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/CS/SB 810

INTRODUCER: Policy and Steering Committee on Ways and Means; Commerce Committee and Senators Garcia and Hill

SUBJECT: Unemployment Compensation Trust Fund

DATE: April 21, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Fav/CS**
2.	Belcher	Kelly	WPSC	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes

B. AMENDMENTS........................ [ ] Technical amendments were recommended

[ ] Amendments were recommended

[ ] Significant amendments were recommended

I. Summary:

The bill 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 (UC Trust Fund) sooner than under the parameters in current law for recoupment. Due to the increasing unemployment rate in Florida, the UC Trust Fund has recently been paying out more funds than it has been collecting.

The bill 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 bill 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. Further, the positive adjustment factor remains in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year; this will effectively leave the rate at a

higher level for longer, resulting in the recoupment of more funds. This will revert to 4 percent on January 1, 2015.

The bill 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 UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. 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.

The proposed changes to the tax structure will infuse significant cash into the UC Trust Fund; however, the fund will continue in deficit over the next five years, thereby, requiring advances [loans] from the Federal government. The projected deficit in the second quarter of 2014 would improve from $3.7 billion [under current law] to $997 million [under the proposed law].

The Governor, or his designee, is specifically authorized to request advances on the amount in the federal UC Trust Fund. Further, the use of moneys in the trust fund to repay advances is specifically authorized.

Effective between July 5, 2009, and December 26, 2009, the bill creates temporary state extended benefits for unemployed individuals for up to 13 or 20 weeks in order to qualify for federal funds under the American Recovery and Reinvestment Act of 2009. By implementing a state extended benefits period based upon the average total unemployment rate, Florida will qualify for 100% funding (approximately $776.7 million in stimulus funds) for the state extended benefits for private employers. Extended benefits for former state and local employees do not qualify for federal funding, and must be paid by the governmental entity. The cost is estimated to total $46.6 million, approximately $8 million from state funds and $38.6 million from local government funds. .

The bill amends ss. 443.1217, 443.131, and 443.191 of the Florida Statutes.

The bill creates s. 443.1117 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.[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

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

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

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.[3] 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 actively seeking work. Qualified claimants may receive benefits equal to 25 percent of their wages, not to exceed $7,150 in a benefit year.[4] 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.[5]

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.[6] The claims total for July 2008 was 159.1 percent greater than the totals for July 2007.[7] AWI reports that, during 2008, the Office of Unemployment Compensation Services issued 846,086 initial monetary determinations.

Financing Unemployment Compensation[8]

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.[9] 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 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.[10] 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.

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[3] Chapter 18402, L.O.F.
[4] Section 443.111(5), F.S.
[5] Section 443.111(3), F.S.
[6] 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).
[7] 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).
[8] 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).
[9] Section 443.191, F.S.
[10] Rules 60BB-2.025 and 2.027, F.A.C.

The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.[11] 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 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.[12] 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.[13] 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.[14]

A new employer's initial tax rate is 2.7 percent.[15] 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

[11] 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.

[12] Section 443.131(3)(b), F.S.

[13] Section 443.131(3)(a), F.S.

[14] Section 443.131(3)(e), F.S.

[15] Section 443.131(2)(a), F.S.

0.1 percent. The adjustment in the tax rate is determined by calculating several factors.[16] 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."

Trigger Date[17]

Each state currently establishes its own policy on trust fund solvency. The Legislature established the current tax trigger in 1957.[18] 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.[19]

UC Trust Fund

The taxes collected are paid into state trust funds maintained at the U. S. Treasury. At the end of the 4th quarter of 2008, Florida had a UC Trust Fund balance of over $1.3 billion.[20]

Florida's unemployment rate for February was at 9.4% and grew to 9.7% in March. The unemployment payments have greatly increased as tax collections decreased. This has resulted in a significant cash decline and, under the state's current tax structure the balance in the trust fund is expected to drop to $476.6 million by the end of April. It is anticipated that Florida's fund will be in a hard deficit in August.

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[16] 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.

[17] 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).

[18] Chapter 57-247, L.O.F.

[19] 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.

[20] 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).

The state will need to request an advance from the Federal government in order to make benefit payments. Revenue estimates have indicated that the fund cannot recover under current law and by the second quarter of 2014, it is anticipated that the fund will be deficit $3.7 billion.[21]

The business community has recommended that the Legislature take steps to insure the stability of the trust fund.

Federal Advances for UC Funding[22]

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.

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.[23]

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

[21] Revenue Estimating Conference, Unemployment Compensation Tax, Fiscal Impact of Senate Bill 810, April 17,2009.
[22] 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).
[23] 42 U.S.C. s. 1321.

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.

State Extended Benefits

State extended benefits are extra benefits that can be paid to unemployed individuals after an individual's regular benefits have run out. These benefits are only available under certain conditions; the extended benefit period is not always available. Under current Florida law, a state extended benefits period is only triggered "on" when the rate of insured unemployment (IUR), not seasonally adjusted, over the preceding 13 week period equals or exceeds 5 percent and 120 percent of the average for the period. When a state extended benefit period triggers "on," eligible individuals may receive another 13 weeks of unemployment benefits.

Individuals currently claiming benefits when the extended benefits period begins automatically receive extended benefits when they exhaust all available regular benefits. Individuals who are not in continuous reporting status or who have had intervening employment since last receiving benefits, have to apply for extended benefits so that their eligibility can be determined based on the requirements of sections 443.091 and 443.101, F.S. Generally, eligible individuals are those persons who still meet criteria to receive regular benefits. However, different from the eligibility for regular benefits, individuals may be disqualified from receiving extended benefits if:

- The individual failed to apply for or accept suitable work; or
- The individual failed to furnish evidence that he or she is actively engaged in a systematic and sustained effort to find work.

Individuals receive weekly benefit amounts equal to the average benefit amounts the individual was receiving in the regular benefit period. An individual may receive a total amount of extended benefits equal to the lesser of:

- 50 percent of the total regular benefits payable in his or her benefit year; or
- 13 times the individual's benefit amount for one week in his or her benefit year.

Federal law provides that when state extended benefits trigger "on" the federal government will share 50 percent of the benefit cost for all insured employers; essentially the federal government will pay 50 percent of extended benefit costs to private employers. The state and local governments in Florida are self-insured and are not eligible for federal sharing.[24]

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.[25] 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

[24] Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; 20 C.F.R. s. 615.14.
[25] Public L. No. 111-5.

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.
- 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 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 $148.1 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.[26] 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 $296.2 million.
- An option for an alternative extended benefits trigger rate: When a state enters an extended benefits period, the Recovery Act provides that the federal government will pay 100 percent of payments to former private sector employees through May 29, 2010 (for claimants that qualify by December 26, 2010). States may elect to participate in an alternate extended benefits trigger rate that will increase the likelihood that a state's extended benefits period would trigger "on." States are also given the option to allow for extended benefits for unemployment following the exhaustion of regular benefits and

[26] 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).

emergency unemployment compensation provided by the federal government. If Florida elects to participate in 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. The state may set a sunset date in enacting the alternate trigger; after December 26, 2010, any extended benefits paid are only reimbursed the federal government at a rate of 50 percent for former private sector employees. If this were implemented with no sunset, from January 1 through June 30, 2010, state agencies and local governments would be burdened by an additional $24.2 million to pay for former employees' benefits, and the cost to the UC Trust Fund would be about $202 million. The Recovery Act funds are paid from a separate federal general revenue account and do not affect the balance of Florida's UC Trust Fund.

III. Effect of Proposed Changes:

Section 1 amends s. 443.1217(2), F.S., to decrease 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.

This section shall take effect January 1, 2010.

Section 2 amends s. 443.131(3), F.S., to increase the positive fund balance adjustment factor (low trigger) from 3.7 percent of taxable payrolls to 4 percent. The positive adjustment factor will remain in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year; this is an increase from 3.7 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.

This section 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 UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. 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.

This section shall take effect January 1, 2010.

Section 3 amends s. 443.191, F.S., to address advances from the federal government. Advances are specifically authorized to be credited to the trust fund. This section adds that the Governor, or his designee, is specifically authorized to request advances on the amount in the federal UC Trust

Fund.[27] Further, as authorized by the Governor, or his designee, moneys in the trust fund may be used for repayment of advances made by the federal government.

This section shall take effect upon becoming a law.

Section 4 creates s. 443.1117, F.S., effective July 5, 2009, and expiring December 26, 2009, to provide temporary state extended benefits. The benefit availability trigger is based upon the average total unemployment rate (TUR) under state law, seasonally adjusted, as determined by the U.S. Secretary of Labor, for the period consisting of that week and 12 weeks immediately preceding it. The section provides for when the trigger is "on" and "off." It also provides for the calculation of the benefit amount. Definitions are provided for terms used in the section. Eligibility for benefits may only be established for weeks between July 5, 2009, and December 26, 2009; however, benefits payments may be made up to the week ending May 29, 2010.

This section is created to fulfill the federal option to adopt the alternative extended benefits trigger, as set forth in the Recovery Act, using the total unemployment rate rather than the insured unemployment rate calculation. This option allows Florida's extended benefits period to trigger "on" and makes Florida's unemployed eligible for extended benefits for a certain period of time. By implementing a state extended benefits period based upon the average total unemployment rate, Florida will qualify for 100% funding for these state extended benefits for private employers; extended benefits for former state and local employees do not qualify for federal funding, and must be paid by the governmental entity.

Section 5 states that the Legislature finds that this act fulfills an important state interest.

Section 6 provides that this act shall take effect upon becoming a law, unless otherwise specifically stated in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees for an additional 13 to 20 weeks, 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 (see section 5 of the bill) and one of the following relevant exceptions:

a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

[27] 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. The expenditure is required to comply with a law that applies to all persons "similarly situated," including state and local governments; or
d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

"Similarly situated" refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities." Because the bill would impact "all persons similarly situated," this exception appears to apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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, will remain in effect until the fund balance equals or is in excess of 5 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.

The proposed changes to the tax structure will infuse significant cash into the UC Trust Fund; however, the fund will continue in deficit over the next five years, thereby, requiring advances [loans] from the Federal government. The projected deficit in the second quarter of 2014 would improve from $3.7 billion [under current law] to $997 million [under the proposed law]. Revenue Estimating Conference, on April 17, 2009, established a fiscal impact on the bill for the UC Trust Fund as follows:[28]

	FY 2009-2010	**FY 2010-2011**	**FY 2011-2012**	**FY 2012-2013**
Impact	304.3	561.3	604.3	621.2

[28] In millions of dollars.

B. Private Sector Impact:

See Tax/Fee Issues.

Many unemployed individuals in Florida who have exhausted regular benefits and the federal emergency UC benefits will be eligible for 13 to 20 weeks of state unemployment benefits. This will come at no cost to private employers and will not affect their contribution rates. The cost will be covered 100% by the Federal stimulus funds and is estimated at $776.7 million.

C. Government Sector Impact:

Related to the tax changes, DOR will incur $42,210 in expenses in FY 2009-10 to adjust the System of Unified Taxation (SUNTAX) to accommodate these proposed changes ($20,000); for programming changes by DOR's vendor for the e-filing programs ($4,000); and to send out information to about 500,000 taxpayers affected by these changes ($18,210).

Related to the temporary state extended benefits provision, benefits for former state and local employees do not qualify for federal funding and must be paid by the governmental entity. The cost is estimated to total $46.6 million, approximately $8 million from state funds and $38.6 million from local government funds.

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.)

CS/CS by the Policy and Steering Committee on Ways and Means on April 21, 2009:
The CS differs from the prior bill in that it:

- Changes the effective dates for the increases to the thresholds for the tax rates, the recapture period, and the increase to the payroll tax base from October 1, 2009, to January 1, 2010.
- Creates a state extended benefits period that will trigger "on" based upon the average total unemployment rate; this will qualify Florida to receive 100% funding for extended benefits payments made to former private sector employees for a certain period of time.
- Adds a statement that the Legislature finds that this act fulfills an important state interest.

CS by the Commerce Committee on April 15, 2009:
The CS amends statutes related to the UC Trust Fund:

- 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, until January 1, 2015. This takes effect October 1, 2009.
- Increases the positive fund balance adjustment factor from 3.7 percent of taxable payrolls to 4 percent, to remain in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year. 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. This takes effect October 1, 2009.
- Increases the negative fund balance adjustment factor from 4.7 percent of taxable payrolls to 5 percent and delays the annual computation of the negative adjustment factor until January 1, 2015. Thereafter, the negative adjustment factor remains in effect until the balance of the UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. However, the negative adjustment factor is suspended in any calendar year in which an advance from the federal government is still in repayment for the principal amount of the loan. This takes effect October 1, 2009.
- "Taxable payroll" is defined to exclude any wages 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 takes effect October 1, 2009.
- Specifically authorizes, upon becoming a law:
  - Advances to be credited to the trust fund;
  - The Governor, or his designee, to request advances; and
  - Money in the trust fund to be used for repayment of advances.

B. Amendments:

None.