

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 Committee on Governmental Oversight and Accountability

BILL: SB 726

INTRODUCER: Senator Detert

SUBJECT: Reemployment Assistance Appeals Commission

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting

I. Summary:

SB 726 reconfigures the Reemployment Assistance Appeals Commission to expand its membership to nine members and provide regional representation by the appointment of members of Regional Workforce Boards. The commissioners are to be appointed by the Governor, subject to Senate confirmation, and are selected from lists of candidates provided by the President of the Senate and the Speaker of the House of Representatives. Commissioners will serve 2 year terms, except for some initial appointments, which will be for 1 year to allow the appointments to be staggered. The full-time chair of the commission will continue to be selected and appointed by the Governor, subject to Senate confirmation, and serve a 4 year term. Appointments will be made in a manner that prevents any regional workforce board to be represented on the commission more than once in a 6 year period. The bill outlines the criteria for a quorum and contains conflict of interest provisions. The bill also eliminates the \$100 stipend paid to commission members.

II. Present Situation:

Reemployment Assistance

The 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

¹ United States Department of Labor, Employment and Training Administration, [State Unemployment Insurance Benefits](http://workforcsecurity.doleta.gov/unemploy/uifactsheet.asp), available at <http://workforcsecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Feb. 6, 2014).

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

Florida's unemployment insurance program was created by the Legislature in 1937.³ The program was rebranded as the "reemployment assistance program" in 2012.⁴ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.

An individual must apply to the DEO for benefits. To receive benefits, a claimant must meet certain monetary and non-monetary eligibility requirements.⁵ 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 notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits.

Determinations and Redeterminations

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁶ Determinations and redeterminations are statements by the DEO 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 and the DEO must review the information on which the request is based and issue a redetermination.

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.⁷

Appeals of Appeals Referee Decisions – Reemployment Assistance Appeals Commission

A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission (commission). The commission may affirm, modify, remand with instructions, or reverse the determination made by the appeals referee based on evidence previously submitted in the case or additional evidence taken at the direction of the commission.⁸ However, the commission may also assume jurisdiction of a case prior to completion of proceedings by an appeals referee.⁹

³ Chapter 18402, L.O.F.

⁴ Chapter 2012-30, L.O.F.

⁵ See s. 443.091, F.S.

⁶ Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).

⁷ Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests.

⁸ Rule 73B-22, F.A.C. The commission will review the appeals referee's decision to determine whether the findings are supported by competent, substantial evidence in the record and the legal conclusions are in accord with the essential requirements of law.

⁹ Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Feb. 12, 2014) (on file with the Senate Committee on Commerce and Tourism). The commission does not generally hold oral arguments and has not removed cases from the appeals referees.

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.¹⁰ 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.

Reemployment Assistance Appeals Commission

The commission was established in 1977 as the Board of Review.¹¹ The commission is administratively housed within the DEO, but is a quasi-judicial administrative appellate body independent of the DEO.¹² The commission is funded from federal grants that are received by the DEO for the operation of Florida's reemployment assistance program.

The current composition of the commission includes a full-time chairperson and two other members, appointed by the Governor and subject to Senate confirmation. The members serve staggered terms of 4 years each. The chair of the commission is required to have the same qualifications of a circuit judge and is restricted from engaging in any other business or employment. Only one appointee may be a representative of employers and one may be a representative of employees as demonstrated by each member's previous vocation, employment, or affiliation. The chair is paid a salary comparable to that of a circuit judge and the other two members are paid a stipend of \$100 for each day they are engaged in work for the commission.

For FY 2012-2013, the commission received 12,328 appeals and issued 12,542 final or remand orders. If one of the commissioners disagrees with a staff recommendation or otherwise requests discussion of a case, it is docketed for a publicly-noticed deliberation meeting. The commissioners reviewed approximately 9,400 cases that were docketed for the commission and each spent, on average, 1,060 hours reviewing these cases.¹³ Additionally, each commissioner spends an average of two hours per week to meet and discuss cases, plus any additional time the commissioner may need to prepare for the meeting. For each case, a commissioner receives a staff summary, the lower level appeal decision, the letter of appeal, legal briefs or other documents filed with the commission, and any exhibits and other evidence reviewed by the DEO appeals referee. Legal staff of the commission is available to provide the commissioners with legal research and analysis for questions that may arise during their independent review of cases or during the public deliberations of the commission.¹⁴

¹⁰ Section 443.151(4)(c), (d), and (e), F.S.

¹¹ Chapter 77-399, L.O.F.

¹² Section 20.60(8), F.S.

¹³ DEO, *Agency Bill Analysis*. To calculate the amount of time spent an average of 10 minutes per case for an "experienced commissioner" is used.

¹⁴ DEO, *Agency Bill Analysis*. Commission meetings are generally held by conference call.

Commissioners are provided case information on a daily basis so that the commission can remain within federally-required timelines.¹⁵ The commission must dispose of 50 percent of cases within 45 days, 80 percent within 75 days, and 95 percent within 150 days. Failure to meet federal performance standards may negatively affect federal funding for the reemployment assistance program. For FY 2012-2013, the commission disposed of 75 percent of its cases within 45 days, 98 percent within 75 days, and 100 percent within 150 days.¹⁶

Regional Workforce Boards

The Workforce Innovation Act of 2000 was passed in an effort to better connect the state's economic development strategies with its workforce development system.¹⁷ The act established a three-tier system for the delivery of workforce services.¹⁸

The DEO is Florida's lead state workforce agency.¹⁹ However, CareerSource Florida²⁰ sets the state's workforce development policy and guidance.²¹ Workforce services in Florida are provided by 24 regional workforce boards (RWB) who deliver services through nearly 100 One-Stop Centers around the state.²²

Each RWB develops a local plan for using federal workforce funds and oversees workforce development activities in the region. The boards also select contractors to operate local One-Stop Career Centers. The One-Stop Career Centers deliver employment services to job seekers and employers. Services include job placement and recruitment assistance as well as funding for skills training.

The service areas of the RWBs generally align with the community college system. Each board is allowed to implement policies based upon the economic development, business, and workforce needs of its particular region of the state.²³

The county or city governing bodies, within an RWB's designated service area, enter into an inter-local agreement to establish the local parameters under which the RWB will operate. This includes the manner in which board members are appointed. Board membership must comply with the requirements outlined in federal workforce law.²⁴ Specifically, the Governor of the state, in partnership with the state board, shall establish criteria for use by chief elected officials in the

¹⁵ DEO, *Agency Bill Analysis*. Timeliness standards are specified in the State Quality Service Plan. This plan serves as the performance document and the grant document through which the state receives administrative funding.

¹⁶ DEO, *Agency Bill Analysis*.

¹⁷ Chapter 2000-165, L.O.F. See bill analysis for SB 2050 and HB 1135 (2000).

¹⁸ See ch. 445, F.S.

¹⁹ Primarily through its Division of Workforce Services.

²⁰ Workforce Florida, Inc., is transitioning to a new unified brand, CareerSource Florida. CareerSource Florida, [Florida Activates New Unified Workforce Brand](http://careersourceflorida.com/wp-content/uploads/2014/01/CareerSourceFloridaLaunchRelease.pdf), available at <http://careersourceflorida.com/wp-content/uploads/2014/01/CareerSourceFloridaLaunchRelease.pdf> (last visited Feb. 12, 2014).

²¹ Workforce Florida, Inc., is Florida's state workforce investment board. See 29 U.S.C. 2821.

²² See <http://careersourceflorida.com/about-careersource-florida> (last visited Feb. 12, 2014).

²³ See s. 445.003, F.S.

²⁴ 29 U.S.C. s. 2832(b). See also Department of Economic Opportunity, Administrative Policy FG-OSPS-73, *Regional Workforce Board Composition, Certification and Decertification* (rev. Sept. 11, 2013), available at <http://www.floridajobs.org/PDG/guidancepapers/DEOGuidancePaperCert073.pdf> (last visited Feb. 14, 2014).

local areas for appointment of members of the local boards. Such criteria shall require, at a minimum, that the membership of each local board shall include the following:

- Representatives of business in the local area, who:
 - Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;
 - Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
 - Are appointed from among individuals nominated by local business organizations and business trade associations;
- Representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
- Representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
- Representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
- Representatives of economic development agencies, including private sector economic development entities;
- Representatives of each of the one-stop partners; and
- Other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

Additionally, state law requires that if a public education or training provider is represented on the board, a representative of a private nonprofit provider and a representative of a private for-profit provider must also be appointed to the board. If the board is located in a region in which there is a military installation, the board must also include one nonvoting military representative.²⁵ The Governor may remove a member of the board for cause.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 443.012, F.S., to redefine the membership of the Reemployment Assistance Appeals Commission (commission). The bill provides that the terms of the members, except for the chair, currently serving on the commission will expire on September 30, 2014.

Beginning October 1, 2014, the commission will be composed of nine members. The chair will continue to be appointed by the Governor, subject to Senate confirmation, for a term of 4 years. The Governor will appoint eight other commissioners, subject to confirmation by the Senate, for

²⁵ Section 445.007(1), F.S.

²⁶ “Cause” includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance. See s. 445.007(2)(b), F.S.

a term of 2 years. Four members of the commission are to be selected from a list of candidates provided by the President of the Senate, which may only include members of the even-numbered regional workforce boards; and four members of the commission are to be selected from a list of candidates provided by the Speaker of the House of Representatives, which may only include members of the odd-numbered regional workforce boards. Each list must contain at least twice the number of candidates as the positions required to be filled.

Only a single member of a regional workforce board may be represented on the commission at any given time. An individual regional workforce board cannot be represented more than once in a 6 year period. *For example:*

Year	Senate recommendations from RWBs	House recommendations from RWBs
2014	2,4,6, and 8*	1,3,5,and 7*
2015	6 and 8	5 and 7
2016	10 and 12	9 and 11
2017	14 and 16	13 and 19
2018	18 and 20	17 and 19
2019	22 and 24	21 and 23

*For the initial appointments, two of the members appointed from the list submitted by the President of the Senate and two of the members appointed from the list submitted by the Speaker will be appointed for a one year term in order to stagger the terms of the appointments. These individuals would be eligible to be reappointed for an additional 2 year term. Vacancies for unexpired terms will be filled in the same manner as the original appointment.

Commission members will only be reimbursed for travel expenses and will not receive the \$100 daily stipend currently paid to commission members for each day they are engaged in commission work.

The bill provides that the presence of four members, in addition to the chair, will constitute a quorum. A member may not participate in a case in which he or she is an interested party or may have a conflict of interest.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 3, Art. II of the State Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

The bill provides that eight of the nine commission members will be appointed by the Governor from lists provided by the presiding officers of the legislature. Based on the independent lists submitted by each of the presiding officers, four members must be appointed from a list of at least eight persons serving on a select group of regional workforce boards.

It is unclear whether the structure of the appointment process of executive branch officials, with the direct involvement of the presiding officers of the legislature, is a violation of the principle of separation of powers.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEO estimates the following impacts:²⁷

- There may be significant impact on the commission staff to provide legal and administrative support to nine members instead of three.
- There will be increased travel costs, as the commission meets in person at least two times per year. New members will also be required to travel to Tallahassee for training, which commission staff anticipates will last approximately one week.
- Additional computers and computer support will be needed for the additional commissioners.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legislation may impact the commission’s ability to meet federal timeliness standards for the reemployment assistance appeals process. With eight new commissioners in the first year and

²⁷ DEO, *Agency Bill Analysis*.

then four new commissioners each year, the rate at which cases can be reviewed may be significantly reduced.²⁸

VIII. Statutes Affected:

This bill substantially amends section 443.012 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

²⁸ DEO, *Agency Bill Analysis*.