

**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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: SB 222

INTRODUCER: Senator Detert

SUBJECT: Reemployment Assistance

DATE: February 5, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	<b>Favorable</b>
2.	Pingree	Martin	ATD	<b>Pre-meeting</b>
3.			AP	
4.				
5.				
6.				

**I. Summary:**

SB 222 makes several changes to the reemployment assistance program, primarily to the process for appealing determinations on reemployment assistance benefit claims. The bill decentralizes the appeals process by creating a local regional appeals office (RAO) in each of the 24 Regional Workforce Boards (RWBs). The bill transfers the functions of the Department of Economic Opportunity (DEO)'s Office of Appeals (with employees located in Tallahassee, Ft. Lauderdale and Jacksonville) to the RWBs. Each RWB will appoint appeals referees that must meet the DEO's qualifications and will be considered employees of the DEO. The bill creates 24 local review panels and eliminates the existing Reemployment Assistance Appeals Commission (RAAC). The local review panels will be comprised of three members of the regional workforce board that are appointed by the chair of the RWB, subject to the board's approval. The review panels will review the decisions of the RWB's appeals referees. The DEO must establish a central appeals office to maintain public records and post final orders of the review panels online. The bill requires the DEO to develop a transition plan that implements these provisions by October 1, 2013.

Implementing the changes to decentralize the process for appealing determinations on reemployment assistance benefit claims is expected to have a significant fiscal impact to the DEO. The DEO projects that an additional 44 full-time positions and \$3.2 million of recurring funds will be needed to implement the bill (assuming that \$3.5 million of federal funds currently provided to administer the appellate functions performed by the RAAC remain available). Nonrecurring costs include, but are not limited to, approximately \$18 million to make the necessary modifications to the Reemployment Assistance Claims and Benefits System ("Project Connect"), and approximately \$1.1 million to cover nonrecurring expenses, including staff

training. The DEO does not anticipate that additional federal funds will be available to cover these projected costs (\$22.3 million).

Effective July 1, 2013, the bill also:

- Creates a limitation and an exception for the current work search requirements. The bill provides that the claimant may not count the same prospective employer at the same location more than once during his or her claim as proof of work search efforts, unless the employer indicates that it is hiring after the claimant's initial contact. An exception to proof of work search requirements is provided for claimants that are participating in Reemployment and Eligibility Assessments.
- Provides specific examples of conduct that constitute "misconduct" that may disqualify an individual for reemployment assistance benefits. Examples include, but are not limited to: willful damage to an employer's property; theft of the property of the employer or a customer or invitee of the employer; failure to maintain a license, registration, or certification required by law that is necessary for work; and committing criminal assault or battery on another employee.
- Provides that an additional assessment on employers will not be made if the amount on deposit from assessments made in previous years, plus any earned interest, is at least 80 percent of the estimated amount of the federal interest due on advances. The bill also provides that four months after all advances and associated interest are repaid, any excess assessed funds remaining on deposit, including any associated interest, will be transferred to the Unemployment Compensation Trust Fund.

The U.S. Department of Labor (USDOL) may determine that the bill, if implemented, results in Florida being out of conformity with federal law. If the USDOL does not certify the state's reemployment assistance program, it could withhold all federal funding provided to administer the program and increase the federal unemployment taxes collected from Florida's employers from .6 percent to 6 percent (a 5.4 percent increase) on the first \$7,000 of each employee's wages.

The bill substantially amends the following sections of the Florida Statutes: 20.60, 110.205, 120.80, 443.012, 443.0315, 443.036, 443.041, 443.091, 443.101, 443.131, 443.151, 443.1317, 443.141, and 443.171.

## II. Present Situation:

### Reemployment Assistance 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.<sup>1</sup> The program is administered as a partnership of the federal government and the states.<sup>2</sup> Each state collects payroll taxes on a quarterly basis to pay reemployment assistance

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<sup>1</sup>USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 1/13/2013).

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

benefits. The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).<sup>3</sup> The FUTA collections are distributed to the states to administer state unemployment insurance and job service programs. In addition, during high periods of unemployment, the FUTA pays one-half of the cost of extended unemployment benefits and provides a fund from which states may borrow, if necessary, to pay benefits.<sup>4</sup>

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 the FUTA or Social Security Act requirements. Florida's unemployment insurance program was created by the Legislature in 1937.<sup>5</sup> The program was rebranded as the "reemployment assistance program" in 2012.<sup>6</sup> The Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division of Workforce Services. The DEO contracts with the Florida Department of Revenue (DOR) for the collection of unemployment taxes.<sup>7</sup>

### **State Reemployment Assistance Benefits**

A qualified claimant may receive RA benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.<sup>8</sup> 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, wages earned, and the unemployment rate.<sup>9</sup>

To receive RA 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.

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. For example, each week an individual is required to contact at least five prospective employers (three prospective employers if the individual resides in a small county) or report to the One-Stop Career Center for reemployment services.<sup>10</sup>

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<sup>3</sup> FUTA is codified at 26 U.S.C. ss. 3301-3311.

<sup>4</sup> USDOL, ETA, [Unemployment Insurance Tax Topic](http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp), available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 1/13/2013).

<sup>5</sup> Chapter 18402, L.O.F.

<sup>6</sup> Chapter 2012-30, L.O.F.

<sup>7</sup> Section 443.1316, F.S.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> See s. 443.091(1), F.S., for the entire list of requirements and exceptions. A "small county" 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.

### *Disqualification for Reemployment Assistance*

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits. For example, an individual is disqualified for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work.<sup>11</sup>

Currently, “misconduct” is defined as:<sup>12</sup>

- Conduct demonstrating conscious disregard of an employer’s interests that is outside of reasonable standards of behavior;<sup>13</sup>
- Careless or negligent behavior that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer’s interests;
- Chronic absenteeism or tardiness that violates a known policy of the employer or follows a written reprimand or warning due to the absenteeism;
- Willful or deliberate conduct that causes or would cause an employer to be sanctioned or the employer’s license or certification to be suspended; or
- Conduct that violates an employer’s rule, unless the claimant can show that he or she did not know of the rule, that the rule is unlawful or not related to the job, or that the rule is not fairly or consistently enforced.

It does not matter if the misconduct occurs at the workplace or during working hours for purposes of disqualifying an individual for reemployment assistance benefits.

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.

### *Determinations and Redeterminations*

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.<sup>14</sup> 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. A party who believes a determination is inaccurate may request reconsideration within 20 days from date the determination was mailed. The DEO must review the information on which the request is based and issue a redetermination.

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<sup>11</sup> An individual is not disqualified for voluntarily leaving temporary work to return to fulltime 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.

<sup>12</sup> Section 443.036(30), F.S.

<sup>13</sup> “Conscious disregard” is not defined. One court characterized the term “conscious disregard of consequences” in a negligence context as being a middle ground between careless disregard of consequences (as in simple negligence) and “the more extreme ‘willful or wanton’ disregard thereof (as in culpable or criminal negligence).” *Courtney v. Fla. Transformer, Inc.*, 549 So. 2d 1061, 1064 (Fla. 1st DCA 1989).

<sup>14</sup> Section 443.151(3), F.S.

*Appeals of DEO Determinations – Office of Appeals*

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.<sup>15</sup> Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests. Generally, an appeal must be filed within 20 days of the determination date.

Upon receiving an appeal, the Office of Appeals will schedule a hearing involving all interested parties to address the issues. The parties will be mailed a *Notice of Hearing* telling them when the hearing will be held and whether they are expected to participate in-person or by telephone... The parties are expected to present all of their evidence and testimony to the appeals referee, who will then make a decision based only upon the evidence and testimony presented during the hearing. An audio recording of the hearing will be made by the referee. When the hearing is completed, the referee will issue a written decision.<sup>16</sup>

In the 2012 calendar year, there were a total of 116,534 appeals filed, and the Office of Appeals issued 128,968 decisions. Most appeals were filed by applicants (about 74 percent of the filed appeals), but the outcomes of the decisions were evenly split between decisions to pay or deny benefits to the applicants.<sup>17</sup>

*Appeals of Appeals Referee Decisions – Reemployment Assistance Appeals Commission*

A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission. An appeal must be filed within 20 days of the date of the appeals referee's decision.

The Reemployment Assistance Appeals Commission (commission) is administratively housed in the DEO, but is a quasi-judicial administrative appellate body independent of the DEO.<sup>18</sup> The commission is 100 percent federally funded and consists of a three member panel that is

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<sup>15</sup> Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Information about the Office of Appeals and the appeals process may be found on the DEO website at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-an-appeal> (last visited 1/13/2013).

<sup>16</sup> The DEO, "Reemployment Assistance Appeals Process, Reemployment Assistance Appeals Commission," available at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/reemployment-assistance-appeals-commission/reemployment-assistance-appeals-process> (last visited 1/13/2013).

<sup>17</sup> Data from the DEO, "Reemployment Assistance Data, 1<sup>st</sup> Quarter 2007 through 4<sup>th</sup> Quarter 2012," January 7, 2013, on file with the Senate Commerce and Tourism Committee. Note, that not all outcomes that award benefits impact an employer's taxes, as some cases find that the former employee separated from work due to reasons not attributable to the employer.

<sup>18</sup> Section 20.60(8), F.S. "The Reemployment Assistance Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the department in the performance of its powers and duties but shall receive any and all support and assistance from the department which is required for the performance of its duties." Information about the commission and the appeals process may be found on the DEO website at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/reemployment-assistance-appeals-commission> (last visited 1/13/2013).

appointed by the Governor, and confirmed by the Senate. It is the highest level for administrative review of contested cases decided by the Office of Appeals referees.

“A party requesting review by the Commission should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.”<sup>19</sup> The commission does not hold a hearing when it reviews the appeal to determine whether the appeals referee's decision was properly supported by the testimony and other evidence presented at the hearing. The commission cannot consider evidence that was not presented to the appeals referee during the previous hearing, unless there is some extraordinary circumstance.

The Reemployment Assistance Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings.<sup>20</sup> In the 2012 calendar year, there were a total of 14,120 appeals filed with the commission, and the commission issued 14,725 orders – 11,061 final orders and 3,664 orders remanding cases back to the Office of Appeals. Approximately 60 percent of the appeals were filed by claimants. Related to outcomes of the final orders, 38 percent resulted in a decision to pay benefits to a claimant and 62 percent denied benefits.

#### *Appeals of Commission Decisions – Florida District Courts of Appeal*

A party to an appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.<sup>21</sup> The notice of appeal should be filed either in the district court of appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. If the notice of appeal is filed with the commission, then the appeal will be filed in the district court of appeal in the appellate district where the order was issued.

#### **Financing Reemployment Assistance**

In Florida, RA benefits are financed solely through contributions by employers – employers pay taxes on the first \$8,000 of each employee's wages.<sup>22</sup> The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's “experience” (as former employees collect RA benefits, these benefits are charged to the employer), the balance of the Unemployment Compensation Trust Fund, and other factors.

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<sup>19</sup> See footnote 17.

<sup>20</sup> Appeals remanded back to the appeals referee occur when the commission finds procedural issues that require further hearing; when a party fails to appear for the hearing and requests that the case be reopened (the referee must hold a hearing to determine if the individual had good cause for not appearing); and when a party files a late appeal and requests the commission to direct the appeals referee to accept the late appeal (the commission determines that the appeal was timely filed and a hearing should be held or that additional fact finding is necessary to determine if the appeal was timely filed).

<sup>21</sup> Section 443.151(4)(c), (d), and (e), F.S.

<sup>22</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. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers. The “wage base” is expected to go down to \$7,000 in 2015. s. 443.1217(2)(a), F.S.

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.0 percent on employees' annual wages.<sup>23</sup> If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net federal tax rate 0.6 percent. Employers file an annual return with the Internal Revenue Service each January for taxes on the first \$7,000 of each employee's annual wages during the previous year.

The USDOL provides administrative grants to the DEO from the taxes collected from employers pursuant to the FUTA. These grants are used to fund the operations of the state's program, including processing claims for benefits, collecting state unemployment taxes, conducting appeals, and performing related administrative functions.

Due to the recent high rates of unemployment in Florida, more funds have been paid out of the Unemployment Compensation Trust Fund than have been collected. The trust fund fell into deficit in August 2009, and since that time the state has requested over \$2 billion in federal advances in order to continue paying unemployment compensation claims. Through voluntary repayment and partial loss of the federal tax credit, Florida has substantially paid down its debt.<sup>24</sup> It is projected that all federal advances will be repaid by June, 2013.<sup>25</sup>

Federal advances accrue interest on a federal fiscal year basis (October to September), and such interest is due no later than September 30<sup>th</sup> of each year. The interest rate for 2013 is 2.5765 percent.<sup>26</sup> The Revenue Estimating Conference estimated on January 15, 2013, that the interest due for 2013 will be \$9.6 million.<sup>27</sup>

The interest due on advances cannot be paid from funds from the Unemployment Compensation Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose an assessment on employers.<sup>28</sup> In 2010, the Legislature imposed an additional assessment on employers to pay interest on federal advances.<sup>29</sup>

Section 443.131(5)(b), F.S., sets forth the calculation for the assessment. To determine the additional rate for the assessment, the formula divides the estimated amount of interest owed by 95 percent of total wages paid by employers for the previous year ending June 30. To determine an employer's payment, the formula multiplies an employer's taxable wages by the additional rate. The DOR is required to calculate and bill the assessment prior to February 1 of the year, based upon the interest estimated by the Revenue Estimating Conference. An employer has 5

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<sup>23</sup> 26 U.S.C. s. 3301.

<sup>24</sup> As of January 10, 2013, Florida owed about \$647 million. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at [http://www.treasurydirect.gov/govt/reports/tfmp/tfmp\\_advactivitiessched.htm](http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm) (last visited 1/13/2013).

<sup>25</sup> The most recent forecast by the Revenue Estimating Conference shows repayment of all federal advances by June 2013. On file with the Senate Commerce and Tourism Committee.

<sup>26</sup> The interest rate charged is equal to the fourth calendar quarter yield on the Unemployment Trust Fund for the previous year, capped at 10 percent. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Unemployment Trust Fund Quarterly Yields at [http://www.treasurydirect.gov/govt/rates/rates\\_tfr.htm](http://www.treasurydirect.gov/govt/rates/rates_tfr.htm) (last visited 1/13/2013).

<sup>27</sup> Revenue Estimating Conference forecast, available at <http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/index.cfm> (last visited 1/17/2013).

<sup>28</sup> The option of issuing bonds to repay the interest may be unavailable to Florida. See Art. VII, s. 11, Fla. Const.

<sup>29</sup> Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.

months, until June 30<sup>th</sup>, to pay the assessment. The assessments are paid into the DOR's Audit and Warrant Clearing Trust Fund and may earn interest. Any interest earned is part of the balance available to pay the interest to the federal government.

Florida has paid interest on advances to the federal government, as follows:

- September 2011 – approximately \$56 million; and
- September 2012 – approximately \$43 million.

Current assessments on deposit total about \$8.9 million, not including earned interest.

### III. Effect of Proposed Changes:

This bill makes several changes to the reemployment assistance program, primarily to the process for appealing determinations on reemployment assistance benefit claims.

#### Reemployment Assistance Appeals Process

This bill decentralizes the current appeals process by creating a local regional appeals office (RAO) in each of the 24 Regional Workforce Boards (RWBs).

The Reemployment Assistance Appeals Commission is repealed and its powers, duties, functions, records, and personnel are transferred by a type two transfer to the Department of Economic Opportunity (DEO). (**Section 1**) The bill provides a transition period, requiring the transfer to be complete by October 1, 2013. The DEO is required to develop and implement a transition plan to implement the bill, and the Governor may transfer funds and positions between budget entities upon the approval of the Legislative Budget Commission. Additionally, the Governor and the DEO are directed to work with any federal agencies as necessary to implement the bill. (**Section 2**)

In place of the commission, regional appeal offices are created at each of the state's 24 regional workforce boards. (**Section 3, amends s. 443.012, F.S.**) Regional appeal offices shall house appeals referees and review panels. The DEO is responsible for providing proper facilities and assistance for the regional appeal offices. Employees of the offices shall be employees of the DEO, but shall be appointed by the regional workforce board.

Similar to current law, appeals referees will hear and decide appeals of determinations by the DEO on applicants for benefits. The bill provides that alternates should be appointed in cases where an appeals referee has a conflict of interest. (**Section 3**)

Each regional workforce board is required to appoint three members from the board to serve as the review panel for that area.<sup>30</sup> The review panels will review the decisions of the local appeals referees. Members of the review panels serve staggered terms of two years. The regional workforce board must also appoint a general counsel to assist the review panel in carrying out the appeals process. The general counsel must be admitted to practice law in Florida and must

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<sup>30</sup> Section 445.007, F.S., sets forth the requirements for regional workforce board membership.

have a minimum of one year of experience in conducting judicial or administrative hearings or five years of experience in the practice of law. **(Section 3)**

The DEO is directed to establish a central appeal office for the purposes of maintaining records and filing the final orders of the review panels or district courts of appeal online. **(Sections 3 and 4)** The central appeal office may also be used to coordinate the filing of appeals through a central system. **(Section 4, amends s. 443.151, F.S.)**

Appeals are to be filed with the regional appeal office located at the regional workforce board serving the area of the claimant's last principal place of business. Appeals filed incorrectly may be forwarded to the appropriate office upon a timely request. Further, appeals of review panel decisions may be filed at the district court of appeal located where the order was issued. **(Section 4)**

Sections 20.60 **(Section 5)**, 110.205 **(Section 6)**, 120.80 **(Section 7)**, 443.0315 **(Section 8)**, 443.036 **(Section 9)**, 443.041 **(Section 10)**, 443.101 **(Section 12)**, 443.151 **(Section 4)**, 443.1317 **(Section 14)**, 443.141 **(Section 15)**, and 443.171 **(Section 16)**, F.S., are amended to address references to the commission and make conforming changes.

### **Work Search Eligibility Requirements**

The bill amends the requirements related to work search by claimants in s. 443.091(1)(d), F.S., by creating a limitation and an exception. **(Section 11)**

Under the current law a claimant must engage in a systematic and sustained effort to find work, including contacting at least five prospective employers each week, or three employers if the claimant resides in a small county.<sup>31</sup> The claimant must provide proof of his or her work search efforts to the DEO for each week of benefits claimed. The bill provides that the claimant may not count the same prospective employer at the same location more than once during his or her claim as proof of work search efforts. However, if the employer indicates that it is hiring after the claimant's initial contact, the claimant may count an additional contact with that employer as part his or her proof of work search efforts.

Additionally, the bill creates an additional exception to proof of work search requirements for claimants that are participating in Reemployment and Eligibility Assessments.<sup>32</sup>

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<sup>31</sup> An alternative to contacting prospective employers, claimants may also report to the One-Stop Career Center for reemployment services.

<sup>32</sup> REAs are in-person interviews with selected RA claimants to review the claimants' adherence to state 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 RA duration and saves RA 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., further sets forth information on reemployment services and requirements for participation.

### **Disqualification for Misconduct**

Under current law, an individual may be disqualified from receiving RA benefits for any week in which the DEO finds that he or she was discharged by his or her employer for misconduct.

The bill adds specific examples of “misconduct” to be included in the definition, but the examples are not intended to limit the definition. (**Section 9, amends s. 443.036(30), F.S.**) The examples include:

- Related to conduct demonstrating conscious disregard of an employer’s interests:
  - Willful damage to an employer’s property that results in damage of more than \$50; or
  - Theft of employer property or property of a customer or invitee of the employer.
- Related to conduct that causes sanctions or an employer’s license or certification to be suspended:
  - Failure to maintain a license, registration, or certification required by law for the employee to perform his or her duties.
- Related to conduct that violates an employer’s rule:
  - Criminal assault or battery on another employee, or on a customer or invitee of the employer; or
  - Abuse or neglect of a patient, resident, disabled person, elderly person, or child in the individual’s professional care.

### **Interest Assessment and Federal Interest Payments**

The Revenue Estimating Conference is required to estimate the amount of interest due to the federal government for advances, and the Department of Revenue (DOR) is required to use that estimate to calculate an assessment on employers in order to pay the interest.

The bill amends s. 443.131(5), F.S., to provide that no additional assessment on employers may be made by the DOR if the amount of assessments on deposit from previous years, plus any earned interest, is at least 80 percent of the estimated amount of interest. The bill clarifies that all assessments on deposit and earned interest is available to pay the interest to the federal government. (**Section 13**)

Under current law, any remaining assessments on deposit are to be credited to employer accounts after all federal advances and associated interest due has been paid. The amount to be credited to employers is based upon a calculation that takes into consideration how much the employer paid in assessments that year. It is expected that all federal advances will be repaid this year and the last interest payment will be made in September of this year. The amount of assessments on deposit after the federal interest has been paid is expected to be very minimal, if any at all remains.

The bill provides that 4 months after all advances and associated interest are repaid, any excess assessed funds remaining in the Audit and Warrant Clearing Trust Fund, including any associated interest, will be transferred to the Unemployment Compensation Trust Fund.

The bill provides that s. 443.131(5), F.S., expires on July 1, 2014.

**Effective Date**

**Section 17** provides an effective date of July 1, 2013.

**Other Potential Implications:**

The U.S. Department of Labor (USDOL) has broad oversight for the reemployment assistance program, including determining whether a state law conforms to federal unemployment insurance law and whether a state's administration of the program substantially complies with processes and procedures approved by the USDOL. 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 the FUTA or the Social Security Act requirements. When a state's law conforms to the requirements of the Social Security Act, the state is eligible to receive federal administrative grants to operate the state's program. When a state's law conforms to the requirements of the FUTA, employers in the state may receive a credit of up to 5.4 percent against the federal unemployment insurance tax rate of 6.0 percent.

The Secretary of USDOL is responsible for determining if a state's unemployment insurance law meets the requirements of federal law. Under the FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment insurance tax.

The USDOL may find various provisions of this bill to be out of conformity with federal law. If USDOL made such a finding, then it would not certify the state's reemployment assistance program and could withhold all administrative funding or cause the employer federal tax rates to increase to the total 6.0 percent because of loss of the entire FUTA tax credit. The USDOL has been requested to issue a written opinion on the effects of this bill.

**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:**

To the extent that individuals will be unable to receive reemployment assistance benefits under the bill’s changes to provisions relating to eligibility and disqualification, there may be an impact on employer contribution rates.

The transfer of any funds remaining after the final federal interest payment is made to the Unemployment Compensation Trust Fund may have a positive impact on employer contribution rates.

**B. Private Sector Impact:**

See Tax/Fee Issues.

**C. Government Sector Impact:**

The bill is expected to have a significant fiscal impact to the Department of Economic Opportunity (DEO). The DEO provided the following estimated costs, segregated by regional workforce board, for the review panels to replace the functions currently performed by the Reemployment Assistance Appeals Commission:<sup>33</sup>

	<b>Closed Commission Appeals FY 2011- 2012</b>	<b>Total Estimated FTE</b>	<b>Estimated Total First Year Cost</b>	<b>Estimated Total Recurring Cost</b>
Central Appeals	N/A	2	\$97,810	\$87,092
RWB 1	59	3	\$259,559	\$241,070
RWB 2	430	3	\$259,559	\$241,070
RWB 3	351	3	\$259,559	\$241,070
RWB 4	84	3	\$259,559	\$241,070
RWB 5	334	3	\$259,559	\$241,070
RWB 6	419	3	\$259,559	\$241,070
RWB 7	520	3	\$259,559	\$241,070
RWB 8	642	3	\$259,559	\$241,070
RWB 9	59	3	\$259,559	\$241,070
RWB 10	774	3	\$259,559	\$241,070
RWB 11	566	3	\$259,559	\$241,070

<sup>33</sup> DEO Bill Analysis of SB 222, dated February 28, 2013, received by committee staff on March 1, 2013, on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

RWB 12	1,176	5	\$403,791	\$373,378
RWB 13	713	3	\$259,559	\$241,070
RWB 14	1,590	5	\$403,791	\$373,378
RWB 15	688	3	\$259,559	\$241,070
RWB 16	557	3	\$259,559	\$241,070
RWB 17	336	3	\$259,559	\$241,070
RWB 18	392	3	\$259,559	\$241,070
RWB 19	74	3	\$259,559	\$241,070
RWB 20	1,284	5	\$403,791	\$373,378
RWB 21	358	3	\$259,559	\$241,070
RWB 22	219	3	\$259,559	\$241,070
RWB 23	3,906	10	\$741,160	\$681,540
RWB 24	603	3	\$259,559	\$241,070
<b>Total</b>	<b>16,134</b>	<b>87</b>	<b>\$7,241,523</b>	<b>\$6,710,166</b>

The DEO estimated that at least one general counsel, one staff attorney, and one administrative support position would be needed to operate higher authority appeals functions in each region.

The USDOL provides annual administrative grants to administer the reemployment assistance program. The DEO indicates that the USDOL is expected to provide \$3.5 million to administer higher authority appeals functions. The DEO estimates that it will need an additional \$3.7 million of state funds (\$3.2 million of which is recurring) to transfer the functions of the RAAC to the review panels in the regional workforce boards. In addition, the DEO estimates that \$600,000 of nonrecurring state funds will be needed for staff training. The DEO projects that approximately \$18 million of state funds will be needed to make the necessary modifications to the Reemployment Assistance Claims and Benefits System (“Project Connect”). Project Connect is currently scheduled to be fully deployed in December, 2013.

To the extent that decentralizing the process for appealing determinations on reemployment assistance benefit claims results in additional final orders being appealed to the appropriate district court of appeals, the bill may have a significant, but indeterminate, fiscal impact to the State Courts System.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not provide for alternates to be appointed in the case where a review panel member has a conflict of interest.

**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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