HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 887 Unemployment Compensation Hearings
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 620

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Workforce and Economic Development (Sub)		Winker	Whitfield
2) Commerce			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 887 requires that notices of hearings in unemployment appeals be provided by certified or registered mail to all parties and attorneys of record.

The Agency for Workforce Innovation estimates that the bill will result in additional costs in the amount of $685,000.

The bill becomes effective on July 1, 2003.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[X]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a "no" above, please explain:

The bill will require additional expenditures and an additional staff at the Agency for Workforce Innovation.

B. EFFECT OF PROPOSED CHANGES:

The bill requires appeals referees to provide notices of hearings in unemployment appeals to all parties and attorneys of record by certified or registered mail.

If an appeal questions whether the claimant performed services that are considered to be employment covered by the Unemployment Compensation Law (ch. 443, F.S.), the bill requires the appeals referee to notify the employer of the appeal, and give special notice of this issue, by certified or registered mail.

The bill provides an effective date of July 1, 2003.

Unemployment Benefit Claims

Under current law, after a claimant files a claim for unemployment benefits, an examiner at the Agency for Workforce Innovation reviews the claim and makes an initial determination of whether the claimant is eligible for benefits to be paid and, if the claimant is eligible, of the amount of the benefits to which the claimant is entitled (s. 443.151(3)(a), F.S.). The Agency for Workforce Innovation is required to provide a copy of the examiner's initial determination to the claimant and to each employer whose employment records will be charged with benefits as a result of the claim. If the examiner denies the claim, the initial determination must also state the reasons for the denial.

Within 20 days after the Agency for Workforce Innovation mails a copy of the examiner's initial determination to the claimant and to each applicable employer, any of the parties may appeal the determination (s. 443.151(4)(b), F.S.). If the Agency for Workforce Innovation discovers an error or finds new information about a claim within 1 year after the determination (or within 2 years in cases involving false or fraudulent representation), the agency may reconsider the determination and issue a re-determination (s. 443.151(3)(c), F.S.). Re-determinations may also be appealed.

Unemployment Appeals

Once a claim is appealed by either the claimant or an employer, the Agency for Workforce Innovation appoints an appeals referee in one of its six appeals offices (Miami, Fort Lauderdale, West Palm Beach, Orlando, Jacksonville, or Tallahassee) to hear and decide the appeal. The appeals referee assigns the appeal a docket number, schedules a hearing on the appeal, and mails a notice of hearing to all parties at their last known addresses. Under current law, the hearing notice must be mailed to the parities at least 10 days before the date of the hearing (s. 443.151(4)(b)2., F.S.). According to the Agency for Workforce Innovation, hearing notices are mailed by first-class mail.

If an appeal questions whether the claimant performed services that are considered to be employment covered by the Unemployment Compensation Law (ch. 443, F.S.) and, therefore, eligible for the payment of unemployment benefits, the appeals referee must also notify the employer of the appeal and give special notice of this issue to the employer, who becomes a party to the appeal (s. 443.151(4)(b)2., F.S.). According to the Agency for Workforce Innovation, these notices are also provided by first-class mail.

Failure to Appear at Hearing

According to the Agency for Workforce Innovation, approximately 60 percent of appeals are heard by telephonic conference call, rather than by the parties appearing in person at one of the agency's appeals offices. If a party fails to appear at a hearing, the appeals referee may proceed with the hearing; however, if the party appealing the claim (the "appellant") fails to appear at the hearing, the appeals referee has automatic grounds to dismiss the appeal (rule 60BB-5.017(1) and (2), F.A.C.).

Under the appeals referees' rules (rule 60BB-5.017(3), F.A.C.), within 20 days after an appeals referee's decision is rendered:

- If the appellant has good cause for failing to appear at the hearing and the appeals referee dismissed the appeal, upon the written request of the appellant, the appeals referee must rescind the dismissal and reopen the appeal.
- If the party responding to the appeal (the "appellee") has good cause for failing to appear at the last scheduled hearing and the appeals referee entered a decision that is adverse to the appellee, the appeals referee must rescind the adverse decision and reopen the appeal.

When an appeals referee finds good cause for a party's failure to appear at a hearing, the appeals referee proceeds to hear the appeal on the merits of the claim. According to the Agency for Workforce Innovation, under current practice and precedent, a party's assertion that he or she failed to appear at a hearing because the party did not receive the notice of hearing constitutes "good cause" for rescinding the decision.

According to the Agency for Workforce Innovation, if a party asserts that he or she did not attend the hearing because the notice was not received via first-class mail, it is the agency's policy to schedule a new hearing. If the first notice was mailed to the correct mailing address, the second notice will be mailed by certified mail.

If good cause is not found, the appeals referee must reinstate the decision. Within 20 days after notice of the appeals referee's reinstatement of the decision is mailed, the party that requested the decision to be rescinded may subsequently appeal the reinstated decision to the Unemployment Appeals Commission (s. 443.151(4)(b)3., F.S.; rules 60BB-5.017(3)(b) and 60BB-6.003(1), F.A.C.). The commission may affirm, modify, or reverse the decision of the appeals referee (s. 443.151(4)(c), F.S.).

Unemployment Appeals Commission

The Unemployment Appeals Commission is a 3-member panel appointed by the Governor, subject to confirmation by the Senate (s. 443.012(1), F.S.). The commission is responsible for all unemployment appeal proceedings under the Unemployment Compensation Law (s. 443.012(3), F.S.). The commission is created within the Agency for Workforce Innovation, but is not subject to control, supervision, or direction by the agency (ss. 20.50(2)(d) and 443.012(5), F.S.).

Federal Performance Measures

The performance of each state's unemployment program is measured and evaluated by the United States Department of Labor through a performance management system, cited as "Unemployment

Insurance (UI) Performs." The UI Performs system includes uniform annual performance measures (cited as "Tier I" measures) and individual state performance targets (cited as "Tier II" measures). States that do not meet minimum performance criteria for Tier I measures are required to submit plans for achieving those criteria and must demonstrate progress toward meeting the minimum criteria.

These Tier I performance measures require lower-authority appeals (i.e., appeals heard by appeals referees) to be completed within the following timelines: 60 percent within 30 days after filing, 85 percent within 45 days after filing, and 95 percent within 90 days after filing.

C. SECTION DIRECTORY:

Section 1: Amends s. 443.151, F.S., related to unemployment appeals hearings; requires that notices to all parties be mailed by certified or registered mail.

Section 2: The bill becomes effective on July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Agency for Workforce Innovation estimates the bill would cause recurring costs of approximately $685,000 per year and would require 1 additional full-time-equivalent position (a deputy clerk) to implement the additional workload associated with preparing hearing notices for mailing by certified or registered mail in lieu of first-class mail.

This cost estimate is based on the agency's analysis that it processed approximately 160,000 hearing notices in fiscal year 2001-2002. Under current law, the Agency for Workforce Innovation cites that it expends about $59,000 per year for mailing these hearing notices by first-class mail. The additional cost of mailing the hearing notices by certified or registered mail is estimated at $650,000 in additional expenses and $35,000 in salaries and benefits for the additional position.

Although administration of the Unemployment Compensation Program is predominantly funded through administrative resource grants provided by the United States Department of Labor, the Agency for Workforce Innovation reports the U.S. Department of Labor has reviewed the bill and advised that Florida should not expect additional grant funding to implement the bill. The Agency for Workforce Innovation consequently asserts that funds from the General Revenue Fund would be needed to implement the bill.

The Agency for Workforce Innovation also claims that mailing hearing notices by certified or registered mail could generate delays in completing unemployment hearings and cause the agency difficulty in meeting federal Tier I performance measures under the U.S. Department of Labor's UI Performance system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES