

**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: PCS/SB 810 (166284)

INTRODUCER: Commerce Committee

SUBJECT: Unemployment Compensation

DATE: April 13, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

PCS/SB 810 amends portions of the unemployment compensation statutes related to calculation of the employer's tax rates and Unemployment Compensation Trust Fund solvency. The effect is to replenish the Unemployment Compensation Trust Fund sooner than under the parameters in current law for recoupment. In recent years the Unemployment Compensation Trust Fund has been paying out more funds than it has been taking in.

The PCS decreases the portion of an individual's wages exempt from determining an employer's contributions from the excess of \$7,000 to the excess of \$8,500. After January 1, 2015, the portion is increased back to wages in excess of \$7,000. In other words, employers will be taxed on an additional \$1,500 for the next 5 years.

The PCS increases the positive fund balance adjustment factor (low trigger) from 3.7 percent of taxable payrolls to 4 percent. Additionally, the time to recapture the funds is shortened from 4 years to 3 years. The recapture time period is restored to 4 years on January 1, 2015.

The PCS increases the negative fund balance adjustment factor (high trigger) from 4.7 percent of taxable payrolls to 5 percent. It delays the annual computation of the negative adjustment factor until January 1, 2015. Thereafter, the negative adjustment factor will remain in effect until the balance of the Unemployment Compensation Trust Fund has a contribution rate between 4 and 5 percent. However, the negative adjustment factor is suspended in any calendar year in which an advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

“Taxable payroll” is defined to exclude any remuneration paid to an individual in excess of the first \$7,000.

The Governor is specifically authorized to request advances on the amount in the federal Unemployment Compensation Trust Fund; and the trust fund is specifically authorized to consist of such funds.

PCS/SB 810 amends ss. 443.1217, 443.131, and 443.191 of the Florida Statutes.

## 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.<sup>1</sup> 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.<sup>2</sup> 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. Florida’s UC program was created by the Legislature in 1937.<sup>3</sup> The Agency for Workforce Innovation (AWI) is the current agency responsible for administering Florida’s UC laws.

### UC Benefits

To receive UC benefits, claimants must meet certain monetary and non-monetary eligibility requirements. For example, claimants must have worked at least 2 of the first 4 of the previous 5 calendar quarters, earned at least \$3,400 in that period, and be unemployed due to layoffs or otherwise through no fault of their own. They must also be ready, willing, and able to work and are actively seeking work. Qualified claimants may receive benefits equal to 25 percent of their wages, not to exceed \$7,150 in a benefit year.<sup>4</sup> Benefits are paid weekly, ranging from a minimum of \$32 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.<sup>5</sup>

During FY 2007-08, initial claims filed by unemployed persons totaled 795,300 which is a 36 percent increase from the 584,603 initial claims filed in FY 2006-07. Florida paid a total of \$1.4 billion in unemployment compensation benefits in FY 2007-08.<sup>6</sup> The claims total for July 2008

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

<sup>2</sup> FUTA is codified at 26 U.S.C. 3301-3311.

<sup>3</sup> Chapter 18402, L.O.F.

<sup>4</sup> Section 443.111(5), F.S.

<sup>5</sup> Section 443.111(3), F.S.

<sup>6</sup> See Office of Program Policy Analysis and Government Accountability’s Florida Government Accountability Report on AWI, at <http://www.oppaga.state.fl.us/profiles/6135/> (last visited 4/9/2009).

was 159.1 percent greater than the totals for July 2007.<sup>7</sup> AWI reports that, during 2008, the Office of Unemployment Compensation Services issued 846,086 initial monetary determinations. At the end of the 4<sup>th</sup> quarter of 2008, Florida had a UC Trust Fund balance of over \$1.3 billion.<sup>8</sup>

#### Financing Unemployment Compensation<sup>9</sup>

At the end of the 4<sup>th</sup> quarter of 2008, Florida had a UC Trust Fund balance of over \$1.3 billion.<sup>10</sup> Florida sets the state tax structure for the taxable wage base and rate, and funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.<sup>11</sup> Pursuant to s. 443.1316, F.S., unemployment taxes are collected by the Department of Revenue (DOR) under contract with the AWI. 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. Employers have until the last day of the month following the end of a calendar quarter to submit their quarterly wage and tax reports.<sup>12</sup> 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.

The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.<sup>13</sup> Under the contributory method, employers pay quarterly taxes on the first \$7,000 of each employee's annual wages. The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 on these wages. If, however, a state program meets the federal requirements and has no delinquent federal loans, the state's employers are eligible for up to a 5.4 percent tax credit, making the net federal tax rate 0.8 percent. To receive the maximum federal tax credit, Florida has established a taxable wage base for state UC taxes at least equal to the federal taxable wage base – currently \$7,000.

Under Florida law, the method of determining varying tax rates assigned to taxpaying employers is referred to as the benefit ratio method of experience rating. An employer's experience rate is based on the employer's own employment record in relation to the employment records of all other employers. Employers who lay off the most workers are charged the highest tax rates. 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. Seventeen states, including

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<sup>7</sup> AWI Long Range Program Plan, FY 2009-10 – FY 2013-14, at <http://www.floridajobs.org/about%20awi/docs/LRPP.pdf> (last visited 4/13/2009).

<sup>8</sup> 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).

<sup>9</sup> Some of this information was obtained from Solvency on the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

<sup>10</sup> 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).

<sup>11</sup> Section 443.191, F.S.

<sup>12</sup> Rules 60BB-2.025 and 2.027, F.A.C.

<sup>13</sup> 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.

Florida, use the benefit ratio method.

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 benefits charged to an employer are compared to its taxable payrolls during the same period. 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

A new employer's initial tax rate is 2.7 percent.<sup>17</sup> 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.<sup>18</sup> 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.

The benefit ratio method 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 is an increase in the adjustment factors, which consequently increases tax rates for all contributory employers. Conversely, tax rates fall steeply after the benefit charges have been "paid off."

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<sup>14</sup> Section 443.131(3)(b), F.S.

<sup>15</sup> Section 443.131(3)(a), F.S.

<sup>16</sup> Section 443.131(3)(e), F.S.

<sup>17</sup> Section 443.131(2)(a), F.S.

<sup>18</sup> 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.

### Trigger Date<sup>19</sup>

Each state currently establishes its own policy on trust fund solvency. The Legislature established the current tax trigger in 1957.<sup>20</sup> The law imposed an automatic tax increase on all employers if the trust fund's balance fell below 4 percent of taxable payrolls on December 31 of each year (also known as the positive fund balance adjustment factor). Conversely, if the trust fund's balance grew beyond 5 percent of taxable payrolls, the law granted an automatic tax reduction for all employers (also known as the negative fund balance adjustment factor). Because legislative records from this period are limited, there is no way to ascertain the Legislature's reasoning behind establishing the tax trigger as a range between 4 and 5 percent of taxable payrolls. Nevertheless, this policy has stood for more than four decades and remains in effect today.

Today the tax trigger is now calculated using the trust fund's balance on June 30 of each year. The positive fund balance adjustment factor is 3.7 percent, and the negative fund balance adjustment factor is 4.7 percent.<sup>21</sup>

Since the tax trigger was established in 1957, a negative fund balance adjustment factor has been applied during 15 tax years, automatically reducing employer taxes in each of those years. During this period, a positive fund balance adjustment factor has automatically increased UC taxes nine times. The most recent instance the tax trigger raised taxes was in 1984, in the aftermath of the 1980 and 1981-82 recessions. The tax trigger cut taxes each year from 1986 to 1991, but leveled off during the 1990-91 recession. The tax trigger has not altered tax rates since 1991. During the history of Florida's tax trigger, the UC trust fund has never become insolvent. In the aftermath of the 1973-75 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 each repaid in less than 1 year. With the exceptions of 1976 and 1977, Florida has never sought a federal loan, making this state one of only a few to avoid serious and chronic problems with trust fund insolvency.<sup>22</sup>

### Advances for UC Funding<sup>23</sup>

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. 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.

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<sup>19</sup> Much of this information was obtained from Solvency on the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

<sup>20</sup> Chapter 57-247, L.O.F.

<sup>21</sup> Section 443.131(3)(c) and (d), F.S. The low and high trigger numbers were adjusted to their current amounts in 2002 by ch. 2002-218, L.O.F., from the amounts they had been since 1957.

<sup>22</sup> Solvency on the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

<sup>23</sup> Much of this information was obtained from Solvency on the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).

The federal UC system originally operated on the basis that benefits would be forward funded. That is, tax rates and benefit levels were established with the intention that the system would accumulate reserves during economic expansions and, thereby, have sufficient reserves to pay benefits during economic recessions. According to the U.S. General Accounting Office (GAO), this approach was used during the first 30 years of the UI system. However, GAO observed that, throughout the most recent three decades, many states have gradually eroded the forward-funding principle by relying on federal loans to pay benefits during recessions due to inadequate trust fund reserves.

In contrast to forward funding, 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 federal law requires a state’s governor to request the loan from the U.S. Secretary of Labor.<sup>24</sup>

Before 1982, the USDOL provided interest-free loans to pay UC benefits in states with insolvent trust funds. However, under the Omnibus Budget Reconciliation Act of 1981, the U.S. Congress mandated that loans to state UC trust funds after March 1982 carried interest charges with an annual interest rate of up to 10 percent. Interest is due on the last day of the fiscal year in which the loans were made (September 30). 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. 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 approval for grants related to the costs of administration is withdrawn until the interest is paid.

Currently 14 states have outstanding loans from the Federal Unemployment Account. The federal law requires that when a state has an outstanding loan balance on January 1st for 2 consecutive years, the full amount of the loan must be repaid before November 10th of the second year, or automatic loan repayment provisions kick in. The federal tax on employers in that state is increased every year that the loan is not repaid. The 5.4 percent credit is reduced by 0.3 percent for each year in which the loan remains unpaid. Additional credit reductions may apply in the third and fifth years if the loan balance is still outstanding and certain criteria are not met.

#### 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.<sup>25</sup> 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.

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<sup>24</sup> 42 U.S.C. s. 1321.

<sup>25</sup> Public L. No. 111-5.

- 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.
- A waiver period for interest charged to any advances made to a state: Any interest due between February 17, 2009, and December 31, 2010, on advances to a state is "deemed to have been paid by the state." Currently Florida does not have any federal loans associated with the UC program. Further, the Recovery Act provides that no interest will accrue on any advances made during this period. Thus, if Florida were to take an advance from the USDOL to pay UC benefits, interest would not accrue on the loan until December 31, 2010; after that date interest would accrue on the outstanding amount of the loan.
- 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, 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 cost 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.
- An option to "modernize" the UC system: As an incentive to modernize the UC system, if Florida were to implement all required components of the Recovery Act and the Unemployment Insurance Modernization Act (UIMA), the state would be entitled to about \$444.3 million in total. These incentive funds will be available until September 30, 2011, and states must apply to receive the funds. In order to receive one-third of the money available under the Recovery Act, Florida would have to implement the alternative base period. Under the alternative base period, claimants must meet the same rules as current law base period claimants but they can use a more recent four-quarter period to do so. Florida's one-third share for implementation of the alternative base period would be \$148 million. 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.<sup>26</sup> 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. Florida's share of the Recovery Act funds, if it were to implement two of the four areas, would be about \$295.9 million.

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<sup>26</sup> 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](http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bpprp.pdf) (last visited 4/7/2009).

### III. Effect of Proposed Changes:

Section 1 amends s. 443.1217(2), F.S., related to the determination of an employer's contributions. The PCS decreases the portion of an individual's wages exempt from determining an employer's contributions from the excess of \$7,000 to the excess of \$8,500. After January 1, 2015, the portion is increased back to wages in excess of \$7,000. In other words, employers will be taxed on an additional \$1,500 for the next 5 years.

Section 2 amends s. 443.131(3), F.S., related to the variation of contribution rates and the balance of the UC Trust Fund. The PCS increases the positive fund balance adjustment factor (low trigger) from 3.7 percent of taxable payrolls to 4 percent. Additionally, the time to recapture the funds is shortened from 4 years to 3 years. The recapture time period is restored to 4 years on January 1, 2015.

The PCS also increases the negative fund balance adjustment factor (high trigger) from 4.7 percent of taxable payrolls to 5 percent. It delays the annual computation of the negative adjustment factor until January 1, 2015. Thereafter, the negative adjustment factor will remain in effect until the balance of the Unemployment Compensation Trust Fund has a contribution rate between 4 and 5 percent. However, the negative adjustment factor is suspended in any calendar year in which an advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

"Taxable payroll" is defined to exclude any remuneration paid to an individual in excess of the first \$7,000. Until January 1, 2015, employers are not credited with the \$8,500 cap on contribution rates; this artificially suppresses the taxable payroll and results in employers paying higher taxes for a time period.

Section 3 amends s. 443.191, F.S., related to the UC Trust Fund, to address advances from the federal government. Advances are specifically authorized to be credited to the trust fund. Funds for advances may only be used for the payment of UC benefits or related administrative expenses. Further, the PCS adds that the Governor is specifically authorized to request advances on the amount in the federal Unemployment Compensation Trust Fund.<sup>27</sup>

Section 4 provides that this act shall take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>27</sup> USDOL Unemployment Insurance Program Letter (UIPL) 22-02, states that "the Governor may delegate the authority to request [advances] and make voluntary repayments to another state official, if permitted by state law."



**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Unemployment compensation benefits are financed by a tax on employers' payrolls. Employers will be subject to higher rates of taxation for UC benefits for the next 5 years:

- Employers will be taxed on an additional \$1,500 for contributions;
- Employers will not receive credit for the tax on the additional \$1,500 for the taxable payroll;
- The positive adjustment is increased from 3.75 percent to 4 percent, and must be repaid in 3 years instead of 4 years, meaning that employers will be subject to a higher tax, but for a shorter period of time; and
- The rate on taxable payroll will not be negatively adjusted until January 1, 2015.

Increased tax rates may not apply to existing employers until January 2010, as many employers pay most or all of their UC taxes in the first quarter; new employers in 2009 may be subject to the higher tax rates.

**B. Private Sector Impact:**

See Tax/Fee Issues.

**C. Government Sector Impact:**

DOR will incur indeterminate expenses to adjust the System of Unified Taxation (SUNTAX) to accommodate these proposed changes.

**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.)

None.

B. Amendments:

None.

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

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