

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 Policy and Steering Committee on Ways and Means

BILL: CS/SB 516

INTRODUCER: Commerce Committee and Senator Hill

SUBJECT: Unemployment Compensation

DATE: April 17, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Fav/CS
2.	Belcher	Kelly	WPSC	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

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill expands the availability of unemployment compensation (UC) benefits under specified conditions. This “modernization” of Florida’s UC system will qualify Florida for an estimated \$444.3 million in federal economic stimulus funds, which may be used to replenish the state’s UC Trust Fund. It will also result in future higher UC taxes for some Florida businesses.

The bill creates an alternative base period to be used in determining an individual’s 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 bill amends the disqualification provisions contained in s. 443.101, F.S., to provide that benefits will not be denied to individuals who voluntarily quit work for “good cause,” which includes:

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

Finally, this bill creates a bar against disqualifying an individual for benefits solely on the basis that the individual is available only for part-time employment. Criteria are established for an individual to be considered able and available for part-time work.

The bill also amends ss. 443.1216 and 443.131 to conform provisions to changes made.

The recurring annual benefits cost of the eligibility enhancements is estimated at \$73,741,011. The immediate receipt of \$444.3 million in Federal stimulus funds will offset the cost to private employers (\$69,316,550 annually) for approximately 6 years. It is estimated that the enhancements will result in an immediate recurring cost of \$4,424,461 to state and local governments, approximately 90% local and 10% state.

The Agency for Workforce Innovation and the Department of Revenue will expend an additional \$2.1 million in recurring federal UC administrative funds to administer the provisions of the bill.

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

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 administration of their UC programs.² States are permitted to set eligibility conditions for UC benefit recipients so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. The Agency for Workforce Innovation (AWI) is the agency responsible for administering Florida's UC laws.

Eligibility for Unemployment Compensation in Florida

Under current law, eligibility for UC 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.³ 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.⁴

¹ USDOL, State Unemployment Insurance Benefits, at <http://workforcsecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 4/7/2009).

² FUTA is codified at 26 U.S.C. 3301-3311.

³ Section 443.036(7), F.S.

⁴ See AWI's Bill Analysis of SB 516, on file with the Senate Commerce Committee.

Base Period Chart									
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			
	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 from which UC benefits can be paid, an individual must:

- 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. 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.

Valid claims for benefits last for 1 year.⁵ Once a valid claim has been established, it remains valid for 1 year; no additional entitlement may be established until that first claim expires if all benefits are used prior to the expiration of the year. An individual may establish another benefit year only after the termination of the preceding year.

Employer Wage and Tax Reports

Pursuant to s. 443.1316, F.S., unemployment taxes are collected by the Department of Revenue (DOR) 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 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.⁶ 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.

⁵ Section 443.036(9), F.S.

⁶ Rules 60BB-2.025 and 2.027, F.A.C.

According to AWI, DOR generally requires 2 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. The data is not available to the agency under the normal employer wage reporting requirements.

Employers who fail to timely submit their quarterly reports are subject to being assessed a penalty by the DOR 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 2008, the Office of Unemployment Compensation Services issued 846,086 initial monetary determinations. Of these, 175,382 were determined to be ineligible. Requests for redetermination were filed on approximately 1/3 of the ineligible claims, or 54,087 requests. AWI's redetermination found, of that total, that 2,163 individuals could not provide any evidence of their employment to support an agency action on their behalf.

Financing Unemployment Compensation

At the end of the 4th quarter of 2008, Florida had a UC Trust Fund balance of over \$1.3 billion.⁷ The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.⁸ 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

⁷ Based on information from the Bureau of the Public Debt and U.S. Department of Labor, compiled by the National Conference of State Legislatures as of January 27, 2009, at <http://www.ncsl.org/standcomm/sclaborecon/UIDec2008.htm#StateUnempRatesandBalances> (last visited 4/8/2009).

⁸ 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.

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.⁹ 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. The adjustment in the tax rate is determined by calculating several factors.¹⁰

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.¹¹

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.¹² 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.¹³

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC 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.

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;

⁹ Section 443.131(2)(a), F.S.

¹⁰ Section 443.131(2)(b), F.S. Because of the definition of base period, 10 quarters must have elapsed before a new employer can be considered chargeable for 8 quarters of benefits.

¹¹ Section 443.131(3)(b), F.S.

¹² Section 443.131(3)(a), F.S.

¹³ Section 443.131(3)(e), F.S.

- 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.

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 to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6 calendar months. Additionally, 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. 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.

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 and report to AWI;
- 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.¹⁴

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.

The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) was signed into law in February 2009.¹⁵ In part, this act allocates funding to UC programs at the state and federal level. The Recovery Act provisions include:

- Weekly UC benefit payments are increased by \$25: UC recipients began receiving an additional \$25 per week in mid-March. This increase is entirely federally funded and time limited; entitlement must be established by December 20, 2009, and the last week additional benefits may be paid out is June 30, 2010. Florida's UC recipients will receive an estimated \$345 million extra.
- Dates for filing and receiving emergency UC benefits are extended: The ability for individuals to apply to receive emergency extensions for UC benefits granted by Congress in 2008 has been extended from March 28, 2009, to December 26, 2009. Extended benefits may be paid until June 5, 2010. These extensions are entirely federally funded. Florida's estimated share for the extensions is \$1.04 billion. Extended UC benefits recipients will receive up to \$275 per week.
- Funds for UC administration are granted to the state: AWI will receive an estimated \$31,733,965 for UC administration from the federal government. These funds may be used for improvement of UC benefit and tax operations; staff-assisted reemployment services to unemployed claimants; and, if the state adopts modernization, these funds may be used to implement the changes and provide outreach to individuals eligible under the changes.
- An option for an alternative extended benefits trigger date: States may elect to participate in an alternate extended benefits trigger date that will increase the likelihood that a state's extended benefits period would trigger "on." If Florida elects to participate in this change, 100 percent of payments to private sector employees through May 29, 2010 (for claimants that qualify by December 26, 2009), would be paid by the federal government. However, government entities are excluded from the 100 percent financing, and would be required to pay their full costs of extended benefits. If Florida were to make this change, about 250,000 individuals would be eligible at an estimated payout of benefits of \$776.7 million. However, state agencies and local governments would be burdened by an estimated \$46,605,000 to pay for former employees' benefits.

¹⁴ Rule 60BB-3.021, F.A.C.

¹⁵ Public L. No. 111-5.

- An option to “modernize” the UC system: As an incentive to modernize the UC system, Florida would be eligible for an estimated \$444.3 million. These changes are discussed in detail below.¹⁶

The Unemployment Insurance Modernization Act:

The Unemployment Insurance Modernization Act (UIMA) was adopted into federal UC law as part of the Recovery Act. In order to receive some stimulus funding under the UIMA portion of the Recovery Act, the states must implement or have in place certain components of a modernized UC program. The Recovery Act allocates \$7 billion available for transfer to states if they meet the conditions of UIMA. If Florida were to implement all required components of the Recovery Act, the state would be entitled to about \$444.3 million in total. These incentive funds will be available until September 30, 2011; states must apply to receive the funds, and USDOL has 30 days to approve the application and direct the U.S. Secretary of the Treasury to distribute funds to the eligible state’s unemployment trust fund. The funds are expected to last 2 to 6 years, depending on the modernization options that a state chooses.

Alternative Base Period

In order to receive one-third of the money available under the Recovery Act, states must use the alternative base period. According to a report by the National Employment Law Program (NELP) and the Center for Economic Policy Research (CEPR),

The alternative base period corrects a timing flaw that unnecessarily limits [UC] eligibility. [UC] eligibility is determined by analyzing earnings records reported by employers each quarter. These records are the basis of a base period year (4 quarters) of earnings for an [UC] claim. Because of processing delays, the standard base period (SBP) excludes up to 6 months of a worker’s earnings. In states with the ABP, claimants who fail the SBP can use more of their recent wages to meet state eligibility requirements. Under the ABP, claimants must meet the same rules as SBP claimants but they can use a more recent four-quarter period to do so.

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.”¹⁷ Some states have implemented an alternative base period to provide benefits to workers who may not otherwise qualify for benefits.

Nineteen other states and the District of Columbia currently 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

¹⁶ See USDOL Unemployment Insurance Program Letter (UIPL) 14-09.

¹⁷ Andrew Stettner, National Employment Law Project (NELP), Heather Boushey, Center for Economic and Policy Research (CEPR) and Jeffrey Wenger, University of Georgia, Clearing the Path to Unemployment Insurance for Low-Wage Workers: An Analysis of Alternative Base Period Implementation, (August 2005), at http://nelp.3cdn.net/b0d0ea6db2fdd39091_lrm6bqi71.pdf (last visited 4/7/2009).

Island, Virginia, Vermont, Washington and Wisconsin.¹⁸ As a result of the implementation of alternative base period legislation in several states, in 2005 about 40 percent of workers who did not qualify under the standard base period ended up receiving UC benefits as a result of the alternative base period. These newly-eligible workers were mostly employed in low-wage jobs (earning on average \$9.00 an hour). As a result, rather than being denied benefits, about 26,000 workers a year in 2006 across the U.S. had been receiving an average UC payment of \$232 a week.¹⁹

NELP predicts that about 27,229 workers would benefit from this change to Florida's UC laws, resulting in a payout of about \$45.2 million. Florida's one-third share for implementation of the alternative base period would be \$148.1 million.²⁰ In November 1997, the Florida Department of Labor and Employment Security conducted a study for the USDOL to determine the benefits to claimants and the impact on employers of using an alternative base period to calculate unemployment compensation.²¹ The Florida study 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. Based upon the number of claims filed in 2008, it is possible that the alternative base period could result in benefit eligibility for 14,030 individuals. The 1997 findings are most likely still generally accurate today.²²

UIMA Incentives Options

To qualify for the remaining two-thirds of the Recovery Act funding associated with UIMA, states must provide benefits in at least two of four areas.²³ Florida's share of the Recovery Act funds, if it were to implement two of the four following areas, would be about \$296.2 million.

(1) Part-time workers

One of the areas involves part-time workers who are denied state benefits because they are required to seek full-time employment. One in 6 U.S. employees works a part-time schedule; statistics show that only 28 percent of unemployed part-time workers collect UC benefits, compared to 50 percent of unemployed full-time workers.²⁴ Employers pay UC for part-time workers, and those worker's wages are also taxed for the same purposes.

¹⁸ See NELP, Question and Answer, The Unemployment Insurance Modernization Act: Filling the Gaps in the Unemployment Safety Net While Stimulating the Economy, (February 2009).

¹⁹ Maurice Emsellem, Andrew Stettner, and Omar Semidey, The New Congress Proposes \$7 Billion in Incentive Payments for States to Modernize the Unemployment Insurance Program, (July 2007), at http://nelp.3cdn.net/17328317431911599f_7nm6iv0he.pdf (last visited 4/7/2009).

²⁰ See fn. 18, supra.

²¹ Division of Unemployment Compensation, Florida Department of Labor and Employment Security, Monetary Eligibility Study: Variable Base Period, Final Report, (June 1997).

²² See AWI's Bill Analysis of SB 516, on file with the Senate Commerce Committee.

²³ The four areas involve part-time workers; workers with dependents; workers who leave work for specific compelling family reasons; and permanently laid-off workers who require benefits to participate in training. See NELP's Implementing the Model Provisions of the Unemployment Insurance Modernization Act in the States (February 2009), at http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bpprp.pdf (last visited 4/7/2009).

²⁴ Andrew Stettner, NELP, What is UI Modernization and Why is it Important?, (May 2008), at http://nelp.3cdn.net/9a398fa5e086804cea_obm6yhsxp.pdf (last visited 4/7/2009).

Additionally, women represent 70 percent of all part-time workers. About 1 in 3 women work part-time. However, NELP statistics shows that in 41 states, unemployed men are more likely than unemployed women to receive UC benefits. “Thus, adopting policies that allow part-time workers to participate in unemployment [compensation] is an important step towards expanding access to [UC] benefits for women and low-wage workers.”²⁵ To receive the incentive option, a state must modernize its UC program so that part-time workers who are unemployed may be eligible for UC benefits while they seek other part-time employment. Currently, 20 states provide unemployment benefits to part-time workers that meet the UIMA requirements.²⁶

Current Florida law does not distinguish between full-time and part-time employment, as discussed above; thus Florida may already be in compliance with this requirement, although not specifically stated in the Florida Statutes. NELP predicts that about 6,294 workers would benefit from this change to Florida UC law, resulting in about \$8 million in benefits paid out.²⁷

*(2) Specific Compelling Family Reasons*²⁸

Another area that a state can implement to obtain the two-thirds of the Recovery Act funding associated with UIMA deals with individuals who leave work for specific compelling family reasons. Such circumstances include:

- Domestic violence – Sometimes victims of domestic violence must leave their jobs due to the impact that the violence has had on their lives. Ninety-six percent report some type of work-related problem due to the violence they suffered in their personal relationships. These individuals may be disqualified from receiving UC benefits if domestic violence is not considered good cause for leaving a job. Currently, 29 states have provisions to provide UC benefits to individuals who must leave employment due to domestic violence or stalking.
- “Trailing spouse” – Almost 1 in 4 families moves every year, and about one-third of these moves are across county lines. When a family member is transferred by his or her employer across county or state lines, the “trailing spouse” or partner must often quit a job in order to move with the family. The individual will frequently be considered to have quit work voluntarily and may be disqualified from eligibility for UC benefits. Currently, 14 states have adopted provisions to provide UC benefits to trailing spouses; some states have similar provisions that do not qualify for UIMA funding because they limit the availability to military spouses (Florida) or other special categories of workers.
- Sick family member – In some instances, an individual must leave employment in order to take care of a sick family member. This may be due to situations where an employer does not provide adequate sick leave, where the employee has limited help to take care of the sick family member, or where workers have checked with their employer but have not been able to find a reasonable work accommodation. Some states recognize that leaving a job in compelling situations, such as a serious disability or illness of a family member, especially one that could not be anticipated, should be treated as “good cause” that should not disqualify the worker from receiving unemployment benefits. Currently, 16 states have specific provisions to allow UC benefits in these types of situations.

²⁵ Id.

²⁶ See fn. 23, supra.

²⁷ See fn. 18, supra.

²⁸ See fn. 23, supra.

NELP predicts that about 6,393 workers would benefit from this particular change to Florida UC law, resulting in a pay-out of about \$18.3 million in benefits.

*(3) Extended Benefits While Training*²⁹

Five states extend UC benefits to unemployed individuals in approved training; the specific requirements differ from state to state. Benefits are provided for 26 weeks beyond the normal duration of UC benefits. Benefits extensions for individuals in training are paid from state UC trust funds to workers who qualify for UC benefits, and, in most cases, these benefits are not charged directly to former employers.

Since these extensions are paid under state laws, states have considerable leeway in targeting specific sectors or occupations for this type of subsidized retraining. Generally, states require that unemployed workers have lost work in a declining industry or occupation in order to qualify. States furnish extensions where retraining is necessary for the claimant to find a full-time job in another sector in which there are labor shortages or growing numbers of jobs. Individuals who are approved for training are permitted to attend the training rather than searching for new work.

*(4) Weekly Dependent Allowance*³⁰

Some states pay weekly supplemental allowances to unemployed individuals that have dependents in their families. These states have policies that distinguish financial hardships that face families with children from hardships faced by other unemployed individuals. Thirteen states, plus the District of Columbia, address these issues by paying a regular weekly dependent or children's allowance as part of a UC check. The Recovery Act and UIMA require a payment of \$15 per dependent for stimulus funding. Currently, all but four of the states implementing these supplemental allowances provide less than the required \$15 per dependent.

III. Effect of Proposed Changes:

The bill expands the availability of UC benefits under specified conditions. This “modernization” of Florida’s UC system will qualify Florida for an estimated \$444.3 million in federal economic stimulus funds, which may be used to replenish the state’s UC Trust Fund. However, it will also result in future higher UC taxes for some Florida businesses.

Section 1 amends s. 443.036, F.S., to create several new definitions and revise the definition of “base period.”

“Alternative base period” is defined as the last four completed calendar quarters immediately preceding the first day of an individual’s benefit year. 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. The term “base period” is revised to also state that in any case in which AWI determines, pursuant to s. 443.091(1)(f), F.S., that the alternative base period will be used, the term “base period” will mean alternative base period.

²⁹ Id.

³⁰ Id.

“Good cause” for voluntarily quitting employment when used in s. 443.101(1)(a), F.S., means:

- Cause attributable to the employing unit requiring separation from employment;
- Illness or disability of the individual requiring separation from employment;
- Domestic violence³¹ that is substantiated by evidence that reasonably proves that the violence occurred, including:
 - An injunction, protective order, or other such reasonable and confidential documentation as authorized by state law; and
 - Statements from qualified professionals, like attorneys, counselors, or health workers, which cause the individual to reasonably believe that continued employment would jeopardize the individual’s personal safety, the safety of any member of the individual’s family, or the safety of other employees of the employer;
- Illness or disability of a member of the individual’s immediate family;
- The need for the individual to accompany his or her spouse, if:
 - The spouse’s relocation resulted from a change in his or her employment; and
 - The relocation is to a place at such distance from the job that commuting is impractical.³²

“Member of the individual’s immediate family” means an individual’s spouse, parent, or minor child under 18 years of age.

Section 2 amends 443.091, F.S., related to benefit eligibility conditions.

Currently, an individual is eligible to receive benefits if she or he is able to work and is available for work. The bill clarifies that an individual may not be found ineligible for benefits when she or he is able and available for work for a number of weekly hours of work that are comparable to the work the individual did during the majority of his or her base period.

The bill also states that wages must be computed using an alternative base period (the last four completed calendar quarters) only in cases in when an individual is not monetarily eligible to receive benefits under current law (the first four of the last five completed calendar quarters). This applies to benefit year starting on or after January 1, 2010.

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. Under current law, if an individual filed a claim immediately after becoming unemployed, the individual would have had to have worked for the three quarters immediately preceding the filing of the claim due to the lag quarter.

³¹ Section 741.28, F.S. “Domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

³² UIMA requires that the individual had to accompany his or her spouse to a place where it is impractical for the individual to commute and due to a change in location of the spouse’s employment.

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)							
		Base Period (Jan. 1 – Dec. 31)			Lag quarter	Claim Filed			
		Alternative Base Period (April 1 – March 31)							
		Base Period (Apr. 1 – Mar. 31)			Lag quarter	Claim Filed			
		Alternative Base Period (July 1 – June 30)							
		Base Period (July 1 – June 30)			Lag quarter	Claim Filed			
		Alternative Base Period (October 1 – September 30)							

An individual who is ineligible for benefits using the current base period on a claim filed effective March 25, 2010, 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 1 week later, effective April 1, 2010.

This bill 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 CS prevents an individual from claiming benefits based on the same time period more than once.

Section 3 amends s. 443.101, F.S., to expand the circumstances under which an individual voluntarily leaving work can receive unemployment compensation benefits. The bill establishes that an individual may not be disqualified for voluntarily quitting work for “good cause,” the definition of which is discussed above. In essence, an individual may not be disqualified from receiving benefits if he or she must leave work related to an illness or disability of the individual or an immediate family member; domestic violence; relocating with a spouse; or cause attributable to the employing unit.

Further, an individual may not be disqualified from receiving benefits solely because the individual is available only for part-time work, so long as the individual is able and available for work for a number of weekly hours of work that are comparable to the hours worked by the individual during the majority of the base period of his or her claim.

Section 4 amends s. 443.151, F.S., to establish the process for determinations involving an alternative base period. When an individual files a claim under the alternative base period, if AWI does not have access to wage information through the database of its tax collection services provider (DOR), the bill requires AWI to request the wage information from the employer by mail. The employer must provide the information requested by AWI within 10 days after the agency mails the request. If wage information is unavailable, the bill permits AWI to make a monetary determination of eligibility using the alternative base period based upon an affidavit submitted by the unemployed individual attesting to his or her wages for those calendar quarters. This section requires the individual requesting benefits to furnish any available payroll information in support of the affidavit. Benefits based on the alternative base period must be adjusted if the quarterly report of wage information received from the employer results in a change in the monetary determination.

Sections 5 and 6 amend ss. 443.1216 and 443.131, F.S., respectively, to conform cross-references to changes made by the CS.

Section 7 provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires cities and counties to expend funds to pay for increased unemployment benefits related to the eligibility enhancements, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest 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.

If the bill were declared to "fulfill an important state interest," it may be considered an exception to the constitutional mandate restriction.

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. Currently, benefit payments exceed tax collections.

If the changes proposed by this bill qualify the state for Recovery Act funding under the modernization options, there will not be any current costs to employers. The state would be entitled to about \$444.3 million in total.

However, the impact of these proposed changes in the future could affect tax collections from employers. 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.

Also, AWI provided the following statistics regarding the implementation of the UC modernization provisions:

	FY 2009-10	FY 2010-11
Unemployment Compensation Trust Fund		
Benefit Payments for Alternative Base Period	\$26,651,750	\$51,303,501
Benefit Payments for Section 2	\$16,828,133	\$22,437,510
Total Expenditures	\$42,479,883	\$73,741,011

AWI estimates that the changes will result in an anticipated annual recurring benefit cost of \$73,741,011; and of that total, approximately \$4,424,461 would be billed to state and local government entities. The \$444.3 million that Florida would receive due to the implementation of modernization provisions is intended to cover benefit payments for the persons eligible under these new provisions for a number of years. The funds will last between 2 and 6 years, after which employers would be responsible for funding these benefit payments, unless repealed by the Legislature.

C. Government Sector Impact:

Unemployment Claim Payments

Public employers (state and local governments) are not assessed unemployment insurance taxes. Federal regulation exempts public employers from the tax and considers them as being “self-insured” for unemployment compensation [claims]. It is estimated that the eligibility enhancements from the modernization will result in an immediate recurring cost of \$4,424,461 to state and local governments, approximately 90% local and 10% state.

Agency for Workforce Innovation

AWI reports that the provisions of the bill will increase the administrative costs of the UC program as follows:

	FY 2009-10	FY 2010-11
Employment Security Administration Trust Fund		
40 FTE positions @ \$50,000 per year (salary & benefits)	\$1,000,000	\$2,000,000
Computer Programming Services ³³	\$280,551	-
Total Expenditures	\$1,280,551	\$2,000,000

However, AWI will receive an estimated one-time payment of \$31,733,965 for UC administration from the federal government as part of the Recovery Act, which could be used in part to offset these costs.³⁴ All administrative costs for the UC program are paid from Federal fund sources.

Department of Revenue

DOR estimates that the effect of the implementation of these proposed changes will have the following impact:

- Recurring costs of \$108,451:
 - Includes 2 FTE positions with total salaries of \$94,249 for contract determinations and wage determinations associated with implementation of the alternative base period and ability of the claimant to file an affidavit of wages;
 - Includes expenses of \$13,300; and
 - Includes human resource contract services of \$802.
- Non-Recurring costs of \$42,824 for Fiscal Year 2009-2010, associated with necessary programming changes for the system used to compute UC taxes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Use of the alternative base period shortens the period required for a new employer to establish chargeability for benefits, possibly resulting in a net reduction in tax receivables from new employers (AWI estimate this will be an \$8 million revenue reduction to the UC Trust Fund).

³³ Amount does not include costs to vendors who provide service to the telephonic claims filing process or the costs to DOR to modify the System of Unified Taxation.

³⁴ USDOL UIPL 14-09, Change 1, March 19, 2009.

The USDOL has issued an advisory Unemployment Insurance Program Letter (UIPL) which discusses, in part, the status of state laws.³⁵ UIPL 14-09 states that state laws on modernization should be in effect as permanent laws, and not subject to discontinuation. “This means that the provision is not subject to any condition – such as an expiration date, the balance in the state’s unemployment fund, or a legislative appropriation – that might prevent the provision from becoming effective, or that might suspend, discontinue, or nullify it.” However, a state may eventually decide to repeal or modify the provisions subsequent to receipt of the funds without being required to return any incentive payments received. But, the USDOL dissuades this approach, and in the UIPL goes on to state that in specifying the permanency of the provisions, Congress made clear its intention that the provisions should not be transitory.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by the Commerce Committee on April 14, 2009:

The CS differs from the prior bill in that it incorporates changes recommended by AWI, to ensure Florida qualifies for the federal stimulus funding for which this legislation is intended. The general substance of the bill as filed did not change. Changes include:

- Addition of definitions;
- Restructuring of provisions in the original bill to more appropriate locations in ch. 433, F.S.;
- Amendment of statutes to conform provisions to changes made by the CS.

B. Amendments:

None.

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

³⁵ UIPL 14-09, February 26, 2009; and UIPL 14-09, Change 1, March 19, 2009.