

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 and Tourism Committee

BILL: SB 1416

INTRODUCER: Senator Bogdanoff

SUBJECT: Unemployment Compensation

DATE: January 25, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1416 rebrands the state’s unemployment compensation program in ch. 443, F.S., as the reemployment assistance program.

The bill makes additional changes, including:

- Requiring the Department of Economic Opportunity (DEO) to establish a numeric score on the initial skills review which demonstrates a minimum proficiency in workforce skills. Individuals who fall below the minimum score may elect to take workforce skills training, and DEO is required to evaluate the training and report findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013;
- Clarifying that individuals who are non-Florida residents, on temporary layoffs, union members, or participating in short-time compensation plans are not required to complete the initial skill review;
- Reducing the number of required work search contacts from 5 to 3 to individuals who live in small counties;
- Clarifying work search requirements for union members and individuals on temporary layoffs or participating in short-time compensation plans;
- Increasing the period of disqualification for making a fraudulent claim from the time that the fraudulent claim was made until 1 year after DEO discovers the fraud or until all fraudulent overpayments are repaid in full.
- Extending the statute of limitations related to the collection of overpayments by providing that the commencement of collections must be initiated within 7 years after the redetermination or decision.

- Authorizing DEO to noncharge the accounts of employers that are forced to lay off workers due to a man-made disaster of national significance.
- Incorporating federal provisions relating to the release of confidential information.

This bill amends the following sessions of the Florida Statutes: ss. 443.011; 443.012; 443.036; 443.051; 443.071; 443.091; 443.101; 443.111; 443.1113; 443.1116; 443.1215; 443.1216; 443.131; 443.1113; 443.131; 443.1312; 443.1313; 443.1315; 443.1316; 443.1317; 443.141; 443.151; 443.163; 443.171; 443.1715; 443.17161; 443.181; 443.191; 443.221; 20.60; 27.52; 40.24; 45.031; 55.204; 57.082; 61.046; 61.1824; 61.30; 69.041; 77.041; 110.205; 110.502; 120.80; 125.9502; 212.096; 213.053; 216.292; 220.03; 220.181; 220.191; 220.194; 222.15; 222.16; 225.20; 288.075; 288.1045; 288.106; 288.1081; 288.1089; 334.30; 408.809; 409.2563; 409.2576; 414.295; 435.06; 440.12; 440.15; 440.381; 440.42; 445.009; 445.016; 446.50; 448.110; 450.31; 450.33; 468.529; 553.791; 624.509; 679.4061; 679.4081; 895.02; 896.101; 921.0022; 946.513; 946.523; 985.618; 1003.496; 1008.39; and 1008.41, F.S.

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. 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.² The individual states collect unemployment compensation (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).³ FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁴

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.⁵ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's UC laws, primarily through its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.⁶

¹USDOL, Employment and Training Administration (ETA), [State Unemployment Insurance Benefits](http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp), available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 1/20/2012).

² There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ FUTA is codified at 26 U.S.C. 3301-3311.

⁴ USDOL, ETA, [Unemployment Insurance Tax Topic](http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp), available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 1/20/2012).

⁵Chapter 18402, L.O.F.

⁶ Section 443.1316, F.S.

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.⁷ Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.⁸

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Determinations and Redeterminations

DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁹ Determinations and redeterminations are statements by the department regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account.

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by DEO that the individual:¹⁰

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Takes and completes the initial skills review;
- Is able to and available for work;¹¹
- Contacts at least 5 prospective employers each week or reports to the One-Stop Career Center for reemployment services;
- 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 DEO.

The law does not distinguish between part-time and full-time work with respect to benefits. With respect to the requirements of being able to work and available for work, Rule 60BB-3.021(2),

⁷ Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.

⁸ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.

⁹ Section 443.151(3), F.S.

¹⁰ Section 443.091(1), F.S.

¹¹ "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. See s. 443.036(1) and (6), F.S. Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work. See Rule 60BB-3.021, F.A.C.

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.

Initial Skills Review

Claimants are required to participate in an initial skills review. The administrator or operator of the online education or training program is required to report to DEO that the individual has taken the initial skills test for benefit eligibility purposes, and to the regional workforce board or One-Stop Career Center the results of the initial skills test for purposes of reemployment services. The regional workforce board is required to develop a plan to use the initial skills review to refer individuals training and employment opportunities.¹²

An initial skills review is an online education or training program, like Florida Ready to Work,¹³ that is approved by DEO and designed to measure an individual's mastery of workplace skills.¹⁴

Florida Ready to Work is an employee credentialing program that is funded by the state.¹⁵ To participate, individuals must first go to a local assessment center to sign up for the program. Once signed up, an individual may take the initial skills review at the assessment center or online at any location with Internet access. The assessment measures general skills necessary for 90 percent of all jobs in three areas: locating information, reading, and applied math. All the questions are based on workplace scenarios. After taking the initial skills review, an individual may take additional course material to try to improve his or her skills. An individual who completes the entire program may receive a Florida Ready to Work Credential to use as a tool when applying for jobs. This program is provided to Floridians at no cost.

DEO has contracted with Worldwide Interactive Network (WIN), the contractor for Florida Ready to Work, to provide the initial skills review required by the unemployment statute.¹⁶ The Florida Ready to Work initial skills review is integrated into the process of applying for benefits to provide a streamlined process. The total cost of contracting with WIN for the initial skills review is \$10 million for FY 2011-12; however WIN provided DEO with an \$8 million discount, making the actual cost \$2 million.¹⁷ The Florida Ready to Work program was funded by \$3

¹² Section 443.091(1)(c), F.S.

¹³ Section 445.06, F.S.

¹⁴ Section 443.036(26), F.S.

¹⁵ Website available at <http://floridareadytowork.com/> (last visited 1/20/2012). The 2006 Florida Legislature created the Florida Ready to Work Certificate Program to enhance the workplace skills of Florida's students to better prepare them for successful employment in specific occupations. See s. 35, ch. 2006-74, L.O.F. A student who earns a Ready to Work Credential (credential) will be considered equipped with the skills to enter the workforce. Any Florida student or resident is eligible to earn the credential. Prior to FY 2011-12 the program was administered by the Florida Department of Education (DOE), Division of Workforce Education, in cooperation with Worldwide Interactive Network (WIN) and the nationally recognized ACT® WorkKeys program.

¹⁶ The 2011 Florida Legislature transferred the Ready to Work Certificate Program from the DOE to the newly created Department of Economic Opportunity (DEO). See ss. 5 and 476, ch. 2011-142, L.O.F.

¹⁷ Contract on file with the Senate Commerce and Tourism Committee. With other costs, such as additional training and certifications available, the total cost of the Florida Ready to Work Program under the contract is \$5 million.

million in General Revenue and \$2 million from the Workers' Compensation Administration Trust Fund in FY 2011-12.¹⁸

Reemployment

To maintain eligibility for benefits, an individual must be ready, willing, and able to work and must be actively seeking work. An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available. DEO defines reemployment services as: job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.¹⁹

DEO's website provides links to local, state, and national employment databases.²⁰ Claimants are automatically registered with their local One-Stop Career Center when their claims are filed and are required to report to the One-Stop Career Center as directed by the regional workforce board for reemployment services.²¹ The One-Stops provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from Employ Florida Marketplace with information about employment services or available jobs.²² Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).²³

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;²⁴
- Failing to apply for available suitable work when directed by DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;²⁵

¹⁸ See s. 2, ln. 98, ch. 2011-69, L.O.F. Of these funds, \$2.3 million from the General Revenue Fund was provided from recurring funds, and the remainder of both funds was provided from nonrecurring funds.

¹⁹ Rule 60BB-3.011(12), F.A.C.

²⁰ For example, on www.fluidnow.com, where individuals can claim their weeks online.

²¹ Section 443.091(1)(b), F.S.

²² Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and DEO. It provides job-matching and workforce resources. <https://www.employflorida.com>.

²³ REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Research has shown that interviewing claimants for the above purposes reduces UC duration and saves UC trust fund resources by helping claimants find jobs faster and eliminating payments to ineligible individuals. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

²⁴ An individual is not disqualified for voluntarily leaving temporary work to return to full time work or to relocate with his or her military spouse due to relocation 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.

²⁵ Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

- Making false or fraudulent representations in filing for benefits;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work; and
- Discharge from employment due to drug use or rejection from a job offer for failing a drug test.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

Collection of Overpayments

Current law provides several options for the state to recoup overpaid unemployment benefits, including, but not limited to, wage garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency.²⁶ Any recovery or recoupment of benefits must be effected within 5 years of a redetermination or decision for cases involving fraud, and within 3 years for all other cases of overpayments.

Employee Leasing Companies

An employee leasing company is “a form of business entity engaged in an arrangement whereby the entity assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.”²⁷ The leasing company provides services for the client companies, such as handling the filing of UC taxes and workers' compensation. Under current law, employee leasing companies are required to report leased employees under the leasing company's UC tax account and contribution rate.²⁸

Temporary State Extended Benefits

In 2009, the Legislature enacted a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds.²⁹ Under this program, the federal government pays 100 percent of temporary state extended benefits to former private sector employees. The federal funds are paid from a separate federal general revenue account and do not affect the balance of Florida's UC Trust Fund. There is no cost to private employers; however, “reimbursable” employers like state and local governments are not covered by the federal government and must pay for the benefits themselves. These benefits are not charged to employers and have no effect on an employer's experience rating.

Since the implementation of the temporary state extended benefits program in the American Recovery and Reinvestment Act of 2009, the existence of the program has been extended several times by the federal government. Most recently, in December 2011, Congress extended the

²⁶ Section 443.151(6), F.S.

²⁷ Department of Business and Professional Regulation, Board of Employee Leasing Companies, definitions, available at <http://www.myfloridalicense.com/dbpr/pro/emplo/codes.html> (last visited 1/21/2012).

²⁸ Section 443.1216, F.S.

²⁹ Chapter 2009-99, L.O.F. Temporary extended benefits was originally created and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 2005, Public L. No. 111-5.

eligibility window for Emergency Unemployment Compensation (EUC) and for state extended benefits through March 7, 2012.³⁰

Florida already had an extended benefits program in statute,³¹ but in order to participate in the federal program, Florida had to enact a temporary state extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR).³² Florida's regular state extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). In the past, the program has generally been set forth in state statute, adopted by the Legislature. However, on January 6, 2012, Governor Scott signed an executive order extending the program after the federal bill was signed into law.³³

III. Effect of Proposed Changes:

SB 1416 rebrands the state's unemployment compensation program in ch. 443, F.S., as the reemployment assistance program.

To make the rebranding changes, the bill amends the following statutes: ss. 443.011 (**Section 1**); 443.012 (**Section 2**); 443.036 (**Section 3**); 443.051 (**Section 4**); 443.071 (**Section 5**); 443.091; 443.101 (**Section 7**); 443.111 (**Section 8**); 443.1113 (**Section 9**); 443.1116 (**Section 10**); 443.1215 (**Section 11**); 443.1216 (**Section 12**); 443.131 (**Section 13**); 443.1113 (**Section 10**); 443.131 (**Section 13**); 443.1312 (**Section 14**); 443.1313 (**Section 15**); 443.1315 (**Section 16**); 443.1316 (**Section 17**); 443.1317 (**Section 18**); 443.141 (**Section 19**); 443.151 (**Section 20**); 443.163 (**Section 21**); 443.171 (**Section 22**); 443.1715 (**Section 23**); 443.17161 (**Section 24**); 443.181 (**Section 25**); 443.191 (**Section 26**); 443.221 (**Section 27**); 20.60 (**Section 28**); 27.52 (**Section 29**); 40.24 (**Section 30**); 45.031 (**Section 31**); 55.204 (**Section 32**); 57.082 (**Section 33**); 61.046 (**Section 34**); 61.1824 (**Section 35**); 61.30 (**Section 36**); 69.041 (**Section 37**); 77.041 (**Section 38**); 110.205 (**Section 39**); 110.502 (**Section 40**); 120.80 (**Section 41**); 125.9502 (**Section 42**); 212.096 (**Section 43**); 213.053 (**Section 44**); 216.292 (**Section 45**); 220.03 (**Section 46**); 220.181 (**Section 47**); 220.191 (**Section 48**); 220.194 (**Section 49**); 222.15 (**Section 50**); 222.16 (**Section 51**); 225.20 (**Section 52**); 288.075 (**Section 53**); 288.1045 (**Section 54**); 288.106 (**Section 55**); 288.1081 (**Section 56**); 288.1089 (**Section 57**); 334.30 (**Section 58**); 408.809 (**Section 59**); 409.2563 (**Section 60**); 409.2576 (**Section 61**); 414.295 (**Section 62**); 435.06 (**Section 63**); 440.12 (**Section 64**); 440.15 (**Section 65**); 440.381 (**Section 66**); 440.42 (**Section 67**); 445.009 (**Section 68**); 445.016 (**Section 69**); 446.50 (**Section 70**); 448.110 (**Section 71**); 450.31 (**Section 72**); 450.33 (**Section 73**); 468.529 (**Section 74**); 553.791 (**Section 75**); 624.509 (**Section 76**); 679.4061 (**Section 77**); 679.4081 (**Section 78**); 895.02 (**Section 79**); 896.101 (**Section 80**); 921.0022 (**Section 81**); 946.513 (**Section 82**); 946.523 (**Section 83**); 985.618 (**Section 84**); 1003.496 (**Section 85**); 1008.39 (**Section 86**); and 1008.41, F.S. (**Section 87**).

Section 3 also amends s. 443.036, F.S., to define "reemployment assistance" to mean, in part, cash benefits payable to individuals due to their unemployment.

³⁰ Pub. L. No. 112-78.

³¹ Section 443.1115, F.S.

³² Section 443.1117, F.S., expired January 4, 2012.

³³ Executive Order No. 12-03.

Section 6 amends provisions in s. 443.091, F.S., related to the initial skills review and work search requirements.

Initial Skills Review

The bill requires DEO to prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills. Any individual who falls below the minimal proficiency score will be offered training opportunities, at no cost to the individual, to improve his or her workforce skills. DEO is required to evaluate the use, effectiveness, and costs associated with the voluntary training offered, and report the department's findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013.

Additionally, the bill specifies that individuals who are non-Florida residents, on temporary layoffs, union members, or participating in short-time compensation plans are not required to complete the initial skill review.

Work Search Requirements

Under current law, most individuals receiving unemployment benefits are required to contact at least five potential employers each week. Individuals may also meet the work search requirement by reporting to a local one-stop career center to meet with a representative of the center for reemployment services.

Under the bill, individuals who live in small counties are only required to contact three potential employers each week.³⁴ Further, union members who customarily obtain employment through a union hiring hall may satisfy the work search requirement by reporting to their union hall. Further, the work search requirements do not apply to individuals on temporary layoffs or participating in short-time compensation plans.

Section 7 also amends s. 443.101, F.S., to increase the duration of disqualification from receiving benefits for making fraudulent representations. Under current law, an individual who makes false or fraudulent representations to obtain benefits is disqualified from receiving benefits for 1 year from the date of discovery of the fraud by DEO. Under the bill, such individual is disqualified from the week in which the false or fraudulent representation is made until 1 year from the date of discovery of the fraud by DEO and until any overpayment of benefits resulting from such fraud has been repaid in full.

Section 13 also amends s. 443.131, F.S., to provide tax relief to employers by noncharging benefits paid to individuals who separated from work as a direct result of an oil spill, terrorist attack, or other similar disaster of national significance not subject to a federal declaration of disaster.

Section 20 also amends s. 443.151, F.S., to extend the period of time that DEO may seek recovery of benefits wrongly or incorrectly paid. Under current law, DEO must collect the benefits within 5 years of the determination that the benefits were wrongly or incorrectly paid,

³⁴ The term "small counties" is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

either due to fraud or other reason. Under the bill, DEO's recovery efforts must be commenced within 7 years of the determination that the benefits were wrongly or incorrectly paid. After commencing recovery efforts, DEO has an unlimited time to recover the benefits.

Section 22 also amends s. 443.171, F.S., and **Section 23** also amends s. 443.1715, F.S., to incorporate federal provisions related to the release of confidential information released to the unemployment compensation program.

Section 88 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who fraudulently or mistakenly receive unemployment benefits will be liable to repay DEO to a longer period of time.

C. Government Sector Impact:

The changes proposed could be accomplished by DEO using existing resources.

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.

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