

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 2706

INTRODUCER: Commerce Committee and Senator Hill

SUBJECT: Unemployment Compensation

DATE: April 8, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Fav/CS
2.			JU	
3.			FT	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This committee substitute creates an alternative base period to be used in determining an individual's unemployment compensation (UC) benefits when the worker has not had sufficient employment to qualify for benefits under the base period provided in current law.

In addition, the committee substitute amends the disqualification provisions contained in s. 443.101, F.S., to provide that benefits will not be denied to individuals who quit work for compelling family reasons, as follows:

- Domestic violence.
- Illness or disability if an immediate family member.
- Need for the individual to accompany a spouse to a place from which it is impractical to commute or due to a change in a location of the spouse's employment.

Finally, this committee substitute creates a bar against disqualifying an individual for benefits solely on the basis that the individual is available only for part-time employment.

This committee substitute amends the following sections of the Florida Statutes: 443.036 and 443.101.

II. Present Situation:

Unemployment Compensation Overview

According to the United States Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.¹ The program is administered as a partnership of the federal government and the states. The individual states collect UC payroll taxes on a quarterly basis, which are used to pay benefits while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA), used to provide grants to the states to fund UC administration (the FUTA is codified at 26 U.S.C. 3301-3311).

Eligibility for Unemployment Compensation in Florida

Under current law, eligibility for unemployment compensation is based on the work performed by an individual during a 1-year period referred to as the “base period.” The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.² The fifth completed calendar quarter – the “lag quarter” – is not used to determine monetary eligibility. The following chart provided by AWI, illustrates the relationship between the filing date of an initial claim and the corresponding base period.³

Base Period Chart									
Year Preceding Prior year		Prior Year				Current Year			
July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.	Jan. Feb. March	April May June	July Aug. Sept.	Oct. Nov. Dec.
	Base Period (Oct. 1 – Sept. 30)				Lag quarter	Claim Filed			
	Base Period (Jan. 1 – Dec. 31)				Lag quarter	Claim Filed			
		Base Period (Apr. 1 – Mar. 31)				Lag quarter	Claim Filed		
			Base Period (July 1 – June 30)				Lag quarter	Claim Filed	

According to s. 443.111(2), F.S., in order to establish a benefit year for UC benefits, an individual must:

¹ USDOL, *State Unemployment Insurance Benefits*, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp>. 26 March 2008.

² Section 443.036(7), F.S.

³ See, AWI, *Analysis of SB 2706*, on file with the Committee on Commerce.

- Have been paid wages in two or more calendar quarters in the base period; *and*
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

The most recent quarter of work can not be credited toward the two-quarter requirement or the \$3,400 requirement. Therefore, individuals who have been employed in only two quarters may not be able to establish eligibility. For example, an employee who has only worked during the two quarters immediately before filing a claim would not qualify for benefits even if he or she earned more than \$3,400. Consequently, some seasonal workers and short-term members of the labor market may not be able to establish monetary eligibility for benefits calculated using the base period in current law.

Alternative Base Period

Benefits available under the UC program are intended to provide temporary financial assistance to unemployed workers. According to the National Employment Law Program (NELP) and the Center for Economic Policy Research (CEPR), such benefits are particularly helpful to low-wage workers who “are more vulnerable than high-wage workers to unemployment.”⁴ Some states have implemented an alternative base period to provide benefits to workers who may not otherwise qualify for benefits. According to the NELP website,

[t]he ABP [alternative base period] corrects a timing flaw that unnecessarily limits UI eligibility. UI eligibility is determined by analyzing earnings records reported by employers each quarter. Because of processing delays, the standard base period (SBP) excludes up to six months of a worker’s earnings. In states with the ABP, claims who fail the SBP can use more of their recent wages to meet state eligibility requirements.⁵

Nineteen other states and the District of Columbia have enacted alternative base period legislation including: Connecticut, Georgia, Hawaii, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Virginia, Vermont, Washington and Wisconsin.⁶ As a result of the implementation of alternative base period legislation in several states, 211,000 more jobless workers were monetarily eligible for UI benefits in 2003.⁷

⁴ Andrew Stettner, National Employment Law Project (NELP), Heather Boushey, Center for Economic and Policy Research (CEPR) and Jeffrey Wenger, University of Georgia, *Executive Summary, Clearing the Path to Unemployment Insurance for Low-Wage Workers: An Analysis of Alternative Base Period Implementation*, p. 2 (August 2005).

⁵ NELP, Synopsis of Report referenced in note 4, *supra*, http://www.nelp.org/ui/initiatives/low_wage/abpreport.cfm 26 March 2008 (alteration in original).

⁶ See, Legal Services, White Paper: *Why Enact the Alternate Base Period?*, on file with the Committee on Commerce. See also, note 5, *supra*.

⁷ See, note 5, *supra*.

Employer Wage and Tax Reports

Pursuant to s. 443.1316, F.S., unemployment taxes are collected by the Department of Revenue under contract with the Agency for Workforce Innovation. Wage records used in determining the amount of benefits that may be paid to an unemployed worker are provided through reports furnished by employers on a quarterly basis to the Department of Revenue (DOR). Employers have until the last day of the month following the end of a calendar quarter to submit their quarterly wage and tax reports. The reports provide the wage data for each individual's base period, which is used to determine the amount of benefits that are paid to an individual worker.

According to AWI, DOR generally requires two months to process approximately 500,000 employer reports and enter the wage information into its database in preparation for claims that will be filed during the next quarter. Thus, under current law, the lag quarter is not used to determine monetary eligibility for unemployment compensation because the agency lacks the necessary wage data at the time a claim is filed.

Employers who fail to timely submit their quarterly reports are subject to being assessed a penalty by the Department of Revenue pursuant to s. 443.141(1)(b)1., F.S., in the amount of \$25 per month or fraction of a month that the report is delinquent.

Determinations and Re-determinations

Section 443.151(3), F.S., outlines the process used by AWI to make UC benefit determinations and redeterminations. 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 the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee.

AWI reports that, during the past 5 fiscal years from FY 2002-03 through 2006-07, the Office of Unemployment Compensation Services issued an average of 476,317 initial monetary determinations per year. An average of nearly 83 percent of these determinations, representing 392,727 claims, resulted in benefit eligibility.

The average number of ineligible claims filed during the same 5 year period was 83,590. Investigations conducted pursuant to these requests yielded an additional 7,841 eligible claims per fiscal year. Therefore, the average number of ineligible claims for a year is 77,395.

Financing Unemployment Compensation

According to a USDOL Unemployment Insurance Report published during the 4th quarter of 2007, Florida had a UC Trust Fund balance of over \$2.2 billion.⁸ The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.⁹ Under the contributory method, employers pay quarterly taxes on the first \$7,000 of each employee's annual wages. The method of determining varying tax rates assigned to taxpaying employers is referred to as "experience rating," and is based on an employer's experience in laying off workers. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to keep the Unemployment Compensation Trust Fund stabilized, and to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

An employer's experience rate is based on the employer's own employment record in relation to the employment records of all other employers. The rate at which taxes are paid is based on the employer's experience with unemployment during the 3-year period before the effective date of the tax rate. An employer's initial tax rate is 2.7 percent. After an employer is subject to benefit charges for 10 or 11 calendar quarters (depending on when the employer became subject to charges), the tax rate is adjusted between a low of 0.1 percent and a high of 5.4 percent. The adjustment in the tax rate is determined by calculating several factors.

The benefit ratio is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding 3 years by the amount of the employer's payroll during the same 3-year period.

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 a notification of the claim with information concerning the reason for the individual's separation from work or refusal to work. In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

Compensation that cannot be charged against any employer's account is recovered through adjustment factors that socialize the cost of this compensation among all contributory employers who, during the previous 3 years, had benefit experience. These adjustment factors include the noncharge adjustment factor, the excess payments adjustment factor, and the positive fund size adjustment factor.

⁸ USDOL, Unemployment Insurance Data Summary, 4th Quarter 2007, http://ows.doleta.gov/unemploy/content/data_stats/datasum07/4thqtr/DataSum_2007_4.pdf, 1 April 2008.

⁹ 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.

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the Unemployment Compensation Trust Fund. The effect is an increase in the adjustment factors, which consequently increases tax rates for all contributory employers. Conversely, when unemployment is low, the adjustment factors decrease and tax rates for rated employers are reduced accordingly.

Study of Monetary Eligibility Feasibility

In 1997, the Florida Department of Labor and Employment Security conducted a study for the United States Department of Labor to determine the benefits to claimants and the impact on employers of using an alternative base period to calculate unemployment compensation.¹⁰ The Florida study estimated that implementing an alternative base period would result in monetary eligibility for an additional 4,000 claimants at a cost of approximately \$4 million to the trust fund. That report also found that the Florida Department of Labor and Employment Security (now AWI) would have to expend \$150,000 for initial programming plus \$45,000 per year for an additional staff person in the monetary reconsideration unit.

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 remuneration in the form of wages 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;
- 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.

¹⁰ Division of Unemployment Compensation, Florida Department of Labor and Employment Security, *Monetary Eligibility Study: Variable Base Period, Final Report* (June 1997).

However, subparagraph (1)(a)1., provides that an individual is not disqualified 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.

Able and Available for Work

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

- Has filed a claim for benefits;
- Is registered to work with AWI;
- Is able and available for work;
- Participates in reemployment services; and
- Has been unemployed for a waiting period of 1 week;
- Is eligible for benefits; 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.

The law provides no definition of part-time and full-time work and makes no distinction between the two with respect to monetary eligibility or disqualification for 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.

III. Effect of Proposed Changes:

Section 1 of the committee substitute amends s. 443.036(7), F.S., to require AWI to use an alternative base period under certain circumstances (paragraph (a)) and to permit individuals requesting benefits to submit an affidavit supporting their claim (paragraph (b)).

Currently, s. 443.036(7), F.S., defines the “base period” as the first four of the last five complete calendar quarters immediately preceding the first day of an individual’s benefit year. For a benefit year commencing on or after January 1, 2009, proposed paragraph (a) requires AWI to determine monetary eligibility for unemployment compensation using wages from an “alternative base period” (the last four completed calendar quarters) for those individuals who are ineligible to receive benefits under current law (the first four of the last five completed calendar quarters).

Using the alternative base period, an individual’s most recent quarter of work would count toward the two-quarter requirement and the \$3,400 requirement. As a result, individuals could qualify for benefits having worked for the two quarters immediately preceding the filing of a claim, rather than the three quarters required under current law.

Base Period Chart Showing Alternative Base Period									
Year Preceding Prior year		Prior Year				Current Year			
July	Oct.	Jan.	April	July	Oct.	Jan.	April	July	Oct.
Aug.	Nov.	Feb.	May	Aug.	Nov.	Feb.	May	Aug.	Nov.
Sept.	Dec.	March	June	Sept.	Dec.	March	June	Sept.	Dec.
Base Period (Oct. 1 – Sept. 30)		Lag quarter		Claim Filed					
		Alternative Base Period (January 1 – December 31)				Claim Filed			
		Base Period (Jan. 1 – Dec. 31)				Lag quarter		Claim Filed	
		Alternative Base Period (April 1 – March 31)				Claim Filed			
		Base Period (Apr. 1 – Mar. 31)				Lag quarter		Claim Filed	
		Alternative Base Period (July 1 – June 30)				Claim Filed			
		Base Period (July 1 – June 30)				Lag quarter		Claim Filed	
		Alternative Base Period (October 1 – September 30)				Claim Filed			

An individual who is ineligible for benefits using the current base period on a claim filed effective March 25, 2008, may qualify for benefits using the alternative base period. The alternative base period used to establish eligibility is the same base period that would be assigned to the claim under current law if the worker filed the claim one week later, effective April 1, 2008.

The committee substitute also provides that wages used in a base period to establish monetary eligibility for unemployment compensation may not be used to establish eligibility for claims in a subsequent benefit year. This portion of the committee substitute prevents an individual from claiming benefits based on the same time period more than once.

When an individual files a claim under the alternative base period, if the necessary wage information has not been input by the Department of Revenue into the Agency for Workforce Innovation’s mainframe database from the employer’s quarterly wage and tax reports or is otherwise unavailable, the committee substitute requires AWI to request the wage information from the employer. The committee substitute also requires employers to provide the information

requested by AWI within 10 days after the agency mails the request. If an employer fails to respond within the required time, the employer is subject to a \$25 penalty for filing a delinquent report as set forth in s. 443.141(1)(b)1., F.S. According to that statutory provision, the \$25 penalty is assessed for each 30 days or fraction thereof that the request is delinquent.

Under proposed paragraph (b), if AWI is unable to access the necessary wage information through its mainframe database, the committee substitute permits the agency to make a monetary determination of eligibility under the alternative base period based upon an affidavit submitted by the unemployed individual. This portion of the committee substitute requires the individual requesting benefits to furnish any available payroll information in support of the affidavit. This portion of the committee substitute also requires AWI to adjust a determination of benefits when the quarterly report of wage information is received from the employer, if such a change is required to reflect the new data.

The agency asserts that it will come to rely on wage information provided from workers in determining the wages in the most recent quarter because employers will realize that a penalty cannot reasonably be imposed. However, as noted in a 1998 USDOL study,¹¹ the agency contends such wage information is prone to inaccuracies, and the agency will ultimately be required to redetermine a large number of claims when wage reports are finally processed by DOR. The end result will be increased administrative costs associated with implementation of the alternative base period.

Section 2 amends s. 443.101, F.S., to expand the circumstances under which an individual voluntarily leaving work can receive unemployment compensation benefits. Currently, an individual is not disqualified 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. This section is amended to provide that an individual cannot be disqualified for a separation from employment if the separation is for "compelling family reasons." These reasons include domestic violence that is verified by an injunction, protective order, or other such reasonable and confidential documentation as authorized by state law. This includes not only consideration of the individual's belief that continued employment would jeopardize the individual's personal safety, but also the safety of any member of the individual's family or other employees of the employer.

Compelling family reasons also include the illness or disability of a member of the individual's immediate family and the need for the individual to accompany his or her spouse to a place at such distance from the job that commuting is impractical or as a result of the spouse's change in employment.

Finally, this section creates a bar against disqualifying an individual for benefits solely on the basis that the individual is available only for part-time employment.

Section 3 provides an effective date of October 1, 2008.

¹¹ Note 7, *supra*, relying on, U.S. Department of Labor, *Implementing ABP, Volume II: Impact of the Alternative Base Period on Administrative Costs*, p.12 (1998). <http://wdr.doleta.gov/owsdrr/98-4/98-4vol2.pdf>. 1 April 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Unemployment compensation benefits are financed by a tax on employers' payrolls. To the extent that these provisions increase the amount of funds paid out to claimants from the Unemployment Compensation Trust Fund, it may require employer contributions be increased.

B. Private Sector Impact:

See Tax/Fee Issues.

C. Government Sector Impact:

AWI reports that the effect of the implementation of the alternative base period will have the following impact on the Unemployment Compensation Trust Fund:

Unemployment Compensation Trust Fund.	FY 08-09	FY 09-10
Benefit Payments for Alternative Base Period	\$ 15,316,372.89	\$ 20,421,830.52
 Employment Security Administration Trust Fund		
6 FTE's @ \$50,000 per year (salary and benefits)	\$225,000	\$300,000
Computer Programming Services	<u>\$280,551</u>	
Total Expenditures	\$505,551	<u>\$300,000</u>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

Committee substitute by Commerce on April 8, 2008:

This committee substitute does the following:

- Delays the effective date of the option to use the alternative base period from October 1, 2008 to January 1, 2009.
- Requires employers to provide the information requested by AWI within 10 days after the agency mails the request, rather than within 10 days of receiving the request from the agency.
- Replaces references to the “division” of Unemployment Compensation – which is obsolete – with a reference to the Agency for Workforce Innovation.
- Restores current law which provides that if employees are discharged from their job for misconduct connected with their work, they are ineligible for unemployment compensation benefits.

- B. **Amendments:**

None.