

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 844

INTRODUCER: Senator Latvala

SUBJECT: Unemployment Compensation

DATE: February 28, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 844 authorizes the Department of Economic Opportunity (DEO) to noncharge the accounts of employers who are required to lay off employees due to the termination of a federal contract or a change in the security clearance requirements of a federal contract.

**II. Present Situation:**

**Reemployment Assistance**

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>

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 Federal Unemployment Tax Act (FUTA) or the Social Security Act requirements. Florida's unemployment insurance program was created by the Legislature in 1937.<sup>3</sup> The program was rebranded as the "reemployment assistance" program in 2012.<sup>4</sup> The DEO is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division for Workforce Services. The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.<sup>5</sup>

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

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

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

<sup>4</sup> Chapter 2012-30, L.O.F.

<sup>5</sup> Section 443.1316, F.S.

Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under FUTA.<sup>6</sup> FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. In addition, FUTA pays one-half 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.<sup>7</sup> The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.0 percent.<sup>8</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 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 employee's annual wages during the previous year.

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>9</sup> The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience," the balance of the Unemployment Compensation Trust Fund, and other factors. The employer's experience rating is based on the employer's own employment records (employers are "charged" when an eligible employee collects RA benefits), in relation to the employment records of all other employers.<sup>10</sup> The experience rating serves to stabilize the Unemployment Compensation Trust Fund, as well as ensure that all employers pay their fair share based on their own experience rating. An employer's tax rate is adjusted annually, and may vary from the maximum rate of 5.4 percent to the minimum rate which varies each year based on adjustment factors.

### **Federal Contracting Overview**

The typical federal procurement process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing those items, and carrying out an acquisition process. Under most procurement processes, an agency posts a solicitation on the Federal Business Opportunities website. Interested businesses prepare their offers in response to the solicitation, and agency personnel evaluate the offers. To be eligible to compete for government contracts a business must first obtain a Data Universal Numbering System (DUNS) number, and register with the System for Award Management (SAM). Many agencies provide assistance and services to potential and existing federal contractors.

Businesses may also serve as subcontractors for other businesses (known as "prime contractors") that have been awarded federal contracts. Most federal agencies typically release information on

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<sup>6</sup> FUTA is codified at 26 U.S.C. ss. 3301-3311.

<sup>7</sup> United States Department of Labor, Employment and Training Administration, "Unemployment Insurance Tax Topic," available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited Feb. 20, 2014).

<sup>8</sup> 26 U.S.C. s. 3301.

<sup>9</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. State and local governments are reimbursing employers. Most employers are contributory employers. In January 2015, the "wage base" will be reduced to \$7,000. See s. 443.1217(2)(a), F.S.

<sup>10</sup> Florida Department of Revenue, "Employer Guide to Reemployment Tax," available at <http://dor.myflorida.com/dor/forms/current/rt800002.pdf> (last visited Feb. 20, 2014).

their websites listing prime contractors that have been awarded federal contracts, which can be a valuable resource for potential subcontractors. Other agencies, including the General Services Administration, Department of Homeland Security, and Small Business Administration provide more specific information regarding subcontracting opportunities with prime contractors on their websites.<sup>11</sup>

For Federal Fiscal Year (FFY) 2013, approximately \$28.7 billion in federal contract and grant dollars were obligated for goods and services to be performed in Florida.<sup>12</sup> Thus far in Federal Fiscal Year 2014, more than \$10 billion have been obligated for contracts and grants to be performed in Florida.<sup>13</sup>

It is expected, however, that defense spending will face a significant reduction in upcoming years. According to the Department of Defense (DoD), the overall defense budget will drop by 20 percent by 2017 from the post-9/11 peak level in 2010.<sup>14</sup> In an effort to meet the challenges of a reduced budget, DoD has implemented or will implement a number of cost-saving measures, such as personnel reductions, reduction of overhead expenses, and shifting of investments.

### Security Clearances

A security clearance is a determination that a federal employee or a private contractor performing services for the government is eligible to access classified national security information.<sup>15</sup> There are 3 levels of security clearances, which are “top secret,” “secret,” and “confidential.”<sup>16</sup>

There are four stages in the security clearance process: pre-investigation, investigation, adjudication, and reinvestigation. As of the fourth quarter of the FFY 2010, the average processing time for a security clearance, from initiation to adjudication was 53 days. There is some speculation that due to recent breaches of security and unauthorized release of national security information, the process for screening individuals for security clearances may become more stringent and possibly cause a delay in processing times.<sup>17</sup> The determination on the issuance of a security clearance is based on adjudicative guidelines, and adverse information

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<sup>11</sup> L. Elaine Halchin, Congressional Research Service; “Overview of the Federal Procurement Process and Resources,” September 11, 2012, available at <https://www.fas.org/sgp/crs/misc/RS22536.pdf> (last visited Feb. 20, 2014).

<sup>12</sup> U.S. Office of Management and Budget, USASpending.gov, available at <http://usaspending.gov/> (last visited Feb. 24, 2014). Search criteria used to obtain information included contracts and grants for fiscal year 2013 to be performed in Florida.

<sup>13</sup> Id. Search criteria used to obtain information included contracts and grants for fiscal year 2014 to be performed in Florida.

<sup>14</sup> U.S. Department of Defense, “Defense Budget Priorities and Choices, Fiscal Year 2014,” (Apr. 2013), available at <http://www.defense.gov/pubs/DefenseBudgetPrioritiesChoicesFiscalYear2014.pdf> (last visited Feb. 24, 2014).

<sup>15</sup> Michelle D. Christensen and Frederick M. Kaiser, Cong. Research Serv., R43216, “Security Clearance Process: Answers to Frequently Asked Questions” (Sept. 9, 2013), available at <https://www.fas.org/sgp/crs/secret/R43216.pdf> (last visited Feb. 19, 2014).

<sup>16</sup> Id. at 2. “Top secret” is the highest level and provides access to security information that would “cause exceptionally grave damage to national security” if disclosed without authorization, “secret” provides access to security information that would “cause serious damage to national security” if disclosed without authorization, and “confidential” provides access to security information that would “cause damage to national security” if disclosed without authorization.

<sup>17</sup> Stephen Losey, “Expect Security Clearance Delays NSA Leak Could Mean Less Info-Sharing, More Polygraphs,” Fed. Times, June 24, 2013, available at <http://www.federaltimes.com/article/20130624/PERSONNEL03/306240008/Expect-security-clearance-delays> (last visited Feb. 20, 2014).

regarding one guideline will not automatically result in a denial of a security clearance.<sup>18</sup> If an applicant receives an unfavorable determination, it may be appealed. The appeals are typically handled within the agency that issued the determination; however, security clearance decisions are generally not subject to judicial review.

Continuing eligibility for a security clearance is re-determined periodically. The schedule for the re-investigation and re-determination varies across agencies and is typically based on the level of security clearance an individual holds.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 443.131, F.S., to create two new conditions for which employers' unemployment accounts will not be charged for benefits paid as a result of an eligible reemployment assistance claim. In the first situation, the DEO may not charge an employer's account for RA benefits paid as a result of a separation from employment due to the termination of federal contract award, except for cases of default. This provision expires December 31, 2017.

In the second situation, the DEO may not charge an employer's account for RA benefits paid as a result of the employer's termination of the employment of an individual as a result of a federal law, regulation, or executive order that mandates a higher level of security clearance or background check for doing the same or similar work the individual was performing prior to the imposition of the mandate; and the individual is deemed ineligible to continue such work by the federal government.

According to the DEO, an informal opinion issued by the U.S. Department of Labor (USDOL) suggests that the provision of the bill that relieves an employer's account of benefit charges in the event of a termination of a federal contract could cause the Florida RA program to be out of compliance with federal law.<sup>20</sup>

**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.

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<sup>18</sup> Christensen and Kaiser, *supra* note 15 at 9-10. The adjudicative guidelines used by governmental agencies in making security clearance determinations include: allegiance to the United States, foreign influence, foreign preference, sexual behavior, personal conduct, financial considerations, alcohol consumption, drug involvement, criminal conduct, security violations, outside activities, misuse of information systems, and emotional, mental, and personality disorders.

<sup>19</sup> Christensen and Kaiser, *supra* note 15 at 6. General guidelines are that someone with a confidential clearance will be reinvestigated at least once every 15 years; secret, at least once every 10 years; and top secret, at least once every 5 years.

<sup>20</sup> DEO, *2014 Agency Legislative Bill Analysis, House Bill 519*, (Feb. 5, 2014) (on file with Senate Commerce and Tourism Committee).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

If Florida's program is determined to be out of compliance with federal law by the USDOL, the 5.4 percent credit in FUTA taxes that Florida employers now receive may be eliminated.<sup>21</sup>

Those employers who must lay off employees due to termination of a federal contract or a change in the security clearance requirements for which incumbent employees are unable to meet, would not be subject to benefit charges to their employer accounts and would not see an increase in their experience ratings. However, these costs would be shared by all employers through the calculation of adjustment factors in the unemployment tax calculation.

C. Government Sector Impact:

The DEO advises that there will be some costs associated with reprogramming the RA benefit and claims system, known as CONNECT. This cost is estimated to be between \$150,000 and \$250,000. Any additional administrative costs will be absorbed with current staff and resources.<sup>22</sup>

To the extent that provisions of the bill impact the conformity of Florida's RA law with federal requirements, the federal funding provided to administer the program could be jeopardized.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 443.131 of the Florida Statutes.

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<sup>21</sup> Id.

<sup>22</sup> Id.

**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.

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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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