed General Motors to introduce the fact that the driver of the second vehicle was intoxicated because the jury "had a right to know all the facts." The jury ultimately found no liability on the part of General Motors.[41]

In its examination of liability and admissibility of evidence in these cases, the Florida Supreme Court concluded that the "principles of comparative fault involving the causes of the first collision do not generally apply in crashworthiness cases."[42] In reaching its conclusion, the court compared crashworthiness cases to medical malpractice actions in which the cause of an initial injury that may require medical treatment is not ordinarily considered as a legal cause of enhanced injuries resulting from subsequent negligent treatment.[43] The court further noted that:

> . . . unlike automobile accidents involving damages solely arising from the collision itself, a defendant's liability in a crashworthiness case is predicated upon the existence of a distinct and second injury caused by a defective product, and assumes the plaintiff to be in the condition to which he is rendered after the first accident. No claim is asserted, however, to hold the defendant liable for that condition. Thus, crashworthiness cases involve separate and distinct injuries– those caused by the initial collision, and those subsequently caused by a second collision arising from a defective product.[44]

The court held that the focus in crashworthiness cases is the enhanced injury; therefore, consideration of the conduct that allegedly caused the enhanced and secondary injuries is pivotal, not the conduct that gave rise to the initial accident.[45] As a result, the court concluded that admission of evidence related to the intoxication of the non-party drivers, which caused the initial collisions, unduly confused the jury and shifted the focus away from determining causation of the enhanced injuries.[46]

The *D'Amario* Debate

Opponents of the rule enunciated in *D'Amario* argue that Florida should align with the majority view.[47] These advocates assert that the fault of the person who caused the initial accident should

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[41] *Nash v. General Motors Corp.*, 734 So. 2d 437 (Fla. 3d DCA 1999).
[42] *D'Amario*, 806 So. 2d at 441.
[43] *Id.* at 435. In addition, the court recognized that in medical malpractice actions, an initial tortfeasor who causes an injury is not to be considered a joint tortfeasor. *Id.*
[44] *Id.* at 436-47.
[45] *Id.* at 437.
[46] The court also ruled that driving while intoxicated does not fall within the "intentional tort" exception to the comparative fault statute. *See* s. 768.81(4)(b), F.S.
[47] Florida Justice Reform Institute, *White Paper: Florida's Crashworthiness Doctrine: Allowing Negligent Drivers to Escape Liability* (2010) (on file with the Senate Committee on Judiciary).

be compared with any fault of an automobile manufacturer in the design of the automobile because the defect would not have manifested itself but for the negligence of the person causing the initial injury. They further assert that the *D'Amario* decision fails to account for the comparative fault of irresponsible drivers and neglects to consider that automobile accidents typically occur so quickly that two distinct instances of harm are almost impossible to dissect. These advocates urge legislators to adopt legislation that ensures that the jury has the opportunity to consider all of the facts pertinent to the cause of the accident, including both the initial and subsequent collisions.

Proponents of the *D'Amario* decision argue that the ruling promotes fairness and objectivity in jury deliberations in product liability cases.[48] They further assert that the current rule recognizes the clear distinction between fault for causing an accident and a manufacturer's liability for a defective product that may cause enhanced injuries separate and distinct from the initial collision. These advocates assert that a retreat from the *D'Amario* decision would allow introduction of evidence that could only serve to confuse the jury and would potentially shift financial responsibility to the state for medical expenses related to plaintiffs in crashworthiness cases.

III. Effect of Proposed Changes:

The bill changes the apportionment of damages in products liability cases in which a plaintiff alleges an additional or enhanced injury (e.g., crashworthiness cases). More specifically, the fact finder in these cases must consider the fault of all persons who contributed to the accident when apportioning fault among the parties who contributed to the accident.

In effect, the bill requires the trier of fact in a products liability case alleging an enhanced injury, such as a crashworthiness case, to consider the facts related to the cause of the initial collision, as well as the subsequent collision. As a result, the negligent actions of the plaintiff or a third party in causing or contributing to the accident must be considered, regardless of whether their actions relate to the primary or secondary collision. Thereafter, the fact finder must apportion fault to all negligent parties contributing to the plaintiff's injuries.

The bill reorganizes the comparative fault statute by changing the term "negligence cases" to "negligence action," revising the definition slightly, and moving the definition of "negligence action" to the definitions subsection in the current comparative law statute. The bill also defines a "products liability action" as a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. This definition specifies that the term includes those claims in which the alleged injuries were greater than the injury would have been, but for the defective product. The definition of "products liability action" also provides that the substance of the claim, not the conclusory terms used by a party, determines whether an action satisfies the definition.

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[48] Florida Justice Ass'n, *White Paper: Products Liability – Crashworthiness Doctrine* (Dec. 9, 2009) (on file with the Senate Committee on Judiciary).

The bill also removes references to chs. 517, 542, and 895, F.S., in the subsection of the comparative fault statute which provides that the comparative fault provisions do not apply to actions in which joint and several liability is allowed under certain chapters[49] (see below, Technical Deficiencies).

The bill contains legislative intent language and findings that the act is intended to be applied retroactively and overrule *D'Amario v. Ford Motor Co.,* which adopted what the Florida Supreme Court acknowledged to be a minority view in crashworthiness cases. The bill states that the minority view fails to apportion fault for damages consistent with Florida's statutory comparative fault system, codified in s. 768.81, F.S., and leads to inequitable and unfair results, regardless of the damages sought in the litigation. Further, the bill includes a finding that, in products liability actions, fault should be apportioned among all responsible persons.

The bill further provides that its measures are remedial in nature and apply retroactively. It includes a finding that the retroactive application of the act does not unconstitutionally impair vested rights, but affects only remedies, permitting recovery against all tortfeasors while lessening the ultimate liability of each consistent with the state's statutory comparative fault system.

The bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill specifically applies its provisions retroactively and overrules *D'Amario v. Ford Motor Co.* Retroactive operation is disfavored by courts and generally "statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."[50] The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

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[49] Section 768.81(4)(b), F.S., provides that the comparative fault statute "does not apply . . . to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895."

[50] Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation,* 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was a person's right vested or inchoate?
- Is the application of the statute to these facts unconstitutionally retroactive?[51]

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.[52]

Notwithstanding a determination of whether the provisions in the bill are procedural or substantive, the bill makes it clear that it is the Legislature's intent to apply the law retroactively. "Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively."[53] A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.[54]

A constitutional challenge to the bill, if adopted, asserted by those individuals with accrued causes of action could be premised upon an argument that it affects or impairs the rights and liabilities of claimants pursuing a products liability action. The courts' evaluation of the retroactive application of the provisions of the bill will likely turn on its determination of whether the provisions do affect a claimant's vested rights associated with the products liability claim. For those crashworthiness claimants with pending cases in which discovery is concluded and trial is imminent, a court could conclude that retroactive application of the provisions of this bill could violate the litigant's due process rights. However, each challenge would likely be evaluated on a case-by-case basis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual suffering enhanced injuries attributed to the use of a defective product may recover less damages, in some instances, if the individual's own negligence contributed to the injury. A third party whose negligence contributed to the injuries suffered by a plaintiff in a crashworthiness case may be liable for damages even though his or her negligence contributed to the primary collision solely. In some instances, manufacturers

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[51] *Weingrad v. Miles,* 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).
[52] *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).
[53] *Weingrad*, 29 So. 3d at 410.
[54] *Id.* at 411.

of defective products may experience a decrease in liability for enhanced injuries when the trier of fact can apportion fault to the plaintiff or a third party as a result of the plaintiff's or third party's negligence related to the initial or subsequent collision.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) evaluated an almost identical House Bill last year (HB 433, 2010 Reg. Sess.) and reported that the fiscal impact to the judiciary could not be determined at that time due to the unavailability of necessary data to evaluate the increase in judicial workload resulting from the requirement that the jury or the judge must consider the fault of all those contributing to injuries in products liability cases where enhanced injuries are alleged.[55]

The OSCA further reported that the judiciary may experience an increase in workload related to revising the Standard Jury Instructions in civil cases to reflect the changes in apportionment of fault as written in the bill. However, OSCA reported that the fiscal impact of this workload issue was not likely to be substantial.[56]

VI. Technical Deficiencies:

A note appears in s. 768.81, F.S., that chs. 517 (securities transactions), 542 (combinations in restraint of trade), and 895 (racketeering) do not contain specific references to the application of joint and several liability. However, s. 517.211, F.S., does contain a specific reference to joint and several liability. Moreover, provisions in chs. 542 and 895, F.S., are often premised upon conspiracy and enterprise activity in which the concept of joint and several liability is implicit. Therefore, the Legislature may wish to restore the references to chs. 517, 542, and 895, F.S., to avoid the unintended consequence of eliminating application of this principle in certain contexts.

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.)

None.

[55] Office of the State Courts Administrator, *Judicial Impact Statement: HB 433* (Jan. 1, 2010) (on file with the Senate Committee on Judiciary).
[56] *Id.*

B. Amendments:

Barcode 156664 by Judiciary on January 11, 2011:
Restores deleted references to chs. 517, 542, and 895, F.S., in the subsection of the comparative fault statute which provides that the comparative fault provisions do not apply to actions in which joint and several liability is allowed under certain chapters.

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

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 and Tourism Committee

BILL: SB 728

INTRODUCER: Senator Detert

SUBJECT: Unemployment Compensation

DATE: February 4, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

Florida's unemployment rate for January 2009 was 8.7 percent and by January 2010 it was 12 percent. The latest unemployment rate reported, for December 2010, was 12 percent, which represents 1.1 million Floridians out of work. Due to the duration of high unemployment, the Unemployment Compensation Trust Fund became insolvent in August 2009 and has continued to borrow funds from the federal government since that time.

SB 728 amends the unemployment compensation statutes to revise benefit eligibility criteria and unemployment tax provisions.

The bill changes the criteria by which claimants are disqualified from receiving benefits by:

- Changing the standard to show misconduct from "willful" (a high standard) to "conscious" (a lower standard);
- Adding a disqualification for "gross misconduct," which is defined by specific acts by an employee;
- Adding a disqualification for any weeks in which an individual receives severance pay from an employer;
- Expanding disqualification to include being fired for all crimes committed in connection with work (rather than only those punishable by imprisonment) and being fired for violating a criminal law which affects an employee's ability to do his or her job; and
- Adding a specific disqualification for individuals who are incarcerated or imprisoned regardless whether the crime was in connection with their work.

The bill changes qualifying requirements by:

- Requiring claimants to complete an initial skills review using an online education or training program, like Florida Ready to Work, within 14 days of making a new claim for benefits;
- Requiring claimants to provide proof of their activities in seeking work;
- Redefining "suitable work" to require:
  - For the first 12 weeks of unemployment, claimants to seek work that pays at least 80 percent of what they had previously made; and
  - For 13 weeks of unemployment and beyond, claimants to seek work that pays at least equal to the weekly unemployment benefits they are receiving; and
- Requiring claimants to file continuing claims by Internet or mail, rather than by phone (in order to collect data on work search activities, similar to state extended benefits program).

The bill codifies the executive order extending the temporary state extended benefits program and amends the program to conform to new federal law.

Related to unemployment taxes, the bill:

- Raises the maximum tax rate to 6.4 percent (from 5.4 percent), retroactive to January 1, 2011;
- Allows employers to continue to have the option to pay their taxes in installments over in 2012, 2013, and 2014;
- 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
- Increases the number of employee leasing companies who may obtain tax information for their clients by filing a memorandum of understanding, instead of filing a power of attorney for each client, with the Department of Revenue.

The bill eliminates the statutory presumption in favor of paying benefits to claimants by explicitly providing that ch. 443, F.S., should not be construed to favor or disfavor a claimant. It also provides specific language to allow appeals of orders by the Unemployment Appeals Commission to be filed in district courts of appeal where the claimant resides or where the job was located. The bill limits the amount of overpayments that can be collected from a claimant when the Agency for Workforce Innovation does not issue a nonmonetary determination within 30 days of the filing of a new claim.

The U.S. Department of Labor may find various provisions of this bill to be out of conformity with federal law. If the U.S. Department of Labor made such a finding, then it could result in a withholding of all administrative funding and a significant increase in employer's UC tax rates.

This bill amends the following sections of the Florida Statutes: 213.053, 443.031, 443.036, 443.091, 443.101, 443.1115, 443.1216, 443.131, 443.141, and 443.151.

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

SB 728 takes effect July 1, 2011.

II. Present Situation:

Unemployment Compensation Overview[1]

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

Statutory Construction

Generally, states construe their unemployment statutes in favor of claimants. Courts have held that the unemployment laws are remedial in nature, and thus should be liberally and broadly construed.[8] Section 443.031, F.S., specifically states that ch. 443, F.S., "shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own."[9]

For statutory construction purposes generally, remedial statutes are liberally construed. Remedial statutes are those that provide a remedy or improve or facilitate remedies already existing for the

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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 1/31/2011).

[2] USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited 2/2/2011).

[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, ETA, Unemployment Insurance Tax Topic, available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited 2/2/2011).

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

[7] Section 443.1316, F.S.

[8] See J.W. Williams v. State of Florida, Department of Commerce, 260 So.2d 233 (1st DCA, 1972); and Williams v. Florida Industrial Commission, 135 So.2d 435 (3rd DCA, 1961). Other states do not specify how their statutes are to be construed; instead they rely upon the interpretation of their courts to make the determination.

[9] See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 1448 (2003), for a discussion of this section. Other states' laws contain a public purpose section, but this was removed from Florida Statutes in 2003, while preserving the standard for liberal construction.

enforcement of rights and the redress of injuries. Florida courts have held that the unemployment statutes are "remedial, humanitarian legislation."

> "[A] statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent."[10]

Unemployment benefits are available as a matter of right to unemployed workers who have demonstrated their attachment to the labor force by a specified amount of recent work and/or earnings in covered employment. The purpose of the unemployment program is to benefit those unemployed through no fault of their own.[11]

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed $7,150 in a benefit year.[12] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount of $275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.[13]

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

AWI issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.[14] Determinations and redeterminations are statements by the agency regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days from the mailing date of the determination. The agency must review the information on which the request is based and issue a redetermination.

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in AWI's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.[15]

A decision by an appeals referee can be appealed to the Unemployment Appeals Commission. The Unemployment Appeals Commission is administratively housed in AWI, but is a quasi-

[10] City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971).
[11] USDOL, ETA, State Unemployment Insurance Benefits.
[12] Section 443.111(5), F.S.
[13] Section 443.111(3), F.S. A claim week begins on Sunday and ends on Saturday.
[14] Section 443.151(3), F.S.
[15] Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S.

judicial administrative appellate body independent of AWI.[16] The commission is 100 percent federally funded and consists of a three member panel that is appointed by the Governor. It is the highest level for administrative review of contested unemployment cases decided by the Office of Appeals referees. The Unemployment Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings. A party to the appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.[17]

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 AWI that the individual:[18]

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

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

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

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work.[19]

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.

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,

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[16] Section 20.50(2)(d), F.S. "The Unemployment Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that is required for the performance of its duties."

[17] Section 443.151(4)(c), (d), and (e), F.S.

[18] Section 443.091(1), F.S.

[19] Rule 60BB-3.021, F.A.C.

free reemployment services and assistance are available. AWI defines reemployment services as: job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.[20]

AWI's website provides links to local, state, and national employment databases.[21] 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.[22] 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.[23] Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).[24]

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;
- Failing to apply for available suitable work when directed by AWI or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving wages in lieu of notice or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Involvement in an active labor dispute which is responsible for the individual's unemployment;
- Receiving unemployment compensation from another state;
- Making false or fraudulent representations in filing for benefits;
- Illegal immigration status;
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;

[20] Rule 60BB-3.011(12), F.A.C.
[21] For example, on www.fluidnow.com, where individuals can claim their weeks online.
[22] AWI's Office of Workforce Services is responsible for providing One-Stop Program Support services to the Regional Workforce Boards. See s. 443.091(1)(b), F.S.
[23] Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. https://www.employflorida.com.
[24] 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., further sets forth information on reemployment services and requirements for participation.

- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm if the individual fails to contact the temporary help or employee-leasing firm for reassignment; 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.

As used in s. 443.101(1), F.S., the term "good cause" includes only that cause attributable to the employer or which consists of illness or disability of the individual requiring separation from work. An individual is not disqualified for voluntarily leaving temporary work to return immediately when called back to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months or for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment 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.

In determining "suitable work," the agency is directed by statute to consider several factors, including:

- Duration of an individual's unemployment;
- Proposed wages for available work, except in the 26th week of unemployment, when suitable work is a job that pays minimum wage and is 120 percent of the individual's weekly benefit amount;
- The degree of risk involved to the individual's health, safety, and morals;
- The individual's physical fitness and prior training;
- The individual's experience and prior earnings;
- The individual's length of unemployment and prospects for securing local work in his or her customary occupation; and
- The distance of the available work from the individual's residence.[25]

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 $2 billion in federal advances in order to continue to fund unemployment compensation claims.[26]

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

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[25] Section 443.101(2), F.S.

[26] As of January 31, 2011. 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 2/1/2011).

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.[27] The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.[28] Employers' state UC taxes are used solely to pay UC benefits to unemployed Floridians.

Currently, an employer pays taxes on the first $7,000 of an employee's wages.[29] An employer's initial state tax rate is 2.7 percent.[30] 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.[31] The adjustment in the tax rate is determined by calculating several factors.

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.

In 2010, legislation was enacted that permitted employers to spread the payment of their quarterly state UC taxes in installments over the year.[32]

	Due April 30	Due July 31	Due October 31	Due December 31	Due January 31
1st Quarter Payment	¼	¼	¼	¼	-
2nd Quarter Payment	-	⅓	⅓	⅓	-
3rd Quarter Payment	-	-	½	½	-
4th Quarter Payment	-	-	-	-	Full

[27] Section 443.191, F.S.
[28] 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 January 1, 2011) there were 453,800 contributing employers and 3,256 reimbursing employers in Florida.
[29] In 2012, the taxable wage base increases to $8,500. See s. 3, ch. 2010-1, L.O.F.
[30] Section 443.131(2)(a), F.S.
[31] 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."
[32] Section 4, ch. 2010-1, L.O.F. Section 443.141(1)(e), F.S.

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.

State Unemployment Compensation Contributions - Benefit Charges
In the unemployment tax calculation, the most significant factor in determining an employer's tax rate is the "benefit ratio."[33] This is the factor over which the employer has control. Often referred to as "experience rating," this factor takes into account an employer's experience with the UC Trust Fund by the impact of the employer's laid off workers on the trust fund. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual $100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual. However, an employer can obtain relief from benefit charges by responding to notification of a claim with information concerning the reason for the individual's separation from work or refusal to work.[34] An employer will not obtain relief from the benefit charges for failure to respond to the notice of claim within 20 days.[35]

State Unemployment Compensation Contribution – Socialized Costs
Compensation that cannot be charged against any employer's account is recovered through "variable adjustment factors" that socialize the cost of this compensation among all contributory employers who had benefit experience during the previous 3 years. 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, also called "overpayments"),[36] the excess payments ratio (that portion of benefit charges

[33] Section 443.131(3)(b), F.S.
[34] Section 443.131(3)(a), F.S.
[35] Section 443.151(3)(a), F.S. AWI is required to send notice to each employer who may be liable for benefits paid to an individual. Based upon information provided with filed claims for benefits and employer responses, if provided, AWI makes an initial determination on entitlement to benefits. An employer has an incentive to respond to AWI if the employer should not be liable for benefits; an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account. A claimant is not required to repay any overpayments due to the employer's failure to respond, so long as there is no fraud involved.
[36] For example, these socialized costs include overpayments.

which exceed the maximum rate of 5.4 percent),[37] and the fund size factor (requires the trust fund maintain a certain balance, discussed below as "triggers").[38]

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.[39] 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 the minimum rate for the year.[40]

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.[41]

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.

State Unemployment Compensation Contribution – 2011 Rates and Forecasts

In 2010, the Legislature turned the trust fund triggers "off" to avoid a significant rate increase for employers.[42] However, taxes still significantly increased from 2010 to 2011. This was due to a large increase in socialized costs, mostly attributable to costs associated with employers whose tax rate does not generate enough money to pay for all the benefits charged to their accounts due to the statutory maximum rate (or "maximum cap").

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 220,000), will see a tax rate increase from 0.36 percent to 1.03 percent. This means that a business that paid $25.20 per employee under the previous rate will pay $72.10 per employee in 2011. Those businesses at the maximum rate will still pay a per employee rate of $378 due to the maximum cap. Since most employers will have paid the $7,000 wage base to their employees in

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[37] 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.

[38] 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 2/2/2011).

[39] If the combined factors exceed the maximum rate, the employer is assigned the maximum rate of 5.4 percent.

[40] DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated.

[41] 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.

[42] Section 3, ch. 2010-1, L.O.F.

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 2011.

	2010 Taxes		**2011 Taxes**	
Minimum Rate	0.36%	$25.20	1.03%	$72.10
Maximum Rate	5.4%	$378	5.4%	$378

Further, due in part to the short term relief provided to employers by legislation passed in the 2010 Regular Session, employers will be faced with a significant jump in tax rates beginning in 2012. Other facts affecting employer taxes in 2012 include the calculation of the trust fund factor and the scheduled increase in the wage base to $8,500.[43]

	2011 Taxes ($7,000 wage base + tax trigger off)		**2012 Taxes**[44] ($8,500 wage base + tax trigger on)		**2013 Taxes** ($8,500 wage base + tax trigger on)		**2014 Taxes** ($8,500 wage base + tax trigger on)	
Minimum Rate	1.03%	$72.10	2.43%	$206.55	2.07%	175.95	1.73%	147.05
Maximum Rate	5.4%	$378	5.4%	$459	5.4%	$459	5.4%	$459

In addition to the economic conditions which attributed to the increase in the contribution rate, the number 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, with the positive fund balance adjustment factor triggering "on" in 2012, existing employers will 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.[45] 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.

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[43] Chapter 2009-99, L.O.F., increased the wage based to $8,500 beginning in 2010; ch. 2010-1, L.O.F., delayed this increased until 2012.

[44] Unemployment Compensation Trust Fund Forecast dated February 2011, by the Office of Economic and Demographic Research, on file with the Senate Commerce and Tourism Committee.

[45] The Federal Unemployment Tax Act (FUTA) is set to be reduced by 0.2 percent in June 2011 (considered a 0.2 percent surtax). 26 U.S.C. s. 3301 (2009). However, since the tax was increased to 6.2 percent in the mid-1980s, each year that the tax has been set to be reduced, Congress has enacted legislation that maintains the surtax.

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 (see below *Federal Advance – FUTA Credit Loss*). In response, these states have restricted eligibility to UC benefits to reduce 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.[46] In the current economic climate, states are increasingly requesting federal advances. Thirty-three states, including the Virgin Islands, currently have requested federal advances.[47] Six states have paid off their federal advances, including Texas, Tennessee, and Maryland.[48]

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 the few to avoid serious and chronic problems with trust fund insolvency.[49]

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 January 31, 2011, the state has requested over $2 billion in federal advances in order to continue to fund unemployment compensation claims.[50]

Advances are requested for 3-month periods at a time, prior to the quarter in which they are needed. The USDOL evaluates the state's request and sends a confirmation letter that provides the authorized amount that the state 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.

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[46] Vroman, Wayne, The Role of Unemployment Insurance as an Automatic Stabilizer During a Recession, The Urban Institute, IMPAQ International, LLC, and USDOL, ETA, July 2010, available at http://wdr.doleta.gov/research/FullText_Documents/ETAOP2010-10.pdf (last visited 2/1/2011).

[47] 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 2/1/2011).

[48] Some of these states only took out short term advances from USDOL. Other states took steps to increase their taxes to repay the federal advances. Texas issued bonds to repay their debt, and employers in that state will incur a new assessment in addition to state UC taxes to pay the debt service due on the bonds.

[49] Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009).

[50] 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 2/1/2011).

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).[51] 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, 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 for wages paid in 2011, due to the existence of an outstanding federal advance. The credit reduction continues and escalates until such time as the loan is fully repaid.[52] The Office of Economic and Demographic Research (EDR) estimated that the first repayment to the federal government through the loss of the federal credit will be $139.8 million in January 2012, $290.4 million in January 2013, and $451.8 million in January 2014, for a total of $882 million.[53] The forecast estimates that the federal advances will be completely repaid by April 2014.

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.[54]

Federal Advance – Interest

Federal advances accrue interest at 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

[51] 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.
[52] USDOL Webinar on Title XII Advances, August 10, 2009 (slides on file with the Senate Commerce Committee).
[53] Unemployment Compensation Trust Fund Forecast dated February 2011, Office of Economic and Demographic Research, on file with the Senate Commerce and Tourism Committee.
[54] USDOL, Unemployment Compensation: Federal-State Partnership, page 7, available at http://ows.doleta.gov/unemploy/pdf/partnership.pdf (last visited 2/2/2011).

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. The interest rate for 2011 is 4.0869 percent. Through December 2010, federal advances did not accrue interest due to a provision in the American Recovery and Reinvestment Act of 2009.

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.[55] In 2010, the Legislature implemented legislation to pay interest on federal advances through an additional employer assessment.[56]

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. DOR 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.

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. The Revenue Estimating Conference estimated a payment of $61.4 million due in 2011; calculated as a per employee rate, the assessment is about $9.51 per employee.[57]

The assessments are paid into the Audit and Warrant Clearing Trust Fund and may earn interest; any interest earned will be part of the balance available to pay the interest to the federal government. 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.

States may apply to USDOL for deferrals of interest for loans in certain situations. These include:[58]

- 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.

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[55] The option of issuing bonds to repay the interest may be unavailable to Florida. See Art. VII, s. 11, Fla. Const.
[56] Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.
[57] Revenue Estimating Conference forecast from November 30, 2010, available at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/index.cfm (last visited 2/1/2011).
[58] USDOL, Unemployment Compensation: Federal-State Partnership, page 8. Currently, Florida does not qualify for a deferral.

- 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 increase to the total federal tax of 6.2 percent because Florida employers would lose the entire FUTA tax credit (5.4 percent).[59]

Temporary State Extended Benefits

In 2990, the Legislature enacted a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds.[60] Under this program, the federal government 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 did not affect the balance of Florida's UC Trust Fund.

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 December 2010, Congress extended the eligibility window for Emergency Unemployment Compensation (EUC) and for state extended benefits through January 4, 2012.

Florida already had an extended benefits program in statute,[61] 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). 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. However, when Congress extended this program in July 2010, because the Legislature was not in session, Governor Crist signed an executive order implementing the program.[62] On December 17, 2010, Governor Crist signed an additional executive order extending the program after the federal bill was signed into law.[63] However, the most recent extension put into law enacts a new "trigger" to keep the program "on" due to the continued high unemployment rates that many states are experiencing.

III. Effect of Proposed Changes:

Section 1 amends s. 213.053(4), F.S., to allow payroll service providers (like employee leasing companies) to file a memorandum of understanding if they provide services for 100 or more employers.

[59] Id. Because the state UC program would not be certified, there would be no state UC tax in this situation.
[60] 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.
[61] Section 443.1115, F.S.
[62] Executive Order No. 10-170.
[63] Executive Order No. 10-276.

Under current law, providers that represent clients on UC tax matters before DOR must file a power of attorney for each of their clients. If the provider provides services for at least 500 clients, the law permits the provider to file a single memorandum of understanding with DOR in lieu of the 500 individual powers of attorney. For providers that have fewer than 500 clients, completing individual powers of attorney is very burdensome. This change would reduce the burden on providers and reduce administrative burdens on DOR.

Statutory Construction

Section 2 amends s. 443.031, F.S., to change the current rule of statutory construction from "liberally" construed in favor of a claimant, to "neutrally" construed between claimants and employers. The bill changes the historical interpretation of the unemployment statutes, as discussed above in the Present Situation. This section also defines the phrase "through no fault of his or her own."

USDOL may find this provision causes the state to be out of conformity with federal law.

State Unemployment Compensation Benefit Eligibility

The bill makes several changes to UC benefit eligibility, including changing the qualifying criteria and circumstances that automatically disqualify claimants from receiving benefits.

Qualifying Criteria

Initial Skills Review

Section 4, amends s. 443.091(1), F.S., to create a new paragraph to require claimants to complete an initial skills review within 14 days of making a new claim for benefits. The initial skills review must be administered by an online education or training program, like Florida Ready to Work,[64] that is approved by AWI and designed to measure an individual's mastery of workplace skills.

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

- Nonresidents;
- Collecting unemployment due to a temporary layoff;[65]
- Union members who customarily obtain employment though a union hiring hall; or
- Claiming benefits under an approved short-time compensation plan.[66]

The administrator or operator of the online education or training program is required to report to AWI 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 services.

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[64] Section 1004.99, F.S.

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

[66] See s. 443.1116, F.S.

Florida Ready to Work is an employee credentialing program that is funded by the state.[67] 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 3 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.

USDOL may find this provision causes the state to be out of conformity with federal law. In general, a state may not condition entitlement to UC benefits on any factor that is not related to the individual's unemployment.

Work Search Requirements

Section 4 of the bill also amends s. 443.091(1)(e), F.S., to specify that as part of being available for work, a claimant must be actively seeking work. A claimant is required to make a reasonable and diligent effort to contact multiple employers each week to find reemployment. The claimant is required to provide evidence of work search activities to AWI or the One-Stop Career Center as directed by AWI.

Section 12 amends s. 443.151(2(a), F.S., to require claimants making continuing claims to file by mail or by Internet. Claimants receiving temporary state extended benefits are required to meet heightened work search requirements, including the requirement to "furnish tangible evidence that she or he actively engaged in a systematic and sustained effort to find work."[68] These claimants are required to file their claims by mail or Internet. By imposing the same type of work search requirements on all claimants, restricting filing methods for continuing claims to mail or Internet will allow AWI to collect the work search evidence required by s. 443.091(1)(e), F.S., as amended by the bill.

Suitable Work

An individual is required to search for "suitable work" to be eligible for benefits under current law. Additionally, if an individual is found to not be searching for suitable work, she or he may be disqualified for benefits. As it relates to the wages paid by suitable work, under current law, specifically for the 26th week of benefits, "suitable work" is defined as "a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing."[69]

[67] Website available at http://floridareadytowork.com/ (last visited 2/2/2011).
[68] Section 443.1115(3)(c)1.b., F.S.
[69] Section 443.101(2), F.S.

Section 5 of the bill amends s. 443.101(2), F.S., (renumbered in the bill as s. 443.101(3),F.S.), to change the wage criteria for suitable work to require:

- For the first 12 weeks of unemployment, search for work that pays at least 80 percent of what a claimant had previously made
- For 13 weeks of unemployment and beyond, search for work that pays at least equal to the weekly UC benefit amount a claimant is collecting.

USDOL may find this provision causes the state to be out of conformity with federal law.

Amendments made in Section 5 of the bill do not change the other current law criteria that AWI considers when determining if work is suitable or not. These include the degree of risk to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of available work from the individual's residence.

The bill also amends s. 443.036(6), F.S., in Section 3, to provide consistency throughout the chapter to use the term "suitable work."

Disqualifications

Voluntarily Quitting

Under current law, an individual who voluntarily quits work without good cause attributable to his or her employer is disqualified from receiving UC benefits. Section 5 of the bill amends s. 443.101(1)(a)1., F.S., to codify case law which states that "good cause" is that which would compel a reasonable individual to cease working.[70]

Misconduct

Section 3 amends s. 443.036(29), F.S., to change the definition of "misconduct."

Under current law, a claimant may be disqualified from receiving benefits for being fired for misconduct associated with work. The current law definition of "misconduct" requires showing:

- Willful or wanton disregard of an employer's interests and is found to be deliberate, or
- Careless or negligent behavior that manifests culpability, wrongful intent, or evil design or was intentional or substantial disregard.

The bill reduces the standard to show misconduct to behavior that is a "conscious" disregard of an employer's interests or that is careless or negligent behavior that shows an intentional and substantial disregard of an employer's interests. Further, behavior that is a "conscious" disregard may be a violation of reasonable standards that an employer expects, including those lawfully set forth in an employer's written rules of conduct.

USDOL may find this provision causes the state to be out of conformity with federal law.

[70] See e.g. Thomas v. Peoplease Corp., 877 So.2d 45(3rd DCA, 2004).

Gross Misconduct

Section 5, amends 443.101, F.S., to create a new disqualification for benefits for specific acts of "gross misconduct" by an employee that led to her or his termination from work. Some of the specific acts included are:

- Willful or reckless damage to an employer's property that results in damage of more than $50;
- Theft of employer, customer, or invitee property;
- Violation of drug and alcohol policies, testing, or use of such substances while on the job or on duty;
- Criminal assault or battery of another employee, customer, or invitee;
- Abuse of a patient, resident, disabled person, elderly person, or child in the employee's professional care;
- Insubordination (willful failure to comply with written employer rule or job description or reasonable order of a supervisor);
- Willful neglect of duty as described in a written employer rule or job description; and
- Failure to maintain a license, registration, or certification required by law for the employee to perform her or his job.

The disqualification for gross misconduct continues until an individual becomes reemployed and earns income of at least 17 times his or her weekly benefit amount that would have otherwise been available.

Severance Pay

Section 5 of the bill creates a disqualification in s. 443.101(3), F.S., (renumbered in the bill as s. 443.101(4), F.S.) for any week in which an individual receives severance pay. Severance pay is often granted to employees upon termination of employment, and is usually based on length of employment (matter of agreement between an employer and an employee). The bill provides for a calculation for the duration of disqualification, beginning from the date an individual became unemployed.

Criminal Acts and Incarceration or Imprisonment

Currently, under s. 443.101(9), F.S., an individual who is terminated from employment for violation of a criminal law punishable by imprisonment (either by conviction or entrance of a plea of guilty or nolo contendere) in connection with work is disqualified for benefits. This includes a violation of a criminal law under any jurisdiction.

The bill amends this disqualification in Section 5 of the bill by expanding the disqualification to a violation of any criminal law, not just those punishable by imprisonment, and includes being fired for violating a crime which affects an employee's ability to do his or her job.

Further, Section 5 creates a new disqualification for being unavailable for work due to incarceration or imprisonment, regardless of whether the offense was committed in connection with work.

USDOL may find this provision causes the state to be out of conformity with federal law.

State Unemployment Compensation Contributions

Maximum Rate

Section 10 amends s. 443.131(3), F.S., to raise the maximum rate from 5.4 percent to 6.4 percent (see Fiscal Impact Statement: Tax/Fee Issues below). This provision is effective upon becoming law and retroactive to January 1, 2011.

Quarterly Contributions – Installment Payments

As discussed in the Present Situation, 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 annual UC payment due early in the year. Under current law, for 2011, employers may choose to participate in an alternative payment plan for an administrative fee of up to $5 to participate.

Section 11 amends 443.141, F.S., to allow this option for UC taxes due in 2012, 2013, and 2014.

Temporary State Extended Benefits Program

In December, Congress extended the time that the federal government would fund 100 percent of state extended benefits for former private sector employers through January 4, 2012.[71] 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.

Section 7 revives, readopts, and amends s. 443.1117, F.S., to extend the duration of the temporary state extended benefits program. The section expired on April 5, 2010. When Congress extended the program in December 2010, Governor Crist signed Executive Order No. 10-276 extending the program. This bill codifies that executive order and revives the statute through January 4, 2012, in order for Floridians to be eligible for 100 percent federal funding for benefits for former private sector employees. Additionally, the bill conforms s. 443.1117, F.S., to federal law by putting into place the new "trigger" permitted.

This section is effective retroactive to December 17, 2010, and expires on January 4, 2012. The section contains an expiration date, because under the federal program, after January 4, 2012, any extended benefits paid will only be reimbursed by the federal government at a rate of 50

[71] Pub. L. No. 111-312.

percent for former private sector employees making new claims. The bill sets a sunset date in enacting the program in order to take the best advantage of the program.

Section 8 clarifies that the temporary extended benefits will be available to unemployed Floridians who establish entitlement to extended benefits between December 17, 2010, and January 4, 2012.

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."[72] 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.

Section 9 amends s. 443.1216(1)(a), F.S., to allow the employee leasing company to report leased employees under the accounts of its clients for unemployment tax purposes only. The bill allows a one-time election to change an employee leasing company's reporting and contribution method. The leasing company is required to notify AWI or the tax collection service provider of such election. The election is binding on all clients of the leasing company, as well.

Appeals

Section 12 amends s. 443.151(4)(e), F.S., relating to appeals of decisions by the Unemployment Appeals Commission.

Generally, if an appellant files a notice of appeal with the commission, the commission files the appeal with the appropriate district court of appeal. The decision of where to file is based upon where the appeals referee was located and the decision was mailed.[73] An appeal must be filed within 30 days of the issuance of the commission's order.

The bill provides that if one of the parties to the commission decision wants to appeal the decision, the party may file the appeal in the appellate district where the claimant lives or where the job was located. If the party files the notice of appeal with the commission, then the commission will file the appeal where the order was issued in order to timely file the appeal.

Overpayments

Overpayments are UC benefits that cannot be charged against any employer's account. These costs are recovered through a noncharge factor that socializes the cost of the overpayments

[72] Department of Business and Professional Regulation, definitions, available at http://www.myfloridalicense.com/dbpr/pro/emplo/codes.html (last visited 2/2/2011).
[73] See Unemployment Appeals Commission, Appealing a UAC Order to a District Court of Appeal, available at http://www.uac.fl.gov/HowTo02.html (last visited 2/2/2011).

among all contributory employers who had benefit experience over the previous 3 years (discussed above in the Present Situation).

Section 12 amends s. 443.151(6), F.S., to create a provision which limits the amount of overpayments that AWI can attempt to collect from a claimant who receives benefits that she or he was not eligible to receive in a situation where notice of nonmonetary determination was not provided within 30 days of filing a new claim. The agency is limited to recollect of up to 5 weeks of benefits.

Other

Various sections of the bill also include changes correcting cross-references. Specifically, Section 6, amending s. 443.1115, F.S., is included for purposes of correcting a cross-reference.

Section 13 states that the Legislature finds that this act fulfills an important state interest.

Section 14 provides that this act shall take effect July 1, 2011.

Other Potential Implications:

USDOL has broad oversight for the UC program, including determining whether a state law conforms to federal UC law and whether a state's administration of the UC program substantially complies with processes and procedures approved by USDOL. 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. When a state's UC law conforms to the requirements of the Social Security Act, the state is eligible to receive federal administrative grants to operate the state's UC program. When a state's UC law conforms to the requirements of the FUTA, employers in the state may receive a credit of up to 5.4 percent against the federal unemployment tax rate of 6.2 percent.

The Secretary of USDOL is responsible for determining if a state's UC law meets the requirements of federal law. Under FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment tax.

USDOL may find various provisions of this bill to be out of conformity with federal law. If USDOL made such a finding, then it would not certify the state's UC program and could withhold all administrative funding or cause the employer federal tax rates to increase to the total 6.2 percent because of loss of the entire FUTA tax credit.

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 bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees through the end of 2011, 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 13 of the bill) and one of the following relevant exceptions:

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

"Similarly situated" refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities. Because the bill 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:

Currently, the statutory cap on unemployment tax rates is 5.4 percent. If an employer at the maximum rate has benefits charges in excess of what the maximum tax rate would cover, these costs are spread back across all other employers with lower tax rates (called excess payments). Essentially employers at the maximum rate create additional costs on employers with lesser benefit histories, because these excess benefits charges become the responsibility of all other employers.

An employer at the maximum tax rate is generally only affected by an increase in the wage base – application of the trigger (to replenish the UC Trust Fund) or socialized costs do not affect these employers. In 2011, about 17 percent of employers paying UC tax are at the statutory cap of 5.4 percent; 66 percent of those employers have an experience rating at or above the statutory maximum (the other 34 percent of employers are picking up some portion of socialized costs which push them up to the statutory maximum).

An increase in the statutory cap would cause those employers who aren't generating enough at their tax rate to pay for all their benefits charged to them to pay an amount closer to the costs they impose on the system. It would lower the amount of excess payments, and this would decrease the amount of socialized costs that other employers have to absorb. Further, raising the maximum rate would lower the minimum tax rate. About 79 percent of employers would experience a reduction in their 2011 taxes (about 279,358), and 21 percent would see an increase (73,423); about 5,000 employers at the maximum rate currently would receive a decrease in their 2011 tax rates.[74] This provision does not decrease or increase total taxes to the UC Trust Fund.

	2011 Taxes – Current Law		**Estimated 2011 Taxes with Higher Max Rate**		**Difference**
Minimum Rate	1.03%	$72.10	0.75%	$52.50	*$19.90 Less*
Maximum Rate	5.4%	$378	6.4%	$448	*$70 More*

The $5 administrative fee to participate in the installment payment program for UC taxes is a per year fee. The amount of money generated from the fee depends on the number of businesses electing to participate. In 2010, out of 450,000 employers, only about 5,000 elected to participate in this option (representing a total of $127 million in UC taxes). However, due to the expected significant increases in the UC tax in future years, more employers may elect to participate in the installment option.

An employee leasing company is allowed, under the bill, 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.

Limiting the amount that AWI can attempt to recover in the event of an overpayment will increase socialized costs that all employers incur and may have a negative impact on the UC Trust Fund. Until an individual completely repays the amount of overpayment due, these costs will be recovered through the trust fund factor, which will increase employers' UC taxes.

B. Private Sector Impact:

Participation in the temporary state extended benefits program is expected to bring an estimated $650 million in additional benefits to Florida. 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,

[74] Data from Department of Revenue, on file with the Senate Commerce and Tourism Committee.

and other reimbursable employers are not covered by federal funds (see explanation below related to Government Sector Impact for impact on public employers).

Changes to the qualification and disqualification criteria for UC benefits may reduce the amount of benefits paid from the UC Trust Fund to unemployed individuals, which may reduce the amount of federal advances drawn down. Additionally, these changes may reduce the amount of federal emergency and federally funded temporary state extended benefits to such individuals.

C. Government Sector Impact:

To the extent that provisions of the bill impact the conformity of Florida's UC law with federal requirements, the federal funding provided to administer the UC program could be jeopardized.

At this time AWI has not indicated the cost to implement the requirement to review and verify tangible evidence that a claimant is actively seeking work. However, the costs to implement will be proportionate to the extent of the verification services, which could be extensive. Furthermore, because AWI has a limited amount of administrative resources from USDOL, allocation of funds to implement this requirement could reduce funds for other services. AWI indicated that computer programming that would be required as a result of changes made by the bill could be funded by currently available federal grants.

The Florida Ready to Work program was funded by $5.3 million in nonrecurring general revenue in FY 2010-11. Increasing the use of the program may result in additional costs to the state. Currently, the Department of Education contracts with a private company to use their skills assessment, training, and credentialing program. State funding allows for a certain number of assessments and credentials under the contract. To the extent that another online education or training program must be developed, reviewed, approved, and implemented to address non-English speaking claimants, there may be a fiscal impact to the state.

DOR may incur additional costs to implement the increase in the maximum rate, and to administer any elections by employee leasing companies to change their reporting methods.

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 $18.4 million, approximately $5.4 million from state funds and $13 million 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.

VI. Technical Deficiencies:

The definition of the term "through no fault of his or her own" in Section 2 of the bill does not encompass all eligible claimants.

In setting wage criteria for "suitable work" in Section 5, the bill does not address whether the weeks begin from the end of the individual's last period of employment or from the effective date of the new claim. Some individuals believe they will find work soon after losing a job and delay filing for benefits. An individual that waits for a calendar quarter to file a claim, which might be a necessity when computing base period employment, would already be in his or her 13th week of unemployment when the claim is established. This individual would be immediately subject to the lower standard of suitability than if the weeks are counted from the date the claim was established.

Additionally, administering the wage criteria for "suitable work" in conjunction with other criteria for suitable work, such as the wages cannot be substantially less favorable than those prevailing for similar work in the locality (a federal requirement codified in state law), may raise challenges in reading the criteria together to administer the law.

The calculation of the duration of "severance pay" in Section 5 of the bill does not take into account whether the individual received the severance pay from his or her most recent employer.

The specific acts set forth in the definition of "gross misconduct," in Section 5 of the bill, do not include violation of an employer's written policy disallowing any drug use whatsoever, including the use of drugs while off the job or off duty. Further, while a disqualification for simple misconduct carries a penalty measured in weeks as well as an earnings requirement, disqualifications for gross misconduct only impose an earnings requirement.

The new disqualification for being unavailable for work due to incarceration or imprisonment raises due process concerns related to individuals who are incarcerated or imprisoned due to mistaken identity, for example.

The potential USDOL conformity issue raised by the requirement of an initial skills review for benefit eligibility may be alleviated if the initial skills review were made a part of the registration and reporting requirement in s. 443.091(1)(b), F.S. As a registration and reporting requirement, the review would not be a condition of an individual's eligibility for benefits. However, if the initial skills review was a condition of registration and reporting, AWI would be required to direct the individual to complete the review and provide a means to complete the requirement.

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.)

None.

B. Amendments:

None.

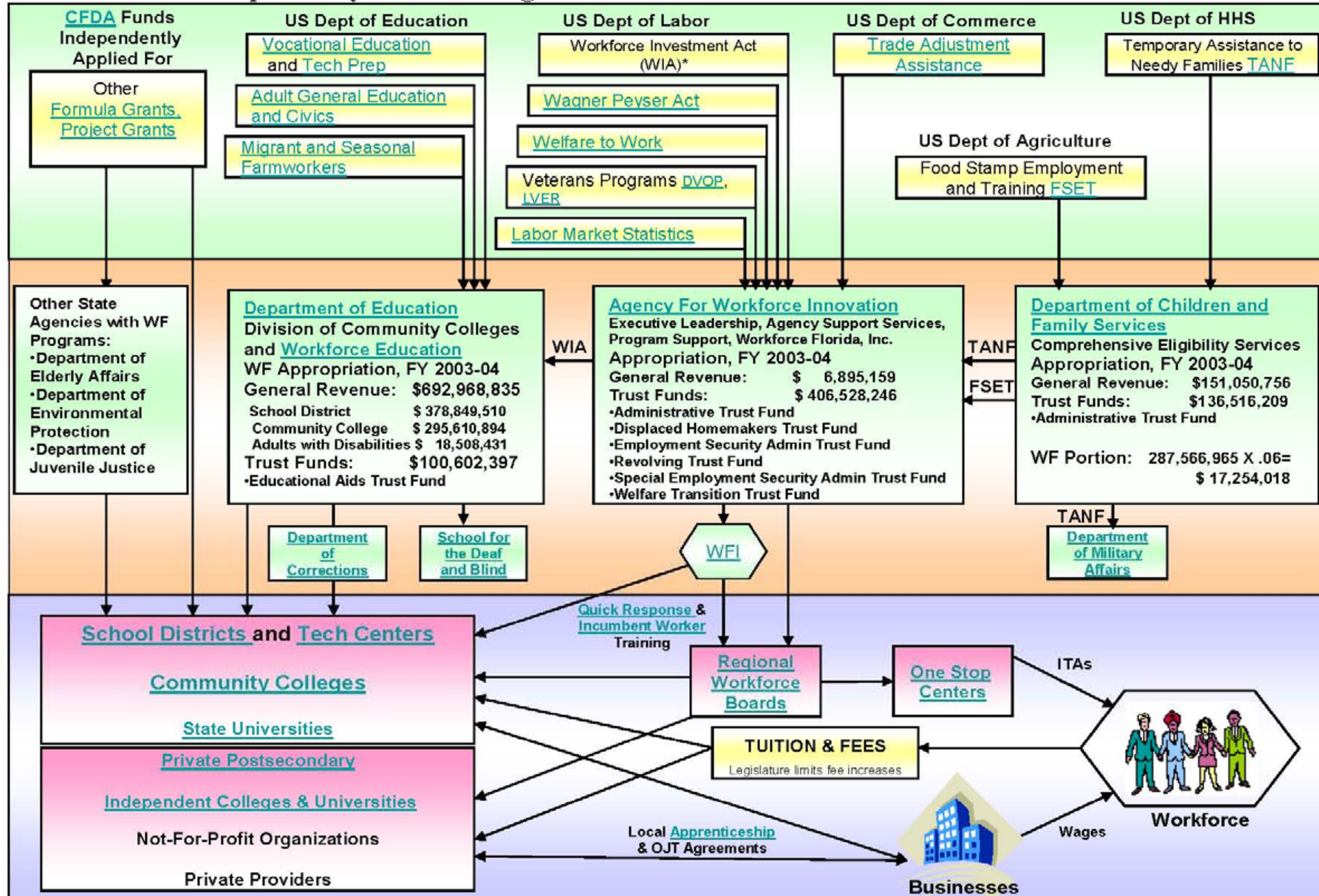
This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

Florida's Current Workforce System

- 12% unemployment
- Bureaucratic:
  - 6 Federal agencies, 10 state agencies
- Federal $$$ restrictive—not flexible
- Jobs hard to find

Florida's Current Workforce "System"

Exhibit 2
Workforce Development System Funding Flow



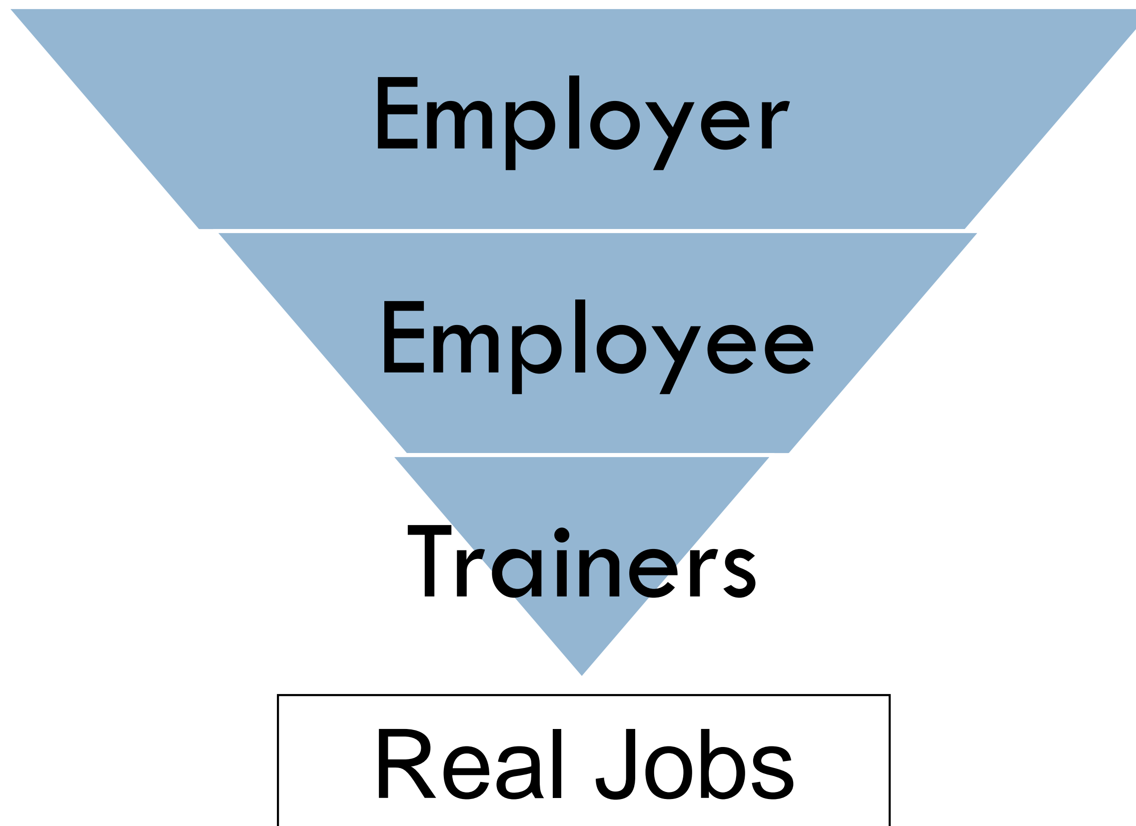
*WIA Formula Funds include: Adults, Youth, Dislocated Workers; Other WIA Funded programs include: Alien Labor Certification, Job Corps Outreach, Operation Paycheck, Trade Act Dual Enrolled, Performance Incentive Grant, WIA Disability Program Navigator Training Programs

CareerEdge

Funders Collaborative Manatee Sarasota

$$$$$$$$$$$

(public/private)



CareerEdge

Funders Collaborative Manatee Sarasota

- 2 County region
- $3 million raised (private/public)
- Health care 3% positive employment growth
- 400 trained, 120 new jobs, 200 saved jobs
- Leverage workforce funds
- Employer/Employee focus

DEAL

Design & Economic Acceleration Lab

SCHROEDER•MANATEE•RANCH INC.

GULF COAST
THE FOUNDATION OF COMMUNITY

Executive Summary. We propose the creation of a Design and Economic Acceleration Lab ("DEAL") through State College of Florida to house in a single, collaborative location all agencies that are essential to the Economic Development equation for the many companies desiring to locate or expand in the Manatee-Sarasota Region. Job creation and retention is first priority and these goals require a fresh, bold, entrepreneurial, and integrated strategy focused solely upon bringing together in an efficient setting the diverse resources designed to maximize prospects for a successful economic development effort.

The Potential. What if there was a college collaborative campus that:

1) was devoted solely to regional job creation and growth that housed together the major economic development and planning organizations in the region;

2) was located on 300 or more acres within the nationally recognized and largest planned development in Southwest Florida;

3) had the backing of the largest and most regionally-focused foundation in the state;

4) used state-of-the-art technology for data collection, strategic planning, and marketing applicable to start-ups, expansion, and recruitment of businesses and cultural entities;

5) would foster public/private partnerships by way of essential support mechanisms for small business development, workforce training, workforce degrees, and be able to move quickly to provide customized training, education, and other support that new enterprises might need;

6) made it easy for companies unfamiliar with the area to access these otherwise diverse resources in an efficient, collaborative, single point of contact; and

7) would include a "University Partnership Center" to provide customized research and training support from educational and research institutions from Florida and throughout the country.

All of these collaborative resources and resulting energy would be located in one place with the primary mission to create jobs and improve the quality of life in the region but also with an important secondary effort to engage in thinking about future realities that can only be imagined now.

In reality, this canvas is ready to be painted:

Early Stakeholders. Lakewood Ranch, where 50% of all office related job growth in Manatee and Sarasota Counties has occurred, has applied the first major brush stroke—the location of the campus. Its Board of Directors has agreed to partner with the State College of Florida, Manatee-Sarasota in this regional venture. In its continuing "broker" role the State College of Florida (SCF) also has had very positive preliminary discussions with leaders in both county governments, the region's EDCs, and other key supporters of a regional approach to economic development. All have expressed interest in moving forward to explore and actively pursue this initiative. In addition, the Gulf Coast Foundation of Venice has indicated strong support for the regional coalition. Consequently, the DESIGN AND ECONOMIC ACCELERATION LAB (DEAL) is aggressively moving beyond concept into reality.

What is DEAL? The Design and Economic Acceleration Lab is a comprehensive collaborative of people, organizations, and high technology resources that facilitates and accelerates regional economic and job growth. It supports economic development success from start-up businesses to improvement, expansion, and redesign of existing enterprises to the recruitment and relocation of major corporations. This support includes whatever is needed to help businesses and organizations be successful, including, but not limited to, access to local, state, and federal incentives; workforce training and education; strategic and tactical planning; leadership mentoring and coaching; team and consensus building; access to research and data; marketing assistance; help with maneuvering through bureaucratic requirements; connections to financial information and capital. It includes resources for entrepreneurs and for international business and trade. Overall, it is a creative environment that fosters innovation and spurs visionary thinking.

What is the Design Component of DEAL? The Design Theater is a state-of-the-art technology and planning hub for such purposes as manipulating data for Scenario Planning and computer modeling for new ventures, in addition to such areas as process redesign and feasibility of business plans. For example, there would be available sophisticated GIS technology applications for identifying and creating data on clusters of related businesses. Innovative and visionary thinking is expected to blossom in the Design Theater from the high tech capability of computers to the low-tech process of literally writing on the walls to organize, visualize, and explore ideas.

Who is DEAL? A core group would be housed in a single location: State College of Florida, Manatee-Sarasota (including its executive administration); the EDCs of Manatee and Sarasota Counties; SCF and other workforce training and education providers. Included also could be such entities as the regional transportation planning group and the Metropolitan Planning Organization (MPO).

Other tenants, either fulltime or part time presence (or remote relationship), could be: financial institution(s) and venture capitalists; private business consulting individuals; university research partners, and others that might provide needed support to its mission as DEAL develops.

A key element is SCF's capability as "broker" to partner with other colleges and universities in a "university center" approach to bring programs, training, and research to the campus.

Why is DEAL Necessary? DEAL is designed to strictly view the Economic Development process from one point of view…that of the prospect in question. Through no fault of the many players in the Economic Development process, the historic Economic Development approach has been, at best, inefficient. Consider the following.

All companies engaged in locational decisions naturally seek the best outcome for their businesses. However, many are naturally on tight time tables and are unfamiliar, not only with the area, but also with the numerous resources that could be brought to bear on their situation. Much time is spent pitting one community against another in an inefficient "bidding war" with no real winners. This duplicates effort and detracts from the real mission which is how to make it happen for the prospect which is legitimately seeking quick, efficient solutions to the needs of its business applications. Frequently, tours of a community are conducted in such a cursory, haphazard fashion as to innocently miss key opportunities and resources that could have made a critical difference in a value added way to all concerned parties.

DEAL allows a visiting prospect to explain their goals and needs ***one time*** to a diverse group of professionals, each of which could be a material component to an integrated business solution tailored specifically to the needs of the prospect. It allows a quick, efficient, timely, and coordinated response to the prospect. It says to any visiting prospect, "We are open for business. We want you to come to our community and we are willing to bring to bear all of our collective resources to help you succeed."

One word sums up the DEAL concept: COLLABORATION. While historically the practice has been for counties, including Manatee and Sarasota, to compete separately toward economic advancement, the fact is, despite sporadic successes, this "siloization" dilutes the compounded power of regional cooperation and leads to the hardening of economic arteries. County lines cannot be competitive fences when economic competition today is waged between regions. Robust regional economic development is effective local economic development. And regional collaboration can best be accomplished by having a central resource that provides connections for all stakeholders. The Design and Economic Acceleration Lab provides that single point of connection.

What are Advantages of DEAL? Among many advantages, DEAL would:

1) create a working model of regional collaboration and a unified regional approach to economic development and job growth, working to advance the best economic opportunities for both Manatee and Sarasota Counties.

2) exist as a "one stop" location where stakeholders and clients can get timely, current, and consistent information; have questions answered; be provided, advised, and directed to appropriate services; experience a substantive "customer/business friendly" environment; and have available on-going resources of support.

3) provide customized workforce training, education, and linkages to meet the needs of every type of business and organization—profit, non-profit, governmental.

4) allow EDC's to work as "partners" while maintaining their individual autonomy and identity, with improved channels of communication, pursuit of common interests, and possible economies of scale for better cost effectiveness.

5) improve business friendly image and reputation for both counties increasing interest of new ventures, both through serendipitous connections and targeted enterprises.

6) foster a regional identity capable of competing with already established regional initiatives, i.e. Tampa Bay.

7) support and encourage better strategic planning at the regional level--for example, a visioning initiative that identifies individual strengths, regional strengths, and common interests.

8) expand State College of Florida's role as educational economic engine of the region through its workforce degrees and programs, its ability to "move on a dime" to meet community needs, and its initiative in bringing in university research partners and expertise (such as the Decision Theater of Arizona State University) to serve the design and economic acceleration demands brought to DEAL. SCF can serve as a "broker" to bring appropriate parties together.

9) establish practical, real-time collaborative engagements based on the best knowledge and strategies that benefit businesses and organizations today while becoming a laboratory for ideas to stay up with or ahead of the constantly changing economic landscape of tomorrow.

In sum, the Design and Economic Development Lab becomes the "go to" location for economic development. DEAL is here to deal so that positive results ensue to improve the quality of life for every citizen in our region.

LET'S DEAL!

Original draft announced 1/18/11

Presentation by Dr. Larry Thompson, President,
Ringling College of Arts and Design

No meeting documents submitted

The Florida Senate

Interim Report 2011-107 *October 2010*

Committee on Commerce

IDENTIFICATION, REVIEW, AND RECOMMENDATIONS RELATING TO OBSOLETE STATUTORY REFERENCES TO THE FORMER FLORIDA DEPARTMENTS OF LABOR AND EMPLOYMENT SECURITY, AND COMMERCE

Issue Description

The Division of Statutory Revision of the Office of Legislative Services reviews Florida Statutes, in part, to remove inconsistencies and otherwise improve their clarity and facilitate their correct and proper interpretation. Any revision the division makes to a statute, either complete, partial, or topical, is accompanied by revision and history notes relating to the same, showing the changes made therein and the reason for such recommended change.

The Division of Statutory Revision maintains an informal list of statute issues, which may include notes and recommendations to clarify and remove inconsistencies in Florida Statutes. Several issues related to references in statutes to the former Department of Labor and Employment Security or the former Florida Department of Commerce still exist in the Florida Statutes.

The Department of Labor and Employment Security was abolished by the Legislature in 2002.[1] Chapter 96-320, L.O.F., provided for the dissolution of the Florida Department of Commerce, effective December 31, 1996.

This interim report will explore the structure of these former departments and how their structures were ultimately dismantled and redistributed to other areas of Florida government. This framework is intended to serve as a resource for use in the examination of current references to the former Department of Labor and Employment Security or the former Florida Department of Commerce in Florida Statutes and assist in determining potential solutions to update such references.

Background

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.[2] It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.[3]

The process for the abolishment of DLES began in the 1999 Legislative Session,[4] and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

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[1] Chapter 2002-194, L.O.F.
[2] Chapter 78-201, L.O.F.
[3] See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 230, dated April 19, 1999.
[4] Chapter 99-240, L.O.F.

Division of DLES	Purpose	Transferred or Repealed[5]	Chapter Law
Division of Administrative Services	Provided support services through four functional units: (a) Human Resource Management; (b) Administrative Support; (c) Management Information Systems; and (d) the Office of Training and Development.	• Transferred administration of labor organizations, migrant and farm labor registration, and other workplace regulation functions to the Department of Business and Professional Regulation • Transferred the Office of Information Systems to the State Technology Office • Other support services were transferred as appropriate	Ch. 2002-194, L.O.F.
Division of Blind Services	Provided rehabilitation, job placement, and follow-up services designed to find employment for Florida's blind residents.	• Transferred to the Department of Education	Ch. 99-240, L.O.F. Ch. 2002-22, L.O.F.
Division of Jobs and Benefits	Helped workers find jobs and assisted employers with recruitment of qualified applicants. The division administered a number of programs, including the following: Job Training Partnership Act; Apprenticeship; Child Labor; Labor Market Information; Professional Placement Network; WAGES/WORKPay$; and School-to-Work.	• Transferred to the Agency for Workforce Innovation, Workforce Florida, Inc., and the Department of Children and Family Services, as appropriate. • Transferred apprenticeship training to the Department of Education • Transferred administration of labor organizations, and migrant, farm worker, and child labor laws to the Department of Business and Professional Regulation	Ch. 2000-165, L.O.F. Ch. 2002-194, L.O.F.
Division of Safety	Performed worksite inspections, and educated employers, employees, and the public about workplace safety issues.	• Repealed July 1, 2000	Ch. 99-240, L.O.F.
Division of Unemployment Compensation	Administered the federally-mandated insurance program that pays wage-replacement benefits to unemployed workers.	• Transferred to the Agency for Workforce Innovation (and required the agency to contract with the Department of Revenue for tax collection services)	Ch. 2000-165, L.O.F.

[5] These are not necessarily the current locations for such programs or authority.

Division of Vocational Rehabilitation (including the Office of Disability Determinations)	Assisted persons with physical or mental impairment gain employment. The Office of Disability Determinations was a federally funded program which was responsible for determining medical eligibility for Social Service Disability Insurance and Supplemental Security Income Benefits. The office also made appropriate referrals to the Division of Vocational Rehabilitation and programs within the Department of Health to assist claimants in obtaining necessary health care and regaining employment security.	• Effective January 1, 2000, the brain and spinal cord injury program and the Office of Disability Determinations were transferred to the Department of Health. • Transferred to Department of Education	Ch. 99-240, L.O.F. Ch. 2002-22, L.O.F.
Division of Workers' Compensation	Assisted in the delivery of benefit payments and provided rehabilitative and support services to injured workers to facilitate their reemployment.	• Transferred to the Department of Insurance; • Also transferred workers' compensation medical services to the Agency for Health Care Administration; and • Workers' compensation rehabilitation and reemployment services to the Department of Education	Ch. 2002-194, L.O.F. Ch. 2002-262, L.O.F.
Office of the Judges of Compensation Claims	Adjudicated disputed facts and resolved disputed issues regarding workers' compensation claims.	• Transferred to the Division of Administrative Hearings	Ch. 2002-194, L.O.F.
Public Employees Relations Commission	Responsible for enforcement of constitutional and statutory provisions giving public employees rights in bargaining with their employer.	• Transferred to the Department of Management Services	Ch. 2001-43, L.O.F.
Unemployment Appeals Commission	Responsible for deciding contested appeals for Unemployment Compensation.	• Transferred to the Agency for Workforce Innovation	Ch. 2002-194, L.O.F.
Workers' Compensation Oversight Board	Formulated proposed workers' compensation and held hearings.	• Repealed July 1, 2002	Ch. 2002-194, L.O.F.
Minority Business Advocacy and Assistance Office	Oversees the state's minority business enterprise program, including certifying participants in the program	• Renamed the Office of Supplier Diversity and transferred to the Department of Management Services	Ch. 2000-286, L.O.F.
Florida Advisory Council on Small and Minority Business Development	Advised and assisted the secretary of DLES in carrying out duties related to minority businesses and economic and business development	• Neither: the council still statutorily resides with DLES; however, it currently operates within the Department of Management Services	Ch. 2000-286, L.O.F.

Florida Department of Commerce

The Florida Department of Commerce (FDC) was created in 1969.[6] It consisted of three divisions and administratively housed or staffed a number of independent entities. It was "the state agency with the primary responsibility for promoting and developing the general business, trade, and tourism components of the state economy."[7]

FDC was abolished in 1996 in a reorganization of Florida's economic development structure.[8] The department's functions were either repealed or transferred to various other agencies. In general, the reorganization transferred economic development functions to Enterprise Florida, Inc. (EFI); tourism development and marketing functions to the Florida Commission on Tourism, Inc.; and all other functions that were considered to be "governmental in nature and [could not] effectively be transferred to public private partnerships" to the Office of Tourism, Trade, and Economic Development (OTTED).[9]

Division of FDC	Purpose	Transferred or Repealed[10]	Chapter Law
Division of Economic Development (included the Florida State Rural Development Council, and the Bureau of Business Assistance)	Responsible for economic development in Florida, including the promotion of Florida businesses and goods, assisting businesses locating or relocating in Florida, and creating high-wage employment opportunities for Floridians Responsibilities included: assisting small and minority businesses; oversight and promotion of the solar energy industry in Florida; the Quick-Response Training Program; the Economic Development Transportation Fund; qualified target industry businesses; enterprise zones; and the Jobs Siting Act	• Transferred to the Office of Tourism, Trade, and Economic Development • Transferred the Quick Response Training Program to Enterprise Florida, Inc. • Transferred solar energy responsibilities to Enterprise Florida, Inc., and the Department of Community Affairs • Created a rules ombudsman within the Executive Office of the Governor to monitor for adverse impacts on business and job creation	Ch. 96-320, L.O.F.
Division of Tourism	Operated advertising and promotional programs for promoting Florida including the agricultural, industrial, and tourism advantages of the state	• Transferred to the Florida Commission on Tourism, Inc., administratively housed in the Executive Office of the Governor	Ch. 96-320, L.O.F.
Division of International Trade and Development	Responsible for promoting Florida tourism and economic development, gathering information on trade data and opportunities in foreign countries, and assisting foreign firms to invest in Florida Responsibilities included: foreign international trade offices; coordination with the Florida Export Finance Corporation; participation in the	• Transferred to the Office of Tourism, Trade, and Economic Development • Transferred coordination with the Florida Export Finance Commission and participation in the International Trade Data Resource and Research Center to Enterprise Florida, Inc.	Ch. 96-320, L.O.F.

[6] Section 17, ch. 69-106, L.O.F.
[7] See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.
[8] Chapter 96-320, L.O.F.
[9] See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.
[10] These are not necessarily the current locations for such programs or authority.

	International Trade Data Resource and Research Center; and outreach activities in Latin America and the Caribbean Basin	• Created the International Trade and Economic Development Board within Enterprise Florida, Inc., to assist and advise in the development of Florida's domestic and international economic development policy	
Florida Entertainment Commission (Direct Support Organization)	Assisted FDC in the promotion and development of the motion picture, television, video, recording, and related entertainment industries	• Transferred to the Office of Tourism, Trade, and Economic Development • The Commission reorganized itself as the Florida Entertainment Industry Council, Inc.	Ch. 96-320, L.O.F.
Florida Sports Foundation (Direct Support Organization)	Assisted FDC in improving the economic presence of sports related industries in Florida	• Transferred to the Office of Tourism, Trade, and Economic Development	Ch. 96-320, L.O.F.
Economic Development Advisory Council	Made recommendations on economic development in Florida, including future growth, impact of government on doing business in the state, and education	• Repealed (Enterprise Florida, Inc., had been performing similar functions since it was created in 1992)	Ch. 96-320, L.O.F.
Commission on Minority Economic and Business Development (included the Minority Business Advocacy and Assistance Office and the Florida Council on Small and Minority Business Development)	Central oversight body for minority business enterprise development efforts, including certification of minority business enterprises	• Repealed; the Minority Business Advocacy and Assistance Office was transferred to the Department of Labor and Employment Security (see above chart) • Renamed the Florida Council on Small and Minority Business Development as the Florida Advisory Council on Small and Minority Business Development and transferred to DLES (see above chart)	Ch. 96-320, L.O.F.
Black Business Investment Board	Assisted in the development and expansion of black business enterprises	• Transferred to the Office of Tourism, Trade, and Economic Development	Ch. 96-320, L.O.F.
Enterprise Zone Interagency Coordinating Council	Advised and assisted in the management and development of enterprise zones	• Transferred to the Office of Tourism, Trade, and Economic Development	Ch. 96-320, L.O.F.
Florida Film and Television Investment Board	Promoted and developed the film and television industry in Florida	• Transferred to the Office of Tourism, Trade, and Economic Development	Ch. 96-320, L.O.F.

Florida Commission on Tourism (included the Florida Tourism Industry Marketing Corporation, a direct-support organization)	Advisory body of industry representatives to promote and enhance Florida tourism	• Transferred to the Florida Commission on Tourism, Inc. • Required establishment of the Florida Tourism Industry Marketing Corporation (VISIT FLORIDA)	Ch. 96-320, L.O.F.
Recycling Markets Advisory Committee	Coordinated policy and overall strategic planning for recovered materials among state agencies and the private sector	• Transferred to the Office of Tourism, Trade, and Economic Development	Ch. 96-320, L.O.F.
Florida Defense Conversion and Transition Commission	Advised the Governor and Legislature in the development and implementation of military base reuse and transition policy	• Transferred to the Office of Tourism, Trade, and Economic Development	Ch. 96-320, L.O.F.

Findings and/or Conclusions

Methodology

The professional staff of the Senate Commerce Committee searched Florida Statutes for terms related to the former Department of Labor and Employment Security and the former Department of Commerce. Staff also utilized the Division of Statutory Revision's informal list of statute issues to identify obsolete references.

Upon creating a list of obsolete references, staff prepared a spreadsheet listing each provision, potential agencies that may currently have jurisdiction over the statute, any historical information about the purpose of the statute or reference, and possible recommendations related to updating the statute. This information was provided to relevant agencies to seek guidance and information about the obsolete references and potential recommended solutions for updating the statute in question.

Findings

Staff found that, despite the decentralization and abolishment of the departments, references to the former Department of Labor and Employment Security and former Department of Commerce still exist in current Florida Statutes.

Further, staff found references in the Florida Statutes to obsolete programs or entities that were transferred to one of the two former departments. The Florida State Employment Service and Florida Council for the Blind both pre-date the former Department of Labor and Employment Security, however, it appears that their responsibilities were transferred or merged into the department. Because the responsibilities of these programs were eventually part of the Department of Labor and Employment Security, staff proceeded to research the vitality of the provisions which still reference these programs.

Additionally, staff discovered references to workforce programs that were formerly housed in Enterprise Florida, Inc., including the Workforce Development Board and its predecessor, the Enterprise Florida Jobs and Education Partnership. Although not specifically within the former Department of Commerce, these programs were also amended at the time that the Legislature was remodeling its economic development policies.[11]

Some obsolete references also required staff to look into the purpose of entire programs, such as the Trench Safety Act[12] and the asbestos management program in public-buildings owned by state agencies.[13]

[11] Chapter 96-320, L.O.F.
[12] Part III, ch. 553, F.S.
[13] Sections 255.551 - 255.563, F.S.

Options and/or Recommendations

In total, there are 35 references to the former Department of Labor and Employment Security, or one of its former programs, and there are 10 references to the Florida Department of Commerce still remaining in Florida Statutes. The professional staff of the Senate Commerce Committee found that some references are still necessary in statute, while others should be repealed or amended to reference the current agency or program.[14]

Department of Labor and Employment Security

Retain Reference in Statute

Statute	Recommended Change
§122.02(4)(a) *Determination of years of service in the State and County Officers and Employees' Retirement System (SCOERS)*	The reference is to the Florida State Employment Service (merged into DLES in 1983) This reference should remain in statute DMS administers ch. 122, F.S. SCOERS was closed to new members in 1970. The agency indicated that leaving the reference may aid individuals who are still active under SCOERS; but also suggested that if the reference was changed, then a footnote should be added to identify the former reference However, AWI suggested the reference be changed to "Public Employment Service"
§122.20(1) *Permits certain "blind or partially sighted persons" to participate in SCOERS*	This reference is to the Council for the Blind (merged into DLES Division of Blind Services) This reference should remain in statute DMS administers ch. 122, F.S. SCOERS was closed to new members in 1970. The agency indicated that leaving the reference will aid individuals who are still eligible for SCOERS through this statute
§440.60(3) *Application of Law for a particular time period for acts of the former Division of Workers' Compensation*	This reference should remain in statute DFS affirmed
§443.141(3)(f) *Reproductions of documents for collection proceedings for unemployment taxes*	This reference should remain in statute AWI affirmed

Delete the Reference or Repeal the Statute/Provision

Statute	Recommended Change
§45.031(7)(a) *Judicial sales procedure where agency was named defendant (unemployment tax)*	Delete the reference to DLES from the statute DOR recommended deleting the reference – stated that it would not affect any cases However, AWI recommended revisiting the issue in 2023, 20 years after the DLES was abolished

[14] A detailed analysis is on file with the Senate Commerce Committee.

Statute	Recommended Change
§69.041(4)(a) *DOR rights to pursue certain liens*	Delete the reference to DLES from the statute DOR recommended deleting the reference – stated that it would not affect any cases However, AWI recommended revisiting the issue in 2023, 20 years after the DLES was abolished
§252.87(7) *Supplemental state reporting requirements of Emergency Planning and Community Right-to-Know Act (EPCRA)*	Delete the reference to DLES from the statute DCA had no comment
§252.937(2) *Coordination of state agencies for implementation of the Accidental Release Prevention Program (Clean Air Act)*	Delete the reference to DLES from the statute DCA had no comment
§287.09451(4)(h), (o)2. *Office of Supplier Diversity*	Delete the references to DLES from the statute DMS recommended that no change be made to the statue at this time, or that the reference to DLES be removed
§288.038 *Allows DLES to enter into an agreement with county tax collectors to accept applications for licensure or registration*[15]	Repeal this statute AWI and OTTED affirmed
§440.49(9)(b)2. *Assessments for the Special Disability Trust Fund*	Repeal the provisions referencing DLES from the statute DFS affirmed
§446.60 *Assistance for displaced local exchange telecommunications company workers*	Repeal this statute WFI indicated that they do not perform this function AWI agreed that the provision may be outdated and beyond the timeline intended by the Legislature
§553.62 *State standard for trench safety*	Delete the reference to DLES and rulemaking authority from the statute DOT affirmed

[15] Similar language appears in ss. 288.037, 455.213(1), and 456.013(1)(a), F.S., for different state agencies.

Statute	Recommended Change
§597.006(1) *Aquaculture Interagency Coordinating Council*	Delete the reference to DLES from the statute

Update Reference to Appropriate Agency

Statute	Recommended Change
§252.85(1) *EPCRA fee based on number of employees*	Change the reference to DLES to "AWI or its tax collection service provider" AWI and DOR affirmed DCA had no comment
§287.09431 Introduction, Art. II (2) – (4) *Statewide and interlocal agreement on certification of business concerns for the status of minority business enterprise*	Change the references to DLES to DMS DMS recommended that no change be made to the statue at this time
§287.0947(1) *Florida Advisory Council on Small and Minority Business Development*	Update the statute to reflect current status of the program, and delete references to DLES as appropriate The council is administratively housed within DMS DMS recommended that no change be made to the statue at this time, or that the reference to DLES be removed
§288.021(1) *Agency economic development liaisons*	Change the references to DLES to AWI AWI and OTTED affirmed
§409.2576(1), (3)(b), (8) *State Directory of New Hires*	There are 3 references to the DLES in the statute The first 2 are unnecessary at this time, since the date specified has passed, and could be deleted For the third, change the reference to DLES to "AWI or its tax collection service provider" AWI and DOR affirmed
§414.24 *Integrated welfare reform and child welfare services*	Change the references to DLES to AWI DCF affirmed
§414.40(2)(d) *Stop Inmate Fraud Program – agency coordination*	Change the reference to DLES to AWI AWI and FDLE affirmed

Statute	Recommended Change
§440.385(5) *Florida Self-Insurers Guaranty Association – plan of operation*	Change reference to DLES to DFS, and repeal obsolete language as appropriate DFS affirmed
§450.161 Introduction *Chapter on child labor not to affect apprentices*	Change reference to the Division of Jobs and Benefits to DOE DOE affirmed
§489.1455(1)(b) *Construction contracting journeymen reciprocity standards*	Change the reference to DLES to "the registration agency defined in 29 C.F.R. 29.2" – or "DOE, state apprenticeship agency, or USDOL" DOE recommended changing the reference to DOE; or to "registration agency defined in 29 C.F.R. 29.2" – or "DOE, state apprenticeship agency, or USDOL" because it is a national program with reciprocity DBPR stated that it does not have jurisdiction over this provision
§489.5335(1)(b) *Electrical and alarm system contracting journeymen reciprocity standards*	Change the reference to DLES to "the registration agency defined in 29 C.F.R. 29.2" – or "DOE, state apprenticeship agency, or USDOL" DOE recommended changing the reference to DOE; or to "registration agency defined in 29 C.F.R. 29.2" – or "DOE, state apprenticeship agency, or USDOL" because it is a national program with reciprocity DBPR stated that it does not have jurisdiction over this provision
§944.012(5) *Legislative intent for the state correctional system & calls for coordination of agency efforts*	The reference is to the Florida State Employment Service (merged into DLES in 1983) Change the reference to "public employment service" AWI, DOC, and DMS affirmed

No Recommendation

Statute	Recommended Change
§112.044(2)(d), (5) *Florida's age discrimination statutes, requiring each [public] employer, employment agency [procuring public employees], and labor organization to post a certain notice*	Neither DMS's Division of Human Resource Management, AWI's Office of Civil Rights, nor the Florida Commission on Human Relations currently perform this function AWI indicated that age discrimination in employment as addressed in Florida statutes is more comprehensive and the protections available to individuals are broader than those available under Federal regulations The DMS Division of Human Resource Management agrees with the recommendation to repeal the reference to DLES and instead refer to the United States Department of Labor and the Equal Employment Opportunity Commission for the required notice to be posted However, if the Legislature determined that a different notice was necessary to be posted by employers, then another state agency would need to be designated to fulfill this purpose

Statute	Recommended Change
§255.551 - 255.563 *Asbestos in state owned buildings*	It appears that no state agency currently performs the functions required by this part DMS concurs with the removal of ss. 255.552, 255.555, and 255.563, F.S. DMS strongly recommends retaining the technical content of ss. 255.551, 255.553, 255.5535, and 255.556-562, F.S., but moving them to be managed by a regulator in the environmental arena. Currently, EPA, state (DEP), and local air program inspectors inspect renovation and demolition sites to determine compliance with the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP)
§469.003(2)(b) *Certified asbestos surveyors prior to October 1, 1987*	DBPR and DMS indicated that repeal of this provision would be OK with them Another idea raised by professional staff of the Senate Regulated Industries Committee is to just eliminate any reference to DLES – "any person engaged in the business of asbestos surveys prior to October 1, 1987… who has complied with the training…" etc.

Florida Department of Commerce

Retain Reference in Statute

Statute	Recommended Change
§288.901(2) *Enterprise Florida, Inc. – employ/lease individuals from FDC*	This reference should remain in statute EFI and DMS indicated that there are still 3 individuals employed under this provision; the reference is necessary until they retire This provision also references the "Workforce Development Board established under s. 288.9620" which was transferred to s. 445.004, F.S., which created Workforce Florida, Inc., and designated it as the state's Workforce Investment Board (ch. 2000-165, L.O.F.)[16]

Delete the Reference or Repeal the Statute/Provision

Statute	Recommended Change
§14.2015(8) *OTTED collection of visitor data*	Delete the reference to FDC from the statute OTTED suggested deleting the reference because the methodology was updated in 2009
§288.035(1) *Economic development expenses that public utilities are permitted to recover*	Delete the reference to FDC from the statute, and update the statute as necessary OTTED affirmed See SB 1696 (2010)
§288.1162(6)(a), (8) *Certification of professional sports franchise facilities*	Repeal this statute, and update the associated revenue statute (s. 212.20, F.S.) OTTED stated that eligibility for the program is closed; they recommend repealing the statute, as long as it doesn't impact funds still flowing to the certified applicants See SB 1696 (2010)

[16] Section 331.369, F.S., also references "the Workforce Development Board of Enterprise Florida, Inc.," in subsections (2), (4), and (5). These obsolete references should be updated to reflect the current workforce entity, Workforce Florida, Inc.

Statute	Recommended Change
§288.1168(1), (2) *Professional golf hall of fame facility*	Repeal this statute, and update the associated revenue statute (s. 212.20, F.S.) OTTED is required to annually review the facility's generic Florida advertising but there are no financial penalties involved; they recommend repealing the statute, as long as it doesn't impact funds still flowing to the certified facility. See SB 1696 (2010)
§288.1229(7) *OTTED contract with sports-related DSO*	Delete the reference to FDC from the statute OTTED recommended repealing the reference and related obsolete language
§446.60 *Assistance for displaced local exchange telecommunications company workers*	Repeal this statute WFI indicated that they do not perform this function AWI agreed that the provision may be outdated and beyond the timeline intended by the Legislature This provision also references the "the Enterprise Florida Jobs and Education Partnership" which was transferred to EFI and renamed the Workforce Development Board (s. 112, ch. 96-320, L.O.F.), and was subsequently transferred to s. 445.004, F.S., which created Workforce Florida, Inc., and designated it as the state's Workforce Investment Board (ch. 2000-165, L.O.F.)[17]

Update Reference to Appropriate Agency

Statute	Recommended Change
§20.18(4)(b) *Directs Department of Community Affairs to work with FDC to develop employment opportunities*	Change the reference to FDC to OTTED DCA affirmed
§288.1169 *International Game Fish Association World Center facility*	Update the statute to reflect current status of the program, and delete FDC as appropriate OTTED is required to complete the required 10-year recertification in 2011; they recommended waiting until at least 2012 to repeal the statute See SB 1696 (2010)
§377.711(5)(h) *Recommendations of the Southern States Energy Compact*	Change the reference to FDC to the standard language of the compact, as other states involved have implemented in their state laws: <u>Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.</u> Section 377.712(3), F.S., deals with state agencies cooperation with the Southern States Energy Board, and references "the department," which may be referencing FDC; this reference could be changed permit <u>any</u> department to cooperate with the Board, so long as it has approval of either the Governor or the Department of Health

[17] Section 464.203(1)(d), F.S., references the Enterprise Florida Jobs and Education Partnership Grant. This obsolete reference should be updated to reflect the current practice.